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2d Session }

COMMITTEE PRINT

{ Ser. No. 18

IMPEACHMENT INQUIRY:  
WILLIAM JEFFERSON CLINTON,  
PRESIDENT OF THE UNITED STATES  
CONSIDERATION OF ARTICLES OF  
IMPEACHMENT

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IMPEACHMENT INQUIRY PURSUANT TO H. RES. 581:  
CONSIDERATION OF ARTICLES OF IMPEACHMENT

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COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

HENRY J. HYDE, *Chairman*



DECEMBER 10, 11, AND 12, 1998

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## CONSIDERATION OF ARTICLES OF IMPEACHMENT

THURSDAY, DECEMBER 10, 1998

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to other business, at 5:30 p.m., in Room 2141, Rayburn House Office Building, Hon. Henry J. Hyde [chairman of the committee] presiding.

Present: Representatives Henry J. Hyde, F. James Sensenbrenner, Jr., Bill McCollum, George W. Gekas, Howard Coble, Lamar S. Smith, Elton Gallegly, Charles T. Canady, Bob Inglis, Bob Goodlatte, Stephen E. Buyer, Ed Bryant, Steve Chabot, Bob Barr, William L. Jenkins, Asa Hutchinson, Edward A. Pease, Christopher B. Cannon, James E. Rogan, Lindsey O. Graham, Mary Bono, John Conyers, Jr., Barney Frank, Charles E. Schumer, Howard L. Berman, Rick Boucher, Jerrold Nadler, Robert C. Scott, Melvin L. Watt, Zoe Lofgren, Sheila Jackson Lee, Maxine Waters, Martin T. Meehan, William D. Delahunt, Robert Wexler, Steven R. Rothman, and Thomas M. Barrett.

Majority Staff Present: Thomas E. Mooney, Sr., general counsel-chief of staff; Jon W. Dudas, deputy general counsel-staff director; Diana L. Schacht, deputy staff director-chief counsel; Daniel M. Freeman, parliamentarian-counsel; Joseph H. Gibson, chief counsel; Peter Levinson, counsel; Rick Filkins, counsel; Sharee M. Freeman, counsel; John F. Mautz, IV, counsel; William Moschella, counsel; Stephen Pinkos, counsel; Judy Wolverton, professional staff; Sheila F. Klein, executive assistant to general counsel-chief of staff; Annelie Weber, executive assistant to deputy general counsel-staff director; Samuel F. Stratman, press secretary; Rebecca S. Ward, officer manager; James B. Farr, financial clerk; Lynn Alcock, calendar clerk; Elizabeth Singleton, legislative correspondent; Sharon L. Hammersla, computer systems coordinator; Michele Manon, administrative assistant; Joseph McDonald, publications clerk; Shawn Friesen, staff assistant/clerk; Robert Jones, staff assistant; Ann Jemison, receptionist; Michael Connolly, communications assistant; Michelle Morgan, press secretary; and Patricia Katyoka, research assistant.

Subcommittee on Commercial and Administrative Law Staff Present: Ray Smietanka, chief counsel; Jim Harper, counsel; Susan Jensen-Conklin, counsel; and Audray L. Clement, staff assistant.

Subcommittee on the Constitution Staff Present: John H. Ladd, chief counsel; Cathleen A. Cleaver, counsel; and Susana Gutierrez, clerk/research assistant.

Subcommittee on Courts and Intellectual Property Staff Present: Mitch Glazier, chief counsel; Blaine S. Merritt, counsel; Vince Garlock, counsel; Debra K. Laman, counsel; and Eunice Goldring, staff assistant.

Subcommittee on Crime Staff Present: Paul J. McNulty, director of communications-chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, counsel; Nicole R. Nason, counsel; and Veronica Eligan, staff assistant.

Subcommittee on Immigration and Claims Staff Present: George M. Fishman, chief counsel; Laura Baxter, counsel; Jim Y. Wilon, counsel; Cynthia Blackston, clerk; and Judy Knott, staff assistant.

Majority Investigative Staff Present: David P. Schippers, chief investigative counsel; Susan Bogart, investigative counsel; Thomas M. Schippers, investigative counsel; Jeffery Pavletic, investigative counsel; Charles F. Marino, counsel; John C. Kocoras, counsel; Diana L. Woznicki, investigator; Peter J. Wacks, investigator; Albert F. Tray, investigator; Berle S. Littmann, investigator; Stephen P. Lynch, professional staff member; Nancy Ruggero-Tracy, office manager/coordinator; and Patrick O'Sullivan, staff assistant.

Minority Staff Present: Julian Epstein, minority chief counsel-staff director; Perry Apelbaum, minority general counsel; Samara T. Ryder, counsel; Brian P. Woolfolk, counsel; Henry Moniz, counsel; Robert Raben, minority counsel; Stephanie Peters, counsel; David Lachmann, counsel; Anita Johnson, executive assistant to minority chief counsel-staff director, and Dawn Burton, minority clerk.

Minority Investigative Staff Present: Abbe D. Lowell, minority chief investigative counsel; Lis W. Wiehl, investigative counsel; Deborah L. Rhode, investigative counsel; Kevin M. Simpson, investigative counsel; Stephen F. Reich, investigative counsel; Sampak P. Garg, investigative counsel; and Maria Reddick, minority clerk.

#### OPENING STATEMENT OF CHAIRMAN HYDE

Chairman HYDE. The committee will come to order. The committee will once more come to order.

The committee will now consider a resolution exhibiting articles of impeachment. The Chair will recognize the gentleman from Wisconsin for purposes of making a motion, but first, I want to make a short statement.

There is one difference between the draft articles that were distributed yesterday at the request of Mr. Conyers and the Democratic members of the committee, and the resolution I am introducing that you have before you. You will note that each page of the draft resolution contained the words "discussion, working draft only, subject to change, pending evidentiary presentations."

Article II, paragraph 2, accuses the President of making perjurious, false and misleading statements in his deposition in the Jones case. In that paragraph, which describes the alleged perjurious statements he made, on page 4, lines 14 to 16, the following words have been inserted: "his knowledge—"

Mr. SCOTT. What page, Mr. Chairman?

Chairman HYDE. On page 4, lines 14 to 16.

Mr. SCOTT. Where does the beginning start?

Chairman HYDE. In the middle of line 14, after the comma: "his knowledge of that employee's involvement and participation in the civil rights action brought against him."

I have determined that this gives an even more accurate description of the types of alleged perjurious statements made by the President. This is the only substantive change from the draft articles.

Mr. FRANK. Mr. Chairman, the one I have—parliamentary inquiry. The one that is dated December 10th, those words are already in it, is that correct?

Chairman HYDE. Yes, I am told they are.

Mr. FRANK. Because it would look funny with them in there twice.

Chairman HYDE. Yes, all right. Legislative counsel has made some technical changes such as adding commas and capitalizing some words, but that is the only change.

All right. The Chair recognizes the gentleman from Wisconsin for purposes of making a motion.

Mr. SENSENBRENNER. Mr. Chairman, I move the resolution's favorable recommendation to the House.

Chairman HYDE. The clerk will report the resolution.

The CLERK. Resolved, that William Jefferson Clinton—

Chairman HYDE. Excuse me for a second, Mr. Clerk. I ask unanimous consent that the reading of the articles be dispensed with.

Without objection, so ordered.

[The Resolution follows:]

105TH CONGRESS  
2D SESSION

**H. RES.** \_\_\_\_\_

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IN THE HOUSE OF REPRESENTATIVES

Mr. HYDE submitted the following resolution; which was

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**RESOLUTION**

Impeaching William Jefferson Clinton, President of the  
United States, for high crimes and misdemeanors.

1       *Resolved*, That William Jefferson Clinton, President  
2 of the United States, is impeached for high crimes and  
3 misdemeanors, and that the following articles of impeach-  
4 ment be exhibited to the United States Senate:

5       Articles of impeachment exhibited by the House of  
6 Representatives of the United States of America in the  
7 name of itself and of the people of the United States of  
8 America, against William Jefferson Clinton, President of  
9 the United States of America, in maintenance and support  
10 of its impeachment against him for high crimes and mis-  
11 demeanors.

## 1 ARTICLE I

2 In his conduct while President of the United States,  
3 William Jefferson Clinton, in violation of his constitutional  
4 oath faithfully to execute the office of President of the  
5 United States and, to the best of his ability, preserve, pro-  
6 tect, and defend the Constitution of the United States,  
7 and in violation of his constitutional duty to take care that  
8 the laws be faithfully executed, has willfully corrupted and  
9 manipulated the judicial process of the United States for  
10 his personal gain and exoneration, impeding the adminis-  
11 tration of justice, in that:

12 On August 17, 1998, William Jefferson Clinton swore  
13 to tell the truth, the whole truth, and nothing but the  
14 truth before a Federal grand jury of the United States.  
15 Contrary to that oath, William Jefferson Clinton willfully  
16 provided perjurious, false and misleading testimony to the  
17 grand jury concerning: (1) the nature and details of his  
18 relationship with a subordinate Government employee; (2)  
19 prior perjurious, false and misleading testimony he gave  
20 in a Federal civil rights action brought against him; (3)  
21 prior false and misleading statements he allowed his attor-  
22 ney to make to a Federal judge in that civil rights action;  
23 and (4) his corrupt efforts to influence the testimony of  
24 witnesses and to impede the discovery of evidence in that  
25 civil rights action.

1 In doing this, William Jefferson Clinton has under-  
2 mined the integrity of his office, has brought disrepute  
3 on the Presidency, has betrayed his trust as President,  
4 and has acted in a manner subversive of the rule of law  
5 and justice, to the manifest injury of the people of the  
6 United States.

7 Wherefore, William Jefferson Clinton, by such con-  
8 duct, warrants impeachment and trial, and removal from  
9 office and disqualification to hold and enjoy any office of  
10 honor, trust, or profit under the United States.

11 ARTICLE II

12 In his conduct while President of the United States,  
13 William Jefferson Clinton, in violation of his constitutional  
14 oath faithfully to execute the office of President of the  
15 United States and, to the best of his ability, preserve, pro-  
16 tect, and defend the Constitution of the United States,  
17 and in violation of his constitutional duty to take care that  
18 the laws be faithfully executed, has willfully corrupted and  
19 manipulated the judicial process of the United States for  
20 his personal gain and exoneration, impeding the adminis-  
21 tration of justice, in that:

22 (1) On December 23, 1997, William Jefferson  
23 Clinton, in sworn answers to written questions asked  
24 as part of a Federal civil rights action brought  
25 against him, willfully provided perjurious, false and

1 misleading testimony in response to questions  
2 deemed relevant by a Federal judge concerning con-  
3 duct and proposed conduct with subordinate employ-  
4 ees.

5 (2) On January 17, 1998, William Jefferson  
6 Clinton swore under oath to tell the truth, the whole  
7 truth, and nothing but the truth in a deposition  
8 given as part of a Federal civil rights action brought  
9 against him. Contrary to that oath, William Jeffer-  
10 son Clinton willfully provided perjurious, false and  
11 misleading testimony in response to questions  
12 deemed relevant by a Federal judge concerning the  
13 nature and details of his relationship with a subordi-  
14 nate Government employee, his knowledge of that  
15 employee's involvement and participation in the civil  
16 rights action brought against him, and his corrupt  
17 efforts to influence the testimony of that employee.

18 In all of this, William Jefferson Clinton has under-  
19 mined the integrity of his office, has brought disrepute  
20 on the Presidency, has betrayed his trust as President,  
21 and has acted in a manner subversive of the rule of law  
22 and justice, to the manifest injury of the people of the  
23 United States.

24 Wherefore, William Jefferson Clinton, by such con-  
25 duct, warrants impeachment and trial, and removal from

1 office and disqualification to hold and enjoy any office of  
2 honor, trust, or profit under the United States.

3 ARTICLE III

4 In his conduct while President of the United States,  
5 William Jefferson Clinton, in violation of his constitutional  
6 oath faithfully to execute the office of President of the  
7 United States and, to the best of his ability, preserve, pro-  
8 tect, and defend the Constitution of the United States,  
9 and in violation of his constitutional duty to take care that  
10 the laws be faithfully executed, has prevented, obstructed,  
11 and impeded the administration of justice, and has to that  
12 end engaged personally, and through his subordinates and  
13 agents, in a course of conduct or scheme designed to delay,  
14 impede, cover up, and conceal the existence of evidence  
15 and testimony related to a Federal civil rights action  
16 brought against him in a duly instituted judicial proceed-  
17 ing.

18 The means used to implement this course of conduct  
19 or scheme included one or more of the following acts:

20 (1) On or about December 17, 1997, William  
21 Jefferson Clinton corruptly encouraged a witness in  
22 a Federal civil rights action brought against him to  
23 execute a sworn affidavit in that proceeding that he  
24 knew to be perjurious, false and misleading.

1           (2) On or about December 17, 1997, William  
2           Jefferson Clinton corruptly encouraged a witness in  
3           a Federal civil rights action brought against him to  
4           give perjurious, false and misleading testimony if  
5           and when called to testify personally in that proceed-  
6           ing.

7           (3) On or about December 28, 1997, William  
8           Jefferson Clinton corruptly engaged in, encouraged,  
9           or supported a scheme to conceal evidence that had  
10          been subpoenaed in a Federal civil rights action  
11          brought against him.

12          (4) Beginning on or about December 7, 1997,  
13          and continuing through and including January 14,  
14          1998, William Jefferson Clinton intensified and suc-  
15          ceeded in an effort to secure job assistance to a wit-  
16          ness in a Federal civil rights action brought against  
17          him in order to corruptly prevent the truthful testi-  
18          mony of that witness in that proceeding at a time  
19          when the truthful testimony of that witness would  
20          have been harmful to him.

21          (5) On January 17, 1998, at his deposition in  
22          a Federal civil rights action brought against him,  
23          William Jefferson Clinton corruptly allowed his at-  
24          torney to make false and misleading statements to  
25          a Federal judge characterizing an affidavit, in order

1 to prevent questioning deemed relevant by the judge.  
2 Such false and misleading statements were subse-  
3 quently acknowledged by his attorney in a commu-  
4 nication to that judge.

5 (6) On or about January 18 and January 20-  
6 21, 1998, William Jefferson Clinton related a false  
7 and misleading account of events relevant to a Fed-  
8 eral civil rights action brought against him to a po-  
9 tential witness in that proceeding, in order to cor-  
10 ruptly influence the testimony of that witness.

11 (7) On or about January 21, 23 and 26, 1998,  
12 William Jefferson Clinton made false and misleading  
13 statements to potential witnesses in a Federal grand  
14 jury proceeding in order to corruptly influence the  
15 testimony of those witnesses. The false and mislead-  
16 ing statements made by William Jefferson Clinton  
17 were repeated by the witnesses to the grand jury,  
18 causing the grand jury to receive false and mislead-  
19 ing information.

20 In all of this, William Jefferson Clinton has under-  
21 mined the integrity of his office, has brought disrepute  
22 on the Presidency, has betrayed his trust as President,  
23 and has acted in a manner subversive of the rule of law  
24 and justice, to the manifest injury of the people of the  
25 United States.



1 continue concealing his misconduct and to escape ac-  
2 countability for such misconduct.

3 (2) As President, using the attributes of office,  
4 William Jefferson Clinton willfully made false and  
5 misleading statements to members of his cabinet,  
6 and White House aides, so that these Federal em-  
7 ployees would repeat such false and misleading  
8 statements publicly, thereby utilizing public re-  
9 sources for the purpose of deceiving the people of  
10 the United States, in order to continue concealing  
11 his misconduct and to escape accountability for such  
12 misconduct. The false and misleading statements  
13 made by William Jefferson Clinton to members of  
14 his cabinet and White House aides were repeated by  
15 those members and aides, causing the people of the  
16 United States to receive false and misleading infor-  
17 mation from high Government officials.

18 (3) As President, using the Office of White  
19 House Counsel, William Jefferson Clinton frivolously  
20 and corruptly asserted executive privilege, which is  
21 intended to protect from disclosure communications  
22 regarding the constitutional functions of the Execu-  
23 tive, and which may be exercised only by the Presi-  
24 dent, with respect to communications other than  
25 those regarding the constitutional functions of the

1 Executive, for the purpose of delaying and obstruct-  
2 ing a Federal criminal investigation and the proceed-  
3 ings of a Federal grand jury.

4 (4) As President, William Jefferson Clinton re-  
5 fused and failed to respond to certain written re-  
6 quests for admission and willfully made perjurious,  
7 false and misleading sworn statements in response  
8 to certain written requests for admission propounded  
9 to him as part of the impeachment inquiry author-  
10 ized by the House of Representatives of the Con-  
11 gress of the United States. William Jefferson Clin-  
12 ton, in refusing and failing to respond and in mak-  
13 ing perjurious, false and misleading statements, as-  
14 sumed to himself functions and judgments necessary  
15 to the exercise of the sole power of impeachment  
16 vested by the Constitution in the House of Rep-  
17 resentatives and exhibited contempt for the inquiry.

18 In all of this, William Jefferson Clinton has under-  
19 mined the integrity of his office, has brought disrepute  
20 on the Presidency, has betrayed his trust as President,  
21 and has acted in a manner subversive of the rule of law  
22 and justice, to the manifest injury of the people of the  
23 United States.

24 Wherefore, William Jefferson Clinton, by such con-  
25 duct, warrants impeachment and trial, and removal from

14

11

- 1 office and disqualification to hold and enjoy any office of
- 2 honor, trust, or profit under the United States.

Chairman HYDE. Each member will have 10 minutes to make an opening statement. After opening statements, the proposed articles shall be considered as read and open to amendment. Each proposed article and any additional article, if any, shall be separately considered for amendment and immediately thereafter voted upon, as amended, for the recommendation to the House, if any article has been agreed to. The original motion shall be considered as adopted, and the chairman shall report to the House said resolution of impeachment together with such articles as have been agreed to. Without objection, so ordered.

Mr. WATT. Mr. Chairman, reserving the right to object, and I don't intend to object, I would just like to have you read that again so that I make sure I understand what the process is going to be.

Chairman HYDE. Without objection, each member shall have 10 minutes to make an opening statement. After opening statements, the proposed articles shall be considered as read and open to amendment. Each proposed article and any additional article shall be separately considered for amendment and immediately thereafter voted upon, as amended, for a recommendation to the House, if any article has been agreed to. The original motion shall be considered as adopted, and the chairman shall report to the House said resolution of impeachment, together with such articles as have been agreed to.

Mr. WATT. Thank you, Mr. Chairman.

Mr. FRANK. Mr. Chairman, parliamentary inquiry. I didn't mean to interrupt the unanimous consent. Have you gotten the unanimous consent?

Chairman HYDE. I believe we have.

Mr. FRANK. Okay. Then just for purposes of scheduling for members, members can then know, because this is going to be a long process and Members need not be here, I would hope, to listen to each of us do our statements. So members can know we are going to begin the 10 minute opening statements now, proceed, some Members could then estimate that they wouldn't be needed for a while, and am I correct that if we do get through all the opening statements tonight, that is all we will do?

Chairman HYDE. That is absolutely right. The markup will start tomorrow, under any circumstances.

Mr. FRANK. So members can calculate when they might be called on to give their opening statement and wouldn't necessarily have to stay around and give their opening statement, other than the chairman, of course.

Chairman HYDE. Yes, the chairman is stuck, and has the benefit of hearing all of these opening statements.

At 10 minutes each, this is a six-hour, with luck, process. Just a minute. I am hearing voices over here.

Mr. Coble.

Mr. COBLE. Mr. Chairman, I want to just extend Mr. Frank's comment. I assume—well, strike that. Does the Chair plan to take all opening statements tonight?

Chairman HYDE. The Chair is going to play it by ear. The Chair figures 9-ish, 10-ish, let's see how far along we are. I would like to get the bulk of them over so that tomorrow morning, if we have

any left over, we can dispose of them at 9:00 a.m., moving quickly along, so that we can finish our work tomorrow.

Mr. SCOTT. Mr. Chairman, we had previously requested information from Mr. Starr. Do we anticipate getting that information before we have to start the markup?

Chairman HYDE. We will make inquiry. I don't know the answer to that, but we will try to find an answer.

Mr. SCOTT. Well, we can speed it along with a subpoena, if necessary.

Chairman HYDE. I understand. I understand. Mr. Conyers and I would have to agree on that, though, you understand.

All right. We are ready for opening statements, and Mr. Sensenbrenner is recognized.

Mr. SENSENBRENNER. Mr. Chairman, for the past 11 months the toughest questions I have had to answer come from parents who want to know what to tell their kids about what President Clinton did. Every parent tries to teach their children to know the difference between right and wrong, to always tell the truth, and when they make mistakes, to take responsibility for them and to face the consequences of their actions.

President Clinton's actions, at every step since the media told us who Monica Lewinsky is, have been completely opposite to the values parents hope to teach their children. No amount of government education programs and day care facilities can reverse the damage done to our children's values by the leader of our country.

But being a poor example isn't grounds for impeachment; undermining the rule of law is. Frustrating the court's ability to administer justice turns private misconduct into an attack upon the ability of one of the three branches of our government to impartially administer justice. This is a direct attack on the rule of law and our country, and a very public wrong that goes to the constitutional workings of our government.

To me, making a false statement under oath to a criminal grand jury is an impeachable offense, period. This committee and the House decided that issue by a vote of 417-to-nothing nine years ago in the Judge Nixon impeachment. To accept the argument that presidential lying to a grand jury is somewhat different than judicial lying to a grand jury, and thus not impeachable, is wrong. It sets the standard for presidential truthfulness lower than for judicial truthfulness. The truth is the truth, and a lie is a lie, no matter who says it, and no amount of legal hairsplitting can obscure that fact.

The evidence clearly shows that President Clinton lied to the grand jury fully seven and one-half months after the President's relationship with Ms. Lewinsky hit the front pages. Those lies were told because the President was unwilling to admit he repeatedly lied in the Paula Jones deposition in January. Whatever one thinks of her Federal civil rights suit, the Supreme Court decided by a vote of 9-to-0 that she had the right to pursue it and to gather evidence to support her claims. Giving testimony under oath at depositions is one way parties to lawsuits are allowed to obtain evidence under our laws. The President lied numerous times at that deposition to obstruct Ms. Jones pursuing her right to get that evidence.

When Americans come to Washington, they see the words "Equal Justice Under Law" carved in the facade of the Supreme Court building. Those words mean that the weak and the poor have an equal right to justice as do the rich and the powerful. President Clinton's lies in that deposition were directly designed to defeat Ms. Jones' claims. He then lied to his Cabinet and his staff so that they would unwittingly deceive the American public on this issue, and he appeared on TV, denying sexual relations with quote, that woman, Ms. Lewinsky, unquote.

The President's defenders might claim that he did it to protect the First Lady and his daughter. While that might have been true right when the story broke, it wasn't shortly afterwards when all the personal embarrassment possible had already been caused. He didn't admit to an inappropriate relationship with Ms. Lewinsky until the DNA tests on that famous dress came back, and to this day he still will not admit to lying at the deposition and to the grand jury, all to evade responsibility for his untruthful testimony. His repeated and continued failure to accept responsibility for his false testimony has brought us to the point where this committee is on the verge of approving articles of impeachment of a President for only the third time in our Nation's history.

Had President Clinton told the truth in January, admitted that he had made a mistake, and suffered the consequences then, there would have been no independent counsel investigation on this matter and we would not be debating impeachment here today. Mr. Clinton has recognized that his relationship with Ms. Lewinsky was wrong. I give him credit for that. But he has not owned up to the false testimony, the stonewalling, the obstructing the courts from finding the truth, and the use of taxpayer-paid White House resources to hide and perpetuate his lies. He has tried to use his apology for private misconduct to evade taking responsibility for the very grave public wrongs done to the judicial system's ability to find the truth. He has used legal hairsplitting and redefinition of words to perpetuate those lies and has continued to do so.

The Framers of the Constitution devised an elaborate system of checks and balances to ensure our liberties by making sure that no person, institution or branch of government became so powerful that a tyranny could be established in the United States of America. Impeachment is one of the checks the Framers gave to Congress to prevent the executive or judicial branches from becoming corrupt or tyrannical. Today, based upon the evidence that the President lied, obstructed and abused power in an effort to prevent the courts from administering equal justice under law, I cast my vote in favor of impeaching William Jefferson Clinton.

I do so with no joy, but without apologies, just as those on this committee who voted to impeach President Nixon 24 years ago did. Watergate and the Nixon impeachment reversed the results of an overwhelming election, and were extremely divisive to our country, but America emerged from that national nightmare a much stronger country, and will do so again after this sad part of our history is over.

What is on trial here is the truth and the rule of law. Our failure to bring President Clinton to account for his lying under oath and preventing the courts from administering equal justice under law

will cause a cancer to be present in our society for generations. I want those parents who asked me the questions to be able to tell their children that even if you are President of the United States, if you lie when sworn to tell the truth, the whole truth, and nothing but the truth, you will face the consequences of that action even when you don't accept the responsibility for them.

I yield back the balance of my time.

Chairman HYDE. I thank the gentleman.

The distinguished Ranking Member from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you very much.

Mr. Chairman and my colleagues, and to the House itself, we stand poised on the edge of a constitutional cliff, staring into the void below into which we have jumped only twice before in our history. Some encourage us to take this fateful leap, but I fear that we are about to inflict irreparable damage on our Nation if we do.

This inquiry began with the tawdry, salacious, unnecessarily sexually graphic referral delivered to us by an occasionally obsessive counsel in September with so much drama, and since that time our proceedings in this committee have been marked by one partisan vote after another, beginning with the majority decision to release literally every shred of paper received from Mr. Starr onto the Internet. Although we have been able to reach accord on some matters, in too many respects this inquiry has been a textbook example of how not to run an impeachment inquiry.

Time after time, we, the minority, have suffered the indignity of learning from the newspaper or television about important investigative or procedural decisions made by the majority. We learned about the decision to take depositions 5 minutes before the majority issues a press release to the world. One day they decide to expand our investigation to campaign finance matters, and the next day we read that the subject is off the table.

Just yesterday, even while the White House counsel was concluding his testimony, the majority released its articles of impeachment, articles so vague that they would be dismissed by most courts in the country.

So much for fairness. So much for bipartisanship.

It is often said that power is best defined through its exercise. Well, all too often, the majority members of this committee have ruled this committee however they see fit, and I am sorry to say that we have fallen far short of carrying out our constitutional duties. The majority have simply rubber-stamped the unexamined, untested, double hearsay, yes, triple hearsay, and conclusions of the Independent Counsel without conducting any factual investigation of its own.

Not one fact witness came before this committee. Faced with the failure of the process that they championed, the majority members this week adopted a new line of attack and tried to blame the President for not calling fact witnesses.

My friends across the aisle, please let me remind you that it is you who are trying to overturn the results of two national elections, you who are attempting a legislative takeover of the executive branch and you, not the President, who have the burden of coming forward with evidence to sustain your actions.

On November 3rd, our citizens sent yet another message to all of us: Stop the investigation, stop the partisanship, stop this impeachment inquiry. But the majority members of this committee have not heard the message.

And now I want to address myself to those members in the House, not Democrats, who are undecided about what to do when this matter reaches the floor. And I want to talk to you about why I would hope and pray that they would vote against impeachment.

There is no question the President tried to hide an extramarital relationship from the glare of his family and political opponents and lied to the American people in his January 21st press conference regarding this relationship. That was wrong. But it doesn't constitute perjury. And, by the way, undermining the rule of law may or may not be impeachable. All lies are not perjury. Perjury may or may not be impeachable.

If our hearings have made anything clear, it is that the distinction between personal misconduct and official misconduct has constitutional significance. Most Americans believe that their personal sex life is personal and should not serve as a basis for a wide-ranging criminal investigation of themselves or any citizen and, yes, not even the President. It should not serve as the foundation for overturning the will of the American people to a twice-elected, popular and successful President.

The majority of our constitutional scholars have concluded that an offense is not impeachable unless it is political in nature. Our government functions under a principle of separation of powers. Under our constitutional system of government, if the President misbehaves in a way that does not impact his official duties, the remedy still lies in the voting booth and not in a legislative takeover of the executive branch.

And so to my Republican friends in this Congress, I beg you to consider the effect of a vote for impeachment on these facts. The Congress shut down the government before, and the results were disastrous for our citizens and for the majority party. A vote for impeachment is a vote for another government shutdown.

That is because the matter would tie up the Senate, take the Chief Justice out of the Supreme Court, away from his duties, while he presided over the trial of the President, and tie up the members of this body as they prosecute the case in the Senate. Even worse, it would needlessly increase the division and polarization of our Nation.

Please, my friends, think about the subject matter of this trial that you are being asked to send to the Senate.

This morning, we heard a detailed analysis from the minority counsel of why the majority's case against the President is factually unsupportable. Article I of the majority's articles of impeachment charges the President with lying before a grand jury, but the article fails to specify the particular statements on which the majority relies. This startling lack of particularity would be laughed at in a courtroom, most courtrooms around the country. It is simply irresponsible to charge the President with offenses without having the courage to lay one's cards on the table and identify precisely which specific acts constitute the alleged offenses. And remember further,

with respect to the alleged grand jury perjury, the President admitted to his improper relationships before the grand jury.

Article II of the majority's articles charge the President lied during his deposition in the *Paula Jones* case, but, as we saw with our own eyes, even skilled attorneys and a judge could not agree on what the definition of sexual relations in that case meant. The failure of the Jones' attorneys to provide the President with a precise definition to ask follow-up questions about what they knew from Linda Tripp shows a profound lack of candor on their part and reveals that deposition for the shell game that it really was, an entrapment. Surely, the President cannot be held accountable in an article of impeachment for that.

Article III of the proposed articles of impeachment charges obstruction of justice. But we know by now that the search for a job for Ms. Lewinsky began long before she showed up on the Paula Jones' witness list. We know—

Chairman HYDE. The gentleman's time has expired. Could you close in a few minutes?

Mr. CONYERS. Yes, sir, I will.

We know that when the President spoke to Betty Currie she was not expected to be a witness in any case and therefore could not have been tampered with. We know that the President didn't encourage Ms. Lewinsky to file a false affidavit. I won't even quote her once more—for the 100th time that she didn't ask anyone to lie or get promised a job for her silence.

Finally, Article IV, and I thank you for your indulgence. The majority's Article IV charges that the President abused his power by lying to aides and to the public and by asserting perfectly legal privileges in court. My friends, the President misled his aides and the country not to affect testimony but because he didn't want anyone to know about his relationship. And, really, how can the assertion of well-established privileges in a court case result in the impeachment of a President? It can't. It just can't.

And I ask unanimous consent that the remainder of my statement be entered into the record. I thank the Chair for his indulgence.

Chairman HYDE. Without objection.

[The statement of Mr. Conyers follows:]

**OPENING STATEMENT OF REP. CONYERS**

(December 10, 1998)

Mr. Chairman, this Committee, and perhaps the House itself, stand poised on the edge of a constitutional cliff. We are staring into the void below, a void into which we have jumped only twice before in our history. Some encourage us to take this fateful leap, but I fear that we are about to inflict irreparable damage on our nation.

This impeachment inquiry began with the tawdry, salacious and unnecessarily sexually graphic Referral that was delivered to us in September with so much drama and fanfare by the Independent Counsel. Since that time, our proceedings in this Committee have been marked by partisan vote after partisan vote, beginning with the Majority's decision to release literally every shred of paper we received from Mr. Starr onto the Internet.

Although we have been able to reach accord on some matters, in too many respects this inquiry has been a text book example of how not to run an impeachment inquiry. Time after time, the Minority has suffered the indignity of learning from the newspaper or the television about important investigative or procedural decisions made by the Majority. We learn about the Majority's decision to take depositions five minutes before the Majority issues a press release to the world. One day the Majority decides to expand our investigation to campaign finance matters, and the next day read in the newspapers that that subject is off the table. And just yesterday, even while the White House Counsel, Mr. Ruff, was still testifying, the Majority released its articles of impeachment, which are so vague that they would be dismissed by any court in the country. So much for fairness. So much for bipartisanship.

It is often said that power is best defined through its exercise.

Well, all too often the Majority Members of this Committee have ruled this Committee however they see fit.

I am sorry to say that we have fallen far short of carrying out our constitutional duties. The Majority has simply rubber-stamped the un-cross examined, untested, double and triple hearsay evidence and conclusions of the Independent Counsel without conducting any factual investigation of its own. Not one fact witness came before this Committee. Faced with the failure of the process that they championed, the Majority Members this week adopted a new line of attack and tried to blame the President for not calling fact witnesses.

My friends across the aisle, let me remind you that it is you who are trying to overturn the results of two national elections, you who are attempting a legislative takeover of the executive branch, and you -- not the President -- who had the burden of coming forward with evidence to sustain your actions.

On November 3, the American people sent a message to the Majority Members of this Committee: stop the investigations, stop the partisanship, and stop this impeachment inquiry. But the Majority Members of this Committee have not heard the message that their counterparts in the rest of the House heard so well. So now I want to address myself to the two-dozen or so Members of the House who are undecided about what to do when this matter reaches the floor. I want to talk to you about why I would hope and pray you would vote against impeachment.

There is no question that the President tried to hide an extramarital relationship from the glare of his political opponents and lied to the American people in his January 21 press conference regarding his improper relationship. That was wrong, but it doesn't constitute perjury.

Further many Americans believe that their personal sex life is personal, and should not serve as the basis for a wide ranging criminal investigation, let alone an impeachment inquiry. It should not serve as the foundation for overturning a the will of the American people to twice elect a popular – and paranthetically a highly successful – president.

If our hearings have made anything clear, it is that the distinction between personal misconduct and official misconduct has constitutional significance. The majority of the constitutional scholars that appeared before us concluded that an offense is not impeachable unless it is political in nature. Our government functions under a principle of separation of powers. Under our constitutional system of government, if the President misbehaves in a way that does not impact on his official duties, the remedy lies in the voting booth, and not in a legislative takeover of the executive branch.

My Republican friends in the House, I beg you to consider the effect of a vote for impeachment on these facts. The Congress shut down the government once before, and the results were disastrous for the American people and for the Majority party. A vote for impeachment is a vote for another government shutdown. That is because this matter would tie up the Senate for months, take the Chief Justice of the United States Supreme Court away from his duties for months while he presided over a trial of the President, and tie up Members of this body as they prosecuted the case in the Senate. Even worse, it would needlessly divide and polarize our great country.

Please, my friends, think about the subject matter of this trial that you are being asked to send to the Senate. This morning, we heard a detailed analysis from the minority counsel of why the Majority's case against the President is factually unsupported. Article One of the Majority's articles of impeachment charges the President with lying in

the grand jury. But the articles fail to specify the particular statements on which the Majority relies. This startling lack of particularity would laugh these charges out of any court room in the country. It is simply put irresponsible to charge the President with offenses without having the courage to lay one's cards on the table and identify exactly which specific acts constitute the alleged offenses. And remember further with respect to the alleged grand jury perjury, the President admitted to his improper relationship before the grand jury.

Article Two of the Majority's articles charges that the President lied during his deposition in the Paula Jones case. But, as we saw with our own eyes, even skilled attorneys and a federal judge could not agree on what the definition of "sexual relations" in that case meant. The failure of Paula Jones attorneys to provide the President with a more precise definition, to ask follow up questions, when they knew from Linda Tripp what to ask, shows a profound lack of candor on their part, and reveals that deposition for the shell game that it really was. Surely the President cannot be held accountable for that.

Article Three of the proposed articles of impeachment charges obstruction of justice. But, we know by now that the search for a job for Ms. Lewinsky began long before she showed up on the Paula Jones witness list. We know that when the President spoke to Betty Currie, she was not expected to be a witness in any case, and therefore could not have been tampered with. And we know that the President did not encourage Ms. Lewinsky to file a false affidavit. Remember Ms. Lewinsky's words: no one asked me to lie, no one promised me a job for my silence.

And finally, Article Four of the Majority's articles charges that the President abused his power by lying to aides and the public, and by asserting perfectly legal privileges in court. My friends, the President

misled his aides and the country not because he wanted to affect anyone's testimony, but because he didn't want anyone to know about his relationship with Ms. Lewinsky. And really, how can the assertion of well established privileges in a court case result in the impeachment of the President? It can't, it just can't.

Some will ask you to send this matter to the Senate merely on a finding of probable cause, even if there is no possibility for conviction there. That is not a proper view of our duty. In order to preserve the separation of powers, a vote for impeachment must, in your mind, be a vote to remove from office. The constitution demands nothing less. And remember also that your vote to send this matter to the Senate is to again thumb your nose at the American people who do not want another year of an intensified trial on this sordid matter.

How can we put the country through the agony of a Senate trial when we know that conviction is an impossibility? The misguided view that some are urging on you is disturbingly similar to a statement that Independent Counsel Donald Smaltz made recently after his prosecution of former Agriculture Secretary Mike Espy was rejected by a jury. Mr. Smaltz said there is a public benefit to charging people with crimes even if you can't convict them.

What both the Espy and Lewinsky matters show is that prosecutors who are given unlimited money and unlimited time to pursue a target lose perspective about the meaning of their investigation and their evidence. And the fact that a President can now be sued civilly, deposed with fishing expedition questions about every aspect of his or her private life, and subject to impeachment proceedings if he misstates anything about the most personal matters of his private life, is a standard that does not serve this country and which will come back to haunt every president in future, be they Republican or Democrat.

My colleagues on the Committee and in the House of Representatives, times of national crisis require us to set partisanship aside and do what is in the national interest. This is such a time. These allegations against the President, while serious, do not rise to the level of an impeachable offense. For that reason, I ask you to vote your conscience and do what is right for the country and for the people of this great Nation. This year-long national nightmare should end in the House of Representatives.

Chairman HYDE. The gentleman from Florida, Mr. McCollum.  
Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

The United States is the greatest free Nation in the history of the world. The foundation of this greatness is our justice system. Instead of settling our disputes with guns and knives or paying off protection rackets, as occurs in much of the rest of the world, any American who is injured may go to court and get a fair resolution of the dispute based on the law and the facts.

A little boy who is run over while riding his bicycle may recover damages from the person who injured him. An elderly widow who has been bilked out of her savings by a fraudulent scam can go to court to recover her savings. A laborer may bring a worker's compensation claim when he is injured on the job. A person who has been discriminated against while seeking a job on account of race, religion, age or disability may go to court for relief. A woman who has been sexually harassed by an employer or supervisor in the workplace may bring a civil rights suit for damages. And the list goes on.

People who go to court in our system expect witnesses who are called to testify to tell the truth to the judge and the jurors. That is what we mean by the term "rule of law." Without truthful testimony, justice can't be rendered, and the system doesn't work.

That is why a person who testifies in court is sworn to tell the truth, the whole truth and nothing but the truth. And that is why if in court proceedings a person lies, encourages others to lie, hides evidence, or encourages others to hide evidence, he is subject to severe punishment. In fact, the Federal sentencing guidelines state that people who are convicted of perjury or obstruction of justice are punished more harshly than those who commit the crime of bribery.

And that is why if President Clinton committed the crimes of perjury, obstruction of justice and witness tampering he should be impeached. Under the Constitution, impeachable offenses are treason, bribery and other high crimes and misdemeanors. If our courts for good reason punish perjury and obstruction of justice more severely than bribery, how could anyone conclude they are not impeachable offenses? Bribery and perjury both go to the same grave offense: the undermining of justice. How could any person who fully understands and reflects on this fail to see that a person who gives perjurious, false and misleading testimony in a civil rights action brought against him and before a Federal grand jury and encourages others to give perjurious, false and misleading testimony and uses the powers of his office to conceal the truth from the court and the grand jury and cover up his crimes should be impeached?

The President is the Chief Executive Officer of the Nation, the chief law enforcement officer of the Nation and our military's Commander in Chief. If we tolerate such serious crimes as perjury and obstruction of justice by the President of the United States and fail to impeach him, there will be grave, damaging consequences for our system of government.

Studies show that perjury is an increasingly common occurrence in our courts. Contrary to what some have asserted, there are numerous recent examples of Federal prosecutions of perjury in civil

cases. There are at least 115 people in Federal prison today for perjury in civil cases.

If he has committed these crimes and is not impeached, a terrible message will go out across the country that will undermine the integrity of our court system. We will not only send the message that there is a double standard and that the President of the United States is above the law in these matters but also a message that these crimes are not as serious as some people once thought they were. More people in the future will likely commit perjury in the courts than would be the case if the President were impeached.

Furthermore, it will be far more difficult in the future for Congresses to impeach Federal judges for perjury and the like, which we have done in the past. And there is bound to be repercussions in our military where the Commander in Chief is treated quite differently from officers and other enlisted personnel who would be routinely removed from duty and discharged from the service for crimes that the President has admitted to, not to mention the crimes themselves which no doubt would get a military officer court martialled.

This is the grave matter we are about today. Unfortunately, I come to the end of these deliberations convinced that the compelling, clear and convincing evidence before us demonstrates that the President has committed several offenses for which he should be impeached. In fact, I am convinced, from the evidence, beyond a reasonable doubt that President Clinton committed a number of crimes that underlie the articles of impeachment today. His conduct constitutes a great insult to our constitutional system and subverts our system of government.

Now, what about the evidence? The President was sued in a sexual harassment civil rights lawsuit by Paula Jones. He said that the purpose of that suit was to politically attack him and embarrass him. That may be what he thought, but on its face the suit alleges a claim of sexual harassment which Paula Jones had the right in our system of justice to try to prove in court. Part of her case was to try to bolster the credibility of her allegations by showing the President engaged in and was still engaging in a pattern of illicit relations with women in his employment. Whatever the merits of this approach, the court determined that she could proceed to try to prove it.

Long before the President was called to give a deposition or Monica Lewinsky was named as a witness in the *Jones* case, the evidence shows that she and the President had an understanding they would lie about their relationship if asked by anybody. When her name appeared on the witness list, the President telephoned her and told her. During this discussion, he suggested she might file an affidavit to avoid being called in person. In that same conversation, they also reviewed the cover stories they had concocted to conceal their relationship. In her grand jury testimony, Monica Lewinsky says the President didn't tell her to lie, but because of their previous understanding she assumed that both expected her to lie in the affidavit. In this context, the evidence is compelling that the President committed the crime of obstruction of justice.

A few days later, the President gave sworn testimony in the *Jones*' case in which he swore he could not recall being alone with

Monica Lewinsky and that he had not had sexual relations with her. He repeated those assertions a few months later to the grand jury. The evidence shows he lied about both and about a number of other material matters. In doing so, the President committed the crime of perjury, both in front of the grand jury and in his civil deposition.

During his deposition in the *Jones* case, the President referred to Betty Currie several times and suggested she might have answers to some of the questions. When he finished the deposition he telephoned Ms. Currie and asked her to come to his office the next day and talk with him. By any reasonable reading of the matter, one is compelled to conclude the President was at least in part concerned that Betty Currie would be called as a witness in the *Jones* case as a consequence of his own deposition testimony. Whether she was ever listed as a witness or actually testified is immaterial and irrelevant. Betty Currie told the grand jury that when she came in the next day the President raised his deposition with her and said there were several things she may want to know. He then rattled off in succession: "You were always there when she was there, right? We were never really alone." "You could see and hear everything."

"Monica came on to me, and I never touched her, right?"

"She wanted to have sex with me, and I can't do that."

It seems abundantly clear that the President was trying to influence how Betty Currie responded, not simply to press questions but to the court in the *Paula Jones* case if she were called as a witness, which the President had every reason to believe could happen and which he may have even wanted to happen so as to corroborate his already untruthful testimony and to continue the coverup. By encouraging her to lie and protect him in anticipation of her testifying in the *Paula Jones* case, the President committed the crimes of obstructing justice and witness tampering.

The list could go on, but time doesn't allow me to discuss all of these. As Mr. Schippers testified today, the President engaged in a whole pattern of conduct over an extended period of time which, taken together, demonstrate a scheme to conceal from the court in the *Jones* case the truth about his relationship with Monica Lewinsky and later to conceal his previous lies, obstruction of justice and witness tampering in that suit.

It is not a case of one or two isolated instances that bring us to the articles of impeachment before us. If the entire fact pattern that has been unveiled to us in the thousands of pages of sworn testimony and documents we have examined were revealed to a criminal court jury I am convinced that they would convict the President of several felony crimes including the crimes of perjury before the grand jury and in the civil case involving Paula Jones. And contrary to the assertion of some, it seems apparent to me that any prosecutor reviewing the totality of the evidence would bring the cases that we are talking about. We are dealing, however, with something graver, and that is the impeachment of the President of the United States.

Some have suggested that we are ill-served by the time that would be consumed in the trial of these matters, but having examined the evidence thoroughly, I don't agree. Just the opposite is

true. To fail to impeach the President knowing what I know and believe I think would be a dereliction of duty on my part.

There may be some particulars over the next day or two that I don't agree with that I find in the articles of impeachment, and I may vote to alter them, but sadly, I conclude that when all is said and done, I must vote to impeach President William Jefferson Clinton. To do otherwise would undermine the rule of law and undermine our constitutional system of government.

Thank you, Mr. Chairman.

[The statement of Mr. McCollum follows:]

The United States is the greatest free country in the history of the world. The foundation of this greatness is our justice system. Instead of settling our disputes with guns and knives or paying off protection rackets as occurs in so much of the world, any American who is injured may go to court and get a fair resolution of a dispute based on the law and the facts.

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others to give perjurious, false and misleading testimony and uses the  
powers of his office to conceal the truth from the court and the grand  
jury and cover up his crimes should be impeached?

The President is the Chief Executive of the nation, the Chief Law  
Enforcement Officer and our military's Commander in Chief. If we  
tolerate such serious crimes as perjury and obstruction of justice by the  
President of the Unites States and fail to impeach him there will be  
grave, damaging consequences for our system of government.

Studies show that perjury is an increasingly common occurrence in our courts. Contrary to what some have asserted there are numerous recent examples of federal prosecutions of perjury in civil cases. There are at least 115 people in federal prisons today for perjury in civil cases. If he has committed these crimes and is not impeached a terrible message will go out across the country that will undermine the integrity of our court system. We will not only send the message that there is a double standard and that the President of the United States is above the law in these matters, but also a message that these crimes are not as serious as some people once thought they were. More people in the future will likely commit perjury in the courts than would be the case if the President were impeached. Furthermore it will be far more difficult in the future for Congresses to impeach federal judges for perjury and like crimes. And there is bound to be repercussions in our military where the Commander in Chief is treated quite differently from officers and enlisted personnel who would be routinely removed from duty and discharged from the service for activities the President has already

admitted to, not to mention the crimes themselves which no doubt would get a military officer a court martial.

This is the grave matter we are about today. Unfortunately, I come to the end of these deliberations convinced that the compelling, clear and convincing evidence before us demonstrates that President Clinton committed several offenses for which he should be impeached. In fact I am convinced, from the evidence, beyond a reasonable doubt that President Clinton committed a number of crimes that underlie the Articles of Impeachment before us today. His conduct constitutes a great insult to our Constitutional system and subverts our system of government.

Now what about the evidence? The President was sued in a sexual harassment civil rights law suit by Paula Jones. He says the purpose of that suit was to politically attack him and embarrass him. That may be what he thought, but on it's face the suit alleged a claim of sexual

harassment which Paula Jones had the right in our system of justice to try to prove in court. Part of her case was to try to bolster the credibility of her allegations by showing the President had engaged and was still engaging in a pattern of illicit relations with women in his employment. Whatever the merits of this approach the court permitted her to explore it.

Long before the President was called to give a deposition or Monica Lewinsky was named as a witness in the Jones' case the evidence shows that she and the President had an understanding they would lie about their relationship if asked by anybody. When her name appeared on the witness list the president telephoned her and told her. During this discussion he suggested she might file an affidavit to avoid being called in person. In that same conversation they also reviewed the cover stories they had concocted to conceal their relationship. In her grand jury testimony Monica Lewinsky says the President didn't tell her to lie, but because of their previous understanding she assumed they both

expected her to lie in that affidavit. In this context the evidence is compelling that the President committed the crime of obstruction of justice.

A few days later the President gave sworn testimony in the Jones' case in which he swore he could not recall being alone with Monica Lewinsky and that he had not had sexual relations with her. He repeated those assertions a few months later to the grand jury. The evidence shows that he lied about both and about a number of other material matters. In doing so the President committed the crime of perjury both in front of the grand jury and in his civil deposition.

During his deposition in the Jones' case the President referred to Betty Currie several times and suggested she might have answers to some of the questions. When he finished the deposition he telephoned Ms. Currie and asked her to come to his office the next day and talk with him. By any reasonable reading of this matter one is compelled to

conclude that the President was at least in part concerned that Betty Currie would be called as a witness in the Jones' case as a consequence of his own deposition testimony. Whether she was ever listed as a witness or actually called is irrelevant. Betty Currie told the grand jury that when she came in the next day the President raised his deposition with her and said there were several things she may want to know. He then rattled off in succession the following:

- “you were always there when she was there, right? We were never really alone.”
- “you could see and hear everything.”
- “Monica came on to me, and I never touched her, right?”
- “she wanted to have sex with me and I can't do that.”

It seems abundantly clear that the President was trying to influence how Betty Currie responded not simply to press questions, but to the court in the Paula Jones' case if she were called as a witness which the President had every reason to believe could happen and which he may even have

wanted so as to corroborate his already untruthful testimony and to continue the cover up. By encouraging her to lie to protect him in anticipation of her testifying in the Jones' case the President committed the crimes of obstructing justice and witness tampering.

And the list could go on but time does not allow me to discuss all of the matters here. As Mr. Schippers testified today the President engaged in a whole pattern of conduct over an extended period of time which taken together demonstrate a scheme to conceal from the court in the Jones' case the truth about his relationship with Monica Lewinsky and later to conceal his previous lies, obstruction of justice and witness tampering in that suit. It is not a case of one or two isolated instances that bring us to the Articles of Impeachment before us. If the entire fact pattern that has been unveiled to us in the thousands of pages of sworn testimony and documents we have examined were revealed to a criminal court jury I am convinced that they would convict the President of several felony crimes including the crimes of perjury before the grand jury and in the

civil case involving Paula Jones. And contrary to the assertions of some it seems apparent to me that any prosecutor <sup>reviewing</sup> revealing the totality of this evidence as Mr. Schippers has done would bring such cases to court.

But that is not what we are about. We are about something graver than that: the impeachment of the President of the United States.

Some have suggested that the country is ill served by the time that might be consumed by a trial in the Senate on these matters. Having examined the evidence thoroughly I do not agree. Just the opposite is true. To fail to impeach the President knowing what I know and believe would be a dereliction of duty on my part.

Now there may be some particulars over the next day or two that I find I don't agree with in the Articles of Impeachment, and I may vote to alter them. But, sadly, I conclude, that when all is said and done I must vote to impeach President William Jefferson Clinton.

*TO do otherwise  
would undermine the rule of law and  
our system of ~~justice~~ government.*

The CHAIRMAN. The gentleman's time has expired.

The distinguished gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. After many years of investigations by every possible investigative tool of the Federal government—congressional committees; the FBI, under the command of the Independent Counsel—we have the following charge against Bill Clinton: He had a private consensual sexual affair and lied about it. Let's be very clear that that is what we are talking about.

That seems to many people an insufficient basis for an impeachment. Indeed, among those who implicitly acknowledge it is an insufficient basis for impeachment are all of those who have been trying so desperately to come up with something else.

I must say, after this committee subpoenaed and then unsubpoenaed all the people in the Kathleen Willey case, and subpoenaed and unsubpoenaed the people in the campaign finance case, I was disappointed to have Mr. Schippers begin today by an entirely inappropriate invocation of unnamed and unspecified further crimes which he claims he is still investigating. And to wave them at this point in the proceeding, as if they somehow justified acting, when he is able to produce nothing to substantiate that, is irresponsible prosecution.

Mr. Schippers began by saying, oh, there is more out there. Why do people say there is more out there? Responsible people don't like to be in the position of making empty threats like that. It is not fair to anybody to say, particularly after 5 years and more of multiple investigations, oh, but there may be more out there. At some point we have to come to a vote.

Now, the people say, well, we are in a hurry. The majority has been in control of this process. If you thought there was more out there, you could have waited. We have waited and waited and waited. I think what we have is an implicit acknowledgment that impeaching the President because he admittedly lied to try to cover up a private, consensual sexual affair is a mistake.

Indeed, the previous speaker made a point that I agree with. He said that the President and Monica Lewinsky, long before they knew about her potential role in the *Paula Jones* suit, agreed that they would try to cover this up. I agree. That goes contrary to the assertion that this was an effort to somehow frustrate justice in the Jones case.

The President was understandably embarrassed. He had private sexual activity that he wanted to conceal, and he lied about it, and that is a subject, as an expert, which I fully understand.

The fact is that that is all we have. Now, we also have Mr. Schippers saying that, and I thought this was also very unusual, please do not be cajoled into considering each event in isolation and treating it separately. That is what people always do in conspiracy cases, he says. But of the four counts, only one could be described as a conspiracy count. Three of the four deal only with sole acts of Bill Clinton.

What Mr. Schippers is saying is, please believe that I have a whole that is greater than the sum of the parts, because they understand that the sum of the parts is not impeachable. The sum of the parts is and the whole is that Bill Clinton gave in to a sexual

affair that he shouldn't have had and shouldn't have lied about it. That is it.

Should that be impeachable? I feel strongly that it should not be. In the first place, the notion that this sort of lying always brings the harshest sanction is simply not true. People have said, well, are you going to say that just because everybody does it, it is all right?

No, that is never true. It is true, however, when people that have given one punishment in one case then want to give a much harsher punishment in a very similar case make that argument, it is legitimate to say they are motivated by something other than what they admit.

We heard people suggest that if the President is not impeached, this will undermine morale in the military and lead to an outbreak of lying in the military. I think our military is of sterner stuff than that. I think when George Bush pardoned the Secretary of Defense because he had been indicted for perjury, that the military shrugged it off. I don't think that had a negative effect. I think when we have had lying alleged in other cases by the President and others in national security cases, that didn't have a negative effect on the military.

The fact is that previous cases of lying have called forth not only less than condemnation but congratulations from some of the members of this committee. That leads me to believe that what we are talking about with impeachment is an effort to get rid of a President who has been inconvenient, not a consistent application of a principle.

As far as the alleged offenses are concerned, I do believe that the President lied when he said he wasn't alone with Monica Lewinsky. I also believe that when you are giving a deposition in a civil case and are asked things that are not relevant, it is not in our interest to pursue that.

Now I will say to some of my friends on my side, we should be examining—and I have been in the minority on my side from time to time in talking about curtailing the reach of private lawsuits. I think we do run into a problem where unlimited discovery, in the case of unlimited right to bring lawsuits, can lead to problems.

I'm not going to give the ultimate punishment to the President of the United States because he lied, in a private lawsuit to which this issue was not relevant—and I believe that a purely consensual affair was in fact irrelevant to the *Paula Jones* case—I believe that this is not something that rises to that level.

As far as the grand jury is concerned—and that, I think, is the heart of the argument, that he committed perjury in the grand jury—I know Mr. Schippers goes beyond Mr. Starr in his allegations of grand jury perjury. I think that is unpersuasive, that Mr. Starr was somehow being soft on the President.

But he does it in part because the central charge that Mr. Starr made for grand jury perjury is that the President, having acknowledged an inappropriate sexual affair, having acknowledged that there was sexual contact between Monica Lewinsky and himself, shortchanged us on the details.

The President stands charged with being insufficiently graphic. He did not talk about what he did in reciprocation, and that is not

a basis for impeachment. What it is, in my judgment, is a basis for censure.

I now want to talk about the difference between the two. I alluded to my own personal life before for a reason. I am struck by those who have argued that censure is somehow an irrelevancy, a triviality, something of no weight.

History doesn't say that. There are two Members of this House right now who continue to play a role who were reprimanded for lying, myself and outgoing Speaker Gingrich. We both were found to have lied, not under oath but in official proceedings, and were reprimanded.

I would tell you that having been reprimanded by this House of Representatives, where I am so proud to serve, was no triviality. It is something that, when people write about me, they still write about. It is not something that is a matter of pride. I wish I could go back and undo it. I don't think Speaker Gingrich's political problems subsequent to his reprimand were unrelated to the fact that he was reprimanded.

I am, indeed, surprised that Members who share my reverence for this institution, my reverence for democracy, my deep, abiding faith in what Thomas Jefferson eloquently called a decent respect for the opinions of mankind, for all of us who are in this business of dealing with public opinion and courting it and trying to shape it, and trying to make it into an instrument for the implementation of our values, could be dismissive of the fact that the United States House of Representatives or Senate might vote a condemnation, as if that doesn't mean anything. Members know better.

I cannot think of another context in which Members would have argued that a censure, a solemn vote of condemnation, would not have meant very much. Certainly former Senators Thomas Dodd and Joseph McCarthy would not have believed that for a minute.

We have one last point. The Founding Fathers could have consigned impeachment to the court. They could have said, if there was an accusation of impeachment, the court would try it—they did, after all, recognize it as quasi-judicial—but bring the Chief Justices in. They didn't. They said it will be done by Congress.

Those who say there shall be no political element fly in the face of the Founding Fathers. They knew if you ask 535 politicians to decide something politics would be essentially that, and it ought to be. We are talking here about democracy; about whether or not an act of misbehavior was so grievous as to justify overturning the most solemn decision ever made by the American people, as far as election.

We are not debating whether or not it was right or wrong, it was wrong. But is it so wrong, so outrageous, that it must be overturned? I do not believe it is.

If I could have 30 seconds, Mr. Chairman, I would note a particular problem with that.

Chairman HYDE. Yes.

Mr. FRANK. Reality from time to time ought to be addressed. We have a very close vote coming. There are, by my count, six Members of the House of Representatives on the Republican side and one on the Democratic side who were defeated in the November

election, either for reelection or for another office, who were replaced by someone of the opposite party.

For the most solemn democratic decision possible to be made by the American people to be narrowly reversed by a margin less than the number of people who were defeated in the last election, and in which impeachment was an issue, and were replaced by people who had the opposite opinion, is an absolute derogation of democracy.

It is simply not sustainable that people who lost their right to represent the people in the last election to people who had a directly opposite view on this question ought to be the deciding votes. Censure is the appropriate response, and I hope the Republican leadership will not allow partisanship to keep the American people from seeing the decision they want and have a right to have made, censure of this President.

The CHAIRMAN. The distinguished gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman.

Mr. Chairman, we have reached the moment of truth for our distinguished committee and for each member thereof. And speaking of the moment of truth, if the President had indulged in a moment of truth in that first deposition in January of 1998, one small moment of truth, we would not be debating this momentous issue here today. But the President chose otherwise, throwing us into this morass of trouble and distinct tumult that we have engaged in for months now. So that moment of truth went by, was ignored, and now we are in trouble.

I say that a thousand historians and a swarm of political opinion polls and a gaggle of media programs and talk shows, nothing, none of those things, can change the vital facts in this case. And that is that falsehoods were uttered in a court proceeding under oath, both in the depositions and later in a criminal Federal grand jury.

The Starr report, which was full of tapes and Tripps and conspiracies and machinations of people behind the scenes, and theories of executive privilege and all of that, put it all together, package it all, and leaping out of that are the salient facts that the President uttered falsehoods under oath in the depositions and in grand jury, and later even to the 81 questions circulated by the Committee on the Judiciary.

Now, I, myself, in reading and analyzing the materials of the Independent Counsel, came to a conclusion very early that I would not automatically adopt, as some people charge who are against impeachment—I would not automatically approve of and fall into lock-step with the allegations by the Independent Counsel.

In fact, I made it known early to my colleagues, to the media, and everyone else, that I was taken aback by the averment, the allegation in the Starr report, his allegation that the assertion by the President of executive privilege constitutes, by itself or packaged with other matters, as an abuse of power.

I rejected that out of hand, and then began to solidify my thinking on it until this moment, when I announce again that when the time comes in these proceedings that we will be dealing with that part of the articles of impeachment, that I will renew my objection

to inclusion of the assertion of executive privilege as an abuse of power.

But still, leaping out of that mass of documents in those boxes in the Ford Building and in all the testimony that we have had here is the recurring theme of perjury, perjury, falsehood under oath. We can't escape it. No matter what other allegations you bring in against Dave Schippers or against Abbe Lowell or against any member of the committee, and especially against the Independent Counsel, perjury still resounds throughout the meeting, in this chamber, and throughout the congressional area of the Washington, D.C. Capitol of the United States. Wherever we go, perjury still rings out in all of these proceedings.

When the witnesses continuously refer to, it is not an impeachable offense because it is, as many of my colleagues have said, really based on sexual misconduct, lies about sex, and that is so insignificant that we should not have bothered with it, notwithstanding that other individuals, our fellow American citizens, are undergoing sentences imposed by the court for lying under oath about matters that you and I in our lives would consider trivial, yet they are undergoing sentence of the court, perjury and falsehood under oath still leaps out at us.

So when that moment of truth passed by, the ability to end everything by the moment of truth in the depositions which passed by, there was another chance for a moment of truth preceding the one we are engaged in now. That was at the grand jury. Again, that moment of truth could have saved us the embarrassment and the humility and indignity of having to decide the fate of the President of the United States. And that moment, where truth could have prevailed, again was swept away by the motivations, however you want to ascribe them, of the President of the United States.

When I engaged in a discussion with one of the witnesses on high crimes and misdemeanors, and the comparison between bribery and perjury, I was struck by the fact that they maintain—and I think it is absolutely correct—that if one finds bribery as an offense committed by the President of the United States, a 10-minute transaction in which either he as a bribee or as a briber passes money or receives money for something not having anything to do with national security, or not having anything to do with the conduct of his office, but an exchange of money, bribery, 10 minutes in its duration could constitute grounds for impeachment. Does anyone disagree with that?

But perjury, which is viewed by scholars and these same historians who enter our premises and spout the holiness of their positions, they would agree that perjury, even in our statutory law, in our common law perceptions, and in practical application of the statute, is more serious than bribery.

And when coupled with the reality that every act of perjury strikes at the heart of the judicial system, endangering our individual rights to receive justice at the hands of our fellow citizens in the court system, then you can see that bribery, that quickly-passing offense not having anything to do with the national weal, all of a sudden, in the face of perjury, we cannot face the reality that that perjury, falsehood under oath, has the capacity to destroy a

branch of government, two branches of government; as a matter of fact, all three branches of government.

If it is uttered by the President of the United States, he is diminishing the presidency, the executive branch. If he does so in a court of law, he is trampling against the walls of security that the court system provides all of us. And he injures the legislative branch, because he forces upon us the indignity, I say, of having to deal with misconduct of a president that might lead to impeachment.

When all is said and done, the moment of truth will recur. It will recur as each one of us finally indicates to the Chair and to the clerk the final vote in this issue. I cannot erase from my mind or from the atmosphere of the Capitol of the United States or from the entire land, from the entire globe, the falsehoods uttered under oath.

I yield back the balance of my time.

The CHAIRMAN. I thank the gentleman.

The distinguished Senator-elect from New York, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman. When the Founding Fathers designed the government of this country, they realized that there would be rare and crucial times in history when it would be necessary to break into the regular order of how our government works to pull the Nation out of crisis and in fact save the republic. They devised the process of impeachment for these times, to be used rarely and only in times of national crisis.

Several weeks ago the notion that we would be on the verge of actually using the hammer of impeachment to remove the President for just the third time in 200 years was unthinkable. Now we are only one day from possibly passing a resolution to remove a duly-elected president from office.

The actions that we take tomorrow far transcend the conduct of Bill Clinton, and will have profound consequences on the future of the country. If we vote articles of impeachment, I fear that we will be setting a precedent that could seriously weaken the office of the presidency, whether the President is removed from office or not.

In my judgment, we will be substantially lowering the bar for removing a sitting president so that we will be in danger of all too frequently investigating presidents and seeking to remove them from office; this, as we enter a century which demands a strong and focused president of the United States. And what would we be removing him for? Sex and lying about sex.

Today we have four charges before us against the President, two perjury counts, obstruction of justice, and abuse of power. I would venture to say that if the obstruction and abuse charges were brought before an impartial jury of randomly selected American citizens and tried by competent lawyers on both sides, the President would be acquitted by a 12 to 0 margin. Neither case is supported by the evidence.

Regarding obstruction of justice, the level of exculpatory evidence exonerating the President concerning the job search, the gifts, and the President's conversations with Ms. Currie is overwhelming and convincing. The abuse of power charge does not pass the laugh test. Indeed, the charge itself is at least as much an abuse of prosecutorial power as the actions of the President in this count.

And perhaps the most Kafkaesque of all the charges is that when the President misled his staff, under no oath whatsoever, by denying an extramarital affair, he was committing a crime.

So this case, this impeachment, boils down to two perjury charges. I agree that the President's testimony was misleading, maddening, evasive, prevaricating, and designed to shed as little light as possible on his embarrassing personal behavior. I have said so since September, that the President lied in his testimony and to the American people, but that he did so about a sexual relationship, not about matters of governance.

The Republicans want the American people, or most Republicans want the American people to equate lying under oath about sex with lying under oath about matters of State. In their wisdom, most Americans can easily see the distinction. The American people know that being evasive about an extramarital relationship is worlds apart from being evasive about matters that go to the core of running this Republic. That is why there is such a huge gap between what the majority on this committee want and what the majority of Americans want.

Yesterday former prosecutor Sullivan stated the average citizen would not be tried, would not be punished, for committing such acts as the President is accused of. However, the President is not an ordinary citizen. He has to be held to a higher standard. He should be sanctioned, not as a political denouement, but because we cannot let posterity believe that a president who so misleads under oath can be allowed to avoid punishment.

So the question before us is not whether to punish the President. The question is the magnitude of the punishment. The question is what punishment fits his actions. I agree with the majority of Americans that impeachment would be wrong. A strong censure motion, such as the motion before this committee, signed and acknowledged by the President, is the appropriate punishment.

It would be a miscarriage of justice to impeach the President over a private affair or about lying about that affair. That is not simply my subjective view, that is what the Founding Fathers intended when they put the impeachment clause in the Constitution. That is what they intended by spelling out the terms of bribery, treason, and other high Crimes and Misdemeanors in Article II, Section 4 of the Constitution.

In September when I first saw the President's testimony on tape it angered me. When I saw it today, it angered me again. While the President may not have committed perjury, he misled in such an artful way that I can see why people, liberals and conservatives, Democrats, Independents, and Republicans, men and women, would be angered and disappointed in the President.

But I was also angered and disappointed by the Ken Starr referral. It was unbalanced, it was full of prosecutorial and partisan zeal, it was intentionally salacious, it lacked the seriousness and gravitas of a document that would guide this Congress on the crucial question of impeaching the President. It raised obvious questions about Ken Starr's partiality and veracity.

I believe that because Starr knew that a case solely about sex and lying about sex would never pass muster with the American people, that he leveled the unsupportable charges of obstruction of

justice and abuse of power. Many House Republicans, because of their hatred of President Clinton, were only too eager to accept the OIC's case without question.

The four articles before us, with rare exception, seem like a rubber stamp of the Starr report, and this is a very sad indictment of what should be a very solemn and judicious process. It leads us to today. The American people may wake up Sunday morning to find out that this committee has passed articles of impeachment on the President. The American people may wake up next Friday morning to discover that the House of Representatives has indeed impeached the President.

Do you know, I think the American people still don't believe that we are foolish enough or partisan enough to do this. I think the American people are waiting for us to come to our senses and end this political game of chicken. But to the American people, I say that the House may very well do the unthinkable. If the vote were held today, I believe the House would impeach the President by a thin margin. I don't think many from the other party are willing to buck the siren calls of the radical right.

I read one columnist who said that impeachment won't really tie things up, or not for too long. They said the Senate will never convict, and it will be over in a few weeks. Let's not delude ourselves. If the House impeaches, we will tie up all three branches of government for months and months. The House Judiciary Republicans will prosecute the case with all the zeal we have seen thus far. The President will call witness after witness, because he can, and because to defend himself he must. The Supreme Court Chief Justice will hear the case in the Senate, the Senate will be paralyzed for legislating. It will poison relations between the House and Senate, between the Congress and the White House, between Democrats and Republicans, for a long time after the trial is over, and all the while, the crushing problems around us in Iraq, in the Middle East, with the world economy, with health care, with education, with Social Security, will fester.

Clearly, if the President's actions were so egregiously wrong that they went to the heart of the continuance of the Republic, we would have no choice but to move forward, even with the risk of all these problems being ignored. But now the majority wish us to go through this ordeal simply about an extramarital relationship and lying about it.

To the members of this committee, to the members of this House, before we act, remember, this is not simply about President Clinton. It is not about the opportunity of the moment to tarnish a president who has frustrated you and maddened you. It is about the careful balance designed by the Founding Fathers that has served our country well for over 200 years. Don't upset it without the most careful deliberation and the strongest of reasons. We may never be able to put the genie back in the bottle. God willing, please let history, justice, wisdom be your guide.

Mr. SENSENBRENNER [presiding]. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Much has been made about the absence of bipartisanship on this issue, and I want to re-

iterate my position on that. Do not point accusatory fingers at Republicans or Democrats because there is disagreement. Assuming we vote our consciences and exercise sound judgment, little else can be asked. Some favor impeachment, some oppose it. The process then will move forward.

I want to direct my attention to perjury, Mr. Chairman. I know of no situation, my friends, where sanctity is so generously laced as when one submits to an oath, then violates it. At this point, perjury rears its unsavory head.

I represent a district far removed from the Beltway and its accompanying mentality. Here we are surrounded by Beltway advisors who demand fees in excess of \$500 per hour. Many of these adept advisors, lawyers, counselors, are spinmeisters. They attach their spin, and oftentimes confusion results.

But when I return to my district, I sometimes motor south on Highway 29 through the fox and the wine country of Virginia. As I approach the North Carolina boundary line, my mind begins to clear, as I am at that point removed from the Beltway spin. All of a sudden, I am aware of the definition of sex. All of a sudden I know the meaning of "alone." I know what is "is," as do the majority of my constituents.

Many have compared the present White House crisis to Watergate. There are similarities. There are distinctions. One glaring similarity in my opinion, my friends, is this: If President Clinton and President Nixon had come before the American people in a timely way—and by that, Mr. Chairman, I mean early in the game—and sincerely apologized for their offenses or crimes, we likely would not be here today. Watergate misconduct, as well as current White House misconduct, are, in my opinion, subject to impeachment.

The American people are a forgiving people. But neither President Nixon nor President Clinton saw fit to pursue the course I have just outlined. Oliver Wendell Holmes said, sin has many tools, but the lie is the handle that fits them all. The centerpiece to this scenario I am convinced, ladies and gentlemen, is not sex; it is indeed perjury. It is the lie. It is the handle to the tool.

As best I can determine, there are no exceptions to the perjury statutes. If we turn a blind eye to perjury in this instance, what precedent do we establish when subsequent cases involving perjury must be resolved fairly and impartially?

Finally, I take umbrage to charges that some are out to get the President. Mrs. Bono, the gentlewoman from California, earlier said this week that it is not we on this committee who created the problem that is now before us. It was the President's doing.

I take umbrage, as well, to those who claim that some approach this arduous task in a gleeful manner. I take no joy in discharging this duty before us, but it remains our duty, nonetheless.

Mr. Chairman, every 25 years, it seems, the House Committee on the Judiciary charts its course through impeachment waters. We spend the remaining years in relative obscurity, compared to some of our House committees that enjoy higher levels of profile than we. I must confess, and I may be speaking for all the members on the Committee on the Judiciary, I must confess, I long for the days of relative obscurity. That may come one of these days.

My good friend from Michigan, the distinguished ranking member, referred to the shutdown of the government when he said the Congress shut down the government. Let me talk a minute about that. When the government shut down in 1991, President Bush was blamed for the shutdown. When the government shut down in 1995, the Congress was blamed for the shutdown. I still haven't figured that one out.

I think the truth of the matter is that President Bush and the Congress closed down the government in 1991. President Clinton and the Congress closed down the government in 1995, for almost identical circumstances, the inability to agree on spending measures.

So I don't believe that—assuming impeachment will follow, I don't think that will accelerate the shutting down of the government. My good friend from New York talked about it is going to tie everything up. It may well tie it up to some extent, but I am the eternal optimist. I forever see that glass half filled, and I can't see that this is going to shut down the government or tie it up, assuming it does advance to the Senate.

Having said all that, Mr. Chairman, I am happy to report the red light is not illuminated, and I yield back my time.

The CHAIRMAN. I thank the gentleman from North Carolina.

The gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman.

Chairman Hyde, wherever you are, I often disagree with you, but I have always known you to be a fine and decent man, and you have often been unfairly attacked throughout this process. And I, for one, want to commend you for the way you have handled these proceedings.

I also want to express to my friend, Mr. Conyers, wherever he is, my appreciation for his effective and wise leadership as my ranking minority member.

The often-repeated mantra that everybody lies, certainly everybody lies about sex, all presidents lie, and many presidents have affairs, must be addressed from this side of the table.

It is certainly true that people sometimes lie, and that people often lie about sex, and it is true that presidents have been known to lie, and that some presidents have had affairs. But that mantra has nothing to do with the issues before us. That mantra does not address the allegations of lying under oath or coaching potential witnesses in legal proceedings in order to evade responsibility for personal wrongdoing. Our proceedings are too momentous to be bogged down by this political spin.

What is an impeachable offense? A precise definition is difficult to glean from the Framers of the Constitution, American history, or scholarship. I find the best answer, albeit on a different subject, contained in the concurring opinion of Supreme Court Justice Potter Stewart, from which I quote: "The court was faced with the task of trying to define what may be indefinable. I shall not today attempt to further define the kinds of material I understand to be embraced, and perhaps I could never succeed in intelligibly doing so, but I know it when I see it." Justice Stewart was ruling on the definition of obscenity, not impeachment. And given his subject matter, some may think this analogy too apt.

But as regards the basic concept of what constitutes an impeachable offense, for me the logic applies: I know it when I see it. And on balance, given the totality of the wrongdoing and the totality of the context, this isn't it.

In fact, though reasonable people may disagree, I don't think it is a close call. The President's behavior that reflects so badly on the presidency and the country, the President's disregard for his obligations as a law-abiding American, the President's refusal to respect a commonsense interpretation of the English language, this conduct does not rise to the level that justifies thwarting the public's mandate as expressed in the 1996 election.

My vote to oppose impeachment turns on three factors. The first factor is, though this is not just about sex, it is colored by sex.

Second, and more importantly, impeachment must not be pursued if the center of gravity of the body politic opposes impeachment. We are privileged to live in a unique and wonderful system. Every 4 years we come together to elect a president. This is the defining moment in American political life, and is portentous in its implications. Each American takes responsibility, and as a whole, all America takes collective responsibility for the decision to vest awesome power in this one person.

There must have been a reason why the Framers vested this power of impeachment in a political body, the people's house, the House of Representatives. If they wanted impeachment to be a non-political decision, totally divorced from public opinion, they would have vested impeachment powers in the judicial branch.

The impeachment process must, at a minimum, pay some deference to the totality of the people's views. Unlike every other vote we cast, where conscience may play a determinative role regardless of public opinion, a vote for impeachment cannot be blind to the views of those who vested power in the President. It would be very, very wrong to expunge the results of an election for the President of the United States without the overwhelming consent of the governed. It should not be contemplated unless the wrongdoing is so egregious as to threaten our form of government.

The third factor in my decision is the belief that the corrosive effects on American society and America's legal system of allowing the President to serve out his term have been overstated. It is true that the President's defense is very troubling. His grand jury testimony, his public statements following the grand jury testimony, his agent's public statements, his answers to the questions submitted to the committee, are more serious than any wrongdoing that caused this process to begin.

There is something Alice in Wonderland like watching someone so smart and so skilled, so admired by the American people for his intellect and his talents, digging himself deeper and deeper and deeper into a rabbit hole, and us along with him, and allowing him to escape accountability. This troubles me greatly, and I know it motivates many of the calls for impeachment.

People do have a right to ask, what will America's children believe about lying, about reverence for the law, about lying under oath? Will more Americans think it is okay to lie under oath if the subject matter is sex or if the subject matter is embarrassing, or

to evade liability in a sexual harassment suit, or to evade criminal liability?

Many thoughtful Americans wonder whether the deconstruction of our language, the hairsplitting, will damage the culture even beyond the legal system. What will happen if words no longer have commonsense meaning, if everything is equally true or not true, because, after all, it depends on what your definition of "is" is?

Of course, there has been and will be harm to our culture and the legal system, but let's keep it in perspective. This is not a court of law. We are not empowered to decide whether or not the President should be indicted or convicted of a criminal offense.

While not above the law, the President, the most powerful man on the planet, the man who has control over our nuclear weapons arsenal, the man whom we vest with the authority to protect and defend the interests of the people of the United States, and indeed, to protect all civilization, is a special case. Everybody is equal under the law, but we make special provisions for one person while he is serving as president.

Few would dispute the fact that the President is immune from criminal prosecution during his term of office. Many would argue, I certainly would, that a wise Congress should pass legislation to immunize the President from civil litigation during his term of office. We vest the secret service with the responsibility of taking the bullet so our Commander in Chief will serve out his term.

Most Americans can be criminally prosecuted at any time. Most Americans can be civilly sued at any time. Most Americans do not have a cadre of heroes providing personal protection for them and their loved ones.

That the President's conduct is not impeachable does not mean that society condones his conduct. In fact, it does not mean that the President is not subject to criminal prosecution after he leaves office. It just means that the popular vote of the people should not be abrogated for this conduct, when the people clearly do not wish for his conduct to cause that abrogation.

The point is, most Americans know and will instruct their children to know that conduct that may not be impeachable for the President of the United States is not necessarily conduct that is acceptable in the larger society. Those who argue that the institutions of government or the fabric of our society will be irreparably harmed by a failure to impeach the President seriously underestimate the American people. America is too strong a society, American parents are too wise, the American sense of right and wrong too embedded to be confused. We all know that the word "is" has a commonsense meaning. We all know that lying under oath will get us in a lot of trouble.

I have anguished over the question: Were the facts the same for a Republican president and a Democratically controlled Congress, would I vote the same way, oppose impeachment? I pray that my decision would be the same, regardless of party, regardless of political position. I hope I have considered only what meets the constitutional standard and what is best for America.

I find the answer unambiguous. Impeachment must be defeated.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. First, I want to acknowledge the thoughtful statement made by the gentleman from California who just spoke.

Mr. BERMAN. Will the gentleman change his vote?

Mr. SMITH. Mr. Chairman, our Constitution tells us the President, the Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors.

To impeach, which lies only within the power of the House, means to accuse or charge with a crime. Only the Senate can actually convict and remove from office. As a distinguished Democratic member of the Committee on the Judiciary said during the Nixon impeachment proceeding, "It is wrong, I suggest, it is a misreading of the Constitution, for any member here to assert that for a member to vote for an article of impeachment means that that member must be convinced that the President should be removed from office. The Constitution doesn't say that. The powers relating to impeachment are an essential check in the hands of this body, the legislature, against and upon the encroachment of the executive.

"In establishing the division between the two branches of the legislature, the House and the Senate, assigning to the one the right to accuse and to the other the right to judge, the framers of this Constitution were very astute. They did not make the accusers and the judges the same person."

After consideration of all the evidence presented, I am convinced it is sufficient for the House to charge the President with several wrongful actions. I feel the evidence shows that the President committed perjury by lying under oath, obstructing justice, and abused the power of his office.

Both historical precedent and current practice support the conclusion that perjury is a high crime and misdemeanor. The Constitution applies that same phrase both to the President and to all civil officers of the United States. Several Federal judges have been impeached and removed from office for perjury. That is why the President can be, too.

Also, bribery and perjury are equivalent means of interfering with the justice system. The Federal sentencing guidelines include bribery and perjury in the same guideline.

Some of the President's defenders would like to change the subject and talk about anybody else but the President, and about anything else except the allegations of lying under oath, obstruction of justice, and abuse of office. Such efforts are an affront to all who value truth over tactics, substance over spin, principles over politics.

Judiciary Committee members will be consistent if they follow the precedent established in 1974. Individuals from both parties agreed with the Democratic Congresswoman from Texas when she said, "The President engaged in a series of public statements and actions designed to thwart the lawful investigation by government prosecutors. Moreover, the President has made public announcements and assertions which the evidence will show he knew to be false." "These assertions, false assertions," she said, "are impeachable."

By any common sense measure, the President did not tell the truth, the whole truth, and nothing but the truth, as his oath required, when he testified before a judge and then before a grand jury, as several Democratic members of this committee now admit.

We should not underestimate the gravity of the case against the President. When he put his hand on the Bible and recited his oath of office, he swore to faithfully uphold the laws of the United States; not some laws, all laws.

As committee witnesses have testified, many people have gone to jail for doing what the President did—lying or knowingly making false statements after swearing in court not to do so. However, others have not been punished for failing to tell the truth. So, if the President were just an ordinary person living in the United States, it is not certain that he would be found to have committed a crime.

What, then, makes this a case that rises to the impeachment level? I think there are two factors: the repeated and deliberate nature of the lies, and the uniqueness of the Office of the Presidency.

It was determined by the Independent Counsel that, “On at least six different occasions, from December 17th, 1997, through August 17th, 1998, the President had to make a decision. He could choose truth or he could choose deception. On all six occasions, the President chose deception, a pattern of calculated behavior over a span of months.

During this time, not only did the President tell a judge and then a grand jury less than the truth, he also told lies to the American people, the news media, Members of Congress, his Cabinet, and senior White House advisors.

One of his own former advisors commented, “President Clinton turned his personal flaws into a public matter when he made the whole country complicit in his cover story. This was no impulsive act of passion, it was a coldly calculated political decision. He spoke publicly from the Roosevelt Room. He assembled his Cabinet and staff and assured them that he was telling the truth. Then he sat back, silently, and watched his official spokespeople, employees of the U.S. government, mislead the country again and again and again.”

The President himself, when he was a law professor in Arkansas, defined an impeachable offense this way: “I think that the definition should include any criminal acts, plus a willful failure of the President to fulfill his duty to uphold and execute the laws of the United States. Another factor that I think constitutes an impeachable offense would be willful, reckless behavior in office.”

The President consciously and persistently made an effort to deceive, give misleading answers and tell lies. He made statements and engaged in actions designed to impede the investigation of the Independent Counsel. We all know the President still might be deceiving us today, were it not for physical evidence that forced him to change his story.

As to the uniqueness of the office the President holds, he is a person in a position of immense authority and influence. He influences the lives of millions of Americans. He sets an example for us all.

A sixth-grader from Chisholm Middle School in Round Rock, Texas, recently wrote me. She said bluntly, “He has lied to the

American people, and although I realize what he lied about has nothing to do with him running the country, then what else would he lie about? He let us down. Kids that think he is a role model now are heart broken.”

The President sets an example for adults, too. When he took the oath of office, he swore to preserve, protect and defend the Constitution of the United States and to take care that the laws be faithfully executed. The President has rightly been called the number one law enforcement officer of the country. As such, he has a special responsibility to take care that he not commit any crime, particularly such a serious one as perjury, a felony for which a person can go to jail for up to 5 years.

When someone is elected president, they receive the greatest gift possible from the American people—their trust. To violate that trust is to raise questions about fitness for office. My constituents often remind me that if anyone else in a position of authority, for example, a business executive, a military officer or a professional educator, had acted as the evidence indicates the President did, their career would be over.

The rules under which President Nixon would have been tried for impeachment, had he not resigned, contain this statement: “The Office of the President is such that it calls for a higher level of conduct than the average citizen in the United States.”

The President has a higher responsibility for another reason. The Arkansas Rules of Conduct for attorneys state that lawyers holding public office assume legal responsibilities going beyond that of other citizens because they know how important the rule of law is to a stable and civilized society.

The President does not hold just any public office, he holds the most powerful one in the world. For these two reasons, the President’s premeditated and repeated efforts while under oath to tell less than the truth, and the special responsibility that comes with holding the highest office in our country, I feel the President’s actions have reached the level of impeachable offenses.

I have been surprised by the assertions of the President’s defenders that we should not impeach him for his actions because it would set a precedent.

Mr. Chairman, I notice that I am out of time, but I have never asked for unanimous consent for additional time before, and, if I could, I would like to have another minute, perhaps, to offset the compliment I issued to the gentleman from California.

The CHAIRMAN. Well, reluctantly, without objection, the gentleman is given another minute.

Mr. SMITH. Thank you, Mr. Chairman.

If our actions send a message that future presidents should not lie under oath, should tell the truth, the whole truth and nothing but the truth, as President Clinton swore to do when giving testimony before a judge and then a grand jury; that future Presidents should uphold the law, as President Clinton swore to do when he took the oath of office as President; that future Presidents should not obstruct justice, as President Clinton did for 7 months as he admittedly deceived the American people and those associated with the investigation; if these are the precedents Congress sets, if these

are the standards future presidents then live by, we need not fear our actions.

This will not be an easy task. In fact, it is a difficult ordeal for all Americans, but we will get through it. We are a great Nation and a strong people. Our country will endure because our Constitution works and has worked for over 200 years.

As much as one might wish to avoid this process, we must resist the temptation to close our eyes and pass by. The President's actions must be evaluated for one simple reason: The truth counts. As the process goes forward, some good lessons can be reaffirmed: No one is above the law; actions have consequences; always tell the truth.

We, the people, should insist on these high ideals. That the President has fallen short of this standard does not mean we should lower it. If we keep excusing away the President's actions, we as a Nation will never climb upwards, because there will be no firm rungs.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent that the gentleman be allowed to complete his statement.

The CHAIRMAN. Without objection.

Mr. SMITH. I am almost finished. I appreciate the indulgence of my colleagues.

Let me quote another insightful letter from a student in that same sixth-grade class.

"As everyone knows," it begins, "President Clinton is going through hearings about lying under oath and tampering with the evidence. Perjury, especially in front of a grand jury, is unacceptable. These many months of investigations could have been avoided if President Clinton would have told the truth in the beginning."

She concludes her letter with words I will use to conclude my remarks: "I know you are being bombarded with letters, each with different opinions. But this is a big issue. Now it is up to you and your fellow Congressmen to decide to the best of your ability what should happen next. Please take into consideration what I have stated and make a decision that would be the best for America's future."

That, my colleagues, to me, says it all.

I yield back the balance, of my time.

[The statement of Mr. Smith follows:]

Statement of Lamar Smith  
before the House Judiciary Committee  
December 10, 1998

Our Constitution tells us: "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

To impeach, which lies within the power of the House, means to accuse or charge with a crime. Only the Senate can actually convict and remove from office.

As a distinguished Democratic member of the Judiciary Committee said during the Nixon impeachment proceeding, "It is wrong, I suggest, it is a misreading of the Constitution for any member here to assert that for a member to vote for an article of impeachment means that that member must be convinced that the president should be removed from office. The Constitution doesn't say that. The powers relating to impeachment are an essential check in the hands of this body, the legislature, against and upon the encroachment of the executive. In establishing the division between the two branches of the legislature, the House and the Senate, assigning to the one the right to accuse and to the other the right to judge, the framers of this Constitution were very astute. They did not make the accusers and the judges the same person." (Opening statement to the House Judiciary Committee, Proceedings On the Impeachment of Richard Nixon, by Barbara Jordan)

After consideration of all the evidence presented, I am convinced it is sufficient for the House to charge the President with several wrongful actions. I feel the evidence

shows that the President committed perjury by lying under oath, obstructed justice, and abused the power of his office.

Both historical precedent and current practice support the conclusion that perjury is a “high crime and misdemeanor.” The Constitution applies that same phrase both to the president and to “all civil officers of the United States.” Several federal judges have been impeached and removed from office for perjury. That is why the President can be, too.

Also, bribery and perjury are equivalent means of interfering with the justice system. The Federal Sentencing Guidelines include bribery and perjury in the same Guideline.

Some of the President’s defenders would like to change the subject and talk about anybody else but the President and about anything else except the allegations of lying under oath, obstruction of justice, and abuse of office. Such efforts are an affront to all who value truth over tactics, substance over spin, principles over politics.

Judiciary Committee members will be consistent if they follow the precedent established in 1974. Individuals from both parties agreed with a Democratic Congresswoman from Texas when she said, “The president engaged in a series of public statements and actions designed to thwart the lawful investigation by government prosecutors. Moreover, the president has made public announcements and assertions... which the evidence will show he knew to be false. These assertions, false assertions,” she said, are “impeachable.” (Ibid.)

By any common sense measure, the president did not “tell the truth, the whole truth, and nothing but the truth,” as his oath required, when he testified before a judge and then before a grand jury, as several Democrats on the Committee now admit.

We should not underestimate the gravity of the case against the President. When he put his hand on the Bible and recited his oath of office, he swore to faithfully uphold the laws of the United States. Not some laws; all laws.

As committee witnesses have testified, many people have gone to jail for doing what the president did—lying or knowingly making false statements after swearing in court not to do so. However, others have not been punished for failing to tell the truth.

So, if the President were just an ordinary person living in the United States, it is not certain that he would be found to have committed a crime.

What, then, makes this a case that rises to the impeachment level?

I think there are two factors: the repeated and deliberate nature of the lies, and the uniqueness of the office of the presidency.

It was determined by the independent counsel that, “On at least six different occasions—from December 17, 1997, through August 17, 1998—the President had to make a decision. He could choose truth, or he could choose deception. On all six occasions, the President chose deception—a pattern of calculated behavior over a span of months.” ( Statement of Independent Counsel Kenneth W. Starr before the Committee on the Judiciary, U.S. House of Representatives, November 19, 1998)

During this time, not only did the President tell a judge and then a grand jury less than the truth, he also told lies to the American people, the news media, members of Congress, his Cabinet, and senior White House advisors.

One of his own former advisors commented, "President Clinton turned his personal flaws into a public matter when he made the whole country complicit in his cover story. This was no impulsive act of passion; it was a coldly calculated political decision. He spoke publicly from the Roosevelt Room. He assembled his Cabinet and staff, and assured them that he was telling the truth. Then he sat back, silently, and watched his official spokespeople, employees of the U.S. government, mislead the country again and again." (Column by George Stephanopoulos, Newsweek, August 31, 1998)

The President himself, when he was a law professor in Arkansas, defined an impeachable offense this way: "I think that the definition should include any criminal acts plus a willful failure of the president to fulfill his duty to uphold and execute the laws of the United States. Another factor that I think constitutes an impeachable offense would be willful, reckless behavior in office..."

The President consciously and persistently made an effort to deceive, give misleading answers, and tell lies. He made statements and engaged in actions designed to impede the investigation of the Independent Counsel. We all know the President still might be deceiving us today were it not for physical evidence that forced him to change his story.

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A sixth grader from Chisolm Middle School in Round Rock, Texas, recently wrote me. She said bluntly, "He has lied to the American people! And although I realize what he lied about has nothing to do with him running the country, then what else would he lie

about? He let us down! Kids that think he is a role model now are heart broken! (Letter from Kara Kothmann, November 17, 1998)

The President sets an example for adults, too. When he took the oath of office he swore to “preserve, protect and defend the Constitution of the United States” and to “take care that the laws be faithfully executed.” The president has rightly been called “the number-one law enforcement officer of the country.” (Leon Jaworski in The Right and the Power.) As such, he has a special responsibility to “take care” that he not commit any crime, particularly such a serious one as perjury, a felony for which a person can go to jail for up to five years.

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The rules under which President Nixon would have been tried for impeachment, had he not resigned, contained this statement: “The office of the President is such that it calls for a higher level of conduct than the average citizen in the United States.” (Drafted in 1974 by Hillary Rodham, a staff attorney of the Judiciary Committee)

The President has a higher responsibility for another reason. The Arkansas Rules of Conduct for attorneys state that “lawyers holding public office assume legal responsibilities going beyond those of other citizens,” because they know how important the rule of law is to a stable and civilized society. And the President doesn’t hold just any public office, he holds the most powerful one in the world.

It is for these two reasons—the President’s premeditated and repeated efforts while under oath to tell less than the truth, and the special responsibility that comes with holding the highest office in our country—that I feel the President’s actions have reached the level of impeachable offenses.

I have been surprised by the assertion of the President’s defenders that we should not impeach him for his actions because it would set a precedent.

If our actions send a message that future presidents should not lie under oath, should tell the truth, the whole truth and nothing but the truth—as President Clinton swore to do when giving testimony before both a judge and then a grand jury; that future presidents should uphold the law—as President Clinton swore to do when he took the oath of office as president; that future presidents should not obstruct justice—as President Clinton did for seven months as he admittedly deceived the American people and those associated with the investigation...if these are the precedents Congress sets, if these are the standards future presidents then live by, we need not fear our actions.

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Let me quote another insightful letter from a student in that same sixth grade class:

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She concludes her letter with words I will use to conclude my remarks, "I know you are being bombarded with letters each with different opinions, but this is a big issue. Now it is up to you and your fellow congressmen to decide to the best of your ability what should happen next. Please take into consideration what I have stated and make a decision that would be the best for America's future." (Letter from Brandi Bockhorn, November 19, 1998)

That, my colleagues, to me, says it all.

Mr. SENSENBRENNER. The gentleman's time has long since expired.

The Chair would ask the members to please try to time their statements to fit as closely to the 10 minutes that were announced by the Chair and agreed to by unanimous consent as possible.

The gentleman from Virginia, Mr. Boucher.

Mr. BOUCHER. Thank you, Mr. Chairman, very much.

I would like to join with others who have expressed similar remarks in expressing my appreciation to Chairman Hyde and also to the ranking Democrat on this committee, John Conyers, for the leadership that they both have provided during what has been an oftentimes difficult process. I think they have both performed well, and I want to thank them for it.

I have reviewed carefully the information that has been presented to this committee by the Independent Counsel and by other witnesses who have testified before the committee, and I have concluded that a congressional response is required to the actions of the President.

The President made false statements concerning his reprehensible conduct with a subordinate. He wrongfully took steps to delay discovery of the truth. He has diminished his personal dignity and that of the Office of the Presidency. He has brought the presidency into disrepute and impaired the image of the President as a role model for younger Americans.

The question we must now decide is whether to adopt a resolution censuring and rebuking the President for these actions or whether we should adopt articles of impeachment directed towards his removal from office.

In deciding which of these alternatives is more appropriate, I have carefully reviewed the historical precedents for the use of both in light of the facts which have been presented to this committee, and I have concluded that a statement by the Congress formally censuring and rebuking the President for his conduct is more appropriate in these circumstances.

Of particular value to me in this analysis was the most recent congressional pronouncement on the proper use of the impeachment power. It is found in the report issued on a broad bipartisan basis by this committee in its 1974 proceeding in the Watergate inquiry.

That report concludes that the framers of the Constitution vested the impeachment power in the House of Representatives with the intent that it only be used to advance the national interest. It was designed to remove from office a chief executive whose conduct threatens the Nation.

Not all presidential misconduct, whether criminal or noncriminal, justifies impeachment. To quote this committee's report, "Only that misconduct which is seriously incompatible with either the constitutional form and principles of our government or the proper performance of the duties of the presidential office will justify a use of the impeachment power."

This is the standard that we should apply today. It was applied by our predecessors on this committee in 1974. It gives further definition to our common understanding that overturning a national election and removing a President from office is a drastic remedy

to be used only when the survival of our constitutional form of government is at stake.

The facts now before this committee which arise from a personal relationship and the effort to conceal it simply do not rise to that standard. While the President's conduct was reprehensible, it did not threaten the Nation. It did not undermine the constitutional form and principles of our government, and it did not disable the proper performance of the constitutional duties of the presidential office. It does not rise to the standard for impeachment set by our predecessors in 1974.

It is equally clear that impeachment was never intended as a punishment for misconduct by the Chief Executive. The Constitution in Article I, Section 3, specifically provides that the President can be tried in the criminal courts after he leaves office for any crimes that are committed during his presidential tenure.

Since the President is clearly subject to the criminal justice process, the rule of law will be upheld, and the principle that no person, including the President, is above the law will be honored.

This President, I should note, is also subject to sanctions being imposed by the Federal judge in Arkansas who presided in the civil lawsuit in which he gave the deposition which has been such a subject of discussion in these proceedings. Impeachment should not be employed as punishment to the President. That punishment can come through the criminal courts or through the sanctions imposed by the Federal judge in Arkansas.

Also weighing against the use of the impeachment power is the virtual certainty that the Senate would not convict the President and remove him from office if the House of Representatives votes favorably on articles of impeachment. A vote of two-thirds of the Senate would be required for that action, and it is universally acknowledged that a two-thirds vote in the Senate to convict the President and remove him from office cannot be obtained.

Therefore, for the House of Representatives to approve articles of impeachment would simply prolong this national debate for many more months without bringing closure, further polarizing the country and hardening the divisions that exist in our population at the time, diverting the President and the Congress from attending to our urgent national business, immobilizing the Supreme Court while the Chief Justice presides over a prolonged trial in the Senate, lowering the standard for future presidential impeachments and possibly causing disruptions in the financial markets to the detriment of our national economy.

For all of these reasons, I am convinced that impeachment is not the appropriate remedy in this case. Its use would not well serve the national interest.

I share the public's deep disdain for the actions of the President, and I am truly concerned that if Congress takes no actions, many troubling, unanswered questions will remain with regard to the example that his conduct sets.

A resolution of censure passed by both Houses of Congress requiring the signature of the President as an acknowledgment of the public's rebuke of his tawdry conduct is the preferable alternative. Tomorrow, I will offer with colleagues of like mind such a resolution of censure for consideration by this committee. Our congres-

sional censure of the President for his conduct, combined with his susceptibility to the criminal justice process and to possible sanctions by the Federal court in Arkansas, will constitute an appropriate admonishment for his conduct which we all disdain.

It is my hope that in the days ahead a consensus can be achieved which leads to this sensible conclusion, if not in this committee then on the floor of the U.S. House of Representatives which, more than any other approach, will simultaneously acknowledge our long constitutional history and place the Nation, the Congress and the presidency on a path toward the restoration of dignity.

Thank you, Mr. Chairman. I yield the balance of my time.

Mr. SENSENBRENNER. That is appreciated.

[The statement of Mr. Boucher follows:]

**OPENING STATEMENT  
CONGRESSMAN RICK BOUCHER  
HOUSE JUDICIARY COMMITTEE  
CONSIDERATION OF ARTICLES OF IMPEACHMENT**

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The question we must now decide is whether to adopt a resolution censuring and rebuking the President for his actions or Articles of Impeachment which are directed toward his removal from office.

In deciding which of these alternatives is more appropriate, I have carefully reviewed the historical precedents for the use of both in light of the facts which have been presented to the Committee, and I have concluded that a statement by the Congress formally censuring and rebuking the President for his conduct is more appropriate in these circumstances.

Of particular value to me in this analysis was the most recent Congressional pronouncement on the proper use of the impeachment power. It is

found in the report issued on a bipartisan basis by this Committee in its 1974 proceedings in the Watergate matter.

That report concludes that the framers of the Constitution vested the impeachment power in the House of Representatives with the intent that it be used only to advance the national interest. It was designed to remove from office a Chief Executive whose conduct threatens the nation. Not all Presidential misconduct whether criminal or non-criminal, justifies impeachment.

To quote the Committee's report, only that misconduct which is "seriously incompatible with either the Constitutional form and principles of our government or the proper performance of the Constitutional duties of the Presidential office" will justify a use of the impeachment power.

This is the standard we should apply. It was applied by our predecessors on this Committee on a broad bipartisan basis in 1974. It gives further definition to our common understanding that overturning a national election and removing a President from office is a drastic remedy to be used only when the survival of our Constitutional form of government is at stake.

The facts now before this committee which arise from a personal relationship and the effort to conceal it simply do not rise to that standard. While the President's conduct was reprehensible, it did not threaten the nation. It did not undermine the Constitutional form and principles of our government. It did

not disable the proper performance of the Constitutional duties of the Presidential office. It does not rise to the standard of impeachment set by our predecessors in 1974.

It is equally clear that impeachment was never intended as a punishment for the conduct of the President. The Constitution in Article I Section 3 specifically provides that the President can be tried in the criminal courts after he leaves office for any crimes he may have committed while holding the Presidential office. Since the President is clearly subject to the criminal justice process, the rule of law will be upheld and the principle that no person, including the President, is above the law will be honored.

This President is also subject to sanctions being imposed by the federal judge in Arkansas who presided over the civil lawsuit in which he gave a deposition if she concludes that sanctions are appropriate.

Impeachment should not be employed as a punishment for the President. That punishment can come through the criminal courts or through the sanctions imposed by the federal judge in Arkansas.

Also weighing against use of the impeachment power is the virtual certainty that the Senate would not convict the President and remove him from office if the House votes Articles of Impeachment. A vote of 2/3 of the Senators would be required for that action, and it is universally acknowledged that the 2/3

vote in the Senate for removal of the President cannot be obtained. Therefore, for the House to approve Articles of Impeachment would simply prolong the national debate for many more months, further polarizing the country, diverting the Congress and the President from attending to our urgent national business, immobilizing the Supreme Court while the Chief Justice presides in a Senate trial, lowering the standard for future Presidential impeachments and possibly causing disruptions in the financial markets to the detriment of the economy. For all of these reasons, I am convinced that impeachment is not the appropriate remedy in this case. Its use would not well serve the national interest.

I share the public's deep disdain for the actions of the President, and I am truly concerned that if Congress takes no action, many troubling unanswered questions will remain with regard to the example his conduct sets. A resolution of censure passed by both houses of Congress, requiring the signature of the President as an acknowledgment of the public's rebuke of his tawdry conduct, is the preferable alternative. Tomorrow, I will offer with colleagues of like mind such a resolution for consideration by the Committee.

Our Congressional censure of the President for his conduct combined with his susceptibility to the criminal justice process and to possible sanctions by the federal court in Arkansas will constitute appropriate admonishment for his misconduct.

It is my hope that in the days ahead, a consensus can be achieved which leads to this sensible conclusion which more than any other approach will simultaneously acknowledge our long Constitutional history and place the nation, the Congress and the Presidency on a path toward the restoration of dignity.

Mr. SENSENBRENNER. The gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Mr. Chairman, we have been waiting for months for President Clinton or his representatives to offer facts that negate the charges in Judge Starr's referral to this committee. During those long months I made a commitment to refrain from judging the President's guilt or innocence until we had the facts. This has been a very trying time. In a democracy there are few more serious acts than to consider the possible impeachment of a President. I can tell you in good conscience it has caused me many sleepless nights.

The charges presented by Judge Starr against President Clinton were strong, but they were only charges. I wanted to hear the evidence that would prove the charges were false. I believed that was the only fair way to proceed, and it was also my solemn constitutional duty and immense responsibility. I waited, I read, and I listened.

Finally, last week President Clinton announced he would launch a vigorous defense. On Tuesday morning Mr. Craig, the President's counsel, said that he would present a powerful case, based on the facts already in the record and on the law, against the impeachment of our President.

What I heard, unfortunately, was more legal hair-splitting. Even some of the President's witnesses said President Clinton had lied. Only presidential attorney Mr. Ruff mounted a vigorous defense of the facts and the record, but I found his conclusions flawed.

I have carefully weighed the evidence, Mr. Chairman. I can only conclude that the President repeatedly lied under oath. I believe his lies under oath were intentional and premeditated.

First, in December, 1997, the President lied under oath in his written answers to a Federal court.

Second, in January, the President lied under oath repeatedly in the Jones deposition.

Third, he willfully and knowingly influenced witnesses and obstructed justice in Ms. Jones' pending lawsuit. He lied to the American people. He lied to Congress, his staff, his cabinet, his party leaders, all to protect himself and frustrate justice.

Fourth, in August, the President lied under oath before a Federal grand jury. The President lied to the American people when he addressed us after that appearance.

Finally, only days ago, the President lied under oath again when he answered the 81 questions posed to him by this committee.

The President had many, many opportunities to come clean and tell the truth. Instead, he continued to lie under oath. He lied under oath despite bipartisan pleas to testify truthfully.

It has been argued that we should not impeach President Clinton because we should not hobble future presidents with the possibility they could be impeached for the same thing. Mr. Lowell, the Democratic counsel, this morning said we should not impeach to punish but rather to preserve the public trust. Future presidents should fear impeachment for lying under oath. Impeaching a President for lying under oath would do what Mr. Lowell suggests: protect the public trust.

Instead of acting presidential and putting the country before his own self-interest, President Clinton chose his own self-interest time and time again. By doing so, he undermined the rule of law and violated his oath of office.

The President, his delegates and my Democratic colleagues argue that even if these facts are provable, they do not rise to the level of impeachment. With all due respect, I believe they are wrong. Lying after swearing before God and country to tell the truth, the whole truth and nothing but the truth is a very serious offense. It is taken very seriously by our judicial system, one of the three equal branches of government in the United States.

In this case, President Clinton's lies under oath before a Federal judge and a grand jury are a direct attack on the constitutional separations of power. On a more basic level, his lies under oath directly attacks the rule of law. This is about a President of the United States lying under oath, undermining our legal process and violating his oath of office. It is about violating Article II, Section 3, of the Constitution which states, the President shall take care that the laws be faithfully executed.

President Clinton's actions clearly fall under the heading of high crimes and misdemeanors. Our legal system, which protects the rights and liberties of all citizens, is dependent on people telling the truth under oath. The President is our chief law enforcement officer and our chief magistrate. When he lies under oath, he undermines the integrity of our judicial system and threatens the rights and liberties of every one of us.

Mr. Chairman, I am not a lawyer, one of the few non-lawyers on this committee. However, everyone who knows me knows that I believe the rule of law is fundamental to our society. Society without laws is anarchy. Societies that ignore the laws are condemned to violence and chaos.

The President's actions have already affected children in my district. An educator at a Moorpark junior high school called me this week. She said, in the last few months students have lied about bad conduct and tried to excuse themselves with the comment, "Well, the President did it; why can't I?" That bothers me.

My district is considered among the safest communities in the Nation. We have fine police officers, which certainly helps, but every officer from the chief to the beat officer will tell you a low crime rate begins with citizens who obey the law. Every citizen must obey the law. Every law. No citizen has a right to pick and choose what laws he or she may follow just because it may be embarrassing or inconvenient.

Our course is certain. Before us is clear evidence that the President knowingly and willfully lied under oath repeatedly and consistently. Those lies under oath are an attack on the rule of law against the very fabric of our society. He violated his oath of office and willfully sought to deny justice to another citizen. He violated the Constitution. To condone this would be to condemn our society to anarchy.

Mr. Chairman, I cannot and will not condone such action. I yield back.

Mr. SENSENBRENNER. The gentleman's time has expired.  
[The statement of Mr. Gallegly follows:]

**Statement by  
Congressman Elton Gallegly,  
House Judiciary Committee  
December 10, 1998**

Thank you, Mr. Chairman.

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This has been a very trying time. In a democracy, there are few more serious acts than to consider the possible impeachment of a president. I can tell you in good conscience, it has caused me many sleepless nights.

The charges Judge Starr presented against President Clinton were strong. But they were only charges. I wanted to hear evidence that would prove the charges were false. I believed that was the only fair way to proceed, and it was also my solemn Constitutional duty and immense responsibility.

I waited, I read, I listened. Finally, last week President Clinton announced he would launch a vigorous defense. On Tuesday morning, Mr. Craig, the president's counsel, said he would present a "powerful case based on the facts already in the record and on the law, a powerful case against the impeachment of this president." What I heard, unfortunately, was more legal hair-splitting. Even some of the president's witnesses said President Clinton had lied. Only presidential attorney Mr. Ruff mounted a vigorous defense of the facts and the record. But I found his conclusions flawed.

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Our course is certain. Before us is clear evidence that the President willfully and knowingly lied under oath, repeatedly and consistently. Those lies under oath are an attack on the rule of law, against the very fabric of our society.

He violated his oath of office and willfully sought to deny justice to another citizen. He violated the Constitution.

To condone this would be to condemn our society to anarchy. Mr. Chairman, I cannot, and will not, condone such actions.

I yield back.

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Mr. SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, today for only the third time in our Nation's history this committee meets to consider articles of impeachment against the President of the United States. This is a momentous occasion; and I would hope that, despite the sharp partisan tone which has marked this debate, we can approach it with a sober sense of the historic importance of this matter.

I believe we need to get back to basics, the Constitution and what the impeachment power conferred on the Congress requires of us. Article II, Section 4, of the Constitution says that a President "shall be removed from Office on Impeachment for and Conviction of Treason, Bribery, or other high Crimes and Misdemeanors."

We have received testimony from some of the Nation's leading scholars and historians who agree that impeachable offenses are those which are abuses of presidential power that undermine the structure and functioning of government or constitutional liberty. Benjamin Franklin called impeachment a substitute for assassination. It is, in fact, a peaceful procedure for protecting the Nation from despots by providing a constitutional means for removing a President who would misuse his presidential power to make himself a tyrant or otherwise to undermine our constitutional form of government. To impeach a President, it must be that serious.

The history of the language is also clear. At the Constitutional Convention the Committee on Style, which was not authorized to make any substantive changes, dropped the words "against the United States" after the words "high Crimes and Misdemeanors" because it was understood that only high crimes and misdemeanors against the system of government would be impeachable, that the words against the United States were redundant and unnecessary.

History and the precedents alike show that impeachment is not a punishment for crimes but a means to protect our constitutional system and was certainly not meant to be a means to punish a president for personal wrongdoing not related to his office.

Some of our Republican colleagues have made much of the fact that some of the Democrats on this committee in 1974 voted in favor of an article of impeachment related to President Nixon's alleged perjury on his tax returns, but the plain fact is that a bipartisan vote of that committee, something we have not yet had in this process on any substantive question, rejected that article. That is the historical record, and it was rejected largely based on the belief that an impeachable offense must be an abuse of presidential power, a great and serious offense against the Nation, not perjury on a private matter.

I have heard it said tonight that perjury is as serious an offense as bribery, that it is equivalent to bribery, a per se impeachable offense. But bribery goes to the heart of the president's conduct of his constitutional duties. It converts his loyalties and efforts from promoting the welfare of the republic to promoting some other interest.

Perjury is a serious crime and, if proven, should be prosecuted in a court of law. But it may or may not implicate the president's duties and performance in office. Perjury on a private matter, per-

jury regarding sex, is not a great and serious offense against the Nation. It is not an abuse of uniquely presidential power. It does not threaten our form of government.

The effect of impeachment is to overturn the popular will of the voters as expressed in a national election. We must not overturn an election and remove a president from office except to defend our very system of government or our constitutional liberties against a dire threat, and we must not do so without an overwhelming consensus of the American people and of their representatives in Congress of the absolute necessity. There must never be a narrowly voted impeachment or an impeachment substantially supported by one of our major political parties and largely opposed by the other. Such an impeachment would lack legitimacy and produce the divisiveness and bitterness in our politics for years to come and will call into question the very legitimacy of our political institutions.

The American people have heard all of the allegations against the President, and they overwhelmingly oppose impeaching him. The people elected the President. They still support him. We have no right to overturn the considered judgment of the American people.

There are clearly some members of the Republican majority who have never accepted the results of the 1992 or 1996 elections and who apparently have chosen to ignore the message of last month's election. But, in a democracy, it is the people who rule, not political elites, and certainly not those members of political elites who will not be in the next election in the next Congress, having been repudiated at the polls.

Some members of this committee may think that the people have chosen badly, but it is the people's choice, and we must respect it, absent a fundamental threat to our democratic form of government that would justify overturning the repeated expression of people's will at the ballot box. Members of Congress have no power, indeed they have no right to arrogate to themselves the power to nullify an election absent such a compelling threat.

We have also received testimony from some outstanding former prosecutors, including the former Republican Governor of Massachusetts, Bill Weld, who headed up the Criminal Division of Ronald Reagan's Justice Department, who compellingly explained why all the loose talk about perjury and obstruction of justice would not hold up in a real prosecutor's office, that the evidence that we have been given would never support a criminal prosecution in a real court of law.

For those who demand that the President prove his innocence rather than his accusers having to prove his guilt or even to state clearly the specific charges, we received answers from Mr. Ruff yesterday and from Mr. Lowell this morning in which they meticulously pointed out, using Mr. Starr's own work, how the charges were not supported and were indeed contradicted by the evidence that Mr. Starr's own office had assembled.

In fact, Mr. Starr has stated in his referral to Congress that his own star witness is not credible except when her uncorroborated testimony conflicts with the President's, and then it proves his perjury.

We have received sanctimonious lectures from the other side of the aisle about the rule of law, but the law does not permit perjury to be proved by the uncorroborated testimony of one witness, nor does the law recognize as corroboration the fact that the witness made the same statement to several different people. You may choose to believe that the President was disingenuous, that he was not particularly helpful to Paula Jones' lawyers when they asked him intentionally vague questions or assert that he is a bum, but that does not make him guilty of perjury.

This committee, this House, is not a grand jury. To impeach the President would subject the country to the trauma of a trial in the Senate. It would paralyze the government for many months while the problems of Social Security, Medicare, a deteriorating world economy and all of our foreign concerns festering without proper attention. We cannot simply punt our duty to judge the facts to the Senate if we find mere probable cause that an impeachable offense may have been committed. To do so would be a derogation of our constitutional duty. The proponents of impeachment have provided no direct evidence of impeachable offenses. They rely solely on the findings of a so-called independent counsel who has repeatedly mischaracterized evidence, failed to include in his report exculpatory evidence and consistently misstated the law. We must not be a rubber stamp for Kenneth Starr. We have been entrusted with the grave and awesome duty by the American people, by the Constitution and by history. We must exercise that duty responsibly. At a bare minimum, that means that the President's accusers must go beyond hearsay and innuendo and beyond demands that the President prove his innocence of vague and changing charges. They must provide clear and convincing evidence of specific impeachable conduct. This they have failed to do. If you believe the President's admission to the grand jury and to the Nation of an inappropriate sexual relationship with Ms. Lewinsky and his apologies to the Nation were not abject enough, that is not a reason for impeachment. Contrition is a remedy for sin, and is certainly appropriate here. But while insufficiency of contrition may leave the soul still scarred, unexpiated sin proves no crimes and justifies no impeachments. Some say that if we do not impeach the President, we treat him as if he is above the law. Is the President above the law, certainly not. He is subject to the criminal law, to indictment and prosecution when he leaves office like any other citizen whether or not he is impeached.

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. NADLER. I ask for one additional minute.

Mr. SENSENBRENNER. Without objection.

Mr. NADLER. Thank you.

And if the Republican leadership allows a vote, he would likely be the third President in U.S. history and the first since 1948 to be censured by the Congress. But impeachment is intended as a remedy to protect a nation, not as a punishment for an errant President. The case is not there, the proof has not been put forward. The conduct alleged, even if proven, does not rise to the level of an impeachable offense. We should not dignify these articles of impeachment by sending them to the full House. To do so would

be an affront to the Constitution and would consign this committee to the condemnation of history for generations to come.

Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman from Florida, Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman. I want to begin by thanking Mr. Hyde for his outstanding leadership of this committee during these difficult days. In the face of a determined effort to undermine and discredit the work of the committee, Mr. Hyde has conducted these proceedings with his accustomed dignity, grace and honor, and for that I express to Mr. Hyde my gratitude and my respect.

Many have asked why we are even here in these impeachment proceedings. They have asked why we can't just rebuke the President and move on. That is a reasonable question, and I certainly understand the emotions behind that question. I want to move on. Every member of this committee wants to move on. We all agree with that. But the critical question is this: Do we move on under the Constitution or do we move on by turning aside from the Constitution? Do we move on in faithfulness to our own oath to support and defend the Constitution, or do we go outside the Constitution because it seems more convenient and expedient? Why are we here? We are not here to deal with the sins of the President. That is a matter between the President and his family and God.

Unfortunately, however, the President's sins led him to commit crimes. His sins led him to engage in a calculated and sustained pattern of lying under oath and obstructing the due administration of justice, and that indeed is the proper subject of our inquiry.

Why are we here? We are here because we have a system of government based on the rule of law. A system of government in which no one, no one is above the law. We are here because we have a Constitution. A Constitution is often a most inconvenient thing. A Constitution limits us when we would not be limited. It compels us to act when we would not act. But our Constitution, as all of us in this room acknowledge, is the heart and soul of the American experiment. It is the glory of the political world, and we are here today because the Constitution requires that we be here. We are here because the Constitution grants the House of Representatives the sole power of impeachment. We are here because the impeachment power is the sole constitutional means granted to Congress to deal with the misconduct of the chief executive of the United States.

In many other countries a matter such as this involving the head of government would have been quietly swept under the rug. There would of course be some advantages to that approach. We would all be spared embarrassment, indignity and discomfort; but there would be a high cost if we followed that course of action. Something would be lost. Respect for the law would be subverted and the foundation of our Constitution would be eroded. The impeachment power is designed to deal with exactly such threats to our system of government. Conduct which undermines the integrity of the President's office, conduct by the chief executive which sets a pernicious example of lawlessness and corruption is exactly the sort of conduct that should subject a President to the impeachment power.

Alexander Hamilton himself acknowledged that those who “set examples which undermine or subvert the authority of the laws lead us from freedom to slavery.” That is what William Jefferson Clinton has done.

There must be a constitutional remedy. The first Chief Justice of the United States, John Jay, said that “no crime is more extensively pernicious to society” than perjury. That is the crime that William Jefferson Clinton has committed repeatedly in a calculated effort to thwart justice. There must be a constitutional remedy. There is a constitutional remedy for such high crimes and misdemeanors, the constitutional remedy is impeachment.

I freely acknowledge that reasonable people can disagree with the weight of the evidence on certain of the charges. For example, I think there is doubt about the allegations that the President willfully lied concerning the date his relationship with Ms. Lewinsky began. But when we set aside any doubtful matters, we are still left with compelling evidence that the President made multiple false statements under oath both in a civil rights case and before a Federal grand jury, that he engaged in other conduct to corruptly influence the administration of justice and that he lied in sworn statements submitted to this very committee. He did this not simply to avoid personal embarrassment, of course that was one of his objectives, but on the contrary he lied under oath and obstructed justice in a calculated effort to defeat the rights of a plaintiff in a Federal civil rights case. Having done that, he went on to lie before a grand jury to cover up and avoid responsibility for his earlier crimes. Then he compounded his offense by submitting false statements under oath to this committee.

Of course the President continues to assert his innocence of any criminal wrongdoing. We heard his counsel assert that before us. The President’s defense is based on the claim that he was telling the truth when he said under oath that he had no specific recollection of ever being alone with Ms. Lewinsky. It hinges on the claim that he was telling the truth when he said under oath that he never had an affair, a sexual relationship, or sexual relations with Ms. Lewinsky. All of the facts point to the conclusion that the President was willfully lying when he said these things. We would have to be blind to the facts to reach any other conclusion. No clever lawyers’ arguments, no legal gymnastics, no attempts to distort the plain meaning of the English language can change the simple facts that any honest review of the record will reveal.

The President’s claim that he did not lie in his deposition and before the Federal grand jury rests, as his counsel acknowledged yesterday, on the argument that Ms. Lewinsky had sex with him, but he did not have sex with her. The simple statement of this argument exposes its absurdity. The President of the United States has been reduced to making such arguments.

Governor Weld, one of the witnesses called to testify before this committee by the President’s lawyers, testified he “assumed perjury” had been committed by Mr. Clinton. Mr. Ruff, the White House counsel, admitted that the President, in his acknowledged efforts to mislead, intentionally walked up to the line of lying and that reasonable people could conclude that he in fact crossed that line.

I candidly submit that a reasonable person is driven by all of the facts and circumstances to conclude that the President most certainly lied and that he did so repeatedly when he was under oath. A reasonable person is also driven to conclude that the President engaged in other corrupt acts to obstruct the administration of justice. The evidence is clear and convincing. It requires a willful suspension of rational judgment to conclude otherwise. Henry Adams, the grandson of John Quincy Adams, said that practical politics consist in ignoring the facts.

I don't think that there is much doubt in this room that the practical political thing to do in this matter would be to ignore the facts and drop these proceedings. All of our lives would be more comfortable if we had never started this impeachment inquiry. All of our lives would be more comfortable if we simply ignored the facts, folded our tents and went home. That would be the politically practical thing to do.

But there are moments when constitutional duty collides with practical politics. We on this committee through no choice of our own have come to such a moment. We cannot ignore the facts. The oath that we have taken to protect and defend the Constitution requires that we acknowledge the facts before us and exercise the momentous power entrusted to us under the Constitution. It is our duty to act against the misconduct of President William Jefferson Clinton within the framework established by the Constitution. The Constitution does not authorize a censure of a President who is guilty of high crimes and misdemeanors. The Constitution provides for the impeachment of a President who has committed high crimes and misdemeanors.

Do we have so little faith in our Constitution and the institutions of our government that we will turn aside from the pattern established in our Constitution and devise what we consider a better way to call the President to account for his misdeeds? Do we believe that our own wisdom exceeds the framers of the Constitution? The answer is clear. We must say no.

William Jefferson Clinton must be called to account as the Constitution provides. He must be impeached and called before the Senate to answer for the harm that he has done. He must be called before the Senate to answer for the harm he has caused by undermining the integrity of the high office entrusted to him by the people of the United States.

Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman's time has expired. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, as a member of the Virginia congressional delegation, I take great pride in the contributions that those from the Commonwealth have made to ensure the viability of our constitutional form of government. Washington, Jefferson, Madison, Mason and others were Virginians who led the constitutional form of government and endeavored to protect and defend it. In that great tradition, a former member of this committee, fellow Virginian Caldwell Butler, is someone who I hold in high regard. As a Republican, Mr. Butler faced the daunting prospect in 1974 of voting to impeach a President of his own party. After a fair process, he was

looking at overwhelming evidence of the President's guilt, and had the courage under those circumstances to vote to impeach the President of his own party. Unfortunately, Mr. Chairman, this party has neglected its constitutional responsibilities and is engaged in an unprecedented, substantive and procedural abuse of Congress's impeachment powers. Since the beginning, a number of colleagues and I have called for a fair, expeditious and focused process. Such a process would have first specified the allegations. It would have then established a standard for determining which, if any, of those allegations constituted an impeachable offense. If any of the offenses were alleged which might have constituted an impeachable offense, the process would then have determined, with a presumption of innocence, whether those allegations were true by using cross-examination of witnesses and other traditionally reliable evidentiary procedures.

If any such impeachable allegations were determined to be true, then we would judge whether they had the substantiality to justify the removal of the President from office. We did not proceed on such a logical constitutional process. Instead, we dumped mountains of salacious, uncross-examined and otherwise untested materials onto the Internet, and then started sorting through boxes of documents to selectively find support for a foregone conclusion.

Our first step in a logical process should have been to look to determine whether or not, even if true, some of those allegations might constitute impeachable offenses.

This committee has completely gutted our impeachment precedents. We have been warned repeatedly that these allegations are nowhere near what is necessary to overturn a national election and to impeach a President.

Despite these cautionary flags, this committee has turned a deaf ear to hundreds of years of precedents and to the Constitution that has kept this country strong and unified.

Mr. Chairman, we did have a hearing at which we considered the constitutional standards for impeachment. At that hearing scholars told us that there was no constitutional authority to impeach a President simply because we dislike him or because we disapprove of his actions when those actions do not constitute treason, bribery or other high crimes and misdemeanors. And by proceeding with an inquiry based on allegations that do not meet that high standard, we have done irreparable harm to our system of government by establishing a dangerous and partisan impeachment-at-will precedent that will forever weaken the institution of the presidency.

The presidency was intended to be free from subversion from the legislature. Three separate and co-equal branches were envisioned by the drafters of our Constitution, and it is this reason that impeachment is limited to the constitutionally explicit treason, bribery or other high crimes and misdemeanors. Impeachment was to be a mechanism to protect us against conduct, as described by Professor Ackerman yesterday, that constitutes a threat to the very foundation of the republic. We know from the Nixon impeachment proceeding that it does not cover half a million dollar income tax fraud. We heard that all of the scholars agreed on one panel, ten of them, that treason, bribery and other high crimes and misdemeanors does not cover all felonies, and so it was not intended

to be a crafty way for Congress to be able to remove a President based on a standard of no confidence.

Furthermore, Mr. Chairman, at the hearing when I posed the question of whether any of the witnesses on the hearing's second panel believed that the count involving invoking executive privilege should be considered an impeachable offense, the clear consensus on the panel was that the charge was not an impeachable offense. In fact, one Republican witness said, I do not think invoking executive privilege even if frivolously, and I believe it was frivolous in these circumstances, but that does not constitute an impeachable offense.

In addition, scholars have refuted attempts by impeachment supporters to argue that the last three impeachments support lowering the impeachment standard to impeach President Clinton for "perjury," despite the fact that all of these impeachments involve judges and the effects their actions had on their offices and the fact that two of the judges were actually in prison during their impeachment trials.

The impeachment cases of Judge Claiborne and Judge Nixon were referred to several times as representing private conduct. However, both of those were tried, convicted and were in prison for crimes when evidence was that Judge Claiborne had lied on his income tax return for not including funds received from bribes and Judge Nixon for lying about contacting a prosecutor to influence the drug case of a business associate.

If we are to impeach the President, it should be at the end of a fair process. But these decisions we have made in the last few weeks have been made on a strictly partisan basis. Campaign finance reform was put into play by the committee on a party-line basis, but news reports indicate it was taken off the table by a strictly partisan phone conference without any discussion with Democratic members.

Likewise, there has been no involvement of Democrats in either the issuance or deadline set in the 81 questions posed to the President. Neither has there been any discussion as to the standard of proof to be applied and no discussion about the apparent presumption that uncross-examined testimony from witnesses testified by one side would be sufficient to require the President to prove his innocence. Instead, without any process for determining which if any of the allegations even if true would be impeachable, we have wandered blindly through an inquiry without any specific allegations or scope.

The accused should have at least some reasonable notice of the charges against him. Mr. Starr started out with 11 allegations and came back with 10. Republican counsel said 15. Mr. Hyde, a couple of days after that, said we should have two or three but didn't say which they should be. Some Republican members, including the Chairman, essentially dropped one count or another because they did not seem to be significant. Others have been adding charges this very week.

Mr. Chairman, we finally have what are supposed to be the definitive allegations, the articles of impeachment, but they were not available to the President's counsel yesterday when he was asked to respond to the charges, and we had the spectacle this morning

of watching the Democratic counsel trying to defend the allegations without knowing the specifics behind the articles of impeachment.

Mr. Chairman, at the end of a fair, democratic process, the President might very well have been impeached by a bipartisan vote of this committee if substantial actual evidence had been considered. But instead of following a reasoned approach, we have subjected the committee to ridicule and scorn.

And so here we are on the verge of impeaching a United States president, overturning a national election, plunging our Nation into constitutional crisis in contradiction of everything that the Founding Fathers labored to avoid on a totally partisan basis.

And so, Mr. Chairman, I do not have the heart-wrenching decision that former Congressman Caldwell Butler faced, who found himself at the end of a fair process facing overwhelming actual evidence of guilt of the president and actual offenses which were clearly impeachable. I find myself facing allegations which most scholars agree would not be impeachable even if they were true and allegations which are presented to us by way of contradictory, uncross-examined hearsay and dubious inferences. Under these circumstances, it is totally inappropriate to vote to remove the President from office.

Chairman HYDE [presiding]. Mr. Inglis, the gentleman from South Carolina.

Mr. INGLIS. Thank you, Mr. Chairman.

I want to thank you for the way that you have conducted these proceedings and congratulate you on the demeanor with which you have conducted them and the fair way with which you have conducted them.

Obviously, my point of view differs considerably from the gentleman who just spoke. I would like to talk about three things: talk about truth, talk about principle over convenience, and talk about our constitutional obligation.

First, it seems to me that what we are witnessing here is a conflict, a clash between two very different views. One view is that there is absolute truth. The other view is that everything is relative. This is not new. This is not a new debate in this country. It has actually been going on quite a while.

And most of us on this committee are lawyers and remember that Oliver Wendell Holmes sort of established the school of legal realism which basically said, let us abandon the search for truth and let us do relative justice between people because there is no truth out there to find. That was a significant statement and set us on a significantly different course in our legal tradition than where we started at the foundation of the country.

And really what we are seeing in President Clinton, I believe, is the culmination of that. He is the perfect embodiment of everything being relative. He is the epitome of somebody who says there is no truth. Everything is relative.

And that's the big conflict here. For those of us who believe that there is truth, that telling the truth is crucial and that there are right statements and there are wrong statements, we find it incumbent upon us to act.

For those who are willing to dismiss, well, it was a lie in the case of sex, so, therefore, it is not a real lie, it is a little lie about a little

matter, they take the opposite view and say, you surely can't impeach a President for something like that because, relatively speaking, it is not as bad. So there are around us some vestiges of this old system of absolute truth.

You know, we had a witness here, Steve Saltzburg, who taught me evidence at the University of Virginia Law School, and at UVA we have something called the single sanction honor code. If you lie, cheat or steal, you are gone. Single sanction. No intermediate sanctions, no disciplinary actions against you. If you commit any of those infractions, you are gone from Mr. Jefferson's academic village.

That is an old view. And the reason that I recommend Mr. Jefferson, he said, we hold these truths to be self-evident.

Let me rewrite that in the way that the White House spin machine would write it.

We hold these relativistic moral assertions to be relativistically true. They work for me; see if they work for you. That's the way the White House spin machine would rewrite the Preamble to the Declaration of Independence.

Mr. Jefferson said, we hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with the right to life, liberty and the pursuit of happiness.

So for those of us who take that view that Mr. Jefferson was right, we come upon a guy, William Jefferson Clinton, who asks us to believe that "alone" depends on the geographic definition of alone and "is" depends on how you define "is" and all of these other hair-splittings, and we say this is unacceptable.

Now, I understand that there are others who don't take that view. They want to usher us into this relativistic age. They want to push on Oliver Wendell Holmes' ideas. They want legal realism to be the rule of the day. They want a very different rule from where we started in this country.

I, for one, hope that we reassert here at the end of this millennium and the beginning of the next that truth matters, that it matters whether the President of the United States lied or not. That, I believe, is the real question behind this.

Now, there is a lesser question there, too. It is not quite as high a question of truth as opposed to relativism which is the rule of law, and there what we are looking at is that, for those of us who believe in true truth, absolute truth, we believe that the rule of law is crucial. There are those that take a different view, and they are willing to excuse this breach of the rule of law.

Perjury is a crime that I believe undermines the very basis of our judicial system, the very basis of the rule of law, and we have heard that repeatedly from witnesses before this committee. So the first issue is truth.

The second issue is the issue of principle over convenience. And we have heard a lot of discussion from the other side and particularly from the White House counsel about how the economy could suffer, about how legislation may be held up, about how the Supreme Court's activities may be held up if we go forward with a trial.

And, of course, they also tells us that polls for the moment tell us that the President shouldn't be impeached. Those same polls

said that Richard Nixon early on shouldn't be impeached, although at this point in the process they had turned.

The polls early on told George Bush not to go to the Persian Gulf conflict. But he led, and I believe it is incumbent upon us to lead even in the face of that.

Because, you know, in 1992, when I first ran for Congress, we had a wonderful volunteer, a college student, who proudly brought in a T-shirt to the campaign office that had a slogan that many will recognize: A politician thinks of the next election, a statesman thinks of the next generation.

And here, rather than studying the polls and figuring out what we should do about the next election, I think we must think about the next generation and decide that we are going to establish the principle or really restate the principle here at the end of this century that truth does matter, and it is important to state that even if it causes short-term inconvenience by the way of interruption of legislation or the interruption of the functioning of the Supreme Court because this is an important matter.

The third thing that I think is important to point out here is that we have a constitutional obligation to act. And there are a lot of folks who would counsel, let's just move along. It is sort of the Clinton so-what offense: So what, I committed perjury. So what, I broke the law. Let's just move along.

I believe we have a constitutional obligation to act. And, of course, there are those that overlook that constitutional obligation, and they refer again to the polls, and they say, but look at the polls. And in a pure democracy, of course, it can do anything as long as you have a majority. In fact, if there are more Baptists than Roman Catholics, the Baptists can vote that there can be no masses on Sunday. In a pure democracy, that is completely acceptable.

But, thank goodness, we are not a pure democracy. We are a constitutional republic. And in a constitutional republic we are constrained by principles set out in the Constitution, and those principles call on us in this case to act against the President of the United States and to punish his perjury and to act against his obstruction of justice and to say that we will not tolerate abuse of power.

Censure is not an option. It is an extra-constitutional remedy. It can't be found in the Constitution.

And the fines that are being discussed, I think we heard from a number of witnesses, would be bills of attainder, clearly violating that Constitution that I just was describing. So that means that we are left with the constitutional procedure, the majestic constitutional procedure of impeachment, and I hope that we go forward, Mr. Chairman.

Chairman HYDE. I thank the gentleman.  
[The statement of Mr. Inglis follows:]

**STATEMENT OF CONGRESSMAN BOB INGLIS**

Thank you, Mr. Chairman. And I want to join with others in thanking you for the way that you've conducted these proceedings and congratulate you on the demeanor with which you've conducted them and the fair way in which you've conducted them. Obviously, my point of view differs considerably from the gentleman who just spoke. What I'd like to do, Mr. Chairman, is talk about three things; talk about truth, talk about principle over convenience, and talk about our constitutional obligation.

First, it seems to me that what we're witnessing here is a conflict, a clash, between two very different views. One view is that there is absolute truth; the other view is that everything is relative. And this is not new; this is not a new debate in this country. It's actually been going on quite a while. Most of us on this committee are lawyers and remember that Oliver Wendell Holmes sort of established the school of legal realism, which basically said let's abandon the search for truth and let's do relative justice between people, because there is no truth out there to find. That was a significant statement and set us on a significantly different course in our legal tradition than where we started at the foundation of the country.

And really, what we're seeing in President Clinton, I believe, is the culmination of that. He is the perfect embodiment of everything being relative. He is the epitome of someone who says there is no truth, everything is relative. And that's the big conflict here. For those of us who believe that here's truth, that telling the truth is crucial and that there are right statements and there are wrong statements, we find it incumbent upon us to act. For those who are willing to dismiss, well, it was a lie in the case of sex, so therefore, it's not a real lie, it's a little lie about a little matter. They take the opposite view and say, you surely can't impeach a president for something like that because relatively speaking, it's not as bad.

So there are around us some vestiges of this old system of absolute truth. You know, we had a witness here, Steve Saltzburg (sp) who taught me evidence at the University of Virginia Law School and at UVA we have something called the "single sanction honor code" -- if you lie, cheat or steal, you're gone. Single sanction. No intermediate sanctions, no disciplinary actions against you.

If you commit any of those infractions, you're gone from Mr. Jefferson's academical village. That's an old view. And the reason I mention Mr. Jefferson, you know, is he said, "We hold these truths to be self-evident."

Now, let me rewrite that in the way that the White House spin machine would write it: "We hold these relativistic moral assertions to be relativistically true. They worked for me, see if they work for you." That's the way the White House spin machine would rewrite the preamble to the Declaration of Independence. But Mr. Jefferson said, "We hold these truths to be self-evident: that all men are created equal, that they are endowed by their creator with certain unalienable rights; among these are the right to life, liberty and the pursuit of happiness."

So for those of us who take that view that Mr. Jefferson was right, we come upon a guy, William Jefferson Clinton, who asked us to believe that "alone" depends on the geographical definition of "alone," and "is" depends on how you define the word "is," and all of these other hair-splittings; and we say this is unacceptable.

Now, I understand there are others who don't take that view. They want to usher us into this relativistic age. They want to push on Oliver Wendell Holmes' ideas. They want legal realism to be the rule of the day. They want a very different rule than where we started in this country. But I, for one, hope that we reassert, here at the end of this millennium and the beginning of the next, that truth matters, that it matters whether the president of the United States lied or not. That, I believe, is the real question behind this.

Now, there's a lesser question there, too, not quite as high as the question of truth as opposed to relativism, which is the rule of law. And there what we're looking at is, for those of us who believe in true truth, absolute truth, we believe that the rule of law is crucial. There are those that take a different view, and they're willing to excuse this breach of the rule of law. Perjury is a crime that I believe undermines the very basis of our judicial system, the very basis of the rule of law, and we've heard that repeatedly from witness before this committee.

So the first issue, I think, is truth. The second issue, I think, before us is the issue of principle over convenience. We've heard a lot of discussion from the other side, particularly, and from the White House counsel about how the economy could suffer, about how legislation may be held up, about how the Supreme Court's activities may be held up if we go forward with a trial.

And, of course, they also tell us that polls for the moment tell us that the president shouldn't be impeached. But, you know, those same polls said that Richard Nixon early on shouldn't be impeached, although at this point in the process they had turned. The polls early on told George Bush not to

go to the Persian Gulf conflict. But he led. And it's incumbent upon us to lead, even in the face of that.

You know, in 1992 when I first ran for Congress, we had a wonderful volunteer, a college student who probably brought in a T-shirt to the campaign office that has a slogan that many will recognize: A politician thinks of the next election; a statesman thinks of the next generation. And here, rather than studying the polls and figuring out what we should do about the next election, I think we must think about the next generation and decide that we are going to establish the principle, or really, restate the principle here at the end of this century that truth does matter. And it's important to say that even if it causes short-term inconvenience by the way of interruption of legislation or the interruption of the function of the Supreme Court, because this is an important matter.

The third thing that I think is important to point out here is that we have a constitutional obligation, a constitutional obligation to act. And there are lots of folks who would counsel, Listen, let's just move along. It's sort of the Clinton so-what defense. So what? I committed perjury. So what? I broke the law. Let's just move along. I believe we've got a constitutional obligation to act. And, of course, there are those that overlook that constitutional obligation, and they refer again to the polls, and they say "But look at the polls." In a pure democracy, of course, you can do anything as long as you got a majority. In fact, if there are more Baptists than Roman Catholics, the Baptists can vote that there will be no masses on Sunday. In a pure democracy, that is completely acceptable.

But thank goodness we're not a pure democracy. We're a constitutional republic. And in a constitutional republic, we are constrained by principles set out in the Constitution. And those principles, I think, call on us in this case to act against the President of the United States and to punish his perjury and to act against his obstruction of justice and to say that we will not tolerate abuse of power.

Censure is not an option, it's an extra-constitutional remedy, it can't be found in the Constitution and the fines that are being discussed -- I think we heard from a number of witnesses -- would be bills of attainder, clearly violating that constitution that I was just describing. So that means we're left with the constitutional procedure, the majestic constitutional procedure of impeachment and I hope we go forward, Mr. Chairman.

Chairman HYDE. The gentleman from North Carolina, Mr. Watt.  
Mr. WATT. Thank you, Mr. Chairman.

There is hardly a member of this committee who has spoken up to this point, either Republican or Democrat, who has not said something with which I agree. I want to pay special tribute to Mr. Scott and Mr. Boucher, because I associate myself with substantial parts of their statements. And I also want to associate myself with some of the comments that Mr. Gallegly made, because I believe, like Mr. Gallegly asserted, that without the rule of law we have anarchy in this country.

When I was in the 8th grade, one of my teachers looked at me and said: "You like to talk a lot. You must be going to be a lawyer." And there was no precedent in my family for it. I didn't really know what a lawyer was. But from that very moment I set out saying to myself and others that I wanted to be a lawyer. And later in life I did end up going to law school, and I started to understand what the rule of law was all about and why it was necessary.

And then I went back after law school and started practicing law, and I practiced law for 22 years before I was elected to the Congress of the United States. And there I started to understand even more the importance of the rule of law.

And I have seen the rule of law undermined in a number of different ways. I have seen it undermined by inequality of resources of people who come into the courtroom. I have seen it undermined by racism and bias and even have been called by a judge in a court "nigger." I have seen it undermined by the lack of due process. I have seen the rule of law undermined by lying under oath. Yes, ladies and gentlemen, it happens regularly in the courts of America, as at least one witness has said before this body.

But there is not a single way that the rule of law is undermined that is more disparaging and more important than a disregard for the law and the established standards of the law. What does the law say? And that is why I was so outraged by the presentation by the majority counsel today, and I would like to talk about four of the things that he said that I especially was offended by.

At the bottom of page 36 and going over to page 37 of the majority counsel's statement he said, "This is a defining moment both for the presidency and especially for members of this committee, for the presidency as an institution because if you don't impeach as a consequence of the conduct that I have just portrayed, then no House of Representatives will ever be able to impeach again."

He went on to say that "the bar will be so high that only a convicted felon or a traitor will need to be concerned."

My friends, that's what the rule of law says, that you can convict, you can charge, you can impeach a President only when that standard is met.

He said on page 27 of his written statement "whether the offenses of President Clinton are criminally chargeable is of no moment. This is not a criminal trial nor is it a criminal inquiry. It is a fundamental precept that an impeachable offense need not be a criminal act."

My friends, the Constitution of the United States defines the grounds for impeachment as bribery, treason, or "other high Crimes and Misdemeanors." What does other high crimes and mis-

demeanors mean if it does not mean a criminal act? What do the words mean? Are we going to disregard that?

At page 26 of his statement the majority counsel said, this is not a trial. It is in the nature of an inquest. Any witness whose testimony is referred to in this proceeding will be subjected to full cross-examination if a trial results in the Senate. That is the time to test credibility. As it stands, all of the factual witnesses are uncontradicted and amply corroborated.

I just absolutely disregard and reject that as the basis on which we should be proceeding. Think about what that means for future impeachment proceedings. Anybody who wants to start an impeachment proceeding and gets it into this committee and puts any evidence before us, we don't ever have to test the credibility of it. He couldn't possibly mean that, but that is exactly what he said the standard should be. I can't go along with that standard.

Finally, on page 36 of the majority counsel's statement, he said these words which I vigorously agree with: "One of the witnesses that appeared earlier likened the government of the United States to a three-legged stool. The analysis is apt because the entire structure of our country rests upon three equal supports: the legislation, the judicial, and the executive. Remove one of those supports, and the state will totter. Remove two, and the structure will either collapse altogether or will rest upon a single branch of government. Another name for that is tyranny."

He is absolutely right. And where we are today is that we are trying to remove the executive of this country. We are about to tie up the judiciary and its Chief Justice in an impeachment trial in the Senate of the United States. And so the majority counsel apparently would have the legislative branch be the only standing leg of the stool.

I don't believe that is what was intended. I reject that as a notion, and I beg of us not to take that authority and give it to the legislative branch. Let's continue to have a three-legged stool as a part of our government.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you. The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Mr. Chairman, this is a somber occasion. I'm here because it is my constitutional duty, as it is the constitutional duty of every member of this committee, to follow the truth wherever it may lead.

Our Founding Fathers established this Nation on a fundamental, yet at the time untested, idea that a Nation should be governed not by the whims of any man but by the rule of law. Implicit in that idea is the principle that no one is above the law, including the chief executive. Since it is the rule of law that guides us, we must ask ourselves what happens to our Nation if the rule of law is ignored, cheapened or violated, especially at the highest level of government.

Consider the words of former Supreme Court Justice Louis Brandeis, who was particularly insightful on this point. "In a government of laws, the existence of the government will be imperiled if it fails to observe the law scrupulously. For good or for ill, it teaches the whole people by its example. If the government becomes a

lawbreaker, it breeds contempt for the law. It invites every man to become a law unto himself.”

Mr. Chairman, we must ask ourselves what our failure to uphold the rule of law will say to the Nation and most especially to our children who must trust us to leave them a civilized Nation where justice is respected. The charges against the President include perjury, obstruction of justice, and abuse of power. These are serious charges deserving serious consideration. The question before the committee is whether the President intentionally misled our judicial system and the American people as part of a calculated, ongoing effort to conceal the facts and the truth and to deny an average citizen her day in court in a sexual harassment lawsuit. And did the President betray the public trust by perjuring himself before a Federal grand jury and obstructing justice.

Let's take a minute to examine the facts of this case. On January 17, 1998, the President swore to tell the truth, the whole truth, and nothing but the truth in a deposition given before a Federal district judge. The President testified that he didn't know that his personal friend, Vernon Jordan, had met with Monica Lewinsky, a Federal employee, a subordinate, and a witness in the *Jones* case in which the President was named as a defendant, and talked about the case. The evidence before the committee clearly indicates that the President lied under oath.

The President testified that he didn't recall being alone with Ms. Lewinsky. The evidence before the committee clearly indicates that the President lied under oath.

On August 17, 1998, seven months after his deposition in the *Jones* case, the President swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury. The President testified that he didn't allow his attorney to claim that his affidavit in the civil case was true, when he knew it was false. The evidence before the committee clearly indicates that the President lied under oath.

The President also testified before the grand jury that he didn't give false testimony in his deposition in the *Jones* case. The evidence before the committee clearly indicates that the President lied under oath.

While the President's lawyers have denied the facts against him, they have not, because they apparently cannot, provide new evidence that rebuts those facts.

Many of the legal scholars testifying at the request of the President have admitted that the President lied in both the *Jones* case and before the grand jury, but argue that those offenses are not impeachable. If the committee were to adopt this position, however, it would create a double standard that places the President above the law. Virtually every public official in America, including our Nation's governors, and virtually everyone in private employment would lose their job if they committed perjury or obstructed justice. In fact, many already have.

We have had before the committee average Americans who have suffered these consequences and even incarceration because they committed perjury. And as more than one witness testified before this committee, a person with those charges against them would not even be nominated for a position in state or Federal Govern-

ment. If we truly respect the presidency, we cannot allow the President to be above the law.

Millions of law-abiding Americans from all walks of life, including my constituents, put in an honest day's work, follow the rules, and struggle to teach their children respect for the law and the importance of integrity. When a factory worker or medical doctor or retiree breaks the law, they do so with the knowledge that they are not above the law.

This same principle must also apply to the most powerful and privileged in our Nation, including the President of the United States. To lose this principle devastates a legacy entrusted to us by our Founding Fathers and protected for us by generations of American families.

Some of my colleagues have decided that a resolution of censure is the only appropriate remedy for the President's action. Their resolution admits that the President made false statements concerning his reprehensible conduct with a subordinate and wrongly took steps to delay the discovery of the truth. For those who might support this resolution, I would like to raise two key points.

First, censure would set a dangerous precedent without foundation in the Constitution. Second, if you truly believe the allegations contained in the censure resolution, how can you not vote to impeach? The evidence against the President shows clearly and convincingly that he committed perjury and obstructed justice, and the consequences of ignoring the facts in this case for simple political expediency or of adopting an unconstitutional or ineffective censure resolution far outweigh the consequences of moving forward.

I have a constitutional duty to follow the truth wherever it leads. The truth in this case leads me to believe that the President knowingly engaged in a calculated pattern of lies, deceit, and delay in order to mislead the American people, impede the search for truth, deny the right of his accuser to have her day in court, and to protect himself from criminal prosecution. Therefore, I have no alternative but to support articles of impeachment against President Clinton.

Mr. Chairman, I would like to thank you for the way in which you have conducted this inquiry. It has not been easy. Your fairness and dedication to duty has been rewarded by personal attacks from the White House. Throughout this process, you have remained faithful to your oath of office and to the Constitution. That is what history will remember, and that is what each of us should strive to follow. When called to duty, you rose to the occasion and we thank you.

The decision I have reached, while a sobering one, is, I believe, also the correct one. I have heard from many constituents who are deeply concerned that action be taken in this matter, and I appreciate them sharing their thoughts. One of those constituents is a 12-year-old 6th grade student from Linkhorn Middle School in Lynchburg, Virginia, named Paul Inge. He recently wrote: "I am a Boy Scout who is concerned about the leadership of the President of the United States of America. It is my understanding that other ordinary citizens who lie under oath are prosecuted. The President should not be any different. He should also have to obey the laws.

As a Boy Scout, I have learned that persons of good character are trustworthy and obedient. I feel that the character of the President should be at least as good as the leaders that I follow in my local troop and community. Is this too much to ask of our country's leaders?"

The precious legacy entrusted to us by our founders and our constituents is a Nation dedicated to the ideal of freedom and equality for all her people. This committee must decide whether we will maintain our commitment to the rule of law and pass this precious legacy to our children and grandchildren, or whether we will bow to political pressure for the sake of convenience or expediency. Much of our hopes and dreams for our children, like Paul Inge, and for the integrity of our Nation depends on the answer to that question.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you very much for your very generous remarks. The gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. This is a sad day in our Nation's history. Unfortunately, it seems to be one more day in a long sad season. We have finally reached the logical conclusion of what happens when a legislative chamber is obsessively preoccupied with investigating the opposition rather than legislating for the people who elected them to office.

We now consider removing the President of the United States from the office to which he was twice elected, and barring him from ever holding office again, for misconduct that is hardly a high crime or misdemeanor.

For more than 200 years, a directly elected chief executive has been one of the great distinctions between our wonderful country and parliamentary democracies. That is why, unlike so many other countries, we don't have a rapid succession of governments, one after another, as votes of no confidence drive out prime ministers who hardly have time to govern before they must stand for reelection.

Our system of government and its stability has contributed to our success. But this system needs checks and balances. The founders were well aware of the tyranny of the Crown, so they established a legislative safety valve against a tyrannical executive, the process of impeachment, by which they could remove the President if his conduct subverted the government.

The founders designed this safety valve for abuses so grave that, in Ben Franklin's words, they suggested assassination as the remedy. Impeachment was our founders' civilized substitute. That may explain why after more than two centuries' experience in this novel democratic experiment, the United States of America, not a single President has been impeached and convicted.

The people's will must not be overridden by those who claim to know better; by those who believe they know what is best for the American people. The people's will may only be overridden and the government overthrown when the acts of the chief executive truly threaten our democratic institutions with injury to the state and to the people; in other words, when the threat the President poses is so great that we can't wait until the next election to remove him.

A vote to impeach, therefore, must not merely pass the buck to the Senate for the real trial of the matter. A vote to impeach must be treated for what it is, a vote to remove the President. No one should consider it permissible to vote if he is not prepared to make the case that the President should be removed, not just tried, and no such case has been made here.

We have heard much of the seriousness with which our courts must take the issue of perjury. No one questions that perjury is wrong, illegal, and a problem in our judicial system. But alleged acts of perjury by the President in a private, nongovernmental, civil litigation and covering up afterwards, as terrible as that is, does not threaten our democratic system or compromise our country's vital interests.

Do not misunderstand. I do not condone the President's misbehavior. I'm only saying that impeachment is not the remedy for the President's misconduct, even if criminal. For that alleged criminal misconduct we have courts. Indeed, the course of action the majority proposes here punishes the Nation rather than the President.

Under President Clinton's leadership, our country has prospered, but we still have serious matters to deal with, including public education, Social Security, Medicare, and abuses by HMOs. We have had foreign policy successes, but we still face challenges abroad, including the continuing financial and business crisis in Asian countries that has already been felt here and may get worse. The impeachment process may compromise our ability to deal with these problems.

If the House adopts articles of impeachment, all three branches of government will be gridlocked in a Senate trial for as long as a year. The bipartisan action and cooperation needed to deal with America's problems will be drowned by this process while our people's needs are ignored.

Impeachment of President Clinton, even if it does not result in conviction in the Senate, will weaken the executive branch of government and further divide this Nation. We have no precedent, nor evidence, that justifies placing this Nation at such risk.

Today, I take my solace not in what we are about to do, but in my belief that the American people get it. No, not every person knows the specific constitutional provisions at issue, but they know their government. They know what is important. They knew the President they elected. They know what he has done. They know he has behaved badly, but they don't want him removed from office. They want him censured. It's that simple.

Like the Constitution that established this government, the American people value freedom and despise tyranny. We have impeachment to correct the tyranny of the executive department, but what remedy do we have for legislative tyranny? Only this: the 2-year terms we serve and the electoral accountability at the end of that term.

For those who are out to get the President, shame on you. But beware, next election the voters will be out to get you.

How did we get to this point? Our President behaved badly and irresponsibly in this affair with Ms. Lewinsky, but his irresponsibility does not license us to act irresponsibly, to fail to adhere to

our own oaths, to support and defend the Constitution of the United States.

Like the Republicans who voted for impeachment in 1974, I would vote to impeach if the acts at issue here threatened our democracy. But in the absence of evidence that President Clinton committed acts that threaten the continuation of our democracy and its institutions, it is my clear constitutional duty, pursuant to my own oath of office, to oppose these reckless efforts to impeach the President. And I yield back the balance of my time.

Chairman HYDE. I thank the gentlelady. The gentleman from Indiana, Mr. Buyer.

Mr. BUYER. I thank the Chairman. I couldn't help as I try to be a good listener to each of my colleagues' statements, I wonder at times if we come from the same world. You know, there are people all across America every day that help define the Nation's character and they exercise common sense virtues. Whether it is honesty, integrity, promise-keeping, loyalty, respect, accountability. They pursue excellence; they exercise self-discipline. There is honor in a hard day's work. There is duty to country. Those are things that we take very seriously. Those are things that the Founders also took seriously.

Every time I reflect upon the wisdom of the Founding Fathers, I think their wisdom was truly amazing. They pledged their lives, their fortunes, and their sacred honor to escape the tyranny of a king. They understood the nature of the human heart struggles between good and evil. So the founders created a system of checks and balances and accountability.

If corruption invaded the political system, a means was available to address it. The founders felt impeachment so important it was included in six different places in the Constitution. The founders set the standard for impeachment of the President and other civil officers as treason, bribery and other high crimes and misdemeanors. The House of Representatives must use this standard and circumstances and facts of the President's conduct to determine if the occupant of the Oval Office is fit to continue holding the highest executive office of this great country.

I concur with the premise that the crimes alleged against the President may not directly involve the derelict exercise of executive powers, except the issues of possible misuse of executive privilege. The alleged crimes plainly do involve the derelict violation of the President's executive duties.

The committee received testimony on American and English history and legal scholarship on precedents which made plain that personal misconduct, violations of trust, and other charges of a more private nature can be impeachable offenses. The question before the committee is: Does perjury to conceal private misconduct and other wrongful conduct to thwart and impede the justice in a civil rights case in Federal court, and efforts to obstruct justice in a criminal proceeding, and perjury before a grand jury rise to the level of an impeachable offense?

When the President had the opportunity to tell the truth, the whole truth, and nothing but the truth, he lied. Before the court in the *Jones* deposition, the President lied. Before the court in the *Jones* case in answers to discovery interrogatories, the President

lied. Before the grand jury, the President lied. Before his Cabinet and senior aides, the President lied. Before the Judiciary Committee of Congress in the answers to requests for admissions, the President lied. Before the American people, the President lied.

What are the consequences if this committee leaves a known perjurer in the Oval Office? First, perjury and obstruction of justice drive a stake in the heart of the rule of law. When the Constitution was ratified, it was christened as “the grand American experiment.” America stood alone in being governed by the rule of law as opposed to the rule of kings, tyrants, czars, monarchs, emperors, chiefs, sheiks, lords, barons and nobles.

To our founders’ credit they created a Republic based on the rule of law rather than a Nation based on the whims of man. The American legacy is that we have become the beacon of liberty to nations around the world who seek systems of government just like ours. We have an obligation to preserve the heritage of the rule of law now and for future generations.

The President’s lawyers give us a fantasy defense. The President’s defenders would have us believe that the President’s misconduct was only private and therefore not impeachable. If the President’s verbal engineering prevails, then an evasive, incomplete, misleading and even maddening statement is not a lie. No one is ever really alone in the cosmos. “Is” is not a state of being. A person performing a sex act is having sexual relations, but the person receiving the sexual favor is not having sex. And a cover story is not a concocted rendition of an event with the willful intent to mislead others by lies, but instead a cover story is a simple harmless revision of an historical event.

This is neither believable, reasonable, rational nor acceptable. The President’s defense is completely misguided in its interpretations, parsing and hair-splitting of words. C.S. Lewis called this technique, quote, “verbicide, the murder of a word,” end quote. When plain spoken English language is twisted into the vague and ambiguous, society is devoid of trust. It undermines our social interaction, commerce, indeed, the rule of law and government itself.

I believe in civility and self-evident truths as a statement of stable social order under the rule of law. If the President’s view of nontruth prevails, we set a double standard. The presidential perjurers in the future will have no consequences to face. Everybody else could go to jail. We will also set a double standard with regard to the behavior of the Chief Executive and as Commander in Chief. Conduct that would strip an admiral or general of his position, land a sergeant in prison, or deprive an administrative nominee of a Cabinet post is condoned for the President. Our soldiers, sailors, airmen and marines will be bound by the high ethical code, which they should be. But our President as Commander in Chief who has the power to send them into harm’s way can conform his conduct to a lower standard. I disagree. Leadership is by example and setting the higher standard.

Retired Admiral Edney, who teaches ethics at the Naval Academy, came before this committee and testified: “Dual standards and less accountability at the top will undermine the trust and confidence so essential to good order and discipline” in the military. I

believe the Office of the President is one in which is reposed the special trust of the American people by virtue of having gained the majority of the American people's electoral vote. If the President can lie repeatedly without remorse with regard to his personal conduct, can the President be trusted by the American people, by Congress, by foreign governments to conduct the official business of the United States?

The trust given the President by the people, I believe, has been broken and betrayed. The President is no longer entitled to the benefit of the doubt as to his actions and his judgments, such as the use of military force and his foreign travel on behalf of the people of the United States. He is now second-guessed by everyone in coffee shops all across this country.

If this committee cannot bring itself to impeach a perjurious President, the bar will be raised for future circumstances that the House and this committee might face. Our children and grandchildren will face presidents who seek to flout the rule of law in a more ambitious manner because of the precedent set through inaction.

I will defend the Constitution and serve as a protector of our national heritage and help define our Nation's character. I will not cave in and permit our Nation to be ruled by polls, emotion, or a distortion of words by "verbiicide."

An ancient Greek philosopher stated: "A man's character is his fate." I am saddened and disappointed that the character of President Clinton brings us to an impeachment vote for only a third time in over 200 years. We are debating articles of impeachment today not because of partisan spite or an overzealous prosecutor, but because of the truth of the President's own actions.

As difficult and wrenching as this matter is, this committee must do its constitutional duty and report articles of impeachment to the full House of Representatives for the sake of our Constitution, for the sake of our children and for the sake of our country.

I yield back the remaining balance of my time.

[The prepared statement of Mr. Buyer follows:]

PREPARED STATEMENT OF CONGRESSMAN STEVE BUYER

Mr. Chairman. Every time I reflect upon the wisdom of the Founding Fathers, I think their wisdom was truly amazing. They pledged "their lives, their fortunes and their sacred honor" to escape the tyranny of a King. They understood the nature of the human heart struggles between good and evil. so, the Founders created a system of checks and balances and accountability. If corruption invaded the political system, a means was available to address it. The Founders felt impeachment so important it was included in six different places in the Constitution.

The Founders set the standard for impeachment of the President and other civil officers as "treason, bribery, and other high crimes and misdemeanors." The House of Representatives must use this standard, and the circumstances and the facts of the President's conduct, to determine if the occupant of the Oval Office is fit to continue holding the highest executive office of this great country.

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federal court; and, efforts to obstruct justice in a criminal proceeding and perjury before a grand jury, rise to the level of an impeachable offense?

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An ancient Greek philosopher stated, "A man's character is his fate." I am saddened and disappointed that the character of President Clinton brings us to an impeachment vote for only the third time in over 200 years.

We are debating articles of impeachment today not because of any partisan spite or an overzealous prosecutor, but because of the truth about the President's own actions. As difficult and wrenching as this matter is, this Committee must do its constitutional duty and report the articles of impeachment to the full House of Representatives for the sake of our Constitution, for the sake of our children and for the sake of our country.

Chairman HYDE. I thank the gentleman, and the gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much. Mr. Chairman and members of the committee, as a Member of Congress and this Judiciary Committee and the House of Representatives, I have been thrust into a role I never envisioned. The action of the past few weeks have caused me to tremble. I woke up in the middle of the night with flashes of the struggles of my African ancestors for justice.

I am reminded of the terrible sacrifice of the heroic men and women of this Nation who have fought for Americans to be able to be free of a police state and to be free of intimidation and harassment. I knew I would have to fight for the rights of minorities, women, the poor and the marginalized for the rest of my life. Never did I believe I would have to fight to protect the rights of the so-called most powerful individual of the free world.

This is a sad time in the history of this Nation. We are on the brink of a Republican partisan impeachment of the President of the United States of America. The articles of impeachment are not based on his undermining of the Constitution, not based on actions that threaten the security of our Nation, not based on treason, bribery or a threat to our democracy, but rather because of the blind political determination of individuals who are philosophically and diametrically opposed to Bill and Hillary Clinton and their politics.

However, tyranny knows no boundaries. This impeachment tyranny by the right ignores the most profound document of our society, the Constitution of the United States. It further disregards and disrespects the basic rights of the accused. This right wing driven assault on our Constitution poses a clear and real danger to our future. If the architects of this anarchy win, we surely place the rights of all American citizens at risk.

After reading the Independent Counsel's referral, reviewing the supporting documents, listening to numerous witnesses and my colleagues on the other side of the aisle, I have become more resolved to defend the Constitution of the United States and all its protections. As I witnessed the unfolding of this march to impeachment, I was jolted by the circumstances surrounding Independent Counsel Ken Starr's incessant pursuit of President William Jefferson Clinton.

In 1994, Attorney General Janet Reno appointed Kenneth Starr as the Independent Counsel to investigate Whitewater. Soon after,

Mr. Starr's investigation extended into the death of Vince Foster, the FBI files, the White House Travel Office files. Finally, after 4 years and over \$40 million later, the President was exonerated by Kenneth Starr. This revolution of exoneration was not made by way of a planned press conference, but rather Mr. Starr casually asserted the President's exoneration in his statement before the Judiciary Committee on November 19, 1998, 16 days after the November 3rd election.

At this same hearing, Mr. Starr appeared as an advocate for impeachment; an extraordinary appearance by an Independent Counsel whose professional responsibility is to gather the facts and evidence for the Members of Congress to arrive at our own conclusion. Mr. Starr's flagrant disregard for the constitutional protection that one is innocent until proven guilty, is apparent in many forms.

For some time now Mr. Starr's bias and ruthless investigative tactics have gained the attention of legislators, many civil rights groups and citizens of this Nation. No justice-loving American can respect the ill-gotten, ill-conceived, convoluted allegations based on the investigation of a private, personal, sex-related affair. Mr. Starr tripped backwards into the Lewinsky matter because everything else he was investigating yielded him nothing. Zilch. Zero.

Mr. Starr's obvious bias and dislike of the President, his investigatory tactics, and his flimsy case does not meet the constitutional standard for impeachment. For example, Mr. Starr had a relationship with Paula Jones's lawyer, Gilbert Davis. In fact, Mr. Starr failed to disclose that he had six conversations with Mr. Davis in the summer of 1997 prior to his request to extend the Whitewater jurisdiction into the Clinton-Lewinsky affair.

Mr. Starr failed to disclose that Richard Porter, a law partner in his Chicago firm of Kirkland & Ellis, was doing legal work on the *Paula Jones* case earlier this year, including filing a brief to the Supreme Court. At least one week prior to January 12, 1998, when Linda Tripp is supposed to have contacted Starr's office, Jerome Marcus, a Philadelphia lawyer with ties to the Paula Jones legal team, informed a law school friend who is employed by Mr. Starr, of the accusations related to President Clinton's relationship with Monica Lewinsky. Mr. Marcus filed a brief with the Supreme Court in support of the *Jones* case on behalf of the Independent Women's Forum, a conservative organization. Curiously, this is the same organization for which Mr. Starr helped prepare a brief in the *Jones* case.

Mr. Starr's investigations relied on illegally obtained information from Linda Tripp. Simply put, Mr. Starr came to the position of Independent Counsel with unclean hands. By failing to disclose to Attorney General Reno his conflicts of interest, when he requested an extension of the Whitewater jurisdiction into the Clinton-Lewinsky affair, Mr. Starr displayed prosecutorial misconduct.

Mr. Starr's investigative tactics are unparalleled. He has subpoenaed hundreds of witnesses, creating legal bills for innocent people who had no relationship to the facts of the case, and abusing his power by denying witnesses their basic rights. Among the victims are Monica Lewinsky, who was sequestered and whose pleas for her lawyers were ignored; Monica Lewinsky's mother who was called in to testify against her own daughter about her daughter's

sexual activities; Julia Steele, whose tax returns were examined, her finances investigated, and to add insult to injury, the origins of the adoption of her 8-year-old Romanian child were questioned. Rob Hill, Jr., whose 80-year-old mother, two adult daughters, his brother, his sister-in-law, and his 16-year-old son were subpoenaed regarding Mr. Hill's misuse of political funds. Mr. Hill's 16-year-old son was served a subpoena at his high school.

Mr. Chairman, I am not here to blindly support or defend President Clinton. I have opposed President Clinton on such issues as NAFTA, Fast Track, the crime bill, welfare reform, and much more. As I sit here today, and as God is my judge, if I felt Bill Clinton was guilty of impeachable offenses, I would join with the most right wing of my colleagues to impeach him. Witness my support of the McDade-Murtha bill, where I joined a right wing Republican in a measure that would hold Federal prosecutors accountable for their abuse of power.

Rather, I am here in the name of my slave ancestors to insist that the President be afforded the constitutional protections that should be available to every citizen in this country. The President is neither above the law or below the law. As Members of Congress have sworn to uphold the Constitution, we must always insist on equal and just treatment under the law.

The presumption of innocence until proven guilty is central and basic to our system of justice. The right to be free from intimidating and coercive self-incrimination is at the core of our criminal justice system. I have seen too many and I know too much about the violation of the rights of my own people. I can never remain silent in the face of injustice.

Kenneth Starr's presentation of impeachable offenses is illegitimate. He has not made a credible case for perjury, obstruction of justice, or abuse of power.

Finally, Mr. Starr has undermined his own investigation by his overzealous and unethical pursuit characterized by a "get-Bill-Clinton-by-any-means-necessary" attitude. Americans across the Nation are offended that a prosecutor could have unlimited powers to delve into one's private, personal life. We have heard Members of Congress describe the President's actions as sickening, reprehensible and unacceptable; however, the Constitution does not allow for the impeachment of a President because we are upset by his personal behavior.

Mr. Chairman, the 19 experts who appeared before the Subcommittee on the Constitution, over 400 historians, 400 legal scholars, 10 out of 12 of the Nation's most respected legal minds, and the American people agree that Mr. Starr's allegations do not reach the level of high crimes and misdemeanors. The Congressional Black Caucus under my leadership assigned to ourselves the role of fairness cops. We dedicated ourselves to exposing abuses.

Chairman HYDE. The gentlewoman's time has expired.

Ms. WATERS. Unanimous consent for 30 more seconds.

Chairman HYDE. Surely.

Ms. WATERS. We vowed to speak up and to speak out. We decided to share the knowledge and experience of our people as we have struggled to make the criminal justice system fair. This committee may vote out articles of impeachment; however, we will not

be deterred in our struggle for justice. We will fight impeachment on the House floor and we will join the fight in the Senate if necessary.

The American people must realize, if the President can be impeached on these unsupported charges, no citizen is safe in our country, despite the sacrifices of the gallant men and women who have fought and died to ensure freedom, justice, and equality for all.

Chairman HYDE. I thank the gentlelady. The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. I thank the Chair. The intersectional collision of President Clinton's deplorable conduct with our Constitution has set in motion this inquiry of impeachment. Each member must now match his or her action with the only authority the Constitution delegates to the House of Representatives. No more, no less.

As such, we must not invent, for the purpose of expediency, a remedy which does not exist. The House cannot and should not be able to reprimand, censure or fine the other two branches of government—the judiciary or the executive branches. Rather, members must be prepared to vote their consciences on whether or not to impeach; that is, to charge the President with an impeachable offense. This is our single role in this process.

Further, impeachment is not a part of the criminal law. It's not governed by the rules of criminal procedure or court precedents and not necessarily the rules of evidence. Impeachment is truly a unique constitutional process combining elements of the legal and political systems.

Numerous scholars have come forward suggesting that not every crime is impeachable. Likewise, it is clear that an impeachable offense does not require a criminal law violation. The distinguished Senator Robert Byrd from West Virginia has stated, "An impeachable offense does not have to be an indictable offense of law."

Before we begin our evaluation of the charges, let's be clear that the standard we must attain in this House, before we can impeach, is not, and I repeat, is not the same case as that against President Nixon in 1974. Some intimate that the Nixon case is the magic threshold and anything less shouldn't be considered for impeachment. That is simply, as the President's legal team put it, "a misleading statement."

Analogize this situation to the prosecutor in a law court who fails to indict the bank robber who robbed five banks because the prosecutor had previously indicted a robber of 20 banks!

As for our own evaluation, our first task is to ascertain the facts. The second task is to determine if the facts support an impeachable offense.

As for the facts: President Clinton was sued by Paula Jones in a civil sexual harassment case. In her case, Ms. Jones tried to establish a particular pattern and practice of behavior by the President. This was not unique to her case. Most sexual harassment cases have to establish such a pattern.

After former White House intern Monica Lewinsky was listed as a potential witness, a series of illegal acts ensued. The evidence establishes the President engaged in the following misconduct, in an

apparent effort to prevent Ms. Jones from recovering a monetary damage judgment against him and to protect his presidency. The facts surrounding these unlawful events are:

Number one, perjury. The President, through a series of calculated lies over a period of months, attempted to evade, mislead and provide incomplete responses to Paula Jones, the judiciary system and the American people. Disregarding the recognized legal standard of a "reasonable man" used in all courts, the President repeatedly used verbal gymnastics to redefine words and phrases such as "alone," "is," and "sexual relations." The latter interpretation, as admitted by his lawyer, results in the ridiculous conclusion that one party to a particular sex act may be involved in a sexual relation while the other party is not!

And they also come into this high room and talk about how the President can give an incomplete answer and yet still comply with the oath he takes to tell the whole truth. Incomplete answer, whole truth, and give a misleading answer, yet tell nothing but the truth? And I am still waiting for an answer as to how you can square those concepts. But if anybody can do it, I'm sure this President can.

Number two, obstruction of justice. Once the question arose concerning an "improper affair" with Ms. Lewinsky, suddenly there was a series of incidents to cover the tracks of this affair, including ridding the immediate area of evidence in the *Jones* case and Ms. Lewinsky. While the President's "fingerprints"—and I use that in quotes—aren't clearly on these actions, almost by magic the President is benefited by physical evidence disappearing from Ms. Lewinsky's apartment and reappearing under his personal secretary's bed. Ms. Lewinsky lands her long-sought job with a New York Fortune 500 company within 24 hours of signing a false affidavit supportive of the President in the Jones case. How lucky can one man be?

Number three, abuse of power. Any claim the President has had that his affair was a private matter and, at worst, grounds for a divorce changed when he brought the powers of his high office into play. The facts show that in the President's zeal to keep his affair from the Jones lawsuit, he allowed government-employed White House counsels, policy advisors, Cabinet members and a communications team to defend him and perpetuate those lies. He continued to use his staff for a period of more than 7 months to deny, stonewall and lie to those investigating this case.

Now we must use a common sense approach to this evidence and look at the results of this series of calculations and incidents. Washington is a "wink and nod" community, where people do not need to say exactly what they want in order to get what they want done.

Nor can we judge each act in a vacuum. The context, the big picture must also be considered. Just look at the time line, look at the actions, and the results which all benefit the one person who says he had nothing to do with anything.

Throughout this process, we have also had the daunting task of determining whether these charges meet the standard of "high Crimes and Misdemeanors" and whether the rule of law can be interpreted to include these offenses.

Surely, one cannot seriously argue perjury and obstruction of justice are not impeachable. They are fraternal triplets of bribery, which is spelled out in the Constitution. Each of these have the same effect of thwarting the truth in our court system.

As former Attorney General Griffin Bell has testified, “The statutes against perjury, obstruction of justice and witness tampering rest on vouchsafing the element of truth in judicial proceedings—civil and criminal and particularly the grand jury.”

Professor Jonathan Turley of the George Washington Law School told Congress that, “The allegations against President Clinton go to the very heart of the legitimacy of his office and the integrity of the political system.”

For those remaining few who persist that this is merely private or an example of trivial conduct, I draw your attention to the testimony before this committee of John McGinnis, a professor of law from the Benjamin H. Cardozo Law School, who said: “Integrity under law is simply not divisible into private and public spheres . . . . It would be very damaging for this House to accept a legal definition of ‘high Crimes and Misdemeanors’ that creates a republic which tolerates ‘private’ tax evasion, ‘private’ perjury, and ‘private’ obstruction of justice from officials who would then continue to have the power to throw their citizens into prison for the very same offenses.”

In addition, Steven B. Presser of the Northwestern University School of Law testified before this Congress: “They are not trivial matters having to do with the private life are thus impeachable offenses. The writings and commentary of the framers [of our Constitution] show that they would have believed that what President Clinton is alleged to have done, if true, ought to result in impeachment and his removal from office.”

Harvard professor Richard D. Parker also stressed the rule of law in his testimony before us: “Now, consider another hypothetical situation: Suppose the President were shown to have bribed the judge in a civil lawsuit against him for sexual harassment, seeking to cover up embarrassing evidence. As bribery, this act would be impeachable [under the Constitution], despite its source in the President’s sex life. What is the difference between that and lying under oath or obstructing justice in the same judicial proceeding—to say nothing of before a Federal grand jury—for the same purpose? By analogy, both sorts of behavior would seem grossly to pervert, even to mock, the course of justice in a court of the United States.”

And finally, when one wants to blame the Congress for all of this—and we hear that very often—I issue the reminder that it was President Clinton and only President Clinton who consistently made wrong choices instead of right choices and who brought us to this point of national exhaustion.

Also, remember the additional words of Professor McGinnis about our forefathers and their paramount concern about the integrity of our public officials: “They recognized that the prosperity and stability of the Nation ultimately rest on the people’s trust in their rulers. They designed the threat of removal from office to restrain the inevitable tendency of rulers to abuse that trust.”

Could I have just one minute?

Mr. SENSENBRENNER [presiding]. Without objection.

Mr. BRYANT. Since these allegations were brought to the attention of the committee, my office has been inundated with phone calls and mail, and I have received an overwhelming number of calls in support of impeachment.

However, I understand the concerns of both sides. I want my constituents back in Tennessee to understand I do not relish this position that I am in or the opportunity to vote in this impeachment matter. It is going to be the toughest vote that I am going to make as a Congressman.

There are no winners or losers today. America has truly suffered. But the facts remain that our President has placed himself before the law and the Nation.

In conclusion, I would join the more than 100 newspapers and numerous other Americans to call upon the President to do the right thing and the honorable thing, to resign from the Office of the Presidency. I thank the Chair.

Mr. SENSENBRENNER. The gentleman's time has expired.

[The statement of Mr. Bryant follows:]

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Inquiry on Impeachment  
House Judiciary Committee  
December 10, 1998

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Since the inception of this inquiry, a division has been created as to what allegations rise to the Constitutional standards of "high Crimes and Misdemeanors."

To assist my own interpretation, I look to the words of Justice Louis Brandeis from 1928 which read:

"In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker; it breeds contempt for law; it

invites every man to become a law unto himself; it invites anarchy."

The intersectional collision of President Clinton's deplorable conduct with our Constitution has set in motion this Inquiry of Impeachment. Each member must now match his or her action with only the authority the Constitution delegates to the House of Representatives. No more, no less.

As such, we must not invent, for the purpose of expediency, a remedy which does not exist. The House can not and should not be able to reprimand, censure or fine the other two branches of government - the Judiciary or the Executive.

Rather, members must be prepared to vote their conscience on whether or not to impeach, that is to charge the President with an impeachable offense. This is our single role in

this process.

Further, impeachment is not a part of the criminal law. It is not governed by the criminal rules of procedure, court precedents, nor necessarily, the rules of evidence. Impeachment is truly a unique Constitutional process combining elements of the legal and political systems.

Numerous scholars have come forward suggesting not every crime is impeachable. Likewise, it is clear that an impeachable offense does not require a criminal law violation. The distinguished Senator Robert Byrd from West Virginia stated, "An impeachable offense does not have to be an indictable offense of law."

Before we begin our evaluation of the charges, let's be clear that the standard that we must attain before we can impeach is not – I

repeat – is not the same case as that against President Nixon's in 1974. Some intimate that Nixon is the magic threshold and anything less should not be considered for impeachment.

That is simply, as the President's legal team put it, "a misleading statement." Analogize this situation to the prosecutor at law who fails to indict the bank robber who robbed five banks because the prosecutor had previously ~~indicted~~ indicted a robber of 20 banks!

As for our own evaluation, our first task is to ascertain the facts. The second task is to determine if the facts support an impeachable offense.

As for the facts:

President Clinton was sued by Paula Jones in a civil sexual harassment suit. In her case, Ms. Jones tried to establish a particular pattern

and practice of behavior by the President. This was not unique to her case, most sexual harassment cases establish such a pattern.

After former White House intern Monica Lewinsky was listed as a potential witness a series of illegal acts ensued. The evidence establishes the President engaged in the following misconduct, in an apparent effort to prevent Ms. Jones from recovering a monetary judgment against him and to protect his Presidency.

The facts surrounding these unlawful acts are:

1. Perjury. The President through a series of calculated lies over a period of months attempted to evade, mislead and provide incomplete responses to Paula Jones, the judiciary system and the American people.

Disregarding the recognized legal standard of a "reasonable man" used in all courts, the President repeatedly used verbal gymnastics to redefine words and phrases, such as "alone," "is" and "sexual relations." The latter interpretation, as admitted by his lawyer, results in the ridiculous conclusion that one party to a particular sex act may be involved in a sexual relation while the other party is not!

*incomplete - w hole  
misleading - no fring but the truth?*

2. Obstruction of Justice. Once the question arose concerning an "improper affair" with Miss Lewinsky, suddenly there was another series of incidents to cover the tracks of this, including ridding the immediate area of evidence in the Jones case and Miss Lewinsky . While the President's "fingerprints" aren't clearly on these actions, almost by magic the President is benefitted by physical evidence disappearing from Miss Lewinsky's apartment and reappearing under

his personal secretary's bed. Ms. Lewinsky lands her long-sought job with a New York Fortune 500 Company within 24 hours of signing a false affidavit supportive of the President in the Jones Case. How lucky can one man be?

3. Abuse of Power. Any claim the President had that this affair was a private matter, and at worst grounds for divorce, changed when he brought the powers of his high office into play. The facts show that in the President's zeal to keep this affair from the Jones lawsuit, he allowed his government-employed White House Counsels, policy advisors, Cabinet members and communications team to defend him and perpetuate the lies. He continued to use his staff for a period of more than seven months to deny, stonewall and lie to those investigating his actions.

We must use a common sense approach to this evidence and look at the results of this series of calculations and incidents. Washington is a "wink and nod" community, where people do not need to say exactly what they want in order to get what they want done. Nor can we judge each act in a vacuum. The context—the big picture—must also be considered. Just look at the time line, look at the actions and the results would all benefit the one person who says he had nothing to do with anything.

Throughout this process, we have had the daunting task of determining whether these charges meet the standard of "high Crimes and Misdemeanors," and whether the Rule of Law could be interpreted to include these criminal offenses.

Surely, one cannot seriously argue perjury and obstruction of justice are not

impeachable. They are fraternal triplets of bribery which is spelled out in the Constitution. Each of these have the effect of thwarting the truth in our court system. As former Attorney General Griffin Bell has testified:

“The statutes against perjury, obstruction of justice and witness tampering rest on vouchsafing the element of truth in judicial proceedings—civil and criminal and particularly the grand jury.”

Professor Jonathan Turley of the George Washington Law School told Congress that:

“The allegations against President Clinton go to the very heart of the legitimacy of his office and the integrity of the political system.

For those remaining few who persist that this is merely private or trivial conduct, I draw

your attention to the testimony before this committee of John McGinnis, a Professor of Law from the Benjamin H. Cardozo School of Law at Yeshiva University, who said:

"Integrity under law is simply not divisible into private and public spheres. ....It would be very damaging for this House to accept a *legal* definition of "high Crimes and Misdemeanors" that creates a republic which tolerates "private" tax evasion, "private" perjury and "private" obstruction of justice from officials who would then continue to have the power to throw their citizens into prison for the very same offenses."

In addition, Stephen B. Presser, of the Northwestern University School of Law stated:

"They are not trivial matters having to do with the private life are thus impeachable

offenses. The writings and commentary of the framers show that they would have believed that what President Clinton is alleged to have done, if true, ought to result in his impeachment and removal from office."

Harvard Law professor, Richard D. Parker, also stressed the Rule of Law in his testimony saying:

"Now, consider another hypothetical situation: Suppose the President were shown to have bribed the judge in a civil lawsuit against him for sexual harassment, seeking to cover up embarrassing evidence. As bribery, this act would be impeachable, despite its source in the President's sex life. What is the difference between that and lying under oath or obstructing justice in the same judicial proceeding – to say nothing of before a federal grand jury – for the same purpose? By analogy, both sorts of behavior would seem

grossly to pervert, even to mock, the course of justice in a court of the United States.”

And finally, when one wants to blame Congress for all of this, I issue the reminder that it was President Clinton and only President Clinton who consistently made wrong choices instead of ~~the~~ right choices who has brought us to the point of national exhaustion.

Also, remember the additional words of Professor McGinnis about our forefathers’ paramount concern with the integrity of our public officials:

“They recognized that the prosperity and stability of the nation ultimately rest on the peoples’ trust in their rulers. They designed the threat of removal from office to restrain the inevitable tendency of rulers to abuse that trust.”

Since these allegations were brought to the attention of the Committee, my office has been inundated with phone calls and mail. ~~From my office,~~ I have received an overwhelming number of calls in support of impeachment, however, I understand the concerns of both sides. I look forward to the end of this debate and getting back to the important issues of social security, health care and others. But I want my constituents to understand, I do not relish this vote or this position our President has put us in. This will be the toughest vote I will make as a Congressman and I only wish I never had to make it.

There are no winners or losers here today. America has truly suffered. The facts remain, our President has placed himself before the law and the nation.

As such, I join the more than 100

newspapers and numerous other Americans to call upon the President to do the right and honorable thing – resign from the Office of the Presidency.

Mr. SENSENBRENNER. The gentleman from Massachusetts, Mr. Meehan.

Mr. MEEHAN. The rule of law. We have heard much about it over the past few weeks and we will surely hear more about it over the next few days. Above all, we have rightly heard that the rule of law must apply equally to President and pauper. Otherwise, law shall be the exception and not the rule.

But in striving to fix the boundaries of the rule of law, we must not restrict our sights to the President. The rule of law must rule here as well. And there is one body of law and only one body of law that governs this committee's action when it meets to consider articles of impeachment: The Constitution of the United States.

No, the law in this room is not Title 18 and Sections 1621 and 1623 of the United States Code, the perjury statute, but rather Article II, Section 4 of the Constitution of the United States: The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

If we forsake this constitutional standard and the precedents in which it has been applied, let there be no doubt about it, our actions will be lawless.

I have read the words of our Founding Fathers and I have reviewed the precedents, and I am left to conclude that impeachable conduct is conduct which clearly, concretely and convincingly demonstrates that a President lacks the capacity to govern, that a President is unable or unwilling to fulfill his or her core responsibilities or respect the boundaries of his or her power.

I also have a good sense about what isn't impeachable conduct. Being a bad husband is not in itself impeachable conduct. Failing to live up to the expectations of those who elected you is not, in and of itself, impeachable conduct. And breaking a law is not, in and of itself, impeachable conduct.

So we must ask ourselves, how does Bill Clinton's conduct reflect upon his capacity to govern?

Let us start with what we have learned about Bill Clinton. We have learned that he is more reckless in his private life than we even imagined—maddeningly reckless for someone with so much potential and so much to lose. We have learned that his instinct is to deceive when he is asked about his private recklessness, particularly when those doing the asking are linked to his political enemies. We have learned that this particular instinct to deceive carries into a judicial proceeding, though not without a competing instinct to act lawfully.

What we see in Bill Clinton's sworn testimony are these two competing instincts at war. I believe that the instinct to act lawfully was surprisingly successful in battle, given the strength of its enemy. Yet that war produced two casualties that we should all lament: forthrightness and clarity. And lines might indeed have been crossed on occasion, most prominently with respect to the President's testimony about precisely where he touched Monica Lewinsky.

I disparage Bill Clinton's relationship with Monica Lewinsky. I disparage what he did in his testimony, legal or not. I disparage

what he said to the American people about this matter, and I disparage what he put this country through over the last 12 months.

But can I conclude clearly, concretely and convincingly from the President's conduct that he lacks the capacity to govern? Only if I willfully blind myself to the rule of life, a phrase I borrow from Professor Lawrence Tribe. The rule of life teaches us that people are complex. They do wrong in certain contexts, yet the forces behind that wrongdoing do not necessarily infect every context of their lives. Where they have erred, they sometimes come to realize it, regret it, and confine it.

Branding a President who teetered on the edge of illegality in testifying about an illicit affair a tyrant or a traitor-in-waiting clearly defies the rule of life. In fact, when I look at Bill Clinton's acts of governance, I see no failure to execute our laws properly or no lack of respect for the boundaries of presidential power.

It also defies the rule of life to suggest that allowing the President to remain in office will result in diminished respect for the rule of law or abandonment of reality. The American people are smart enough to know the difference between right and wrong; to realize that supposed role models who do wrong are models for nothing in those instances; to recognize that the President is already paying a steep price for his deception; and to understand that he remains subject to indictment and prosecution for any illegality he might have committed, whether we impeach him or not.

Yet this committee, nonetheless, proceeds on a lawless path to impeachment, destined to arrive there on Saturday, December 12, 1998. And despite the awesome constitutional and practical significance of impeachment, we have been proceeding as if we are about to do anything but something exceptional.

Material witnesses? None to be found here, even though there are multiple instances of conflicting testimony on critical issues. We instead appear to have embraced a new theory of jurisprudence whereby the defense must prove its innocence to stave off punishment, or at least the burden shifts to the defense after the prosecution claims it has made out a prima facie case of some unrevealed charge.

Accountable? Not us. We simply pass scandal on to the Senate, leaving it to the other body to do the dirty work of determining fact and meting out proportional punishment.

Restraint? Only restraint from criticizing ourselves for having dumped a gratuitously salacious referral on the American people without even having read it first.

I observe the polls indicating that the American people overwhelmingly oppose impeachment, observe how we have conducted this impeachment inquiry, and I find myself suspecting that I am witnessing some grand scheme to convince the American people not to take this process seriously, to tune us out and let us commit a constitutional wrong without anybody noticing.

For those who might hope for this outcome, let me say to you that whether or not the American people tune us in today or in the following days, history will not tune us out. The leading constitutional law treatise describes history's view of the 1867 impeachment of former President Andrew Johnson with the following

words, "The congressional attempt to oust Johnson was itself an abuse of power."

I am sick at heart today, for I believe that similar words will come to characterize the actions of this committee and, perhaps, those of the House. Indeed, I fear not only how history will treat us, but how our actions will shape history. We lay the groundwork today for a startling precedent, a precedent by which private wrongs readily become grist for a reopening of elections; by which major constitutional clashes between executive and legislative branches are triggered by mere party line votes within the legislature; and by which the American people's views on what makes for a high crime and misdemeanor are flatly ignored.

So, I say to my colleagues outside this committee who may not have made their minds up on whether or not to impeach the President and are watching us tonight, it is not only this President's and the Nation's fate that hangs in the balance, but also the fates of Presidents-to-be.

Thirty more seconds?

Mr. SENSENBRENNER. Without objection.

Mr. MEEHAN. But also the fates of Presidents to be, and our fate in the eyes of history. Please, save the Constitution from an overreach. Save our Nation from a prolonged Senate trial. Save the House from the condemnation of history, and save history from this committee's excesses. Thank you.

Mr. SENSENBRENNER. The gentleman's time has expired.

The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you. Mr. Chairman, every member of our committee recognizes that this is likely the most important vote we will ever cast, and all of us would prefer that the President's actions had not led us down this fateful path. However, we have sworn an oath to uphold the Constitution, and we must fully accept that responsibility.

As a father of two children, I am deeply troubled by the events of the last year. My children, who were taught at home and in church and at school that honesty and integrity do matter, have witnessed the President of the United States shamelessly lie to the American people. As a Member of Congress, and as an attorney, I am very troubled that every day in courthouses throughout this Nation, Americans raise their right hands and swear to tell the truth, the whole truth, and nothing but the truth. They do so under the penalty of perjury. Yet in this case the President of the United States, the chief law enforcement officer of this land, has made an utter mockery of that fundamental precept. That is a travesty.

No person stands above the law. All Americans, no matter how rich, how powerful, how well connected, should be held accountable for their actions—every American must be held accountable.

Back in 1972 I cast my first ballot in a presidential election. I was 19 years old, a college student. Like a majority of Americans that year, I voted for a Republican, Richard Nixon. Four years later, however, I voted for a Democrat, Jimmy Carter. That decision stemmed from my profound disappointment over Watergate and a strong conviction that President Nixon should not have received a pardon, that he should not have gotten away with his actions.

Since that time, I always hoped that our country would never again be confronted with an impeachment proceeding against an American President. But President Clinton's actions have again brought us to the brink of impeachment and he has no one to blame but himself.

The grand jury didn't force the President to commit perjury. Judge Starr did not encourage the President to obstruct a lawful investigation, and, in fact, this committee did give the President innumerable opportunities to refute the evidence before us. Instead, the President chose to run from the truth, justifying his lies with twisted definitions of "is" and "alone."

But despite President Clinton's linguistic contortions, the evidence is strong, convincing and clear. The President of the United States, William Jefferson Clinton, has engaged in a pattern of cover-up and deceit. Standing alone, each individual offense is extremely serious. Collectively, they're overwhelming. It has become clear to me that the President lied under oath before a Federal grand jury, he lied under oath in a sexual harassment case, and he obstructed justice, and he abused his constitutional authority.

Let me again review the facts. President Clinton lied to a Federal grand jury. He lied about whether or not he committed perjury in a civil deposition, and about the extent of his relationship with a subordinate government employee. President Clinton lied in a civil deposition in order to defeat a civil rights suit in which he was a defendant. He attempted to mislead the plaintiff's attorneys, relying on contrived cover stories and embracing false repetitions of, "I don't recall," when he clearly did.

President Clinton obstructed justice by encouraging others to lie in judicial proceedings. He sought to influence the testimony of a potentially adverse witness with job assistance, and he attempted to conceal evidence that was under subpoena.

Finally, in conducting this cover-up, President Clinton used the power of his office to mislead, impede, and obstruct a Federal grand jury, a civil deposition, and the American people. He used government resources, including government attorneys and staff, to disseminate his deceitful story to the public and to the grand jury.

Back in 1974, Congresswoman Elizabeth Holtzman, who served on the Judiciary Committee during Watergate, said that she would vote to impeach President Nixon in part because, and I quote, "The presidential cover-up is continuing even through today." We find ourselves facing a similarly unfortunate situation. To this day, President Clinton continues to deny and distort. He continues to dispute the undeniable facts before our committee and before the American people. The President refuses even to admit what several prominent Democratic members in this committee have publicly concluded to be true: President Clinton lied under oath. Several Democratic members of this committee have acknowledged that.

The historic record, the law and the Constitution tells us that the charges against the President do, indeed, rise to the level of impeachable offenses. They constitute serious violations of criminal law and fall squarely within our Founding Father's definition of high crimes and misdemeanors.

Mr. Chairman, impeaching the President is an extremely serious matter. Throughout these proceedings I've tried to keep an open

mind, giving the President every opportunity to refute the facts that have been laid before our committee. But now all of the evidence is in and a decision is at hand. It has become apparent to me that impeachment is the only remedy that adequately addresses this President's illegal and unethical acts.

Allowing the President's actions to go unpunished would gravely damage the office of the President, our judicial system, and our country.

I have not reached this decision lightly. I have done my share of soul-searching, I have listened carefully to the views of my constituents, and I have reviewed the evidence in excruciating detail, and much of it wasn't particularly pleasant, I can assure you; and I have been guided by our Constitution. In the end, the appropriate course is clear: impeachment. That is, regrettably, our only option.

The argument has been made by the President's defenders that voting for articles of impeachment would set a terrible precedent. I respectfully disagree. To the contrary, burying our heads in the sand and refusing to acknowledge the gravity of the President's crimes would set a far more dangerous precedent. Giving the President a pass or a censure would set a dangerous precedent for future Presidents, for those who testify in our courts, and for our children whom we try to raise with respect for the truth and a sense of what is right and what is wrong.

I ask my colleagues to search their hearts and answer this question: What message are we sending the youth of America if we abdicate our constitutional duty and allow perjury, obstruction of justice and abuse of power to go unpunished?

When we cast our votes, we are not voting as Republicans or Democrats, we are voting as Americans. Our allegiance does not lie with any one President or with our country. Our charge is not handed down from any one political party, but from the Constitution. Every Member of this body is duty-bound to put politics aside, following our consciences, and uphold our oath of office. William Jefferson Clinton has disgraced the sacred office of the President. I have come to the conclusion that it is our duty to impeach.

I yield back the balance of my time.

Mr. SENSENBRENNER [presiding]. The gentleman's time has expired.

The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

I would like to ask each of you to imagine you have been summoned to defend yourself in court. You don't know what you are charged with because there is no indictment. The prosecutor has spent four years investigating your financial dealings, but when you get to the courtroom he only wants to talk about sexual indiscretions.

He sends the jury a 445-page report telling just his side of the story, and releases thousands of pages of secret grand jury testimony to the public. He calls none of the witnesses quoted in his report, so you can't challenge their accuracy. In fact, he calls only one witness: himself. Then it turns out that he has never even met your chief accuser.

The judge allows new charges to be raised in the midst of the trial, but then drops them. He warns that you will be convicted if

you do not offer a defense. Then, when you do so, he tells you not to hide behind legal technicalities.

The scene I have just described wasn't dreamed up by George Orwell or Franz Kafka; it is not a Cold War account of a Soviet show trial. In fact, it is similar to what is taking place here in America during the course of this impeachment inquiry.

We are about to impeach the President of the United States on charges that never even would have been brought against an ordinary citizen. We have delegated our constitutional duty to substantiate those charges to an unelected prosecutor. We have called no witnesses to testify to the charges except the prosecutor himself, and he admitted he has no personal knowledge of the facts and never even met Monica Lewinsky. None of his witnesses were subject to cross-examination to test their credibility, despite the majority counsel, Mr. Schippers' statement that they should be.

Having put before the public a one-sided case for the prosecution, some members of the committee have suggested that the President has the burden of proving his innocence. When he has attempted to do so, those same members have accused him of splitting hairs. We have required the President's counsel to prepare his defense without knowing what the formal charges would be, and we released articles of impeachment to the press before Mr. Ruff had even finished his presentation.

At our hearing the other day, one of my Republican colleagues alluded to those he considers real Americans. To me, the real America is a land where every person, whether pauper or President, is accorded due process of law. Due process has nothing to do with legal hairsplitting. It has everything to do with requiring those who wield the awesome power of the state to meet their burden of proof.

That is what distinguished this country from a totalitarian one. That is the genius of the Constitution, crafted by men who knew and understood the nature of tyranny. As former U.S. Attorney Sullivan testified, those who complain most loudly about such technicalities are the first to resort to them when it is they who stand accused.

For weeks members of the majority have cited the famous passage from "A Man For All Seasons" in which Thomas More defends the rule of law against those who would cut down every law in England to get after the devil. More says, and I quote, "And when the last law was down and the devil turned round on you, where would you hide, the laws all being flat? This country is planted thick with laws from coast to coast, man's laws, not God's, and if you cut them down, and you are just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I give the devil benefit of law for my own safety's sake."

We would all do well to ponder those words, Mr. Chairman, for though we have invoked the rule of law, we have failed to embrace it. How can the American people accept our verdict unless they are satisfied we have conducted ourselves in as orderly, deliberate and responsible a fashion as did the Watergate Committee in 1974, respectful of due process? Chairman Rodino did not proceed with the Nixon impeachment until it was clear that it had substantial bipartisan support.

Chairman Hyde began these proceedings by observing that without such consensus, impeachment ought not go forward. Yet, this has been the most partisan impeachment inquiry since the infamous trial of Andrew Johnson five generations ago. It is like a runaway train.

Within the committee, some of us have attempted to apply the brakes, developing a respectful though ultimately unsuccessful dialogue with our colleagues across the aisle. Elsewhere, growing numbers of thoughtful Republican leaders, from Governor Racicot of Montana to Governor Rowland of Connecticut, have expressed dismay, yet the train continues to gather speed. From my own perspective, this isn't even about President Clinton anymore.

That he deserves our condemnation is beyond all doubt, but as President Ford has written, the fate of one particular President is less important than preserving public confidence in our civic institutions themselves. Article II of the Constitution provides a mechanism for removing our Presidents. It is called an election, and it happens every four years. Whatever the Founders meant by "high crimes and misdemeanors," the one thing that seems certain is that impeachment should be reserved for situations in which the incumbent poses so grave a danger to the Republic that he must be replaced ahead of schedule.

The House debated proposed term limits for Members of Congress. One of the most respected leaders of the House led that fight against that legislation, choosing principle over party. In his speech he said, "The right to vote is the heart and soul, it is the essence of democracy. Our task today is to defend the consent of the governed, not to assault it. Do not give up on democracy. Trust the people."

The author of these elegant words is my friend, the Honorable Henry Hyde of Illinois. I remind him of these words today, not to throw them back at him, but because it seems to me that the consent of the governed is once more under assault and we sorely need such eloquence again.

The President committed serious indiscretions. In the effort to conceal his misdeeds, he compounded them, abusing the trust of those closest to him and deliberately, cynically lying to the American people. Knowing this, the people went to the polls on November 3rd and rendered their verdict, and it is illegitimate for a lame duck Congress to defy the will of the electorate on a matter of such profound significance. The voters did not condone the President's behavior; far from it. But they knew the difference between misdeeds that merit reproach and abuses of office that require a constitutional coup d'etat.

Some have said we are just a grand jury whose only role is to endorse the prosecutor's conclusion that there is probable cause to indict, and don't worry, they say, the Senate won't convict. This view is both dangerous and irresponsible. Impeachment is not some routine punishment for Presidents who fall short of our expectations. It is the political equivalent of the death penalty, with grave consequences for the Nation that all of us, Republicans and Democrats, so dearly love. We should not use the ultimate sanction—may I have an additional 30 seconds?

Mr. SENSENBRENNER [presiding]. Without objection.

Mr. DELAHUNT. We should not use the ultimate sanction when there is an alternative at hand, the joint resolution which my colleagues and I intend to offer, expressing our disapproval of the President's misbehavior and censuring him for it.

If the President really did commit perjury or other criminal acts, the law will deal with him in due course. Our job is to safeguard the Constitution and the principle of popular sovereignty that is, in the stirring words of Henry Hyde, its heart and soul.

There is still time to trust the people, Mr. Chairman. Let us do so before it is too late. I yield back, and I thank the Chairman.

Mr. SENSENBRENNER. The gentleman's time has expired.

The gentleman from New Jersey, Mr. Rothman.

Mr. ROTHMAN. Thank you, Mr. Chairman.

For four months now this committee and the Nation have struggled with issues at the very heart of our legal system: perjury, the rule of law, and impeachment. I have strived to keep an open mind, to study the historical precedents, to listen carefully to all who have spoken, no matter their party or political views, and to conduct myself in a manner that my constituents, history, and my children will respect.

Now, I must make a decision. I do not believe that anyone should impeach the President of the United States without first discovering the truth. But while Judge Starr chose to submit a report charging the President with perjury, abuse of power, and obstruction of justice, the majority in charge of this committee never called even one of the witnesses who were supposed to have known the events firsthand. We did not hear from one of these fact witnesses. The college professors brought before us were not fact witnesses. Those convicted of felonies brought before us were not fact witnesses. There was not one person who could testify to what had actually happened in this case.

Instead, we were forced to rely on Judge Starr's report, a series of portions of statements from a civil deposition, from people his staff chose to question before the grand jury, and Judge Starr's inferences and conclusions that he drew from all of these. None were ever cross-examined by the President's lawyers, even though there was a great deal of conflicting and ambiguous testimony given by each of those witnesses.

David Kendall, Charles Ruff, the President's counsel, and Abbe Lowell, the Minority counsel, in their oral and written responses rebutted and refuted each and every one of the charges brought by Mr. Starr. And so, with the facts thus in doubt, I firmly believe it was incumbent upon those advancing the impeachment of a sitting President of the United States to bring forth the fact witnesses so that we on the House Judiciary Committee could hear them, see them, and most importantly, question them.

Having the right to question and confront witnesses is an integral part of the very foundation of our American legal system, as is placing the burden of proof on those who are making accusations. I continue to hear from my Republican colleagues who say, why hasn't the President produced evidence exonerating himself? Well, look back at your law books, my friends. The accused is not required to prove his or her innocence. To put the burden of proof on the accused, in this case President Clinton, not only corrupts

the Congress's impeachment power, but subverts 200 years of American justice.

Some argue that the House Judiciary Committee does not have to delve into the whole case. We can just ship it along to the Senate, and let them get to the truth. They talk as if we were passing a bill to determine what the national flower should be. But what we are debating here is the impeachment of a sitting President of the United States, twice elected by the people. It strikes at the very heart of our Constitution and the balance of powers that has served us so well for more than 200 years; a balance of powers that has included a very high bar for the impeachment of a President, one which apparently the Republican majority now wishes to significantly lower.

It is my opinion that a clear and convincing standard of proof must be met before the House Judiciary Committee and the House of Representatives can send an impeachment matter to the Senate.

In the Federal Papers, the Founders showed a very real fear that a Congress dominated by one political party could recklessly and for pure political benefit impeach the President of an opposing or the opposite political party without sufficient cause or proof, causing a terrible shock and disruption to the entire American political system. That is why the framers set the bar for impeachment of a President so high. They rejected standards, such standards as maladministration and failure to demonstrate good behavior. Instead, they chose treason, bribery, or other high crimes and misdemeanors. According to most constitutional scholars, that phrase clearly meant offenses as serious a threat to the Republic as treason or bribery.

The President is not above the law. When he leaves office, criminal charges can be filed against him, and at any time he can be sued civilly for his actions. So the world knows and our children know that the rule of law applies to all of us, even the President, and he will have to confront the consequences of his own actions.

But our responsibility today is not to enforce the civil or criminal law. That is what the civil and criminal courts are for. Our job is to determine whether the facts in Judge Starr's case have been sufficiently proven, and if so, whether the Constitution then requires our President to be removed from office.

With no fact witnesses to prove the charges, with no opportunity to question them, with no opportunity to get to the truth, the prosecution here has not met its burden. Therefore, I am compelled and I will vote against the articles of impeachment against President Clinton based on Judge Starr's charges.

But that does not end this matter. We must address the fact that in January of 1998 President Clinton wagged his finger and volunteered to us on television that he never had sexual relations with Monica Lewinsky. The President was adamant, and demanded that we believe him. At that time, he had no reason to rely on the narrow definition of sexual relations he believed he was held to in the Paula Jones civil deposition. He was not telling us the truth. He lied to us.

While that lie does not rise to the level of treason, bribery or other high crimes and misdemeanors, the President's lie and his admitted adulterous behavior with Ms. Lewinsky in the White

House demand our punishment. Only by punishing him for this conduct will we be able to look our children in the eyes and tell them that even Presidents will be punished if they lie and conduct themselves with dishonor.

I will cast my vote with a heavy heart. This is a sad moment in our Nation's history, but I implore my colleagues to turn away from politics, turn away from shredding the Constitution with partisan shears and from bringing our Nation to the very brink of a constitutional crisis. Instead, turn and face history. Face the Founding Fathers and face the facts.

Impeachment was never meant to be a political tool, nor was it meant to be a punishment for immorality. I implore you to reject impeachment and to preserve our Constitution. We must punish the President without punishing our system of government, our people, or our great Nation.

I yield back the balance of my time.

Mr. SENSENBRENNER. The gentleman's time has expired.

That concludes the number of speakers for tonight. The committee stands in recess until 9 o'clock tomorrow.

[Whereupon, at 9:40 p.m., the committee recessed, to reconvene at 9:00 a.m. on Friday, December 11.]

## CONSIDERATION OF ARTICLES OF IMPEACHMENT

FRIDAY, DECEMBER 11, 1998

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to call, at 9:15 a.m., in Room 2141, Rayburn House Office Building, Hon. Henry J. Hyde (chairman of the committee) presiding.

Present: Representatives Henry J. Hyde, F. James Sensenbrenner, Jr., Bill McCollum, George W. Gekas, Howard Coble, Lamar S. Smith, Elton Gallegly, Charles T. Canady, Bob Inglis, Bob Goodlatte, Stephen E. Buyer, Ed Bryant, Steve Chabot, Bob Barr, William L. Jenkins, Asa Hutchinson, Edward A. Pease, Christopher B. Cannon, James E. Rogan, Lindsey O. Graham, Mary Bono, John Conyers, Jr., Barney Frank, Charles E. Schumer, Howard L. Berman, Rick Boucher, Jerrold Nadler, Robert C. Scott, Melvin L. Watt, Zoe Lofgren, Sheila Jackson Lee, Maxine Waters, Martin T. Meehan, William D. Delahunt, Robert Wexler, Steven R. Rothman, and Thomas M. Barrett.

Majority Staff Present: Thomas E. Mooney, Sr., general counsel-chief of staff; Jon W. Dudas, deputy general counsel-staff director; Diana L. Schacht, deputy staff director-chief counsel; Daniel M. Freeman, parliamentarian-counsel; Joseph H. Gibson, chief counsel; Peter Levinson, counsel; Rick Filkins, counsel; Sharee M. Freeman, counsel; John F. Mautz, IV, counsel; William Moschella, counsel; Stephen Pinkos, counsel; Judy Wolverton, professional staff; Sheila F. Klein, executive assistant to general counsel-chief of staff; Annelie Weber, executive assistant to deputy general counsel-staff director; Samuel F. Stratman, press secretary; Rebecca S. Ward, officer manager; James B. Farr, financial clerk; Lynn Alcock, calendar clerk; Elizabeth Singleton, legislative correspondent; Sharon L. Hammersla, computer systems coordinator; Michele Manon, administrative assistant; Joseph McDonald, publications clerk; Shawn Friesen, staff assistant/clerk; Robert Jones, staff assistant; Ann Jemison, receptionist; Michael Connolly, communications assistant; Michelle Morgan, press secretary; and Patricia Katyoka, research assistant.

Subcommittee on Commercial and Administrative Law Staff Present: Ray Smietanka, chief counsel; Jim Harper, counsel; Susan Jensen-Conklin, counsel; and Audray L. Clement, staff assistant.

Subcommittee on the Constitution Staff Present: John H. Ladd, chief counsel; Cathleen A. Cleaver, counsel; and Susana Gutierrez, clerk, research assistant.

Subcommittee on Courts and Intellectual Property Staff Present: Mitch Glazier, chief counsel; Blaine S. Merritt, counsel; Vince Garlock, counsel; Debra K. Laman; and Eunice Goldring, staff assistant.

Subcommittee on Crime Staff Present: Paul J. McNulty, director of communications-chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, counsel; Nicole R. Nason, counsel; and Veronica Eligan, staff assistant.

Subcommittee on Immigration and Claims Staff Present: George M. Fishman, chief counsel; Laura Baxter, counsel; Jim Y. Wilon, counsel; Cynthia Blackston; clerk; and Judy Knott, staff assistant.

Majority Investigative Staff Present: David P. Schippers, chief investigative counsel; Susan Bogart, investigative counsel; Thomas M. Schippers, investigative counsel; Jeffery Pavletic, investigative counsel; Charles F. Marino, counsel; John C. Kocoras, counsel; Diana L. Woznicki, investigator; Peter J. Wacks, investigator; Albert F. Tracy, investigator; Berle S. Littmann, investigator; Stephen P. Lynch, professional staff member; Nancy Ruggero-Tracy, office manager/coordinator; and Patrick O'Sullivan, staff assistant.

Minority Staff Present: Julian Epstein, minority chief counsel-staff director; Perry Apelbaum, minority general counsel; Samara T. Ryder counsel; Brian P. Woolfolk, counsel; Henry Moniz, counsel; Robert Raben, minority counsel; Stephanie Peters, counsel; David Lachmann, counsel; Anita Johnson, executive assistant to minority chief counsel-staff director, and Dawn Burton, minority clerk.

Minority Investigative Staff Present: Abbe D. Lowell, minority chief investigative counsel; Lis W. Wiehl, investigative counsel; Deborah L. Rhode, investigative counsel; Kevin M. Simpson, investigative counsel; Steven F. Reich, investigative counsel; Sampak P. Garg, investigative counsel; and Maria Reddick, minority clerk.

Chairman HYDE. The committee will come to order, please. A quorum being present, we will resume hearing opening statements, and the Chair now yields to the gentleman from Georgia, Mr. Barr, for a 10-minute opening statement.

Mr. SCOTT. Mr. Chairman.

Chairman HYDE. The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, before Mr. Barr starts, we had previously agreed to try to be as timely as possible; if we are going to have amendments, to let the other side know and let have the common decency of an opportunity to respond. I have been drafting amendments, but we haven't had, because of the time schedule, the opportunity to caucus, to determine which, if any, of those amendments might actually have support. So I just wanted to notify you that I may have amendments and will get them to you as soon as we possibly can.

Chairman HYDE. The Chair would announce that at the conclusion of opening statements, we will have a 30-minute recess, and you folks can caucus and we can caucus so that can be more fully discussed.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman HYDE. Very well.

Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, it is morning in America, literally and figuratively. Children all across this land are now sitting down in their classes, having been led in the Pledge of Allegiance to our flag by dedicated teachers in classrooms large and small. Adorning the walls of those classrooms are pictures of great American heroes, such as George Washington.

When asked to name the single most important gift America had given the world, Daniel Webster replied, the integrity of George Washington. How many of us have wondered, as a child, holding a shiny new quarter in our hand, why the profile of George Washington adorns more coin and paper money than any other national figure? Integrity.

However, as we stand here today on the threshold of a new millennium, dazed by scandal and riddled with doubt, we are forced to confront the reality that in the words of Mark Halpern writing in the July 2nd, 1998, Wall Street Journal in an essay lamenting the decline of statesmanship, quote, we have only what we have.

When I look out at this audience, Mr. Chairman, I see, we all see, America. We see Americans young and old, black and white, probably natural-born and naturalized, and just as probably rich and poor; citizens and likely hopeful citizens all drawn to America by something that makes generation after generation of boys and girls want to grow up in America, something that makes citizens of all other lands yearn desperately to come to our shores and become our fellow citizens.

What is it that sets us apart, that draws people to America and keeps them here? Anyone who lives in this country, who visits America, quickly learns there is indeed something extraordinarily special about this place. It is something that all of us as Americans feel when we return to our shores from travel abroad. While there are indeed many things that make our Nation unique, in the final analysis everything that is special and unique about our country is built on and protected by one principle, the rule of law.

Unfortunately, like many of the phrases in our national debate, the phrase "rule of law" has been so oft repeated, we risk losing our grasp on exactly what we mean when we say it.

What is the rule of law? The rule of law finds its highest and best embodiment in the absolute unshakable right each one of us has to walk into a courtroom and demand the righting of a wrong. It doesn't matter what color your skin is, what God you pray to, how large your bank account is or what office you hold. If you are an American citizen, no one should stand between you and your access to justice.

President John F. Kennedy put it this way: Americans are free to disagree with the law, but not to disobey it. For a government of laws and not of men, no man, however prominent and powerful, and no mob, however unruly or boisterous, is entitled to defy a court of law. If this country should ever reach the point where any man or group of men by force or threat of force could long defy the commands of our courts and our Constitution, then no law would stand free from doubt, no judge would be sure of his writ, and no citizen would be safe from his neighbors.

This, though, is the fundamental American right that President Clinton tried to deny a fellow citizen, Paula Jones. It could just as

easily have been anyone here in this room, in the audience or on the committee. It could have been your husband, your wife, your child, your neighbor. It just happened to be Paula Jones.

Whether one agrees with Paula Jones' case or not is irrelevant. What is very relevant is that, when she tried to exercise her indisputable right to take her case to the court, the highest official in our Nation tried to take that right away from her, that same public official who as Governor tapped her on the shoulder and had her escorted under the watchful eye of troopers to a hotel room and crassly demanded personal favors of her. Later, when Ms. Jones tried to walk into a courtroom, that Governor, now the President of the United States of America, slammed the door in her face, and it very nearly remained locked tight.

In a society based on justice under law, such an egregious wrong cannot be ignored. We in this Congress on this committee absolutely cannot ignore it.

Even more troubling is the evidence that this administration has used its power to do exactly the same thing to others. Need we remind America of the 900-plus FBI files brazenly and illegally misused by the White House.

Anyone not possessing an infinite capacity for self-delusion knows, whether they are willing to say it or not, that the President perjured himself on multiple occasions and committed other acts of obstruction of justice. It is also glaringly evident he enlisted others, from Cabinet officials to political operatives, in this endeavor, and that this endeavor continued into this very room.

While reference for parallels with the Nixon impeachment is seductive but inappropriate, there are some points worth noting. In the Nixon case, for example, lying to Congress and to the American people in just such a manner provoked a separate article of impeachment. Is the danger of such an attack on our constitutional processes any less dangerous today?

Sadly, I believe the case we are discussing today is but a small manifestation of President Clinton's utter and complete disregard for the rule of law. Throughout his Presidency, his administration has been so successful at thwarting investigations and obstructing the work of Congress and the courts that it may be decades before history reveals the vastness of his abuse of power or the extent of the damage it has wrought.

President Clinton apparently subscribes to the same theory Richard Nixon articulated in a 1977 interview with David Frost. Nixon said, when the President does it, that means it is not illegal. That was dead wrong then, and it is dead wrong today; wrong, that is, unless one subscribes to the principle that the President is not only above the law, but that he is the law.

With his conduct and his arrogance, William Jefferson Clinton has thrown a gauntlet at the feet of the Congress. Today, it lies at the base of this very dais. It remains to be seen whether we will pick it up.

Throughout our history, there have been other times when the principle of equal justice under law was widely questioned. It happened when some Americans tried to deny other Americans access to justice based on their skin color. It happened when Japanese Americans were imprisoned in barbed wire stockades based on mis-

guided fears. It happened in Watergate when a President abused his power in an effort to thwart political enemies.

However, at each of these critical junctures, Americans, great and small, rose to the occasion. Justice, although sometimes delayed, did prevail. However, in each of these instances, good finally did prevail over evil. The rule of law survived, and we pulled back from the slippery slope, political slope that is, that ends in tyranny. And in each of these cases, America was guided by the law and the Constitution, not polls or focus groups.

You know, as children all of us believed certain things with all of our hearts. We knew there was a difference between good and evil. We knew it was wrong to lie, and, equally important, that if we got caught, we would be punished. We knew that honesty and fairness were as much a part of why we respected our parents, pastors and teachers as we assuredly knew they were part of why we pledged allegiance to our flag.

What happened to these simple things that we all knew in our hearts just a few short years ago? Why do so many adults now find it so hard to call a lie a lie, when as parents, teachers and employers we have no such hesitancy? Why do so many now resist the search for the truth and accountability when we do so day in and day out in our lives at home, in business, in school and in our religious institutions?

In short, in the short time I have served in Congress, I have learned that this place, this city, has an incredible power to complicate the simple. The staggering ability to muddle simple issues is perhaps best illustrated by the fact that much of the President's defense has hinged on defining common words in ways that shock most Americans who think they have a rather firm grasp on the meaning of words, such as "lie," "alone," "is," "perjury." But, of course, to the President's defenders, words, history and the records thereof are nothing more than leaves on a sidewalk in the fall, irrelevant items to be swept lightly away whenever one wants to walk from point A to point B.

Where does all this leave us? What do we have? Do we have, in Mark Halpern's words, only what we have? I say, no. We are not locked in a strange parallel universe in which up is down, is becomes was, and being alone is a physical impossibility. We are not living in an alien world. We are living in America. We are living in an America in which we know that felons are prosecuted and not allowed to remain in office. We live in an America in which rights prevail, wrongs must be righted, and indeed we have to stand up today, tomorrow and forever for the rule of law, the Constitution and accountability.

Vote articles of impeachment, which are the one tool given to us by our Founding Fathers to do precisely that, in precisely these circumstances with precisely this President.

Thank you, Mr. Chairman.

[The information follows:]

**Remarks by U.S. Representative Bob Barr (GA-7)  
House Judiciary Committee Debate on Articles of Impeachment  
December 11, 1998**

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It is morning in America; literally . . . and figuratively. Children all across this land are sitting down to their classes, after having been led in the Pledge of Allegiance to our flag by dedicated teachers in classrooms large and small. Adorning the walls of those classrooms are pictures of great American heroes, like George Washington.

George Washington. Why George Washington?

When asked to name the single most important gift America had given the world, Daniel Webster replied, "the integrity of George Washington."

The integrity of George Washington.

How many of us wondered, as a child, holding a shiny new quarter in our hand, why the profile of George Washington adorns more coin and paper money than any other national figure. Integrity.

However, as we stand today on the threshold of a new millennium, dazed by scandal and riddled with doubt, we are forced to confront the reality that, in the words of Mark Helprin, writing in the July 2nd 1998 *Wall Street Journal*, in an essay lamenting the decline of statesmanship, "we have only what we have."

When I look out at this audience, I see America. I see Americans young and old, black and white, probably natural-born and naturalized, and just as probably rich and poor. I see citizens, and likely hopeful citizens, all drawn to America by something that makes generation after generation of boys and girls *want* to grow up in America; something that makes citizens of other lands yearn desperately to come to our shores and become our fellow citizens.

What is it that sets us apart; that draws people to America and keep them here?

Anyone who lives in another country, and visits America, quickly learns there is indeed something extraordinarily special about this place; this land; this country. As American citizens, we feel a glow of pride whenever we return home after traveling abroad.

While there are many things that make our nation unique, in the final analysis,

everything that is special and unique about our country is built on -- and protected by -- one foundational principle: *The rule of law*.

Unfortunately, like many of the phrases in our national debate, the phrase "rule of law" has been so oft repeated we risk losing our grasp on exactly what we mean when we say it. What, then, do we mean when we talk about *the rule of law*?

The rule of law finds its highest and best embodiment in the absolute, unshakeable right each of us has to walk into a courtroom and demand the righting of a wrong. It doesn't matter what color your skin is, what God you pray to, how large your bank account is, or what office you may hold. If you are an American citizen, no one can stand between you and your access to justice. President John F. Kennedy put it this way:

"Americans are free to disagree with the law but not to disobey it. For a government of laws and not of men, no man, however prominent and powerful, and no mob, however, unruly or boisterous, is entitled to defy a court of law. If this country should ever reach the point where any man or group of men, by force or threat of force, could long defy the commands of our courts and our Constitution, then no law would stand free from doubt, no judge would be sure of his writ and no citizen would be safe from his neighbors."

*This* is the fundamental American right President Clinton tried to deny a fellow citizen: one Paula Jones. It could just as easily have been anyone here in this room today, in the audience or on the Committee. It could have been your husband, wife, child, or neighbor. It just happened to be Paula Jones.

Whether one agrees with Paula Jones's case or not, is irrelevant. What is *very* relevant is that, when she tried to exercise her indisputable right to take her case to court -- a right the Supreme Court voted 9 to 0 to allow her to exercise -- the highest official in our nation tried to take that right away from her. The same public official who, as a governor, had tapped her on the shoulder and had her escorted, under the watchful eye of police troopers, to a hotel room and crassly demanded personal services of her. Later, when Paula Jones tried to walk into a courtroom, that governor, now the President of the United States, slammed the door in her face. And it very nearly remained locked shut.

In a society based on equal justice under law, such an egregious wrong cannot be ignored. We in the Congress, on *this* Committee, absolutely cannot ignore it.

Even more troubling is evidence that this Administration has used its power to do

exactly the same thing to other critics. Need we remind America of the 900-plus FBI files brazenly, and illegally, misused by the White House? And, in the case of Linda Tripp, a top Pentagon official goes yet unpunished for violating her rights under the Privacy Act in an effort to smear her. As Chief Investigative Counsel Schippers and Representative Graham have pointed out, media accounts indicate the White House was directing the same machinery against Monica Lewinsky before they were confronted by irrefutable physical evidence of the veracity of her story.

Anyone not possessing an infinite capacity for self-delusion knows -- whether they're willing to say it or not -- that the President perjured himself on multiple occasions, and committed other acts of obstruction of justice. It is also glaringly evident he enlisted others, from cabinet officials to political operatives, in this endeavor, and that it continued into this very room.

While reverence for parallels with the Nixon impeachment is seductive but inappropriate, there are points worth noting. In the Nixon case, for example, lying to Congress and to the American people in just such a manner provoked a separate article of impeachment.

Is the danger of such an attack on our constitutional processes any less dangerous today?

Sadly, I believe the case we are discussing today is but a small manifestation of William Jefferson Clinton's utter and complete disregard for the rule of law. Throughout his presidency, his administration has been so successful at thwarting investigations and obstructing the work of Congress and the courts, that it may be decades before history reveals the vastness of his abuse of power; or the extent of the damage it has wrought.

Whether the conduct in question is soliciting money from foreign sources, engaging in a scheme to violate campaign spending limits, smearing political enemies, or abusing the federal law enforcement apparatus, the underlying principles they portray are the same:

The law is irrelevant. The Constitution is of little moment. Basic standards of decency are of no concern. We are above the law.

President Clinton subscribes to the same theory Richard Nixon articulated in a 1977 interview with David Frost. Nixon said, "When the President does it, that means it is not illegal." That was dead wrong then, and it is dead wrong today . . . wrong, that is, unless one subscribes to the principle that the President is not only above the law, but that he *is* the law.

With his conduct and his arrogance, William Jefferson Clinton has thrown a gauntlet at the feet of the Congress of the United States of America. Today, it lies at the base of this dais. It remains to be seen whether we will pick it up.

Throughout our history, there have been times when the principle of equal justice under law was widely questioned, even in this century. It happened when some Americans tried to deny other Americans access to justice based on their skin color. It happened when Japanese-Americans were imprisoned in barbed-wire stockades based on misguided fears. It happened in Watergate when a President abused his power in an effort to thwart political enemies.

At each of these critical junctures, great Americans rose to the occasion. Their words filled courtrooms, newspapers, and congressional hearing rooms like the one we sit in today. Sometimes, justice was delayed, and it took time to right wrongs. However, in each of these instances, good finally prevailed over evil: the rule of law survived; and we pulled back from the slippery political slope that ends in tyranny. And, in each of these cases, America was guided by the law and the Constitution, not by polls or focus groups.

As children, all of us believed certain things with all our hearts. We knew there was a difference between good . . . and evil. We knew it was wrong to lie. And, equally important, that if we were caught, we would be punished. We *knew* that honesty and fairness were as much a part of why we respected our parents, pastors and teachers, as we assuredly knew they were a part of why we pledged allegiance to our flag.

What happened to these simple things we all knew in our hearts just a few short years ago? Why do so many adults now find it so hard to call a lie a lie, when as parents, teachers and employers, we have no such hesitancy? Why do so many now resist the search for the truth and accountability?

In the short time I've served in Congress, I've learned that this place, this city, has an incredible power to complicate the simple.

This staggering ability to muddle simple issues is perhaps best illustrated by the fact that much of the President's defense has hinged on defining common words in ways that shock most Americans, who think they have a rather firm grasp on the meaning of words such as *lie, alone, is, perjury* . . .

But, of course, to the President's defenders, words, history, and the records thereof are nothing more than leaves on a sidewalk in the fall; irrelevant items to be swept blithely

out of the way whenever one wants to walk from point A to point B.

Those of us who are privileged to sit on this Committee have witnessed a seemingly endless stream of professional *complicators*, at work even inside these four walls. A veritable army of lawyers and scholars paraded in and out of this room, stopping only long enough to pompously lecture us on how our actions will be judged by history. They've delivered interpretations of the Constitution, history, the facts, and of the law that are so tortured as to make one wince.

However, there are two things that no witness appearing before our committee has succeeded in doing.

First, not a single witness has disputed the evidence submitted by Judge Starr. We've heard differing *views* of the evidence, but no real rebuttal. This evidence -- as outlined by the Articles of Impeachment we will now consider -- proves conclusively the President perjured himself, obstructed justice, tampered with witnesses and evidence, and abused power.

Secondly, no witness has been able to rewrite our Constitution. The impeachment clause remains at once steadfast and elastic in its applicability: up to each Congress according to the evidence detailing each abuse of power in each era, to interpret. This is precisely as our Founding Fathers designed it, because they did not know how future Presidents might abuse their offices. These Founding Fathers were great and insightful men: they knew that there would certainly be instances of abuse, and they gave us a process through which we could and must rid out system of that abuse.

And, despite their best efforts, despite repeated slight of hand, no professor or lawyer has been able to create authority that does not exist in our Constitution. Search as they might -- and they searched mightily -- none has found alternatives to impeachment. Censure, rebuke, and other novel "punishments" are all extra-constitutional, probably unconstitutional, and definitely meaningless. Discussions of these "punishments" may make for interesting -- perhaps fascinating -- conversation, joined in quite eagerly by the President himself, for he knows better than his defenders, that none would have any meaning in fact or in history.

It is equally pointless to argue that the President should not be impeached because he would be subject to criminal prosecution once he leaves office. It is a virtual certainty no prosecutor would prosecute a President that Congress had failed to impeach. Furthermore, given the President's conduct throughout this process, we cannot preclude the possibility he would be shameless enough to pardon himself before leaving office.

Where does all this leave us? What *do* we have? Do “we have only what we have.” as Mark Helprin lamented? Are we locked into a strange, parallel universe in which *up* is down, *is* becomes *was*, and *being alone* is a physical impossibility. Are we indeed living in an alien world in which laws and documents have no meaning? A society in which our willingness to uphold constitutional standards of accountability is strangely paralyzed?

We know for one thing, however, that a prosecutable felon sits in the White House as we meet today. However, thankfully we know, too, that today, as children all over this great land stand and pledge allegiance to the same flag beneath which we sit, our Constitution is still alive; perhaps not alive and *well*, but alive. We have within us the power to rescue it. To breath new life back into it. We also know in our hearts that, whether we support or oppose the President on policy issues, we cannot allow this situation that we today consider, to stand. The only way to provide future generations with a precedent that will protect them from Presidents who would abuse their power, is to preserve the doctrine that a President cannot commit felonies that would land an average American in prison and expect to remain in office.

As Jerome Zefman, chief counsel of the House Judiciary Committee at the time of the Nixon impeachment inquiry a quarter century ago, has said, perjury *is* impeachable, and perjury *has* occurred. He fought for principle then, as we must now. For his sake; for the Constitution’s sake; for our children’s sake; and for the sake of every citizen of other lands who yearns for American citizenship, let us stand up, strongly and proudly, and tell the world that, at least today, in at least *this* House of Representatives, there are Americans who do indeed believe in the Law, Accountability, and our Constitution. Vote Articles of Impeachment.

Chairman HYDE. The gentleman's time has expired.

The gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Mr. Chairman, Ranking Member Conyers, first let me thank you for your service to this committee.

Fellow colleagues on both the Democratic and Republican side of the aisle, I am here today at this point in history, not to further the political divide, not with a liberal label, a Democratic label, Republican label or conservative label, because that battle has been fought these last few weeks, and no one has emerged the winner.

I come here not angry at my Republican colleagues, but with a heavy heart. I come bearing feelings of somberness and sadness. I am sad not only because the House is considering articles of impeachment for the President of the United States, but because I recognize that we are doing it without clear and convincing evidence. Nor are we using the standard outlined by our framers of the Constitution: The President shall be removed from office on impeachment for conviction of treason, bribery or other high crimes and misdemeanors.

Ironically, this is a sad moment, yet a historical one. It is sad because Congress has exercised its discretion to draft articles of impeachment which is almost equal to, if not greater than, the power to declare war. In 1691, Solicitor General Sommers told the British Parliament that the power of impeachment ought to be like Goliath's sword, kept in the temple and not used but on great occasions.

Where do we go from here? Yes, the President did mislead the American people, and he alone must respond to them. However, have the accusations of perjury against the President been proven to warrant impeachment? No.

Have the accusations of obstruction of justice against the President been proven to warrant impeachment? No.

Have the accusations of abuse of power against the President been proven to warrant impeachment? No.

By the response to the above questions, it is obvious that these articles of impeachment are not warranted. Nor are they demanded based on what this committee has before it. Impeachment is final and nonappealable.

At the very outset, however, let me apologize to the Nation for being a party to a proceeding which has allowed an investigation to absorb the time and energies of this Congress. I know my fellow Americans across the Nation hope that we will be able to quickly get on with the people's business.

Our challenge today is not to damage the Constitution, not to distort its clear meaning when it states in Article II, Section 4 that the President of the United States should be impeached only on grounds of treason, bribery and other high crimes and misdemeanors.

The private acts of William Jefferson Clinton, no matter how reprehensible, do not, do not, constitute the intent of the framers by the above language, which suggests acts to undermine or subvert the government.

What we have here are not proven facts, established like a court of law, by the give and take of questioning witnesses to what hap-

pens, through a legally constituted jury that has handed down a guilty verdict. All we have are allegations, brought to the Judiciary Committee by what appears to be a determined Independent Counsel.

In perjury, the declarant must willfully offer testimony that the declarant believes is false before an individual can be convicted of perjury. No evidence presented by the majority has ever proven that the President believed that he gave false testimony. In fact, the credibility of a major witness relied upon by the majority was never tested in our committee.

Mr. Schippers, the chief investigative counsel for the House Judiciary Committee, said "Ms. Lewinsky's credibility may be subject to some skepticism." "At an appropriate stage of the proceedings, that credibility will of necessity be assessed with the credibility of all witnesses in light of all the other evidence." That never happened.

Mr. Schippers further charges the President with abuse of power. In committee I raised the following question to Mr. Ruff, the President's lawyer: Abuse of power requires the use of power. Did President Clinton in any way ask any of the members of his Cabinet to use the powers of their office to help cover up his affair with Monica Lewinsky?

His answer, in part, was, "no, Congresswoman."

The American people have heard the charges of perjury, obstruction of justice, and they certainly know when a President has abused his power, caused his Cabinet officers to use the powers of their office in a conspiracy to cover up anything. This did not occur.

How can we even begin to consider the statements of the President to his own wife to shield an inappropriate relationship that he had been having as an abuse of power? That is what the Independent Counsel would have you believe. It is preposterous, and it shortchanges the intelligence and perceptiveness of the American people.

Now let me briefly note the process in which we have engaged in since the referral was sent to this committee in September 1998. There have been, including today, under 10 hearings by this committee that would decide the fate of this Nation. There have been no fact witnesses brought by the Majority, who, under our well-understood system of justice, bear the heavy burden of proving that an impeachable offense has indeed been committed, and we have seen Mr. Starr, holding the same role as Leon Jaworski in 1974, remove his hat of objectivity and move from impartially referring the facts to being an advocate for the President's impeachment. Even worse, we have literally seen the prosecutor in this matter step away from his position as an officer of the court and step into the role of the witness in chief against the President of the United States, and this occurred to the horror of Mr. Starr's own ethics advisor, Sam Dash, who resigned because of it. This perverts the role of the Office of the Independent Counsel and violates the rules of professional conduct that all lawyers and judges must abide by.

Mr. Jaworski was so concerned about subpoenaed material from the House Judiciary Committee in 1974, that he was willing to contest it. Now, however, where do we go from here?

In Dr. Martin Luther King's book, *Where Do We Go From Here*, he talked about the limited gains that we have attained in civil

rights. He said, however, conscience burned dimly. Justice of the deepest level had but few stalwart champions.

We must find in this room today more stalwarts for justice, more champions for justice, those with courage to do the right thing, in fact, an uncommon courage. Somewhat similar to Daniel Webster, who I raise today, in his March 7th, 1850, speech when, in an attempt to hold this floundering Union together, he said, Mr. President, I wish to speak today not as a Massachusetts man, not as a northern man, but as an American and a Member of the Senate of the United States. I speak today for the preservation of the Union. Hear me for my cause.

He was more concerned with avoiding the secession of the States. He wanted to maintain the liberty and the safety of the Union. When he finished, there was no applause, but Daniel Webster did succeed, but he succeeded in the light of great vilification. "I know of no deed in American history done by a son of New England to which I can compare this but the act of Benedict Arnold." "Webster," said Horace Mann, "is a fallen star! Lucifer descending from heaven." But Daniel Webster maintained his support for the Union.

So today I will join any colleagues in offering a censure resolution to bring the Nation together, to heal the political schism, sharp as it appears, rebuke, reprimand, condemn, censure the President. I believe censure is right, punitive and just, and we must have the courage to find that level of cooperation even in this committee.

Those who will argue for impeachment want the ultimate act, removal of the President from office, and under these articles, a lifetime ban of the President ever being in public service again, appointed, voluntary. However, constitutional scholars have said there are no grounds for determining that Mr. Clinton's behavior subverted the Constitution. The punishment should fit the crime.

Mr. Clinton has wounded his family and his country and admitted to an inappropriate relationship. Nevertheless, would deviance from traditionally moral, acceptable patterns of behavior be sufficient grounds for impeachment? A reading of the Constitution will suggest they had no such triviality in mind, but rather major offenses against the state.

What actions have posed a threat to the security of the Nation and its position in world politics? Need one answer?

I would not have anyone draw the conclusion that the behavior of the President should be condoned—his own counsel said it was maddening—or that I would recommend this as a model for our youth of America. God help our parents and our religious institutions to be their guide. On the contrary, I join with millions of other Americans in condemning the President's behavior. Yet, impeachment would not be grounded in the Constitution and has not been proven beyond a reasonable doubt.

Wayne Owens, who served on this committee in 1974, said if you vote to impeach a President because of an improper sexual affair and avoided full disclosure, you impeach on that narrow base of personal, not official, misconduct, you do damage to the Constitution and to the stability of future Presidents. To those men and women, House Members who are now searching their souls, with

censure you stamp this President's legacy forever, but you maintain the stability of the institution of the Presidency.

In the gathering storm, Winston Churchill recommended special kinds of behavior under special conditions: In war, resolution; and in peace, goodwill. Because we are men and women of goodwill, always wanting the best for our Nation, when the dust of rhetoric and stage performance has settled, we should be able to sit down and reason together, for together we possess the qualities of men and women called by Jay Holland: God give us men and women a time like this demands, strong minds, great hearts, true faith; tall men and women who live above the fog in public duty and private thinking.

Mr. Chairman, we are morally bound to make our disapproval known, but we can best do it through censure, an act which would help us maintain constitutional integrity and to ensure that Lincoln's dream of the future will remain a constant reality; that we will continue to live in a Nation where there is government of the people, by the people, and for the people.

So today, Mr. Chairman, I vote no on the articles of impeachment and yes on censure to heal this Nation.

I yield back.

Chairman HYDE. The gentlelady's time has expired.

The gentleman from Tennessee, Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman.

We are about to conclude an undertaking which this committee did not invite, a solemn responsibility that was thrust upon us after 430 Members of the House of Representatives voted for an inquiry of one magnitude or other. We are here to consider the conduct of a President of the United States.

The committee did not initiate or encourage the conduct that brought us here. The Congress did not initiate or encourage the conduct that brought us here. The conduct was the conduct solely of the accused.

Initially, it was a private matter that was met with reactions ranging from forgiveness to condemnation. Later, it gravitated to giving false testimony under oath in depositions and before a grand jury. We have heard sworn factual deposition testimony and sworn testimony from witnesses with a wide range of opinions.

Most of the witnesses were very capable and well prepared. One witness recounted her own false testimony about a strikingly familiar personal relationship that led to her conviction for obstruction of justice. One witness appeared intent on dictating, even threatening, rather than informing, the committee, declaring in advance the historical condemnation of the committee and the entire Congress.

Defense lawyers have constantly attacked the special counsel and his investigators. They have attacked the committee in their review of the referral of the special counsel. They have attacked the committee in accomplishing the task assigned to the committee by the full House of Representatives in House Resolution 581. It was not until the last day of the hearing, and then for a very few minutes, that defense counsel provided any factual evidence that the accused did not engage in the conduct charged or that the conduct did not constitute perjury, obstruction of justice or abuse of power.

Wide-ranging testimony has been given to this committee about the burden of proof required to send this matter to the full House of Representatives. In my mind, the evidence is sufficient to vote some articles to the House of Representatives. Also, to fail to do so would deny the citizens across the United States, through their elected representatives, their voice and their vote on this divisive issue.

From all of this, the committee must decide if the President committed perjury, obstructed justice or abused the power of his office, and if these constitute grounds for impeachment.

Throughout this proceeding, many expressions of concern have been voiced about the Presidency itself. I share these concerns and have for decades. Since 1960, one President has been tragically assassinated. One President was driven out of office and did not seek reelection. One President was caused to resign. Three good Presidents were voted out of office after one full or a partial term of office. Only one President thus far, in almost four decades, has served two full terms in office.

The Presidency, I think, is under attack, but amid this concern, there has been little mention that Presidents themselves can strengthen the Presidency by conducting themselves in a manner that brings pride and admiration and confidence to the minds of all of our citizens.

We will soon know the conclusion of this committee's work. After it ends, whatever the outcome, I hope we will have a renewed and increased spirit of cooperation, to strengthen Social Security, to make our health care system more compatible to and considerate of patients and their physicians, to ensure that we have a strong national defense, to ensure that our children receive a good education.

After all, we started this great Republic with a goal set out in the Preamble of the Constitution, to form a more perfect Union, to establish justice, to ensure domestic tranquility, to provide for the common defense, to promote the general welfare and to secure the blessings of liberty for ourselves and our posterity.

If there is a vote to impeach, it will not be the end of our Republic. Although our system is indeed fragile, it has survived impeachment; it has survived two world wars and numerous other conflicts, the Great Depression and a very bitter Civil War.

The country survived these things partly because we believed that we all, and the least among us, are entitled to a measure of dignity and to be dealt with fairly and to not be overwhelmed by the most powerful among us. In order to continue that belief, those who have the mantle of leadership, who have power and privileges beyond the knowledge of the average citizen, and beyond the belief of some who have knowledge, must be expected to meet basic responsibilities. One of those responsibilities is to tell the truth under oath, as every citizen is required to do. If these responsibilities are not met, the average, ordinary American is overwhelmed. Our survival will indeed be in question. For those vested with great power and privileges, it seems to me that the simple code for them to follow is this: To whom much is given, much is expected in return.

Thank you, Mr. Chairman. And I yield back the balance of my time.

Chairman HYDE. Thank you, Mr. Jenkins.

Chairman HYDE. Mr. Wexler, the gentleman from Florida.

Mr. WEXLER. Thank you, Mr. Chairman.

I would first like to commend our colleague from Massachusetts, Mr. Frank, with respect to his opening remarks yesterday in which he described the powerful ramifications of being censured or reprimanded by this House. His comments, I believe, were courageous, and I hope illuminating.

Mr. Chairman, this has been the scariest week of my life. I listened to Mr. Ruff, counsel to the President, and Mr. Lowell, counsel for the minority, each present a fact-by-fact rebuttal of the case against the President.

I read the 184-page report by the President's lawyers that established the President did not commit grand jury perjury; did not obstruct justice; did not tamper with witnesses; and certainly the President did not abuse his office. But the Republicans on this committee did not listen. In fact, they drafted their articles of impeachment even before Mr. Ruff concluded the President's defense. This process has been a sham from the beginning.

Wake up, America. They are about to impeach our President. They are about to reverse two national elections. They are about to discard your votes. They are about to exercise a congressional power that has been used only twice before in our Nation's history.

Before the Starr Report was delivered to Congress, the Republicans said they would not even try to impeach the President over just the Monica Lewinsky affair. They promised grand White House conspiracies of misused FBI files, Whitewater land deals and Travel Office abuses. They promised patterns of lawbreaking. They found nothing.

They said they would not impeach without public outrage, but much to their dismay, the minds of the American people have not changed. The overwhelming number of Americans do not want this President impeached based on this flimsy case.

Well, wake up, America. This elitist group has decided that they know better than you. This committee will vote straight down party lines to impeach and remove the President of the United States of America.

The articles of impeachment actually say William Jefferson Clinton warrants impeachment and trial and removal from office. And what is it all about? Sex. They use criminal terms like "perjury," but guess what the perjury is really about. The alleged perjury is about the discrepancy between the President's and Miss Lewinsky's testimony about the details of their relationship. You see, at the grand jury the President admitted he had inappropriate intimate contact with Monica Lewinsky of a physical nature. He acknowledged that it was wrong. But the President didn't specifically admit the details of his encounters with Ms. Lewinsky, like who touched whom and where. And the President denied having sexual relations with Ms. Lewinsky under the distorted definition put forth by the Paula Jones attorneys, a definition that even the presiding judge, Judge Wright, said was confusing.

Imagine that the impeachment of the President of the United States hinges on a tortured definition of sex. That's what the per-

jury in the grand jury is all about, folks. But they are going to impeach the President anyway.

The Republicans on this committee say the President tampered with witnesses. Well, you better wake up, America. You could be tampering with a witness and not even know it, because according to the Majority on this committee, you can be guilty of witness tampering a person who is not a witness in any case. The facts clearly show that Betty Currie was not listed as a witness or a potential witness at the time of the alleged tampering, but they are going to impeach the President anyway.

They claim the President has obstructed justice, but let's look at the facts underlying these damning charges. Their star witness, Monica Lewinsky, testified under oath that nobody, nobody, asked her to lie, and nobody offered her a job for her silence. But they are going to impeach the President anyway.

They claim the President abused his power. How? By asserting his constitutional rights and privileges pursuant to the advice of his lawyers. Well, wake up, America, because if they can do it to the President, they can do it to you. If this committee supports an article of impeachment for abuse of power, they will be saying that any American who goes into court and claims their constitutional protections is at risk. How un-American. But they are going to impeach him anyway and extend our national nightmare for another year, by sending this weightless case to the Senate for trial.

So wake up, America. Our government is about to shut down. The public's business will grind to a halt. The Senate, the Supreme Court, and the House of Representatives will all be hostage to a process that never should have been triggered in the first place. If you are sick of all-Monica-all-the-time, you ain't seen nothing yet. Be prepared to turn on your TV and watch the Chief Justice of the Supreme Court swear in Lucianne Goldberg, Linda Tripp, endless testimony in front of the whole world, showcasing America at its most absurd.

When we started these proceedings, I expressed my fear that this impeachment, if successful, would forever lower the standard for impeachment for future Presidents. In my worst nightmare, I did not foresee this. There is no standard left. They have trashed it. They have trivialized the Founding Fathers' standard of treason, bribery or other high crimes or misdemeanors. They have made a mockery of this process. Clearly, there is no case for impeachment.

The truth is, Mr. Chairman, if the question before this committee were about the morality of the President's actions, there would be no debate. The President's conduct was wrong. He did lie to the American people. In fact, for those of us who believe in this President, who are committed to his policies, who are motivated by his centrist philosophy, who are moved by his compassion for people, the President's relationship with Monica Lewinsky was more than wrong. It was heartbreaking. How could he have been so foolish? How could he have done such a reckless thing?

There are no good answers to these questions, but I believe in my heart that morality is a complex equation; that good people sometimes do bad things; that moral people sometimes commit immoral acts. And when I look at the totality of this case, I am left

with one undeniable conclusion: The President betrayed his wife. He did not betray his country.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you, sir. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

For over 25 years Bill Clinton has been a State and national star. President Clinton carried my State of Arkansas in the last election, he ran for the seat of Congress that I now hold, and has served my State as Attorney General and Governor. During this hearing, his negatives have been emphasized, but I am mindful that there are many qualities of Bill Clinton that I admire, and, of even greater significance, that people of my State admire. When he was elected President, it was a unique opportunity for a small State, not likely to be repeated.

There is no question but that all of this impacts him and his family and when he expresses regret for his actions and requests forgiveness for his conduct, I have no hesitation in saying he should receive our compassion and encouragement. For those reasons, among others, this is not a pleasant experience for me.

What I have discussed are personal issues of profound significance, but my responsibilities require me to consider the legal and constitutional consequences to the conduct in question. We on the committee are not jurors, but I am reminded of the instruction a judge gives to juries: "You are not to be guided by your sympathies or prejudice, but by the facts and the law." In my judgment, that describes the duty of this committee. So let us look at the facts.

The evidence has been established through sworn testimony under oath, corroborated in many instances by documentary evidence from computer disks to telephone records. The sworn testimony includes that of Bill Clinton, Monica Lewinsky, Betty Currie, Vernon Jordan and others. The testimony establishes a pattern of false statements, deceit and obstruction. By committing these actions, the President moved beyond the private arena of protecting embarrassing personal conduct. His actions invaded the very heart and soul of that which makes this Nation unique in the world, the right of any citizen to pursue justice equally. The conduct obstructed our judicial system and at that point became an issue not of personal concern, but of national consequence.

The clarion call for justice in this land was established in the Preamble to our Constitution, which states, "We the people of the United States, in order to form a more perfect Union," and then it says, "to establish justice . . . do ordain and establish this Constitution for the United States of America."

The second purpose stated for ordaining the Constitution was to establish justice. It is not for the President or his lawyers to determine who can or cannot seek justice. And if the President lied under oath in a Federal civil rights case, then he took it upon himself to deny the right of a fellow American, in this case a fellow Arkansan, equal access to relief in the courts. The President's lawyers have declared such a lie to be a small one, of small consequence, and therefore not impeachable, but I cannot see how denying the rights of a fellow citizen could be considered of small consequence.

Now, speaking of the facts, it has been pointed out that the grand jury testimony of the various witnesses has not been subject to cross-examination. That is true. However, each of these witnesses are strongly sympathetic to the President. Vernon Jordan, his personal advisor and longtime friend; Betty Currie, his employee; and Monica Lewinsky, who resisted for months providing any statement to the Independent Counsel, and who would be subject to prosecution for any false statement.

Of greatest significance, though, is the testimony of the President himself. The President's own words and admissions, combined with a dose of common sense, support the charge that the President lied under oath. The evidence not only shows the President giving perjurious statements, but he continues his assault on the judicial system by soliciting and encouraging false statements by others. This is evidence of an effort to obstruct justice.

This leads me to the second argument raised by the President's lawyers. Even if the President lied under oath, even if he obstructed justice under these facts, that does not constitute an impeachable offense.

Let me address that argument. Alexander Hamilton in the Federalist Papers said that impeachment must relate chiefly to injuries done immediately to society itself. Justice Story said impeachment should be reserved for great injuries to the state.

I believe that damage to the state and to the integrity of government occurs when those in high office violate a court oath and the constitutional oath to ensure the faithful execution of the laws.

One of the President's own witnesses, former Congressman Wayne Owens, stated in 1974 that for an action to be impeachable conduct, "it must be a violation of a principle of conduct which Members of the House determine should be applied to all future Presidents and established as a constitutional precedent."

I believe Mr. Owens is correct. I have no trouble in setting a benchmark that future Presidents cannot willfully and repeatedly lie under oath in an official judicial proceeding without jeopardizing their office. On the contrary, I have a great deal of trouble in lowering the standards to say to future Presidents, lying under oath, no matter how often and no matter how intentional, is considered acceptable conduct.

As the Supreme Court said in *United States v. Holland*, "Perjury, regardless of the setting, is a serious offense that results in incalculable harm to the function of the legal system, as well as to private individuals."

In my judgment, perjury goes to the heart of our judicial process and our very system of government and constitutes a high crime and misdemeanor.

What happens if we fail to act? It appears to me that we quietly embrace and even aid in the gradual subversion of our core belief that we are a Nation of laws, and that all of us, regardless of wealth or power, deserve equal treatment in the eyes of the law.

The next defense that is presented on behalf of the President is that Independent Counsel Kenneth Starr did not conduct the investigation properly, and therefore we should not move forward. There have been many criticisms of Judge Starr, some justified and some without merit. In hindsight, I would have preferred that the Attor-

ney General had appointed a different Independent Counsel on the Lewinsky matter; that Judge Starr had been more actively involved in interviewing the witnesses; that he had not engaged in outside representation, and that he had been less of an advocate and more of a conduit of the facts. But let me assure everyone that I have engaged in an independent review of the facts, and despite these criticisms, the President had a decision to make when he testified in the civil deposition and in the grand jury. He could tell the truth, or he could lie.

The Supreme Court has said, in *United States v. Mandujano*, that the defendant was free at every stage to interpose his constitutional privilege against self-incrimination, but perjury was not a permissible option. The Court rejected the defendant's argument that his testimony, because it was obtained in violation of his rights, could not be used in the criminal prosecution. The conclusion is that allegations of misconduct on the part of the government are not an excuse for perjury.

It is reminiscent of every criminal case that I have prosecuted to hear the President's lawyers attack the prosecutor, blame this committee, criticize the process and refuse to take responsibility. I concede his lawyers this tactic, but I have also urged him to show me compelling facts rebutting the long trail of evidence suggesting that the President lied under oath and obstructed justice. This they have not done to my satisfaction.

The final argument of the President is that to go forward with an impeachment trial would traumatize the country. First, as usual, I believe that the trauma is overstated; but more importantly, the strength of the Constitution is understated. I believe our Constitution is strong, and we need to follow it and trust it. It will work as the Founding Fathers designed it. As Barbara Jordan stated at a similar time in 1974, "My faith in the Constitution is whole, it is complete, it is total." I share that belief.

In the next few days I will cast some of the most important votes of my career. Some believe these votes could result in a backlash and have serious political repercussions. They may be right, but I will leave the analysis to others. My preeminent concern is that the Constitution be followed and that all Americans, regardless of their position in society, receive equal and unbiased treatment in our courts of law.

The fate of no President, no political party and no Member of Congress merits a slow unraveling of the fabric of our constitutional structure. As John Adams said, "We are a Nation of laws, not of men."

Our Nation has survived the failings of its leaders before, but it cannot survive exceptions to the rule of law in our system of equal justice for all. There will always be differences between the powerful and the powerless, but imagine a country where Congress agrees the strong are treated differently than the weak, where mercy is the only refuge for the powerless, where the power of our positions governs all of our decisions. Such a country cannot long endure.

God help us to do what is right, not just for today, but for the future of this Nation and for those generations that must succeed us. Thank you.

Chairman HYDE. I thank the gentleman.  
[The statement of Mr. Hutchinson follows:]

Asa Hutchinson

December 11, 1998 (9:24 AM)

Judiciary Committee Remarks

For over 25 years Bill Clinton has been a state and national star. President Clinton carried my state of Arkansas in the last election. He ran for the seat in Congress that I now hold and has served my state as attorney general and governor. During this hearing, his negatives have been emphasized but I am mindful that there are many qualities of Bill Clinton that I admire and, of even greater significance, that the people of my state admire. When he was elected president, it was a unique opportunity for a small state -- not likely to be repeated.

I know this impacts him and his family, and that is a concern, and when he expresses regret for his actions and requests forgiveness for his conduct, I have no hesitation in saying he should receive our compassion and encouragement.

For those reasons, among others, this is not a pleasant experience for me.

In this case, as in every legal case, there are personal issues of profound significance, but my responsibilities require me to consider the legal and constitutional consequences to the conduct in question. We, on the Committee, are not jurors, but I am reminded of the instruction a judge gives to a jury, "You are not to be guided by your sympathies or prejudice, but by the facts and the law." In my judgment, that describes the duty of this committee.

So, let us look at the facts.

The evidence has been established through sworn testimony under oath, corroborated in many instances by documentary evidence from computer disks to telephone records. The sworn testimony includes that of Bill Clinton, Monica Lewinsky, Betty Currie, Vernon Jordan and others. The testimony establishes a pattern of false statements, deceit and obstruction. By committing these actions, the President moved beyond the private arena of protecting embarrassing personal conduct. His actions to conceal, mislead and falsify -- while under oath -- invaded the very heart and soul of that which makes this nation unique in the world -- *the right of any citizen to pursue justice equally.*

The conduct obstructed our judicial system and at that point became an issue -- not of personal concern but of national consequence. The clarion call for justice in this land was established in the Preamble to our Constitution, which states: "We the people of the United States in order to form a more perfect union," and then it says and to "establish justice . . . do ordain and establish this Constitution for the United States of America." The second purpose stated for ordaining the Constitution was to establish justice. It is not for the President or his lawyers to determine who can or cannot seek justice. And if the President lied under oath in a federal civil rights case, then he took it upon himself to deny the right of a fellow American, in this case *a fellow Arkansan*, equal access to seek relief in the courts.

The President's lawyers have declared such a lie to be a small one, of small consequence, and therefore not impeachable. But I cannot see how denying the rights of a fellow citizen could be considered of small consequence.

Now speaking of the facts, it has been pointed out that the Grand Jury testimony of the various witnesses has not been subject to cross-examination. That is true. However, each of these witnesses are strongly sympathetic to the President: Vernon Jordan, his personal advisor and longtime friend; Betty Currie, his employee; and Monica Lewinsky, who resisted for months providing any statement to the Independent Counsel. Of greatest significance is the testimony of the President himself. The President's own words and admissions combined with a *dose of common sense* support the charge that the President lied under oath.

The evidence not only shows the President giving perjurious statements, but he continues his assault on the Judicial system by soliciting and encouraging false statements by others. This is evidence of an effort to obstruct justice.

That leads me to the second argument raised by the President's lawyers: even if the President lied under oath, even if he obstructed justice under these facts, that does not constitute an impeachable offense. Let me address that argument:

Alexander Hamilton in the *65<sup>th</sup> Federalist Papers* said that impeachment must "relate chiefly to injuries done immediately to society itself."

Justice Story said impeachment should be reserved for "great injuries" to the state.

I believe the damage to the state and to the integrity of government occurs when those in high office violate a court oath and the Constitutional oath to assure the faithful execution of the laws. One of President Clinton's own witnesses, former Congressman Wayne Owens, stated in 1974, that for an action to be impeachable conduct, "it must be a violation of a principle of conduct which Members of the House determine should be applied to all future presidents and established as a *Constitutional precedent*."

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As the Supreme Court said in *The United States v Holland*, “perjury, regardless of the setting, is a serious offense that results in incalculable harm to the function of the legal system as well as to private individuals.” In my judgment perjury goes to the heart of our Judicial process and our very system of government and constitutes a high crime and misdemeanor.

If we fail to act, it appears to me that we quietly embrace and even abet the gradual subversion of our core belief that we are a nation of laws and that all of us — regardless of wealth or power — deserve equal treatment in the eyes of the law.

The next defense that is presented on behalf of the President is that Independent Counsel Kenneth Starr did not conduct the investigation properly and, therefore, we should not move forward. There have been many criticisms of Judge Starr -- some justified and some without merit. In hindsight, I would have preferred that the Attorney General had appointed a different Independent Counsel on the Lewinsky matter; that Judge Starr had been more actively involved in interviewing the witnesses; that he had not engaged in outside representation; and that he had been less of an advocate and more of a conduit of the facts. But let me assure everyone that I have engaged in an independent review of the facts and

despite these criticisms, the President had a decision to make when he testified in the civil deposition and in the grand jury — he could tell the truth or he could lie.

In the *United States v Mandujano*, the Supreme Court held that the defendant was “free at every stage to interpose his Constitutional privilege against self-incrimination, but perjury was not a permissible option.” The Court rejected the defendant’s contention that his testimony — because it was obtained in violation of his rights, could not be used in a criminal prosecution. Allegations of misconduct on the part of the prosecutor are no excuse for perjury.

It is reminiscent of every criminal case that I have prosecuted to hear the President's lawyers attack the prosecutor, blame this Committee, criticize the process and refuse to take responsibility. I concede his lawyers this tactic, but I have also urged them to show me compelling facts rebutting the long trail of evidence suggesting that the President lied under oath and obstructed justice. This they have not done to my satisfaction.

The final argument of the President is that to go forward with an impeachment trial would traumatize the country. First, as usual, I believe that the trauma is overstated and the strength of the Constitution is understated. I believe our Constitution is strong and will work as the Founding Fathers designed it. As Barbara Jordan stated in a similar time in 1974: “My faith in the Constitution is whole, it is complete, it is total.” I share that belief.

In the next few days I will cast some of the most important votes of my career — perhaps *the* most important.

Some believe these votes could result in a backlash and have serious political repercussions.

They may be right, but I will leave the analysis to others. My preeminent concern is that the Constitution be followed and that all Americans — regardless of their position in society — receive equal and unbiased treatment in our courts of law. The fate of no president, no political party and no member of Congress merits the slow unraveling of the fabric of our constitutional structure. As John Adams said, “We are a nation of laws, not of men.”

Our nation has survived the failings of its leaders before, but it *cannot* survive exceptions to the rule of law and our system of equal justice for all. There will always be differences between the powerful and the powerless. But imagine a country where Congress agrees the strong are treated differently than the weak. Where mercy is the only refuge for the powerless. Where the thickness of our wallets or the power of our positions govern all of our decisions.

Such a country cannot long endure.

God help us do what is right, not just for today  
but for the future of this nation and for those  
generations that must succeed us.

Chairman HYDE. The distinguished gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

As we move toward consideration of articles of impeachment of a President for only the second time in the past 130 years, I recognize the gravity of the matter before us. For the decision we make today is important not only now, but important for future Members of Congress and for our children and grandchildren as well.

The President's actions were wrong. It was wrong for him to make false statements concerning his reprehensible conduct with a subordinate, and it was wrong for him to take steps to delay discovery of the truth. But the constitutional question is not whether his actions were right or wrong. The question is whether his actions rise to the level of an impeachable offense, and if so, should we invoke this drastic constitutional remedy of impeachment, set aside the only national election in this country and remove him from office? And ultimately the question is what is best for the people of this country.

To answer these questions, we have to ask another question: Who committed these sins? Were these the sins of Bill Clinton, the President, or Bill Clinton, the man? To some, this is a distinction without a difference, but I believe the framers of our Constitution contemplated a distinction when they wrote of treason, bribery and other high crimes and misdemeanors. For if it was Bill Clinton, the President, if any wrongdoing he committed was committed against the body politic, if it undermined our representative form of government, then it would be necessary to remove him from office, not to punish him, but to ensure that our democratic form of government is safeguarded. But if the sin were committed by Bill Clinton, the man, sins nonetheless, the decision becomes more difficult.

As our predecessors on this committee recognized 24 years ago, impeachment is reserved for grave offenses against the state, those that threaten our system of government. Not all crimes are impeachable. One must examine the conduct in question to determine whether it is impeachable. Most offenses undermine one thing or another; that is why they are proscribed by the criminal law. Most people would agree that running a red light does not fall within the narrow category of offenses that are impeachable, but if everyone did it, countless people would die on unsafe streets. So the question isn't whether lying under oath or perjury undermine the system of justice in a general sense. The question is whether the specific conduct represents a grave offense against the state and is a threat to our system of government.

Assuming that the evidence before us, most of it hearsay, untested by cross-examination, did establish perjury and obstruction of justice, I would have to conclude that the matters the President allegedly lied about, the matters he allegedly obstructed justice about, are not, except in the most attenuated, abstract sense, a threat to our system of government. This case is not like Watergate, which involved the obvious and direct misuse of government power, and it is not a case of lying or obstruction on a matter of public concern. We cannot escape the fact that the President's misconduct related to his private life. It was not a great and dangerous

offense against the state. It does not threaten our Republic, and we need not remove him to protect our democracy.

I acknowledge that there are exceptions to the rule that high crimes and misdemeanors must relate to public conduct. If a President had committed murder, not an offense against our representative form of government, I would vote for impeachment. I believe I would be so offended by the immorality and the intrinsic wrongfulness of the act that our democratic system of government would have to be cleansed of the wrongdoing. The allegations against the President, although serious, do not rise to this level. So I must conclude that perjury, per se, does not constitute an impeachable offense as intended by our forefathers.

This is where I pause. I pause because the allegations against the President do raise questions about his character. I ask myself, if it were a Republican President in this predicament, what would I do? Would I maintain consistency and impose impeachment even if I both opposed his public policies and personal conduct? I pray that I would treat the two situations consistently, and I pray I never have to face that question.

To those who fear that a vote against impeachment would mean that it is okay to lie, it is okay to mislead and deceive, I submit that this President has not and will not escape punishment. He has suffered a public humiliation that few will ever know. And humiliation is not the end of his troubles. If we reject impeachment in the next few days, we can censure and condemn him for his conduct. There is no constitutional bar to censure. It is within our power. More importantly, it is the just and appropriate remedy for this misconduct. For a man undoubtedly concerned about his place in history, this is no small punishment. He would be only the second President of the United States ever censured.

What is more, we should not forget that President Clinton is subject to criminal prosecution after he completes his term of office. He is neither above the law nor below it. He can and should be treated like every other citizen who may have committed similar offenses.

Unfortunately, the President's conduct is not the only unsettling component to our present crisis. I am also deeply, deeply troubled by the events leading up to the President's deposition in the Jones case. There clearly was a channel of communication between Ken Starr's office and Paula Jones' attorneys through Linda Tripp, and I believe her motives and actions, in part personal and in part political, cannot be ignored here.

If we are to set aside our only national election, we must be confident that political enemies or political motives did not set the stage for this political morality play. For if they did, then there is a potentially greater danger here to our democracy than lying about sex. The grave act of setting aside a national election cannot be agitated by those forces that failed to prevail at the ballot box.

I stress again that my deep concern about the Linda Tripp connection in no way excuses Bill Clinton for his wrongdoing. That is why it is important that he remain subject to appropriate criminal and civil action after he leaves office. And that is why it is important that this institution impose a sanction appropriate to the President's actions. That is why I favor censure. A censure reflects the gravity of the President's wrongdoing.

I want to thank you, Mr. Chairman, for your decision to permit a vote on our censure resolution here in committee. I agree with you that it will foster comity. But I have another request, not just to you, but to all my colleagues on this committee. I have listened as many, if not most, Members on the Republican side of the aisle have asserted that this is a vote of conscience. And Mr. Schippers, in his closing argument, specifically noted the importance of voting one's conscience.

I respect each and every member of this committee who votes his or her conscience. On a matter as important as this, party identification should not be, must not be, the deciding factor. Conscience must be. So my request to you is a simple and straightforward one. Please let me vote my conscience, both here in committee and on the floor. Please allow our censure resolution to move to the Rules Committee, either on a positive or a negative vote.

I and many others in this Congress should not be denied the right to vote our conscience, the right that many here assert genuinely, I believe, as their rationale for supporting impeachment. To deny us that right would be the rawest of raw partisan politics. It would confirm the fear that party leaders and not conscience are dictating this committee's actions.

Not a single Member of this institution should fear a vote of conscience. Not a single Member of this Congress should be part of any plan to deny other Members of Congress the opportunity to vote their conscience on an issue of as grave constitutional import as this.

Mr. Chairman, as you know, I joined this committee the day it received the Starr Report. I am the most junior member. I honestly walked into the first hearing believing our proceeding would be nonpartisan. I don't know if I was more like Mr. Smith Goes to Washington or Gomer Pyle. I even thought that we might be sitting physically like grand jurors, individually, not divided by party, like gladiators fighting a partisan fight.

Well, I was wrong, and I think many members of this committee on both sides of the aisle are disappointed on how partisan this has been. I don't think any of us intended it to be this way. Perhaps I am as naive now as I was when I first joined the committee, but I don't think so. I call it optimism, because I believe my colleagues on this committee recognize that our vote of conscience may be different from their vote of conscience. And I believe that you know in your heart of hearts that it would be a partisan tactic to prevent us from voting our conscience.

Let's leave this room together, not as Democrats and Republicans, let us leave this room as Americans, hand in hand, and take the vote to the floor of the House of Representatives. Conscience will prevail. Conscience should prevail, and if that happens, justice will prevail.

I yield back the balance of my time.

Chairman HYDE. I thank the gentleman. Mr. Pease, the gentleman from Indiana.

Mr. PEASE. Thank you, Mr. Chairman.

The issues before this committee are of such nature and consequence that I, like so many others, have struggled to impose on myself a discipline of open-mindedness for as long as I possibly

could. That decision has had its consequences as I have found myself criticized from across the political spectrum for not declaring myself, nor advocating a conclusion, even as the committee was still receiving evidence and hearing argument.

I understand and accept those consequences as inevitable. Just as though I wish fervently this matter were not before us, wishing will not make it so.

My intention was to prepare these remarks personally, following the conclusion of the President's defense on Wednesday, assuming I would have several hours to collect my thoughts, and do the best I could to present them in a fashion that measures up to the importance of the moment.

Instead, I went to the Ford Building, reviewed again the evidence presented by Mr. Ruff in his thoughtful defense of the President, went to my office to review the notes I've made over the last few months, and went to God in prayer for guidance and strength. These thoughts, therefore, are collected in bits and pieces as time has availed itself in limited supply during the last day and a half, and now it is time for decisions. I believe I owe an explanation of the process by which I reached them.

It seemed to me that I must first decide the role which this committee assumes. Some have argued that we are akin to a grand jury and that we need simply to find probable cause of commission of high crimes and misdemeanors in order to approve articles of impeachment. Others contend that we must be convinced that the trier of fact, in this case the Senate, would convict on an article before it could be reported out.

Though there is a difference between this matter and the prosecution of a crime, I believe that there is a parallel between the decision to indict and the decision to impeach in this regard: While a prosecutor should not, in my view, bring a case unless he is convinced under the law and the facts that an unbiased jury would convict, the House and the committee in its role recommending to the House should not vote articles of impeachment unless it also believes that the Senate, looking only at the Constitution and the facts, would convict as well.

As to the standard of proof, there are those who argue that since this is not a criminal matter, the usual standard in civil cases—preponderance of the evidence—should obtain. Some believe that since there are parallels to criminal law or because the matter is of such national import, the criminal standard of beyond a reasonable doubt should be employed.

As I have already distinguished this from criminal prosecution, but because I believe that the standard must be higher than that normally the case in civil proceedings, I have determined to evaluate the allegations against the President by a standard of clear and convincing evidence.

Most difficult is the determination of what constitutes a high crime or misdemeanor. The Founders deliberately left out a definition, and though it would in some sense have made our work easier had they crafted one, I believe that their decision was right for the Nation.

Some contend that the action complained of must be and can only be an offense against the state, one that constitutes a direct

attack on the body politic. Others observe that while such actions would clearly qualify, they are not exclusive of other actions, even personal actions, but of a clearly heinous nature. Others submit that since the constitutional language is "high crimes and misdemeanors," there can be no impeachment unless there is first a prosecutable crime. As I have earlier observed, I am not prepared to accept that the standard of performance for an American President is simply that he or she is not indictable.

I agree with those who assert that every American is entitled to privacy in his or her personal life and that no matter what we may think of another's actions in that regard, it is, to use the vernacular, simply none of our business. Period. Our business does include, though, the performance of public duties, the integrity of the judicial process and the protection and defense of the Constitution.

Accordingly, I have concluded that perjury or false statements under oath, obstruction of justice and abuse of the office of the presidency are all impeachable offenses. I believe, given the facts before this committee, that each of them has been proven by a preponderance of the evidence in this case. I also believe, though, that every presumption in favor of the President must be made, both regarding the facts and regarding the standard of proof. The more I have seen and read of the President's statements, both under oath and otherwise, the more difficult this has become, but I have persisted.

Having reviewed and reviewed the material, I do not believe that all of the allegations presented meet the standard of being proven by clear and convincing evidence. The final assessment of which meet what I believe to be the necessary higher standard of proof will depend, in part, on the form the articles take after the committee completes the amendatory process. Given what I know now, though, I anticipate that I will conclude this matter the way I began it, somehow managing to irritate virtually everyone in my district who holds an opinion on the subject.

Those who believe there's nothing here will be disappointed to know that I believe there is. Those who want me to do everything I can to vilify this President in every way possible will be disappointed to know that my assessment on the facts cannot allow me to do so.

I long ago gave up the notion that I could depart these proceedings undamaged, so I have done what I have always known I must do anyway—depend on the Constitution as my compass, and my conscience as my guide.

As I conclude, Mr. Chairman, I would like to offer an observation about this committee. It has often been called one of the most polarized in the Congress. The confrontational approach, though regularly seen here, is one that I abhor and which has made service even more difficult for me than it might otherwise have been. There are members here with whom I strongly disagree. There are some I find annoying, even abrasive. But I believe all of the members of this committee are decent human beings who are honestly trying to do the right thing as they see it.

Over the last few months, I have met with a subset of this committee, Republicans and Democrats, in an effort to maintain communication, look for consensus, reaffirm respect. I have learned

many things from them and from others on this committee for which I will always be grateful, but one seems especially pertinent today.

Our votes will likely be characterized by many as strictly partisan, implying that decisions here will be made simply on the basis of party affiliation. I believe firmly that each of us honestly, sincerely struggled to do what he or she believed must be done and that party affiliation was not the basis for decisions made here. Those who contend otherwise regarding members in either party do a disservice to the members of this committee, to their work and to the Congress.

And with that, Mr. Chairman, I yield the balance of my time.

Chairman HYDE. I thank the gentleman.

The distinguished gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. And as I begin, may I just thank you for your steady hand on the tiller of this committee. You've done so through personal criticism, whirling debate and alliances, and I appreciate your steadiness there.

Chairman HYDE. I thank you.

Mr. CANNON. We are at a defining moment in our history. What we do here will set the standard for what is acceptable for this and future Presidents. I believe profoundly that the behavior of this President is unacceptable because I agree with John Jay, one of our Founding Fathers, who said, "When oaths cease to be sacred, our dearest effort and most valuable rights become insecure." Let me just repeat that. "When oaths cease to be sacred, our dearest and most valuable rights become insecure."

I believe that, whatever critics may allege, John F. Kennedy loved and wanted to preserve this most extraordinary constitutional system of ours, as he said. President Kennedy had something to say about presidential responsibility and oaths. Please allow me to share a comment by President Kennedy regarding oaths. And would you please direct your attention to the video monitors.

(Videotape played.)

[Information not available at time of printing.]

Mr. CANNON. John Jay and President Kennedy were looking at the world from a similar perspective. I invite you to consider the context from which they were speaking.

Our dearest rights, to which Jay referred, are set forth in the Declaration of Independence. They are the inalienable rights of life, liberty and the pursuit of happiness, commonly referred to as the right to property, with which we are endowed by our Creator. In other words, these rights are of divine origin but they are subject to mortal abuse. The purpose of government to Jay and to Kennedy is to make those rights secure against abuse.

What does the sacredness of oaths have to do with the security of our rights? President Kennedy thought that if a President were not to fulfill the obligations, the obligations of his oaths, that he would begin—that is, the President, any President, he suggested—that he would begin to unwind this most extraordinary constitutional system of government. He was not and we are not talking about separation of powers. We are not talking about the other constitutional concepts like the delegated powers and reservation of powers to the States. Kennedy and Jay are referencing something

more fundamental. They are talking about the glue that holds our system together.

Now, our system can take a lot of abuse. It is resilient. It can handle strong, spirited debate. It can even handle violent conflicts like the Civil War. But attempts to make a sacred oath flexible are like introducing solvent into a system that is glued together; the whole system comes apart.

President Kennedy knew this. He was questioned, can you tell us about the outlook for your civil rights program and, sir, why are you pushing it so vigorously? Kennedy responded, I know that this program has not gotten a lot of support here in Florida. He's talking to an antagonistic audience. He's angry at them because he is doing something that those people don't want him to do. This is a robust debate over civil rights.

And Kennedy continues, "I think you gentlemen should recognize the responsibility of the President of the United States. His responsibility is different from what your responsibility may be. In this country, I carry out and execute the laws of the United States. I also have the obligation of implementing the orders of the courts of the United States. And I can assure you that whoever is President of the United States, he will do the same, because if he did not, he would begin to unwind this most extraordinary constitutional system of ours. So I believe strongly in fulfilling my oath in that regard." And that regard means, if he didn't fulfill his oath, the system would begin to unwind. It is inexorable.

We have heard much comparing this matter with Watergate. Nixon is said to have abused citizens to the IRS, the CIA and the FBI. We do not have before us allegations that this President has done the same. Though popular press reports many abuses, we cannot and should not pass judgments on those accusations in these deliberations. That judgment may be for history.

But we do want the President and those around him, and future Presidents and those around them, to know that we will not allow weakness of character, willfulness, or any other trait of a President to undermine the sacredness of oaths. Because Kennedy and Jay are right. So are some of the commentators, even Democratic partisans and presidential supporters.

Before the President committed the acts of perjury that we now confront, Alan Dershowitz, George Stephanopoulos and others warned the President that he would be impeached if he lied to the grand jury. It did not occur to them that it could be otherwise because I believe—because I believe they love this system of government, like Jay and Kennedy and like me, members of this committee, Members of Congress and millions of Americans, as well as millions worldwide to whom America is the beacon of hope and the example of freedom to which they aspire. There are some who call themselves Americans and who understand these principles, who cover them over with facile arguments, because they want to preserve their power.

I'm not going to deal here with the facts of the case. They are compelling enough that even Democratic members of this committee and witnesses called by the President have to acknowledge that the President lied under oath. If anyone has a serious question, I refer to you Mr. Schippers' excellent report.

The fact is, the unwinding of this extraordinary constitutional system is inexorable if the President presents an example of perjury. To Kennedy, it was self-evident. And the tape—his words bears repeating. Would you please look at the monitors.

[Videotape played.]

[Information not available at time of printing.]

Mr. CANNON. Thank you for your indulgence. I submit that in the spirit of our Founding Fathers and John F. Kennedy, that our first duty is to provide for the security of the fundamental rights of Americans. To properly perform that duty, we must vote to impeach the President.

Thank you.

Chairman HYDE. I thank the gentleman.

The gentleman from California, Mr. Rogan.

Mr. ROGAN. Thank you, Mr. Chairman.

The House Judiciary Committee today contemplates articles of impeachment against an incumbent President of the United States. Our committee undertakes its task in an era where the deceitful manipulation of public opinion no longer is viewed as evil but as art. "Propaganda" once evoked images of dictators enforcing mind control over the masses. Now we readily bathe ourselves in "spin," and we confer the degree of doctor upon those who administer the dosage.

In this very sobering hour, the time has come to strip away the spin and propaganda and face the unvarnished truth of what this committee is called upon to review. First, this impeachment inquiry is not and never was license to rummage through the personal lifestyle of the President of the United States. It is a gross distortion to characterize his present dilemma as only about sex. As Governor Weld said earlier this week, adultery is not an impeachable offense. And the country needs to know that nobody on this committee seeks to make it so.

If that is true, then why are these unsavory elements of the President's private life now at issue? It is because the President was a defendant in a sexual harassment civil rights lawsuit. When Paula Jones' lawsuit reached Federal court, after much consideration, the trial judge ordered the President to answer under oath questions relating to other subordinate female employees with whom he might have solicited or engaged in sexual involvement. This line of questioning was not invented to torment the President. These questions are routine and must be answered every day by defendants in harassment cases throughout the country.

Why is this so? It is because the courts want to see if there is any *pattern of conduct* that might show a similar history either of harassment, abuse, or of granting or denying job promotions.

It was in this context that the President first was asked questions about Monica Lewinsky, and it had nothing to do with Judge Starr, Speaker Gingrich, or any Member of the Congress of the United States.

If lying now becomes acceptable in harassment cases because candor is embarrassing, or because the defendant is just too powerful to be required to tell the truth, we will destroy the sexual harassment protections currently enjoyed by millions of women in the work force. One cannot fairly claim to support the societal benefits

of these harassment laws on the one hand, and then deny the application of these laws to a defendant merely because he is a President who shares their party affiliation.

Next, the Constitution solemnly required President Clinton, as a condition of his becoming President, to swear an oath to preserve, protect and defend the Constitution and to take care that our Nation's laws be faithfully executed. That oath of obligation required the President to defend our laws that protect women in the workplace, just as it also required him to protect our legal system from perjury, obstruction of justice, and abuse of power.

Fidelity to the presidential oath is not dependent on any President's personal threshold of comfort or embarrassment. Neither must it be a slave to the latest polling data.

Even more disturbing is the current readiness of some to embrace out of political ease a thoroughly bastardized oath, so long as the offender expresses generalized contrition, while at the same time rejecting meaningful constitutional accountability.

Consider how far afield these new standards move us as a nation since our first President obliged himself to the same oath that now binds Bill Clinton to the Constitution.

On the day George Washington became our first President, he pledged to our new country that the foundation of his public policies would be grounded in principles of private morality. He said that by elevating an otherwise sterile government to the level of private moral obligations, our new country would win the affection of its citizens and command the respect of the world.

Most significantly, in this first presidential address, Washington presented himself not as a ruler of men, but as a servant of the law. He established the tradition that, in America, powerful leaders are subservient to the rule of law and to the consent of the governed. Two hundred years later, in an era of increasing ethical relativism, it seems almost foreign to modern ears that the first speech ever delivered by a President of the United States was a speech about the relationship between private and public morality.

George Washington was not perfect. He certainly was no saint. But soldiers knew his bravery on the battlefield; his national reputation for truthfulness was unquestioned. Washington, a very human being with very human flaws, still could set by personal example the standard of measurement for the office of the presidency.

Today, from a distance of two centuries, Washington stands as a distant, almost mythical, figure. And yet President Clinton and every Member of the Congress of the United States have a living, personal connection to him. Like Washington, each of us took a sacred oath to uphold the Constitution and the rule of law. There is no business of government more important than upholding the rule of law.

A sound economy amounts to nothing beside it, because without the rule of law, all contracts are placed in doubt and all rights to property become conditional. National security is not more important than the rule of law, because without it, there can be no security and there is little worth defending. And the personal popularity of any President pales when weighed against this one fundamental concept that forever distinguishes us from every other nation: no person is above the rule of law.

Mr. Chairman, the evidence clearly shows that the President engaged in a repeated and lengthy pattern of felonious conduct, conduct for which ordinary citizens can and have been routinely prosecuted and jailed. This simply cannot be wished or censured away. With his conduct aggravated by a motivation of personal and pecuniary leverage, rather than by national security or some other legitimate government function, the solemnity of my own oath of office obliges me to do what the President has failed to do: defend the rule of law despite any personal or political costs.

With a heavy heart, but with an unwavering belief in the appropriateness of the decision, I will cast my vote for articles of impeachment against the President of the United States, William Jefferson Clinton.

I yield back the balance of my time.

Chairman HYDE. I thank the gentleman.

The distinguished gentleman from South Carolina, Mr. Lindsey Graham.

Mr. GRAHAM. Thank you, Mr. Chairman.

One thing I think would be appropriate as we wind toward the end, and Mary and I are again, as we have always been, the last two to speak here, let me just say it has been an honor to serve on the committee. I have been on the committee relatively as a junior member. I think Mrs. Bono, myself, Jim, and Mr. Barrett have all come on in the relatively late stages of the last Congress, or this Congress, and it is something I will remember for the rest of my life. I can assure you that. I doubt if I will ever do anything as important for the Nation as having served on this committee.

I have been an Air Force officer, serving overseas as a prosecutor. I have been an Air Force officer, serving stateside as a defense attorney defending men and women accused of crimes in the military. I am very honored for that experience. I have served in the Air National Guard, representing men's and women's legal interests during Desert Shield and Desert Storm with my unit.

Mr. Chairman, I would like to compliment you on two things. Over 50 years ago, when my father was in the Far East serving America in New Guinea, fighting the Japanese, you were in that part of the world serving America, protecting the Constitution, protecting the rule of law, risking your life; and we all owe a debt of gratitude to you and your generation for having done so.

I think we owe a unique debt of gratitude to you now for having guided this committee, somewhat under fire, at a time when we are going to evaluate who we are as a people, how far we have come in 200 years—have we made progress, have we gone backwards, what is the state of the American people, what is the state of the American political system?

I will say this: The people who have fought and died should feel good. We are going to have a partisan vote, but that is okay. You have parties. You have political thought. You have political differences. That is a good thing, not a bad thing. A lot of people have fought and died so you could have those differences.

Let me share some thoughts about my colleagues, and we will talk about the evidence and the truth. Mr. Frank has made a statement that I would like to associate myself with. This is about the Monica Lewinsky episode. This is not about Whitewater; that has

not been put at the feet of the President. This is not about Filegate; that was not put at the feet of the President. This is not about Travelgate; that was never put at the feet of the President.

That is important. Quite frankly, I thought some of these things would mature into cases that would come before this committee. They did not. And we should not mislead people that we are voting on anything other than what happened in the Paula Jones sexual harassment lawsuit. And we will all make a decision at the end of the day: Is that worth overturning a national election?

Mr. Berman, I would like to associate myself with his comments. This is not all about sex, but it is colored by sex. It certainly is.

Mr. Rogan has told you about the sexual harassment nature that got us into this whole situation, and I think he did so far better than I can comment because there are some important concepts. But in many ways this is all about people, this is all about emotion, this is really all about one man, Bill Clinton.

There is really some cast of characters here. The Linda Tripp of the world, Ken Starr, whether you like him or not, there are some unique characters here—myself, whether you like me or not. But at the end of the day, we are here because of what Bill Clinton did or chose not to do.

Mr. Barrett, I would like to associate myself with his spirit. He is a very nice man. He has got a child coming along, a new child to be brought into the world, and we all wish him well. He has tried to say to this committee, let's bring the country together. What a noble cause. Don't worry, Mr. Barrett, if we don't come together. This country is strong. We shall survive.

Mr. Schumer, I admire him greatly because he believes the President lied to the grand jury but he says, in the context in which he lied, he does not believe it's a high crime or misdemeanor. I respect that reasoning. I disagree with it.

No Democrat on this committee has ever suggested that the President's conduct was acceptable. Let the record reflect that. Whatever differences we have had, there has been nobody from this committee on the Democratic side that ever suggested that what the President did was appropriate or was okay. I think they deserve to have that said.

If this is a vote of conscience, and I believe it is, it is going to come down to the Republican conscience versus the Democratic conscience; and I don't know how to characterize that. I don't know what that means. I would suggest—as one is not better than the other, I would suggest that there is a very unique nature about this case that we need to look at long after this case is over, and only time will tell who got it right.

One thing has guided me more than anything else, and I have really had to struggle, do you want to impeach a President when it comes down to just the Lewinsky events. I live in a district that finds the conduct unacceptable and they, quite frankly, do not want Bill Clinton to be their President. They never have. As a district, we never voted for Bill Clinton. And the misleading and all the things that the Democratic members condemn as being unacceptable, people in my district find not only to be unacceptable but inconsistent with national leadership.

I am proud of my district. I respect those in my district who disagree with the majority. But the majority in the Third District of South Carolina believes that the conduct is inconsistent with national leadership.

I have tried to take a middle position. I like politics, but I love the law. The law has been something I chose to do to make a living. When you politicize the law, you are putting the country at risk. My father and Mr. Hyde made sure that we could come together and disagree, that the first person ever to go to college from their family, like Lindsey Graham, could one day wind up in Congress. If we lost that war that would have been impossible.

So I have tried to take a tone here that the law has to win out over politics. And the easy thing for me to have done from day one is to come up here and rant and rave because that would have played well because people do not like the President.

I have asked the President on numerous occasions to reconcile himself with the law. I never meant for him to have to humiliate himself. The standard that Governor Weld has said to reconcile himself with the law, quite frankly, is stronger than I have ever wanted. I do not want to take money out of his pocket. I do not want to humiliate him in front of his family or daughter. I merely want him to have the character and the courage to come forward and admit to criminal wrongdoing, that he violated his oath, that he engaged witnesses in an improper way.

I was willing to make sure, if I could in any fashion, that the whole affair would end then, that 2 years from now he need not have to face prosecution. I think the chances of that are almost zero. That is all I ever wanted from our President.

I am about to vote. I have yet to receive that. I don't know if I will ever get it. Bill Clinton's fate, ladies and gentlemen, is in Bill Clinton's hands. The biggest enemy of Bill Clinton, just like with all of us, is Bill Clinton. God knows, he has many enemies. God knows he's a polarizing figure. God only knows what is in his heart. I am having to judge Bill Clinton based on evidence. And I would like to speak a few minutes to what I believe is the unshakeable, undeniable truth, and much of it is about sex.

This idea that the President of the United States, when he testified in Paula Jones's deposition, a lady who brought a case against him for sexual harassment, that he gave testimony that was legally accurate is a total falsehood. The idea that the definition of sex did not include oral sex, and they did not ask the right questions, and if they did, he would have told the truth, offends me. This idea of what sex meant came up after this blue dress, in my opinion.

The reason I say that is that on January the 17th, when he was asked to testify about his relationship with Monica Lewinsky, he knew she had provided an affidavit denying any improper relationship of any kind whatsoever; he believed himself to be covered. He did not know of the tapes. Whether you like the tapes or not, he did not know of them and, without them, he would have lied with Monica Lewinsky to the prejudice of a citizen who is suing him for conduct. If true, that should be enough to impeach him. The world shall never know what happened in that room in Arkansas or that hotel room. Two people know and God knows.

Why I believe the definition of “sex,” as being propounded by the President to this very day, is a lie is based on the conduct he exhibited after the deposition. On January 17th, he would have had us believe they did not ask the right question and the definition excluded oral sex. I would suggest to you that is a fabricated tale, that on January 24th we have a talking point paper from the White House telling people how to respond about the allegations against the President, and one of those questions was, “Do sexual relations include oral sex?” The answer was yes.

Chairman HYDE. The gentleman’s time has expired.

Mr. WATT. Mr. Chairman, I ask unanimous consent that the gentleman be given 2 additional minutes.

Chairman HYDE. Without objection, so ordered.

Mr. GRAHAM. Thank you. I have talked in 30-second sound bites so long, I have never had this much time. Thank you very much. I can’t believe 10 minutes went by so quick.

What I believe is that his press accounts to Mr. Lehrer and to Roll Call indicate that in proper relationships there was no artificial definition, oral sex is not included. I believe that is a falsehood. I believe that is a fraud. I believe he knew Ms. Lewinsky’s affidavit was false and that when the discussion with Mr. Bennett came up in the deposition, he was following intently what happened and that he was not surprised and that he did, in fact, lie to the grand jury on numerous occasions.

Should he be impeached, very quickly, the hardest decision I think I will ever make. Knowing that the President lied to a grand jury about sex, I still believe that every President of the United States, regardless of the matter they are called to testify about before a grand jury, should testify truthfully, and if they don’t, they should be subject to losing their job. I believe that about Bill Clinton. I believe that about the next President.

If it had been a Republican, I would still believe that. I would hope that if a Republican President had done all this that some of us would have gone over and told him, you need to leave office. I understand the dilemma that all of us are in about that. His fate is in his own hands.

Right quickly, Mr. Chairman, 30 years from now they are going to judge what we have done and how partisan it has been and whether or not this made any sense. I just want you to know, as you look back and look at these tapes and find out what we are doing, there is one Member of Congress, there are a lot of us here who believe the President has lied to us to this very day, that we can’t reconcile ourselves with that, that it was in a lawsuit with an average, everyday citizen—legal rights at stake. And the most chilling of all things to me was the episode after he left the deposition. He told Mr. Blumenthal that Monica Lewinsky was basically coming on to him, he had to fight her off; he told Betty Currie, “She wanted to have sex with me, and I couldn’t do that.”

The most chilling thing was, for a period of time, the President was setting stories in motion that were lies. Those stories found themselves in the press to attack a young lady who could potentially be a witness against him.

To me, that is very much like Watergate. That shows character inconsistent with being President. And every Member of Congress

should look at that episode and decide, is this truly about sex, is Bill Clinton doing the right thing by continuing to make us have to pursue this, have to prove to a legal certainty he lied.

The President's fate is in his own hands.

Mr. President, you have one more chance. Don't bite your lip. Reconcile yourself with the law.

I yield back, well beyond my time.

Chairman HYDE. I thank the gentleman.

The distinguished lady from California.

Mrs. BONO. Mr. Chairman, I want first to thank the American people for giving me the opportunity to speak this morning on the most important issue I will ever face as a Member of Congress. Yet after sitting through the many days of hearings and hours of testimony, I can also understand why much of the country has become somewhat immune to this issue.

Obviously, we all wish we could put this matter behind us. But I do not have the luxury of doing that. I have the constitutional duty to review the facts. And no matter how difficult or even unpopular my decision might be, in the end, I must vote my conscience based on the evidence and the law. And although the White House spin machine has tried to place the blame for these proceedings on Judge Starr or the committee majority, I can tell you that after reviewing the evidence and listening to the President's testimony, the reason we are here is because, unfortunately, the President of the United States lied to the American people and a Federal grand jury, and then he attempted to use the full power of the White House to cover it up. Then, instead of trying to present a credible defense that respected the intelligence of the American people, the White House and its allies used their spin machine to attack its opponents and destroy reputations.

Not until the possibility of impeachment became real to the White House in the last few days did they bother to address the facts or the truth.

In the real world of everyday Americans, people who break the law face consequences. That is what our Founders intended when they drafted a Constitution and established the rule of law as a framework for our society. And when a President attempts to weave his way through the rule of law to cover up a lie, he puts the Constitution itself on trial.

Like so many others, I am disappointed that the office of the presidency has been reduced in stature by the legal hairsplitting and stonewalling that the President and his lawyers have engaged in for the past 7 months. According to his own defenders, the President engaged in sinful actions that were morally wrong.

So many twisted definitions of a very simple fact: The President of the United States committed perjury before a Federal grand jury. He tried to convince the American people that the improper behavior that he engaged in with a young subordinate was really not sex, at least not according to the definition provided to him by the court.

I am sure that every husband or wife knows in their heart that their spouse would consider what he did sex, and certainly even young children recognize that he lied about it. How can anyone look their children in the eye and tell them that they must tell the

truth after they see the President of the United States lie to the entire Nation on television? He abused his power as Chief Executive to protect himself at the expense of his family, his friends, his Cabinet and, sadly, the American people.

I do believe the public deserves a President who adheres to a higher principle, and I am not afraid to admit that. It is what our forefathers fought and died for. It is what our veterans risked their lives for. It is what we all pray for for our children.

President Kennedy, who was President Clinton's boyhood hero, said in the days before his assassination that it is "the responsibility of the President to carry out and execute the laws of the country and that whoever is President will do the same because if he did not, he would begin to unwind this most extraordinary constitutional system. So I strongly believe in fulfilling my oath."

And that concerns me greatly. If we just look the other way and allow a President to abuse his authority and betray his oath by committing, at the very least, perjury, the public trust in our constitutional system will be forever diminished.

Today, the President's lawyers asked us to put an end to this process for the good of the Nation. If the President had really wanted to save the Nation the turmoil of this past year, he should have been more truthful or forthcoming from the beginning or, as some have already suggested, he could have simply resigned.

So I say to the President today, if you really believe that this process will cause our Nation irreparable harm, I ask you, for the good of the Nation, to resign and spare our country the lengthy and divisive impeachment process.

The simple truth is that this issue would not even be before us if the President simply told the truth or settled with Paula Jones in the beginning, rather than telling his political operatives that they would just have to win instead. The pursuit of the truth cannot be avoided simply because it involves an uncomfortable issue like sex. And I have got news for you, whatever you do that is wrong is going to be embarrassing when people find out about it.

To avoid dealing with the truth because it makes people uncomfortable would be particularly hurtful to any and all women who must deal with cases of harassment, and that is a real fear that I have. In fact, this case is largely about one woman being denied her day in court, about a White House that uses all of its resources to intimidate witnesses and obscure the facts.

That is one reason why so many Americans have lost faith in our legal system. The lesson women learn from the Paula Jones case is not to challenge a powerful person, certainly not someone who has the best lawyers and resources of a nation at his disposal. Believe me, the example this sends is that any person who challenges a figure of authority is going to be subjected to all types of abuse. Let me tell you, that is a very scary message.

Another concern that is very scary is the effect the President's behavior will have on our national security. Just a few months ago, I found myself, along with many other Americans and even the media, wondering if our strike against terrorism was life imitating art or a genuine response to a terrorist organization. Just the thought that a possibility existed that the President was engaging

in a “Wag the Dog” scenario was chilling and profoundly disappointing. As a nation, we deserve better.

You know, a lot of people ask me if I am concerned about voting to impeach a popular President. They talk about his high approval ratings in the polls and say, most Americans oppose impeachment. But I cannot allow my decision to be based on the President’s popularity, on the numbers in a poll. History will judge us on the facts. I want future generations to look at the evidence and say that what we did was based on the law and upon our constitutional duty.

I know that the President is a very likeable man. I understand why people want this issue to just go away. But the issue we are facing is at the very core of our constitutional system; and while many people may like this President, I hope that they love their country more, because that is what I will base my vote on, my love for this country and in our Constitution. If we do not uphold its principles, the foundation of our system of government will be undermined forever.

Mr. Chairman, I want to thank you for your leadership and for your fairness throughout these entire hearings in this process, and I want to echo the sentiments of Congressman Graham that it has been truly an honor to serve with each and every member on this panel.

And with that, I yield back the balance of my time.

Chairman HYDE. I certainly thank the gentlelady.

I wish that was the ultimate opening statement but it was but the penultimate. I have my opening statement, which I have not delivered, and if you will indulge me, I will now make my opening statement.

Perjury is not sex. Obstruction is not sex. Abuse of power is not about sex. It is important to understand that none of the proposed articles include allegations of sexual misconduct.

The President is not accused of marital infidelity because such conduct is essentially private. But when circumstances require you to participate in a formal court proceeding and, under oath, mislead the parties and the court by lying, that is a public act and deserves public sanction. Perjury is a crime with a 5-year penalty.

Now, what all this boils down to is, what do we think of the oath? Is it a ceremonial formality or does it mean something? We were told there were three pillars to the rule of law: an honest judiciary, an ethical bar, and an enforceable oath. And this is why the President’s lying under oath is so serious. It is an assault on the rule of law. It cheapens the oath. It is a breach of promise to tell the truth. It subverts our system of government.

Now, the Democrats have what really amounts to the “so what” defense, well articulated in yesterday’s Wall Street Journal op-ed page where a pundit states, “Mr. Clinton’s behavior has been disgraceful, but it hasn’t involved actions against the state.”

Okay, a compendium of prominent Democrats who agree the President lied under oath is long and distinguished, and I have it here, but all of them insist the President’s lies do not rise to the level of impeachment. I suggest impeachment is like beauty, apparently in the eye of the beholder. But I hold a different view, and it is not a vengeful one; it is not vindictive and it is not craven,

it is just a concern for the Constitution and a high respect for the rule of law.

Now, as to the charge that we have produced no witnesses whose credibility could be tested by cross-examination, well, we had Monica Lewinsky's testimony under oath, her immunity grant in jeopardy if she lied. We accepted her heavily corroborated testimony. I hate to bring up the stained dress again, but we didn't feel the need to bring her in for more testimony. But if the Democrats had the slightest qualm about her credibility, why didn't they invite her to testify, or take her deposition to have her credibility tested?

Betty Currie, we had her testimony under oath. Vernon Jordan, we had his testimony under oath. If there were any questions, why, the Democrats could have called them as witnesses. But all we got from them was a covey of professors, no fact witnesses.

We based our facts, the ones we were willing to accept, on 60,000 pages of sworn testimony, deposition transcripts, grand jury testimony, all under oath and all available to the Democrats. If they doubted this testimony, they were free to take depositions or produce them as witnesses. They did not. So I wonder about the complaints that they didn't get a chance to test the credibility of the witnesses.

Now, as a lawyer and a legislator for most of my very long life, I had have a particular reverence for our legal system. It protects the innocent. It punishes the guilty. It defends the powerless. It guards freedom. It summons the noblest instincts of the human spirit. The rule of law protects you and it protects me from the midnight fire on our roof or the 3 a.m. knock on our door. It challenges abuse of authority.

It is a shame Darkness at Noon is forgotten, or the Gulag Archipelago, but there is such a thing lurking out in the world called abuse of authority, and the rule of law is what protects you from it. And so, it is a matter of considerable concern to me when our legal system is assaulted by our Nation's chief law enforcement officer, the only person obliged to take care that the laws are faithfully executed.

Now, we suffer from an abundance of details but it is clear we have, as the National Journal said, not an occasional, minor, garden variety perjury but multiple acts of perjury. We have calculated lawlessness which takes us for fools and chips away at our legal system. Lies about sex are one thing; lies under oath by the Nation's chief law enforcement officer are another.

Why do we bother to argue the facts? So many of you, certainly not all, but so many of you have pleaded *nolo contendere*. So our debate is whether multiple violations of the solemn oath deserve censure or removal.

Incidentally, where did you get your facts on censure? From the Starr report?

What concerns me most deeply in sorting out the many arguments here is the significance of the oath. When the President performs the public act of asking God to witness his promise to tell the truth, the whole truth, and nothing but the truth, that is not trivial. Whether it is a civil suit or before the grand jury, the significance of the oath cannot and must not be cheapened if our

proud boast that we are a government of laws and not of men is to mean anything. I submit it means everything. It was purchased for us by the lives of countless patriots, some of whom are resting across the Potomac River in a cemetery, but all of whom put the Nation's good ahead of their own.

A few words about fairness. I have been relentlessly accused of being unfair. I can only say I have tried, I have tried, and I have tried. We have labored under an artificial time constraint, but one that I adopted back before the election when the spirit of the age was, get this over with, get this behind us, the country doesn't want this to be dragged out over the next coming year.

I bought into that. I agreed it was in the interest of the country, the President and the Congress to move this along as fast as we could, and I believed we could finish it by the end of the year. That was naive, and there are so many things left undone because of time constraints. But now that the election is over and now that the Democrats—and by the way, we did not want to do anything just before the election for fear of being accused of trying to politicize our activities, so we held back. But now that the Democrats have picked up some seats, we hear the phrase “lame duck Congress.”

Well, we can't have it both ways. We are trying to finish this decently, honorably, fairly within time constraints because I don't want this to spill over into next year. I don't want this to be an endless process. I think it is in the interest of the country to finish it, and we have tried our level best. And I have tried to grant every request the Democrats have made. Maybe we haven't succeeded, but I have certainly tried.

Now, we seek impeachment, not conviction nor censure. Those are decisions for the other body, the Senate. We merely decide if there is enough for a trial. The accusatory body should not be the adjudicatory body. Barbara Jordan pointed out, it was a wise decision not to have the House that charges be the one that tries. That doesn't mean we don't take our responsibility seriously, but it means we have a different role.

Now, we are told an impeachment trial would be too divisive and too disruptive, that it would reverse two elections. We are not reversing any election. Bob Dole will not end up President of the United States if there is an impeachment. We are following a process wisely set down as a check and balance on executive overreaching by our Founding Fathers.

This vote says something about us. It answers the question, just who are we and what do we stand for? Is the President one of us or is he a sovereign? We vote for our honor, which is the only thing we get to take with us to the grave.

I yield back the balance of my time.

Now, that concludes the opening statements, mercifully. Before we recess for 30 minutes, I want to explain the procedure which we will follow when we reconvene.

Pending is a resolution exhibiting articles of impeachment and a motion to favorably report the resolution. Under previous order of the committee, the second reading of the resolution has been dispensed with.

We will proceed with the amendment process article by article. Therefore, when we return from this recess, Article I will be open for amendment.

After all amendments to Article I are completed, we will have a final vote on Article I. If any article is adopted, the original motion shall be considered as adopted and any approved article of impeachment will automatically be favorably reported to the House. We will then consider the remaining articles and follow the same procedure.

If there are no amendments to any articles, but members wish to be heard on that particular article, they will be recognized to strike the last word. So you will have an opportunity to speak.

Mr. FRANK. Mr. Chairman, parliamentary inquiry.

Chairman HYDE. The gentleman will state his parliamentary inquiry.

Mr. FRANK. I believe I understand it, but I want to make it clear here what occurs first. There will, therefore, only be one vote on an article, and if an article on this first reading gets a majority vote, there will be no need to revote, there will not be a subsequent vote?

Chairman HYDE. That is right.

Mr. FRANK. So we will, in effect, be treating these as if they were four separate things to be reported to the House?

Chairman HYDE. Exactly.

Mr. SCOTT. Mr. Chairman, I would like to ask the status of the responses from Mr. Starr. One of the amendments that I have to offer depends pretty much on his answer.

Chairman HYDE. Well, I am advised we have phoned them and they are working on the answers. We will rephone them during the recess and see if we can move it along.

Ms. Waters.

Ms. WATERS. I would like to ask unanimous consent to insert into the record a letter to me, and perhaps to others, from Alan Dershowitz, one of the panelists, expert panelists, who testified here relative to an exchange that took place between Mr. Barr, Mr. Dershowitz, and Mr. Higginbotham. I would also like to insert a copy of the article that Mr. Dershowitz referred to regarding Mr. Barr's speech before the Council of Conservative Citizens.

Chairman HYDE. Is there any objection?

Hearing none, so ordered.

[The information follows:]



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*Felix Frankfurter Professor of Law*

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December 4, 1998

**Via Facsimile and First Class Mail**

The Honorable Maxine Waters  
2344 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Waters:

As a member of the House Judiciary Committee, you will recall that on December 1, 1998 Congressman Bob Barr referred to "real America" and strongly implied that Professors Jeffrey Rosen, Stephen Saltzberg, A. Leon Higginbotham, and I were something other than real Americans. I objected to being considered not a "real American" because it reminded me of the days when Senator Joseph McCarthy and his ilk would call their political opponents un-American. I said that the term used by Congressman Barr, "real America," often was used as a code word for bigotry. Several Republican members of the committee shouted out comments such as, "That's silly."

I now would like to provide the committee with documented proof that Congressman Barr's reference to "real America" was a code word unworthy of a member of your Committee.

On June 6, 1998, Congressman Barr was a keynote speaker and honored guest at the Semi-Annual National Board Meeting of an organization that I am confident none of you would ever want to be associated with: The Council of Conservative Citizens (CCC). That organization, an outgrowth of the racist Citizens' Councils, is a softer version of the KKK and overtly espouses racism and anti-Semitism. Their Website ([www.cofcc.org](http://www.cofcc.org)) carries editorials such as "A Call To White America," with rhetoric like the following:

If we want to live, white Americans must begin today to lay the foundations for our future and our children's future.

To: Hon. Maxine Waters  
Page 2  
December 4, 1998

Start today, fellow white Americans. Look at the faces around you: find the faces like yours, and see them as your brothers and sisters. Find the fair-skinned babies, and see them as your children.

Another columnist featured on the CCC Website argues that

whites apparently have some talents that give them advantages over most of the rest of humanity the way blacks have some talents that give them some advantages in certain sports such as basketball. These talents of whites, which are hard to catalog since they're often of the mind, let them jump a little higher in society.

In the CCC's quarterly newspaper, the *Citizens Informer* (the same issue that features photographs of Congressman Barr with officers of the CCC), the former head of the Citizens' Councils, Robert Patterson, argues that

Western civilization with all its might and glory would never have achieved its greatness without the directing hand of God and the creative genius of the white race. Any effort to destroy the race by a mixture of black blood is an effort to destroy western civilization itself

On the same page is an advertisement that reads, "Integration Is Genocide . . . [it] destroys excellence, crushes freedom, and violates the Scriptures."

Not surprisingly, the CCC and those who are associated with it use the term "real America" to describe whites who agree with their racist agenda. At a rally to support the Confederate battle flag in Mississippi at which CCC members handed out Confederate flags, white supremacist Richard Barrett said that the Confederate flag "signifies the *real American* way of life as it was before James Meredith [the first black student at Ole Miss University] and Earl Warren, and as it can and will be again."

The CCC also opposes the immigration of Jews from the former Soviet Union who were prevented from practicing their religion by the communists, arguing that their language and culture are "alien" to that of real Americans. Nor is their nativism limited to hatred of Jews; they oppose the immigration of Latinos as well.

To his credit, Lt. Governor Mike Huckabee of Arkansas canceled his scheduled speech in 1994 for the CCC when he learned who else was speaking and when he realized what the organization stood for. He said he would never knowingly share the platform with someone affiliated with white supremacist and anti-Semitic organizations because he lived by the maxim, "Avoid the very appearance of evil."

To the contrary, Congressman Barr, who was fully aware of this organization's racist and anti-Semitic agenda, chose not to follow Lt. Governor Huckabee's example. He not only gave

To: Hon. Maxine Waters

Page 3

December 4, 1998

the keynote address to the CCC's National Board, but even allowed himself to be photographed literally embracing one of their national directors.

In doing so, Barr joined the ranks of other CCC speakers such as David Duke, the former grand wizard of the KKK and a neo-Nazi. In a speech in 1995, Duke promised CCC members a "white revolution in America," adding:

We are in a struggle for our very genes, for the blood that flows in our veins, that makes us the way we are. This country is built on our heritage, and we've got the right to survive.

It is in this context that Congressman Barr's reference to "real America" must be understood. The "real Americans" whom he supports include white racists who oppose integration and equality. When Congressman Barr refers to "real America" in the future, you are now on notice of what he means and who the "real Americans" are with whom he associates and before whom he speaks.

Every American, including Congressman Barr, has full and complete freedom of associations and freedom of speech. But every American, including Judge Higginbotham, myself, and the other members of the Judiciary Committee, also had the right – indeed the obligation – to condemn those who associate with and support racist and anti-Semitic organizations and who deem the members of these organizations "real Americans" while considering some of us less than "real Americans." Congressman Barr especially is to be condemned because he willingly aided the CCC in its efforts to achieve legitimization by boasting that a member of Congress is willing to speak before it and be associated with it.

I enclose for your consideration background material on which this letter relies (we are continuing to do research and will provide the committee with any additional relevant material).

I formally request that you include my letter and the background material as an appendix to my testimony before the committee.

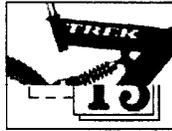
Sincerely,



Alan M. Dershowitz  
Felix Frankfurter Professor of Law

cc: Hon. A. Leon Higginbotham, Jr.  
Enclosures  
AMD/jno

## Barr Spoke To White Supremacy Group



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By *Thomas B. Edsall*  
 Washington Post Staff Writer  
 Friday, December 11, 1998; Page A23

A spokesman for Rep. Robert L. Barr Jr. (R-Ga.) acknowledged yesterday that Barr was a keynote speaker earlier this year at a meeting of the Council of Conservative Citizens, an organization promoting views that interracial marriage amounts to white genocide and that Abraham Lincoln was elected by socialists and communists.

Barr spoke at the organization's semiannual convention on June 6 in Charleston, S.C. His presence was cited by Harvard law professor Alan M. Dershowitz, who testified against the impeachment of President Clinton at a hearing of the House Judiciary Committee. Barr, the most outspoken proponent of impeachment in the House, serves on the committee.

"Congressman Barr, who was fully aware of this organization's racist and antisemitic agenda, not only gave the keynote address to the CCC's national board, but even allowed himself to be photographed literally embracing one of their national directors," Dershowitz wrote Judiciary Committee Chairman Henry J. Hyde (R-Ill.) last week.

In a letter to Hyde responding to Dershowitz, Barr declared that Dershowitz's "accusations are unfounded and deplorable."

Asked to comment on the views of the council, Brad Alexander, Barr's spokesman, said Barr is working full time on impeachment, and "he is not going to take time away from it to respond to groundless attacks by Professor Dershowitz."

In the letter to Hyde, Barr counterattacked, accusing Dershowitz of "condoning the use of racism in court, most notably in the O.J. Simpson case," in which Dershowitz served as part of the defense team.

The World Wide Web site of the Council of Conservative Citizens is dominated by material portraying the "white race" as under siege. A council columnist described only as "H. Millard" writes:

"Take 10 bottles of milk to represent all humans on earth. Nine of them will be chocolate and only one white. Now mix all those bottles together and you have gotten rid of that troublesome bottle of white milk. There too is the way to get rid of the world of whites. Convince them to mix their few genes with the genes of the many. Genocide via the bedroom chamber is as long lasting as genocide via war."

Ms. WATERS. Thank you very much.

Chairman HYDE. All right, the gentleman from Michigan.

Mr. CONYERS. Unanimous consent request for a letter from William Alden McDaniel, Jr., Esq., to Congressman Bob Barr, copied to me with attachments.

Chairman HYDE. Is there any objection?

Mr. FRANK. Mr. Chairman, could we just get Mr. Barr's receptionist to send us some of this stuff directly? It might save some committee time.

Chairman HYDE. He wants to know if your receptionist would send this material directly to him.

Mr. BARR. I would say to the gentleman from Massachusetts—

Chairman HYDE. I think it was a facetious request. I will treat it as such and ignore it.

[The information follows:]

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December 10, 1998

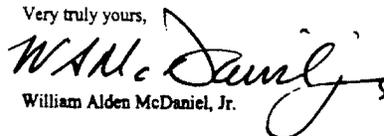
**BY HAND-DELIVERY**

The Honorable Bob Barr  
Member of Congress  
1130 Longworth House Office Building  
Washington, D.C. 20515-1007

Dear Mr. Barr:

Your remarks regarding Sidney Blumenthal made Tuesday, December 8, 1998, during the hearing of the House Judiciary Committee betray your ignorance of the facts regarding Mr. Blumenthal's testimony before the grand jury. Enclosed with this letter is a photocopy of a letter to Kenneth Starr, Esquire, setting forth the facts relating to this matter. Also enclosed are excerpts from Mr. Blumenthal's testimony before the grand jury. If you review these documents you will no doubt come to the conclusion that your remarks were false and misleading. You ought to remove your comments from the public record.

Very truly yours,

  
William Alden McDaniel, Jr.

WAM:akd  
Enclosures

cc: Hon. Henry Hyde  
✓ Hon. John Conyers, Jr.  
(both by hand, w/enclosures)  
Charles F.C. Ruff, Esquire  
Gregory B. Craig, Esquire  
David Kendall, Esquire  
(all by first-class mail, w/o enclosures)

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November 18, 1998

**BY TELECOPIER TRANSMISSION**  
**202-514-8802**

Kenneth W. Starr, Esquire  
Independent Counsel  
Office of the Independent Counsel  
1001 Pennsylvania Avenue, N.W.  
Room 490 - North  
Washington, D.C. 20004

Re: *Sidney Blumenthal*

Dear Mr. Starr:

This letter concerns false and reprehensible statements made by representatives of your office regarding our client, Sidney Blumenthal, as part of your continuing campaign to bully and vilify Mr. Blumenthal. Those statements were made by your agents, Ronald Rotunda, who advises you on "ethics" at the rate of Three Hundred Dollars (\$300.00) per hour, and Charles Bakaly, your press agent. The statements made by these men about Mr. Blumenthal are false, and you know them to be false. We demand that you retract those statements immediately.

In an article written by Brian Blomquist and published in the *New York Post* on or about November 15, 1998, Mr. Rotunda is quoted as saying the following about Mr. Blumenthal: "The Clinton apologists are so confident that we will not leak that they feel confident in *boldly lying* to the press." (Emphasis added.) The following also was attributed to Mr. Rotunda:

"It's been unfortunate that, given the rules of engagement given to us by the district judge, we can be *vilified and lied about* by Clinton aides like Blumenthal in their confidence that the truth will never come out. You remember last February, Blumenthal came out of the grand-jury room and announced how he was

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mortified and felt dirty because he'd been asked by investigators who in the press he had been contacting." (Emphasis added.)

Mr. Rotunda concluded by stating the following:

"We now know ... that Blumenthal was never asked that question and that the next time he showed up in the grand-jury room, the grand-jury forelady said, "How could you say this to the press? It was just a lie." Everybody in this office knew since last February that *Sid Blumenthal was lying* ... but that never leaked. Moreover, *Sid Blumenthal knew he was lying*. But he was confident enough in engaging in a *bald-faced lie* last February because he was confident it wouldn't leak." (Emphasis added.)

The statements that Mr. Blumenthal knew your office would not leak are ludicrous. You and your staff have violated Fed. Rule Crim. Pro. 6(e) with abandon, as you have admitted in your interviews with the press, most notably with Steven Brill. Indeed, your office specifically leaked information about Mr. Blumenthal to the *Washington Post*.

These statements made by Mr. Rotunda, a paid advisor to you, are false in every particular. A reading of Mr. Blumenthal's grand jury testimony, released by you to the United States House of Representatives and by them to the public, shows the falsity of Mr. Rotunda's statements.

When Mr. Blumenthal told the press that attorneys from the Office of Independent Counsel (the "OIC") had asked him in the grand jury about "who in the press [Mr. Blumenthal] had been contacting" that was true. First, the subpoena served on Mr. Blumenthal by the OIC, a photocopy of which is attached to this letter, specifically demanded that Mr. Blumenthal produce to the OIC and the grand jury documents relating to Mr. Blumenthal's communications with the press. The subpoena called for "any and all documents" Mr. Blumenthal had "referring or relating to *any contact, directly or indirectly, with a member of the media* which related or referred to the OIC, or attorneys or other staff members of the OIC." (Emphasis added.)

Second, as you are well aware, Mr. Blumenthal moved to quash that subpoena. In that motion, Mr. Blumenthal complained about the OIC's request for information relating to Mr. Blumenthal's contacts with the media.

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Your office opposed that motion and argued before the Court that information regarding Mr. Blumenthal's communications with the press was a legitimate enquiry to be undertaken by your office. After a hearing on the matter, the Court ruled that you could ask Mr. Blumenthal questions before the grand jury about his communications with the media during the time period that Mr. Blumenthal had been working at the White House. And you did so.

Third, when Mr. Blumenthal appeared before the grand jury, attorneys from your office asked Mr. Blumenthal several questions about his communications with the media. Your staff began by asking Mr. Blumenthal to confirm that part of his job as Assistant to the President included "talk[ing] to the media." Mr. Blumenthal confirmed that it did. Transcript of the Testimony of Sidney Blumenthal before the Grand Jury, 2/26/98 ("Blumenthal Transcript"), 7:2-10. (A photocopy of the relevant portions of the Blumenthal Transcript is attached to this letter.) All of the questions your staff then asked Mr. Blumenthal about his communications with other people must be viewed in light of this "table-setting" answer. The conclusion is inescapable that your staff was seeking to learn about Mr. Blumenthal's communications with members of the news media.

Members of your staff then had a discussion with Mr. Blumenthal about information that he had received or transmitted to reporters about your office. They asked: "Mr. Blumenthal I think that the question was whether you had received, other than this videotape, any other information that had not been previously published about [members of the OIC staff]." Blumenthal Transcript 46:6-9. Mr. Blumenthal's response has been redacted. *Id.* 46:13-20. Your staff then queried: "Did you tell anyone else about that story or contact with this member of the news media?" *Id.* 46:21-22. Your staff then asked Mr. Blumenthal if he knew why "this member of the news media" – Jay Brannigan from *Time* – had telephoned Mr. Blumenthal. *Id.* 47:2-3.

A few minutes later, your staff asked Mr. Blumenthal certain information that Mr. Blumenthal had received from Stanley Sheinbaum: "The information that you received from Mr. Sheinbaum, did you relay that information to anyone else?" *Id.* 48:1-3. Mr. Blumenthal said that he did. Your staff asked him to tell them to whom he had relayed that information, and Mr. Blumenthal did so. That response, however, has been redacted. *Id.* 5-25.

Your staff then asked Mr. Blumenthal why he disseminated that information to the news media, and if he had disseminated any positive information about the OIC to the

Kenneth W. Starr, Esquire  
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news media. *Id.* 49:4-11. Your staff asked Mr. Blumenthal if he had told the news media about certain other information that Mr. Blumenthal had learned about the OIC. *Id.* 50:4-6.

A few questions later, your staff asked Mr. Blumenthal if he had distributed certain material to anyone outside of the White House. *Id.* 51:4-5. Mr. Blumenthal responded that he had done so and named those media outlets to which he had distributed the information. *Id.* 51:6-10. Your staff asked Mr. Blumenthal if he had distributed any "talking points" to the news media. *Id.* 51:11-13. Your staff asked Mr. Blumenthal if he discussed any of the substance of any "talking points" to members of the press. *Id.* 56:5-7.

Your staff then asked Mr. Blumenthal if anyone at the White House had provided certain information to members of the media. *Id.* 58:21-24; 59:19 - 60:7.

In each of these instances it was your staff who raised the issue of communications with the press and your office that asked who in the press Mr. Blumenthal had talked to. Your office was determined to learn whether Mr. Blumenthal had discussed your office with the press and if so, with whom. For you and your staff to lie about your behavior now, is cowardly and despicable and evidences your continuing failure to abide by your legal and professional responsibilities. It is outrageous that the American people are paying Ronald Rotunda Three Hundred Dollars (\$300.00) per hour to lie on your behalf.

In addition, Mr. Rotunda's statement that Mr. Blumenthal was chastised by the foreperson of the grand jury at his next appearance before the grand jury is also false. The foreperson of the grand jury said nothing to Mr. Blumenthal at his next appearance before the grand jury that occurred June 4, 1998, about any statements Mr. Blumenthal had made to the press.

It was on June 25, 1998, that the grand jury foreperson spoke to Mr. Blumenthal. She did not make the statement attributed to her by Mr. Rotunda. The foreperson never said the words "How could you say this to the press? It was just a lie" as Mr. Rotunda said that she did. What the grand jury foreperson said to Mr. Blumenthal can be found on page 69 of the June 25, 1998, transcript. The foreperson never accused Mr. Blumenthal of lying. What she said was that the grand jury was "very concerned about the fact that during your last visit (June 4, 1998, not February) that an inaccurate representation of the events that happened were retold on the steps of the courthouse." Indeed, Mr. Blumenthal made no statement on June 4, 1998, after his testimony; rather it was William Alden McDaniel, Jr., Mr. Blumenthal's attorney, who made a statement. And nothing Mr. McDaniel said was inaccurate or false.

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Based on the foregoing, it is clear that Mr. Blumenthal was not lying about what your staff asked him in the grand jury room. It was, instead, Mr. Rotunda who made false statements.

In a story written by Don Van Natta, Jr., and published in *The New York Times* November 18, 1998, another member of your office, Charles Bakaly, disseminated false information about Mr. Blumenthal. In that article, Mr. Bakaly stated: "People who lie and perjure themselves have been able to get away with it by complaining about prosecutors and portraying prosecutors as villains." Given the remarks made by Mr. Rotunda, it is not hard to figure out that Mr. Bakaly is referring to Mr. Blumenthal.

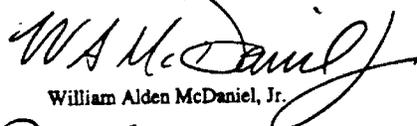
From the day that your office issued its subpoena to Mr. Blumenthal, your office had been conducting a smear campaign against Mr. Blumenthal to prevent him from making any remarks to the media and the public about your office. You and your staff cannot stand the fact that there is derogatory information publicly available about you and your staff. You and your staff believe that any discussion of information about previous misconduct engaged in by you and your staff constitutes obstruction of justice or a "coordinated effort to stonewall and destroy [your] prosecutorial authority," as Mr. Bakaly put it. The first half of Mr. Blumenthal's grand jury appearance before the grand jury in February consisted in of a multitude of questions regarding publicly available information about the OIC that Mr. Blumenthal had learned or had provided to the media. The statements made by Mr. Rotunda and Mr. Bakaly are yet another part of that campaign.

We do not know whether it is you or some other member of your staff who is directing this campaign. We do not know whether you have authorized the false statements made about Mr. Blumenthal by your staff or instructed your staff to make those statements. Nevertheless, the statements are being made by your agents and, therefore, are attributable to you. This conduct is unseemly, unprofessional, and reprehensible. It must stop.

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We demand that you retract immediately the lies disseminated by Mr. Rotunda and Mr. Bakaly and that you instruct all members of your staff that they are not to continue making such false statements. If you do not do so, Mr. Blumenthal will take the appropriate steps.

Very truly yours



William Alden McDaniel, Jr.



Jo Bennett Marsh

WAM/jcb

Cc: Mr. Sidney Blumenthal  
David Kendall, Esquire  
Charles F.C. Ruff, Esquire  
Gregory Craig, Esquire  
W. Neil Eggleston, Esquire  
Robert S. Bennett, Esquire  
William J. Murphy, Esquire  
(all by telecopier)

# United States District Court

FOR THE DISTRICT OF COLUMBIA

TO:

Sidney Blumenthal

## SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

PERSON  DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE United States District Court for the District of Columbia Third & Constitution Avenue, N.W. Washington, D.C.	COURTROOM Grand Jury, Third Floor DATE/TIME February 24, 1998/9:15 a.m.
--	--

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

See attached rider.

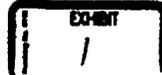
Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE Nancy M. [Signature]	DATE February 20, 1998 (D1005)
U.S. DEPUTY CLERK [Signature]	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY Robert J. Bittman, Deputy Independent Counsel Office of the Independent Counsel 1001 Pennsylvania Avenue, N.W., Suite 490-North Washington, D.C. 20004 (202) 414-8688

\*Not applicable, unless noted.

\*A.S.P. (optional FORMS)



Subpoena # D1005

To: Sidney Blumenthal

**SUBPOENA RIGNE**

A. Produce any and all documents referring or relating to Monica Lewinsky.

B. Produce any and all documents referring or relating to the Office of Independent Counsel Kenneth W. Starr ("OIC"). These documents should include, but not be limited to, the following:

1. all documents referring or relating to attorneys and other staff members of the OIC;
2. all documents referring or relating to any contact, directly or indirectly, with a member of the media which related or referred to the OIC, or attorneys or other staff members of the OIC; and
3. all documents referring or relating to any communications which relate or refer to the OIC, or attorneys or other staff members of the OIC.

**Definitions and Instructions**

**1. Definitions**

a. The term "document" or "documents" as used in this subpoena means all records of any nature whatsoever within your possession, custody or control or the possession, custody or control of any agent, employee, representative (including, without limitation, attorneys, investment advisors, investment bankers, bankers and accountants), or other person acting or purporting to act for or on your behalf or in concert with you, including, but not limited to, draft, pending or executed contracts and/or agreements, sample documents, insurance policies, financial guarantee bonds, letters of credit, communications, correspondence, calendars, daytimers, datebooks, telegrams, facsimiles, telex, telefaxes, electronic mail, memoranda, records, reports, books, files (computer or paper), summaries or records of personal conversations, meetings or interviews, logs, summaries or records of telephone conversations and/or telefax communications, diaries, forecasts, statistical statements, financial statements (draft or finished), work papers, drafts, copies, bills, records of payments for bills, retainer records, attorney time sheets, telephone bills and

records, telefax bills and records, tax returns and return information, employee time sheets, graphs, charts, accounts, analytical records, minutes or records of meetings or conferences, consultants' reports and/or records, appraisals, records, reports or summaries of negotiations, brochures, pamphlets, circulars, maps, plats, trade letters, depositions, statements, interrogatories and answers thereto, pleadings, docket sheets, discovery materials, audit letters, audit reports, materials underlying audits, document productions, transcripts, exhibits, settlement materials, judgments, prece releases, notes, marginal notations, invoices, documents regarding collateral or security pledged, settlement statements; checks disbursed or received at settlement, inspection reports, title policies, financial statements and/or federal tax returns submitted by any person in support of any loan application, items related the repayment, if any, of any interest or principal on the loan, items relating to any default on the loan, commission records, evidence of liens, documents relating to filings under the Uniform Commercial Code and/or its equivalent, foreclosure and mortgage documentation, cashiers checks, bank drafts, money orders, bank and brokerage account statements, debit and credit memoranda, wire transfer documentation, opening account cards, signature cards, loan applications, any employment and bank account deposit verification documents, loan histories, loan files, records of loan repayment or any and all efforts to secure repayment, including foreclosure or records of lawsuits, credit references, board resolutions, minutes of meetings of boards of directors, opinion letters, purchases and sales agreements, real estate contracts, brokerage agreements, escrow agreements, loan agreements, offer and acceptance contracts, or any other contracts or agreements, deeds or other evidence of title, escrow accounts and any other escrow documentation, savings account transcripts, savings account deposit slips, savings account withdrawal slips, checks deposited in savings accounts, checking account statements, canceled checks drawn on checking accounts, deposit slips and checks deposited into checking accounts, credit card accounts, debit and credit documentation, safe deposit records, currency transaction reports (IRS Form 4789), photographs, brochures, lists, journals, advertising, computer tapes and cards, audio and video tapes, computerized records stored in the form of magnetic or electronic coding on computer media or on media capable of being read by computer or with the aid of computer related equipment, including but not limited to floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs and any other media capable of storing magnetic coding, microfilm, microfiche and other storage devices, voicemail recordings and all other written, printed or recorded or photographic matter or sound reproductions, however produced

or reproduced.

The term "document" or "documents" also includes any earlier, preliminary, preparatory or tentative version of all or part of a document, whether or not such draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final document.

b. The term "communication" or "communications" is used herein in its broadest sense to encompass any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether face-to-face, by telephone or by means of electronic or other medium.

c. "Possession, custody or control" means in your physical possession and/or if you have the right to secure or compile the production of the document or a copy from another person or entity having physical possession, including, but not limited to, your counsel.

d. The term "referring or relating" to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject including, but not limited to, documents concerning the preparation of other documents.

e. The term "you" means yourself, any person or agent acting on your behalf or at your suggestion or direction, and any of your companies, partnerships and business entities with which you have been affiliated and any employees, partners, associates or members of any firm with which you have been affiliated.

## 2. Instructions

a. The originals of all documents and communications must be produced, as well as copies within your possession, custody, or control.

b. If any original document cannot be produced in full, produce such document to the extent possible and indicate specifically the reason for your inability to produce the remainder.

c. Documents shall be produced as they are kept in the usual course of business, as organized in the files.

d. File folders, labels, and indices identifying documents called for shall be produced intact with such documents. Documents attached to each other should not be

separated.

e. In reading this rider, the plural shall include the singular and the singular shall include the plural.

f. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The use of the word "including" shall be construed without limitation.

g. In the event that any document, or portion thereof, called for by this subpoena is withheld on the basis of any claim of privilege or similar claim, that document shall be identified in writing as follows: (a) author; (b) the position or title of the author; (c) addressee; (d) the position or title of the addressee; (e) any indicated or blind copies; (f) date; (g) a description of the subject matter of the document; (h) number of pages; (i) attachments or appendices; (j) all persons to whom the document, its contents, or any portion thereof, has been disclosed, distributed, shown, or explained; and (k) present custodian. Each basis you contend justifies the withholding of the document shall also be specified. With respect to those documents or records as to which you may claim privilege, or attorneys' work product, set forth as to each such document the basis for such claim, including the purpose and circumstances surrounding the creation of the document, the identity of each person who has been privy to such communication reflected in the document, the identity of any person or entity instructing the subpoena recipient or the attorney of the subpoena recipient to withhold production of the document, and whether you will submit the document to the Court for an *in camera* determination as to the validity of the claim. If the existence of a joint defense agreement or any agreement as to common interest is relevant to the assertion of any claim of privilege or similar claim, please provide a copy of that agreement; if any such agreement is not in writing, please set forth the date of the creation of the agreement, the identities of all parties to the agreement and the specific individuals who entered into the agreement on behalf of those parties, and the objects, purposes, and scope of the agreement.

h. In the event that any document called for by this subpoena has been lost, destroyed, deleted, altered, or otherwise disposed of, that document shall be identified in writing as follows: (a) author; (b) the position or title of the author; (c) addressee; (d) the position or title of the addressee; (e) indicated or blind copies; (f) date; (g) a brief description of the subject matter of the document; (h) number of pages; (i) attachments or appendices; (j) all persons to whom the document, its contents, or any portion thereof, had been disclosed, distributed, shown or explained; (k) the date of the loss.

destruction, deletion, alteration, or disposal and the circumstances thereof; and (1) the reasons, if any, for the loss, destruction, deletion, alteration, or disposal and the person or persons responsible.

i. If any information or data is withheld because such information or data is stored electronically, it is to be identified by the subject matter of the information or data and the place or places where such information is maintained.

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Sidney Blumenthal, 2/26/98

Grand Jury

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CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

OFFICE OF THE INDEPENDENT COUNSEL  
1001 Pennsylvania Avenue, N.W.  
Suite 490-North  
Washington, DC 20004  
Phone: 202-514-8688  
FAX: 202-514-8802

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...handies?  
 A I deal with foreign policy, with domestic policy.  
 Q On Tuesday when we were in the judge's courtroom downstairs, and the grand jurors know that, your attorney described to the judge that your job is to talk to the media.  
 A That's part of my job.  
 Q That's part of your job?  
 A Yes.  
 Q Is that the biggest bulk of your job?  
 A On some days.  
 Q Some days? And when your primary job is not talking to the media, what is your primary job?  
 A Well, I have made a concerted effort not to be a public spokesman. I give very few, if any, on-the-record interviews. I have never appeared as a spokesman on television or on radio. And I've been involved in such issues over the last month as writing the State of the Union and helping to arrange the visit of Prime Minister Blair, who is a very old friend of mine.  
 Q In your duties at the White House, do you typically advise the President himself?  
 A I do speak with the President. I brief him.  
 Q Without going into the substance of what you talk to the President about, is that something you do on a daily basis or on a weekly basis?

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...A I think I should consult my attorney about how I'm supposed to answer.  
 Q I'll withdraw that question for the time being.  
 A Aside from the President, who are you regularly in contact with? For example, the Office of Communications, the director is Ann Lewis. Do you speak with Ms. Lewis on a regular basis?  
 A I think I want to speak to my attorney about that because I'm a little confused about that.  
 MR. BITTMAN: Sure.  
 Mr. Blumenthal? Yes?  
 MR. BITTMAN: If you would knock -- when you come back, if you would knock, and we'll open the door.  
 THE WITNESS: Sure, Thank you.  
 (The witness was excused to confer with counsel.)  
 BY MR. BITTMAN:  
 Q I had two general questions for you.  
 MR. Blumenthal, one was whether you advised the President himself. Can you answer that question?  
 A I do.  
 Q You do. How regularly do you do that?  
 A Several times a week.  
 Q Who are the other advisors, if any, that you consult with at the White House on a somewhat regular basis?

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...A I would say that I speak with almost everybody in the White House on a regular basis. And, on a daily basis, I speak with the Chief of Staff, Ericine Bowles; with John Podesta, the Deputy Chief of Staff; with Sylvia Matthews, the senior Deputy Chief of Staff; with Rahm Emmanuel, the senior advisor; with Paul Begala, Counselor; with Doug Sosen, Counselor; with Mike McCurry, Press Secretary; with Joe Lockhart, Deputy Press Secretary; with Tony Binson and David Levy, the Director and Deputy Director of the Strategic Planning for the National Security Council.  
 Q Can you spell Mr. Binson's last name?  
 A Yes. B-I-N-S-O-N. With Bruce Reed, the Director of the Domestic Policy Council; with Gene Sperling, Director of the National Economic Council. Almost every day I speak to those people and others.  
 Q Where is your office physically located in the White House?  
 A It's on the ground floor of the West Wing.  
 Q Have you had any involvement in the matter involving Monica Lewinsky?  
 A I think I'm going to talk to my lawyer about that.  
 (The witness was excused to confer with counsel.)  
 MR. BITTMAN: It's just note for the record it's 9:44.

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...THE DEPUTY FOREPERSON: Mr. Blumenthal, ...  
 THE WITNESS: Thank you.  
 BY MR. BITTMAN:  
 Q Mr. Blumenthal, have you had any role in the Lewinsky matter?  
 A Yes.  
 Q What has been that role?  
 A I attend meetings in the White House in the Office of Legal Counsel in the morning and in the evening almost every day.  
 Q We understand that these meetings occur daily at 8:30 a.m. and at 6:45 p.m.  
 A Yes.  
 Q Are these the meetings that you attend?  
 A Yes.  
 Q And can you tell us who generally attends them?  
 A I understand that these are daily meetings and that the same people don't always attend them. You probably or may not attend them all the time either.  
 Q Correct.  
 Q Can you tell us who generally attends -- first of all, generally, do they attend both meetings, the same group? Or is it two separate groups, one at 8:30 and then a second, different group attends the 6:45?

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...A Generally the same group.  
 Q Okay. What's the group, as far as you can remember?  
 A It is legal counsel. Chief Legal Counsel, Charles Ruff. It is Larry Sawyer, of the Legal Counsel Office. Cheryl Mills, of Legal Counsel Office. Bruce Lindsey, Senior Advisor to the President and Legal Counsel. John Podesta, Deputy Chief of Staff. Rahm Emmanuel, Senior Advisor. Paul Begala, Counselor. Jim Kennedy, Legal Counsel Office. Mike McCurry, Press Secretary. Joe Lockhart, Deputy Press Secretary. Ann Lewis, Director of Communications. Adam Goldberg, who is in Legal Counsel Office. That's Adam -- I forget his last name, actually. It's Don Goldberg of Legislative Affairs, I believe, and Legal Counsel. I could be wrong about some of these titles. That's generally the group.  
 Q Do any of the President's private attorneys attend either the 8:30 or 6:45 meeting, whether in person or by telephone?  
 A I've never seen them in person.  
 Q Do you know whether they are on the telephones? Is there a conference call, actually?  
 A No.  
 Q No? So anyone who is aware of the meeting at the time it occurs would have to actually be present at the

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...meeting.  
 A Yes.  
 Q Does anyone from outside the White House ever attend these meetings, that is, not employed by the White House?  
 A No.  
 Q Are there regular conference calls, as far as you know?  
 A Regular?  
 Q When I say "regular," not scheduled but calls that occur on perhaps a daily or every-other-day basis.  
 A There have been conference calls that I've been part of, but they haven't been --  
 MR. BITTMAN: Please note for the record that the Attorney from the Office of Independent Counsel has come in.  
 I'm sorry.  
 THE WITNESS: There have been conference calls, but, to my knowledge, they're not daily.  
 BY MR. BITTMAN:  
 Q Are there any meetings that you attend that are a subset of the people that you just listed? That is, a smaller group.  
 A There are no regular meetings.  
 Q No regular meetings? What occurs at these 8:30 and

00A

Sidney Blumenthal, 2/26/98

00A27

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11: Detective?  
 12: A No.  
 13: Q Has anyone ever told you that any information from  
 14: (1) any of the President's private attorneys was relayed to  
 15: people other than yourself at the White House?  
 16: MR. WEISBERG: Relayed or related?  
 17: MR. BITTMAN: Relayed. Excuse me.  
 18: THE WITNESS: I wonder if you could restate it.  
 19: I'm a little confused.  
 20: BY MR. BITTMAN:  
 21: Q You've already indicated that you received some  
 22: information, namely, this videotape of a broadcast in  
 23: California related to  
 24: A Right.  
 25: Q You received that from the President's attorneys.  
 26: A Right.  
 27: Q Have you received any other information from any of  
 28: the President's private attorneys?  
 29: A No.  
 30: Q Have you heard whether they have given any other  
 31: information related to the Monica Lewinsky matter to anyone  
 32: else at the White House?  
 33: A No.  
 34: Q Has anyone at the White House ever indicated that  
 35: they were told by one of the President's attorneys about some

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1: fact relating to the Monica Lewinsky matter?  
 2: A No.  
 3: Q Have you received any information other than this  
 4: videotape regarding the professional staff of the Office of  
 5: Independent Counsel?  
 6: Q Could you restate that?  
 7: A Yes. I have not received any information other than  
 8: the information about [redacted] contained in this videotape  
 9: about the professional staff of the Office of Independent  
 10: Counsel?  
 11: A And you're not referring to the attorneys?  
 12: Q I am referring to the attorneys.  
 13: A Oh. Because it wasn't in the question.  
 14: Q Included in the professional staff, I'm including  
 15: the attorneys.  
 16: A I see. No.  
 17: Q You've never received any information from whatever  
 18: source, other than the videotape, about members of the  
 19: professional staff?  
 20: A Except anything in the public domain, such as David  
 21: Kendall's letter.  
 22: Q Okay. Have you received any information  
 23: specifically about [redacted]  
 24: A From [redacted]  
 25: Q From any source.

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1: A Yes.  
 2: Q From what source have you received information?  
 3: A From an article in the Atlanta Journal  
 4: Constitution.  
 5: Q Prior to the publication of that article, did you  
 6: receive any information about [redacted]  
 7: A I believe that he was mentioned in an article in  
 8: U.S. News.  
 9: Q Okay. Let me ask it this way. Prior to the  
 10: publication of any news article relating to [redacted], had  
 11: you received any information about [redacted]  
 12: A No.  
 13: Q What about [redacted] Prior to the publication of  
 14: any news article or news broadcast, did you receive any  
 15: information with regard to [redacted]  
 16: A I'm going to consult my attorney right now.  
 17: MR. BITTMAN: Okay.  
 18: THE WITNESS: Thank you.  
 19: MR. BITTMAN: It's 11:35.  
 20: (The witness was excused to confer with counsel.)  
 21: MR. BITTMAN: Let the record reflect the witness  
 22: has reentered the grand jury room and it's 11:25.  
 23: Mr. Blumenthal has not come back with lunch as many  
 24: of us had hoped.  
 25: THE WITNESS: You didn't give me your order.

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1: THE DEPUTY FOREPERSON: You're still under ca-  
 2: Mr. Blumenthal.  
 3: THE WITNESS: And that's under oath.  
 4: (Sighs.)  
 5: BY MR. BITTMAN:  
 6: Q Mr. Blumenthal, I think the question was whether  
 7: you had received, other than the videotape, any other  
 8: information -- it had not been previously published about  
 9: [redacted]  
 10: before I answer that, I want to make an addition --  
 11: [redacted]  
 12: [redacted]  
 13: [redacted]  
 14: [redacted]  
 15: [redacted]  
 16: [redacted]  
 17: [redacted]  
 18: [redacted]  
 19: [redacted]  
 20: [redacted]  
 21: Q Did you tell anyone else about that story or  
 22: contact with the member of the news media?  
 23: A I spoke with Paul Begala of the White House star  
 24: about that because he had also been called by Jay Byrnes of  
 25: Time and he called me and told me he had been called by

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1: Time about the story.  
 2: Q And what was the purpose of the person from Time  
 3: Magazine calling you about it, if you know?  
 4: A No idea. Don't know.  
 5: Q Did you know anything about the facts?  
 6: A No. I had no material facts to offer whatsoever,  
 7: no information.  
 8: Q Did you tell anyone else other than Mr. Begala  
 9: about it?  
 10: A No.  
 11: Q What about [redacted] You said you may have  
 12: received information about [redacted] other than the  
 13: videotape.  
 14: A I have.  
 15: Q Before publication?  
 16: A Yes.  
 17: Q And from what source?  
 18: A The source of my information was Stanley Shainca.  
 19: Q Can you spell his last name, please?  
 20: A Yes. It's S-H-A-I-N-C-A.  
 21: Q And who is he?  
 22: A He is the former commissioner of the Los Angeles  
 23: Police Department.  
 24: Q Any other sources of information?  
 25: A None.

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1: Q The information that you received from  
 2: Mr. Shainca, did you relay that information to anyone  
 3: else?  
 4: A I did.  
 5: Q To whom?  
 6: [redacted]  
 7: [redacted]  
 8: [redacted]  
 9: [redacted]  
 10: [redacted]  
 11: [redacted]  
 12: [redacted]  
 13: [redacted]  
 14: [redacted]  
 15: [redacted]  
 16: [redacted]  
 17: [redacted]  
 18: [redacted]  
 19: [redacted]  
 20: [redacted]  
 21: [redacted]  
 22: [redacted]  
 23: [redacted]  
 24: [redacted]  
 25: So that was on the public record in the article

00C-849

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1 that had been faxed to me by Stanley Sherbaum. He had told  
 2 me that there was widespread concern among the law  
 3 enforcement community in Los Angeles.  
 4 Q And what was your purpose in disseminating this  
 5 information to members of the news media?  
 6 A I believe that the public has the right to know  
 7 about the character and records of public officials.  
 8 Q Have you ever disseminated any information positive  
 9 about members of the Office of Independent Counsel staff to  
 10 the members of the news media?  
 11 A I don't recall.  
 12 Q Do you know, by the way, the videotape that your  
 13 attorney provided me of a news report that was broadcast  
 14 in Los Angeles, do you know approximately when it was  
 15 broadcast?  
 16 A Just from watching it, it seems as though this is  
 17 a second broadcast from the TV station. It's UPN, whichever  
 18 TV station that is in L.A. And apparently this is a second  
 19 report of this TV station. The first one, they refer to an  
 20 earlier report, and then they refer to the Daily Journal  
 21 article which they claim was prompted by their earlier  
 22 report. [REDACTED]

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1 Q Did you later learn that that was not true?  
 2 A I learned that one of the defendants dropped the  
 3 case.  
 4 Q Did you then tell the members of the news media  
 5 that new information that you learned, that the case had been  
 6 dropped about that?  
 7 A Yes. Anything that had been published about that.  
 8 Q Have you ever seen, Mr. Blumenthal, any documents  
 9 related to the Monica Lewinsky case?  
 10 A How would you define documents?  
 11 Q Let me specifically ask, has the White House  
 12 produced any document like a talking points document relating  
 13 to referring to the Monica Lewinsky matter or the Office of  
 14 Independent Counsel staff or anything of that nature?  
 15 A I've seen talking points from the Democratic  
 16 National Committee.  
 17 Q And what was the substance of those talking points?  
 18 A Different talking points.  
 19 Q Do you remember the subject? Other than Monica  
 20 Lewinsky, was it about the Office of Independent Counsel  
 21 staff?  
 22 A I believe that what -- they're produced by the  
 23 research department and they are all based on published  
 24 reports and they're summaries of published reports and  
 25 obviously they expressed the view of the research department

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1 of the DNC.  
 2 Q And you received this from the DNC?  
 3 A Yes.  
 4 Q Did you distribute it to anyone outside the White  
 5 House?  
 6 A If reporters called me or I spoke with reporters,  
 7 I would tell them to call the DNC to get those talking  
 8 points, and those included news organizations ranging from  
 9 CNN, CBS, ABC, New York Times, New York Daily News, Chicago  
 10 Tribune, New York Observer, L.A. Times.  
 11 Q Would you, though, distribute the talking points?  
 12 Would you cause the talking points to be distributed to any  
 13 of these news organizations?  
 14 A Can I consult my attorney?  
 15 Q Yes. Could you also ask them one other question?  
 16 A Sure.  
 17 Q About your role when you were speaking to the First  
 18 Lady about the Monica Lewinsky matter.  
 19 MR. WISENBERG: The question about in what capacity  
 20 were you --  
 21 THE WITNESS: Yes, I forget that. Yes.  
 22 MR. WISENBERG: We had withdrawn it, but we're --  
 23 THE WITNESS: You're coming back to it?  
 24 MR. BITTMAN: Coming back to it.  
 25 MR. WISENBERG: Yes.

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1 THE WITNESS: Okay.  
 2 MR. BITTMAN: It's 11:37 for the record.  
 3 THE WITNESS: So there are two questions, one is  
 4 the capacity in which I was speaking to the First Lady?  
 5 MR. BITTMAN: Yes. And then the second is whether  
 6 you distributed to a news organization the talking points  
 7 that you received from the Democratic National Committee.  
 8 THE WITNESS: Okay. Thank you.  
 9 MR. WISENBERG: Or caused them to be distributed.  
 10 MR. BITTMAN: Or caused them to be distributed.  
 11 THE WITNESS: Good. Thank you.  
 12 (The witness was excused to confer with counsel.)  
 13 MR. WISENBERG: Let the record reflect that the  
 14 witness has reentered the grand jury room.  
 15 MR. BITTMAN: It's 11:56.  
 16 THE DEPUTY FOREPERSON: You remain under oath.  
 17 THE WITNESS: Thank you.  
 18 BY MR. BITTMAN:  
 19 Q Mr. Blumenthal, we had two questions for you.  
 20 A Yes.  
 21 Q The first was about your role when you were  
 22 speaking with the First Lady.  
 23 A Yes. I was speaking in my capacity as a member of  
 24 the senior staff of the White House.  
 25 Q And how were you advising -- were you advising her

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1 or someone else?  
 2 A I was speaking with her and no one else was  
 3 involved in our conversations.  
 4 Q Was the purpose, though, to advise the First Lady  
 5 or was it to advise someone else?  
 6 A It was to advise her.  
 7 Q In your conversations with Mrs. Clinton about the  
 8 Monica Lewinsky matter, did any of those conversations refer  
 9 or relate to the dissemination of information about members  
 10 of the Office of Independent Counsel to the news media?  
 11 A Well, I really regret that anything to do with the  
 12 substance of my conversations, I'm advised by legal counsel I  
 13 can't discuss. And I truly regret that.  
 14 Q Did you take any actions as a result of your  
 15 conversations with Mrs. Clinton?  
 16 A On matters regarding?  
 17 Q Based on your discussions with Mrs. Clinton, did  
 18 you take any actions?  
 19 A In any matter?  
 20 Q Yes, on any matter based on your conversations with  
 21 Mrs. Clinton about Monica Lewinsky?  
 22 A On Monica Lewinsky?  
 23 Q Yes.  
 24 A I think I'd like to consult my attorney on that.  
 25 I'm just confused about that one.

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1 MR. BITTMAN: Sure.  
 2 THE WITNESS: Thank you.  
 3 MR. BITTMAN: It's 11:58.  
 4 (The witness was excused to confer with counsel.)  
 5 MR. WISENBERG: Let the record reflect the witness  
 6 has reentered the grand jury room.  
 7 MR. BITTMAN: It's 11:54.  
 8 BY MR. BITTMAN:  
 9 Q Mr. Blumenthal, my last question was in your  
 10 conversation with Mrs. Clinton that related or referred to  
 11 Monica Lewinsky, did you take any actions as a result of your  
 12 conversation?  
 13 A After consulting White House legal counsel, I can  
 14 answer the previous question as well, if you would like to  
 15 restate it.  
 16 Q That is whether the conversations with Mrs. Clinton  
 17 referred or related to your dissemination of information  
 18 regarding Office of Independent Counsel staff with members of  
 19 the news media?  
 20 A No.  
 21 Q What previous question?  
 22 A That question. I'm giving you the answer.  
 23 Q Okay. The answer is no.  
 24 MR. WISENBERG:  
 25 Q Conversations with Mrs. Clinton did not refer or

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...relate to that  
 117: A Correct.  
 118: Q Okay. Now, the other question, what actions, if  
 119: any, did you take as a result of your conversations with  
 120: Mrs. Clinton about the Monica Lewinsky matter?  
 121: A None.  
 122: Q Did you take any actions as a result of your  
 123: conversation with the President about the Monica Lewinsky  
 124: matter?  
 125: A No.  
 126: Q And then the break previous to the break you just  
 127: took, we asked you about whether you disseminated the talking  
 128: points that you received from the Democratic National  
 129: Committee to any news organization.  
 130: MR. WISENBERG: Or caused them to be.  
 131: BY MR. BITTMAN:  
 132: Q Or caused them to be disseminated.  
 133: A Well, when reporters would call me, they were  
 134: seeking information and sources and they would ask me if  
 135: there were sources and I would occasionally refer them to the  
 136: Democratic National Committee.  
 137: Q You received a document from the Democratic  
 138: National Committee that had various talking points in it.  
 139: Yes.  
 140: Q Did you cause that document to be disseminated to

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11: any member of the news media?  
 12: A Don't know. I don't know what happened after they  
 13: called the Democratic National Committee.  
 14: Q Did you discuss with any member of the news media  
 15: the contents, that is, the material that was in the talking  
 16: points, that you received from the Democratic National  
 17: Committee?  
 18: A Not per se.  
 19: Q What do you mean, "not per se"?  
 20: A I may have discussed published articles in the news  
 21: media generally.  
 22: Q Did the White House produce its own talking points  
 23: at any time about the Monica Lewinsky matter?  
 24: A How would you define talking points here?  
 25: Q Well, has anyone at the White House produced any  
 26: document that has any information relating or referring to  
 27: Monica Lewinsky? That you have seen or heard about.  
 28: A I think I'm going to consult counsel on that.  
 29: I'm confused.  
 30: Q Okay. Is it because of the question? Is there  
 31: anything I can do to clarify the question?  
 32: A Well, just the nature of document.  
 33: Q Okay. Any written form is what I mean by document.  
 34: really. Has anything been written down at the White House  
 35: that you've been told about or that you've seen that relates

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11: or refers to Monica Lewinsky?  
 12: A I don't recall.  
 13: Q Going back to the talking points, you know  
 14: there's a practice in the media field --  
 15: A Right.  
 16: Q You received talking points from the Democratic  
 17: National Committee. The White House, I suppose, has produced  
 18: talking points on other issues not related to Monica  
 19: Lewinsky. Is that correct?  
 20: A That is correct.  
 21: Q Have they produced any such document that related  
 22: to the Monica Lewinsky matter that you have seen or heard  
 23: about?  
 24: A I'm going to consult counsel.  
 25: MR. BITTMAN: Please.  
 26: THE WITNESS: Thank you.  
 27: MR. BITTMAN: It's 11:58.  
 28: THE WITNESS: Thank you.  
 29: (The witness was excused to confer with counsel.)  
 30: MR. WISENBERG: The witness is reentering the grand  
 31: jury room.  
 32: MR. BITTMAN: It's 12:01.  
 33: THE WITNESS: Thank you.  
 34: MR. BITTMAN: Mr. Blumenthal still has no lunch.  
 35: THE WITNESS: No. Well, you've got to get the

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orders  
 MR. BITTMAN: Okay. We've got to get the orders.  
 THE WITNESS: There aren't orders here.  
 BY MR. BITTMAN:  
 Q The pending question, Mr. Blumenthal, was about  
 talking points and whether the White House, whether you have  
 seen or heard whether the White House produced any talking  
 points relating or referring to the Monica Lewinsky matter.  
 A I don't recall having seen or heard that.  
 Q Have you seen or heard that the White House, anyone  
 in the White House, has produced any document that summarizes  
 the facts in the Monica Lewinsky -- the facts -- pardon me,  
 or the allegations in the Monica Lewinsky matter?  
 A Do you mean material facts?  
 Q Any facts. Or allegations, information.  
 A I don't recall ever having seen such a document.  
 Q We have seen on the television that some talking  
 point type document that at least the news reporter indicated  
 had come from the White House.  
 A I haven't seen that.  
 Q You haven't seen that. Have you heard about the  
 White House disseminating to any news organization any type  
 of document like that, any talking points, factual summaries  
 or anything like that, to any member of the news media?  
 A Only from the -- it wouldn't be the White House, it

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11: would be the DNC. What I previously described to you from  
 12: the DNC.  
 13: Q Okay. Have you received any talking points from  
 14: any other person or entity besides the tape from the law  
 15: office of Williams & Connolly and the talking points from the  
 16: Democratic National Committee? That related or referred to  
 17: the Monica Lewinsky matter.  
 18: A And this is the attorneys or the DNC? Have I  
 19: received any documents other than this videotape and the  
 20: talking points from the DNC?  
 21: Q Correct.  
 22: A I have not received any other.  
 23: Q Has anyone at the White House received any other  
 24: talking points from any other source?  
 25: A I don't know.  
 26: Q Have you heard?  
 27: A No.  
 28: BY MR. WISENBERG:  
 29: Q Mr. Blumenthal, do you know if anyone at or acting  
 30: on behalf of the White House leaked to the press the story to  
 31: the effect that Monica Lewinsky had visited the White House  
 32: about 37 times after losing her job there?  
 33: A I know nothing about that.  
 34: Q Okay. You don't know if anybody at or acting on  
 35: behalf of the White House leaked that story?

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11: A To my knowledge, no.  
 12: Q Are you aware of any information either personally  
 13: or just through hearsay, are you aware of any information  
 14: that the White House or people acting on behalf of the White  
 15: House has leaked to the press but accused the Office of  
 16: Independent Counsel of leaking to the press?  
 17: A Absolutely not.  
 18: MR. WISENBERG: That's all I've got.  
 19: BY MR. BITTMAN:  
 20: Q Let me ask you one other question. We talked  
 21: specifically about talking points and then summaries of facts  
 22: and I had started with the question, Mr. Blumenthal, about  
 23: whether you have seen any document in the White House, that  
 24: is, any piece of paper on which something is written, any  
 25: document that was created or believed to be created at the  
 26: White House that related to the Monica Lewinsky matter.  
 27: A I have not.  
 28: Q So as far as you know, no one in the White House  
 29: has written anything down relating to Monica Lewinsky.  
 30: A I don't know, but I have not seen it.  
 31: Q Have you heard about any such --  
 32: A No, I have not.  
 33: MR. BITTMAN: Okay. Why don't we excuse you for a  
 34: moment and then we'll take questions, we'll see if the grand  
 35: jurors have any other questions for you.

<p style="text-align: right;">Page 69</p> <p>1 [REDACTED]</p> <p>2 [REDACTED] And I</p> <p>3 would regard all of those as confidences.</p> <p>4 So he has confided in me about personal matters.</p> <p>5 MS. DOMERGUT: Anything else?</p> <p>6 MR. BINHAK: Not from me.</p> <p>7 THE FOREPERSON: Well, I just have a statement for</p> <p>8 you.</p> <p>9 THE WITNESS: Yes.</p> <p>10 THE FOREPERSON: The grand jurors, a few minutes</p> <p>11 ago while you were out consulting with your attorney, asked</p> <p>12 to deliberate for a few moments, without the attorney or the</p> <p>13 court reporter, because we had some serious concerns.</p> <p>14 The work that we are doing here is very serious,</p> <p>15 and the integrity to our work as representatives of people of</p> <p>16 the United States of America is very important to us.</p> <p>17 We are very concerned about the fact that during</p> <p>18 your last visit that an inaccurate representation of the</p> <p>19 events that happened were retold on the steps of the</p> <p>20 courthouse.</p> <p>21 We would hope that you will understand the</p> <p>22 seriousness of our work, and not in any way use it for any</p> <p>23 purpose other than the purpose that is intended, and that you</p> <p>24 would really represent us the way that events happened in</p> <p>25 this room.</p>	
<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: I appreciate your statement.</p> <p>2 THE FOREPERSON: Thank you.</p> <p>3 MS. DOMERGUT: Okay. Anything else?</p> <p>4 (No response.)</p> <p>5 MS. DOMERGUT: Thank you very much, sir.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 MS. DOMERGUT: And you are excused, and although</p> <p>8 I'd like to say you will never need to come back, obviously,</p> <p>9 I can't guarantee that -</p> <p>10 THE WITNESS: Right.</p> <p>11 MS. DOMERGUT: - should something come up. But at</p> <p>12 this point we have finished the session of grand jury with</p> <p>13 you.</p> <p>14 THE WITNESS: Good. Thank you very much. Good</p> <p>15 luck to you all.</p> <p>16 THE FOREPERSON: Thank you very much.</p> <p>17 (The witness was excused.)</p> <p>18 (Whereupon, at 4:28 p.m., the taking of the</p> <p>19 testimony in the presence of a full quorum of the Grand Jury</p> <p>20 was concluded.)</p> <p>21 . . . . .</p>	

Mr. BARR. Mr. Chairman, I would like unanimous consent to insert into the record a letter I have sent to all members of the committee in response to the materials being circulated by Mr. Dershowitz.

Chairman HYDE. That shall be done, without objection.  
[The letter follows:]



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COMMITTEES:  
BANKING AND FINANCIAL SERVICES  
GOVERNMENT  
REFORM AND OVERSIGHT  
JUDICIARY

December 10, 1998

The Honorable Henry J. Hyde  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
2141 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable John Conyers  
Ranking Democrat Member  
Committee on the Judiciary  
United States House of Representatives  
2142 Rayburn House Office Building  
Washington, D.C. 20515

IN RE: Alan Dershowitz Letter

Dear Chairman Hyde and Congressman Conyers:

I write with respect to a letter you may have recently received from Mr. Alan Dershowitz. This letter borders on slander, and distorts reality so gravely, I am obligated to respond to it. In his letter, Mr. Dershowitz implies that our profound disagreement over whether perjury is an impeachable offense is somehow motivated by racial animus.

To unequivocally reaffirm the record on that point, it is my deeply held belief that our law, culture, and discourse should be as color blind as possible. It is my firm conviction that all Americans, regardless of the color of their skin, or the country where they were born, should enjoy the same equal protection of our laws, and the same ability to succeed in our society. It is for that reason that I oppose racial quotas, and wholeheartedly support vigorous enforcement of our laws against discrimination. I do this as a Member of Congress, and as a citizen, just as I did during my tenure as a United States Attorney.

While I was a child, my father served as an Army officer, and then as a civil engineer, and I spent many years living in other countries, such as Iran. For this reason, I know full well how it feels to be a member of a very small minority, and I care deeply about preventing anyone from being singled out for discrimination based on their race, gender, national origin, religion, or other factors.

In fact, my desire to see the President treated just like any other American who commits perjury or obstruction, is the result of my concern for ensuring equal justice under the law. If Mr. Dershowitz is so gravely concerned about our civil rights laws, I would be quite interested to know how he arrives at the contorted position that it is perfectly acceptable to flout sexual harassment laws, perjure oneself, and obstruct justice, so long as one is President of the United States.

I would note Mr. Dershowitz has acquired some level of notoriety for condoning the use of racism in court, most notably in the O.J. Simpson case. In the process of turning that trial into a judicial mockery, Mr. Dershowitz condoned the use of members of the notoriously anti-Semitic Nation of Islam as bodyguards, as well as Johnnie Cochran's attempt to link retired detective Mark Fuhrman to Hitler.

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The Honorable Henry J. Hyde  
The Honorable John Conyers  
December 10, 1998  
Page 2

Apparently, the Anti-Defamation League was also offended by Mr. Dershowitz's support of race-baiting in the Simpson trial, because its national director, Abraham Foxman, condemned him for doing so.

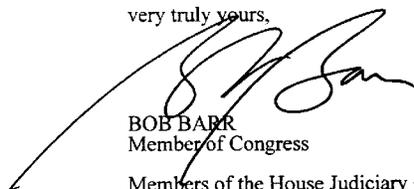
Mr. Dershowitz's conduct in our deliberations -- raising the outrageous specter of the KKK and David Duke, whose rhetoric and actions I, and every member of our committee, vehemently oppose -- confirms his tactics of making unfounded accusations of racism as a defense tool. Clearly, he has absorbed the maxim of many trial lawyers that pounding loudly on the table is the best option when you have neither the facts nor the law on your side. His deplorable conduct at our hearing stemmed from the same *modus operandi* he has used before.

Interestingly, Mr. Dershowitz's latest missive underscores the very point I made in our hearing when I referred to the "real America." The "real America" I was referring to may not breath the rarefied air of the Ivory Tower, but it understands the difference between right and wrong, and legal or illegal. This same real America would not support the use of baseless accusations of racism to deflect attention away from the facts and the law.

Finally, Mr. Dershowitz's actions have continued a pattern of conduct in which individuals are attacked personally during these debates surrounding the impeachment of President Clinton. While I intend to ignore Alan Dershowitz's race-baiting, I think it is important for you and the Committee to understand his accusations are completely unfounded and deplorable. Should you have any questions about this matter, please do not hesitate to contact me.

With warm personal regards, I remain,

very truly yours,



BOB BARR  
Member of Congress

Members of the House Judiciary Committee

BB:jb

Chairman HYDE. The committee will stand in recess for 30 minutes.

[Whereupon, the committee recessed, to reconvene in 30 minutes.]

Chairman HYDE. The committee will come to order.

The resolution now before us has been read and is open for amendments, and we are going to do it article by article. So as to Article I, are there any amendments to Article I?

The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, have you had a chance to hear from Mr. Starr?

Chairman HYDE. Yes. We were told that on all of these, we will have the answers for you, to your questions. We hope to have them. May all your requests be as speedily answered. I am told there are no reservations. There are no amendments to Article I.

The Clerk will call—

Does someone wish to strike the last word?

Ms. JACKSON LEE. Yes, Mr. Chairman.

Chairman HYDE. The gentlewoman from Houston, Texas is recognized for 5 minutes to strike the last word.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

We have all had an opportunity to hear this morning from passionate Americans who have disagreed. In so doing, Mr. Chairman, we have confirmed what this Nation stands for. It is a democracy. It does abide by the rule of law. It is a constitutional government.

Frankly, I think we do a disservice to this process by suggesting to the American people, any of us, that the process does not work. But it is for these reasons that I must counter and oppose Article I. See, I am wrapped in the Constitution. I was hoping we might follow it today.

But in any event, I have participated in this process and noted earlier in my remarks that it has been a shortened process. And the Chairman has aptly said, many of us, and many Americans, said—have commented that they wanted to see this process move expeditiously. But in so doing, I would hope my remarks would not have been attributable to the idea that I did not want to get the facts, that I did not want an article of impeachment to be grounded in the facts, particularly as it relates to what every American now can recite but may not understand—perjury. And then later we will discuss obstruction of justice and abuse of power.

Many scholars and experts on the issue of perjury have already said to us how undefined it is, how unclear perjury is. And I cannot find, in all of the chief counsel's presentation, where Mr. Schippers convinced us that the President believed he was making false statements.

Of course, we know that there was a lot of mish-mash, a lot of who said what. My understanding of the word "is" is "is," but impeachment is precise. It is not appealable. It is ultimately the removal of a President from the United States of America, and frankly, Mr. Chairman, it is a serious and momentous occasion, one that I would not want to be part of today and of history to report, not because the vehicle is not one that cannot be used and we should

ignore; it was put there by the framers, but for a very grave concern.

Mr. Chairman, we are in a great, grave dilemma, believing in the Constitution, believing in the promise, and recognizing that it keeps this country together. But I cannot hold to the fact that allegations contain discrepancies, on the basis of a judgment on a witness whose credibility has not been—has not been, if you will, confirmed in this proceeding. For in the fear of prosecution, it has not been made in this setting.

So as someone who recognizes that my very existence, the fact that I am now a whole person and not two-thirds of a person is wrapped in this Constitution, it makes me very much needing to be precise when I act on anything that I claim to be constitutionally grounded. And for it to be this article based on perjury to remove a President, it is not there.

We have too many in this Nation, as I close, Mr. Chairman, who hold on for their existence—whether their religion is different, whether their sex is different, whether they have just come to this Nation as a new immigrant seeking freedom, they know that they can trust the Constitution to protect them, though oppressed.

Frankly, the President, however, is a human being; and we must, as well, give him the protection of the Constitution. It is not here, Mr. Chairman. It is not in this article. This article does not warrant conviction. It does not warrant leaving this committee. It is, in fact, Mr. Chairman, an article that we should terminate. I thank the Chairman for his time.

Mr. NADLER. Mr. Chairman, point of information.

Chairman HYDE. Who seeks a point of information?

Mr. NADLER. I do.

Chairman HYDE. Mr. Nadler.

Mr. NADLER. My question is that this Article I that we are discussing now alleges the President committed perjury. It is basic that we should be told, before voting the specific words that are alleged to be perjurious, and I was—my point of information is, what are those words? What words specifically, for the 4—for the 4 subunits, 4 allegations in Article I, are alleged to be perjurious?

Could we have that? Could we have those words, please, so that we could discuss them as to whether they are perjurious, and so that the Senate, should this article, God forbid, pass the House, that the Senate will know what the allegation is and the defense attorneys will know what they must defend against?

In connection with the question and my point of information, I would ask unanimous consent to insert into the record an article from today's L.A. Times raising the same question.

[The information follows:]

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December 11, 1998, Friday, Home Edition

SECTION: Part A; Page 28; National Desk

LENGTH: 1006 words

HEADLINE: THE IMPEACHMENT HEARINGS;  
EXPERTS SAY PERJURY CHARGE VAGUE;  
LAW: PANEL'S KEY ARTICLE OF IMPEACHMENT DOESN'T CITE WHICH STATEMENTS BY CLINTON  
CONSTITUTE A LIE, AN OMISSION SOME CALL A SERIOUS FLAW.

BYLINE: DAVID G. SAVAGE and ROBERT L. JACKSON, TIMES STAFF WRITERS

DATELINE: WASHINGTON

BODY:

The articles of impeachment to be debated today by the House Judiciary Committee broadly charge President Clinton with perjury in the grand jury and in the Paula Corbin Jones sexual harassment case, but they do not say what statements were false, a serious flaw in the view of some legal experts.

The key charge, Article I, says that Clinton lied before the grand jury in August "concerning the nature and details of his relationship" with former White House intern Monica S. Lewinsky.

Perjury before the grand jury is the strongest impeachment count, several wavering Republicans have said, and it is the charge most likely to be sent to trial in the Senate.

But as debate on the articles gets underway, committee Republicans who will prosecute the case have yet to set forth which of Clinton's statements in August were "willfully perjurious."

Under oath before the grand jury, the president admitted that he had "inappropriate intimate contact" with the former White House intern and acknowledged that he had misled his family, friends, staff and the American public about his illicit relationship.

However, Clinton also said then, and his lawyers say now, that he told the truth before the grand jury.

In the days ahead and certainly in a Senate trial, the debate over specific statements would prove crucial because a perjury case turns on precise words and their intended meaning.

Republicans Focus Broadly on Charge

Los Angeles Times December 11, 1998, Friday,

To this point, the Republicans have focused broadly on the charge that Clinton is a liar. They have plenty of evidence to bolster that claim. They say that he lied about his relationship with Lewinsky in the January deposition, denying even being alone with her.

When news of their affair became public, he went before the cameras and lied to cover up his affair. And in August, he continued lying before the grand jury, they assert.

Clinton displays "a conscious disregard for the truth," committee GOP counsel David Schippers said in summing up Thursday, and his pattern of lying has brought "scandal and disrespect" on the presidency.

But Democratic defenders want to narrow in on the details. Yes, they say, Clinton lied to the public in January. And he was misleading and evasive, even "maddening," in his Jones case testimony, his lawyers concede.

But he did not lie under oath to the grand jury, they say.

Looked at broadly, the charges that Clinton lied appear powerful. Looked at more narrowly, however, the case against him for perjury in his grand jury testimony looks quite a bit weaker.

Under the Constitution, the House is free to impeach the president on whatever grounds it chooses.

#### Question of Fairness

However, several former prosecutors and law professors questioned whether it is fair to impeach the president for perjury without specifying the false statements.

"It's basic. You can't bring a perjury indictment without spelling out what the perjury is," said Pamela Stuart, a former federal prosecutor here. "You have to show the precise statements that were false. In the recent Webster L. Hubbell indictment, independent counsel Kenneth W. Starr set forth the exact words that he claims are perjurious."

"I'm surprised they didn't lay out the specifics on perjury yet," said Stephen Saltzburg, a law professor at George Washington University. "You can't debate whether someone testified falsely unless you know what the false statements were."

Aside from lacking in particulars, the perjury charges are weak, according to other experts, because they fail to include what prosecutors usually have in their arsenal: evidence from two or more witnesses that a defendant has lied under oath.

"It's the president's word against one other's--Lewinsky," said Paul Rothstein, a Georgetown University law professor. "To prove, you need to have two witnesses."

In September, Starr pointed to three instances where Clinton allegedly lied in his testimony to the grand jury.

Los Angeles Times December 11, 1998, Friday,

He said that the president lied when he denied touching Lewinsky in a sexual way, contradicting her testimony.

Rep. Barney Frank (D-Mass.), a defender of the president, called this the "question of who touched who where."

In his closing argument Thursday, Democratic counsel Abbe Lowell asked the Republicans to think twice "before you put the country through the unseemly spectacle of a trial requiring Ms. Lewinsky to describe what part of him touched what part of her."

Starr also said that Clinton lied when he said the affair began in February 1996, rather than November 1995. Clinton also lied in August, Starr said, when the president said in January that he believed oral sex was not included in the definition of "sexual relations" read to him during the Jones deposition.

On Thursday, Lowell played part of the taped Jan. 17 deposition showing a confused, three-way conversation about the convoluted definition of "sexual relations" used in the Jones case. Prophetically, Judge Susan Webber Wright commented that the definition was rather unclear and would cause confusion later.

During this week's hearing, committee Republicans cited a fourth example of lying to the grand jury. They said that Clinton lied in August, saying he was not paying close attention when Robert S. Bennett, his private attorney, told Judge Wright that the president had no sex of any kind with Lewinsky.

In one of his most effective moments, counsel Schippers played part of the January videotape that shows Clinton watching as Bennett asserts the president's total innocence.

"Do you think for one moment, after watching the tape, that the president was not paying attention?" Schippers asked.

In his argument, the Republican counsel urged committee members to look at Clinton's testimony "as a whole," not to focus on statements that may be "literally true."

But Stuart, the former prosecutor, disputed Schipper's view.

"I guess I find that rather scary. In a perjury case, you are ignoring the rule of law if you don't focus on the precise words," she said.

LANGUAGE: English

LOAD-DATE: December 11, 1998

Chairman HYDE. I can only refer you to Mr. Schippers' report yesterday discussing this, and I will try to get a copy of it and repeat it to you.

Mr. NADLER. Mr. Chairman, with all due respect, Mr. Schippers' report, and I have listened carefully, makes many multiple allegations, many multiple—many inferences, and it is unclear to me from reading that, which of those statements are the subject of these specific 4 points.

There are 4 specific points here. For each one of them, we should list in a committee document what the allegedly perjurious words are. Failing that, there is no due process, and I think no ability to note intelligently or to discuss intelligently this article.

Chairman HYDE. The words were set out in detail in the presentation yesterday.

Mr. NADLER. Then you would be able to tell me what they are.

Chairman HYDE. I am looking for my copy. I didn't commit them to memory. I am not quite that acute. I am waiting for somebody.

Mr. NADLER. Mr. Chairman, I must—

Chairman HYDE. We know your question. We are trying to find the answer. Somebody here on our staff has an answer.

Mr. SENSENBRENNER. Mr. Chairman.

Chairman HYDE. The gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I rise in support of the article of impeachment.

Mr. NADLER. Wait a minute, point of order. Until we have—

Chairman HYDE. I thought the gentleman was going to help on the point of order. He is not recognized to debate yet.

Mr. NADLER. I don't think we can proceed until we know and have in front of us exactly the words that are alleged to be perjurious, so that we can debate them and measure them against the allegation.

Chairman HYDE. I will read to you from the book that we have prepared, and perhaps it will supply your answer. During his deposition in the case of *Jones versus Clinton*, President Clinton testified before the grand jury that he does not believe his conduct with Ms. Lewinsky falls within the definition of sexual relations.

He was given, in the case of *Jones v. Clinton*, grand jury testimony of President Clinton 8/17/98, page 11, House Document 105–311, page 463. When he was specifically asked “. . . whether oral sex performed on you is within that definition as you understand it, the definition in the Jones,” the President responded, “as I understand it, it was not. No.”

Grand jury testimony of President Clinton, 8/17/98, page 92, House Document 105–311, page 54: The President conceded that he considered the kissing or touching of breasts or genitalia of another person would be covered by the definition of sexual relations utilized at his deposition in the case of *Jones v. Clinton*. After making this concession, the President testified, “You are free to infer that my testimony is I did not have sexual relations as I understood this term to be defined.”

There is so much here that I really don't care to read, but it is available.

Mr. NADLER. Mr. Chairman.

Chairman HYDE. Yes.

Mr. NADLER. Mr. Chairman, my question is, you have just read a paraphrasing of what the President allegedly said. Then you read a quote beginning, as I understand it, "No." Then you read a paragraph about a concession, or what is characterized as a concession the President made, and then you read a quote, "You are free to infer," and I forget the rest of the sentence.

Are you including those paraphrases as part of the allegation? If yes—

Chairman HYDE. Yes. The paraphrases are part of the allegation.

Mr. NADLER. Then could we have the exact terminology, please? You cannot base a perjury indictment or a perjury article on a paraphrase. You have to know the exact words. It is black letter hornbook law. I would ask that before we consider any allegation of perjury, we have before us in writing the text which is the alleged subject of—we have here four things: the nature and details of his relationship with a subordinate employee, that is one allegation. What words are we—

Mr. GOODLATTE. Point of order, Mr. Chairman.

Mr. NADLER. What we have here is paraphrasing, "what is that referring to," and so forth. We need the exact words. In other words, we can't argue intelligently.

Chairman HYDE. Mr. Nadler, I will read something that is not as sexual as what I had on the other page.

Mr. GOODLATTE. Point of order, Mr. Chairman. Mr. Chairman, the gentleman from New York has not stated a proper point of order. We are operating under the 5-minute rule. The gentleman should either be required to act under the 5-minute rule as part of his general debate of Article I, or his point of order should be ruled out of order.

Mr. NADLER. It was a point of inquiry.

Chairman HYDE. You are correct, it was a point of inquiry. What I will do for you, so we don't have to hold this up too much, I will have these next two pages, which are question and answer, question and answer, question and answer, Xeroxed.

Mr. NADLER. Point of inquiry.

Chairman HYDE. State your point.

Mr. NADLER. Mr. Chairman, you say you will give me specific quotes? Or paraphrases?

Chairman HYDE. Specific quotes.

Mr. NADLER. My second point of inquiry is the allegations then in Article I are limited to the words which will be on that Xerox you going to give me?

Chairman HYDE. No, they are not.

Mr. NADLER. In which case you are not going to tell us what the words allegedly perjurious are, only some of them?

Mr. CANADY. Mr. Chairman, I make a point of order that we should follow the regular order.

Chairman HYDE. I will give you as much as I can of the direct language. There may be some paraphrasing. I have a lot of direct quotes here. This information is available. These articles were drafted exactly as they were in the Nixon situation, and they are not in particulars; they are articles of impeachment.

I am happy to provide the gentleman with what I have, which are direct quotes, so that you can know what we are talking about.

Mr. SCHUMER. Could I make a unanimous consent request?

Chairman HYDE. Surely.

Mr. SCHUMER. Thank you, Mr. Chairman. And I do think you have been fair throughout these proceedings. I know you mentioned in your statement you were stung by statements saying you have not been fair. I think you have been fair. I don't agree with where you are going, but I think you have been fair.

My unanimous consent request is this: We are dealing with something that is more serious than anything we have dealt with on this committee in a very, very long time. Yesterday we had a lengthy report by Mr. Schippers that went on for several hours and listed a whole bunch of different allegations. Today we have before us the articles.

I think if we actually debate the articles, it would be appropriate, fitting, proper, and necessary that perhaps the Clerk, perhaps Mr. Schippers, perhaps the sponsor of the article, or you, yourself, outline to us the specifics; which ones did you think rose to the level of being worthy—which alleged perjurious statements before the grand jury rose to the level of being included in the article, which ones did not.

I am not trying to do this to deter you, I just have a unanimous consent request. I think it is worth discussing. I would like to finish it, if the gentleman would give me that courtesy. We are not dealing here with being bad. This is one of the most serious things this committee has undertaken.

I, for one, while I have read the article, I don't know which specific statements it is alleged that the President made that are perjurious. I have read and listened to Mr. Schippers' statement yesterday.

Mr. CANNON. The gentleman has stated a unanimous consent request?

Mr. SCHUMER. My unanimous consent request, which I will make directly in the form of a request, is this: that before we begin debating these momentous articles, that either the Chair, the author, or Mr. Schippers or the Clerk outline for us what explicit statements are stated to be or believed to be, by the author and supporters of this article, as perjurious. That is my unanimous consent request.

I don't see, frankly, how in good conscience we can vote on these articles and present them to the full body and present them to the American people without explicitly knowing that.

Mr. CANNON. Reserving the right to object.

Chairman HYDE. The Chair would like to respond to Mr. Schumer. That was the purpose of the presentation yesterday. The 2½ hours or 3 hours of Mr. Schippers' detailed presentation, with a copy of the text given to you, contains the information you seek. Now you want us to rehash it orally now as though you weren't here yesterday, as though you didn't hear Mr. Schippers, as though you haven't read his presentation.

I think that is an imposition on the rest of the committee, and so your unanimous consent request is—

Mr. SCHUMER. Mr. Chairman, before you deny it, I have read the presentation, I have listened to it, and I have thought about it, in fact, all of last night. And in that presentation there is a whole—

Mr. GOODLATTE. Regular order, Mr. Chairman.

Mr. ROGAN. This is a breach of the committee's rules.

Mr. SCHUMER. If the gentleman will not——

Mr. ROGAN. The gentleman has not been recognized.

Mr. SCHUMER. This is important enough that I deserve to be heard.

Mr. GOODLATTE. We recognize the 5-minute rule——

Mr. SCHUMER. I was making a unanimous consent request.

Mr. ROGAN. Ad nauseum.

Chairman HYDE. There is objection to your request. I think it would be redundant and excessively time-consuming.

Could we get rid of Mr. Nadler's point of order, or the point of inquiry? Your point is the same as Mr. Schumer's; you want to know specifics.

Mr. NADLER. No, I disagreed with Mr. Schumer in one respect. My point of order is this: First of all, no one is asking for an oral presentation to waste anybody's time or for any other purpose. What I am saying is Mr. Schippers made many, many statements. The President and his defense attorneys are entitled to know, it is black letter law that anyone accused of perjury is entitled to know; before we vote, we are entitled to know which specific words, which specific sentences, of the many that Mr. Schippers cited, are the points being alleged as perjury. They should not be subject to being added to later.

Mr. CANNON. He has not stated a proper point of order, Mr. Chairman.

Mr. NADLER. It is improper to have an article that does not relate specifics.

Chairman HYDE. I have heard the gentleman, and I am going to overrule whatever it is you are asking for.

Mr. FRANK. Mr. Chairman, under the 5-minute rule?

Chairman HYDE. Yes.

Mr. FRANK. I think it has just been made very clear how flawed this article is. I reread the presentation of Mr. Schippers. It is impossible to tell from that presentation what specific fact allegations are being challenged as perjury. I do not think it is a result of incompetent draftsmanship. I think it is a decision.

First, let's be clear. I say this is very important, because grand jury perjury goes to the heart of the case. It is clearly the one article that has the best chance to win. Grand jury perjury does not run into problems of materiality, et cetera.

The problem the Majority has with grand jury perjury is that in Mr. Starr's report the three specifics are, in combination, trivial and impossible to prove. Mr. Starr lists, unlike Mr. Schippers, three specific allegations. We can't tell from reading this whether Mr. Schippers is going beyond Mr. Starr, whether he thinks Mr. Starr became too easy on Mr. Clinton. We can't tell from reading either the article or the presentation what the specifics are on the single most important charge of grand jury perjury.

I think part of the problem is, as the Chairman illustrated with his obvious reluctant reading of more detail about anatomy than any of us wanted to have discussed in public, part of the problem is that the central charge that Mr. Starr makes alluded to vaguely in lines 17, 18, and 19 here, the nature and details of his relation-

ship with a subordinate government employee, that has to do with Mr. Clinton's denial that he touched Ms. Lewinsky in certain places for the purposes of causing gratification.

The President acknowledged before the grand jury that there had been sexual contact. Mr. Starr charges, and Mr. Schippers repeats to some extent in his presentation and vaguely alludes to in the article—and this is the sense of the perjury charge—the President violated that traditional definition of sexual relations he said he abided by because he touched her.

And there is a debate, and this is quoted by Mr. Schippers, quoted by Mr. Starr, did the President touch her here, or did he not touch her here? That is the heart of it. I think what we see is an understandable reluctance on the part of the Majority to ask the American people to do one of the most momentous things a democracy can do: impeach a twice-elected President of the United States, throw him out of office.

Because impeachment is not simply a way of expressing your wish that he had not won. Impeachment is—if we vote in this committee to impeach, understand that, we are doing the maximum we can do as elected representatives to throw this man out of office. You cannot gainsay that. This is the beginning of a process which is intended to throw him out of office. You are voting on a resolution which says you believe he should be thrown out of office.

There is an understandable reluctance to say we want him thrown out of office because he did go to the grand jury and he did say that they had had sexual contact, but he didn't give us enough detail; he didn't tell us what he touched. Therefore, it was perjury.

The other one we have, and I assume this is also involved here, he said it started in February, when it started in November. Mr. Schippers said he said they had phone sex sometimes, but it was 55 times. Well, I don't think it is perjury if you do not describe the amount of phone sex in adjectives sufficient to satisfy Mr. Schippers.

So the vagueness that my colleagues have pointed out—and it was very clear how Majority was unable to respond to these simple requests—which statements do you think is perjurious? It was not simply incompetence. They are much better drafters than that. It was a conscious decision, on the one article that they think has the most serious chance of driving impeachment home, to vacillate and confuse and not to be specific, because they do not believe that the specifics would justify impeachment.

Where the President touched her after he acknowledged having sex, whether it started in November or February, those are not issues for which people think you undo two Democratic elections and throw an elected official out of office.

So what we have here, in the single strongest article as they have described it, is a deliberate vagueness, obfuscation, because they simply do not have substantial specific evidence that they themselves believe would justify impeachment.

Chairman HYDE. The gentleman from Wisconsin, Mr. Sensenbrenner, is recognized for 5 minutes. Would you yield to me for—

Mr. SENSENBRENNER. I yield to the Chairman.

Chairman HYDE. Thank you. In partial answer to Mr. Schumer's prior—and Mr. Nadler's questions—I have some quotes from Mr.

Schumer, October 5, 1998. "To me it is clear that the President lied when he testified before the grand jury."

October 8, 1998, Mr. Schumer. "To me, Mr. Speaker, it is clear the President lied when he testified before the grand jury."

Then I have Mr. Wexler from September 15th: "It is clear from the report that Clinton didn't tell the truth."

October 5th, Mr. Wexler: "The President had an affair. He lied about it."

So if you want the specifics, whatever it was you relied on, I would be willing to cite it.

Mr. SCHUMER. Point of personal privilege.

Chairman HYDE. Also I understand that lurking about is a resolution of censure, and if I am not misinformed, it says, "The President made false statements concerning his reprehensible conduct with a subordinate."

So you must have a sufficiency of specifics to reach those conclusions that you have reached. I guess in law you call that an admission against inference.

Mr. FRANK. Would the gentleman yield?

Mr. SCHUMER. Point of personal privilege.

Chairman HYDE. Simply by way of information. Mr. Schumer has a point of order—

Mr. SENSENBRENNER. Mr. Chairman, it is my time.

Mr. SCHUMER. Will the gentleman recognize me, not on his time, but will the Chair—

Mr. SENSENBRENNER. May I ask unanimous consent that my time may be tolled for however long Mr. Schumer wants to—

Mr. SCHUMER. No objection.

Mr. BUYER. No.

Chairman HYDE. Go ahead, Mr. Schumer.

Mr. SCHUMER. The point is very simple. Yes, I stated the President lied. I believe he did. First—

Chairman HYDE. When? When did he lie?

Mr. SCHUMER. That is, I am not putting forward, Mr. Chairman, with all due respect, articles of impeachment. And furthermore, even if you believe as many do in this country and on this side of the panel, because we have all, or most of us have stated it, we don't believe it rises to the level of impeachment.

To make a considered judgment whether that is true or not, Mr. Chairman, the Members of this House, once we refer something to them, should know the specifics.

Second, the standards—

Mr. SENSENBRENNER. May I reclaim my time to give you some of the specifics, sir?

Mr. SCHUMER. It is not your time. The Chairman has yielded to me.

Chairman HYDE. We can move along in an orderly fashion. Let Mr. Schumer finish. I have a feeling he is nearing the end.

Mr. SCHUMER. Your feeling in this case, Mr. Chairman, is correct and justified.

Chairman HYDE. That is known as the power of suggestion.

Mr. SCHUMER. Correct, and very persuasive in this instance it is.

Mr. FRANK. Or the suggestion of power.

Chairman HYDE. That is true.

Mr. SCHUMER. Number one, we are not dealing with fun and games here. If you are putting together articles of impeachment, specifically you should state which instances you believe not only were lies or mistruths, but which were perjurious. And there is a different standard, and the gentleman knows, all perjury is lies; not all lies in the common parlance are perjurious.

Second, even if you should assume that they are the same here, we are rising to a level where we are asking to impeach a President, and I find it utterly amazing that instead of giving an answer, "These are the three cases where he lied before the grand jury that rise to the level of perjury, and, more importantly, rise to the level of impeachment," we cannot get the other side to specifically state them.

I find that—and instead, you are relying on a statement that I made, which I believe and have believed all along, and that is not a substitute.

Again, we are not dealing in verbal jousting here. We are not dealing, if I might finish, and I am about to finish—

Chairman HYDE. Please, Mr. Schumer, please finish.

Mr. SCHUMER. In winning a point. We are dealing with impeaching a President. If you can't state the specifics, and you want to move forward, something is wrong with the process.

Chairman HYDE. I hope by the end of the debate, you will have heard a lot of specifics. I am now back to Mr. Sensenbrenner.

Mr. SENSENBRENNER. Do my 5 minutes start fresh now, Mr. Chairman?

Chairman HYDE. As we speak.

Mr. SENSENBRENNER. I thank the Chair.

I would draw attention to the four specific instances of false and perjurious testimony that are contained in Article I. I know I won't be able to list all of them in 5 minutes, but they fall in four basic areas:

1. the nature and details of his relationship with a subordinate government employee;
2. prior perjurious, false, and misleading testimony he gave in the Federal civil rights action brought against him;
3. prior misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and
4. his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

Now, I know I won't be able to get through the instances that we know of in all four of these categories, and I would request my colleagues seated to my right to pick up when the red light goes on for me. But I also would like to point out that this is a very clever ruse on the part of the people seated to my left to attempt to limit evidence that can be adduced in the Senate, if it gets that far, to just these instances that I give. I am going to say that—

Mr. DELAHUNT. Mr. Chairman.

Mr. SENSENBRENNER. It is my time, please.

Mr. DELAHUNT. I have a unanimous consent request.

Mr. SENSENBRENNER. I will object to whatever it is, because I would like to make my point without interruption, if I could.

Chairman HYDE. You may. Please proceed.

Mr. SENSENBRENNER. I would just like to point out that the instances that my colleagues and I will be giving should not be construed at any future point in the proceeding as limiting evidence that might be adduced either on the House floor or over in the Senate.

But first, relative to point number one in the articles of impeachment, the nature and details of his relationship with a subordinate government employee, page 11 of the grand jury testimony, the President testified whether his conduct with Ms. Lewinsky fell within the definition of sexual relations.

He was given the case of *Jones v. Clinton*. He said he didn't believe that. At page 92, when he was asked ". . . whether oral sex performed on you was within the definition, as you understood it," the President replied, "As I understood it, it was not. No." The President conceded that the kissing or touching of the breasts or genitalia of another person would be covered by the definition of sexual relationships utilized in his deposition in the case of *Jones v. Clinton*. That is at page 95. That testimony is false and misleading in light of the detailed and corroborated and consistent testimony of Monica Lewinsky.

Secondly, the article of impeachment says, "His prior perjurious false and misleading testimony he gave in a Federal civil rights action brought against him," which is *Jones v. Clinton*. At pages 457 and 458 of the grand jury testimony, he testified that he believed he had answered the questions truthfully, "That is correct", in the Paula Jones deposition. I think there is ample evidence, including the videotape we saw yesterday, that that wasn't true.

The third point is that there were—the President made prior false and misleading statements that he allowed his attorney to make to a Federal judge in a civil rights action.

Now, the President's deposition, or excuse me, his grand jury testimony at pages 57 to 61 specifically relates to the affidavit that Monica Lewinsky signed, caused to have filed in the Jones versus Clinton case, where the President said, "If it means there are none, that was a completely true statement."

We saw that on the TV yesterday, and that related to the false affidavit in the—of Monica Lewinsky in the civil rights action that the President's own attorney, Robert Bennett, said that the court should disregard in a letter, after more facts came out.

Fourth, his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in a Federal civil rights action. Take a look at the grand jury testimony, page 43. My time is up. I think that is enough.

Chairman HYDE. The gentleman's time has expired.

Mr. DELAHUNT. Mr. Chairman, a unanimous consent.

Chairman HYDE. The gentleman is recognized for a unanimous consent request.

Mr. DELAHUNT. Thank you, Mr. Chairman. I make a unanimous consent request that Mr. Sensenbrenner be given what time he needs to outline the specifics.

Mr. CHABOT. I object.

Chairman HYDE. Objection is heard, but we will get him some more time along the line.

Mr. CONYERS. Mr. Chairman.

Chairman HYDE. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, is it unreasonable to ask, when we are about to impeach a sitting President, that at least in these articles, starting with Article I, that we articulate which specific statements are perjurious in the text of the resolution?

Now this, referring to pages out of Mr. Schippers' presentation and other matters that we heard here, is exactly the problem. This charge of perjury fails because it is vague and does not meet the minimal standards of due process. All the article says before us is that the President lied about the nature and the details of his relationship.

What does this mean? And so what I would just like to do is point out to you that in these four instances, clause (1), relating to the nature and the details of the relationship, the President admitted that he had an improper relationship with Monica Lewinsky before the grand jury. The phrase "nature and details of the relationship" shows that the Republicans want to impeach the President over what has been referred to as who touched who and where.

Now, in the second paragraph we are talking about relating to and affirming deposition testimony in the Paula Jones case. One cannot impeach the President for reaffirming his Paula Jones testimony. The judge, the Jones attorneys, and the President all agreed that when he was asked about whether he had a sexual relationship in deposition, the definition used there was contorted and confusing. We cannot now bring this to the height of an impeachable position in this article this afternoon.

There is also a definite lack of materiality that would throw such an allegation out of any court in the country.

The third clause regarding his grand jury testimony regarding the filing of an affidavit: The President never told Ms. Lewinsky to file a false affidavit, but only that an affidavit may satisfy a legal requirement once she was subpoenaed. That has been reported repetitively here. That is not illegal nor improper, and that is the uncontradicted testimony of both the President and Ms. Lewinsky.

The President believed fully that the Lewinsky affidavit was accurate. Lewinsky characterized in her taped conversation with Ms. Tripp the same definition of sexual relations used by the President and consistent with Webster's Dictionary.

Now, clause (4) regarding the President's testimony at the grand jury to corrupt testimony of Lewinsky in the Jones suit: Monica Lewinsky said that no one asked her to lie. No one promised her a job. We must have heard that nearly 35 times in this committee. This may also be a veiled reference to efforts to find Ms. Lewinsky a job, but the testimony before the committee clearly shows that these efforts started prior to the Jones litigation, and the President never offered her a job.

Mr. FRANK. Will the gentleman yield?

Mr. CONYERS. I yield briefly to Barney Frank.

Mr. FRANK. One point the Chairman made, the censure resolution refers to false statements made not under oath in press conferences. The suggestion that the censure resolution is in any way consonant with perjury is just not true. The censure resolution that

the Chairman quoted, the Democratic censure resolution, does not at all talk about false statements made under oath, and certainly not before the grand jury.

Mr. CONYERS. I repeat, Mr. Chairman, can't we, in reasonableness on an article of impeachment for perjury, ask that you articulate which specific statements are perjurious? That is all that has been asked here by four members of this side of the aisle. Can we do that?

Mr. BERMAN. Mr. Chairman.

Chairman HYDE. The gentleman's time has expired.

The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, throughout this proceeding, we have been admonished by those on the other side of the aisle to look to the Rodino proceedings for guidance as we proceed. I think we have done a very good job of that throughout this process.

I have before me the articles of impeachment against President Richard Nixon, particularly Article I, which was approved by this committee by a vote of 27 to 11 on July 27, 1974. Now, the only member of this committee who remains from the Watergate committee is the gentleman from Michigan. He voted for this article of impeachment.

The article specifies nine sections with regard to acts by President Nixon that the committee felt to be impeachable. The first one is "Making or causing to be made false or misleading statements to lawfully authorized investigative officers and employees of the United States." It does not specify what those statements are, what they—

Mr. DELAHUNT. Will you yield?

Mr. GOODLATTE. No, I will not yield—what date those statements were made, in what context they were made. It simply specifies that false and misleading statements were made.

The second paragraph deals with "Withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States," and again, that is the entire text of that section.

The eighth section says, "Making false or misleading public statements for the purpose of deceiving the people of the United States," and it does not specify what those are either. I recognize the gentleman from Massachusetts' point that the censure resolution only refers to the public statements with regard to President Clinton.

I would only add that that points out exactly how weak the censure resolution is, if it doesn't even make reference to the false statements the President has so clearly made before the grand jury—

Mr. GEKAS. Will the gentleman yield for a point?

Mr. GOODLATTE [continuing]. In a civil deposition. I will in just a moment.

The final point I would point out is that the report that was filed with these articles of impeachment by the Rodino committee with regard to President Nixon, and the supporting documentation that was filed, does itemize in considerable detail exactly what false and

misleading statements were made. So I think we are entirely appropriate.

In fact, we have been far more generous than the Rodino committee was in terms of making available information in terms of the statements made by Mr. Schippers yesterday, and by Mr. Sensenbrenner a few minutes ago.

I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman for yielding. The point has been made that the articles of impeachment then, in Watergate, and now are based on the record that has been compiled over the course of time. The articles are allegations, final allegations as part of the article of impeachment, that are founded on the massive evidence and records that are part of the record, and the report and the comments of the members of the committee, and all the evidence that was presented by counsel are all the foundation.

The article simply relies on us, who have heard this evidence, who have developed our own opinions on it, to finally record our votes on whether or not the record substantiates the wording of the article of impeachment, then and now.

Mr. GOODLATTE. I yield to the gentleman from North Carolina.

Mr. WATT. I thank the gentleman for yielding.

I thank the gentleman for yielding. I think the gentleman has made the exact point we are trying to make over here, that once you insert the word "perjurious," which is a legal term, you are required to specify what phrases, words, were perjurious.

Mr. GOODLATTE. Reclaiming my time, the gentleman has no precedent for that in terms of the context—

Mr. WATT. Yes, there is—

Mr. GOODLATTE. Reclaiming my time, with regard to impeachment articles against previous Presidents, including false and misleading statements, there is no distinction being made here in terms of submitting to the Senate the charge the President has made false, misleading, and perjurious statements. We simply have a record that we are going to submit in the Senate, and it is in that record, just like it is in the record with regard to President Nixon.

I believe my time has expired.

Mr. WATT. Will the gentleman yield?

Mr. SCHUMER. Mr. Chairman, I move to strike the last word, Mr. Chairman.

Chairman HYDE. The gentleman—I guess you haven't trespassed on time, yet. The other was a point of order.

Mr. SCHUMER. Correct.

Chairman HYDE. The gentleman is recognized. The gentleman is recognized for a short 5 minutes.

Mr. SCHUMER. Thank you. I will take a very short 5 minutes, but a pointed 5 minutes.

I would say this, Mr. Chairman. I am just utterly amazed at where we are. We are seeking to remove a President of the United States. By general concession, this first article is the strongest case that the Majority has, that the authors of the resolution have, because it deals with perjury before the grand jury.

We cannot get from anyone thus far a list of what specific perjurious statements have been made.

Chairman HYDE. Will you yield?

Mr. SCHUMER. If the Chairman will make my short 5 minutes a long 5 minutes, I will.

Chairman HYDE. I will. I just want to say that the information has been handed to Mr. Nadler, a transcript of these remarks of Mr. Schippers yesterday, which contain extensively the information you are seeking.

Mr. SCHUMER. Reclaiming my time, Mr. Chairman, are we then saying that the entire portion of Mr. Schippers' testimony yesterday, or presentation yesterday, all of that could be attached to the articles of impeachment as representing every one of those, is what the author of the resolution believes to be perjurious, point A, and B, nothing more?

Chairman HYDE. I think—

Mr. SCHUMER. I would yield to the gentleman. If the gentleman believes that, then our question is satisfied. At least there is a list of particulars.

I would remind the gentleman, particularly my good friend from Virginia, that Watergate—there was no perjury charge there; that it is a fact of common law that when you are indicted for perjury, the actual perjury words be included in the indictment.

And if you are asking for precedent, which the gentleman from Virginia was, I only look to Mr. Starr's indictment of Web Hubble, which had specific items of perjury.

Chairman HYDE. Will the gentleman yield?

Mr. SCHUMER. I yield.

Chairman HYDE. This is not an indictment. This is not a criminal proceeding. You keep casting it as such. It isn't. This is impeachment, as we are reminded ceaselessly by everybody else.

Mr. SCHUMER. Reclaiming my time, I would make a couple of points. Yes, the gentleman is exactly correct; this is not a specifically legal proceeding. But the entire basis of what the author and the Majority have called for here is the fact that the President broke the law, that Americans can never trust the President again, that he allowed perjurious testimony to go forward.

I think, at the very least—in other words, you are making a case based on the law. That has been the entire case that I have heard the Majority make. Now, all of a sudden, we are getting into the sort of never-never land of page 7 of the articles; when the President makes a misleading statement or a false statement, whether it is perjurious or not, that might be grounds for impeachment. I find this a sad day when that is the case.

So what I would ask, again I would renew my request, because I think it is important to know if it is serious enough that we take that into account; that in one way or another—and I am only speaking for myself, I would be willing to take a short recess so the Majority could prepare it—that we get specific words that are alleged to be perjurious.

As I read Mr. Schippers' presentation, and I imagine it is some 15 or 16 pages, based on Article I, based on the grand jury testimony, there are all sorts of charges and allegations. Some are done in paragraph form, some are done with specific quotes. There is not one sort of set pattern.

I think what is required of us here today—because indeed we are seeking to impeach a President, and many of us argue that that is

a step that even goes beyond the criminal law, because not every, at least in my judgment and in the judgments of many scholars, not every violation of criminal law rises to the level of impeachment, but at least in the criminal law, that we have the specific words listed.

I would ask, in all due respect, and I am about to conclude, my respect for the Chairman, that we be given that specific list so that we, the full House—and, if it should come to it, the Senate—will know exactly what we are talking about.

Chairman HYDE. The gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, although you are absolutely correct that this is not a criminal proceeding in the strict sense of the word, I think there are some parallels that can be drawn and some lessons that can be gleaned from looking to and referencing procedures in the Federal criminal code. The nature of what we are doing here is similar to the drafting up of an indictment; not precisely, but similar to. Yet, the criminal rules themselves provide for what is called a “bill of particulars.”

Were an indictment—which is what the other side is alleging we are basically doing here—deemed to include every single element of every single allegation that will support the criminal charges alleged against the defendant, then there would be no need in the criminal rules for a “bill of particulars.”

The criminal rules, particularly rule 7, do indeed provide general guidance on what is, and what must be contained within an indictment, which is a charge that puts the defendant on notice as to the nature of the charges against him or her.

Subsection (f) of that same rule provides for what I referred to—a bill of particulars. A bill of particulars is something that defense attorneys almost always seek. They seek that because they are seeking additional detail with which to prepare their defense. The appropriate time to file a bill of particulars is after the indictment, in order to test the sufficiency of the indictment itself.

Were a bill of particulars, which is what the other side is cleverly asking for at this preliminary stage—to be required, then every single indictment ever issued by a Federal grand jury would be voluminous and would, in fact, limit the prosecutors in advance of preparing their trial, responding to motions, or preparing evidence, to only those specifics alleged completely as to every single element of proof.

The fact that our Federal rules of criminal procedure provide for, in this instance, a two-step procedure is instructive here. You allege the general parameters with sufficient clarity and detail, only to put the defendant on notice so he or she can begin preparing their defense in the indictment.

What comes after the indictment, which in this case is analogous to what we would be doing after this leaves the House, if it does leave the House, would be a whole range of procedures, during which time the sufficiency of that charging instrument is tested, and during which time the evidence itself is brought forward, debated in this case in the Senate, in a criminal proceeding in the courtroom.

Now, what the other side is doing is, of course, very clever, but very disingenuous. What they are seeking, as the gentleman from Wisconsin noted a few moments ago, they are seeking not to do what they appear to be doing, and that is to provide sufficient data, sufficient information, for the President to know what he is charged with. He knows darned well what he is charged with. There will be, as part of the record that goes to the Senate, tens of thousands of pages of evidence, hours of testimony here, hours of debate here. That will all be the record that will go there.

What they are seeking to do is to limit in advance what the Senate can do. They are trying to tie the hands of the Senate. That is improper. That was not done in any prior impeachment proceedings. It is not done in criminal proceedings. They are simply trying to maneuver their way, anticipating that this does go to the Senate, to limit arbitrarily the data and the evidence, and therefore the charges, on which the President can be tried.

We have in this indictment, in this document that we have here—we have alleged with sufficient particularity to put the President on notice and a reasonable person on notice with the nature of the charges against him so he can defend against them.

Chairman HYDE. The gentleman's time has expired.

The gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman. I would like to take a few minutes. First, I have said that I believe that the President lied before the grand jury, made false statements to the grand jury. I think the Majority has overreached by reaching the conclusion—a conclusion that we don't have a judge to instruct us on the elements—of perjury.

But the worst thing is to try and have it both ways, to reach the legal conclusion in the article of impeachment that the president committed perjury, and then not to comply with the traditional requirements—which Mr. Barr and the majority totally ignored—that in an indictment for perjury that you list the false statements and why the prosecution believes they are false.

If the majority chooses not to do that, I think the fair thing to do is to go through the process of providing notice to the Senate, and to Members of the House on the floor of the specifics. I think that is the fair way to approach this.

Now, I want to acknowledge right off the bat that I don't believe this conduct constitutes or rises to the level of a high crime and misdemeanor. This is not why I am going to vote against this article of impeachment. But I think that is the right way to do it. We passed this law, as I mentioned, this independent counsel law. Starr gets appointed. The investigation presents 60,000 pages, as the Chairman mentioned earlier this morning, of information. I think the Chairman is right. If we wanted to contest that 60,000 pages of sworn testimony, and that is what it is, we could have cross-examined those people by calling them ourselves, but here is where I do think we cross the line by not providing the specifics while you try to get us to make the legal judgments I don't think this body, this political body, should be making a determination that perjury has been committed. I think you should take some time and either change the allegation of perjury or make the notice.

I yield to my colleague.

Mr. FRANK. As a matter of fact, Kenneth Starr does meet the specificity requirement, not in the criminal indictment but in the referral. If you look at pages 148 and 149 of the referral, Kenneth Starr did very crisply with three counts of grand jury perjury, and it was specific.

The problem the Majority has is that they are too trivial. The Majority does not like what Kenneth Starr came up with, so what we have here is an obfuscation. Kenneth Starr says, he said 1996, February; she said November, 1995. Kenneth Starr said he said he believed himself when he testified in August. He said he believed himself when he testified in January. And Kenneth Starr said he touched her, and he didn't say he touched her, and she said he touched her.

The problem is, Kenneth Starr does do what the Majority doesn't do. Kenneth Starr gives three specifics of grand jury misstatement. I will give the Majority credit; they know a losing case when they see one. They look at Kenneth Starr's three cases and they say, wow, we can't defend those.

I yield back to the gentleman.

Mr. BERMAN. Kenneth Starr alleged three specific false statements.

Mr. FRANK. He didn't call it perjury. That is true. That is true. I guess the Majority has finally made it clear, they will not tolerate Kenneth Starr's softness on the President. They are going to toughen it up. But the fact is that they do it in a very, very inaccurate and inadequate way.

Chairman HYDE. The gentleman's time has expired.

The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman. I think what we are dealing with today is a debate on a smokescreen. I really believe, as some of my colleagues have said a moment ago, that what we have before us is 60,000 pages of documents, and we had a very excellent summary of the specific details of where the President committed perjury before the grand jury from Mr. Schippers yesterday.

But I am going to discuss—rather than getting into the prolonged technical discussion about whether we should be more specific or not, I am going to get into some of the specifics of why I believe that Article I should indeed be an impeachment of the President of the United States.

Mr. MCCOLLUM. The President clearly, to me, committed perjury before the grand jury when he testified with regard to whether or not he engaged in sexual relations with Monica Lewinsky, with respect to the definition given to him by the judge in the court.

If you remember, that it was a very specific definition and it included in it touching of breast and genitalia. And on page 547 of the big document we have got published here, this is Part 1 from the office of Kenneth Starr, is part of the testimony—the entire transcript is here of the President's deposition before the grand jury, and on page 547 he has been asked about the particulars of that statement and that definition, and he has been asked a question that says, "If the person being deposed touched the blank of another person would that be—and with the intent to arouse sex-

ual desire, arouse or gratify as defined in definition one, would that be, under your understanding then and now—

Answer. Yes, sir.

*Question* [continuing]. Sexual relations?

Answer. Yes, sir.

*Question*. Yes, it would?

Answer. Yes, it would. If you had a direct contact with any of these places in the body, if you had direct contact with the intent to arouse or gratify, that would fall within the definition.”

That’s the President’s answer.

“So”—then the question goes on,

So you didn’t do any of those things—

Answer. You—

*Question* [continuing]. With Monica Lewinsky?

Answer. You are free to infer that my testimony is that I did not have sexual relations as I understood this term to be defined.

*Question*. Including touching her breasts, kissing her breasts or touching her genitalia?

Answer. That’s correct.

That is specifically, if anybody wants to know, where the President committed perjury.

Now, why do I conclude he did, in this particular set of circumstances, if we want to be specific? It is because Monica Lewinsky testified that on numerous occasions he did touch those particular parts of her body and that he, in fact—that her testimony about that was corroborated and is corroborated by a number of specific witnesses whose testimony we have in the record that Mr. Schippers referred to yesterday; contemporaneous discussions that she had with him about this over a period of time.

Now, I can cite you to the testimony of Catherine Allday Davis, Neysa Erbland, Natalie Rose Ungvari, Andrew Bleiler, and Kathleen Estep—who, by the way, was a counselor for her, a psychiatrist I suppose, or a counselor of some sort. At any rate, this was contemporaneous. It is believable. It is consistent with her testimony she gave herself before the grand jury.

She is believable. The President is not. Anybody who reads this can’t help but come to those conclusions. And that’s taking the President’s own admissions into account.

Now, with regard to other features of this, the President also testified in the grand jury, in this document, on page 571, with regard to the affidavit that was in question, “and I hoped she would be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.”

He lied in that case. He committed perjury in that case because, of course, he wanted her, with all the evidence before us, to execute a false affidavit. We have been over that, about the circumstances of their original meeting, about all the details that you could imagine about those circumstances. He clearly anticipated that she would, consistent with the cover stories they prepared before, before she went to give her testimony in the Jones case, file a false affidavit. Mr. Schippers was over that time and again yesterday, and that is another question that goes to the fourth basis in this, and we could go on and enumerate a lot of it.

The fourth basis of our particulars in Article IV, that we are here today, deals with the question of his corrupt efforts to influence the

testimony of witnesses to impede the discovery of evidence in that civil rights action. And we could go on and on and on with the list, and I am sure we will today.

But I am convinced, beyond a reasonable doubt, not just clearing and convincing—

Chairman HYDE. The gentleman's time has expired.

Mr. MCCOLLUM [continuing]. That Article I is more than justified as an article of impeachment, that the President committed perjury.

Chairman HYDE. The gentleman's time has expired.

The gentlelady from—

Ms. WATERS. Mr. Chairman, I move to strike the last word.

Chairman HYDE. Ms. Waters, I have just been reminded by Mr. Nadler that he was next, and I am sorry.

Ms. WATERS. All right. No problem.

Chairman HYDE. Mr. Nadler.

Mr. NADLER. Thank you. I move to strike the last word.

Chairman HYDE. Five minutes.

Mr. NADLER. Mr. Chairman, I wish to yield to you to answer a question. As the author of this proposed article of impeachment, do you intend that this—these alleged perjuries to be Mr. Starr's three perjuries—three allegations on pages 148 and 149 of the report, or do you intend to go beyond that and have some other perjuries beyond these three he mentions?

Mr. MCCOLLUM. If the gentleman would yield? I would believe that there are—

Mr. NADLER. I didn't ask you. I asked the sponsor, the author of the resolution.

Mr. MCCOLLUM. You are asking Mr. Hyde this question, not me?

Mr. NADLER. Yes, I am. He is the author.

Chairman HYDE. I really don't know. I think the three—

Mr. NADLER. Thank you very much, Mr. Chairman.

Chairman HYDE. The three—

Mr. NADLER. Reclaiming my time. Reclaiming my time.

Mr. Chairman—

Chairman HYDE. Oh, you don't want a full answer?

Mr. NADLER. You said you didn't know. That's the answer.

Chairman HYDE. Well, I said I will try to be more precise if you will give me some time.

Mr. NADLER. I am sorry. Go ahead. Go ahead.

Chairman HYDE. Okay. Go ahead. Finish your time.

Mr. NADLER. No, no. I thought—

Chairman HYDE. I finished what I wanted to say. I will try to get more information. My present opinion is, we will stay with what Starr has and what Mr. Schippers has.

Mr. NADLER. Starr and Schippers.

Chairman HYDE. Oh, yes, Starr and Schippers.

Mr. SCHUMER. Would the gentleman yield?

Mr. NADLER. Yes, quickly.

Mr. SCHUMER. Starr has three allegations of perjury under the grand jury: the date they met Lewinsky, whether there was a touching—

Mr. ROTHMAN. A lying.

Mr. SCHUMER. A lying, a false statement. Excuse me. I am sorry; that's well corrected.

And third, whether oral sex was committed.

Schippers lists a whole bunch of other things which—are we referring in this article—I would yield to the chairman to answer—to those three in the Starr report or to others that are listed in the Schippers report, as well?

Chairman HYDE. We are referring to everything in the Starr report.

Mr. NADLER. Thank you. Reclaiming—

Mr. SCHUMER. Just the Starr report?

Mr. NADLER. Just the Starr report?

Chairman HYDE. The Starr report and the Schippers report.

Mr. SCHUMER. Well—

Mr. NADLER. Thank you. Reclaiming my time. Starr and Schippers. So you are going beyond Starr to other unspecified statements.

Mr. Chairman, let me say the following. Let me say the following: We keep hearing from the other side of the aisle in this committee that the whole reason—the whole reason for this proceeding is that we must defend the rule of law.

Well, the rule of law demands and establishes due process, and a fundamental of due process is that a defendant is entitled to notice of the charges against him. Perjury, the central allegation here, demands specifics. The law says the specifics must be listed in the indictment.

I would be satisfied with a contemporaneous report, a contemporaneous list now, not in the language, but a contemporaneous list now, precisely as Mr. Sensenbrenner says, so that the Senate is limited, so that the House is limited to the charges we make, so that the defendant has notice of what he must defend against. That is the essence of due process.

Now, we are told by the gentleman from Virginia that the Nixon allegation in the article, which wasn't the central article as this one is, didn't list the specific language, but the fact is, the report did. What we are saying today is that you can have no due process, you can have no fair notice of the charges if the charges are subject to expansion later, if the charges are anything that can be derived from the 100-page Schippers' report, full of loose allegations, unspecified. And the fact of the matter is, this whole subject is revealed for the farce it is if the majority cannot answer the question and say what are the specifics.

I didn't demand that the specific language be in the article; I asked what any defendant is entitled to—even the President of the United States—that we have notice before we vote on these, so that we can debate them intelligently; so that—so the House Members know what they are voting on; and should they go to the Senate, the President knows what he is dealing with.

And the law requires—unlike what Mr. Barr said, when you deal with perjury, the law requires the specifics in the indictment; and I am saying—

Chairman HYDE. Will the gentleman yield even though his time is up?

Mr. NADLER. I will yield.

Chairman HYDE. If my good friend would listen to when we talk over here—I know that is a major effort, but if you would—you will hear the answers to your questions. Already, many of the answers have been provided and more are on the way.

Mr. NADLER. Reclaiming my time for two sentences, Mr. Chairman.

The problem is that all the discussion is not satisfactory, for one reason. What we need, what is required, is a specific list of the words, a limited list of the words not subject to expansion later, specific notice of the allegation. That is all we ask—

Chairman HYDE. Well, if you will listen—

Mr. NADLER [continuing]. So the House will know what it is debating.

Chairman HYDE. If you will listen carefully, you will get your answer.

The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. I thank the Chair.

Let me just review where we are here for a moment. I believe it was yesterday and the day before we heard the President's counsel, the minority counsel, respond very specifically to the allegations of perjury that were alleged before the grand jury, which is the substance of Article I. The President's lawyer and the minority counsel did not have any problem in responding very specifically, because they know the specifics as to the allegations. They were set forth in the Starr report; they were set forth in the Schippers report.

But I think that when you look at the drafting of this particular article, it is consistent with the previous articles of impeachment that have been drafted for perjury in previous cases before this House. You can set forth specifically in the articles the question and answer, but in this case, we gave due notice because of the different areas that are being alleged to be perjurious in the articles of impeachment.

So there is adequate notice. And Mr. Barr from Georgia is correct that if it goes to the Senate and more specificity is desired, then under a bill of particulars, that can be provided. This article would be sufficient under any indictment that would be presented in a criminal case, but this is not a criminal case. This is an impeachment proceeding before the House of Representatives, and perhaps we will need to provide more specifics at a later date.

But these articles give adequate notice, and when the statement "perjurious" is in there, that means that it is in the nature of perjury, it is in the nature of false statements. We are not going on technical legal definitions or technical criminal statutes. This is a proceeding protecting the public trust of the United States.

My friend from New York has asked for specific questions and answers in the grand jury testimony, and so let's look at that for a moment. In the articles of impeachment, the first reference is that there were perjurious statements given concerning the nature and details of the President's relationship with a subordinate government employee. I am referring to the actual grand jury transcript that is not bound in the Starr report, but it is the actual transcript. On page 6 the President refers to the statement that he

gives to the grand jury. He says that his relationship with Ms. Lewinsky did not consist of sexual intercourse. "They did not constitute sexual relations, as I understood that term to be defined at my January 17th, 1998, deposition."

I believe that is a false statement that is provided by the President of the United States in the grand jury testimony, that supports the nature and details of his relationship as alleged in Article I.

Another allegation in the articles of impeachment is that he gave false testimony relating to his prior testimony in a Federal civil rights action. If you refer to pages 18 and 19 of the President's grand jury testimony, the question was asked, "Was it your responsibility to answer those questions truthfully, Mr. President?" That referred to his previous testimony in the *Jones* case.

It is a long answer, but in the course of that, he says, "But in this deposition, Mr. Bittman, I was doing my best to be truthful."

The President is saying that he was doing his best to be truthful in his prior deposition. I believe that is a false and perjurious statement.

Mr. SCHUMER. Would the gentleman yield?

Mr. HUTCHINSON. I go on to page 37, which is testimony about improperly influencing witnesses as alleged in the articles of impeachment. And at page 37, the questions are asked about his conversations with Betty Currie and why he was leading her through a series of statements. His testimony to the grand jury was that, "I thought that what would happen is that it would break in the press, and I was trying to get the facts down."

It is my belief that that is false testimony, because I believe it is unreasonable, illogical and defies common sense; and I believe the purpose of his questioning and conversation with Betty Currie was to influence her testimony improperly.

Those are Q&A, question and answer, in the grand jury testimony that support the articles of impeachment that are set forth here, specifics.

Now, that doesn't mean it is limited to just these examples. That doesn't mean that this is all the Q&A; there are certainly others that can be pointed to. But these are ones that I am relying upon as a member of this committee when I vote on this article of impeachment.

Mr. SCHUMER. Would the gentleman yield for a brief question?

Chairman HYDE. The gentleman's time has expired.

Mr. SCHUMER. I ask unanimous consent to ask the gentleman a brief question.

Chairman HYDE. Without objection.

Mr. SCHUMER. Several of the things alleged—mentioned by Mr. Hutchinson, which might well be in a court of law perjurious—I won't judge that—are neither in Schippers nor Starr. And so now that—

Mr. HUTCHINSON. That is not a true statement.

Mr. SCHUMER. So the chairman has said it is Schippers and Starr—first, it was just Starr.

Mr. HUTCHINSON. Reclaiming my time, because I believe I am yielding to you.

Mr. SCHUMER. We have to know what we are voting on here, not what each person says.

Chairman HYDE. Reclaiming his time.

Mr. HUTCHINSON. Mr. Schippers certainly covered the exact same issues his testimony before this committee. And it is specifically set forth in the Starr referral. There is more than adequate notice on that, and I have given you several specific questions and answers. You do not have to accept it, you do not have to agree with it, but there is adequate notice.

Mr. FRANK. Would the gentleman yield?

Mr. HUTCHINSON. I yield back, Mr. Chairman.

Chairman HYDE. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. I want to say—thank Mr. Starr finally for answering the question. The question was what authority Mr. Apperson had to swear in the grand jury witness. Mr. Starr points out that the official transcript has Elizabeth Eastman, a notary public for the District of Columbia, providing the oath and saying that although Rule 6(e) authorizes the foreperson of the grand jury to administer oaths, it does not restrict the authority to someone else, but doesn't specifically say whether or not Mrs. Eastman had the authority.

Mr. Chairman, this is not a small point, because Rule 6(e) gives the foreperson or deputy foreperson authority to swear in the witnesses. The framers of the Bill of Rights included in the Fifth Amendment a guarantee of grand juries in Federal court in order to protect ordinary citizens against the power of Federal prosecuting authorities, and even the Supreme Court in *U.S. v. Williams* states that the whole theory and foundation is that it belongs to no branch of constitutional government, serving as a kind of buffer between government and the people, and, "It swears in its own witnesses."

Mr. Chairman, there is a case, *Pryor v. United States*, a 1977 case, where the question was whether or not a perjury charge could lie when the defendant said that the court reporter swore the person in and the foreman of the grand jury said that he had actually sworn him in, and I am going to read part of that case.

"The defendant claims that the government failed to prove that he was duly administered an oath by the foreman at the commencement of his testimony. He relies upon the certificate of the court reporter, a preprinted form, describing the proceedings as a deposition. He argues that this certificate conclusively establishes that the court reporter, rather than the foreman, administered the oath to him and that the notary public, not being authorized to administer the oath to grand jury witnesses, the case must fail. The certificate might be sufficient, if not contradicted, to overcome the presumption."

The Court goes on to say that the chairman—the foreman of the grand jury actually testified that he in fact had given the oath.

"It is for the jury to weigh the relative credibility of the foreman and the form. There was ample evidence from which they could and did concede—conclude that the oath had been properly administered by the foreman."

Mr. Chairman, that would be totally irrelevant if we accept Mr. Starr's statement that it didn't matter who gave the form.

Now, all of this intrigue is interesting, Mr. Chairman, because Mr. Starr now tells us that there is an official transcript. The one he sent us just said, "William Jefferson Clinton, being duly sworn," whereas, with Monica Lewinsky, he said the grand jury—in her grand jury testimony it said, "Monica Lewinsky, being duly sworn by the foreperson of the grand jury."

I don't know why we got a different form. This is an important issue before us, and if we are going to—I would like to know from Mr. Starr why this was kind of obfuscated with Mr. Clinton and why we were not told this other information, because he had told us in his testimony that there is no question—well, he said that a jury would convict and all of the elements of perjury were there.

Mr. Chairman, I don't know why we got a different transcript in our form than he is referring to now, but this is an issue, and I think goes to the credibility of the witness.

I will yield to the gentleman from Massachusetts, if you had a comment.

Mr. FRANK. No.

Mr. SCOTT. I yield back, Mr. Chairman.

Chairman HYDE. I thank the gentleman.

Mr. Coble, the gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, I yield my time to the gentleman from the Roanoke Valley of Virginia, Mr. Goodlatte.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, first, in response to the gentleman from Virginia, I would direct his attention to Title V of the United States Code, section 2903, oath, "authority to administer, subsection (b)(2), an individual authorized by local law to administer oaths in the state, district, territory or possession of the United States where the oath is administered," and then, of course, you turn to the District of Columbia law, which authorizes the notary public to administer the oath. I think that answers that question.

Mr. SCOTT. In a grand jury proceeding?

Mr. GOODLATTE. Let me go on to the other point I want to make here first, and that is with regard to this issue of perjury. I think the gentleman from Virginia and the gentleman from Arkansas have been absolutely correct in terms of the nature of this proceeding being different from a criminal proceeding, but in a criminal proceeding there are two types of perjury:

One, where you have two different statements made by an individual and the issue is, which one is the correct statement, you do list those with specificity. If you are viewing this as that type of case, the report that will be submitted with this will list those things or incorporate other things such as Mr. Schippers' report or the counsel's report, and that specific information will be available to the President, whose counsel obviously knows what we are referring to because he addressed it all when he was here.

But, secondly, the other type of perjury, and the type that I think we are really talking about here, where someone is simply accused of making a false statement, does in fact not require the specificity that the other side is calling for.

Let me read you a case appropriately from the U.S. District Court in Arkansas, in prosecution for making false material declarations in proceeding on the accused's motion to vacate or set aside a sentence imposed for a kidnapping offense.

"The accused's allegedly false testimony at such proceeding, that he had not wished to take the stand at the kidnapping trial but defense counsel had advised him to take the stand and had coerced him into doing so, was material and it was not error to instruct as to its materiality."

And then in the absence of any claim of—let's see. Here is another case in which the defendant was not entitled to a bill of particulars specifying those portions of the grand jury testimony which provided the basis for charging false declarations before a grand jury, *U.S. v. Questa*, a Florida case, 1979.

Mr. FRANK. Will the gentleman yield?

Mr. GOODLATTE. I will in a moment.

Finally, let me get back to what I think the gentleman from Wisconsin and the gentleman from Florida correctly pointed out, which is really the purpose here today, and that is to try to get away from what is truly the issue here, and that is whether or not we are going to submit to the Senate articles of impeachment. To try to claim that somehow we have to put all of the details regarding those things in the articles, I think is clearly wrong.

Going back to the Watergate proceedings, the gentleman from Michigan, Mr. Conyers, addressed this very point. He said, "I would like to observe, if I might, that we have spent a great deal of time talking, and I think we may have reached some agreement upon the validity of the Sarbanes substitute. That is to say, we realize we are going to bring to the floor of the Congress this matter so that to attempt to detail the policy or plan that has been suggested as the basis for Article I in the substitute would be a little bit ludicrous." He went on to say—

Mr. CONYERS. Will the gentleman yield?

Ms. LOFGREN. Mr. Chairman.

Mr. GOODLATTE. In response to the specific point about detailing the false or misleading statements that are a part of that article, he said that was a false or misleading statement. He had just detailed one of those.

"We have documented it any number of times in the course of the months that we have been here, and so for us to have to write this in is an unnecessary act because there is not just one or two; there are several. Any number of them, any of which, since I—as I read this pleading, it is in the alternative, would be sufficient. The means used to implement the policy of the President have included one or more of the following," and he makes emphasis of a number of these specific courses.

Now, with that in mind, Mr. Chairman, I think that after we analyze any number of these reasons that demonstrate a course of conduct, those of us who are ready to support the notion of impeachment as embodied in this very plainly worded language should be able to support it before this evening is over, and I would hope that we would be moved to that point so that we could at least accept this very first article before the end of this evening.

Chairman HYDE. The gentleman's time has expired.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Chairman HYDE. Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Mr. CONYERS. Would the gentlelady yield for 10 seconds?

Ms. LOFGREN. Yes.

Mr. CONYERS. I just want the gentleman from Virginia, Mr. Goodlatte, to know that in the Nixon case in 1974, we had the FBI, IRS, CIA records. They were quite specific and were not in controversy.

Here, we have statements that flow all over the place, in and out of grand jury trials and actual events.

And I thank the gentlelady for yielding.

Ms. LOFGREN. Reclaiming my time.

Mr. SCHUMER. Would the gentlelady yield for just 5 more?

Ms. LOFGREN. If I may just quickly reclaim my time, because it is directly on the point Mr. Conyers has just made, I do believe that what is before us today falls short of the precedents that the House has set in impeachment particulars in the past; and I wanted to just quote briefly from a letter I think every member of the committee received from our colleague, Congressman Hastings, that was entered into the record yesterday, I believe, by Ms. Waters.

In his letter to us, he points out that in the 1973 proceedings, the Chair and the ranking minority member, with the concurrence of the committee, directed John Dorr, the special counsel for the majority, and Albert Jenner, the special counsel for the minority, to produce a comprehensive statement of information in the inquiry into the conduct of the then-President Nixon. The statement of information that the staff produced for the inquiry consisted of numbers of paragraphs, each of which was followed by photocopies of the particular portions of the evidence that the staff concluded supported the assertions made in that paragraph.

President Nixon was invited to and did submit a further statement of information in the same format, and as a result, there was a balanced, organized, neutral statement that all members could review and understand what it was they were voting on.

Mr. Hastings points out that other members have not had the same access to the material that the members of this committee have, and that the record is such that other Members of the House may not be able to determine for themselves whether there is clear and convincing evidence to support any or all of the allegations in these articles, and that in order to impose the burden of an impeachment trial upon the Senate, the President, the Supreme Court and the American people, each Member of the House, not just the members of this committee, need to satisfy themselves that there is sufficient evidence, that it is sufficiently specific and that it meets the clear and convincing burden.

I would note also that in the only other presidential impeachment, the impeachment and trial of Andrew Johnson, the articles listed the general allegations and then were very specific as to the actual words that President Johnson was accused of saying and how they violated, in the view of the radicals' proceeding at that point, their view of high crimes and misdemeanors. And I would

like to ask unanimous consent that the articles of impeachment for Andrew Johnson be made a part of this hearing record.  
[The information follows:]



ARTICLE IV.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, in the year of our Lord 1868, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and obstruct the execution of the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the provisions of an act entitled "An act to define and punish certain crimes committed by officers and soldiers of the United States," approved July 31, 1861, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.

ARTICLE V.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, and on divers other days and times in said year, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the provisions of an act entitled "An act to define and punish certain crimes committed by officers and soldiers of the United States," approved July 31, 1861, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.

ARTICLE VI.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of an act entitled "An act to define and punish certain crimes committed by officers and soldiers of the United States," approved July 31, 1861, and with intent to violate those provisions, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ARTICLE VII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said Department, with intent to violate and obstruct the execution of the laws of the United States, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ARTICLE VIII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in the year of our Lord 1868, in the Department of War, on the 21st day of February, in the year of our Lord 1868, did unlawfully conspire with one Lorenzo Thomas, to violate the provisions of an act entitled "An act to define and punish certain crimes committed by officers and soldiers of the United States," approved July 31, 1861, and in violation of the Constitution of the United States, whereby said Andrew Johnson, President of the United States, did then and there in violation of the laws of the United States, and within the Senate was then and there in session, there being no vacancy in

the office of Secretary for the Department of War, with intent to violate and disregard the said act, and to obstruct the execution of the laws of the United States, in violation of authority in writing, in substance as follows, that is to say:

"Encourages Marston."

"Washington, D. C., February 21, 1868.  
"Sir, Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act in his stead, and to discharge the duties of the office, with immediate effect upon the date of this date. Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other property now in his custody and charge.  
Respectfully yours,  
ANDREW JOHNSON.

"Hereat Maj. Gen. Lorenzo Thomas, Adjutant-General, Army, Washington, D. C.

wherein said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.

ARTICLE IX.

That said Andrew Johnson, President of the United States, on the 22d day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, as Chief of the Constitution and the laws of the United States, did bring before him then and there William H. Emory, a major-general by brevet in the United States Army, and did then and there, as such Commander in Chief, declare to and instruct said Emory that part of a law of the United States of the year ending June 30, 1868, and for other purposes, especially the second section thereof, which provides, among other things, that all orders and instructions issued by the President of the United States, in the name of his liability, through the next in rank, was unconstitutional and in contravention of the commission of said Emory, and which said provision of law was intended to prevent and hinder the execution of the laws of the United States, and the direction of the Army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, to violate the provisions of said act, and to take and possess of the custody and charge of the said Emory, to prevent and hinder the execution of the laws of the United States, according to the intent of the said act, and to prevent the execution of an act entitled "An act to regulate the tenure of certain civil offices," passed March 2, 1867, and to unlawfully conspire with one Lorenzo Thomas, to prevent the execution of the laws of the United States, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.

ARTICLE X.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the bar-ter and equities which ought to enter and be maintained between the executive and legislative authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Constitution and laws of the United States, and to impair and destroy the regard and respect thereof (which all officers of the Government ought to have) and to excite the passions and prejudices of the people of the United States, and to excite the odium and resentment of all good and patriotic citizens, and to prevent the execution of the laws of the United States, and to prevent the execution of an act entitled "An act to regulate the tenure of certain civil offices," passed March 2, 1867, and to unlawfully conspire with one Lorenzo Thomas, to prevent the execution of the laws of the United States, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the bar-ter and equities which ought to enter and be maintained between the executive and legislative authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Constitution and laws of the United States, and to impair and destroy the regard and respect thereof (which all officers of the Government ought to have) and to excite the passions and prejudices of the people of the United States, and to excite the odium and resentment of all good and patriotic citizens, and to prevent the execution of the laws of the United States, and to prevent the execution of an act entitled "An act to regulate the tenure of certain civil offices," passed March 2, 1867, and to unlawfully conspire with one Lorenzo Thomas, to prevent the execution of the laws of the United States, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.





Ms. LOFGREN. I would strongly suggest that what we have before us now falls far short of what our precedents would lead us to do, and also will not give adequate notice to our colleagues.

What we are talking about, I think, is a trial in the Senate that will require extensive, probative testimony as to details of sexual activity; and I think that if that is, in fact, what we are asking our colleagues to vote upon and to ask the Senate to delve into, they have a right to know that that is what they are being asked to send to the Senate.

And now I would happily yield to Mr. Frank.

Mr. FRANK. I thank the gentlewoman. This notion—it is an abdication of responsibility. You are voting for a resolution that says these things conclusively; and to say that we don't have to specify what the perjury was and we will tell the Senate later, if they ask, boggles my mind.

I have tried to go through the Schippers report. I looked at the Starr report. It was both specific on perjury and weak, and I believe the majority knew that, so they decided to buff up the Starr report.

But I have been through the Schippers report. I cannot tell where points three and four are supposed to be. One and two have to do with what he touched and when he touched it, but points three and four are very vague. It is unclear to me in the Schippers report, and I would hope before we were through—I mean, I will never be a Senator, Mr. Chairman. I am not going to run for the Senate, but just for a brief minute, make me a Senator.

Show me what you are going to show the Senate. Treat me like a Senator. It is enough I am sitting next to Schumer, but maybe I can—maybe you would show me what you are going to show the Senate and where in the Schippers report are these allegations on three and four, because they are not in the Starr report; and I do think we ought to get a sense of them before we get to the Senate.

Chairman HYDE. Mr. Gekas, the gentleman from Pennsylvania.

Mr. GEKAS. I thank the Chair.

Chairman HYDE. Will the gentleman yield to me just for a second?

Mr. GEKAS. I certainly will.

Chairman HYDE. I would like to ask Mr. Scott a question.

Mr. Scott, you seem to be making an issue of the validity of the oath that was given to the President by the court reporter or the notary public. An insufficient oath is a defense to perjury. Is the President making that defense that the oath was insufficient?

Mr. SCOTT. Mr. Chairman, I don't know what defense the President is making. Of course, he didn't know what the charges were when his counsel was here to present, but if you are going to charge perjury, rather than—if you just charge false statement, even false statement under oath, it wouldn't even have to be the right oath, but if you are going to charge perjury, you have to prove it, all of the elements.

Chairman HYDE. I just wondered if that was a defense that he was urging.

Mr. SCOTT. Mr. Chairman—I can say, Mr. Chairman—I don't think so. I don't think so.

Chairman HYDE. Okay. Thank you.

Mr. Gekas.

Mr. SCOTT. But what I am making—

Chairman HYDE. Mr. Gekas.

Mr. GEKAS. Mr. Chairman, it is worth repeating that all of us have contributed in one way or another to creating the record which is before us; incorporating into the record the Starr report was a giant step in that direction. Later, all the testimony we had with respect to what an impeachable offense is, all the experts, the historians and then even in the later stages, when minority counsel and majority counsel presented their presentations, that, too, became a part of the record and outlined in detail all the bases upon which these articles of impeachment are based.

In short, the article summarizes the allegation that is to go to the Senate and provides with it voluminous portions of records that sustain the main allegation in the article. And that is not so far-fetched or so far removed from what happened in Watergate, because the so-called Dorr report is the Starr report in our case. That is, that it does compend together all of the allegations and puts them in one feasible package so that the members can consider them.

Moreover, when this procedure finally ends, Mr. Hyde, as chairman of this committee, following the procedures, will be drawing a final report to submit to the House and presumably that will also go to the Senate if the House should impeach; and that Hyde report will again repeat the bases of the record that we have created to which we have lent our ears and our pens and our voices.

Mr. SCHUMER. Will the gentleman yield?

Mr. GEKAS. And that Hyde report, the chairman's report, will be the final indication that the record which supports the allegations that are contained in the articles of impeachment are, indeed, well founded. And that, to me, is a simple fact.

We are now delaying the process. This is dilatory on the part of those who want to maintain that the record does not sustain the allegations.

Mr. SCHUMER. Would the gentleman yield?

Mr. GEKAS. Yes.

Mr. SCHUMER. He has a little more time.

I thank the gentleman for his courtesy in yielding.

I understand the point that you are making, the gentleman from Virginia, about what was done in Watergate and the—but the point stands. When you are dealing with perjury, it is the very words that constitute the crime in a criminal court, and here it should constitute the act for impeachment.

When you don't list the words that are allegedly perjurious, it is like alleging obstruction or subornation of a witness without mentioning the witness.

Mr. GEKAS. Reclaiming my time.

Mr. SCHUMER. So there is a difference with perjury and with all the other charges.

Mr. GEKAS. Reclaiming my time.

Mr. SCHUMER. The facts matter. I yield back.

Mr. GEKAS. Rendering false statements under oath is also a crime, but you do not insist that that be stated in specificity because that was the Watergate mode, which we have taken great

pains, in order to accommodate your side of the aisle to try to emulate, so that we can bring these matters to a conclusion.

Mr. FRANK. Would the gentleman yield?

Mr. GEKAS. We have done so in a proper manner and the final vote that we will be casting will be with a complete record. That record aimed at and succeeded at substantiating the allegations in the articles of impeachment.

Mr. FRANK. Will the gentlemen yield?

Mr. GEKAS. I yield.

Mr. FRANK. I thank the gentleman. The point is that I have the same argument with this perjury or false statement because I am making a substantive argument. There is nothing dilatory. I really believe that you think that politically lying in front of the grand jury is the strongest argument to make, but it is the weakest factual one.

Mr. GEKAS. Reclaiming my time, Barney.

Mr. FRANK. Oh, George, that's not fair.

Mr. GEKAS. Reclaiming my time.

Mr. FRANK. Nine seconds.

Mr. GEKAS. It is my time.

Mr. FRANK. Nine seconds you give me, George.

Mr. GEKAS. I will ask for 30 more seconds, and if you yield back the yielding that I yield to you, I will yield.

Mr. FRANK. I do.

Mr. GEKAS. Will you yield?

Mr. FRANK. I do.

Now let me just finish, if I can, to say that I really believe the crux of this is that the three specific acts of grand jury perjury Kenneth Starr puts forward, you are embarrassed to take to the floor, you are embarrassed to try and unseat a twice-elected President on this degree of trivia and you have therefore used obfuscatory language to suggest a set of offenses that don't have specific support.

Mr. GEKAS. I repeat that we have a full record, and furthermore, even if the gentleman from Massachusetts says that false statements under oath are also unspecified here, then we have failed to follow the Watergate mode the way he wants, because it does the same, exact thing.

I yield back the balance of my nontime.

Chairman HYDE. The gentleman has no time to yield back.

Ms. Waters.

Ms. WATERS. I thank you very much, Mr. Chairman. I move to strike the last word.

I had planned on giving quite a different statement. However, it is obvious, based on the conversation and the discussion and debate that we have been engaged in over the past—I don't know—hour, that we can't move forward until we resolve something that's very basic to this impeachment—these articles of impeachment that your side is attempting to put forward.

Certainly, Mr. Chairman, you could allow each of us to use up our 5 minutes, and after we have all exhausted that, move on, but I don't think you want to do that and even though I chide you and even make you a little bit uncomfortable sometimes, I do believe that you tend to operate the Chair in a fashion where you would

want to resolve an issue as basic as this one about whether or not we are going to move forward with an article of impeachment without specificity.

Let me just tell you whether you are a Democrat or a Republican, I don't think you want history to record that you voted on something and you don't know what you are voting on. I don't think you want 20 years from now, or 30 years from now, someone to pick up this article of impeachment that in a very general way talks about perjury and the historians cannot identify the words that were taken down that were perjurious. I just don't think you want that.

And so, Mr. Chairman, instead of offering my statement, I am going to point you, number one, to the fact that the Schippers list that you are talking about attaching does not meet the test of specificity, and it certainly is not consistent with what is in the Starr report. As a matter of fact, I am a little bit offended by the Schippers list that talks about the number of phone conversations that the President had with Monica Lewinsky as opposed to the number that the President identified.

But he goes even further. He talks about patterns of distortion, outright lies, half truths, and if you recall, he referred to the half truths as "the blackest lie of all that just doesn't meet the test." I don't know what this means. And I would submit to you, Mr. Chairman, that perhaps you should consider recessing so that you can give specificity to the article of impeachment.

The members of this committee are not asking that you not do anything so they can continue this. They have been very gracious in saying, we will give you time to go and put the specificity in.

Now, don't be guilty of the charge that you don't want to do it because you want an open-ended referral that will allow the Senate or anybody else to choose, pick, add, do whatever they want to do. If you are serious about your desire to impeach this President because you sincerely believe that he has perjured himself in ways that meet the constitutional test, high crimes and misdemeanors, list them. Be straightforward enough to say what they are. Be specific about them, so that in fact they can be argued, they can be debated. Otherwise, we are all over the place trying to debate which lie you are supposedly talking about, which half truth, which is the blackest lie, which is what.

I don't think you want that.

I certainly don't want to be recorded in history that way, but you will be worse off than me because I am voting no on all of this. But you are going to vote aye on something, and when your grandchildren that you keep referring to every day, when your grandchildren ask you, what did you vote on, what was the lie, what are you going to tell them—I don't know, it was kind of general; there were a lot of things, we attached a report? No, it didn't comport with what Ken Starr said, but we had this idea, and then when it gets over someplace else and they have to talk about, what did they really mean, they are not going to know.

So, with that, as my time winds down, Mr. Chair, who today I think you are the fairest chairman I have ever met, I am going to ask you to recess this committee and deal with the specificity and allow us to come back and debate that.

I yield back the balance of my time.

Chairman HYDE. I thank the gentlelady. And insofar as it is within my power, the gentlelady may recess anytime she wants.

The gentleman—

Ms. WATERS. Mr. Chairman.

Chairman HYDE. Yes, ma'am.

Ms. WATERS. You did that on my time so I am sure, in your fairness, you are going to allow me a little bit more time, despite the fact that I am going to be very short.

This is a little bit more serious than you have dealt with, and I expect these proceedings to be handled in a way that you, too, will want to be recorded in history in a serious way.

Chairman HYDE. Well, I thank the gentlelady, and I will direct her to the report, which will be filed. We can't impose a criminal standard on an impeachment process, but we can provide the gentlelady with much more specificity, and will.

Mr. WATT. Would the chairman repeat that one more time?

Mr. SCOTT. Mr. Chairman.

Chairman HYDE. Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman.

At the risk of repeating things that have already been said, although that seems to be most of what is happening here on the other side of the aisle at least, I am hearing the same things over and over again; and I think it would be interesting if we could go back and see the full debate in the Nixon matter.

I think the same arguments, ironically, were being made by the Republicans there in challenging the articles of impeachment against President Nixon; at least the Republicans who were opposed to impeaching President Nixon. They were trying to derail the process any way they could, and they screamed specificity, and they tried to throw up everything they could think of to detract from the misconduct of Richard Milhous Nixon.

I think the same thing is going on here today, unfortunately.

Let me say that I believe that the rule you are stating for a criminal proceeding is not even accurate, but it is clear that we aren't governed by the same rules that would be applicable in a criminal proceeding. If you don't believe that, let me cite you to Alexander Hamilton in Number 65 of *The Federalist*. There, Hamilton wrote—in speaking of the nature of impeachment proceedings, he said, "This can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases, serve to limit the discretion of courts in favor of personal security."

Now, you may not agree with Hamilton, and you are entitled not to agree with Hamilton, but I think your whole argument is based on your dispute with Alexander Hamilton, and it is based on your dispute with the real nature of an impeachment proceeding.

Now, having said that, I want to just point out—and again at the risk of some repetition—some of the things that I believe are in the President's grand jury testimony that are not truthful.

Now, I am sure all of you have read this. It has been printed up by the United States Government. It is House Document 105-311, Part 1; the grand jury testimony of the President appears here, and I would just cite you to various pages.

Page 502 of the President's testimony, where he said—where the question is asked, "Did you speak with your secretary, Ms. Currie, and ask her to pick up a box of gifts that were some compilation of gifts that Ms. Lewinsky would have?"

Answer: "No, sir, I didn't do that."

Now, I realize you may disagree with my conclusion about this, and you are entitled to do that. I believe the President lied when he said that, and I believe there is evidence to indicate that he lied.

Mr. WATT. Will the gentleman yield?

Mr. CANADY. I am sorry. I won't yield. I want to go through this, and the gentleman from North Carolina will have his time and probably a little extra.

If you will turn over to another page, page 532 of this report and of the President's testimony before the grand jury, lines 4 and 5, the President said, "My goal in this deposition"—there referring to his deposition in January in the *Paula Jones* case—"my goal in this deposition was to be truthful."

I think that was a bald-faced lie. I think his goal in that deposition was to lie and to hide the truth. His own attorney admits that he went into that deposition with the purpose of misleading and got as close to the line as he thought he could without crossing it. Well, I think he crossed the line in the deposition, and I think he crossed the line here before the grand jury when he said his purpose was to be truthful.

Page 547, line 23, and I am not going to read all the question there because this has to do with the relationship between the President and Ms. Lewinsky, and I know—I see the gentlelady smiling. Well, the President has degraded his office by his conduct, but we don't have to degrade this committee by what we do here.

Mr. WATT. Will the gentleman yield?

Mr. CANADY. I will not.

But when the President there on page 547 in a question concerning his relationship with Ms. Lewinsky said, "That's correct"—

Mr. SCOTT. Mr. Chairman.

Mr. CANADY [continuing]. I believe he was lying.

Mr. SCOTT. I would ask that the gentleman be given an additional 2 minutes so he can finish.

Chairman HYDE. Is there objection?

Without objection, so ordered.

Mr. CANADY. Page 571, lines 20 and 21, the President says, "Did I want her to execute a false affidavit?" That being Monica Lewinsky. "No, I did not."

I believe that was an untruthful statement.

On page 593, going to page 594, the bottom of the page, it says, "If I understand"—this is the question of the President. "If I understand your current line of testimony, you are saying that your only interest in speaking with Ms. Currie in the days after your deposition was to refresh your own recollection?"

"Answer: Yes."

I believe the President was lying when he said that.

Now, I understand that there are differences of opinion. I don't think that there is much room for a difference when you look at the whole weight of the evidence and all of this in context, but I can accept that there are differences of opinion. But there are spe-

cifics here. We have listed specifics. Other members of the committee have gone through the specifics.

The issue here that's being raised by the other side about the specifics isn't because they think there aren't specifics. It is just an effort to derail this proceeding. It is an effort to cause confusion, which is in line with the way this whole thing has been handled from the very beginning, an effort to stop this proceeding from moving forward.

Ms. JACKSON LEE. Will the gentleman yield?

Mr. CANADY. I am sorry. I won't yield. You are going to have your time to talk, and I have gone over my time. But the facts are here.

I thank the Chairman.

Chairman HYDE. The gentleman's time has expired.

Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman.

With all due respect to Mr. Canady, I can imagine that he could have last year's State of the Union address of the President and go through it page by page and say, "I believe that was a lie. I believe that was a false statement. I believe he was wrong about that." But this isn't what this proceeding is all about.

It is interesting to me, Mr. Chairman, because as I look at the—

Mr. CANADY. I beg to differ.

Mr. MEEHAN. As I look at the Independent Counsel's referral, and since we are on the section having to do with perjury, I go and reread the section on perjury, or alleged lying under oath. I don't find perjury.

Now, if Ken Starr spends \$45 million and 5 years investigating President Clinton, I assume this has to be the best case. And when I open it up, I never see the word "perjury" used.

Page 145, "lied under oath." Then I go to page 148, "The testimony is not credible," paragraph 2, "the President made a second false statement." "The President lied to grand jury; President, to grand jury, is false"; "the President had a motive to lie." Third, "false statement." "Motive for President to make false statement."

You read the entire section and you never see the word "perjurious" or "perjury" used. But yet in Article I, the Republicans are seeking to up the bar: Let's tell the country that the President committed perjury, and that's why we need to impeach him, when the Independent Counsel never referred to the President's grand jury statements as "perjurious." And it is probably because when you accuse someone in this country, even the President of the United States, of perjury, most people recognize that there is at least an obligation to specifically refer to what language in grand jury testimony.

Now, I know this isn't a criminal procedure, but when we train first-year assistant district attorneys—I came from a district attorney's office before I got elected; Mr. Delahunt did—the first thing that you teach somebody who gets out of law school is you don't accuse anyone of a crime unless you specifically can prove it.

In the case of perjury, you are required, when you go before a grand jury, to give specific instances of where a potential defendant may have committed perjury.

Now, I know this isn't a criminal procedure, but you would think that with the majority using "perjurious" and accusing the President of "committing perjury," at a minimum—at a minimum, they would cite specifically where the President committed perjury. But there is a failure to do that.

I would point out that it seems to me, in going through the Starr report, that what this all comes down to is, the President said that he didn't touch Monica Lewinsky in a certain way and that Monica Lewinsky said he did it a certain way, and that's what your strongest count is all about.

Now, let me reiterate, if there is—in any way, shape or manner a perjury case here, the Independent Counsel, number one, would have said "perjury"; number two, is free to indict the President of perjury. But I think most members of this committee know that once you get into the specifics, once you actually try to show that the President may have committed perjury and have to prove the elements, it becomes extremely difficult to do.

So this particular article is not specific. It ought to be specific. If you choose to use the term "perjury," you, at a minimum, ought to be able to tell this committee, the full House, and the American people what, specifically, you are accusing the President of, committing perjury, and where.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. MEEHAN. I would yield to my colleague.

Ms. JACKSON LEE. And I thank the gentleman, who laid out a very articulate argument.

The language in this article is that of the Republicans, and they use the language "perjurious." First of all, they want to ignore the rule of law on one hand and not on the other. There is a two-witness rule in most instances on corroborating perjury. Who are they using? The friends? Linda Tripp? Do they have a direct knowledge of the acts between Monica and the President?

Mr. GEKAS [presiding]. The time of the gentleman has expired.

Ms. JACKSON LEE. So there are failings in this that really go to the heart of this document.

Mr. GEKAS. The time of the gentleman, Mr. Meehan, has expired.

Ms. JACKSON LEE. Therefore, you cannot vote on such.

I thank the chairman and I thank the gentleman for yielding.

Mr. GEKAS. The Chair now recognizes the gentleman from Tennessee, Mr. Bryant, for 5 minutes.

Mr. BRYANT. I thank the Chair.

It appears to me that we have debated about every possible issue of this. I would simply reiterate that this is not a criminal proceeding. We are not dealing with a crime here. We are dealing with an impeachment process which, again, is a unique process combining elements of both the legal and political world.

I have been looking at this and, frankly, I look at Article I and it talks about the nature and details of his relationship with a subordinate government employee. That is number one.

Well, who could that be? Monica Lewinsky. I mean, if you just sit here and read this, it is pretty clear what we are talking about.

Number two, that he gave false, perjurious—prior perjurious, false and misleading testimony in the civil rights action that we referred to in Article II; and in that, we specifically say that in this

civil rights action he lied in the interrogatories. We all know where those are.

Ms. JACKSON LEE. Will the gentleman yield?

Mr. BRYANT. No. I don't have but 5 minutes. If I do have some time, I am committed to Mr. Barr afterwards. I apologize for that.

The second part of that is, in his deposition in the Jones case, what they are talking about there is that he lied about the relationship with a subordinate government employee, Monica Lewinsky. His knowledge of that, of Monica's involvement and participation in the *Jones* case, was subpoenaed, and his corrupt efforts to influence her testimony.

I mean, this doesn't take a rocket scientist to figure any of this out. You simply read the charge.

Number three, the prior false and misleading statements he allowed his attorney to make to a Federal judge in a civil rights action, that is the affidavit. Look at the affidavit. Look at that testimony around where he filed the affidavit, and the President sat there and watched him file a false affidavit and didn't say anything, and even acknowledged it—acknowledged the truth—the fact that he did not commit—have a sexual relationship, or “an affair,” I believe was the wording.

And number four, his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in the civil rights action. To corrupt the testimony—Betty Currie, Monica Lewinsky. What have we been talking about for the last month? Hiding evidence. What evidence? The evidence that somehow was in Monica Lewinsky's house one morning and ended up in President Clinton's personal secretary's house, under her bed, the next day.

I mean, these aren't difficult issues. Only if you want to make good theater and good show and complain. But if you sit down and look at this, I think the article very clearly refers to what the charges would be.

But let me say this: I was reading through this, and I have never seen this before, and I find this so interesting because I have dwelt on this issue of how can the President's lawyers, without laughing, come in here and tell us—which they did, without laughing—that he can give incomplete answers and tell the whole truth, and that he can give misleading answers and say nothing but the truth, you know, taking that right out of the oath?

In the grand jury testimony, in the oath that the President took, when he gave his grand jury testimony, he was sworn in and was asked, “Mr. President, do you understand your testimony here today is under oath?”

And the President answered, I do.

Listen to this, the second question: “Do you understand that because you have sworn to tell the truth, the whole truth and nothing but the truth, that if you were to lie or intentionally mislead”—the word that they all talk about, that there is no problem with—“or to intentionally mislead the grand jury, you could be prosecuted for perjury and/or obstruction of justice?”

And the answer—and this is the key—the President says, I believe that is correct.

Now, he has just acknowledged that he believes it is correct that if he were to intentionally mislead the grand jury that he understood he could be prosecuted for perjury or obstruction of justice.

Mr. BRYANT. And if you think back, that seems to me to be very different from what his lawyers were saying; and in fact, they admitted—they admitted for the President that he misled the grand jury, for what it is worth.

I yield my time to Mr. Barr.

Mr. BARR. Thank you.

I would say to those on other side who profess great interest in specificity to look at the President's statement that he proffered, was allowed to proffer, to the grand jury. It is perjurious. It is misleading. It is wrong. It is a lie. And it was used 19 times. That could in a criminal law setting provide for 19 counts of perjury and 19 counts of impeding the work of a grand jury.

Mr. GEKAS. The time of the gentleman from Tennessee has expired.

The Chair now recognizes the gentleman from North Carolina, Mr. Watt, who moves to strike the last word.

Mr. WATT. Thank you, Mr. Chairman. I will be brief, although I think Mr. Scott wants me to yield to him.

I have been reluctant to get heavily involved in this because I think the handwriting is pretty much on the wall, and I do not do this to be dilatory. I do it because I think if this committee is going to allege perjury, which it is in this article, that the President is entitled to a specification of that; and that is what the law says.

And as we have gone around the room, including the comments made by Mr. Canady and the comments made by the Chairman, we have gotten a number of different versions of what the perjurious statements are.

Mr. Schippers does not mention the ones that Mr. Canady mentioned. Mr. Canady has absolutely no basis in the record other than his kind of—I do not know where he is getting it from, but nothing in this record that suggests or confirms that the President told Betty Currie to go pick up those gifts. Now, if he wants to make that an element of the perjury, then that is fine. I do not have any problem with that.

Is my time out, Mr. Chairman?

Chairman HYDE [presiding]. I was transfixed by your remarks, so forgive me. Your time has elapsed. Thank you for bringing that up.

Mr. WATT. Well, I am trying to be as hard on myself as I am on you most of the time.

Chairman HYDE. I am told that you never did get the right time. So you can start now if you want.

Mr. WATT. Well, I will not start over for your benefit. But I do think that if you are going to charge the President of the United States with perjury, which this article does, he is entitled to know what that perjury is, and if it is what Mr. Canady says—sure, there are plenty of things in 1,600 pages that you could specify. The only point we are making is that you are duty-bound, you are obligated to make that specification and not to make him guess about it. If it is, as Mr. Canady says, that you do not believe the President when he said—when everybody says, Ms. Currie, Ms.

Lewinsky and the President says, I did not tell Ms. Currie to go out there and pick up those gifts, if you are going to specify that as an element of perjury, then specify it.

It is ridiculous. That is why we were laughing over here when he said it, because there is nothing in the record that supports it. But if you want to specify it, specify it, but do not just say, okay, we are going to use the three things that Mr. Starr said and limit them to that. They obviously are not enough to impeach. We are going to use what Mr. Schippers said, a nice novel he read to me yesterday, but very few things in there that really specify perjury, a nice novel, I almost went to sleep on it when he was reading it, but if you are going to use the word "perjurious" in this article, I think it is incumbent on you to specify what the perjury is.

Now, if you want to strike the word "perjurious" out of the article, maybe you would not have to specify, and that is obviously what the folks in the Watergate—in the Nixon impeachment decided, because, as Mr. Goodlatte has carefully quoted to you, they never used the word "perjury." That is obviously how Independent Counsel Starr finessed it. He never used the word "perjury." But Mr. Schippers did, and he used it in some very strange words that I do not believe amount to perjury. They were a nice novel.

But now we are in a legal proceeding, and we are getting down, as Mr. Jenkins said, we are pulling back the shucks of the corn and looking inside so that we can see it is now—it is time for you to tell this man what you are going to charge him with so that he has the opportunity to prepare his defense. It is obvious now it is going across the aisle to the Senate.

I yield back, Mr. Chairman.

Chairman HYDE. The gentleman from California, Mr. Rogan.

Mr. ROGAN. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. ROGAN. Thank you, Mr. Chairman.

It has been noted on both sides of the aisle in this proceeding today that this is not a criminal proceeding. That is a correct assertion. But if it were a criminal proceeding, we would be bound by extraordinary rules of procedure to guarantee a defendant had his rights protected.

Those same strict rules of criminal procedure do not apply here in Committee. But let us just assume for a moment, Mr. Chairman, we were in a courtroom and this were a preliminary hearing. A police officer upon taking an oath simply could submit a police report with unsworn statements, turn it over to the judge, and upon that hearsay a finding of probable cause could be found to bind somebody over for trial. The only thing that would have to be alleged in the charging documents, like an indictment or an information, would be that on a certain date and at a certain time, a named defendant committed the crime of (for example) perjury in violation of a specific code section.

Now, under the very strict rules of criminal procedure that apply in courtrooms, that is constitutionally sufficient to bring a case to trial.

In our Committee proceedings here today, we have raised the bar beyond what we need to do. We have not only had an extensive and thorough submission of documents and a three-month review pe-

riod for every member of this committee, we then took the extraordinary step of bringing in the prosecutor responsible for the preparation of those documents. He submitted to over 12 hours of cross-examination. Then we had a one-hour presentation from our majority counsel, who set forth the facts as the majority perceive them. And then, after the draft articles of impeachment were circulated, majority counsel sat for an additional 2½ hours to set forth for the committee and the American people the specifics of the accusations against the President.

It is beyond my comprehension how some of my colleagues now can allege that rather than raising the bar and in guaranteeing the President procedural due process rights beyond what the Constitution or our own House rules require, they somehow think that our procedures are “unfair”.

Mr. Chairman, now I want to talk about the word “perjury” as set forth in the proposed Articles of Impeachment. We did not have to use the word “perjury.” The charging documents against the President could simply have alleged that he “lied under oath”.

What is the difference? To charge someone with lying under oath essentially alleges that there was a false answer under a properly administered oath in a sanctioned proceeding. By using the word “perjury,” we have not reduced an element to prove against the President, we have *added* an element, because perjury requires the additional element that the lie be “material” to the proceeding.

How in the world can my colleagues on the other side suggest that by Republicans submitting the charge of “perjury” rather than “lying under oath”, we have been unfair to the President?

Mr. WATT. Will the gentleman yield?

Mr. ROGAN. I will not yield, respectfully, to my colleague. I have listened patiently for 2 hours of this debate waiting for my opportunity to comment, and I only have a few moments left.

We did not lower the bar against the President. We raised the bar for our Committee to ensure a strict requirement of procedural fairness. And we are holding ourselves accountable to that obligation.

This entire proceeding, from the day the Chairman first banged the gavel, has never been about the facts of the case in the eyes of the minority. It has been complaints about procedure.

Mr. WATT. Mr. Chairman, I ask unanimous consent that the gentleman be granted 2 additional minutes.

Chairman HYDE. Hearing no objection, so ordered.

Mr. ROGAN. Mr. Chairman, reserving the right to object, I would happily accept the 2 minutes if it is offered so I can finish my point.

Mr. WATT. I am offering it at this point solely so that you could finish your point, but I would like for you to yield to me at some point if you would. But if you have not finished your point, take the whole 2 minutes.

Mr. ROGAN. I will happily take Mr. Watt’s gracious suggestion. And if the clerk would advise me when 1 minute is up, I will split the difference with my colleague from North Carolina.

The point I wanted to make, Mr. Chairman, is that once again, we are treated to the spectacle of the debate solely over procedure and never about disputing the facts of the case. We are now here

debating articles of impeachment. In Article I, the question before us is did the President commit perjury? Time and time again, Republican members of this committee have offered specific allegations that can be pointed to in the record to prove it. Time and again my friends on the other side are complaining about the process rather than addressing the issue.

With that observation, I am happy to yield to my friend from North Carolina.

Mr. WATT. I thank the gentleman for yielding. And I want to tell the gentleman that I agree with him, we are not that far apart.

Mr. ROGAN. Had I known I would have yielded much earlier to the gentleman!

Mr. WATT. The point I am making is that once you have included the word "perjurious," then you cannot just put it out there, because that is a legal term, and it has some requirements that go with it, and if you put it out there, then you must meet those legal terms, and the legal terms are that you must tell who you are charging with perjury what the perjurious statements are that he made. You and I really are not saying substantially different things.

Mr. ROGAN. We are almost so close to one mindset, that I am tempted to keep moving down the table so we can sit closer together.

Mr. WATT. I invite you down anytime, Mr. Rogan.

Chairman HYDE. There will be none of that today.

Mr. WATT. Will he vote this way when he comes this way?

Chairman HYDE. Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

You know, I hear my friend Mr. Rogan talk about the analogy of the criminal law here, and I think it is important, and I direct these comments to Mr. Canady. You know, there is nobody on this side of the aisle that wants to delay, denigrate in any way these proceedings, because given the analogy of the criminal law, this is just too important.

The right analogy in terms of the criminal law is that this is a capital case. This case involves the death penalty, politically speaking, for the executive branch of government. Should we go beyond procedural safeguards accorded in criminal occasions? I dare say yes, because, Mr. Canady, I believe that Alexander Hamilton and the Founding Fathers would want us to do exactly that.

Let me try to be specific, and I am going to go to clause (4) of Article I. And it reads, "Corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action." I have to guess what that language means, but I presume it is regarding the President's testimony at the grand jury to corrupt the testimony of Lewinsky in the Paula Jones suit.

Well, let me put out some specific language by Monica Lewinsky that was prompted by a grand juror. And everyone that has practiced criminal law, and many of us have here, know that in the normal course of grand jury proceedings, it is the prosecutor that asks the questions. And this was a grand juror, which is highly unusual, asking this question.

And you know what Monica Lewinsky stated? She stated that no one asked her to lie, and no one promised her a job. That is hard

evidence, as I guess it relates to clause (4) of Article I. Now, maybe it is also a reference to finding Monica Lewinsky a job. But you know what? The testimony, the so-called testimony that was never cross-examined, that was never cross-examined, is clear that the efforts to secure a position for Monica Lewinsky occurred far before the Paula Jones deposition. And the President himself, and we heard it from Mr. Ruff, could have easily secured a position for Ms. Lewinsky in the White House, and he did not.

So let me just suggest from what I am guessing clause (4) should be totally disregarded when we come to our considerations.

You know, I do not see that I have enough time, but I did want to talk about Mr. McCollum's reference to those corroborative witnesses that he claims would somehow support the testimony or the credibility of Monica Lewinsky. Well, let me tell you what she said to some of them.

Chairman HYDE. Does the gentleman want additional time?

Mr. DELAHUNT. Could I have an additional 2 minutes?

Chairman HYDE. Without objection.

Mr. DELAHUNT. She told her friend Kathleen Estep that the Secret Service took the President to a rendezvous at her apartment. She made a comment or she made a statement to other friends, an Ashley Raines and a Ms. Erbland, that she had relations with the President in the Oval Office when both were completely unclothed; a statement she made to the White House steward that the President invited her to go to Martha's Vineyard with him when the First Lady was out of the country; statements she made to New York job interviewers that she had lunched with the First Lady, who then offered to help find her a place to live in New York.

You know, this comes down to a question of credibility. But I dare say the corroboration, with all due respect, that you allude to, it just isn't—

Mr. MCCOLLUM. Would the gentleman yield?

The fact is you are right, she can be impeached on certain things. But my point in raising them is that she repeated the same descriptions with regards to sexual relations and the particular parts of the anatomy that the President denied having contact with to every one of those witnesses, and she did it on numerous occasions, and she was consistent, if I might conclude with this, and it was consistent with what she swore to before the grand jury. I think that taken as a whole, one would have to conclude that she was not fabricating those things about those particular elements that are critical to this case.

Mr. DELAHUNT. Well, I dare say, okay, to make a decision based upon that inference when a totally different inference is absolutely reasonable is not a way that we should make a judgment in this case. And, Mr. McCollum, you know the law. When there is an uncertainty or an ambiguity or an inference in a criminal case, in a criminal case, that inference should be drawn in favor of the defendant. And the defendant here is President Clinton. And this simply does not pass the test.

Chairman HYDE. The gentleman from South Carolina, Mr. Graham.

Mr. GRAHAM. Thank you, Mr. Chairman.

One thing I think is important for us to remember is the context of when the grand jury testimony was provided by the President because there are two decisions to make. Is the article factually, in other words, does the evidence suggest that the allegations contained in the article, is the burden of proof met. The second is, even if that did occur, should the President be impeached or be sent to trial in the Senate? Does it amount to a high crime or misdemeanor?

Remember, this is in August now, folks. Remember, the deposition was in January. What happened between January and August? The President, after saying he would not come to the jury five times, finally volunteered, had his lawyer there, his setting that was, I think, very fair to the President. What was going on in the country? You had every group—not every group, but you had a lot of people saying, Mr. President, do not go in the grand jury and lie.

Now this is a political death penalty, so to speak, for a politician to be removed from office, but I think the President had a lot of notice from people from his own party, Senators from his own party, House Members from his own party, it would be a very bad thing if you told a lie in the grand jury.

And Mr. Dershowitz—and he and I disagree on many things about life, I suppose, but I respect his intellect, and he said before us that grand jury perjury, in his opinion, would be a high crime or misdemeanor. I respect him giving us that information. Other smart people said they disagree with him, but I agree with him on that issue that grand jury perjury would subject any President to removal from office because it is a very serious offense.

But with this President, he was begged by a lot of people, including Senator Hatch and others, do not go in that grand jury and lie again. Now, did he go in that grand jury and lie again? Forget about why or forget about what the topic was. He was put on plenty of notice the consequences to him as a person, to him politically.

I suggest to you, ladies and gentlemen, there is an overwhelming occasion that the other side has knowledge of that he did, in fact, lie. Now, this idea that they were not familiar with what we are talking about, we have had great debate about whether or not certain events happened. I would suggest to you that Mr. Lowell made a very good presentation that you should believe the President about the term “sexual relations,” and it did not include oral sex. He knows what we are talking about because he made a defense to that charge that the President fabricated that definition.

I disagree with Mr. Lowell because I believe the testimony shows accurately, the deposition testimony, the President made statements to reporters and other people that it did not have this narrow-minded definition of “sex,” that he said there was no improper relationship. He told that to Mr. Lehrer. He told that to Roll Call. And his talking point said oral sex would be included. I think this is a fabricated definition. Therefore, he lied in the grand jury.

Very important case here, situation here. Betty Currie. He goes to Betty Currie January 18th, the day after the deposition, and he runs four statements by her, and he talks about this in his grand jury testimony. Mr. Lowell addressed this in his argument. Number one, you were always there when she, Monica Lewinsky, was

there, right? We were never alone. You could see and hear everything.

Mr. Lowell says that what the President was doing was he was reacting to the Drudge report and media reports that would be forthcoming, and he was trying to refresh his memory, and that that was not witness tampering, and that the whole scenario was innocent. Well, what did the President say about that scenario? He says, "I do not recall engaging in that conversation."

I believe he is lying.

Mr. Lowell did not address the other two statements that Betty Currie says the President made.

Mr. WATT. Would the gentleman yield?

Mr. GRAHAM. Mr. Watt, yes, I will. You were kind enough to give me two minutes. I will certainly yield to you.

Mr. WATT. The question I would ask is, do you not think that the President would be entitled to have a specification of the things that you are saying, though? I believe that you believe he lied, but when you allege perjury, which this article does, do you not believe that he would be entitled to know the specific things that you and Mr. Schippers and Mr. Starr and Mr. Canady—you know, if he is going to have to defend these things, do not just put it all out there in some global term. Tell him what things you are going to charge him with. That is the question I want you to answer.

Mr. GRAHAM. And the reason I know that the other side knows and the President—

Mr. WATT. Well, I know.

Mr. GRAHAM. Yes, sir. I believe the reason that the lawyers know is because his defense team came in here and made a defense against the allegation that he lied in the grand jury, they made a defense against the allegation he fabricated a false affidavit, they made a defense against the allegation he was trying to tamper with Ms. Currie, they made a defense against whether or not he was alone. And let's revisit that defense, the term "alone."

Chairman HYDE. The gentleman's time has expired.

Mr. WATT. Mr. Chairman, I ask unanimous consent the gentleman be given 2 additional minutes.

Mr. GRAHAM. The term "alone" is unusually used here. When he said in his grand jury testimony, his deposition testimony, he was never alone with Ms. Lewinsky, he said, "Well, you ask a vague question." Their defense was, you ask a vague question because you did not give a geographic location, but the thought being that you and me could be alone in the Rayburn Building, but since other people were in the Rayburn Building, we were never alone, which is kind of an artful way of getting around common-sense use of the term "alone."

Now, you made this argument. If you assume his definition of sex included oral sex, he still has a problem because Ms. Lewinsky gives testimony of intimate details that would even make that perjurious, and one of the defenses is, well, you need more corroboration, and since they were alone, there is nobody else around. It is kind of an odd use of the term "alone." It is a get out of jail free card.

So what I am saying, and I will end here, is that there is plenty of notice; that you know what we are talking about. You defended

against these allegations, the lawyers have. I just disagree with their interpretation. And if you are allowed to use common sense and put two thoughts together and look at everything in its entirety, the President is guilty of perjury, and when he went into that grand jury, he was begged to tell the truth, his political career was on the line, he chose to ignore it, and he is still lying about many of these matters.

Thank you.

Chairman HYDE. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman.

It seems to me that the issue before the committee is not what Mr. Schippers said to the committee or how Mr. Schippers defined "perjury"; it is not what Mr. Lowell said to the committee or how Mr. Lowell defeated the claim of perjury; it is not what Mr. Ruff said to the committee and how he responded to the charges of perjury; it is not what Mr. Hutchinson or Mr. Graham say perjury is; it is certainly not what I say perjury is or is not. The issue is much simpler than that. It is what do the articles of impeachment say perjury is.

We are not voting on Mr. Schippers' statement. We are not voting on Mr. Ruff's statement. We are not voting on my statement or any other statement of any member of the committee. We are voting on the articles of impeachment. And it seems with respect to articles of impeachment and with respect to claim of perjury against the President in the articles of impeachment, there is the ultimate irony.

On the one hand, the Majority argues that we should impeach; no, we must, we are duty-bound to impeach the President because of the rule of law. But in the document that impeaches the President, the rule of law does not apply because this is not a legal or criminal proceeding, the ultimate irony. And the Majority, of course, very effectively, I admit, is fond of arguing that if what the President did was done by an ordinary American, they would be in jail or they would have lost their job.

Well, if an ordinary American is charged with perjury, then the United States or the State charging it has to tell that ordinary American the specific things that he or she said that is, in fact, perjury. If the United States Government charges an ordinary American with tax fraud, if they say, you know, you did not account for your income this way, they just cannot say, you look too rich. They have to tell you which income you did not put on your tax form. And imagine if the United States Government or any State in this country charged you with murder, but they did not tell you who you killed. "You, you stole cars, but we are not going to tell you which cars."

But maybe the most appropriate analogy is that in every court in this land, if you are accused of slander or libel, the person accusing you of it must tell you specifically what you said or what you wrote that was slander or libel. So here we are today, the ultimate irony. We are going to impeach the President of the United States to uphold the rule of law, because if we do not, the rule of law will be jeopardized forever. But the document that we are voting on that charges the President with impeachment, the rule of law does not apply.

So what is the perjury? I guess the perjury is what Mr. Hutchinson says, what Mr. Graham says, what Mr. Barr says, what Mr. Schippers says, what anybody says. The document does not tell us. There is not one single specified item of perjury in the document, but we are going to impeach the President anyway.

Thank you Mr. Chairman.

Mr. FRANK. Would the gentleman yield?

Mr. WEXLER. Yes, I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman. What he has said is absolutely right. But again, it is totally vague in the document, but the vagueness is purposeful. And you heard this from the gentleman from South Carolina. The reasons for impeaching the President on grand jury perjury are what he touched and when he touched it, and that is the problem they have. They do not want to take that to the floor of the House of Representatives and to the Senate, because it all comes down to, when you ask for specifics, that Ms. Lewinsky says that he touched her in several places and to corroborate it told 10 of her friends. There is no independent corroboration. It is that she told 10 of her friends that the President touched her in certain places, and that he did it in November and not in February.

So that is their dilemma. They cannot be specific, because if they are specific, they are trivial. And if they want to be portentous, they have to be vague. That is the choice. So Mr. Starr chose to be specific and trivial. The document chooses to be portentous and foreboding and very vague, and that is the dilemma they have.

If we ask for the particulars, we get it. Let's throw the President out of office. Let's cancel two elections. Because when he admitted to her performing sex on him, he did not tell us that he touched her in return, and for that we are going to undo two Presidential elections.

Ms. JACKSON LEE. Mr. Chairman, I ask the gentleman to get an additional 2 minutes, Mr. Wexler.

Chairman HYDE. Is the gentlelady asking for unanimous consent for 2 additional minutes?

Ms. JACKSON LEE. Yes, to Mr. Wexler.

Mr. WEXLER. I suppose I am supposed to yield.

Ms. JACKSON LEE. I ask you to yield.

Chairman HYDE. Well, if Mr. Wexler wants 2 additional minutes, and I hear no objection, we shall do so.

Ms. JACKSON LEE. I thank the gentleman very much.

The language of this article is the Majority of the committee. And I think that America understands most what it is to have uncorroborated witnesses say something about what you did. And that is why we are asking the question for specificity, what did he do, because I am looking at Mr. Schippers' reference to grand jury lies, and he has got issues dealing with the fact that the President told them that he did not know about Monica Lewinsky had been subpoenaed in the Jones case, when he knew it through Mr. Jordan; that he reaffirmed what he said in the deposition, that the Monica Lewinsky affidavit was truthful when it said no sexual relations.

There is a whole litany of so-called accusations. And so we do not know which of the ones that are stated in this, and the only thing

we have is the suggestion that there were some witnesses who heard her say things of which they are corroborating. That is the same way if you are accused of perjury, and the people who are accusing you or who are the people who will be the witnesses.

This gives us no basis, and I think that if we are relying upon language that is in the rule of law perjurious, then you are owed, if you will, the protection of the fifth amendment, which is notice; and you are also owed the common law protection of Bronson, the case that says that if the witness is unresponsive or evasive, that is not per se perjurious; or if you are relying on the fact that the President said, "I do not recall," or, "I cannot remember," that it is not per se perjurious. And I think that is where we fall on very weak ground, Mr. Chairman, in this instance.

Chairman HYDE. The gentlelady's time has expired.

Mr. Chabot.

Mr. CHABOT. Thank you.

You know, the argument that is being made by some of the folks on the other side of the aisle here is that this article of impeachment is not specific enough. And we have been debating this issue for about 2 hours now. Perhaps we need some guidance here. Perhaps we need to find a Member of the House of Representatives whom both sides respect, somebody who was actually around back in 1974 when the Watergate hearings were going on and Richard Nixon was being investigated, somebody both sides respect.

Now, who could that maybe be? How about Charlie Rangel, somebody I think we all agree is an exemplary Member of Congress. Here is what Charlie Rangel had to say about specifics back in 1974 in the Nixon matter. "If we got bogged down with specifics before the House of Representatives has worked its will, perhaps we would not give the general recommendation to the House that it rightfully deserves. It is not our constitutional responsibility to impeach the President, but merely to report to the House. So it seems to me that we should not be talking about specifics but give the maximum amount of information to the House of Representatives so that they can deal with the problem constitutionally."

That is what Charlie Rangel said back in 1974. Now, we have heard numerous times from the President's defenders that the sexual details of this case are salacious and distasteful, et cetera. And I agree, they are distasteful. They are distasteful because of the conduct of the President of the United States. That is why they are so distasteful. And we have dealt with them in excruciating detail in Mr. Schippers' report, in the Starr report; and I do not think we need to go through all the salacious details here again today. I prefer that we not do that.

You know, we have reviewed 60,000 pages of documents, 16 boxes of evidence. We have listened to many, many witnesses testify, a significant number of them appearing on behalf of the President. We have heard from history professors, legal experts, even perjurers. We have watched grand jury testimony. We have watched deposition videotapes. We have read transcripts, hundreds, even thousands of pages. It all boils down to this: The President lied before a grand jury. He lied at a deposition when he was under oath. He waved his finger at the American people and lied to them. He lied to his staff. He lied to his Cabinet. He lied so

many times in so many forums, it is really hard to keep track of it all.

Again, the specific details of all the lies were dealt with in great specificity in the Starr report and in Mr. Schippers' presentation before this very committee. The articles of impeachment are, in fact, comprehensive and will provide the Senate an opportunity to conduct a fair and appropriate trial without tying their hands. While some would try to bring consideration of these articles to a grinding halt or drag us through the muck, I do not think we need to get into the salacious details over and over again.

We have had months to review the evidence provided in sworn testimony by many witnesses, and we have listened to the President's people, we have listened to the President on his videotape, we have listened to the Independent Counsel's report. I believe the facts are clear and convincing. The President lied under oath. He committed perjury before a grand jury. The President gave false and misleading testimony before the grand jury regarding his contact with a subordinate Federal employee who was a witness in a civil rights suit against him.

Particularly telling, I believe, was Mr. Schippers' testimony yesterday as it related to the President's claim that the President was not paying attention when he allowed his attorney Mr. Bennett to present an affidavit to the court that he knew was false. We all know, the evidence is clear, that he knew it was false. The President's videotape testimony in the sexual harassment case demonstrates that the President, in fact, was paying clear attention. He was looking directly at his attorney Mr. Bennett.

Mr. WATT. Would the gentleman yield time for a question?

Mr. CHABOT. If I have got any time, I will, but I am almost out of time.

Perjury cannot be taken lightly. It is a direct assault on our justice system. Ignoring this President's lies and deceit would set a terrible precedent for the future, for future Presidents, for future people who testify in courts throughout this country, and to our Nation's children.

I hear over and over again, "We have got to do it for the children." And unfortunately, I believe, for the children of this Nation, this President has to be impeached.

And with the little time I have left, I yield to Mr. Barr, and I would ask for an additional 2 minutes so I could yield to the gentleman from North Carolina Mr. Watt, who has been very generous in yielding time to other Members here today.

Chairman HYDE. Without objection, so ordered.

Mr. BARR. Mr. Chairman, in the event that the words of their former colleague Mr. Rangel do not suffice for those who believe that we are doing something without historic precedent in moving forward with articles of impeachment, while they do not contain the full range of all the details, the other side would like to, in fact, place the President on sufficient notice for him to prepare a defense, which, as Mr. Graham has already pointed out, he has already done.

I would point also to testimony in the Nixon case on the same day in which, as Mr. Chabot pointed out, Mr. Rangel spoke, and this is from the lead counsel for the then Majority, Mr. John Doar,

“Mr. Chairman, in my judgment it is not necessary to be totally specific, and I think this article of impeachment meets the test of specificity, there will be a report submitted to the Congress with respect to this article if the committee chooses to vote this article, and behind that report will be the summary of information as well as all of the material that was presented to this committee.”

I close quote and let that stand as a very sound historical and legal precedent for the precise language and the sufficiency thereof of this article of impeachment.

I thank the gentleman from Ohio.

Mr. CHABOT. I yield to the gentleman from North Carolina.

Mr. WATT. I thank the gentleman for yielding.

There was just one aspect of what you said that really troubled me, and I want to make sure I understand what you are saying. You made a reference to not tying the Senate’s hands when this goes to the Senate. Is the gentleman saying that once this gets to the Senate, the Senate can add additional perjurious statements, they can just do whatever they want to once we get over there?

Mr. CHABOT. Reclaiming my time, there are so many perjurious statements in the 60,000 pages and previous evidence that we have already had before this committee, I do not think they are going to have to look for additional statements of perjury.

Mr. WATT. The question I am asking is, are you saying that they could go outside of the perjurious statements that you have specified and just decide what they decide?

Mr. CHABOT. Reclaiming my time, you just referred to them as perjurious statements. Are you conceding that they are perjurious statements?

Mr. WATT. Beg your pardon?

Mr. CHABOT. You just referred to them as “the perjurious statements.” Are you conceding that they are perjurious statements?

Mr. WATT. No. I am conceding that you have alleged that they are perjurious statements, and I have heard a lot of allegations on your side about what is perjurious, and I acknowledge that. The question I am asking is, if you have not specified them or if you do specify them, would the Senate have the right to go beyond what you have specified?

Mr. CHABOT. Reclaiming my time, it is our responsibility as a House and right now as this committee to study the evidence very carefully and, if we feel that there are sufficient grounds, for articles of impeachment to be sent to the full House. And I have reached that conclusion at this time. I think there is sufficient evidence, because I think the President has committed perjury, obstruction of justice, and probably abused his powers of office as well. I reach that conclusion.

Chairman HYDE. The gentleman from New Jersey, Mr. Rothman.

Mr. ROTHMAN. Thank you, Mr. Chairman.

We are discussing articles of impeachment against a sitting United States President for the third time in American history. I would like to use my 5 minutes to discuss some other things.

I believe our job is to decide whether treason, bribery, or other high crimes or misdemeanors have been committed. I think that is what we are supposed to be doing here. Let’s start with the premise that the accuser bears the burden of proof. Is that foreign

to anybody, any American? No. In America the accuser bears the burden of proof.

Okay, well, what is the burden of proof? Is it proof beyond a reasonable doubt? No. Most constitutional and historical scholars say it is a clear and convincing standard of proof that the accuser bears.

Okay, well what do we have before this committee? We have got a bunch of lawyers, we have got Judge Starr and Mr. Schippers on the one hand, referring to some portions of statements made in a deposition by a grand jury, none of which were cross-examined, and they infer and conclude from those portions of those statements that high crimes and misdemeanors have occurred.

We have got a whole bunch of other lawyers on the other side, Mr. Kendall, Ruff and Lowell, who examined the same statements, same portions of statements, which were never cross-examined by anybody, and say, no, the correct inferences and conclusions are that no high crimes and misdemeanors were committed, that the President did follow the bizarre and narrow definition of "sexual relations," and that there is a legitimate question, at least in the President's mind, whether the definition involved whether he was touching her to gratify her or himself. That is what we have got, lawyers arguing inferences and conclusions.

Where is the fact witness who we can hear, see, or cross-examine to determine which inference is correct? Well, we have got 60,000 pages. Well, all we got are lawyers trying to interpret those 60,000 pages, not one fact witness presented before this committee. Some say it was up to the President, the accused, to prove his innocence. Where did they get that notion from? Not from America. Whether you say it is not a criminal case or it is a criminal case, the burden is on the prosecution, on the accuser, to bear the burden of proof by clear and convincing evidence.

So when you have equally intelligent lawyers refuting one another on inferences and conclusions from the same facts, what is this committee left with? Is it clear and convincing evidence such that we should remove a sitting President of the United States, such that they constitute by clear and convincing evidence that they are high crimes and misdemeanors?

Then they throw this other very emotional but appropriate, but still emotional, argument about the rule of law. Well, there are criminal laws and civil laws. There are civil courts and criminal courts to resolve issues. If someone commits a civil offense, they can be fined and punished in civil court. If someone commits a criminal offense, they can be punished in a criminal court.

The President is not above the law. We are talking about a third thing, a third punishment, not civil punishment or criminal punishment, because that upholds the rule of law in the civil and criminal courts. We are talking about whether treason, bribery, high crimes and misdemeanors have occurred.

Now, is the standard somehow expanded so that it is not just treason, bribery, high crimes, or misdemeanors, but lack of good character such that while we do not have clear and convincing evidence since there was no fact witness, and intelligent folks have argued equally, what happens when the argument is equal and no

fact witness is presented? Does the prosecution win, we declare the President guilty?

I do not think so. We are talking about the impeachment of a President of the United States, let alone any American. And when you have no fact witnesses to help you decide the arguments that have neutralized one another from competent attorneys, I believe the score is zero/zero, and the accused is not convicted, and the clear and convincing evidence has not been proven, that they should be either sent to trial or the grand jury.

If I may have one more additional minute, Mr. Chairman?

Chairman HYDE. Yes.

Mr. ROTHMAN. The Founders of our country in the Federalist Papers 65 said they were very concerned about one political party in the Congress using the power of impeachment to remove the President of an opposing party, and so they set the bar for impeachment of that President very high. They rejected the notion that perhaps one of the standards in addition to treason, bribery, high crimes and misdemeanors should be failure of good behavior. They rejected that notion to the bar. They rejected the notion of narrow administration.

And I believe that if we step back and look at what is now the articles of impeachment against a President for the third time in our 200-year history, do we find that a clear and convincing standard of proof has been met for a high crime or misdemeanor, or are we befuddled by the lawyers' talk which has neutralized one another and we ask, why did not the accuser call a single fact witness to support his charges.

We do not have to speculate. Judge Starr did not. The Majority did not. Those who want to impeach the President did not. And we as the jury, if you will, are left zero to zero, and we must say the burden of proof to impeach a sitting United States President has not been met.

Mr. SENSENBRENNER. Will the gentleman yield?

Mr. ROTHMAN. I will yield.

Mr. SENSENBRENNER. I ask unanimous consent the gentleman be given one additional minute.

Chairman HYDE. Without objection.

Mr. SENSENBRENNER. To the gentleman from New Jersey, first of all, we are not the jury. The jury is in the Senate, if it gets that far. And we should not be determining what the weight of the evidence should be. We should be determining if there is sufficient evidence to accuse the President through articles of impeachment.

Secondly, you make the point about Federalist 65 and that has been very frequently quoted. Federalist 65 was written before the 12th amendment was ratified. Before the 12th amendment was ratified, the Vice President was always the Presidential candidate of the losing party. And after Aaron Burr undermined all of Thomas Jefferson's proposals, the 12th amendment was proposed and ratified so that the Vice President would be the——

Mr. ROTHMAN. Reclaiming my time, let me just say this. No one will deny that there is a burden of proof upon anyone that wishes to impeach a sitting United States President. The question is, what is the burden of proof? And I think it is fairly unanimous amongst

the scholars that the burden of proof is clear and convincing evidence.

So that is the standard. And then the question is, in the duel, in the battle, the neutralizing battle of lawyers who have argued equally well that you can draw inferences to support the President's conduct so that it would not be a lie or perjury and those who say you could draw inferences to make it a lie or perjury, that they neutralize one another, and the failure of the accusers, those supporting the President's impeachment, to call a single fact witness is powerful and determinative.

Mr. HYDE. The gentleman's time has expired.

The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

I would like to make a couple of comments then yield some of my time to my colleague from Arkansas. First of all, I think I need to respond to a couple of things to what my friend from New Jersey just said.

In fact, the President is probably the one person in America who is above the law for a period of time. While he is President, I think the weight of constitutional authority suggests that he cannot be prosecuted. This is the one place where it is more important to maintain our political hygiene, that is through impeachment, than it is to have the supremacy of the criminal law take place.

Secondly, I would like to make a couple of comments on the distinction between perjury and perjurious. And I do not mean to speak down to people, particularly in my district, who understand the role of government and the different activities of the various branches and who know what is going on here in this proceeding.

Everybody agrees this is not a criminal proceeding, period. That is not even an issue. We also are not dealing with a crime here. "Perjury" is a legal term of art that relates to the criminal law, and with it come certain particulars. What we have talked about here is perjurious, which means in the nature of perjury.

I cannot understand my colleagues on the other side of the aisle making a big deal out of the difference between perjury and perjurious, or trying to make perjurious perjury, because what the American people really care about here is the nature of the acts of our President. They know he is not going to go to jail. They know this is not a criminal. We do not need to lecture them about this not being criminal. What they care about is did he do things that would undermine our constitutional system of government.

With that, let me yield the balance of my time to my colleague from Arkansas.

Mr. HUTCHINSON. I thank the gentleman for yielding.

I just wanted to comment on a couple things. We continue to hear the claim that there is a lack of specificity. And, of course, I went through in my earlier statements questions and answers, in the grand jury testimony that are alleged perjurious statements to support the articles. But if you look back, and I think this is important, and Mr. Goodlatte referenced it, at the drafting the articles for the impeachment of Richard Nixon, and I went through the other historicals from Hastings to Nixon, Judge Nixon, Judge Claiborne, anytime that there is an article that is drafted relating to false statements, relating to perjurious statements, it is in the

same form that this is presented in this case. And so we are following a historical pattern here, and I think that is important to note.

It has been said that the President did not give false answers because they are literally true. And I just wanted to reference a case that came down within the last month. A three-judge panel of the appellate court gave an opinion that the defendant can be found guilty of perjury when he knew what the question meant and gave knowingly untruthful and materially misleading answers in response. Though his defense was that he gave literally truthful answers, the Kentucky Federal District Court found that he knew what the questioner meant and intended to deceive them. The conviction was upheld by the sixth circuit, which found, in Judge Rosen's words, that "a perjury inquiry which focuses only upon the precision of the question and ignores what the defendant knew about the subject matter of the question at the time it was asked misses the very point of perjury; that is, the defendant's intent to testify falsely and thereby mislead his interrogators." This gentleman suffered a criminal penalty for the perjury in question in that case.

Now, briefly, the point needs to be made that this is not a technical criminal proceeding. And we are hearing these things like the two-witness rule. Sheila Jackson Lee, the gentlelady from Texas, made reference to, to this side being unable to comply with the two-witness rule. Again, it is not a criminal proceeding. But the two witnessess were in fact, applies to 18 U.S.C. 1621. It does not apply to section 1623 which covers grand jury proceedings and ancillary proceedings. And also, in fact, the two-witness rule can be satisfied with one witness plus documentary evidence. All of that, even if you complied with the strict criminal procedures, is met in this case. But this is not a criminal proceeding. We go far beyond that because we are dealing with the public trust. And so I think it is important to put this in perspective.

I thank the gentleman for yielding.

Mr. SCOTT. Would the gentleman yield?

Mr. CANNON. I would be happy to yield to the gentleman from Virginia.

Mr. SCOTT. I thank the gentleman for yielding.

The gentleman from Arkansas referenced the Judge Nixon case and the format. I have the articles before me, which Article I is false statements to a grand jury, and they cite the statement. Article I was, in substance, that Forest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon. The second article actually quotes the language. The third article has seven or eight statements that said, Judge Nixon never discussed with Raleigh Fairchild anything about Raleigh's son's case. B. Raleigh Fairchild never brought up the son's case.

Mr. CANNON. Reclaiming my time, Mr. Scott, let me yield again to Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Scott, I thank you for bringing that out. And you are right that there are some references in Judge Nixon's impeachment proceedings to particular areas of testimony. You do not see in there an excerpt from the grand jury testimony, question, here is the question; answer, here is the answer. That is nowhere in those articles.

What you see is a description of the testimony, and that is what you have in the articles before us today. So I think there is sufficient specificity provided for any defense that the President will make.

There is no question what we are talking about in this case. There is no question. The American people know there is no question about the nature of the charges in this case and the question as to what was true or what was not true.

Mr. CANNON. May I just say that I think we are living with an eternal light here. Why couldn't I get this much time when I was speaking this morning, Mr. Chairman? I think that other people have time. Let me yield to Mr. Bryant, and then I would be happy to yield to Ms. Lofgren, depending on how long the light lasts.

Mr. BRYANT. Thank you, Mr. Chairman.

I have sat and listened to the debate and the debate and the debate and the debate. I think it is very clear that everything that can be said about this issue, which I believe is a nonissue, has been said. We have had brought out just in the last few minutes from my colleague from Arkansas the record—what precedent exists for impeachment—of prior charging, which is consistent with the way these charges are written, specifically using the Rodino model as a model. We have heard from my colleague from Georgia the words of the Majority counsel, who explained why it was appropriate to charge in that fashion.

And it just seems to me that we have a lot of ground to cover today. We are doing important work here, but this issue has been debated, and it seems clear to me that we are on the right side here. Who can quarrel with the precedent and the majority counsel for the Rodino hearings as well as the Rodino charges?

So I might just ask if we can move on or carry this to a vote or whatever it takes to move on to the next issue.

Chairman HYDE. Well, we have one more gentleman on the Democratic side who has not been heard from.

Mr. BARRETT. I think I am the one you have been waiting for.

Chairman HYDE. We have been waiting for you all afternoon. Mr. Barrett.

Mr. BARRETT. Thank you very much, Mr. Chairman.

Impeachment is a little bit like a polka dot zebra, it is a little bit of this and a little bit of that. And we have heard numerous Members on the other side say that President Clinton has committed a crime or has committed many crimes. We are told that we are sitting in a situation like a grand jury; we are to make a determination whether there is probable cause to charge the President of the United States with impeachable acts. But we are also told that the Federal Rules of Criminal Procedure do not apply to our proceedings, and my colleagues who say that are absolutely correct. The Federal Rules of Criminal Procedure do not apply to the workings of Congress.

But I do not think you can stop there. I think you have to ask another question and say, what is the principle underlying the particular Federal rule; whether it is a rule of evidence, whether it is a rule of pleadings, what is the principle behind that rule? For example, in the case of the release of grand jury testimony that we objected to so vociferously, we argued that that was unfair to the

defendant because that defendant did not have an opportunity for his or her counsel to ask questions. That was a rule that was established a long time ago. We argued that it was unfair. This committee decided that that principle of fairness did not apply to our proceedings.

It did not matter. It did not matter whether it was a principle of fairness that applied to defendants all over this country. It did not apply to the President of the United States, the person who, all of us agree, should not be above the law, but the person who apparently some people believe can be below the law.

Now, often as the last person to speak, you get a little time on your hands, so I was able to get the indictment in the latest Webb Hubbell case.

This is the one that was filed just a month ago. It is the third indictment filed by the Independent Counsel against Mr. Hubbell. I won't go into that. But I think it is instructive for us, because there is a count of perjury in here, and there are several counts of making false statements. It is pretty much consistent with what we have been hearing today.

I heard a number of my colleagues on the other side talk about the Nixon case. In the Nixon case, the Judge Nixon case, there were references—Mr. Scott said there were references to the false statements. In here, in the indictment against Mr. Hubbell, where there are allegations that he made false statements, the document actually states what the false statements were, and then states, "In truth and in fact, the defendant then well knew each of those statements was false."

But it also has a count of perjury. There it actually quotes the question. It has the question, and it has the answer. Why does it do that? It does that because the words are the crime. A defendant can't be on notice of what the crime is unless he knows what the words are. The words are the body, the identity of the person who has been murdered.

To say that the defendant, in this case the President of the United States, does not have the right to know what words are claimed to be perjurious I think simply flies in the face of fairness, fundamental fairness. He should be on notice as to what he is being charged with.

The claim I hear from some of my colleagues, holy moly, there are so many of them we can't list them all. To me that is not a reason to forego notice to a defendant. If there are so many statements that constitute perjury, that is all the more reason to put the President on notice as to why this body is coming after him.

If you look at this, it is not difficult. It is not difficult at all. I don't know if there are any law clerks in the office of our opposing party here, but certainly a law student could go through and say what the question is and what the answer is, so there has to be another reason why it is not in here.

I think the reason, as Mr. Frank has said so many times, is because this is a nasty-sounding claim, perjury before a grand jury. But I also agree with Mr. Graham, that the real nub of this is the President of the United States refused to state which body parts he touched, and that could very well have been a lie. In fact, I

think that the President knew whether or not he touched her and he knew where he touched her, but he refused to say what it was.

The problem, of course, is if we present that to the American people, they are going to question whether that is an impeachable offense. So by leaving it in this form, without notice to the President, we make it sound much worse. And perhaps it is. I'm not saying that it is not bad. But I think that is the reason it is not here. I think that is the reason it should be here.

I yield back.

Chairman HYDE. The gentleman's time has expired.

Normally, we would proceed to a vote. However, Mr. Rogan has a last-minute amendment that he would like to offer.

The Clerk will report.

The CLERK. Amendment of Mr. Rogan to H. Res.

Mr. ROGAN. I ask unanimous consent that the amendment be considered as read.

AMENDMENT OF MR. ROGAN TO H. RES.

Page 2, line 17, insert after "concerning" the following: "one or more of the following".

Mr. FRANK. It hasn't been distributed.

Chairman HYDE. We had better—

Mr. ROGAN. I am happy to have the amendment read.

Chairman HYDE. Please read it. It is so terribly short.

The CLERK. Amendment of Mr. Rogan to H. Res. blank, page 2, line 17, insert "concerning the following"—after "concerning," "one or more of the following."

Chairman HYDE. The gentleman from California is recognized for 5 minutes in support of his amendment.

Mr. ROGAN. Mr. Chairman, thank you.

With respect to Article I of the articles of impeachment, for the benefit of those who haven't yet received the amendment, it would essentially take the charging paragraph and change it to read as follows: "On August 17, 1998, William Jefferson Clinton"—

Mr. NADLER. Mr. Chairman, we cannot hear at this end.

Chairman HYDE. If the gentleman would speak closer to the microphone, and with a tad more volume.

Mr. ROGAN. That is probably the first and last time, Mr. Chairman, that will ever be requested of me during my legislative career.

It would change the paragraph to essentially add the same conforming language that is already found in Articles 3 and 4, and which I understand the gentleman from South Carolina will be offering by article II. It is a technical amendment only. I ask the Members for an aye vote. I yield back.

Mr. FRANK. Mr. Chairman.

Chairman HYDE. The gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I think this makes a bad situation worse. As I understand it, what we are talking about now is it will accuse the President of one or more of the following, which means, if I read this correctly, we now have four general categories. The President stands accused of committing perjury with regard to I, II, III or IV, or more. You have taken an article of impeachment and made it a multiple choice test.

Shouldn't you have, Mr. Chairman, "or Article V?" To keep with the dignity of this, shouldn't it be, "V, all of the above?" Here is what it will say: "The President provided perjurious, false, and misleading testimony to the grand jury concerning one or more of the following." So maybe it was I or maybe it was II, and maybe it was III, maybe it was III and IV, maybe it was I, III, and IV. I am baffled by this. You have had quite a few months here. Is there no consensus among you on which of these?

Once again, I think I see what we have. By the way, it seemed to me that my friend from Arkansas gave an inaccurate response to the excellent point of the gentleman from Virginia about the particularities of the Judge Nixon case. As the gentleman from Virginia said, in the Judge Nixon case it said he made a false statement by denying he had talked to the D.A. to get him to drop the case about his partner's son—a very different thing, by the way, than which body part you are touching.

In the Judge Nixon case it was perjury, in which a Federal judge denied trying to fix a case of a drug dealer who was his partner's son by going to a State judge. But it didn't say—actually, if the Judge Nixon case followed your motto, it would have said, false statement concerning the nature and details concerning the nature of his conversation with another judge. It would have left out the gravamen of the charge.

But what you are really trying to do now is—is this a shell game? That is the question. Under which pea is the impeachment? Is it under number I, or is it number II, or maybe it is under III and II, or IV and I, or II and III? How are you going to defend it?

I have to say, the notion—and I hope this doesn't go anywhere, and I hope we don't bog the country down, but I am almost intrigued, here. I want to see Chief Justice Rehnquist sitting there while the Senate is trying to guess under which pea you have concealed the impeachment.

The point is that you ought to be making specific charges. What you now have is you are going to seriously argue that the President should be charged with one or more of the following, and not two?

Now I understand a kind of reluctance on the part of the Majority to live up to their responsibility, because I think when you vote for a resolution that says, oh, the President has done terrible things and ought to be thrown out of office, that is what you are voting for. And to say that you are voting for that, but you don't really mean it, we are just the piano players, we are just sending it upstairs, and then the Senate will decide whether it is true or not true—that absolute avoidance of responsibility is compounded when now you won't even say which of the ones you care about, which are the ones you mean.

Are we simply going to say, hey, we found four things? We looked through the Starr report. We didn't really like those too much. They were too trivial. We went through the Schippers report. That is pretty wide-ranging. That has a lot. We are going to pick four, describe them vaguely, and we will tell you I, II, or III and IV, or II or III are there, and you, the Senate, figure it out.

And, by the way, haven't we done a wonderful job? Haven't we been responsible Members of Congress? We have gone through here, and we have thrown that mix on the table.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman.

Mr. CONYERS. We have spent 2 hours begging for more specificity and now, as a result of that plea, we now get an amendment that adds to more generality and makes it more difficult to become more accurate.

Mr. FRANK. More ambiguity, and that reinforces the substantive point. We are not interested in specificity for its own sake. We are talking here about how the issue is framed.

It is the most important issue possible. Do we undo the election? Do we throw the duly-elected President out of office? We are asking that this issue be framed. If you are saying that the President of the United States should be thrown out of office because, having acknowledged that he had a sexual relationship, he misstated the date by 3 months and when it started on and he did not give details about what he touched, then say so.

But do not take refuge in confusion, obscurity and, now, ambiguous obscurity. You list four general categories without any specificity, and then you don't even say which ones you stand behind. This is an abdication of responsibility that is absolutely breathtaking on a matter of such centrality to our democracy.

Mr. SCHUMER. Mr. Chairman.

Chairman HYDE. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Chairman, I think we are seeing a continuation of legal hairsplitting, albeit quite a bit more humorous than that which we heard from either the President's counsel or Mr. Lowell yesterday. This merely takes care of a drafting error in the articles of impeachment that were put before us.

What it says is that you only have to prove one kind of false statement when it goes to trial. The question, I think, is, is one false statement enough to warrant the impeachment and removal from office of the President? I answer that question yes, because one false statement is one lie.

I think what the other side is trying to do with all of their humor, and have everybody laugh about what the Chief Justice of the United States would have to rule on, is to set up to make an argument that you have got to talk about—prove all four kinds of false statements.

That is not the intent of the article of impeachment, and Articles III and IV I think have one or more of the following statements in. Mr. Graham will have one relative to Article II. I think really what we are trying to do is to laugh over something that is a drafting error. This amendment simply corrects it.

Mr. BARR. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I yield to Mr. Barr.

Mr. BARR. I thank the gentleman. If I might inquire of the gentleman from Wisconsin, is it not standard prosecutorial procedure to use this precise language in the drafting of indictments?

Mr. SENSENBRENNER. Absolutely.

Mr. ROGAN. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman.

Mr. ROGAN. I thank the gentleman.

Actually, before my colleagues on the left get terribly exorcised about this, I will tell them that this language is being inserted at their request. It was always the request of the Democrats that we follow the Rodino model for impeachment. As to my proposed Amendment, this was not language that I invented. This is the language that the Democrats used in Article I and Article II of the impeachment articles against President Richard Nixon.

When the Democrats drafted articles of impeachment against President Nixon, they defined very broad categories of impeachable offenses. It was in "either/or" fashion i.e., perjury or obstruction of justice. We have narrowed it much more specifically against President Clinton than they did against President Nixon.

To my friend from Massachusetts, I say I did not get the idea from Monty Hall or "Let's Make a Deal." I got the idea from those venerable Democrats who preceded us in the annals of impeachment precedent that you requested we follow.

Chairman HYDE. The gentleman from Michigan?

Mr. CONYERS. Mr. Chairman, I am almost inclined to want to come to a vote right away. But to take this language and now make it a shell game is an offense to the experience of impeachment in the United States history. This does not follow the Rodino model.

I would merely like you to recall that there was bipartisan agreement in 1974 in the Watergate case, because there wasn't controversy about the CIA involvement, the FBI, the IRS and the war against Nixon's political opponents and the hush money and the subversion of government. So that does not apply here.

To take the prosecutorial tactics of any and all and expand it to anything they can catch and now put this into an article of impeachment on perjury destroys any rational approach to this subject.

Mr. FRANK. Will the gentleman yield?

Mr. CONYERS. Of course.

Mr. FRANK. As to the argument this is a standard criminal prosecution, I think I heard a lot of people on the other side differentiating impeachment from a criminal prosecution recently. It underwent a very quick transmogrification.

In fact, it is not a criminal proceeding. It is a political proceeding in the broadest sense of the word. Remember, the Founding Fathers decided to send this to Congress. They didn't decide to send impeachments to the Supreme Court. It is to be decided on the facts and with political considerations, with the sense of democracy in the broad involved.

When you are dealing in that situation, to throw in a laundry list which you may not believe poisons the atmosphere. To make accusations you are not prepared to stand behind, which you do when it is "one or more," poisons the atmosphere.

As far as a criminal trial, remember, in a criminal trial the defendant may be convicted on one, two, three, four, five, or six of the counts, and the sentence will vary, according to how many counts. But here there is only one sentence, impeachment or nonimpeachment, so that model is irrelevant.

Yes, it is relevant how many of the counts, and you might want to charge a bunch of counts in a criminal case, and the number of

counts convicted affects the disposition. Here, this is either political capital punishment or an acquittal. So doing it in this way simply is an attempt—and it is very clear—it is an attempt to try and build some substance around a travesty.

Remember, from the beginning Members have said, we can't impeach him before we have got his sexes—we can't impeach him. So we had a hunt, we had a hunt through the campaign finance, the Whitewater, the FBI. Even not sex, it had to be not consensual sex, sexual harassment: Kathleen Willey. There has to be something beyond lying about a private, consensual affair.

Since they couldn't find it in reality, they tried to cover it up in the drafting. This is phase two of the expansion.

Mr. CONYERS. I thank the gentleman.

So what we have here is an article that states there are 60,000 pages of materials. We had four counts. We have now added "one or more of the following." So now Mr. Canady volunteered some more. So we may have anywhere between four and 104.

Somewhere in these 60,000 pages we are asking the Members of the House of Representatives, under what will almost surely be limited debate, to determine where, if or under any circumstances there could be anything that could reach the standard of perjury. This is the most incredible article, and it proves that the more we talk about it, the more we go in the wrong direction.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

I think my colleague, the gentleman from Massachusetts, used appropriate humorous language. But I am still amazed at what is going on here. The more I sit here, the more amazed I am.

Instead of the seriousness with which this should be approached, now we are saying we have spent 3 months of hearings, we have all this evidence, and we are not sure of which ones it should be. We are going to send to the House and possibly to the Senate a range, and they can choose.

That is not what we are supposed to be doing here. We are supposed to be weighing very serious charges.

Chairman HYDE. The gentleman's time—

Mr. SCHUMER. Mr. Chairman, instead of striking the last word, I ask unanimous consent for 2 minutes to finish my point.

Chairman HYDE. Would you settle for 1?

Mr. SCHUMER. I would say 2, or I will strike the last word and do 5.

Chairman HYDE. You have got me. Two.

Mr. SCHUMER. Thank you, Mr. Chairman.

What I would say is this: You don't send a full menu and then decide. Maybe the majority is having some doubts, or some members of the majority, about one or two of the aspects here. Maybe the arguments we made that points three and four really have very little basis, none in the Starr and even in the Schippers, not much basis, so you are hedging your bets.

You don't do that when it comes to impeachment. You make a decision whether that high bar of impeachment is reached, and you send your considered judgment first to the full House and to the Senate.

One other point I would like to make. The majority keeps invoking the Watergate hearings when they want to but not when they

don't. But let me tell you this. The number one reason that Peter Rodino was regarded as a leader and that the hearings were regarded as fair and had a national consensus behind them is that they were bipartisan, that they had a significant number of the minority party who went along.

What distinguishes this is, in my judgment, the lack of real facts; the playing of games; the idea that, well, it is maybe this one day and maybe that in another day; is the reason you haven't brought a single member from the minority party along in this committee and the reason that you are unlikely to bring hardly any along in the House. And that is the glaring distinction between the Rodino hearings and these hearings.

And until it changes and until you say, yes, this is serious and, yes, the President and the Nation is entitled to a bill of particulars on perjury and until you say that it is not fair to say "one or more," then it will continue to be regarded as a partisan activity that will not have the support of Americans and will go down in history as something that America is not proud of.

Chairman HYDE. The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I do think this is an extraordinarily serious matter. I don't think anybody thinks it is less than that. I don't think it should be trivialized.

The Article I that we are discussing today appropriately should be one or more. There are four parts to it, any one of which is a major charge against the President of the United States, any one of which could stand alone; not one little line somewhere, that he said something that might be perjurious in one word or something, but broad and very specific in the nature that they are presented, "the nature and details of his relationship with a subordinate government employee."

The second one is prior perjurious, false, and misleading testimony he gave in the Federal civil rights action brought against him; third, prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and, fourth, his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in the civil rights action: specifically, the hiding of the gifts, the affidavit, and the Betty Currie testimony.

Having said all of that, if you look back at Richard Nixon's impeachment articles, and I do think it is fair to do that—this book has them in it, and it is the third page of the book—the first thing in it, the first article discusses whether or not the President had failed to faithfully execute his office, prevented, obstructed, and impeded the administration of justice—pretty darned broad language.

The means used to implement this course of conduct or plan included one or more of the following: number one, making or causing to be made false and misleading statements to lawfully authorized investigative officers and employees of the United States; two, withholding relevant and material evidence or information with lawfully authorized investigative officers and employees of the United States; three, approving, condoning, acquiescing, and counseling witnesses, et cetera. It goes on and on. There are nine of them, not four but nine.

The second article also charged the President with repeatedly engaging in conduct violating the constitutional rights of citizens, very broad language. This conduct has included one or more of the following, and there are five of them under that, and so on goes the list. So we are not doing anything extraordinary.

What I am afraid the other side is trying to do is precisely what they are accusing us of. The other side is trying to trivialize this matter. This is not a trivial matter.

What we are dealing with here today is far from simply a matter about the President possibly touching certain parts of the other woman, as he called her. What we are dealing with today is the fact that the President of the United States engaged in a scheme, an elaborate scheme, to lie and to get other people to lie and to hide evidence and get other people to hide evidence in order to thwart the opportunity of Paula Jones to bring her civil rights sexual harassment suit in court and have it properly adjudicated.

Whether you agree with her tactic or not, the court allowed it, that she, as part of her case, could try to bolster the credibility of her allegations by showing that the President had engaged and was still engaging in a pattern of illicit relations with women in his employment. Whatever the merits of that, that is what she was trying to do. The President was determined to defeat that.

Those were the rights this woman had at that point in time when he conducted his first lies in his deposition, were involving the proof of those other instances with regard to the President, whom she was suing at the time. We are undermining a fundamental right if we don't get at the truth. The President was undermining.

That is what we are here all about today. That is, can we have peoples' rights, whether it is a little boy on a bicycle who is hit by a car and is injured, have his right in court; or the little lady who has been bilked out of her savings, to have a chance to recover? All of that depends upon truth being told by witnesses who are sworn, and they are not supposed to commit perjury.

Then the President compounds this all by going before the grand jury months later after he has done all of this and lies again under oath in front of the grand jury on an even greater matter. This is far from trivial.

Mr. BUYER. Can we have regular order?

Mr. MCCOLLUM. I am on my 5 minutes.

Mr. BUYER. I want to be able to hear you, Mr. McCollum.

Mr. MCCOLLUM. If you will recall, back at the beginning of this process, the President had a set of cover stories with Monica Lewinsky. That is how all this got started, to cover up this relationship. They knew they would lie. They agreed they would tell these cover stories if anybody ever asked them.

Then along comes the opportunity for the President to see this suit actually materializing with Monica on the witness list, and she and he had this discussion when he tells her she is on the list. She says, what do I do if I am subpoenaed? He said, why don't you file an affidavit so you don't have to testify?

She assumes—she tells this and tells the grand jury under oath that she is going to tell a lie in the affidavit, and she assumes he would assume that, because they discussed cover stories in the very

same conversation where he asks her about—to file or suggests she file the affidavit.

So knowing that she is going to do this, anticipating that she is going to do it, never explicitly asking her to lie but knowing she is going to, he then proceeds to go give his own testimony in that deposition in which we saw excerpts yesterday of where he clearly counted on being able to tell those same lies and the same story.

Then he calls up Betty Currie right afterwards, because he used her name a whole bunch of times, thinking she is going to go testify in that case, possibly, because he says, you had better check with Betty Currie on this. And he encourages her to corroborate his lies that he has told.

He has done all this and much more that we know about, but I don't want to tell the whole story again. The point is, this is not trivial. This is not trivial at all. He goes to the grand jury and repeats those lies, and lies again and again, and we presented this I think very carefully in Article I in ways that anybody could understand, four parts.

It ought to be framed the way this amendment does. It ought to say "one or more." Each one of them can stand alone. Each one is powerful, and every Member, just as in Watergate, should have the opportunity to conclude the President committed perjury before the grand jury if he or she concludes that any one of the four is indeed perjurious and indeed a false and misleading statement.

Thank you, Mr. Chairman.

Chairman HYDE. The gentleman's time has expired.

Is there further discussion?

Mr. NADLER. Mr. Chairman, I move to strike the last word.

Chairman HYDE. Of course. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

Mr. Chairman, I am going to surprise some people. I don't think this amendment matters one way or the other. I think it is, frankly, wasteful and will have no impact one way or the other, because this article of impeachment is just that, an article of impeachment.

Whether or not you say "one or more of the following," this is not—these are not elements of a crime, all four of which have to be proven in order to get a Senator or House Member to vote for it. A House Member or Senator will vote for it if they think it is sufficiently established, and in their own mind they will determine whether to sufficiently establish the article so as to get their vote, you have to prove one or two or three or four of those.

So I don't think the amendment, frankly, matters. But it does give all of us time to speak on this article again, for which I thank the gentleman.

Chairman HYDE. We planned it that way.

Mr. NADLER. Good. Let me avail myself of that opportunity.

We heard—the gentleman from Florida just went through all this litany again of all the President's alleged opposition. He didn't specifically list them, but he said he lied, he lied, he lied, as did Mr. Schippers yesterday, Mr. Ruff 2 days ago. Mr. Lowell yesterday I think very persuasively knocked holes in these alleged perjuries.

I don't think—I think that these articles of impeachment, every one of them should not be approved today for several reasons: One,

because they are far from proven. The evidence just doesn't support it. Number two, because even if they were provable, they are far from impeachable offenses.

None of these are abuses of presidential power that undermine the structure or functioning of government or undermine personal liberty. Perjury in a private sexual affair is a low crime, a serious crime, but a low crime, not a crime against the State, and ought to be prosecuted. If it were provable—although we heard a bunch of Republican—mostly Republican prosecutors the other day tell us that no reasonable prosecutor—and I presume they didn't include Mr. Starr in that category—would think of bringing a prosecution on the evidence we have here, and you would never get a conviction.

But, nonetheless, that is the appropriate forum for this kind of alleged crime. These are not high crimes and misdemeanors under the meaning of the Constitution. But if, despite that—if, despite the weight of tradition, of precedent and of scholarly opinion that these are not high crimes and misdemeanors, this committee chooses to put forward articles of impeachment, at least they ought to follow due process of law.

Due process of law demands specificity in a perjury count. It doesn't demand that the specific words be listed in the article itself, but it does demand that, contemporaneous with the article, there be a piece of paper that says, these are the alleged perjurious words. This is the notice. We are not going to add or surprise you with more allegations or different allegations later. We don't make you guess which of the many different references Mr. Schippers referred to, some by paraphrase, some by specifics, that we are talking about. This is what you must defend against. This is what we are voting on.

Members of the committee and Members of the House next week are entitled to know the specific allegations.

When the Nixon case was voted a generation ago, the specific words were not in the article, nor need they be now, but they were in the report of the committee.

So all we are asking—I asked for this at the beginning this morning at about 11 o'clock. We have been talking about it ever since. It shouldn't take the staff between 11 and 4, we will be here another few hours yet, I'm sure, to go in the back room, write down the specific allegations, come out, pass it out and say, this is what we are talking about. That is all we are asking.

Is it that the staff is incapable of this or that you want to play a guessing game? I am not sure. But it is wrong.

We are told that this entire question—that the President must be impeached to uphold the rule of law—the rule of law demands due process, due process demands notices of the charges against someone and that, especially in opposition, demands the specifics.

I fail to understand why we don't have the specifics or why we are not supplied with the specifics in writing so we know what they are, and they are set, and they are locked, and can't be changed, because it is unfair to change them later.

Chairman HYDE. Mr. Coble.

Mr. COBLE. I move to strike the last word, Mr. Chairman. I assure you I will not use anywhere near the five minutes.

I am confident, Mr. Chairman, that the report that will accompany these articles will be as specific as was the report that accompanied the articles regarding the Watergate matter. My friend from Ohio, quoted Charlie Rangel, our Democrat friend from New York, in the Watergate matter when Mr. Rangel indicated that there was no need to go into great specificity or great detail.

I am going to revert 25 years, Mr. Chairman. I can imagine that what Mr. Rangel was doing was probably responding to a Republican charge, just as we have been responding to Democrat charges this afternoon. That is the nature of being in the Minority. It is a lot easier to throw grenades than it is to catch them. When you are in the Minority you throw them. I know because I have been there before. This is not a case of first impression.

But I want to say this, Mr. Chairman. One of our buddies from over yonder—and I recall most all of them as my buddies—but somebody, unless I misunderstood it, implied that my good friend from California, Mr. Rogan's amendment would have in some way enlarged or broadened Article I and permitted additional charges to be added.

That is clearly not true. It says very precisely, "one or more of the following," so that would restrict it to the four. With that, Mr. Chairman, I yield to the gentleman from Ohio.

Mr. CHABOT. I thank the gentleman for yielding. I know several of my Democratic colleagues on the other side of the aisle were not in the room when I read Mr. Rangel's quotation from the 1974 Watergate investigation during that particular hearing. I would just like to read it very quickly again. Here is what Charlie Rangel said on this very specific argument on specifics:

If we got bogged down with specifics before the House of Representatives has worked its will, perhaps we would not give the general recommendations to the House that it rightfully deserves. It is not our constitutional responsibility to impeach the President, but merely to report to the House. So it seems to me that we should not be talking about specifics, but give the maximum amount of information to the House of Representatives so they can deal with the problem constitutionally."

I yield back.

Chairman HYDE. Who else seeks recognition?

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, the way to legitimately do this "one or more" or pick and choose is to have separate articles, so when you vote you can agree with a whole specific article. This amendment allows members to look and see if there is anything in the article they agree with, and then they can vote yes, in spite of the fact that most serious offenses are not proven.

In fact, you might as well add "other heinous crimes." You don't have to prove an allegation, you just have to make it. By adding unproven, vague allegations that don't have to be proved, you can pass a serious-sounding article by finding just that one of the flimsiest parts of it is true.

This last minute add-on is not new to this committee. Just in the last couple of weeks the scope of this committee inquiry has added on the Willey matter, the campaign finance matter. A couple of

days ago the gentleman from South Carolina added on a charge. The gentleman from Arkansas added on another charge. Even after all of the testimony was in, the Majority counsel added on unnamed, unspecified charges after the opportunity had long gone for anybody to respond.

As the gentleman from New Jersey and the gentleman from New York have reminded us, the reason we are asking for specificity is when we ever get the specifics, then we can determine whether they are even impeachable offenses.

Where is the subversion of government? We know a half a million dollar income tax fraud is an impeachable offense, but we can't get to that question because we can't get to a coherent statement of what the charges are. This amendment doesn't help.

I yield to the gentlewoman from California.

Ms. LOFGREN. Thank you. I just want to make a couple of comments as to specificity. I agree with my colleague, Mr. Nadler, that the "one or more" is not the problem so much as the lack of specificity in the underlying article itself.

Looking at our precedents, and first going to the Johnson case, there is specification first with the details and a word-by-word allegation of what the President was supposed to have said, and then specification second, and specification third.

Much has been said about the Watergate matter. While it is true that all of the evidence was not recited in the various articles, especially in Article II, there was much specificity in the article, and it is worth reiterating and reminding the committee that accompanying the articles was a statement of information that was very specific as to the absolute detail that was being alleged about what that the President had done, numbered by paragraphs, with copies of the evidence.

Looking at judicial impeachments, although I don't think they are precedent in terms of the standard for high crimes and misdemeanors, looking at the Hastings case, all of the articles that alleged false statements quote the statements that are being referred to.

I think it is important that we know what we are doing, not only for due process and notice to the President, but for notice to our colleagues, who, I think as early as next week, will be asked to vote upon one or more articles.

I am beginning to think that my colleague from Massachusetts is correct. We are writing the articles in this way because we do not want to admit what the issue really is. Looking at the Starr report referenced by the Chairman this morning as incorporated in these articles, on page 148 is the following statement by Mr. Starr: "The President's grand jury testimony contradicts Ms. Lewinsky's grand jury testimony on the question of whether the President touched Ms. Lewinsky's breasts or genitalia during their sexual activity."

I cannot believe that the Founding Fathers meant for the fate of the Nation and the will of the people to fall or rise based on whether or not Ms. Lewinsky's or the President's version of breasts and genitalia touching was accurate. I cannot imagine that the Chief Justice of the Supreme Court and the Senate is going to sit and listen to the two individuals testify as to this matter, and I cannot

believe that this is what we are going to be sending to our colleagues, but obviously it is. We ought to admit it, instead of trying to hide it behind the imprecise articles before us.

Ms. JACKSON LEE. Mr. Chairman.

Chairman HYDE. The gentlewoman from Houston, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

As I listen to this debate, it is quite striking to me because I remember, that a couple of weeks ago when we started I brought up the issue of the fifth amendment being part of the proceedings of this process to ensure that we did abide by or be guided by, if you will, the rule of law to the extent that we recognize notice and due process.

I think what the American people understand is a basic fairness. I don't think the amendment even comes near to the question of fairness, because all it does is provide for a listing, an either/or, an A, B, C, D, or E. It does not provide the specificity that is important to notice.

Let me explain to the American people about this whole question, with great respect to my colleagues in 1974. What this means when we vote out articles of impeachment, and let's just send it to the House, what is actually happening is that Members who are scattered all over the Nation, some overseas, some finishing up various medical procedures, as the newspapers have indicated, will be expected to come back here on next Thursday and vote on these articles.

Now, with great respect for my colleagues, I don't know if they will have read 60,000 pages or even 1,600 pages. So it is our responsibility in this room, if we pass out articles of impeachment, to be satisfied that they are grounded constitutionally and they are specific enough that our colleagues will vote not only their conscience, but with information.

Might I say something to my colleague, Mr. Hutchinson, because he reminded me on the issue of the two corroborating witnesses issue, I want to clarify that. I used it in particular because it is a Department of Justice standard to use two witnesses as they proceed in trial. It is certainly a guide. But also in the grand jury we are told that though the two-witness rule may not be applied, it is nonetheless clear from the case law that perjury prosecutions require a high degree of proof.

We can ultimately use the two-witness rule or the two-witness corroboration rule because even though there are two bodies, a House and Senate, and the Senate will try this case, we have a responsibility not to send frivolous articles of impeachment, ones that we know will ultimately fail. We have a responsibility as the 'prosecutors,' in quotes, to not send forward those articles that will not prevail, that have no basis whatsoever.

So I think the idea of the two-witness rule is an important one. It is a standard by which we should be guided.

Then my good friend from Arkansas also quoted a Fourth Circuit case about this whole issue of unresponsiveness and evasiveness. But the Bronson case is a Supreme Court case, a higher authority. So that means that we are relying upon so-called lies that may nec-

essarily have been, really, “I can’t recollect,” “I can’t recall,” or the fact that the questioner did not ask the question.

So I still think that this article of impeachment that we have before us fails because its underpinnings are not specific. There is no notice, no abiding of due process. We have an obligation in this committee, holding onto the constitutional premise that everyone deserves fairness and justice, that the President even deserves to be notified of the allegations and charges; and most of all, most of all to my colleagues who are relying upon us as the first arbiter, if you will, of the facts, coming back on Thursday to vote on articles, in essence that we will say to them: You can go to the Ford Building in about five minutes and look at those 60,000 pages, and a variety of other pages; or you might even want to call your own witnesses so you can determine whether or not these articles are premised factually.

That is the fallacy in what we have before us. They used the term “perjurious.” They did not have to use it. Might I say, I am reading here, “Federal civil rights action.” Can I just clarify for the record, I assume it is the Paula Jones case that was dismissed. So I am a little offended by “a civil rights action.” It was dismissed, and on appeal—there was no appeal, or there was no decision. There was a settlement, of which—as I understand, a settlement does not admit or deny any allegations.

I am proud of harassment laws, Mr. Chairman, because they mean something to those of us who are women and those of us who are men in the workplace. But the case was dismissed. So this is a nonprecise article, Mr. Chairman. This amendment does not help it.

Chairman HYDE. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I will be brief, but I tried to get my colleague’s attention from North Carolina, Mr. Coble’s attention when he had time, to get him to yield, and I don’t think he knew that I was trying to get him to yield to me.

Mr. COBLE. Mr. Watt, I didn’t hear you. If I had heard you, I would have done that.

Mr. WATT. I know you would have yielded to me, if you had.

But I wanted to respond to a point that he made, which was that he was sure that the staff would add the necessary specificity at some point in this process. I have heard several people refer to Congressman Rangel’s statement back in the Watergate impeachment process as a precedent for that.

Let me tell you my concern with that, what Mr. Coble has suggested. I believe that would put us in the position of delegating our responsibility on this committee to the staff. Now, I think you can do that if the staffs are working together on the content of something, and if the committee has a bipartisan agreement that what has happened constitutes an impeachable offense. In this particular case in 1998, as contrasted to 1974, I simply haven’t seen any indication of bipartisanship at the member level, nor have I seen any indication of consultation in drafting or preparing information to submit to anybody at the staff level.

So when you have a bipartisan agreement going on about what is going to happen, as there was in 1974, it is very easy to say, okay, we are all in agreement about what the offense is, and the

staffs are working together. They have drafted this together and brought it to us, and it is very easy to then pass that on to the staff.

But when you start out with the light of bipartisanship at the member level, and the light—I referred to it in the presentations between Mr. Lowell and Mr. Schippers, in the first presentations, as they were light years apart, and yesterday they were light years apart. There is no bipartisanship here on the committee.

So to leave that obligation or delegate it to the staffs simply is a delegation to the Republican staff to do this, and I think that then becomes a delegation of responsibility that we as Members of this committee can't—if we are fulfilling our constitutional responsibility, we simply can't do that. That is the point I wanted to make to Mr. Coble.

I yield back the balance of my time.

Chairman HYDE. Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman. I would move the previous question.

Chairman HYDE. The previous question has been moved.

Mr. CONYERS. Could I inquire of the gentleman, we only have one more speaker.

Chairman HYDE. Would the gentleman withhold?

Mr. BRYANT. I will gladly withhold.

Chairman HYDE. Thank you.

The gentlewoman from California, who I assume is the last speaker.

Ms. WATERS. I move to strike the last word, Mr. Chairman.

Chairman HYDE. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. When I asked earlier for a recess, it was precisely to see if there was some opportunity to work in a bipartisan way to come up with some specificity, so that we could get this beyond us. Of course, that was not done, and the amendment that was offered by Mr. Rogan only complicated the matter because it went to the opposite end of the scale on our request for specificity.

Let me just say to those who keep asking me, and many of the reporters and others out in the hallway, "Can't there be some compromise, some compromises between the Democrats and the Republicans? Can you work in a bipartisan way on anything?" Well, I think that we really can, but we have to understand, we have to want to do it. We have to have the will to do that. We are missing the opportunity—and we have three more articles to go through. We are going to have the same arguments about a lack of specificity. We have been over 4 hours on this article of impeachment, and it is going to continue to happen. We are not going to go away because we think it is very, very important.

I think I know why there is not a desire to put specificity, to specify the charges inside these referrals. But let me just say this, with all due respect to all of the references to Mr. Charlie Rangel, I am absolutely surprised to know that Mr. Lindsey Graham, as he said, loves Charlie Rangel, and Mr. Rangel's words are being used to guide us today. Let me just tell you what Mr. Rangel says about this impeachment.

Mr. Rangel says that we should not be impeaching the President of the United States, it is outrageous; that we do not have any le-

gitimate charges, that we are in violation of our oath that we have taken to uphold the Constitution. So if you like what Mr. Rangel says, take him up on what he is saying to everybody, to me and to the President and to everybody else, that we need to put an end to this right away. If you need Mr. Rangel to come down and tell you, I will ask him to do that.

Let me just say in reference to what Ms. Lofgren said, Zoe said that specificity would force you to place in words information about where the President touched Monica Lewinsky and where he did not touch her. You don't want to do that because you know how ridiculous that is, to have a charge of perjury about who touched who and where. I think that one of our members said it, it is "he said/she said." You can't get perjury out of that.

It is absolutely ridiculous that you would list how many times—how many times the President had sex conversations or phone conversations or whatever you call it about sex. In this referral Mr. Ken Starr talks about the President lied because he said it was occasional, and she gave a specific number of times. I'm sure you don't want to list that in articles of impeachment about the President of the United States of America.

I'm sure that you don't want to list and be specific about the gifts and the hiding of the gifts, and trying to prove obstruction of justice. I really don't think you want to list for debate by the Senate and anybody else what Betty Currie did with a hat pin, a Teddy bear and a tee shirt. It is outrageous and you know it.

We are not going to solve it here today because you don't have anywhere to go with this. The only real place to go is to back out of it and say we were wrong, we shouldn't have done it this way, and let's think about some other way to show the President that we are unhappy, displeased with the actions that he has taken.

We are not going to get any specificity in any of these articles of impeachment because the allegations are so outrageous, so flimsy, so ridiculous that they dare not put it in writing. They dare not write it down because they know that the American people won't buy it. But after today the American people are going to know. When the word goes out of here that we voted to send articles of impeachment to the floor of the House, then all those who have been shopping since Thanksgiving, all of those who thought this was going to go away, all of those who thought somehow it was going to be resolved will know exactly what has taken place.

Mr. SENSENBRENNER [presiding]. The gentlewoman's time has expired.

Mr. GEKAS. Mr. Chairman, I move to strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman, I wish to delegate my time to yield to the gentleman from California, Mr. Rogan.

Mr. ROGAN. I thank the gentleman for yielding.

Mr. Chairman, I have sat and listened carefully, to this debate, not just on this amendment, but over these last several days. When the Starr report was first delivered to the Congress, the Minority Leader of the House of Representatives, Mr. Gephardt, went before the press and said that, the true mark of a fair hearing in our committee on the Judiciary will be whether the Republicans adopt the Rodino model—he Democrat model that was used to impeach Presi-

dent Nixon—as our model in reviewing these matters relating to President Clinton.

Our Chairman, from the very beginning, agreed to do that. We have done it procedurally. We have done it technically, and, to the best of our ability we have done it in spirit as well as in letter.

The impeachment referral against President Nixon is said by my colleagues on the other side to have contained “specificity”. Is that true? The Nixon referral was contained in a 300-page book, which I am holding right here. Only three pages of that book contain the articles of impeachment; over two-hundred-and-ninety pages contain the appendix, which is the specificity.

They didn’t churn out hundred-page articles of impeachment. They treated the articles of impeachment for what they were supposed to be: an announcement of the charge. The record—the appendix—which is backed up what those charges were.

We have followed that model in spirit and in practice right down to the actual drafting of our proposed articles against President Clinton, which are modeled after the Rodino proposals.

The amendment that I offered is a technical drafting amendment, so that our articles comport with the language that the Democrat Congress used in drafting articles of impeachment against President Richard Nixon.

Will the gentleman continue to yield?

One final point.

Much has been said since the beginning of this entire episode about the expected lack of Democrat votes for any article of impeachment on this committee. I have sat and listened day after day, and month after month, to my dear friends on the other side boasting over their expectation that no Democrat will cross over to vote on this Committee for articles of Impeachment against President Clinton, and compare this to the era where a number of Republicans voted to impeach President Nixon.

Comity and affection has caused me to remain silent on this issue up until now, but their repeated haranguing on this phenomenon requires me to now say this: The reason Republicans in 1974 voted to impeach a President of their own party is because when they saw a pattern of deceit, lying, subverting the law, perjury, obstruction justice, and other acts that offended the presidential oath of office, they refused to defend that conduct. Their lack of defense was not just in verbal condemnation. They took the very difficult and very painful step of saying the President of their own party no longer had the right to serve more as President of the United States.

I have never questioned the motives behind the vote of any of my colleagues on the other side, either on this committee or in our body. Yet, I have watched my colleagues on the Republican side have their motives questioned on an hourly basis in this committee and in the press by the minority. Again, I don’t question the motives of any of my dear friends in the minority as to why it may be that they choose not to vote for articles of impeachment against President Clinton.

But I must say to all of them that in light of this President’s record of deceit, of perjury, and of obstruction of justice. I hardly think that boasting that none of your ranks will vote for an article

of impeachment under these and circumstances is a matter of bragging rights.

Mr. CONYERS. Would the gentleman from Pennsylvania yield?

Chairman HYDE. The gentleman from Pennsylvania controls the time, what is left of it.

Mr. GEKAS. I yield what is left to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman. I just want to point out to Mr. Rogan that in 1974 the charges went to the obstruction of the office of the President. These were charges that went to the substance of running the government, sir. They were not personal conduct, or he said/she said. These were matters that involved pitting the CIA against the FBI, against the IRS, against the Department of Justice; a completely different kind of case situation entirely.

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman HYDE [presiding]. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for five minutes.

Mr. WATT. Will the gentleman yield for 30 seconds?

Mr. DELAHUNT. I yield 30 seconds to Mr. Watt.

Mr. WATT. I just wonder whether Mr. Rogan was in the room when the gentleman who sits right behind him, Mr. Goodlatte, read the charges in 1974. There was no perjury charge in '74, and this whole discussion has been about whether there is a perjury charge.

If you are going to allege perjury, you have got to add specificity. I don't know why the gentleman is so upset about that. He read him the charge. There is no perjury charge there. I appreciate the gentleman yielding. I will yield back.

Mr. ROGAN. Will the gentleman yield?

Mr. DELAHUNT. I yield to my friend.

Mr. ROGAN. I appreciate that. Certainly if in my passion in presenting my argument I misstated one charge that may not have been levied against President Nixon, that certainly was not my intent. I have no intention of disparaging the memory of our late President. I think everyone understands the point I was trying to make. I was relying on my recollection respecting a perjury allegation.

I thank the gentleman for yielding.

Mr. SENSENBRENNER [presiding]. Will the gentleman yield to me?

Mr. DELAHUNT. I will yield to the Chair.

Mr. SENSENBRENNER. The statement that was just made by the gentleman from North Carolina is incorrect. I would like to read three lines from Article I of the Richard Nixon impeachment: "The means used to implement this course of conduct or plan included one or more of the following: one, making or causing to be made false or misleading statements to lawfully authorized investigative officers or employees of the United States."

Mr. WATT. That is not perjury, Mr. Chairman. Good try. Close, but no cigar, as they say.

Mr. DELAHUNT. Reclaiming my time, I want to be very clear. I, for one, have never been known for what I consider impugning the motives of anyone, particularly Mr. Rogan, for whom I have not just great respect but great affection.

At the same time, we are making these comparisons between the Rodino model and what we are about today. But it has to be stated clearly, that there is a fundamental difference between what occurred during those hearings, those proceedings, and what we are about today.

And I would harken back to the testimony by Judge Wiggins when he appeared here back on the first of December. And I posed a question to him and in response to the question as to whether he heard evidence from witnesses, his answer was, yes, we heard from John Dean. We heard from H.R. Haldeman. We heard from Mr. Erlichman. We haven't heard from a direct witness to the events.

Now, it can be said, well, it was—you could have done it. If you felt the need, you could have done it. Well, I dare say it was the responsibility of the committee. And I think it's important that the American people understand that no member of this committee has ever heard from Monica Lewinsky, from Betty Currie, from Vernon Jordan, from Linda Tripp, from any of the principals and that's the difference. We haven't been able to assess credibility.

And implicit in a statement by majority counsel, Mr. Schippers. He said himself, and I think I've got the quote down fairly accurately because I've repeated it often enough. At some stage of the proceedings, by necessity, we will have to assess the credibility of Ms. Lewinsky and others and we never did it. I don't care whose responsibility it was. But we as a committee that is about to report out articles of impeachment, I submit to the American people had that responsibility. I didn't hear.

And the problem is that we have had so many inconsistencies, so many inferences that many on this side in good conscious can't believe that either Mr. Schippers nor Mr. Starr made. I mean, they should—they have—those inferences have been drawn against Mr. Clinton. And here we are when they could have been resolved in his favor.

And that's the problem, Jim. That's the problem. The facts aren't there.

Mr. SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Tennessee seek recognition?

Mr. BRYANT. I move the previous question.

Ms. WATERS. Mr. Chairman?

Mr. SENSENBRENNER. For what purpose does the gentlewoman from California rise?

Ms. WATERS. I would like to make an inquiry of you.

Mr. SENSENBRENNER. State your inquiry.

Ms. WATERS. Given the vote that we are about to take and—

Mr. SENSENBRENNER. The question is on the amendment by the gentlewoman from California.

Ms. WATERS. On the amendment, the President of the United States of America just made a speech to the American public. Some of the members saw it. Some members didn't. Would it be wise for the members of this committee to have the opportunity to see the message from the President relative to the vote we are about to take prior to taking this vote?

Mr. SENSENBRENNER. I know that the message of the President has been video taped in the Republican members' room. Those who have not seen it can go back there at their convenience to see it.

Without objection, the previous question is ordered on the amendment. The question is on adoption of the amendment offered by the gentleman from California, Mr. Rogan.

Those in favor will say aye. Those opposed will say no.

A roll call has been requested. The Clerk will call the roll. Those in favor will vote aye. Those opposed will vote no. The Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. McCollum votes aye.

Mr. Gekas.

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas votes aye.

Mr. Coble.

[No response.]

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly votes aye.

Mr. Canady.

Mr. CANADY. Aye.

The CLERK. Mr. Canady votes aye.

Mr. Inglis.

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis votes aye.

Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte votes aye.

Mr. Buyer.

Mr. BUYER. Aye.

The CLERK. Mr. Buyer votes aye.

Mr. Bryant.

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant votes aye.

Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot votes aye.

Mr. Barr.

Mr. BARR. Aye.

The CLERK. Mr. Barr votes aye.

Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins votes aye.

Mr. Hutchinson.

[No response.]

The CLERK. Mr. Pease.

Mr. PEASE. Aye.  
The CLERK. Mr. Pease votes aye.  
Mr. Cannon.  
Mr. CANNON. Aye.  
The CLERK. Mr. Cannon votes aye.  
Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
[No response.]  
The CLERK. Mrs. Bono.  
[No response.]  
The CLERK. Mr. Conyers.  
Mr. CONYERS. No.  
The CLERK. Mr. Conyers votes no.  
Mr. Frank.  
Mr. FRANK. No.  
The CLERK. Mr. Frank votes no.  
Mr. Schumer.  
Mr. SCHUMER. No.  
The CLERK. Mr. Schumer votes no.  
Mr. Berman.  
Mr. BERMAN. No.  
The CLERK. Mr. Berman votes no.  
Mr. Boucher.  
Mr. BOUCHER. No.  
The CLERK. Mr. Boucher votes no.  
Mr. Nadler.  
Mr. NADLER. No.  
The CLERK. Mr. Nadler votes no.  
Mr. Scott.  
Mr. SCOTT. No.  
The CLERK. Mr. Scott votes no.  
Mr. Watt.  
Mr. WATT. No.  
The CLERK. Mr. Watt votes no.  
Ms. Lofgren.  
Ms. LOFGREN. No.  
The CLERK. Ms. Lofgren votes no.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. No.  
The CLERK. Ms. Jackson Lee votes no.  
Ms. Waters.  
Ms. WATERS. No.  
The CLERK. Ms. Waters votes no.  
Mr. Meehan.  
Mr. MEEHAN. No.  
The CLERK. Mr. Meehan votes no.  
Mr. Delahunt.  
Mr. DELAHUNT. No.  
The CLERK. Mr. Delahunt votes no.  
Mr. Wexler.  
Mr. WEXLER. No.  
The CLERK. Mr. Wexler votes no.

Mr. Rothman.  
 Mr. ROTHMAN. No.  
 The CLERK. Mr. Rothman votes no.  
 Mr. Barrett.  
 Mr. BARRETT. No.  
 The CLERK. Mr. Barrett votes no.  
 Mr. Hyde.  
 Chairman HYDE. Aye.  
 The CLERK. Mr. Hyde votes aye.  
 Mr. Coble.  
 Chairman HYDE. The gentleman from North Carolina.  
 The CLERK. Mr. Coble is not recorded.  
 Mr. COBLE. I vote aye.  
 The CLERK. Mr. Coble votes aye.  
 Chairman HYDE. The gentleman from South Carolina, Mr. Graham.  
 Mr. GRAHAM. Aye.  
 The CLERK. Mr. Graham votes aye.  
 Chairman HYDE. The gentleman from Arkansas, Mr. Hutchinson.  
 Mr. HUTCHINSON. Aye.  
 The CLERK. Mr. Hutchinson votes aye.  
 Chairman HYDE. Mrs. Bono.  
 Mrs. BONO. Aye.  
 The CLERK. Mrs. Bono votes aye.  
 Mr. Chairman, there are 21 ayes and 16 noes.  
 Chairman HYDE. The amendment is agreed to.  
 Without objection, the previous question is ordered on Article I.  
 The question occurs on Article I. All those in favor will signify by saying aye. Opposed, no. And we will certainly have a roll call. The Clerk will call the roll.  
 The CLERK. Mr. Sensenbrenner.  
 Mr. SENSENBRENNER. Aye.  
 The CLERK. Mr. Sensenbrenner votes aye.  
 Mr. McCollum.  
 Mr. MCCOLLUM. Aye.  
 The CLERK. Mr. McCollum votes aye.  
 Mr. Gekas.  
 Mr. GEKAS. Aye.  
 The CLERK. Mr. Gekas votes aye.  
 Mr. Coble.  
 Mr. COBLE. Aye.  
 The CLERK. Mr. Coble votes aye.  
 Mr. Smith.  
 Mr. SMITH. Aye.  
 The CLERK. Mr. Smith votes aye.  
 Mr. Gallegly.  
 Mr. GALLEGLY. Aye.  
 The CLERK. Mr. Gallegly votes aye.  
 Mr. Canady.  
 Mr. CANADY. Aye.  
 The CLERK. Mr. Canady votes aye.  
 Mr. Inglis.  
 Mr. INGLIS. Aye.  
 The CLERK. Mr. Inglis votes aye.

Mr. Goodlatte.  
Mr. GOODLATTE. Aye.  
The CLERK. Mr. Goodlatte votes aye.  
Mr. Buyer.  
Mr. BUYER. Aye.  
The CLERK. Mr. Buyer votes aye.  
Mr. Bryant.  
Mr. BRYANT. Aye.  
The CLERK. Mr. Bryant votes aye.  
Mr. Chabot.  
Mr. CHABOT. Aye.  
The CLERK. Mr. Chabot votes aye.  
Mr. Barr.  
Mr. BARR. Aye.  
The CLERK. Mr. Barr votes aye.  
Mr. Jenkins.  
Mr. JENKINS. Aye.  
The CLERK. Mr. Jenkins votes aye.  
Mr. Hutchinson.  
Mr. HUTCHINSON. Aye.  
The CLERK. Mr. Hutchinson votes aye.  
Mr. Pease.  
Mr. PEASE. Aye.  
The CLERK. Mr. Pease votes aye.  
Mr. Cannon.  
Mr. CANNON. Aye.  
The CLERK. Mr. Cannon votes aye.  
Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
[No response.]  
The CLERK. Mrs. Bono.  
Mrs. BONO. Aye.  
The CLERK. Mrs. Bono votes aye.  
Mr. Conyers.  
Mr. CONYERS. No.  
The CLERK. Mr. Conyers votes no.  
Mr. Frank.  
Mr. FRANK. No.  
The CLERK. Mr. Frank votes no.  
Mr. Schumer.  
Mr. SCHUMER. No.  
The CLERK. Mr. Schumer votes no.  
Mr. Berman.  
Mr. BERMAN. No.  
The CLERK. Mr. Berman votes no.  
Mr. Boucher.  
Mr. BOUCHER. No.  
The CLERK. Mr. Boucher votes no.  
Mr. Nadler.  
Mr. NADLER. No.  
The CLERK. Mr. Nadler votes no.  
Mr. Scott.

Mr. SCOTT. No.  
The CLERK. Mr. Scott votes no.  
Mr. Watt.  
Mr. WATT. No.  
The CLERK. Mr. Watt votes no.  
Ms. Lofgren.  
Ms. LOFGREN. No.  
The CLERK. Ms. Lofgren votes no.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. No.  
The CLERK. Ms. Jackson Lee votes no.  
Ms. Waters.  
Ms. WATERS. No.  
The CLERK. Ms. Waters votes no.  
Mr. Meehan.  
Mr. MEEHAN. No.  
The CLERK. Mr. Meehan votes no.  
Mr. Delahunt.  
Mr. DELAHUNT. No.  
The CLERK. Mr. Delahunt votes no.  
Mr. Wexler.  
Mr. WEXLER. No.  
The CLERK. Mr. Wexler votes no.  
Mr. Rothman.  
Mr. ROTHMAN. No.  
The CLERK. Mr. Rothman votes no.  
Mr. Barrett.  
Mr. BARRETT. No.  
The CLERK. Mr. Barrett votes no.  
Mr. Hyde.  
Chairman HYDE. Aye.  
The CLERK. Mr. Hyde votes aye.  
Chairman HYDE. Mr. Graham?  
Mr. GRAHAM. Aye.  
The CLERK. Mr. Graham votes aye.  
Chairman HYDE. Have all voted who wish? The Clerk will report.  
The CLERK. Mr. Chairman, there are 21 ayes and 16 noes.  
Chairman HYDE. Article I is agreed to. The committee will now consider Article II. Are there any amendments to Article II.  
Mr. Graham?  
Mr. FRANK. Mr. Chairman.  
Chairman HYDE. I guess Mr. Graham does not have an amendment to number II. Please state your—  
Mr. FRANK. It has to do with the procedure I was provided by a member of staff. The procedure was going to be here—and it's a little reversal than norm but not a problem—that you would ask for amendments first and then there would be the opportunity to strike the last word. So that members would know the fact that we're getting to amendments doesn't preempt the right to strike the last word; is that correct?  
Chairman HYDE. We were just informed that Mr. Graham is not going to offer his amendment. Yes, we can discuss—  
Mr. FRANK. We're open for—  
Chairman HYDE [continuing]. For discussion, if you wish.

All right. The gentlelady from California.

Ms. WATERS. Thank you very much. Mr. Chairman and members, today, Friday, December 11, 1998, the Judiciary Committee of the 105th Congress is embarking on the extraordinary procedure of taking a vote to report from this committee articles of impeachment of the President of the United States of America, William Jefferson Clinton. Let history record I, Maxine Waters, member of Congress, representing the 35th Congressional District of the United States of America, is of sound mind, excellent health, and a clear conscious. Let history further record that I direct my remarks to my children, Ed and Karen, my grandchildren, Cameron Titus, 10 years of age, my grandson, Mikael, 20 years of age, to my mother, Emily Moore, to my 12 brothers and sisters, living and dead, to my husband Ambassador Sydney Williams, my dear friends and supporters, my constituents, really to all Americans and peoples of the world, I will not violate the Constitution of the United States. I will vote no on each and every vague and general article of impeachment that will be presented to this committee today.

Let history record I have fought against the impeachment of the President of the United States in every way that I know how; that my Democratic colleagues have shown in every possible way that this President has not committed perjury, obstructed justice, or committed any actions or crimes that rise to the level of impeachment.

Mr. Chairman and members, let history treat me kindly as our children and children's children analyze what we do here today. Let the historians speak favorably at me because I have carefully, responsibly, and honorably exercised my duty to uphold the Constitution of the United States of America, so help me God.

I yield back the balance of my time.

Chairman HYDE. The gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, this is the article which would call for the dismissal from office of President Clinton because of false statements he made in the deposition in the *Paula Jones* case. I do not believe with regard to Article I that false statements were demonstrated.

With regard to this article, I do believe, as I read and heard the testimony, that the President spoke falsely when he denied being alone with Ms. Lewinsky, and I very much regret that. And I believe that given the fact that the statute of limitations has not expired and won't expire for some time, he will be subject to prosecution on that when his term expires.

I do not think prosecution is likely because I believe that if someone were to bring that it would fail. And I believe we heard from a very distinguished group of prosecutors who said that it is highly unlikely that a federal prosecutor would have brought that.

And there are two reasons why I think we should reject this. First, I disagree with the assertion that a false statement is a false statement without regard to the underlying act about which it is made. I must say, Mr. Chairman, I don't think anybody here believes that all the time. The notion that you equally condemn any false statement no matter what the context, no matter what the

underlying issue, no matter what the motivation, is none of you, I believe that any of us consistently hold.

It has gained some adherence because it is a convenient stick with which to beat the President. But the fact is that the cause of the lie the President told with regard to the deposition is a consensual sexual affair and his desire to conceal it.

We have plenty of testimony that the desire to conceal this long predated knowledge that it would get involved in this lawsuit. Indeed, the gentleman from Florida himself said yesterday or the day before that the President and Monica Lewinsky had agreed between them that they would try to conceal this from people who asked long before they knew about the lawsuit. It was an understandable desire to conceal activity the President knew to be wrong, but it was not activity that assaulted anyone else, that imposed himself on anyone else. It was purely consensual sex.

There's another concern I have. And it has to do with the irrelevance, in my judgment, of the conduct that occurred between President Clinton and Monica Lewinsky to the Paula Jones case. People have talked about sexual harassment. I am a strong believer in very tough laws against sexual harassment, and I think you do the cause of protecting people against sexual harassment enormous damage if you erode that firewall between consensual and non-consensual sex. People who would try to diminish that distinction in my judgment undermine our efforts to protect people against harassment, against coercion.

Monica Lewinsky herself is the undeviating, unrefuted witness to the fact that she was the initiator of this relationship, and at no point did she ever feel any pressure to continue it.

So here's the problem: You have the President sued by Paula Jones. He is then subject to wide discovery. If the fact is that because you are sued no matter what the merits ultimately of the suit, you can then in a very wide discovery process be compelled under oath under penalties of punishment to be asked about and answer about any aspect of your personal life, even if it is wholly irrelevant to the lawsuit is an erosion of privacy that I don't want to give any stamp of approval to. And to say that we're going to throw Bill Clinton out of office, and you're not simply—and again, this notion that you're just here pitting batting practice, it's ole Mark McGwire and Sammy Sosa in the Senate, and poor you, you're not making any judgments, you're not doing anything. That's simply wrong and everyone knows it. There's no more solemn act you can take here than to say we think Bill Clinton ought to be thrown out of office and we set in motion, as you just did, the process to throw him out of office. To throw him out of office because he tried to conceal a consensual sexual relationship in a lawsuit in which it had no relevance in fact would be a very grave error.

Yes, I have no trouble in differentiating that from the impeachment of a federal judge who tried to fix a case of a drug dealer and lied about it or a president who tried to impinge on the law enforcement of the country. So I hope that this article is defeated.

Chairman HYDE. The gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I rise in support of the article.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I'm afraid that my friend from Massachusetts flat out misstated the law on sexual harassment. We don't need a law on sexual harassment for nonconsenting sexual contact. That's sexual assault. And there are adequate laws on sexual assault in all 50 States and the District of Columbia that deal with people who perpetrate that type of heinous crime. The laws prohibiting sexual harassment are designed to provide protection for those who are sexually harassed, primarily women but not exclusively, from activities that do not rise to the level of sexual assault.

And I'm awful afraid that if we say it's okay to lie in legal proceedings on sexual harassment, we've made enforcement of the sexual harassment laws ineffective because every lawsuit on sexual harassment is about sex, by, in and of its very nature. But Paula Jones' lawsuit was a federal civil rights lawsuit, which is under a different part of the law. And part of the allegations that Ms. Jones made and which the Supreme Court by a 9-0 vote said she had a right to pursue is that after she allegedly rejected the President's advances in the hotel room in Arkansas, she was harassed at work, denied pay raises and ultimately forced to resign her position with the Arkansas state government. And with those allegations, she would have a much stronger case to take to the court and to take to the jury by showing that there are other women who are under the direct employ and supervision of Mr. Clinton, when he was governor or president, who submitted to his advances who got jobs and promotions and pay raises and goodies and the like. That's a classic civil rights case.

Now, I'm not here to say whether she would have the evidence to do that or not. That's not the point. The point is that the Supreme Court and Judge Wright in Arkansas said that she had the right to obtain evidence to try to prove her case, and where the alleged perjury of the President came in was to prevent her from doing that. That is a very, very serious result of that perjury, and it all goes to the business of whether an employee of the State of Arkansas who claimed that the governor of Arkansas sexually harassed her denied her civil rights. The Supreme Court said she had a right to proceed in gathering evidence and where I believe the President obstructed her wrongfully and perjuringly was to prevent her from obtaining that evidence.

Now, the law on perjury does not depend upon the outcome of the case. The case was thrown out of court by Judge Wright. It was appealed and the President paid a significant judgment before the appeal was decided. The issue of alleged perjury is whether it was materially at the time the alleged perjurious statement was made. And here we have a decision of the United States Court of Appeals for the District of Columbia that was placed under seal and was unsealed just recently that said it was material, the false statements, and those material false statements were directly designed to change the outcome of the case. That related to the affidavit of Monica Lewinsky that even the President's lawyer had to send a letter to the court instructing him to disregard.

I yield back the balance of my time.

Chairman HYDE. The gentleman from Michigan.

Mr. CONYERS. Before I begin, I'm going to briefly recognize Mr. Frank.

Mr. FRANK. I thank the ranking member. The gentleman from Wisconsin completely misstated my position. I was not suggesting that the activity involving Paula Jones was in any way consensual. Yes, sexual harassment is wrong, but for the gentleman to suggest that I'm allowing sexual harassment when I say consensual sex, misunderstands sexual harassment. The terrible thing about harassment is precisely that it is non-consensual, that it overcomes the victim's "no" with other threats. My point was that the Monica Lewinsky-Bill Clinton relationship was according to Monica Lewinsky in an uncontested way wholly consensual. There was not a shred of any evidence of sexual harassment between Monica Lewinsky. When I say I want a law, I believe that the wholly consensual relationship between Bill Clinton and Monica Lewinsky was in fact irrelevant to the accusation of harassment by Paula Jones, and I think we do a disservice to sexual harassment law by letting that distinction be eroded.

Mr. CONYERS. I thank my colleague.

Ladies and gentlemen, this second article deals with perjury in the Jones deposition, and the Republicans on this committee would impeach the President of the United States over a tortured definition of the phrase "sexual relations."

Now, we all saw the deposition videotape of the 15-minute conversation among the three lawyers and a judge about what the definition of sexual relations in that case meant. We witnessed, watched, and listened to it. No one in the deposition room aside from the Paula Jones lawyers who were in effect setting up the President understood what that definition meant. The judge in the case even said that after all she heard, that she did not think that the President understood the definition. This is on the record.

The President's testimony about his consensual relationship with Ms. Lewinsky was not material to the Paula Jones claim that the President made unwanted advances toward her. Could that still be in dispute? Judge Webber Wright made that clear in three separate rulings that testimony about the President's relationships with other women simply did not go to the core of the issues put in dispute by Ms. Jones.

The Republicans misstate that the issue of materiality was settled by the litigation involving Ms. Lewinsky's lawyer Frank Carter. The only thing that the litigation involving Mr. Carter decided is that Ms. Lewinsky's affidavit was material to the limited question in that case. That is, whether Ms. Lewinsky's affidavit was material to whether she should have to testify as a deposition witness in the Jones case.

The court considering that limited issue never considered the overall materiality of the Lewinsky testimony to the Jones case and would and could not have made a ruling on a case pending in another court. Republicans would impeach the President of the United States for his testimony on subjects as whether he was ever alone with Ms. Lewinsky. While we're troubled by the President's testimony, we believe it is insufficient, too insufficient to warrant an impeachment of the President. The President's reactions to the setup in the Jones deposition were not impeachable reactions but

the reactions of a husband and a father whose misconduct was about to be exposed.

Please, please let us reject this second article of impeachment. Thank you, Mr. Chairman.

Chairman HYDE. Thank you. The gentleman from Florida, Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman. I rise in support of this article. Now, I will grant that not all false statements under oath are equivalent. A lie concerning a barroom fight is not equivalent to a lie concerning a rape or murder. I don't think anyone in this room would disagree with that. But I think we need to look at this conduct of the President in context. I agree, the context is important, but I'm driven to the conclusion that when we look at the context here, we have to understand that this was a serious act of wrongdoing, a willful act of wrongdoing, an act of wrongdoing designed to deprive another American citizen of her rights in court.

Now, I know the President didn't like the fact that he was subjected to a lawsuit. He didn't think that the plaintiff should ever be in court, at least during his presidency. He believed or he says he believed that it was all a plan to get him and embarrass him. But the fact of the matter is that in this proceeding, the judge decided that the President would have to answer questions at the deposition concerning Ms. Lewinsky and other people that might have been in a similar position.

Mr. Clinton didn't agree with that decision of the judge. I understand that. Mr. Clinton thought that was unfair. I understand that. But the judge decided he would have to answer those questions.

Now, the judge having decided that, the President went in to the deposition and he lied. We all know that. Well, maybe somebody doesn't know it, but I would suggest that it requires a turning away from the facts, a closing of the eyes to these facts to come to any other conclusion that he lied. He lied repeatedly.

Let me point out that I think the evidence is also clear that he went into the deposition with clear knowledge that he might be asked questions about Ms. Lewinsky and with a plan to lie if he was asked questions. He thought he could get away with telling lies because of the affidavit that she had given.

Now, I would feel differently about this if the President had truly been blindsided, if he had not known that the subject of Ms. Lewinsky was likely to come up, he thought that was a closed chapter, nobody knew about it and a question comes to him like a bolt out of the blue. And I think some people believe that's what happened in this deposition, but the record absolutely shows that wasn't the case. He knew she was on the witness list. He knew all the circumstances and he knew that he was likely to be asked about her. He was asked about her and he sat there and we watched him and he coolly, in a calculated manner lied. That's what took place there.

Now, that is a serious matter for the President of these United States who has the responsibility to uphold the rule of law in this country to engage in such conduct.

Now, what does the President say in his defense? Well, we get more and more of the legalisms. It is amazing to me that the President's lawyers and the President can come forward with an argu-

ment that turns on the contention that Ms. Lewinsky had sex with him but he didn't have sex with her. That's what this all turns on. If we're going to believe his interpretation of what was going on, we have to believe that version of reality. That's an insult to our intelligence. That's an insult to the intelligence of the American people. It is not truthful. And I would suggest that we focus on the facts here and if we do that, we will come to the conclusion that the President willfully in a calculated manner lied to defeat the rights, the due rights, of an American citizen.

It's not just his lying about the sexual relations. He also lied when he said he didn't have an extramarital affair or a sexual relationship, when he affirmed the affidavit given by Ms. Lewinsky that said there was no sexual relationship. If there was no sexual relationship, what kind of relationship was it? Let's get real about the facts here. The President lied and he should be impeached for lying.

Chairman HYDE. The gentleman's time has expired. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. We all don't know that the President lied in his deposition. Many people suspect he did, but it has not been proven. One of my chief concerns with these—with this whole proceeding is that there is not nearly sufficient proof before us to warrant the conclusion that he did what the allegation says he did.

Now, this article of impeachment says he perjured himself at the deposition testimony on January 17 in that—that he lied under oath about the nature of his relationship, presumably when he said that he did not have a sexual affair, a sexual relationship, or sexual relations with Ms. Lewinsky. The President asserted that he did not have a sexual affair with her within the undefined meaning of that term, that Ms. Lewinsky was correct in her statement that she did not have a sexual relationship with the President within the undefined meaning of that term and, three, that he did not have sexual relations with Ms. Lewinsky as that term was defined by the Jones lawyers and limited by Judge Wright.

It is by now more than clear that the undefined term sexual affair, sexual relations, and sexual relationship, despite the fact that what I'm about to say is counterintuitive, in fact is at best ambiguous, meaning different things to different people, and that President Clinton's belief that the terms referred to sexual intercourse and not to certain other acts is supported by courts, commentators, and numerous dictionaries. As one court has stated in common parlance, the term "sexual intercourse" and "sexual relations" are often used interchangeably. The Webster's Third New International Dictionary defines sexual relations as coitus. Random House Webster's College Dictionary defines sexual relations as sexual intercourse; coitus. Merriam Webster's Collegiate Dictionary defines sexual relations as coitus. Black's Law Dictionary defines intercourse as sexual relations. Random House Compact—Unabridged Dictionary defines sexual relations as sexual intercourse; coitus. The President's understanding of these terms or his testimony to the understanding of these terms, which is shared even by several common dictionaries, cannot possibly support a prosecution for perjury. How would a prosecutor prove these dictionaries wrong? And

in any event, regardless of one's view that sexual relations means intercourse, the evidence is indisputable that this is indeed what President Clinton believed at the time. And of course, perjury is dependent on what the deponent believed. Perjury requires more than that someone else believes President Clinton was wrong about the meaning of these terms. It also requires proof that President Clinton knew he was wrong and intentionally lied about it, but the evidence demonstrates that the President honestly held that belief well before the Jones deposition. The genuineness of the President's belief on the subject is even supported by the special prosecutor's account of Ms. Lewinsky's testimony during an interview with the FBI. And I quote from an FBI 302 form cited in the report referral. After having a relationship with him, Lewinsky deduced that the President in his mind apparently does not consider oral sex to be sex. Sex to him must mean intercourse, closed quote.

Finally, Ms. Lewinsky herself took the position that her contact with the President did not constitute sex and reaffirmed that position even after she received immunity and begun cooperating with the special prosecutor. In one of the Linda Tripp tapes, which she didn't know she was being recorded on obviously, Ms. Lewinsky explains to Linda Tripp that she didn't have sex with the President because having sex is having intercourse. And in fact Neysa Erbland, one of the alleged—one of her friends who was an alleged collaborator of her testimony, according to the special prosecutor, states that Ms. Lewinsky said the President and she didn't have sex. In her original proffer to the independent prosecutor, she wrote, quote, Ms. Lewinsky was comfortable signing an affidavit with regard to the sexual relationship because she could not justify to herself that she and the President did not have sexual intercourse, unquote. In short, the evidence supports only the conclusion that the President's responses with respect to these undefined terms were truthful and at worse good faith responses to indisputably ambiguous questions. We have seen from the independent prosecutor, from Mr. Schippers, from anybody else, no, and I repeat no, evidence to the contrary. And simple statements that come on, how can anybody think that, well, the fact is that the dictionaries think that and a lot of people think that. Maybe nobody at this table thinks that but a lot of maybe less sophisticated people or more sophisticated people, I don't know, do think that.

Chairman HYDE. The gentleman's time—

Mr. NADLER. I request an additional 15 seconds.

Chairman HYDE. The gentleman's 15 seconds are granted.

Mr. NADLER. Thank you. A lot of people do think that and one cannot possibly prove with no evidence that the President thought the contrary. Therefore it's counter to all the evidence to base a perjury article on this and therefore as well as for all the other reasons I stated with respect to Number I—Article I, we must oppose Article Number II also.

Thank you, Mr. Chairman.

Chairman HYDE. The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman. I, like all of us, am uncomfortable with this article, as I was with the other one, because of the subject matter. The more we plow into this and the more we debate it, the more I'm convinced unfortunately that

the President did indeed commit perjury, not just lying on numerous occasions in that deposition with Paula Jones as well as in front of the grand jury. But it is disappointing.

I heard the President a few moments ago. I reviewed what he said before the public—in the public eye here about his supposed again contrition. I don't think he said anything new, unfortunately, except that he was ashamed of what he did, as he certainly should be, but he's never admitted actually committing the perjury or the lying under oath, and so forth, that are the subject matters here today. I think some of us had it right in the past, it would have been preferable if he resigned—he did not announce that he was resigning today—than to what we're doing. But we have an obligation constitutionally to proceed. I must say that with all due respect to Mr. Nadler and my colleagues on the other side that the evidence here of what this President was about is abundantly clear if you just take the blinders off and you look at the whole picture. I described some of that a few minutes ago.

Putting it back in context very briefly once again, the President was involved in being concerned about his sexual relationship with Monica Lewinsky, whatever words you want to use, coming to bear and being acknowledged in the Paula Jones civil rights suit. He was determined to defeat that suit. And in order to do so it's very clear that a few weeks before his deposition, he made some comments that were made clearly to Monica Lewinsky that made everybody understand that they were not going to tell the truth about their relationship. Now, whether he made it before he knew about the suit or before he knew about the deposition or whatever makes no difference because at the time she was called upon as a witness, put on the list, he called her up, he knew that and they knew, both of them knew that they were not going to tell the truth about this matter under any circumstances. And so the evidence is very clear he went into this deposition with that in mind and he went through the process of testifying numerous times. The sexual relations question, what was it, what was the definition, we can all argue about. Common sense says, as Mr. Canady did a minute ago, that he knew good and well what it was and that he lied when he tried to avoid telling the truth about it. But even if you believe him in every respect, the contorted definition that was put before him he did understand. With all due respect, the other side has been arguing he didn't understand it, he understood the definition that was put before him when it finally was resolved in that court and the deposition, when his attorneys had finished the argument. He clearly was paying attention to all of that. We saw some of that on television yesterday. And then in the grand jury deposition, he was specifically asked if he understood it and what it meant. And he said, yes, he did, in terms of the actual words that went on. Now, it may not have been intercourse but he knew that certain parts of the body, if he had touched them, were indeed included in that definition.

We went over before the grand jury, but I'll go over it briefly here again with regard to perjury in the deposition in the Jones case. The fact of the matter is that Monica Lewinsky has testified in the grand jury proceedings that he did in fact touch her in certain ways that were in the definition that the court gave to Mr.

Clinton, and that Mr. Clinton acknowledged he understood. And there are numerous witnesses who corroborate that in fact what Monica Lewinsky said before the grand jury she had repeated to them on several occasions contemporaneously, in other words, at the same time roughly that these supposed contacts were going on. All of that is corroborated. It's very believable and it's very much corroborated also by a computer letter she had in a draft to the President, and so and so forth.

And the President lied on numerous other occasions in his testimony in that deposition. He lied after being asked if anybody reported to him in the past two weeks that they had a conversation with Monica Lewinsky. He lied in the deposition about being alone in certain quarters in the Oval Office. He lied in the deposition about his knowledge of gifts that they may have exchanged. He lied in the deposition about his knowledge about whether he'd ever spoken to a subordinate employee about a possibility that the employee might be called as a witness. He lied about his knowledge of the services of a subpoena in the case. He lied about his knowledge of the final conversation he had with an employee who was going to be a witness in the case brought against him. He lied in the deposition about his knowledge to the contents of the affidavit executed by—and so on and so forth, nine or ten times. And I won't go on with the list.

He clearly committed perjury in that deposition. I would suggest that it does rise to an impeachable standard and he should be impeached, unfortunately and sadly, for it and that's what we're called upon to do in the article we're debating today.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. After the last debate, I guess we can give up on getting the specifics. I guess we'll find out what we voted on after we vote. But since again we're talking about perjury, if you're going to allege perjury, you have to prove all the elements of perjury, which in this case include materiality. And we're talking about testimony that the judge ruled as inadmissible in a lawsuit that was thrown out on a summary judgment and then settled. Never anywhere in America would a perjury charge be brought in such a situation. And therefore we're faced with a question of whether whatever he said was such a subversion of government that his conduct warrants impeachment and trial and removal from office and the additional optional judgment that he be disqualified from holding and enjoying any office of honor, trust, or profit under the United States. Now, that additional judgment was not requested in Watergate. And so history will record that this committee thought that the punishment for his testimony in the Paula Jones case was worse than President Nixon's corrupt use of the FBI, the CIA, and Internal Revenue Service and Watergate and that's why one of our witnesses recently was provoked to suggest that history will hunt some of us down for our votes today. I yield back the balance of my time.

Chairman HYDE. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. I thank the Chair and I just wanted to make a comment on the statement from the gentleman from Massachu-

setts, Mr. Frank. He indicated that the statements that were given under oath that are alleged to be perjurious were wholly irrelevant to the lawsuit. Who determined that they are irrelevant? Are we going to let litigants in a lawsuit determine what is relevant and whether they're going to answer a question under oath or not?

In this case, there was an extraordinary circumstance. The federal judge was sitting in the room, and the judge, Judge Wright from Arkansas, indicated that the President should answer the question. She heard the President's lawyers object and say this is irrelevant, it's not material, we should not consider this, and she said yes, it is, you need to answer. And so are we going to let a litigant in a lawsuit determine and make the decision unilaterally what is relevant?

Now, I understand and appreciate what Mr. Frank is saying but, you know, you can change the law. You can change the rules, but under the rules you operate, the judge determined that he should answer, the question and she expected a truthful answer and that goes to Mr. Scott's question of materiality.

Mr. FRANK. Will the gentleman yield?

Mr. HUTCHINSON. For a question I will yield.

Mr. FRANK. I was going to answer the question you asked me.

Mr. HUTCHINSON. Let me see if we can get some more time and we'll discuss this.

Go ahead. I'll yield.

Mr. FRANK. Very brief. If the President were to be criminally charged with perjury, if someone brought that, then the judge said it would be relevant.

We are here being asked to make an independent judgment as Members of Congress as to what punishment we think is appropriate. My answer to your question is I and each of the rest of us have to judge about that. That is, this is not the criminal perjury that might be brought. I have an independent constitutional responsibility. Do I think the President of the United States should have been thrown out of office for it and I believe—

Mr. HUTCHINSON. I'm reclaiming my time. I appreciate the gentleman's distinction, which is just the opposite distinction that your side has been making for the last hour.

Mr. FRANK. Will the gentleman yield?

Mr. HUTCHINSON. No. You say that we can't meet the elements of a criminal case but now you're saying well, it's beyond that. We're talking about the action of Congress and it is a distinction there. I understand—

Mr. FRANK. But the gentleman is simply misstating my position.

Mr. HUTCHINSON. It's still my time, Mr. Frank. It's still my time. If you look at this, I just think it's bad practice. I think that it would be extraordinary to carve out an exception to materiality and say that the President should not be held accountable because he determined or his lawyers determined that he could lie because he determined that it was not relevant.

Now, let's go to the statements that were actually made in the deposition. Numerous, numerous statements were made. The first one of course, the most obvious, is that he was never alone with Monica Lewinsky and we don't need to debate what alone means, but the question was asked about whether he had been alone with

her and his answer was he did not recall. The question specifically was, "So I understand your testimony is that it was possible then that you were alone with her but you have no specific recollection of that ever happening?" Answer: "Yes, that's correct." This is an amazing statement. I believe it is a false statement.

Another question was: "When was the last time you spoke with Monica Lewinsky?"

Answer: "I'm trying to remember. Probably sometime before Christmas." And then he adds: "She came by to see Betty sometime before Christmas and she was there talking to her and I stuck my head out and said hello to her." That is not a correct response. It's not a truthful response. In fact, the President met with Monica after Christmas, on December 28, to exchange gifts. It was something that anyone would remember, and he is trying to tie it all to Betty Currie.

Another question: "Did she tell you that she had been served a subpoena in this case?" Answer: "No, I don't know if she had been." Another false statement. Question: "Did you have an extramarital sexual affair with Monica Lewinsky?" Remember that the question was not under the definition of sexual relations, but the question was, did you have an extramarital sexual affair with Monica Lewinsky? The answer was no. Then he goes on later and he again states, I've never had an affair with her. And so you can go through the deposition time after time and point to numerous incidences very specifically of false statements being given. Are they relevant? Are they important? I believe they were important to the plaintiff in that civil rights lawsuit. Any other person would be held accountable if they unilaterally made a decision it is not important, it is of no consequence, I'm not going to tell the truth on that. We cannot have litigants in court making that determination. I'm not happy that we have to look at this and determine that the President of the United States lied under oath, but those are the facts and so we must proceed.

Chairman HYDE. The gentleman's time has expired. The gentlelady—I'm sorry. Mr. Berman from California.

Mr. BERMAN. I move to strike the last word.

Chairman HYDE. The gentleman's recognized for 5 minutes.

Mr. BERMAN. Mr. Chairman, I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman. I appreciate the gentleman from Arkansas' comments, but he seriously misstated what I said. I think there's a very fundamental issue here. First, he said I was being inconsistent in saying that we should apply the standard of impeachment because some members on this side have been talking about a criminal case. I'm not one of those. I make a deal with the rest of the world. Then I'm responsible for what I say. I'm not responsible for what they say.

Mr. HUTCHINSON. Will the gentleman yield for an apology?

Mr. FRANK. I'll yield to the gentleman.

Mr. HUTCHINSON. I think you're absolutely correct. You do show a great deal of independence.

Mr. FRANK. I thank the gentleman. I want to continue in the spirit because it is one of the central questions here. I did complain about the lack of specificity because I thought and still think it was

an effort to try and fuzz up the issue because members aren't satisfied in taking it to impeachment. As to criminal prosecution, and I do believe that the judge's ruling was conclusive as to criminal prosecution, that's right. As to perjury, if you're going to have that kind of accusation and you're going to bring a criminal case, then that could be conclusive. That could be litigated there. But we're not in a criminal prosecution. I haven't said that we are. I would also note—

Mr. HUTCHINSON. Would you yield for a clarification?

Mr. FRANK. Yes.

Mr. HUTCHINSON. Am I correct to understand that you believe that the materiality question for a criminal prosecution is satisfied and that he could be criminally prosecuted for a false statement that was material?

Mr. FRANK. No, I think it could be litigated. I think the fact of what you said is relevant and not dispositive because there were later decisions that might be different, but that's not our issue. I haven't talked about that as being the same issue. I'm talking about our independent responsibility to decide if this is impeachable because there's another factor that would intervene in criminality. As former Governor Weld said, in addition to materiality, there's substantially. He was talking specifically about this. I agree with the many prosecutors who have said, very few prosecutors if any would bring this case so that the question about whether or not the President would be convicted is almost irrelevant, but that is for prosecution. And I do make the note. Ken Starr will probably still be the independent counsel. There will be a successor in office. The statute of limitations will not have elapsed, so therefore I think it ought to be left to prosecution. But for us, and this is very important, we have an independent responsibility to decide whether or not the President of the United States ought to be thrown out of office. Frankly, I'm surprised to see members on the other side shying away from that. There's a pattern of some members saying, who, us? We're just sending it over to the Senate. We're just finding probable cause. No, this is our constitutional solemn responsibility and you voted for something that says he should be thrown out of office. And then the question is for each and every one of us to decide. Should Bill Clinton be thrown out of office, should the presidency, twice won in a popular election, be terminated because he denied having been alone with Monica Lewinsky in a civil deposition and lawsuit to which I believe it was irrelevant because I believe that there is an absolute bar between the wholly consensual sex in the Lewinsky matter and the allegation of harassment in the Paula Jones matter.

So no, I don't think the fact that a judge ruled is dispositive for us. Whether or not it would be later on would be if anybody brought the prosecution. I don't think anyone would, but I do not think members ought to hide behind judges or senators or anyone else. This is your choice. Are you going to vote individually to throw Bill Clinton out of office, which is what you are voting for in this resolution. It cannot be gainsaid because in a civil deposition, he lied to conceal a private consensual affair and that's the standard. The question is who decides what rises to that level?

Each and every one of us do. I cannot think of a more solemn or heavier responsibility.

I thank my friend from California.

Chairman HYDE. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I thank the Chair. One could argue that the falsehoods under oath uttered by the President in the deposition are more serious and more damaging and more definable than those which we have voted have occurred in the grand jury. In the grand jury, oh, it's a criminal investigation and on first glance would seem to be more serious than a civil case. In the grand jury in a criminal case at least, there's no known victim, no individuals whose rights have been damaged but rather the societal atmosphere which the criminal investigation involves. But in the civil deposition that we're talking about, let's assume for a moment that Monica Lewinsky uttered in her affidavit that she indeed did have a relationship, a sexual relationship with the President. Paula Jones was entitled to have that affidavit which shows that even the consensual relationship of Monica Lewinsky with the President, Paula Jones would have been able to display that as something further discoverable that if indeed Monica Lewinsky had this consensual relationship because of the promise of or the fear of certain consequences that would follow her relationship with the consent of herself and the President, then Paula Jones could point to that as additional evidence that what she had confronted was totally damaging to her rights. But we never got that far because Monica Lewinsky filed an affidavit that claimed that there was no sexual relationship. What happened then it means, the whole world should recognize this, that this destroyed, utterly destroyed in that little section of the world, in that section of time, destroyed the rights of Paula Jones, who only Mr. Carville would trash immediately. It got out of hand—

Mr. NADLER. Would you the gentleman yield for a quick question?

Mr. GEKAS [continuing]. Who destroyed the case of Paula Jones or attempted to by not acknowledging or trying to hide the fact that there was a sexual relationship. That's why that affidavit, the false affidavit filed by the witness, Monica Lewinsky, attested to as it were by the President falsely in that deposition which later carried over to the grand jury, definitely was a damage to the constitutional rights—

Mr. NADLER. Would the gentleman yield for a question?

Mr. GEKAS [continuing]. Of an individual and did extreme damage in the long run to the rights of you and me and our spouses and our sisters and our—

Mr. NADLER. Would the gentleman yield for a question?

Mr. GEKAS [continuing]. Brothers and everybody else in the society, damaged our conceptual and prospective rights to sue in court for damages done to our family—

Mr. NADLER. Now will the gentleman yield for a question?

Mr. GEKAS [continuing]. Only to have that suit irreparably damaged by someone appearing, taking an oath and falsely testifying with an attempt and rationale and intent to destroy your case. That is what this was all about.

So when in Article II we include as one of the most damaging portions of the falsehoods uttered by the President, it is in the context of the deposition in a civil case, a civil case in which our fellow citizens are involved every day in every courtroom in every State in the Union and on which our civilized society depends on an oath and the evidence, the truthful evidence to be given under that oath. That is why Article II in the minds of some, I could argue and do argue, may be, in the context of the entire impeachment proceedings, more vital, more important and more worthy of our conscientious decision making than even the falsehoods uttered in the grand jury.

Mr. NADLER. Mr. Chairman.

Chairman HYDE. The gentleman from New York.

Mr. NADLER. I ask unanimous consent to grant Mr. Gekas 2 minutes so I can ask him a question.

Chairman HYDE. Is there any objection?

I hear no objection, so the gentleman has 2 minutes.

Mr. NADLER. Thank you.

Mr. GEKAS. Should I yield?

Mr. NADLER. I am sorry, would you yield?

Mr. GEKAS. Yes, I will yield.

Mr. NADLER. I was struck by what you said when you said Paula Jones was denied the evidence of Monica Lewinsky's affidavit, which was relevant because of a sexual affair as a result of—a sexual affair because of the emoluments or the advantages that she was essentially given.

My question was, wasn't it the case, isn't all the evidence uncontradicted, that she had the sexual affair first, and that it was not motivated by any gifts or anything else?

Mr. GEKAS. The gentleman misses the point. I am saying to you, at first, when this affidavit would be filed, the one that I maintain for the purpose of arguing *arguendo* that she admitted a sexual relationship, that would allow Paula Jones to indulge in the further discovery to learn from this situation, the one that Monica admits under the hypothesis, admits the relationship, that would entitle Paula Jones to discover further whether or not, in return for that consensual sexual relationship, Monica Lewinsky received any benefits, any promotions like going from intern to paid employee, et cetera—no, I want to answer this fully, because it is an important question that the gentleman raised, and it has got to be answered—that Paula Jones, by the virtue of the false affidavit, was deprived of the ability to look further into this to try to compare it to her case or to some other case in which in a sexual harassment suit is so vital.

Chairman HYDE. All time has expired.

Before I recognize someone on this side, Mr. Watt, I just want to announce I have been given several ceremonial gavels which I am to use up here, and then they are to be given to people, for what purpose I don't know, but if you see me up here banging away, don't worry. I am just trying to use the ceremonial gavel.

Okay, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I hope the Chairman doesn't plan to use any of them on the members. That's the only thing I think might not be appropriate.

I want to weigh in to a discussion that my good friend Mr. Frank and my good friend Mr. Hutchinson were having, because I am not sure I disagree with them. I am almost afraid to disagree with them, both of them are such brilliant minds. But I actually started this discussion last night in my opening statement when I pulled out a phrase that Mr. Schippers had made on pages 36 and 37 of his statement.

There he said, "This is a defining moment both for the Presidency and especially for the members of this committee. For the presidency as an institution, because if you don't impeach as a consequence of the conduct that I have just portrayed, then no House of Representatives will ever be able to impeach again. The bar will be so high that only a convicted felon or a traitor will need to be concerned."

Now, I agree with Mr. Frank that there is a substantiality question here, but I read the Constitution to require a criminal act, and that is why I pulled this out from Mr. Schippers' statement, because I believe the bar was set so high intentionally that you would only get traitors and felons under the impeachment standard.

Now, I don't want to be technical about this, but let me read to you the exact wording of Article II, Section (4). It says that they shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Treason is a constitutional crime. Let me start before that. Conviction means criminal conduct. Treason is a constitutional crime. Bribery is a crime. Or other high crimes and high misdemeanors is a crime. It is either a crime against the state, which we have been arguing, which is still criminal conduct, or it is a crime, as the Republicans have been saying, in the criminal context, but there still has to be a crime if you read the literal language of the constitutional provision.

Now how does that apply to what we are debating here? It applies this way. If there cannot be a crime, I think it goes to what Mr. Frank is saying, it can't be a high crime because it is insubstantial, it doesn't have the substantiality. But if it is not a high crime that is required, there still has to be a crime, and you have got to meet the criminal code standard. And if nobody would convict in the criminal context, then we wouldn't be able to convict in the impeachment context.

And that is the point I was making. I think Mr. Schippers is absolutely wrong to imply and demean somehow that if we don't accept his version that the only people who need be concerned are convicted felons or traitors. I think that is what the standard is in the Constitution.

Can I just ask for more time?

Chairman HYDE. Sure, wind up your thought.

Mr. WATT. I think the reason the standard was set so high was for the very reason again I talked about a little bit in my opening statement last night, was that you have got three independent branches of government, and if we lower the standard in the legislative branch and make it just a popularity contest, as opposed to a criminal, treasonous, traitor, felon act, then what we have done is elevated the legislative branch over the executive branch, and we have disturbed that balance.

Now that is not different from what I said last night in my opening statement. It is a little bit more directly on point. I do believe we need substantiality, as Mr. Frank has said, but I also believe, even if you interpret it according to the way the Republicans have been interpreting it, you can just do this on a crime. You still have got to then revert to the criminal code and comply with that code. In this case, I don't think we have done either.

Thank you, Mr. Chairman.

Chairman HYDE. The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Would the gentleman yield just a few seconds to me?

Mr. BRYANT. I would be happy to.

Chairman HYDE. I am fascinated by the discussion of what the words mean, "high crimes and misdemeanors," and I have read a little bit on it, far from exhaustively, but I would just say to Mr. Watt, the plain English of misdemeanor, demeanor means how you conduct yourself, and misdemeanor, I would suspect, is not conducting yourself very well, misconduct. Certainly in the law, a misdemeanor is less than a felony; and just the etymology of the word would indicate not a very profound wrong. But, of course, over the years, the literature and the scholarship has meant that it had to be something either touching on a breach of trust or subverting the government. So it couldn't be a very little thing.

But demeanor means something in the English language, and misdemeanor is like something that is malapropos, it is the opposite of appropriate, and misdemeanor is the opposite, I think, of good conduct.

I am taking Mr. Bryant's time. I will start again with you. Go ahead.

Mr. WATT. If the gentleman will yield just for a second, I remember the Chairman had this discussion with one of the experts, and the expert, the historian, I can't remember which one it was, said that the Chairman's interpretation of misdemeanor in the historical context was just simply not correct.

Chairman HYDE. That is usually the response I get to my ideas. I hasten to describe an intellectual as one who is educated beyond his intelligence, but I wouldn't say that to him.

Thank you, Mr. Bryant, for indulging us.

Mr. BRYANT. Thank you. I don't have that problem.

Any time we get into this discussion that we have been in today about, well, this is not serious crime here, it was just about a sexual matter, I think of Professor John McGinnis, who testified before this committee. He is a law professor at the Benjamin Cardozo Law School, and he gave us a hypothetical, and I want to substitute the current names of the current parties for his hypothetical.

But he said, suppose that—again, I am using not the names he used, but the current names—suppose the President bribed the judge in the Paula Jones case to ensure that he didn't have to pay a money judgment and protected his presidency, but actually bribed the judge. There would be no question about it. We would be in here voting an impeachment on the President. But, instead, what the President did was intervene in a way of perjury.

Perjury is actually, under the Uniform Sentencing Code a more serious offense than bribery, and it is what I call a fraternal twin to bribery. Both end up thwarting justice, as was done in the *Paula Jones* case. She was denied her monetary judgment up until recently because of the President's actions, not the least of which is the perjury offense.

But I want to talk also very quickly about one of the lies that he told during the deposition in the *Paula Jones* case. He had been asked, did he ever talk to Monica Lewinsky about the possibility that she might be subpoenaed to testify in the *Paula Jones* case, and his answer was, "Bruce Lindsey, I think Bruce Lindsey told me that she was. I think maybe that is the first person who told me she was. I want to be accurate. I want to be as accurate as I can."

Apparently, they were interrupted a little bit, and the questioner basically said, can you say that again? And he said, "I'm not sure, and let me tell you why I'm not sure. It seems to me the—the—the—I want to be as accurate as I can here. It seems to me the last time she was there was to see Betty before Christmas. We were joking about how you all, with the help of the Rutherford Institute, were going to call every woman I ever talked to and ask them that. And so I said that you would qualify, or something like that. I don't think we ever had more of a conversation about it."

Now, let me tell you the truth to that lie. Monica Lewinsky has testified that she had a telephone conversation with the President on December the 17th, and the President, she says, "Yes, he told me he had some more bad news, that he had seen the witness list for the *Paula Jones* case and my name was on it. He told me it didn't necessarily mean I would be subpoenaed, but that was a possibility, and if I were subpoenaed, I should contact Betty and let Betty know that I received the subpoena."

Also, she went on to say he asked her to submit the affidavit. The answer, her testimony was, "I believe I probably asked him, you know, what should I do, in the course of that, and he suggested, well, maybe you can sign an affidavit."

"Question: Well, when he said that you might sign an affidavit, what did you understand that to mean at that time?"

Her answer was, "I thought that signing an affidavit could range from anywhere—the point of it would be to deter or prevent me from being deposed, so that could range from anywhere between maybe just somehow mentioning, you know, innocuous things, or going as far as maybe having to deny any kind of relationship."

So, very clearly we have proven here a lie in the Paula Jones deposition. That is one of the many subjects of this particular article of impeachment, that he denied having anything other than just a passing casual conversation about how she might be called as a witness, when, in fact, he had a telephone conversation wherein he told her we have bad news here, and you know, one thing you might do to avoid having to go in and testify would be to file an affidavit.

We know the rest of that story. She did ultimately file an affidavit which exonerated the President, within 24 hours of receiving that long-sought-after job she had wanted with a Fortune 500 company in New York City. Just a coincidence, I suppose.

I yield back the balance of my time.

Chairman HYDE. The gentlewoman from Texas, Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

If you need to gavel one of those ceremonial gavels, go right ahead. In fact, you might want to gavel that the meeting has been adjourned.

But let me agree with Representative Canady, because he is probably right. The President was very unhappy that the Paula Jones case was allowed to go forward. I disagree with the Supreme Court's decision, but it was the Supreme Court. They ruled, and we, frankly, had to live with that decision and are living with it.

I call this article, Article II, the spider web article, because the more you touch it, the more it sticks and provides a web of confusion.

I remind the committee again that what we are doing today will lay the underpinnings of the vote our colleagues will take next Thursday. We have a responsibility, again, as the moving body to determine whether or not there are grounds to vote articles of impeachment out of this committee to our colleagues who will not have the minimal contact with many of this documentation that we have had. So I think that some of these issues that my friends on the Republican side want to ignore are relevant issues.

I think that we have all gone around—some people have indicated that it is crimes that are high crimes and misdemeanors and others have talked about sexual harassment. Let me make these points.

First of all, having watched the employment atmosphere before sexual harassment laws were in place, I know how valuable and important they are; and I am comforted by the Congresses that preceded me that saw fit to pass such laws. But at the same time as they passed such laws, we must recognize that there are elements of those laws that, in fact, we should be sensitive to, because we don't want to make light of a very important right that people have if they feel sexually harassed in the workplace. It is a very important right for men and women, as we have seen in the case law.

And whatever my friends may say, Ms. Jones' case was dismissed, subsequently appealed to the 8th Circuit and subsequently not ruled upon but settled.

In addition, let me say that there were a lot of variables dealing with the web that was being perpetrated, such as Linda Tripp, who put the Paula Jones lawyers on notice, we got him, here is a get-you question. These are the kinds of spidery web kind of mystery activities that maybe, in a normal person's litigation, they might at least have the scales of justice balanced a little bit.

Now the President's behavior certainly was part of the reason he was where he was. But you cannot deny that the case was dismissed—that Ms. Jones' case was dismissed on the elements of sexual harassment as to whether or not she was denied promotions or she had made her case. And, yes, someone can make the element or make the comment that she was trying to find out whether there were patterns of the President's conduct. But it is clear on the record, if we have one, that Monica Lewinsky said she was consensual and did not feel sexually harassed.

Kathleen Willey was something we were supposed to be investigating. That was an allegation of potential sexual harassment. Maybe we would have found a connection to Paula Jones. We haven't even looked into that. We threw that out, along with campaign finance reform.

And why, my friends, do you think we are raising this whole question of the bar? Well, the reason is because this is a somber decision. And, frankly, I think my colleagues in 1974. You could understand what it means to break into a psychiatrist's office. If you live in Arkansas, if you live in New York or Chicago, you understand what that means. You understand when 19 people of the Cabinet or surrounding the Cabinet were indicted as coconspirators, five or six of them Cabinet members.

This particular article, Mr. Chairman, is sticky because we have got a lot of things going with it.

Mr. Schippers, for example, stated as one of his lies, he was not paying attention when his attorney said no sex in the Jones' deposition exchanges. I venture to say, Mr. Chairman, some of us in these proceedings today might be or might not be paying attention, and so—

Chairman HYDE. I am paying attention to the light, and your time is up.

Ms. JACKSON LEE. Mr. Chairman, if you would allow me to conclude my remarks, I would appreciate 30 seconds.

Chairman HYDE. Surely.

Ms. JACKSON LEE. I thank you.

So this is a sticky web that gives me great discomfort, disturbs me, gives me little room to go forward and say to my colleagues voting next Thursday, you have got an article of impeachment of which is high crimes and misdemeanor, treason and bribery. It is not here, Mr. Chairman. That is why we are suggesting in addition to the specifications issue, but it is not here, because it is grounded on too much didn't happen, too much not done. That is the spider web that we have.

I yield back, Mr. Chairman.

Mr. BUYER. Mr. Chairman, I hesitate to do this, but I ask unanimous consent that the gentlewoman be given 1 minute and ask that she yield to me.

Chairman HYDE. Hearing no objection, so ordered.

Ms. JACKSON LEE. Mr. Buyer, I will be happy to yield. I don't know why you hesitated to do it.

Mr. BUYER. Thank you. Thank you.

I heard you say that with regard to the claim of sexual harassment in regard to the Kathleen Willey case that we had made a decision to throw it out. I think that is completely false and is still within the jurisdiction of the Office of Independent Counsel, and I note that this committee subpoenaed Nathan Landow and took his deposition. I even read in the paper where he took the Fifth Amendment—over 70 times. So there is a lot of discussion still involved in that case. Just for clarification—

Ms. JACKSON LEE. I thank the gentleman.

Might I reclaim my time.

I was certainly aware of that and certainly would say to you I think it is pointed that Mr. Landow claimed the fifth amendment

and the fact that we are now voting on articles of impeachment without the Kathleen Willey materials before us today, and that is what I am speaking of, and it will not be before our colleagues next Thursday.

Chairman HYDE. The gentlewoman's time has expired.

Mr. Rogan of California.

Mr. ROGAN. Thank you, Mr. Chairman.

In reviewing the evidence respecting this particular article, Article II, this deals with perjurious statements in sworn testimony in the Paula Jones' litigation. In my opening statement this morning, I discussed the reasons why the President was required to answer specific questions about his personal life in that litigation.

It is important to remember that the judge in the *Paula Jones* case did not order the President to answer any random question about his personal life. However, because he was a defendant in a sexual harassment case, the judge did say that Ms. Jones was entitled to ask questions as to whether the President, while he was President or Governor, ever had a sexual relationship with a subordinate female employee over whom he had control in the workplace.

Now that question was not invented for the President, as I said this morning. It is a routine question that is asked in sexual harassment cases every day in courts throughout the country, because judges have to find out if the harasser has shown a "pattern of conduct" that will help the female victim prove her case.

Harassers in the workplace normally don't commit their offenses under the glare of television lights, where witnesses can observe their conduct. They like to get their victims alone and isolated, because they understand one of two things will generally happen: the victim, through intimidation, fear and isolation, will submit; or, the victim will not submit but because of fear and intimidation, they will never report it.

So that is why the law allows these questions to be asked. Typically, it is the only way a woman complainant ever has an opportunity to prove harassment in the workplace.

What is the message that we send to every victim of harassment in the workplace if the arguments that are being made from the other side are adopted? The message is this: if you have been harassed in the workplace, you had better keep quiet about it. Because if you do have the courage to come forward and if there is no physical evidence to prove it, and if you try to get evidence about potential conduct that may have happened with other women, the defendant in that case can come in and lie with impunity. Under their standard, the defendant will know the chances of ever being caught are minuscule. But in the unlikely event there happens to be DNA on some dress, or there is some other physical evidence, the defendant, especially if they are powerful or famous can come forward, bite their lip, say they are sorry, and suddenly embarrassment becomes a defense to sexual harassment.

One simply cannot say out of one side of one's mouth that one support the laws of harassment that protect women in the workplace and, in the same breath, defend the conduct of a political ally by saying, well, everybody lies under oath about sex, especially if he is the President and didn't want to be embarrassed.

If we set that standard, what happens the next time a President or a Governor or a Senator or a CEO decides to lie under oath in these cases? We have to make a decision: Are these cases important enough to give them the due respect of the law? Are we going to recognize them for what they are—assaults that often are vicious, intrusive, embarrassing and insulting to human dignity? Or are we going to simply look at the party affiliation and the job title that the defendant holds, and if it happens to comport with our own political philosophies, of who should be President, we give them a pass.

Now, my friend from Texas indicated that the *Paula Jones* case ultimately was dismissed. She is correct. But the law is clear: perjury occurs at the time the defendant committed the perjurious statement. The later disposition of the case is irrelevant. Otherwise, we would establish a policy that would allow one who was a good enough liar to go in and perjure oneself; if the lie was good enough during discovery, to get the case dismissed, and if later perjury was discovered, one could defend the perjury on the ground that the case was dismissed. They could claim, "I am immune from prosecution."

That is not the standard of the law. That should never be the standard of the law. And I don't believe any of my colleagues, on the other side, really want to see that become the standard of the law. I would suggest to them, as important as the presidency of Bill Clinton is to them politically, it is not so important to our Nation that we should adopt that as a standard for women in the workplace, or for our country.

I yield back.

Ms. JACKSON LEE. Would you yield the gentleman an additional two minutes so I can pose a question to him, Mr. Chairman?

Mr. ROGAN. I have no objection, Mr. Chairman.

Chairman HYDE. Without objection, the gentleman is recognized for two additional minutes.

Ms. JACKSON LEE. I thank my dear friend for his comment about where perjury holds. I think the point I was making about the dismissal of the case was made to the point about materiality, and I ask you, is the fact that I believe the opinion suggests that Ms. Jones had not made her case on the elements of sexual harassment, meaning that she had not been able in the facts of her case—putting aside the course and pattern, that she had been demoted, that she had not received benefits, that she hadn't gotten even a pay raise. In fact, I think there was some evidence that she had gotten flowers and stayed on the job.

So that was the point I was making. The case was being dismissed on the four corners of Ms. Jones' immediate case of whether she had made a case at that time upon her action dealing with the elements of sexual harassment. I don't know if the gentleman cares to respond to that inquiry. That is where I was going, not on the question of whether perjury holds or does not hold. The case was dismissed.

Mr. ROGAN. I thank my dear colleague for that clarification. That was a fair one to make. That was the judge's ultimate decision. I didn't think my colleague was suggesting that because the case was

dismissed, that we should somehow view that as something that would negate potential perjury.

Ms. JACKSON LEE. Thank you very much.

Chairman HYDE. Mr. Barrett, the gentleman from Wisconsin.

Mr. BARRETT. Mr. Chairman, I would like to make a couple of observations. Sometimes common sense isn't that common, but I just want to make a couple observations that I think might at least for me be common sense observations.

I can't sit here with a straight face and say that I think the President was telling the truth when he said he couldn't remember whether he was alone with Monica Lewinsky. I just can't do that. Just about everybody I know knows whether they were alone when they were having a sexual encounter with another person. So I just have to put that on the table.

But I have to put something else on the table, and that is that the system has worked. The case that was filed with Paula Jones was not a \$850,000 case. I think most people looking at it would say "This is not a \$850,000 case." If President Clinton had simply defaulted on the liability portion and gone to damages, I don't think it would have come to even 10 percent of \$850,000.

So the system worked because President Clinton was held accountable. Nobody settles a case that has been dismissed for \$850,000 unless they are terrified it is going to be reversed and there is going to be a huge judgment, or there is something else going on there. And here we all know what the something else was. It was that he felt that he could lower his exposure, both to this committee and the American people, by settling that case.

So I think that the system works. And when we talk about a perjury per se rule, I think we have to be careful. If a person is in a courtroom and is charged with speeding and says "Your honor, I wasn't speeding, my odometer was broken," and the odometer wasn't broken, is that perjury?

Certainly speeding laws are in effect so that lives are not lost, so one could argue it was a life or death issue. That person may have been going 85 miles an hour, but they were able to say that it was a faulty odometer and all of a sudden they are off the hook.

So we have to be careful. I think the Democrats have to be careful and I think the Republicans have to be careful as to what we do with this perjury bar and where we put it. And I think the framers of the Constitution in all their genius gave us some guidance, because I do think that the language of "treason, bribery, and other crimes and misdemeanors," without that phrase—it was dropped by the stylistic committee that we have talked about before—that phrase "against the United States" that the stylistic committee felt was implicit, gives us the guidance.

This was not an offense against our democratic institutions. Even if true, it was not an offense against our democratic institutions. It was not an offense against the body politic. It did not threaten our Republic. That doesn't mean it was right. It means that impeachment may not be the sanction that is necessary here, that there are other sanctions that are available.

Now it is true, as the gentleman insisted over there, that an individual can be prosecuted for perjury even after the case is settled, and if justice requires that in this case, so be it. I question whether

it would happen. I sat here, as many of you did, with the two witnesses who had been involved in perjury cases, and I found them both a little interesting.

One woman who had been involved was a basketball coach whose case was based on an article in *Sports Illustrated*. What we didn't really talk about was, she didn't like the article in *Sports Illustrated*, so she filed the lawsuit. She was the plaintiff. She was the one that invoked all the powers of the court to go after *Sports Illustrated* based on her false representations. So the entire lawsuit was based on a lie.

The other woman was the defendant, but she actually used perjury as a sword as well by saying to the Federal Government in a sense "I want you to immunize me for these damages." So she was trying to use it as a sword.

And I am not saying it is okay to use it as a shield, but I think we have to be careful to look at what the forefathers wanted. Did they want every offense to be an impeachable offense? That is my fear. My fear is we are going down the road where every offense becomes an impeachable offense, and I do not believe that that is what the forefathers had in mind.

So even though I think that the President was lying when he said he couldn't remember being alone with that woman, I do not think that that reaches the constitutional barrier or the constitutional mandate that this be an offense that threatens our democracy.

I yield back the balance of my time.

Chairman HYDE. The question occurs—

Mr. DELAHUNT. Mr. Chairman.

Chairman HYDE. Mr. Delahunt, yes.

Mr. DELAHUNT. I move to strike the last word. I will not take all five minutes.

I just want to associate myself with Mr. Barrett's comment about common sense. I don't know whether I agree with him in his recitation and his conclusions, but I do think there is a lot of common sense when we say that the President did take advantage of a convoluted, contorted description or definition of the term "sexual relations." But I think that we have got to remember, and I think the American people have to understand that it was the lawyers for Paula Jones that insisted on the definition. And I think that what he did, it provided him an opportunity to be nonresponsive, to evade, to obfuscate, and he did take advantage of that.

However, when we talk about perjury, it does not constitute perjury to evade, to obfuscate and not to respond. I clearly acknowledge that he wasn't forthcoming, but I don't want to divine his intent as to whether he intended to commit perjury or whether one can find that intention.

I dare say if the lawyers for Ms. Jones, and clearly they were highly regarded professionals and people of some considerable experience, asked those specific questions, we would have known. It might have presented a different case whether the President was going to embark upon perjurious testimony in that deposition.

But if there is an uncertainty, as I said before, if there is an ambiguity, if there is a cloud in murkiness, I think it is incumbent upon the fact-finders, and that is our role at this point in time, to

give him the benefit of the doubt. That is where I come down, and I really do think common sense plays a role.

And I can understand and respect the position of the counsel for Ms. Jones. But my memory is, I think it was Mr. Camarata who on one of the national TV stories acknowledged the fact that it was a contorted, convoluted definition and the President did take advantage of it.

Now, whether he committed perjury or whether he lied, it just can't be determined. And that is where I come down as far as the facts are concerned, because I really do believe, Mr. Chairman, that that concept of due process penetrates Article II, comes into the impeachment clause and creates a standard of proof that is clear and convincing. And I submit there has not been a clear and convincing body of evidence that can lead us to a conclusion that he did.

I yield back.

Chairman HYDE. The question occurs—we will have to go to the Republican side. Mr. Buyer.

Mr. BUYER. Thank you, Mr. Chairman. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for five minutes.

Mr. BUYER. I didn't speak on the first article. I wanted to reserve my time to speak now. As some of the drafting of the articles were being done, I wanted to thank my colleagues. We separated out the grand jury perjury from the other perjury, and I wanted to do that for a particular reason, because grand jury perjury is so serious.

I think the grand jury process is the integral part of our criminal justice system. It is the truth-finding mission. The Supreme Court described the grand jury's authority to compel testimony as "among the necessary and most important powers that ensures the effective functioning of government in an ordered society." The importance of the grand jury function is underscored by the fact that perjury in a grand jury proceeding is discussed separately than perjury in general.

The Supreme Court has noted the gravity of perjury in 425 U.S. 564: "In this constitutional process of securing a witness' testimony, perjury simply has no place whatsoever. Perjured testimony is an obvious flagrant affront to the basic concepts of the judicial proceeding." This case was in reference to grand jury perjury.

Under Article II we have the other forms of perjury, and that is in the interrogatories and the civil deposition in the Jones case. I would like to refer specifically to Article II, paragraph (2), which would be the January 17th, 1998 civil deposition, and speak in particular to the issue of perjury cases for feigned forgetfulness.

Mr. Ruff, the counsel for the President, was here and he testified that Bill Clinton has a great memory, one of the best memories of anyone he has ever known. A witness cannot use a phrase "I don't recall," "I don't remember," "I don't know," when in fact they do know. That is the purpose of the oath.

If we didn't care about the feigned forgetfulness, we would just say stand and tell the truth. We ask them to tell the truth, the whole truth, and nothing but the truth. So they can't say "I don't know" or "I don't remember" when in fact they do know, and they then want to play tortured word games.

Cases have been charged when witnesses claim “I don’t remember” when in fact they do. In *U.S. v. Chapin*, that is one of the Watergate cases, where one of the President’s men decided that in the investigation he would use this same mind game and verbicide that President Clinton has used, and claimed a feigned lack of memory. He was convicted. The court found that a feigned lack of memory is sufficient for a perjury conviction.

Now, when you bring these cases for feigned memory, the state of mind is very important, and it is proved by either direct evidence or by circumstantial evidence. In particular, there are two sections that I wanted to bring up about the feigned memory and why I believe it supports paragraph (2) and Article II. That is the issue of the hat pin and the gold brooch.

Now, what I find most interesting here is that on December 28th of 1997, it is a Sunday, and the President has Betty Currie provide access for Monica Lewinsky to the White House. They discuss the *Jones* case. But what I really find fascinating is that Ms. Lewinsky mentioned her anxiety about a subpoena by the *Jones* lawyers in reference to a hat pin, and the President said that sort of bothered him too. You see, he had a present knowledge about a hat pin because he gave that hat pin to Monica Lewinsky as a belated Christmas gift on February 28th of 1997.

So then during this civil deposition, there was a specific question, have you ever given any gifts to Monica Lewinsky? “I don’t recall. Do you know what they were?”

Question: “A hat pin.”

Response: “I don’t—I don’t.” You see, he stutters. Stuttering is very important, because you challenge the demeanor of the witness. Bill Clinton is not the kind of individual that I have known who stutters. He says “I, I, I, I don’t remember, but I certainly could have.” He then was questioned, “Do you remember giving a gold brooch?” He says no.

Well, see, the gold brooch was a specific gift given by Monica Lewinsky. She testified that the President had given her a gold brooch and as a matter of fact, she made contemporaneous statements to four of her friends about the gold brooch.

You see, uncooperative attitude is also—Mr. Chairman, I ask unanimous consent for two additional minutes.

Chairman HYDE. Without objection.

Mr. BUYER. Uncooperative attitude is also relevant in this discussion about state of mind. The President’s defense said the President had specific intent to be evasive, incomplete, misleading. That goes directly to his state of mind, and that is the circumstantial evidence with regard to this feigned memory.

You can’t answer questions, whether it is in interrogatories, requests for admissions or before a grand jury, in trial or even in a civil deposition, “I don’t know,” “I don’t recall,” “I don’t remember”, if in fact a person that knows exactly what they are doing, using tortured words, hairsplitting, and verbicide, actually murder of the English word, the plain-spoken word. This is unacceptable, whether it is in a civil court proceeding or in a criminal court proceeding.

So I believe that this charge with regard to perjury, not only in the interrogatory in the *Jones* case but also here in the civil deposition, is more than substantiated. What bothers me is that it is

not—my colleagues say to my left, he was being deceitful because he wanted to hide a sexual affair.

Well, true. But tell the rest of the story. What was his motive to lie, which goes to the circumstantial evidence? His motive to lie wasn't just to hide a sexual affair, but it was to win the case. He was a defendant in the sexual harassment case, and he wanted to win that case, and he wanted to win it by all means possible. He felt in his heart that it was a politically motivated lawsuit, therefore it justified his actions to not only lie but to obstruct justice.

Chairman HYDE. The gentleman's time has expired.

Mr. BUYER. I ask unanimous consent for 30 additional seconds.

Chairman HYDE. Without objection.

Mr. BUYER. I will conclude with this. It is so important, what were his justifications in his own mind.

We had two witnesses, two women who came before this committee who went to prison, one in particular who lied in a sexual harassment case, in particular for obstruction of justice, and she said, "You know, what I did was wrong. I went to prison for it. I can no longer practice law, I can't practice medicine. I will accept the consequences."

But this is not just to hide an affair, folks. The President wanted to win the case by all means possible, including lying and the obstruction of justice, which will be found in Article III. I yield back my time.

Chairman HYDE. The gentlewoman from California.

Ms. LOFGREN. Thank you, Mr. Chairman. I believe that it has been adequately covered by my colleagues that whatever offenses are alluded to in this article, whether true or not, would not constitute conduct that threatens our institutions and the form of government of the United States, and therefore may not constitute a grounds for impeachment.

However, I did want to briefly raise an issue. I see it is a little after 6 o'clock. We are close to voting on Article II, and I was interested in listening to Mr. Buyer's comments about the Chapin case, in which "I don't remember" and "I don't know" was enough to get a conviction of Mr. Chapin because of his feigned lack of memory.

My recollection is that that was actually testimony given to one of the congressional committees. Which reminds me that I have yet to receive an answer to the three questions I asked on the 19th of November to Mr. Starr, the three questions I asked that he said he did not remember and he would get back to me.

I wrote to him on the 24th and again on the 2nd. Mr. Conyers has written and most recently, Mr. Chairman, you and Mr. Conyers wrote together. I had understood that he was going to answer the questions, and I don't understand why those answers have not been received. It does not require an essay, just yes or no. And I am very concerned that we are not getting answers and we are already halfway through the deliberations.

Chairman HYDE. Would the gentlewoman yield?

Ms. LOFGREN. I certainly would, Mr. Chairman.

Chairman HYDE. Diana Schacht, who is right there with you, has the latest word and will whisper to you.

Mr. WATT. They are working on them.

Ms. LOFGREN. I am advised that they don't have them yet and they are working on them.

Chairman HYDE. All we can do is ask. We are asking.

Ms. LOFGREN. I understand that. Mr. Scott made an issue of his questions and eventually got a letter. I am hoping that by making an issue of my three questions, I will get the affidavit that I expect, and I really am concerned. We are almost through, and it is really three questions that are yes or no answers, and I wanted to raise the issue. I think it is terribly unfair, and makes all of us very concerned and even suspicious.

That is all I have to say on this subject.

Mr. CONYERS. Will the gentlelady yield so I can associate myself with her remarks?

Ms. LOFGREN. I certainly will, Mr. Conyers.

Mr. CONYERS. I think this has been well over a week that we have been waiting for the response, and it seems like that it could have been a little bit more expeditious than it was.

Ms. LOFGREN. It has been actually not quite a month since the questions were first posed, a little shy of a month. I will yield back. I know how the vote is going to go on this. I think it is inappropriate, but I expect that we either will get an answer to these questions or will have to take some other more drastic action, and I would yield back the balance of my time.

Chairman HYDE. Mr. Pease, the gentleman from Indiana.

Mr. PEASE. Thank you, Mr. Chairman. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for five minutes.

Mr. PEASE. It is my intention actually to yield to my colleague Mr. Canady, because I had intended to point out a matter that has since been pointed out by my colleague from Indiana, Mr. Buyer, and that is that this article has been referred to generally as the Paula Jones deposition article. While most of the material in the article does deal with the *Paula Jones* deposition, there are matters dealing with alleged false statements by the President in interrogatories involving the Paula Jones case as well, those having been made in December of 1997.

That having already been addressed, I will yield to my colleague, Mr. Canady.

Mr. CANADY. Thank you, Mr. Pease, I appreciate that. I want to focus on a point that has been mentioned previously, I think every point has been mentioned at some point previously, but this is one that hasn't been mentioned for a while, and I think it is important for us to keep this in mind as we are making a judgment about these matters. And it doesn't focus on the specific facts here.

As I have stated before, I think that it is clear that the President went into the deposition, lied repeatedly, willfully, and I believe that at least on some of these matters there is pretty general agreement, at least when he testified that he couldn't remember or had no specific recollection of ever being alone with Ms. Lewinsky. There may be others other than Mr. Nadler who believe that that is truthful, but I think most of us understand that that was a false statement.

But let's put this in context. This House has impeached and the Senate has removed from office Federal judges for lying under

oath. Just to mention two of them recently, Harry Claiborne in 1986 was impeached for filing a false income tax return, signing a false statement on his income taxes. Judge Walter Nixon was impeached in 1989 for lying before a grand jury.

The key thing in both these cases was that there was an undermining of the integrity of the office held by the judge. The judge did something that was inconsistent with the position that the judge held. It didn't necessarily directly affect the judge's performance of his official duties, but it was inconsistent with the trust that had been given to him in that particular position.

Now, it is contended that these impeachments of the Federal judges really aren't relevant for our present considerations, that somehow we should set a lower standard for the President of the United States than the standard that has already been set by this House and by the Senate for a Federal judge. I simply disagree with that. I don't think it makes sense for us to set a lower standard of integrity for the President of the United States than we would set for a Federal judge.

Is the integrity of a Federal judge more important than the integrity of the President of the United States under our system of justice? Now, the President, it is important to understand, appoints Federal judges, including members of the Supreme Court. He appoints the Attorney General and the FBI director. Do we really want to take the position that we want someone who repeatedly lied under oath in a calculated effort to defeat the rights of another citizen, appointing Justices of the United States Supreme Court? Do we want someone who is guilty of repeated acts of perjury appointing the Attorney General or the FBI director?

What does that do for the system of justice in this country? What does that say about our view of the rule of law? What does it say about our respect for the rule of law in this country?

I will have to tell you, I think it would send a very bad message. It is not the kind of message that we on this committee should be sending, and that is why I would urge my colleagues to look at these charges against this President in the proper context and understand the extreme seriousness of having the President of the United States go into a deposition and raise his hand and swear to tell the truth, the whole truth and nothing but the truth, then violate that oath and do so with impunity under our system of justice.

I yield back the balance of my time.

Chairman HYDE. The gentleman from New Jersey, Mr. Rothman.

Mr. ROTHMAN. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for five minutes.

Mr. ROTHMAN. Thank you, Mr. Chairman.

The American system of government that was created by our Founders, was a revolutionary form of government in the 1700's, revolutionary to have a strong President elected for four years at a time, with two other branches of government as the checks and balances, judiciary and legislative. But it was a revolutionary form of government, and they gave the President a great deal of power.

They said they wanted a strong and stable executive. And I think, as others have pointed out, that a part of America's great success, aside from the goodness and greatness of its people, is the

fact that our form of government has allowed us some stability, certainly stability at the top rather than having parliamentary removals of prime ministers and leaders year after year.

But the framers did give that opportunity for the people's representative, the Congress, to get rid of their choice even in the middle of that IV years, but they set a high standard. As I mentioned earlier today, they were worried that maybe one political party, if it controlled the Congress, might want to get rid of the President of another political party without sufficient cause. So they set the bar for impeachment very high: treason, bribery, high crimes and misdemeanors.

Someone suggested that maybe they should add failure to adhere to good behavior. The framers of the Constitution rejected that notion. They said for judges, yes, that should be the standard, good behavior, but not for the President. For the President there is only treason, bribery, and other high crimes and misdemeanors.

And while we may debate whether they made a mistake or not, they did it that way. We have been living under that system for over 200 years. And I dare say if someone wants to change the definition—the standard of impeachment for our Constitution, they have got to do it by getting the people to approve that change first.

I want to make another point. It has been said that we must take on the responsibility and the burden of protecting litigants in civil sexual harassment cases. Certainly those are extremely important cases, and I am glad the laws are on the books to protect people who have been sexually harassed so that they can be compensated for the harassment.

But the question is whether it is the job of the House Judiciary Committee to enforce the sexual harassment laws, or isn't it, in fact, the job of the civil courts to enforce the sexual harassment laws? Because if President Clinton were found to have lied in the civil deposition in the *Paula Jones* case and the case continued on, the civil court judge could have imposed fines and other punishments on the President and order that he be deemed to have violated her civil rights, and treble damages and attorneys fees. Perhaps that is why the President settled that civil case.

So the President was accountable. The sexual harassment law was observed and enforced by the civil court system. And the rule of law was observed even against the President. And if the President committed some criminal act, if he committed perjury, which has not been proved, but if he committed perjury in the course of the sexual harassment case, there are criminal courts that can put him in prison for that.

My good friend from Florida, I believe, Mr. Canady, was asking if we want to set a different standard for Presidents than for judges? Well, the nuclear bomb of punishments, impeachments, applies only to Presidents, only if the burden of proof has been met that treason, bribery, or other high crimes and misdemeanors has occurred.

I would say that if we want to punish our President for waving his finger at us and lying to us about his relationship with Ms. Lewinsky, if we want to punish him for his adulterous and wrongful relationship with an intern that occurred in the White House, in our White House, which most people say does not rise to the

level of treason, bribery, and high crimes and misdemeanors, then we should censure the President for that wrongful behavior and show our children that Presidents who lie and behave so dishonorably will be punished.

But do we want to create a precedent for our Constitution where the burden of proof has not been met on these charges regarding Ms. Lewinsky and for the first time, remove a sitting President of the United States on these charges.

Chairman HYDE. The gentleman's time has expired. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. I thank the Chairman. It's obvious that the President lied numerous times under oath in his deposition in the Paula Jones civil rights suit against him. There were numerous times when the President falsely claimed that he could not recall very memorable events. His failure of recollection really strains credibility.

For example, President Clinton claimed in his Jones' deposition that he could not recall whether or not he gave any gifts to Monica Lewinsky, even though he gave her more than a dozen gifts. And remember, he was under oath. He swore to tell the truth, the whole truth, and nothing but the truth when he said that.

Further, the President and Ms. Lewinsky specifically discussed a hat pin which he had given her and was under subpoena in the Jones case. And that was less than 3 weeks before his deposition; however, he could not remember giving it to her. That's what he claimed. And he was under oath. Remember that. That's very important. This failure to recollect is just not credible. And since he was under oath, it clearly constitutes perjury.

In addition, as I pointed out a few days ago, when the White House released the 184-page so-called defense papers that they sent to us the other day, the President's continued strained definitions, continued evasions, and outright falsehoods do not withstand simple reasonable interpretation.

For example, in that defense, the President's lawyers claimed that the word "alone" does not necessarily mean alone. No, according to their definition, alone is a term that is vague, unless a particular geographic space is identified. It depends upon the geographic context. That's how we determine what "alone" means.

I am offended by the suggestion that lying under oath to defeat a civil rights suit is somehow not serious. Our courts have repeatedly emphasized that perjury in a civil proceeding is, indeed, just as serious as criminal perjury. And courts have rejected any suggestion, implicit or otherwise, that perjury is somehow less serious when made in a civil proceeding.

Perjury, regardless of the setting, is a serious offense that results in incalculable harm to the functioning and integrity of the legal system, as well as to private individuals. That's a direct quote from the case *U.S. v. Holland*. In fact, Mr. Chairman, over 100 people are in Federal prison for perjury, and thousands and thousands in state prisons all over this country. And I think they would agree that civil perjury is a serious offense.

Our whole judicial system is dependent upon the truth and upon the idea that no man is above the law. I believe that the President,

the chief law enforcement officer, should also be subject to the law that he is supposed to enforce.

I yield back the balance of my time.

Chairman HYDE. The question occurs—

Mr. MEEHAN. Mr. Chairman.

Chairman HYDE [continuing]. On Article—

Mr. MEEHAN. Mr. Chairman.

Chairman HYDE. Oh, Mr. Meehan.

Mr. MEEHAN. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. MEEHAN. I won't take all of 5 minutes, Mr. Chairman. But as I'm sitting here listening to the debate go back and forth, and sometimes it's legal issues and elements of the crime we're trying to prove, other times it's impeachment and Article II, Section IV of the Constitution.

And I am just thinking about what a Senate trial is going to be like if the Republican members of the committee, when they vote for this article, have their way. And I just can't believe, as I think about it, a prolonged Senate trial on the scope of the terms sexual affair, sexual relationship, when we saw in Mr. Lowell's presentation how difficult it was in the civil deposition for the judge and the attorneys to deal with the whole issue of what constitutes sexual relations.

And it went on and on and on on the tape here. And there was definition A and definition B and definition C. And I think about how Americans are going to react when inevitably Monica Lewinsky is called to the stand and goes through grueling questioning. And I think about all the others, Linda Tripp and everyone else that's going to be called to the stand as one attempts to prove this case, all the while Social Security reform is put on hold, health care reform, that's all put on hold, school repairs all put on hold, all so that we can have a trial in the United States Senate, determining what sexual affair means, what sexual relationship means, where the President put his hands and when he put them there.

Mr. Chairman, lying about fully consensual sexual conduct even under oath simply does not rise to the level of treason, bribery, or other high crimes and misdemeanors. It's not an offense of the magnitude of treason and bribery. It does not speak clearly and convincingly and concretely to the President's capacity to govern.

So as we proceed, I hope that we really think about what this trial is going to be like. And I hope the American people focus on the fact that, if this committee has its way, when 1999 comes around, this country is going to have to brace for a trial of impeachment for the second time in our history, defining the terms sexual relations, cross-examining Monica Lewinsky and the rest of the people that have been subject to this investigation.

I cannot believe that we are going to do this when 65 to 70 percent of the Americans are begging us, begging us not to do this, begging us to find reason, to find bipartisanship, to find a middle ground so that we can punish the President without punishing the country and without putting our people and our country and this institution through this. I only hope and pray that some way between now and the floor of the House that middle ground is reached.

I return the balance of my time, Mr. Chairman.

Chairman HYDE. The question occurs on Article II, as amended. All those in favor will say aye; opposed nay.

In the opinion of the Chair, a record vote had best be called. The Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. McCollum votes aye.

Mr. Gekas.

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas votes aye.

Mr. Coble.

[No response.]

The CLERK. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly votes aye.

Mr. Canady.

Mr. CANADY. Aye.

The CLERK. Mr. Canady votes aye.

Mr. Inglis.

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis votes aye.

Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte votes aye.

Mr. Buyer.

Mr. BUYER. Aye.

The CLERK. Mr. Buyer votes aye.

Mr. Bryant.

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant votes aye.

Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot votes aye.

Mr. Barr.

Mr. BARR. Aye.

The CLERK. Mr. Barr votes aye.

Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins votes aye.

Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

The CLERK. Mr. Hutchinson votes aye.

Mr. Pease.

Mr. PEASE. Aye.

The CLERK. Mr. Pease votes aye.

Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon votes aye.  
Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
[No response.]  
The CLERK. Mrs. Bono.  
Mrs. BONO. Aye.  
The CLERK. Mrs. Bono votes aye.  
Mr. Conyers.  
Mr. CONYERS. No.  
The CLERK. Mr. Conyers votes no.  
Mr. Frank.  
Mr. FRANK. No.  
The CLERK. Mr. Frank votes no.  
Mr. Schumer.  
Mr. SCHUMER. No.  
The CLERK. Mr. Schumer votes no.  
Mr. Berman.  
Mr. BERMAN. No.  
The CLERK. Mr. Berman votes no.  
Mr. Boucher.  
Mr. BOUCHER. No.  
The CLERK. Mr. Boucher votes no.  
Mr. Nadler.  
Mr. NADLER. No.  
The CLERK. Mr. Nadler votes no.  
Mr. Scott.  
Mr. SCOTT. No.  
The CLERK. Mr. Scott votes no.  
Mr. Watt.  
Mr. WATT. No.  
The CLERK. Mr. Watt votes no.  
Ms. Lofgren.  
Ms. LOFGREN. No.  
The CLERK. Ms. Lofgren votes no.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. No.  
The CLERK. Ms. Jackson Lee votes no.  
Ms. Waters.  
Ms. WATERS. No.  
The CLERK. Ms. Waters votes no.  
Mr. Meehan.  
Mr. MEEHAN. No.  
The CLERK. Mr. Meehan votes no.  
Mr. Delahunt.  
Mr. DELAHUNT. No.  
The CLERK. Mr. Delahunt votes no.  
Mr. Wexler.  
Mr. WEXLER. No.  
The CLERK. Mr. Wexler votes no.  
Mr. Rothman.  
Mr. ROTHMAN. No.  
The CLERK. Mr. Rothman votes no.

Mr. Barrett.

[No response.]

The CLERK. Mr. Hyde.

Chairman HYDE. Aye.

The CLERK. Mr. Hyde votes aye.

Mr. COBLE. Mr. Chairman.

Chairman HYDE. The gentleman from North Carolina.

The CLERK. Mr. Coble is not recorded, Mr. Chairman.

Mr. COBLE. I vote aye.

The CLERK. Mr. Coble votes aye.

Chairman HYDE. Mr. Barrett from Wisconsin.

The CLERK. Mr. Barrett votes no.

Mr. GRAHAM. Is this Article II?

Chairman HYDE. Yes, Mr. Graham.

Mr. GRAHAM. No.

The CLERK. Mr. Graham votes no.

Chairman HYDE. Have all voted who wish?

The Clerk will report.

The CLERK. Mr. Chairman, there are 20 ayes and 17 noes.

Chairman HYDE. You will try—could we have some order please. Could I have the count again.

The CLERK. Mr. Chairman, I have 20 ayes and 17 noes.

Chairman HYDE. And the amendment—and the article is—

Mr. BARRETT. How is Mr. Barrett recorded?

The CLERK. Mr. Barrett is recorded as a no.

Mr. BARRETT. Thank you.

Chairman HYDE. And the article is agreed to.

Mr. CONYERS. Mr. Chairman, I have a unanimous consent request.

Chairman HYDE. The gentleman from Michigan.

Mr. CONYERS. On behalf of my colleague, Maxine Waters of California, I wanted to put in the record here the hearings in the Constitution Subcommittee focusing on curtailing remedies for discrimination in the 104th and 105th Congress and request for hearings on the persistence of discrimination in this Nation.

Chairman HYDE. You are—

Mr. CONYERS. I ask unanimous consent that this be entered into the record.

Chairman HYDE. Without—

Mr. CANADY. Mr. Chairman, reserving the right to object.

Chairman HYDE. The gentleman reserves the right.

Mr. CANADY. I'm just curious about how voluminous this is and whether this really has the proper place in the proceedings here.

Mr. CONYERS. Mr. Chairman, I can put this in in another place in the proceedings. It doesn't have to go in here. I will withdraw it.

Mr. CANADY. Thank you.

Mr. CONYERS. You are welcome.

Chairman HYDE. Very well. The committee will now consider Article III.

Are there any amendments to Article III? If not, I will—

Mr. SCOTT. Mr. Chairman.

Chairman HYDE. The gentleman from Virginia.

Mr. SCOTT. Are you asking for—well, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Are there any amendments?

Chairman HYDE. There are no amendments. It is the chair's intention when we finish this article to adjourn for the evening and come back at 9 a.m. tomorrow morning. I just wanted to announce that for scheduling purposes.

Now, does anyone seek recognition? Was that Mr. Scott? Yes, Mr. Scott.

Mr. SCOTT. I move to strike the last word, Mr. Chairman.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, first of all, I think we ought to reflect a bit about the facts on this article. We have things like a false affidavit and false statements. The gentleman from New York, Mr. Nadler, has spared me the necessity of quoting from the dictionary about certain words. But Monica Lewinsky was not provided with a contorted definition that the judges and lawyers argued over. She said what she believed certain words mean.

And there's evidence in this case, the tape recording, when she didn't know that she was being recorded or being set up by Linda Tripp, she said what she thought certain words meant. And Linda Tripp, who knew they were being recorded, tried to get her to change her mind about the definition, but Monica Lewinsky wouldn't.

Also, in the witness tampering, there has to be a witness for there to be tampering. And after you review the conflicting uncross-examined hearsay and dubious inferences used to make the other elements of this article, you still have to place the articles in the—the allegations in the context of impeachment.

Our authority to do what some wanted to do but couldn't do with the polls, that is, defeat Bill Clinton, that authority is limited to treason, bribery, or other high crimes and misdemeanors. Now "high" is a word that doesn't really—isn't really used very much in America, because it's an English word against the State.

Our experts at our hearing also told us to pay close attention to another word in the phrase, and that is "other." It's treason, bribery, or other high crimes and misdemeanors; that is treason, bribery, and stuff like that and its effect against our government. That is, there has to be a subversion of the Constitution. There has to be a danger in the President staying in office. That is, the President must be removed because of treason, bribery, or other high crimes and misdemeanors.

He will later be subject to the rule of law just like everybody else. And when we review these allegations to see if they are impeachable offenses, we have to remember what impeachment is for. It's to protect our Nation.

So we look at the history of impeachment and look at what kinds of offenses have been impeachable offenses, and we look at Watergate and see the corrupt use of the FBI, CIA, and Internal Revenue, official use of those agencies, and lying about it have been impeachable offenses in Watergate, but \$500 million tax fraud where the evidence, according to those who were there, was overwhelming and certainly stronger than the hearsays and inferences we're rely-

ing on today, but they did not support the article involving half a million dollars tax fraud which was certainly a crime, a serious crime, but not a high crime.

Furthermore, our experts unanimously agreed that the term “treason, bribery, or other high crimes and misdemeanors” does not cover all felonies. So we cannot remove a President because he, quote, failed to faithfully execute the laws or when we can’t stand him being President anymore.

The rule of law restricts our authority to act to treason, bribery, or other high crimes and misdemeanors. So even if we believe the hearsay and inferences we have before us, there has been no showing that the conduct constitutes a threat to our constitutional form of government. And that’s why historians and legal scholars have told us that, whether or not these allegations are true, they are not impeachable offenses.

I yield back the balance of my time.

Mr. SENSENBRENNER [presiding]. The gentleman yields back the balance of his time.

I rise in support of the article of impeachment and recognize myself for 5 minutes.

Mr. Chairman, this article of impeachment, Article III, is the one that relates to obstruction of justice by President Clinton. There are seven specifically mentioned instances of alleged obstruction of justice that are contained in this article, and it does have the words “one or more” in that, so we don’t have the problem of making that interpretation.

There will be members on the Republican side of the aisle who will specifically address themselves to each of these instances of obstruction of justice. But I think that if we looked at it from the criminal context, which we are not here, but there have got to be three elements of what makes obstruction of justice.

First, there’s got to be a pending Federal judicial proceeding. There was in this case with the Paula Jones’ civil rights lawsuit.

Secondly, the defendant had to know of the proceeding. Mr. Clinton was the civil defendant in that lawsuit. He had been served the papers on it.

And, third, that the defendant acted corruptly and with intent to obstruct and interfere with the proceeding or the due administration of justice.

The first of the seven instances that are contained in Article III states that on or about December 17th, 1997, William Jefferson Clinton corruptly encouraged a witness in the Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false, and misleading.

In his deposition testimony in January of this year, the President said that he spoke with Monica Lewinsky before Christmas and that, while he was not sure that she should be called to testify in the Paula Jones’ civil suit, she might qualify or something like that.

The President denied encouraging Ms. Lewinsky to lie about filing a false affidavit. But in answer 18 to the 81 questions submitted to this committee, he did say that he told her that, quote, other witnesses had executed affidavits and there was a chance that they would not have to testify, unquote. Hint, hint.

Ms. Lewinsky was more emphatic on the subject in her grand jury testimony. When she asked the President what she should do if she was called to testify, he said, "Well, maybe you can sign an affidavit." The point would be to deter, to prevent me from being disposed so that they could range anywhere between just somehow mentioning innocuous things or going as far as maybe having to deny any kind of relationship. That's what Monica Lewinsky told the grand jury.

She further stated that she was 100 percent sure, 100 percent sure that the President suggested she might want to sign an affidavit to avoid testifying. And that was in an independent counsel interview, false statements of which are a Federal crime.

Ms. Lewinsky also noted the President never explicitly instructed her to lie about the matter. Rather, since the President never told her to file an affidavit detailing the true nature of their sexual relationship, which would only invite humiliation and prove damaging to the President in the Paula Jones' case, she contextually understood that the President wanted her to lie. That also is in the OIC referral.

Furthermore, attorneys for Paula Jones were seeking evidence of sexual relationships the President may have had with other State or Federal employees. Such information is often deemed relevant in sexual harassment lawsuits to help prove the underlying claim of the plaintiff, and Judge Susan Webber Wright ruled that Paula Jones was entitled to this information for purposes of discovery.

Consequently, when the President encouraged Monica Lewinsky to file an affidavit, he knew that it would have to be false for Ms. Lewinsky to avoid testifying. If she filed a truthful affidavit, one acknowledging a sexual relationship with the President, she certainly would have been called as a deposition witness, and her subsequent truthful testimony would have been damaging to the President, both politically as well as legally.

I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman.

Mr. SENSENBRENNER. For what purpose does the gentleman from Michigan rise?

Mr. CONYERS. I rise to strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. In reviewing Article III that is before us, obstruction of justice, I review the seven clauses. And it's almost like we have come here this evening and have never examined the facts in the matter. These have all been gone through repeatedly. Each one can be very carefully answered.

The filing of an affidavit by Ms. Lewinsky, is there anyone here who doesn't know that she swore that no one ever asked her to lie and that the decision as to what the affidavit should contain was a decision made by her alone, and that the President said that Ms. Lewinsky might be able to avoid testifying by filing a limited, but truthful affidavit, a perfectly legal activity on his part and, as a matter of fact, what her own lawyer ended up doing?

In clause 7, statements to aides, the President made statements to his staff on January 21st, 23rd, and 26th in order to protect his family from discovering the Lewinsky relationship. He could not have known that his staff would be called at that time before the

office of independent counsel's grand jury. The President's denial of his relationship with Ms. Lewinsky to his staff was after he had already made the same denial to the public. The President was not then singling out his staff. He denied the affair to everyone. So he was not denying the affair to his staff with the idea that they would be called before the independent counsel grand jury.

Clause 6, attempting to influence Betty Currie. We have heard repeated testimony that the President of the United States did not attempt to influence Betty Currie's testimony in any proceeding when he spoke with her on the Sunday and the Tuesday, January 18th and 20th respectively, before the news regarding Ms. Lewinsky broke in the media.

The President was concerned about the media reaction to what he knew would be a leak of his deposition testimony. He could not have known about the OIC investigation. So, therefore, he could not have thought that Ms. Currie was or could be on a witness list.

With reference to statements by the President's lawyers, clause 5, there's no evidence that the President knowingly allowed his lawyer to make false representations in the Jones' deposition. In fact, the President testified that he was not focusing on his attorney when he made the statements. Instead, he was concentrating on his own testimony in his deposition. There is no evidence, none, that the President encouraged his attorney to make those statements or even had any idea that his attorney would make them for him.

Here we go with clause 4, the job search. How many times has this been put into evidence that there's nothing connecting the efforts to help Ms. Lewinsky find a job with Ms. Lewinsky's submission of an affidavit. She's testified that no one ever promised her a job. That may be the 45th time that phrase has been uttered in this room.

If the President were intent on getting her a job, he clearly would have done that and could have done that. The fact that he did not know shows that there was no linkage with her affidavit.

And then, of course, we have the gift situation, in which all witnesses agree the job search started long before Monica Lewinsky was named on the Jones witness list. Mr. Chairman, I ask unanimous consent to put my statement into the record at this point.

Mr. SENSENBRENNER. Without objection, so ordered.

[The information was not received at time of press.]

Mr. CONYERS. Could I return any time that may remain.

Mr. SENSENBRENNER. The gentleman's time has expired. For what purpose does the gentleman from Arkansas seek recognition?

Mr. HUTCHINSON. I move to strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HUTCHINSON. Mr. Chairman, I wanted to address the second paragraph of this article of impeachment. The second paragraph provides that, on or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false, and misleading testimony if and when called to testify personally in that proceeding.

This is in reference to a call that occurred on December 17th at 2 a.m. or 2:30 a.m. in the morning by the President of the United

States. The President of the United States learns that Monica Lewinsky is on the witness list, and he calls her first to purportedly advise that Betty Currie's brother has passed away; but of course the real purpose was to advise her that, bad news, your name is on the witness list. And they discuss this.

And he went ahead to say, if you are subpoenaed, which of course he knew was coming, you should contact Betty. And then he told her, "You can always say you were coming to see Betty or that you were bringing me letters," according to the testimony of Monica Lewinsky.

And this is very important, because here you have a witness, without any question, who was going to be a witness in a Federal civil rights suit; and in this case, the President personally calls this witness to let her know that she is going to be subpoenaed, that she is on the witness list, and how she should handle it. The call is to encourage her not to provide truthful testimony, but to provide false testimony and to provide a cover story, suggesting "you can always say." And this is confirmed in the grand jury testimony of Monica Lewinsky.

Now the President denies this in part. He admits that that telephone conversation took place, and so there is some corroboration to it. But he has no specific recollection of the details of the conversation. But when Monica Lewinsky has a clear recollection and the President has no specific recollection, I think that the weight of the evidence goes to the testimony of Monica Lewinsky.

Second, the cover story is consistent with their pattern of deception. Prior to this, they had arranged the cover story. And I understand that's not in a legal context. But when it moved into the legal context, they continued that scheme to cover up in the legal context by suggesting the same cover story would apply.

And so there's no dispute about the call. It is consistent with the pattern of deceit. There is a motive obviously for the President to encourage the perjury. And then it is also consistent with the false affidavit that is ultimately provided by Monica Lewinsky.

I would also call upon the testimony of Mr. Jordan who confirmed in his testimony before the grand jury that President Clinton knew that Monica Lewinsky was going to execute the false affidavit. And he kept the President very closely apprised as to every development with that affidavit.

And so when I look at this matter from the standpoint of clear and convincing evidence, I believe that there is clear testimony, and because of the corroboration, because of the motivation behind it, the other testimony of Vernon Jordan, this allegation does rise to obstruction of justice by clear and convincing evidence.

I yield back.

Mr. SENSENBRENNER. The gentleman's time has expired. For what purpose does the gentleman from New York rise?

Mr. SCHUMER. I moved to strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHUMER. I thank the gentleman. And let me say that on the—particularly on the second article, while I—I certainly believe that, even assuming the facts that Mr. Starr presented and Mr. Schippers reiterated, it doesn't rise to the level of impeachment.

I can see the argument among my colleagues that, in a basic criminal context or a civil context, there's a strong argument on the other side. And in Article I, to a somewhat lesser extent, I think the gentleman from Massachusetts summed that up as well. But, yeah, it's sort of trivial, but you might be able to make a very legalistic argument, albeit one that wouldn't come close to the level of impeachment.

But when we get to Articles III and IV, we really begin to reach. Article III reaches. Article IV reaches and almost gets into the theater of the absurd.

But today we are here to address Article III. I would submit that, based on a standard of clear and convincing evidence, which the majority professes to use, we are not even close. Yes, you can string together facts and, by surmise, say this was the motivation; but there is, at the very least, an equally plausible explanation that there was a different motivation. And there is not one direct fact that shows that the motivation attributed, for instance, by the gentleman from Arkansas to the President is the motivation.

How can we submit articles of impeachment based on surmise? Even Mr. Starr, when he was here, admitted it was surmise.

So take the job hunt. Yes, there was a job hunt. We all agree there was a job hunt. We all agree it started before there was any knowledge of a judicial process of a Paula Jones suit or later a grand jury, and continued after. We all agree it was a very similar job search. And we all agree there are two plausible explanations after the job—after it became clear that there was a Paula Jones lawsuit and a deposition: One, to get Monica Lewinsky away from the scene, to prevent the continuation of an illicit affair, and, two, to keep Monica Lewinsky quiet before a judicial proceeding.

One explanation I would argue is as plausible as the next. In fact, the noncriminal explanation is more plausible because it began before we even knew there was a possible intervention, judicial intervention. And, yet, the majority has the temerity to say, oh, no, we know by clear and convincing evidence that he was doing it to prevent her from testifying.

I ask you, where is your direct evidence? Where is it more than surmise? And you have an obligation, in my judgment, to make sure that it is more than surmise if you are asking us to impeach, if you are asking America to impeach its President.

The same thing with the Monica Lewinsky story. Yes, it is true, we all admit, that the President and Monica Lewinsky had a cover story, a story that was not truthful, that was of lies. They had it, once again, before, before any knowledge of a grand jury, any knowledge of a deposition.

And, again, just on the basis of surmise, the majority says, oh, yes, they did it to deceive in the deposition and in the grand jury. That's not good enough, ladies and gentlemen. You need more than that to be clear and convincing in a court of law. You certainly need more than that to impeach a President.

And, finally, because my time is ending, and finally, listen to this one, ladies and gentlemen. The President didn't tell the truth to his cabinet about Monica Lewinsky because he thought they might later be called into a grand jury, and he wanted to mislead them.

I ask unanimous consent for an additional minute.

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. SCHUMER. I ask unanimous consent for an additional minute.

Mr. SENSENBRENNER. Without objection, the gentleman will be granted an additional minute. Hearing none, so ordered.

Mr. SCHUMER. I thank the gentleman.

Imagine putting a count in here that says, well, we somehow think that the President would lie to his cabinet, would tell the—not tell the truth to his cabinet, when he had no idea there would be a deposition and no idea that there would be a grand jury proceeding, because he wanted them not to tell the truth. We can do a lot better. We must do a lot better than that.

This is a string put together piece by piece that leads to a conclusion that is so demonstrably stretched that, when people ask why do some out there believe that the motivation here is more partisan than coming directly on the facts, I would not argue that about counts 1 and 2, but when you look at count 3, and particularly at count 4, it is logical, not provable, but logical to say some people on the other side are out to get the man regardless of the facts.

Mr. SENSENBRENNER. The man's time has again expired.

For what purpose does the gentleman from South Carolina rise?

Mr. INGLIS. To strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. INGLIS. Mr. Chairman, I think it's important to bring out some facts about paragraph 3 in this part of this article. Here we are talking about the scheme to conceal evidence that had been subpoenaed in that Federal civil rights action brought against the President. And of course we heard from minority counsel that, and the President's counsel, that this was not orchestrated by the President and, therefore, they would put this claim in this particular article.

But I think that the evidence clearly indicates, it clearly indicates an effort here, a scheme to conceal this evidence. And in this case, it's supported by a telephone record. And of course this is indicative, I think, of the excellent investigative work that's been done here.

So what happened is the—there's testimony from Ms. Lewinsky that she was concerned about the gifts. She raised the issue with the President. The President told her that he—about the suggestion that possibly the—she should do something to the gifts. The President, according to Monica Lewinsky, said I don't know or let me think about that.

And then later that day, Ms. Lewinsky got a call from Ms. Currie, according to Ms. Lewinsky, saying I understand you have something to give me, or something like the President said you may have something to give me.

Now, on this point, Ms. Currie, as Mr. Schippers pointed out, has a fuzzy memory. And she reported that, actually she couldn't remember, but the best she can remember, she thinks that Monica Lewinsky called her, Betty Currie.

But that is contradicted by a key piece of evidence, and that key piece of evidence is the cell phone record of Ms. Currie's phone, showing that she placed a call within hours after they left the White House on that day to Monica Lewinsky.

And with that evidence, it's clear that the call was initiated by Ms. Currie to Monica Lewinsky. And of course that is further buttressed by the fact that why else would Ms. Currie call Ms. Lewinsky and ask if she had something for her to pick up? And why would she take that box of gifts and put it under her bed? These are not normal things that people do. You don't call up somebody, ask if you have something for me, and then takes the box and put it under your bed. It just defies common sense to think that it was the other way around, in other words, that Ms. Currie was—or that Ms. Lewinsky was initiating the transfer here.

It's pretty clear from this evidence, and I think clear and convincing from this evidence, that the President must have been involved in a scheme to get those gifts from Monica Lewinsky into the hands of his trusted secretary, Betty Currie; and that was part of a scheme to obstruct justice in this case, to stop the discovery of this information.

And so, Mr. Chairman, I think it's clear that this particular paragraph of the articles of impeachment is clearly substantiated by the evidence. And I yield back the balance of my time.

Mr. SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Massachusetts, Mr. Delahunt, rise?

Mr. DELAHUNT. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I'm real pleased that my friend Mr. Inglis has raised this particular evidence, because I would suggest that this is exactly the peril of this particular approach that this committee has adopted, never hearing once from a witness, never hearing from Ms. Currie or Ms. Lewinsky, Vernon Jordan, or anyone else. Shame on us. Just simply taking written documents and suggesting that that constitutes evidence, totally unlike what occurred during the Watergate inquiry where, as Charles Wiggins, a Republican member in the minority, told us that they heard from John Dean, from Mr. Halderman and Mr. Erlichman. Shame on us. We did have that responsibility. And now we are doing it real sloppy.

Let me tell you, I did my own homework on this particular point, Mr. Inglis. You're right. It's undisputed that Ms. Lewinsky returned the gifts to Ms. Currie. And she did so on December 28th. The key question is whether the President asked Ms. Currie to retrieve the gifts or whether Ms. Lewinsky made her own arrangements to return the gifts without Mr. Clinton's involvement.

On Wednesday, the independent counsel released a statement to the press, which I would submit into the record—

Mr. SENSENBRENNER. Without objection, so ordered.

[The information follows:]



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**FOR IMMEDIATE RELEASE**

The Office of Independent Counsel issued the following statement today:

Yesterday's White House Submission to the House of Representatives makes a series of misrepresentations regarding this Office's Referral. In our view, Congress should be guided by the facts and the evidence. That is why we submitted to Congress not only the Referral, which organizes and summarizes that evidence, but several thousand pages of raw evidence itself. Indeed, every item of evidence in the White House's Submission came from our Office.

The following are three of the many misleading statements in the White House Submission:

1. The White House argues that the President did not lie when he denied having any recollection of being alone with Ms. Lewinsky, and quotes a passage from the President's deposition in which he appears to acknowledge the possibility that he was alone. (Submission at 77) The Submission omits, however, a significant part of the quotation in which the President says that he has no "specific recollection" about being alone with her, and even limits that theoretical possibility to when Ms. Lewinsky worked in the White House and brought him papers. Given that the President and Ms. Lewinsky had been alone less than three weeks earlier, as well as numerous other times over a span of two years, there is reason to doubt the truthfulness of his answer. The President's full testimony in the Jones deposition is listed below. The underscored portions were omitted in the White House's Submission:

- Q: So I understand, your testimony is that it was possible, then, that you were alone with her, but you have no specific recollection of that ever happening?
- A: Yes, that's correct. It's possible that she, in, while she was working there, brought something to me and that at the time she brought it to me, she was the only one there. That's possible.

(Referral at 152)

2. The White House contends that, other than Ms. Lewinsky's own accounts, no evidence indicates that the President's gifts to Ms. Lewinsky were picked up on December 28, the day of her last meeting with the President. (Submission at 107) That is false. The Submission ignores the cell-phone records from Betty Currie, which show that Ms. Currie called Ms. Lewinsky on December 28 at 3:32 pm. See 1070-DC-0000007. Without knowledge of these phone records, Ms. Lewinsky

stated that Ms. Currie called her on December 28, and she thought Ms. Currie may have been calling from her cell phone. Lewinsky 7/28/98 Int. at 8, reprinted in App., Part 1, at 1396.

3. The Submission argues that the Referral falsely contends that the President and Ms. Lewinsky "discussed" what should be done with the gifts, citing Ms. Lewinsky's statement that the President "didn't really discuss it." (Submission at 47) Actually, Ms. Lewinsky's words "he didn't really discuss it" came in response to a second, more specific question, after Ms. Lewinsky had spent several hundred words recounting her conversation with the President about the gifts. The Submission's quotation is so obviously misleading that we reprint the full excerpt here:

Juror: . . . [R]etell for me the conversation you had with the President about the gifts.

Witness: Okay. It was December 28th and I was there to get my Christmas gifts from him. . . . And we spent maybe about five minutes or so, not very long, talking about the case. And I said to him, "Well, do you think --"

What I mentioned -- I said to him that it had really alarmed me about the hat pin being in the subpoena and I think he said something like, "Oh," you know, "that sort of bothered me, too. That bothered me," you know, "That bothers me." Something like that.

And at one point, I said, "Well, do you think I should --" I don't think I said "get rid of," I said, "But do you think I should put away or maybe give to Betty or give to someone the gifts?"

And he -- I don't remember his response. I think it was something like, "I don't know," or "Hmm" or -- there really was no response.

I know that I didn't leave the White House with any notion of what I should do with them, that I should do anything different than that they were sitting in my house. And then later I got the call from Betty.

Juror: Now, did you bring up Betty's name or did the President bring up Betty's name?

Witness: I think I brought it up. The President wouldn't have brought up Betty's name because he really didn't -- he didn't really discuss it, so either I brought up Betty's name, which I think is probably what happened, because I remember not being too, too shocked when Betty called.

Lewinsky 8/20/98 GJ at 65-67, reprinted in App., Part 1, at 1121-23 (emphasis added).

Mr. DELAHUNT [continuing]. Taking issue with Mr. Ruff's presentation to this committee and claiming that the President's involvement is substantiated by the billing records from Ms. Currie's cellular or telephone account, just as you mentioned.

The records, and Mr. Schippers, as you indicated, used these in his closing statement to the committee, indicated that that 1-minute call was placed from Ms. Currie's cell phone to Ms. Lewinsky's telephone number at 3:32 p.m. on December 28th.

In his press release, the independent counsel claims that Ms. Currie placed this call for the purpose of arranging to pick up the gifts from Ms. Lewinsky. In his closing statement to the committee, Mr. Schippers made much of the document. He said that—he said that it, and I quote, corroborates Monica Lewinsky and proves conclusively that Ms. Currie called Monica from her cell phone several hours after she left the White House.

Why did Betty Currie pick up the gifts from Ms. Lewinsky, Mr. Schippers asked? And he answered the facts, the facts, oh, if we only had facts, the facts strongly suggest the President directed her to do so. And that his support for the charge is that the President sought to conceal evidence.

But do you know what, there's a problem with this so-called evidence. It is directly and explicitly contradicted by the FBI report of the interview with Monica Lewinsky taken this past July, on July 27th of this year.

That report, which appears in the first appendix to the Starr referral on page 1,396—as you know, there are 60,000 pages in there, so I don't blame Mr. Schippers for missing it, and I certainly don't suggest he would try to mislead the committee—and I am quoting, Lewinsky met Currie on 28th Street, outside Lewinsky's apartment at about 2 p.m. and gave Currie the box of gifts.

Not at 3:32, but at 2 p.m. was the transfer of that—of those gifts, Mr. Inglis. An hour and a half discrepancy. This raises the following question: If the gift exchange had already taken place—

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. DELAHUNT. I ask unanimous consent for an additional 2 minutes.

Mr. SENSENBRENNER. Without objection.

Mr. DELAHUNT. Thank you, Mr. Chairman. This raises the following question: If the gift exchange had already taken place at 2 p.m., how could the telephone call placed at 3:32 have been for the purpose of arranging it? This is what I would suggest some would conclude is a considerable inconsistency, one of the many troubling inconsistencies in the documents themselves. Yet, this potentially exculpatory fact taken from materials, sworn-under-oath materials, documents, 60,000 pages of them, from the possession of Mr. Starr, was never acknowledged by Mr. Starr, nor unfortunately was—it was it acknowledged by Mr. Schippers.

Both of them, and I am not suggesting it was intentional, affirmatively lead the committee to believe the call was for the purpose of arranging for Ms. Currie to pick up the gifts.

And now, now we are preparing to vote on an article, on an article of impeachment that is substantially based on that telephone call. What was the purpose of the call? We don't know. It appears that the investigators never asked. And we have never had the op-

portunity to ask because we have not heard from the witnesses themselves. And this is no way to conduct an inquiry, Mr. Chairman. It's a disgrace. And it's an insult to the rule of law.

Mr. CANNON. Would the gentleman yield just to a question as what the citation was on that, Mr. Delahunt, on the page 1,300 something as I recall.

Mr. DELAHUNT. It's page 1,396. I yield back.

Mr. CANNON. Thank you.

Mr. SENSENBRENNER. The gentleman's time is again expired.

For what purpose does the gentleman from Georgia rise?

Mr. BARR. To strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, witnesses and defendants, witnesses who are targets of investigations and defendants in cases frequently have a very clear motive to take steps to either ensure that adverse witnesses don't appear in court in order to testify against them, to provide testimony at other times and places, or to change in some way their testimony so it is either not damaging or less damaging to the target or the defendant.

That being a fact of human nature and the Federal Government for many years having knowledge of that characteristic of defendants and targets of investigations has had on the books in Title 18 of the Criminal Code provisions of our criminal laws that address that and seek to prevent or punish those who, in fact, take steps to what is determined in the eyes of the law tamper with witnesses.

Specifically, Mr. Chairman, that statute is found at 18 U.S.C., that is the Criminal Code, section 1512, and, in addition, section 1515, which contains definitions that are relevant to that provision of the Code.

In essence, Mr. Chairman, and this is in large part the essence also of paragraph 4 of this third article of impeachment, we are looking at the provision of Title 18, section 1512, that provides, in part, whoever knowingly engages in misleading conduct towards another person with intent to influence, delay or prevent the testimony of any person in an official proceeding, causes or induces any person to withhold testimony, evade legal process or be absent from an official proceeding or hinder, delay, or prevent the communication of information is guilty of a criminal offense.

Turning to section 1515, one finds a common sense definition of misleading conduct as well as common sense definitions of official proceedings and to corruptly persuade.

When one then turns to the evidence in this case and the evidence regarding the so-called job search, one fact that immediately jumps to mind is why would the most powerful human being on the face of the earth, that is, the President of the United States of America, and one of the most prominent and, in legal circles in Washington, most powerful private attorneys, drop essentially everything they are doing—and the President constantly reminds us how important his work is, as indeed it is—and conduct a job search for what might be termed, at best, a second- or third-rate employee?

Vernon Jordan testified that he had, indeed, conducted quite a few job searches for individuals of note to him—the former mayor of the City of New York; a talented attorney from Akin, Gump, one of the preeminent law firms in Washington; a Harvard business school graduate; Monica Lewinsky. That, in and of itself, contrary to the pattern of activity of this particular witness—and, by the way, that testimony was controverted by the testimony of the CEO of a Fortune 500 company, Mr. Perlman, who said Mr. Jordan had never called him about a job search—raises a very legitimate presumption that there was some reason other than a legitimate job search for Monica Lewinsky that occupied considerable attention of the President and Vernon Jordan.

And one finds it indeed in the testimony of Ms. Lewinsky that the President suggested to her that it might be appropriate if she took a job in New York and he would help her find that through Vernon Jordan, somebody that heretofore was unknown to Ms. Lewinsky, that this might cause her to avoid being called as a witness or available as a witness. And indeed that is what happened. Mission accomplished, in the words of Mr. Jordan.

I believe very clearly, Mr. Chairman, that we have here a very substantial case involving a violation of Title 18, the U.S. Criminal Code, section 1512, tampering with a witness, clearly involving—

Mr. Chairman, I would ask unanimous consent for 2 additional minutes.

Mr. SENSENBRENNER. Without objection.

Mr. BARR. I thank the Chairman—involving an effort, a deliberate effort, a knowing effort, a willful effort on the part of the President to cause Ms. Lewinsky or to take steps to cause Ms. Lewinsky, once it became known that she would be a witness, that she had, in fact, been subpoenaed.

The other side might make some hay out of the fact that Ms. Lewinsky really had been involved in a job search for quite some time—and, indeed, that is the case—since July of 1997. What certainly raises legitimate suspicions and fits within the pattern of activity here and the evidence, though, Mr. Chairman, is the fact that this went from a back burner effort by a second- or third-rate employee of the government to a very accelerated effort involving a flurry of activity by Mr. Jordan, by the CEO of a major Fortune 500 corporation, involving, indeed, the ambassador, the U.S. ambassador to the United Nations, all set into motion after it became known, not before but after it became known that Ms. Lewinsky would indeed be a witness and provide testimony in the Paula Jones' case.

These are appropriate, reasonable, common sense conclusions, which, even in a criminal proceeding, a trier of fact would be instructed by a United States District Court judge they could properly conclude, based on the evidence, which is very voluminous, set forward, summarized yesterday by Mr. Schippers, and uncontroverted.

I believe, Mr. Chairman, that there is a more than substantial basis, a more than adequate basis for paragraph 4 of Article III involving tampering with a Federal witness by the President of the United States of America.

Mr. SENSENBRENNER. The gentleman's time has again expired.

For what purpose does the gentleman from New York, Mr. Nadler, rise?

Mr. NADLER. To strike the last word, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, the recklessness of the Republican Majority in this proceeding is really illustrated by Articles III and IV. I believe, as I have stated many times, that Articles I and II are not sufficient. They don't rise to the level of impeachable offenses even if provable, and there is not sufficient evidence. But numbers III and IV, frankly, don't pass the giggle test. They are quite simply laughable as well as outrageous.

What is number 3, Article III? A grab bag of different allegations. The President encouraged Ms. Lewinsky to file a false affidavit. A fair reading of the evidence says only one thing, she asked how she could avoid testifying. And he said, well, other witnesses have been allowed to not to testify in person by submitting an affidavit. So maybe they will let you do that, too.

There's no evidence, no testimony from anybody that he asked her to file a false affidavit as opposed to simply suggesting that she could file an affidavit instead of appearing in front of a grand jury, which she was understandably nervous about. Indeed, she testifies he never asked her to lie. There's no contradictory testimony at all. Yet the surmise, as Mr. Schumer put it, is sufficient to make that part of an article of impeachment.

The job search. The job search, helping someone find a job is not illegal. It's generally considered praiseworthy. There is no evidence whatsoever connecting the efforts to help Ms. Lewinsky find a job with her submission of an affidavit or her testimony. She testified that no one ever promised her a job.

The suggestion to tie them together we know came from Linda Tripp. We know that from the tapes. We know if the President were really intent on getting her a job, he clearly could have done that. He is, after all, quite a powerful person. The fact that he did not shows there was no linkage with her affidavit. What linkage do we have with her affidavit? None at all except surmise.

And the fact that the effort started well before there was any knowledge that she might be called as a witness, that she might have to file an affidavit or appear indicates that there was no connection beyond which even the surmise—the surmise is, why else would the President or Betty Currie or Vernon Jordan be interested in helping this young woman? There must be a corrupt motive. Well, no, it musn't be. Betty Currie might have—Betty Currie was a friend, we know, of Vernon Jordan. Betty Currie asked Vernon Jordan to help her. Why would Betty Currie ask Vernon Jordan to help Monica Lewinsky find a job? Well, maybe because Monica Lewinsky asked here to, and Betty Currie was a friend of hers. That is as logical as any other explanation. That is as logical as the sinister explanation you gentlemen posed, for which there was no evidence whatsoever.

This is a classic example of a logical fallacy some of us learned in college: After this, therefore because of this. After this, therefore because of perhaps a lot of different reasons.

Then we have the gifts. Monica Lewinsky returned—gave gifts to Betty Currie. It must be because the President was trying to hide

the evidence. It must be because the President asked Betty Currie to retrieve the gifts, except that Betty Currie says that's not the case. Betty Currie testifies that Monica Lewinsky was the one who asked her to get the gifts.

But we're told there was this phone call. Now there is no evidence of what was said in that phone call. But what's the difference? We can surmise what we want to surmise. We can pretend it makes a difference.

Now Mr. Delahunt destroyed that by showing the phone call came an hour and a half after the gifts were retrieved or were given by Monica Lewinsky. That's proof positive there has nothing to do with it. So there is no evidence whatsoever of an evil motive for giving these gifts.

But we've also been subjected to outrageous leaps of logic. Because if, in fact, these gifts were being given by Monica Lewinsky to Betty Currie because the President wanted to get evidence away from her, why would he be giving her additional gifts on the same day? If he's trying to get the evidence away from her, why is he giving her more evidence?

Well, there is outrageous leaps of logic to answer this. Mr. Schippers tells us, for example, that he intends to deal with the fact that the President—

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. NADLER. I ask unanimous consent for an additional two minutes.

Mr. SENSENBRENNER. Without objection.

Mr. NADLER. Mr. Schippers attempted to deal with the fact that the President gave Ms. Lewinsky additional gifts after Betty Currie supposedly retrieved the earlier gifts, acting allegedly on the President's behalf to conceal those gifts in the Jones case. He says, he told this committee with a straight face, the only logical inference is that the gifts, including the bear symbolizing strength, were a tacit reminder to Ms. Lewinsky that they would deny their relationship even in the face of a Federal subpoena.

Is he kidding? For nonsense like this we are going to overturn the votes of the American people? The bear symbolizing strength was a tacit reminder to Ms. Lewinsky and a secret code, I suppose, to continue to deny the relationship? I don't think so. I think the bear was a warning by the President that the stock market was going to tank and she should put her money in bonds. It is as logical an inference; it has as much evidence behind it.

The fact is, this is a nonsense article and, finally, the fact that the President spoke to co-workers in his office, to people he works with every day and said, and told them the same cover story that he was presumably telling his wife and others to protect his family because he was ashamed of this relationship, what is that evidence of, a conspiracy against justice? No, it is evidence of the fact that he is having a cover story for a sexual affair he wasn't proud of and didn't want to go public. That becomes an impeachable offense? This is ludicrous, along with the rest of this article, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman's time has again expired. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman is recognized for five minutes.

Mr. CANNON. Thank you. Let me just say that I think a compelling case, Mr. Nadler, has made for a scheme here, and it doesn't make sense to pick out details and mock them when we have a deep responsibility.

But I did take Mr. Delahunt's question to heart and looked up the information there, and to some degree he is right. I would just like to point out that I don't think it has—his argument has the weight that he would suggest. On page 13996 of the documents, it does indicate in a 302, one of the FBI reports which was done on July 27th, 1998, that on December 28th—the document was done on the 27th of July—Monica Lewinsky says that on December 28th, so roughly seven months earlier, she had had a phone call and then met or was outside of her apartment on 28th Street to give those, the gifts, to Ms. Currie at about 2:00 p.m. That's a fair statement, but it does say about. On the other hand, you have a call at 3:32 which is fixed in the records of her cell phone. I suspect that there may have been a mistake by Ms. Lewinsky of an hour and a half there and that that is not substantial.

I would like to talk briefly about the fact that Mr. Clinton, President Clinton allowed his attorney to make false statements and misleading statements to a Federal judge, as he characterized in the affidavit, in order to prevent questioning which during the course of the question the judge deemed was relevant. On January 15th, Robert Bennett, who was the attorney for President Clinton, obtained a copy of the affidavit that Monica Lewinsky had filed to avoid testifying herself in the Jones case and then in this affidavit, you will recall, Ms. Lewinsky asserted that she had never had a sexual relationship with the President.

At the President's deposition 2 days later on July 17, 1998, an attorney for Paula Jones began to ask the President questions about his relationship with Ms. Lewinsky. We saw this on the video recently. Mr. Bennett objected to the innuendo of the questions and he pointed out that she had signed an affidavit denying a sexual relationship with the President. Mr. Bennett asserted that this indicated there was no sex of any kind, in any manner, shape or form.

Now, we all heard that being stated as the President sat there and nodded a couple of times in assent. After a warning from Judge Wright he stated that, look, I am not coaching the witness. In the preparation of the witness for this deposition, the witness was fully aware of Ms. Jane Doe 6's affidavit, so I have not told him a single thing he doesn't know.

Mr. Bennett clearly used the affidavit in an attempt to stop the questioning of the President about Ms. Lewinsky. The President did not say anything to correct Mr. Bennett even though he knew the affidavit was false. Judge Wright overruled Mr. Bennett's objection and allowed the questioning to proceed.

Later in the deposition Mr. Bennett read the President the portion of Ms. Lewinsky's affidavit in which she denied having, quotation marks, a sexual relationship with the President, and asked the President if Ms. Lewinsky's statement was true and accurate. The President responded, "That is absolutely true."

The grand jury testimony of Monica Lewinsky, given under oath following a grant of transactional immunity, confirmed that the contents of her affidavit were not true. Of the affidavit, she says, under questioning, "I have never had a sexual relationship with the President." "Is that true?" And her answer is, no, it was not true.

When President Clinton was asked during his grand jury testimony—backing off from the Lewinsky testimony now in the deposition to the grand jury—how he could have lawfully sat silent at the deposition while his attorney made a false statement, "There is no sex of any kind, in any manner, shape or form," in the district court, the President first said he was not paying a great deal of attention to Mr. Bennett when he said this. The President also said, "I didn't pay any attention to this colloquy that went on."

Of course, we saw the President sort of nodding at that, as the colloquy happened. The videotape deposition shows the President looking in Mr. Bennett direct while Mr. Bennett was making a statement about no sex of any kind.

The President then argued that when Mr. Bennett made the assertion that there is no sex of any kind, Mr. Bennett was speaking only in the present tense. Therefore we get the famous "is," "is what" question. The President stated it depends on what the meaning of "is" is and that if it means there is none, that was a completely true statement.

President Clinton's suggestion that he might have engaged in such a parsing of the words at his deposition is at odds with his assertion that the whole argument had just passed him by.

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. BRYANT. Mr. Chairman, I ask unanimous consent for two minutes to be yielded to Mr. Cannon.

Mr. SENSENBRENNER. Without objection, of course.

Mr. BRYANT. Mr. Cannon, are you aware that the President's attorney, Bob Bennett, has since this time sent a request or a letter to the court formally withdrawing that affidavit?

Mr. CANNON. I am aware of that, and I think that is a remarkable fact.

Mr. BRYANT. My question is, as he did that, I understand, as an officer of the court, do you understand the significance of that action and how that impacts the President?

Mr. CANNON. I believe actually that I do understand the significance of that action. But you were a Federal prosecutor and it might be nice if you stated that, what you think that is.

Mr. BRYANT. Well, we have got several on this panel but my—certainly my opinion of these facts is that Mr. Bennett, the lawyer for the President, as any attorney would in any litigation, once they find out that there has been improper or false evidence submitted to the court, as an officer of the court they have a duty to notify the judge of that and to take the proper steps to disassociate themselves from their client or withdraw that evidence from the court. I just wanted to point that out to you and I don't know if—

Mr. DELAHUNT. Would my friend yield?

Mr. BRYANT. I would be happy to, another great prosecutor over there.

Mr. DELAHUNT. Thank you, Mr. Bryant. You know, Mr. Cannon alluded to the fact that you are a United States Attorney and sug-

gested that you respond to one of his questions. I see my friend from Arkansas, Mr. Hutchinson, here also. And as former U.S. Attorneys, both of you, and for whom I truly have great respect for both, let me pose a question.

Take Bill Clinton out of the deposition. Substitute ordinary citizen. Would either one of you have brought a perjury case when you were the United States Attorney? And the context that I pose this is that we had five United States attorneys here testifying that in both the grand jury as well as the deposition—

Mr. SENSENBRENNER. The gentleman's time has again expired.

Mr. COBLE. Mr. Chairman, unanimous consent to speak out of turn for one minute.

Mr. SENSENBRENNER. Without objection.

Mr. COBLE. Mr. Chairman, I don't want to be appear to be the grinch who stole Christmas but I want to tell my Democrat and Republican friends alike, I think five minutes are sufficient, and if it doesn't annoy anybody too severely, I intend to object at the end of each five minute segment so we can go home and go to bed. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from North Carolina, Mr. Watt, seek recognition?

Mr. WATT. Mr. Chairman, I move to strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for five minutes exactly.

Mr. WATT. Thank you, Mr. Chairman. I want to proceed very carefully in what I say here because I think of all the articles in this document, this is the one that is most troubling to me. And when I hear Mr. Cannon refer to a scheme, it troubles me even further, because I really think there are some things in this article that come dangerously close to just McCarthyism.

We went through a period in our history when behind every tree there was a communist. You know, if you made a phone call to somebody who was a communist, you became a communist. We assumed the absolute worst. That is what I see happening in some parts of this article. And when you do that, you start to presume things that just—I mean they are like bad people behind every tree and bad motivations for every phone call and bad motivations for every contact, even when the contacts are completely innocent.

Now, I just want to specifically look at part 6 and 7 on page 7 of the articles where when the President is having a conversation with Ms. Currie. You say that, I presume you are talking about Ms. Currie, on or about January 18, January 20, 21, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding in order to corruptly influence the testimony of that witness.

Now, we know that in the *Paula Jones* case, when the President had a conversation with Ms. Currie, that conversation with Ms. Currie, the discovery period was almost over. It was within a few days of being over. And Ms. Currie's name had never appeared on a witness list. So this notion that she is somehow a potential witness, I don't know where it comes from. And then you go back later and you do the same thing.

Now, let me show you where this leads, finally, in Mr. Schippers' presentation yesterday and show you how sinister it becomes. Mr. Schippers then says, "When he called Ms. Currie, he made sure that this was a face-to-face meeting, not an impersonal telephone call. He made sure that no one else was present when he spoke to her. He made sure that he had the meeting in his office, an area where he was comfortable and could utilize his power and prestige to influence future testimony. Once these controls were established, the President made short, clear, understandable declarative statements telling Ms. Currie what his testimony was."

Now, that is fine if that is what happened, but look at what the actual statements were that the President made. They are one page before Mr. Schippers has given us this declarative statement. He has told us what the statements were. Number one, it was never really—"I was never really alone with Monica, right?" Is that a declarative statement? Two, "You were always there when Monica was there, right?" Is that a declarative statement? "Monica came on to me and I never touched her, right?"

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. Mr. Chairman, I ask unanimous consent for two additional minutes.

Mr. COBLE. Mr. Chairman, I hate to do it but I object.

Mr. SENSENBRENNER. Objection is heard.

Mr. WATT. If you set this precedent, then you are going to be the beneficiary of it, too.

Mr. NADLER. Mr. Chairman—

Mr. COBLE. May I respond to that, Mr. Sensenbrenner?

Mr. SENSENBRENNER. Objection is heard. The time of the gentleman from North Carolina has expired.

Would the gentleman from North Carolina like to strike the last word and get five minutes?

Mr. COBLE. Mr. Chairman, I will strike the last word and use one minute.

Mr. SENSENBRENNER. The gentleman is recognized for five minutes.

Mr. COBLE. I did that to put everybody on notice earlier—

Mr. WATT. Will the gentleman yield two minutes to me?

Mr. COBLE. No, sir. I won't do it, Mr. Watt, not yet.

Mr. WATT. Okay, I have done my best.

Mr. COBLE. Because, folks, I think five minutes are adequate. I always finish before that red light illuminates, and I believe most of us can do it. I yield back my time.

Mr. SENSENBRENNER. The time of the gentleman from North Carolina has expired.

For what purpose does the gentleman from Florida seek recognition.

Mr. CANADY. To strike the last word.

Mr. SENSENBRENNER. The gentleman from Florida is recognized for five minutes.

Mr. CANADY. Thank you Mr. Chairman. I want to follow up on the comments made by—

Mr. NADLER. Point of order, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman will state his point of order.

Mr. NADLER. The point of order is, it should be a Democrat now, Mr. Coble having been the last.

Mr. FRANK. I think the Chairman made the right call.

Mr. SENSENBRENNER. The gentleman from Florida is recognized for five minutes.

Mr. CANADY. Mr. Chairman, may I have the full five minutes?

Mr. FRANK. It's okay with us. Check with Coble.

Mr. CANADY. I wanted to follow up on the issues raised by the gentleman from North Carolina, Mr. Watt, about paragraph 6 in this article concerning the conversations that the President had with Ms. Currie on January 18th and January 20th and 21st.

The record reflects that President Clinton attempted to influence the testimony of Betty Currie, his personal secretary, by coaching her to recite inaccurate answers to possible questions that might be asked of her if called to testify in the case of *Jones v. Clinton*. The President did this shortly after he had been deposed in that case, as we all know. In his deposition, when asked about whether it would be extraordinary for Betty Currie to be in the White House between midnight and 6:00 a.m., the President answered in part, "Those are questions you would have to ask her."

Furthermore, the President invokes Betty Currie's name numerous times throughout the deposition, oftentimes asserting that Monica was around to see Betty and that Betty talked about Vernon Jordan helping Ms. Lewinsky and that Betty talked with Ms. Lewinsky about her move to New York. After mentioning Betty Currie so often in answers to questions during his deposition, it was very logical for the President to assume the Jones lawyers might call her as a witness. That is not a leap. That is right there. That's for all of us to see in the President's own words. This is why the President called her about two hours after the completion of his deposition and asked her to come to the office the next day, which was a Sunday.

Now, the President has stated that on January 18th, 1998, he met with Ms. Currie and asked her certain questions "in an effort to get as much information as quickly as I could and made certain statements, although I do not remember exactly what I said." That is what the President contends. The President added that he urged Ms. Currie to tell the truth after learning that the Office of Independent Counsel might subpoena her to testify. The President also stated that he could not recall how many times he had talked to Ms. Currie or when.

But let me go on and tell you what Ms. Currie said, and you have gone through it, but I think it bears repeating. While testifying before the grand jury, Ms. Currie said this when an OIC attorney asked her if the President had made a series of leading statements or questions that were similar to the following: "You were always there when she was there, right?" "We were never really alone. You could see and hear everything." "Monica came on to me and I never touched her, right?" "She wanted to have sex with me and I couldn't do that."

Now, in her testimony Ms. Currie indicated that the President's remarks were "more like statements than questions." Now, that is her characterization of it. Based on his demeanor and the manner in which he asked the questions, she concluded that the President

wanted her to agree with him. Ms. Currie thought that the President was attempting to gauge her reaction and appeared concerned.

Ms. Currie also acknowledged that while she indicated to the President that she agreed with him, in fact she knew that at times he was alone with Ms. Lewinsky, and that she could not or did not hear or see the two of them while they were alone.

At their subsequent meeting on January 20 and 21, after the first time he talked with her about this, Ms. Currie stated that it was sort of a recapitulation of what we had talked about on Sunday.

Now, the President's response that he was trying to ascertain what the facts were or trying to ascertain what Betty's perception was is simply not credible. The President knew the facts about what had happened with Ms. Lewinsky. Betty Currie was not his source of information about the details of that relationship. That is ridiculous on its face. The only reason he had to pose that series of so-called questions or statements to her was to corruptly influence her testimony. I think that is clear on the face of the record, and any contrary interpretation suggests a willful disregard of all the circumstances.

I yield back the balance of my time.

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. FRANK. Mr. Chairman, I move to strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for five minutes.

Mr. FRANK. Mr. Chairman, this is a very shoddy effort, it seems to me, intellectually. I agree again that the central facts of this case remain central to this: Bill Clinton had a consensual sexual affair with Monica Lewinsky and sought to conceal that fact. That is the only fact that we have at the center of all this. That is the cause. We again remember that all of the other issues that have been raised, from the FBI files to Whitewater to Kathleen Willey, et cetera, et cetera, are simply absent from this.

So then the question is, did the President obstruct justice? And there are a number of, I think, very strained efforts to prove that. One central fact has been missing. Monica Lewinsky is treated here as if she was just bursting to get to that deposition and tell all. And the whole premise of this is that Monica Lewinsky was being preyed upon, suborned, persuaded by this combination of Vernon Jordan, Betty Currie, Bill Clinton, et al., not to tell the truth.

It is in this context that it is very relevant that Monica Lewinsky volunteered, because the prosecutors knew enough from their case's standpoint not to ask her, she volunteered, "No one asked me to lie and no one promised me a job." Now, I have noticed that my colleagues on the other side have developed a very peculiar verbal tic. Monica Lewinsky said "No one asked me to lie." They are incapable of repeating that without adding the word "explicitly." It is a form of verbal disease. Monica Lewinsky said no one asked her to lie. They all say, including Kenneth Starr, "No one explicitly asked me to lie." There is an enormous difference between the two. And the very fact that my colleagues on the other side almost al-

ways add that word “explicitly” indicates their recognition of the power of her denial.

It is also interesting that Monica Lewinsky is a woman of absolute perfect memory in Ken Starr’s version except she just had a terrible memory lapse, she lost a couple of hours of her life, because the gentleman from Utah, explaining the important point made by my colleague from Massachusetts, said, “Oh, well, she must have thought it was 2:00, but it was really 4 o’clock because the call came at 3:30.” There is nothing remotely to suggest that.

Betty Currie, interestingly, also goes through transmogrification. We are told that she was willing to give testimony to the grand jury that the Majority finds damaging. But she also said, Betty Currie said Monica Lewinsky initiated the gift transfer. So we have your acknowledgment that Betty Currie was prepared to tell the truth even if it was somewhat damaging to Bill Clinton. You are citing one of her statements as very damaging to Bill Clinton. Why does she then become a liar and a schemer when she volunteers it?

The fact is that the most sensible explanation here is that both Bill Clinton and Monica Lewinsky wanted to withhold the truth of this. Neither one of them wanted to do it. Monica Lewinsky and Bill Clinton worked together. The gentleman from Florida said they had agreed long before the Paula Jones, a month before the Paula Jones thing was on anybody’s horizon for Monica Lewinsky, that they would not tell the truth.

But you have to change the facts. You have to assume that there was this Monica Lewinsky dying to tell everybody. As a matter of fact, let’s be very clear. Even after all of this, what got Monica Lewinsky to talk was Kenneth Starr threatening to throw her and her mother in prison. Monica Lewinsky had to be threatened by Kenneth Starr with imprisonment and have her mother be threatened by Kenneth Starr with imprisonment before she would say it.

That is relevant because you are portraying this notion that it took all of Bill Clinton’s wives and Vernon Jordan and Betty Currie to keep her from doing this. The truth is she never wanted to do it. The truth is she was resisting vigorously doing it on her own. The truth is, if this young woman only told these facts when she was threatened with prison, that destroys the whole case.

You are accusing Bill Clinton and Vernon Jordan and Betty Currie of doing something all of them have denied, and they have all denied that they did this, and you are saying that they did it to persuade and cajole Monica Lewinsky to do something which she in fact—that she wanted to do. She did not have to be restrained from testifying. She didn’t want to testify. Quite the contrary is the case. She had to be—first Linda Tripp tried to get her to do it, and then Kenneth Starr threatened her with it.

I think this failure to recognize Monica Lewinsky’s reluctance to testify is a central problem, and that is why you have so much trouble explaining away her statement that no one asked her to lie and no one promised her a job.

Mr. SENSENBRENNER. The gentleman’s time has expired.

For what purpose does the gentleman from Pennsylvania, Mr. Gekas, seek recognition?

Mr. GEKAS. To strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for five minutes.

Mr. GEKAS. We will all recall that the President gave that deposition on January 17th, 1998. On or about January 21st, in conformity now I am speaking with number 7 of the article of impeachment number 3, in the days following, the 21st, et cetera, he started talking with his aides, because by that time the Washington Post had broken the story and everybody in the country was talking about it and so his aides, one by one, the President's aides would be talking to him about it.

In one of those instances, Mr. Blumenthal, one of his aides, asked him, "Have you done anything wrong?" A lot of details to it, but this is basic, "Have you done anything wrong?" He said, "No, I have done nothing wrong," and words to the effect, that he did not have a relationship with this intern as the Washington Post had indicated.

Now, at that time it was also revealed by the Washington Post that Judge Starr was looking into this matter. So when Blumenthal asked this, the President knew that Starr was pursuing this matter. When he told Blumenthal that he did nothing wrong and that there was no relationship between him and Monica Lewinsky, he had an inkling that and a notion, a knowledge that Ken Starr was after this case.

Back up for a moment. If he had told Blumenthal the truth that, "Yes, Mr. Blumenthal, I did have a relationship, I have done something wrong, I did have this relationship with Monica Lewinsky," Blumenthal, upon being subpoenaed by the grand jury, would have to testify on an admission against interest on the part of the President and say, "The President did admit to me that he had this relationship."

So the President, in telling Blumenthal and Podesta and X and Y and Z among the aides who he knew were going to be testifying after Judge Starr began to pursue witnesses, had to block out the item that he was trying to protect. He was trying to protect himself and Monica Lewinsky and his family and everybody else from the break of the news that he had this relationship with Monica Lewinsky. So he told one after the other, knowing that they were in a position to be subpoenaed by the grand jury, that he did nothing wrong, he had no such relationship with Monica Lewinsky.

This is obstruction of justice.

Now, how did the President know, is a question that might be looming, how did the President know, how do we know that the President knew that there were going to be witnesses in the grand jury? The President said so.

In the grand jury testimony that he himself presented, the question was, it may have been misleading, sir, and you knew, though, after January 21st, when the Post article broke and said that Judge Starr was looking into this, you knew that they might be witnesses, meaning Podesta, Blumenthal, X, Y and Z, the aides in the White House, you knew that they might be called into a grand jury, didn't you? Answer: That's right. I think I was quite careful what I said after that. I may have said something to all these people to that effect but—I am reading the whole thing to be fair so that I wouldn't be taking it out of context—but I also, whenever

anybody asked me any details, I said, look, I don't want you to be a witness or I would turn you into a witness or give you information that could get you into trouble. I just wouldn't talk. I, by and large, didn't talk to people about this.

And so that forms the gravamen of this particular averment in the third article of impeachment. It is palpably an attempt by the President to protect himself, but in doing so he gives evidence from which a trier of fact can easily deduce that he obstructed justice.

I yield back the balance of my time.

Mr. SENSENBRENNER. For what purpose does the gentlewoman from California, Ms. Lofgren, seek recognition?

Ms. LOFGREN. To strike the last word.

Mr. SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. First, I would like to comment once again that it is now almost 7:50 p.m. We are concluding or getting close to concluding our third article, and we have still not heard from Mr. Starr in response to my questions, despite the chairman and ranking member's letters and the repeated phone calls from the staff, among both Republican and Democratic staff, to ask for the answers.

I would like unanimous consent to submit for the record the form that I sent to Mr. Starr on December 4th asking him three questions and asking that he merely fill in the blanks and circle "yes" or "no" as an answer. And I am hopeful that by continuing to raise this issue, we might actually get the answers that we are owed before we are finished—

Mr. SENSENBRENNER. Without objection, the gentlewoman's letter will be placed as a part of the record. She may proceed.

[The letter follows:]

*RECORD / INSERT,  
(Per Lofgren)*

AFFIDAVIT

**Question 1.** When did you first hear any information to the effect that a tape recording existed of a woman -- any woman -- who claimed to have had a sexual contact with President Clinton?

Answer: \_\_\_\_\_

**Question 2.** In or about November 1997, did you discuss with any person the possibility that a tape recording might exist on which a woman claimed to have had sexual contact with President Clinton? Yes or no?"

Answer: (circle one) Yes No

If yes, provide a full account of the circumstances. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Question 3.** There is an investigation into leaks from your office to the press. Reporters promise confidentiality to sources, and they are very serious about that. I am asking you today, will you release members of the media from their vow of confidentiality to you and your deputies so that this can be fully investigated?

Answer: (circle one) Yes No

I, Kenneth Starr, do certify under penalty of perjury, that the aforesaid answers are the truth, the whole truth and, nothing but the truth.

**Hon. Kenneth Starr**

Sworn to before me this \_\_\_\_\_  
day of December, 1998  
Notary Public \_\_\_\_\_

Ms. LOFGREN. Secondly, I think it is clear that the allegations in this article are so far from what would be required to prove that the conduct was destructive to our American constitutional system of government that I really think it is preposterous. My colleagues have handled this quite well. I don't need to go at very great length. So I would therefore like to yield the remainder of my time to my colleague from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I thank the gentlelady for yielding. I understand, I wasn't in the committee room at the time, but I understand that Mr. Cannon acknowledged that Ms. Lewinsky might be wrong about the time and I appreciate that acknowledgment. But I really wonder when we should stop assuming that she was making mistakes. I think we have that responsibility. It is a very dangerous assumption, but anyhow—or that she was correct.

Mr. CANNON. If the gentleman would yield on that point, I don't think I acknowledged that she made a mistake. I don't know. But a two-hour mistake after several months is not a major thing.

Mr. DELAHUNT. I don't have a lot of time. Again, Mr. Frank talked about shoddiness. While we are on the subject of that phone call, I just want to make another point that speaks to the quality of the evidence. And I dare say it speaks to all of the evidence contained within the Starr referral because no member of this committee, including myself, have had the opportunity to review it. And we know that, and the American people should know that. It is just—it was simply an impossible task.

You know, both the referral from Mr. Starr and Mr. Schippers state that Ms. Currie initiated the call when she was visiting her mother in the hospital. Now, if Mr. Starr had bothered to investigate, again another point, I would call it a rather key point, or if Mr. Schippers had done the work an impeachment should really be about, they would have found that Ms. Currie was at the Howard University hospital here in D.C.

Now, go back to this key corroborating evidence, the cell phone bill that we keep talking about. Putting aside why Betty Currie would use her cell phone to call Ms. Lewinsky to begin this obstruction of justice, let us put that aside, but just notice, notice that the phone bill says the call was from Arlington, Virginia, not from Washington, not from the District.

You know, when should we believe Mr. Starr? It is interesting to note that in the grand jury Ms. Lewinsky stated rather clearly that the Office of Independent Counsel asked her if she would agree to be wired to get Vernon Jordan or Betty Currie and possibly the President.

Mr. SENSENBRENNER. The time of the gentlewoman from California has expired.

Mr. GEKAS. Mr. Chairman, point of parliamentary inquiry.

Mr. SENSENBRENNER. State your point.

Mr. GEKAS. Do we have to refer to Mr. Coble to gain extra time for our members?

Mr. SENSENBRENNER. Mr. Coble told us that he was more of the official timekeeper than this contraption.

Mr. COBLE. Mr. Chairman, I think I have ruffled feathers. I didn't mean to. We are in the shadow of the yuletide season. I will

withdraw my complaint and I will try to get some time and I will give it to Mr. Watt before the midnight hour.

Mr. SENSENBRENNER. Without objection, the feathers are unruffled.

Mr. COBLE. I am not sure about that, Mr. Chairman.

Mr. DELAHUNT. May I have an additional minute?

Mr. SENSENBRENNER. Without objection, so ordered. Well, it is the time of the gentlewoman from California. She has to ask for it.

Mr. NADLER. Mr. Chairman, could I ask for an additional minute for the gentlewoman from California?

Mr. SENSENBRENNER. I guess so, without objection.

Mr. NADLER. And I yield it.

Mr. SENSENBRENNER. Well, even though proxy voting has been abolished for four years, I guess the gentleman from Massachusetts is now recognized on his own for a minute.

Mr. DELAHUNT. Well, I thank the creativity of the Chair. But I just simply want to make the point that during her grand jury testimony, Monica Lewinsky unequivocally stated that during the encounter at the hotel, the Ritz, she was asked by the Office of Independent Counsel whether she would consider to be wired.

And yet Mr. Starr, under oath, when he testified here before us in reference to a letter that I had produced to him that he had sent to Mr. Brill, where he said that the suggestion that he had in any way requested Ms. Lewinsky to be wired was totally false, was totally false. I mean, this is—we are on the verge of voting another article based on pick and choose and pick and choose and just shoddiness everywhere. I sincerely ask my friends on the other side just to think about these things. Please.

Mr. SENSENBRENNER. The gentleman's time has expired. Before recognizing the next speaker, let me announce that I have been informed by staff that the Office of Independent Counsel has prepared the responses to the questions that were jointly asked by Chairman Hyde and Ranking Minority Member Conyers. And I—using their words, they are literally “out the door” with these responses and should be here within the next half hour. I hope that that satisfactorily answers the questions that have been posed at least about the timing of this.

For what purpose does the gentleman from Virginia, Mr. Goodlatte, seek recognition?

Mr. GOODLATTE. I move to strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for five minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, I intend to vote for this article of impeachment. I have listened to the debate, studied the evidence very carefully. I think that the evidence very strongly supports the allegations of an effort to obstruct justice by the President of the United States.

I would like to address my attention to motives. The gentleman from Massachusetts focused on the motivation of Ms. Lewinsky, and I think that is important and I would like to address that. But I think the motivation of the President in this case, particularly when we come to the issue of whether or not this is an impeachable offense, is particularly important because many on the other side

have suggested that even if all of these events described in this article took place, it is still not an impeachable offense because it is simply the President's efforts to cover up an embarrassing situation. I don't believe that to be the case, but I will get to that in a moment.

I think the gentleman from Massachusetts is right that Ms. Lewinsky was motivated not to testify, but I also think there are a lot of different ways that she might result in not testifying, and one of those was the very affidavit that is the subject of this article. And it is an issue of control. The President of the United States did not want Ms. Lewinsky to testify because if she went before the civil deposition and testified, she would be expected to tell the truth under penalty of perjury, the very issue in this case.

And so the issue of this affidavit, the President knows that an affidavit is being prepared, he knows that if it is being prepared truthfully, that she is definitely going to be called to testify in that case because she would then be a material witness, because as a subordinate employee of the President, her evidence of her relationship with the President is very much related to the question of whether or not Ms. Jones is telling the truth in her case.

It all boils down to how you prove a sexual harassment lawsuit, and every one here should know that it is very difficult to prove a sexual harassment lawsuit. You do it by showing patterns of behavior. Very often the only two witnesses to the case are the two people involved. In this case Ms. Jones and the President were the only people in the room during the incident that is alleged. So what can you show to corroborate Ms. Jones' testimony? Well, Ms. Lewinsky can corroborate that. So it is very important that that affidavit be false.

And so, yes, there is a motivation on the part of Ms. Lewinsky not to testify, but how she goes about not testifying is of grave concern to the President. And I think that is substantiated.

But the greater concern that I have is, what is the motivation of the President? I reject the argument that this is simply to avoid embarrassment, because in the very same deposition that the President gave testimony in, which I believe he gave substantial amounts of false testimony, he acknowledged his relationship with Gennifer Flowers. He acknowledged embarrassing circumstances.

And as a result, it is my opinion that the President engaged in the activity, both in that deposition and in all of these activities surrounding it, with regard to the affidavit, with regard to the gifts, with regard to Ms. Currie's testimony and so on, all of that was designed to defeat that sexual harassment lawsuit. That is the purpose of the President's activities here. It is not to avoid embarrassment. It is to defeat the lawsuit.

When we had Professor Dershowitz come before us and testify, he attempted to define several levels of perjury, some of which he acknowledged would be impeachable and some not. And he attempted to make this perjury the lowest level of perjury and therefore not impeachable. But I pointed out to him that if these facts are indeed the case, that this is a part of an effort to defeat this lawsuit, that is not dissimilar to the police officers that he complained about giving false testimony in criminal cases in the effort to win those lawsuits.

So his effort to defeat this lawsuit or win it from his standpoint, in my opinion, is a very serious form of perjury. It is not based upon simply covering up his personal activities but rather to subvert the judicial process, to harm a right that people in this country have to bring, and that is sexual harassment lawsuits when they are treated in a certain fashion. And we should not treat the President's behavior lightly because it was, in my opinion, founded upon an effort far, far removed from simply covering up a personal embarrassment.

I yield back the balance of my time.

Mr. SENSENBRENNER. The gentleman's time has expired.

I am going down the line in order on the Democratic side. Do either the gentlewoman from Texas or the gentlewoman from California seek recognition?

The gentlewoman from Texas is recognized for five minutes.

Ms. JACKSON LEE. I would like to strike the last word. We are dangerously tilting over the edge, and for many of us this exercise has not been taken lightly. And frankly, I again, a word that I continue to use because I hope it signifies some seriousness in this effort, I am just not sure where we are going. We are at the point of these articles of impeachment.

And for those who are studying this process and have seen us work through yesterday and today, the articles have several paragraphs and so they make up the article as an entirety. And this one that is Article III is called or at least suggests obstruction of justice.

But I believe we shouldn't even be here, if you will, because these are private matters, albeit reprehensible. And if we would tend to the constitutional mandate and the Framers mind-set or the Federalist papers or the words of James Madison, we would understand that treason, bribery and other high crimes and misdemeanors were intended to deal with the acts of a President that impacted the governmental system, that subverted the Constitution, that toppled the government, that destroyed the trust in government of the chief executive officer of the United States of America.

We are here quarreling over these private matters and discussing phone call distinctions, albeit relevant since our colleagues are relying upon this, but, unfortunately, we cannot rely on witnesses called by the Majority to have been able to assess their credibility, to have been able to ask Ms. Currie, to have been able to ask Ms. Lewinsky of the discrepancy. So it troubles me and somewhat provides an unfortunate degree of humor when I hear my colleagues citing the record, when it is nothing but the unchallenged record of testimony where we have not had the ability to give and take, to examine and cross-examine.

In the Madison papers, written quite well by James Madison, who was a good note taker of the proceedings to frame the Constitution, it is made very clear that they had intended or had the language dealing with how they perceived high crimes and misdemeanors, treason and bribery against the State. And it was only when the stylistic committee, meaning the grammar committee, the committee that makes it look pretty, decided to take out "against the State" to eliminate redundancy.

So we are actually talking about private matters of the President of the United States, and the impeachment provision doesn't even provide for that. But that is another story, I guess.

I want to focus on number 7 of Article IV because it talks about the President using his Cabinet and attempting—and his chief deputies—to cover up and to obstruct justice.

First of all, as this was unveiling, the President was telling more or less the same story to everyone. This was embarrassing, didn't want to have this come out, anyone to know anything differently. I don't know how we can attribute to him the fact that he knew that all of this was going to explode. At the time, he was still dealing with Whitewater and Travelgate and Filegate. And then all of a sudden this came about.

But let me simply say, in the Starr report you have the most senior officials in the executive branch serve as additional, albeit unwitting, agents of the President's deception. The Cabinet and White House aides stated emphatically that the allegations were false, and they are basing that upon what Mr. Clinton said to them. Now, none of them got on a telephone or got into a meeting and organized themselves and said, you go here, you go here, make sure when you go into the grand jury, which they did not know, including Mr. Lindsey and Lieberman and all the others, you say this.

And then the ultimate foolishness, foolhardiness of this is in Mr. Starr's referral he talks about the First Lady. We all are familiar with the very forceful statement she made on one of the morning talk shows sometime in January. He wants to call that obstruction of justice.

Mr. SENSENBRENNER. The time of the gentlewoman has expired.

Ms. JACKSON LEE. The President is not being treated fairly. These are not impeachable offenses, Mr. Chairman. These are not offenses against the State. This article should fail because it is groundless.

Mr. SENSENBRENNER. For what purpose does the gentleman from Ohio, Mr. Chabot, seek recognition?

Mr. CHABOT. To strike the last word.

Mr. SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

As we come to a close on this unfortunate but very necessary debate, let me address the third article of impeachment, obstruction of justice.

As I discussed last night, the charges arrayed against the President are individually very troubling but together they are overwhelming. This article I believe demonstrates the web and deceit and cover-up that the President constructed to hide his lies in the Jones' civil rights lawsuit.

This third article of impeachment charges the President of the United States with, one, encouraging a witness to file a false affidavit; two, encouraging a witness to give false testimony; three, encouraging a witness to conceal evidence; four, assisting a witness to get a job in order to make sure that she didn't tell the truth in her testimony; five, allowing his attorney to make false statements and thus cut off a specific and very important line of questioning in the Jones' case; six, attempting to influence Betty Currie to lie;

and, seven, making false and misleading statements to his staff and to his Cabinet with the intent that they would repeat those lies before a Federal grand jury and also would repeat those lies to the American people.

The purpose of all this lying and deceit wasn't just to keep the President from being embarrassed. He had been embarrassed before. It was to defeat a civil rights sexual harassment lawsuit. That was the purpose. This isn't just about sex, as many people have said and would like it to be about. It is not. It is the lies. It is the obstruction of justice. It is the covering up. It is that lawsuit that was the basis for all of this.

These serious seven obstruction charges are extremely troubling. We are not talking about little white lies or half-truths. Instead, we are talking about the President of the United States engaging in cover-up, witness tampering and a well-planned effort to thwart our system of justice.

These are criminal acts that cannot be ignored. Let us always keep in mind that, as the President was concealing the evidence and the other things that he was doing in this case, he was consciously and deliberately breaking the law. At that time, he was the chief law enforcement officer of this country. And that is completely unacceptable. That is why we are here this evening.

At this time, I would like to yield the balance of my time to the gentleman from Georgia, Mr. Barr.

Mr. BARR. I thank the gentleman from Ohio.

Much has been made by various of the other speakers on the other side of the aisle in their continuing defense of the President; and, indeed, they remind me dramatically of defenses and arguments that I would hear as a United States Attorney raising arguments against indictments, against proof in criminal cases.

I would point out to particularly my colleagues on this side of the aisle that, as they are well aware, obstruction of justice, as the gentleman from Ohio stated, is an extremely serious portion of the United States Criminal Code reflected in the very serious penalties applicable thereto in the Federal sentencing guidelines. There is indeed an entire chapter of Title 18 of the United States Code, which is the Criminal Code, relating to obstruction.

The reason why there are so many different provisions of the Federal Criminal Code that relate to obstruction as opposed, for example, to the perjury provisions of the Code, which are found entirely in one particular section, is because of the very subtle nature and very subtle practice that obstruction usually takes, very frequently involving sophisticated and intelligent defendants. And one may accuse or feel a lot of things about the President of the United States, but I don't think anybody could claim that he is neither sophisticated nor intelligent.

In those types of situations involving application of the obstruction statutes, what almost invariably prosecutors are faced with are defendants who do not tell the person whom they are seeking to obstruct justice, I want you to lie. I am tampering with you. Do you understand that? I am asking you and directing that you hide this evidence? Do you understand that?

It is much less, much less direct than that, much more sophisticated.

The case that we have heard today, reflected in the general but with sufficient specificity provisions of Article III of these articles of impeachment, is more than sufficient to satisfy the burden of your United States attorneys and many State prosecutors for those States which have—might I have one more minute, Mr. Chairman, by unanimous consent?

Chairman HYDE. Yes, sure.

Mr. BARR. For those States which have statutes similar to the Federal obstruction statutes. Frequently—more frequently than not, prosecutors present and have convictions sustained on less evidence than we have addressed here today, much less evidence than the Independent Counsel has already presented to this committee and which will be transmitted along with whatever articles of impeachment may be voted out by the House to the Senate.

And as members on our side have indicated, these involve the tampering with witnesses, tampering of evidence, efforts to have other people go forth, sally forth in the world and relay to other people, in this case literally millions of other people, your side of the story which is not in accord with reality or the facts of the case.

That is the essence of tampering. That is the essence of obstruction. And I feel very comfortable, Mr. Chairman, in recommending the members on this committee vote in favor of Article III and all of its component parts which more than satisfies both the legal and historical burden of an obstruction article of impeachment.

Chairman HYDE. The gentleman's times has expired.

The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much.

Mr. Chairman and members, at one point during the day I thought I would not engage in this anymore because I know that my colleagues on the other side of the aisle have made up their minds and you certainly can't change their minds. They know what they have to do. They know what they must do. There is not a lot of independence over there, and they are going to vote lockstep together, and that is that.

But I want to really talk about some of this to the American public that may be listening. This hodgepodge of referral information that is general in nature, not specific and does not cite anywhere exactly what Bill Clinton said or did to support the allegation in the referral is just absolutely amazing.

But let me talk a little about the job assistance part of it, and that is on page 6, where they say, beginning on or about December 7, 1997, and continuing through and including January 14th, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

There is nothing, absolutely nothing in any of the information that we have received, none of the documents, that supports this allegation. As a matter of fact, if you listen to the telephone conversations between Monica Lewinsky and Linda Tripp, you will see Linda Tripp carefully guiding her to get to Vernon Jordan. Tripp suggests to Lewinsky that Vernon Jordan could really get her a job, that what she needed to do was to find a way to get to Vernon Jor-

dan because he was a powerful man with a lot of friends. And she literally put a string through her nose and just led her right through to her going back to Betty Currie asking if they could get some help from Vernon Jordan.

The President did not ask her, did not ask Vernon Jordan. Nowhere in the document do you see the President in a conversation with her saying that he will give her job assistance if she will not testify. Nowhere do you see him asking anybody to do anything.

But what you see is a very aggressive young woman who knows what she wants, and she's learned a lot about how to stay in people's faces, how to get what she wants, how to ask for it, how to get to the next person higher up, and she does it quite well. She bugs everybody. She ensnares a lot of people into this circle of trying to get her a job. And she keeps pestering and sending notes.

And we know about this because we have interns in our office. Some are very aggressive, and they let you know what they want right away. Ms. Waters, can you introduce me to so and so? Can you get me into a party with the President? Can you get me on a campaign? I want to be the press person. And, some of them really go after it.

And when they come here, they do their work oftentimes, but they're at the parties, and they find out where the big things are happening. They want to rub shoulders. That's what she was all about. That's how she did it.

There's nothing in this information that shows that the President and Vernon Jordan dropped everything they were doing, as Mr. Barr said. Now that's really putting a spin on it, to say the President of the United States and Vernon Jordan dropped everything that they were doing in order to get Monica Lewinsky a job.

Let me tell you something. He referred to her as second or third rate. Well, we have interns that come into our office, and they may come in making no money or very little money or they may just be volunteering. But they're not second- or third-rate people. Even if they come in at an entry-level rate, they just happen to be people breaking in the door, getting a job for the first time. They're not second or third rate. We have some first-rate people in low-paying jobs.

And to identify her, a college graduate who's bright, who's computer literate, who keeps the damndest records I've ever seen—this woman documents everything. She's not a second- or third-rate person. She's very bright. She knows how to go after a job and to get people doing what she wants them to do.

This is a bunch of baloney. I'm not a lawyer, but I could argue this case in court and win. I could win because they have no documentation. They have nothing but the spinning of someone like Mr. Barr, and that's dangerous. And why am I so fixed on this—

I request unanimous consent for two more minutes.

Chairman HYDE. The gentlelady wants two minutes. She shall have it.

Ms. WATERS. Let me tell you why I'm fixed on this. I'm fixed on this because I think Ken Starr is the poster boy for all the bad prosecutors in America.

What does that mean? That means you have prosecutors who abuse people, who use their powers to make people plea bargain because they don't know their rights. They perjure.

I don't care if you're from the right wing or the left wing or in the center. I am with you in fighting against bad prosecutors.

I was sympathetic to the people up at Ruby Ridge and Waco, and they certainly are not over on the left. I was sympathetic to them because there's nothing worse than being descended on with the gun and the badge and you're powerless to fight that kind of power.

Americans, you better listen. Because we're talking about Ken Starr today, and you're hearing people make up information, make up documentation. This could be your child, your wife, your friend tomorrow who found themselves in a very difficult situation with an abusive prosecutor who will do whatever is necessary to convict you. That's what this is all about.

It's not simply about Bill Clinton. This is about justice in America. How does the justice system work? You don't know about it until you come in contact with it, but God forbid you get a Ken Starr or Bob Barr. You don't ever want that.

Chairman HYDE. The gentlelady's time has expired.

The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. I'd strike the last word.

Chairman HYDE. The gentleman's recognized for five minutes.

Mr. BRYANT. I'm not sure if I can follow that presentation, but I certainly have seen lawyers in court do worse.

In response to my friend Bill Delahunt, who is a very experienced, good prosecutor from Boston, we had sort of a dangling question there at the end. He had asked whether I, as a prosecutor myself, would take this case to court. And I hear that this is a private matter consistently, that this is just private parties, and it was, to an extent.

Again, the U.S. attorney, the prosecutor from Massachusetts, doesn't handle divorce cases; and up to a point that's about all it would have been had anybody been interested in the case. But from the point in which it went from just allegations about sex to an active cover-up, that's when it came into the public domain and when the law started being violated regarding perjury, obstruction of justice and tampering with witnesses, hiding evidence.

And you can isolate these in a vacuum all you want and talk about them and take a statement out of context, and it sounds perfectly innocent, but you do have to look at the big print. You do. You don't throw away your common sense. You have to look at the big picture and you have to look at the results.

As I mentioned yesterday in my statement, just this point about the job, this lady was aggressive. She tried for months to get a job. She had friends in high places and could not get a job, but, lo and behold, within 24 hours of signing an affidavit which exonerated the President, she got the job in New York with a Fortune 500 company. The evidence was in her apartment one day and then, almost by magic, it was in the President's personal secretary's house under the bed, hidden, just there.

So you have to look at these things in the big picture. You can't ignore them. These things just don't happen by magic.

But in answering my friend's question, you have to look at several issues. And it would be hard, he said, if this weren't the President. But you have to look at it as if this were another highly elected official. If it were the everyday person, they wouldn't have the opportunity to do the abuse, to perform the level of abuse that occurred in this case. So I think you have to look at it as a very visible person, the person that, once this comes out, they're going to say, well, why didn't you look at this person? Why didn't you prosecute this person? Because he's famous, he's rich, he's powerful. So that is a special consideration.

In fact, it's in the U.S. attorney's manual. That was discussed two days ago when we had this panel in. Ron Noble brought that up and said, sometimes you have to send it to Main Justice to prosecute it. Because they're going to say, well, you know this person, you're giving them special treatment and so forth. You have to be extremely careful there and especially with somebody like the President.

I never had the opportunity to prosecute the President, and I hope I never do. But the person who is the chief law enforcement official, the fact that he brought other people in this and caused other people to commit crimes, the fact that there is a cover-up here, the fact that you are vindicating the laws against perjury and obstruction of justice, vouchsafing this, as Griffin Bell said, the fact that all this lying and cover-up occurred in a sexual harassment case, you have to vindicate that lawsuit. You have to protect the rights of people who file these lawsuits. Because they're difficult to file. They're difficult to prove.

So at the risk of being named an unreasonable prosecutor by a couple of these folks who testified here in the past, I would have to say I would have carried this case to court and would yield back the balance of my time.

Chairman HYDE. Thank the gentleman.

Anyone else seek recognition? Mr. Meehan?

Mr. MEEHAN. Move to strike the last word.

Chairman HYDE. The gentleman is recognized for five minutes.

Mr. MEEHAN. Mr. Chairman, sitting here on this article and listening back and forth for the last four hours or so, there's an old joke that comes to mind when I hear the case for Article III. It goes something like this, to the best of my memory.

A physicist, a chemist, and an economist are stranded on a desert island. Now, there's little food on the island, so they're all starving. Suddenly a can of soup floats ashore. They're all elated until they realize they don't have a can opener.

Then the physicist has an idea. He says, you know, if you drop that rock over there at a certain angle from a palm tree of a certain height on the top of the can, it will pierce the top of the can, and we can eat.

The chemist replies, well, that's interesting, but I have a better idea. We can mix some of the sand over there with some of the saltwater, grind up the palm leaves, smear the resulting paste on top of the can, leave it out in the sun, and the top of the can will eventually dissolve.

Well, the economist leaped up after listening to his colleagues to speak on the subject, nodding his head. Finally, the economist said,

that's great stuff, but I think I know how to deal with this. Assume a can opener.

Mr. Chairman, I call Article III the "assume a can opener" article. Monica Lewinsky tells us no one asked her to lie; and no one promised her a job in return for her silence. Betty Currie tells us that she didn't feel the slightest bit pressure when she spoke with the President following his civil deposition. We know that Ms. Currie wasn't a witness at the time. The job assistance and the cover stories between the President and Ms. Lewinsky long predated Ms. Lewinsky's involvement in any way, shape, or manner in the Jones' case. No one accuses the President of saying very much, if at all, in response to Ms. Lewinsky's suggestions that the gifts be concealed. No one testified that the President told Ms. Lewinsky to file a false affidavit.

In short, there are no hard facts to support any obstruction of justice charge. So in the absence of any hard facts, we just assume a conspiracy. We assume implicit understandings. We assume subtle suggestions, tacit agreements, bad intent. We assume a case from nothing.

Mr. Chairman, there's a reason why few consider this article to have any chance of approval on the House floor, even though its central allegation, obstruction of justice, sounds much more serious than mere perjury. It is because there are no hard facts to support the charge. Just assumption after guess after inference. Not the stuff our Founding Fathers anticipated for the constitutional equivalent of the atom bomb.

I urge opposition to this clearly misguided, unproven article of impeachment and yield back the balance of my time.

Chairman HYDE. Thank the gentleman.

Mr. Pease, the gentleman from Indiana.

Mr. PEASE. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for five minutes.

Mr. PEASE. I yield two minutes to the gentleman from North Carolina, Mr. Coble.

Mr. COBLE. I thank the gentleman from Indiana.

If you would yield to my friend, Mr. Watt, two minutes and get me out of his doghouse, I would appreciate it.

Mr. PEASE. I would be pleased to. I yield to the gentleman from North Carolina.

Mr. WATT. I thank the gentleman for yielding to me.

I was on a roll at the time you all interrupted me. You've given me a whole hour to cool off, but I appreciate the time anyway.

I was going to conclude my story, and it actually follows with what Mr. Meehan says. Because you can put all this stuff together if you have a conspiratorial mind and you can draw the conclusion that the Majority is drawing. But it just is not supported by any evidence. I mean, you've got to do a lot of speculating.

One of the things they're speculating about is that, well, Vernon Jordan couldn't possibly get a job or try to get a job for somebody as terrible, although reliable in her testimony, I would say, as Ms. Lewinsky. And you should be aware that I have a member of my staff who drove Mr. Jordan to the negotiations for the debate preparations in the last campaign. In the process of getting there, as he was parking and Mr. Jordan was in the car, he backed into a

pedestrian. And Mr. Jordan has actually made several offers to try to get him a job. I mean, that's the kind of guy that Mr. Jordan is.

Now, you could—sure, it's not consistent with your theory that somebody could just have an innocent motive that they could be helping out somebody, but it's just as consistent that Mr. Jordan, and I know him, is that kind of person.

Mr. PEASE. I need to reclaim my time to say something here.

Mr. WATT. I'm going to yield back to you. My point is that you are seeing these ghosts behind every tree and, you know, you package all this stuff, as Mr. Meehan has said, and you come to what appears to be a rational conclusion but it's not very rational.

I ask unanimous consent that Mr. Pease be given 4 minutes.

Mr. PEASE. Thank you. I don't think I'll need it. I won't ask for it. I'm trying to do cleanup. Mr. Delahunt asked a question of Mr. Hutchinson. I wanted to give him time to answer that question on my remaining time.

Mr. HUTCHINSON. Thank you, Mr. Pease. I understand that Mr. Bryant answered this, but the question is whether these cases would be prosecuted if the President was an ordinary citizen. I would just respond very quickly that the case of an ordinary citizen would be considered from a standpoint of probable cause proof, a very low standard as to whether a prosecutor would bring charges. We're looking at this as an impeachable offense, and therefore at a very high burden. So I think we're looking at this much closer than an average citizen. I think with eyewitness testimony, it would be a good case to bring forward.

Mr. NADLER. Would the gentleman yield for a moment?

Chairman HYDE. The gentleman's time has expired.

Mr. NADLER. Could I ask unanimous consent that he be given one additional minute to respond to my question?

Chairman HYDE. If he chooses to.

Mr. NADLER. Thank you. Would the gentleman yield?

Mr. HUTCHINSON. Certainly.

Mr. NADLER. Thank you. You just said if the President were an ordinary person, the prosecutor would look at this from a level of probable cause. Yet we heard all these prosecutors say that although you only need probable cause for grand jury indictment, prosecutors look at a case as to whether they'll prosecute it, and properly so, as to whether they're likely to get a jury conviction. So they would be looking at a much higher standard than probable cause; isn't that correct?

Mr. HUTCHINSON. Well, I heard that testimony and it was interesting. I think that a prosecutor does look to see what the likelihood of getting a conviction is. But I think also that when you're talking about sexual abuse cases, there's a lot of cases that they're very tough to bring but in the interest of justice it is required to go forward. And lots of times you don't know what's going to happen in the jury. I think the prosecution is in a little bit of trouble when you start figuring out what a jury is going to do. You have to look at this and in your heart if you feel this case has the merit to go forward it should and let the jury decide.

Chairman HYDE. The question occurs on Article III. Oh, Mr.—Mr. Wexler.

Mr. WEXLER. Thank you. I will be brief, Mr. Chairman. I would just like to spend a little bit of time examining this alleged, corrupt scheme to conceal evidence that the President allegedly engaged in. And I use the words "corrupt scheme to conceal evidence" because that, of course, is what is alleged in the articles of impeachment. And to do so, I would like to employ what I think was a noteworthy argument advanced by Mr. Barr just a couple of moments ago. And if I understand Mr. Barr's argument correctly, it essentially went that because the President is admittedly a smart, intelligent man, that it is appropriate to infer or use circumstantial evidence because naturally a smart, intelligent man would not create a chain of evidence that so directly establishes that he obstructed justice. I can buy that. That's a reasonable proposition.

So let's apply that proposition to the allegations against the President. This smart, intelligent man, according to the President's accusers, arranged on December 28, earlier in the day, with a corrupt motive to retrieve all the gifts that he gave to Monica Lewinsky. And this intelligent, smart man apparently was so taken by his incredibly wise retrieval of the gifts that he wanted to up the stakes later in the day. He gave her some more gifts. So earlier on December 28, the President with corrupt mind said, here, we're going to create this big scheme to take back the gifts. And that same intelligent man later on in the day, so taken with himself, said, here's some more gifts. I guess he just wanted to do it all over again in a couple of days so he could do that same corrupt scheme to get them back. It just doesn't make sense.

And then let's look at the job quest, the so-called we're going to keep Monica on the team, I think it was explained by either Mr. Schippers or someone else. We've got to keep Monica on the team. We've got to get her a job. But of course they've got to get over one tremendous hurdle. The job search started long before Monica Lewinsky was ever on the witness list. So knowing that creatively, the President's accusers, they say, well, the job search itself wasn't an impeachable event. That wasn't corrupt. What was corrupt was when the President intensified the job search. The job search that started for months. Well, that was okay. It was just when he got serious about it, when he intensified it, it became impeachable. But this same smart man, this same intelligent man who apparently thought it was so important to keep Monica Lewinsky on the team, he never thought to get her a job at the White House like she wanted. How did he miss that one? So that's this intelligent man that concocted this extraordinary scheme to conceal evidence and get a job. But he forgot two things. He didn't conceal any evidence because he gave it back to her and he forgot to get her a job.

Ladies and gentlemen, does anybody reasonably believe that this is what we impeach a president of the United States over? This is as circumstantial as it gets. This employs the ability of reading somebody's mind. And we have now concluded that in order to get us the impeachable evidence, this intelligent president, this intelligent president did some extraordinarily stupid things and that is now the basis of his obstruction of justice count.

Thank you, Mr. Chairman.

Chairman HYDE. The gentleman from Florida, Mr. McCollum, is recognized for 5 minutes.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman. We've heard a lot tonight about these seven parts of the obstruction of justice article. And I think it is important for us to keep in mind a couple of things. One, I wish, as one of the members of the other side had said earlier, that the record did show that all of this was made up. But unfortunately, it is not made up and nobody's made it up. It's before us and we have to deal with it. That's why we're here tonight.

Secondly, I think it's important to remember that this is the article we discussed earlier in the day that originally came forward saying one or more of the following. There are seven of them. Not every one of them may rise to the same level of proof that the others do. The strict burden that we have to send something forward to trial, as has been stated tonight, is probable cause. I happen to think we need to have it a little higher than most of us do and I think clear and convincing has been more or less the general standard most of us agree to. A couple of these seven I think go beyond that. I would say that I'm convinced from the evidence that we have before us that if I were on a jury, I'd convict the President beyond a reasonable doubt. But all of them are clear and convincing and surely to any reasonable person, there would be probable cause to take these to trial for crimes if you were going to take these to trial before a jury.

Now, let's look at this. We're not surmising about this, as somebody said earlier. We're talking now about, yes, some circumstantial evidence. I don't know many crimes that are committed in this country that are taken to trial of any sort or type of which there is not circumstantial evidence. Most of them involve that. And a great many of them have only circumstantial evidence. There aren't too many cases of murder where you have the eyewitness, at least where you have a trial. Usually you have somebody who is going to plead to that one. Where you actually have to go to trial, you don't usually have the goods from the witness there. You have circumstantial evidence.

What we have today is very compelling circumstantial evidence. We know the President of the United States was facing a lawsuit, a civil suit we talked about a lot tonight; sexual harassment, civil rights suit. He was worried about that suit, no doubt, and again, whether you agree with Paula Jones' right to bring the suit or whether or not he should have been required to testify, the courts ruled he did and he had to go forward and testify.

Now, long before that came up and long before Monica Lewinsky was subpoenaed, we know that there was an agreement between the President and Monica Lewinsky that if they were ever asked, they would lie about their relationship. That's a fact. Certain period of time goes by. There is that famous call on the night of December 17, after the President learns Monica is on the witness list. And they have the discussion. That's very clear. And I think this is one of the strongest. It's the very first one of the seven obstruction of justice charges that are in this article. On that night they have this discussion about the fact she's going to be a witness and she's worried about it and she says to the President, what do I do about it? He suggests that she might file an affidavit. And in that discussion, he suggests she might use the cover stories which, by

the way, form the basis of the second obstruction of justice charge. Well, you can always tell them that Betty is the reason you came down here and so forth. At any rate, both of them knew that night that it was going to be a false affidavit. It didn't have to be explicitly stated. They talked about cover stories that night and Monica Lewinsky said in a sworn statement to the grand jury when asked about all of this, when she did say of course that the President didn't tell me to lie, but he did suggest things that would lead me to believe that he expected we were going to. And she says, quote, it wasn't as if the President called me and said, you know, Monica, you're on the witness list, this is going to be really hard for us. We're going to have to tell the truth and be humiliated in front of the entire world about what we've done, which I probably would have fought him on, probably, that was different. And by him not calling me and saying that, you know, I knew what that meant, unquote. Now, that's what she's testified to and that's very consistent with the circumstances we're in here in this situation. So I'm convinced myself beyond a reasonable doubt and I think it would be pretty easy for a prosecutor to convince a jury that the President indeed obstructed justice with regard to suggesting this affidavit, expecting it to be false. But that isn't the end of the story. Moving very rapidly in that process, you know, on the 18th—I should say on the 19th of December—that was on the 17th—the President—I shouldn't say the President—Monica Lewinsky received a subpoena for the gifts that we've talked about. And in that subpoena was a very explicit request for any dresses or hat pins and so forth that the President might have given her, and it screamed out at me, she said, the hat pin which was the first gift that had been given to her. And so she then tries to make some contact with the President. He has indicated he wants to give her more gifts and finally after Christmas on December 28, she goes into a meeting with the President and has that meeting in which he is going to give her the Christmas gifts that so famous has been discussed. In that meeting, in that meeting, she says Mr. President, the hat pins here, this is a big problem. It's been subpoenaed. She's worried about it. Well, he says, you know, she says maybe I ought to give this to Betty Currie. Maybe we ought to give the gifts and package them up. He says, let me think about it, or words to that effect. That very day on December 28—Mr. Chairman, I would like to ask for unanimous consent for 3 additional minutes to wrap this up.

Chairman HYDE. Without objection, the gentleman is recognized for 3 additional minutes.

Mr. MCCOLLUM. Thank you. On December 28, again on that very same day that the President and Monica have this discussion where she gets the Christmas gifts and where she came to discuss this with the President about what do I do with the gifts, she goes home and Betty Currie calls her. Now, there's circumstances we discussed earlier about this but the fact is we have the record showing Betty Currie made a call on that date, despite all the other disputes, to Monica Lewinsky. And there's no question that she then picks up the gifts. Heavy circumstantial evidence, but I think it all fits into the big pattern, the big picture that's here. Time's passing. About this time, by the way, Vernon Jordan gets cooking looking for a job. He'd been asked by Monica Lewinsky a

long time before all of this to look for a job. She suggested that to him a long time ago. Remember what Mr. Schippers told us about yesterday? We went through that whole sequence of events? But he really didn't do anything about it until, lo and behold, on January 7, she finally signs the affidavit which he's been aware of she's been preparing. She's been going around, talking with him a lot about the hat pin and so forth. Once she signs on January 7, lo and behold on January 8, just coincidentally, he calls Mr. Perlman at Revlon and she has a job. Bang, just like that. That's why the obstruction of justice charge is in here for that. The coincidences aren't coincidences. They're a pattern.

On the 17th of January, the President testifies, the famous deposition over which we've already passed a perjury and articles of impeachment charges. And just after that, he calls Betty Currie. Remember, he had explicitly told her that—explicitly said that she had things she could tell to the court in that deposition. So he calls her and has her come over the next day. That's when he reads off the litany that's in one of these obstruction of justice charges down there on the list. One, two, three, four. Now, some people say she was never a witness. I want to make the final point on this one, very important point and that is the courts have ruled that the solicitation of false testimony from a prospective witness may provide the basis for a conviction of obstruction of justice. In a court case I'm sitting here reading from, in federal circuit court, the defendant tried to induce to witnesses to provide a false alibi. Neither individual had been subpoenaed and neither had any intention of testifying. The court went on to say any corrupt behavior to influence any party or witness, whether successful or not in this situation constitutes obstruction of justice prohibited by the law. So whether Betty Currie was a witness or not a witness, the President certainly had reason to believe she was going to be. She was truly a prospective witness in that case, and I believe that is one of the most compelling beyond a reasonable doubt obstruction of justice charges that are in this particular article of impeachment, Article IV. And then after all of that, beyond that we know the President talked—Article III, excuse me—beyond this the President went on to talk to his—two days later, and so forth, to his cabinet, to his White House aides telling them even bigger whoppers about his relationship with Monica Lewinsky than he had told to the court in the day or two before that.

It's a picture that's wrapped up. I think it's clear. It's clear and convincing, Mr. Chairman, and I believe that Article III should go forward to the trial and we should pass that article of impeachment.

Chairman HYDE. The gentleman's time has expired. The gentleman from New Jersey, Mr. Rothman.

Mr. ROTHMAN. Thank you, Mr. Chairman. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. ROTHMAN. Thank you. I would like to step away from the lawyer minutia—you could call it other things—and try to put some of this in perspective. What is going on? What is going on here in the House Judiciary Committee? The Republican Majority is trying to impeach the sitting President of the United States.

That is what is going on right now. They have already passed two articles of impeachment to impeach the sitting President of the United States. Now they are on Article Number III of impeachment.

What does the Constitution have to say about this? The Constitution says that a President can only be removed on a showing of treason, bribery, or other high crimes and misdemeanors. It does not say that you can remove a president for bad behavior. It doesn't say you can remove a president for having bad character. Some of those ideas were thrown around in the 1700s but were rejected by the drafters of the Constitution who said they wanted a strong presidency for 4 years. That is what has given our country stability for a long time, but we cannot remove our President whenever the Majority party in the Congress says so. The people say so every 4 years whether the President stays.

They say the President committed impeachable offenses. I believe that anyone who wants to impeach the sitting President of the United States must bear the burden of proving it.

Okay, so what is the appropriate burden of proof? Clear and convincing evidence. So who brought the proof? We had Judge Starr come forth, who was not an eyewitness to anything. He admitted that many times. We had Mr. Schippers come forth, who is a lawyer, who summarized his inferences and conclusions from transcripts of other people's testimony, people who were never cross-examined. So you had those bunch of lawyers bring the case for impeachment. Then you had another bunch of lawyers on the other side defending the President, Kendall, Ruff, and Lowell, who refuted and rebutted every single allegation of impeachable offense raised by the accusing set of lawyers. And that is what we have got. We had a bunch of historians say these would never be impeachable offenses. We had a bunch of Democratic and Republican former prosecutors who said none of these would be indictable. We would never indict for any of these. And then you have the American people who say, hey, we have heard this for a long time, all the details. We do not think this is impeachable. You know who was not before us? Not one single fact witness.

So you have got all of this neutralizing lawyer talk. Some say he did it. Some say he did not. All arguing inference. Not one fact witness brought before us and they say we are convinced by a clear and convincing standard when all the lawyers disagreed with each other and not one fact witness came forth. Is that the basis on which we are going to overturn our last election of the presidency? For the third time in American history we are going to impeach a president without meeting the burden of proof? Some say, well, we have to uphold the rule of law. Well, what rule of law? If the President lied in a civil deposition, there are civil courts to enforce that. Maybe that is why he paid a \$850,000 civil court settlement because he knew he would pay a big fine in the civil courts. They upheld the civil rule of law. The President can be sued in criminal court and he can go to prison once he leaves office if he committed perjury and any criminal offenses. So there the rule of law does apply to this President, just like every other American, but what we are talking about is not upholding the civil law or criminal law. We have got civil courts and criminal courts to do those. We are

talking about whether the third punishment should be imposed, impeachment. But it is a punishment that is imposed upon the Nation, the people who elected this President, and I dare say where you have no one who came forth as a fact witness and have competing neutralizing lawyer talk to defend and rebut every allegation of impeachment and most Americans say it is not impeachable. Most historians say it is not impeachable. Most prosecutors say they would not prosecute, that they have not met the burden of proof.

Now, I was there when the President waved his finger on TV at us and said he did not have sexual relations with Ms. Lewinsky and I have kids and I think lying is wrong and I teach my kids not to lie and that adulterous, wrongful behavior in my White House is wrong and I believe the President should be punished for lying to the American people. I do not need to hear from the eyewitnesses. I was an eyewitness to those offenses.

So I would be willing to censure the President for what I know with my own eyes and ears took place and what he admitted to when he waved his finger at us and said no sexual relations and he wasn't under any civil deposition definition of sexual relations at that time. He was just talking to us on TV. He lied to us and he should be punished for that and censured for that as well as having an affair with the intern in the White House.

But let us not forget that there has been no meeting of any reasonable burden of proof on any of the allegations, none of them, and they are about to approve the third article of impeachment against our sitting President for only the third time in American history. The American people must tell their representatives in Congress if they don't think this President should be impeached because no reasonable burden of proving his guilt has been established. They must stop what will be one of the saddest moments in American history from taking place, the removal of a sitting United States President with no reasonable proof.

Chairman HYDE. The gentleman's time has expired. The gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

Clear and convincing. Clear and convincing. Clear and convincing. We all agree that that's the standard that must be met. Paragraph number 6, on or about January 18 and January 21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a federal civil rights action brought against him to a potential witness in that proceeding in order to corruptly influence the testimony of that witness. We're talking about Betty Currie. He's going to influence her in that proceeding. Never mind that the period of discovery is going to end several days from then and she's not on the witness list. Clear and convincing? I don't know.

Let's look at the evidence. "I was never really alone with Monica, right? You were always there when Monica was there, right? Monica came on to me and I never touched her, right? You could see and hear everything, right? She wanted to have sex with me and I cannot do that." Is that clear and convincing evidence that he was trying to influence her testimony in that proceeding? I don't think so.

But there's more. It's not just that proof. You have to have some other proof. This is from Mr. Schippers' report. "He made sure that this was a face-to-face meeting, not an impersonal telephone call. He made sure that no one else was present when he spoke to her. He made sure that he had the meeting in his office, an area where he was comfortable and could utilize its power and prestige to influence future testimony." Clear and convincing? He could have also said they met at the office, because that's what happened. They met at the office. He worked at the Oval Office. She worked outside. How often does the boss come out to the desk? Usually the boss says to the person, come on in. That's what usually happens. Clear and convincing? I don't know.

But there's more. The President has an explanation for this. I thought we were going to be deluged by the press comments because we had entered the eye of the hurricane here.

He had given his testimony in the deposition in the Paula Jones suit. Of course, as we all know and again as the report indicates, the President had an option. He could have said nothing. This is what Mr. Schippers says. He could abide by Judge Wright's order to remain silent and not divulge any details of his deposition.

But it made a lot of sense. Presumably, of course, the other side is going to do the same. There would never be any leaks coming from the other side in the Paula Jones suit and so the President, the only motive he would have would be to influence her testimony in a lawsuit in which the discovery period was about to end.

But the reality is the President knew what was going on. The President knew, even when he was taking that deposition, because he knew that his political opponents were paying for that lawsuit. He knew that. And he knew there were going to be leaks. Now maybe he was paranoid or maybe he wasn't.

January 22, 1998, was a Thursday. NBC Nightly News transcript: "NBC news has learned that the President did admit to sleeping with Gennifer Flowers in his Saturday statement to Jones' lawyers, but the President believes that does not constitute a long affair."

Now, how did that come out? How did that come out? I don't think the President did that. Did that come out from Paula Jones' side? Could it be possible that the President thought that he was going to be asked or Betty Currie was going to be asked questions about Monica Lewinsky? I think it's entirely possible. I think that he knew what was coming.

And maybe he didn't. Maybe he did want her to lie. Maybe he wanted her to lie to the press. Maybe he wanted her to lie to the press because he didn't want the press to know that he had an inappropriate relationship with Monica Lewinsky.

The Republicans would have you believe that that's clear and convincing evidence. Ladies and gentlemen, that is not clear and convincing evidence. I yield back the balance of my time.

Chairman HYDE. I thank the gentleman.

The Chair yields himself two minutes. I just want to say people watching this on television might get the wrong idea that we're—if we pass these articles of impeachment, we're throwing the President out of office. That's exactly not true.

Mr. BARRETT. Point of information or point of—if I could make a point.

Chairman HYDE. Point of interruption? Go ahead.

Mr. BARRETT. Point of interruption. If I could just read, “Wherefore”—from the first article—“wherefore William Jefferson Clinton by such conduct warrants impeachment and trial and removal from office.”

Chairman HYDE. You understand we don’t do the trial in the House.

Mr. BARRETT. I understand that.

Chairman HYDE. You understand the trial occurs in the other body.

Mr. BARRETT. I understand that.

Chairman HYDE. What we do is we find whether there’s enough evidence to warrant submission to the Senate, for them to conduct the trial and for them to impose whatever sanction they choose by a two-thirds vote. That’s the process. And our Founding Fathers were very wise to have the accusatory body not be the adjudicatory body.

You may leave the room.

Chairman HYDE. Yes, Ms. Waters, what is it?

Ms. WATERS. I don’t want you to be frightened when I want to engage you. I want you to stand up for what you believe in. Now let’s talk.

Chairman HYDE. I’m trying. I’m trying.

Ms. WATERS. Mr. Chairman, I do not want you to use your awesome power to send a message to the citizens of this country that we’re not involved in a most extraordinary effort that leads to the impeachment of the President of the United States of America. This is the significant part. You are getting the ball rolling here.

Chairman HYDE. I’d like to take back my time. I get the gentlelady’s message. I’m not saying what we do is insignificant. I think it is highly significant and portentous and requires great care and great study and great analysis, but I am suggesting to the gentlelady we do not conduct the trial. We merely decide whether there is enough evidence.

Now we get on the question of evidence, and I’ve heard repeatedly, especially from the gentleman near the end of the first row, that they didn’t have a chance to test the credibility of any witnesses. Well, we accepted 60,000 pages of transcripts, grand jury transcripts, depositions, statements under oath, all under oath. We accepted Monica Lewinsky’s testimony because it was given under a grant of immunity that would be declared null and void if she lied. So we were willing to accept all of that testimony under oath and if the Democrats wanted to question it, why in the world didn’t they invite these people up to testify under oath and undergo the withering cross-examination of several of your lawyers? Why—

Mr. NADLER. Mr. Chairman.

Chairman HYDE. Please, let me finish.

Mr. NADLER. I thought you were. I apologize.

Chairman HYDE. I’m on a roll and as soon as I’m through—why didn’t you call them in for deposition? Why didn’t you put them to the crucible of cross-examination? You had that opportunity, but you chose to bring us professors, historians and law deans, which

is wonderful and entertaining and illuminating. But when you say that you didn't have a chance to test their credibility, that rings a little hollow.

Mr. ROTHMAN. Point of personal privilege.

Chairman HYDE. I'll let you stretch it that far but I didn't mention your name.

Mr. ROTHMAN. Well, you meant me.

Chairman HYDE. Well, I did mean you.

Mr. ROTHMAN. Thank you for that.

Mr. Chairman, thank you for allowing me to speak on this point of personal privilege. First of all, you keep saying 60,000 documents. Well, the 60,000 documents were about civil deposition and grand jury testimony where nobody was cross-examined there.

I would like my point of personal privilege, Mr. Goodlatte.

Chairman HYDE. We're nearing the end, folks. Let's take a deep breath. Go ahead.

Mr. ROTHMAN. Thank you very much. In my judgment what the Majority would have us do is put fairness and due process on its head. They want the accused, President Clinton, to prove his innocence. What they brought forth to prove the case against him are two lawyers, Judge Starr and Mr. Schippers, arguing inferences and conclusions from portions of transcripts of depositions and grand jury testimony.

Chairman HYDE. I'm going to have to retrieve my time.

Mr. ROTHMAN. The Democrats responded with lawyer talk. They say that's—

Chairman HYDE. Mr. Rothman, may I regain my time?

That's really not so. Those are—that testimony has been taken. It's under oath under penalty of perjury. I know the oath may be a matter of some question with some of us, but we think the oath is significant, and we were willing to accept that. And if you question it, you had every opportunity to do that.

Now I swing to Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman.

Mr. ROTHMAN. Mr. Chairman, I would say unreasonably accepted, a low burden of proof that didn't constitute—

Chairman HYDE. That's your opinion.

The gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I appreciate your swinging my way.

Mr. Chairman said he would swing to me.

I do want to take serious issue with a profound point. I really do think we have a series of issues here. We will rejoin them later, but I didn't want to let it go undiscussed now.

I was struck, Mr. Chairman, by your statement that we're not here throwing the President out. I must say, to the extent that I wasn't clear what the public perception is of what we're doing, I am inferring from your disavowal that this is as much as any Member of the House can do to get the President out of office, that there's some uneasiness about it.

I have to say that I think it is a grave error constitutionally to denigrate what we are doing. Yes, it is true that, as a consequence of this, the President will not be instantly thrown out of office. It is also true that the only justification and basis for this proceeding and the only basis on which Members can honestly vote for these

articles is the conviction that the President ought to be thrown out of office.

I think there is a tendency that we've seen over the past few months to try to lighten up impeachment and to take as profound an instrument as can exist in a democratic society, the cancellation of an election by people not themselves electorate, and it has to be there from time to time, but to reduce its impact that way or at least to reduce our part in it, that's, I think, one of the most important philosophical differences between us.

Chairman HYDE. I hear the gentleman, and it is a respectable point of view, but I thoroughly disagree with it. I think you denigrate the role of the Senate, which has the important adjudicatory role to weigh the evidence, to study what it wants and agree and disagree; and then our Founding Fathers made it extraordinarily difficult to eliminate a President from office by requiring a two-thirds vote.

And that's why I have always said, unless this is done bipartisanship—and, tragically, there's no bipartisanship here—but I'm hopeful if, if it gets to the Senate, there would be bipartisanship. But, absent that, there will be no—

Mr. MEEHAN. God help other presidents, Mr. Chairman.

Mr. SCHUMER. As somebody who doesn't want to denigrate the Senate probably more than anybody else on this committee—

Chairman HYDE. I think it's a sad greeting to you as you come over there to a denigrated body.

Mr. SCHUMER. Thank you, Mr. Chairman.

Let me just say—and I appreciate the Chairman yielding.

Mr. ROGAN. Mr. Chairman, I move to strike the last word.

Chairman HYDE. Yes, you may.

Charles, could you please?

Mr. SCHUMER. Yes, my one minute.

Chairman HYDE. Say what you want to say.

Mr. SCHUMER. What I want to say is, I do just want to underscore, first, I do think, by the way, if, God forbid, this gets to the Senate, it will be bipartisan. There will be a bipartisan vote against removing the President, with a small number of Republicans voting for it.

But my point is similar to Mr. Frank's. I was sitting in the anteroom there and, as somebody who has such respect for you, I was just shocked almost that you would, as we close this hearing, say, now, don't worry, folks. We're not getting rid of the President right here. When it seems that the Majority in all of these hearings and with these articles has endeavored to do everything it can to get rid of the President. So because you have a few more hurdles to overcome, please, to the public, it is perfectly clear, I hope, that should the mechanism, the very serious mechanism, used only twice in 200 years mechanism that the Chairman and his colleagues seek to unleash, if it rolls in the direction they seek, the President will be gone. That's what they want. That is indeed what they want.

Chairman HYDE. Now, Senator, I have been very indulgent. We've had a seminar here. I think it's important for the public to understand the constitutional provisions of the function of the

House and the function of the Senate which has been blurred over, and that is my point.

Now, the gentleman from—Mr. Rogan.

Mr. ROGAN. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for five minutes.

Mr. ROGAN. Mr. Chairman, I echo the comments of the chair a moment ago, when the chair discussed the importance of having the public understand this constitutional function. I, too, think that is our important role, and I think that is something that has been missing over these last days.

We keep hearing about the sanctity of the election process to the Constitution, and I have no quarrel with that. But an election is not the only constitutional process that allows a President to assume and serve in office.

The fact that a person is elected to the office of the presidency of the United States does not allow them automatically to assume that office. There is a prerequisite. Even after an election, the Constitution requires that, before the elected person may become the President, they must take an oath to preserve, protect, and defend the Constitution of the United States. And even after that oath is taken, they still are not allowed to remain in office if that oath is violated, and the House finds that impeachable offenses have occurred, and the Senate acts to convict.

The same Constitution that gives us the electoral process, that gives us the presidential oath, also gives us the process for removal of a President when they violate that oath, and it gives us the process of replacing that President with another popularly elected official, in this case, the Vice President.

Dr. Larry Arnn has written on this subject, and I'd like to read for the record an excerpt of his recent writings on the points raised by the minority:

“A point has been made that it is a serious matter to overturn an election. True enough. But elections have no higher standing under our Constitution than the impeachment process. Both stem from provisions of the Constitution. The people elect the President to do a constitutional job. They act under the Constitution when they do it. At the same time, they elect a Congress to do a different constitutional job. The President swears an oath to uphold the Constitution. So does the Congress. Everyone concerned is acting in ways subordinate to the Constitution both in elections and in the impeachment process.

If a President is guilty of acts justifying impeachment, then he, not the Congress, will have overturned the election. He will have acted in ways that betray the purpose of the election. He will have acted not as a constitutional representative, but as a monarch subversive of or above the law.

If the great powers given the President are abused, then to impeach him defends not only the results of the election, but that higher thing of which elections are in service, namely, the pre-eminence of the Constitution as the institution under which we pursue the security of our rights. We are all subordinate to that.”

I yield back, Mr. Chairman.

Chairman HYDE. I thank the gentleman.

Mr. CANNON. Mr. Chairman, I have a request for unanimous consent.

Chairman HYDE. Yes, Mr. Cannon.

Mr. CANNON. I request unanimous consent to submit into the record an article from George magazine entitled, Sidney Strikes Again. This is an article about Clinton aide Sidney Blumenthal. He has a controversial reputation for planting favorable Clinton stories in the press, helped the historians—that's the 400 historians create the ad that recently got some publicity. So if I could submit that.

Chairman HYDE. Without objection, so ordered.

[The information follows:]

# George

## SIDNEY STRIKES AGAIN

When more than 400 of the country's greatest historians took out a full-page ad in the *New York Times* against impeaching the president just days before the elections, it raised eyebrows in the world of academia and beyond. Turns out that the pro-Clinton manifesto had a little help from a friend in high places. Clinton aide Sidney Blumenthal, who has a controversial reputation of planting favorable Clinton stories in the press, helped the historians create the ad. Blumenthal, who fancies himself the White House's resident intellectual, was the historians' "connection at the White House," says an informed source. Though Blumenthal's secret role has been confirmed by others, Princeton historian Sean Wilentz, one of the ad's initiators, denies that Blumenthal had anything to do with it, saying that "we kept it separate" from the White House, and "this was not a partisan effort." Blumenthal did not return phone calls for comment. —Richard Blow

Professor Blumenthal: His fingerprints are everywhere.

Chairman HYDE. I am going to go down the line. Mr. Berman. This is for unanimous consent request. What purpose do you seek recognition?

Mr. BERMAN. To strike the last word.

Chairman HYDE. You have already spoken, I am told.

Mr. BERMAN. Not on this article. On Article I, I spoke.

Chairman HYDE. We have it down that you spoke on Article III. Those are our records. Do you want to tell me after school?

Mr. BERMAN. I would like to see clear and convincing evidence of that.

Chairman HYDE. All right. Who else? For what purpose does Mr. Berman seek recognition?

Mr. BERMAN. To strike the last word.

Chairman HYDE. I am sorry—

Mr. BERMAN. I am sorry, this is a factual dispute, but I am willing to go under oath. I have not spoken on Article III.

Chairman HYDE. Go ahead. Take your 5 minutes.

Mr. BERMAN. But I haven't spoken.

Chairman HYDE. Well, we have mooted that question. We have mooted that.

Mr. BERMAN. All right.

Chairman HYDE. You may go as though you have not spoken.

Mr. BERMAN. The Chairman said it like he was giving me a second 5 minutes. I just wanted to make sure we understand.

My only point here is I think if the Chairman had said people understand by the result of the action we are taking today the President will not be removed from office, but I and all the others who are voting for these articles of impeachment want the President removed from office, are voting for a resolution which says that these articles warrant impeachment and trial and removal from office and a bar to office in the future, that that would have been a more accurate statement.

I think we should get away from the notion that our decision should be based on some kind of prosecutorial probable cause, that we are just kicking it over to the Senate for a trial. I have heard a number of my colleagues on the other side say very sincerely that they do not consider their role as that of a grand jury, that they are applying the standard of clear and convincing evidence, and they believe that it justifies the impeachment, the conviction, the removal from office. That is what the resolution says, and I think that is the accurate conclusion to conclude from people's support of these articles of impeachment.

I yield back.

Chairman HYDE. I thank the gentleman. Who else is seeking recognition? Mr. Scott. For what purpose does the gentleman seek recognition?

Mr. SCOTT. I ask unanimous consent to speak out of order for 2 minutes.

Chairman HYDE. Without objection, so ordered.

Mr. SCOTT. Thank you, Mr. Chairman. I was astounded by some of what was said about our role. First of all, Mr. Chairman, the gentleman from New Jersey wasn't the only one that has been insisting on fact witnesses. We could not call fact witnesses because we did not know the allegations and the allegations that we knew

were not impeachable. But the fact is that the record reflects that a motion was defeated on a party line vote that would have provided for fact witnesses to be called after the allegations had been ascertained. That motion was defeated on a party line vote.

And look at the evidence we have got. We think it is “under oath,” but the “under oath” only reflects answers to questions selected by prosecutors, answers not subject to cross-examination nor answers which were subject to any refuting by others.

Mr. Chairman, the rule of law prevents us from doing what you are trying to do here by trying to remove the President from office. Most of the debate that the Founding Fathers participated in in setting the impeachment article in the Constitution, most of the debate was how to keep Congress from doing it. It was not how to get the President out of office. You had this provision, it would be too easy, that provision would be too easy. They ended up with treason, bribery and other high crimes and misdemeanors, a very high standard. In the words of the counsel, it is for traitors and felons, and not all felons would even qualify for that.

So, Mr. Chairman, we are removing the President from office. The resolution is clear that wherever William Jefferson Clinton by such conduct warrants impeachment and trial and removal, that is what we are voting on, and people ought to be exactly clear of what is going on.

Thank you, Mr. Chairman.

Chairman HYDE. I thank the gentleman. The question occurs on Article III. All those in favor signify by saying aye.

All opposed, say no.

In the opinion of the Chair, we are going to have a roll call.

Mr. CONYERS. I ask for a record vote.

Chairman HYDE. The Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. McCollum votes aye.

Mr. Gekas.

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas votes aye.

Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble votes aye.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly votes aye.

Mr. Canady.

Mr. CANADY. Aye.

The CLERK. Mr. Canady votes aye.

Mr. Inglis.

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis votes aye.

Mr. Goodlatte.  
Mr. GOODLATTE. Aye.  
The CLERK. Mr. Goodlatte votes aye.  
Mr. Buyer.  
Mr. BUYER. Aye.  
The CLERK. Mr. Buyer votes aye.  
Mr. Bryant.  
Mr. BRYANT. Aye.  
The CLERK. Mr. Bryant votes aye.  
Mr. Chabot.  
Mr. CHABOT. Aye.  
The CLERK. Mr. Chabot votes aye.  
Mr. Barr.  
Mr. BARR. Aye.  
The CLERK. Mr. Barr votes aye.  
Mr. Jenkins.  
Mr. JENKINS. Aye.  
The CLERK. Mr. Jenkins votes aye.  
Mr. Hutchinson.  
Mr. HUTCHINSON. Aye.  
The CLERK. Mr. Hutchinson votes aye.  
Mr. Pease.  
Mr. PEASE. Aye.  
The CLERK. Mr. Pease votes aye.  
Mr. Cannon.  
Mr. CANNON. Aye.  
The CLERK. Mr. Cannon votes aye.  
Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
Mr. GRAHAM. Aye.  
The CLERK. Mr. Graham votes aye.  
Mrs. Bono.  
Mrs. BONO. Aye.  
The CLERK. Mrs. Bono votes aye.  
Mr. Conyers.  
Mr. CONYERS. No.  
The CLERK. Mr. Conyers votes no.  
Mr. Frank.  
Mr. FRANK. No.  
The CLERK. Mr. Frank votes no.  
Mr. Schumer.  
Mr. SCHUMER. No.  
The CLERK. Mr. Schumer votes no.  
Mr. Berman.  
Mr. BERMAN. No.  
The CLERK. Mr. Berman votes no.  
Mr. Boucher.  
Mr. BOUCHER. No.  
The CLERK. Mr. Boucher votes no.  
Mr. Nadler.  
Mr. NADLER. No.  
The CLERK. Mr. Nadler votes no.

Mr. Scott.  
Mr. SCOTT. No.  
The CLERK. Mr. Scott votes no.  
Mr. Watt.  
Mr. WATT. No.  
The CLERK. Mr. Watt votes no.  
Ms. Lofgren.  
Ms. LOFGREN. No.  
The CLERK. Ms. Lofgren votes no.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. No.  
The CLERK. Ms. Jackson Lee votes no.  
Ms. Waters.  
Ms. WATERS. No.  
The CLERK. Ms. Waters votes no.  
Mr. Meehan.  
Mr. MEEHAN. No.  
The CLERK. Mr. Meehan votes no.  
Mr. Delahunt.  
Mr. DELAHUNT. No.  
The CLERK. Mr. Delahunt votes no.  
Mr. Wexler.  
Mr. WEXLER. No.  
The CLERK. Mr. Wexler votes no.  
Mr. Rothman.  
Mr. ROTHMAN. No.  
The CLERK. Mr. Rothman votes no.  
Mr. Barrett.  
Mr. BARRETT. No.  
The CLERK. Mr. Barrett votes no.  
Mr. Hyde.  
Chairman HYDE. Aye.  
The CLERK. Mr. Hyde votes aye.  
Chairman HYDE. The Clerk will report.  
The CLERK. Mr. Chairman, there are 21 ayes and 16 noes.  
Chairman HYDE. And the article is agreed to, and the committee  
stands in recess until 9 a.m. tomorrow morning.  
[Whereupon, at 9:17 p.m., the committee was adjourned.]



## CONSIDERATION OF ARTICLES OF IMPEACHMENT

SATURDAY, DECEMBER 12, 1998

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to call, at 9:40 a.m., in Room 2141, Rayburn House Office Building, Hon. Henry J. Hyde (chairman of the committee) presiding.

Present: Representatives Henry J. Hyde, F. James Sensenbrenner, Jr., Bill McCollum, George W. Gekas, Howard Coble, Lamar S. Smith, Elton Gallegly, Charles T. Canady, Bob Inglis, Bob Goodlatte, Stephen E. Buyer, Ed Bryant, Steve Chabot, Bob Barr, William L. Jenkins, Asa Hutchinson, Edward A. Pease, Christopher B. Cannon, James E. Rogan, Lindsey O. Graham, Mary Bono, John Conyers, Jr., Barney Frank, Charles E. Schumer, Howard L. Berman, Rick Boucher, Jerrold Nadler, Robert C. Scott, Melvin L. Watt, Zoe Lofgren, Sheila Jackson Lee, Maxine Waters, Martin T. Meehan, William D. Delahunt, Robert Wexler, Steven R. Rothman, and Thomas M. Barrett.

Majority Staff Present: Thomas E. Mooney, Sr., general counsel-chief of staff; Jon W. Dudas, deputy general counsel-staff director; Diana L. Schacht, deputy staff director-chief counsel; Daniel M. Freeman, parliamentarian-counsel; Joseph H. Gibson, chief counsel; Peter Levinson, counsel; Rick Filkins, counsel; Sharee M. Freeman, counsel; John F. Mautz, IV, counsel; William Moschella, counsel; Stephen Pinkos, counsel; Judy Wolvertan, staff assistant; Sheila F. Klein, executive assistant to general counsel-chief of staff; Annelie Weber, executive assistant to deputy general counsel-staff director; Samuel F. Stratman, press secretary; Rebecca S. Ward, officer manager; James B. Farr, financial clerk; Lynn Alcock, calendar clerk; Elizabeth Singleton, legislative correspondent; Sharon L. Hammersla, computer systems coordinator; Michele Manon, administrative assistant; Joseph McDonald, publications clerk; Shawn Friesen, staff assistant/clerk; Robert Jones, staff assistant; Ann Jemison, receptionist; Michael Connolly, communications assistant; Michelle Morgan, press secretary; and Patricia Katyoka, research assistant.

Subcommittee on Commercial and Administrative Law Staff Present: Ray Smietanka, chief counsel; Jim Harper, counsel; Susan Jensen-Conklin, counsel; and Audray L. Clement, staff assistant.

Subcommittee on the Constitution Staff Present: John H. Ladd, chief counsel; Cathleen A. Cleaver, counsel; and Susana Gutierrez, clerk, research assistant.

Subcommittee on Courts and Intellectual Property Staff Present: Mitch Glazier, chief counsel; Blaine S. Merritt, counsel; Vince Garlock, counsel; Debra K. Laman; and Eunice Goldring, staff assistant.

Subcommittee on Crime Staff Present: Paul J. McNulty, director of communications-chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, counsel; Nicole R. Nason, counsel; and Veronica Eligan, staff assistant.

Subcommittee on Immigration and Claims Staff Present: George M. Fishman, chief counsel; Laura Baxter, counsel; Jim Y. Wilon, counsel; Cynthia Blackston, clerk; and Judy Knott, staff assistant.

Majority Investigative Staff Present: David P. Schippers, chief investigative counsel; Susan Bogart, investigative counsel; Thomas M. Schippers, investigative counsel; Jeffrey Pavletic, investigative counsel; Charles F. Marino, counsel; John C. Kocoras, counsel; Diana L. Woznicki, investigator; Peter J. Wacks, investigator; Albert F. Tracy, investigator; Berle S. Littmann, investigator; Stephen P. Lynch, professional staff member; Nancy Ruggero-Tracy, office manager/coordinator; and Patrick O'Sullivan, staff assistant.

Minority Staff Present: Julian Epstein, minority chief counsel-staff director; Perry Apelbaum, minority general counsel; Samara T. Ryder counsel; Brian P. Woolfolk, counsel; Henry Moniz, counsel; Robert Raben, minority counsel; Stephanie Peters, counsel; David Lachmann, counsel; Anita Johnson, executive assistant to minority chief counsel-staff director, and Dawn Burton, minority clerk.

Minority Investigative Staff Present: Abbe D. Lowell, minority chief investigative counsel; Lis W. Wiehl, investigative counsel; Deborah L. Rhodes, investigative counsel; Kevin M. Simpson, investigative counsel; Stephen F. Reich, investigative counsel; Sampak P. Garg, investigative counsel; and Maria Reddick, minority clerk.

Chairman HYDE. The committee will come to order.

Good morning. A quorum being present and pursuant to notice, the committee will reconvene to complete consideration of a resolution exhibiting articles of impeachment. We will consider Article IV and, time permitting, we will consider a censure resolution after completing the articles of impeachment issue.

Are there any amendments to Article IV?

The Chair recognizes the gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman. I have an amendment at the desk which I hope the clerk will read.

Chairman HYDE. The clerk will report the amendment.

The CLERK. Amendment to House resolution blank, offered by Mr. Gekas. Page 8, line 13, strike "repeatedly."

Page 8, line 16, strike "laws" and all that follows through page 10, line 17, and insert the following:

"Authority of the legislative branch and the truth-seeking purpose of a coordinate investigative proceeding, in that, as President, William Jefferson Clinton refused and failed to respond to certain written requests for admission and willfully made perjurious, false and misleading sworn statements in response to certain written requests for admission propounded to him as part of the impeach-

ment inquiry authorized by the House of Representatives of the Congress of the United States. William Jefferson Clinton, in refusing and failing to respond and in making perjurious, false and misleading statements, assumed to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives and exhibited contempt for the inquiry.”

Page 10, line 18, strike “In all of this” and insert “In doing this.”

Chairman HYDE. The gentleman from Pennsylvania is recognized for 5 minutes in support of his amendment.

Mr. GEKAS. Thank you, Mr. Chairman.

The intent of this amendment is to delete paragraphs 1, 2 and 3 from Article IV, and leave for our consideration—if this amendment be adopted, leave for our consideration the paragraph entitled 4, which has to do with the 81 questions. This foray on my part is focused on the question of executive privilege.

The question of executive privilege has mixtures within it of separation-of-powers issues, of comity, C-O-M-I-T-Y, types of issues, balance and fairness; all the things that have swarmed around the consideration of the impeachment inquiry, and beyond.

I have always valued the separation of powers and particularly with respect to executive privilege. I believe that we should very gently probe around the edges of executive privilege no matter what we do as Members of Congress, and to accord the President of the United States that extraordinary way of conducting the business of the executive and, within certain parameters and boundaries, of course, to allow that executive branch to function within its own sphere.

In the case at hand, we note that the assertion by the President of executive privilege, although he did it excessively and he can easily be criticized for perhaps the underlying purposes that we believe, many of us, prompted the assertion of the executive privilege; nevertheless, in doing so, he was simply uttering a privilege that was accorded to him and is accorded to him.

I don't believe that the evidence that has been presented to us, nor the contents of the referral, give us the ability to second-guess the rationale behind the President or what was in his mind in asserting that executive privilege. We may have a good idea, and those of us who have become suspicious about some of the actions of the President would have a right to enhance those suspicions. Nevertheless, we ought to give, in my judgment and the judgment of many, the benefit of the doubt in the assertion of executive privilege.

On top of that, we ought to recognize that there are two settings for the assertion of the executive privilege which come into play and which have come into play during this inquiry and the one that preceded us in 1974 against President Nixon, and that is the executive privilege that is asserted during a criminal investigation or a grand jury investigation, and the one asserted directly against Congress when the Congress makes certain requests or demands of the President of the United States. In either case, it seems to me that we ought to give the benefit of the doubt to the President.

We also are buttressed in our thinking for asking for the deletion of the executive privilege section the testimony of the counsel for

the President. In our questions and in his—and the answers thereto, plus his narrative, he was sure and certain in pointing out that in most of the executive privilege assertions by the President, he was advised by counsel. That ought to be taken into consideration by us.

Secondly, in the cases that wound up in court, the executive privilege itself, the right to assert it, was sanctified and adopted by the court, permitted by the court, but it had to yield only when the court also decided that the case made by the Independent Counsel that the needs of the grand jury investigation superseded the privilege of the executive, then and only then, said counsel and the facts and the record do support that, then and only then would the executive privilege be surmounted.

So putting all of this together—

Mr. WATT. Mr. Chairman, I ask unanimous consent that the gentleman be granted 5 additional minutes to complete his presentation.

Chairman HYDE. Without objection, so ordered.

Mr. GEKAS. I thank the gentleman.

There is another historic reason we should do this. We should be, even though we are, in the exercise of the impeachment power, re-emphasizing the power of the Congress and the legislative branch, we ought to, while we are doing that, set down in history as well that we revere the office of the presidency and that we want future Presidents not to have to reinspect the record of these proceedings to determine whether or not they have the right to exert executive privilege. We want to sanctify today that we believe that future Presidents will be able, in looking back at these proceedings, recognize that their executive power—although impeached on the one hand, that the power of future elected chief executives to assert executive privilege shall not be curtailed.

My colleagues on the Republican side have joined me over the period of time since I announced my intent to do this, and we have agreed to include in the removal from the text paragraphs 1 and 2 which are self-evident in the text of the article itself; and so in the spirit of wanting to correct the record, as it were, on what we intend to do in these impeachment proceedings, we offer this amendment. We feel just as strongly about leaving in number 4 as we do about deleting 1, 2, and 3.

With that, I yield back the balance of my time.

Chairman HYDE. The gentleman from Virginia, Mr. Goodlatte. Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, I would like to join in support of this amendment. I think that this is the appropriate thing to do. I think that no one should take from the decision to delete these three sections of the article our severe approbation about the actions of the President in regard to these sections. I believe that the allegations contained in them are all true.

I believe the President of the United States did lie to the American people. I do believe that the President lied to Members of his Cabinet and others, and I think that he hoped that in doing so, they would carry forth his lies; and I think that is wrong as well.

I do believe that the President has improperly exercised executive privilege. But I also don't believe that any of these three items are impeachable offenses, and as a result, I will support this amendment.

With regard to the executive privilege, I believe that the President has improperly used executive privilege here. I do, however, think that the arguments set forth by his counsel, Mr. Ruff, bear some merit in his contention that the President was, in exercising executive privilege, attempting to narrow the scope of the requests for information submitted to him by the Independent Counsel, and that only after the judge, in reviewing that executive privilege request, ruled in that fashion did the scope of the request meet the terms. If there was public and private information, if there was information subject to executive privilege protection and information not subject to executive privilege protection taking place at the same meetings in the same documents, I think the President is entitled to exercise that.

Secondly, while I think it is abused in this case, I think it is not at all uncommon for attorneys to exercise executive privilege on behalf of their clients. I think that was done in this case in several instances incorrectly, but I think the appropriate measure for that are sanctions by the court and not impeachment.

I do, however, think that this committee should be outspoken in its condemnation of the misuse of executive privilege, because in some instances that executive privilege power has been exercised wrongly with the Congress in other regards, and it is important that we not allow a continuing erosion of the abuse of the executive privilege power.

However, I think that the committee and the article are better served by removing these three provisions and going forward with what I think is clearly impeachable and reprehensible conduct, and that is the President's willful misrepresentation of the facts with regard to the answers to the President's—the President's answers to the 81 questions submitted by Mr. Hyde on behalf of the committee. Those answers were submitted under oath; a number of those answers are, in my opinion, lies and should be accepted by the committee as grounds for impeachment.

I yield to the gentleman from Indiana.

Mr. BUYER. I do have a question for you. I also listened to Mr. Ruff. The President, though, seems to be letting the office of counsel sign these executive privileges for him. Would it be your assertion that not only now, but in particular, in the future that if a President of the United States is going to exert executive privilege, that it should be done so upon his own signature?

Mr. GOODLATTE. I think that is a special privilege reserved for the President of the United States, and the President of the United States, as with the signing of legislation submitted to him by the Congress, should sign directly those privileges. I agree with the gentleman.

Chairman HYDE. The gentleman's time has expired.

The gentleman from New York, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

I have always felt that Article IV, the abuse of power parts of these articles of impeachment, was the greatest reach of all when

there are lots of high reaches going on, or long reaches going on. The most absurd thing in this entire bill, in this entire bill of impeachment is to say that when the President speaks to the public or his Cabinet, quote, “for the purposes of deceiving the people of the United States in order to continue concealing his misconduct,” that that should be an article of impeachment. I think you could go down the list of every President of the United States from George Washington to the present and there would—if that article is significant enough for impeachment—if that reaches what many of us on this side of the aisle consider a high bar of impeachment, but I am afraid the majority does not consider it a very high bar—then you could find people of goodwill and total honesty feel that every President should be impeached under that article, every single one. And just go back and read the newspapers or read the histories and the Whigs may have thought that something Thomas Jefferson thought was totally honest was misleading to the public.

So to me, if you want an archetype of what is wrong with this whole proceeding, you look at that article.

Now, the gentleman from Pennsylvania, to his credit, has knocked out that article and the others like it in his amendment. I will address maybe the articles themselves when we go on to debate those. But he moves it from, not from the sublime to the ridiculous, from the very ridiculous to simply the ridiculous.

This committee submitted 81 questions to the President. He knocks that part out, the part I mentioned. The committee submitted 81 questions to the President. The President answered them in the way he saw fit. Admittedly it was frustrating to many members of the majority, admittedly it was probably politically damaging to the President. But to say that the President’s answers, not reaching a level of perjury, because that is not alleged here, should be grounds—is perjury alleged? Excuse me. Okay.

Then to say that it is perjurious, to say that what the other side considers false statements, as the President seeks to defend himself before a committee, makes a mockery of this impeachment proceeding.

Again, you may not like how the President answered. You may think he tried to deceive, mislead the committee. That is not grounds for impeachment. I find it amazing.

Then I would go back to the argument that the gentleman from New York and I made yesterday. What specifics? Which of the 81 questions rise to the level of impeachment? Do all of them? Do some of them? Does one of them? Is it a misplaced modifier or a comma that is out of place, or is it the whole article or something in between?

The President has a right to know it. The House, when it votes next week, has a right to know it. The Senate—if, God forbid, we move to an impeachment trial, as it seems we are—has a right to know it. And again, there is just a lot of poorly drawn-together verbiage here saying, we want that man out.

So I guess I have a question for the gentleman from Pennsylvania. Since he doesn’t move to knock out all of Article IV, which I think he should, even given his other strongly held beliefs, which I respect, I would like to ask him, which of the 81 questions are perjurious, false, and misleading and which are not? And if you

just say, well, it is some of them, you are degrading this process; you are degrading, in my judgment, what the Founding Fathers put together when they put that magnificent document, the Constitution, together.

This is not, I repeat, this is not a game. This is serious stuff, the most serious stuff that this committee has grappled with in the 16 years I have been a member of it; and to simply say—just to conclude my sentence, to simply say it is something in there that bothers us is not enough.

Chairman HYDE. The gentleman's time has expired.

The Chair yields himself 5 minutes.

I want to make it very clear what we are doing here with this amendment. We are deleting the allegation in Article IV that the President made false and misleading public statements for the purpose of deceiving the people of the United States. Not that we deny or doubt that to be the fact, but we don't choose to make it part of Article IV, mostly because his statements weren't under oath and there are so many others that he made that were false and misleading under oath, we choose to emphasize the statements, the false statements made under oath, and to delete the others.

Mr. SCHUMER. Would the gentleman yield for one question?

Chairman HYDE. Yes.

Mr. SCHUMER. Because I am—I mean, what I would ask the gentleman, in all due respect—and I have such tremendous respect for him and his fairness; I am glad you are deleting that. I have been making a point of that, many of us have, for a while. How the heck did it get put in to begin with?

Chairman HYDE. Well, that's another topic for another seminar, but—

Mr. SCHUMER. I will eagerly enroll in that class, Mr. Chairman.

Chairman HYDE. Very good.

The other thing we are deleting are false and misleading statements made to White House aides, where the President lined up his Cabinet and said things to them, and they went out on the hustings and repeated them, which were patently untrue. We are taking that out; and the executive privilege assertions, we are taking that out. So that the only thing left in Article IV are false and misleading answers to the 81 questions. And the reason they are staying in is the answers were made under oath, and it is the significance of the oath that compels us to keep them in.

Now, the gentleman asked which ones we are talking about and complaining of, and I will tell him now. The President did not respond completely or truthfully to requests for admission number 19. The President did not respond completely or truthfully to requests for admission 20. The President did not respond completely or truthfully to requests for admission 24. The President did not respond completely or truthfully to requests for admission numbers 26 and 27; also, number 34, number 42, number 43, numbers 52 and 53. Those are the ones we complain of, and we can amplify them if you wish, but for your information and in the interests of specificity, that is what we are talking about.

Mr. NADLER. Mr. Chairman, parliamentary inquiry.

Chairman HYDE. Mr. Nadler has another parliamentary inquiry.

Mr. NADLER. But which is the perjury?

Chairman HYDE. Well, we maintain the statements were all false and misleading. Whether they were perjurious or not we don't feel is entirely relevant, because if they were false and misleading and made under oath, then they are actionable.

I yield back the balance—

Mr. SCHUMER. Will the Chairman yield for just a question?

Chairman HYDE. I will yield for a question.

Mr. SCHUMER. Now that this is just related to perjurious, false and misleading statements, why isn't this part of Article—I guess it would be Article I or II? Why is it a separate article? Now that the, quote, abuse of power parts of the amendment have been taken out that the President used government and abused his power, I don't think this would be called an abuse of power, even if one ascribed to the viewpoint of the gentleman.

Chairman HYDE. Well, you can have that opinion, but this article stands as an assault on the Congress because of the false and misleading answers the President gave to Congress under oath. That is why it stands alone as an article. You could draft it differently, but it comes out the same.

I yield back the balance of my time.

Mr. NADLER. Mr. Chairman.

Chairman HYDE. Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I move to strike the last word.

Chairman HYDE. The gentleman has 5 minutes.

Mr. NADLER. First of all, let me point out that in answer to my last question, the Chairman said that various statements or answers, the President didn't respond completely or truthfully. There is a difference between completely and truthfully. If he didn't respond completely, that is not a lie under oath, it is not perjury. If he didn't respond truthfully, that would be a lie under oath or perjury, and so when we get to the main article and offer this amendment, I hope by then the Republican staff and the Chairman will be prepared to answer with specificity what the allegedly untruthful statements were for which this article of impeachment—not the incomplete, but the untruthful, because there is a very big difference there, and obviously we have to judge it.

Mr. Chairman, I commend the gentleman from Pennsylvania for showing some respect for the rule of law by recognizing that the use of a legal privilege is not illegal or impeachable by itself, a legal privilege, executive privilege. It is a legal privilege, is not illegal or impeachable by itself by introducing this amendment.

Members of Congress have an absolute privilege contained in the speech and debate clause which protects the work of every Member of this committee from lawsuits and criminal prosecution stemming from the performance of our official duties. I am, however, very concerned at the cavalier attitude this committee has taken throughout this proceeding toward legal privileges, including executive privilege, the attorney-client privilege, which this committee, by a partisan vote, elected to disregard last week, or 2 weeks ago.

Even the new language offered by the gentleman from Pennsylvania still leaves in and still considers an impeachable offense the fact that the President didn't answer the Majority's 81 questions to the Majority's satisfaction, including such insulting and silly ques-

tions which boil down to, does the President admit or deny that he is the President. Which legal privileges will this committee attack next? The clergy-penitent privilege, the spousal privilege? This committee has opened a dangerous door, and—

Chairman HYDE. Would the gentleman yield?

Mr. NADLER. Yes, I will.

Chairman HYDE. We have stricken that count. We are not attacking the assertion of privilege. Why are you consuming our time debating something that is not an issue?

Mr. NADLER. Reclaiming my time, the committee has stricken these counts, but the committee specifically voted down limitations—or rather voted down respecting the attorney-client privilege in some of the subpoenas we issued 2 weeks ago.

Mr. FRANK. Will the gentleman yield?

Mr. NADLER. Yes.

Mr. FRANK. I would just remind the Chairman, I know that the votes are never in doubt here, and the Chairman knows exactly what we are going to do, but we haven't done it yet. I think we ought to observe the proprieties. The Chairman just announced that we have stricken this. I would remind him that the formality of a vote of the committee, formality although it is, still has not occurred.

Mr. NADLER. I thank the gentleman.

Reclaiming my time, this committee has opened a few dangerous doors, and this amendment, while commendable in its purpose, does not fix the problem. The damage is not fixed, it is done, and we are still in this article even with the amendment alleging that the President, without being specific, perjured himself in answering the questions.

I would also point out, although this doesn't affect the amendment, that the article that is still in here that the President allegedly didn't answer these questions that we propounded to him, these questions, as far as I am concerned, were illegitimate to start with. The President should have and would have been within his rights to tell us, I don't choose to answer, because they were an attempt to get the accused to condemn himself out of his own mouth.

They were an attempt to shift the burden of proof from the accusers having to prove guilt to shift the burden of proof to the accused having to prove innocence, and I don't think they should have been sent because I think they were improper, and I don't think there was anything perjurious or misleading or incomplete in the answers in any event. But the questions themselves were part of the committee's turning the entire process on its head and asking the President to prove his innocence rather than asking the accusers to bear a burden of proof of guilt.

With that, I again commend the gentleman for his amendment, which I support, for changing the absolutely indefensible to the still absolutely indefensible, but on fewer grounds.

I yield back the balance of my time.

Chairman HYDE. The gentleman from North Carolina, Mr. Coble. I wish the gentleman would yield very briefly to me?

Mr. COBLE. I will.

Chairman HYDE. I just want to say to my friend from New York, if I could get my friend's attention, you talked about the President

shouldn't even have answered these. Really, I think there is a duty for the President to cooperate with a committee of inquiry on articles of impeachment. We could have asked him to come in and testify. We thought we would submit written interrogatories, admit or deny, perfectly proper. You may disagree with the formulation of them, but the submission of them was perfectly proper, and everybody has a duty to cooperate, helping us get the information.

So I think you protesteth too much.

The gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, I will be as brief as I can. I move to strike the last word.

In the waning hours last night, one of my friends on the other side implied that we on this side were trying to get rid of the President and being vengeful. We were accused of vengeance earlier in the week, and that is when I said folks can meet me in the parking lot. It is just unfortunate I have had several calls inviting me to the parking lot, but one 83-year-old woman in Texas who said she was frail, said she would stand with me, so at least that is the good news.

But we are not being vengeful. There is no lynch mob mentality over here, and for the benefit of the gentleman who said that last night, I have had knots in my gut all week because of this. I approached this, my friends, with a very heavy heart, and I will have knots in my gut next week when we cast votes. I don't take it lightly. I don't take it lightly at all. It is a hard chore for all of us, on that side as well as on this side.

Many times they talk about polls, resisting the polls, ignoring the polls. I compare the knots in my gut this week with the knots I had in my gut when we addressed the Persian Gulf War. We dispatched men and women to address a problem that was not of their own making, and that was a heavy vote for me as well. But I did not accuse one of my colleagues who voted against that resolution for ignoring the polls. The polls, you will recall, were overwhelmingly in favor of our going to war.

But I equate these two, and I do indeed approach both of them with a heavy heart, and I resent the fact that anyone on this committee would accuse a lynch mob mentality of taking hold on this side of this hearing room. It clearly is not true. We are doing it evenhandedly.

My friend from Pennsylvania, I think, has taken another step to indicate ultimate fairness, and by the way, I support the gentleman's amendment. But I felt—or I would be remiss if I didn't at least respond to the charge that was handed down last night. And if Mr. Schumer was talking about me last night, he owes me an apology. I yield back the balance of my time.

Mr. FRANK. Mr. Chairman.

Chairman HYDE. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Chairman, I spent the last 2 years as the Ranking Member on the subcommittee chaired by the gentleman from North Carolina. I know him to be a man of conviction and integrity, and I am glad that he set the record straight, and I am glad not simply because he is entitled to reaffirm his integrity, but because, Mr. Chairman, frankly, I think his remarks stand in thoughtful contrast to your own remarks late last night.

I believe that part of what has been happening, in fact, is an effort by some to explain away impeachment. We have had people say, well, wait a minute. We are not really throwing the President out. Wait a minute, we are not really doing much more than sending this to the Senate.

There has been an extraordinary constitutional wrench. Impeachment, the most solemn duty of the House of Representatives after declaring war; impeachment, which is the absolutely essential first step for cancelling an election and throwing an elected President out of office; a resolution which says, in fact, that Bill Clinton has done bad things and should be thrown out of office, this is not sending to the Senate a questionnaire. This is a statement the President should be thrown out.

So the gentleman from North Carolina's reference to the tension he feels is entirely appropriate. This is as much as anybody can do in this room to kick the President out and undo the last election. And to suggest otherwise, to suggest that this is merely some beginning of a process that is unclear, I think that degrades the constitutional process.

We have had people say, oh, you can't censure the President and think it is meaningful because there will be no consequence. Well, what you are doing when you downgrade impeachment this way is, in fact, to make it into exactly what you say you are decrying, because there have been arguments made, and we know this, for political purposes to get votes on the floor; don't worry, we are going to impeach him, but it is not going to pass the Senate. Well, an impeachment in the House that doesn't pass the Senate has no more actual force than the censure you have decried, and in fact, the censure is a more rational way to censure. But that is why I was glad to hear the gentleman from North Carolina underline the gravity of this act.

The gentleman from North Carolina is entirely right. We are not here simply serving as grand jurors to the Senate. We are not simply framing an issue for the Senate to deal with. We are not expressing no views on this and letting the Senate try it. We are beginning the process of throwing the President out of office. We are beginning the process of undoing the last election because Members in the Majority feel that the President's transgressions were so grave as to be one of those rare exceptions when you cancel the democratic outcome and say, no, you can't have it. And to try to downgrade that is a terrible horror.

I think what is happening is the gentleman says people are ignoring the polls. No, people aren't ignoring the polls; they are trying to frame this issue to conform to the polls. There is clearly a desire to impeach the President, and what has become clear is that the public, infuriatingly to many on that side, infuriatingly to the media, the public simply hasn't changed its position that impeachment is wrong, and particularly that the President should not be thrown out.

So what we have people now trying to do is to have their cake and eat it, too; to impeach the President and begin the process of expelling him while denying that that is what they are doing, because there are clearly Members in this body who have communicated that their voters, the people who voted for Bill Clinton,

don't want them to throw Bill Clinton out. So what we have now is an orchestrated argument to say to them, well, don't worry, tell them that you just voted that way, but it is really not going to happen. In effect, what we are having people say is, we are going through the anguish the gentleman from North Carolina mentioned, we are grunting and groaning and fighting, but don't worry, the outcome is fixed.

Mr. Chairman, I do not think it serves the Constitution, maybe it is the influence of Jesse Ventura, to treat impeachment as if it was professional wrestling, to tell people that all of this energy and all of this stress and all of this Sturm und Drang, in fact, don't worry about it, because we all know in the end it is not going to go anywhere.

I think the gravity and anguish expressed by my friend from North Carolina is a far more appropriate description of what we are doing than an effort to try to make light of this and to act as if it is simply a way to express displeasure with Bill Clinton. If people want to do that, as many of us do, there is a way to do it. Twisting impeachment out of shape, and changing the meaning of what we do, and voting for a resolution, and then claiming you don't believe in the resolution because the resolution does not say, hey, Senate what do you think, the resolution says kick him out, that is a grave error.

Chairman HYDE. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Chairman HYDE. Would the gentleman yield to me briefly?

Mr. SMITH. Of course I will, Mr. Chairman.

Chairman HYDE. I am just unwilling to let Mr. Frank define the argument as he has, because I think he is absolutely wrong. I just want to agree with Barbara Jordan who made the point that the House accuses and the Senate judges.

Now, I do not disagree with the significance of what we do. I don't want it bent out of shape. I think it is highly significant. It is the most significant thing we do, short of a declaration of war. But I also want to emphasize that ours is but a partial role in the drama of impeachment. The trial, which has been safeguarded by our Founding Fathers to require a two-thirds vote, is held in the other body, and it is our function under the Constitution and, as significant and solemn as it is, to decide if there is enough information, enough evidence, to warrant a trial in the Senate. That is the constitutional requirement, and that is what we are doing. In no way do we diminish or demean the significance, the weightiness of what we are doing. We are not twisting it out of shape. But you, sir, when you imply that we are kicking him out of office, go too far. That is not what the Constitution provides.

I thank the gentleman for yielding.

Mr. FRANK. Mr. Chairman, would the gentleman yield, the gentleman from Texas?

Mr. SMITH. I am sorry. I would prefer that the gentleman use time given to him by his colleagues because my time is being used up. I would like to follow up on the point that the Chairman has just made and augment it by saying this: that the individual to whom he referred, Barbara Jordan, then a Congresswoman from Texas and a Democratic member of the Judiciary Committee in

1974, was one of the most respected members of that committee at that time. And I want to read her exact words, because I think the views that she represented then represented the vast majority of the members of the Judiciary Committee at that time, and so far as I know have not been refuted by anyone on the Judiciary Committee this year.

Barbara Jordan stated, quote: "It is wrong, I suggest, it is a misreading of the Constitution for any member here to assert that for a member to vote for an article of impeachment means that that member must be convinced that the President should be removed from office. The Constitution doesn't say that. The powers relating to impeachment are an essential check in the hands of this body, the legislature, against and upon the encroachment of the executive. In establishing the division between the two branches of the legislature, the House and the Senate, assigning to the one the right to accuse, and to the other the right to judge, the framers of the Constitution were very astute. They did not make the accusers and the judges the same person." End quote.

Now, Mr. Chairman, I would like to go on and comment on the motion that the gentleman from Pennsylvania has made and say that I agree with his amendment, particularly as it relates to paragraph 3 of this article. I will have to say that the reason I think that the assertion of the various executive privileges by the President does not reach the level of impeachment in this instance is because the President, quite frankly, was acting just like a lawyer. He was, in fact, acting to delay, to stonewall, to postpone any way he could, what I think was a legitimate investigation of his activities. Nevertheless, as I said, I don't think it rises to the impeachment level.

However, just as the President's being a lawyer in this instance is a mitigating factor, I think it is an aggravating factor when we consider the other articles of impeachment against the President; and I say that because the President, as a lawyer, knew better than most, in my judgment, how important the rule of law was to a stable and civilized and even democratic society. He knew, more than most, the importance of saying an oath that required him to tell the whole truth and nothing but the truth.

But the President, of course, was not just anybody. He had been a law professor in Arkansas; he had been an Attorney General of that State; and as President, he is the chief law enforcement officer of the United States. So in these other instances, in these other articles, and in the case of paragraph 4 of this very article, the fact that the President was a lawyer and knew better and was trained to know better, I think is an aggravating factor.

Mr. GEKAS. I ask unanimous consent that the gentleman be accorded another 1 minute.

Mr. SMITH. I appreciate the gentleman's offer. I don't think I need it. I yield back the balance of my time.

Chairman HYDE. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Mr. Chairman and Members, this does to some people begin to take on the appearance of a coup, and I am getting the calls into my office about that. It is frightening, it is staggering. This is not in a developing country. We are talking about a polite, paper-exchanging, voting process in which we rip out the 42nd

President of the United States. And this isn't a perception that I am giving to you, it is a perception that is coming into me from my constituents.

We need to really think about where this is going, and I think that we have hit on a sensitive nerve when those who think that impeachment is just our narrow slot and that it is given a lateral pass over to the other body, and if two-thirds can make the grade, then he gets it, and if they don't, he won't. I think when we say that we are to remove him from office, that is as important a part as any in this process. I would think that censure may begin to look better and better to more and more Members of Congress.

I yield to my colleague from Massachusetts.

Mr. FRANK. I thank the gentleman. I think we have seen some implicit bad history here. If my colleagues are to be believed, the trial of Andrew Johnson was a mere bump that had no real impact on history, because all that happened was the House sent it to the Senate and the Senate ultimately acquitted him.

I disagree with those who say—and that includes Barbara Jordan who was a very able representative—who say that you ought to do something as solemn and as potentially disruptive to this country's ability to do business as impeachment if you don't think the President should be thrown out of office. Let me say, maybe I am wrong. It is not my impression that there is at this point a member on the other side who doesn't think the President should be thrown out of office. I have certainly gotten the impression from listening to them that the President ought to be thrown out of office. I think what we have are people who want to respond either personally or to some political impulse or for whatever reason, they want to throw the President out of office, but they don't want to own up to the political consequences of taking that position.

It is true, by ourselves we can't throw him out of office. But you know what? As the House of Representatives by ourselves, we can't do anything. We can't pass a law. Nothing done in this House alone is final. When we are debating major legislation do we say oh, by the way, American people, don't take this one as if it is really an important thing; it is up to the Senate. We always need the concurrence of the Senate. The Senate can sometimes do things without us, like ratify a treaty or confirm someone, but nothing we do goes without the Senate.

I have to say that I am struck at the incongruity, and I have to again allude to the gentleman from North Carolina. Why does he have knots in his stomach? Just because he is sending this over to the Senate to decide? He has knots in his stomach, as he courageously articulated, because he understands what we are doing. He understands that you are trying to undo the election. You are entitled to do that. You are entitled to say that Bill Clinton's transgressions, in your mind, are so bad that he should be thrown out of office.

I don't think lying about a consensual sexual affair ought to do that. It does not seem to me that members are entitled to do everything within their constitutional power to impeach the President, to press for it, to lobby for votes, to do everything possible, and then disclaim responsibility for it.

And the notion that we are simply here passing this along to the Senate is not good constitutional theory, it is not good law, it is not good political science. It may just be a good lobbying strategy for the floor. It may be that there are Members who are unwilling to vote for this unless they can tell their constituents, well, don't take it too seriously, it isn't really going to happen. But I think that is a very grave misstatement of what the stakes are in this issue.

Mr. CONYERS. Mr. Chairman, to me, the shell game continues from last evening, at a slightly higher level, but not much. So we are still in the same quandary.

I worry about this House of Representatives that cannot find enough Members to come to the midground of censure if they cannot turn this impeachment process away entirely.

Ms. JACKSON LEE. Mr. Chairman, I ask that the Ranking Member be given an additional 2 minutes, so that I might ask him to yield to me.

Chairman HYDE. Well, is there any objection? Hearing none, the gentleman from Michigan is recognized.

Mr. CONYERS. I yield to the gentlewoman from Texas.

Ms. JACKSON LEE. I thank the gentleman. I think it is quite comforting of my colleague from Texas to have cited a very fine contributor to this process in 1974, Barbara Jordan. But might I add additional comments of Barbara Jordan to the record?

She said, "Impeachment is chiefly designed for the President and his high ministers to somehow be called into account. It is designed to bridle the executive if he engages in excesses. It is designed as a method of national inquest into public men. The framers can find in the Congress the power, if need be, to remove the President in order to strike a delicate balance between a President swollen with power and grown tyrannical, and preservation of the independence of the executive. The nature of impeachment is a narrowly channeled exception to the separation of powers maxim. The Federal Convention of 1787 said that. It is limited to high crimes and misdemeanors and discounted and opposes the term 'maladministration.' It is said to be used only for great misdemeanors."

And I believe that Ms. Jordan understood the difference, and would, of 1974 and 1998.

I yield back.

Chairman HYDE. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I am really very disturbed at some of the debate that I have just heard. The gentleman from Michigan, Mr. Conyers, seems to state that these proceedings are somewhat akin to a coup, and that is anything but the case. The framers of the Constitution put the impeachment clauses into that document as a way of looking into the conduct of members of the executive and the judicial branches. There can be a legitimate difference of opinion in whether the President has engaged in impeachable activity, but I think that every member of this committee, Democrat and Republican alike, has approached this very grave responsibility with the thoughtfulness and the seriousness

that the framers of the Constitution intended to have take place when allegations like this arise.

Impeachment is not removal. The Senate is given the responsibility under the Constitution of making the determination on whether an official is to be removed from office, after a full trial where both the House managers and the defense are able to call all of the witnesses they want and to make their arguments to the Senate. So what we are doing here is making a determination that the offenses that the President is accused of are serious enough to warrant a trial in the Senate on that issue.

Now, should the Senate decide to remove the President from office—we are a long ways away from that—Mr. Gore will become President. Mr. Gore is a man of very similar views to Mr. Clinton, and the President and the Vice President have bragged about how well they get along and how much they agree. So there is not going to be an abrupt change in the policies that the President of the United States advances, whether that President be Mr. Clinton or the President be Mr. Gore. And I think the same thing could have been said back 24 years ago when Richard Nixon ended up getting himself in trouble. The policies that Gerald Ford advanced were not dissimilar to those that Richard Nixon advanced. There wasn't an abrupt change in control of the Oval Office. The President and the Vice President are intended to work together.

So I think that merely by utilizing the processes that the Constitution sets forth is the proper move. It is something that certainly should be used, but used sparingly, and I think that here, at least those of us who have supported articles of impeachment, think that there is evidence to indicate that President Clinton abused his office and committed high crimes and misdemeanors.

Now, I do want to talk about the amendment which is the pending question with the committee. The fact that the gentleman from Pennsylvania has introduced an amendment, which I support, to delete 3 of the 4 charges of abuse of power, that is, of wrongly advancing executive privilege, lying to the public, and lying to his Cabinet and staff, shows that those of us on this side of the aisle are approaching this matter with thoughtfulness. I have concluded personally that there is no evidence to sustain a charge that the President has committed impeachable activity in these three particular areas. I do think he has in the fourth, but that is not the question yet until we dispose of the amendment.

So certainly what we are doing now shows that the Majority party, the Republican Party on this committee, is prepared to meet the White House halfway, and to show that when we don't think that there is evidence to sustain a charge of impeachment in the three areas I have mentioned, we are prepared to amend the draft articles of impeachment to delete them.

Now I yield to the gentleman from Tennessee, Mr. Bryant, who has asked me to yield to him.

Mr. BRYANT. I thank my friend from Wisconsin. I, too, want to just comment quickly about the analogy of a coup, a political coup. This is the orderly process of the Constitution at work, not military troops running about the streets, not a different regime seizing power. As my friend from Wisconsin said, we move the Vice Presi-

dent there, and in the interest of time, I will elaborate on this later, and I yield back.

Chairman HYDE. The gentleman from California, Mr. Berman.

Mr. BERMAN. Well, thank you, Mr. Chairman. The gentleman from Wisconsin described what many of us think is going on in this particular amendment, setting up a strawman in order to tear it down. It must have been a very, very interesting caucus that the Majority had to conclude that articles which they spent a great deal of time formulating all of a sudden were defective in substantial part and needed to be changed through an amendment. It is an orchestrated dance to create an illusion of reasonability that I don't think people should fall for.

Mr. GEKAS. Would the gentleman yield? Would the gentleman from California yield? There is a kind of an aspersion there that I think has to be clarified. Kind of.

Mr. BERMAN. It is not an aspersion, it is a commentary an analysis. Of course I yield.

Mr. GEKAS. The gentleman from California should know that the first utterance I made in this proceeding when it began a couple of months ago was my dissatisfaction——

Mr. BERMAN. Absolutely.

Mr. GEKAS. Well, then how——

Mr. BERMAN. Absolutely. And to reclaim my time, what about the gentleman's utterance, which made so much sense when he first uttered it, all of a sudden took hold on your colleagues on that side to get them all to join and remove something?

Mr. GEKAS. It is my persuasive powers.

Mr. BERMAN. Well, they are slow-building, but effective when they finally take hold.

The two points I would like to make on this time, though, are first just a point of clarification for us. The language in the Gekas amendment, as I understand it, is more or less the same language in paragraph 4 of Article IV; isn't that correct?

Mr. GEKAS. That is correct.

Mr. BERMAN. And so, in effect, this amendment is really, even though it asserts a lot of wordage, is essentially just an amendment to strike paragraphs 1, 2, and 3; is that correct?

Mr. GEKAS. If the gentleman would yield, that is correct. That is not an aspersion.

Mr. BERMAN. No, no, there was no aspersions ever meant to be cast at you.

So we are not voting to add some additional language, we would be voting to delete it. I thank the gentleman, and I am going to support his amendment.

Just one final point I want to make, though. Yes, the action of this committee, and if it is the same, the action on the House floor, does not remove the President from office. But as much respect as I have for Barbara Jordan or whatever words of Barbara Jordan the Majority chooses to utilize in some cases and disregard in others, the fact is the language of this proposal trumps anything else. You had the ability to cast it any way you wanted to. You alleged that if these things happened, these are the conclusions we should draw from it, and therefore the President should be removed from office.

Everyone who votes for this, votes to remove the President from office. Things may come up later in a Senate trial that cause people to change their minds, but at this particular point in time, it is a vote to remove the President from office.

Mr. BARRETT. I want to echo that point, and then I may ask for an additional minute to do so.

The Constitution gives the House of Representatives one function in this process, to impeach the President of the United States. The document before us tells us what we are voting on. Wherefor, William Jefferson Clinton, by such conduct, warrants impeachment. If we were fulfilling our role, there would be a period there.

The Constitution gives the Senate three functions. It gives the Senate the power to have the trial, to decide whether to remove him from office, and to decide whether he should be able ever to hold office again. These articles of impeachment say that the conduct warrants three different decisions that the Senate can make. It warrants trial. It warrants removal from office. That is what these articles say. And most amazingly, these articles of impeachment go beyond the articles of impeachment of Richard Nixon because that is where the articles of impeachment for Richard Nixon end. We go a step further here and say that this conduct warrants disqualification to hold and enjoy an office of honor, trust or profit under the United States. That is another decision that the Senate makes.

Chairman HYDE. The gentleman from Florida, Mr. McCollum.

Would the gentleman yield to me briefly?

Mr. MCCOLLUM. I would be delighted to yield.

Chairman HYDE. I would just like to point out to my constitutional friends that the language in the articles before us cannot trump the Constitution. It can't add nor can it detract from the constitutional powers that are reserved to the House and reserved to the Senate. So much as we might use precatory language or any kind of language, the Constitution still is overall and transcendent and will determine.

I thank the gentleman for yielding.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I think what we are discussing today is exceedingly important, and we have to understand that indeed the Senate does try this if we send it over there—they could choose not to; I believe they would. I think we have to assume, once we send it out of the House, he may be impeached, but there is no guarantee of that.

Those on this side who voted for the articles of impeachment, I am quite sure, and they must be quite sure that in their minds there is at least clear and convincing evidence that the President committed impeachable offenses for which the Senate has the power and should be given the opportunity to remove.

I have studied the Constitution, and I am convinced if the Senate convicted the President, they would not have to remove him. And if they did not chose to remove him, they could still punish him in one other way and that is to disable him from holding further offices in the future, such as John Quincy Adams.

Mr. SCOTT. Would the gentleman yield? Did the gentleman say that the Senate could convict and not remove?

Mr. MCCOLLUM. That is exactly what I said.

Reclaiming my time, I did say that the Senate could convict and not remove. There is nothing mandatory in the constitutional language that says that.

Now, however, saying all of that, I want to come back to the issue at hand. The amendment before us strikes three of these articles, and I don't think that they are three insignificant portions of this article, three paragraphs of this article. The first one is about the President lying to the public. Now, I don't think that we should go forward and impeach the President for his speech before the American public telling us lies, but I want you to know that in the Watergate hearings, the conclusion was to do exactly that. So we are doing something less than what was done with Richard Nixon.

With regard to executive privilege, I don't think that there is any question that the President abused executive privilege here, because it can only be used to protect official functions. And in case after case, from Bruce Lindsey all of the way through, the witnesses who were called before the grand jury who were White House aides were not asserting executive privilege to protect the government's official business; they were asserting it in order to protect and keep private matters that concerned the personal conduct of the President in the matters we have been discussing here.

However, I am not going to object. We are going to go forward with this, and we shouldn't get into that; that doesn't need to be an article of impeachment. The other matters that are here are far graver than that—the perjury, the obstruction of justice and the things that we have voted upon.

But in the Nixon Watergate proceedings there was an article of impeachment for abusing executive privilege. So we should understand that we are moving in a way and not doing the same thing that they did when the Democrats had the power here.

The third one with regard to using the people around him that we are going to delete from this by the motion of the gentleman from Pennsylvania, in terms of what the President did here, it is clear that on or around the 21st of January, after giving his deposition, he told a lot of very stretched stories to his staff, to his aides, to the people around him. And I know some can say that he just did it—he told bigger whoppers, as I said yesterday evening, than he did in the testimony officially where he perjured himself, and I am quite sure that he expected them to go out and repeat them, and they did in many cases; and as the gentleman from South Carolina pointed out, to Monica Lewinsky. There was a tactic that appeared at one point that they were going to cast aspersions upon her, and then they retreated from that.

We are deleting all of those, and I agree with that, and so we are left with an abuse of power by the President of the United States with respect to the provisions of what he did and said and lied to us, I think, in answering the admissions. And some have said on the other side that there is nothing to these admissions that rises to the level of anything impeachable—and I am about to have my time run out.

I would like two additional minutes, Mr. Chairman.

Chairman HYDE. Without objection.

Mr. MCCOLLUM. Thank you. With respect to—one I am very concerned about is with respect to the request for admission 34. The

President was asked to admit or deny if he had any knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky were not true.

The President said, "I was asked at my deposition"—these are in answers to the admission—"in January about two paragraphs of Ms. Lewinsky's affidavit. With respect to the paragraph 6, I explained the extent to which I was able to test the accuracy. With respect to the paragraph 8, I stated in my deposition that it was true."

And then he goes on to say, "I sought to explain the basis for the answer. I believe at the time she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate."

Well, we have debated the whole portion of her affidavit where she says, "I never had a sexual relationship with the President. He did not propose that we have a sexual relationship."

I think most of us understand that debate. I don't believe that it is true. I think it is a perjurious affidavit on that point. But, even if you don't agree with that, the President, in his answers to admissions, also said the affidavit in paragraph 8 was true, where Monica Lewinsky said, "The occasions where I saw the President after I left my employment at the White House in April 1996 were official receptions, formal functions or events related to the U.S. Department of Defense where I was working at the time. There were other people present on those occasions."

The fact of the matter is that this was absolutely perjurious. The President knew this and Monica Lewinsky knew that. The President knew that when he answered that affidavit—and he has committed another perjurious act by doing so, in this case to Congress—it is serious and grave, and it is appropriate that it be cited as part of an article of impeachment for abuse of power.

I encourage the adoption of the amendment by Mr. Gekas and adoption of Article IV as amended.

Mr. SCHUMER. Mr. Chairman, I ask unanimous consent the gentleman be given 2 additional minutes so I might ask him a question.

Mr. MCCOLLUM. If it is to respond to—

Mr. SCHUMER. Thank you.

Chairman HYDE. Without objection, so ordered.

Mr. SCHUMER. Thank you.

There are two points that leap at my credulity, number one, that the Senate could impeach the President, go through the trial and then vote to vote for these articles but not remove him from office.

My first question to the gentleman is: What penalty, if any, does he feel would occur? I don't see any that is constitutionally mandated, and then we are saying that this should be a show trial. It is in line with what the chairman said last night, "Well, the Senate doesn't have to vote to convict him."

Both of those statements reveal that even on the majority side people are saying, "Well, wait a minute, let's understand the magnitude of what we are doing here." So I would ask the gentleman what other penalties he would have in mind.

The second point is, he said, "Just like in Watergate, there was an abuse of power charge." I have never heard that type of argu-

ment win in a courtroom. Yes, there was abuse of power, using the IRS, using the CIA and other organizations of government to go after individuals that President Nixon didn't like. How can the gentleman compare—just because it says abuse of power, how can he compare the abuse of power charges in Watergate to this abuse of power charge, which is simply, again, perjurious testimony about an—

Mr. MCCOLLUM. If I may reclaim my time and ask unanimous consent for 1 additional minute.

Chairman HYDE. I will grant the additional minute if Mr. Schumer will answer a question from me.

Mr. SCHUMER. Yes.

Chairman HYDE. When are you going to get sworn in in the other body?

Mr. SCHUMER. Hopefully, Mr. Chairman, when we come to a conclusion that the Senate will not have to spend its first 6 months doing the same thing that we are doing here.

Chairman HYDE. That answer will be stricken from the record. You may have an additional minute.

Mr. MCCOLLUM. Thank you.

Article I, section 3, of the Constitution in regards to impeachment reads, "Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States." Shall not extend further than, I think that is very clear, you don't have to go that far. So the reality is that they can convict.

Mr. SCHUMER. If the gentleman would yield, what penalty does he have in mind?

Mr. MCCOLLUM. There doesn't have to be a penalty other than conviction or there could simply be the impeachment and no trial in the Senate if the Senate didn't choose to.

Now, if I might continue one last point, with regard to the executive privilege question, there certainly is an abuse of power here, I think, very clearly with respect to the answers to these admissions; and however you want to frame it, as the chairman said earlier, we could have done it as another perjury article if we wanted to, perjury to Congress, but I think it is an abuse of power. It is perfectly appropriate to label it that.

That is what we are left with in this article. And having gone through the one example that I gave you, there are other examples that he did lie in his answers to us. He did mislead us, and he did commit perjury.

Mr. SCOTT. Would the gentleman yield?

Chairman HYDE. The gentleman from New Jersey, Mr. Rothman.

Mr. ROTHMAN. Thank you. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. ROTHMAN. Thank you, Mr. Chairman. I want to address the notion that the House accuses and the Senate convicts and say that the House's power to impeach a sitting President of the United States is not a free pass. There is a burden of proof that has to be met, and there will be significant negative consequences to our constitutional form of government if impeachment occurs under the wrong circumstances and without just cause.

The House cannot just impeach a President because the majority party in Congress decides that they want to change a vote of the people. There has to be proof by clear and convincing evidence that treason, bribery, or other high crimes and misdemeanors have occurred.

Boy, my time went really fast. I hope that the clock will be fixed.

Chairman HYDE. I think we probably had it on 2 minutes. Forgive me. We will give you some more time.

Mr. ROTHMAN. Thank you, Mr. Chairman.

So it is not a free pass; they have to prove high crimes and misdemeanors. And we discussed at length in the last several days why, in my opinion and in the opinion of most Americans, no clear and convincing evidence has been produced to convict this President and send this matter for trial in the Senate.

But when you say we are just impeaching and we will go for trial in the Senate, some people say, "What is so bad about that?" We will find out. Do you remember President Andrew Johnson, whom the House impeached, and the Senate did not find guilty? There was an effect on the presidency of the United States for decades after that.

Now, you know, some of my colleagues on the Republican side of the aisle said, if we just impeach him in the House, that will send a message to future Presidents that you cannot behave in such a way as they feel is wrongful. I think the President's behavior is wrongful and should be censured for the things that we know that he did, and he admitted to, but there will be a devastating effect on the next President of the United States and the President after that and the President after that.

When the people of the United States elect a President, if the Republican majority gets its way in this committee and in the House of Representatives, the next President and the President after that and the President after that are going to be looking over their shoulder every time they make a controversial decision if they are a member of a different party than the majority party in the Congress. They are going to wonder if they veto a bill that the majority in the Congress doesn't like, is the majority of Congress going to invest \$40 million in an investigation and try to come up with something so that they can impeach them so that the majority of the Judiciary Committee can say, well, we will just see if it gets conviction in the Senate. It will have a devastating, chilling effect on the next President of the United States. History tells us that with what happened with President Andrew Johnson, and that will be a terrible thing.

The Founders of our Constitution rejected using impeachment for failure to live up to good behavior or narrow administration. They set the bar for impeachment by the House very high. It has not been met.

The people of America must let their Representatives know there is a danger to our Republic and to the future holders of the office of the presidency if the House impeaches the President, even if they say that it is just to pass it on for a trial.

I yield back.

Mr. ROGAN. Would the Chair recognize me for a unanimous consent request?

Chairman HYDE. The gentleman from California.

Mr. ROGAN. I ask unanimous consent for an additional minute so I may propose a question to my friend from New Jersey.

Chairman HYDE. Without objection, so ordered.

Mr. ROGAN. I would ask my friend from New Jersey about his comments a moment ago. He just told the committee, as well as the American people, that some of his friends on the Republican side have taken the position that it is appropriate to vote for impeachment just because it sends a message. It would be quite an indictment against a member to suggest that members of my party in Congress are minimizing their constitutional role.

Ms. WATERS. They are.

Mr. ROGAN. Would the gentleman be kind enough to identify by name those Republicans who have taken that position?

Mr. ROTHMAN. You know, there have been so many, it is hard to remember who told me that, Mr. Chairman.

Mr. ROGAN. I would request as much time for the gentleman as necessary so my friend can identify them.

Mr. ROTHMAN. I will give you a complete answer.

There have been many, many people who have said to me, "You know, Steve, why don't you just have an impeachment?" They are members on the other side of the aisle, and it has occurred behind the scenes, off the road, in the cloakrooms, where they said, "Well, we are going to move this on. I feel strongly about it."

I do not denigrate the motives of any member on the other side of the aisle in making their votes. I never have, I never will. I believe you make your judgments based on your opinion as to what is the right thing to do.

I just feel your opinion about what the right thing to do is fundamentally wrong and a great danger to our country, but I do not denigrate your belief that it is the right thing to do. But that does not stop us from the need to prevent something terrible from happening.

Mr. ROGAN. I reclaim my time.

Chairman HYDE. The Chair would very much like to get to a vote on the amendment. We have discussed everything from aardvark to Zimbabwe without concentrating on the amendment.

I will get to you, Ms. Jackson Lee, but I must move to the Republican side now, and so Mr. Canady is recognized for 5 minutes.

Mr. CANADY. Thank you, Mr. Chairman, and I assume that it wouldn't be out of order to express my support for the amendment. Most of the discussion that we have had hasn't directly related to the amendment, but I would at least like to say that I think the gentleman from Pennsylvania has offered an amendment that should be adopted by the committee and one which I will support.

I do want to respond to some of the statements that have been made this morning concerning the issue before us.

Now, the point was just made if we move forward and impeach the President, that future Presidents will be looking over their shoulder. This will have some sort of chilling effect on the institution of the presidency.

Well, I will say that I believe the only—there is an element of truth in that. I believe that if we move forward with this impeachment, future Presidents who engage in a course of conduct de-

signed to obstruct justice, who lie repeatedly under oath, will be looking over their shoulder. And I would like for them to be looking over their shoulder; they should take pause before they think about engaging in such conduct.

It has also been argued that it was unfair for us to even ask the President any questions in this inquiry, and that we are somehow guilty of misconduct because we dared to ask the President questions about his misconduct. We are accused of somehow being out of line because we expected and required that the President answer our questions in a truthful manner.

Now, Mr. Schumer has said the President answered the questions as he saw fit. I agree with the gentleman from New York. The President did answer the questions as he saw fit. He answered not only our questions as he saw fit, he answered the questions in the deposition in January as he saw fit. He answered the questions before the grand jury as he saw fit. The problem is this: He saw fit to lie. He saw fit to lie in the deposition. He saw fit to lie before the grand jury. He saw fit to lie finally in his answers to our questions.

Now, that is the serious matter that is before us, and that is a matter from which we cannot turn away as though it is something trivial. It is not trivial. It is serious. And it shows an amazing lack of respect not only for the truth, but for the system of justice and ultimately for this inquiry.

Now, when the President answered the questions that we propounded to him, he was not responding as a private citizen, and that is why I think having a separate article that focuses on his false answers to the questions propounded to him in this inquiry make sense. When he answered those questions, he answered as President of the United States. And he did so in a way that evidenced his continuing lack of respect for the truth, lack of respect for the dignity of his office and lack of respect for the oath that he took when he swore to tell the truth, the whole truth, and nothing but the truth.

Mr. SCHUMER. Would the gentleman yield?

Mr. CANADY. The gentleman from New York has probably had more time this morning than any other member of the committee.

I simply believe that we have a responsibility to focus on the facts that are before us. And when I saw the President's answers to these questions, quite frankly I was astounded. I have to tell you I was also astounded when I saw the President's statement yesterday.

After all this, we still cannot get an honest acceptance of responsibility for breaking the law, for lying under oath. I am not saying that would make the matter go away even if the President admitted that. I think it has gone too far for that. I don't think that you just accept an apology for such a course of conduct.

But at this point the President still cannot reconcile himself to the law and to the truth. I think that is a factor which cannot be denied in the circumstances that are before us.

And let me say in response to some of the other points that have been made, I wouldn't vote to impeach the President unless I felt there was evidence sufficient to convict him in the Senate. I think that is the proper way to deal with this. We are dealing with a

course of conduct here which is serious. The ultimate judgment is not ours, and I think the chairman is quite right in pointing out that the ultimate judgment is with the Senate.

And the gentleman from New York, the Senator-elect, has been chosen by the people of New York, and he will play a role in making that decision, and he is entitled to that. But we have a responsibility to carry out here, and I intend to do it.

Chairman HYDE. The gentleman's time has expired.

The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank you very much, Mr. Chairman.

Although I find great interest in the amendment and will study it further, I couldn't help but listen to my colleagues on the other side of the aisle on this moment.

The President left this morning for the Mideast, and I wish him Godspeed. But he should realize that tomorrow's headlines, if they are truthful, will announce his removal from office. And with all of the coloration that that is not the case, I think it is important to note that it is clearly stated in the articles of impeachment. The language is there.

And the basis for the removal is one that should be restated, for we are continually—and that is Republicans and Democrats—citing the Watergate model. Statesmen and stateswomen, they were, but the facts of Watergate were so obviously and conspicuously different that we do a disservice to the citation, the quotation, the remembrance of those members because they were remembering horrific acts: the use of the CIA to violate the FBI; the coordination of members of Cabinet sitting in rooms talking about, how do we get these people. And the tawdry facts today, the getting of President Clinton, the leaving of the office of special counsel by Linda Tripp and going to the counsel for Paula Jones; Paula Jones's own husband saying, We are going to get the President of the United States; the hiring of a public relations specialist for Paula Jones to set out on a campaign to make this more than this was, a tawdry, adulterous affair.

We now sit to remove this President. We now sit to tell our children, our grandchildren that there is no redemption. And I am offended when my colleagues across the aisle talk about the chief executive of this United States. He is still that, and when he comes before the people of the United States of America and offers his apology, how dare you—how dare you suggest that he is diminished, he is using another line?

And there are Americans that have said that, as I am sure that they have been encouraged by those who could not wait to comment on how insignificant it is for the President of the most powerful nation in the world to come before the American people and acknowledge that he has been called deceitful, that he has misled the American people and that he should be censured.

And so let it not be mistaken, we vote today, as we conclude, to take the private acts, sexual accusations and indiscretions, violations and complete wounding of one's family and this nation—however, added to by 22 hours of illegal taping, coordination with a civil case, dismissed—and we now say that we want to remove the President of the United States. And then to add insult to injury—although I had, by the grace of the chairman, and I thank him, ad-

mitted into evidence the Constitution, although I had spoken weeks and weeks ago about the need to be guided by the Fifth Amendment, that is, notice and due process.

When the President responds, duly guided by his lawyers, to interrogatories, as any other citizen would have the privilege of doing, we take those documents and suggest that we now can create another violation by suggesting in his interrogatories using the Fifth Amendment, the right of due process, the right to respond to one's accuser, and make it now an article where he is accused of violating perjury, obstructing justice, because he answered our interrogatories.

My friends, I would say if we didn't have a case before that, then that is making a case inside of this room. For, frankly, I think we have a case against the chief accuser to have left his prosecutorial role and moved to be the witness in chief, the fact witness, when all Mr. Starr could offer us was nothing but hearsay. Hearsay. And these articles, Mr. Chairman, are premised upon the hearsay of a witness who had no firsthand knowledge.

Chairman HYDE. The gentlelady—

Ms. JACKSON LEE. Tomorrow's headlines should say the truth. We are voting to remove the President. In our hearts, we must ask, we must raise up our conscience and ask, are we prepared today to vote to remove the President of the United States of America, for no constitutional forbidding, if you will, takes that vote away from us today.

And, Mr. Coble, I know that we all are full of "knots," but let it be, if you will, connecting that you are—are not—you are not just voting to move something forward. You are voting to remove the President of the United States, and I hope to God that you are fully convinced that this President should be removed on these tawdry and what I consider very insignificant facts.

[Closing remarks of Ms. Jackson Lee follows:]

#### CLOSING STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

##### INTRODUCTION

Mr. Chairman, Ranking Member Conyers, fellow colleagues on both the Democratic and Republican side of the aisle, I come here today, at this point in history, not with partisanship, not with a "liberal" label or a "Democratic" label, because that battle has been fought these last few weeks, and no one will emerge as a winner. However, there will be several losers: our constituents, America and our Constitution.

I come here not annoyed with my Republican friends, but with a heavy heart. I come bearing feelings of somberness and sadness. I'm sad not only because the House is considering Articles of Impeachment against a popular President; but because I recognize it is occurring without clear and convincing evidence nor are we using the standard outlined by the framers of our Constitution: [T]he President shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. It's the Constitution that

Ironically, this is a sad moment yet an historical one. It is sad because Congress has exercised its discretion to draft Articles of Impeachment which is almost equal to if not greater than its power to declare war. In 1691, Solicitor General Somers told the British Parliament that "*the power of impeachment ought to be, like Goliath's sword, kept in the temple, and not used but on great occasions.*" At the time of the Constitution's construction, the framers were concerned with assuring individual freedom and avoiding governmental tyranny.

It is historical because the House Judiciary Committee is doing something that has only been done twice before in our nation's history: Drafting Articles of Impeachment against the President of the United States. Article I, section 2 of the

Constitution grants the House of Representatives the sole Power of Impeachment. While Article I, section 3, authorizes the Senate to try all impeachments. Hence, the Legislative branch is charged with checking the Executive branch.

At the very outset, let me take this opportunity to apologize to the Nation for being party to these proceeds which have absorbed the time and energies of this Congress, deprived the country of the legislative service that moves our Nation forward in these critical times.

It is my hope, as I am sure it is the hope of millions of my fellow Americans, across the Nation, that we will be able to bring this matter to a closure with dispatch, and get on with the business of moving this country into meeting the challenges of the twenty-first century.

Our challenge today is not to damage the Constitution, but to uphold its principles; it is the Constitution that matters! The *private* acts of William Jefferson Clinton, no matter how reprehensible, these acts do not rise to an impeachable level because these acts were not attempts to subvert the government. With that understanding I along with other democrats will introduce a joint censure resolution of censure. "It is expedient that a wicked man be punished, as that a sick man be cured by a physician, for all chastisement is a kind of medicine." What kind of medicine is needed to heal our Nation and set the record straight for our children.

At a time when men and women passionately cry out for one moral standard to be applied to all, and show themselves relentless in their insistence on the most severe punishment, we might well give consideration to the truth contained in the words of Shakespeare, the first taken from Richard III, and the second from Hamlet. "Not to relent is beastly, savage, and devilish", and "What if the cursed hand were thicker than itself with they brother's blood? Is there not rain enough in the sweet heavens, to wash it white as snow?"

I would not have anyone draw the conclusion, that I implied that we should condone the irregular behavior of our chief executive reported by the media, or that I would recommend this as a model for the youth of America. On the contrary, I join with millions of other Americans in condemning the alleged behavior, but for the healing of the nation, let us promote censure, not impeachment.

In the Gathering Storm, Winston Churchill recommended special kinds of behavior under special conditions: In war resolution, in defeat defiance, in victory magnanimity, and in peace goodwill.

Because we are men and women of good will, always wanting the best for our nation, when the dust of rhetoric and stage performance has settled, we should be able to sit down and reason together, for together we possess the qualities of men and women called for by Josiah Holland when he said:

God gives us men and women . . . A time for this demands  
Strong minds, great hearts, true faith and ready hands  
Men and women whom the lust of office cannot kill  
Men and women whom the spoils of office cannot buy  
Tall men and women who live above the fog  
In public duty and private thinking.

We are morally bound to make our disapproval known, but we can best do it through censure . . . an act which would help us maintain our integrity, and to ensure that Lincoln's dream of the future will remain a constant reality, that we will continue to live in a nation where there is "government of the people, by the people, and for the people."

Where do we go from here?

Have the accusations of perjury against the President been proven? No.

Have the accusations of obstruction of justice against the President been proven? No.

Have the accusations of [abuse of power] against the President been proven? No.

By the response to the above questions—it is obvious that these Articles of Impeachment are not warranted, nor are they demanded by what this committee has before [it]. As Solicitor General Somers told the British Parliament in 1691, "the power of impeachment ought to be, like Goliath's sword, kept in the temple, and not used but on great occasions."

Impeachment is final and non-appealable. In this instance, it would thwart the will of the American people. It would then have the overtones of partisanship at its lowest level. Mr. Chairman, nowhere in our early history as the Constitution was being drafted do we find any commands to impeach the highest officeholder of this nation on a mere whim. So [on] what are the members of this committee basing this grave move towards impeachment?

What we have here are not facts, established by a court of law by a legally constituted jury that has handed down a guilty verdict. All we have are mere allega-

tions, brought to the judiciary committee by what appears to be an overzealous independent counsel.

In more understandable language, Jim Cole, an [?] active Washington public integrity lawyer, said it best:

It comes down to what the person said, what they understood themselves to be saying and what they understood the question to be.

In Committee yesterday, I raised the following question: Abuse of power requires the use of power. Did President Clinton, in any way, ask any of the Members of his Cabinet, to use the powers of their office to help cover up his affair with Monica Lewinsky?

His answer, in part was:

“No, Congresswoman . . . the President had already . . . misled the American people in public statements. It’s a little difficult to contemplate a setting in which persons who listen to him make those public statements go out and say ‘I believe the President’ and then he finds himself being accused of misusing his power. . . . It struck me when I read [Starr’s allegations of abuse of power involving the President’s Cabinet], especially when considered against the backdrop of events of 1974, as an odd proposition.

The American People know perjury, obstruction of justice when they see it, and they certainly know when a President has abused his power, caused his Cabinet officers to use the *powers* of their office in a conspiracy to cover up anything—if an article of abuse of power was not even drafted in the Iran-Contra matter, then how can we even consider such under the facts today? How can we even begin to consider the statements of the President *to his wife* about an affair that he had been having an abuse of power? That is what the Independent Counsel and my colleagues on the other side of the aisle would have you believe. It is preposterous, and it short-changes the intelligence and perceptiveness of the American people.

Now let me briefly note the process in which we have engaged in since the referral was brought to Congress on September 11, 1998. There have been, including today, only ten meetings or hearings by this Committee that would decide the fate of this nation. There have been no fact witnesses brought forth by the Republicans, who under our well-understood system of justice, bear the heavy burden of proving that an impeachable offense has indeed been committed. And we have seen the person holding the same role as Leon Jaworski in 1974 remove his hat of objectivity and move from being an impartial presenter of facts to being an advocate for the president’s impeachment. Even worse, we have literally seen the prosecutor in this matter step away from his position as an officer of justice, and step into the role of the witness-in-chief against the President of the United States—and this occurred to the horror of Mr. Starr’s own ethics advisor, Sam Dash—who resigned because of it. Leon Jaworski would never, never, have done such a thing—not only because it perverts the role of the Office of Independent Counsel, but also because it violates the Rules of Professional Conduct that all lawyers and judges must live by.

I believe we must find the courage [to rise] above the political fray—such as the courage Daniel Webster found in his March 7, 1850 speech to the United States Senate on holding this floundering nation together doomed to divide over slavery. Mr. Webster’s actions unfolded as follows as he rose to the floor of the Senate:

“Mr. President,” he began, “I wish to speak today, not as a Massachusetts man, nor as a Northern man, but as an American and a Member of the Senate of the United States. \* \* \* I speak today for the preservation of the Union.

Hear me for my cause.”

The Senate’s main concern, he insisted, was neither to promote slavery nor to abolish it, but to preserve the United States of America. And with telling logic and remarkable foresight, he bitterly attacked the idea of “peaceable secession”:

Sir, your eyes and mine are never destined to see that miracle. The dismemberment of this vast country without convulsion! Who is so foolish \* \* \* as to expect to see any such thing? \* \* \* Instead of speaking of the possibility or utility of secession, instead of dwelling in those caverns of darkness, \* \* \* let us enjoy the fresh air of liberty and union. \* \* \* Let us make our generation one of the strongest and brightest links in that golden chain which is destined, I fondly believe, to grapple the people of all the states to this Constitution for ages to come.

There was no applause. Daniel Webster did not succeed. “Webster did more than any other man in the whole country, and at a greater hazard of personal popularity,

to stem and roll back the torrent of sectionalism which in 1850 threatened to overthrow the pillars of the Constitution and the Union." However, with such courage does come nullification—

"I know of no deed in American history done by a son of New England to which I can compare this, but the act of Benedict Arnold." "Webster," said Horace Mann, "is a fallen star! Lucifer descending from Heaven!" Longfellow asked the world: "Is that possible? Is this the titan who hurled mountains at Hayne years ago?" And Emerson proclaimed that "Every drop of blood in a man's veins has eyes that look downward."

However, his final words [were]—I shall stand by the Union with absolute disregard of personal consequences!

#### INDEPENDENT COUNSEL STATUTE

This is the first time under the Independent Counsel Statute that a President has been investigated. If for no other reason, it is imperative that this committee's legacy validate the lofty aims of the Independent Counsel Statute. It was enacted to provide a mechanism that would avoid the inherent or structural conflicts which could arise when the Attorney General is required to supervise an investigation of an Executive branch official. Unfortunately, since the re-authorization of the Independent Counsel Statute, it has been employed by some to engage in witch-hunts; fishing expeditions and scatter-gun approaches searching for evidence of a crime. This noble idea has been twisted by knaves to create a partisan weapon. A primary example is the Michael Espy investigation. In that case, Independent Counsel Smaltz spent over ten million dollars to investigate Mr. Espy receipt of \$33,000 in gifts. Given the results of this case it is evident that the Independent Counsel statute needs to be examined if it is to remain a viable procedure for future investigations of Congress and the Executive branch.

#### ARTICLES OF IMPEACHMENT

The Committee's majority has introduced four Articles of Impeachment against the President alleging the following charges: two counts of perjury, obstruction of justice and abuse of power. Allow me to explain why I believe the Starr Referral, the linchpin of the Articles of Impeachment, does not provide credible and sufficient evidence to support the Majority's mistaken decision. Now, let us examine Articles I and II to determine if they are supported by credible evidence.

The federal perjury statute requires:

- (1) the declarant must take an oath to testify truthfully;
- (2) the declarant willful false statement must be contrary to the oath;
- (3) the declarant must believe the statement is false; and
- (4) there must be a nexus between the statement and a material fact in the matter pending before the tribunal. Therefore, under 18 U.S.C. 1621 the declarant must willfully offer testimony that the declarant believes is false before an individual can be convicted of perjury.

During the Watergate hearings, Mr. St. Clair, President Nixon's attorney, stated "*a President cannot be impeached by piling inference upon inference.*"

Mr. Schippers, Chief Investigative Counsel for the House Judiciary Committee, stated:

Monica Lewinsky's credibility may be subject to some skepticism. At an appropriate state of the proceedings, that credibility will, of necessity, be assessed together with credibility of all witnesses in the light of all the other evidence. Ms. Lewinsky admitted to having lied on occasion to Linda Tripp and to having executed and caused to be filed a false affidavit in the Paula Jones case.

Ms. Lewinsky stated that her contact with the President did not constitute "sex" and reaffirmed that position even after she received immunity for the Office of the Independent Counsel. In a conversation taped record by Ms. Tripp, Ms. Lewinsky explained that she "didn't have sex" with President because "having sex is having intercourse." It is important to remember that Ms. Lewinsky did not know that her conversations were being taped. Therefore, she too believed that her contact with the President was not sex.

#### COMPARISON WATERGATE AND STARR REFERRAL

In 1974, this Rodino Committee drafted three Articles of Impeachment against President Nixon. Article II charged Richard Nixon with "Using the powers of the office of President of the United States, in violation of his constitutional duty . . .

abuse of power. He has repeatedly engaged in conduct impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies. This conduct has included one or more of the following:

(1) He has, acting personally and through his subordinates and agents, endeavored to obtain from the I.R.S., in violation of the constitutional rights of citizens.

(2) He misused the FBI, the Secret Service, and other executive personnel, in violation or disregard of the constitutional rights of citizens, by directing or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security.

(3) He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed with money derived from campaign contributions.

(4) He has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know . . . of the unlawful entry into the headquarters of the DNC and the cover-up thereof.

(5) In disregard of the rule of law, he knowing misused the executive power by interfering with agencies of the executive branch, including FBI, the Criminal Division, and the Office of Watergate Special Prosecution force, of the Department of Justice, and the C.I.A., in violation of his constitutional duty.

The Starr Referral purports to outlined "substantial and credible information that President Clinton's actions since January 17, 1998, regarding his relationship with Monica Lewinsky have been inconsistent with the President's constitutional duty to faithfully execute the laws." The Referral considers the following acts an abuse of the President's Constitutional duty:

(1) On January 21, 1998, the President misled the American People and congress regarding the truth of his relationship with Ms. Lewinsky.

(2) The First lady, the cabinet, the president's staff, and the President's associates relied on and publicly emphasized the President's denial.

(3) The President repeatedly and unlawfully invoked the executive privilege to conceal evidence of his personal misconduct from the grand jury.

(4) The President refused six invitations to testify to the grand jury, thereby delaying expeditious resolution of this matter, and then refused to answer relevant questions before the grand jury when he testified in August 1998.

(5) The President misled the American people and the Congress in his public statement on August 17, 1988, when he stated that his answers at his civil deposition in January had been "legally accurate."

The Office of the Independent Counsel couches his abuse of power charge by suggesting that President asserted Executive privilege without a basis in law. On page 156 of the Referral the following "facts" outlined:

On March 24, while the President was traveling in Africa, he was asked about the assertion of Executive Privilege. The President responded, "You should ask someone who knows." He also stated, "I haven't discussed that with the lawyers. I don't know."

This language was taken out of context. Here is the proper context for this statement:

Q: Mr. President, we haven't yet had the opportunity to ask you about your decision to invoke executive privilege, sir. Why shouldn't the American people see that as an effort to hide something from them?

The President: Look, that's a question that's being asked and answered back home by the people who are responsible to do that. I don't believe I should be discussing that here.

Q: Could you at least tell us why you think the First Lady might be covered by that privilege, why her conversation might fall under that?

The President: All I know is—I saw an article about it in the paper today. I haven't discussed it with the lawyers. I don't know. You should ask someone who does?

Hence, placed in the proper context it is clear that the President was not asked about the assertion of Executive Privilege but about the very narrow issue of the privilege and its application to the First Lady.

Under what standard is this an abuse of power? Certainly not the Watergate standard. These Articles of impeachment are vastly and starkly different. You must have use of power to have abuse of power. The President did not instruct cabinet officials to use their office to deceive the public.

## CONCLUSION

We have heard from the greatest legal and constitutional scholars of our time who have come before this committee to opine on the weighty subject on Impeachment. Professor Michael Gerhardt came before us and stated that, "Most if not all impeachments made by the House and convictions made by the Senate have followed or approximated the paradigm of an impeachment—the abuse of official power of privilege." Lastly, it was our former colleague Congressman Wayne Owens who served as a Member of the Judiciary Committee during the Watergate proceedings who said, "if you vote to impeach a president because he had an improper sexual affair, then avoided full disclosure by using narrow legal definitions, even then affirming that testimony before a grand jury, if you impeach on that narrow base of personal-not official misconduct—you do untold damage to the Constitution. . . and to the stability of future presidents."

Mr. Chairman, my fellow colleagues if this committee, this House, votes to impeach this President solely based on these allegations then there will be no winners here, only losers. The losers will be OUR CONSTITUENTS, THE NATION AS A WHOLE . . . THE INSTITUTION OF THE AMERICAN PRESIDENCY . . . NOT THE PRESIDENT . . . BUT THE PRESIDENØ . . . BUT MOST IMPORTANTLY THE CONSTITUTION WOULD LOSE . . . BECAUSE IT WOULD HAVE BEEN SUBVERTED . . . MISUSED . . . AND DIMINISHED BECAUSE OF PARTISAN POLITICS. THIS WAS NOT THE INTENT OF THE FRAMERS.

Chairman HYDE. The gentelady's time has expired.

The gentleman from South Carolina, Mr. Inglis.

Mr. INGLIS. Thank you, Mr. Chairman.

The gentelady from Texas just mentioned the horrific facts of Watergate. Isn't it true that we have horrific facts here?

We have got the chief law enforcement officer of the United States, who perjured himself not once, but repeatedly, not just in a civil deposition, but before a grand jury. Perjury is more heavily punished than bribery. It is horrific to me that the President would even continue that as late as 4:00 yesterday.

As late as 4:00 yesterday the man cannot bring himself to tell the truth. He continues to lie. He continues to deceive the American people. I think it is horrific. I think it is horrific that the man is leaving now for a trip where, who knows what he can say and who can count on what he says. I think it is horrific.

These are horrific facts, that the man cannot tell the truth. He couldn't tell the truth yesterday. He couldn't tell the truth before a grand jury. He couldn't tell the truth in a civil deposition and he couldn't tell the truth when he submitted answers to questions to this committee.

When will he tell the truth? When he is finally before the bar in the Senate? Maybe. Is that when he tells the truth?

The gentelady suggested that there is no redemption here. There is redemption with consequences. And in this proceeding earlier, I believe it may have been the chairman who eloquently pointed this out—if not him, someone else—that a perfect picture of that is Pope John Paul confronting his assailant, went to forgive him and offer forgiveness and hope, but left him in jail. He made no effort to have him released from jail. And there his assailant continues to remain.

Now, that is the appropriate picture of redemption. Redemption, yes, forgiveness, yes, but with consequences. The President can't ask us for not cheap grace, worthless grace, absolutely worthless grace to not even admit his wrongdoing, and expect that—even if he did admit wrongdoing, expect that there would be no consequences. There are consequences to wrongdoing.

And I would also point out that the attack on the truth-seekers continues. And that is particularly shameful that in the midst of this series of events where clearly the President of the United States is guilty of perjury—folks on that side are even admitting it now—that the minority counsel, when he sat before us, I think pretty clearly admitted it awhile back, the man has lied. But instead of admitting that, as we all should and even his defenders should, all of them, not just some of them, they go on a continued attack against the truth-seeker.

So we continue to hear attacks here against Ken Starr, for example, as if he were on trial. As if he were the one who dreamed up these tawdry facts. It is not his fault for bringing up tawdry facts than for some prosecutor having to bring up tawdry facts in a courtroom about a rape matter, for example, and horrible details. But the defendant in the action can't be heard later to complain to the court, why do we have to delve into these things? Well, if the defendant hadn't committed the acts, there wouldn't be a tawdry scene.

So the defendant in this matter, William Jefferson Clinton, cannot be heard to complain about the facts that he has put before us. Those facts must be divulged. Those facts must be discussed and they are now going to be, I hope, the subject of a trial in the U.S. Senate, and there there are consequences for wrongdoing, and that is what the President is unable to accept and what his defenders are unable to accept. There are consequences for violating the rule of law.

I yield back the balance of my time.

Mr. McCOLLUM [presiding]. The gentlelady from California, Ms. Waters, is recognized for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman, and members.

I am absolutely amazed at the liberal and loose interpretation of the Constitution that I am hearing from conservatives. Usually progressives are accused of loose interpretation and usually conservatives are considered to have strict interpretation of the Constitution and the law. But sitting in this committee, I have witnessed the loosest interpretation of the Constitution as my colleagues on the other side of the aisle have dealt with the meaning of "high crimes and misdemeanors."

Now, if that is not bad enough, I am now finding out from the Chair of this committee that what we are doing here in voting out these articles of impeachment really does not have much to do with whether or not we really mean it and whether or not we are really involved in the ultimate impeachment of the President. I think my grandmother would call that throwing a rock and hiding your hand, almost as if you really don't want to be identified with the ultimate impeachment if that should happen.

I am amazed at these interpretations, and to add insult to injury, Mr. McCollum said that we could go through this entire process, vote out articles of impeachment from the Judiciary Committee, send it to the floor; and if it is voted out on the floor, go through the trial in the Senate and not remove the President from office—that the Constitution, he said, says you should extend no further than.

Well, what does that really mean? Rather than the loose interpretation that he is giving it, to have you believe that somehow it means that you can stop short of, you can punish, you can do something other than, which is nowhere indicated in the Constitution of the United States. I think it really means that you can't give him the death penalty or you can't send him to prison rather than the interpretation that Mr. McCollum was giving.

Mr. BARRETT. Would the gentlelady yield?

Ms. WATERS. I am awfully concerned that the young people who are listening to us, who are learning about the Constitution of the United States of America, are going to be very confused. I don't know what the teachers of America are going to do as they watch all of these truth-telling members of the Judiciary Committee interpret the Constitution of the United States.

Mr. BARRETT. Would the gentlelady yield?

Ms. WATERS. Yes, I would yield to my colleague.

Mr. BARRETT. I heard the gentleman from Florida's comments, too, so I have Article II, section 4, of the Constitution which reads, "The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." I see no discretion in the word "shall."

Ms. WATERS. I thank you very much. I am absolutely sure of that. I learned that in the eighth grade. But let me just say, I do feel that the Chair of this committee should have stopped this committee at the point that Mr. McCollum gave that interpretation, so at least we could have a reasonable debate, so that the distortion would not stand in this committee. I think it is awfully unfortunate.

I would like to direct a question to Mr. Canady, who has called the President a liar about a hundred times this morning.

Which answer to the 81 questions do you think is deserving of impeachment, that you are so upset about, Mr. Canady? I would like you quickly to point to just one.

Mr. CANADY. The chairman gave a list earlier.

Ms. WATERS. I want you to give one. If you cannot do it, I take back my time.

Mr. CANADY. I am not going to engage in this if you won't let me answer.

Ms. WATERS. Reclaiming my time, if it takes you that much time to think about it, then you don't know it. I thought you had something that you were so sure about that you could just tell us in a short moment here what it is in the 81 questions, the so-called "lie" that is so upsetting, that is so worrisome, that meets the test of the Constitution that you would want to impeach the President about.

And let me just conclude my remarks by saying, I wish I was as pure and as moral and as honest as some of my colleagues on the other side of the aisle who keep referring to the President as the greatest liar, the biggest liar they have ever seen, they have ever met. I hope that we can all work on ourselves and do a little bit better and be a little bit more forthcoming in the work that we do, so that in fact we can feel comfortable enough to claim the kind of honesty that they are denying to the President.

Mr. McCOLLUM. The gentlelady's time has expired. The gentleman from Georgia, Mr. Barr is recognized for 5 minutes.

Mr. BARR. I would like to pause a little bit here and—despite arguments by particular individuals on the other side that are fast, furious and glib, as if the faster you say something, the louder you say it, the more times you repeat it, by golly, it makes it so.

The fact of the matter is, Mr. Chairman, that the Constitution was written very calmly, deliberatively and solemnly, thank goodness. And I think it is time for Constitution 101 for America.

Article I, section 2, paragraph 5, Article I being that article of the Constitution that describes the powers of the Congress, says that the House has the sole power of impeachment. Article I, section 3, paragraph 6—we are still in Article I, still dealing with the powers of the Congress—states that the Senate shall have the sole power to try all impeachments.

Article II, section 4—Article II being the section that describes the powers and other matters relating to the executive branch, that is, the President—says that the President shall be removed on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors.

Now, let's parse that. The word “and”—while the President undoubtedly would have great difficulty determining and deciphering what the word “and” means, we don't or at least we should not. It says that the President shall be removed on impeachment for and conviction of. The “and” bridges two ideas, two things that must happen before the President is removed.

Now, parents out there listening today know exactly what I am talking about. Children out there listening today know exactly what I am talking about. If a parent tells a child you can go out and play if you clean your room and wash your hands, the child knows what that means. They must do both things; and if they fail to do both things, then the consequence will not happen. So it is in the Constitution.

Every word in our Constitution is there for a purpose. Every word was deliberated at great length; not fast, not glibly, but at great length, very deliberatively, very solemnly.

For the other side to maintain by saying it fast, furiously and repetitively, that a vote in the House to impeach removes the President, is to do precisely what the President does and that is to give the wrong, reverse meaning to words. They may want to operate in the same parallel universe that the President operates when it comes to the use of the English language, but we ought not let America be deceived by this sophistry. When the House votes pursuant to its sole power to impeach, that does not, cannot and never will remove a President from office. It cannot. The only way a President can be removed from office—

Ms. LOFGREN. Would the gentleman yield for a question?

Mr. BARR [continuing]. Impeachment by the House, and, A-N-D, conviction in the Senate.

It is preposterous to maintain that a vote in the House, carrying out our sole and exclusive duty to impeach, removes the President. It does not—does not and never will.

We are here today exercising our sole responsibility, and we are trying to do it in a manner that lends credibility to this document.

No matter how many times the other side may raise their voice, pound on the table, talk too fast for those us from the South to understand what they are saying, the fact of the Constitution remains, impeachment is not removal from office. Impeachment is not removal from office. Impeachment is not removal from office.

Impeachment is the process laid out in the Constitution whereby the House determines that actions by the President should be decided by the Senate in a trial, the parameters of which are clearly also laid out in the Constitution, whether or not he should be removed. Now, to adopt the position of the gentleman from Massachusetts that we should not do our constitutional duty here unless we know for a certainty that the Senate will, would be akin to saying, no prosecutor can seek an indictment unless he or she knows that the petit jury will convict, or that Congress, the House of Representatives, should not pass or consider a bill unless the Senate has done so first.

Their argument is just that ludicrous. America, do not be deceived.

This is the Constitution. Its words, and thankfully we did not ask the President to determine or decipher Article II, section 2, or Article I, section 2, or Article I, section 3, paragraph 6, because we would have had endless arguments over what the words “sole power” mean or the word “and”—“impeachment for and conviction of.”

I believe that we do here, at least on this side of the aisle, understand what the Constitution says. That is why we keep it in our drawers so every once in awhile we can take it out and look at it and make sure that the words are still there, which is something that we have to do frequently in light of the arguments made by the other side.

Ms. MCCOLLUM. Would the gentleman yield?

Mr. BARR. I would be happy to yield to the gentleman from Florida.

Mr. MCCOLLUM. Thank you, Mr. Barr.

I would like to set the record straight. I looked at Article I, section 3, which does say that you can't go higher than certain punishments; and didn't look at Article II, section 4, which says if the President is convicted he must be removed from office if he is indeed convicted.

But I think the fact remains what Mr. Barr says is very accurate. When we impeach, we impeach. It also requires conviction for removal from office, but removal is automatic, and I do stand corrected.

Ms. WATERS. Would the gentleman yield?

Mr. BARR. What the other side is trying to do, they are not really misinterpreting the Constitution. They are making an incorrect argument, trying to reach out beyond this dais here to convince other members that the Constitution means something that it doesn't. They are trying to give solace to those members who are grappling with this momentous question and this momentous decision. They are reaching out to them and saying, don't worry, if you vote to impeach, you will be removing and you don't want to do that. That is what they are trying to do.

Mr. FRANK. Would the gentleman yield?

Mr. BARR. It is a very disingenuous argument, and it ought not be allowed to stand.

I would be happy to yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman for yielding, and I would ask to have an additional minute.

He has misstated what I said. No one here has said if you vote for this, you are removing the President. What we have said is that an indispensable step in removing the President is voting for this. The gentleman made our point; he read the Constitution.

Mr. BARR. Reclaiming my time. So I am quoting the gentleman from Massachusetts correctly, and I would hope my colleagues not on this committee would hear this, that a vote to impeach is not a vote to remove the President.

Mr. FRANK. Would the gentleman yield?

Mr. BARR. Yes.

Mr. FRANK. He said what the Constitution says, that there are two equally important, indispensable steps to removing the President. We can take one and the Senate takes the other. Until we act, the Senate cannot act. So we hold the keys to that door.

I do disagree with his suggestion that an ethical prosecutor or a responsible member should vote for this if you did not think that it is justified that there be conviction. I am not saying that you have to predict the jury, but a prosecutor who indicts if he doesn't think there should be a conviction is wrong, and a member who votes for conviction not thinking that the President ought to be removed is wrong.

The gentleman from Georgia read the Constitution correctly. There are two equally important, indispensable steps to removing the President. We can take one of them, the Senate the other. This is the indispensable step that we and we alone can take, leading to the removal of the President if the Senate then takes its step. Members who do not think that the President should be removed should not take that inevitable step that only we can take.

Mr. BARR. I am reclaiming my time and remind those present here that they have heard something very historic today: Barney Frank and Bob Barr agree on something.

Chairman HYDE. Just a moment. I don't think that was the historical aspect of that; I think it was Mr. Frank speaking slowly.

Mr. BARR. A fact that I appreciate very much, coming from Georgia.

I yield back.

Chairman HYDE. Who seeks recognition? Are we ready for the vote on—

Ms. WATERS. No, we are not ready.

Chairman HYDE. I didn't catch that, Ms. Waters.

Ms. WATERS. No, we are not ready for the vote. We have work to do to help teach our members on the other side of the aisle what the Constitution really says, and we can't skip over this.

Chairman HYDE. Oh, well, thanks so much.

Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

On the prior point, I think it is clear that we should not vote an article of impeachment unless we believe that the President ought to be impeached and removed from office for the reasons already

stated, but also for this: once the House of Representatives votes articles of impeachment, the next job that they have to do is appoint managers. The House acts as the prosecutor and the Senate acts as the jury, and the Chief Justice acts as the judge, the presiding officer. So if we don't think that we have the evidence to go prosecute this case to get a conviction in the Senate, we should not be voting to move forward.

I also want to talk a little bit about what we are doing here. I think in some ways we are bringing this Nation together today in the Judiciary Committee, together in opposition to what we are doing. I think each day we meet to discuss this impeachment, more people are waking up to the fact that it is actually going on and most people do not want us to do it. Today's Washington Times reports that, "in voting to send the impeachment of President Clinton to the full House for a vote, the GOP has bucked the polls, the press, the conventional wisdom and the November 3rd election results," and I think that is something that we need to take seriously.

I know that my obligation to my oath does not mean I can set aside my conscience, but it also doesn't mean that I can't take a look at what the people of this country want us to do.

I would like to ask unanimous consent to submit for the record the letter that you sent to me, Mr. Chairman, on September 21st, along with a very interesting article from Duke Law School that you cited favorably; and I would like to quote from that article that you sent to me and recommended that I read.

On pages 1044 and 1045, the article says, "The public's opinion in impeachment matters. It is so that what we do may be legitimate and perceived by the public we represent as being legitimate," and "The legitimacy of a democratic government must be established in the minds of the people. Thus, for a transfer of presidential powers to be accomplished by removal in the face of impeachment, the legitimacy of the new administration can only be assured by public recognition that the previous mandate has clearly expired."

The same article, on page 1029, states that "The impeachment process, while fundamentally political, was designed to protect the foundation of the state itself and not to create a sanction for misjudgment or to settle disputes over policy or to substitute for the criminal law."

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 THOMAS BY BARRI, WISCONSIN

September 21, 1998

Hon. Zoe Lofgren  
 318 Cannon House Office Building  
 United States House of Representatives  
 Washington, D.C. 20515

Dear Zoe:

I want to take this opportunity to respond to the concern you have expressed about the procedures to be followed by the Judiciary Committee in conducting any impeachment inquiry against President Clinton. Please know that it is my intention to afford President Clinton the same opportunity to participate in the proceedings before the Committee as was President Nixon during the Watergate impeachment inquiry. Of course, I cannot commit the Committee on this or any other point, but at the appropriate moment I will strongly urge the Committee to agree on such a process.

Let me remind you that President Nixon and his counsel were never granted access to any materials gathered by the Committee in the course of its inquiry. His access to materials was limited to that information which was deemed by staff to be relevant to the proceeding as that material was presented to the Committee behind closed doors. President Nixon was allowed to attend the Committee meeting where Committee counsel made a presentation detailing information believed by the Committee staff to be pertinent to the inquiry, and was given the right to receive a copy of the statement of information and other documents and materials when they were furnished to the Members of the Committee. He was then granted the right to respond to the presentation and to submit requests that the Committee receive additional testimony or other evidence.

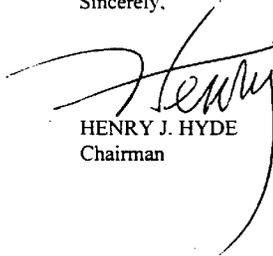
During the Committee's impeachment inquiry, President Nixon and his counsel were also granted the right to attend all hearings, including any held in executive session; the right to object to the examination of witnesses or to the admissibility of testimony and evidence; and the right to question any witnesses. If and when this Committee begins an impeachment inquiry relating to President Clinton, I will strongly urge the Committee to grant President Clinton these same rights.

Might I observe that by making the Independent Counsel's referral available to the President at this time, President Clinton has actually been placed in a position superior to President Nixon. President Nixon's access to materials did not occur until the Committee was well into its impeachment inquiry. To the extent that the Independent Counsel's submission becomes a part of an impeachment inquiry, President Clinton will have had those materials from the moment the inquiry begins.

You might be interested in reviewing the enclosed article, "Removal of the President: Resignation and the Procedural Law of Impeachment," which appeared in the January 1974 volume of the Duke Law Journal. I find it to be a well researched and thorough discussion of the Nixon impeachment inquiry procedures.

I trust this responds to your concerns.

Sincerely,



HENRY J. HYDE  
Chairman

Enclosure

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## REMOVAL OF THE PRESIDENT: RESIGNATION AND THE PROCEDURAL LAW OF IMPEACHMENT

EDWIN BROWN FIRMAGE\*

R. COLLIN MANGRUM\*\*

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\* Professor of Law, University of Utah College of Law; J.D. 1963, LL.M. 1964, J.S.D. 1964, University of Chicago; Fellow in Law and the Humanities, 1974-75 Harvard University.

\*\* Research Assistant, University of Utah College of Law, J.D., 1975.

#### THE FOLLOWING CITATIONS WILL BE USED IN THIS ARTICLE:

- R. BERGER, *EXECUTIVE PRIVILEGE: A CONSTITUTIONAL MYTH* (1974) [hereinafter cited as *EXECUTIVE PRIVILEGE*];
- R. BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* (1973) [hereinafter cited as *R. BERGER*];
- C. CANNON, *CANNON'S CONGRESSIONAL PRECEDENTS* (1935) [hereinafter cited as *CANNON'S*];
- L. DESCHLER, *CONSTITUTION, MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES, 93D CONGRESS* (1973), containing *Jefferson's Manual* [hereinafter cited as *Manual*];
- J. ELLIOTT, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS* (1937) [hereinafter cited as *J. ELLIOTT*];
- A. C. HINDS, *HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES* (1907) [hereinafter cited as *HINDS'*];
- J. KENT, *COMMENTARIES ON AMERICAN LAW* (2d ed. 1832) [hereinafter cited as *J. KENT*];
- THE RECORDS OF THE FEDERAL CONVENTION OF 1787* (M. Farrand ed. 1911) [hereinafter cited as *RECORDS*];
- J. STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* (5th ed. 1905) [hereinafter cited as *J. STORY*]

- J. The Effects of Recesses and Adjournments on the Impeachment Process
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  - E. Evidentiary Rulings
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Actuated by these sentiments our ancestors arrayed themselves against the government in one huge and compact mass. All ranks, all parties, all Protestant sects, made up that vast Phalanx. In the van were the Lords Spiritual and Temporal, Then came the landed gentry and the clergy; both the Universities, all the Inns of Court, merchants, shopkeepers, farmers, the porters who plied in the streets of the great towns, the peasants who ploughed the fields. The league against the King included the very foremast men who manned his ships, the very sentinels who guarded his palace. The names of Whig and Tory were for a moment forgotten. The old Exclusionist took the old Abhorrer by the hand. Episcopalians, Presbyterians, Independents, Baptists, forgot their long feuds, and remembered only their common Protestantism and their common danger . . . . The coalition of 1688 was produced, and could be produced, only by tyranny which approached to insanity, and by danger which threatened at once all the great institutions of the country.

Macaulay on the Fall of  
James II<sup>1</sup>

### I. INTRODUCTION

The aborted proceeding to impeach Richard Nixon has stimulated debate about the appropriateness of the impeachment process as a check upon the arbitrary use of presidential power. Impeachment has been criticized as a cumbersome, agonizingly slow, and unjustifiably expensive way for Congress to express its will, extracting a cost in an abraded electorate suffering further with duties of government unmet

1. 1 T. MACAULAY, THE HISTORY OF ENGLAND FROM THE ACCESSION OF JAMES II 803-04 (1906).

while Congress and the presidency are consumed with their offensive and defensive roles in the process. Termination of the impeachment proceeding without an admission of moral guilt (only "errors of judgment") or a finding of legal responsibility is a disquieting denouement for the Watergate tragedy. Further, such proceedings could not adequately resolve whether a President who resigns when faced with certain removal should be allowed extensive federal retirement benefits or if a resigning President should have immunity from prosecution for criminal acts committed while in office—now a mooted question as to federal prosecution because of President Ford's pardon.

Congressman Henry Reuss has proposed in response to this crisis the adoption of a modified form of responsible government to be accomplished by a constitutional amendment which would permit the removal of the President by a three-fifths vote of no confidence by the members of each House of Congress.<sup>2</sup> A new President and Vice-President would be chosen in a special election held following such a vote. Under such a system, a President could be removed simply upon the basis of a strongly felt difference on policy or for an error in judgment, rather than upon conviction of the commission of treason, bribery, or other high crimes and misdemeanors. The President would enjoy office at the sufferance of Congress.

It is suggested, however, that when considered within the parameters of our present system of government, the process of impeachment, even if it culminates in presidential resignation, has served as an effective deterrent to the arbitrary abuse of presidential power. A radical change in the law of presidential removal is not called for by the Nixon resignation.

Of course, impeachment is cumbersome, heavy artillery in the arsenal of democratic government, not designed to go after a mouse—a rat on occasion perhaps, but never a mouse. Other procedures are available for lesser game, including a vote of censure.

Nor is it meant to be quick. Within a governmental system of checks and balances in which the President possesses an electoral mandate equal to and independent of Congress, it would violate an expression of the people's will to accomplish his removal from office before not only Congress but also the people recognize by a substantial majority that legitimacy had departed, the mandate finished.<sup>3</sup> Of

2. H. JOINT RES. NO. 903, 93d Cong., 2d Sess. 1111 (1974). See also Havighurst, *Doing Away with Presidential Impeachment: The Advantages of Parliamentary Government*, 1974 ARIZ. L. REV. 223.

3. The term "legitimacy" is not used here in the legalistic sense of the acquisition of power by formally orthodox or proper means. Rather, it is

course, the efficiency of that process depends upon the speed with which evidence can be produced. Thus, where immediate presidential compliance with congressional fact-finding incident to an impeachment inquiry would appropriately shorten the process, categorical refusal to comply with congressional subpoenas should be considered an impeachable offense, since toleration of such failure would destroy the impeachment provision.

In the sense that the process was designed ultimately to protect the country against corruption and the abuse of power by removing rather than punishing the offender, impeachment works; this is appreciated particularly when it is understood that resignation is not "extra-legal,"<sup>4</sup> apart from the process, but rather is an historically often-used and a constitutionally mandated<sup>5</sup> part of the system. The framers demanded the preservation of separate criminal proceedings, to accomplish punishment, as the price paid for the removal of English criminal sanctions from the process of impeachment.<sup>6</sup>

Finally, rejection of the parliamentary mode does not necessarily suggest a qualitative judgment in favor of a governmental system of separated branches balanced and checked. It is simply a recognition that after 200 years of such governance, the separation of coordinate branches is woven into the warp and woof of the community, and is not able to be extracted and replaced without rending the whole.

Our purposes, therefore, are twofold: first, to analyze in detail the American procedure of impeachment, in the hope that wider knowledge of its provisions will render the use of the process more effective in constraining executive and judicial power; and second, to offer suggestions for improving the process within the bounds of our historical constitutional system. In that which follows, the first three sections present an analysis of the procedural law of the impeachment process

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used, as the political scientist or sociologist would use it, to connote a sufficient affinity between the people and the institutions of government, based upon the preexistence of a cultural harmony between them, that allegiance naturally results without coercion. Firmage, *Law and the Indochina War: A Retrospective View*, 1974 UTAH L. REV. 1, 21, reprinted in 4 *The Vietnam War and International Law* (R. Falk ed. 1974).

See also Firmage, *The War of National Liberation and the Third World*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* (J. Moore ed. 1974). Lipset has defined legitimacy as the capacity of a political system to advance and maintain the belief that existing political institutions are the most appropriate for the community. Lipset, *Some Social Requisites of Democracy: Economic Development and Political Legitimacy*, 53 AM. POL. SCI. REV. 69, 86 (1959).

4. Cf. Kurland, *Watergate, Impeachment and the Constitution*, 45 MISS. L.J. 531, 579 (1974).

5. U.S. CONST. art. II, § 1, cl. 8.

6. See notes 40, 332-34 *infra* and accompanying text.

as it operates when no objections or defenses extraneous to the impeachment process itself are raised by the defendant to impede its normal resolution. Later sections discuss the various immunities, privileges, rights, and powers which a party defendant to an impeachment proceeding may exercise in an effort to thwart, delay, or reverse the course of the congressional impeachment process. The final sections treat the effect of resignation upon an attempted impeachment and the effect upon the impeachment process of the pardon granted Mr. Nixon by President Ford.

Underlying the impeachment powers are four fundamental precepts which should guide any discussion of the process of presidential impeachment particularly, and each recommendation for its improvement and refinement. First, the impeachment power was written into the Constitution to protect the principle of separation of powers. Impeachment had developed in England as a parliamentary process designed to protect and ultimately to enhance the power of Parliament against constitutional abuses and excesses of Tudor and Stuart ministers bent upon asserting absolutist power for the Crown against the prerogatives of Parliament. By this means, the King's ministers were brought under the rule of law, and executive responsibility to Parliament was established.<sup>7</sup> Similarly, impeachment procedure was placed in the United States Constitution by founding fathers steeped in English law and history,<sup>8</sup> primarily as a check upon overweening executive power, as an "exception to [the] principle"<sup>9</sup> of separation of powers in order that that very principle might be preserved with governmental branches checked and balanced.

Second, as a prophylactic against the usurpation of powers,<sup>10</sup>

7. See W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 382 (3d ed. 1922); C. ROBERTS, *THE GROWTH OF RESPONSIBLE GOVERNMENT IN STUART ENGLAND* *passim* (1966). It should be noted that the powerful Tudor monarchy was not simply aimed at containing or diminishing the power of its potential rival, parliament. Equally fundamental in explaining the Tudor quest for absolute power was its natural reaction against Lancastrian misrule and the consequent baronial anarchy: the collapse of trial by jury, the subversion of local government by large landowners, the control of parliamentary elections by local barons, and the crumbling legal system at Westminster and in the country. See T. PLUCINETT, *A CONCISE HISTORY OF THE COMMON LAW* 35-38 (5th ed. 1956).

8. Many of the members of the Convention had studied in England, including nine lawyers who had practiced there. R. BERGER 87 n 160. Also, the English impeachment trial of Warren Hastings was in progress during the Constitutional Convention and was referred to in the debates. 2 RECORDS 350.

9. 1 ANNALS OF CONG. 527 (1789) [1789-1824] (remarks of Representative Boudinot).

10. Roberts noted that impeachment during the seventeenth century was not aimed at preventing or punishing private wrongs, nor was it stimulated by party policy differ-

impeachment was intended primarily to protect the integrity of government against political offenses. It cannot seriously be questioned that impeachment will lie for "great offenses" which arise out of misuse of constitutional powers which nevertheless does not constitute a criminally indictable offense. James Wilson, perhaps the greatest legal mind in the Convention, concluded that

[i]mpeachments . . . come not . . . within the sphere of ordinary jurisprudence. They are founded on different principles; are governed by different maxims, and are directed to different objects: for this reason, the trial and punishment of an offense on an impeachment, is no bar to a trial and punishment of the same offense at common law.<sup>11</sup>

Impeachment, Wilson wrote, was "confined to political characters, to political crimes and misdemeanors, and to political punishments."<sup>12</sup> Similarly Chancellor Kent taught that "[i]f . . . the President will use the authority of his station to violate the Constitution or law of the land, the House of Representatives will arrest him in his career by resorting to the power of impeachment."<sup>13</sup> Thus, the Congress is called upon to curtail any abuse of political office through the exercise of its own political powers as representatives of the people.<sup>14</sup>

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ences, it was "not the venting of private spleen or party hatreds" but rather a prophylactic against usurpation of power. C. ROBERTS, *supra* note 7, at 32.

11. 1 J. WILSON, WORKS 452 (1804).

12. 2 *Id.* at 166.

13. 1 J. KENT 289.

14. Firmage, *The Law of Presidential Impeachment*, 1973 UTAH L. REV. 681.

George Mason in the Constitutional Convention debated the necessity of having a check on the Executive to ensure executive responsibility to the constitutional structure of this country.

[Some provision should be made for defending the Community (against) the incapacity, negligence or perfidy of the Chief Magistrate. The limitation of the period of his service . . . was not a sufficient security. He might lose his capacity after his appointment. He might pervert his admiration into a scheme of speculation or oppression. . . . In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic. 1 RECORDS 65-66.

Mason further noted that "attempts to subvert the Constitution" should constitute an impeachable offense. *Id.* at 550. Benjamin Franklin noted that impeachment of the Chief Executive was essential to avoid political assassination when the Executive had "rendered himself obnoxious." *Id.* at 65. Edmund Randolph also commented on the necessity of impeachment to provide against Executive abuse of power:

The Executive will have great opportunities of abusing power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections. *Id.* at 67.

Messrs. Jones, Bowdoin, and Stillman also asserted in the Massachusetts convention that presidential impeachment would lie for "abuse of power," 2 J. ELLIOT 75, 81-86, 168-69, as did Francis Corbin in the Virginia convention, 3 *Id.* at 509-11, and Iredell in the North Carolina convention, 4 *Id.* at 127.

Third, the impeachment power was designed to preserve the basic structure of our society. While the impeachment process is fundamentally political,<sup>15</sup> it was designed to protect the foundation of the state itself—not to create a sanction for misjudgment or to settle disputes over policy, both appropriately dealt with through the electoral process. (To hold otherwise would do violence to that principle which undergirds the Constitution—the separation of powers—which the impeachment power was designed to preserve.) It was this that Hamilton referred to when he stated that impeachable offenses have “a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”<sup>16</sup> Mason regarded the purpose of impeachment to be the prevention of “great and dangerous offenses,” resulting from “attempts to subvert the Constitution.”<sup>17</sup> Iredell, later to become a Justice of the Supreme Court, in the North Carolina ratifying convention, stated that impeachment would arise from “acts of great injury to the community.”<sup>18</sup> Madison saw impeachment as a preventive against a president perverting “his administration into a scheme of peculation or oppression”;<sup>19</sup> Morris perceived it as a deterrent for bribery.<sup>20</sup> In part it was this conception of the impeachment proceeding as a political institution which made it logical to transfer the forum of the impeachment trial from the Supreme Court as provided by an early draft of the Constitution, to the Senate.<sup>21</sup>

Finally, being a political process, impeachment should not be viewed as a duplication of the criminal process.<sup>22</sup> The impeachment process was designed to be neither a criminal proceeding, nor, in a strictly technical sense, a juridical trial. Removal from office cannot be viewed as criminal punishment or its equivalent. To hold otherwise would be to assume that an office holder was possessed of an indefeasible property interest in the office. Joseph Story spoke of impeachment as “a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.”<sup>23</sup> This conclusion was

15. 1 J. WILSON, *supra* note 11.

16. THE FEDERALIST No. 65, at 426 (B. Wright ed. 1961) (A. Hamilton).

17. 2 RECORDS 550.

18. 4 J. ELLIOT 113.

19. 2 RECORDS 68-69.

20. *Id.*

21. 1 *Id.* at 22; 2 *Id.* at 186, 493, 547, 551.

22. See U.S. CONST. art. I, § 3, cl. 7.

23. 1 J. STORY § 803, at 586-87.

consistently held by virtually every early commentator on the process of impeachment.<sup>24</sup> Nevertheless, while the process was shorn of criminal sanctions,<sup>25</sup> certain aspects of criminal procedure and its linguistic trappings were retained from its English origins as a criminal proceeding within Parliament.<sup>26</sup>

To a large extent, it was this retention of criminal judicial forms and practices which has given rise to further questions about what rights and immunities a defendant is entitled to raise before an impeachment court. Does the scope of executive privilege afford any protection whatever in a trial by the Senate? May fourth and fifth amendment rights be raised to exclude certain evidence, and who may assert such of the arguments which are likely to be relevant based upon the rights? Which, if any, of the interlocutory or final rulings and judgments of the Senate may be subjected to judicial review? While many of these questions must wait upon the political moment in which they will arise before they can be answered authoritatively, we shall present fundamental precepts and precedents underpinning the procedural law of impeachment.

## II. THE ENGLISH PRECEDENTS

It has been said that "[t]he 'crowning achievement' of the fourteenth century . . . was to devise impeachments as a procedure for trial of the King's ministers, who were otherwise not reachable."<sup>27</sup> Unlike the bill of attainder where persons were sentenced to death without any trial and conviction in the ordinary course of judicial proceedings, impeachment involved both an indictment by the House of Commons as a grand jury of the nation and a trial at the bar of the House of

24. *E.g.*, Edward Rutledge and General C.C. Pinckney considered impeachment proper were a President to betray or abuse his public trust. 4 J. ELLIOTT 276, 281. Mason and Morris recognized gross personal corruption as grounds for impeachment. 2 RECORDS 68-69.

25. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law. U.S. CONST. art. I, § 3, cl. 7.

26. Article two, section four provides for removal from office on "conviction of Treason, Bribery, or other high Crimes and Misdemeanors." Article one, section three, clause six gives the Senate "sole Power to try all Impeachments" and later speaks of no person being "convicted" without the concurrence of two-thirds of the members present; article two, section two, clause one gives the President the "Power to grant Reprieves and Pardons for Offenses against the United States" but excepts impeachment; and article three, section two, clause three states that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury."

27. R. BERGER 26.

Lords. Through the growth of parliamentary impeachment there emerged a procedural common law of impeachment which was familiar to the framers of the American Constitution and which has substantially influenced the proceedings in American impeachment cases to the present.

It was the English law of impeachment, as summarized in Thomas Jefferson's *Manual of Parliamentary Practice*,<sup>28</sup> that was referred to and followed, with some modifications, in the American impeachment cases. Under English law, the House of Commons, as the "grand inquest of the nation,"<sup>29</sup> generally conducted *ex parte* investigations against the accused,<sup>30</sup> passed resolutions containing a charge of impeachable conduct on the part of the accused,<sup>31</sup> directed some member to impeach the accused by oral accusation at the bar of the House of Lords,<sup>32</sup> and thereafter appointed managers to present articles of impeachment and to act as suitors for penal justice against the impeached at the bar of the Lords.<sup>33</sup> The House of Lords then issued process against the impeached party<sup>34</sup> and committed him where necessary.<sup>35</sup> Subsequently, the Lords acted as judges in the trial before their bar.<sup>36</sup> The trial before the House of Lords essentially followed the criminal procedure found in the courts and applied the same rules of evidence<sup>37</sup> with the judgment itself controlled by legal

28. Jefferson's *Manual* was prepared by Thomas Jefferson for his own guidance as President of the Senate in the years of his Vice-Presidency, from 1797 to 1801. In 1837 the House, by a rule which still exists, provided that the provisions of the *Manual* should "govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House." *Manual* 121 n.a.

29. *Manual* § 602, at 295. See also 3 HINDS' §§ 2004, 2026.

30. In the 1852 impeachment proceeding of District Judge Watrous, the issue as to the propriety of *ex parte* investigations was debated and English citations were given in support. See 3 HINDS' § 2496, at 996-97. See also 3 *Id.* § 2326 (In the Peck impeachment case the nature of the inquiry preliminary to impeachment was discussed in regard to its conformity with English precedents.)

31. *Manual* § 602, at 295. See, e.g., 3 HINDS' § 2038 (discussing the Blount impeachment in which the House, following the precedent of the Hastings trial, passed an impeachment resolution without accompanying articles and presented it to the Senate).

32. *Manual* § 602, at 295. In the Hastings trial, for example, Mr. Burke "went up to the House of Lords and impeached him in words . . ." 3 HINDS' § 2295, at 647.

33. 3 HINDS' §§ 2004, 2026; *Manual* § 602, at 295. For a discussion of the role of the managers under English precedent, see 3 HINDS' §§ 2136-39.

34. *Manual* § 608, at 297. "Under the parliamentary law, if the party impeached at the bar of the Lords does not appear, proclamations are issued giving him a day to appear." 3 HINDS' § 2116, at 438.

35. *Manual* § 602, at 296. The House in the Blount impeachment followed English precedent and required the sequestration of the respondent from his seat in the Senate. 3 HINDS' § 2295, at 646.

36. 3 HINDS' § 2056, at 378; *Manual* §§ 615-18, at 301-03.

37. *Manual* § 619, at 304. See also 3 HINDS' § 2155, at 485. In the Johnson trial

precedents.<sup>38</sup> An impeachment proceeding was not discontinued by the dissolution of Parliament but was resumed by the subsequent Parliament.<sup>39</sup>

Although English precedent has been relied on heavily in the American impeachment cases, Congress has the constitutional authority to control its procedure without regard to earlier precedent. Moreover, a persuasive argument can be made for substantially modifying the English procedure to accommodate special circumstances present in American impeachment cases, since one of the marked distinctions between English and American impeachments is that the English proceeding included the imposition of criminal sanctions, while criminal penalties are excluded from American proceedings.<sup>40</sup> Consequently, a relaxation of the strict rules of evidence and procedure used in a criminal proceeding is appropriate in American impeachment, which is more closely analogous to a civil trial. While Congress has rejected efforts toward general reform of its impeachment procedure<sup>41</sup>—professing to retain the English model with its criminal law superstructure—it has often modified its procedural rules in individual instances.

### III. HOUSE IMPEACHMENT PROCEDURE

The Commons, as the grand inquest of the nation, becomes suitors for penal justice. . . . The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons.<sup>42</sup>

Sole power of impeachment is conferred upon the House of Representatives by the Constitution.<sup>43</sup> The manner in which impeach-

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the necessity of strictly following the rules of evidence was discussed and the practice was continued on the strength of English precedent. 3 *Id.* § 2238, at 565.

38. *Manual* § 619, at 304. Although it has been urged that impeachment under the English law was merely an extension of the criminal law and thus would be appropriate only for indictable crimes, this view has been substantially repudiated. See R. BROWN 59-67. Accordingly, the statement that judgments on impeachment were controlled by legal precedent refers to the fact that while "English impeachments did not require an indictable crime they were nonetheless criminal proceedings because conviction was punishable by death, imprisonment, or heavy fine." *Id.* at 67.

39. 3 *Hrvos'* § 2005, at 308; *Manual* § 620, at 305.

40. See, e.g., 3 *Hrvos'* § 2510, at 1016 (discussion of the Colfax impeachment in which the Judiciary Committee concluded that the power of impeachment under the Constitution was remedial rather than punitive).

41. Such reforms have been unsuccessfully attempted in the several impeachments. See notes 163 & 226 *infra*.

42. *Manual* § 602, at 295 (citation omitted).

43. U.S. CONST. art. I, § 2 (providing that "[T]he House of Representatives . . . shall have the sole power of impeachment").

ments are conducted in the House, however, is not described in the Constitution but instead follows the accretion of procedural precedents which are modified from time to time by House resolutions. There follows an examination of these precedents as they are found in the thirteen impeachments voted by the House,<sup>44</sup> with special reference to the Nixon proceeding whenever deviation from precedent occurred.

The House has generally followed its English and American precedents, even though the Constitution clearly authorizes it to abandon these precedents and to develop new procedures. Nonetheless, where equitable or public policy considerations have been urged in support of a particular change from procedural precedent, the House has been amenable to innovative modifications. These changes have led to the eventual adoption of specific procedures to guide the impeachment process through the House from its earliest initiatory investigations to presentment before the Senate.

An impeachment resolution is first presented to the House, and if that body sees fit, the matter is referred to the House Judiciary Committee for investigation. This Committee serves two purposes: it recommends to the House whether to vote to impeach, and it drafts articles of impeachment to be issued against the accused in the trial by the Senate. Following the Committee's report on the articles of impeachment, the full House votes, and if it impeaches, managers are selected to present the case at the bar of the Senate. At certain stages in this process, questions arise about the necessity of showing probable cause, the burden of proof, the right of the accused to be represented, and the degree of specificity and publicity which should accompany the House's decisions and formulations of its case against an accused public officer.

#### A. *The Initiation of Preliminary Investigations in the House*

Impeachment inquiries in the House are initiated by Congress in response to accusations made against civil officers.<sup>45</sup> Congressmen have preferred charges in various ways.<sup>46</sup> Individual House members

44. Senator Blount (1797-99); District Judge Pickering (1803-04); Supreme Court Justice Chase (1804-05); District Judge Peck (1830-31); District Judge Humphreys (1862); President Johnson (1867-68); District Judge Delahay (1873); Secretary of War Belknap (1876); District Judge Swayne (1903-05); Circuit Judge Archbald (1912-13); District Judge English (1925-26); District Judge Louderback (1932-33); District Judge Setter (1933-36).

45. The term "civil officers" includes both officers of the executive branch of government and federal judges. The impeachment precedents that do exist primarily involve the impeachment of federal judges. See note 44 *supra*.

46. The process of preferring charges has no prescribed formality or technical re-

have initiated impeachment investigations by preferring charges entirely on their own responsibility, usually reinforced by accusations made by others. Investigations have also been stimulated by presidential messages, accusations contained in memorials,<sup>47</sup> and as a result of general congressional investigations. Where individual House members present impeachment resolutions and propose House investigation of alleged misconduct on the part of civil officers, these are presented before the House as a question of highest privilege.<sup>48</sup> As a question of privilege, an impeachment resolution may be presented at any time, irrespective of previous action by the House.<sup>49</sup> The following examination of impeachment proceedings demonstrates these various manners in which impeachment inquiries originate.

Individual House members often have initiated impeachment inquiries on their own responsibility. Generally, such a resolution would propose that "[a] committee be appointed to inquire into the official conduct of [an accused] . . . and to report their opinion whether the said [accused] hath so acted in his [official] capacity as to require the interposition of the constitutional power of the House."<sup>50</sup> Thus, it is possible for impeachments to begin through an impeachment resolution which is adopted in reliance on the recommendation of a single House member.<sup>51</sup> For example, in the Johnson impeachment, one House member proposed as a question of privilege before the House a resolution: "That the Committee on the Judiciary be . . . authorized to inquire into the official conduct of Andrew Johnson . . . and that said committee have power to send for persons and papers and to administer the customary oath to witnesses."<sup>52</sup> More typically, however, impeachment inquiries have been initiated by a proposal of one House member reinforced by charges of others. Accordingly, Judge Swayne's impeachment originated in response to a member's proposal reinforced

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quirements, but rather is a flexible process which may be executed in any number of ways by a member of the House.

47. Memorials, for these purposes, include general government documents drawn from virtually any other source which provide a congressman with some motive for initiating accusations of wrongdoing.

48. "Questions of the privilege of the House are brought before the body in the form of a resolution." 6 CANNON'S §§ 661-68, at 283-84. See also *id.* § 470; 1 J. STORY § 807, at 588.

49. 3 HINDS' § 2053. It should be noted that while a resolution directly proposing impeachment is privileged, a resolution proposing an investigation with a view to impeachment is not. 3 *id.* § 2546.

50. 6 CANNON'S § 468; 3 HINDS' §§ 2051-52.

51. See, e.g., 80 CONG. REC. 404 (1933) (the investigation of Judge Ritter); 3 HINDS' § 2400 (the investigation of President Andrew Johnson).

52. 3 HINDS' § 2400, at 824.

by a legislative memorial;<sup>53</sup> the Humphreys case was initiated through a House member supported by "common fame";<sup>54</sup> and Judge Louderback's impeachment originated in response to a member's proposal supported with a presentation of accusations by a local bar association.<sup>55</sup>

Three of the earliest impeachments were initiated in response to presidential messages charging misconduct on the part of certain individuals. Senator Blount's investigation was set in motion by a confidential message sent to the House by the President.<sup>56</sup> The message set forth facts and documents which the House, by resolution, referred to a special committee for investigation. Similarly, the Pickering impeachment inquiry was initiated in response to a message from the President which included several complaints from civil officers charging the judge with official misconduct.<sup>57</sup> Judge Archbald's impeachment investigation originated with a letter sent to the President from a member of the Interstate Commerce Commission charging the judge with official misconduct. The letter which had been sent to the President was requested by the House and transmitted to the Judiciary Committee for use in its investigation.<sup>58</sup>

Finally, in the past, not all impeachment investigations have been initially directed against actually named or otherwise designated individuals. The impeachment of President Johnson was first proposed indirectly through a resolution authorizing an investigation into misconduct on the part of civil officers generally.<sup>59</sup> Similarly, Secretary of War Belknap's impeachment grew out of an 1876 resolution authorizing a general investigation of the departments of government.<sup>60</sup>

#### *B. The Irrelevance of Probable Cause to Impeach Named Individuals*

In the Chase impeachment, a debate arose over the sufficiency of a single member's supporting evidence to warrant the initiation of a full impeachment investigation. Although it was urged that such an investigation should begin only upon a showing of probable cause, the House voted in favor of the investigation on the theory that such an investigation was to procure evidence and not to establish guilt.<sup>61</sup>

53. *Id.* § 2469, at 949.

54. *Id.* § 2383, at 805.

55. 6 CANNON'S § 313, at 709.

56. 3 HINDS' § 2294.

57. *Id.* § 2319.

58. 6 CANNON'S § 498.

59. 3 HINDS' § 2399. The resolution, however, was not adopted. *Id.*

60. *Id.* § 2444.

61. *See, e.g.*, 3 HINDS' § 2342, at 712 (Chase impeachment). *See also* 1 J. STORY § 808, at 588. It was objected that the voting of an inquiry would be equivalent to the

Nevertheless, on other occasions preliminary investigations have been initiated by the House only upon review of charges preferred by memorial. The impeachment proceeding in the Peck case had its official inception in a memorial charging the judge with misconduct in office.<sup>62</sup> Contrary to the procedure in the Chase impeachment, in which the same issue was raised and debated, the full impeachment investigation in the Peck case was authorized only after the Judiciary Committee had examined the memorial for probable cause.<sup>63</sup> Likewise, the House voted to investigate the conduct of Judge Delahay only after the Judiciary Committee had examined charges made in a memorial.<sup>64</sup> However, since impeachment resolutions may be summarily accepted or rejected for practical or political reasons without any discussion of probable cause, the only ultimate question of probability considered on such a vote is whether the investigation will probably be worth the Judiciary Committee's while.<sup>65</sup> Nevertheless, once instituted, an impeachment investigation bears the crucial responsibility of procuring and preparing evidence which will support a report recommending either impeachment or no action.

### C. *Investigations Preparatory to the Articles of Impeachment*

An investigation by the House has been considered to be an essential part of every impeachment to date. The importance of this preliminary investigation to the ultimate effectiveness and fairness of the overall procedure cannot be over-emphasized. It is here that charges are investigated and facts supporting possible articles of impeachment are elicited. Consequently, the power of the investigatory committee to secure evidence relevant to its investigation cannot be separated from the impeachment power itself.<sup>66</sup> Beginning with this preliminary stage of the impeachment process, the constitutional principle of separation of powers is conspicuously held in abeyance while the legislature gathers information necessary to exercise its exclusive constitu-

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expression of an opinion that the House had evidence of the probable guilt of the judge and therefore should be entered into only with a satisfactory showing of probable cause. In rebuttal it was urged that the inquiry was to procure evidence and thus "[t]he statement of a member in his place, even though hearsay, was sufficient to cause inquiry." 3 HINDS' § 2342, at 713.

62. 3 HINDS' § 2364.

63. *Id.*

64. *Id.* § 2504.

65. *See, e.g.*, 6 CANNON'S § 469.

66. The House impeachment power may be called into full operation as soon as the House acts corporately to initiate an impeachment inquiry or investigation.

tional power to impeach civil officers for possible wrongdoings.<sup>67</sup>

In the early impeachment cases it was common practice to select a special committee to investigate accusations of impeachable offenses brought before the House.<sup>68</sup> Later, after the Judiciary Committee became a standing committee, it generally conducted the investigation.<sup>69</sup> This Committee serves two purposes in the impeachment process: first, it investigates evidence bearing upon allegations of misconduct and thereupon recommends whether or not the accused should be impeached; second, it has become the practice in the more recent impeachments that the Judiciary Committee also drafts articles of impeachment to be presented at the bar of the Senate. Incident to its investigatory duties, the Committee is generally granted the subpoena power of the House to send for "papers, persons and documents" relevant to its inquiry.

In earlier impeachments, these two functions were assigned to two separate committees.<sup>70</sup> One was a preliminary investigatory committee which was responsible for reporting whether or not the House should impeach the accused; the other was a committee appointed to secure information to be used in the drafting of the articles of impeachment. Although these two committees eventually came to exercise equivalent fact-finding powers, the responsibilities of the two committees were quite distinct. The preliminary investigatory committee was assigned only to satisfy itself that some basis justifying an impeachment inquiry could be identified,<sup>71</sup> and in fairness to the accused it was generally found inappropriate to publicly defend the conclusion which the committee had reached: "In presenting the report . . . the committee

67. See note 9 *supra* and accompanying text.

68. See, e.g., 3 HINDS' § 319 (Impeachment of Judge Pickering); *id.* § 2244 (impeachment of Senator Blount); *id.* § 2342 (Impeachment of Justice Chase).

It should be noted that while the House in most instances has referred impeachment investigations to the Judiciary Committee, it has not always done so. In the Johnson impeachment, for example, the House appointed the Committee on Reconstruction to continue the investigation that earlier had been initiated by the Judiciary Committee. *Id.* § 2408.

69. The Judiciary Committee did not come into existence as a standing committee until 1813. 6 CANNON'S § 467.

70. This bifurcation of the impeachment inquiry was the result of a conscious attempt to adhere to English precedent. In an early impeachment, where it was alternatively proposed that the articles of impeachment should be prepared and presented in conjunction with the impeachment report, it was urged in rebuttal that

the mode which [was] proposed was the same which was practiced in the case of Mr. Hastings. Mr. Burke went up to the House of Lords and impeached him in words . . . . Some time afterwards, the articles of impeachment having been drawn, Mr. Burke again went up to the House of Lords and exhibited them. 3 HINDS' § 2295, at 647.

71. See, e.g., *id.* § 2342 (Judge Chase); *id.* § 2364 (Judge Peck).

deemed it fairest toward the party accused not to report to the House their reasons at length for arriving at the conclusion that he ought to be impeached."<sup>72</sup> In comparison, the committee assigned to draft the articles of impeachment prepared evidence in support of specific accusations of the commission of impeachable offenses. Consequently, the most extensive investigations in the early impeachments came later in the process when the articles were being drafted rather than at the preliminary investigation stage.<sup>73</sup>

Thus, it is understandable that in the earlier impeachments, where the body accomplishing the preliminary investigation was charged only with recommending whether or not the accused should be impeached, that committee's inquisitorial authority was limited. In the Blount impeachment, for example, the investigatory committee was charged by the House only to consider the messages and papers which had been brought forth by the President and to report on impeachment therefrom;<sup>74</sup> then after the committee had recommended impeachment on the basis of that limited evidence, the House took additional evidence before the body as a whole prior to voting impeachment.<sup>75</sup> The preliminary investigation of Judge Pickering was similarly focused on the examination of *ex parte* affidavits transmitted to the House by the President.<sup>76</sup> In the Chase impeachment, however, the first committee was granted broader authority "to send for persons and papers" relevant to the impeachment inquiry, and since that time, this broad fact-finding power has been delegated routinely to the investigating committee.

The earlier bifurcation of responsibilities, however, proved to be impractical in the American experience, since the dual committee structure entails an unnecessary duplication of resources.<sup>77</sup> Accordingly, beginning with the Archbald impeachment in 1913, whenever the Judiciary Committee has reported a resolution favoring impeachment, it has simultaneously submitted prepared articles of impeachment supporting that resolution.<sup>78</sup> This consolidation of the resolution and

72. *Id.* § 2365.

73. The committee appointed to draft articles of impeachment *after* the House presentation of the bare impeachment resolution at the bar of the Senate was generally empowered to procure all evidence supporting the charges. Thus, in the Blount case, it was the committee appointed to draft the articles of impeachment which was granted "power to send for persons, papers, and records." *Id.* § 2297.

74. *Id.* § 2294.

75. *Id.*

76. *Id.* § 2319.

77. The English have not been troubled by this problem, since the last English impeachment occurred in the eighteenth century.

78. 6 CANNON'S § 499. The simultaneous reporting of impeachment and articles of impeachment was not original to the Archbald case. A similar reporting was proposed

drafting functions of the investigatory committees is inherently advantageous, for otherwise, under the bifurcated system, the House membership must vote as a whole on the question of taking to the Senate articles of impeachment which have not yet been drafted. The only apparent virtue of the separated system was to guarantee that extensive investigations would not be undertaken without the approval of the full House. But as the course of events in the Nixon proceeding now illustrates, no apparent safeguards or legislative prerogatives are lost by allowing the Judiciary Committee to proceed in its initial investigations under the mantle of the full congressional impeachment powers.

#### *D. The Drafting of Articles of Impeachment*

In the Nixon impeachment, the degree of specificity required in the language of the articles of impeachment was debated at length by the House Judiciary Committee. While a minority urged that due process demanded that specific articles be presented, as had always been the practice in earlier impeachment cases,<sup>79</sup> the majority voted for articles drafted in general terms referring only to generic areas of presidential misconduct with the provision that a "list of incidents" would be attached to the articles setting forth specific circumstances of misconduct tending to support each general article.<sup>80</sup> In effect, the Committee resolved that since the President's counsel could demand a bill of particulars at appropriate stages of the proceeding, the past practice of specificity could be modified somewhat.

It is suggested that the Committee's decision to recommend that the House vote on general articles satisfied any applicable due process requirement and was a proper exercise of the Committee's function of recommending to the House that an impeachment trial should in any event ensue. Inasmuch as the articles serve to set the standard by which relevancy is determined in the Senate trial,<sup>81</sup> and given the

in the impeachment of District Judge Durell in 1873. When Durell resigned, however, the impeachment proceedings were discontinued. 3 *HINDS* § 2509.

79. Although the articles in most American impeachments have been drafted to include specific instances of misconduct, it is commonly recognized that following the precedent in England, where the proceedings were strictly criminal, the articles of impeachment are distinguishable from the criminal indictment by their "less particularity of specification." 3 *HINDS* § 2117. Story noted that "the articles [of impeachment] need not, and indeed do not, pursue the strict form and accuracy of an indictment." 1 *J. STORY* § 808, at 588 (footnote omitted).

80. See the "list of incidents" compiled by counsel to the Judiciary Committee to uphold the Committee allegations in proposed impeachment Article I against President Nixon. H.R. REP. NO. 1305, 93d Cong., 2d Sess. 2 (1974).

81. The text of the articles of impeachment is, of course, subject to modification by the House at any time in the trial, since there is no double jeopardy or *res judicata*

fact that the President had not complied with congressional subpoenas for tapes and documents pertinent to the impeachment investigation, the President should not thereby be allowed by his own dereliction to narrow the scope of inquiry in a Senate trial. The articles also provided that there could be included in the list of incidents additional information regarding misconduct, thus expediting the administration of the impeachment process without jeopardizing the rights of the accused to a fair proceeding; all of this, of course, was made necessary by Mr. Nixon's refusal to comply with congressional fact-finding incident to its impeachment inquiry. To the extent that a President himself is responsible for creating the incompleteness of the Committee's investigation, it is unseemly for him to claim that his right to receive a fair trial is abridged either by the preliminary vagueness of the charges or by any possible over-breadth of the trial in the Senate caused by that incompleteness of evidence. Rather, it is within the power of the Judiciary Committee, reporting as the preliminary investigatory body, to recommend immediate impeachment based upon failure to comply with its constitutionally mandated fact-finding in an impeachment proceeding, thereby opening the way for further investigations and the further drafting of specific articles for subsequent presentation to the Senate.

The report of the Judiciary Committee has usually been followed by the House, but this has not always occurred. For example, in one instance the Committee recommended censure, but the House, adopting the minority report of the Committee, voted to impeach.<sup>82</sup> Also, in the Johnson impeachment, articles in addition to those prepared and recommended by the Judiciary Committee were proposed and adopted on the floor of the House.<sup>83</sup>

*E. The Right of the Accused to Appear in the Course of the House Investigation*

Impeachment investigations have traditionally been conducted *ex parte* with the accused having a limited role, if any, in the preliminary inquiry. It has gone unquestioned that it is for the House to determine

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effect in an impeachment trial. But as a practical matter, modifications will not be undertaken once the pleadings have been drafted and thus extensive pleadings and negotiations have always been important at the pleading stage of the impeachment proceeding. See text accompanying notes 175-89 *infra*.

82. 6 CANNON'S § 514 (Judge Louderback).

83. In the Johnson impeachment, the House added two articles proposed by the newly elected managers in addition to those prepared and recommended by the drafting committee. 3 HINDS' § 2418.

the extent of participation accorded the person under investigation.<sup>84</sup> For these purposes, whatever sixth amendment rights to be represented by counsel and to confront one's accusers an impeached officer may have at trial before the Senate, they would not apply before the House, since it does not determine if an impeachable offense has been committed. Nevertheless, the Judiciary Committee has from time to time permitted the accused and his counsel to participate in the investigation hearings. Judge Peck cross-examined witnesses, presented a response in writing to the charges against him, and addressed the Judiciary Committee on his own behalf.<sup>85</sup> In permitting that participation, in an effort to protect the interests of the accused,<sup>86</sup> the Committee expressly confined itself to what it characterized as *ex parte* evidence "lest there be no bounds to the inquiry."<sup>87</sup> The effect of the Belknap impeachment upon investigatory precedent was to broaden the participation of the accused in the preliminary investigation. Belknap was allowed to present his own witnesses and was also permitted to cross-examine adverse witnesses.<sup>88</sup> Several other impeachment cases have followed the Belknap precedent. Judge Swayne was present in person with counsel and was permitted to introduce testimony and argue his case before the Committee.<sup>89</sup> Judge Delahay,<sup>90</sup> Judge Archbald,<sup>91</sup> and Judge Louderback<sup>92</sup> each appeared with counsel before the Judiciary Committee and argued his case.

Despite the precedent for allowing a limited role for the accused and his counsel during the impeachment inquiry, the House Judiciary Committee has continued to characterize its investigation as an *ex parte* proceeding and House procedures do not give the accused a right to demand any role in the proceeding. As examples of the extreme to which this aspect of the procedure may be pursued, the two investigations which were conducted preliminary to President Johnson's impeachment were strictly *ex parte*, with only one member of the House not on the Committee being permitted to so much as examine a witness.<sup>93</sup>

In the Nixon investigatory proceeding, the accused, through counsel, was given a remarkably broad role in the Committee's hear-

84. *Id.* § 2501.

85. *Id.* § 2365.

86. *Id.* § 2366, at 779.

87. *Id.*

88. *Id.* § 2445.

89. *Id.* § 2470.

90. *Id.* § 2504.

91. 6 CANNON'S § 498.

92. *Id.* § 514.

93. 3 HINDS' §§ 2403, 2409.

ings.<sup>94</sup> His counsel was permitted oral and written argument, including a limited right of cross-examination, the presentation of his own witnesses, and the submission of briefs in response to proposed articles of impeachment. However, the request of counsel that he be allowed an advocate's role in the deliberative process of the Committee, in addition to such participation at the fact-finding stage, was denied.

*F. The Burden of Proof for the Adoption of the Articles*

Another issue raised and debated in the Nixon case was the burden of proof required to sustain a vote of impeachment by the House. Despite some precedent to the contrary, the view that the House, acting analogously to a grand jury throughout, need only ascertain probable cause to warrant sending the case to trial at the bar of the Senate has generally been followed without debate.<sup>95</sup> Where it has been debated, the following argument has prevailed:

[T]he action of the House was similar to that of a grand jury; that while the investigation of the House was not necessarily *ex parte*, the office of the House was not to ascertain whether the party was guilty or innocent of the charges preferred against him, but whether the proof was sufficient to make the case worthy of a further trial. [A House member] called attention to the fact that the trial of the case belonged to the Senate under the Constitution and to the Senate alone. If the House advanced one step beyond the ascertainment of probable cause it was plunged into the trial. The House, in the exercise of its discretion, might examine witnesses on both sides, but there must be a boundary line marking the powers of the House and Senate, and there was no line to be observed, except the ascertainment of probable cause. Such I understand to have been the views . . . entertained in the case of Judge Peck and the case of Judge Chase, of Macclesfield in 1705, in the case of Warren Hastings in 1778, and of Lord Melville in 1805.<sup>96</sup>

In the Nixon case, however, the probable cause burden was rejected, apparently not on the basis of precedent or any jurisprudential rationale, but rather as a compromise between the lesser standard of "probable cause" urged by some and the greater burden of "beyond

94. *Id.* § 2403. It should be noted that while in the impeachment trial the strict rules of evidence are followed, the hearings conducted before the investigatory committee are generally less formal. In the Johnson case, for example, the rules of evidence were relaxed at the investigatory stage of the proceeding to allow a fuller investigation: "In an investigation before a committee it would be difficult and perhaps impossible to confine the evidence to such as would be deemed admissible before a court of justice." *Id.* at §28. For the rules of procedure adopted by the House Judiciary Committee for the presentation of evidence concerning charges against President Nixon, see app. A *infra*.

95. See 3 HINDS' § 2004.

96. *Id.* § 2498 (debate in the Watrous investigation).

a reasonable doubt" urged by others. The equitable burden of "clear and convincing" evidence was eventually adopted<sup>97</sup> over the arguments in favor of a yet higher burden made by assistant minority counsel Garrison, who urged that the Committee should recommend impeachment only if it was apparent that the Senate would convict and, apart from the issue of guilt or innocence, only where the public interest would be better served should the President be convicted and removed from office.

Certainly, public policy considerations are relevant in an impeachment proceeding,<sup>98</sup> but not in the way Mr. Garrison has urged. Impeachment was designed primarily as a means of protecting the Republic rather than punishing a wrongdoer. In the words of the Judiciary Committee which participated in the Colfax impeachment, the process is remedial rather than punitive.<sup>99</sup> It follows that the impact upon the country of the final resolution of an impeachment proceeding should be a criterion of the highest order in determining the nature of its resolution. This does not mean, however, that impeachment should be used by Congress to sweep from office an unpopular President or that impeachment should be voted by the House only if conviction is certain to follow. The Constitution provides that before a President can be removed from office, his guilt must be established in the commission of treason, bribery, or high crimes and misdemeanors. No degree of public disenchantment with a particular President, no unpopularity of a policy, no mistake in judgment should ever be sufficient, without such guilt, to result in impeachment. Thus, public policy considerations do not mandate impeachment based upon congressional opinion but rather simply require that the House of Representatives bear the double burden of being clear and convincing to both the Senate and the American people. If impeachment, conviction, and removal are to accomplish a therapeutic effect upon the country, it

97. In civil cases where the measure of persuasion is by a "preponderance of evidence," there are a limited number of claims in which the party is required to establish a higher burden of persuasion. The measure of "by clear and convincing evidence," represents this higher standard commonly used and seems to have had its origins in the courts of equity. See *Marquis Townshend v. Stangroom*, 31 Eng. Rep. 1076, 1078 (Ch. 1801); *Henkle v. Royal Exch. Assurance Co.*, 27 Eng. Rep. 1055, 1056 (Ch. 1749). Equity cases on the degree of proof necessary to establish a claim are collected in C. McCORMICK, *HANDBOOK OF THE LAW OF EVIDENCE* § 340 (2d ed. E. Cleary 1972).

98. [I]f "broad and comprehensive principles of public policy" are appropriately considered in the profoundly political process of impeachment, then the impact upon the nation of the President's removal or retention is valid consideration, even though such considerations would be inappropriate in a forum charged with the normal "judicial function" of deciding guilt or innocence without regard for political consequences. *Firmage*, *supra* note 14, at 700.

99. 3 *HINDS* § 2510.

is essential that the public be convinced of the President's guilt in the commission of impeachable offenses and thereby be persuaded that his removal is in the constitutional interest of the country. The citizenry must not only be convinced of this but must also be convinced in bipartisan numbers if impeachment is to be dominantly therapeutic rather than divisive. It is not sufficient that Congress only be convinced, and it is toward the accomplishment of this harmony between the electorate and its representatives that the issue of television coverage of impeachment proceedings will be considered.

Comparisons between impeachment proceedings and criminal trials, in which only the issue of guilt or innocence is relevant and in which no particular public acceptance of an individual verdict is necessary, are therefore inapt.<sup>100</sup> It is here, in the necessity of bearing a double burden of convincing the people, in addition to the usual burden of persuading designated triers of fact and law, that the burden of proof for an impeachment proceeding must be defined. It does indeed place a huge burden on those advocating impeachment, a burden which is qualitatively different from that found in the usual judicial proceeding.

#### G. *The Public Eye on the Adoption of the Articles of Impeachment*

In the early cases where the voting of impeachment and the drafting of the articles were separate functions, the committee drafting the articles was under an injunction of secrecy, which was removed only at the time the articles were presented before the House.<sup>101</sup> Today, however, the drafting of the articles of impeachment has taken on a more significant role as the first official act to be completed in the impeachment process, thereby setting the scope and tone for the entire impeachment process to follow.

In the Nixon impeachment proceeding, although the fact-finding process of the Judiciary Committee was intended to be secret, the Committee, convinced that the nation would be well served with rapid public disclosure of congressional impeachment decisions, whatever they might be, amended its rules to allow television coverage of its deliberations over the particular articles of impeachment. The legitimacy of a democratic government must be established in the minds of the people;<sup>102</sup> thus, if a transfer of presidential power is to be accomplished by either removal or resignation in the face of impeachment, the legitimacy of the new administration can only be assured by public rec-

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100. Firmage, *supra* note 14, at 703.

101. See, e.g., 3 HINDS' §§ 2300, 2323.

102. See note 3 *supra*.

ognition that the previous mandate has clearly expired. In order for this to occur, whatever interests previously were served in the name of fairness to the accused by insisting on secrecy in the adoption of the articles of impeachment must yield to the public interest when a public office, which derives its imprimatur from the public will, is in question.<sup>103</sup>

#### H. *The Committee Report on the Articles of Impeachment*

The investigatory committee culminates its hearings by voting on recommendations of impeachment. Generally, in the early impeachments, the investigatory committee thereafter reported its conclusions to the Committee of the Whole House.<sup>104</sup> Where the investigation committee recommended impeachment and the Committee of the Whole concurred, an impeachment resolution was presented before the House for the impeachment vote. In these earliest impeachments minority views were not permitted to appear in the committee's report, and any dissent appeared only in the debates.<sup>105</sup> Furthermore, as noted previously, the committee was charged only with reporting its conclusions to the House, and thus it usually excluded any reasons for its conclusions in fairness to the accused.<sup>106</sup> Later, the Judiciary Committee came to report its recommendation directly to the House.<sup>107</sup>

Beginning with the Johnson impeachment in 1868, majority and minority arguments were included in the committee's report.<sup>108</sup> Although in the first attempt to impeach the President, the majority of the investigatory committee recommended impeachment, the House apparently favored the minority argument and the resolution failed.<sup>109</sup> When the Committee on Reconstruction, after a second investigation, recommended impeachment, with no minority argument being filed,<sup>110</sup>

103. This is not to imply that no impeachment of a judicial officer should be publicized, but only that mass media coverage of an impeachment of, for example, a Supreme Court Justice would have to be justified on some other grounds.

104. See, e.g., 3 HINDS' § 2319 (Pickering); *id.* § 2343 (Chase); *id.* § 2365 (Peck). In the Blount case, however, the articles were presented directly to the House. *Id.* § 2300.

105. *Id.* § 2343, at 716 (A committee member in debate dissented from the committee's report to impeach Justice Chase on the grounds that testimony given had been "entirely ex parte.").

106. *Id.* § 2365.

107. See, e.g., 6 CANNON'S § 498 (Archbald); *id.* § 514 (Loudenback); 3 HINDS' § 2385 (Humphreys); *id.* § 2410 (Johnson); *id.* § 2445 (Belknap); *id.* § 2505 (Delahay).

108. 3 HINDS' § 2403.

109. *Id.* § 2407.

110. Although several members of the Committee dissented from the majority report, they did not present any minority report in support of their views. *Id.* § 2410, at 847.

the House voted to impeach.<sup>111</sup>

*I. The Vote on the Articles on the Floor of the House*

Historically, presentation of the articles on the floor of the House has involved issues of both strategy and fairness. In the Blount and Pickering cases, the articles were considered collectively, but in the Chase impeachment the articles were presented individually both to the Committee of the Whole and before the House.<sup>112</sup> In that impeachment, the House debated whether or not additional articles could be proposed at any time; in concluding that they could, the House expressly "saved to itself the liberty of exhibiting at any time hereafter any further articles of other accusation or impeachment . . ."<sup>113</sup> There is precedent in other cases for presenting the articles together to be adopted without debate,<sup>114</sup> and there are instances, such as the Swayne impeachment, where a strong minority report and accompanying debate immediately preceded the vote to adopt the articles.<sup>115</sup> In the Swayne impeachment, the minority dissented from the majority's report of twelve articles on the ground that a "beyond reasonable doubt burden had not been met on eleven of the articles."<sup>116</sup> Following House amendment of some of the articles, they were presented individually and adopted by the House.<sup>117</sup>

Beginning with the Belknap impeachment the practice of presenting the articles first to the Committee of the Whole was dispensed with without any question being raised as to the propriety of having the articles presented directly to the House by the House Judiciary Committee.<sup>118</sup> In this manner, the power of the Judiciary Committee was enhanced, and the discretion of the whole House regarding rules of debate and amendment was correspondingly limited. In the Belknap case, the articles were adopted without amendment, a separate vote not being demanded on any article.<sup>119</sup> In the Johnson case, after the articles had been adopted individually, the managers who were elected to present the articles at the bar of the Senate proposed two additional articles to broaden the charges to include non-indictable offenses.<sup>120</sup>

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111. *Id.* § 2412.

112. *Id.* § 2344.

113. *Id.* at 719.

114. *See, e.g., id.* § 2448 (Belknap).

115. *Id.* § 2474.

116. *Id.*

117. *Id.* The articles may be amended on the floor of the House without being referred back to committee, as the Pickering proceeding illustrates. *Id.* § 2324, at 686.

118. *Id.* § 2448, at 908.

119. *Id.*

120. *Id.* § 2418.

In the Archbald impeachment, the practice of reporting the articles of impeachment simultaneously with the impeachment resolution was initiated. There the report of the Judiciary Committee was debated in the House, and the supporting articles of impeachment were voted on together with the impeachment resolution.<sup>121</sup> Both the English and the Louderback impeachments followed the Archbald pattern. In the English case, the House after debate accepted the procedure that "[i]t is in order to demand a division of the question on agreeing to a resolution of impeachment and a separate vote may be had on each article."<sup>122</sup> In the Louderback case, the articles adopted were those presented as the minority report favoring impeachment.<sup>123</sup>

*The Effects of Recesses and Adjournments on the Impeachment Process*

Impeachment proceedings in the United States have followed the parliamentary precedent that an impeachment is not terminated or legally interrupted by the dissolution of Parliament.<sup>124</sup> Accordingly, the House has often continued impeachment investigations from one session to another, making use of any former report or testimony already taken; similarly there is nothing to prevent a Senate trial initiated in one session of Congress from being continued in the next until a verdict is reached.<sup>125</sup> The following examination of precedent demonstrates the continuity of Congress' constitutional responsibility of impeachment.

From the earliest impeachment, that of Senator Blount, the precedent has been firmly established that an impeachment is unaffected by congressional recesses or adjournments. In that case, Congress recessed between the impeachment of Blount and the framing of the articles of impeachment.<sup>126</sup> Later the Senate, in its writ of summons, fixed Blount's appearance at the next session of Congress.<sup>127</sup> In the impeachment of Pickering, the House proceeded even though it was

121. 6 CANNON'S § 500.

122. *Id.* § 545.

123. *Id.* § 515.

124. 3 HINDS' §§ 2004-05. See also *Manual* § 620, at 305.

125. In respect to the procedure in the House, see 3 HINDS' § 2029 (Boorman). The Senate has continuing jurisdiction over an impeachment trial and could continue a trial between sessions even though some new Senators were present. In several trials, however, new members were excused from voting on the judgment of impeachment cases because they had taken their seats after part of the testimony had been given. See, e.g., *id.* § 2114 (Swayne); *id.* § 2396 (Humphreys).

126. *Id.* § 2299.

127. *Id.* § 2304.

apparent that the impeachment could not be completed within that congressional session.<sup>128</sup> Accordingly, the House continued with the proceedings, impeaching Pickering and notifying the Senate on the last day of the Seventh Congress. Thereafter, at the beginning of the Eighth Congress, the House appointed a committee to prepare articles of impeachment to continue the proceeding.<sup>129</sup> Similarly, the House voted the impeachment of Judge Delahay at the end of one Congress, intending to present articles of impeachment in the next.<sup>130</sup> Congress also recessed between the filing of the answer in the Peck impeachment and the managers' presentation of the replication.<sup>131</sup> No reason in precedent or public policy would seem to exist for distinguishing between presidential impeachment and the impeachment of civil officers in regard to this point.<sup>132</sup> In the Johnson impeachment, the Thirty-ninth Congress expired during the preliminary investigation, and in the next Congress, the House directed the Judiciary Committee to resume the investigation.<sup>133</sup> Later, Congress recessed after receiving the Committee's report recommending impeachment, and the subsequent session of the House voted on the report.<sup>134</sup> Thus, an impeachment proceeding should not be affected by recesses or adjournments of Congress.

#### K. *The House Selection of Managers*

The House has varied both its method for selecting its managers and the number of managers selected to present its case at the bar of the Senate.<sup>135</sup> Managers have been selected by ballot, appointed by the House Speaker, and selected by resolution. In the Blount impeachment, eleven managers were elected by ballot following House debate which analyzed the comparative roles of the managers and normal committees of Congress. The election procedure was wisely adopted in the Blount case, contrary to the ordinary practice of having inves-

128. *Id.* § 2319.

129. *Id.* § 2321.

130. Judge Delahay's resignation prior to the beginning of the next Congress apparently caused the House to discontinue the impeachment. *Id.* § 2505.

131. *Id.* § 2375.

132. *Cf. Firmage, supra* note 14, at 700 (suggesting a different standard of conduct for an impeachable offense).

133. 3 *HINDS* § 2401, at 825. The resolution was adopted forthwith, and the congressional session having expired before the completion of the investigation, a member of the House proposed as a question of privilege at the beginning of the next session that the Judiciary Committee complete the investigation begun earlier.

134. *Id.* § 2407.

135. 6 *CANNON'S* § 467.

igatory committees appointed by the Speaker, due to a recognized difference of broader non-partisan responsibility to be fulfilled by those selected as managers. Whereas the reports of the investigatory committees are not finally binding upon the House, the conduct of the managers serves as an ultimate representation of the House, with any action taken by them being final. Thus, the managers, by House resolution, were elected individually by ballot with each manager requiring a majority to be elected. Following the Blount precedent, managers have been elected by ballot in the Pickering,<sup>136</sup> Chase,<sup>137</sup> Peck,<sup>138</sup> and Johnson cases.<sup>139</sup> In the subsequent proceedings, however, managers were appointed either by resolution<sup>140</sup> or by the Speaker.<sup>141</sup>

Excepting the Blount impeachment, where all eleven managers were from the Federalist party, the managers have represented both parties. Of course, it has always been the practice that the managers, as advocates of the House, would reflect the House sentiments<sup>142</sup> regarding impeachment. Accordingly, managers have always been selected from among those who have voted in favor of impeachment. The chairman for the managers has been selected by the managers in some cases<sup>143</sup> and by the House in others.<sup>144</sup>

Usually, the managers have the responsibility of presenting the articles of impeachment against the accused at the bar of the Senate and of conducting the case of the House at the Senate trial. In charging the managers with the responsibility of conducting the case before the Senate, the House normally delegates further fact-finding powers to the managers incident to their prosecutorial duties.<sup>145</sup>

Upon informing the Senate that the House of Representatives "will, in due time, exhibit particular articles against [the impeached]

136. 3 *HINDS* § 2323 (eleven managers elected).

137. *Id.* § 2345 (seven managers elected).

138. *Id.* § 2368 (five managers elected).

139. *Id.* § 2417 (seven managers elected).

140. See, e.g., 6 *SANBORN'S* § 500 (seven managers appointed by resolution in the Archbald impeachment); *Id.* § 514 (five managers appointed in the Louderback impeachment); 3 *HINDS* § 2388 (five managers appointed by resolution in the Humphreys impeachment); *Id.* § 2448 (seven managers appointed by resolution in the Belknap impeachment).

141. See 3 *HINDS* § 2475 (The Speaker of the House in the Swayne impeachment appointed seven managers).

142. See *id.* § 2448 (Belknap).

143. See *id.* § 2417 (Johnson).

144. See *id.* § 2448 (Belknap).

145. See *id.* § 2419 (Johnson).

and make good the same,"<sup>146</sup> the managers demand that the Senate "take order for [his] appearance . . . to answer the said impeachment."<sup>147</sup>

#### IV. SENATE IMPEACHMENT PROCEDURE

The Constitution vests in the Senate the sole power of trying all impeachments,<sup>148</sup> but as to the form and nature of the impeachment trial the Constitution is silent except for the following statements. The Constitution provides that "[w]hen the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present."<sup>149</sup> The Constitution further strips from the impeachment process the power to impose any criminal sanctions; at the same time, it assures that any convicted party shall not be beyond the normal operations of the criminal law either during or subsequent to the impeachment process.<sup>150</sup> Finally, the Constitution provides that the President's power to grant reprieves and pardons for offenses against the United States does not extend to cases of impeachment<sup>151</sup> and that the right to trial by jury extends to all crimes except cases of impeachment.<sup>152</sup> Due to the constitutional silence in regard to all other aspects of the impeachment trial, we must turn to an analysis of prior precedents in order to ascertain the working elements of Senate procedure in impeachment trials.

##### A. *Does the Senate Sit as a Court?*

The selection of criteria by which the appropriateness of any aspect of the Senate procedure in an impeachment trial is to be judged depends in large part upon whether the proceeding is to be seen as being dominantly political or juridical. But either characterization of the process is problematic, since many judicial practices are appropriated by the Senate for use in the impeachment trial, which is otherwise conducted as a wholly political proceeding. Its adjudicative nature is manifest especially in the conduct of the impeachment trial, its rules

146. *Id.* § 2296.

147. *Id.*

148. "The Senate shall have the sole Power to try all Impeachments." U.S. CONST. art. I, § 3, cl. 6.

149. *Id.*

150. "Judgment in Cases of Impeachment shall not extend further than to removal from Office [and] the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment according to Law." *Id.* art. I, § 3, cl. 7.

151. *Id.* art. II, § 2, cl. 1.

152. *Id.* art. III, § 2, cl. 2.

of evidence, the form of judgment, and in the absence of judicial review over the impeachment process. On balance, however, American precedent reflects the basic understanding that the impeachment process is fundamentally political.

In the early impeachment cases, although the Senate described itself by rule as a court of impeachment,<sup>153</sup> the powers which it invoked were described as *political* powers and privileges. In one case, the issue of characterizing the impeachment process arose in argument over the assertion that the Senate's impeachment jurisdiction does not extend to an offense which is within the jurisdiction of the common law courts. Mr. Bayard, one of the managers in the Blount impeachment, answered persuasively that the role of the Senate in impeachment cases is political rather than judicial since "no court at common law could give judgment of disqualification, and that was the just punishment for the offense alleged."<sup>154</sup>

It was suggested as early as the Pickering impeachment that the Senate had the sole power to regulate forms, substances, and proceedings when acting as a court of impeachment.<sup>155</sup> In the Johnson impeachment in 1868, the Senate, after substantial debate, decided that it sat for impeachment trials as the Senate and not as a court.<sup>156</sup> The debate appears to have been initiated in response to a resolution to drop the words "high court of impeachment" from its Senate rules lest the Chief Justice might have a tie-breaking vote on procedural questions.<sup>157</sup> The resolution passed and the Senate adopted rules for the Johnson trial as a Senate and not as a court.<sup>158</sup> After the trial concluded, Senator Sumner, a bitter enemy of Johnson, elaborated on the political nature of the proceeding by explaining that Senators are not constrained in impeachment by any obligation to serve the traditional role of a criminal trial judge:

[The Constitution] provided that "the Senate shall have the sole power to try all impeachments," thus positively making a distinction between the judicial power and the power to try impeachments; . . . the Senate on an impeachment does not exercise any portion of the judicial power, but another and different power, exclusively delegated to the Senate,

153. See, e.g., 3 HINDS' § 2307 (Blount). See also 1 J. STORY § 809.

154. 3 HINDS' § 2314. See also 1 J. STORY §§ 800, 812.

155. 3 HINDS' § 2324.

156. *Id.* § 2057.

157. *Id.*

158. *Id.* Chief Justice Chase, however, presented a written dissent from the views taken by the Senate with regard to its constitutional function as a political body rather than as a court in an impeachment trial. *Id.*

having for its sole object removal from office and disqualification therefor; . . . the proceeding by impeachment is . . . from beginning to end political, being conducted before another political body having political power only, and ending in a judgment which is political only.<sup>159</sup>

Later in the Archbald case, the issue of the proper role of the Senate in an impeachment trial was again raised and debated:

[M]uch has been attempted by counsel for the respondent in their effort to show that this is a court in the ordinary acceptance of that term. Whatever name you call this body sitting here now, whatever functions they may discharge, it cannot be said to be a court as that word is employed in the Constitution or understood by the ordinary man. It is more than a court. Under our Government it is clothed with the highest and most extraordinary powers of any body or any functionary or any agency of our Federal Government. Your powers here invoked are political in their nature. Mr. Bayard announced that doctrine in the first impeachment case, that of Blount. Every commentator, including Story and all the rest, has quoted it with approval, and should any man deny it he would at once confess himself ignorant of the history and the law of impeachment.<sup>160</sup>

If this conclusion were not reached and were the verdict of the Senate trial not reviewable by the federal courts,<sup>161</sup> the exercise of judicial power by the Senate would appear to violate the vesting of the judicial power of the United States in one Supreme Court.<sup>162</sup>

Accordingly, it is generally understood that the Senate functions as a political body in impeachment trials, exercising its political duty in a political manner and to a political end. Several conclusions follow from this proposition. First, the Senate and not the judiciary is charged with adopting rules with respect to the conduct of impeachment trials.<sup>163</sup> Second, as a matter of public policy, rules of admissibility of evidence in an impeachment trial need not necessarily comply strictly with judicial exclusionary rules designed to protect the integrity of the judicial process, particularly those designed to insulate a jury in a criminal trial. Third, the rules of evidence adopted by the Senate are subject to modification on an ad hoc basis where the Senate deems

159. *Id.* § 2057, at 385.

160. 6 CANNON'S § 471, at 665.

161. See section VII accompanying notes 310-31 *infra*.

162. U.S. CONST. art. III, § 1.

163. New impeachment trial rules were proposed for the Peck trial, 3 HINDS' § 2372, the Archbald trial, 6 CANNON'S § 483, and recently for the Nixon trial, S. Res. 390, 93d Cong., 2d Sess. (1974), but in each of these cases the proposed new rules were rejected and the rules framed in the earliest impeachment cases continued in effect.

it appropriate.<sup>164</sup> Fourth, judicial review is inapplicable to the impeachment process and judgment.

### B. *Initiation of the Senate Trial*

The House, by notifying the Senate that it has impeached a civil officer, formally sets in motion the impeachment trial machinery of the Senate. Notification in the earlier impeachments was transmitted to the Senate by a committee of two or three appointed for that purpose, which made formal accusations on behalf of the House and signified that articles of impeachment would later be exhibited.<sup>165</sup> In some instances, the Senate has organized for trial before receiving the articles,<sup>166</sup> but in other cases it has organized only after the articles have been presented.<sup>167</sup> Upon presentation of the articles, the Senate is required by its own rules to proceed to prompt consideration.<sup>168</sup> In presenting the articles of impeachment at the bar of the Senate,<sup>169</sup> the chairman of the House managers generally reads the articles and then delivers them at the table of the Senate.<sup>170</sup> In organizing for trial, the Senate suspends ordinary business, administers oaths to the Senators,<sup>171</sup>

164. The Senate amended some of its existing rules and added other rules in the Johnson trial. 3 HINDS' § 2414. Also, additional rules were adopted by the Senate for the trial of Judge Louderback. 6 CANNON'S § 519.

165. See, e.g., 3 HINDS' § 2294 (A single House member notified the Senate that Blount had been impeached by the House.). The Pickering impeachment was carried to the Senate by a committee of two. *Id.* § 2319. For other cases in which impeachment resolutions were carried to the Senate by a committee of two, see *id.* § 2343 (Chase); *id.* § 2367 (Peck); *id.* § 2385 (Humphreys); *id.* § 2412 (Johnson); and *id.* § 2505 (Delahay). See generally 1 J. STORY § 807.

166. In the Blount impeachment, the Senate "took order for the trial" upon the presentation of the impeachment resolution. 3 HINDS' § 2296; accord, *id.* §§ 2325, 2328 (Pickering). See also 1 J. STORY § 807.

167. In the Pickering case, the Senate concluded that there was no impeachment before the Senate until the articles of impeachment were exhibited. 3 HINDS' § 2324; accord, *id.* § 2450 (Belknap).

168. See, e.g., 6 CANNON'S § 546; 3 HINDS' § 2079. See also SENATE IMPEACHMENT RULE III, app. B *infra*; 1 J. STORY § 807.

169. See, e.g., 3 HINDS' § 2301 (Blount); *id.* § 2328 (Pickering); *id.* § 2346 (Chase); *id.* § 2369 (Peck); *id.* § 2389 (Humphreys); *id.* § 2420 (Johnson); *id.* § 2449 (Belknap); *id.* § 2476 (Swayne).

170. See, e.g., 6 CANNON'S § 501 (Archbald); 3 HINDS' § 2328 (Pickering); *id.* § 2346 (Chase); *id.* § 2420 (Johnson); *id.* § 2449 (Belknap).

171. Senators sitting for an impeachment trial are required by the Constitution to be on oath or affirmation. U.S. CONST. art. I, § 3. Until 1876 the Senate under its own rules empowered its presiding officer to administer to Senators the oath required for an impeachment trial. In the Belknap trial, the oath was initially administered by the Chief Justice, but during the trial a bill was enacted conferring on the presiding officer authority "to administer all oaths or affirmations that are or may be required by the Constitution or by law to be taken by any Senator, officer of the Senate, witness, or

assumes jurisdiction by majority vote,<sup>172</sup> appoints a presiding officer,<sup>173</sup> and notifies the House of Representatives that the Senate is ready to proceed.<sup>174</sup>

Once the articles have been presented and the Senate organized for trial, the managers generally demand that process be issued against the accused to appear and answer the charges presented by the House.<sup>175</sup> The writ of summons which is issued by the Senate recites the articles of impeachment and notifies the respondent to appear at a fixed time and place and to file an answer.<sup>176</sup> Where respondent fails to appear or to answer either in person or by counsel,<sup>177</sup> the trial proceeds as on a plea of "not guilty."<sup>178</sup> The respondent is usually allowed to appear and move for a delay in the filing of his answer, but requests are often not accepted.<sup>179</sup>

In answering, the respondents have either (1) taken articles one by one, denying some of the charges, admitting others but denying that they set forth impeachable offenses, and excepting to the sufficiency

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other person, in respect to any matter within the jurisdiction of the Senate." 3 HINDS' § 2081, at 412. Subsequently, a Senator is designated by resolution to administer the oath to the presiding officer, who in turn administers the oath simultaneously to all Senators standing in their places. *See, e.g.*, 6 CANNON'S § 502 (Archbald). The Senate in its rules has refrained from prescribing an oath for the Chief Justice when he presides at an impeachment trial. 3 HINDS' § 2079; *see* SENATE IMPEACHMENT RULES III, IV, *app. B infra*.

172. 3 HINDS' § 2059.

173. Generally, the President pro tempore of the Senate presides in impeachment trials against all civil officers except the President. Where the President pro tempore is unable or unwilling to preside at trial when it is his duty, a presiding officer is appointed by resolution. *See* 3 HINDS' § 2477 (Swayne). In presidential impeachment, the Chief Justice of the Supreme Court presides in accordance with the constitutional requirement. *See* U.S. CONST. art. I, § 3.

174. 3 HINDS' § 2070. *See also* 1 J. STORY § 811.

175. 3 HINDS' § 2127; *see, e.g.*, 6 CANNON'S § 503; 3 HINDS' § 2423 (Johnson); *Id.* § 2478 (Swayne); *Id.* § 2451 (Belknap). *See also* 1 J. STORY § 807.

176. 3 HINDS' § 2127; *see, e.g.*, *Id.* § 2304 (Blount); *Id.* § 2329 (Pickering); *Id.* § 2347 (Chase). *See also* 1 J. STORY § 807.

177. 3 HINDS' § 2127. Justice Chase appeared "in his own proper person," *Id.* § 2349, and Judge Peck attended in person and by counsel, *Id.* § 2371. Johnson entered his appearance by a letter addressed to the Chief Justice, which named a counsel who would appear for him. *Id.* § 2424. *See also* 1 J. STORY § 809.

178. 3 HINDS' § 2127.

179. The Senate declined to allow Judge Peck to delay his answer until the next session of Congress and set an earlier date for filing an answer than he had requested. 3 *Id.* § 2371. The Senate also denied President Johnson's request for forty days in which to prepare an answer and instead granted ten days. *Id.* §§ 2424-25. The Senate, on the other hand, has allowed reasonable requests for time to prepare an answer. For example, the Senate has granted motions by respondents that ten days be granted for the purposes of answering the impeachment charges. *See, e.g.*, 6 CANNON'S §§ 482, 504 (Archbald).

of others,<sup>180</sup> (2) demurred to the articles generally, raising a question as to the jurisdiction of the Senate to try the charges,<sup>181</sup> or (3) demurred severally to all the articles and then replied in detail to the charges set forth in each article.<sup>182</sup> It has been commonly held that the answer of respondent under the parliamentary law of impeachment need not observe neat strictness of form,<sup>183</sup> just as the articles need not be as specific as an indictment. If a guilty plea is entered in answer, judgment may be entered without further proceedings.<sup>184</sup> Otherwise, a Senate trial must follow to a final conviction or acquittal.

Upon receiving the respondent's answer, time is allowed for the replication of the managers, on the condition that any further pleadings be duly filed with the Secretary and notice be given to the other party prior to a designated date.<sup>185</sup> A replication by the House managers usually consists of a general denial of all allegations set forth in the respondent's answer and of an averment that the charges contained in the articles set forth impeachable offenses.<sup>186</sup> A replication, on the other hand, can allege a new matter not set forth in the articles,<sup>187</sup> thereby necessitating further pleadings.<sup>188</sup> The parties may submit briefs in support of their pleadings, but the briefs typically are not submitted until after the managers and counsel for the respondent have made opening statements and introduced witnesses at the Senate trial.<sup>189</sup>

The time granted by the Senate for the respondent to prepare for trial after presentation of his answer will vary, but the Senate usually allows the question of calendaring to be argued by both sides. President Johnson, for example, requested 30 days, and arguments were heard on the motion with the Senate granting less time<sup>190</sup> and suggesting that there should be no delays once trial was commenced.<sup>191</sup> In the Nixon case, counsel for the respondent was notified by the Senate, after the Judiciary Committee had voted to report articles of impeachment to the

180. 3 HINDS' § 2428 (Johnson).

181. *See, e.g., id.* § 2433 (Belknap demurred to the impeachment articles on the grounds that he was not a civil officer.).

182. *See, e.g.,* 6 CANNON'S § 505 (Archbald).

183. 3 HINDS' § 2121. *See also Jefferson's Manual* § 620, at 305.

184. 3 HINDS' § 2127. *See also SENATE IMPEACHMENT RULE VIII*, app. B *infra*.

185. *See, e.g.,* 6 CANNON'S § 547 (English). In the Belknap trial the forms of pleading, including rejoinder, surrejoinder, and *amittiter*, were discussed. 3 HINDS' § 2455.

186. *See, e.g.,* 6 CANNON'S § 507 (Archbald).

187. *See, e.g.,* 3 HINDS' § 2454 (Belknap).

188. *Id.* § 2455 (Belknap).

189. *See, e.g.,* 6 CANNON'S § 480 (Archbald); 3 HINDS' § 2125 (Swayne).

190. 3 HINDS' § 2430.

191. *Id.*

House, that the President would be granted two to three weeks for the preparation of the case should the House vote impeachment.

### C. *The Presiding Officer*

The presiding officer during Senate impeachment proceedings is the Vice-President and, in his absence or own trial, the President pro tempore,<sup>192</sup> except in cases involving the President, where the presiding function is performed by the Chief Justice of the United States.<sup>193</sup> The presiding officer is empowered by rule to make and issue orders, writs, precepts, and regulations,<sup>194</sup> and to direct the form of proceedings for which the rules otherwise have not provided.<sup>195</sup> All motions by the parties are to the presiding officer,<sup>196</sup> who sometimes makes preliminary rulings on evidentiary issues and instructs and interrogates witnesses.<sup>197</sup> The preliminary rulings of the presiding officer stand as judgments of the Senate unless a vote is requested by a Senator<sup>198</sup> and the Senate thereafter overrules the preliminary ruling.<sup>199</sup>

The role of the Chief Justice as the presiding officer in a presidential impeachment is unsettled at least as to whether he is entitled to a tie-breaking vote on procedural questions. Although Chief Justice Chase voted on minor procedural issues in the Johnson trial,<sup>200</sup> the propriety of his doing so was not conclusively settled.<sup>201</sup> Nevertheless, since we must infer that, where the impeachment rules are silent, the general Senate rules of procedure apply,<sup>202</sup> the presiding officer should

192. *Id.* § 2309 (Blount); *id.* § 2337 (Pickering); *id.* § 2477 (Swayne). *See also id.* § 2394 (In the absence of the Vice-President, the President pro tempore presided in the Humphreys case.).

193. U.S. CONST. art. I, § 3. *See also* 3 HINDS' §§ 2055, 2082.

194. 3 HINDS' § 2083. *See also* SENATE IMPEACHMENT RULE V, app. B *infra*.

195. *See, e.g.*, 3 HINDS' § 2331 (Pickering). *See also* SENATE IMPEACHMENT RULE V, app. B *infra*.

196. 3 HINDS' § 2131. *See also* SENATE IMPEACHMENT RULE XVI, app. B *infra*.

197. 3 HINDS' §§ 2085-87. *See also* SENATE IMPEACHMENT RULE XIX, app. B *infra*.

198. The right to challenge the presiding officer's preliminary rulings belongs to the Senators and to counsel. *See, e.g.*, 3 HINDS' § 2195 (where the President pro tempore as presiding officer in the Belknap trial held that counsel for respondent could not appeal a preliminary ruling to the Senate although a Senator might have the point submitted to the Senate). In the Johnson trial, Chief Justice Chase held that the managers might not appeal from a decision of the presiding officer as to evidence. *Id.* § 2084.

199. *Id.* For instances where the presiding officer has made evidentiary decisions, *see id.* §§ 2226-29, 2252, 2271, 2276. For instances where a presiding officer's preliminary ruling was overruled by the Senate, *see id.* §§ 2208, 2222, 2238.

200. *Id.* § 2067.

201. *Id.* § 2098.

202. *Id.* § 2100. For a discussion of the form and history of the Senate Rules applicable to impeachment trials, *see* the following sections in 3 HINDS': § 2078 (Rule 1);

be entitled to exercise a tie-breaking vote on questions of procedure unless his power is otherwise limited.

#### D. Conduct of the Impeachment Trial

The Senate sits for an impeachment trial with open doors but conducts secret sessions when deliberating on any decision,<sup>203</sup> be it an evidentiary ruling or the final judgment. However, the final judgment has been considered on occasion in open session.<sup>204</sup> Thus, as a general rule the orders and decisions of the Senate trial are debated in closed session, but the Senate by majority vote can proceed with debate in open session.<sup>205</sup> All motions must be presented in writing to the presiding officer,<sup>206</sup> and any question or remark of a Senator must be similarly presented.<sup>207</sup>

Impeachment trials are exempted from the constitutional requirement of trial by jury.<sup>208</sup> The trial is initiated by each side making an opening statement,<sup>209</sup> which generally (1) outlines what is expected to be proven or rebutted, (2) discusses constitutional questions, and (3) controverts or defends charges preferred in the articles of impeachment.<sup>210</sup> During the impeachment trial, all preliminary or interlocutory

§ 2126 (Rule II); § 2079 (Rule III); § 2082 (Rule IV); § 2083 (Rule V); § 2158 (Rule VI); § 2084 (Rule VII); § 2127 (Rule VIII); § 2128 (Rule IX); § 2129 (Rule X); § 2070 (Rule XI); § 2069 (Rule XII); § 2090 (Rule XIII); § 2130 (Rule XIV); § 2131 (Rule XV); § 2168 (Rule XVI); § 2163 (Rule XVII); § 2176 (Rule XVIII); § 2075 (Rule XIX); §§ 2091-93 (Rule XX); § 2132 (Rule XXI); § 2098 (Rule XXII); § 2094 (Rule XXIII); §§ 2080, 2119, 2162 (Rule XXIV); § 2076 (Rule XXV).

203. *Id.* § 2075. *See, e.g.*, 6 CANNON'S § 524. (In the Louderback case the Senate deliberated in secret session on the final judgment.); 3 HINDS' § 2309 (In the Blount case all questions were decided in secret session and by yea and nay votes.); *id.* § 2437 (In the Johnson trial deliberation on the final question was conducted in secret session.). *See also* SENATE IMPEACHMENT RULES XX, XXIV, *app. B infra*.

204. *See, e.g.*, 3 HINDS' § 2383 (Peck); *id.* § 2397 (Humphreys).

205. *Id.* § 2094. The rule that decisions of the Senate sitting for an impeachment trial shall be without debate has been rigidly enforced. *Id.* § 2088; *cf. id.* § 2154 (In the Swayne trial, the Senators were permitted to debate to a greater extent than usual). Debate in secret session is limited to ten minutes on interlocutory questions and to fifteen minutes on the final question, unless modified by consent of the Senate. *Id.* § 2094. *See also* SENATE IMPEACHMENT RULE XXIV, *app. B infra*.

206. 3 HINDS' § 2131. *See also* SENATE IMPEACHMENT RULE XVI, *app. B infra*.

207. *See* 6 CANNON'S § 519. *See also* SENATE IMPEACHMENT RULE XIX, *app. B infra*.

208. U.S. CONST. art. III, § 2, cl. 3.

209. *See, e.g.*, 6 CANNON'S § 522 (Louderback); 3 HINDS' § 2132 (Johnson). *See also* SENATE IMPEACHMENT RULE XXII, *app. B infra*.

210. *See, e.g.*, 6 CANNON'S § 509 (Charges preferred in the articles were controverted in the opening address of respondent's counsel in the Archbald case); 3 HINDS' §§ 2133-34 (The managers in the Swayne case outlined in their opening statements what it was

questions and motions are limited to one-hour arguments on each side.<sup>211</sup>

Both sides are generally allowed to present witnesses at the trial<sup>212</sup> and are required to furnish to each other a list of prospective witnesses.<sup>213</sup> Should either party later desire to present any additional witnesses, an application must be made to the presiding officer.<sup>214</sup> The Senate, on the application of managers or of the respondent or his counsel, is empowered to issue subpoenas in impeachment trials to compel the attendance of any witnesses<sup>215</sup> or to procure papers.<sup>216</sup> It is also the Senate, and not the presiding officer, that must rule on any motion for attachment of persons or papers.<sup>217</sup> Where either party is not prepared to present testimony, the Senate, upon motion, may exercise discretion in delaying the trial to permit time for preparation.<sup>218</sup>

The presentation of testimony in the Senate trial is controlled by Senate, rather than by judicial, rules. Testimony presented in an impeachment trial need not be classified according to the particular article to which it applies.<sup>219</sup> Witnesses are examined by one person on both sides,<sup>220</sup> and any person, including Senators, may be questioned as a witness.<sup>221</sup> Although the managers and counsel for the respondent usually conduct all examinations of witnesses, Senators have on occasion presented questions by directing, through the presiding officer,<sup>222</sup>

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they expected to prove.); *Id.* § 2433 (Evidence to be presented in the trial was outlined and constitutional issues raised in the opening addresses of the Johnson trial.).

211. 3 HINDS' §§ 2091-93. The Senate may by order extend the time allowed for arguments of motions and interlocutory questions. *Id.* See also SENATE IMPEACHMENT RULE XXI, app. B *infra*.

212. See, e.g., 3 HINDS' § 2353 (Chase).

213. See, e.g., 6 CANNON'S § 484 (Archbald); 3 HINDS' § 2156 (Belknap).

214. 6 CANNON'S § 508 (Archbald).

215. 3 HINDS' § 2158. See also SENATE IMPEACHMENT RULE VI, app. B *infra*.

216. 3 HINDS' §§ 2038-39 (Blount).

217. *Id.* §§ 2152-53 (Swayne). See also 6 CANNON'S § 523 (The Senate in the Louderback impeachment ordered process to compel the attendance of a witness who had declined to respond to a subpoena.); *Id.* § 531 (A witness who refused to testify was arrested and detained in custody.); 3 HINDS' § 2160 (The Senate in the Belknap case commanded a reluctant witness to produce certain papers in his possession.).

218. See, e.g., 3 HINDS' § 2353 (The Senate in the Chase trial granted the managers' motion for a continuance because they were unprepared to present testimony.); *Id.* § 2433 (The Senate in the Johnson trial granted the respondent's motion to continue to permit time for preparation of testimony for the defense.).

219. *Id.* § 2165 (Chase).

220. *Id.* § 2168 (Chase). See also SENATE IMPEACHMENT RULE XVII, app. B *infra*.

221. See, e.g., 3 HINDS' § 2164 (Belknap); *Id.* § 2309 (Blount); *Id.* § 2336 (Pickering); *Id.* § 2378 (Peck). See also SENATE IMPEACHMENT RULE XVIII, app. B *infra*.

222. 3 HINDS' § 2176. See, e.g., 6 CANNON'S § 522 (Louderback); 3 HINDS' § 2331

questions in written form to witnesses, managers, or counsel.<sup>223</sup> The respondent typically is permitted to appear in his own behalf<sup>224</sup> and to respond at length to the charges against him.

#### E. Evidentiary Rulings

Since the Senate sits as both judge and jury, it is necessary for that body to adopt rules of evidence to govern the admissibility and relevance of evidentiary presentations in the course of its own trial. In some trials, the Senate, following English precedent, has perfunctorily voted to adopt the rules of evidence currently in force in the courts.<sup>225</sup> However, since the rules of evidence vary from jurisdiction to jurisdiction in the United States and since the rationale behind several evidentiary rules becomes inapposite in a Senate trial which operates without a jury that can be sequestered, it has been argued in other trials, often persuasively, that the regular rules of evidence should be relaxed.<sup>226</sup>

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(Pickering). The managers or counsel for the respondent, however, may object to a witness' answering a question put by a Senator. *See, e.g., id.* §§ 2182, 2186, 2187. In such a case the Senate must rule on the objection. *See, e.g., id.* § 2188.

223. *Cf.* 3 HINDS' §§ 2180-81 (Several Senators addressed verbal questions to the managers and to counsel for respondent, notwithstanding Senate Impeachment Rule XIX, app. B *infra*, which requires questions from one Senator to be in writing and to be put by the presiding officer.).

224. *See, e.g.,* 6 CANNON'S § 524 (Louderback appeared at the trial and testified at length in his own behalf.).

225. 3 HINDS' § 2218. President Ford has recently signed into law the Federal Rules of Evidence. *See* Pub. L. No. 93-595 (Jan. 2, 1975), *reprinted in* 43 U.S.L.W. 137. Since these uniform rules have been enacted, they are likely to be utilized in subsequent impeachment trials unless special rules of evidence adapted to the impeachment process also are enacted. Historically, the Senate has remained faithful, broadly speaking, to the rules of evidence applicable in criminal trials before juries. However, Senate rules are such that this general position has been most often eaten up by exceptions in particular circumstances.

The Senate, after considering English precedent, ruled in the Peck trial that the strict rules of evidence in force in the courts should be applied. The ruling came after a lengthy debate and appeared to be the result of the Senate's efforts to assure a fair trial. Representative Storms argued:

I confess I feel alarmed to hear it gravely urged here that an impeachment is to be governed by other rules than the well-known and long-established rules of evidence. Rules of evidence are as much a part of the law of the land as any other part of it, and they constitute the security of every man. A more dangerous principle could not be broached, or a more alarming principle established than that in the trial of an impeachment, the ordinary rules of evidence are to be relaxed . . . [such a practice] might easily lead to the most unjust and oppressive proceedings. 3 HINDS' § 2218, at 339.

226. In the Johnson trial, for example, it was suggested that the ordinary rules of evidence be relaxed:

Considering the character of this proceeding, that it is a trial of impeachment before the Senate of the United States, and not a proceeding by indictment in an inferior court;

Considering that Senators are, from beginning to end, judges of law as well as fact, and that they are judges from whom there is no appeal;

Evidentiary rulings are made in the course of the trial itself in an ad hoc fashion. Evidentiary questions are "by long-established custom, submitted by the presiding officer to the Senate for decision";<sup>227</sup> however, a Senator at his option may submit the question to the members of the Senate in the first instance. While evidentiary rulings of the presiding officer are said to be controlling, they can in practice be overruled by a majority vote of the Senate. For example, in the Johnson impeachment, although the Chief Justice of the United States, who presided over the trial, made preliminary rulings, every evidentiary question invariably was submitted to the Senate for final determination.<sup>228</sup> As a result, several of the Chief Justice's preliminary evidentiary rulings were overruled by majority vote.<sup>229</sup> Thus, while the Senate has declined to liberalize the strict rules of evidence across the board, the proposition that the Senate may admit or exclude evidence by majority vote has never been seriously questioned,<sup>230</sup> and the Senate has often voted not to follow certain rules of evidence in particular cases.<sup>231</sup>

In order to avoid the appearance of manipulating justice through ad hoc evidentiary rulings, it is suggested that a committee of the Senate be requested to examine the question of the appropriateness

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Considering that the reasons for the exclusion of evidence on an ordinary trial where the judge responds to law and the jury to the fact are not applicable to such a proceeding;

Therefore, . . . it is deemed advisable that all evidence offered on either side not trivial or obviously irrelevant in nature shall be received without objection. 3 HINDS' § 2219, at 540.

A strong argument can be made for modifying in a Senate impeachment trial those exclusionary rules of evidence designed primarily to protect a jury in a criminal proceeding. Similarly, in a criminal trial without a jury, evidentiary rules are modified substantially because the court presumably is able to determine the appropriate weight to be given all the evidence without being swayed unduly by questionable evidence. In a Senate trial, the Senators sit as deciders of fact and law, judge and jury; thus it need not follow that the Senate should be bound by rules designed to protect only its jury functions. Moreover, the political nature of the impeachment process is such, especially in presidential impeachment, that much of the evidence upon which conviction or exoneration is based is by then in the public domain. There is simply no way to sequester the Senate. If defense counsel is fairly to have an opportunity to rebut formally in the course of a Senate trial evidence of wrongdoing, whether hearsay or otherwise, all serious issues should be presented within that forum.

227. 6 CANNON'S § 491, at 678.

228. 3 HINDS' § 2222. See also 6 CANNON'S § 491, at 678 (The President pro tempore referred to the Johnson trial for the precedent that the Chief Justice's rulings were invariably put to a Senate vote.).

229. 3 HINDS' § 2222.

230. *Id.* § 2167 (Belknap).

231. See, e.g., 6 CANNON'S § 510 (The Senate by its own order disregarded an established rule of evidence in the Archbald case.).

of present evidentiary rules governing an impeachment trial at a time when minds are free from the adversarial influences generated in the anticipation or conduct of a particular trial. General guidelines can be adopted, and principles for adapting the jury-oriented evidentiary rules to Senate use can be delineated.

#### F. Final Arguments and Voting

Final arguments on the merits in an impeachment trial are made by two persons on each side, unless modified by prior application.<sup>232</sup> Following final arguments, the final judgment is put to the Senate.<sup>233</sup> Consistent with the Senate rule allowing only yea and nay voting in impeachment proceedings,<sup>234</sup> the Senate has declined to permit any expression as to whether the offenses charged constituted high crimes and misdemeanors.<sup>235</sup> The consequence of this rule is that a negative vote could mean either that a Senator considered (1) that the offense embodied in the article of impeachment did not constitute a "high crime and misdemeanor," whether or not committed by the defendant, or (2) that the defendant was not guilty of the commission of the offense charged, whether or not it constituted an impeachable offense. However, in the interest of precedential clarity and due to the dual role of the Senate as both judge and jury, it is urged that the form of the final question be modified in order to allow each Senator to respond

232. See 3 HINDS' § 2132 (The managers and counsel for respondent in the Johnson trial successfully objected to the rule limiting the number entitled to make final arguments on each side.). See also SENATE IMPEACHMENT RULE XXII, app. B *infra*.

233. The articles are generally read successively, with the question of guilty or not guilty being presented in open session to each Senator for separate consideration.

234. See, e.g., 3 HINDS' § 2363 (Chase). The form of the final question, following the Chase precedent, has been:

Mr. \_\_\_\_\_ how say you; is the respondent \_\_\_\_\_  
guilty or not guilty of a high crime or misdemeanor, as charged in the  
\_\_\_\_\_ article of impeachment. *Id.*

235. See, e.g., *Id.* § 2339 (Pickering). See also 6 CANNON'S § 457, containing a monograph by Wrisley Brown, of counsel on behalf of the managers in the Archbald impeachment, which was printed as a public document following Archbald's conviction, and which reads as follows:

The impeachments that have failed of conviction are of little value as precedents because of their close intermixture of fact and law, which makes it practically impossible to determine whether the evidence was considered insufficient to support the allegation of the articles, or whether the acts alleged were 'adjudged insufficient in law to constitute impeachable offenses.' . . . Neither of the successful impeachments prior to the case of Judge Archbald was defended, and they are not entitled to great weight as authorities. . . . But, it will be observed, none of the articles exhibited against Judge Archbald charged an indictable offense, or even a violation of positive law. . . . Therefore, the judgment of the Senate in this case has forever removed from the domain of controversy the proposition that judges are only impeachable for the commission of crimes or misdemeanors against the laws of general application. *Id.* at 637-38

on both the legal and factual elements of the final verdict.<sup>236</sup>

The issue of the applicability of the doctrine of disqualification based upon personal interest, as applied to a Senator voting on impeachment, has been raised but not acted upon.<sup>237</sup> The President pro tempore of the Senate during the Johnson trial, for example, participated despite the fact that a conviction would have made him President.<sup>238</sup> Also, a Senator related to Johnson was not challenged when he voted on the final impeachment question.<sup>239</sup>

### G. Judgment

Under the Constitution, if an impeachment is not sustained by a two-thirds vote on any article, the accused is acquitted.<sup>240</sup> Where conviction is accomplished, the Senate must decree the defendant's removal from office and may disqualify him from holding any public office in the future.<sup>241</sup> Debate has occurred in the Senate as to whether or not the Constitution requires both removal and disqualification upon conviction. In both the Archbald and the Humphreys cases, the President pro tempore ruled that the two questions were separate and divisible propositions, the former being mandatory and the latter discretionary.<sup>242</sup>

## V. RAISING THE DEFENSE OF EXECUTIVE PRIVILEGE

Why, what mockery it would be for the Constitution of the United States to say that the House should have the power of impeachment extending

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236. The filing of individual opinions to be published in the Senate records presently provides the only indication, other than the actual vote, as to whether the offense charged constituted a "high crime and misdemeanor" and whether the accused was guilty of its commission.

237. See, e.g., 3 HINDS' § 2061 (Johnson).

238. *Id.*

239. *Id.* It should also be noted that in the Pickering trial a Senator, who had previously voted for impeachment as a member of the House, was challenged but allowed to vote. *Id.* § 2327. Senators on the other hand, have often been excused from voting for various reasons. See, e.g., 6 CANNON'S § 516 (Senators in the Louderback case were excused for various reasons from voting on all or part of the impeachment articles.); 3 HINDS' § 2114 (A Senator who had not heard the evidence was excused from voting on the question of guilt in the Swayne trial.); *id.* § 2383 (One Senator in the Peck trial was excused from voting on the judgment because he had appeared as a witness and another Senator was excused from voting because he had taken his seat after part of the testimony had been presented.); *id.* § 2396 (Various Senators were excused from voting in the Humphreys case.).

240. U.S. CONST. art. I, § 3, cl. 6.

241. *Id.* cl. 7.

242. See 6 CANNON'S § 512, at 706 (Archbald); 3 HINDS' § 2397, at 820 (Humphreys).

even to the President of the United States himself, and yet to say that the House had not the power to obtain the evidence and proofs on which their impeachment was based. It appeared to him [John Adams] equivalent to a self-evident principle, that the power of impeachment gives to the House necessarily the power to call for persons and papers.

John Quincy Adams<sup>243</sup>

Congressional power to obtain information concerning an official's conduct is critical to every stage of any impeachment process. Consequently, a claim of executive privilege to withhold information from an impeachment investigatory committee at any stage of the process would threaten to emasculate the power granted Congress by the Constitution to impeach any federal official, especially the President.<sup>244</sup> Thus, while executive privilege possesses a certain legitimacy in spite of dubious parentage, there exists a strong presumption against any use of executive privilege to obstruct an impeachment investigation.

The constitutional status of executive privilege has been the subject of much recent debate.<sup>245</sup> Historically, the doctrine was invoked rarely and in narrow circumstances.<sup>246</sup> During the Eisenhower administration it was seriously contended that the President has unlimited discretion to withhold any information from Congress or the courts,<sup>247</sup> but

243. CONG. GLOBE, 27th Cong., 2d Sess. 580 (1842).

244. "The House of Representatives shall . . . have the sole Power of Impeachment." U.S. CONST. art. I, § 2, cl. 5. "The Senate shall have the sole Power to try all Impeachments." *Id.* art. I, § 3, cl. 6. Congress, the coordinate political branch, and not its least dangerous sister, is ultimately the only natural balance to the executive. Cf. Bickel, *Should Rodino Go to Court?*, THE NEW REPUBLIC, June 8, 1974, at 11.

245. See, e.g., Berger, *Executive Privilege v. Congressional Inquiry*, 12 U.C.L.A.L. REV. 1287 (1965); Committee on Civil Rights of the New York City Bar, *Executive Privilege: Analysis and Recommendations for Congressional Legislation*, 29 RECORD OF N.Y.C.B.A. 177 (1974); Dornen & Shattuck, *Executive Privilege, The Congress and the Courts*, 35 OHIO ST. L.J. 1 (1974); Ervin, *Controlling "Executive Privilege"*, 20 LOYOLA L. REV. 11 (1974); Harden, *Executive Privilege in the Federal Courts*, 71 YALE L.J. 879 (1962); Henkin, *The Right to Know and the Duty to Withhold: The Case of the Pentagon Papers*, 120 U. PA. L. REV. 271 (1971); Kramer & Marcuse, *Executive Privilege—A Study of the Period 1953-1960*, 29 GEO. WASH. L. REV. 623, 827 (1961); Kutner, *Executive Privilege . . . Growth of Power over a Declining Congress*, 20 LOYOLA L. REV. 33 (1974).

246. EXECUTIVE PRIVILEGE 163-208.

247. The House Foreign Operations and Government Information Subcommittee reported in March 1973 that since 1952 executive privilege had been invoked 49 times—more than twice the number of all prior claims. *The Present Limits of "Executive Privilege"*, CONG. REC. 2243-46 (daily ed. Mar. 28, 1973). After that report, the Nixon Administration asserted executive privilege at least four additional times including an assertion against complying with a subpoena duces tecum directed by the Senate Select Committee on Presidential Campaign Activities, a subpoena from Special Prosecutor Archibald Cox, and later from Special Prosecutor Jaworski, and finally a subpoena issued by the House Judiciary Committee incident to its impeachment inquiry.

the validity of that claim of absolute executive privilege has been vigorously contested by both the courts<sup>248</sup> and Congress.<sup>249</sup> In view of the firm responses of the Supreme Court and Congress denying the President's claim of an absolute privilege to withhold information, it is appropriate to examine the development of the doctrine of executive privilege and its limitations.

Under the common law of English parliamentary government, in which the Prime Minister must be elected as a member of Parliament, there exists ample precedent for parliamentary investigation of executive conduct, both for purposes of initiating legislation and undertaking impeachment.<sup>250</sup> In America, however, the separation of powers doctrine, which makes the Executive independent of direct legislative control, has given birth to a limited doctrine of executive privilege. The Executive has frequently withheld information from the courts, the Congress, and the people by asserting the principle of separation of powers directly, the need for confidentiality, or rights granted by statute. Nevertheless, none of these bases can support an absolute claim to executive privilege, especially with respect to a congressional impeachment investigation.

#### A. *Executive Privilege Based on Separation of Powers*

The claim of an absolute executive privilege based on separation of powers<sup>251</sup> was rejected judicially in *Nixon v. Sirica*<sup>252</sup> and *United States v. Nixon*,<sup>253</sup> and it was repudiated congressionally incident to the Nixon impeachment proceeding.<sup>254</sup> These judicial and congressional pronouncements imply that the doctrine of executive privilege is predominantly extra-constitutional. In *United States v. Nixon*,<sup>255</sup> the

248. The Supreme Court in *United States v. Nixon*, 94 S. Ct. 3090 (1974), rejected the Executive's claim to privilege based upon separation of powers and the need for confidentiality between the President and his closest aides. See also *Nixon v. Sirica*, 487 F.2d 700 (D.C. Cir. 1973).

249. The House Judiciary Committee repudiated President Nixon's claim of privilege to withhold information from an impeachment investigation by voting the articles of impeachment contained in appendix C *infra*.

250. EXECUTIVE PRIVILEGE 15-48.

251. See notes 247 *supra* & 263 *infra* and accompanying texts.

252. 487 F.2d 700 (D.C. Cir. 1973).

253. 94 S. Ct. 3090 (1974).

254. See note 249 *supra*. Although a minority of the Committee argued that its subpoena should be taken to the courts for enforcement, counsel for the majority of the Committee concluded that congressional power to inquire incident to impeachment has an even more well-established constitutional base than judicial power to compel presidential disclosure. 32 CONG. Q. 2013-14 (1974).

255. The case arose when the President filed a motion to quash a trial subpoena duces tecum directed to the President for presidential materials and a motion to expunge

President's counsel raised three points before the Supreme Court to support his assertion that executive privilege is a proper basis for disregarding a subpoena of a federal district court. All three were essentially separation of powers arguments: first, that "[i]nherent in the executive power vested in the President under article II of the Constitution is executive privilege, generally recognized as a derivative of the separation of powers";<sup>256</sup> second, that since the courts have no jurisdiction over impeachment-related matters, the use of a court subpoena to force the production of presidential documents while an impeachment is in process would accomplish indirectly what the Constitution clearly prohibits;<sup>257</sup> and third, that "the common law and its embodiment of the concept of confidentiality as a prerequisite to the effective administration of government"<sup>258</sup> requires that the privilege be recognized. The Court, however, unceremoniously rejected each of these arguments;<sup>259</sup> while conceding that presidential communications are "presumptively privileged," the Court held that the "generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial."<sup>260</sup>

Certainly, this denial of a President's assertion of privilege against a judicial subpoena recognized general limits on the doctrine of executive privilege, at least to the extent that an assertion of privilege may be countered by the competing interests of the other branches of

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any finding of the grand jury that he was an unindicted co-conspirator in the criminal proceedings commonly known as Watergate. 94 S. Ct. at 3096, citing *United States v. Mitchell*, No. 110 (D.D.C. Apr. 30, 1974). The district court held that under *Nixon v. Sirica*, 487 F.2d 700 (D.C. Cir. 1973), the court had the authority to rule on the scope and applicability of executive privilege and further that its jurisdiction was not affected by the intra-executive nature of the dispute. 94 S. Ct. at 3103. It then found that the Special Prosecutor had demonstrated a "compelling need" which under *Sirica* was necessary to overcome the presumptively privileged nature of presidential documents and papers. *Id.* at 3105.

256. Brief for Respondent at 17 & 49, *United States v. Nixon*, 94 S. Ct. 3090 (1974).

257. *Id.* at 15.

258. *Id.* at 50.

259. The first: "[N]either the doctrine of separation of powers, nor the need for confidentiality of high level communications, without more, can sustain an absolute, unqualified presidential privilege of immunity from judicial process under all circumstances." 94 S. Ct. at 3106.

The second: "[T]he legitimate needs of the judicial process may outweigh presidential privilege . . . ." *Id.* at 3107.

And the third:

Absent a claim of need to protect military, diplomatic or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of presidential communications is significantly diminished by production of such material for *in camera* inspection with all the protection that a district court will be obliged to provide. *Id.*

260. *Id.* at 3110.

government exercising their respectively authorized functions. Thus, it would seem that, when the privilege is asserted against an impeachment inquiry, the circumstances under which executive privilege would justify the President's refusal to divulge information are indeed limited, if not wholly hypothetical. Stated another way, a presumption of almost insurmountable proportions exists against the exercise of executive privilege when it is used to avoid supplying persons or papers requested by the House upon its constitutionally based power to impeach. This conclusion is consistent with the earlier treatment of claims of executive privilege in other contexts based upon the separation of powers.

The earlier cases of executive privilege have been read by its proponents to support the invocation of an absolute privilege; however, a more careful analysis shows that these precedents actually refute such a proposition. Frequently, the first precedent cited is Washington's refusal in 1796 to submit requested materials concerning the Jay treaty negotiations to the House. This incident cannot be interpreted to support an argument for absolute executive privilege based upon the doctrine of separation of powers, since Washington had already submitted the requested materials to the Senate. Rather than asserting any executive privilege, Washington refused to disclose to the House the instructions that he had given to his ministers on the grounds that the treaty-making power was exclusively vested in the President and the Senate. He therefore contended that the House request was not incident to one of its assigned responsibilities: "[T]he inspection of the papers asked for can [not] be relative to any purpose under the cognizance of the House . . . *except that of impeachment*; which the resolution has not expressed."<sup>261</sup> Washington's refusal was couched carefully in narrow terms; rather than rejecting the power of Congress to inquire into executive conduct when such an investigation is conducted incident to a legitimate congressional responsibility such as impeachment, Washington explicitly recognized that right.<sup>262</sup>

261. 5 ANNALS OF CONG. 759-60 (1796) [1789-1824] (emphasis added).

262. Washington declared his intent not to "withhold any information . . . which could be required of him by either House of Congress as a right." *Id.* at 760. Nevertheless, his refusal was not wholly acquiesced to by the House of Representatives. Members insisted on clarifying their right to demand information from the Executive:

The right of calling for papers was sanctioned . . . by the uniform and undeniable practice of the House ever since the organization of the Government . . . [The House had the fullest right to the possession of any papers in the Executive department . . . [T]his was the first time it had ever been controverted. *Id.* at 601.

Accordingly, a member of the House asserted that if information "came within [the House's] powers, [it] would have a right to the papers" and the House would "demand them, and insist on the demand." *Id.* at 458.

President Andrew Jackson in 1833 was the first President to assert the doctrine of executive privilege based upon the separation of powers. He refused to answer a Senate request for papers which contained the President's policy statements to his cabinet concerning the removal of public funds from the Bank of the United States (perhaps in anticipation of or to hasten its failure). He explained to Congress:

The Executive is a coordinate and independent branch of the Government equally with the Senate, and I have yet to learn under what constitutional authority that branch of the Legislature has a right to require of me an account of any communication . . . made to the heads of Departments acting as a Cabinet council. . . .

I am constrained, therefore, by a proper sense of my own self respect and of the rights secured by the Constitution to the executive branch of the Government to decline a compliance with your request.<sup>263</sup>

In 1835, Jackson reasserted this argument in refusing to supply the Senate with a copy of charges that had been brought against a recently dismissed surveyor-general: "This is another of those calls for information made upon me by the Senate which have, in my judgment, either related to the subjects exclusively belonging to the executive department or otherwise encroached on the constitutional powers of the Executive."<sup>264</sup> In asserting a claim of privilege based on separation of powers, however, Jackson distinguished between congressional investigation of purely executive affairs and congressional inquiry incident to a constitutionally mandated congressional duty:

[C]ases may occur in the course of its legislative or executive proceedings in which it may be indispensable to the proper exercise of its powers that it should inquire or decide upon the conduct of the President or other public officers, and in every case its constitutional right to do so is cheerfully conceded.<sup>265</sup>

Thus, while Jackson clearly propounded a separation of powers argument in defense of a privilege to withhold information, the assertion was narrow rather than absolute and cannot serve as a precedent for a refusal to provide information related to an impeachment inquiry. This same restrictive understanding of the privilege was adhered to by President Tyler.<sup>266</sup> This distinction, along with an acknowledged re-

263. 3 J. RICHARDSON, *MESSAGES AND PAPERS OF THE PRESIDENTS* 36 (1897). Rather than acquiescing to the President's conduct, the Senate censured the President. See note 408 *infra*.

264. *Id.* at 132.

265. *EXECUTIVE PRIVILEGE* 182.

266. See 4 J. RICHARDSON, *supra* note 263, at 105-06.

While I shall ever evince the greatest readiness to communicate to the House

servation for inquiry pursuant to an impeachment investigation, was drawn by Buchanan in 1860: "Except in [the] single case [of impeachment], the Constitution has invested the House of Representatives with no power, no jurisdiction, no supremacy whatever over the President. In all other respects he is quite as independent of them as they are of him."<sup>267</sup> The same thesis was asserted by Grant in 1876 in refusing to comply with a request for information when the Democratic House appeared bent on publicly embarrassing the administration:

I fail, however, to find in the Constitution of the United States the authority given to the House of Representatives . . . to require of the Executive, an independent branch of the Government, coordinate with the Senate and the House of Representatives, an account of his discharge of his appropriate and purely executive offices, acts, and duties, either as to when, where, or how performed.

What the House of Representatives may require as a right in its demand upon the Executive for information is limited to what is necessary for the proper discharge of its powers of legislation or of impeachment.<sup>268</sup>

Until the present era, this interpretation of executive privilege and the impeachment investigatory powers of Congress had gone unchallenged. Recently, however, the claim of privilege has been debated at length in the context of contemporary political controversies.<sup>269</sup> This has led to the advancement of the further, more sweeping claim that all communications between employees in the executive branch must be per se immune from the investigations of Congress in order that

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of Representatives all proper information which the House shall deem necessary to a due discharge of its constitutional obligations and functions, yet it becomes me, in defense of the Constitution and laws of the United States, to protect the executive department from all encroachment on its powers, rights, and duties. In my judgment a compliance with the resolution which has been transmitted to me would be a surrender of duties and powers which the Constitution has conferred exclusively on the Executive . . . . *Id.*

267. 5 *Id.* at 615.

268. 7 *Id.* at 362 (emphasis added).

269. In one such debate Congressman Richard Nixon, a member of the House Un-American Activities Committee, responded to President Truman's refusal to release information pertaining to the loyalty of a prominent government scientist:

The point has been made that the President of the United States has issued an order that none of this information can be released to the Congress and that therefore the Congress has no right to question the judgment of the President in making that decision.

I say that that proposition cannot stand from a constitutional standpoint or on the basis of the merits for this very good reason. That would mean that the President could have arbitrarily issued an Executive order in the Myers case, the Teapot Dome case, or any other case denying the Congress of the United States information it needed to conduct an investigation of the executive department and the Congress would have no right to question his decision.

Any such order of the President can be questioned by the Congress as to whether or not that order is justified on the merits. 94 CONG. REC. 4783 (1948).

federal employees can "be completely candid in advising with each other."<sup>270</sup> Nevertheless, the logic and internal consistency of this position has been sharply criticized.<sup>271</sup> It is difficult to imagine a need for candor between two members of the executive branch which is so profound as to impede Congress' ability to utilize the constitutional processes to protect against the abuse of public office.

Neither the historical precedents nor the day-to-day pressures upon the executive branch can support a claim of absolute immunity for presidential documents or testimony based upon the doctrine of separation of powers, when such materials are sought to be withheld from Congress acting pursuant to the impeachment powers. Therefore, while the most respectable claim to executive privilege can probably be based upon the concept of separation of powers, that claim surely founders in the impeachment context since impeachment was conceived as an "exception to [the] principle"<sup>272</sup> of separation of powers.

*B. Withholding Information When the Public Interest Requires Executive Secrecy*

The court in *Nixon v. Sirica*<sup>273</sup> characterized the predominant basis of executive privilege as one of public policy,<sup>274</sup> not constitutional mandate, and this view is in accordance with the weight of precedent. Thus, the privilege of secrecy is not impregnable and may be overridden by a superior public policy interest, and it will be overridden wherever a competing constitutional interest, such as impeachment, is present.

From the earliest days of the Republic, the doctrine of executive privilege has been associated with a consideration of public protection rather than constitutional prerogative. In 1792, for example, when Washington was President, the House of Representatives requested military papers pertaining to Major General St. Clair's unsuccessful expedition against the Indians. Since all of the papers were given to Congress, the tenuous precedential value of this transaction rests on Jefferson's notes of a cabinet meeting discussing the circumstances under which nondisclosure would be proper:

270. EXECUTIVE PRIVILEGE 234. This argument appears in an executive directive reprinted in 100 CONG. REC. 6621 (1954). See generally EXECUTIVE PRIVILEGE 234-35.

271. EXECUTIVE PRIVILEGE 164. See also *United States v. Nixon*, 94 S. Ct. 3090 (1974).

272. 1 ANNALS OF CONG., *supra* note 9.

273. 487 F.2d 700, 713, 716 (D.C. Cir. 1973).

274. Public policy, for these purposes, will protect national security and a necessary degree of confidentiality and candor in presidential conversation.

We had all considered and were of one mind. 1. that the house was an inquest, and therefore might institute inquiries. 2. that they might call for papers generally. 3. that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those the disclosure of which would injure the public.

It was agreed in this case that there was not a paper which might not be properly produced. . . .<sup>275</sup>

This illustrates the point that the executive privilege of secrecy can only be asserted upon some showing of injury to the public good. Traditionally, the courts and Congress have respectfully prefaced requests for presidential information with the declaration that such materials are "presumptively privileged," and they have invited the withholding by the Executive of any materials whenever their release would not be in the public interest.<sup>276</sup> The need for sustaining that privilege of presidential confidentiality, however, has only been respected where some explicit public good is shown to be jeopardized by disclosure. In the Burr trial, for example, the court subpoenaed certain letters in Jefferson's control which Burr deemed essential to his defense and required that they be produced unless it could be shown that the letters contained matters which, in the public interest or security, ought not to be disclosed:

There is certainly nothing before the Court, which shews, that the letter in question contains any matter, the disclosure of which would endanger the public safety. If it does contain any matter which it would be imprudent to disclose, which it is not the wish of the Executive to disclose, such matter, if it be not immediately and essentially applicable to the point, will of course, be suppressed.<sup>277</sup>

Consequently, the burden of proof was placed upon the Executive seeking to raise a defense of immunity based upon a need for secrecy or confidentiality. Accordingly, Jefferson responded to the subpoena,<sup>278</sup> reserving only the right to withhold materials which were im-

275. Berger has argued that Jefferson misinterpreted English precedent in suggesting that the Executive had authority in certain circumstances to refuse to provide presidential papers. EXECUTIVE PRIVILEGE 169-70.

276. The House request, for example, for materials involving the Jay Treaty instructions excepted "such of said papers as any existing negotiation may render improper to be disclosed." 5 ANNALS OF CONG., *supra* note 261, at 759. The House request for presidential papers bearing on the Burr conspiracy also excepted such materials as Jefferson "may deem the public welfare to require not to be disclosed." EXECUTIVE PRIVILEGE 179.

277. 1 T. CARPENTER, THE TRIAL OF COLONEL AARON BURR 133 (1807), cited in Berger *The President, Congress, and the Courts*, 83 YALE L.J. 1111, 1114 (1974).

278. Berger cited references to commentators who have stated that Jefferson refused to respond to Chief Justice Marshall's subpoena. EXECUTIVE PRIVILEGE 1112.

material to the action *sub judice*, by transmitting all evidence requested, "excepting such parts thereof as are, in my opinion, not material for the purposes of justice, for the defense of the accused, or pertinent to the issue . . . . The accuracy of this opinion, I am *willing to refer to the judgment of the Court*, by submitting the original letter for its inspection."<sup>279</sup> The Burr trial provides precedent for judicial power to subpoena presidential papers subject to the limitation that materials surveyed by the court which are irrelevant to the case under adjudication may properly be withheld and suppressed on a claim of privilege. The onus of proof justifying any broader claim of confidentiality, however, clearly falls upon the Executive.

The courts in both *Nixon v. Sirica* and *United States v. Nixon* followed the Burr precedent by requiring that the President provide materials "essential to the justice of the [pending criminal] case."<sup>280</sup> The court in *Nixon v. Sirica* recognized that while it ought to "show respect for the President in weighing those reasons [for nondisclosure] . . . the ultimate decision remained with the court."<sup>281</sup> In *United States v. Nixon*, the Supreme Court followed the Burr case in holding that, while presidential documents were "presumptively privileged," the claim "cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending trial."<sup>282</sup> Although the *Nixon* cases arose out of a dispute exclusively within the executive branch, the logic of these decisions is equally persuasive when applied to congressional requests. Where the President claims a privilege of secrecy to withhold material information from either the courts or Congress, functioning within their respectively mandated spheres, the President's claim must be made responsibly and subject to *prima facie* review. In the case of pending criminal trials, the courts have provided the procedure of *in camera* inspection of presidential papers as a means of reviewing such a claim of privilege, but in the case of congressional inquiries, the procedure is presently unclear. Since the public interest involved in congressional inquiries, particularly impeachment inquiries, is at least as great as the interests involved in the promotion of criminal justice, Congress too should establish a similar reviewing protocol with selected leaders ac-

279. *Id.* at 1116 (emphasis added), quoting 3 T. CARPENTER, *supra* note 277, at 30.

280. *United States v. Nixon*, 94 S. Ct. 3090, 3110 (1974), citing *United States v. Burr*, 25 F. Cas. 187, 192 (No. 14,694) (C.C.D. Va. 1807).

281. 487 F.2d 700, 710 (D.C. Cir. 1973).

282. 94 S. Ct. at 3110.

completing an *in camera* inspection to review claims of confidentiality in opposition to congressional requests for persons and papers.

### C. *Withholding Information on the Basis of a Statutory Privilege*

Statutes permitting confidentiality have been invoked in support of an executive claim of privilege under limited circumstances but never in opposition to the impeachment process. The purpose of the Freedom of Information Act<sup>283</sup> is to make available to "any person" upon request governmental records not falling within certain specified exceptions,<sup>284</sup> and to a certain extent, the Act attempts to codify the doctrine of executive privilege.<sup>285</sup> But the Act explicitly states: "This section is not authority to withhold information from Congress."<sup>286</sup> Furthermore, since the courts have generally declined to abdicate control over evidence to the caprice of executive officers,<sup>287</sup> and since it cannot be concluded that Congress has relinquished any of its extraordinary power to impeach the President simply by having recognized the doctrine of executive privilege in general information-access legislation, one must conclude that a claim of privilege asserted under the Freedom of Information Act or any other such statute is not applicable

283. 5 U.S.C. § 552 (1970).

284. *EPA v. Mink* 410 U.S. 73 (1973). The Supreme Court held that where government documents are clearly classified under the statute even an *in camera* proceeding was improper. *Id.* at 84. For a discussion of *Mink*, see Comment, *Developments Under the Freedom of Information Act—1973*, 1974 *Duke L.J.* 251, 252-57.

285. Committee on Civil Rights of the New York City Bar, *supra* note 245, at 182.

Prior to the passage of the Freedom of Information Act, cases invoking the privilege were often based upon R.S. 161 (5 U.S.C. § 22, now 5 U.S.C. § 301), which provided that department heads were authorized to prescribe regulations, not inconsistent with law, for the custody and use of governmental records. *Id.* at 205 n.19.

*See, e.g.,* *Touby v. Ragen*, 340 U.S. 462 (1951); *Boske v. Commingore*, 177 U.S. 459 (1900); *Hubbard v. Southern Ry.*, 179 F. Supp. 244 (M.D. Ga. 1959).

286. 5 U.S.C. § 552(c) (1970). The Act exempts nine types of information from its coverage. The doctrine of executive privilege is apparently codified in exemptions (1), (5) and (7). Exemption (1) includes materials "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy." Exemption (5) includes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." This exemption relates to law enforcement and civil and criminal discovery. Exemption (7) is essentially the same as (5) differing only in that (5) covers cases in which the government is a party and (7) extends to all contexts involving the discovery of law enforcement investigatory files. *See generally* Comment, *supra* note 284, at 252-59, 274-80, 284-88.

287. *See, e.g.,* *Tennessean Newspapers Inc. v. FHA*, 464 F.2d 657 (6th Cir. 1972); *Getman v. NLRB*, 450 F.2d 670 (D.C. Cir. 1971); *Wellford v. Harden*, 444 F.2d 21 (4th Cir. 1971). *But see* *Consumers Union of United States v. Veterans Administration*, 301 F. Supp. 796 (S.D.N.Y. 1969), *dismissed as moot*, 436 F.2d 1363 (2d Cir. 1971).

to congressional investigations, especially where the investigation is incident to an impeachment proceeding.

In sum, the assertion that the Executive has an absolute discretion to withhold materials from both the Congress and the courts on any basis has been shattered by both the Supreme Court in *United States v. Nixon*<sup>288</sup> and the Judiciary Committee of Congress by its vote on the third article of impeachment.<sup>289</sup> This rejection of executive privilege, taken together with the formal congressional reaction to executive (undeclared) war,<sup>290</sup> to executive acts approaching the monarchical tradition of being above the law,<sup>291</sup> to executive corruption of government agencies,<sup>292</sup> and to campaign financing abuses,<sup>293</sup> closes an era of unchallenged presidential ascendancy.

#### VI. EXCLUDING EVIDENCE ON OTHER CONSTITUTIONAL OR EVIDENTIARY GROUNDS

Just as a claim of executive privilege may not be extended to bar congressional investigation of executive wrongdoing, so many other procedural and civil privileges take on a different legal meaning within the context of an impeachment trial. Confusion of the political role of the impeachment trial with the juridical role of a trial by jury might suggest the need to transpose the prevailing concepts of procedural or substantive due process from the judicial setting to the impeachment process. Due process, however, is not simply the equivalent of being fair; such a simplistic transposition would not be proper. Nevertheless, such concepts as due process and evidentiary privileges may in the future play an important role in establishing the evidence necessary for impeachment and removal from office, especially as concrete evidence like tape recordings of incriminating conversations may not be available for future impeachment proceedings. No doubt the fifth amendment rights, the fourth amendment protections, and the evidentiary privileges afforded an accused or testifying witnesses may become a debated issue in future impeachment proceedings.

288. 94 S. Ct. 3090 (1974).

289. See ARTICLES OF IMPEACHMENT art. III, app. C *infra*.

290. In order to limit the Executive's heretofore untrammelled power to carry on undeclared war, Congress has passed the War Powers Act (Act of Nov. 8, 1973, 87 Stat. 555 (codified at 50 U.S.C.A. §§ 1541-48 (Supp. 1974))).

291. See ARTICLES OF IMPEACHMENT art. I, app. C *infra*.

292. See ARTICLES OF IMPEACHMENT art. II, app. C *infra*.

293. In an attempt to ameliorate presidential campaign financing abuses Congress recently has enacted the Federal Election Campaign Act Amendments of 1974 (Act of Oct. 15, 1974, Pub. L. No. 93-443).

The applicability of concepts of due process is immediately suggested by the mere prospect of the government's taking valuable personal rights, offices, and employment from the citizens who hold them.<sup>294</sup> The fifth amendment would appear to protect public officers from any taking of office or injury to reputation or future opportunity, except upon the condition that it is accomplished according to the requirements of due process,<sup>295</sup> since the Constitution would seem to authorize dismissal from office only upon a showing of good cause.<sup>296</sup> However, a President who attempts to invoke the due process clause of the fifth amendment to impose upon the Congress a specific standard of justice to be observed in the conduct of the impeachment proceeding may fail for the following reasons. First, the Bill of Rights was adopted to protect private citizens from encroachments upon their liberties by powerful federal officers; never does there appear any indication in the writings of Jefferson or those who advocated the ratification of the fifth amendment that the due process clause should also regulate the interrelationships between those federal officers or, indeed, constitute an ultimate principle superimposed upon the principle of separation of powers otherwise defined in the Constitution. Moreover, certain presidential claims, such as the assertion of executive privilege, rest exclusively upon the assumption that the individual raising them does so as President and not in his capacity as a private citizen. Thus, in order to invoke the personal protections of the fifth amendment, the President must take a position that would be inconsistent with any protections that he claimed because of the status of his office. Second, there is no simple concept of due process per se. Rather, the standard

294. See *Bishop v. Wood*, 377 F. Supp. 497, 501 (W.D.N.C. 1973); cf. *Perry v. Sindermann*, 408 U.S. 593 (1972); *Bell v. Burson*, 402 U.S. 535 (1971).

295. See *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Cafeteria Local 473 v. McElroy*, 367 U.S. 886 (1961); *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 185 (1951).

296. By enumerating specific crimes and circumstances against which impeachment may ensue, the Constitution would appear to incorporate a "good cause" requirement for dismissal. Moreover, the phrase "high Crimes or Misdemeanors" does not nullify that requirement through any vagueness, as the following historical analysis demonstrates. The English impeachment of Warren Hastings for high crimes and misdemeanors was voted shortly before the beginning of the Constitutional Convention, and his trial was referred to in the debates. See R. BENOEN 3 n.15, 94; 2 RECORDS 550; 1 J. STORY § 799, at 583. Story asserts that "what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to English law." In the Swayne trial, it was argued that the phrase "high Crimes and Misdemeanors" is a "term of art," of fixed meaning in English parliamentary law and transplanted to the Constitution in unchangeable significance. See 3 HINDS' § 2009; Firmage, note 14 *supra*, at 682.

of due process which is required by any given situation is determined independently by reference to the nature of the right which is sought to be protected.<sup>297</sup> Just as the procedure which is adequate for the vindication of welfare rights is not the same as that which is required to prove a felony charge,<sup>298</sup> so one cannot import into and appropriate for use in the impeachment process any given standard of due process which happens to attach to another given substantive right in our society. The meaning which due process therefore will have in the impeachment context must be founded upon a wide-ranging analysis of the total impeachment process; it must not merely reflect the interests of any one officer who is seeking to retain his office. Third, the impeachment process is itself a well-defined political proceeding which operates only upon the observance of its established rules and constraints. These provisions provide ample procedural protection, affording an accused the rights of notice and hearing which characterize the essence of due process.<sup>299</sup> No taking of office occurs before this elaborate procedure has been carried out, and even after it has been carried out the removed officer has additional, though limited opportunities to clear his name and reputation in subsequent actions in the courts.<sup>300</sup> Finally, since the total scheme which is embedded in the Constitution articulates both the rights of office and the manner in which a person's tenure of office terminates, the inescapable conclusion is that any person claiming the rights of public office and enjoying the particular protections of the removal process as defined in the Constitution cannot be heard at the same time to contest the "constitutionality" of an impeachment conducted pursuant to the terms of that document. As Mr. Justice Rehnquist has recently stated: "[W]here the grant of a substantive right is inextricably intertwined with the limitations on the procedures which are to be employed in determining that right, [one claiming rights under that grant] must take the bitter with the sweet."<sup>301</sup> In the case of a presidential impeachment especially, since the procedural relationship between the office of the President and the other branches of government is undeniably intertwined with

297. See *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972); *Bell v. Burson*, 402 U.S. 535, 541-42 (1971). "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria Local 473 v. McElroy*, 367 U.S. 886, 895 (1961); cf. *Arnett v. Kennedy*, 416 U.S. 134, 134-35 (1974) (Rehnquist, J.).

298. *Bell v. Burson*, 402 U.S. 535, 540 (1971).

299. See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Greene v. McElroy*, 360 U.S. 474 (1959); *Fahey v. Mallon*, 332 U.S. 245 (1947).

300. See *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 (1972); *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1970).

301. *Arnett v. Kennedy*, 416 U.S. 134, 153-54 (1974) (Rehnquist, J.).

the substantive creation of the office, the procedural rights which attach to that office are to be defined exclusively by the impeachment provisions as they appear explicitly in the Constitution. These provisions do not incorporate a judicially defined due process requirement into the political machinery of impeachment.

However, this argument against the applicability of the due process clause of the fifth amendment should not lead to the conclusion that the House and the Senate have the power to deal arbitrarily with the impeachment power. The concept of due process is important to the impeachment proceeding, not because it appears in the fifth amendment, but because it pervades this country's concept of justice and therefore acts as a powerful political constraint on congressmen who participate in the impeachment investigations and trial. Consequently, while the Senate may vote on an ad hoc basis to overrule particular evidentiary or procedural rules which conventionally are followed in the courts,<sup>302</sup> it is highly unlikely that the Senate would deny an impeached civil officer well-recognized procedural safeguards except in rare cases. As the history of prior impeachment trials has shown, the substance of due process currently recognized in judicial proceedings generally will be recognized in impeachment proceedings, with the single caveat that a party asserting the privilege or right is subject to the concepts of justice held by congressmen, and derivatively by their constituents, rather than by the judiciary.

This same line of reasoning applies to the full panoply of rights and privileges which an accused officer might attempt to derive from the fourth amendment or from the common law. Consider what would happen if the Congress were to authorize and conduct an unlawful search of the White House to gain possession of a President's personal papers. While the President could easily suppress that evidence in a subsequent trial of his criminal guilt in the courts, he could not compel its suppression before the Senate through the fourth amendment. His only recourse would be to appeal to the conscience of the Congress and to the public commitment to the rule of law. If that appeal were unsuccessful, he might seek money damages directly upon the violation of his fourth amendment rights which he had suffered,<sup>303</sup> but beyond that, it would exceed the powers of the courts either to intervene in the conduct of the impeachment trial or to reverse its verdict for any perceived constitutional infirmity.<sup>304</sup> Even less likely is the possibility

302. See SENATE RULES OF PROCEDURE, app. B *infra*.

303. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

304. For the further ramifications of judicial review of the impeachment process, see Section VII accompanying notes 310-31 *infra*.

that, it would exceed the powers of the courts either to intervene in order to protect evidentiary privileges that exist between a husband and wife or between an accused and his counsel. The social institutions which these privileges were created to protect simply cannot be given precedence over the nation's constitutional infrastructure which is designed to regulate the relationship among the governmental branches in an impeachment proceeding.

A further due process argument may conceivably be advanced by a public officer who has been subjected to impeachment investigations or by witnesses brought to testify in such trials: that certain demanded disclosures may jeopardize the rights of third parties and therefore cannot be compelled. On occasion—but not in the context of an impeachment trial—Presidents have objected to and resisted certain disclosures which would infringe the constitutional rights of third parties. For example, President Jackson refused to disclose information to the House concerning the conduct of a surveyor-general who had been removed from office on the purported grounds of fraudulent conduct. Jackson argued that disclosure would deprive a citizen of his basic right to “a public investigation in the presence of his accusers and the witnesses against him.”<sup>305</sup> Later, President Tyler also claimed a privilege to withhold certain information on the basis of evidentiary privileges. In support of his refusal to supply the requested materials, Tyler stated that “these principles [evidentiary privileges] are as applicable to evidence sought by a legislature as to that required by a court.”<sup>306</sup> If this principle were not generally respected, it might be argued, Congress could fashion its own concept of procedural due process and then proceed, for example, to compel a witness to testify about a conversation concerning criminal conduct in which the witness participated. It

305. EXECUTIVE PRIVILEGE 181. Berger argued that Jackson's assertion that such an inquiry was not “indispensable to the proper exercise of congressional power cannot be supported. Otherwise the President could cut off Congress' power to investigate executive misconduct merely by removing the officer.” *Id.* at 182.

306. 3 HINDS' § 1883, at 182. In more recent years, both Truman and Eisenhower claimed privileges, based in part on due process considerations, to support directives prohibiting the disclosure of government information to congressional committees investigating the loyalty of federal employees. In a 1948 memorandum to all federal employees, President Truman directed that they were not to respond to inquiries involving the Employees' Loyalty Program. It is clear that the memorandum was prompted at least in part by due process considerations: “This is necessary . . . to protect Government personnel against the dissemination of unfounded or disproved allegations. It is necessary also in order to insure the fair and just disposition of loyalty cases.” 13 Fed. Reg. 1359 (1948). Likewise Eisenhower's refusal to permit Defense Department personnel to testify at the Army McCarthy hearings was prompted largely by due process considerations.

would appear that a witness could thereby be effectively deprived of his right against self-incrimination, whereas the Supreme Court in *Emspak v. United States*<sup>307</sup> and *Quinn v. United States*<sup>308</sup> specifically has extended the privilege against self-incrimination to apply to a witness testifying before a congressional investigatory body. The modern doctrine of the privilege "extends to all manner of proceedings in which testimony is legally compellable, whether litigious or not and whether ex parte or otherwise."<sup>309</sup>

Without dismissing out of hand the due process arguments thus raised on behalf of third parties, it is contended that any effort to exclude evidence on such grounds from an impeachment proceeding must bear a nearly insurmountable burden of persuasion whenever that evidence is deemed significant to the resolution of the impeachment issue. This result is dictated both by the extraordinary nature of the impeachment proceeding and by the ability of a court to suppress or contradict the congressional testimony in a subsequent trial if that should prove necessary to vindicate the rights of third parties. Any earlier intervention by the courts into the impeachment process, however, on the pretense of supplying that proceeding with a given measure of due process, must be perceived and dismissed as premature and extra-constitutional.

#### VII. IMPEACHMENT AND JUDICIAL REVIEW

Until recently, it has not been suggested seriously that the Supreme Court would have the power to review the interlocutory or final decisions of the Senate in an impeachment trial.<sup>310</sup> Nevertheless, as

307. 349 U.S. 190 (1955).

308. 349 U.S. 155 (1955).

309. 8 J. WIGMORE, EVIDENCE § 2252, at 327 (McNaughton ed. 1961).

The privilege against self-incrimination has not been exercised in American impeachment proceedings for several reasons. First although the privilege was incorporated into the fifth amendment, it was rarely used in early criminal cases. See *Id.* § 2252. Second, although recognition of the privilege became more widespread toward the end of the nineteenth century, it was not until *McCarthy v. Arndstein*, 266 U.S. 34 (1924), that the privilege was also extended to civil trials.

In the case of public officials, however, the scope of the privilege remains substantially limited. The privilege does not extend to public documents or papers, as distinguished from purely personal documents and papers, on the basis that it would be an intolerable handicap for the government to be unable to discover what its own doings are. See 7 J. WIGMORE, *supra* § 2259(c)(1). See also Note, *Quasi Public Records and Self-Incrimination*, 47 COLUM. L. REV. 838 (1947). Consequently public officials, particularly the President, will be more likely to assert other privileges of confidentiality such as executive privilege rather than the privilege against self-incrimination in seeking to prevent disclosure of information recorded in public documents.

310. For recent assertions that an impeachment judgment is reviewable, see R.

the nation matures and its communal roots deepen, it becomes increasingly more reasonable to require the decisions of government to be "made in accordance with rules of law and somewhat less by political accommodation."<sup>311</sup> One can anticipate that the political question doctrine,<sup>312</sup> precluding judicial review of the decisions of a coordinate political department, is bound to recede as time goes on,<sup>313</sup> and as its circumference contracts, the feasibility of allowing judicial review of decisions made in the course of an impeachment proceeding may well appear to be enhanced. It is suggested, however, that there exists a hard core of issues, extending beyond the conduct of foreign policy, in which perceived legitimacy of governmental institutions and decisions demands the final political resolution of problems by one or the other of the political branches. Over these matters judicial review should not extend. Impeachment is such an issue.

A political question which evades judicial review is said to arise under any of six conditions: where the actual text of the Constitution commits the issue to other branches for determination, where judicially discoverable or manageable standards for resolving the issue are lacking, where the question cannot be resolved without presupposing an initial policy determination of a kind clearly calling for nonjudicial discretion, where judicial review would entail an expression of disrespect for other branches of government, where contradictory resolutions might cause embarrassment to the government as a whole, and where

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BERGER 103-21; I. BRYANT, *IMPEACHMENT, TRIALS AND ERRORS* 182-97 (1972); FERRICK, *Impeaching Federal Judges: A Study of the Constitutional Provisions*, 39 *FORDHAM L. REV.* 1 (1970); REZNECK, *Is Judicial Review of Impeachment Coming?*, 60 *A.B.A.J.* 681 (1974); Comment, *Presidential Impeachment and Judicial Review*, 23 *AM. U.L. REV.* 939 (1974).

The more conventional view, however, has been to the contrary. Willoughby viewed impeachment as nonreviewable: "It is scarcely necessary to say that the proceeding and determinations of the Senate when sitting as a court of impeachment are not subject to review in any other court." 3 W. WILLOUGHBY, *THE CONSTITUTIONAL LAW OF THE UNITED STATES* 1451 (2d ed. 1929). Black expressed essentially the same view:

It will be perceived that the power to determine what crimes are impeachable rests very much with Congress. For the House, before preferring articles of impeachment, will decide whether the acts or conduct complained of constitute a "high crime or misdemeanor." And the Senate, in trying the case, will also have to consider the same question. If, in the judgment of the Senate, the offense charged is not impeachable, they will acquit; otherwise, upon sufficient proof and the concurrence of the necessary majority, they will convict. And in either case, there is no other power which can review or reverse their decision. H. BLACK, *CONSTITUTIONAL LAW* 121-22 (1897).

311. Firmage, *Law and the Indochina War: A Retrospective View*, *supra* note 3, at 19.

312. See notes 314-31 *infra* and accompanying text.

313. Firmage, *Law and the Indochina War: A Retrospective View*, *supra* note 3, at 19.

there is need to adhere to a political decision already made.<sup>314</sup> It is suggested that under all but perhaps the second of these criteria, every question which is material to an impeachment decision presents a political question not subject to judicial review.

In the first instance, the constitutional text expressly grants the exclusive power of impeachment to the houses of Congress. The power to impeach and convict is held *solely* by the House and the Senate.<sup>315</sup> It would seem to be anomalous to contend that this power can be exercised only in compliance with the dictates of the Supreme Court.

This construction of the demonstrable constitutional commitment of the issue of impeachment to Congress has been consistently acclaimed by the courts and the commentators, and it clearly reflects the unambiguous intentions of the framers at the Constitutional Convention. Joseph Story, in his *Commentaries*, expressed the common view of the early writers that Congress, not the courts, possessed a textual grant of constitutional authority to resolve any question of impeachment: "The true exposition of the Constitution on [this point] is brought before the learned reader as matters still *sub judice*, the final decision of which may be reasonably left to the high tribunal constituting the court of impeachment when the occasion shall arise."<sup>316</sup> This view is amply supported by the record of the Convention. Impeachment, as originally proposed, was to be within the jurisdiction of the "National Judiciary."<sup>317</sup> After much discussion, however, impeachment jurisdiction was taken away from judicial cognizance and vested solely in Congress.<sup>318</sup> The debates outline the reasons for the change. First, the judiciary has the power to proceed under an indictment against an accused at the same time that he is the subject of an impeachment proceeding, and it was considered undesirable that the courts should entertain two proceedings at the same time against one individual.<sup>319</sup> Second, the framers recognized that impeachment was nonreviewable and defended this provision against the argument that

314. See *Baker v. Carr*, 369 U.S. 186, 217 (1961).

315. U.S. CONST. art. I, § 2, cl. 5; *id.* § 3, cl. 6.

316. 1 J. STORY § 805, at 587.

317. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature . . . that the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort . . . impeachments of any National Officers. . . . 1 RECORDS 21-22.

318. 2 *id.* at 186, 493, 547.

319. "A conclusive reason for making the Senate instead of the Supreme Court the judge of impeachments, was that the latter was to try the President after the trial of the impeachment." *Id.* at 500 (remarks of Gouverneur Morris).

it would subject the Executive to tenure at the mere pleasure of the legislature,<sup>320</sup> for the assumption could not be indulged that the Senate would abuse its power:

[N]o other tribunal than the Senate could be trusted. The Supreme Court were too few in number and might be warped and corrupted. [Madison] was agst. a dependence of the Executive on the Legislature, considering the Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out.<sup>321</sup>

Finally, it was suggested that it would be unwise to permit a body appointed by the President to hold the ultimate power to try him on a bill of impeachment: "The Supreme Court [must be regarded] as improper to try the President, because the judges would be appointed by him."<sup>322</sup> For these reasons, judicial trial of impeachments was rejected by the framers of the Constitution.

The views expressed by the founders and supported historically by the weight of constitutional scholarship<sup>323</sup> have been subsequently sustained by the courts.<sup>324</sup> Judge Ritter's unprecedented collateral attack on the Senate's impeachment conviction was firmly rejected by a unanimous opinion of the Court of Claims:

We think that when the provision that the Senate should have "the sole power to try all impeachments" was inserted in the Constitution, the word "sole" was used with a definite meaning and with the intention that no other tribunal should have any jurisdiction of the cases tried under the provisions for impeachment. The dictionary definition of the

320. [Madison] objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments. *Id.* at 551.

321. *Id.*

322. *Id.*

323. See T. COOLBY, *THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW* 206 (1931); NEW YORK CITY BAR ASSOCIATION, *LAW OF PRESIDENTIAL IMPEACHMENT* 14-17 (1974); W. RAWLE, *A VIEW OF THE CONSTITUTION* (1829); C. WARREN, *THE MAKING OF THE CONSTITUTION* 658-64 (1928); Kurland, *supra* note 4, at 569-70; Ross, "Good Behavior" of Federal Judges, 12 U. KAN. CITY L. REV. 119, 125-26 (1944); Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 8 (1959); Bestor, *Book Review*, 49 WASH. L. REV. 255, 268 (1973); Fordham, *Book Review*, 47 U. SO. CAL. L. REV. 673, 680-82 (1974).

324. *But cf. State ex rel. Olson v Langer*, 65 N.D. 63, 256 N.W. 377 (1934) (reviewing Governor Langer's impeachment with regard to the term "disability" as grounds for impeachment); *Ferguson v Maddox*, 114 Tex. 85, 263 S.W. 888 (1924) (holding that a court may determine whether the state Senate had exceeded its impeachment jurisdiction by acting on the basis of neither treason, bribery, nor high crimes and misdemeanors), Fordham, *supra* note 323, at 681.

word "sole" is "being or acting without another" and we think it was intended that the Senate should act without any other tribunal having anything to do with the case. This would be the ordinary signification of the words and this construction is supported by a consideration of the proceedings of the Constitutional Convention and the uniform opinion of the authorities which have considered the matter.<sup>325</sup>

Given the foregoing arguments, there can be little doubt that there exists demonstrable textual commitment of the impeachment decision process to the legislature, bringing the exercise of that power securely within the realm of the political question doctrine.

Perhaps most important, judicial review of presidential impeachment would generate practical problems of the most grave and perhaps irremediable nature. There is an absolute need to abide by any political decision to impeach, once that verdict has been reached by the Senate. Judicial review of such a verdict would cast the office of the Executive into an intolerable state of limbo as the succeeding President awaited the opinion of the Supreme Court on the correctness of the Senate's decision. Presidential legitimacy, never more necessary for reaffirmation, would be held in abeyance if not in a condition of further disintegration. Further, the painful reconciliation of Congress and the new President would be critically complicated by the brooding apparition of the former President's possible return. The government bureaucracy would be forced to hedge its activities in self-protection against the return of the ousted President; the gradually spreading paralysis of government, to some degree inevitable during congressional impeachment activity, would be continued. And if the former President were to be reinstated by judicial reversal, it is unimaginable that an effective relationship would ever be re-established between him and the Congress which had pronounced him guilty of the commission of impeachable offenses.<sup>326</sup> In short, neither political nor bureaucratic

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325. *Ritter v. United States*, 84 Ct. Cl. 293, 296 (1936), *cert. denied*, 300 U.S. 668 (1937).

326. Interposition of the courts to pass upon the legal sufficiency of articles of impeachment following their adoption by the House would considerably prolong the period of uncertainty in the leadership of government that impeachment of a President would necessarily produce; and judicial review after a judgment of conviction and removal by the Senate would cast doubt, with the greatest potential repercussions, on the fundamental question of who is entitled to hold the office of President of the United States in the period following the final vote in the Senate. These considerations support our basic conclusion, that the Constitution has committed exclusively and finally to the measured discretion of elected representatives the unique, quasi-judicial function of determining whether an elected or appointed officer of the United States must be removed from office on grounds of fitness. *NEW YORK CITY BAR ASSOCIATION*, *supra* note 323, at 170.

levels of government could function under such conditions. The profoundly political nature of impeachment is nowhere more evident than in an analysis of the impropriety of judicial review of this seminal political act.

Moreover, the fundamentally political nature of the impeachment process should preclude the possibility of judicial review of intermediate as well as final determinations made by Congress in the exercise of its impeachment power. Interlocutory appeals of such congressional decisions, in addition, may be discounted on the further ground that the threat of repeated delays in trial, which such review would inevitably create, would stifle most attempts to exercise the impeachment power effectively as a political prophylactic. Of course, impeachment is heavy political artillery which is not meant to operate too quickly. Nevertheless, it is designed to operate effectively, and a multiplicity of interlocutory appeals by a President who wanted to "run out the clock" would threaten to stall seriously its basic operation and thus should not be permitted.

It has recently been suggested, however, that the direction in which the Court has moved through its intervention into areas previously considered to be beyond the scope of its jurisdiction warrants, if not demands, a similar extension of its authority into the realm of impeachment.<sup>327</sup> The main proponents of this view have relied primarily upon statements in *Powell v. McCormack*<sup>328</sup> and *Baker v. Carr*<sup>329</sup> that a political question exists where judicially discoverable and manageable standards for resolving the problem are lacking. Thus, it

327. See note 310 *supra*.

328. 395 U.S. 486 (1969). *Powell* involved the expulsion of Congressman Adam Clayton Powell from the House of Representatives. The Court reached the merits notwithstanding the constitutional delegation to Congress of the responsibility of judging the qualifications of its own members. Article I, section 2, clause 2 of the Constitution describes three qualifications that must be met by a Representative, and article I, section 5, clause 1 provides that "[e]ach House shall be the Judge of the . . . Qualifications of its own Members." It is submitted, however, that *Powell* cannot be extended to permit judicial review of impeachment, for the exercise of judicial review in *Powell* is distinguishable from its invocation in an impeachment proceeding. In *Powell*, the Court did not find a "textually demonstrable commitment" of a discretionary power to each House. See *NEW YORK CITY BAR ASSOCIATION*, *supra* note 323, at 169. The constitutional text and the framers' own interpretation are quite different with regard to impeachment. Although the Constitution limits impeachment to "Treason, Bribery, or other high Crimes and Misdemeanors," U.S. CONST. art. II, § 4, it also grants to Congress the "sole" authority to apply those terms, *id.* art. I, § 2, cl. 5. Rather than limiting impeachment to grounds unambiguously circumscribed, the framers delegated a significant degree of political discretion to Congress, a fact which could not be shown in *Powell*.

329. 369 U.S. 186 (1962).

is argued that since the interpretation of the term "high Crimes and Misdemeanors" is susceptible to principled judicial standards, the political question doctrine should not be invoked in derogation of judicial jurisdiction to review the congressional interpretation of this phrase. This argument, however, cannot stand. This very matter was specifically considered and rejected in the Convention. Broad political judgment, not judicial interpretation, was thought necessary to determine the scope of this phrase's application to particular offenses: "[O]n this basis, the propriety of the exercise of these powers in a particular case would present a *political* question, regardless of whether 'high Crimes and Misdemeanors' is given a broad or a narrow meaning."<sup>330</sup> Beyond that, the argument looks only to one of six criteria set forth for the existence of a political question, and from that single proposition it incorrectly infers that, since a political question exists where suitable judicial standards are lacking, it necessarily follows that the doctrine can be disregarded wherever manageable judicial standards are present. That extrapolation, however, is fallacious: if such a conclusion were reached, it would foreclose the political question doctrine whenever decisions capable of formal rationalization are made in either of the other branches of government.

It is not disputed that *Baker* and *Powell* have significantly contributed to the erosion of the political question doctrine. Nevertheless, the erosion cannot wash away those powers textually committed by the Constitution solely to the political branches of government. The nub of the political question doctrine is not simply that the courts will not intervene where judicial standards are vague, but rather that in a democratic community certain decisions, because of their inherently political nature, must be left to political branches of the government. In recognizing this principle, the Court of Claims has concluded that impeachment is indeed such a political process which is not susceptible to judicial review:

While the Senate in one sense acts as a court on the trial of an impeachment, it is essentially a political body and in its actions is influenced by the views of its members on the public welfare. The courts, on the other hand, are expected to render their decisions according to the law regardless of the consequences. This must have been realized by the members of the Constitutional Convention and in rejecting proposals to have impeachments tried by a court composed of regularly appointed judges we think it avoided the possibility of unseemly conflicts

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330. See NEW YORK CITY BAR ASSOCIATION, *supra* note 323, at 169 (emphasis added).

between a political body such as the Senate and the judicial tribunals which might determine the case on different principles.<sup>331</sup>

#### VIII. IMPEACHMENT AND INDICTMENT

It has recently been questioned whether or not the President, the Vice-President or any civil officer can be indicted before impeachment, conviction, and removal from office. The issue involves the interpretation of article I, section 3 of the Constitution: "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification . . . but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."<sup>332</sup> The debate involves the "nevertheless" clause, which under one reading might only preclude the impeached from asserting double jeopardy as a criminal defense or on a broader reading may also extend to establishing a precedence of impeachment and conviction before any subsequent criminal indictment. Berger, in considering the issue, directly limits the clause to the first interpretation:

The implication of "shall nevertheless be liable" to indictment is that the given party is already liable, that the words are merely designed to preserve existing criminal liability rather than to qualify it. It would be unreasonable to attribute to the Framers an intention to insulate officers from criminal liability by mere appointment to office; like all men they are responsible under the law.<sup>333</sup>

This is consistent with the major body of thought on the question, as few have been willing to bestow an absolute immunity from prosecution upon all public servants during their tenure in office:

Otherwise, it might be a matter of extreme doubt whether . . . a second trial for the same offense could be had, either after an acquittal or a conviction, in the court of impeachments.

The Constitution . . . has wisely subjected the party to trial in the common criminal tribunals, for the purpose of receiving such punishment

331. *Ritter v. United States*, 84 Ct. Cl. 293, 299 (1936), *cert. denied*, 300 U.S. 668 (1937).

332. U.S. CONST. art. I, § 3, cl. 7. Special Prosecutor Leon Jaworski advised the grand jury not to indict President Nixon: "It was researched at the time and the conclusion was that legal doubt on the question was so substantial that a move to indict a sitting President would touch off a legal battle of gigantic proportions." *N.Y. Times*, Mar. 12, 1974, at 24, col. 1. Although the issue was presented by the President's cross petition for certiorari in *United States v. Nixon*, 94 S. Ct. 3090, 3097 n.2 (1974), the Court found the resolution thereof unnecessary and hence dismissed the cross-petition as improvidently granted. *Id.*

333. Berger, *supra* note 277, at 1123

as ordinarily belongs to the offense.<sup>334</sup>

And there is little reason to concede such an immunity. The founders' fear of a despotic Executive is well known, and it militates directly against the granting of such executive immunity.<sup>335</sup> In early congressional debate regarding the limited immunity granted to congressmen,<sup>336</sup> Charles Pinckney commented: "No privilege of this kind was intended for your Executive . . . . The Convention . . . well knew that . . . no subject had been more abused than privilege. They therefore determined to set the example, in merely limiting privilege to what was necessary, and no more."<sup>337</sup> With a view to assuaging the same fear, Wilson assured the Pennsylvania Ratification Convention that "not a *single privilege* is annexed to [the President's] character."<sup>338</sup>

The courts have also concluded that no officer is immune from responsibility under the civil and criminal law, regardless of the repercussions of conviction and punishment. The Supreme Court in *United States v. Lee*,<sup>339</sup> a civil suit against appointed military officers acting under a presidential directive, stated:

[N]o officer of the law may set that law at defiance with impunity.

All the officers of government, from the highest to the lowest . . . are bound to obey it.

It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe

334. 1 J. STORY §§ 782-83, at 571-72.

335. George Mason, in speaking to the need to broaden the impeachment provision beyond treason and bribery, noted that "attempts to subvert the Constitution may not be [treasonous]." 2 RECORDS 550. Madison advocated that "some provision should be made for defending the community [against] the incapacity, negligence or perfidy of the Chief Magistrate. The limitation of the period of his service . . . was not a sufficient security. . . . He might pervert his administration into a scheme of peculation or oppression." *Id.* at 65-66.

336. "The Senators and Representatives . . . shall in all Cases, except Treason, Felony or Breach of the Peace, be privileged from arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same. . . ." U.S. CONST. art. I, § 6, cl. 1.

337. 10 ANNALS OF CONG. 74 (1800) [1799-1801].

338. 2 J. ELLIOTT 480.

339. 106 U.S. 196 (1882). The Court has recently affirmed that position in dicta in *O'Shea v. Littleton*, 414 U.S. 488 (1974), a civil suit against a federal judge. The case, dismissed for failure to demonstrate a case and controversy, contained elements of alleged civil and criminal misconduct:

We have never held that the performance of the duties of judicial, legislative, or executive officers, requires or contemplates the immunization of otherwise criminal deprivations of constitutional rights. . . . On the contrary, the judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct proscribed by an Act of Congress. *Id.* at 503 (citations omitted).

the limitations which it imposes upon the exercise of the authority which it gives.<sup>340</sup>

Likewise, in *Gravel v. United States*,<sup>341</sup> a Senator asserted a constitutional privilege to disregard a subpoena requiring him to appear as a witness before a federal grand jury. The Court stated: "[T]he constitutional freedom from arrest does not exempt Members of Congress from the operation of the ordinary criminal laws, even though imprisonment may prevent or interfere with the performance of their duties as Members."<sup>342</sup> Thus, elected and appointed officers alike are not above the law, even where conviction and imprisonment may interfere with the execution of the duties of their office.

It also appears well settled that a conviction in the law courts is not synonymous with impeachment and removal from office. Precedent exists where elected officials and civil officers have been prosecuted without being either impeached or expelled, thereby suggesting at least the possibility that presidential impeachment and removal need not precede indictment. In *Burton v. United States*,<sup>343</sup> a United States Senator appealed a conviction for bribery, arguing that conviction would necessarily lead to his expulsion from the Senate whereas the Constitution granted the Senate the sole power of expulsion. The Court, quoting *United States v. Lee* with approval, rejected his contention and found no violation of separation of powers.<sup>344</sup> Similarly, there have been several cases where federal judges have been indicted, and in some instances convicted, yet never impeached.<sup>345</sup> Most recently, the question of the criminal indictability of an incumbent federal judge was raised in *United States v. Isaacs*.<sup>346</sup> Co-defendant Kerner, a federal district judge and a former Governor of Illinois, argued that because conviction on criminal charges is "tantamount to removal from office, federal courts are without jurisdiction over the person."<sup>347</sup> The court, however, again rejected the defendant's claim of immunity:

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340. 106 U.S. at 220.

341. 408 U.S. 606 (1972).

342. *Id.* at 615.

343. 202 U.S. 344 (1906).

344. *Id.* at 368.

345. For instance, Manton of the Court of Appeals for the Second Circuit was criminally indicted but never impeached. See J. BORKIN, *THE CORRUPT JUDGES* 25 (Meridian ed. 1966). Other examples are Davis of the Court of Appeals for the Third Circuit, who was indicted as an incumbent but never convicted or impeached, *id.* at 97, and Johnson of the Eastern District of Pennsylvania, who was convicted without being impeached, *id.* at 141.

346. 493 F.2d 1124 (7th Cir. 1974).

347. *Id.* at 1140-41.

[T]hat an impeached judge is "subject to Indictment, Trial, Judgment and Punishment, according to Law" does not mean that a judge may not be indicted and tried without impeachment first. The purpose of the phrase may be to assure that after impeachment a trial on criminal charges is not foreclosed by the principle of double jeopardy, or it may be to differentiate the provisions of the Constitution from the English practice of impeachment.<sup>348</sup>

After considering the precedents, the court unequivocally approved pre-impeachment indictment of any civil officer:

[W]hatever immunities or privileges the Constitution confers for the purpose of assuring the independence of the co-equal branches of government they do not exempt the members of those branches "from the operation of the ordinary criminal laws." Criminal conduct is not part of the necessary functions performed by public officials. Punishment for that conduct will not interfere with the legitimate operation of a branch of government.<sup>349</sup>

Nevertheless, it has been argued that whereas lesser officers may be subject to indictment before impeachment, the President is not. This thesis has been presented most persuasively by Professor Bickel and is premised upon the theory that "[i]n the presidency is embodied the continuity and indestructibility of the state."<sup>350</sup> Reasoning therefrom, Bickel has argued that "the presidency cannot be conducted from jail, nor can it be effectively carried on while an incumbent is defending himself in a criminal trial."<sup>351</sup> Raoul Berger in reply argued: "While it is true that the presidency 'cannot be conducted from jail,' it is unrealistic to postulate that a convicted President could not be released on bail pending appeal . . . . If the President lacked the sensitivity to resign, an impeachment could speedily follow . . . ."<sup>352</sup>

Still, in reaching this conclusion, one need not ignore the fact that certain costs attach to a constitutional interpretation that the President is subject to criminal processes before or contemporaneous with impeachment proceedings. This interpretation may result in some incapacitation of the executive office, but to raise the spectre of total im-

348. *Id.* at 1142.

349. *Id.* at 1144.

350. Bickel, *The Constitutional Tangle*, THE NEW REPUBLIC, Oct. 6, 1973, at 14, 15.

351. *Id.* at 15.

352. Berger, *supra* note 277, at 1133.

It is we who have surrounded the President with a mystique that has contributed heavily to an "imperial presidency." When we forget that the President is "but a man . . . but a citizen" we are on the road that has unfailingly led to Caesarism. It was because the Founders had learned this lesson from history that presidential powers were enumerated and limited, and that immunity from arrest was altogether withheld. *Id.* at 1136 (citations omitted).

mobilization of executive action is to project the matter absurdly out of proportion. Moreover, the "continuity and indestructibility of the state" would seem to be linked indissolubly to the perceived legitimacy of a government whose officers are required to operate without immunity based upon special status. It is our adherence to constitutional institutions, not to the elevated personalities of our leaders, which provides an iron rod of support from a republican past to a republican future. Neither a natural reading of the Constitution and the "nevertheless" clause nor precedent nor public policy requires that impeachment and removal precede indictment, even—perhaps especially—when the accused is the President.

#### IX. RESIGNATION AND IMPEACHMENT

The resignation of President Nixon has precipitated debate about the effectiveness of the impeachment proceeding as a constitutional means of removing civil officers for official misconduct. The dialogue speaks to both the issues of whether the impeachment process may be continued after the accused has resigned and whether the impeachment process is too unwieldy to provide an efficient means of removing offending officers. It is suggested that the impeachment process may constitutionally be continued after an accused has resigned (1) although public policy considerations may require that the proceeding be discontinued nonetheless) and that, (2) although the impeachment procedures are cumbersome and deserve to be reviewed and amended, the overall effectiveness of the impeachment process as a means of removing civil officers from office for misconduct may be enhanced rather than diminished by a resignation in anticipation of inevitable conviction and removal. Resignation should not be viewed as being extraordinary, extra-legal,<sup>353</sup> alien to, or even apart from, the impeachment process. The Constitution provides for resignations precipitated directly by the impeachment process,<sup>354</sup> and they are much more frequent than convictions and removals. Under proper circumstances, resignation is a fitting and foreseeable conclusion to impeachment, a coherent part of the process.

In addition to President Nixon, many civil officers have resigned under the pressure of an impeachment proceeding against them, and the question of the continuation of post-resignation impeachment pro-

353. Cf. Kurland, *supra* note 4, at 578. Kurland has stated that where "resignation is not a voluntary act but is in effect forced upon them by extra-legal pressures, the resignation is an extra-constitutional means of removal." *Id.*

354. U.S. CONST. art. II, § 1, cl. 6.

ceedings has frequently been discussed. In the earliest impeachment, that of Senator Blount, whose removal was actually accomplished by Senate expulsion, the issue of continuing the impeachment process after resignation was vigorously debated. The argument that Congress has jurisdiction to continue the impeachment process after an accused has resigned was made by Congressman Bayard:

If the impeachment were regular and maintainable when preferred, I apprehend no subsequent event, grounded on the willful act, or caused by the delinquency of the party, can vitiate or obstruct the proceeding. Otherwise, the party, by resignation or the commission of some offense which merited and occasioned his expulsion, might secure his impunity. This is against one of the sagest maxims of the law, which does not allow a man to derive a benefit from his own wrong.<sup>355</sup>

This point was effectively conceded by both parties, while counsel for the respondent argued that Blount could not both be expelled from the Senate under its own rules<sup>356</sup> and then later disqualified from holding office by an impeachment conviction.<sup>357</sup> Blount was ultimately acquitted on the basis that a Senator was not a civil officer under the impeachment clause.

In the Belknap trial, the question arose in the context of whether a private citizen who had "formerly held an office may be impeached for acts done as an incumbent of that office."<sup>358</sup> It was argued, citing Story, that such an exercise of the impeachment power should not be possible:

All the reasons upon which the proceeding was supposed to be necessary were applicable only to a man who wielded at the moment the power of the Government, when only it was necessary to put in motion the great power of the people, as organized in the House of Representatives, to bring him to justice. It is a shocking abuse of power to direct so overwhelming a force against a private man.<sup>359</sup>

In rebuttal, however, the House managers contended that the impeachment power does not depend upon the condition or the status of the

355. 3 HINDS' § 2317, at 678.

356. At the time of the Senate trial, Blount was no longer a Senator, having been expelled from the Senate under its own rules. *Id.*

357. Counsel for the respondent, Mr. Dallas, protested: "I certainly shall never contend that an officer may first commit an offense and afterwards avoid punishment by resigning his office; but the defendant has been expelled. Can he be removed at one trial and disqualified at another for the same offense?" *Id.*

358. *Id.* § 2007.

359. *Id.* at 313. It was further argued that "the only purpose of impeachment is to remove a man from office, when the man is out of office the object of impeachment ceases, and the proceeding must abate. There would be no further object to attain by the proceeding." *Id.* at 318.

culprit at the time of trial in the Senate, so long as jurisdiction had been properly obtained over the respondent by the House:

[T]he power of the Senate of the United States over all grades of public official national wrongdoers, a power conferred for the highest reasons of state and on fullest deliberation, to interpose by its judgment a perpetual barrier against the return to power of great political offenders, does not depend upon the consent of the culprit, does not depend upon the accidental circumstance that the evidence of the crime is not discovered until after the official term has expired or toward the close of that term, but is a perpetual power, hanging over the guilty officer during his whole subsequent life, restricted in its exercise only by the discretion of the Senate itself and the necessity of the concurrence of both branches, the requirement of a two-thirds' vote for conviction, and the constitutional limitation of the punishment.<sup>360</sup>

[W]e claim that the House of Representatives having obtained jurisdiction of the subject-matter by instituting these proceedings against the defendant, he could no more defeat them by resigning midway than he could defeat the Constitution itself.<sup>361</sup>

After consideration, the Senate concluded that Belknap was subject to the impeachment process notwithstanding his prior resignation.<sup>362</sup>

Consistent with this conclusion, when impeachment investigations have been discontinued after the accused has resigned,<sup>363</sup> the Congress has reserved its discretionary authority to continue the impeachment proceeding despite the resignation. In the English impeachment, for example, although the Senate voted after his resignation to discontinue the proceeding, the managers expressed the opinion that "the resignation of Judge English in no way affects the right of the Senate, sitting as a court of impeachment, to hear and determine said impeachment charges."<sup>364</sup> Thus, the Congress has been adamant in retaining impeachment jurisdiction over an accused despite his resignation from office.

Three arguments can be advanced in support of the claim that post-resignation impeachment is not an idle or vindictive gesture. First, as has been argued in previous impeachment cases, the impeachment judgment may extend to both removal from office and disqual-

360. *Id.* at 315-16.

361. *Id.* at 317.

362. *Id.* at 321.

363. See, e.g., 6 CANNON'S § 526 (Hanford); *id.* § 547 (English); *id.* § 550 (Winslow); 3 HINDS' § 2489 (Stephens), *id.* § 2500 (Irwin), *id.* § 2512 (Busteed); *id.* § 2509 (Durell).

364. 6 CANNON'S § 547.

ification from holding any further office. Resignation accomplishes only the first objective. Second, the accused may stand to receive emoluments and benefits upon resignation which would not otherwise be available should he be removed by conviction. Thus, in the impeachment proceeding of Judge Hanford in 1912, the Judiciary Committee recommended discontinuance of the impeachment proceedings after the Judge had resigned upon the express reason that he was not entitled to receive any retirement benefits: "[H]is resignation brings him no emolument or reward and involves no expenditure of public money."<sup>365</sup> But in the case of a presidential resignation incident to an impeachment proceeding, the presence of emoluments and benefits, which are available notwithstanding the fact that the resignation is not in reality voluntary, may demand a contrary result, and continuing the impeachment process could terminate the expenditure of public money to a President whose official misconduct resulted in resignation. Third, looking at the subject jurisprudentially, impeachment in England and America was developed to enforce affirmatively the constitutional bounds of legitimate official action. Accordingly, impeachment as a political tool serves to maintain government under law; its purpose extends beyond the scope of any particular case to its effect on the constitutional structure of the state. Taking the impeachment process to conviction may have the effect of setting powerful precedential limitations on presidential conduct; Senate conviction after resignation represents the most awesome judgment that certain behavior is beyond the pale.

Although the impeachment process may constitutionally be continued after the accused has resigned, several arguments can be made against such conduct under certain circumstances. First, when the offense charged constitutes an indictable crime, after resignation it may be most practicable to allow the judicial process to be utilized to conclude the matter on conventional criminal grounds. The framers clearly intended the judicial process to supplement the impeachment process, even—perhaps especially—against the acts of the highest officials. Moreover, a judicial conviction may provide an alternative mode for creating precedent which would restrain future conduct of the office. Second, Congress has alternative means to limit, at least prospectively, the retirement benefits for civil officers who have resigned under threat of impeachment. Third, when the offense charged may be nonindictable, such as abuse of powers or failure to comply with congressional subpoenas in an impeachment proceeding, Congress

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365. *Id.* § 526.

could pass a precedential resolution indicating the impeachable nature of such acts; it could then censure the accused officer after his resignation rather than prolonging the impeachment trial itself.<sup>366</sup> The availability of these law-making alternatives may support an argument against continuing the impeachment process when the accused has resigned, but only to the extent that these alternatives are actually utilized are the purposes of the impeachment process thereby fulfilled.

No myth of martyrdom should be allowed to surround one not worthy of such a fate. The absence of factual ambiguity must be achieved either by confession connected with resignation or by the processes discussed previously, or by some combination thereof. Otherwise, the discontinuation of the impeachment process upon the resignation of the accused, if followed by a failure of the courts, the President, the Justice Department, and the Congress to further effectuate alternatives to impeachment, together would demonstrate the inadequacy of the system properly to enforce the rule of law as the cohesive element of the state.

Aside from the critical and complex issue as to how the law-making, precedential purposes of impeachment can best be accomplished, an analysis of resignation incident to impeachment demonstrates that the limited and more simple purpose of impeachment to remove high officials from office in order to end a particular abuse of office is not frustrated by resignation. Joseph Borkin has noted that "[o]f the fifty-five judges [subject to a congressional inquiry] . . . seventeen . . . resigned at one stage or another on the conduct of the investigation . . . . Added to this are the undetermined number of judges who resigned upon mere threat of inquiry; for them there are no adequate records."<sup>367</sup> A simple listing of the resignations which

366. The House of Representatives acted in this manner, though with overcaution and consequently with much less normative impact, by ordering the printing of the final report of the House Committee on the Judiciary as a House document rather than following the usual procedure of printing it as a document of the Judiciary Committee. This reflects to some ambiguous degree House ratification of the Committee's fact-finding conclusions and impeachment recommendation. The Committee report presents an overwhelming factual case establishing the commission of impeachable offenses, but the report falls far short of a vote of impeachment after resignation. Where offenses, both criminally indictable and nonindictable, are as serious as those established, a vote of censure after resignation, rather than a continuation of impeachment proceedings, is precedentially harmful to the rule of law. In such a situation, censure is so mild when compared with the seriousness of the offenses as to be institutionally harmful, arguably indicating congressional timidity toward the concept of equality before the law when high political figures are involved. See H.R. REP. NO. 1305, 93d Cong., 2d Sess. (1974).

367. J. BORKIN, *supra* note 345, at 204.

have followed impeachment investigations suggests that the impeachment power of Congress has been successfully employed as a powerful constitutional means of removing civil officers from office where misconduct is apparent. Among the judges who have resigned directly as a result of an impeachment inquiry are Judges Stephens, Irwin, Bustud, Durell, Hanford, Wright, English, and Winslow.<sup>368</sup> Secretary of War Belknap resigned incident to an impeachment investigation,<sup>369</sup> as did a collector of customs.<sup>370</sup> Finally, and most significantly, President Nixon resigned after repeated statements that he had no intention of so doing, once it appeared that impeachment in the House and conviction in the Senate were inevitable. Although the Judiciary Committees in these cases either have found it unnecessary to report to the House or have reported with a recommendation of discontinuance after resignation, the possibility of including findings or resolutions in such reports often provides an effective alternative to continuing the impeachment process.<sup>371</sup>

Resignation need not represent the defeat of the impeachment process but instead may be just one aspect of its successful operation. Although the resignation of a corrupt officer, taken alone, does not fulfill all the purposes of impeachment, resignation does accomplish several important functions of impeachment without precluding the use of other available means to fulfill its further ends.

#### X. PARDON AND IMPEACHMENT

The pardon extended Mr. Nixon by President Ford raises further questions concerning both the effectiveness of the impeachment process as a means of constraining executive power and the validity of the democratic premise that law does in truth apply equally to all men. The questions are precipitated, in part, by confusion concerning the scope of the presidential pardon power, with regard to which the following points may be made in respect to impeachments: (1) a pardon is an act of grace primarily intended to be used in cases where strict ap-

368. Judges Stephens in 1818, 3 HINDS' § 2489, Irwin in 1859, *id.* § 2500, Busteed in 1873, *id.* § 2512, Durell in 1875, *id.* § 2509, Hanford in 1912, 6 CANNON'S § 526, Wright in 1914, *id.* § 528, English in 1926, *id.* § 547, and Winslow in 1929, *id.* § 550, all resigned as a result of the initiation of impeachment proceedings.

369. 3 HINDS' § 2445.

370. 6 CANNON'S § 539 (Chase).

371. In the case of Circuit Court Judge Hanford, who resigned in 1912, the House Judiciary Committee, in recommending the discontinuation of the proceeding, "declared him to be disqualified for his position, thereby presenting an official pronouncement as to the Judge's responsibility for misconduct in office." *Id.* § 526, at 745.

plication of the criminal code would not serve justice; (2) the founding fathers intended to except from the presidential pardon power those cases involving public misconduct rising to the level of impeachable offenses and no reason is evident to depart from such a policy; (3) the scope of the pardon power is limited to remitting criminal punishment but does not blot out the offender's guilt; and (4) the pardon power ought not to be exercised to circumvent a full investigation into the misconduct of public officials, but should only be invoked either after conviction to remit punishment or before trial to secure the testimony of a co-conspirator in the extraordinary situation in which justice is better served by so doing.

#### A. *Historical Analysis of Pardon*

The earliest statement of the English law of impeachment was made in the thirteenth century by Bracton who stated with respect to the effect of a pardon:

[A] person is not restored except to the king's peace alone . . . . For the king cannot grant a pardon with injury or damage to others. He may give what is his own, that is his protection, . . . but that which is another's he cannot give by his own grace. Likewise a person justly and duly outlawed is not restored to anything except to the king's peace . . . .<sup>372</sup>

In the case of impeachment, where the offense was deemed to be against the public rather than the crown, the king's prerogative of pardoning was substantially limited. Story, in his *Commentaries on the Constitution*, summarized the English law of pardon incident to impeachment: "In England . . . no pardon can be pleaded in bar of an impeachment. But the king may, after conviction upon an impeachment, pardon the offender. His prerogative, therefore, cannot prevent the disgrace of conviction; but it may avert its effects, and restore the offender to his credit."<sup>373</sup>

The effect of a pardon, therefore, did not blot out, much less prevent, the establishment of the felon's guilt by trial and conviction, but merely reestablished his legal capacity as that of an innocent man, an important matter under English law since conviction destroyed many of the civil rights of the offender.<sup>374</sup> In the case of a public servant whose offense was against the public he purportedly served, the king's pardon could not obviate the disgrace of conviction after impeachment,

372. Williston, *Does a Pardon Blot Out Guilt?*, 28 HARV. L. REV. 647, 649 (1915).

373. 2 J. STORY § 1502, at 336.

374. Williston, *supra* note 372, at 650.

which served a prophylactic function in the effort to achieve "ministerial responsibility and primacy over the king . . ."<sup>375</sup> The preventive functions of the impeachment process demanded the proper timing of a grant of pardon which did not obstruct full disclosure of wrongdoing.

Contrary to the English experience, Americans adopted the view that sovereignty with all its perquisites, including the power to remit punishment, rested finally with the people. Morris, in the Constitutional Convention, noted that "this Magistrate [the President] is not the King but the prime Minister. The people are the King."<sup>376</sup> As a result, the theoretical foundation of the English law of pardon, that the king's peace was the king's to enforce, or its violation to forgive, became inapplicable in the American situation. Nevertheless, pardon power was discussed in the constitutional debate as an essential element of democratic government. It was argued by James Iredell in the North Carolina ratifying convention that the proper exercise of the pardon power in a republican form of government was not to protect felons with powerful friends, but to protect the body politic from possible injustices that may result from inflexible application of the laws.<sup>377</sup>

In the case of a public servant who had committed "high Crimes and Misdemeanors," Iredell, who later served on the Supreme Court, argued that a pardon would be inappropriate in that it would not serve justice:

After [an impeachment] trial thus solemnly conducted, it is not probable that it would happen once in a thousand times that a man actually convicted would be entitled to mercy; and if the President had the power of pardoning in such a case, this great check upon high officers of state would lose much of its influence. It seems, therefore, proper that the general power of pardoning should be abridged in this particular instance.<sup>378</sup>

Accordingly, the presidential pardon power that was incorporated into the Constitution excepted cases of impeachment: "The President . . . shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment."<sup>379</sup>

Justice Story, in analyzing the historical creation of the pardon power, stated that the framers intended by the exception to take "from the President every temptation to abuse it in cases of political and

375. Firmage, *supra* note 14, at 686.

376. 2 RECORDS 69.

377. 4 J. ELLIOTT 110-12.

378. *Id.* at 113-14.

379. U.S. CONST. art. II, § 2, cl. 1.

official offences by persons in the public service."<sup>380</sup> Story concluded that

[i]t is of great consequence, that the President should not have the power of preventing a thorough investigation of their conduct, or of securing them against the disgrace of a public conviction by impeachment if they should deserve it. The Constitution has, therefore, wisely interposed this check upon his power, so that he cannot, by any corrupt coalition with favorites, or dependents in high offices, screen them from punishment.<sup>381</sup>

#### B. Elements of Pardon

A pardon has been defined as "the private, though official act" of forgiveness "by the executive magistrate . . . [which] exempts the individual" who accepts the proffer from the legal punishment normally attached to the offense.<sup>382</sup> Much of the debate concerning the presidential pardon power involves questions concerning the scope of the power and the appropriate timing of a grant of pardon. The Supreme Court's imprecise treatment of these issues is in part responsible for the confusion over the presidential pardon power.

Support for the view that a pardon blots out guilt as well as remits punishment has been thought to exist in the Supreme Court's opinion in *Ex parte Garland*.<sup>383</sup> In that case, the petitioner argued that the effect of a pardon "is to obliterate the past, to leave no trace of the offense, and to place the offender exactly in the position which he occupied before the offense was committed, or in which he would have been if he had not committed the offense."<sup>384</sup> Seemingly adopting the petitioner's reasoning, the Court stated in dicta that "a pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out the existence of guilt, so that in the eye of the law the offender is innocent as if had never committed the offense."<sup>385</sup> The presidential "pardoning" proclamation in that case, however, was "under the amnesty power delegated by Congress in 1862 as well as under this pardoning power."<sup>386</sup> The precedential value of *Garland* in a simple pardon is therefore slight.

380. 2 J. STORY § 1501.

381. *Id.*

382. *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160 (1833).

383. *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867).

384. *Id.* at 351.

385. *Id.* at 380.

386. Freeman, *An Historical Justification and Legal Basis for Amnesty Today*, 1971 LAW AND THE SOCIAL ORDER 515, 522.

Courts, in distinguishing between amnesty and pardon, have stated that whereas amnesty may blot out guilt by removing the offense, a pardon merely remits punishment. In *United States v. Basset*,<sup>387</sup> amnesty and pardon were distinguished on the ground that a pardon does not extinguish guilt:

The word "amnesty" is defined thus: "An act of oblivion of past offenses, granted by the government to those who have been guilty of any neglect or crime, usually upon condition that they return to their duty within a certain period."

A pardon relieves an offender from the consequences of an offense of which he has been convicted, while amnesty obliterates an offense before conviction; and in such case, he stands before the law precisely as though he had committed no offense.<sup>388</sup>

The Supreme Court in *Burdick v. United States*<sup>389</sup> apparently adopted the same view that a pardon does not extinguish guilt notwithstanding the dicta in *Garland*:

The one [amnesty] overlooks offense; the other [pardon] remits punishment. The first is usually addressed to crimes against the sovereignty of the State, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the State.<sup>390</sup>

In *Burdick*, the Court rejected the view expressed earlier by Justice Field that the distinction between amnesty and pardon is "one rather of philological interest than of legal importance."<sup>391</sup> In response to Field's opinion that amnesty and pardon are indistinguishable and that both extinguish guilt, the Court stated: "This is so as to their ultimate effect, but there are incidental differences of importance. They are of different character and have different purposes."<sup>392</sup> Furthermore, a proper reading of *Garland* demonstrates the Court's recognition of guilt attached to a pardoned crime: "Literally, of course, an executive pardon cannot 'blot out of existence guilt' of one who committed a crime. At most it can wipe out the legal consequences which flow from an adjudication of guilt."<sup>393</sup>

In support of this view, courts have generally held that the accept-

387. 5 Utah 131, 13 P. 237 (1887), *rev'd on other grounds*, 137 U.S. 496 (1890).

388. 5 Utah at 133, 13 P. at 239 (citation omitted).

389. 236 U.S. 79 (1915).

390. *Id.* at 95.

391. *Knote v. United States*, 95 U.S. 149, 153 (1877).

392. 236 U.S. at 94-95.

393. *People ex rel. Prisament v. Brophy*, 287 N.Y. 132, 136, 38 N.E.2d 468, 470 (1964) (applying *Garland*).

ance of a pardon implies an admission of guilt, in exchange for the remission of penalties.<sup>394</sup>

Far from wiping out guilt, the acceptance of an executive pardon may imply a confession of guilt. Escape by confession of guilt implied in the acceptance of a pardon may be rejected—preferring to be the victim of the law rather than its acknowledged transgressor—preferring death even to such certain infamy.<sup>395</sup>

Since an acceptance of a grant of pardon implies a confession of guilt, which cannot be blotted out of existence by executive whim,<sup>396</sup> the pardon should logically follow, not precede, formal adjudication of the offenses. Luther Martin offered a motion in the Constitutional Convention to accomplish this result by making conviction a prerequisite to the reception of a pardon. Madison recorded that Martin moved to "insert the words, 'after conviction,' after the words 'reprieves and pardons.'" However, Martin withdrew the motion when James Wilson noted that "pardon before conviction might be necessary, in order to obtain the testimony of accomplices."<sup>397</sup> The framers, therefore, while not expressly requiring that conviction precede pardon, had a narrow view as to those cases in which a pardon could legitimately be invoked prior to conviction. That narrow view clearly did not extend to the case where the pardon power is used to prevent a thorough investigation and a final determination of the guilt or innocence of public officials charged with illegal misconduct in office. Rather, the impeachment exception to the presidential pardon power was added as a circumscription to that power in order to avoid that very possibility.<sup>398</sup>

### C. *The Nixon Pardon and Beyond*

President Ford's grant of pardon to former President Nixon may be criticized on several grounds. First, his exercise of the pardon power was inconsistent with its underlying purpose, that of serving justice. President Ford, in a news conference following the grant of pardon, admitted that the thirty-eight member House Judiciary Committee's final unanimous report in favor of impeachment and Nixon's

394. See, e.g., *State v. Jacobsen*, 348 Mo. 258, 260-61, 152 S.W.2d 1061, 1063 (1941); *Jones v. State*, 141 Tex. Crim. 70, 73-74, 147 S.W.2d 508, 510 (Crim. App. 1941); *State v. Cullen*, 14 Wash. 2d 105, 109, 127 P.2d 257, 259 (1942).

395. *Burdick v. United States*, 236 U.S. 76, 90-91 (1915).

396. See *People ex rel. Prissament v. Brophy*, 287 N.Y. 132, 137-38, 38 N.E.2d 468, 471 (1941), where the court stated that "[t]he Constitution, which confers upon the President the power to pardon, does not confer upon him power to wipe out guilt."

397. 5 J. ELLIOTT 480.

398. See text accompanying note 378 *supra*.

acceptance of the pardon constitute persuasive evidence of the former President's guilt.<sup>399</sup> The pardon, following the discontinuation of the impeachment proceedings upon Nixon's resignation, implies that the President's conduct will not be measured by the same standard of justice that applies to all other persons. Confidence in our democratic system of justice demands that the law be applied to all persons equally and that public officials not be permitted to violate the laws with impunity.

Second, the framers intended, by including the impeachment exception to presidential pardoning power, to avoid having the pardon used to obstruct a thorough investigation and ultimate congressional resolution of charges of official misconduct. A pardon granted prior to any final determination of the extent of presidential misdeeds in this case goes even further than would be permitted in English law where the king could not invoke his pardon in the case of impeachment, both in a criminal as well as a political proceeding, until after conviction and disgrace. The constitutional framers consciously separated the impeachment and the criminal processes in recognition of the facts that the two served different purposes and that removal from office alone was not an adequate sanction for public wrongdoing. Since Nixon was not impeached or convicted (though both appeared inevitable in the absence of resignation), Ford's pardon suggests that future Presidents subjected to the impeachment process will escape criminal prosecution on the ground that their removal from office has been punishment enough. This conception of punishment would seem to assume a property interest in political office, a notion hardly consistent with democratic government. To this extent, Nixon's pardon as precedent may effectively nullify the clause in the Constitution that an impeached official "shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."<sup>400</sup>

In response to President Ford's questionable grant of pardon in this case, several steps could be taken. First, the constitutional validity of a pardon, incident to presidential misconduct which would have resulted in impeachment and conviction had not the accused resigned, could be challenged in the courts. Such an exercise of the pardon power is fundamentally inconsistent with the impeachment exception to that power. If Mr. Nixon were indicted, he would be compelled to raise the issue of the validity of the pardon as an affirmative defense to prosecution.

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399. N.Y. Times, Sept. 17, 1974, at 22C, col. 1.

400. U.S. CONST. art. I, § 3, cl. 7.

Second, Congress could resume impeachment proceedings against Mr. Nixon for the purpose of a final determination of the extent of presidential wrongdoing. It is recognized, however, that whatever the theoretical correctness of such a procedure,<sup>401</sup> Congress, for its own reasons, will not follow this course. In the alternative, Congress could provide the Special Prosecutor with a broadened mandate to include within his final report to Congress all findings on the Watergate scandals, including the involvement of Richard Nixon.

Third, the grant of pardon was accompanied by an agreement with Mr. Nixon concerning the handling of the papers and tapes accumulated while he was in the White House. These records are of critical importance with respect to pending criminal cases and a final determination of the facts of executive misconduct. Although the agreement included a provision whereby Nixon would voluntarily produce items in response to court subpoenas, the documents remain subject to any claims of privilege he may assert, and what is not made clear in the agreement is whether these documents, which were previously categorized as public and therefore not subject to the privilege against self-incrimination asserted by the custodian of the materials, are now to be considered personal and therefore subject to Mr. Nixon's privilege against self-incrimination. The pardon does not moot this issue. Although a federal pardon precludes the use of the privilege against self-incrimination for federal crimes, the privilege nevertheless can be invoked where state charges may be possible.<sup>402</sup> Therefore, it would appear that Mr. Nixon may be compelled to testify and to produce White House papers and tapes only if he is granted witness immunity under his own anticrime statute of 1970.<sup>403</sup> Although the agreement concerning the tapes and papers grants custody of the White House documents to Mr. Nixon, the public nature of the materials and the express provisions that they be made available for criminal proceedings may be sufficient to overrule any claim of privilege later asserted by Mr. Nixon.<sup>404</sup> Congress could and should avoid the issue, however, by requiring that ownership of all presidential papers be retained by the government for purposes of preservation and inspection.

401. See notes 360-65 *supra* and accompanying text.

402. See *Murphy v. Waterfront Comm'n*, 378 U.S. 52 (1964) (holding that one jurisdiction may not, absent an immunity provision, compel a witness to give testimony which might incriminate him under the laws of another jurisdiction).

403. See Omnibus Criminal Control Act, 18 U.S.C. § 6002 (1970).

404. A public official's privilege against self-incrimination does not extend to public documents or papers in the official's possession since it would be an intolerable burden for the government to be unable to discover what its own doings are. See 7 J. WILMORE, *supra* note 309, § 2259(c)(1).

The particular interworkings of the impeachment process, presidential resignation, the twenty-fifth amendment, and the pardon power demonstrate once again the limits of institutional constraints upon human discretion. Our government is, always has been, and will continue to be conducted by both laws and men. The ambiguities of the presidential pardon power, together with the twenty-fifth amendment, have permitted a President appointed by his predecessor to the Vice-Presidency to pardon his benefactor when the latter faced possible criminal prosecution for the offenses which drove him from office. The result has been to undermine the concept of equal justice under law, to delay, if not foreclose, a final determination of Mr. Nixon's role in the Watergate scandals, and to erode the confidence of the electorate in the Ford administration.

And yet proposed institutional reforms to prohibit such a confluence of factors in the future are also flawed. Repeal of the twenty-fifth amendment could return us to a line of succession to the presidency which has already proved itself to be unattractive. Banning presidential pardons in every case until conviction and sentencing, as originally proposed by Luther Martin and now suggested by Congressman John Dent,<sup>405</sup> would not only prevent the abuse of discretion present in the Nixon pardon but also would make impossible the compassionate use of such power when the health of the recipient, or the administration of justice, might mandate such action. It is suggested that in this instance, the American penchant for an institutional response to every perceived human failing be restrained for the present. Let the decision to pardon the former President be weighed by the electorate, after passage of time has improved our perspective as to its merit, as we would do with any other political judgment of substantial magnitude.

#### XI. CONCLUSION

Any government is free to the people under it (whatever be the frame) when the laws rule, and the people are a party to these laws, and more than this is tyranny, oligarchy, or confusion. But, lastly, when all is said, there is hardly one frame of government in the world so ill designed by its first founders, that, in good hands, would not do well enough . . . Governments, like clocks, go from the motion men give them; and as governments are made and moved by men, so by them are they ruined too. Wherefore governments rather depend upon men,

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405. H.R.J. Res. 1125, 93d Cong., 2d Sess. (1974); cf. *ABA Report on Pardons*, 43 U.S.L.W. 2143 (Oct. 18, 1974).

than men upon governments. Let men be good, and the government cannot be bad; if it be ill, they will cure it. But if men be bad, let the government be never so good. They will endeavor to warp and spoil it to their turn.

William Penn<sup>406</sup>

The impeachment process cannot properly be evaluated apart from its constitutional matrix. Of course, executive wrongdoing could be remedied more simply by legislative action within a system in which the legislative branch is supreme.<sup>407</sup> This recognition, however, is little more than tautology. In a government in which the executive is a subordinate part of and is responsible to the legislature, executive maladministration is the direct responsibility of a legislative institution

406. *Preface to W. PENN. FRAME OF GOVERNMENT FOR PENNSYLVANIA (1682)*.

407. Members of the Constitutional Convention considered and rejected the notion of executive tenure at the pleasure of the legislature. Madison, in objecting to "maladministration" as a term to be joined with treason and bribery as constituting grounds for impeachment, noted that "so vague a term will be equivalent to a tenure during pleasure of the Senate." "High Crimes and Misdemeanors" was then selected from English law presumably because it possessed a sufficiently definable content from English usage to avoid the spectre of executive tenure at the sufferance of Congress. 2 RECORDS 350. The system which they chose called for an executive electoral mandate independent of Congress and for a set term of years, to be terminated earlier only upon death, resignation, or inability to discharge the duties of the office. U.S. CONST. art. II, § 1, or upon conviction for the commission of treason, bribery, or other high crimes and misdemeanors, *id.* art. II, § 4.

Rejection of the parliamentary model in no way reflects a qualitative judgment between the two systems; rather, it is a simple acknowledgement that the substitution of a "foreign tradition for an indigenous one" will likely not take root. Merryman in his description of the works of Beccaria and other reformers of criminal procedure in eighteenth century France, noted the attempts to transplant English criminal procedure (the jury, oral public procedure in place of secret written procedure, right of counsel for the accused, restriction of the judge's inquisitorial powers) into the French civil law tradition:

In the fervor of the French Revolution an attempt was made to abolish the criminal procedure of the old regime and substitute an entirely new one based on the English model. The failure of the effort to substitute a foreign tradition for an indigenous one soon became apparent, and a counterrevolution in criminal procedure took place in France. The result is a mixed system, composed in part of elements from prerevolutionary times and in part of reforms imposed after the Revolution. J. MERRYMAN, *THE CIVIL LAW TRADITION* 137 (1969).

The failure of a transplanted system seems especially likely when it is designed to replace the very essence of the infrastructure of the American state, namely, the concept of the separation of powers. While our conclusion does not constitute any criticism of the parliamentary concept, it should be noted that the performance of our own Congress gives little reason to be any more sanguine about the prospects for honest and efficient government under legislative direction than under the present mix. However, in view of the historical precedents, it would seem unwise for Congress to adopt any of the current Watergate-inspired proposals to change our governmental structure in favor of a parliamentary mode. See note 2 *supra* and accompanying text.

presumably equipped to accept such a duty. The American system, however, has been built upon the concept of separate, coordinate branches of government with the political branches each having independent and direct electoral bases. Impeachment must ultimately be judged within this context.

We, therefore, should seek to analyze, reform, and utilize the impeachment tool within the bounds set by the basic structure of our system. Circumscribed within that environment, several observations and recommendations are offered in conclusion. First, impeachment must be seen as only one of several weapons in our system to combat ministerial abuse. Impeachment cannot be judged as if it alone must be able to deter executive abuse and then, if found wanting, discarded. For dealing with most problems, there are other effective political and social mechanisms, which include, to name the more obvious: the electoral judgment, judicial review of executive administrative decisions, congressional control over legislation and the purse, a free press ideally in constant tension with the objects of its reporting, a party structure sufficiently strong to act as a constraint upon arbitrary presidential action, a White House staff with "seniors committed to republican government and the rule of law and juniors sufficiently beyond identity crises to avoid seduction,"<sup>408</sup> a Cabinet with at least some members possessing a political, bureaucratic, or professional base independent of their connection to the President, and a professional bureaucracy with a tradition of adherence to the law strong enough to withstand subversion.

Second, the process of impeachment must be viewed in its entirety, encompassing not only its constitutional, textual content but also the other actions that customarily accompany it. Resignation has become the usual means of removal following the initiation of impeachment proceedings; it is more often accomplished than conviction and cannot be considered as extra-legal or as evidence of the failure of the impeachment system. Nor are criminal prosecutions subsequent to an impeachment to be viewed as an unrelated or precluded portion of the impeachment process. As the criminal sanctions which could be applied under the English model were excluded from the process of American impeachment, the possibility of subsequent criminal prosecution and punishment was carefully excepted from the prohibitions against double jeopardy. Furthermore, censure, though used only once against a President,<sup>409</sup> has been employed often against judges

408. Firmage, *Law and the Indochina War: A Retrospective View*, *supra* note 3, at 20.

409. Censure has been invoked against a President, Andrew Jackson, by the Senate

and members of Congress,<sup>410</sup> and could well play an important role in restricting presidential conduct.<sup>411</sup> Refusal to use these mechanisms, available along with or as part of the impeachment process, when justice would warrant their use, represents not a weakness of constitutional structure but rather a failure of political will.

When impeachment is evaluated as only one of many institutions of constraint upon ministerial abuse and when it is seen in its larger context to include not only its textual definition of the offense, trial, conviction, and removal but also other integrally related textual matters such as resignation<sup>412</sup> and further criminal prosecution and punishment,<sup>413</sup> together with censure as an alternative or supplementary sanction, the entire process seems a worthy instrument of republican government. Its performance in the Nixon case has been no exception to this judgment. Even so, our experience with the impeachment process which led to the resignation of former-President Nixon has re-

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for his removal of governmental deposits from the Bank of the United States in an effort to cause its failure. Jackson, who had the support of the House, challenged the Senate's authority to censure: "If Congress really meant what the Senate said, . . . let the House impeach him and the Senate try him." A. SCHLESINGER, *THE IMPERIAL PRESIDENCY* 411-12 (1973).

410. "Fifteen House Members have been censured. . . . The Senate has resorted to censure on seven occasions." J. KIRBY, *CONGRESS AND THE PUBLIC TRUST* 210 (1970). In addition, "[o]f the fifty-five federal judges subjected to House Judiciary Committee scrutiny, eight were impeached of whom four were convicted, and eight were censured." BORKIN, *supra* note 345, at 204.

411. Arthur Schlesinger examined Jackson's response and concurred as a matter of constitutional principle:

Jackson was plainly right. If a President committed high crimes and misdemeanors, censure was not enough. The slap-on-the-wrist approach to presidential delinquency made little sense, constitutional or otherwise. . . . This did not mean, of course, that a fainthearted Congress might not censure a lawless President and pretend to have done its duty, but unless the terms of the resolution made it clear why the President was merely censurable and not impeachable, the action would be a cop-out and a betrayal of Congress' constitutional responsibility. A. SCHLESINGER, *supra* note 409, at 422.

It goes without saying that the Congress is well advised on any account to clearly delineate the grounds upon which its decision is made whenever a President is censured rather than impeached. This, however, in no way implies that the use of censure is itself an admission of congressional weakness or faintheartedness. If the resolution of censure is drafted articulately, it may function as a "trial balloon" and communicate important political sentiments to the President and the electorate alike, as well as serve significantly as a notice to the President that he is on a collision course with Congress. Even where a President is impeached, Congress could use a vote of censure to warn future Presidents what conduct it found objectionable, even if not conclusively impeachable, offenses. For example, the defeated article of impeachment covering Nixon's alleged tax irregularities may well have been converted into an effective vote of censure.

412 U.S. Const. art. 2, § 1, cl. 6

413 *Id.* art. 1, § 3, cl. 7

vealed some areas of needed reform. First, the fact-finding powers of Congress in an impeachment proceeding must be affirmed without ambiguity. The impeachment process is one of those rare instances in which the separation of powers is held in abeyance with one particular branch in the ascendancy for a time, in the words of Representative Boudinot, impeachment represents "an exception to [the] principle"<sup>414</sup> of separation of powers, with Congress possessed of the authority to acquire that information necessary and proper to accomplish its constitutionally mandated task. The single most important fact which retarded the impeachment investigation of President Nixon was his refusal to comply with congressional subpoenas on the basis of executive privilege.<sup>415</sup> It is suggested that the relative weight to be accorded a congressional demand for persons and papers in an impeachment proceeding investigating the alleged commission of high crimes and misdemeanors by the President, with its constitutional foundation, is incomparably greater than that which must now be accorded a prosecutor within the executive branch investigating the alleged commission of a conspiracy to obstruct justice. Congress by joint resolution should express its opinion that failure to comply with its subpoenas, duly authorized in an impeachment proceeding, would constitute the commission of an impeachable offense. Legitimation of an executive refusal to do so would effectively cripple the impeachment process. The law announced in the third article of impeachment, shorn of its particular factual accusations against President Nixon, should be ratified by Congress. Having asserted jurisdiction to issue subpoenas, Congress could justifiably rely on the assumption that the Supreme Court would refuse to review the exercise of that subpoena power whenever it is conducted pursuant to a proper assertion of the impeachment power. Consequently, Congress by its actions must firmly establish this precedent. Without adequate fact-finding powers incident to an impeachment proceeding, Congress, already weakened seriously as a coordinate balance to the awesome executive branch, would find the powerful if cumbersome weapon of impeachment effectively spiked. Ultimately, it can only be Congress, a coordinate political branch, which effectively checks and balances its political colleague and natural adversary.

Second, there is need to revise the procedural rules of impeachment at a time when no actual case is impending in Congress. Antiquated evidentiary rules, which do not reflect the political nature of

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414. 1 ANNALS OF CONG., *supra* note 9.

415. The Supreme Court's ruling in *United States v. Nixon*, 94 S. Ct. 3090 (1974), effectively destroyed the assertion of absolute executive privilege.

the impeachment trial and which are vestiges either of judicial rules relevant only to trial by jury or of English impeachments which carried criminal sanctions, should be reformulated.<sup>416</sup> Such reform should include, among other things, a provision stated in the form of a policy directing open hearings during all but the earliest stages of the impeachment of the high officials of the state, with a special provision made for coverage by the mass media, particularly television.<sup>417</sup> To fulfill its object of governmental protection, the impeachment process should be accomplished with popular ratification of its direction, progress, and conclusion. Neither impeachment and conviction nor exoneration can with good effect take place until an electoral mandate is either ended or reaffirmed. Perceived legitimacy<sup>418</sup> of the incumbent administration or its successor cannot exist without popular ratification of the result of the impeachment inquiry; that in turn can only be accomplished through the electronic media.

Third, the nature of the House and Senate votes on impeachment should be altered to allow a more accurate, less ambiguous means of common law development of the definition of an impeachable offense.<sup>419</sup> These votes should distinguish findings of fact and law. An impeachment vote should first clearly reflect whether the congressmen believed the respondent to be guilty of the offense charged and, second, whether its commission was considered to constitute impeachable conduct.

Beyond improving the impeachment process, modern Congresses should be more aware of the use of censure as a means, short of impeachment, of expressing their disapproval of presidential conduct. There is no reason why Congress may not in certain situations vote a resolution of censure against a President. The Congress historically has resorted to censure as a sanction more often than it has voted to impeach and convict: "Fifteen House Members have been censured . . . . The Senate has resorted to censure on seven occasions."<sup>420</sup> In addition, "[of] the fifty-five federal judges subjected to House Judiciary Committee scrutiny, eight were impeached of whom four were convicted, and eight were censured."<sup>421</sup>

Furthermore, where a President is impeached and his pattern of conduct, in addition to impeachable offenses, includes constitutionally

416. See section IV, E, accompanying notes 225-31 *supra*.

417. See section III, G, accompanying notes 101-03 *supra*.

418. See note 3 *supra*.

419. See notes 234-36 *supra* and accompanying text.

420. J. KIRBY, *supra* note 410.

421. BORRIN, *supra* note 343, at 204.

objectionable acts not necessarily rising to the level of impeachability, the Congress should vote censure for those acts as well as impeachment for the commission of high crimes and misdemeanors. In such a case, the sanction would be aimed not simply against the accused but prospectively in an effort to outline the parameters of what Congress considers constitutional conduct.

## XII. EPILOGUE

Oliver Goldsmith noted some time ago: "How small, of all that human hearts endure, that part which laws or kings can cause or cure."<sup>422</sup> However, recent events have demonstrated how disproportionate is the harm to the political fabric which a king (or President) can cause when compared to the ability of the law to contain such harm. Our legal institutions were able to contain this harm only with the best of luck. An unlikely concatenation of events—the inept burglary of the Democratic Party Headquarters, the lost notebook revealing White House involvement, the chance disclosure of the presidential tape recordings—saved our system this time. Institutions are at best frail defenses against the propensities of men. Ours worked better than most but must still be improved. The combination of good men and good laws together represent the ultimate safeguard for republican government.

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422. THE COMPLETE POETICAL WORKS OF OLIVER GOLDSMITH 19 (Oxford ed. 1911) ("The Traveler," *verse* 3).

## XIII. APPENDICES

## APPENDIX A

JUDICIARY COMMITTEE'S IMPEACHMENT INQUIRY PROCEDURES  
IN THE NIXON IMPEACHMENT

The House Judiciary Committee on May 2, 1974, adopted the following procedural rules for the Nixon inquiry:

A. The committee shall receive from committee counsel at a hearing an initial presentation consisting of (i) a written statement detailing, in paragraph form, information believed by the staff to be pertinent to the inquiry, (ii) a general description of the scope and manner of the presentation of evidence, and (iii) a detailed presentation of the evidentiary material, other than the testimony of witnesses.

1. Each member of the committee shall receive a copy of (i) the statement of information, (ii) the related documents and other evidentiary material, and (iii) an index of all testimony, papers, and things that have been obtained by the committee, whether or not relied upon in the statement of information.

2. Each paragraph of the statement of information shall be annotated to related evidentiary material (e.g., documents, recordings and transcripts thereof, transcripts of grand jury or congressional testimony, or affidavits). Where applicable, the annotations will identify witnesses believed by the staff to be sources of additional information important to the committee's understanding of the subject matter of the paragraph in question.

3. On the commencement of the presentation, each member of the committee and full committee staff, majority and minority, as designated by the chairman and the ranking minority member, shall be given access to and the opportunity to examine all testimony, papers and things that have been obtained by the inquiry staff, whether or not relied upon in the statement of information.

4. The President's counsel shall be furnished a copy of the statement of information and related documents and other evidentiary material at the time that those materials are furnished to the members and the President and his counsel shall be invited to attend and observe the presentation.

B. Following that presentation the committee shall determine whether it desires additional evidence, after opportunity for the following has been provided:

1. Any committee member may bring additional evidence to the committee's attention.

2. The President's counsel shall be invited to respond to the presentation, orally or in writing as shall be determined by the committee.

3. Should the President's counsel wish the committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the committee shall determine whether the suggested evidence is necessary or desirable to a full and fair record in the inquiry, and, if so, whether the summaries shall be accepted as part of the record or additional testimony or evidence in some other form shall be received.

C. If and when witnesses are to be called, the following additional procedures shall be applicable to hearings held for that purpose:

1. The President and his counsel shall be invited to attend all hearings, including any held in executive session.

2. Objections relating to the examination of witnesses or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a member of the committee, committee counsel or the President's counsel and shall be ruled upon by the chairman or presiding member. Such rulings shall be final, unless overruled by a vote of a majority of the members present. In the case of a tie vote, the ruling of the chair shall prevail.

3. Committee counsel shall commence the questioning of each witness and may also be permitted by the chairman or presiding member to question a witness at any point during the appearance of the witness.

4. The President's counsel may question any witness called before the committee, subject to instructions from the chairman or presiding member respecting the time, scope and duration of the examination.

D. The committee shall determine, pursuant to the rules of the House, whether and to what extent the evidence to be presented shall be received in executive session.

E. Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of coverage in accord with the rules of the House and the rules of procedure of the committee as amended on November 13, 1973.

F. The chairman shall make public announcement of the date, time, place and subject matter of any committee hearing as soon as practicable and in no event less than twenty-four hours before the commencement of the hearing.

G. The chairman is authorized to promulgate additional procedures as he deems necessary for the fair and efficient conduct of committee hearings held pursuant to H Res. 803, provided that the additional procedures are not inconsistent with these procedures, the rules of the committee, and the rules of the House. Such procedures shall govern the conduct of the hearings, unless overruled by a vote of a majority of the members present.

H. For purposes of hearings held pursuant to these rules, a quorum shall consist of ten members of the committee.

#### APPENDIX B

##### SENATE IMPEACHMENT PROCEDURE RULES

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against \_\_\_\_\_;" after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles, and shall con-

tinue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the members of the Senate then present and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one fifth of the members present, when the same shall be taken.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail to service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed there-

for as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12 30 o'clock afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, \_\_\_\_\_, do solemnly swear that the return made by me upon the process issued on the \_\_\_\_ day of \_\_\_\_\_, by the Senate of the United States, against \_\_\_\_\_, is truly made, and that I have performed such service as therein described: So help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of twelve Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock afternoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of \_\_\_\_\_, in the Senate Chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.

XIII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m.; and when the hour for such thing shall arrive, the Presiding Officer of the Senate shall so announce; and thereupon the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment,

XVI. All motions made by the parties or their counsel shall be addressed to the Presiding Officer, and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

XVII. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XVIII. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

XIX. If a Senator wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

XXII. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

XXIII. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.

XXIV. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not to the final question on each article of impeachment.

XXV. Witnesses shall be sworn in the following form, viz: "You, \_\_\_\_\_, do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the United States and \_\_\_\_\_, shall be the truth, the whole truth, and nothing but the truth: So help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

#### APPENDIX C

##### ARTICLES OF IMPEACHMENT

The House Judiciary Committee, subsequent to its investigation of the Nixon presidency, voted the following articles of impeachment:

##### ARTICLE I

In his conduct of the office of President of the United States, Richard M. Nixon,

in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

On June 17, 1972, and prior thereto, agents of the Committee for the Re-election of the President:

Committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon, using the powers of his high office, engaged personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

The means used to implement this course of conduct or plan have included one or more of the following:

[1]

Making or causing to be made false or misleading statements to lawfully authorized investigative officers and employees of the United States.

[2]

Withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States.

[3]

Approving, condoning, acquiescing in, and counseling witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and Congressional proceedings.

[4]

Interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, the office of Watergate Special Prosecution Force, and Congressional committees.

[5]

Approving, condoning and acquiescing in the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such illegal entry and other illegal activities.

[6]

Endeavoring to misuse the Central Intelligence Agency, an agency of the United States.

[7]

Disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employees of the United States, for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability.

[8]

Making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and personnel of the Committee for the Re-election of the President, and that there was no involvement of such personnel in such misconduct; or

[9]

Endeavoring to cause prospective defendants, and individuals duly tried and con-

victed, to expect favored treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

#### ARTICLE II

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States, and to the best of his ability preserve, protect and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice in the conduct of lawful inquiries, of contravening the law of governing agencies of the executive branch and the purposes of these agencies.

This conduct has included one or more of the following:

[1]

He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law; and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

[2]

He misused the Federal Bureau of Investigation, the Secret Service and other executive personnel in violation or disregard of the constitutional rights of citizens by directing or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security, the enforcement of laws or any other lawful function of his office.

He did direct, authorize or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws or any other lawful function of his office. And he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

[3]

He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derived from campaign contributions, which unlawfully utilized the resources of the Central Intelligence Agency, engaged in covert and unlawful activities, and attempted to prejudice the constitutional right of an accused to a fair trial.

[4]

He has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know that his close subordinates endeavored to impede and frustrate lawful inquiries by duly constituted executive, judicial and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee and the cover up thereof and concerning other unlawful activities including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, the electronic surveillance of private citizens, the break in into the offices of Dr. Lewis Fielding and the campaign financing practices of the Committee to Re elect the President.

ZOE LOFGREN  
16TH DISTRICT, CALIFORNIA

COMMITTEES  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COURTS AND  
INTELLECTUAL PROPERTY  
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS  
COMMITTEE ON SCIENCE  
SUBCOMMITTEE ON SPACE AND AERONAUTICS  
COMMITTEE ON STANDARDS OF  
OFFICIAL CONDUCT

Congress of the United States  
House of Representatives  
Washington, DC 20515-0516

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 www.house.gov/lofgren

RECEIVED

SEP 21 1998

September 18, 1998

COMMITTEE OF THE JUDICIARY

Dear Republican Judiciary Committee Colleague:

All of the Democratic Members of the Committee have signed the attached "Yardsticks for Fundamental Fairness." We are circulating these to you in the hope that we can agree on these basic principles.

Sincerely,

  
Zoe Lofgren  
Member of Congress

*September 17, 1978*

Three Yardsticks for Fundamental Fairness  
When Considering the Impeachment of a President

1. We must have a standard by which we determine what conduct is impeachable. In 1974, before there was even a thought of releasing a single document to anyone, the House closely examined the constitutional law and precedents and published a standard. We must apply the same standard the Congress and Judiciary Committee members used when considering the conduct of the President in 1974, for if we do not, then our conduct, rather than appearing fair and consistent, shall appear instead to be arbitrary and partisan. We will be putting the cart of public dissemination in front of the horse of a proper constitutional standard.
2. The authorizing resolution and the committee rules should be fair. In 1974, the House drafted a resolution and rules that were fair, granting participation to members and interested persons and without favor. That resolution and those rules should be adopted for this inquiry – if there need be one. These rules guaranteed and reflected bipartisanship then. No less is needed now.
3. The evidence and information should be handled very carefully. This information should be handled carefully not only because it is confidential, not only because it may offend one's sensibilities, not only because it may compromise the reputations of private persons. This information should be handled carefully because to do otherwise would be to abdicate our constitutional responsibility to conduct this process in a hearing room, rather than a press room. In 1974, the House had elaborate procedures to handle information. Those procedures should be adopted and followed consistently, as the members did then. The rules should not change from day to day.

Zoe Sorenson  
Bill Roberts

Bobby Scott  
Arnold Nadler  
Deborah Watts

Shirley Lee  
Tom Bennett  
John Roth

Robert Waples  
M. M. Med

Arline Waters

John Longjohn  
General J. Berman  
Barry Rank

Rick Rankin

527

Chuck Schumer

/s/

You know, I have listened to great extent about the amendment that is before us, and I want to differ a little bit from some of my colleagues on the underlying thesis that the failure of the executive to respond to the House in the impeachment process itself should that be an article in and of itself; and I would note that in the 1974 impeachment inquiry President Nixon's failure to provide information to the House was a ground for impeachment, and I think that is necessary and legitimate because otherwise the power of the House can never be utilized. But I would say it is only necessary and legitimate if the underlying impeachment effort itself is legitimate.

This process is illegitimate. It has not yet come up with grounds that meet high standards in the Constitution, and I will tell you this: On page 12, one of the questions listed by the chairman, question 42, "Whether or not there were additional gifts from the Black Dog" cannot possibly be grounds for removal of the President of the United States.

And I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Chairman, I give the gentlelady an additional 2 minutes.

Chairman HYDE. You yield her an additional 2 minutes?

Ms. JACKSON LEE. I wanted to ask her a question.

Chairman HYDE. If the gentlelady seeks additional time.

Ms. LOFGREN. I would seek an additional 2 minutes and yield.

Chairman HYDE. Without objection, so ordered.

Ms. JACKSON LEE. As the gentlelady has so noted, she had the honor of serving as a staff person during that period. Might I ask the gentlelady, because we have had this dispute between the nexus of impeachment and removal. And comparable to a prosecutor believing in the indictment and ultimately that the person would be convicted, isn't there at least a nexus between the act of impeachment, as we need to guide our colleagues on Thursday, and the fact that we believe, or whoever votes for impeachment would believe, that the President might be removed, if there is some nexus there?

Ms. LOFGREN. Reclaiming my time, there is more than a nexus. There is no reason for the House to proceed at all if there is not a belief that the clear language within the resolution, the articles of impeachment, should not in fact be found true by the Senate. Because after the adoption of articles of impeachment, the appointment of managers to prosecute the case must come forward. All of the evidence that will be considered by the Senate is to be presented by the House, as the prosecutors, to the jury, the Senate.

And so I find it rather unbelievable that having come this far, having adopted three articles and about to adopt a fourth, that some would suggested that what we are really doing is not anything. In fact, Mr. Barr is right, we are not removing the President, we are taking the first step to remove the President, and we will remove the President if we appoint managers and the Senate convicts.

We should not put the country through this trauma if we do not believe that the President should be removed. And as I said before, the idea that the President should be removed for the reasons outlined to date are in fact preposterous.

Chairman HYDE. The gentlelady from Texas.

Ms. JACKSON LEE. Thank you very much. I have made my case on this issue.

Chairman HYDE. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. I thank the chairman and I wanted to come back to the motion in question. I support the substitute offered by Mr. Gekas, and want to address that for a moment.

I would have had trouble supporting Article IV without this amendment deleting paragraphs 1, 2 and 3. I say that not to diminish the significance or the substantiality of the evidence with regard to these three areas.

One of those claims is that the President deceived and lied to the American public. I think this is extraordinarily serious anytime it happens. Obviously, there is no question that it did happen. It is wrong, but I do not believe that should be included in this article of impeachment on abuse of office.

The second part is that the President frivolously asserted executive privilege. I believe that he did do that. I believe it was a delay tactic. I don't believe that it was proper. I believe it was abuse of responsibility in the investigation, and I think it is wrong.

Countervailing of that, the President did drop the assertion after a period of time, and the witnesses eventually testified. And so for those reasons, even though I believe it was abuse, I don't believe that it should be included in this article of impeachment.

Third, the article alleges lying to aides, I believe this too is extraordinarily relevant and significant in terms of proving intent and a pattern of conduct on behalf of the President supporting obstruction of justice and the other false statements that are recited in the other articles. And so, even though I am delighted that they are being deleted, I don't think that we should diminish the significance of them.

Now, I want to refer to three of the President's responses to Congress in the 81 questions. One of them is question number 20, and you have to precede this with what was testified to in the deposition of Paula Jones. The question of the President was, Did she tell you that she had been served with a subpoena in this case? The answer was no. He responds, "No. I don't know if she had been."

It is a very clear statement. The question by Congress to the President was, "Do you admit or deny that you gave false and misleading testimony under oath when you stated during the deposition of the Jones case that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?" A very simple question calling for a simple answer.

Here is the President's answer: "It is evident from my testimony on pages 69 to 70 of the deposition that I did know on January 17, 1998, that Ms. Lewinsky had been subpoenaed in the *Jones v. Clinton* case." Ms. Jones' lawyer's question, "Did you talk to Mr. Lindsey about what action, if any, should be taken as a result of her being served with a subpoena?" and "my response, 'No,' reflected my understanding that Ms. Lewinsky had been subpoenaed. That testimony was not false and misleading."

The answer has to be studied. It is a simple question, but the answer is so convoluted, and I believe it is in fact false and misleading.

I would also refer to question number 26, "Do you admit or deny on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?"

His answer, "I do not recall any conversation with Ms. Currie on or about December 28, 1997, about gifts I had previously given to Ms. Lewinsky. I never told Ms. Currie to take possession of gifts I had given to Ms. Lewinsky; I understand Ms. Currie has stated that Ms. Lewinsky called Ms. Currie to ask her to hold a box."

I believe that is a false, an intentionally false, answer that the President provided. Monica Lewinsky's testimony substantiates that. The telephone records substantiate what Monica Lewinsky says. But also, it is unreasonable that Betty Currie, an employee of the President of the United States, would go and retrieve gifts that are under a subpoena in a lawsuit affecting her boss, in which he is a defendant, without the President authorizing the retrieval of those gifts.

I believe that is a false statement. Then you go on to question number 42, and you have to lay the foundation for this as well. The question that was asked to the President in the deposition of the *Paula Jones* case was, "Have you ever given any gifts to Monica Lewinsky?" His answer: "I don't recall. Do you know what they were?"

Now, the question from Congress was, "Do you admit or deny that when asked on January 17, 1998, in your deposition in the case of *Jones v. Clinton* if you had ever given gifts to Monica Lewinsky, you stated that you did not recall, even though you actually had knowledge of giving her gifts in addition to gifts from the Black Dog?" His answer, which I believe is false is as follows. "In my grand jury testimony, I was asked about this same statement. I explained that my full response was I don't recall. 'Do you know what they were?' By that answer, I did not mean to suggest that I did not recall giving gifts; rather, I meant that I did not recall what the gifts were, and I asked for reminders."

I believe that is a false statement going back to his original question in the deposition, which was, have you ever given any gifts to Monica Lewinsky; his answer, "I don't recall."

Mr. NADLER. Would the gentleman yield for a question?

Chairman HYDE. The gentleman's time has expired.

Mr. NADLER. I ask unanimous consent that the gentleman be given 2 additional minutes to answer a question.

Chairman HYDE. Without objection, so ordered.

Mr. NADLER. Would the gentleman yield for a question?

Mr. HUTCHINSON. Certainly.

Mr. NADLER. It is a question, or will be a question. Yes, you just said that—

Mr. HUTCHINSON. Do you need to take 2 minutes for this question?

Mr. NADLER. That is not my purpose. You just said—the President, rather, said, by that answer "I did not mean to suggest that I did not recall giving gifts. Rather, I meant that I did not recall what the gifts were, and I asked for reminders."

You just quoted that, and you said you believed that that was a perjurious statement. So you are saying that the President's characterization of his state of mind was a false statement. My question

is, how do you know that? What is the evidence for your statement that his characterization of his state of mind was false?

Mr. HUTCHINSON. My statement is that I believe the answer to question number 42 is false and misleading. Whenever the question is asked whether he admits or denies whether he had given any gifts to Monica Lewinsky, he stated he did not recall, even though he actually had knowledge of giving her gifts. In his answer, he says, "I did not mean to suggest that I did not recall giving gifts; rather, I meant that I did not recall what the gifts were."

That answer, I believe, is a false statement, because the question is very clear. He is a very brilliant person. When the question is, "Have you ever given any gifts to Monica Lewinsky?" his answer is, I don't recall. That is responsive to—

Mr. NADLER. No, his answer is, no, I don't recall, do you know what they were, which seems to imply he knows gifts were given, but he doesn't recall which ones they are referring to.

Mr. HUTCHINSON. Well, if you want to accept the twisted, confusing answer of the President as being truthful, then you certainly have the right, but I believe if you presented this to a jury of common-sense people in America, perhaps outside the Beltway, as Mr. Coble referenced, I think they would understand very clearly that the President of the United States is not being truthful and responsive and respectful to the Congress of the United States.

Chairman HYDE. Are we ready for the question?

Ms. WATERS. No, Mr. Chairman, I have a unanimous consent request.

Chairman HYDE. The gentlewoman will state her unanimous consent request.

Ms. WATERS. I am requesting that Mr. Delahunt be allowed to orally put on the record one more time the conclusive evidence of the telephone call and the time of it so that my colleagues can stop distorting the record about that telephone call on Ms. Betty Currie's bill.

Chairman HYDE. Well, Mr. Delahunt has already spoken to that issue, and—

Ms. WATERS. No, my colleagues don't know that, because he just incorrectly, unless he was lying, said that—said that there was evidence based on the telephone record that the President had lied. Now, either he knows better, or he needs to be reminded.

Chairman HYDE. Well, frankly, I would rather recognize Mr. Meehan. But if Mr. Delahunt wants the time—

Mr. DELAHUNT. I will defer to Mr. Meehan.

Mr. MEEHAN. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. MEEHAN. Mr. Chairman, we can really see now we are headed in a direction that I think started yesterday, Mr. Chairman, as we closed, with your comments, basically saying to the American people, we want you all to know impeachment is not the removal of the President. And then listening to some of my Republican colleagues here, they seem to all be rushing to say the same thing. Even Mr. Barr, who has to be as aggressive as anyone in terms of wanting to get rid of this President, went out of his way to say impeachment doesn't mean the President is removed.

Mr. McCollum, although he has corrected the record, even made the statement that even if the Senate were to convict, it doesn't mean the President is going to be removed. Now since Mr. McCollum has come forward and said, well, okay, I stand corrected on that.

But I think it was Wednesday, and sometimes newspaper articles don't have it right, but Mr. McCollum can correct it if it isn't right, but the other day in the New York Times Mr. McCollum said, "Impeachment would satisfy those who believe the President should be branded and given the scarlet letter."

Now, I don't know if that is accurate or not, but I know that on Face the Nation earlier, Mr. McCollum also said, "Impeachment would be the ultimate censure, the ultimate scarlet letter."

Mr. MCCOLLUM. If the gentleman would yield, I did say that, and I do believe that would be true whether he were convicted in the Senate or not.

Mr. MEEHAN. I appreciate that, and I think that is an important point to make. Apparently the Republicans, many of them on this committee, view impeachment as the ultimate censure, the ultimate scarlet letter. Let's brand the President. Even the maker of this motion Mr. Gekas also said recently if the committee reports out a resolution for impeachment and fails to pass the House floor, I believe he still has been censured.

Ladies and gentlemen, this is not about branding the President or a scarlet letter to the President. You are going to have an opportunity to censure the President. It is coming up in the Democratic proposal that would be offered after you vote to impeach the President—that is, to send over to the Senate removal from office. You will have an opportunity to vote for censure. Let's see if you really want to vote for censure.

But these Members try to have the American people believe that impeachment somehow isn't impeachment. It just doesn't wash. It doesn't fly. Nobody is buying it. If you want to punish the President, or brand the President, or scarlet letters or stamp them on his forehead, censure is the way to do that.

I talk to people in Massachusetts, Republicans, Democrats, Independents. They say why are they doing this? Why push it this way? It is clear the President should be punished, censured, get it over with. They just lost five seats in the House when they were supposed to pick up 25. It is because of the way impeachment was handled. Why are they doing this? Sixty-five to seventy percent of the American people say, don't do this. Censure the President. Punish him, get it over with. Why are they doing it?

And I hear Mr. Inglis and Mr. McCollum say—keep bringing up Watergate as if somehow lying about clearly consensual sex is the same as paying \$100,000 cash to keep those guys quiet that did the break-in, or abusing the CIA, or abusing the FBI, or abusing the IRS to go after your political enemies. But somehow they are on equal footing.

Nobody believes that. But I heard Mr. McCollum say, well, we have an obstruction of justice charge just like Watergate. It is just like Watergate. You guys had an obstruction of justice charge. We have one. Abuse of power. Well, there was abuse of power in Watergate, so we have an abuse of power. That is what we are doing,

what you did in Watergate. False statements. This is just like Watergate.

Nixon was accused of false statements. We threw in perjury.

Is that what this is all about? Watergate? Is this get-even time? You want to punish the President, you want to brand him, you want to censure him. We are going to have an opportunity to do that. But in the interests of the Constitution of the United States, let's do it constitutionally. Let's censure him when we bring up censure after this impeachment article. We can brand the President that way.

Mr. MCCOLLUM. Will the gentleman yield?

Mr. MEEHAN. I yield.

Mr. MCCOLLUM. I simply believe this is not comparable to Watergate. I never suggested it was.

Mr. MEEHAN. Taking back my time, I was simply pointing out that you made the statement, there is obstruction of justice in this case, just like Watergate. You had an abuse of power article in Watergate. Well, we have one. Well, we have perjury. You had a false statement in Watergate. We are just doing the same thing.

It is not the same thing. No one in America believes it is the same thing. This isn't abuse of the CIA, this isn't looking up IRS records. This isn't about abusing the head of the FBI and saying, we are going to call over to the FBI, we are going to get those records, we are going to investigate Ted Kennedy, George McGovern and anybody else we can. This is not what this is about.

Chairman HYDE. The gentleman's time has expired.

Mr. MEEHAN. I would request 1 more minute. Perhaps Mr. McCollum has another point.

Chairman HYDE. If you wish, if Mr. McCollum wishes.

Mr. MCCOLLUM. If you could, I would like to respond. Thank you very much.

I simply want to say I think the Watergate model is like David Broder discussed yesterday. It is a model. It was very serious. You don't have to reach the same level that Richard Nixon or Watergate did to find impeachable offenses, but we do have some similarities. That is what I pointed out.

I believe there are similarities, but I don't think we should diminish the importance of what we are doing today or the crimes I think the President has committed by suggesting it doesn't rise to the level of Watergate.

Mr. MEEHAN. Reclaiming my time, I would just say you are going to have an opportunity for the scarlet letter, for the branding of the President, for the ultimate censure of the President, when we vote for censure. But vote for the censure; if that is what you want to do, if you want to punish the President for his behavior, as we do, vote for the censure.

I yield back the balance of my time.

Chairman HYDE. The gentleman's time has expired. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you. I agree with some of what my Democratic colleagues have said here this morning. I can only speak for myself. But I would not have voted for articles of impeachment if I had not been convinced after thoroughly reviewing all of the evidence here in this committee that the President deserves to be re-

moved from office. But this talk of a coup, this terminology that we are turning over a national election, is just not true.

As Mr. Rogan, my colleague from California, so accurately stated last night, the President took an oath of office after he was elected, and he stated, and I quote, "I do solemnly swear that I will faithfully execute the office of President of the United States and will to the best of my ability preserve, protect and defend the Constitution of the United States." That is what he swore to do, to defend the Constitution of the United States.

But then on a number of other occasions, he took another oath. He raised his right hand and he swore to tell the truth, the whole truth and nothing but the truth, so help him God. And then he turned around and he lied and he perjured himself, and when he did that, when he broke that second oath, he broke the first oath, the oath that he took to this country. And that is why we are here today. That is why this President is facing impeachment.

And, remember, he is the chief law enforcement officer of this country, the chief law enforcement officer. Although the article of impeachment that we are considering right now relates to the 81 questions he answered, and the very first question that he was asked in these—legally they are called requests for admissions—the very first question he was asked is, do you admit or deny you are the chief law enforcement officer of the United States of America. Yes or no would be probably the appropriate answer one would expect. That is not the answer we got.

Here is the answer the Congress got. I will read it fast because it is pretty long: "The President is frequently referred to as the chief law enforcement officer. Although nothing in the Constitution specifically designates the President as such, Article II, Section 1 of the United States Constitution states that 'the executive power shall be vested in a President of the United States,' and the law enforcement function is a component of the executive power.

Article II, Section 3 of the United States Constitution states in part that the President shall 'take care that the laws be faithfully executed.' Article II, Section 1, Clause 1 of the Constitution vests the entire executive branch of the government, which includes the United States Department of Justice, in the President. He authorizes through the Attorney General all prosecutions brought on behalf of the people of the United States in carrying out his constitutional duty to take care that the laws be faithfully executed."

Now, a simple answer would have been yes. Is that impeachable? Of course not. There are many other of the other 80 answers which are the actual impeachable offenses. This does go to show a little bit why, in his own defense attorney's terminology the other day, he described the President's answers oftentimes as maddening. I find that answer maddening; not impeachable, but maddening.

Now, we should not understate the importance of what this committee is doing by passing articles of impeachment. I agree with that. This moves the possible removal of a President from office from this committee to the full House where a vote is likely to take place next week, and if that vote is in the affirmative, then it will go to the Senate for a trial, and it takes two-thirds of the Senators to actually remove a President from office.

But let's not overstate what we are doing, as we have heard a number of times here this morning from some of my Democratic colleagues on the committee. I would strongly encourage my colleagues over there to stop using this inflammatory language, like coup and coup d'etat, which brings to mind visions of blood flowing in the streets. For 220 years we have been a Nation of laws, buttressed by a sacred Constitution, a Constitution which I believe, sadly, that this President has violated. And as unpleasant as this matter is that we are facing and this Nation is facing right now, we are a very strong Nation, and we will overcome these unfortunate circumstances. I have the utmost faith in this country, although, unfortunately, I have lost a tremendous amount of faith in this particular President.

I yield back the balance of my time.

Chairman HYDE. Mr. Scott, the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, the matter before us is the amendment, technically the amendment at this point, and it is a difficult vote, because voting for this amendment to strike one or two of the elements out of this article suggests that this last one has some kind of additional substance that the others didn't have. I don't want to give that impression when I vote to strike out the others, that I agree with this last one.

Mr. Chairman, we are talking about these questions that you say "we" sent. Mr. Chairman, I didn't know the questions were being sent until I found out they had been sent by the news media. I found out when the deadline for the response was when I got that in the media. So I don't want anyone to think I had anything to do with these questions.

The gentleman from Ohio read the first question and answer and suggested how insulted he was with the answer.

Mr. Chairman, who is the chief law enforcement officer of Washington, D.C.? Is it the mayor? Is it the chief of police? Is the prosecutor? I introduced into evidence a newspaper article from last Sunday that identified the second highest ranking law enforcement official in the State of Delaware and identified the Chief Deputy Attorney General, suggesting it wasn't the Governor, but the Attorney General was the chief law enforcement officer of Delaware. And so we have an answer to the question, and you have to answer it precisely, as the President did, because you know, and when you send in these answers, you are going to be charged with perjury. You know that. So you better answer it precisely, and that precise answer is just what he gave.

Really, what difference does it make? What was the significance of the question to begin with?

Mr. Chairman, we find ourselves with this article at the end of a process that began with the Starr report, which we released without reading it, never calling a fact witness to reconcile conflicts in testimony. Instead, we resolved all conflicts and took all inferences in a way most damaging to the President. If there was a conflict in testimony, therefore, the President lied each and every time.

We even used normally improper theories of evidence. I have heard of challenging evidence by finding prior inconsistent statements that have been made, but I have never seen any way to corroborate testimony by pointing out prior consistent statements. I

was amazed when the committee called the prosecutor as the sole fact witness.

We have been charged with not asking him questions about the facts. We did ask him questions about the facts. He said he didn't know anything, firsthand, secondhand, sometimes not even thirdhand about the relevant facts in this matter.

We were not given the opportunity to call rebuttal witnesses. The record will reflect on a party line vote we rejected the motion which would have given the Democrats the opportunity to call witnesses as soon as the committee decided which allegations we were actually going to pursue. That was not an unreasonable request, what allegations are we pursuing, because Mr. Starr started off with 11, came back with 10. Mr. Schippers, the Republican counsel, said maybe 15. The next day the Chairman said two or three. As we have been proceeding, the scope has expanded into Kathleen Willey, into campaign finance. The gentleman from Arkansas listed another statement that he thought was perjurious just in the last couple of days. Mr. Graham did the same thing. Even after all of the rebuttal had taken place, after our counsel had spoken, after Mr. Ruff had spoken, the Republican counsel added on some new unnamed charges.

So this impeachment thing has been a moving target. We just asked for the specific allegations so we could call witnesses. We were denied.

Mr. Chairman, the Democrats began this process by offering to work in a bipartisan fashion by suggesting a step-by-step, orderly process to evaluate the allegations in a fair, focused and deliberate process, but that suggestion was rejected on a party line vote.

So this article of impeachment, which is totally out of proportion to whatever President Clinton may have done—let's look at when Speaker Gingrich was found to have lied, he was not disqualified, he was reelected. Impeachment is totally out of proportion, particularly when you consider the added statement that the President not only warrants impeachment and trial and removal from office, but disqualification to hold or enjoy any office of honor, trust or profit in the United States. That additional language was not mentioned in the Watergate articles of impeachment. So history will suggest that we thought what President Clinton did was worse than what happened in Watergate.

These are flimsy allegations, supported by conflicting hearsay statements and dubious inferences, and here we find that we have to compare—Mr. Chairman, could I have 2 additional minutes?

Chairman HYDE. Without objection.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, we need to compare these allegations to what is an impeachable offense anyway, and why do we have impeachment. We have impeachment to protect against the subversion of government. We found in Watergate that half-a-million-dollar tax fraud was not a subversion of government. We only have the authority to remove the President for commission of treason, bribery, or other high crimes and misdemeanors.

Our experts told us to focus on that word "other," things like treason and bribery. So some of us were surprised to hear the Republican counsel say that if we don't impeach the President, only

convicted felons and traitors need to be afraid of impeachment. Well, that is what the Constitution says. That is what the Constitution says, that you do not have the legal authority under the rule of law to try to remove the President unless there is treason, bribery, or other high crimes and misdemeanors.

I was also amazed to find at the end of the process we have to debate whether or not the conviction in the Senate would result in the removal of the President. We kind of had to go back and forth. I think we found out that upon conviction, the Senate can either remove the President from office, or remove him and disqualify him from further offices, but he has to be removed.

So as we vote on this article, we are facing allegations which are not impeachable offenses, which are presented to us by way of contradictory hearsay and dubious inferences and assumptions, and after we have violated fundamental principles of fairness and decency in a partisan proceeding, I will vote no when this article comes up.

Chairman HYDE. I thank the gentleman.

The distinguished gentleman from South Carolina, Mr. Lindsey Graham.

Mr. GRAHAM. Thank you, Mr. Chairman.

I certainly respect Mr. Scott's right to vote no based on what he feels to be insufficient evidence, unfair proceeding, and doesn't rise to the level of impeachment. I just happen to disagree with him on all counts.

I do believe, Mr. Chairman, that there is ample testimony from which you can make a logical conclusion on each and every article based on evidence given under oath, and I would refer back to Mr. Lowell's rather dramatic presentation during his summary to the committee, which I think was well done. Many times he would say, I now call so and so to the stand. And he would by illustration get the sworn testimony and refer to it.

And the idea that the committee has denied the President or the Members of the other side a chance to address the factual allegations by calling witnesses they believe can help clarify matters I reject. I don't believe is true. And it is time to move on, I believe, to what the real heart of the matter is with Article IV.

Imagine an oath tree. This is how the President has climbed the oath tree. The first time he violated his oath was in a litigation matter with a young lady, Paula Jones, a former government employee of the State of Arkansas. He chose, in my opinion, to lie in his deposition, to her legal detriment, a single individual, exercising her constitutional rights to have her day in court.

I agreed with the Democratic friends on the other side that because the deposition was dismissed, I would give the President the legal benefit of the doubt. However, I do believe he gave false testimony.

The second time that he abused the oath, in my opinion, was when he went in front of 23 or so Federal fellow citizens who were sitting as a Federal grand jury down the street. I think he willfully lied about important matters relating back to Mrs. Jones' lawsuit and lied about important matters concerning his criminal misconduct to hide the truth. He lied then, Mr. Chairman, after he was begged basically by members of both parties and prominent

Americans, do not go into the grand jury and tell another lie. You are risking your Presidency. That would be bad. That would be an impeachable offense.

The third time I believe the President violated his oath, the group then he harmed was the Congress of the United States, because I believe, Mr. Chairman, that after he lied in the deposition in January, after he continued to lie in August at the Federal grand jury, the final insult was that the President lied to the United States Congress, the House of Representatives, the body closest to the people.

The argument that we don't understand what you are talking about I think for lack of a better word is wrong. We know what we are all talking about here. They have made an elaborate presentation of the President's side of the story about each and every matter contained in these questions. They go to the heart of the matter, and I would just refer to one, question 52. "Do you admit or deny that on January 18th, 1998, at or about 5 p.m. you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Ms. Monica Lewinsky: One—this is the scenario where he was trying to refresh his memory after the deposition because he thought some press reports would be coming—you were always there when she was there, right? We were never really alone. Two: You could see and hear everything. Three—it gets bizarre now, in my opinion—Monica came on to me and I never touched her, right? Four: She wanted to have sex with me. I couldn't do that.

The most bizarre of all statements under the idea of refreshing memory."

Mr. Chairman, I believe that those statements were made as Ms. Currie recounts. The President's answer to the interrogatory says, "when I met with Ms. Currie, I believed that I asked her certain questions in an effort to get as much information as quickly as I could and made certain statements, although I do not remember exactly what I said," and it goes on to say that he was trying to recall or refresh his memory, and that when she was going to go to the grand jury, he said, "just relax, go in there and tell the truth."

I believe that his response, "I was just talking to her to refresh my memory, get as much information as possible," is absolutely false, not based on any common-sense interpretation of what was going on at the time, and that he did, in fact, just as recently as a few weeks ago, choose to violate his oath again, the fifth time, to the House of Representatives, the people's House. That, to me, Mr. Chairman, is very much an impeachable offense.

I yield back the balance of my time.

Chairman HYDE. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I have been doing two things this morning, and I want to try to address both of them, because I think two things have been going on.

I have been trying to listen very carefully to the debate in the committee and I have been trying to look very quickly at the amendment that was offered by Mr. Gekas to try to decide how I feel about that amendment. And I would like to address both of those things, because I have been very fascinated by the debate

that has been taking place here in the committee and the effort by some of my colleagues to minimize the importance of what we are doing here today and what the House will do and what our role in the impeachment process is.

I think that part of the debate is basically spin control that we usually do out in the press gallery, and my perception is—and I am not accusing anybody of this, I am just giving you my perception—is that it is an attempt by some of my colleagues to be in a position to say in April, May, and June and July of next year, when things are going on in the Senate and the questioning is going on in the Senate about what body parts were touched and how salacious this was and the details of the trial that must be had, some of my colleagues, I believe, based on the discussion that we have had today, will say, well, we didn't have anything to do with that.

I have seen a lot of this in this committee by the refusal to add the kind of specificity which the law requires when you allege perjury. That is a legal allegation, and there are some legal consequences that go with it when you allege it. The law says if you allege it, you have got to specify the specific statements that you believe constitute the perjury. And in order to do that here, we would have to get into the same kind of details that Mr. Starr got into in his referral, which the American people don't like, and my colleagues don't want to be saddled with that responsibility.

Now they are spinning this in such a way that when that trial takes place in the Senate and that must be done, they can say, "well, oh, no, that is the Senators that are doing that. We didn't have anything to do with that."

That is an unfortunate spin, because we can't get through the door to the Senate unless we send it out of here and give them the keys to deal with that.

That is the first part of what I wanted to say. The second part has to do with the amendment that is before the committee, because I have been vexing about whether to support it or not, and I could do one of three things: I could vote for it, I could vote against it, or I could just say "pass." There are good valid arguments to do either one of those three things.

Mr. GEKAS. Mr. Chairman, I ask that the gentleman be given an additional 1½ minutes.

Mr. WATT. My time isn't up yet. I appreciate your generosity, but at least let me finish.

Mr. GEKAS. There you go.

Mr. WATT. Now that he used a half a minute of my time, Mr. Chairman, I would ask unanimous consent for 3 additional minutes.

Chairman HYDE. The gentleman is granted 3 additional minutes.

Mr. WATT. Thank you, Mr. Chairman, because I really do want to talk about the amendment that is before us, not the spin machine that is going on here.

If I vote for this amendment, and I may, I want to be clear that I would be voting for it only because it is less ridiculous than the original article that is in the original bill that was presented here. So I would be voting for it on the less ridiculous theory.

If I just said "pass,"—and I guess I have some responsibility to vote for things that are less ridiculous. I don't endorse them if I

do that, I just say they are marginally better than what we started off with and I want to improve what we are doing.

If I took a pass and said I just pass, I would be acknowledging, as my colleague Mr. Frank has indicated, that if you are charged with murder and you have got four bullets, and three of them are going to kill you anyway, and you strike those three, and the fourth one is going to kill you anyway, you are going to be just as dead. So, you know, what difference does it make whether we have got four charges, four subcharges, or one subcharge here?

I think this article, the amendment, just summarizes everything that was in the first three articles. It doesn't add anything. This whole notion that the President assumed to himself functions and judgments necessary to the exercise of the House's power is what we do all the time. I second-guess what the President does all the time. He second-guesses what we do all the time.

If you strip that part of it out, you wouldn't have anything other than that he committed perjurious, false and misleading statements, which is the same thing that we covered in Articles I and II that have already been voted for.

So unless we are going to set some precedent that every time the President disagrees with us, he takes upon himself some extraordinary function that we in an equal branch disagree with him on, I don't understand the article. I mean, I just think it is ridiculous. I am still vexing about which one of these options to pursue. I guess by the time we get around to voting, I will decide. But if I do vote for this, I do want the record to understand that it is not because I am endorsing this article. It is just because I think it is less ridiculous than the original article that we started off with.

Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman HYDE. Thank you, sir. The question occurs on the amendment—

Mr. WEXLER. Mr. Chairman.

Chairman HYDE. Mr. Rogan. Five minutes.

Mr. ROGAN. I move to strike the last word, Mr. Chairman.

Chairman HYDE. I am sorry. I automatically yielded you 5 minutes.

Mr. ROGAN. My deference to the Chair—

Mr. DELAHUNT. Mr. Chairman, it is my memory—and I would be happy to seek a unanimous request or unanimous consent request that Mr. Rogan be given additional time—but is my memory that he has already spoken on this issue.

Mr. ROGAN. That is not correct.

Chairman HYDE. He has been yielded time, but has never used his 5-minute turn. So the gentleman is recognized for 5 minutes.

Mr. ROGAN. Thank you, Mr. Chairman. The primary purpose for our being here today is to debate, discuss, and vote upon a pending issue of great constitutional and historical significance. But there is a by-product from our debate today. It is the opportunity to educate America as to the function of what we are doing, and educate America as to what the framers intended our function to be.

Mr. GRAHAM. Excuse me, I hate to interrupt the gentleman from California. Would you yield to me for one moment, please?

Mr. ROGAN. I am happy to yield to my colleague.

Mr. GRAHAM. Mr. Chairman, I have a matter that I feel is appropriate to take up at this time in this area of discussion about abuse of power, and I would like to inform the committee of something I think that is disturbing.

There is a Member of Congress from Arkansas, Mr. Jay Dickey, who I think is trying to search his conscience and vote in a manner consistent with the best interests of the Nation. Being from the home State of the President, I know that has got to be very difficult. This article, I believe, is in today's paper, the Arkansas Democratic Gazette. It is entitled "Pressure Mounts on Fence-Sitting Dickey." I would like to read an excerpt.

"The White House feels some confidence that despite pressure from the Republican leadership, Dickey can be persuaded to vote against impeachment. 'If Jay Dickey votes to impeach the President, it is probably an indication he will not run for reelection in 2000,' one White House aide said. 'It is suicide, and we will make sure it is.'"

Mr. Chairman, I think this needs to stop. I understand what the article is about, and I understand the general idea of abuse of power, now that we are down to the 81 questions, but I think it is important to know that this behavior, if true, is certainly out of line.

I yield back to the gentleman from California.

Mr. WATT. Mr. Chairman, will the gentleman from California yield?

Mr. ROGAN. I yield to my colleague for his response.

Mr. WATT. Well, I am not sure I am going to be able to do this on your time. Let me just yield back to you. I think I need independent time to respond to Mr. Graham, because I am really troubled by the last 2 or 3 days of grandstanding that we have gotten out of this, and I am a little—I am getting a little perturbed by it.

Mr. ROGAN. I am happy to yield to the gentleman so that he may pose a question to the gentleman from South Carolina.

Mr. WATT. I will get time later. I will take care of it. Maybe I will feel differently if I simmer down. I will just yield back.

Chairman HYDE. Does the gentleman from California wish any more time?

Mr. SCOTT. Mr. Chairman, I would ask that his time totally be restored.

Chairman HYDE. The gentleman from California's 5 minutes will totally be restored.

Mr. ROGAN. Thank you, Mr. Chairman. I thank my friend from Virginia. The point I was starting to make is that during the course of debate on this particular article, a few constitutional issues have arisen that some of my friends on the other side now take issue. One issue is the constitutional role of the House of Representatives in an impeachment inquiry. The second issue is the validity of some members of the Majority to point out the beneficial effect of the role of impeachment with respect to how that might deter an otherwise errant executive in the future. The third issue is whether it is appropriate for us to pursue articles of impeachment without a guarantee that we would be able to successfully obtain a conviction after trial in the Senate.

Constitutional law Professor Jonathan Turley must have been prescient, because just last week, he published an article that addressed all three of these issues in a few paragraphs. I would like to read them into the record.

First, with respect to the role of the House, he clearly indicated that impeachment and removal are distinct issues given to distinct houses of Congress. Impeachment simply means the referral of accusations to the Senate, which is given the sole authority to try such issues. Thus, the House does not convict, but merely accuses. In performing this accusatory function, the House plays an important role in deterring presidential misconduct.

That is not a minimization, Mr. Chairman, of the role of the House; it is a recognition of the constitutional role of the House.

Far more serious is the suggestion from the minority that this House should not address presidential misconduct unless we can guarantee the Senate will produce the votes to convict. Imagine the absurdity of suggesting that no criminal trial could be filed anywhere in the country unless there was a sufficient guarantee from the jury pool that they would vote to convict the defendant charged with some heinous crime. That is ridiculous.

But Professor Turley put it in even stronger societal terms. He said, “[i]magine if a grand jury, which performs a role similar to the House, refused to indict a defendant based on the likely outcome of the case. In the South, many prosecutors used this as amoral argument to explain why they would not prosecute cases involving black victims and white killers. Prosecutors simply argued that a jury would not convict, and therefore there was no point in bringing a case. Yet it was a greater loss to the system not to force the question, not to call those responsible to the bar of justice. Otherwise, only those felons who are unpopular are brought to justice in a system of pure moral relativism.”

Professor Turley thus addressed his argument from the shadow of a dark period of our history that we now celebrate is over. I don’t want to see us step into the same type of constitutional quagmire that some regions in the past were in; this was a terrible black mark upon the legal history of our country then, and we should not sound retreat now.

Finally, Mr. Chairman, I must note that one dear friend of mine on the other side spoke with a disparaging tone in his voice about a Republican member’s motivation, when the Republican suggested that the threat of impeachment also is a legitimate tool to deter wrongful conduct in a President.

This minority member’s quarrel is not with any member of the majority. If he has a quarrel, his quarrel is with James Iredell, one of the founders of our country. Framer Iredell spoke of the importance of the House impeachment authority as a deterrent. He explained that while the President may be a man of no principle, the very terror of punishment will perhaps deter him. Impeachment, Professor Turley concluded, is the process by which presidential misconduct is detected and defined within the constitutional system.

Now, Mr. Chairman, I have become used to seeing quarrels raised in this committee with everybody responsible for trying to hold the President accountable. Quarrels have been raised with

Judge Starr, with the Chairman, with individual members of this committee, and the Majority party of this committee collectively. But this is the first time I have seen the minority openly quarrel with the concept of the Constitution and the document of the Constitution itself. There is nothing pernicious about simply reading from the Constitution and stating that which is so, and using the opportunity that we have in this great historical debate to educate the public on the meaning of the Constitution, as well as our responsibility to the Constitution.

Chairman HYDE. The gentleman's time has expired. Does the gentleman from Massachusetts seek recognition?

Mr. DELAHUNT. I seek recognition, Mr. Chairman.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. Mr. Chairman, I thank the Chairman. I want to pick up on the point by Mr. Rogan about the process of a prosecutor, and I really don't believe that he would disagree with me when I say that the ethical prosecutor would not bring a case unless he was convinced of the likelihood of a conviction. I dare say there is nobody on the other side who has voted for an article of impeachment who does not believe—and I think this is the important point to make—who does not believe that the President of the United States should be removed from office. Not just simply impeached, but be removed from office.

I am confident that every member here is abiding by the dictates of his conscience. But I also think it is important for the American people to know that when a member of this committee votes on an article of impeachment, that he believes or she believes it is not simply the standard of probable cause, but it is because of a conviction that President Clinton should be removed from office. That is what this is about. That is what this is about. And I hear no response. But if there is any member on the other side that believes that the President should not be removed from office, I would like to hear from them.

Mr. CANNON. I would like to associate myself with that standard. I believe that is what a Congressman should be doing when he votes.

Mr. DELAHUNT. Thank you, Mr. Cannon. I think that is the point, that these votes are votes by people who think that the President of the United States should be removed from office, not just simply impeached.

Mr. ROGAN. Will the gentleman yield?

Mr. DELAHUNT. I will at a later point.

Mr. CANNON. Could I make one distinction there?

Mr. DELAHUNT. I want to make some other points, and I am sure you will be able to pick up some time from colleagues on your side.

You know also, too, this process has become very, very disturbing because, again, in my prior life, I was a prosecutor, and many prosecutors would overcharge for leverage purposes, to secure some advantage, and then drop some charges. And I am sure the gentleman from Pennsylvania is acting in good faith; in fact, I know he has. Stop and think of what we were about to do before the gentleman's motion.

We were going to impeach the President of the United States for lying to the American people. While we could have done it retro-

actively to Lyndon Johnson in terms of what this House did with the Gulf of Tonkin Resolution which led to a war that claimed 54,000 American lives, or we could have impeached President Eisenhower when he stood up and lied to the American people about the U-2 incident, but we didn't. We exercised judgment.

But what we have got here is an amendment which takes away the absurdity of what was originally proposed and tries to make it reasonable. This isn't even about abuse of power now, it is about perjury, and it doesn't really belong separate and standing in a distinct article. If we were really going to be fair, we would incorporate this final clause in one of the articles dealing with the issue of perjury, either Article I or Article II.

So I will support the gentleman's amendment but, you know, here we are, not even on the eve, but the day of the debate, and Mr. Gekas has courageously spoken out about this. But 2 days ago we were presented with an article that was so absurd, it would have created an imbalance among the three coordinate branches of government. It would have created an assault by Congress on the Constitution. It would have created a system of constitutional tyranny.

Chairman HYDE. The gentleman's time has expired. The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Ms. JACKSON LEE. Mr. Bryant, would you allow me just a very brief moment of personal privilege?

Mr. BRYANT. I certainly will.

Ms. JACKSON LEE. I thank you very much. Mr. Chairman, I thank, first of all, Mr. Bryant, he happens to be my floor mate, and I thank you for indulging me. My stomach has settled a little bit now with the words of my good friend from South Carolina. I wanted to comment very briefly. I know Mr. Dickey. I have great respect for him. I think it would do well for all of us to just restate during this process that we all will be voting our conscience, our heart, and hopefully the facts and the Constitution.

Mr. ROGAN. Mr. Chairman, this is not a point of personal privilege.

Ms. JACKSON LEE. I don't know how much service it might be to any of—and I will finish, Mr. Bryant—that we raise these issues in the Committee, but I hope that all of us, however we talk to Members, will do so in conscience and with our hearts.

Chairman HYDE. I thank the gentlewoman. Mr. Bryant, I have restored your 5 minutes.

Mr. BRYANT. Thank you, Mr. Chairman. I am reminded of the Biblical quote and try to practice it as often as I can in my life, "to be quick to listen and slow to speak and slow to anger." And I think that would be something we could all do a better job of in this committee, certainly on the slow to speak, we could get this done. We probably should have voted on this amendment some time ago, but as you can see, we have diverted from the merits of the amendment and talked and talked and talked about issues we have beaten to death. But certainly that is part of this process, and it is a very serious process.

But once you peel away all the package and you continue to take the papers out and you take out the attacks on Kenneth Starr and the unfair process and the attacks on our Chairman and the political motivations—which, quite frankly, I have never understood why we would want to remove this President to put in a popular Vice President to give him an advantage in the next election—I really resent that, though, our opposition here thinks we are motivated that way.

I believe sincerely that all members of this committee are motivated by principle. We may disagree on what the principle is, but I think we are all motivated by principle and not politics.

But when you strip away all this package, all the wrappings, and get to the core of it, you still have a President who has perjured himself. And the reason this is separated into three distinct articles is that he perjured himself in the grand jury, number one; he perjured himself in answering interrogatories in the deposition in the *Paula Jones* case, number two; and now, number three, he perjured himself in his answers to Congress. Those are three distinct categories and deserve three very distinct articles.

That brings me to an interesting question. I wonder, and I don't presuppose the Senate will do anything with this or convict or have a trial or whatever, but if the President were to testify and raise his right hand in the Senate and swear to tell the whole truth and nothing but the truth, so help me God, I just wonder if the Senate would also have to give him an admonition: Does that mean you are not going to evade? Does that mean you are not going to mislead the Senate? Does that mean you are not going to give incomplete answers to the Senate?

It is almost humorous, but it is not. It is that serious. You almost have to do that in this situation, and that is the core of what we are talking about here. I think our counsel, David Schippers, summarized this very well when he spoke the other day. He mentioned how we have referred back to this income tax case against President Nixon and said, "We are not going to go down that road, that is not impeachable." He said, what about in future years when Congresses look at alleged misconduct of the President?

Are we now, in 1998, taking off the table, just as they did in 1974, the income tax issue? Are we now taking off the table perjury? Obstruction of justice? It sounds to me like some in this room would have us do that, just because it is sex.

Folks, this is not about sex. We are not charging him with adultery or anything like that. We are charging him with making that conscious choice—and a calculated choice, may I add, where he had to take a poll from Dick Morris to decide what to do—and then decide to go down that road of consistent, persistent perjuries and obstruction of justice. That is what we are about. Are we going to turn our head as a Congress and take these things off the table for future Congresses and allow a President that leeway to get into that conduct, and 20 years from now come back and say, you set the precedent in 1998, you can't call me to order for perjury, for obstruction of justice? I don't think we are about that, and I would urge my colleagues: let's cut our speeches down, let's vote on this, support this amendment and move forward.

Chairman HYDE. The question occurs on the amendment—

Mr. WEXLER. Mr. Chairman.

Chairman HYDE. Do you want 5 minutes?

Mr. WEXLER. I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. WEXLER. Thank you, Mr. Chairman. I have no doubt that history will record today's debate as the great dumb-down impeachment debate. And if I understood Mr. Rogan's objection earlier, or concern with my friend Mr. Rothman's comments, I think in a very genuine and honest fashion, my colleague from my home State of Florida, Mr. McCollum, answered Mr. Rogan's question honestly, genuinely; that at least in part, and I don't want to paraphrase him, but I believe he said it himself, in confirming what he has said many times, that impeachment is the ultimate censure, the ultimate scarlet letter.

And what I think many of us on this side of the aisle are having such a terrible time with respect to that notion is that impeachment is much more than that. Censure is the scarlet letter. Impeachment is the removal of the President. And when the idea of impeachment being the removal of the President is combined with the notion and the predicate of what is now or may be Article IV, again my colleague from Florida, Mr. McCollum, said that at least one of the answers that is so egregious that would justify impeachment that the President gave to this Congress was the answer to question No. 34. And the essence of the answer to No. 34 that apparently justifies impeachment and removal, at least as we see it, impeachment and removal, is that the President answered, and his quote was: "I believe at the time she filled out this affidavit"—that is, Monica Lewinsky—"if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate."

Now, I understand the other side when they say this isn't about sex, it is about perjury, it is about obstruction of justice, it is about a whole lot of things. But when it comes right down to it, you cannot, cannot, escape the very fact that what this is all about is the definition of a sexual relationship. And what boggles my mind is that we seem to have forgotten the beginning of Mr. Lowell's presentation. We all saw it. The President was sitting up there on all these television sets, and what did we hear at that deposition? We heard the President's lawyers arguing with Paula Jones' lawyers about this definition, back and forth, back and forth, back and forth. And then I think they changed the definition twice, and it wasn't Robert Wexler that is now arguing this is confusing, it was the presiding judge. She said that she is concerned that the President may be confused.

So then the President went ahead and denied a sexual relationship. And that is what we are impeaching the President about.

Well, I hope Dr. Ruth is getting ready, because she will undoubtedly be an expert witness at the trial in the Senate. But that is what it all comes down to.

If I could in conclusion just offer not a response, but maybe a corollary to Mr. Graham's concern about undue pressure, unfair pressure about impeachment. Well, what about a censure vote on the floor of the House? What about a censure vote on the floor of the House? Why won't the Republican leadership, why wouldn't Speak-

er Gingrich or new to-be Speaker Livingston or Mr. Delay, why won't they let us vote on a censure vote in the full House? Because it is undue pressure, because they know very well that if they allow a censure vote, that will create a big dilemma for some Republicans. So when we talk about undue pressure, when we talk about voting your conscience, then let's talk about the Republican leadership in Congress allowing the free will of this Congress to be expressed.

Don't hide behind parliamentary procedure. Undue pressure? Let us vote on the censure, and then maybe, maybe the Republicans would have a ground to talk about undue pressure. Thank you, Mr. Chairman.

Mr. ROGAN. Mr. Chairman, I rise to a point of personal privilege.

Chairman HYDE. The gentleman from California has a point of personal privilege.

Mr. ROGAN. Thank you, Mr. Chairman.

A few minutes ago my friend from Massachusetts in his remarks to the committee put forth his interpretation of the motivations of the Republican Members' votes on articles of impeachment. He then said that if any Republican disagreed with that interpretation, they should speak right now. I asked the gentleman to yield me time; he did not yield to me. He said at the end of his remarks he would yield to me. Regrettably, his time expired.

I simply don't want a vacant record left that shows silence when the challenge was issued. Speaking for myself, I did take issue with his interpretation. I do not know if any of my colleagues join me in that, but I just want the record to reflect the gentleman's time did expire before anybody had an opportunity to engage him further on his point.

Mr. WATT. Will the gentleman yield? Which friend from Massachusetts? We have three of them here.

Mr. ROGAN. Well, they are all my friends. That would be my especially dear friend from Massachusetts, Mr. Delahunt.

Chairman HYDE. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

Let me just point out, I wanted to make a distinction as to what Mr. Delahunt had said and suggest that conviction, the conviction that every person of conscience in this House arrives at when he makes a vote, should be based on things other than just personal animosity. I don't think that is any reason to vote in this House, but rather should be based on the evidence and the weighing of many factors, including the gravity of the acts of the President and their effect on our system. But I think, at least for me, the standard should be that those rise to a level that should result in removal from office.

Let me associate myself with the comments of my friend Mr. Coble, who talked about the gravity that this proceeding has for him, and in particular he spoke about the emotional difficulty, the knots in his stomach. I think this is a trying time for America, a very difficult time, and yet we are called upon to do what I would hope on all sides is the courageous thing and that is vote our consciences. I would just make an exception that I don't want to go to the parking lot with him, because I think he can handle it him-

self, for whoever might take it. I just give you fair warning in advance.

I would like to speak to the issue of executive privilege and why I thought it should be in here. It is a difficult issue and one where I have a great deal of sympathy for Mr. Gekas and his view that executive privilege is easily abused. But you will recall that this became rather a prominent item over the President's denial that he knew anything about the assertion of executive privilege in the course of questioning from reporters from the Washington Post.

In fact, President Clinton said—or the article says, Clinton, who has yet to acknowledge publicly even that he is asserting executive privilege, was pressed by reporters to explain why he was trying to block testimony. His voice clipped and his expression cold, the President responded as though he were a bystander in the controversy rather than its central character. All I know is I saw an article about it in the paper today, said Clinton, referring to the packet of news clippings he gets each morning. I haven't discussed it with the lawyers. I don't know. You should ask someone who knows.

Now, that is important, because what the President was doing here was cutting off one of the kinds of things in America in our system that keeps him in line, and that is the press. He didn't tell the truth. The White House came back, through Mr. Ruff, and tried to explain that, saying that, in fact, the question, in fact, cast aspersions on Mr. Starr, saying that he misquoted and misstated the past. But in fact, in paragraph 44 of Mr. Ruff's affidavit, he referred with particularity to the First Lady. So that being the distinction, that the President had been asked about the First Lady, and yet the averment that Mr. Ruff made in his assertion of the executive privilege particularly included the First Lady.

Now, I don't think that executive privilege would be—just based on that would be so significant, when you take a look at what this White House has done. In the Nixon case executive privilege was asserted six times in writing, and I think those were the only assertions of executive privilege. In this case, that is the case of President Clinton, we have 13 assertions of executive privilege in writing. And beyond those, there have been numerous, perhaps hundreds of assertions that haven't been in writing. And I will just tell you as a member of the Resources Committee, where we did battle over issues that went right to the core of what we are dealing with here, that is the President lying, in the establishment of a monument in my district, the President suggested and suggested and suggested executive privilege, and what came down in a subpoena refused, or didn't actually assert it in the case.

So can executive privilege be abused? I think it can.

In closing, let me just say that the heart of the case against the President is lying under oath. At every turn when he was faced with the choice of answering questions honestly or deceptively, the President has chosen deception. Even when he was faced with the prospect of impeachment, the President chose to provide false and deceptive information to the Judiciary Committee, demonstrating contempt for the constitutional duty of Congress. While lying to the American people and his subordinates are extremely serious matters, for the basis of impeachment charges against President Clin-

ton, the Majority is choosing to set the bar for abuse of power in the articles of impeachment as clearly as possible, and focusing that on lying to Congress.

Thank you, Mr. Chairman.

Chairman HYDE. The gentleman's time has expired.

The gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

I want to briefly address this amendment itself, and I listened carefully when Mr. Watt, among others, spoke on this amendment. I view this as choosing between supporting or voting for an article that is currently in the draft that I don't support, or voting for an article that is not in the draft that I don't support. And I am of the notion that rather than picking my poison, I am going to vote against both of them for that reason.

I also want to address a comment that my friend Mr. Bryant made from Tennessee, because I think actually there was a lot in his comment that deserves discussion, because in some ways it goes to the nub of what we are talking about here today.

He said that he felt, and I don't mean to misstate you, Mr. Bryant, so correct me if I do, that we should not be lowering the bar, in essence, by saying that perjury and obstruction of justice are no longer impeachable offenses. That is pretty much what you said. And I would agree with that, but I don't know that we would say, at least that I would say, that perjury in the context of a personal matter is per se an impeachable offense.

And so my feeling on this all along is that you have to look at the underlying offense, first, to determine whether it occurred; second, to determine whether it is an offense against the State; and if it is not an offense against the State, whether it is a crime of such great magnitude that the underlying offense so offends one's morality that the person should be removed from office.

So I think we do have to be careful, and I agree with you, we have to be careful what we are doing with this bar, whether we are lowering it or whether we are raising it, because I think if we did say that perjury per se was an offense, that would mean that you would have someone who committed perjury in a very private divorce matter, for example, susceptible to impeachment. I am not saying that that is right, but that is certainly something that could happen, so you would not have an underlying civil rights claim that we have in this case. You could say that perjury, as I mentioned before, in a speeding case would be an act that deserved impeachment. Again, I don't think that is what the framers had in mind.

I also want to briefly touch on the comments that my good friend Mr. Graham referred to when he read from the article dealing with Jay Dickey. I know Jay Dickey. He is a good friend of mine. He can foul and be fouled as well as anybody I know in the basketball gym downstairs, and he can stand up to pressure from Democrats and Republicans.

I have looked at the article, and I want to read another section of the article, because it says, it was not the kind of arm-twisting that normally marks a legislative battle, Dickey said. Rather, it was simply an offer for information. But he isn't sure whether he will take the White House up on it. "I will if I can see an application." It doesn't sound like a man under great duress.

Earlier in the article, the article also states, the White House feels some confidence that despite pressure from the Republican leadership, Dickey can be persuaded to vote against impeachment. What this means in legislative parlance is that Mr. Dickey is in play, and he is getting pressure apparently from the White House, although from his own account it is not the normal kind of arm-twisting that goes along with legislative battle, but pressure from the Republican leadership.

I have been under the impression from statements here today that this is solely a vote of conscience.

Mr. GRAHAM. Would the gentleman yield?

Mr. BARRETT. I will yield in about 15 seconds.

Mr. WATT. Would the gentleman yield to me, too?

Mr. BARRETT. And if it is solely a vote of conscience, then we should tell the leaders from both our parties to go home, leave us alone, let us pray and make the decision as our conscience dictates.

I yield to Mr. Graham.

Mr. GRAHAM. I will associate myself with that last statement. Let me read what Mr. Dickey has released in a press release. A statement by 4th district—well, it was brought up by the gentleman from Wisconsin. I have the article, and I hope something will bring us together, and maybe the idea of your last statement will bring us together. We all got a job to do, and we are going to have to live with what we have to do, and leave us alone and let us do it.

That statement takes—he is referring to the statement in the article, that statement—

Mr. WATT. Mr. Chairman, I ask unanimous consent that the gentleman be given 2 additional minutes.

Mr. GRAHAM. “When will they learn there are some people who don’t want to serve according to polls, who don’t consider their survival more important than the good of the country? This threat encourages me to make this decision in the shallow reaches of pure and simple politics. I will resist that. I don’t want to serve just to be reelected. What I want to do is stress to my constituents that this decision should be about protecting, respecting, and abiding by the U.S. Constitution and respecting others with opposing views. Hear this, White House: I am planning on running for reelection in the year 2000. You are trying to influence my vote with the power of the White House. If my decision on impeachment causes you to work even harder for my defeat, as you have in the past, then so be it. In the end, you may finally tear me away from my constituents, but you won’t ever tear me away from my conscience.”

I hope we all would associate ourselves with that statement.

Mr. BARRETT. If I could reclaim my time, and again, we hear the word “conscience,” and we are going to hear that word a lot more today, because our plea to you is going to be continuously that we be allowed to vote our conscience as well. Every one of us, believe it or not, and maybe the American people don’t believe it, but I believe it, every Member of this institution has a conscience. No Member of this institution should be denied the right to vote their conscience.

I yield to Mr. Watt.

Mr. WATT. I thank the gentleman for yielding. I just want to say on the record that I wanted the record to reflect that I was on the verge of making some disparaging remarks about my friend Mr. Graham. Mr. Rogan had, in fact, yielded me time to do that. And I took a deep breath and took a walk, and decided neither to say them publicly, nor privately, and that Mr. Graham and I remain friends. And I am happy that I did that.

Mr. BARRETT. I yield to Mr. Frank.

Mr. FRANK. I thank the gentleman. I would just like to say that any discussion of pressure being put on Members which leaves out the name of Tom DeLay is equivalent to debating impeachment without mentioning the name of Monica Lewinsky.

Chairman HYDE. The time of the gentleman has expired.

The gentlewoman from California, Mrs. Bono.

Mrs. BONO. Thank you, Mr. Chairman.

I would just like to address a question that I heard a long time ago in this proceeding. It was posed by Congressman Schumer. His question was, "how did lying to the American people get here in the first place?" Now, granted it has been stricken from the article before us, but I want to just read from something that I have come across—

Mr. SCHUMER. Would the gentlelady yield, because she didn't quote me correctly. Lying to the Cabinet, or to the public, not under oath, become part of this article.

Mrs. BONO. Then I stand corrected. But I think that nonetheless this is relevant, and I would like to read it. It is something former Secretary of Labor Robert Reich has written. "President Clinton's defense of a public lie in this matter poses a great threat to his Presidency that makes it especially difficult for the Nation to move on."

What Reich finds so disturbing is not simply the fact of President Clinton's public lie, but passionate intensity. Mr. Reich wrote, quote, "In January, the President told America with stunning conviction that he had not had a sexual relationship with Ms. Lewinsky. On August 17th, he looked into the eyes of America and said his January statement had been misleading. Many who witnessed both performances thought the January one more convincing. Hence, Mr. Clinton's second problem. If he can so convincingly fake a lie, how can the public believe anything else he says, including his current stream of apologies? Despite protestations that the Lewinsky affair was his private business, the betrayal was indubitably public because the denials were so passionately public. He spoke to America with the same emotional intensity he has brought to countless public issues. What happens to Presidential power when credibility is so blatantly forfeited? It inevitably subsides."

And that is why lying to the American people was here in the first place. I believe that this side has stricken it because we strongly feel that the first three articles are just so strong that the perjury, the first two on perjury, are so strong.

With that, I yield to my good friend, the gentleman from Indiana.

Mr. BUYER. I thank the gentlewoman for yielding.

I am going to support the Gekas amendment. I will vote for Article IV. The President's response to the 81 request for admissions

was a continuation of a pattern, I believe, of perjury and obstruction of justice.

When we bring up the issue about the impeachment of former Federal judges Mr. Claibourne and Mr. Nixon, what was interesting at the time we had a Democrat Majority here that sat on the Judiciary Committee, and they brought forward those impeachments. They passed the House. We had managers that prosecuted them in trial before the Senate. What I find most interesting is that these judges were prosecuted, and one standard was used: high crimes and misdemeanors. They said one standard that applies to the President and Vice President will also apply to these Federal judges and other civil officers.

You see, in the defense of the judge, the defense lawyers in the trial in the Senate argued that the Federal judges should be treated differently, that they should be treated on impeachment for misbehavior, not judged on the same standard with the President. The Democrat Majority at the time said no; rejected that, and said no, Federal judges and the President should be treated by the same standard. Well, I agree. I think the Republicans and Democrats at the time in the 1980s on both of those cases agreed. I think the Judiciary Committee needs to follow the precedent and be consistent, and that is what we are trying to do here.

I also want to express my appreciation to Mr. Coble. Mr. Coble expressed some honesty about his own personal conscience, about his gut and how it was being turned over. And I don't believe anyone should make a mockery about someone describing how they personally feel going through this process, because it is not easy. So I am going to speak about my conscience.

You see, I didn't sleep very well last night. So what I did about 2 a.m. this morning is I went out and took a jog. Now some may say that may not be a smart thing to do in Washington at 2 a.m., but I took a jog down the Mall, and as I took the jog down the Mall, I first went through the Korean memorial. I did that because of my father, and then I thought of Mr. Conyers, and I thought of others; I then went over to the Vietnam Memorial, and I walked slowly. I thought of my time back as a cadet at the Citadel.

Chairman HYDE. The gentleman's time has expired.

Mr. BUYER. I move to strike the last word on my time.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. BUYER. The gentleman was a Vietnam veteran and he walked up to the blackboard, and his name today is Colonel Trez. He was a young major at the time, and he wrote this statement on the blackboard and he demanded that these young cadets memorize this statement. He said, "Those who serve their country on a distant battlefield see life in a dimension that the protected may never know."

You see, I worked hard to understand that. It wasn't until years later that I understood that myself in my service in the Gulf War. I had a very dear friend die. I understand the painful tears, and I understand the horrors of war.

As I jogged back, I stopped at the Washington Monument. The Mall is beautiful at night. And then I thought about the World War II veterans, Mr. Hyde and others, a unique generation. They were truly crusaders. They fought for no bounty of their own. They left

freedom in their footsteps. And then I thought about something I had read in military history. After D-Day they were policing up the battlefield and lying upon the battlefield was an American soldier who was dead. No one was around to hear his last words, so he wrote them on a pad. Can you imagine the frustration, knowing you are about to die and there is no one around to say your last words to? I don't know what you would write, but this soldier wrote, "Tell them when you go home, I gave this day for their tomorrow."

You see, part of my conscience is driven by my military service. I am an individual that not only is principled, but also steeped in virtues, and I use those to guide myself through the chaos. And then I think about people all across America, about America's values and American character, and I want to put it in plainspoken words.

So when I think about America's character and commonsense virtues, I think about honesty. What is it? Tell the truth; be sincere; don't deceive, mislead or be devious or use trickery; don't betray a trust. Don't withhold information in relationships of trust. Don't cheat or lie to the detriment of others. Nor tolerate such practice.

On issues of integrity, exhibit the best in yourself. Choose the harder right over the easier wrong. Walk your talk. Show courage, commitment, and self-discipline.

On issues of promise-keeping, honor your oath and keep your word.

On issues of loyalty, stand by, support and protect your family, your friends, your community. And your country. Don't spread rumors, lies, or distortions to harm others. You don't violate the law and ethical principles to win personal gain, and you don't ask a friend to do something wrong.

On issues of respect, you be courteous and polite. You judge all people on their merits. You be tolerant and appreciative and accepting of individual differences. You don't abuse, demean, or mistrust anyone. You don't use, manipulate, exploit, or take advantage of others. Don't You respect the right of individuals.

On the issue of acting responsibly and being accountable, the issue is to think before you act; meaning, consider the possible consequences on all people from your actions. You pursue excellence, you be reliable, be accountable, exercise self control. You don't blame others for your mistakes. You set a good example for those to look up to you.

On the issue of fairness, treat all people fairly. Don't take unfair advantage of others. Don't take more than your fair share. Don't be selfish, mean, cruel or insensitive to others.

You see, citizens all across America play by the rules, obey the laws, pull their own weight; many do their fair share, and they do so while respecting authority.

I have been disheartened by the facts in this case. It is sad to have the occupant of the White House, an office that I respect so much, riddled with these allegations, and now I have findings of criminal misconduct and unethical behavior. We cannot expect to restore the Office of the Presidency by leaving a perjurious President in office.

I yield back my time.

Chairman HYDE. The question occurs on the amendment offered by the gentleman from Pennsylvania, Mr. Gekas.

All those in favor will signify by saying aye.

Opposed, no.

Mr. CONYERS. A recorded vote is requested.

Chairman HYDE. The gentleman from Michigan requests a recorded vote. The Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. McCollum votes aye.

Mr. Gekas.

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas votes aye.

Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble votes aye.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly votes aye.

Mr. Canady.

Mr. CANADY. Aye.

The CLERK. Mr. Canady votes aye.

Mr. Inglis.

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis votes aye.

Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte votes aye.

Mr. Buyer.

Mr. BUYER. Aye.

The CLERK. Mr. Buyer votes aye.

Mr. Bryant.

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant votes aye.

Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot votes aye.

Mr. Barr.

Mr. BARR. Aye.

The CLERK. Mr. Barr votes aye.

Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins votes aye.

Mr. Hutchinson.

Mr. HUTCHINSON. Aye.

The CLERK. Mr. Hutchinson votes aye.

Mr. Pease.

Mr. PEASE. Aye.

The CLERK. Mr. Pease votes aye.  
Mr. Cannon.  
Mr. CANNON. No.  
The CLERK. Mr. Cannon votes no.  
Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
Mr. GRAHAM. Aye.  
The CLERK. Mr. Graham votes aye.  
Mrs. Bono.  
Mrs. BONO. Aye.  
The CLERK. Mrs. Bono votes aye.  
Mr. Conyers.  
Mr. CONYERS. Aye.  
The CLERK. Mr. Conyers votes aye.  
Mr. Frank.  
Mr. FRANK. Present.  
The CLERK. Mr. Frank votes present.  
Mr. Schumer.  
Mr. SCHUMER. Aye.  
The CLERK. Mr. Schumer votes aye.  
Mr. Berman.  
Mr. BERMAN. Aye.  
The CLERK. Mr. Berman votes aye.  
Mr. Boucher.  
Mr. BOUCHER. Aye.  
The CLERK. Mr. Boucher votes aye.  
Mr. Nadler.  
Mr. NADLER. Aye.  
The CLERK. Mr. Nadler votes aye.  
Mr. Scott.  
Mr. SCOTT. Aye.  
The CLERK. Mr. Scott votes aye.  
Mr. Watt.  
Mr. WATT. Aye.  
The CLERK. Mr. Watt votes aye.  
Ms. Lofgren.  
Ms. LOFGREN. Present.  
The CLERK. Ms. Lofgren votes present.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. No.  
The CLERK. Ms. Jackson Lee votes no.  
Ms. Waters.  
Ms. WATERS. No.  
The CLERK. Ms. Waters votes no.  
Mr. Meehan.  
Mr. MEEHAN. Present.  
The CLERK. Mr. Meehan votes present.  
Mr. Delahunt.  
Mr. DELAHUNT. Aye.  
The CLERK. Mr. Delahunt votes aye.  
Mr. Wexler.  
Mr. WEXLER. No.

The CLERK. Mr. Wexler votes no.  
Mr. Rothman.

Mr. ROTHMAN. Aye.

The CLERK. Mr. Rothman votes aye.

Mr. Barrett.

Mr. BARRETT. No.

The CLERK. Mr. Barrett votes no.

Mr. Hyde.

Chairman HYDE. Aye.

The CLERK. Mr. Hyde votes aye.

Chairman HYDE. The Clerk will report.

The CLERK. Mr. Chairman, there are 29 ayes, 5 noes, and 3 present.

Chairman HYDE. And the amendment is agreed to.

It is the Chair's intention, following the adoption of Article IV, to declare a 30-minute luncheon recess before we return for the unfinished business.

So without objection, the previous question is ordered—

Mr. SCHUMER. Mr. Chairman.

Chairman HYDE. The gentleman from New York.

Mr. SCHUMER. I move to strike the last word.

Chairman HYDE. The gentleman—

Mr. SCHUMER. It is on the amendment, it is on Article IV.

Chairman HYDE. All right. The gentleman is recognized for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman.

My colleagues, to me, like to many of us, this is a sad day, it is a solemn day. The longer I am at these proceedings, the more I am convinced of the weakness of the case made by the Majority. Last night and today, I think, show that in a telling way. Last night our Chairman, who I esteem and have always esteemed and will continue to esteem, tried to tell the American people, don't worry, we are not yet throwing the President out, even if we vote for these articles of impeachment. And this morning, before he corrected himself, Mr. McCollum said we don't have to have the penalty of throwing the President out.

I think the Majority almost subliminally realizes that the punishment doesn't fit the crime. We all agree that the President didn't tell the truth. We may disagree about its criminality, its consequences. But, our side, and I think most Americans, with their commonsense wisdom, believe it doesn't rise to the level of impeachment. And the idea that Mr. Hyde mentioned and Mr. McCollum mentioned would be as if there were two, two commanding officers in a bunker in South Dakota who had their fingers on the button of a nuclear weapon. You needed both to push the button. We in the House, being the first officer, we push the first button and then say the second officer doesn't have to push the button, and avoid nuclear strike. That is sophistry. It is not becoming of this body, in my judgment.

The second point I would make is this. The amendment to Article IV which I just supported—I called that the other day the part of Article IV—and this is what Ms. Bono mentioned; that in the eyes of some, if the President doesn't tell the truth to the public or to his Cabinet—remember, what is truth in the eyes of some is not

telling the truth in the eyes of others, and that is because the world is a world of shades of gray—that that would indicate grounds for impeachment.

Now, fortunately, Mr. Gekas came to the rescue at this last minute and removed that from these articles, but I shudder to think what led the Majority to put them in the articles of impeachment to begin with, and why were they not removed until this last minute when that kind of article is just so absurd on its face? I called it yesterday “the theater of the absurd.” We could call today’s move renders these articles “the theater of the slightly less absurd,” but absurd nonetheless. I just don’t understand how that provision stayed in so long, and it makes me wonder, not about the motivation, but about the logic and the soundness of argument of the Majority.

Now, what remains? What remains in Article III—and to their credits many, particularly I esteem the gentleman from Florida, Mr. Canady, he has been consistent throughout. He has said that this is about, in his judgment, lying, perjury under oath, and the President should be removed from office. He said that at the start, he has said that consistently. I respect him for it. I disagree with him, but I respect him. His argument has been consistent throughout, it hasn’t changed with the winds, et cetera. But now, that is all we have. Article III—I mean Article IV, once the amendment passes, is about the same nexus of facts that Articles I and II are about. All we are talking about in this is something serious, but something that doesn’t rise to the level of impeachment, which is not an extramarital relationship. The other side keeps setting up that strawman. No one on this side is saying you are impeaching the President because of an extramarital relationship. What you are impeaching the President for is lying, in your judgment, about that extramarital relationship.

Chairman HYDE. The gentleman’s time has expired.

Mr. SCHUMER. I would ask for—

Mr. DELAHUNT. Mr. Chairman?

Chairman HYDE. Who is seeking recognition?

Mr. DELAHUNT. Mr. Delahunt.

Chairman HYDE. Mr. Delahunt is asking for recognition. For what purpose?

Mr. DELAHUNT. I move to strike the last word.

Chairman HYDE. Well, I am sorry. Would you mind if we go to the Republican side? Mr. McCollum.

Mr. MCCOLLUM. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I want to respond. I have a lot of respect for Mr. Schumer. He and I have served on this committee a long time. He has been my Ranking Member on the crime subcommittee, and I wish him well as he goes off to the other body shortly. But I simply cannot resist responding to the points he is trying to make here about characterizing some of the thoughts that some of us have, and me in particular.

First of all, I believe that the President of the United States has committed very grave, serious, and impeachable offenses that deserve for him to be removed from office. And I think that most of

the Members, if not all of the Members, on my side believe that he should be removed from office.

Now, the reality is, the reality is, that however serious these are, that apparently the likelihood is that the Senate doesn't have enough votes over there to convict, but we don't know that until we get there. In fact, this case should be tried over there. We should find that out, in my judgment. That is my opinion. If we can get him convicted or removed from office, by golly, he deserves it.

However, even if he weren't convicted, my point has been all along that impeachment is the ultimate censure. You can't just slap somebody on the wrist with some piece of paper we file as a resolution which we are going to debate here in a little while, and the resolution that we could do and we do regularly around this body for any number of things, condemning this or condemning that, and suggest that that act alone rises to the level of actually giving some kind of response to the awful, criminal acts that this President has committed: the undermining of the right of Paula Jones to have her day in court, the lying to the court, the encouraging of others to lie, the hiding of evidence, the encouraging of others to hide evidence; the lying before the grand jury ultimately, which is even a greater insult to our system of government, and committing perjury, which I believe that was; and then I believe in this article, even a greater insult, after he knew he was under an inquiry of impeachment, after all that had been said and done, the President of the United States contemptuously came back to this committee and lied again, not once, but any number of times that have been cited. I think that it is very much to the level of impeachment, and I believe it is to the level that the President should be removed from office. It is just simply not logical to do otherwise.

I would also like to quote from Mr. Broder's column yesterday in which he says, "Other defense witnesses tried with more success to argue that the allegations against Clinton are not nearly as serious as those that led to the recommended impeachment of Richard Nixon and are not so consequential as to merit the disruption of government a Senate trial might entail."

The first point is irrefutable, but irrelevant. The House is not being asked to judge whether Nixon or Clinton is the worst miscreant, but simply whether Clinton's actions in themselves merit impeachment. I submit they clearly do, they merit removal from office, but at the very least they merit impeachment, and if he is not removed from office ultimately, which is not our decision, it is the other body's decision, at the very least he merits impeachment, impeachment that will go down in history as a brand that says, this is the President who was impeached for these awful offenses.

I yield back the balance of my time.

Chairman HYDE. Without objection, the previous question is ordered on Article IV. The question occurs on Article IV as amended. All those in favor will say aye.

Opposed, no.

In the opinion of the Chair, there will—

Mr. WATT. Mr. Chairman?

Chairman HYDE. Mr. Watt.

Mr. WATT. Would the gentleman mind me striking the last word?

Chairman HYDE. Not a bit. Please, talk away.

Mr. WATT. Is the Chairman perturbed that we are trying to explain our votes and debate the underlying article at this point? I can't understand what the Chairman's motivation is.

Let me just say that I find this article simply to be a repeat of Articles I and II, substantially, now that it has been amended. I did vote for the amendment, because I thought it was absolutely ridiculous to say that the—to the President of the United States that he could be impeached for exercising executive privilege, which every—I mean, any kind of privilege is a legal privilege that we give under the law, and to say that it is an abuse of power when you exercise a privilege is just absolutely ridiculous.

So, as I said in the debate on the amendment to this article, Mr. Gekas's amendment clearly made it less onerous and less ridiculous. But the amendment is subject to the same concerns that we expressed yesterday about Articles I and II because it uses the term "perjurious," and therefore alleges perjury, and there has been absolutely no designation in the Gekas amendment or elsewhere of what the perjurious statements are. And if we are going to allege a perjury, a legal perjury, then I think it is incumbent upon this committee to grant to the President of the United States the exact same privileges that we would grant to every American citizen in the country. He can't be above the law; he can't be below the law. The rule of law in our country says that if you charge somebody with perjury, you must tell them the statements that they have made that constitute that perjury.

And we have spent the last 3 days now talking about how all of us are intent on upholding the rule of law in this country. And if we can't accord the rule of law to the President of the United States in these impeachment articles and tell him what he is going to be tried for if he is convicted—if he is impeached for them, then we have accorded the President the status of being below the law, which I would submit to you is even worse than according him the status of being above the law.

We cannot sit here in the Judiciary Committee of the United States House of Representatives and give pious statements about how we are upholding the rule of law, and consistently disregard what the rule of law says our obligation is. And the rule of law says, if you charge somebody with perjury, you are obligated to tell them what the perjurious statements are. And that is what I think we should insist on as members of this committee, and that is what I—that is the very reason I will vote against this article just as I voted against the Articles I, II and III. I yield back.

Chairman HYDE. The gentleman's time has expired.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent that we have two additional speakers on each side before we move to a disposition of the article.

Chairman HYDE. Is there objection?

Mr. WATT. Mr. Chairman, reserving the right to object.

Chairman HYDE. Mr. Watt reserves the right to object.

Mr. WATT. I am reserving the right to object so that I can understand why it is that we are being asked to give up the committee's right to debate the article to this impeachment, which is the most profound responsibility that this committee and this Congress could have. Why are we muzzling the members of this committee?

Mr. CONYERS. To the member who has just utilized his 5 minutes, I would suggest that the reason that we are doing it is that we have debated the issue, the article, the amendment, and adopted the amendment—

Mr. WATT. Well, let me just reclaim my time and submit to the gentleman that what we debated was whether to amend the original article. We are now debating the article which is in question. There is a difference in those two things.

Mr. CONYERS. I quite agree with my colleague from North Carolina.

Mr. WATT. Well, I am not going to object. I have used my 5 minutes, you are absolutely right. But I would tell the gentleman that I just think we are doing the American public an absolute disservice by depriving this committee of the right to debate one of the most important issues that has ever come before this Congress.

Mr. CONYERS. I don't doubt the gentleman's sincerity and conviction.

Ms. JACKSON LEE. Mr. Chairman, point of information.

Chairman HYDE. Would the gentleman yield for just a second, Mr. Conyers, on your unanimous consent request?

Mr. CONYERS. Yes, sir, I do.

Chairman HYDE. I have some working papers that explain in detail which language we allege is perjurious and wrongful and misleading.

Mr. WATT. Is the gentleman responding to my concern?

Chairman HYDE. Yes. And I will be happy to send this right down to you, if you don't mind my scratchings in the margin.

Mr. WATT. Would the gentleman make them a part of the impeachment article?

Chairman HYDE. No, I will not. I will make them a part of the record, and when we file a report, as soon as the law lets us, it will contain extensive specificity, something we all seem to want. But meanwhile, to answer your urgent question as to which specific misstatements and perjurious remarks of the President we are counting on, I have this working document that I am happy to give you.

[The information follows:]

**Working Document**  
**Article IV**  
**Some Examples of Perjurious, False and Misleading**  
**Statements Given Under Oath by the President in the Inquiry**  
**of Impeachment**

*As President William Jefferson Clinton refused and failed to respond to certain written requests for admission and willfully made perjurious, false and misleading sworn statements in response to certain written requests for admissions propounded to him as part of the impeachment inquiry authorized by the House of Representatives of the Congress of the United States. William Jefferson Clinton, in refusing and failing to respond and in making perjurious, false and misleading statements, assumed to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives and exhibited contempt for the inquiry.*

1. The President did not respond completely or truthfully to Request for Admission No. 19.
2. The President did not respond completely or truthfully to Request for Admission No. 20.
3. The President did not respond completely or truthfully to Request for Admission No. 24.
4. The President did not respond completely or truthfully to Request for Admission Nos. 26 and 27.
5. The President did not respond completely or truthfully to Request for Admission No. 34.
6. The President did not respond completely or truthfully to Request for Admission No. 42.
7. The President did not respond completely or truthfully to Request for Admission No. 43.
8. The President did not respond completely or truthfully to Request for Admission Nos. 52 and 53.

Mr. WATT. Is this a consensus of the committee that we are working from, or is it—does it explain solely from the Chairman's mind?

Chairman HYDE. No, it is certainly from the bowels of the committee, but it may have had its—

Mr. WATT. Well, Mr. Chairman, I assure you it is not from my bowels. This will be the first time I have ever seen it.

Chairman HYDE. Well, that's right, but you are seeing it, and I am happy to give it to you, and I hope it answers some of your questions.

Mr. WATT. Would the Chairman object to my trying to make this a part of the impeachment article?

Chairman HYDE. You mean you want to offer an amendment?

Mr. WATT. I might.

Chairman HYDE. Well, you do anything you want, sir. This is a democracy.

Mr. WATT. Well, if we don't have but two more speakers and I don't have a chance to look at it, then it is going to be pretty difficult for me to have that option, because it will be gone.

Mr. CONYERS. Mr. Chairman, it is my appreciation that on this side there is a request for two more of my colleagues to speak, and that is why—three now.

Mr. SCOTT. Mr. Chairman, I don't want, unless provoked—I would object to the unanimous consent request. I think if there are only two, then there will only be two. But I would object to the unanimous consent.

Chairman HYDE. Objection is heard, and the committee will stand in recess for an hour for lunch.

[Whereupon, at 1:30 p.m., the committee recessed, to reconvene at 2:30 p.m., this same day.]

Chairman HYDE. The committee will come to order.

Is there further discussion on Article IV?

If not, the question occurs on Article IV as amended. All those in favor will signify by saying aye.

Opposed, no.

A roll call has been requested. The clerk will call the roll.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Mr. McCollum.

Mr. MCCOLLUM. Aye.

The CLERK. Mr. McCollum votes aye.

Mr. Gekas.

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble votes aye.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly votes aye.

Mr. Canady.

Mr. CANADY. Aye.  
The CLERK. Mr. Canady votes aye.  
Mr. Inglis.  
[No response.]  
The CLERK. Mr. Goodlatte.  
Mr. GOODLATTE. Aye.  
The CLERK. Mr. Goodlatte votes aye.  
Mr. Buyer.  
Mr. BUYER. Aye.  
The CLERK. Mr. Buyer votes aye.  
Mr. Bryant.  
Mr. BRYANT. Aye.  
The CLERK. Mr. Bryant votes aye.  
Mr. Chabot.  
Mr. CHABOT. Aye.  
The CLERK. Mr. Chabot votes aye.  
Mr. Barr.  
Mr. BARR. Aye.  
The CLERK. Mr. Barr votes aye.  
Mr. Jenkins.  
Mr. JENKINS. Aye.  
The CLERK. Mr. Jenkins votes aye.  
Mr. Hutchinson.  
Mr. HUTCHINSON. Aye.  
The CLERK. Mr. Hutchinson votes aye.  
Mr. Pease.  
Mr. PEASE. Aye.  
The CLERK. Mr. Pease votes aye.  
Mr. Cannon.  
[No response.]  
The CLERK. Mr. Rogan.  
Mr. ROGAN. Aye.  
The CLERK. Mr. Rogan votes aye.  
Mr. Graham.  
Mr. GRAHAM. Aye.  
The CLERK. Mr. Graham votes aye.  
Mrs. Bono.  
Mrs. BONO. Aye.  
The CLERK. Mrs. Bono votes aye.  
Mr. Conyers.  
[No response.]  
The CLERK. Mr. Frank.  
Mr. FRANK. No.  
The CLERK. Mr. Frank votes no.  
Mr. Schumer.  
Mr. SCHUMER. No.  
The CLERK. Mr. Schumer votes no.  
Mr. Berman.  
Mr. BERMAN. No.  
The CLERK. Mr. Berman votes no.  
Mr. Boucher.  
Mr. BOUCHER. No.  
The CLERK. Mr. Boucher votes no.  
Mr. Nadler.

Mr. NADLER. No.  
 The CLERK. Mr. Nadler votes no.  
 Mr. Scott.  
 Mr. SCOTT. No.  
 The CLERK. Mr. Scott votes no.  
 Mr. Watt.  
 Mr. WATT. No.  
 The CLERK. Mr. Watt votes no.  
 Ms. Lofgren.  
 Ms. LOFGREN. No.  
 The CLERK. Ms. Lofgren votes no.  
 Ms. Jackson Lee.  
 Ms. JACKSON LEE. No.  
 The CLERK. Ms. Jackson Lee votes no.  
 Ms. Waters.  
 Ms. WATERS. No.  
 The CLERK. Ms. Waters votes no.  
 Mr. Meehan.  
 Mr. MEEHAN. No.  
 The CLERK. Mr. Meehan votes no.  
 Mr. Delahunt.  
 Mr. DELAHUNT. No.  
 The CLERK. Mr. Delahunt votes no.  
 Mr. Wexler.  
 Mr. WEXLER. No.  
 The CLERK. Mr. Wexler votes no.  
 Mr. Rothman.  
 Mr. ROTHMAN. No.  
 The CLERK. Mr. Rothman votes no.  
 Mr. Barrett.  
 Mr. BARRETT. No.  
 The CLERK. Mr. Barrett votes no.  
 Mr. Hyde.  
 Chairman HYDE. Aye.  
 The CLERK. Mr. Hyde votes aye.  
 Mr. GEKAS. Mr. Chairman.  
 Chairman HYDE. The gentleman from Pennsylvania?  
 Mr. GEKAS. I vote aye.  
 The CLERK. Mr. Gekas votes aye.  
 Chairman HYDE. The gentleman from South Carolina, Mr. Inglis?  
 Mr. INGLIS. Aye.  
 The CLERK. Mr. Inglis votes aye.  
 Chairman HYDE. Mr. Conyers?  
 Mr. CONYERS. No.  
 The CLERK. Mr. Conyers votes no.  
 Chairman HYDE. The clerk will report.  
 The CLERK. Mr. Chairman, there are 20 ayes and 16 noes.  
 Chairman HYDE. And the article is agreed to.  
 Now, I ask unanimous consent that the staff be directed to make necessary technical and conforming changes to the resolution just passed, and pursuant to clause 215 of House rule 11, Members will have until Tuesday evening, December 15, to file supplemental Minority or additional views. That means that Members must file

their views with the committee on Tuesday evening. Pursuant to the rule the committee will file its report between 12:01 a.m. and 1 a.m. Wednesday morning.

The committee will now proceed to consider a joint resolution censuring President Clinton.

The clerk will report the resolution sponsored by Mr. Boucher.

Mr. BOUCHER. House Joint Resolution blank—

Mr. CANNON. How is the gentleman from Utah recorded?

Chairman HYDE. How is the gentleman from Utah recorded?

The CLERK. Mr. Chairman, the gentleman from Utah is not recorded.

Mr. SENSENBRENNER. I ask unanimous consent that the gentleman be allowed to vote at this point.

Chairman HYDE. Hearing no objection, the clerk will incorporate Mr. Cannon's vote with the roll call.

Mr. CANNON. I vote aye.

The CLERK. Mr. Cannon is recorded as an aye.

Chairman HYDE. And will the clerk report the roll again?

The CLERK. Mr. Chairman, there are 21 ayes and 16 noes.

Chairman HYDE. And the article is agreed to.

Now, the clerk will report the joint resolution.

The CLERK. House Joint Resolution blank. Joint Resolution expressing the sense of Congress with respect to the censure of William Jefferson Clinton.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that it is the sense of Congress that:

(1) On January 20, 1993, William Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President; implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William Jefferson Clinton, has egregiously failed in this obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and dishonored the office which they have entrusted to him;

(2)(A) William Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate;

(B) William Jefferson Clinton wrongly took steps to delay discovery of the truth; and

(C) inasmuch as no person is above the law, William Jefferson Clinton remains subject to criminal and civil penalties; and

(3) William Jefferson Clinton, President of the United States, by his conduct has brought upon himself, and fully deserves, the censure and condemnation of the American people and the Congress; and by his signature on this joint resolution, acknowledges this censure and condemnation.

Chairman HYDE. The Chair recognizes the gentleman from Virginia, Mr. Boucher, for 5 minutes.

Mr. BOUCHER. Mr. Chairman—

Chairman HYDE. Ten minutes, I am sorry.

Mr. BOUCHER. Thank you very much, Mr. Chairman.

I want to begin this afternoon by expressing my appreciation to you, Chairman Hyde, for making in order for consideration by the

Judiciary Committee this resolution of censure. It is the American public's preferred outcome for the committee's investigation, and any process in this committee or on the floor that makes a censure alternative unavailable to the members would be rejected by the public as unbalanced, partisan and unfair.

You have wisely chosen, Chairman Hyde, to make the censure alternative in order; and without regard to the success of censure in this committee, I am confident that the same sense of evenhandedness, balance and fair play that led you, Chairman Hyde, to make the censure debate in order here will also be employed by the leadership of the House so that the censure alternative will be available to the full House membership next week.

I want to express a word of thanks to the committee's Democratic leader Mr. Conyers for the outstanding work that he and his fine staff have undertaken throughout this inquiry in partnership with the membership on this side of the aisle and for the very helpful guidance that he has provided to us as we began our work on this censure resolution. I also want to thank my colleagues and co-authors of this censure resolution, the gentleman from Massachusetts, Mr. Delahunt, the gentleman from Wisconsin, Mr. Barrett, and the gentlewoman from Texas, Ms. Jackson-Lee, for their substantial efforts in advancing this censure resolution.

The framers of the Constitution intended that the impeachment power be used only when the Nation is seriously threatened. In the words of our predecessors on this committee in their 1974 Watergate inquiry report, it is only to be used for the removal from office of a Chief Executive whose conduct is seriously incompatible with either the constitutional form and principles of our government or the proper performance of the constitutional duties of the Presidential office.

The facts that are now before this committee which arise from a personal relationship and the effort to conceal it simply do not rise to that high constitutional standard. While the President's conduct was reprehensible, it did not threaten the Nation. It did not undermine the constitutional form and principles of our government. It did not disable the proper performance of the constitutional duties of the Presidential office. It does not rise to the standard of impeachment set by this committee on a bipartisan basis in 1974.

But the acts were reprehensible. The President made false statements about his relationship with a subordinate. He wrongfully took steps to delay the discovery of the truth. He has diminished his personal dignity and that of the office of the Presidency. He has brought the Presidency into disrepute and impaired the image of the President as a role model for younger Americans.

I have a deep disdain for the President's actions. He deserves the admonishment and the censure and the rebuke of the Congress, and in adopting this resolution of censure, we will give voice to the widely held public view that the President should not be removed from office, but that he should be admonished by the Congress for his conduct.

Not only is this the public's preference, but it is the right thing to do. Some on the Majority side of this committee say that the only way to honor the rule of law and the revered American prin-

ciple that no individual, including the President, is above the law is to impeach and remove the President from office. Impeachment, however, was never designed as a punishment for the misconduct of the individual. It was designed to protect the Nation.

The President can be indicted, tried and punished in the criminal courts just as any other citizen for any conduct that he has committed while holding the Presidency that is found to be of a criminal nature. That is how his punishment can occur. His susceptibility to the criminal justice process means that the rule of law and the principle that no person, including the President, is above the law will be well served.

Censure is preferable to impeachment for yet another reason. The passage by the House of articles of impeachment will visit serious consequences upon the Nation. The mere fact that the House of Representatives votes for articles of impeachment will be felt by this country, and harm will occur. The divisions that now exist in our society will harden and deepen; a rift and a divide will occur. There will be a polarization. The President and the Congress will be diverted from the Nation's urgent national agenda while a prolonged trial takes place in the Senate. The Supreme Court will be immobilized all during that time as the Chief Justice presides during the Senate trial. There will be a lowering of the standard for future Presidential impeachments with a consequent and inherent weakening of the Presidential office. There will probably be turmoil in the financial markets with adverse effects for the Nation's economy.

These harms are not necessary. The Senate will not convict. It is universally acknowledged that the two-thirds vote required for a conviction cannot be achieved in the Senate, so we can avoid this damage to the Nation. We can bring closure to the process this month, and we can begin the process of healing this Nation by adopting this resolution of censure here and having it adopted on the floor of the House.

It is my hope that together we can reach this sensible conclusion, which more than any other approach will simultaneously acknowledge our long constitutional history and place this Nation, the Congress and the Presidency on a path toward the restoration of dignity.

Thank you, Mr. Chairman, and I yield back my time.

Chairman HYDE. I thank the gentleman. I yield myself 10 minutes.

The Constitution contains a single procedure for Congress to address the fitness for office of the President of the United States—impeachment by the House and subsequent trial by the Senate. Article II of the Constitution also specifies the necessary consequence of conviction in an impeachment case: “The President, the Vice President and all civil Officers shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

Article I states that “judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States.” This provision, however, does not authorize Congress to impose legislative punishments short of removal. Read to-

gether, the impeachment clauses require removal upon conviction, but allow the Senate at its discretion to impose a single additional penalty, disqualification from future office.

The framers' decision to confine legislative sanctioning of executive officials to removal upon impeachment was carefully considered. By forcing the House and Senate to act as a tribunal and a trial jury rather than merely as a legislative body, they infused the process with notions of due process. The requirement of removal upon conviction accentuates the magnitude of the procedure, encouraging serious deliberation among Members of Congress. Most importantly, by refusing to include any consequences less serious than removal as outcomes of the impeachment process, the framers made impeachment into such an awesome power that Congress could not use it to harass executive officials or otherwise interfere with operations of coordinate branches.

Some Members and commentators have proposed censure as a sanction from analogy to the legislative procedures by which Members of each House censure its own Members. I believe that analogy fails because the Constitution expressly provides plenary of authority to each House of Congress to fashion penalties for members of the legislative branch short of expulsion, but provides no such authority to discipline officers of other branches in the same manner.

Indeed, Article I, Section 5, Clause 2 states that "each House may determine the Rules of its Proceedings, punish its Members for disorderly behavior, and, with the Concurrence of two-thirds, expel a Member." It is pursuant to this explicit authority that each House can require one of its Members to go to the well of the House and receive the judgment of their peers.

I believe that for the President or any other civil officer, this kind of shaming punishment by the Legislature is precluded since the impeachment provisions of the Constitution permit Congress only to remove an officer of another branch of government and disqualify him from office. Such an extraconstitutional censure would undermine the separation of powers by assuming a power not enumerated in the Constitution.

I still believe we are a Constitution of enumerated powers which limits the actions of the Federal Government. Pursuing the course that the House has embarked on pursuant to H.Res. 581, the committee has adopted articles of impeachment against William Jefferson Clinton, and I believe it is tremendously important to let the House work its will on the work product of this committee pursuant to the House's command. To do anything else would be to look the other way instead of confronting our collective responsibility under the Constitution.

Out of a feeling of fairness and deference to Ranking Member Conyers and to my other Democratic friends, I have agreed to allow the committee consideration of a joint resolution of censure, but in no way should my disposition here today in committee be confused with my conviction that a so-called Presidential censure is *ultra vires* of the Constitution.

Now, it is very tempting, almost irresistibly tempting to demand of my friends specificity. Yesterday you put me through 22 hoops, some of which I had a lot of trouble climbing through, because of

“a dearth of specificity.” As I look at this work product, I can only ask where is the specificity? You say he made false statements, what false statements? When, where, under what circumstances? Was he under oath? Where is the word “lie” in here? I don’t see “lie.” I see that William Jefferson Clinton wrongly took steps to delay discovery of the truth. How did he do that? Specificity, Mr. Nadler, specificity.

Anyway, I won’t avail myself of that great temptation, but I will ask what effect—

Mr. NADLER. I am glad you won’t, Mr. Chairman.

Chairman HYDE. Yes. I will say what effect.

Now, Mr. Frank yesterday made a very good statement. He talked about censure is not nothing. It is substantial. I think it depends on the person who is censured. I think it means something to a person of some sensitivity. I think it has historical meaning. I don’t say that it is a nullity or nothing at all, but it also—the only time that I am aware of it having any efficacy was against Andrew Jackson, and it is now a bare footnote in Mr. Schlesinger’s book in *The Age of Jackson* and was revoked the next year by another Congress, but it is similar to yelling at a teenager. It purges you of some emotional feelings, but I don’t know what it really accomplishes. And I am concerned that once established, we would see a stream of censures against succeeding Presidents for policy decisions and what have you.

The Constitution doesn’t require us to fill in the blanks. There are no blanks. And what do we censure him for? As I read this, it is getting into sexual misconduct, and that is none of Congress’ business. I insist, it is none of Congress’ business. Those are private and ought to be left alone, and the resolution does not adequately address the serious questions of perjury and lying under oath which are the gravamen, to this Member, of the impeachment.

So I reserve—I will yield to Mr. Sensenbrenner since I have some time left.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Let me echo the comments that the gentleman from Illinois, Mr. Hyde, has made expressing his grave reservations about the constitutionality and efficacy of the censure resolution that has been proposed in good faith by the gentleman from Virginia and others.

Let me say it is of questionable constitutionality, and it is bad precedent, and it doesn’t do what it proposes to do.

I have done some reading from the minutes of the Constitutional Convention, and one of the themes that the 39 delegates to the Constitutional Convention repeated time and time again is that they did not want American Government to be like the British Parliament. They felt that many of the causes of the American revolution were a result of a parliamentary dictatorship where the three functions of government—executive, legislative and judicial—were all combined into a single institution, the British Parliament; and that is why they devised the elaborate system of checks and balances which have ensured that no institution or branch of government or single individual in the United States of America has ever become or will become too powerful.

The initial draft of the Constitution that the delegates considered had the removal function in the Supreme Court. The delegates de-

cided that that would make the removal of the President and other civil officials too much of a legal issue.

Mr. CHAIRMAN, I move to strike the last word, and I will take my 5 minutes now.

Chairman HYDE. Very well. My time has expired, and the gentleman is recognize for 5 minutes.

Mr. SENSENBRENNER. They were concerned about having the legal function be too legal. That is why they adopted in the Constitution the impeachment procedure that we have been debating for the last week where the House would have the sole power of impeachment, and the Senate would try the case and remove any official that has been impeached, deliberately making this a very difficult procedure and one that is isolated from instantaneous political whims.

One of the proposals during the Constitutional Convention was to have the President be suspended from office between the time the House voted articles of impeachment and the time the Senate tried and decided that case. They decided that that would run directly counter to the doctrine of separation of powers in an independent executive because a majority of the House of Representatives, by voting articles of impeachment, could effectively kick the President out of office. Therefore, that was not in the final Constitution that was submitted to the States for ratification.

Every time the Congress has attempted to censure the President, it has backfired, and it has backfired because it is something that can be done instantaneously, and it is something that is subject to change should the political winds change.

The Chairman has dealt with the censure of Andrew Jackson for directing his Secretary of the Treasury to withdraw government funds from the Bank of the United States, an action that was expunged from the record of the Senate after the next election caused Jackson's party to get a majority in the Senate.

The same thing can happen here. That is why Congresses repeatedly have declined to censure Presidents. If we set the precedent of censuring the President over allegations of misconduct, then we can do it for a President vetoing a budget bill of the Congress of another party, a President vetoing a bill that bans partial birth abortions, or anything else that is emotional. We should stay away from setting this precedent, as tempting as it may be.

Finally, the censure resolution that has been offered by the gentleman from Virginia does not address the essential misconduct that has been alleged against the President of the United States. I listen quite eagerly to everything my friend from Massachusetts says, and yesterday during the debate Mr. Frank said that the censure resolution relates to the statements that the President made at the press conference and not to the grand jury; that means, if this resolution is adopted the way it has been submitted, shaking your finger at the camera and telling the American public a lie is worthy of condemnation and censure by the Congress, but violating one's oath to the grand jury or in other types of judicial proceedings is not.

Mr. Chairman, that is ridiculous. I think it comes close to insulting the intelligence of the American public. What we are talking about here are serious legal violations by President Clinton, and

your censure resolution does not address those in the slightest. I think it misses the point. It misses the mark, and it tells the American public that it is more serious to lie on television than to lie after you have raised your right hand and swear to tell the truth, the whole truth and nothing but the truth, and I hope it is overwhelmingly rejected, and yield back the balance of my time.

Chairman HYDE. Mr. Boucher.

Mr. Delahunt.

Mr. DELAHUNT. Yes, thank you, Mr. Chairman.

We have voted on strict party lines to approve four articles of impeachment against the President of the United States. In light of what we have done, I have become very concerned about a stream of impeachment resolutions brought before this Congress.

In my view, what we have done has been reckless and irresponsible. Impeachment is not a punishment to be imposed on Presidents who fall short of our expectations. It is a last resort, an ultimate sanction to be used only when a President's actions pose a threat to the Republic so great as to compel his removal before his term has ended, not as a form of censure.

And I must disagree with my friend and the gentleman from Florida in the statement that impeachment is the ultimate censure. It is far more than that. It is the beginning of a process to remove the President of the United States. Impeachment should be considered only when there is no alternative. In this case we had an alternative, and the House still does.

I want to thank you, Mr. Chairman, for allowing this resolution to come to a vote. I have no doubt that you were under great pressure not to do so, and I applaud you for recognizing that it was the fair and proper thing to do. I can only hope that Speaker-elect Livingston will emulate your political courage and allow us a vote on the floor as well and give the American people an opportunity to hear that debate, because this resolution expresses the overwhelming sentiments of the American people that the President committed serious indiscretions with a subordinate; that in the effort to conceal his misdeeds he compounded them, abusing the trust of those closest to him and deliberately, cynically lying to the American people; that these actions warrant condemnation, but not impeachment.

The resolution does not mince words. It denounces the President's behavior sternly and unambiguously in plain, simple English. It acknowledges that the President is not above the law. Like every citizen, he remains subject to whatever penalties a court might impose on him at some future date, and we should not lose sight of that fact.

This language may be too harsh for some, too lenient for others, but its purpose should be clear to all. Censure has been endorsed by no less a luminary than former President Jerry Ford, who called it, and I am quoting, dignified, honest and above all cleansing. He added, and I quote, "At 85, I have no personal or political agenda, nor do I have an interest in rescuing Bill Clinton, but I do care passionately about rescuing the country I love from further turmoil and uncertainty."

These are the sentiments which most Americans, including many prominent Republicans, agree. Yesterday Governor Pataki of New

York became just the latest to announce his support for censure. Yet some insist that a censure of the President would be unconstitutional. Why? Because the Constitution doesn't mention censure. It is impeachment or nothing, we are told. That is absurd. We have ample discretion to do either.

As two-thirds, two-thirds of the constitutional experts called to testify by both Democrats and Republicans agreed, the Constitution, in the words of Justice Jackson, is not a suicide pact. It doesn't compel us to detonate a nuclear explosion when light artillery would do.

Chairman HYDE. The gentleman's time has expired. Does the gentleman wish additional time?

Mr. DELAHUNT. Two more minutes.

Chairman HYDE. Without objection, 2 more minutes.

Mr. DELAHUNT. Others oppose censure because they believe it is just a slap on the wrist. That is not how Andrew Jackson saw it when the Senate censured him in 1884. He was humiliated. Eventually the Senate repealed its rebuke, and Jackson's proudest possession was the pen used to strike the words "of censure" from the Senate journal.

Finally, some have claimed that censure would short-circuit the impeachment process. They insist on going forward, but assure us that once we have launched our nuclear missile, we can rely on the Senate to destroy it before it hits its target, saying in effect, I would prefer the President not be removed, but I am willing to put the country through the upheaval of a Senate trial nonetheless.

I submit that this is an abdication of a solemn duty which cannot be delegated to the Senate or anyone else. If we truly believe that the President should not be removed from office, we have a better option: Censure him and preserve the Constitution.

I yield back.

Chairman HYDE. The gentleman's time has expired.

Before we go any further in this matter and in this debate, and before we finally adjourn, I want to take this opportunity to express my gratitude and the gratitude of those people I can speak for to the staffs of the Democrat and the Republican side. We have spent hours, long, weary, agonizing hours, we Members, but nothing like the staffs. They have tripled the effort that we have made; late nights, hard work, reading until their eyes were red, and doing first rate work. America is well served and this committee is well-served by talented and patriotic staff on both sides, and I would like the committee to stay seated and let the staff stand up on both sides and give them a hand.

Thank you very much.

Mr. COBLE. Mr. Chairman, may I speak out of line for about 30 seconds?

Chairman HYDE. I hoped I wasn't starting a trend. Go ahead.

Mr. COBLE. In this air of frivolity and good will, I tried this last night, I don't want to be the Grinch, but would I offend anybody if I suggest that we adhere to the strict 5-minute rule as we proceed?

Let me make a unanimous consent request to that end.

Chairman HYDE. I get your meaning, and I will be as tough as I can be, which isn't all that tough, but I will try. I will try.

The next person, Mr. McCollum.

Mr. McCOLLUM. Thank you, Mr. Chairman. I notice that starts with me, Mr. Coble. I will attempt to do that.

Let me respond, first of all, to Mr. Delahunt's last comments, because they were directed in part at me.

I have been saying for quite some time publicly and, of course, in these hearings that I believe that the President of the United States has committed some very grave offenses. If he were guilty of those, if I came to the conclusion by clear and convincing evidence that he has done these offenses, these perjuries, these obstructions of justice and so forth, in terms of undermining the court system and in the Paula Jones case before the grand jury, he should be impeached.

And I have always been saying, equally strongly, that I think that if he is impeached, he should be removed from office.

But I have also said that should he not be removed from office by the Senate—and that is their judgment, their decision, not ours; and I hear people say that there are not enough votes. I don't know if there are or are not. I don't think we will know that until and unless there is a trial over there.

But if he is not removed from office and we impeach him, that is the ultimate form of censure. Now, I think I am right about that, and it may be the only constitutional form of censure.

The reality is that if we do what this resolution suggests, which comports with a lot of other resolutions Congress passes that are nonbinding for this, that or the other reason, we have by no means given the kind of stamp of disapproval on this President's actions that they deserve. That is first and foremost.

I don't know anything that we could do short of impeachment, to do that and removal from office. I mean, he has committed some very serious crimes. Perjury, in my judgment, in looking at everything, rises to the same level as bribery, treason—bribery and other high crimes and misdemeanors under the Constitution, deserving of impeachment.

He has eroded by his actions—and if we tolerate it, we are eroding along with him—the very system of justice upon which this Nation was founded, where people can go to court and are expected to tell the truth, the whole truth and nothing but the truth and get justice, because they do get that kind of information.

But if we are going to look at this seriously as a censure resolution, I would suggest there are constitutional problems potentially here. Andrew Jackson did not only dislike being censured, he said, and I quote, he is perfectly convinced that “The discussion and passage of the above-mentioned resolution were not only unauthorized by the Constitution, but in many respects repugnant to its provisions and subversive of the rights secured by it to other coordinate departments.”

Why did he say that? He said it because in our Constitution, there is a prohibition on a bill of attainder. That was the original mechanism in which the British parliament could punish specific individuals for activities against the interests of the Crown. It was a feature of British common law that was abominable to the framers of the Constitution.

A bill of attainder is a law intended to punish a specific individual rather than a regulatory or prophylactic law intended to protect the public, and the Supreme Court has clearly upheld that rule that we can't do that sort of thing. Courts, in deciding whether or not a bill of attainder exists, look to what was understood as the motivational, functional and historical underpinnings of why we do it: whether the legislature intended the law to be punitive, whether the law reasonably can be said to further nonpunitive purposes, whether the punishment was traditionally judged to be prohibited by the bill of attainder clause.

Clearly, in this case, the motivational purposes are implicated here. No nonpunitive function for the proposed presidential censure resolution exists.

We had a problem with Megan's Law recently, something I had a lot to do with. The court looked at the question of whether or not in that law, where we talked about dissemination of information to the public about sex offenders, the law might be detrimental; and they concluded that it would be detrimental and that—since it was punitive.

But they found that it also had a remedial function in that it informed people in a way they might be protected from other harm. This doesn't have that prophylactic or remedial function.

I might remind my colleagues that Justice Stevens in a concurring opinion in the Nixon impeachment case said that he was condemned there, the statute implicitly condemns him as a unreliable custodian of his papers, and he says that legislation, and this is a quote, "which subjects a named individual to this humiliating treatment, must raise serious questions under the bill of attainder clause."

I submit we may have a constitutional problem with this. But even if we don't, the resolution has no statement that President Clinton lied to the court in the Jones case, let alone committed perjury or obstruction of justice; no statement he lied to the grand jury, let alone committed perjury; no condemnation of his lies to the White House staff, Cabinet or to the American people; no recommendation that he resign.

It is a toothless resolution, which is very common to many other resolutions that are nonbinding that we pass. It should not be passed as any substitute or by any pretense that it rises to the level of condemning the President in a way that either is constitutionally sound or in a way that is deserving from the conduct he has done against the Constitution and the constitutional Government of the United States; and I am strongly opposed to it.

Mr. WATT. Would the gentleman yield for a second?

Chairman HYDE. The gentleman's time has expired.

Mr. WATT. I ask unanimous consent for 30 additional seconds to ask the gentleman a question.

Chairman HYDE. Without objection, 30 seconds.

Mr. CANADY. Objection.

Chairman HYDE. Objection has been heard.

The gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you very much, Mr. Chairman. I want to thank you also for allowing this resolution to be heard. You did the

right thing. This was the right thing, and that is the highest compliment I can pay you.

This country will not accept a partisan solution to this matter. It simply won't.

It is beginning to look more and more like we may have a partisan resolution that passes the House of Representatives next Thursday, which will impeach President Clinton. But make no mistake about it, this country will not accept that. And it will show only that we are divided.

And we certainly are divided on this committee. We are divided over whether these actions are impeachable. Some of you think they are, some of us think they aren't. And I trust that each of us makes that decision relying on our own conscience.

One thing I have learned, the times I have been unhappy being in the minority because I know how a vote is going to go and I know how politics come into play, is that I will never doubt the conscience of this institution when individuals step back from partisan pressures, from political pressures, and try to do what is right. I will never, never doubt the conscience of the 435 people who serve in this institution.

What we are trying to do here today is to offer an olive branch, plain and simple. We think that after Republicans and Democrats alike read this bill, they will agree that this is a fair resolution to this matter. And we are doing this because even those of us who are opposed to impeaching the President recognize that we cannot tell our children that it is okay not to tell the truth.

If you had asked me 6 years ago, 5 years ago, 1 year ago whether I would be a coauthor of a measure censuring my President, the President of my party, I would say not a chance. But I never thought we would come to this, and I have got to believe that the members on the other side of the aisle, if they think about it, are amazed that four Democrats are coauthoring a measure to censure the President of the United States.

We have heard that this is something not permitted by the Constitution. I see nothing in the United States Constitution that prohibits us from censuring the President. Perhaps the framers didn't contemplate it. Perhaps they were fortunate enough not to have to worry about a problem like the problem we face today, where a President, because of his personal behavior, has disgraced himself and disgraced the office. But that is what we are dealing with here today.

I hear the argument that if we adopt this censure, we are going to have a stream of censures. But I think back, and I think, geez, we just did this 164 years ago. I don't worry about that. If we do a censure once every 164 years, I don't think that that is a problem. I think that more than anything, that recognizes the gravity of what we are trying to do.

And make no mistake about it, whether we impeach the President or whether we censure the President, it will be the second time in this Nation's history that we do either. We are either going to censure the President for the second time in this country's history, or we are going to impeach him.

Why is this so appealing to us? For me, because it starts the healing process that we have seen is so sorely needed in this com-

mittee and in this Nation. This country, as Mr. Wexler has said, does not want to have all Monica all the time, and I do think that is what we are getting. I don't think that this country wants us to go through a tawdry trial that could last months and that will alienate more people from this process. And if there is a crisis we have in this country, it is that people don't believe in this institution.

Right now they are looking at this institution with disbelief. They are saying, we know what the President did was wrong, we know he should be punished. We don't want him to be removed from office. But if we do that, that is going to lessen the credibility of this institution, and I love this institution too much to do that.

So I ask my colleagues to look at this. I realize it is not going to pass in committee, but at the end of the day next week, I am hopeful that we can start the healing process and get back to the people's business, because that is what they want us to do.

I yield back the balance of my time.

Chairman HYDE. I thank the gentleman.

The gentleman from Pennsylvania, Mr. Gekas, is recognized for 5 minutes.

Mr. GEKAS. I thank the Chair. I believe that the gentleman from Massachusetts, Mr. Delahunt, at one point implied, if not directly stated, that the scholars of our Nation generally support the idea or at least condone or in one way or another endorse the concept of a censure. Yet we have a documentation here that the letter of Gary McDowell, the Director of the Institute for U.S. Studies, University of London, to the gentleman from Massachusetts takes the point of view that impeachment really is the only constitutional and proper way—

Mr. DELAHUNT. Would the gentleman yield?

Mr. GEKAS. As soon as I finish.

Proper way to bring about these kinds of condemnations and rebukes to the President of the United States.

The language that I think is important is that the temptation to do anything possible to avoid exercising the awful constitutional power of impeachment is obviously and understandably great, but such a temptation to take the easy way out by assuming a power not granted should be shunned.

This is a scholar who wrote directly to the gentleman. And should President Clinton as a result of bad advice or political pressure agree to such an unconstitutional punishment as a censure, that would be a breach of his constitutional obligations, as great as anything else of which he has been accused.

The great office he is privileged to hold deserves his protection against any ill-considered censorious assault from Congress.

The reason I stated this is because something has been obvious in these entire proceedings upon which I wish to comment, and that is, the onslaught of scholars and historians that we have had from the beginning of this inquiry has been in large measure divided in its impressions, and it's—

Mr. DELAHUNT. If the gentleman would yield, I could respond to that.

Mr. GEKAS. I will, as soon as I finish.

Just a bare statement.

The point I wish to make is with the inundation of scholarship and academia and historians that this committee has seen since this inquiry began, the most that can be said for it is that it has been interesting, as the chairman so often says, but more than that, it has been divided. And to take a head count or a nose count as to who is in favor of considering perjury as an impeachable offense or not, or who considers censure as a proper remedy or not, would leave us with the final conclusion that it is still up to us to weigh these opinions and come to a conclusion that best suits our duty to do the best possible carrying-out of our obligation.

That is the main point of the invocation that we sometimes indulge in of the scholars who come to us with their blessings.

I yield to the gentleman from Massachusetts.

Mr. DELAHUNT. I thank the gentleman for yielding, and you are correct in your recitation by Professor McDowell. In effect, the point that I was making is that we did have 19 scholars that testified before this committee, nine of whom were put forth by the Republicans, nine of whom were Democratic-selected scholars. One happened to be a shared appointment, and that was Professor Gerhardt.

I am going to ask unanimous consent to include in the record the responses I received from the constitutional scholars, who did testify before the committee regarding censure, in my letter to Chairman Hyde summarizing their conclusions; and it is a clear majority, more than two-thirds, that are clear and unequivocal about the constitutionality of censure as appropriate in circumstances such as this.

Chairman HYDE. Does the gentleman make such an unanimous consent request?

Without objection, so ordered.

[The information follows:]

**WILLIAM D. DELAHUNT**  
TENTH DISTRICT, MASSACHUSETTS

COMMITTEE ON THE JUDICIARY

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December 4, 1998

The Honorable Henry J. Hyde, Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515-6216

Dear Mr. Chairman:

On December 1, 1998, I notified you in writing of my intention to offer at next week's Judiciary Committee markup an alternative to impeachment that condemns the President's conduct and censures him for it.

As I stated in my letter, I am confident that the adoption of a resolution of censure or reprimand lies within both our mandate from the House and our authority under the Constitution. However, since some members of the committee have expressed reservations as to the constitutionality of such a resolution, I have taken the liberty of submitting the question to the 19 distinguished constitutional scholars who testified at our November 9 hearing on "the history of impeachment."

It was my recollection that, during that hearing, a substantial majority of both Republican and Democratic witnesses had concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. Indeed, as several witnesses testified, both the House and the Senate have passed resolutions censuring previous presidents on a number of occasions.

To confirm my recollection, I circulated a questionnaire to each of these scholars, asking whether they know of any reason such a resolution would not be constitutional. Copies of their responses are enclosed.

Of the 19 scholars, 12<sup>1</sup> responded that there is no constitutional impediment to censure, while one

<sup>1</sup>Former Attorney General Griffin B. Bell, Professor Susan Low Bloch (Georgetown University), Professor Michael J. Gerhardt (College of William and Mary), Professor Matthew Holden, Jr. (University of Virginia), Professor Forrest MacDonald (University of Alabama), Professors Laurence H. Tribe and Richard D. Parker (Harvard University), Professor Daniel H. Pollitt (University of North Carolina), Professor Jack N. Rakove (Stanford University), Professor Emeritus Arthur M. Schlesinger, Jr. (City University of New York), Professor Cass R. Sunstein (University of Chicago) and Professor William Van Alstyne (Duke University).

The Honorable Henry J. Hyde  
 December 4, 1998  
 Page 2

other<sup>2</sup> agreed that a "resolution of disapproval" (as distinguished from the "censure" by either House of its own members) would pass constitutional muster. Only three<sup>3</sup> claimed that such a resolution would be unconstitutional, a view also expressed at the hearing by a fourth<sup>4</sup> who did not return the questionnaire. Of the two remaining witnesses, one declined to take a position on the question<sup>5</sup> and the other<sup>6</sup> failed to respond.

Several of those who acknowledged the constitutionality of censure expressed concerns that the practice might be unwise as a matter of policy.<sup>7</sup> However, as Professor Gerhardt explained in his response, "whether a resolution is a worthwhile endeavor politically is separate and distinct from whether it is constitutional."

There are many on both sides of the aisle — as well as such distinguished former members as President Ford — who believe that censure *is* a worthwhile endeavor, and regard a formal rebuke of President Clinton's behavior as the best means of bringing to a proper conclusion this unfortunate chapter in the life of our nation.

On their behalf, and on behalf of the majority of Americans for whom they speak, I renew my request that we be permitted to place this alternative before the committee and the House.

With warm regards.

Sincerely,



William D. Delahunt

Enclosures  
 cc: The Honorable John Conyers, Jr.

---

<sup>2</sup>Professor John O. McGinnis (Yeshiva University).

<sup>3</sup>Professors Gary L. McDowell (University of London), Stephen B. Presser (Northwestern University) and Jonathan R. Turley (George Washington University).

<sup>4</sup>Professor Robert F. Drinan, S.J. (Georgetown University).

<sup>5</sup>Charles J. Cooper (Cooper, Carvin & Rosenthal).

<sup>6</sup>Professor John C. Harrison (University of Virginia). He also did not address the issue in his testimony.

<sup>7</sup>Professor Schlesinger, Professor Pollitt and former Attorney General Bell.

# KING & SPALDING

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December 3, 1998

VIA FAX

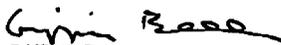
Congressman William D. Delahunt  
Committee on the Judiciary  
Congress of the United States  
House of Representatives  
Washington, D.C. 20515-2110

Dear Congressman Delahunt:

Responding to your inquiry of December 1, my answer is that the impeachment clause of the Constitution treats the House as a grand jury. Hence, a vote, if there is a vote, of a no-bill or a true bill, is the extent of the House's power and duty under the impeachment clause.

The House has adequate power otherwise to adopt resolutions, including a resolution of censure, although the use of the legislative power of resolution toward the President may be questioned on separation of power grounds. The argument would be that the only power against the President under the Constitution is restricted to the impeachment clause.

Yours sincerely,

  
Griffin B. Bell

GBB/bk  
cc: Congressman Bob Barr

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GEORGETOWN UNIVERSITY LAW CENTER

Susan Low Bloch  
Professor of Law

December 3, 1998

The Honorable William D. Delahunt  
U.S. House of Representatives  
1517 Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Delahunt:

Thank you for the opportunity to respond to your question regarding the constitutionality of the House's choosing to censure or otherwise adopt a resolution disapproving of the President's behavior. My answer is simple. I see absolutely no reason why a resolution censuring or otherwise disapproving of the President's behavior would be unconstitutional, so long as it does not attempt to impose a monetary fine or other form of punishment.

The House has the power to express its opinion on virtually anything, including disapproval of the President's conduct. The fact that the Constitution does not specifically mention the word "censure" is irrelevant. It also does not mention the Supreme Court's power to review the constitutionality of Acts of Congress. Yet, the Court inferred the existence of such power in 1803 in *Marbury v. Madison* and no one seriously debates the existence of such power today. The fact is, as a recent memorandum by the Congressional Research Service indicates, both Houses have historically assumed they have such power and, in fact on a few occasions, have adopted resolutions criticizing the President's conduct. The only constitutional constraint on such a resolution is the prohibition on "bills of attainder," contained in Article I, section 9, a provision that prohibits the legislative imposition of punishments. Thus, so long as the House does not pass a bill that would punish the President by imposing a fine or other sanction, it can adopt a resolution that criticizes or otherwise disapproves of his conduct.

The existence of this power does not, of course, mean that it should be used lightly. I believe that such a resolution is a serious event and should be considered only for the most egregious transgressions by the President - misconduct that is seriously inappropriate but that does not warrant impeachment.

As one of the constitutional law professors who testified before the House Judiciary Committee's Subcommittee on the Constitution on November 9, I was struck not by the experts' disagreement as to whether the President's alleged actions rose to the level of an impeachable

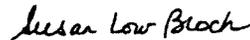
offense, but rather on our agreement on two very significant points. First, a clear majority of the experts testifying at the hearing agreed that even if the President's conduct rises to the level of an impeachable offense, the House, like a prosecutor, constitutionally has discretion to choose not to impeach. Second, we agreed that the House has more than two alternatives. Not only can it vote to impeach or not to impeach, it also has the power to adopt a resolution that disapproves of President Clinton's conduct.

That agreement suggests the appropriate next step for the Judiciary Committee. Before the Committee continues with what is likely to be a difficult, unpleasant and potentially lengthy evidentiary proceeding, it should ask two questions: (1) assuming the allegations in the Starr Referral are true, do the alleged actions constitute impeachable offenses and (2) if they do, does the exercise of discretion warrant voting out articles of impeachment? If the answer to either of these questions is "no," the Committee has two alternatives; it can constitutionally and conscientiously terminate the inquiry without proceeding any further or it can recommend that the House adopt a resolution disapproving of the President's behavior. As indicated above, the adoption of such a resolution should be considered only for the most egregious transgressions by the President - misconduct that is seriously inappropriate but that does not warrant impeachment.

Some Representatives have argued that voting out articles of impeachment would be a form of censure and is the only way the House can constitutionally disapprove of the President's conduct. That argument is flawed in two respects. First, as I have indicated, the House can constitutionally adopt a resolution censuring or disapproving of the President's conduct. Second, voting out Articles of Impeachment is the beginning of a monumental event - the potential removal of the President of the United States. It should be undertaken only if (1) the President has committed treason, bribery, or other high crimes and misdemeanors *and* (2) the House, in its discretion, taking into account all the circumstances, believes the President should be removed from office. That, of course, is not to say that the House has the final word. Obviously, there must be a trial in the Senate. But it is the height of irresponsibility for a member of the House to vote to impeach the President if one believes the President should not be removed but is counting on the Senate to keep him in office. Voting out articles of impeachment as a means of censuring the President's conduct - adopting a practice of "censure by impeachment" - would establish a seriously dangerous precedent.

Thank you again for the opportunity to give my opinion.

Respectfully yours,



Susan Low Bloch

## Cooper, Carvin & Rosenthal

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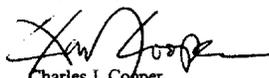
December 2, 1998

The Honorable William D. Delahunt  
Congress of the United States  
House of Representatives  
Washington, DC 20515-2110

Dear Representative Delahunt:

This letter is in response to your December 1, 1998 inquiry as to the constitutionality of censuring the President. Unfortunately, I have not had the opportunity to study the question closely, and so am not prepared to render an opinion as to censure's constitutionality. My testimony focused on the historical and legal precedents underlying the fact that perjury and obstruction of justice constitute "high crimes and misdemeanors." I would note, however, that serious scholars whom I respect greatly—notably, Professor John McGinnis—have examined the matter and concluded that censure would not be constitutional. While their opinions should carry great weight, I am not currently prepared to state my own conclusion on this matter I have not studied.

Respectfully,



Charles J. Cooper

WILLIAM D. DELAHUNT  
 Tenth District, Massachusetts  
 COMMITTEE ON THE JUDICIARY  
 SUBCOMMITTEES ON:  
 COURTS AND INTELLECTUAL PROPERTY  
 COMMERCIAL AND ADMINISTRATIVE LAW  
 COMMITTEE ON RESOURCES  
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**Congress of the United States**  
**House of Representatives**  
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Michael J. Gerhardt, Professor of Law  
 College of William and Mary School of Law  
 PO Box 8795  
 Williamsburg, VA 23187-8795

December 1, 1998

Dear Professor Gerhardt:

During the Constitution Subcommittee hearing at which you testified on November 10, 1998, there was considerable discussion regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment.

My recollection is that most – but not all – of the 19 witnesses who testified at the hearing concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. However, since the House may consider such an alternative over the course of the coming days, I would appreciate your written response for the record to the following question: Do you know of any reason why a resolution disapproving the President's behavior would not be constitutional?

Please feel free to elaborate on your response to the extent your time permits. However, it is essential that you fax me the completed form at 202.225.5658 no later than 5pm on Thursday, December 3, 1998.

I appreciate your cooperation in this effort. Please feel free to contact me or my legislative director, Mark Agrast, at 202.225.3111, if you have questions or concerns.

With kind regards,

Sincerely,  
  
 William D. Delahunt

Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional? (Check one.)

Yes       No

M. Gerhardt      12/2/98  
 Signature      Date

Comments (optional):



School of Law

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 Williamsburg, Virginia 23187-8795  
 757/221-5800, Fax 757/221-3261

December 3, 1998

Representative William D. Delahunt – D., Mass.  
 U.S. House of Representatives  
 1517 Longworth House Building  
 Washington, D.C. 20515

Dear Representative Delahunt:

I appreciate the opportunity to answer your question whether there is any reason for thinking that a resolution disapproving the President's conduct would be unconstitutional. For the reasons outlined below, I think that it is beyond question that the House may pass a resolution expressing its condemnation or censure of the President's behavior.

In my opinion, every conceivable source of constitutional authority – text, structure, and history – supports the legitimacy of the House's passage of a resolution expressing its disapproval of the President's conduct. First, there are several textual provisions of the Constitution confirming the House's authority to memorialize its opinions on public matters. The Constitution both authorizes the House of Representatives to "keep a Journal of its Proceedings" and provides that "for any Speech or Debate in either House, members should not be questioned in any place." One may plainly infer from these textual provisions the authority of the House to pass a non-binding resolution in which it expresses its opinion – pro or con – on some public matter.

Second, the passage of resolutions critical of the President is quite compatible with the constitutional structure. The Constitution does not establish impeachment as the only constitutionally authorized means by which the House may "censure" the President. Instead, impeachment exists as the only means by which the House may formally charge and thereby obligate the Senate to consider the removal of a president for certain kinds of misconduct. Otherwise, the constitutional structure leaves to the criminal process the investigation and punishment of all sorts of misconduct (some but not all of which might overlap with impeachable misconduct) and to the political process – broadly understood – the checking or censure of misconduct of a wide variety (including but not limited to offenses that do not rise to the level of an impeachable offense).

Moreover, it is nonsensical to think that if a resolution has no legal effect it somehow still might violate the law. By definition, a resolution has no effect on the law (or legal

arrangements) in any way. To think that a resolution might have little or no practical effect is not a reason to think that it is unconstitutional; it is a reason to think perhaps that a resolution critical of the President might be a futile act politically. The calculation of whether a resolution is a worthwhile endeavor politically is separate and distinct from whether it is constitutional.

Last but not least, the House has passed resolutions on at least two occasions memorializing its disapproval of presidential misconduct. The subjects of the latter resolutions were Presidents Polk and Buchanan. Such resolutions provide historical precedents for the House to do something similar with respect to President Clinton. For that matter, the thousands of resolutions the House has passed over the years expressing its opinions on a wide variety of public matters constitute other relevant precedents supporting its passage of a resolution expressing its condemnation or disapproval of a president's conduct. (Indeed, the House has also passed at least three resolutions expressing its disapproval of conduct by high-ranking executive officials other than the President.)

In short, I believe there is a textual and historical pedigree for censure. Moreover, the House's memorialization of its condemnation of the President in a resolution is perfectly consistent with the structure of the Constitution.

If there is any other information I can provide you on this subject, please do not hesitate to contact me. I appreciate the opportunity to be of service to you.

Very truly yours,



Michael J. Gerhardt  
Professor of Law



UNIVERSITY OF VIRGINIA SCHOOL OF LAW

John C. Harrison  
Professor of Law

December 7, 1998

The Honorable William D. Delahunt  
United States House of Representatives  
Washington, D.C. 20515-2110

Dear Representative Delahunt:

This is in response to your letter of December 1, 1998, concerning Congress' power to censure the President.

Your question led me to reflect on the matter more carefully than I had before. My view at this point is that there are serious constitutional difficulties with congressional censure of the President as that idea is currently understood.

The answer to your question depends on precisely what one means by censure. I assume that censure would take the form of a resolution by one house, resolutions by both houses, a concurrent resolution, or a joint resolution, and that any such resolution would express condemnation of culpable misconduct by the President without purporting to attach legal consequences to that condemnation.

Any attempt to attach legal consequences to such a statement of condemnation would be unconstitutional under the federal Bill of Attainder Clause of Article I, Section 9, as that clause is interpreted by the Supreme Court. The Court has held that the clause forbids both bills of attainder in the strict common law sense and legislative punishments short of attainder in the strict sense, which lesser legislative punishments were known in England as bills of pains and penalties. *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867). Any adverse legal consequences imposed by a censure resolution would constitute punishment, and as the Court interprets the Bill of Attainder Clause, if it stands for nothing else, it stands for the proposition that Congress may not by legislation punish an identified individual.

Censure as I have defined it, and as it seems currently to be contemplated, would have no legal effects. It would be purely expressive. That feature, however, by no means clearly exempts censure from the Bill of Attainder Clause. A resolution of censure, even if purely expressive, still would have a punitive purpose. Expressed moral condemnation is a form of retribution, and acceptance of it is a form of contrition just as acceptance of more concrete punishment is a form of contrition. That punitive purpose would bring a censure resolution within the ban on bills of attainder if one were to conclude that the injury inflicted on the President, although purely expressive, were punishment within the meaning of the Bill of Attainder Clause.

Purely expressive governmental action can violate the Constitution. The mere statement by an Act of Congress that Roman Catholicism is the official religion of the United States likely would violate the Establishment Clause, and the Supreme Court has found that the clause forbids symbolic governmental endorsement of religion, e.g., *Lynch v. Donnelly*, 465 U.S. 668 (1984); *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989).

Whether censure violates the Bill of Attainder Clause thus depends on whether that provision resembles the Establishment Clause by forbidding purely expressive action. Although the question is open, there is substantial reason to think that it does. Punishment, as that idea is normally understood, is not limited to changes in one's legal entitlements and obligations. Moreover, the purpose of the clause is to take questions concerning the culpability of particular individuals away from the legislative process and thereby forestall the especially ugly politics that result when the legislature has power to punish. The impeachment provisions represent a carefully calibrated exception to this principle.

It is also unclear whether Congress has the affirmative power to censure the President. The Constitution grants only limited legislative power to Congress, and its grants do not include authority to reprimand the President for his conduct of office or his non-official actions, or indeed to reprimand anyone who is not a member of Congress. In the absence of any express authority, censure can be sustained only if an act of censure is necessary and proper to carry into execution one of Congress' enumerated powers. See U.S. Const., Art. I, Sec. 8. Which power would be advanced by censure is hard to say.

This question is novel and difficult and has not had the benefit of substantial practice or scholarly commentary. With that qualification in place, I will say that there are serious questions whether Congress may censure the President.

Sincerely,



John C. Harrison

cc:

Hon. Henry J. Hyde  
Hon. John Conyers, Jr.  
Hon. Charles T. Canady  
Hon. Robert C. Scott

**Agrast, Mark**

---

**From:** Woolfolk, Brian  
**Sent:** Thursday, December 03, 1998 6:06 PM  
**To:** mh3q@virginia.edu; Agrast, Mark  
**Cc:** RCS; Vassar, Bobby  
**Subject:** RE: RE: Minority Memo for Hearing in E-mail form

Thanks for the comments, Professor Holden. I am forwarding your message to Mark Agrast, Congressman Delahunt's Legislative Director.

-----Original Message-----  
**From:** Matthew Holden, Jr [SMTP:mh3q@server1.mall.virginia.edu]  
**Sent:** Thursday, December 03, 1998 2:12 PM  
**To:** Woolfolk, Brian  
**Cc:** RCS; Vassar, Bobby; 'mh3q@virginia.edu'  
**Subject:** Re: RE: Minority Memo for Hearing in E-mail form

Brian Woolfolk:

Please do me a courtesy. In the mail yesterday there was a fax from Congressman Delahunt asking the November 9 witnesses if they agreed or disagreed that censure lies within the constitutional power of the House of Representatives.

My answer: emphatically yes.

The power to levy fines is dubious.

On November 9, as the record should show, one member (Congressman Hutchinson, I think, but my memory is not clear and notes do not show) asked the same question of all panelists. At one point, I broke into his summary to say "I didn't say anything about censure." He then asked what I thought. My answer: "You can do anything you want to do (about censure)."

Please do me the courtesy to convey this answer to whoever is keeping score for Congressman Delahunt.

For the record, I still think people are losing focus. The question is not whether perjury is bad (which it is), or whether anyone defends it (which no one does), nor whether perjury is punishable. All those seem no-brainers. None of that settles anything about the President, since the Congress is on what is fundamentally the wrong question. Fundamentally, the question is whether even perjury falls within the "other high crimes and misdemeanors," and it is not obvious that the answer is "yes," no matter how mad people may be about it (or by their belief that it existed). As far as I can tell (though I would wish to be checked) all the citation of Blackstone is misleading. In practice, so far as I can tell, in the 1700s the English had around 200 state trials, and there were some impeachment trials among them. So far, I can find three (repeat three) designed as "perjury" trials. But the "impeachment" subset and the "perjury" subset appear distinct. In other words, in the real world of the 18th century, perjury (for some reason) did not have the same actual weight, and it is doubtful that that is what the Framers meant to include in the "other high crimes and misdemeanors" phrase.

**This is a mere recitation of my point  
that too much is being conceded in principle.**

**Of course, I say nothing of Hill  
realities.**

**Matthew Holden, Jr.**

To The Honorable William D. Delahunt  
1517 Longworth House Office Building  
Washington DC 20515  
202-225-5658

Attention Mark Agrast

December 2, 1998

This is in response to the question, "Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional?"

The subject is a little trickier than it might seem. Obviously the House could adopt such a resolution, and so could the Senate. A "congressional" resolution, however, meaning presumably a joint resolution, is a different matter. Article I, Section 7, Paragraph 3 of the Constitution states that "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

In other words, Congress can pass a resolution disapproving the President's behavior, but such a resolution would be subject to presidential veto.

Forrest McDonald  
Distinguished University Research Professor  
Department of History  
University of Alabama  
Tuscaloosa AL 35487-0212

WILLIAM D. DELAHUNT  
Fourth District, Massachusetts  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEES ON  
EVIDENCE AND INVESTIGATIVE POWERS  
CONSTITUTIONAL AND ADMINISTRATIVE LAW  
COMMITTEE ON RESOURCES  
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Gary McDowell, Director  
Institute for U.S. Studies, University of London  
Senate House  
Malet Street, Room 304  
London WC1E 7HU England

December 1, 1998

Dear Professor McDowell:

During the Constitution Subcommittee hearing at which you testified on November 10, 1998, there was considerable discussion regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment.

My recollection is that most — but not all — of the 19 witnesses who testified at the hearing concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. However, since the House may consider such an alternative over the course of the coming days, I would appreciate your written response for the record to the following question: Do you know of any reason why a resolution disapproving the President's behavior would not be constitutional?

Please feel free to elaborate on your response to the extent your time permits. However, it is essential that you fax me the completed form at 202.225.5658 no later than 5pm on Thursday, December 3, 1998.

I appreciate your cooperation in this effort. Please feel free to contact me or my legislative director, Mark Agras, at 202.225.3111, if you have questions or concerns.

With kind regards.

Sincerely,  
*William D. Delahunt*  
William D. Delahunt

Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional? (Check one)

Yes  No  
*William D. Delahunt* Signature *3 Dec 98* Date

Comments (optional):  
*See attached.*  
PRINTED ON RECYCLED PAPER



Institute of United States Studies  
University of London

3 December 1998

The Honorable William D. Delahunt  
United States House of Representatives  
1517 Longworth House Office Building  
Washington, D.C. 20515  
UNITED STATES OF AMERICA

By fax: 001 202 225 5658

Dear Mr. Delahunt,

I have received your letter of December 1st concerning the hearing on "The Background and History of Impeachment" that was held on November 9, 1998. I must confess, your letter leaves me more than slightly perplexed in so far as we seem to have completely different recollections of what was actually said at the hearing.

With all due respect, I think your recollection that "most — but not all — of the 19 witnesses who testified at the hearing concluded that . . . a resolution [of censure or disapproval] would be constitutional" is completely wrong. I would refer you in the first instance to the coverage the issue received the next day in the *New York Times* where it was properly noted that the majority consensus was that censure would be a violation of the doctrine of separation of powers. This was a view that transcended both ideological and partisan considerations with all sides agreeing that the constitutional issue was fundamental. I am sure that if you review the transcript of the hearing you will see the general sense of the majority on this issue.

The Founders understood better than do many today that the most potentially pernicious branch of our constitutional order is the legislature. As James Madison correctly observed in *The Federalist*, No.48, history had demonstrated that the "legislative power is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." The reason this is a danger, Madison noted, is that a legislature is all too often "inspired by a supposed influence over the people with an intrepid confidence in its own strength." Thus, Madison concluded, "it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions."

A primary reason for the Founders' efforts to curb the tendency of your branch to draw all power into its "impetuous vortex" was to protect the executive branch from being molested by you. Those who framed and ratified the Constitution had seen in their own state constitutions the debilitating effect of having a dominant legislature and a servile executive. By establishing a clear separation of powers — and by giving each branch the means of resisting the encroachments of the others — they sought to create that energy in the executive

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A member-Institute of the School of Advanced Study

that they deemed essential to good government. Alexander Hamilton summed it up powerfully in *The Federalist*, No. 70: "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution: And a government ill executed, whatever it may be in theory, must be in practice a bad government."

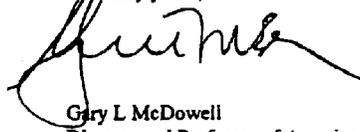
Recognizing as they did that "enlightened statesmen [would] not always be at the helm", the Founders also knew there had to be some means available to remove from office those who might violate their sacred public trust and abuse their positions. But such a means had to be created within the context of the necessary separation of the coordinate powers. The solution was the sole power of impeachment given to the House of Representatives and the sole power to try such impeachments given to the Senate. By such a device the principle of a bicameral legislature would temper the impulses of the legislature to censure and to punish those with whom the most numerous branch might disagree.

Andrew Jackson understood well the unconstitutionality of a censure. The very idea of a censure, he wrote, is a "subversion of that distribution of powers of government which [the Constitution] has ordained and established [and] destructive of the checks and safeguards by which those powers were intended on the one hand to be controlled and the other to be protected." It was for this reason that Jackson argued, as should you, that censure was "wholly unauthorized by the Constitution and in derogation of its entire spirit."

Impeachment is the only power granted by the Constitution to the Congress to deal with errant executives. It is the only means whereby the necessarily high walls of separation between the two branches may be legitimately scaled. Had the Founders intended some other means of punishment to be available to your branch they would have said so, as Chief Justice John Marshall once said, "in plain and intelligible language." That they did not do so should be your only guide in this grave and sensitive matter.

The temptation to do anything possible to avoid exercising the awful constitutional power of impeachment is obviously and understandably great. But such a temptation to take the easy way out by assuming a power not granted should be shunned. And should President Clinton, as a result of bad advice or political pressure, agree to such an unconstitutional punishment as a censure, that would be a breach of his constitutional obligations as great as anything else of which he has been accused. The great office he is privileged to hold deserves his protection against any ill-considered censorious assault from Congress.

Sincerely yours,



Gary L. McDowell  
Director and Professor of American Studies

# CARDOZO

TWENTIETH ANNIVERSARY

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

John O. McGinnis  
Professor of Law

(212) 790-0318  
FAX (212) 790-0205

Congressman William Delahunt  
House of Representatives  
Washington, D.C. 20515

Dear Congressman Delahunt:

Dec. 3, 1998

Thank you for your letter of Dec. 1, 1998. I regret to say that I am unable to check a box "yes or no" in response to your question. The reason is that your question asks my opinion about a motion disapproving the President's behavior, but in the first sentence you equate a resolution disapproving the President's behavior with censure. The term "censure" has definite meaning in the context of legislative proceedings from the authority of the Congress to censure one of its members. The term "disapproval," however, has no such fixed meaning in this context.

As I testified at the hearing, I believe Congress has no power to "censure" the President as part of the impeachment process or otherwise. Thus if you mean to ask me the question of whether Congress can censure the President, I would say it is plainly not authorized to do so. For further discussions of my reasons for believing that "censure" has no constitutional basis, please see pages 16-20 of my testimony of Nov. 9, 1998.

On the other hand, I do not believe it is unconstitutional for any member to criticize anyone in the course of a legislative proceeding and thus members of Congress may join together to criticize any person as a kind of collective shout from the floor. To understand the legal nature of such an act, however, shows that it is in no way analogous to censure—the solemn legislative sanction flowing from express authority under the Constitution for the legislature to punish one of its members for "disorderly behavior."

Please do not hesitate to write me again if I can be of further assistance.

Sincerely yours

  
John O. McGinnis

cc: Chairman Henry Hyde

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 Tenth District, Massachusetts  
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 100 Main Street  
 Framingham

Richard Parker, Professor of Law  
 Harvard University School of Law  
 Hauser Hall  
 Cambridge, MA 02138

December 1, 1998

Dear Professor Parker:

During the Constitution Subcommittee hearing at which you testified on November 10, 1998, there was considerable discussion regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment.

My recollection is that most – but not all – of the 19 witnesses who testified at the hearing concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. However, since the House may consider such an alternative over the course of the coming days, I would appreciate your written response for the record to the following question: Do you know of any reason why a resolution disapproving the President's behavior would not be constitutional?

Please feel free to elaborate on your response to the extent your time permits. However, it is essential that you fax me the completed form at 202.225.5658 no later than 5pm on Thursday, December 3, 1998.

I appreciate your cooperation in this effort. Please feel free to contact me or my legislative director, Mark Agrast, at 202.225.3111, if you have questions or concerns.

With kind regards,

Sincerely,  
  
 William D. Delahunt

Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional? (Check one.)

Yes  
 No  
  
 Signature

12/2/98  
 Date

Comments (optional):



HARVARD LAW SCHOOL  
CAMBRIDGE · MASSACHUSETTS · 02138

December 4, 1998

Dear Representative Delahunt,

As you know -- and as I confirmed in response to your survey three days ago -- I stated to the Committee on November 9 that I see no constitutional barrier to a resolution critical of the President's behavior.

Now that I have a moment, I would like to add one more thing. I believe it would be quite pathetic if any such resolution were weak and mealymouthed. Any resolution worth its salt -- as an exercise of the responsibility of the coordinate branch of government -- ought, at the least, to state plainly that the President has "with premeditation sought to subvert the process of the judiciary" and so "degraded the presidency." It surely ought to "condemn" that behavior. I do not want to be portrayed as in any way supportive of any whitewash of someone who has betrayed his office and the American people.

If you pass my response to your survey along to others, I trust that you will include this additional thought as well.

Sincerely,

A handwritten signature in black ink, appearing to read "R. D. Parker", written in a cursive style.

Richard D. Parker  
Williams Professor of Law

WILLIAM D. DELAHUNT  
 Tenth District, MASSACHUSETTS

COMMITTEE ON THE JUDICIARY

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 Pittsboro

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 144 Main Street  
 Hyannis

Daniel H. Pollitt, Professor Emeritus  
 University of North Carolina School of Law  
 CB 3380 Van Hecke-Wetach Hall  
 Chapel Hill, NC 27599-3380

December 1, 1998

Dear Professor Pollitt:

During the Constitution Subcommittee hearing at which you testified on November 10, 1998, there was considerable discussion regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment.

My recollection is that most – but not all – of the 19 witnesses who testified at the hearing concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. However, since the House may consider such an alternative over the course of the coming days, I would appreciate your written response for the record to the following question: Do you know of any reason why a resolution disapproving the President's behavior would not be constitutional?

Please feel free to elaborate on your response to the extent your time permits. However, it is essential that you fax me the completed form at 202.225.5638 no later than 5pm on Thursday, December 3, 1998.

I appreciate your cooperation in this effort. Please feel free to contact me or my legislative director, Mark Agrast, at 202.225.3111, if you have questions or concerns.

With kind regards.

Sincerely,  
  
 William D. Delahunt

Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional? (Check one.)

Yes  No

Daniel H. Pollitt  
 Signature

12/2/98  
 Date

Comments (optional):

*see attached*

600



December 2, 1998

919-962-0154  
FAX: 919-962-1277

Honorable William Delahunt:

I think a Congressional resolution disapproving the President's behavior would be constitutional.

Presidents Andrew Jackson and James Polk were reprimanded. So too, the House voted to reprimand, rather than impeach, Judge Aleck Boorman (1890), Emory Speer (1914) and Grover Moscowitz (1930). See my written statement at page 26.

However, I am not sure a reprimand is wise. I was very much impressed by the testimony of Arthur Schlesinger on how reprimands, if the practice caught on and spiraled, would seriously weaken the institution of the Presidency; and the doctrine of Separation of Powers.

Sincerely,

A handwritten signature in cursive script that reads "Daniel H. Pollitt".

Daniel H. Pollitt  
Kenan Professor of Law Emeritus







**Stephen B. Presser**  
**Raoul Berger Professor of Legal History**  
Northwestern University School of Law  
357 East Chicago Avenue  
Chicago, IL. 60611

Phone: 312-503-8371  
FAX: 312-503-3440  
312-503-2035

E-Mail: S-Presser@nwu.edu

December 1, 1998

Hon. William D. Delahunt  
Congress of the United States  
House of Representatives  
Washington, D.C. 20515-2110

Dear Congressman Delahunt:

My recollection of the hearing on November 10, 1998 is different from yours. I thought there was general agreement that censure would not be constitutional. That certainly is my view.

In my opinion impeachment is the remedy specified in the Constitution for acts that require censure by the House of Representatives. It is then up to the Senate to decide whether the evidence that supported impeachment is sufficient for removal. As I tried to explain in my testimony, I think the acts attributed to President Clinton by Judge Starr are certainly grounds for impeachment and removal, and are just the sort of breaches of duty for which the framers believed impeachment (and removal) were appropriate. As I also testified, I believe that the Constitution imposes an affirmative duty on you to vote for impeachment if grounds for it exist. I think it would be a breach of your Constitutional duty, therefore, if you came to believe that Mr. Starr's referral was factually accurate and you failed to vote for impeachment. As I read the history of impeachment that's your only alternative - a vote for or against impeachment. There is nothing in the *Federalist* or any other contemporary account about censure, and the one time it was done - against President Jackson - it was later withdrawn and acknowledged to be inappropriate.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Stephen Presser", written over a horizontal line.

Stephen Presser

WILLIAM D. DELAHUNT  
 THIRTY DISTRICT, MASSACHUSETTS

COMMITTEE ON THE JUDICIARY

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CAPE COD & ISLANDS  
 100 Main Street  
 Hyannis, MA 01901

December 1, 1998

Jack N. Rakove, Professor of American History  
 Stanford University  
 Department of History  
 Stanford, CA 94305-2024

Dear Professor Rakove:

During the Constitution Subcommittee hearing at which you testified on November 10, 1998, there was considerable discussion regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment.

My recollection is that most – but not all – of the 19 witnesses who testified at the hearing concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. However, since the House may consider such an alternative over the course of the coming days, I would appreciate your written response for the record to the following question: Do you know of any reason why a resolution disapproving the President's behavior would not be constitutional?

Please feel free to elaborate on your response to the extent your time permits. However, it is essential that you fax me the completed form at 202.225.5658 no later than 5pm on Thursday, December 3, 1998.

I appreciate your cooperation in this effort. Please feel free to contact me or my legislative director, Mark Agrast, at 202.225.3111, if you have questions or concerns.

With kind regards.

Sincerely,

*William D. Delahunt*  
 William D. Delahunt

Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional? (Check one.)

Yes       No

*Jack N. Rakove*  
 Signature

*2 Dec 1998*  
 Date

Comments (optional):

STANFORD UNIVERSITY  
STANFORD, CALIFORNIA 94305-2024

JACK N. RAKOVE  
COE PROFESSOR OF HISTORY  
AND AMERICAN STUDIES

DEPARTMENT OF HISTORY  
650-723-4814 PHONE  
650-725-0697 FAX  
RAKOVE@LELAND.STANFORD.EDU

December 1, 1998

The Honorable William D. Delahunt  
House of Representatives  
Congress of the United States  
Washington D.C. 20515-2110

fax 202.225.5658

Dear Representative Delahunt,

Although I did not address the issue of a congressional censure of President Clinton during my testimony before the Constitution subcommittee on November 9, it is certainly a question I have considered, both before and since, and I am happy to respond to your request to add my thoughts to the record.

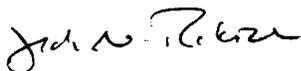
Those who doubt the legitimacy of a congressional censure rely on the fact that the Constitution nowhere explicitly authorizes Congress to adopt such a measure; they accordingly conclude that impeachment is the sole means whereby Congress can judge, and penalize, a president for the variety of offenses covered by Article II, Section 4. But this position ignores the plain and indeed common sense position that a resolution of censure would be simply one version-- though admittedly an unusual one--of the resolutions that both houses of Congress routinely pass on a range of issues upon which they wish to express an opinion not requiring further legal action. One could no more conclude that Congress (or either house) lacks the authority to condemn presidential misbehavior in this way than one could deny Congress the authority to adopt a resolution commending a president for some exceptional accomplishment.

In my view, however, it would be problematic to suggest that Congress could couple a resolution of censure with any effort to impose any further penalty--for example, in the form of a fine--upon the president. Here, again, the reasoning seems fairly obvious. The imposition of any such penalty would fall within the definition of the bills of attainder which Congress is prohibited from adopting by Article I, Section 9. Even if imposed in conjunction with what has been called a "plea bargain," it would remain problematic, for Congress would still be levying (by negotiation, if not by fiat) a judicial penalty. Since the adoption of a censure resolution supposes that a standard of impeachable offenses could not be met, it is difficult to see how the

Constitution could allow Congress to impose penalties that are, in judicial terms, more punitive than those permitted by the impeachment power itself.

It has been argued that adoption of a censure resolution under these circumstances would set a harmful precedent encouraging future Congresses to adopt similar resolutions whenever they were at loggerheads with the president. Professor Schlesinger voiced this concern, I believe, at the hearings of November 9; and that possibility crossed my mind when one of the majority members that day mused that a president could be censured for vetoing (for example) a ban on "partial-birth abortions." I doubt, however, whether this is a precedent that is likely to be developed or frequently invoked by Congress in the future. It has taken rather exceptional circumstances to bring Congress, and indeed the Republic, into our current predicament; nor should we ignore the fact that presidential censure has been invoked about as often in the past as presidential impeachment.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Jack N. Rakove".

Jack N. Rakove

606

FAX COVER SHEET

TO: Congressman WILLIAM D DELAHUNT

---

FAX: 202 225 5658

NO OF SHEETS (including cover sheet) two

DATE: 2 December 98

FROM: ARTHUR SCHLESINGER, JR  
455 East 51st Street, New York, NY 10022  
Fax: 212.688.8399 Telephone: 212.751.6898

MESSAGE

PLEASE USE THIS SLIGHTLY AMENDED VERSION RATHER THAN THE VERSION  
MISTAKENLY SENT EARLIER THIS MORNING

Dear Congressman Delahunt:

Congressional censure of presidents is neither authorized or forbidden by the letter of the Constitution. But it can be convincingly argued that such censure is subversive of the separation of powers and therefore contrary to the spirit of the Constitution. President Jackson set forth that case in rejecting a resolution of censure passed by the Senate. I would urge that the full text of Jackson's Protest to the Senate of 15 April 1834 be made available to members of the Committee on the Judiciary.

As a practical matter, ~~the~~ course, Congress can pass any resolution it wishes. Nor is likely that the Supreme Court would regard objections to congressional censure of presidents as justiciable. Any such case would surely fall into the category of 'political questions.' It may be too that censure is the practical way to pull the republic out of this dreary and ludicrous impasse.

But if President Clinton fails to follow Jackson's precedent and throw back the resolution, his acquiescence will legitimize censure as a weapon future Congresses will wield against future presidents. Had censure of the president been established as a congressional right in 1951, Congress, moved by the tremendous outburst of public indignation, would most probably have censured President Truman after he fired General MacArthur. Yet no one doubts today that Truman was

right. Does the 105th Congress really want to go down in history as having established this mischievous and damaging precedent?

It is argued that, if there is no impeachment and no censure, the President will escape scot-free and future presidents will think they can get away with anything. This seems a most unrealistic argument. The President is bound to feel shame in the eyes of his family, the eyes of his friends and the eye of history. And how would anyone like to know that his name will be indissolubly linked forever after with that of Monica Lewinsky? That is punishment indeed.



Arthur Schlesinger, jr

WILLIAM D. DELAMINT  
 Tenth District, Massachusetts  
 COMMITTEE ON THE JUDICIARY  
 SUBCOMMITTEE ON  
 COURTS AND IN ADDITIONAL, PROPERTY  
 CONSERVATION AND ADMINISTRATIVE LAW  
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 Hyannis

Cass Sunstein, Llewellyn Professor of Jurisprudence  
 University of Chicago Law School  
 1111 East 60th Street  
 Chicago, IL 60637

December 1, 1998

Dear Professor Sunstein:

During the Constitution Subcommittee hearing at which you testified on November 10, 1998, there was considerable discussion regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment.

My recollection is that most – but not all – of the 19 witnesses who testified at the hearing concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. However, since the House may consider such an alternative over the course of the coming days, I would appreciate your written response for the record to the following question: Do you know of any reason why a resolution disapproving the President's behavior would not be constitutional?

Please feel free to elaborate on your response to the extent your time permits. However, it is essential that you fax me the completed form at 202.225.5658 no later than 5pm on Thursday, December 3, 1998.

I appreciate your cooperation in this effort. Please feel free to contact me or my legislative director, Mark Agrast, at 202.225.3111, if you have questions or concerns.

With kind regards,

Sincerely,  
  
 William D. Delamint

Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional? (Check one.)

Yes  No  
 Com h WA

12/1/98  
 Date

Comments (optional):

University of Chicago Law School  
1111 E. 60th Street  
Chicago, Illinois 60637

*Cass R. Sunstein*  
*Karl N. Llewellyn Distinguished Service Professor of Jurisprudence, Law School and Department of Political Science*  
Telephone 773-702-9498  
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December 1, 1998

By FAX to 202 225 5658

The Honorable William D. Delahunt  
Congress of the United States  
U.S. House of Representatives

Dear Congressman Delahunt:

Thank you for asking me for my views on the constitutionality of a congressional resolution of censure or disapproval. The accompanying page suggests that I believe such a resolution would be constitutionally acceptable.

To elaborate briefly on my response: ~~There can be no serious constitutional objection to a resolution of censure or disapproval, so long as it is unaccompanied by financial or other penalties, nor legally enforceable mandate that the President attend any relevant proceedings.~~ Very frequently, Congress passes resolutions of approval or disapproval. This is an ordinary part of the legislative process. Congress could censure or disapprove a foreign leader, a Governor, or a private citizen, just as it could approve or celebrate any one of these. The same holds true for the President.

Those who raise doubts about the constitutionality of a resolution of censure or disapproval are on firm ground if they are objecting to financial or other penalties; Congress has no power to fine the President. But they are on extremely weak ground – indeed their argument seems to me frivolous, from the strictly legal point of view – if they suggest that history, or the explicit availability of the impeachment route, bans a resolution of censure or disapproval. Censure of the President has been very infrequent, to be sure, but even if it never occurred in our history, there would be no constitutional obstacle to censuring the President when the proper occasion arose (as some people believe that it has). And it is implausible to say that the constitutional availability of impeachment means that impeachment is the sole method by which Congress may express disapproval of the President. To be sure, impeachment provides the sole route by which Congress may remove a President from office. But it does not create, explicitly or by implication,

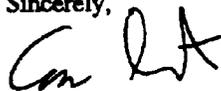
any obstacle to an effort by Congress, not to remove a President from office, but to express disapproval of his behavior.

In short: Nothing in the Constitution forbids the Congress from passing a resolution of censure or disapproval of the President, and Congress' admitted power to pass resolutions includes the power to approve, or to disapprove, anyone at all, not excluding the President.

I should say that this letter represents a judgment about the constitutional question, and it should not be taken to reflect a policy position on any issue now facing the Committee on the Judiciary or the House of Representatives.

With best regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Cass R. Sunstein". The signature is stylized and cursive.

Cass R. Sunstein

WILLIAM D. DELAHUNT  
 Tenth District, Massachusetts  
 COMMITTEE ON THE JUDICIARY  
 SUBCOMMITTEES ON:  
 COURTS AND INTELLECTUAL PROPERTY  
 CONSUMER AND ADMINISTRATIVE LAW  
 COMMITTEE ON RESOURCES  
 SUBCOMMITTEES ON:  
 NATIONAL PARKS AND PUBLIC LANDS  
 CO-CHAIR, COAST GUARD CAUCUS  
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 Washington, DC 20515-2110

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December 1, 1998

Laurence H. Tribe  
 Tyler Professor of Constitutional Law  
 Harvard Law School  
 Hauser Hall, Room 420  
 Cambridge, MA 02138

Dear Professor Tribe:

During the Constitution Subcommittee hearing at which you testified on November 10, 1998, there was considerable discussion regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment.

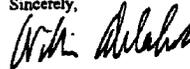
My recollection is that most -- but not all -- of the 19 witnesses who testified at the hearing concluded that such a resolution would be constitutional, assuming it were not accompanied by financial or other penalties. However, since the House may consider such an alternative over the course of the coming days, I would appreciate your written response for the record to the following question: Do you know of any reason why a resolution disapproving the President's behavior would not be constitutional?

Please feel free to elaborate on your response to the extent your time permits. However, it is essential that you fax me the completed form at 202.225.5658 no later than 5pm on Thursday, December 3, 1998.

I appreciate your cooperation in this effort. Please feel free to contact me or my legislative director, Mark Agrat, at 202.225.3111, if you have questions or concerns.

With kind regards.

Sincerely,



William D. Delahunt

Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional? (Check one.)

Yes

No

Laurence H. Tribe

Signature

12-1-98

Date

Comments (optional): See letter.

HARVARD UNIVERSITY  
LAW SCHOOL

LAURENCE H. TRIBE  
*Ralph S. Tyler, Jr. Professor  
of Constitutional Law*



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December 1, 1998

The Honorable William D. Delahunt  
Subcommittee on the Constitution  
House Committee on the Judiciary  
U.S. House of Representatives  
Congress of the United States  
Washington D.C. 20515-2110

Dear Congressman Delahunt:

As one of those who testified on the background and history of impeachment on November 9, 1998, I am glad to respond to your letter dated today regarding the constitutionality of a congressional resolution of censure or disapproval as an alternative to impeachment. ~~Assuming such a resolution were not accompanied by financial or other penalties — that is, assuming such a resolution did not purport to have concrete legal consequences for the censured president — its constitutionality would, in my judgment, be beyond question.~~

The first issue that may require clarification is whether a congressional censure, given its serious adverse consequences for the censured president's personal and political reputation and for the censured president's place in history, might violate constitutional protections against legislative, as opposed to judicial, punishment. The short answer is that a censure, unaccompanied by any coercive or restrictive measure directly constraining the president's liberty or property, would not violate any such constitutional protection. The relevant provision is the Article I, §9, ban on Congress passing any Bill of Attainder. That ban, which prohibits Congress from engaging in what some have called "trial by legislature" (outside the special contexts of disciplining one of its own members or impeaching and convicting an executive or judicial officer), is a vital safeguard both for the fair treatment of individuals and for the separation of powers, but it simply does not come into play when the House, the Senate, or the two bodies acting concurrently, merely record their condemnation or censure of an officer of the government, including the President of the United States, and state their reasons for concluding that the President or other officer is deserving of such a public rebuke. In brief, a censure resolution would not be a law that legislatively assesses guilt and imposes punishment, for it would not be a law and would not impose what the Constitution regards as punishment.

However powerful an exercise of congressional prerogative a censure resolution condemning a sitting President might be — and one should not underestimate its power as an expression of national disapproval or disgust — it would be nothing more than a "sense of the Congress" resolution of the sort that Congress quite regularly passes, sometimes addressing particular policy questions but often addressing specific individuals and their conduct, as when Congress recently and unanimously condemned the racially motivated killing of an African-American man in Texas, James Byrd. Because such resolutions entail no exercise of lawmaking authority over the other branches of the national government, no exertion of legislative power over the state or local governments, and no assertion of lawmaking authority with respect to the lives, liberties, or property of individuals or groups, they do not bring into play any of the Constitution's substantive or structural limitations on the unauthorized assertion of power by the national

legislature. In particular, the principle, embodied most famously in the Tenth Amendment, that Congress may not legislate without pointing to an express or implied source of affirmative authority in the Constitution — a place in the Constitution that affirmatively delegates to Congress the power being exercised — has no application to a mere expression of opinion by the House, the Senate, or the Congress as a whole. A resolution expressing congressional censure or condemnation needs no particular delegation to sustain it. Accordingly, the criticism that censure is not mentioned in the Constitution, which speaks of impeachment and conviction but not of censure or condemnation, is simply irrelevant to the constitutionality of a censure resolution.

If an affirmative delegation of power were needed, however, it would not be difficult to identify it. Article I, §5, provides that "Each House shall keep a Journal of its Proceedings," and Article I, §6, provides that no member of Congress "shall . . . be questioned in any other Place" for "any Speech or Debate in either House." Taken together, those two provisions leave no doubt that each House is fully authorized to record the results of its deliberations about any matter of policy or personnel that Congress's duties might have led it to address, and that the power of Congress, or of either House, to memorialize its conclusions for the benefit of the nation and of posterity is beyond question.

On at least two prior occasions, the House of Representatives in particular passed resolutions memorializing its disapproval of presidential conduct that it deemed inconsistent with the constitutional trust placed by the people of the United States in the hands of the chief executive. Those precedents, and that of the Senate in the censure of President Andrew Jackson, as well as censure resolutions involving other high officials, all rest firmly upon the platform provided by Article I, §§ 5 and 6 but would be fully consistent with the Constitution even without those textual sources of authority. For it bears repeating that this is not a context in which the Constitution's silence on a particular form of action by Congress, or the Constitution's explicit provision of an alternative form of action — here, impeachment and conviction — carries any sort of negative implication for the exercise of power in question. ~~Those who argue that, because the Constitution provides for impeachment and conviction, it somehow follows that censure is extra-constitutional, or unconstitutional, are describing a constitution altogether different from ours.~~ Ours has been a Constitution that has endured for generations, and has endured with mercifully few amendments, largely because that form of argument — that the failure to mention an option renders the option impermissible — has been roundly, repeatedly, and authoritatively repudiated.

The policy arguments some might advance against censure, including the concern that the censure device ~~not be used too readily lest ours come to resemble a parliamentary system, may or may not carry weight with individual members of Congress, but there should be no mistake about the fact that any objection to censuring the president would have to be grounded in policy, rather than in the Constitution.~~ Those who argue in the Constitution's name that the only legitimate options are impeachment or nothing ought to know better. The arguments on the merits for or against censure might be close ones, but there is no legitimate basis to doubt the constitutional authority of Congress to pursue the censure path — either after an impeachment effort has been voted upon and has failed, or in lieu of bringing an impeachment effort to a final vote on the floor of the House.

Sincerely,



Laurence H. Tribe



JONATHAN TURLEY  
*J.B. AND MAURICE SHAPIRO PROFESSOR  
OF PUBLIC INTEREST LAW*

December 3, 1998

By Facsimile and U.S. Mail

The Honorable William D. Delahunt  
Member of Congress  
1517 Longworth House Office Building  
United States House of Representatives  
Washington, D.C. 20515-2110

Dear Congressman Delahunt:

Thank you for your letter concerning the use of censure in the current presidential crisis. I apologize for the delay in responding but, due to litigation out of town, I did not receive your letter until this morning.

Having testified before the Committee on prior occasions, I have always found you to be honestly engaged in constitutional and legal issues. I regret that we disagree on this matter after agreeing on so many past issues. Moreover, I wish that I could give you a clear response but, like much in this current crisis, the constitutional issues are anything but clear on certain points. There is no constitutional barrier to the use of censure but there are considerable constitutional problems raised by such a legislative device.

The use of censure as part of an impeachment process raises serious constitutional questions. The Framers expressly mandated that the Senate, and not the House, should resolve whether "high crimes and misdemeanors" have been committed and should be subject to legislative penalty. It was the Senate that was given the duty to hear testimony under oath or affirmation in a constitutional trial. For the House to impose a punishment as part of the impeachment process would be extra-constitutional and would usurp the role given by the Framers to the Senate.

Clearly, outside of impeachment, it is perfectly appropriate for the House to express its view as to the conduct of any president, including an act of censure. While the language and collateral penalties can trigger the prohibition on bills of attainder, there is no constitutional barrier to such resolutions if they avoid prohibited forms of legislative punishment. When the House engages in such acts of censure as part of the impeachment process, however, it supplants a process expressly laid out in the first two articles of the Constitution. This does not mean that the use of a censure as an alternative to impeachment is unconstitutional. Rather, the use of a censure by the House is extra-constitutional and contrary to the process created by the Framers.

Faced with compelling evidence of criminal acts in office, it is understandable that Congress would search for some alternative to articles of impeachment. With the encouragement of the White House, censure has become such an alternative. Censure is a shaming device, however, that has no role in the impeachment process. Before Congress throws a willing president into a briar-patch of shame, it may want to consider why censure is not mentioned in any part of the Constitution or the original constitutional debates.

Shaming is, of course, nothing new in American law. At one time, American colonists used stocks, pillories, brands, and other forms of shaming punishments. While familiar with these punishments, however, the Framers never even mentioned censure as a penalty for a president or any other official. It is not difficult to understand why the Framers never considered censure as a serious response to crimes committed by a president in office. The use of shame is hardly a convincing deterrent to a president contemplating criminal acts. By the time an impeachment inquiry has begun, a president has already been shamed by the public controversy. Shaming requires the disclosure, not the repetition, of information. Censure of a president in a long-standing scandal merely represents an effort to shame a president twice for the same conduct. This is precisely why the idea of censure is more to the liking of a James Carville than a James Madison.

Shaming is also a penalty with meaningless historical value. Andrew Jackson was the only president ever censured. Jackson did not hide his contempt for the meaningless gesture and ultimately a later Congress rescinded the act and placed Jackson on the twenty-dollar bill.

**Ironically, the use of shame and censure as an alternative to the constitutional process would have the greatest impact on future innocent presidents. The presidents most susceptible to shame are presidents who have avoided shameful conduct but have been targeted by abusive legislators. The danger of creating new options in the Madisonian democracy is that they open new opportunities for abuse outside the system of checks and balances.**

**Few Americans believe that the President will be affected personally or politically by a censure of Congress. To work, this "exit strategy" requires a mutual understanding between the White House and the Congress: The Congress will pretend to shame the President and the President will pretend to be ashamed. I believe that such a demonstration would undermine the constitutional process and the credibility of the Congress. Both Father Robert Drinan and I agree on this point. It would be better for Congress to do nothing than to create such an extra-constitutional device.**

**The Constitution already contains the element of censure. It is found in a bill of impeachment. The Constitution does not require that the Senate remove a president who has committed crimes. To the contrary, the Framers anticipated that the Senate would defeat most impeachment referrals and expressly weighed the process in the Senate against conviction. The act of submission to the Senate contains a critical form of censure that would not create dangerous precedent for future presidents who would lie before a federal grand jury. When the House endorses the view that the President can commit the alleged criminal acts without suffering impeachment, the House will be defining an area for permissible future conduct. Likewise, there is great significance to where the impeachment process terminates. If the process is terminated in the House, the underlying conduct becomes precedent of exclusion. If the process terminates in the Senate without conviction, no precedent is established for similar conduct in the future. Both decisions may be acts of political nullification of criminal conduct by a president. However, when the House acts in this fashion, it has a greater influence on future presidential conduct.**

Censure often appears motivated by a belief that impeachment necessitates removal or that removal is the only function of impeachment. I disagree with both assumptions. In my view, it is a mistake to view impeachment as requiring conviction and removal. Impeachment can perform the very constitutional function that is sought in a censure. It defines conduct as sufficiently egregious to warrant removal. The actual removal of a president, however, depends on a variety of circumstances considered in the Senate. The Senate is expected to balance many factors in the interests of the public. The Senate has the authority to simply deny conviction on the articles of impeachment. If criminal conduct committed in office is to be nullified, however, the Senate is the designated body to make such a decision in the interests of the nation.

Impeachment is a process by which legitimacy questions raised by a president's crimes in office can be addressed in an open and deliberative fashion. In the Senate trial, a president will be called as a witness and placed under oath. Unlike the House, all three branches will be present by constitutional design in the Senate trial. With the Senate members sitting as jury, the Chief Justice sitting as presiding judge, and the President as witness and accused, all three branches participate in the final outcome. If a president's crimes are to be excused, it is the Senate that should make that decision after the public has been given a fully defined set of allegations and allowed to hear sworn testimony of the President. This can preserve not only the deterrent for future presidents but reaffirm the right of a people to examine the conduct of the Chief Executive as a check on presidential power.

I apologize for the length of this reply but I believe that this is an issue that does not lend itself to a cursory response. I would be more than willing to discuss this issue with you further and I appreciate your interest in my views.

Sincerely,

Jonathan Turley  
Shapiro Professor of Public Interest Law



## MEMORANDUM

TO: BD  
 FROM: MDA  
 DATE: December 3, 1998  
 RE: Censure Poll

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The following are the results of our poll of the 19 law professors who testified at our hearing on the history of impeachment regarding the constitutionality of censure:

**Question:** *Do you know of any reason why a congressional resolution disapproving the President's behavior would not be constitutional?*

**Responses:** 12 no, 4 yes (including 2 non-respondents), 1 "no opinion", 1 "other", 1 non-response (opinion not ascertainable from testimony):

Griffin B. Bell	No, but questionable on separation of powers grounds.
Susan Low Bloch	No, it would be constitutional.
Charles J. Cooper	No opinion.
Robert F. Drinan	No response, but testified that censure would be unconstitutional.
Michael J. Gerhardt	No, it would be constitutional.
John C. Harrison	No response.
Matthew Holden	No, it would be constitutional.
Forrest McDonald	No, it would be constitutional.
Gary McDowell	Yes, it would be unconstitutional.
John McGinnis	"Censure" would be unconstitutional, "disapproval" constitutional.
Richard Parker	No, it would be constitutional.
Donald H. Pollitt	No, but possibly unwise (citing Schlesinger).
Stephen B. Presser	Yes, it would be unconstitutional.
Jack N. Rakove	No, it would be constitutional.
Arthur M. Schlesinger, Jr.	No, but questionable on separation of powers grounds.
Cass R. Sunstein	No, it would be constitutional.
Laurence H. Tribe	No, it would be constitutional.
Jonathan R. Turley	No response, but testified that censure would not be constitutional.
William Van Alstyne	No, it would be constitutional.

Mr. GEKAS. Reclaiming my time, I was going to repeat the chairman's possible request for specifics, but you proved my point. I say to the gentleman that I think he endorses my point that the scholarly community is divided on this and every other issue that we will ever have to consider. They are divided. That is fine.

Mr. DELAHUNT. No, they are not divided. That is the point.

Mr. SENSENBRENNER. General order.

Chairman HYDE. The gentleman from Massachusetts does not have the time. The time of the gentleman from Pennsylvania has expired.

Who seeks recognition? The Chair recognizes Ms. Jackson-Lee for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and I thank Mr. Conyers as well. Both of you have contributed to the real and important opportunity to hear this censure resolution.

I join my colleagues who have coauthored this and would not have imagined that in 1998 would be part of censuring and drafting a resolution such as this to condemn a sitting President of the United States of America.

The President's conduct was wrong. Impeachment, however, is final and nonappealable. And, frankly, it as well deals with issues of great and dangerous offense against the Constitution. It deals with undermining the state.

But impeachment is also decisive. It crosses the political divide, it raises the anguish and anger of America. And I take issue with my colleagues who might note that it is unconstitutional, it cannot be done. It is not a bill of attainder, as under Article I, section 9, it does not restrict the liberty and property of the President.

But does that in any way diminish its impact? I would say not.

So I would like to just for a moment take up the challenge that our late and respected member of this committee would always say, and I am reminded of his words, Mr. Bono, "Stop the legalese." And I want to do that right now. For this is an anguished time for all of us, and it is at this very moment, in this very esteemed room, that I would like to look at the back of the room and see the doors swing open and groups of Americans pour into this room, coming from all walks of life, maybe Shaker Heights in Ohio, or Harlem in New York; maybe 5th ward in the 18th Congressional District of Texas; maybe some parts in Arizona where Native Americans dwell. And I would like for us to listen to them. For they have now challenged us to break this impasse. They have now risen to the point of saying: Censure this President, rebuke him for his wrong and horrible and intimidating conduct. He has hurt his wife, his daughter, his family of Americans. Listen to us. Let us be heard.

Oh, yes, there might be one or two who would squeeze in from my district and waive their fists and say impeach. Impeach that man.

And then there are others who say, how dare you offer such a resolution? You know what we sent you to Congress for. Vote with the President. Stick with him all the way to the end.

Well, this now is a time for uncommon courage. It is a time for champions of justice. It is a time, really, to really understand what those who go and defend our Nation are all about.

My grandmother sent three sons to World War II. When I was growing up, I could not join the United States military. But in talking to those men and women who now are in the U.S. military, and talking to those men who served their time, they tell me that they did not go into war or police actions or join the service to restrict our freedom, but they joined it to give us freedom, to do what is right for this Nation.

Censure is right for this Nation. It causes us to rise above the political divide, and it is not unconstitutional. There is no prohibition in the Constitution, and it is right for us to send this motion to the floor of the House.

I don't know if it will pass. I remain an optimist about the people on this committee. But I do say to the leadership, Mr. Gingrich, wherever you are, and Mr. Livingston, wherever you are, you would do a disservice to the American people that I imagine would like to come through this room right now and make their plea. Vote to heal this Nation, vote to ensure that we have a country that accepts its world position.

Chairman HYDE. The gentlewoman's time has expired.

Ms. JACKSON LEE. And, of course, accepts the freedom that we have.

I yield back the balance of my time.

[Statement of Ms. Jackson Lee follows:]

SHEILA JACKSON LEE  
18TH DISTRICT, TEXAS

COMMITTEES:  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON CRIME  
SUBCOMMITTEE ON COMMERCIAL AND  
ADMINISTRATIVE LAW

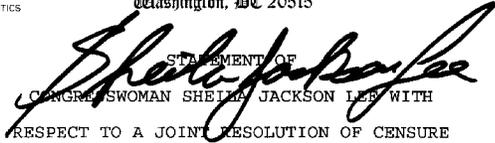
COMMITTEE ON SCIENCE  
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SUBCOMMITTEE ON BASIC RESEARCH

**Congress of the United States**  
**House of Representatives**

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STATEMENT OF  
  
CONGRESSWOMAN SHEILA JACKSON LEE WITH  
RESPECT TO A JOINT RESOLUTION OF CENSURE

FOR

WILLIAM JEFFERSON CLINTON

DECEMBER 12, 1998

I would like to thank the Committee on the Judiciary Chairman Congressman Hyde and Ranking Member Congressman John Conyers for giving me this opportunity to speak on this important subject.

"Unless we are sure of our starting point, we can never chart a correct course to our goal." We should now begin to heal our nation. There is a formidable and understandable procedure to rebuke the President due to his actions, it is censure.

On October 5, 1998, the House passed H. Res. 581, which expressly authorized the committee to report: "such resolutions, articles of impeachment, or other recommendations as it deems proper." Over the past two months, the Judiciary Committee has heard testimony from several witnesses about "high crimes and misdemeanors" and alternatives to impeachment. Censure is a viable alternative to impeachment that will quickly and judiciously resolve this national issue.

What is Censure? It is a formal resolution that expresses

Congress' opinion publicly. Censure is a sensible historically proven solution for addressing the President's disturbing behavior. It is time for America to move forward; it is time to put this unsettling controversy and divisiveness aside; it is time for the business of the American people to take first priority. It would benefit the entire country if the President could return to focusing on the issues at hand, as opposed to this scandal. The time to close this dishonorable chapter in our Country's history has come.

Censure is neither a substitute for a federal pardon nor is it a cover-up. Therefore, the President is still subject to civil and criminal punishment for any alleged crimes he may have committed by the court system after he leaves office.

President Clinton's conduct, although wrong, should not be regarded as an impeachable offense because it was not the product of an illegal use of power or a breach of the public trust as suggested by the framers of the Constitution. George Mason, a framer of the Constitution, stated that "high crimes and misdemeanors" refers to Presidential actions that are "great and dangerous offenses" or "attempts to subvert the Constitution." This is the proper standard for impeachment.

Further, Professor Charles Black, a recognized Constitutional scholar, stated in Impeachment: A handbook, that impeachment should be invoked only against "serious assaults on the integrity of the process of government and such crimes as would so stain a President as to make his continuance in office dangerous to the public order." The purpose of impeachment is to curb breaches and abuses

Page 3

of the governmental system. In 1691, Solicitor General Somers told the British Parliament that "the power of impeachment ought to be, like Goliath's sword, kept in the temple, and not used but on great occasions."

Impeachment is a constitutional remedy that is reserved for serious public offenses by the President. It should not be used to punish him for his private inappropriate relationships. The purpose of impeachment is to curb breaches and abuses of the governmental system.

James Hamilton, a former Assistant Chief Counsel for the Senate Watergate Committee, defined impeachment as "a crime against the state." An impeachable offense must relate chiefly to official injuries done to society. William Jefferson Clinton was elected and re-elected by the people. Therefore Congress must take into account the desire of most Americans.

"Here sir, the people govern." These words were used by Alexander Hamilton, an author of the Federalist Papers, at the New York federal Constitutional ratification Convention. This is the People house and they have spoken, their voices were heard loud and clear, its time to put this divisive issue of impeachment in our past.

A recent USA Today Gallup Poll demonstrates that three out of five Americans disapprove of the GOP's handling of the continuing investigation. Nearly three out of four Americans interviewed, stated they would like to see the whole impeachment process end immediately. Thirty-nine percent of those surveyed wanted the

Page 4

hearings concluded, and thirty-five percent recommended censured. President Clinton's job approval rating is holding steady at sixty-six percent. On the other hand, Congress' approval rating is at an all time low. It would be a grave and serious error to ignore the opinion and request of the American people to end these proceedings in an equitable and judicious manner quickly. A censure resolution is in the best interest of the Nation. What can we do to heal this Nation, and get back to the true business of America?

Censure. I support censuring President Clinton for several reasons. First, it provides an equitable and appropriate remedy for the President's actions. Second, Charles Ruff, the White House Counsel, rebutted the allegations included in the Starr Referral. Ruff utilized Ms. Lewinsky's definition of sex to explain that President's understanding of sexual relations was reasonable. Ms. Lewinsky, in a taped telephone call with Ms. Tripp stated:

[H]aving sex means having intercourse . . . . I never came close to sleeping with the President. . . . We didn't have sex. . . .Having sex is having intercourse. . . .Having sex is having intercourse. . . . That's how most people would define it.

Consequently, when the president stated in his January 17, 1998, deposition, that "he did not have a sexual affair with Ms. Lewinsky", this statement was not perjurious. Additionally, Mr. Ruff placed the President's statement to newspaper reporters about Mrs. Clinton in the proper context. This analysis demonstrated that the President's statement was juxtaposed and twisted to suggest that Mrs. Clinton was entitled to assert executive privilege. Simply put, Mr. Ruff provide a full and satisfactory explanation

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for the President's deposition responses while alleviating fears about abuses of power.

After hearing Mr. Ruff, I am convinced that the Referral and Articles of Impeachment that charges perjury, obstruction of justice and abuse of power are not substantiated by credible evidence.

Critical, to my position is the fact that the Starr Referral relies upon a single witness whose credibility has not been determined. Furthermore, the President's attorneys have not been given an opportunity to cross-examine this individual. The President should not be impeached or a citizen should not be convicted without evidence to support the charges. And finally, the Articles of Impeachment drafted by the majority which include perjury, obstruction of justice and abuse of power do not satisfy the constitutional standard "other high crimes and misdemeanors."

Certainly, everyone agrees that the President's conduct was inappropriate. In fact, it is unacceptable, but it does not meet the constitutional threshold that would warrant impeachment: "[T]reason, bribery and other high crimes and misdemeanors." A censure resolution acknowledges and condemns the President's reprehensible conduct. He has admitted to making false statements about his private "inappropriate relationship."

I believe that the President engaged in activities to delay discovery of the truth about his relationship with a subordinate. During his civil deposition, President Clinton answered the questions truthfully to the best of his knowledge; maybe giving

Page 6

misleading responses but not perjurious responses to any questions in the grand jury or during his deposition in the Jones case. Our system of jurisprudence places the "burden on the questioner to pin the witness down to the specific object of the questioner's inquiry." Bronston v. United States, 409 U.S. 352 (1973).

Censure is neither a substitute for a federal pardon nor is it a cover-up. Therefore, the President is still subject to civil and criminal punishment for any alleged crimes he may have committed by the court system after he leaves office. **The United States Constitution does not prohibit Censure.**

Several critics continue to suggest that censure is unconstitutional because there is no constitutional provision that expressly authorizes censure. This rationale is flawed and without merit. If we follow this line of reasoning to its logical conclusion: postal stamps, social security, and public education are unconstitutional because there is no explicit reference to these programs in the Constitution.

Furthermore, the Constitution does not prohibit Congress from acting because of its silence. Many powers and individual rights not expressly stated in the Constitution have been recognized by this body politic. For example, the right to privacy, the right to bodily integrity and the Executive power of removal. Our Constitution is a "living and breathing" document that requires continuous interpretation by the Supreme Court to address the problems facing our Nation.

Further, there is an historical precedent for a censure

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resolution. A censure resolution was considered against President Nixon during the Watergate investigation because of the allegations involving his abuse of Presidential authority and misuse of the Justice Department. Richard Nixon resigned from office. In 1834, the United States Senate censured President Andrew Jackson because of actions interpreted as contravening the rule of law. More importantly, censure would not violate the Constitution's substantive restraints against the use of federal power.

Now is the time for the United States Congress to condemn the President's unacceptable behavior and begin the healing process. Censure is an appropriate vehicle to accomplish condemnation and reprimand. The removal of the President of the United States would be a dangerous precedent, and throw this nation into a governmental crisis, with none of the nation's business being done for as much as six months.

In January 1995, and again in 1997, I took the Congressional Oath of Office to support and defend the Constitution of the United States against all enemies, foreign and domestic. It was an obligation that I took freely and without an reservation.

I believe that we should be informed as to the background of Censure as we consider what path to take in the days ahead, as related to Independent Counsel Starr's testimony and the documents that we have already reviewed in Committee. Censure has been used throughout history as a lesser form of action.

As a Member of Congress, I am bound to uphold the Constitution. My duty to uphold the Constitution is not a

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theoretical duty but a tangible duty that enhances my desire to unify Americans throughout the Country.

As an expression of Congress, I believe that Censure is the most reasonable and most adequate way to handle the current issue we are facing in this Congress. I hope that as a committee we can consider the importance and perhaps appropriateness, of censure as a Judiciary Committee action.

Censure is a sensible historically proven solution for addressing the President's disturbing behavior. It is time for America to move forward; it is time to put this unsettling controversy and divisiveness aside; it is time for the business of the American people to take first priority. It would benefit the entire country if the President could return to focusing on the issues at hand, as opposed to this scandal. The time to close this dishonorable chapter in our Country's history has come.

Thank you.

Chairman HYDE. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Mr. Chairman, I thank you and my colleagues. The Constitution provides only one process and remedy for a President who violates his oath of office, and censure is not that remedy in my opinion. I yield back my time.

Chairman HYDE. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. I have listened carefully this morning, frankly with some incredulity at some of the comments being made, although no doubt sincerely made, that somehow if Congress expresses the opinion that the President has done the wrong thing and deserves our condemnation, that we will cause a terrible problem for the Constitution. And I find it hard to accept those assertions when we are moving forward on only the third presidential impeachment articles in the history of the Nation, on a basis that almost half the committee feels are invalid and a clear majority of the country feels are invalid. We are moving forward on a partisan basis, and that will do damage to our country.

I look at what a trial in the Senate will focus on, and I will just note that one of the things that we will necessarily have to receive is direct testimony on—as found on page 148 of Mr. Starr’s report, which was incorporated yesterday in the articles—whether or not Ms. Lewinsky’s grand jury testimony on the question of whether the President touched Ms. Lewinsky’s breasts or genitalia during their sexual activity is true. We will have to hear from her, and we will have to hear from the President on that in the U.S. Senate.

I don’t think that these are harmless things. I think that the opportunity to censure the President is something that ought to be seriously considered.

Now, I have heard that there is concern that this is unconstitutional, and I don’t think that that is valid. I actually did a little search. We have had over 2,000 resolutions introduced in the 105th Congress expressing the sense of Congress, and I would note that some of them actually condemn civil officers who, if the arguments are to be made and adhered to today, could only be subject to impeachment.

For example, H. Con. Res. 183, Representative Graham is one of the cosponsors, relates to the Attorney General, a civil officer subject to impeachment. And in the end, in the “resolved” clause, we deplore the refusal of the Attorney General, we condemn the Attorney General, we denounce the Attorney General, we lament the loss of confidence, we do all of this because that is what Representative Graham and others believe.

I don’t happen to share that belief, but I recognize their lawful ability to express their opinion, to ask Congress to express their opinion.

What I hear from my colleagues on the other side of the aisle is that in your judgment, this resolution does not go far enough. It is insufficient. You have a right to that opinion. I don’t agree with you, but I recognize you have the right to believe that the resolution is insufficiently strong, insufficiently tough, insufficiently condemnatory. But I think you do not have the right to deny our colleagues on the House the opportunity to disagree with you.

I think that this issue of whether the President should be impeached or whether there should be a resolution of censure is one that we should not hold just to ourselves in the Judiciary Committee. This is a question that needs to be shared with every Member, all 435 Members of the House of Representatives.

I would ask that you consider doing this, and I have asked privately several of you to consider this: If you cannot approve of this resolution, please vote present on this resolution. Let those of us who believe that this resolution is the correct thing to do vote for it and move it to the floor. Those of you who cannot in good conscience vote for it, notice that you are present, as some of us did on Mr. Gekas' amendment, and let it move forward so our colleagues may have the opportunity to express their sense of condemnation, so that we can recognize and respect their opportunity.

With that, I would hope that we would at least in this matter operate in a bipartisan manner and show that much respect for our colleagues to allow them to express their condemnation.

Mr. Chairman, with that, I yield back the balance of my time.

Chairman HYDE. I thank the gentlewoman. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. First of all, I would like to compliment the gentleman from Virginia and his colleagues for drafting what I think is a serious and strong resolution. This is tough language. It says that the President "failed in his obligation to set an example of high moral standards," that he "violated the trust of the American people," that he "lessened their esteem for the Office of President," that he "dishonored the office," that he "made false statements," that he "wrongly took steps to delay discovery of the truth and remains subject to criminal and civil penalties," that he "deserves the censure and condemnation of the American people and the Congress," and that "his signature acknowledges this censure and condemnation."

But, Mr. Chairman, the same reasons listed in this censure, in my judgment, justify an impeachment. There are three other reasons to, I think, oppose this censure. The first is that we don't know if it is constitutional. The Constitution does not specifically mention censure as a sanction appropriate to be applied to the President, but it doesn't prohibit it specifically either.

The fact of the matter is, we don't know, and therefore it might be unconstitutional and subsequently overturned.

The second reason is that it might be repealed by future Congresses. This is what happened with the previous censure back in 1934 when President Andrew Jackson was censured. It was, in fact, overturned by the very next Congress.

The third reason to oppose it, I think, is that it is contrary to precedent. When the censure was issued back against President Jackson, it was issued by the Senate, not the House. That is appropriate because, as we have heard many times today, the House impeaches, it accuses or it charges. It is the Senate that determines guilt or innocence and applies the sanctions. So if and when there ever might be a censure, the Senate is the appropriate forum for that.

The only clear constitutional remedy without any question is impeachment and, Mr. Chairman, anything else in my judgment would be premature and improper.

There is an obvious solution, though. I listened to the President's statement yesterday, and I feel for him, I feel with him, and I agree with him. I can't imagine a worse agony than being ashamed in front of your family. But there is a way for the President to spend time, more time, with his family, hopefully, happier times with his family. There is a way for our country to avoid going through this ordeal, though I have great faith in the American people and in our country to get through it. There is a way to avoid disrupting the Senate's schedule, though I don't share the concerns of some of my colleagues that that is a major issue. It would give the country a fresh start and would give us a period of national relief, and it would also leave in office, of course, an incumbent Democratic President, and that is for the Democrats on this Judiciary Committee, along with Republicans, if that is deemed appropriate, to go to the President and ask him to resign. I think that that is the obvious solution.

Mr. Chairman, I yield back the balance of my time.

Chairman HYDE. The gentlewoman from Texas, Ms. Jackson-Lee.

Ms. JACKSON LEE. I was going to ask my good friend from Texas to just briefly yield to me. His time had not expired.

Chairman HYDE. His time has been yielded back.

Ms. JACKSON LEE. Thank you.

Chairman HYDE. Who seeks recognition? Mr. Watt, the gentleman from North Carolina—I am sorry, not Mr. Watt.

Mr. CONYERS. Mr. Chairman, may I go at this point?

Chairman HYDE. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you very much.

Ladies and gentlemen of the committee, we have two ways to attempt to get a censure resolution through this Congress. One is to start it off here. The second is to try to get it through the Rules Committee of the House to be made in order. And while I am pleased that we are at least able to get it up here on the floor of the Judiciary Committee, thanks to Henry Hyde, it appears that there may not be, let's face it, a single Republican on this committee willing to consider the censure option, including the Chairman, who allowed us to bring it forward. This is in real time.

So we will practice our arguments today and prepare them for a larger presentation. My hope is on the untested Speaker-elect, Bob Livingston, who will be meeting with the Democratic leader of the House of Representatives, Dick Gephardt, that will allow us to continue to fashion a way out of here.

Now, the problem is that if we don't do that, we are going to have a great debate on the floor of the House of Representatives, and I believe personally that a lot of Americans are beginning to find out that the Republican attempt to remove this President is not only serious, but it is for real, and I think that there is an awareness that is coming about that may allow us to prevail with a censure resolution on the floor of the House. Because if we don't, ladies and gentlemen, we are getting ready to call those wonderful citizens of new fame, the Goldbergs, the Tripps, the Lewinskys, for the most unimaginable trial in the history of this country in the

United States Senate, presided over by the Chief Justice of the Supreme Court.

Hear me. I mean, is that a tough call? You would really do this to your country? Not to the President. You would do this to the history of the Nation?

I am hopeful enough about the make up of this country to believe that there are enough Americans that will come to their senses and say, "This is not a tough call. We have got to do censure."

Oh, yes, it will be explained, as many times as my friends need, that this is perfectly feasible, because it has been done a half dozen times. But what on Earth could we be thinking about in terms of forcing America through months of testimony from Linda Tripp, Lucianne Goldberg, and Monica Lewinsky? Now, if you are ready to do that, then we are going to be put through perhaps the most tortured experience in American history, in years.

So I am hopeful that our citizenry and our colleagues will join us in this very modest effort to find an honorable exit from this most embarrassing and difficult situation that we are in.

Chairman HYDE. I thank the gentleman. The gentleman from Florida, Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman. I again want to express my gratitude to you, Mr. Chairman, for the way you have conducted these proceedings. We are now coming to the end of a very difficult process here in the committee, and you have shepherded us through this in a way that has shown dignity and grace, and we all owe a debt of gratitude to you for that.

I want to speak now about this resolution in the light of the commitment I made at the outset of these proceedings. I said that I would make a judgment in this matter on the basis of the facts of the case and the standards of the Constitution, and I believe that is what all of us should do.

Now, about the facts of the case: We have talked about that a great deal. We have made statements, and I have made statements about the President's conduct, which I have concluded more in sorrow than in anger. But the facts point to the conclusion that the President has been more concerned with maintaining his personal power than with maintaining the dignity and the integrity of the high office entrusted to him under our Constitution.

The evidence points to a President who clearly has no conception of the meaning of the stability of truth, a President who sees truth as the mere plaything of his imagination, something to be manipulated from moment to moment, to suit his convenience.

We see evidence in the record before us, indeed overwhelming evidence, of a President who by his calculated and sustained course of misconduct has directly undermined the integrity of his office, a President who has breached his duty to take care that the laws be faithfully executed and, indeed, a President who has attacked the rule of law.

Now, we do not sit here today in judgment on the President as a man. It is my earnest prayer that as a man, Bill Clinton will find reconciliation and peace. I bear him no ill will. But we have a responsibility to judge the misconduct of the President because that misconduct has involved crimes, crimes that are harmful to our system of government.

Now, in the efforts that have been made to palliate, in the efforts to confuse, and all the irrational legalisms, and the twisting of the plain meaning of English words, we have seen coming from the President's defenders, in all of this, we see the foreshadowing of the subversion of respect for the law that is inevitable if we fail to impeach this President. These efforts find their most concrete expression, indeed they are distilled in the resolution that is before us today.

Now, we should focus in the task ahead of us on what the Constitution provides. Mr. Hyde has read the provisions of the Constitution. I will not read them again. We have heard them in this committee. I simply suggest to the members that we should focus on the words of the Constitution, and we will find in the Constitution nothing that authorizes the censure of the President by the House of Representatives.

Mr. BERMAN. Would the gentleman yield for a question on that point?

Mr. CANADY. I will be happy to yield when I am done, but I would appreciate not being interrupted.

Now, we have a responsibility to follow the Constitution. Now, we have heard many suggestions about what will happen if this President is impeached. We have heard horror story after horror story. But do we have such fear of following the path marked out for us by the Constitution that we would take it upon ourselves to go down a different path, a path of our own choosing? Will we let our faith in the Constitution be put aside and overwhelmed by the fears that have been feverishly propagated by the President's defenders?

Now, there is no question that this is a momentous issue. There is no question that impeaching a President of the United States is a momentous act. But this is not a legislative coup d'etat. This is a constitutional process.

Now, will the impeachment of the President cause difficulties, discomfort, and inconveniences? Most certainly. No one would deny that. This is a sad chapter in our history. But I reject the notion that the Senate will be tied up for month after month with this matter. Such dire predictions are scare tactics, a tactic to scare us into turning away from our constitutional duty.

There is a great deal of evidence before us, but in its essentials, this is a rather simple case. It can be resolved by the Senate expeditiously. We should reject the scare tactics, we should reject the effort to have us turn away from our constitutional duty, we should vote down this motion and move forward with doing our duty in the House of Representatives.

Chairman HYDE. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. First of all, the argument that because we are not explicitly authorized by the Constitution to pass a vote of censure of the President can't be meant seriously by anyone here.

I've been reading the Constitution. It is going to make the best-seller list this week, obviously. And I looked at the enumerated powers. There is nothing in here that says we can pass censure Congress resolutions. There is nothing in here that says we could have passed the resolution sponsored just this year by Mr. Solomon, Chairman of the Rules Committee; Mr. Delay, the Majority

Whip; urging the President to do this, being critical of the President for doing that.

No one seriously argues that, because it is not explicitly authorized, Congress cannot pass resolutions expressing opinions. So I don't believe that the constitutional argument has any substantive issues whatsoever.

This committee, every single member, has participated in passing resolutions for which there is no more explicit constitutional sanction than censure; and many of them are, in fact, resolutions which are implicitly or explicitly critical of the President.

Though the next set of arguments kind of cancels out, they are the too much and too little simultaneous argument. Censure is considered to be wrong because it would so easily be responded to, that it would hamper the President. It would interfere with the separation of powers. It would prevent the President from doing his work.

How would it prevent the President? How would too frequent censure prevent the President from doing his work? The answer is by having no impact whatsoever. Censure cannot simultaneously be nothing of consequence and a potentially fatal interference with the scheme of the separation of powers.

Now I want to talk about the argument that it would have no force. And I will repeat, as one of those who serves in this body today who was reprimanded, along with Speaker Gingrich, I do not understand how any of my colleagues who share my reverence for this institution who, like me, are as proud of being here as of almost anything in the eyes—certainly anything in their public eyes, can argue that we would be indifferent to being reprimanded. No one thinks that.

Please be wary of using arguments that are good for this day and this purpose only. Let's not use arguments that none of us really believe.

Look at history. Was the censure of Joseph McCarthy or Thomas Dodd of any relevancy? And I understand there were different constitutional sanctions. But I'm talking now about the impact.

And, by the way, when we are told censure is to be dismissed because it would have no force, we are told that by some of the same people who said, here's what we think we should do. We should vote an impeachment. And, by the way, one reason you can vote for it without too much worry is the Senate is not going to do anything about it.

Well, impeachment not acted on in the Senate has no more formal force than a censure. So you cannot consistently argue that the way to deal with the President—the gentleman from Florida said it is the ultimate censure impeachment. That is funny. I thought impeachment was impeachment. And censure was censure. This is Orwellian.

What are we now doing? Changing the words. We may be able to amend the Constitution, but we're amending the dictionary.

The fact is that we have now two choices, and this is critical. We have two choices, because people here have been arguing, and they've been arguing this because they need to get votes on the floor by saying, don't worry, you're not really throwing the President out. The question is, here are two choices.

There is a broad consensus of disapproval of the President's behavior, of the dishonesty. And I did not mean to suggest that—if I did, I was speaking sloppily—that the reference here to false statements was only the press conference. I personally believe that the President testified falsely when he said he could not remember being alone with Monica Lewinsky. I think he did remember being alone with Monica Lewinsky and testified falsely in the deposition to the contrary.

But we have a consensus that the President behaved badly, was dishonest and should be condemned. We have two choices. How do we do that? How do we get a vote that expresses condemnation?

One choice is a broad bipartisan majority passing a strongly worded censure. That is one choice. Your option is an impeachment which you tell us is unlikely to be finally adopted by the Senate. So, therefore, it would have no more force and effect, except to cause a trial in the Senate. And if the gentleman from Florida thinks it wouldn't take up too much time in the Senate, I know how much it has taken up in committee. Is the Senate to be considered less likely to be serious about this than this committee? Every member of this committee knows the extent to which it has disrupted our ability to do other sorts of business. We have legislation put aside because we were working on this.

So here's the choice: Assuming that the Senate is not going to actually act on the impeachment, if you are bent on getting on the President thrown out of office, as many of you are, then you vote impeachment. But if you are saying here, look, here are the two choices, the impeachment not acted on in the Senate or this censure. Here are the choices—

And I will ask for 30 seconds, Mr. Chairman, to finish up.

Either you get a bipartisan majority that censures in the House, or you have a very narrow, very tight partisan majority in the House.

And, by the way, that majority for impeachment will be a majority only because of the vote of lame ducks who were defeated in the last election in which impeachment was an issue. There will be nine Members serving when we vote next week who ran for another office and were defeated and had their seats go to a Member of the opposite party, and that reflects a net gain of five for the Democrats.

So if impeachment passes by five votes or less, it will be passed because of the votes of lame ducks who lost their seats to people in the opposite party and the elections in which impeachment was an issue.

Here's your choice: bipartisan censure, both parties, the majority of both parties saying we're appalled by what the President did, and we take this historical, unique opportunity to say so, or a narrow and crabbed bipartisan majority not legitimate under Democrat norms, because it will be a majority only because of those lame ducks. I think the country will be much better served by this censure.

Chairman HYDE. The gentleman's time has expired.

The gentleman from South Carolina, Mr. Inglis.

Mr. INGLIS. Thank you, Mr. Chairman.

I was interested in asking some questions of Mr. Boucher, if he is willing to answer.

I'm curious, Mr. Boucher, you seem to indicate here that there were false statements—you do indicate that there were false statements that the President made. Were any of those false statements made under oath?

I would be happy to yield to you.

Mr. BOUCHER. I thank the gentleman for yielding.

I would say to the gentleman that the phrase in our resolution that the President made false statements is a vessel. I would assign as contents to that vessel the public statements that the President made on television in January. Those statements were not made under oath.

I would personally also assign as contents the President's statement that he was never alone with Ms. Lewinsky. That statement was made under oath. I personally don't think it was truthful.

I am not prepared to characterize other statements that he made under oath which some have said to be untruthful as untruthful, but there are other Members who may. And other Members may give greater or lessor definition to this phrase "false statements" than I have. Each Member is free to assign whatever content to that vessel he or she deems proper—

Mr. INGLIS. Let me reclaim my time just for a moment so I can ask you another question. How about in the grand jury, do you personally assign any—to that vessel, any statements made by the President in the grand jury?

Mr. BOUCHER. Well, the President I think in his grand jury testimony repeated his statements with regard to whether or not he remembered being alone with her. My own personal belief is those statements were not true.

Mr. INGLIS. No, in other words you would—in your case, I don't want you—you obviously can't speak for everyone else who would be supporting this resolution, those false statements. Some of them were made under oath in the grand jury and in the deposition.

Mr. BOUCHER. Would the gentleman yield?

Mr. INGLIS. Yes.

Mr. BOUCHER. I would say that is true. However, let me also add that, even taking those statements as having been false, having been made under oath, I do not believe that that conduct rises to the level of an impeachable offense; and, therefore, I think the resolution of censure is the proper alternative in this case.

Mr. INGLIS. And reclaiming my time, because I understand the gentleman would not make those impeachable offenses.

How about this? You say that the President took steps to delay the discovery of the truth. Do you suppose that there were investigations under way or legal proceedings under way at the time that he was taking those steps? And I would be happy to yield to the gentleman.

Mr. BOUCHER. I would say to the gentleman that my intention in authoring that particular phrase was to say that, in not telling the truth, primarily in the public statement the President made in January, that statement alone constitutes an action that delayed the discovery of the truth. And that is the extent to which I believe

that phrase deserves definition. Others might want to assign a greater meaning to it. That is my personal meaning.

Mr. INGLIS. Reclaiming my time for that and ask you another question. If, in fact, there were investigations under way or legal proceedings pending, did the President's steps to delay the discovery of that truth in your mind constitute obstruction of justice?

Mr. BOUCHER. Would the gentleman yield?

Mr. INGLIS. Yes.

Mr. BOUCHER. No, it does not. It doesn't rise to that legal standard.

Mr. INGLIS. I would be curious—I would yield again to the gentleman to explain the difference. I mean, if he was taking steps to delay the discovery of the truth while legal proceedings were pending, you, in your mind, don't define that as obstruction. I would be interested in knowing why.

I would be happy to yield.

Mr. BOUCHER. I thank the gentleman for yielding.

Let me say to the gentleman that the steps that the President took delaying discovery of the truth were, in my opinion, not steps that were central to any legal proceeding that was under way at the time. It is a general statement. It is designed to say that the President should have been more forthright at that particular time. He should have told the truth on that occasion, rather than making false statements. And in making false statements, the inquiry of the Independent Counsel perhaps took somewhat longer than it necessarily should. In my opinion, none of that rises to the level of obstruction of justice.

Mr. INGLIS. Thank you, Mr. Boucher. And I'm nearly out of time.

I just observe it is pretty clear that those false statements were made under oath; and, if so, it is perjury. And it is pretty clear that the President was taking steps to delay the discovery of the truth, and I believe that is obstruction of justice. That is why I support articles of impeachment.

Chairman HYDE. The gentleman's time has expired.

The gentleman from New York, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

And I thank you once again. This may be the last moment I will officially address you in this committee. And I want to thank you for your years of guidance and leadership and fairness which I believe extends up to this moment.

Chairman HYDE. Thank you.

Mr. SCHUMER. I would like to make four points, two really augment the points Mr. Frank made, and then go into the two major points I want to make. First, in terms of what Mr. Frank said, in terms of the constitutionality of censure, I just like to remind people, yes, we censure every day or every week. There are motions of censure on the floor. We have importuned the President in those censures and one could make an argument, which I think has no validity, just as the argument that because impeachment is in the Constitution you will never—you should never have censured—that you couldn't have censure. Well we have statutes mentioned in the Constitution laws.

Does that rule out the kinds of censure that we have done having less effect? Simply because the Constitution mentions impeachment

doesn't mean it rules out censure, just as simply because the Constitution mentions statute, it doesn't rule out censure on other matters.

Second, in terms of this becoming too frequent a measure, I think the sponsors of this bill, and I would like to compliment Mr. Boucher, Mr. Delahunt, Mr. Barrett and Ms. Jackson-Lee, had a singular wisdom.

They made this a joint resolution, that means that the President has to sign it. That means he has to acknowledge his misdeeds. In a sense it is like the censure we have here in the House of Representatives, where the Member has to go into the well, the significance of that, and hear the articles of censure read against him or her. In a sense that is forcing that Member to acknowledge the censure. The joint resolution form of this that the President would have to sign requires the same acknowledgment, and I think guards against the fact that this would be used too frequently.

My two major points. You know, what's good for the goose is good for the gander. And this body through its Ethics Committee and then through its vote found that Newt Gingrich made false statements. For instance, Newt Gingrich said that the course GOPAC was, by design and application, completely nonpartisan. It was and remains about ideas and politics, page 2. The fact is, he said on page 4, Renewing American Civilization and GOPAC have never had any official relationship. We know those statements to be patently false. They were made to the Ethics Committee.

Mr. Gingrich's rationale for that was a simple one. He said his lawyer did it without him knowing. I can imagine if Bill Clinton had said that, the opprobrium justifiably that would have rained upon him from the other side. And, yet, I didn't hear a single member of the other party call for Mr. Gingrich to be removed from office in the House equivalent of impeachment, which is expulsion. In fact, with the exception of Ms. Bono, who wasn't here, and Mr. Buyer and Mr. Barr, every member of this committee voted to censure Mr. Gingrich for making false statements.

False statements to a government body, false statements that were at least as patently false as the statements you are saying that Mr. Clinton made, it seems to me—now you can say one was under oath and one was to the Ethics Committee—it seems to me that is not the kind of difference that measures such a huge support for censure of Mr. Gingrich and saying censure is not the right punishment for President Clinton.

I would remind my colleagues again to be fair and consistent. And, finally, again, I would like to compare this to Watergate; to me the major difference is the fact that in Watergate there was a bipartisan agreement. It didn't start out bipartisan. When Mr. Rodino chaired the hearings, every Republican was opposed to impeaching the President, as was the American public. But as the facts came out, and as the fairness of the hearings became clear, Republicans and the American people came to a view that we ought to have impeachment.

I would plead that we have not reached that here. And you can force it all you like, that is not going to happen. I would plead with Mr. Livingston. Do not force the House on Thursday between 2 unpalatable choices, no punishment or impeachment. If, as you

have stated this, you believe this is a matter of conscience, if you believe this is a matter of fairness, if you believe each member should decide for him or herself, please in the name of the greatness of this country and our future allow a censure resolution like the one that was crafted here on the floor and let the chips fall where they may.

Mr. GEKAS [presiding]. The time of the gentleman has expired. The Chair now recognizes the gentleman from Virginia for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, first I would like to commend my friend and colleague from the adjoining district of mine in southwest Virginia for his efforts. I think he is sincere in those efforts. And I think that he has accurately described the nature of the resolution in terms of what it accuses the President of, as an unspecified open vessel into which he might place some statements and I might place others.

The problem that I have with the resolution is this. Those things that I would place into that vessel are perjury under oath before a civil deposition, before a U.S. district judge, perjury before a Federal grand jury, perjured statements submitted to the United States Congress, obstruction of justice in subverting the right of an individual to have her day in court. And those are impeachable offenses and that is why I must oppose the gentleman's resolution.

I am further concerned by the comments from the gentleman from New York. First of all, the United States Constitution is explicit in the power of the Congress to discipline its Members. But I think that it is not only not stated that the Congress has the power to discipline the President, but except for the specific power of removal, separation of the man from the office by virtue of the impeachment process, what the gentleman proposes and what this resolution proposes is unconstitutional.

He is correct in noting that it is a joint resolution, requiring the signature of the President, and that is very significant, because requiring passage by both Houses and signature by the President, while a simple or concurrent resolution is more like a collective shout from the House or from the Senate, a joint resolution is very clearly a bill. And since it is a measure requiring the signature of the President, a joint resolution of censure, a law formally and publicly expressing condemnation, or to use the gentleman's own words, punishment by the legislature directed at a specific individual, confronts squarely the prohibition in the Constitution on a bill of attainder, and, therefore, I believe this is unconstitutional.

But finally and, most importantly, the reason why I'm opposed to this censure resolution is the contrast between the reaction of President Clinton who openly yesterday sought a censure resolution and President Jackson. What a sharp contrast to President Jackson, who wrote that the very idea of a censure is a subversion of that distribution of powers of government which the Constitution has ordained and established and destructive of the checks and safeguards by which those powers were intended, on the one hand to be controlled and the other to be protected.

President Clinton welcomes this censure because it is an open vessel for him as well. And you can expect that the spin doctors at the White House, the James Carvilles of America will be out

there filling that vessel with nothing, nothing, and exonerating this President because this is exactly what the President wants. The President in his behavior before the district court, in the behavior before the grand jury, in his behavior before this Congress mocks the American people. This President mocks the Congress.

And this censure is exactly what he wants. He will take it as vindication of his mocking. And we should not give it to him. Mr. Chairman, I yield back my time.

Mr. GEKAS. The time of the gentleman has expired.

The Chair now recognizes the gentleman from California, Mr. Berman, who moves to strike the last word.

Mr. BERMAN. Thank you, Mr. Chairman. I have a question, but before I ask the question of the Chair, I would just like to point out that what I haven't heard in a very long time is a substantial amount of time spent by those who favor the articles of impeachment on one issue which I tried to raise Thursday evening.

I concur with a number of the assertions made by the majority with respect to presidential wrongdoing. Your quickness to come to legal conclusions I don't agree with, I don't think that is our role. And I don't think we're in the right situation to make those judgments. But as to the specific acts, I tend to agree with many of your interpretations. And I also agree that the President's wrongdoing has had a corrosive effect and will have a corrosive effect on the law and on society.

But very little time of the majority has been spent explaining why that corrosive effect could possibly equal or outweigh the corrosive effect of nullifying the defining moment in our political system, the national vote for President of the United States, particularly in the context of the fact that the body politic doesn't want that to happen.

Again, I would just like to repeat, a vote for impeachment may be the only vote you should think twice voting for based on your conscience, because what you are doing there is nullifying the one unifying expression of the people.

Mr. GEKAS. Would the gentleman yield for a moment on that? I thought you addressed the Chair on that.

Mr. BERMAN. No, I was going to ask a somewhat narrower question, but I'm always happy to hear your thoughts on the subject.

Mr. GEKAS. I was just going to say in 1974 the result of that inquiry and impeachment was to nullify an overwhelming election by the holder of the White House at that juncture.

Mr. BERMAN. I couldn't agree more. And the one thing I know is that the body politic less than 2 years earlier had voted for that President. I can't remember whether that was the election in which Massachusetts was the only State to support the President's opponent.

Within that time and by the time that the House Judiciary Committee had taken its action, it was very clear that the center of gravity of the body politic with respect to on presidential wrongdoing had shifted. There is no case to be made that that has happened here and, in fact, there is constant reaffirmation of the fact that that hasn't happened.

Now, before my time runs out I'd like to ask my one much narrower question to those who argue that this resolution is not con-

stitutional. On October 8th, we passed a resolution, House Resolution 581, which said that the Committee on the Judiciary is authorized to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, the committee shall report to the House of Representatives such resolutions, articles of impeachment or other recommendations as it deems proper.

And the question I ask to the Chair or anyone else who wishes to respond is, if censure is not contemplated by the Constitution and therefore not permitted by the Constitution, without regard to whether you like this language or anything else, what were the other recommendations or resolutions that the House contemplated when they vested this committee with the power to begin this inquiry?

Mr. GEKAS. If the gentleman would yield? Many of us on this side of the aisle and elsewhere do not contend that censure is unconstitutional, but the Constitution does not prohibit the introduction or passage of a censure resolution.

Mr. BERMAN. I'm sorry, just to reclaim my time. I ask unanimous consent for one additional minute. I was hoping I could get an answer from—

Mr. GEKAS. Without objection.

Mr. BERMAN [continuing]. One of the many people from Chairman Hyde to Mr. Sensenbrenner to Mr. Canady, I believe, who argued that it is the absence of reference to it in the Constitution, in a Constitution which gives us powers only that are enumerated, therefore, meant that we couldn't do it. It was one of those members, not you then that I was asking that question.

Mr. GEKAS. Does anyone wish to save my hide or Mr. Hyde's hide?

Mr. BARRETT. I would.

Mr. BERMAN. I just want to know for those people what were the resolutions or the other recommendations that we were vested to provide back to the House floor in our original—

Mr. HUTCHINSON. Would the gentleman yield?

Mr. BERMAN. I would be happy to.

Mr. HUTCHINSON. I would assume one of the recommendations back could be to take no action. You would have to have that statement in there if we were going to report back no action. I think it was a broad statement.

Mr. BERMAN. I think the absence of reporting articles of impeachment would have been no action. It is hard for me to believe that your explanation is what was contemplated.

Mr. HUTCHINSON. I think the gentleman has a very good point. And I've always interpreted that as a broad statement, broad jurisdiction to the committee, and that's why I think we are debating the resolution of censure that you are proposing.

Mr. BERMAN. It is a functional equivalent of the phase one or more of the following, as the Rogan amendment added to Article I.

Mr. GEKAS. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Indiana, Mr. Buyer.

Mr. BUYER. I thank the Chair. I have some specific questions about the censure resolution itself.

Mr. Barrett, could I ask you some specific questions about the censure resolution? I noted in paragraphs 1 and 2 and you have some subsections, it appears to me that, such as in line 11, you say he egregiously failed, and then in line number 1 in page 2, he violated the trust; and then line 2, it says lessened their esteem; and line 3, dishonored the office; line 5, that he made false statements; line 6 is reprehensible conduct; line 8, wrongly took steps.

This appears to be you are laying the foundations for findings of guilt. Why did you lay it out in such a way that you would have findings of guilt?

Mr. BARRETT. Well, we didn't have findings of guilt, and that is exactly the point, because the findings of guilt in an impeachment resolution would have to occur in the Senate after a lengthy trial, and that is exactly what we want to avoid. We believe that if we go down that road, it is going to rip this country apart.

Mr. BUYER. But you've laid it out so that it is findings of guilt, that he in fact did this type of behavior, so that you could then set up number 3 with regard to this is what the remedial effect would be of the censure, did you not?

Mr. BARRETT. Again, I think all of us know that there has been something bad happening in this country over the last year. And I think, frankly, as the impeachment articles attempted to avoid that, so does this resolution.

Mr. BUYER. Well—

Mr. BARRETT. It is a fair criticism of both.

Mr. BUYER [continuing]. I look at this and read this as though you actually have findings of guilt with regard to the President having conducted certain things, so you laid it out with specific statements, would you agree?

Mr. BARRETT. The resolution refers to admitted misconduct by the President.

Mr. BOUCHER. Would the gentleman yield?

Mr. BUYER. I have a short amount of time. I will just in a second, Mr. Boucher.

With regard to, quote, his actions brought dishonor, why did you use that word, that phrase?

Mr. BARRETT. If I could yield to Mr. Boucher, who obviously is the main author.

Mr. BUYER. Sure.

Mr. BOUCHER. Let me first respond to the gentleman by saying that nowhere in here is there a direct accusation that the President is guilty of a crime. I think your initial set of questions were focused on whether or not we were suggesting that there is guilt, and there is no suggestion here that the President has committed a criminal offense. If Members want to expand the particular content in these two phrases, that he made false statements and that he wrongfully took steps to delay discovery of the truth, to believe that the statement suggests involvement in criminal conduct, that is up to each individual. But the statement itself does not go that far.

Mr. BUYER. Let me reclaim my time. In paragraph 2 you said that he made false statements concerning his reprehensible conduct with a subordinate. I suppose you are referring to what you've

been arguing here the last couple of days about private sexual misconduct. Would that be true?

Mr. BOUCHER. The reprehensible conduct with a subordinate does relate to the various items of conduct in which the President engaged with Ms. Lewinsky.

Mr. BUYER. Then is your effort here to say that this censure is some form of a moral condemnation with regard to that conduct? What are you trying to say?

Mr. BOUCHER. Would the gentleman yield?

Mr. BUYER. Yes.

Mr. BOUCHER. I would not use the phrase "moral condemnation". I think the public disdains the President's conduct. I certainly disdain it. It is reprehensible. The words here speak for themselves in terms of the condemnation that we suggest the Congress express for the conduct that the President has engaged in.

Mr. BUYER. To say then that you disdain that type of reprehensible conduct, would that be some form of seeking retribution then upon the President?

Mr. BOUCHER. Would the gentleman yield?

Mr. BUYER. I'll yield.

Mr. BOUCHER. I would say to the gentleman this is not designed to be retribution; this is designed to express the outrage of the American public for the conduct of the President that is referred to in the resolution. If there is criminal conduct, if it is subsequently determined in a criminal trial that there is criminal conduct, the President can be punished in the courts just as any other American. And that is the way questions of guilt and conduct that reaches that level of reprehensibility would be addressed.

Mr. BUYER. Reclaiming my time, why have you used the term his actions have brought dishonor? And the definition of dishonor is a lack or loss of honor or reputation. Aren't you inflicting a penalty by taking away the President's honor and reputation by a censure that says "I find you dishonorable"?

Mr. BOUCHER. Would the gentleman yield.

Mr. BUYER. Yes.

Mr. BOUCHER. I thank the gentleman for yielding.

It is not designed to be a penalty. It is an expression of opinion. Congress expresses its opinion all the time on matters. The President in my opinion has acted dishonorably here, and I think that is an opinion that is shared by the American public. And it does not suggest that in saying so, we are in any way penalizing the President. We are simply expressing the condemnation that the American public expects.

Mr. BUYER. I ask unanimous consent for an additional 2 minutes so I may engage with the author.

Mr. GEKAS. Without objection, the gentleman is accorded two minutes.

Mr. BUYER. I appreciate the gentleman's candor here. The only question I have if we're going to make—I think this is my interpretation, Mr. Boucher, of it, that these are specific violations—findings, when you say in fact that he violated a trust, that he lessened the esteem, that he dishonored the office, that he made these false statements and he wrongly took steps to delay. Then we want to

say, oh, by the way, William Jefferson Clinton remains subject to criminal and civil penalties.

If Congress is going to make an affirmative statement with these specific types of findings in it, how can Bill Clinton afford himself to a fair trial? I yield to the gentleman.

Mr. BOUCHER. Nothing in our resolution, I would say to the gentleman, accuses the President of criminal conduct. It is fairly to be interpreted by a court of law as merely being an expression of Congressional opinion reflecting the public's disdain for the President's conduct. Dishonor does not mean criminal conduct.

And in a court of law, if the President is prosecuted upon leaving office for any offenses that he may have committed while in office, if it is alleged that the acts of false statements or acts of delays leading to discovery of the truth are characterized as perjury or as obstruction of justice, then it will be up to the prosecutor to prove whether or not that standard in the law is met. We are making no judgment with respect to that question in putting forward this resolution.

Mr. BUYER. I would say to the gentleman, then, this becomes a very weak censure resolution then, if you are unwilling to step forward and say then, with regard to he wrongfully took steps to delay the truth, with regard to what. I mean, I know the Chairman was saying, well, okay, I can in turn say what about the specificity; but if you are unwilling to say that and say with regard to delaying discovery truth in what, the civil—the Jones civil case? Was it the criminal proceeding? I mean, just giving it in a blanket like that, you've watered it down as much as you possibly can.

My sense though, Mr. Boucher, is that in paragraph 2(a) that really is not a sense of moral condemnation, it is a form of retribution, and it is therefore punitive in its nature. And I really have some very strong concerns about if the President could every have the right to a fair trial, if in fact the Congress wants to legislatively make these sort of findings, taking a judicial role, which is in fact why a bill of attainder—

Mr. BARRETT. Would the gentleman yield?

Mr. BUYER [continuing]. The Supreme Court has said has been unconstitutional.

Mr. GEKAS. The time of—

Mr. BARRETT. If I can ask unanimous consent for 30 seconds.

Mr. BOUCHER. I ask unanimous consent that the gentleman have an additional 30 seconds.

Mr. HUTCHINSON. Objection.

Mr. GEKAS. Objection is heard.

Mr. HUTCHINSON. Withdrawn.

Mr. GEKAS. Objection is withdrawn.

Mr. BARRETT. It sounds to me—

Mr. GEKAS. The time is extended.

Mr. BARRETT [continuing]. That you are saying at the same time that it is too strong because it is not going to allow a fair trial, and it is also too weak.

Mr. BUYER. No, no, it is not. I'm just saying that I don't understand this censure. When I first read it, Mr. Barrett, I read it as though you have laid out actually findings of guilt. And then you say, oh, by the way, he can stand at trial, and then I say how do

you protect himself to a fair trial, and then at the same time there is this unwillingness here to give specificity.

Mr. BARRETT. Do you think—

Mr. BUYER. There is an inconsistency.

Mr. BARRETT. I'm just asking, do you think it is too strong or too weak?

Mr. BUYER. Frankly, I don't think this is an alternative to impeachment. What I'm saying is that I'm trying to figure out why you have drafted it in a particular way and whether it will pass the constitutional scrutiny of bill of attainder.

Mr. BARRETT. Do you think it is too strong or too weak?

Mr. BUYER. I think the way you've laid it out is very, very weak.

Mr. BARRETT. I don't see how it can hurt the President's case if he were charged 2 years from now.

Mr. BUYER. Absolutely. In my judgment of being strong, there is no way I believe that you can do a censure and the President could find a fair trial in this country. And that is the error of this resolution.

Mr. GEKAS. The time of the gentleman has expired.

We now turn to the gentleman from New York, Mr. Nadler, who moves to strike the last word.

Mr. NADLER. I do indeed, Mr. Chairman.

Thank you, Mr. Chairman. I have already stated my reasons for opposing impeachment and I will not repeat them now. Suffice it to say that a partisan impeachment opposed by one of our two major political parties and by two-thirds of the country can only be divisive and calling into question the legitimacy of our political institutions.

We now take up a resolution of censure which I will support today, despite my very grave reservations concerning the precedent its adoption would set. I will vote for this resolution, however, because I believe that many Members of the full House and the people they represent believe that the President ought to be censured by Congress but not impeached. They have a right to a choice between the extreme and unjustified action of impeachment, and a less radical expression of the Congress and the Nation's disapproval embodied in this motion.

And I do not want to support Mr. DeLay's strategy of maximizing the number of votes for impeachment by denying to Members who feel the President's conduct warrants a formal rebuke by Congress, but does not warrant impeachment, no alternative but impeachment or nothing. That, Mr. Chairman, constitutes moral blackmail.

I would note that this resolution cites acts that are worthy of condemnation and that have been admitted by the President. The resolution does not cite alleged crimes that have been denied by the President and have not been proven. I believe it would be improper for Congress to pronounce officially a President or anyone else guilty of crimes that have been neither admitted nor proven.

Indeed, one of the reasons I oppose impeachment is that in my opinion there is far from sufficient evidence the President committed perjury or the other alleged crimes, but this resolution does not deal with allegations of crimes. It is indisputable that the President lied to his family, his friends, his staff, the Congress and the American people. He carried on an affair with a subordinate em-

ployee and attempted to keep it secret. He has admitted these actions.

He has sought forgiveness from those he has hurt and deceived. Should crimes turn out to be provable, he will face the possibility of criminal prosecution like any other citizen because no one is above the law. Most importantly, he will bear the burden of the judgment of history and of the American people. So there are consequences and the President will not escape them simply because he is the President.

What disturbs me about censure, however, is that it sets a worrisome precedent. Congress will now be in the business of making sweeping statements on the conduct of future Presidents. Presidents often do things that anger or offend Members of Congress or the public. Presidents are answerable to the American people for that conduct and they are answerable in the courts. But to single out this President for deception about a personal indiscretion disturbs me.

We did not censure George Bush when he lied to the Nation about being out of the loop in the Iran-Contra scandal or when he said, "Read my lips. No new taxes." President Reagan was not censured for using members of his White House staff and Cabinet to conceal those illegal acts, nor was President Bush censured for issuing pardons to keep those involved in that lawbreaking above the law.

It is certainty constitutional for Congress to adopt a censure resolution. I know it is said that censure is not mentioned in the Constitution. Neither is Social Security. Congress expresses its views in on all sorts of things, and there is nothing in the Constitution that prevents us from expressing our views as an institution about the President. Members who want to express that view should have the opportunity to do so, and not be muzzled by a partisan House leadership.

I urge the members of this committee on this supremely important issue to permit the Members of the House to make their own choices. And despite my serious reservations with the censure resolution, I am willing to vote for it today to increase the odds that the country we all love may avert the catastrophe of a partisan impeachment resolution that does not commend the support of the country and can only increase the bitterness of our politics and public life for years, perhaps decades to come.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. NADLER. Thank you, Mr. Chairman.

Yes, I would yield.

Ms. JACKSON LEE. I thank the gentleman very much. Let me just say to the gentleman from South Carolina, this is not a bill of attainder. This censure resolution does not restrain the property and liberty of the President, but it does condemn his conduct. And the recitation that we have in the censure resolution condemns the conduct that we have seen over the past few months.

We have never done great in this country when we have remained to the left or the right. We have done our best work when those of us of different perspectives move to the center of the road and do what is best for this nation.

I thank the gentleman for yielding.

Mr. GEKAS. The time——

Mr. NADLER. Can I have one additional minute?

Mr. GEKAS. Without objection.

Ms. JACKSON LEE. I thank the gentleman.

Mr. NADLER. I would simply also observe it is precisely because this resolution does not officially condemn the President for crimes, for perjury, for acts which he has denied and which have not been proven, that it is not a bill of attainder and I can vote for it.

I yield back the balance of my time, and I thank you, Mr. Chairman.

Mr. GEKAS. The Chair thanks the gentleman for yielding back the balance of his time.

The chair now recognizes the gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. I thank the chair.

I am genuinely confused here, but I'm going to use all my 5 minutes to talk about what I understand this to be. And perhaps someone who feels they can straighten me out on their own time, I welcome that, but I do have more than 5 minutes of things to talk about here.

I understand that this is not punitive. I think I've heard that phrase used that this is not punishment. And I thought that is what a censure was. And, in fact, I looked up in Black's Dictionary that a censure is defined as the formal resolution of a legislative, administrative or other body reprimanding a person, normally one of its own members, for specific conduct, an official reprimand or condemnation. Reprimand is punishment.

And then I hear that, basically, this entire censure arises out of one incident where the President, I assume, shook his finger at America and said, I did not have sex with that woman, Monica Lewinsky. Both the misleading and delaying the disclosure of evidence and the false statement arose from that incident. That gives me great trouble, as Mr. Nadler has mentioned several statements that past presidents have made, and if we're going to set this precedent that we can censure a president for a statement that he makes publicly in a political speech or a political campaign, I think we really don't want to go down that road.

The bottom line for me is we don't, as a Congress, as a House, I should say, have the authority to punish. The Senate has the power to punish the President. The House has no such authority, and we can only match our actions in the House with the authority that we have. We can't go out and create something here. We can't go out and invent something that we don't have under the Constitution, just for expediency. This is unconstitutional.

And if it were challenged by the President who objected to receiving a censure and if it did go to court, the court would hold it to be unconstitutional. It is not in the Constitution, only the power to impeach. And if we can't do that, we can't do anything. But because the President might accept this unconstitutional censure, it might never be brought before a court, and it might never be resolved.

But, in the end, we will know if we were to pass this that we passed an unconstitutional act. And we have not done that. That

is not the standard by which we operate. Because it is not going to be challenged or what, we can slide it by.

It is a terrible precedent that we have here. The only possibility that I could see perhaps possibly if we voted articles of impeachments out of the House and gave the Senate something to work with that they might somehow perhaps not consider the articles, but at least have something in front of them that they could take some action on, maybe. Maybe you could argue that they could censure the President or reprimand the President in the Senate.

But, very clearly, the House of Representatives has absolutely no authority to punish the President. And no matter what you call it, we are punishing the President with this reprimand, with this censure; and I very much oppose this. This is a terrible precedent and for us to do this in the interest of expediency. It sounds good and all, but it is not constitutional.

And I would yield back my time.

Mr. SMITH [presiding]. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I defer to the gentleman from North Carolina.

Mr. SMITH. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

I want to say, at the outset, this is a very difficult issue for me. I was not involved in the drafting of this censure resolution. And that clearly there are some words in it that I have some trouble with. I suspect that the drafters didn't—either thought I was too liberal or thought I was too constitutional or for whatever reason and didn't get me involved in it.

But I'm kind of happy that I can either vote it up or vote it down without vexing about it and trying to deal with it. I have on a number of occasions—well, I shouldn't say a number of occasions—but a couple of occasions stood by myself in defense of the Constitution, even when the House of Representatives voted all the way on the other side. I almost paid a political price for it, in fact, in the last election. That became a major issue in my campaign.

So I have a history of defending rigorously the Constitution of the United States and have defended it in this committee vigorously. And if I thought that this was unconstitutional, I would say that I thought it was unconstitutional.

I've looked at the bill of attainder provisions, and I had some concerns about whether it might be a bill of attainder, but I am convinced that it is not.

The second option would be that there is no mention of a censure in the United States Constitution, but a lot of things we do in the House of Representatives there is no mention of. So I don't find any constitutional prohibition against this, although I do believe that it sets a difficult precedent. And that is kind of the slippery slope argument. Once you get on the slippery slope, where do you stop when you start censuring a president? Will we have one every year? Will we have one every term of different presidents? But I'm satisfied that the history of censures in this country and the responsibility of Congresses will have to be accountable for that.

Censure is a constitutional alternative which Congress has used on several occasions in the past. Andrew Jackson was censured in 1834 for vetoing legislation creating a national bank.

In 1942—I mean 1842, I'm sorry—the House adopted a motion agreeing to a committee report condemning President Tyler for “gross abuse of constitutional power” through his actions vetoing legislation.

In 1860, the House adopted a resolution stating that President Buchanan was deserving of “reproof” relating to alleged kickbacks.

And those are the only three occasions—and I'm just going to have to trust future Congresses not to abuse this, because there is the possibility that it could be abused and you get into situations regularly.

What I'm more concerned about is the slippery slope we're on with the words that are actually in the Constitution. There is nothing about censure in the Constitution. There is a standard in the Constitution having to do with what is impeachable. And that is the slippery slope I'm concerned about.

Mr. Chairman, I ask unanimous consent for one additional minute.

Mr. SMITH. Without objection.

Mr. WATT. So I think I'm going to vote for this, probably much to the chagrin of some people in my congressional district, who think we ought not do anything. But there are a bunch of people in my district who think we ought to impeach the President, too.

So I think my responsibility is to do what I think is right here, and there are two things that make me believe this is right: Number one is the very, very persuasive argument that Mr. Barrett made yesterday that every single Member of this House ought to be allowed to vote their conscience, whatever that is. And, number two, I think we have a very strong message to bring this matter to an end from the country's perspective.

And if I do find anything in the enumerated legislative powers that justifies what we might do, there is a provision in the legislative powers that says we can do whatever we want to do for the general welfare of the United States. And if anybody wants to find that provision, it is in section 8, clause 1.

So I will yield back the balance of my time. And it is my intention to vote for the resolution.

Mr. SMITH. Thank you, Mr. Watt.

The gentleman from Ohio, Mr. Chabot, is recognized for 5 minutes.

Mr. CHABOT. I thank the Chairman.

I have some serious concerns about the censure resolution before us today. So what is this censure really all about? We heard Chairman Hyde when we started this debate refer to censure as yelling at your teenager. Well, I've got a teenage daughter, and I can assure you it doesn't do any good.

And you might even get back the response that the Democratic counsel, Abbe Lowell, got back from his daughter the other day—dah.

And, you know, this censure, is it really just a way for people to cover their political backside? I guess we can use that term when we consider how graphic the evidence is that we have endured.

Mr. BARRETT. Would the gentleman yield for two seconds?

Mr. CHABOT. I would yield in a moment.

I respect the work that my colleagues undoubtedly put into the drafting of this resolution, and I know that they were doing what they believed to be right. But I do not believe that this resolution adequately addresses the President's reprehensible actions.

As has been noted, the most glaring omission from this resolution are the words under oath. I had hoped that by now members of the committee would have all agreed on one simple truth, the President of the United States did, in fact, lie under oath.

The phrase, and I quote, "took steps to delay discovery of the truth" also seems to represent an immense understatement. I assume it refers to the President's lies and misstatements before the grand jury, lies in a civil rights case, obstruction of justice, witness tampering, lies to Cabinet members and lies to the American people.

Sadly, these crimes are far more serious than described in this proposed censure resolution. It also is of concern to me that there is no expressed provision in our Constitution that allows Congress to censure the President. In fact, we know that the constitutionality of a censure resolution is open to challenge. My colleagues, both Republican and Democrat, have made strong arguments in defense of their positions on this issue. But there is no clear consensus.

We do know, however, that impeachment is a constitutional process; and we know that censure does not appear to be and has not traditionally been a component of the impeachment process. It is my belief that our first duty is to consider articles of impeachment and allow the full House to vote on those articles. A censure resolution, especially one that does not acknowledge many self-evident truths, is not appropriate at this time.

Mr. Chairman, I would also like to comment briefly on our deliberations over the last few days. I very much respect the passionate arguments made by my friends on the other side of the aisle. I think there have been impassioned arguments on both sides of the aisle; and I think everybody has considered this very, very seriously. We simply see much of the evidence in a different light.

These truly have been decisions of conscience, and we have all done a great deal of soul-searching in this whole matter. And I deeply respect the members, each and every one of them, on the other side of the aisle, just as I do my colleagues on this side of the aisle.

And was there somebody that asked me to yield? Mr. Barrett?

Mr. BARRETT. You had asked whether this was a vote just for people to cover their backside, and I wanted to take two seconds to say no.

Mr. CHABOT. Okay. I appreciate that. And I am just saying for some people it is—

Ms. JACKSON LEE. Would the gentleman yield?

Mr. CHABOT [continuing]. And we all have to make our own decision on these types of matters.

I would be happy to yield to the gentlelady from Texas.

Ms. JACKSON LEE. I thank the gentleman.

Likewise, as a coauthor of this resolution, I would simply say that it might do more damage to those who may ultimately vote

for it than not. But I think the deciding factor is one of conscience and, the point that I made, one of bringing us together as a Nation.

And I thank the gentleman for yielding.

Mr. CHABOT. I thank you.

I yield back the balance of my time.

Mr. GEKAS [presiding]. The gentleman yields back the balance of his time.

The Chair now recognizes the gentleman from Virginia, who moves to strike the last word.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I have complained from the beginning that, as a result of an unfair process, we have an insufficient factual basis to support impeachment. This is not Mr. Boucher's fault, because we drafted, along with others, a democratic, fair plan, which would have started with allegations, would have required us to focus on those which might be impeachable offenses, if true, proceed to fact-finding to support those allegations, and then come to a logical conclusion.

Instead, we went right from the allegations and jumped over focus and fact-finding to conclusions that we should impeach the President. The so-called evidence for impeachment is flimsy, because it is based on contradictory hearsay and inferences. The so-called evidence might be true, but we should have tested that evidence the traditional way by which we would test the reliability of the evidence, cross-examination and opportunity to rebut.

We saw this today when the gentleman from South Carolina read a portion of a newspaper article which suggested that the President's operatives would ensure a Republican Representative suicide if he voted for impeachment. When this evidence was subjected to rebuttal, we find that the whole article reflects a total different interpretation.

The evidence before us has been selected by Mr. Starr and consists mainly of answers to questions posed by the prosecution, not additional answers to questions posed by the President, nor rebuttal witnesses. And, therefore, it is wrong to draw factual conclusions from the uncross-examined hearsay and inferences drawn by Mr. Starr without the opportunity to rebut.

Unfortunately, the process which fails to establish a factual basis for impeachment also fails to establish an appropriate factual basis for censure.

Mr. Chairman, I have two additional concerns. One, there is the serious policy implications when one colloquial branch of our government seeks to unilaterally punish another. And it is even worse when there becomes an expectation or even a responsibility to censure every time one branch is outraged by the conduct of another branch.

Mr. Chairman, these are policy questions. Like the gentleman from North Carolina, Mr. Watt, I do not believe that this rises to constitutional implications, just policy implications.

Finally, Mr. Chairman, the consideration of a censure now, while articles of impeachment are pending, is troublesome, because it diverts focus from the reality that we are about to impeach the President of the United States.

Furthermore, Mr. Chairman, future impeachment thresholds may be lowered, because future offenses, like we have today—instead of offenses like we have today. Offenses that may be impeachable but not—may be not impeachable but censurable would be considered in order to launch an impeachment inquiry.

Mr. Chairman, a Republican witness referred to what we have before us as low crimes and misdemeanors, and I would hope that we would not provoke future inquiries with even more flimsy allegations. Impeachment inquiries are serious.

During this inquiry we have already voted against a motion to recognize attorney-client privilege. During this inquiry we have already subpoenaed confidential memos between the Attorney General and her subordinates, and we have diverted attention from important issues like religious freedom, juvenile justice, immigration concerns that we could not consider at the end of last year because we were focused on impeachment.

Mr. Chairman, an impeachment inquiry should only be launched when there are clear allegations of impeachable offenses, not lesser offenses. So, in summary, because we have not done rational fact-finding to prove the allegations, because we have concerns about coequal branches of government, that they should refrain from censoring one another, and because this might provoke future impeachment inquiries with flimsier allegations than we have today, I cannot support this resolution.

I yield back.

Mr. GEKAS. The gentleman yields back the balance of his time.

The Chair now recognizes the gentleman from California, Mr. Gallegly, who moves to strike the last word.

Mr. GALLEGLY. Thank you very much, Mr. Chairman. Mr. Chairman, it has been a long week, and as we get to the final hours of this debate, I want to stand up and strongly oppose censure, particularly including this censure proposal.

I will let my colleagues continue to discuss the constitutional problems with censure, but I would like to take just a second and focus on the practical problems. Censuring the President will, in my opinion, establish a very dangerous precedent and will weaken the office of the presidency for generations to come.

In the future whenever the President is involved in any wrongdoing, Congress will be tempted to punish the President by passing a censure resolution. The greater perceived wrongdoing, the more we punish the President. The lower the poll ratings, the more we condemn. I think this is a terribly bad idea.

The result would be to upset the balance of powers among our three branches of government. It would limit the ability of future Presidents to make unpopular decisions. It would weaken our future Presidents. This is also a very bad idea, Mr. Chairman.

The country today is faced with serious wrongdoings by our President: perjury, obstruction of justice, abuse of presidential power. Our goal should be to properly judge the President's office without undermining the office of the presidency, and there is only one way I believe that we can accomplish this.

We can't take the easy way out, Mr. Chairman. We can't establish a new way to punish the President not contained in the Constitution. In short, with all due respect, I believe censure is a cop-

out, a cop-out with very dangerous consequences. Based on our conscience and judgment, we should do what is provided for in the Constitution, no matter how uncomfortable that may be. Next week we should vote up or down impeachment.

With that—

Mr. BARR. Would the gentleman yield?

Mr. GALLEGLY. With that, I am pleased to yield to the gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you. Mr. Chairman, I would ask unanimous consent to insert into the record an October 6, 1998 article which appeared in the New York Times by Lowell Weicker.

Mr. GEKAS. Without objection.

[The information follows:]

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October 6, 1998, Tuesday, Late Edition - Final

SECTION: Section A; Page 25; Column 1; Editorial Desk

LENGTH: 629 words

HEADLINE: Let the Process Go Forward

BYLINE: By Lowell Weicker; Lowell Weicker served as a Republican Senator from Connecticut from 1970 to 1988.

DATELINE: CHARLOTTESVILLE, Va.

BODY:

The House Judiciary Committee did the right thing yesterday in voting for an investigation of President Clinton that could lead to impeachment hearings.

Saying this does not mean I'm a partisan -- far from it. I often parted company with my Republican colleagues when I was in the Senate. In 1990, I left the party. I voted for, and publicly endorsed, Mr. Clinton twice.

Still, I believe the committee acted properly. It is too early to say whether the President should be impeached. It is not too early to say that the alternative -- censure -- would be a grave mistake.

Having sat on the Senate Select Committee that investigated Richard Nixon 25 years ago, I fully appreciate the difficult decisions ahead. But censure is not an answer. It belongs to the autocratic nature of parliamentary government. In our democracy, issues -- including the fitness of candidates to serve -- are decided at election time. Overturning this electoral verdict should require the most extraordinary of precautions. That is precisely what the impeachment process in the Constitution demands.

The Founding Fathers purposely set forth a complex procedure to determine the fitness of a President to continue in office. The Constitution requires decisions to be made first in the House and then in the Senate, with any Senate vote to impeach requiring a two-thirds majority.

The Founders wanted to filter emotional or irrational considerations out of deliberations of a President's fitness to remain in office. That is why reason prevailed on the only two occasions when Presidents seriously faced removal by impeachment. In 1868, the House voted articles of impeachment against Andrew Johnson, but the Senate failed to convict him -- by one vote. In our own time, the threat of impeachment forced the resignation of Richard Nixon, who realized that the legislative and constitutional processes had established that he had violated the laws of the land.

Censure, on the other hand, has no constitutional basis. The threshold for passing a censure resolution is far lower than that required for impeachment. Legally it resembles any other nonbinding Congressional resolution and

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therefore requires only a simple majority in one or both houses. The one time a President was censured -- Andrew Jackson in 1834 -- the resolution was passed by a vote of only 28 to 18. The vote had none of the authority of an impeachment vote.

Censure also carries no enforceable sanction. On 1837, after Jackson's Democrats had won the Senate, they ordered black lines drawn around the resolution in the official record, with "Expunged by order of the Senate" superimposed. Thus did censure prove to be an empty, meaningless gesture.

At the same time, in a highly charged political climate, censure could become a volatile new political instrument. Since it requires only a bare majority of votes, it could amount to an open invitation for political mischief to be visited on future Presidents whenever Congress disagrees with their policies.

It could also backfire. What if Nixon's supporters in Congress had proposed letting him plea bargain for a censure? The imperial Presidency would have been here to stay. What if a President retaliated by issuing an executive order censuring a member of the House or Senate?

For too long, Americans and their elected representatives have opted for soft landings on the toughest problems. And whenever a tough call has been required, it has been supplanted by a symbolic gesture.

Censuring Mr. Clinton would be a gesture of this kind. What exactly would it mean? What sanctions would follow? What message would be sent?

There is no choice now but to push ahead with impeachment hearings. Anything less will result in government by free-for-all.

LANGUAGE: ENGLISH

LOAD-DATE: October 6, 1998

Mr. BARR. Thank you. This article, Mr. Chairman, I think lays out some very cogent arguments that bear directly on the debate today, and perhaps in addition to those in attendance here, our colleagues who do not serve on this committee yet will be called upon within a matter of days to render a very, very grave and serious decision on impeachment.

I quote from this article by Lowell Weicker, who our colleagues will, I am sure, remember served very ably in this Congress as a Republican Senator from Connecticut for 18 years, from 1970 to 1988, and thereafter as a very distinguished independent governor in his home State of Connecticut. He says, directly addressing the issue of censure which has been floating around here for a long time, "It is too early to say whether the President should be impeached. It is not too early to say that the alternative, censure, would be a grave mistake."

He goes on: "Censure has no constitutional basis." He goes on: "Censure also carries no enforceable sanction." He goes on: "Censure could become a volatile new political instrument." He goes on: "For too long, Americans and their elected representatives have opted for soft landings on the toughest problems, and whenever a tough call has been required it has been supplanted by a symbolic gesture." Censuring Mr. Clinton would be a gesture of this kind. There is no choice now but to push ahead with impeachment hearings. Anything less will result in government by free-for-all.

I thank the gentleman and yield back to him.

Ms. JACKSON LEE. Would the gentleman from California yield?

Mr. GEKAS. The time of the gentleman from California has expired. The Chair recognizes the lady from California, Ms. Waters, who moves to strike the last word.

Ms. WATERS. I move to strike the last word.

Mr. Chairman and Members, we have had a lot of discussion about the Constitution of the United States of America and it has been good for us and this institution. Oftentimes I think we forget our oath, and we forget about this most profound document that basically instructs us on how we can live in a democracy and the rules of the democracy.

I can recall my years as a very young girl when we were being taught the Constitution of the United States, and my absolute eagerness to learn more as they taught us about the divisions of government and why they were separate and what it meant, and our Commander in Chief, and what the legislative branch's responsibilities would be.

And I have thought about it an awful lot as we have debated this issue, and I still believe, the more that I know and understand about the Constitution, that the allegations that are being brought in these articles of impeachment do not meet the test of high crimes and misdemeanors, and I sincerely believe that.

I also believe that the conduct of the prosecutor and the investigation was a lot less than what it should be, and a lot of people's rights were abused in the process. I am also still stung by the fact that the prosecutor came here as an advocate. I am also amazed that the prosecutor had not even met some of the central players in this impeachment attempt.

I am also bothered that we did not get a chance to see, feel and hear the witnesses to begin to understand how we could get rid of some of the contradictions and misinformation.

I also come to this process having lived a long time, and with enough wisdom to know the difference between the ideals and what happens in the real world. I abhor hypocrisy, and I don't easily compromise. I think compromise is a very important concept, and it helps to get rid of gridlock, and it is very important dealing in this kind of atmosphere. We have so many people with so many ideas coming from so many different places, until I guess we have to understand compromise, and I have a great deal of respect for people who know how and when to do it.

I am not so blessed with the ability to give in, to being a little bit right and a little bit wrong. I am rather passionate about my beliefs. And so I do not embrace compromise in general very easily, and certainly on this important issue of impeachment do I understand how to move to the so-called middle.

For those people who have decided that they are going to do it, that censure is the answer, I certainly respect that, and maybe that will be the way that this Congress will eventually go. I am not prepared to do it at this moment and at this time. I still think that the Members of our House have a lot to learn about what has gone on here; the people out there looking at us have a lot to learn about what we are doing and what the facts are.

And so while I am not prepared to support censure at this time as a way to compromise, I am prepared to keep talking to the people of this Nation, to keep educating, to keep seeking out the facts, and we have time to do that, a short time, but impeachment should never have been attempted in a short period of time. We should never have tried to do this work in a short period of time, so that we could get over with the business of it because people didn't want it to be dragged out too long. Justice takes time, and I am prepared to put the time in. I yield back the balance of my time.

Mr. GEKAS. The lady yields back the balance of her time.

The Chair now recognizes the gentleman from Georgia, Mr. Barr, who moves to strike the last word.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, in listening to the debate over the last few hours, I jotted down some words that we have heard on more than one occasion. We have heard about healing, closure, the healing process. Next I expect we will hear we are in group therapy. But we are not in group therapy, Mr. Chairman. We are in the Congress of the United States of America. Let's act like it.

Let's stand up and say we have a Constitution. The Constitution tells us what to do. By God, let's follow it. This isn't group therapy. This isn't a feel-good session. This is the Congress of the United States. We have a solemn duty here, based on an oath that we took to uphold the Constitution. Let's do it.

If people believe that it is indeed okay for the President of the United States of America to perjure himself, to lie under oath, to make false and misleading statements under oath, then let them have the backbone to stand up and say so, to look the people of this country in the eye and say, "I think it's okay for a President to do

those things.” But let’s not succumb to that siren song, that mirage in the desert of a censure.

It is in fact, as the gentleman from California said, a constitutional cop-out, which is, I think, words also that we heard from some of the experts. If we look at the history of censure—and I would like to ask unanimous consent to introduce into the record pages 1317 through 1336 of debates in Congress from the year 1834.

Mr. GEKAS. Without objection, they will be included in the record.

[The information follows:]

**DEBATES IN CONGRESS.**

PART I. OF VOL. X.

REGISTER  
OF  
DEBATES IN CONGRESS,



COMPRISING THE LEADING DEBATES AND INCIDENTS

OF THE FIRST SESSION OF THE TWENTY-THIRD CONGRESS:

TOGETHER WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND THE

LAWS, OF A PUBLIC NATURE, ENACTED DURING THE SESSION:

WITH A COPIOUS INDEX TO THE WHOLE.

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VOLUME X.

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WASHINGTON:

PRINTED AND PUBLISHED BY GALE & SEATON.

1834.

APRIL 16, 17, 1834.]

President's Protest.

[SENATE.]

WEDNESDAY, APRIL 16.

No business was done in the Senate to-day, the Senate being engaged in attending the funeral obsequies of the late Mr. DENNIS, a member of the House of Representatives.

THURSDAY, APRIL 17.

Several messages were received from the President of the United States, by Mr Donelson, his private Secretary; among them the following

## PROTEST.

To the Senate of the United States:

It appears by the published Journal of the Senate, that, on the 26th of December last, a resolution was offered by a member of the Senate, which, after a protracted debate, was, on the 28th day of March last, modified by the mover, and passed by the votes of twenty-six Senators, out of forty-six who were present and voted, in the following words, viz.

"Resolved, That the President, in the late Executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both."

Having had the honor, through the voluntary suffrages of the American people, to fill the office of President of the United States during the period which may be presumed to have been referred to in this resolution, it is sufficiently evident that the censure it inflicts was intended for myself. Without notice, unheard and untried, I thus find myself charged on the records of the Senate, and in a form hitherto unknown in our history, with the high crime of violating the laws and constitution of my country.

It can seldom be necessary for any department of the Government, when assailed in conversation, or debate, or by the strictures of the press or of popular assemblies, to step out of its ordinary path for the purpose of vindicating its conduct, or of pointing out any irregularity or injustice in the manner of the attack. But when the chief Executive Magistrate is, by one of the most important branches of the Government, in its official capacity, in a public manner, and by its recorded sentence, but without precedent, competent authority, or just cause, declared guilty of a breach of the laws and constitution, it is due to legislation, to public opinion, and to a proper self-respect, that the officer thus denounced should promptly expose the wrong which has been done.

In the present case, moreover, there is even a stronger necessity for such a vindication. By an express provision of the constitution, before the President of the United States can enter on the execution of his office, he is required to take an oath or affirmation in the following words:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

The duty of defending, so far as in him lies, the integrity of the constitution, would indeed have resulted from the very nature of his office; but by thus expressing it in the official oath or affirmation, which, in this respect, differs from that of every other functionary, the founders of our republic have attested their sense of its importance, and have given to it a peculiar solemnity and force. Bound to the performance of this duty by the oath I have taken, by the strongest obligations of gratitude to the American people, and by the ties which unite my every earthly interest with the welfare and glory of my country, and perfectly convinced that the discussion and passage of the above-mentioned resolution were not only unauthorized by the constitution, but in many respects repugnant to its provisions and subversive of the rights secured by it to other co-ordinate departments, I deem it an imperative duty to maintain the supremacy of that sacred instrument, and the

immunities of the department intrusted to my care, by all means consistent with my own lawful powers, with the rights of others, and with the genius of our civil institutions. To this end, I have caused this, my solemn protest against the aforesaid proceedings, to be placed on the files of the Executive department, and to be transmitted to the Senate.

It is alike due to the subject, the Senate, and the people, that the views which I have taken of the proceedings referred to, and which compel me to regard them in the light that has been mentioned, should be exhibited at length, and with the freedom and firmness which are required by an occasion so unprecedented and peculiar.

Under the constitution of the United States, the powers and functions of the various departments of the Federal Government, and their responsibilities for violation or neglect of duty, are clearly defined, or result by necessary inference. The legislative power, subject to the qualified negative of the President, is vested in the Congress of the United States, composed of the Senate and House of Representatives. The executive power is vested exclusively in the President, except that in the conclusion of treaties and in certain appointments to office, he is to act with the advice and consent of the Senate. The judicial power is vested exclusively in the Supreme and other courts of the United States, except in cases of impeachment, for which purpose the accusatory power is vested in the House of Representatives, and that of hearing and determining, in the Senate. But although for the special purposes which have been mentioned, there is an occasional intermixture of the powers of the different departments, yet with these exceptions, each of the three great departments is independent of the others in its sphere of action; and when it deviates from that sphere, is not responsible to the others, further than it is expressly made so in the constitution. In every other respect, each of them is the co-equal of the other two, and all are the servants of the American people, without power or right to control or censure each other in the service of their common superior, save only in the manner and to the degree which that superior has prescribed.

The responsibilities of the President are numerous and weighty. He is liable to impeachment for high crimes and misdemeanors, and, on due conviction, to removal from office, and perpetual disqualification; and notwithstanding such conviction, he may also be indicted and punished according to law. He is also liable to the private action of any party who may have been injured by his illegal mandates or instructions, in the same manner and to the same extent as the humblest functionary. In addition to the responsibilities which may thus be enforced by impeachment, criminal prosecution, or suit at law, he is also accountable at the bar of public opinion, for every act of his administration. Subject only to the restraints of truth and justice, the free people of the United States have the undoubted right, as individuals or collectively, orally or in writing, at such times, and in such language and form as they may think proper, to discuss his official conduct, and to express and promulgate their opinions concerning it. Indirectly, also, his conduct may come under review in either branch of the legislature, or in the Senate when acting in its executive capacity; and so far as the executive or legislative proceedings of these bodies may require it, it may be examined by them. These are believed to be the proper and only modes in which the President of the United States is to be held accountable for his official conduct.

Tested by these principles, the resolution of the Senate is wholly unauthorized by the constitution, and in derogation of its entire spirit. It assumes that a single branch of the legislative department may, for the purposes of a public censure, and without any view to legislation or impeachment, take up, consider, and decide upon, the

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official acts of the Executive. But in no part of the constitution is the President subjected to any such responsibility; and in no part of that instrument is any such power conferred on either branch of the legislature.

The justice of these conclusions will be illustrated and confirmed by a brief analysis of the powers of the Senate, and a comparison of their recent proceedings with those powers.

The high functions assigned by the constitution to the Senate, are in their nature either legislative, executive, or judicial. It is only in the exercise of its judicial powers, when sitting as a court for the trial of impeachments, that the Senate is expressly authorized and necessarily required to consider and decide upon the conduct of the President, or any other public officer. Indirectly, however, as has already been suggested, it may frequently be called on to perform that office. Cases may occur in the course of its legislative or executive proceedings, in which it may be indispensable to the proper exercise of its powers, that it should inquire into, and decide upon, the conduct of the President or other public officers; and in every such case, its constitutional right to do so is cheerfully conceded. But to authorize the Senate to enter on such a task in its legislative or executive capacity, the inquiry must actually grow out of and tend to some legislative or executive action; and the decision, when expressed, must take the form of some appropriate legislative or executive act.

The resolution in question was introduced, discussed, and passed, not as a joint, but as a separate resolution. It asserts no legislative power; proposes no legislative action; and neither possesses the form nor any of the attributes of a legislative measure. It does not appear to have been entertained or passed with any view or expectation of its issuing in a law or joint resolution, or in the repeal of any law or joint resolution, or in any other legislative action.

Whilst wanting both the form and substance of a legislative measure, it is equally manifest that the resolution was not justified by any of the executive powers conferred on the Senate. These powers relate exclusively to the consideration of treaties and nominations to office; and they are exercised in secret session, and with closed doors. This resolution does not apply to any treaty or nomination, and was passed in a public session.

Nor does this proceeding in any way belong to that class of incidental resolutions which relate to the officers of the Senate, to their chamber, and other appertinances, or to subjects of order, and other matters of the like nature—in all which either House may lawfully proceed, without any co-operation with the other, or with the President.

On the contrary, the whole phraseology and sense of the resolution seem to be judicial. Its essence, true character, and only practical effect, are to be found in the conduct which it charges upon the President, and in the judgment which it pronounces on that conduct. The resolution, therefore, though discussed and adopted by the Senate in its legislative capacity, is, in its office, and in all its characteristics, essentially judicial.

That the Senate possesses a high judicial power, and that instances may occur in which the President of the United States will be amenable to it, is undeniable. But under the provisions of the constitution, it would seem to be equally plain that neither the President nor any other officer can be rightfully subjected to the operation of the judicial power of the Senate, except in the cases and under the forms prescribed by the constitution.

The constitution declares that "the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors"—(but the House of Representatives "shall have the sole power of impeachment")—that the Senate

"shall have the sole power to try all impeachments"—that "when sitting for that purpose, they shall be on oath or affirmation"—that "when the President of the United States is tried, the Chief Justice shall preside"—that "no person shall be convicted without the concurrence of two-thirds of the members present"—and that "judgment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States."

The resolution above quoted charges in substance, that in certain proceedings relating to the public revenue, the President has usurped authority and power not conferred upon him by the constitution and laws, and that in doing so he violated both. Any such act constitutes a high crime—one of the highest, indeed, which the President can commit—a crime which justly exposes him to impeachment by the House of Representatives, and upon due conviction, to removal from office, and to the complete and immutable disfranchisement prescribed by the constitution.

The resolution, then, was in substance an impeachment of the President; and in its passage, amounts to a declaration, by a majority of the Senate, that he is guilty of an impeachable offence. As such, it is spread upon the Journals of the Senate—published to the nation and to the world—made part of our enduring archives—and incorporated in the history of the age. The punishment of removal from office and future disqualification, does not, it is true, follow this decision; nor would it have followed the like decision, if the regular forms of proceeding had been pursued, because the requisite number did not concur in the result. But the moral influence of a solemn declaration, by a majority of the Senate, that the accused is guilty of the offence charged upon him, has been as effectually secured, as if the like declaration had been made upon an impeachment expressed in the same terms. Indeed, a greater practical effect has been gained, because the votes given for the resolution, though not sufficient to authorize a judgment of guilty on an impeachment, were numerous enough to carry that resolution.

That the resolution does not expressly allege that the assumption of power and authority which it condemns, was intentional and corrupt, is no answer to the preceding view of its character and effect. The act thus condemned, necessarily implies volition and design in the individual to whom it is imputed; and being unlawful in its character, the legal conclusion is, that it was prompted by improper motives, and committed with an unlawful intent. The charge is not of a mistake in the exercise of supposed powers, but of the assumption of powers not conferred by the constitution and laws, but in derogation of both; and nothing is suggested to excuse or palliate the turpitude of the act. In the absence of any such excuse or palliation, there is only room for one inference, and that is, that the intent was unlawful and corrupt. Besides, the resolution not only contains no mitigating suggestion, but on the contrary, it holds up the act complained of, as justly obnoxious to censure and reprobation; and thus as distinctly stamps it with impurity of motive, as if the strongest epithets had been used.

The President of the United States, therefore, has been, by a majority of his constitutional triers, accused and found guilty of an impeachable offence: but in no part of this proceeding have the directions of the constitution been observed.

The impeachment, instead of being preferred and prosecuted by the House of Representatives, originated in the Senate, and was prosecuted without the aid or concurrence of the other House. The oath or affirmation prescribed by the constitution, was not taken by the Senators—the Chief Justice did not preside—no notice of the charge was given to the accused—and no opportunity afforded him to respond to the accusation—to meet his accusers

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face to face—to cross-examine the witnesses—to procure counteracting testimony—or to be heard in his defence. The safeguards and formalities which the constitution has connected with the power of impeachment, were doubtless supposed by the framers of that instrument, to be essential to the protection of the public servant, to the attainment of justice, and to the order, impartiality, and dignity of the procedure. These safeguards and formalities were not only practically disregarded, in the commencement and conduct of these proceedings, but in their result, I find myself convicted, by less than two-thirds of the members present, of an impeachable offence.

In vain may it be alleged in defence of this proceeding, that the form of the resolution is not that of an impeachment, or of a judgment thereupon; that the punishment prescribed in the constitution does not follow its adoption; or that in this case, no impeachment is to be expected from the House of Representatives. It is because it did not assume the form of an impeachment, that it is the more palpably repugnant to the constitution; for it is through that form only that the President is judicially responsible to the Senate, and though neither removal from office nor future disqualification ensues, yet it is not to be presumed that the framers of the constitution considered either or both of those results, as constituting the whole of the punishment they prescribed. The judgment of guilty by the highest tribunal in the Union; the stigma it would inflict on the offender, his family and fame; and the perpetual record on the Journal, handing down to future generations the story of his disgrace, were doubtless regarded by them as the bitterest portions, if not the very essence of that punishment. So far, therefore, as some of its most material parts are concerned, the passage, recording, and promulgation of the resolution, are an attempt to bring them on the President, in a manner unauthorized by the constitution. To shield him and other officers who are liable to impeachment, from consequences so momentous, except when really merited by official delinquencies, the constitution has most carefully guarded the whole process of impeachment. A majority of the House of Representatives must think the officer guilty, before he can be charged. Two-thirds of the Senate must pronounce him guilty, or he is deemed to be innocent. Forty-six Senators appear by the Journal to have been present when the vote on the resolution was taken. If, after all the solemnities of an impeachment, thirty of those Senators had voted that the President was guilty, yet would he have been acquitted; but by the mode of proceeding adopted in the present case, a lasting record of conviction has been entered up by the votes of twenty-six Senators, without an impeachment of trial; whilst the constitution expressly declares that to the entry of such a judgment, an accusation by the House of Representatives, a trial by the Senate, and a concurrence of two-thirds in the vote of guilty, shall be indispensable prerequisites.

Whether or not an impeachment was to be expected from the House of Representatives, was a point on which the Senate had no constitutional right to speculate, and in respect to which, even had it possessed the spirit of prophecy, its anticipations would have furnished no just grounds for this procedure. Admitting that there was reason to believe that a violation of the constitution and laws had been actually committed by the President, still it was the duty of the Senate, as his sole constitutional judges, to wait for an impeachment until the other House should think proper to prefer it. The members of the Senate could have no right to infer that no impeachment was intended. On the contrary, every legal and rational presumption on their part ought to have been, that if there was good reason to believe him guilty of an impeachable offence, the House of Representatives would perform its constitutional duty, by arraigning the offender before the

justice of his country. The contrary presumption would involve an application derogatory to the integrity and honor of the representatives of the people. But suppose the suspicion thus implied were actually entertained, and for good cause, how can it justify the assumption by the Senate of powers not conferred by the constitution?

It is only necessary to look at the condition in which the Senate and the President have been placed by this proceeding, to perceive its utter incompatibility with the provisions and the spirit of the constitution, and with the plainest dictates of humanity and justice.

If the House of Representatives shall be of opinion that there is just ground for the censure pronounced upon the President, then will it be the solemn duty of that House to prefer the proper accusation, and to cause him to be brought to trial by the constitutional tribunal. But in what condition would he find that tribunal? A majority of its members have already considered the case, and have not only formed, but expressed a deliberate judgment upon its merits. It is the policy of our benign systems of jurisprudence, to secure, in all criminal proceedings, and even in the most trivial litigations, a fair, unprejudiced, and impartial trial. And surely it cannot be less important that such a trial should be secured to the highest officer of the Government.

The constitution makes the House of Representatives the exclusive judges, in the first instance, of the question, whether the President has committed an impeachable offence. A majority of the Senate, whose interference with this preliminary question has, for the best of all reasons, been studiously excluded, anticipate the action of the House of Representatives, assume not only the function which belongs exclusively to that body, but convert themselves into accusers, witnesses, counsel, and judges, and pre-empt the whole case—thus presenting the appalling spectacle, in a free state, of judges going through a labored preparation for an impartial hearing and decision, by a previous *ex parte* investigation and sentence against the supposed offender.

There is no more settled axiom in that government whence we derived the model of this part of our constitution, than that "the Lords cannot impeach any to themselves, nor join in the accusation, because they are judges." Independently of the general reasons on which this rule is founded, its propriety and importance are greatly increased by the nature of the impeaching power. The power of arraigning the high officers of government before a tribunal whose sentence may expel them from their seats and brand them as infamous, is eminently a popular remedy—a remedy designed to be employed for the protection of private right and public liberty, against the abuses of injustice and the encroachments of arbitrary power. But the framers of the constitution were also undoubtedly aware, that this formidable instrument had been, and might be abused; and that from its very nature, an impeachment for high crimes and misdemeanors, whatever might be its result, would in most cases be accompanied by so much of dishonor and reproach, solicitude and suffering, as to make the power of preferring it, one of the highest solemnity and importance. It was due to both these considerations, that the impeaching power should be lodged in the hands of those who, from the mode of their election and the tenure of their offices, would most accurately express the popular will, and at the same time be most directly and speedily amenable to the people. The theory of these wise and benignant intentions is, in the present case, effectually defeated by the proceedings of the Senate. The members of that body represent, not the people, but the States, and though they are undoubtedly responsible to the States, yet, from their extended term of service, the effect of that responsibility, during the whole period of that term, must very much depend upon their own impressions of its

obligatory force. When a body, thus constituted, expresses, beforehand, its opinion in a particular case, and thus indirectly invites a prosecution, it not only assumes a power intended for wise reasons to be confined to others, but it shields the latter from that exclusive and personal responsibility under which it was intended to be exercised, and reverses the whole scheme of this part of the constitution.

Such would be some of the objections to this procedure, even if it were admitted that there is just ground for imputing to the President the offences charged in the resolution. But if, on the other hand, the House of Representatives shall be of opinion that there is no reason for charging them upon him, and shall therefore deem it improper to prefer an impeachment, then will the violation of privilege as it respects that House, of justice as it regards the President, and of the constitution as it relates to both, be only the more conspicuous and impressive.

The constitutional mode of procedure on an impeachment has not only been wholly disregarded, but some of the first principles of natural right and enlightened jurisprudence, have been violated in the very form of the resolution. It carefully abstains from averring in which of "the late proceedings in relation to the public revenue, the President has assumed upon himself authority and power not conferred by the constitution and laws." It carefully abstains from specifying what laws or what parts of the constitution have been violated. Why was not the certainty of the offence—"the nature and cause of the accusation"—set out in the manner required in the constitution, before even the humblest individual, for the smallest crime, can be exposed to condemnation? Such a specification was due to the accused, that he might direct his defence to the real points of attack; to the people, that they might clearly understand in what particulars their institutions had been violated; and to the truth and certainty of our public annals. As the record now stands, whilst the resolution plainly charges upon the President at least one act of usurpation in "the late Executive proceedings in relation to the public revenue," and is so framed that those Senators who believed that one such act, and only one, had been committed, could assent to it, its language is yet broad enough to include several such acts; and so it may have been regarded by some of those who voted for it. But though the accusation is thus comprehensive in the censures it implies, there is no such certainty of time, place, or circumstance, as to exhibit the particular conclusion of fact or law which induced any one Senator to vote for it. And it may well have happened, that whilst one Senator believed that some particular act embraced in the resolution, was an arbitrary and unconstitutional assumption of power, others of the majority may have deemed that very act both constitutional and expedient, or if not expedient, yet still within the pale of the constitution. And thus a majority of the Senators may have been enabled to concur, in a vague and undefined accusation, that the President, in the course of "the late Executive proceedings in relation to the public revenue," had violated the constitution and laws; whilst, if a separate vote had been taken in respect to each particular act included within the general terms, the accusers of the President might, on any such vote, have been found in the minority.

Still further to exemplify this feature of the proceeding, it is important to be remarked, that the resolution, as originally offered to the Senate, specified, with adequate precision, certain acts of the President, which it denounced as a violation of the constitution and laws, and that it was not until the very close of the debate, and when, perhaps, it was apprehended that a majority might not sustain the specific accusation contained in it, that the resolution was so modified as to assume its present

form. A more striking illustration of the soundness and necessity of the rules which forbid vague and indefinite generalities, and require a reasonable certainty in all judicial allegations, and a more glaring instance of the violation of those rules, has seldom been exhibited.

In this view of the resolution, it must certainly be regarded, not as a vindication of any particular provision of the law or the constitution, but simply as an official rebuke or condemnatory sentence, too general and indefinite to be easily repelled, but yet sufficiently precise to bring into discredit the conduct and motives of the Executive. But whatever it may have been intended to accomplish, it is obvious that the vague, general, and abstract form of the resolution, is in perfect keeping with those other departures from first principles and settled improvements in jurisprudence, so properly the boast of free countries in modern times. And it is not too much to say of the whole of these proceedings, that, if they shall be approved and sustained by an intelligent people, then will that great contest with arbitrary power, which had established in statutes, in bills of rights, in sacred charters, and in constitutions of government, the right of every citizen to a notice before trial, to a hearing before conviction, and to an impartial tribunal for deciding on the charge, have been waged in vain.

If the resolution had been left in its original form, it is not to be presumed that it could ever have received the assent of a majority of the Senate, for the acts therein specified as violations of the constitution and laws were clearly within the limits of the Executive authority. They are, the "dismissing the late Secretary of the Treasury because he would not, contrary to his sense of his own duty, remove the money of the United States in deposit with the Bank of the United States and its branches, in conformity with the President's opinion, and appointing his successor to effect such removal, which has been done." But as no other specification has been substituted and as these were the "Executive proceedings in relation to the public revenue," principally referred to in the course of the discussion, they will doubtless be generally regarded as the acts intended to be denounced as "an assumption of authority and power not conferred by the constitution or laws, but in derogation of both." It is, therefore, due to the occasion that a condensed summary of the views of the Executive in respect to them, should be here exhibited.

By the constitution, "the executive power is vested in a President of the United States." Among the duties imposed upon him, and which he is sworn to perform, is that of "taking care that the laws be faithfully executed." Being thus made responsible for the entire action of the executive department, it was but reasonable that the power of appointing, overseeing, and controlling those who execute the laws—a power in its nature executive—should remain in his hands. It is, therefore, not only his right, but the constitution makes it his duty, to "nominate and by and with the advice and consent of the Senate appoint," all "officers of the United States whose appointments are not in the constitution otherwise provided for," with a proviso that the appointment of inferior officers may be vested in the President alone, in the courts of justice, or in the heads of departments.

The executive power vested in the Senate, is neither that of "nominating" nor "appointing." It is merely a check upon the Executive power of appointment. If individuals proposed for appointment by the President, are by them deemed incompetent or unworthy, they may withhold their consent, and the appointment cannot be made. They check the action of the Executive, but cannot, in relation to those very subjects, act themselves, nor direct him. Selections are still made by the President, and the negative given to the Senate, without diminishing his responsibility, furnishes an additional guar-

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antee to the country that the subordinate executive, as well as the judicial offices, shall be filled with worthy and competent men.

The whole executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence, that he should have a right to employ agents of his own choice to aid him in the performance of his duties, and to discharge them when he is no longer willing to be responsible for their acts. In strict accordance with this principle, the power of removal, which, like that of appointment, is an original executive power, is left unchecked by the constitution in relation to all executive officers, for whose conduct the President is responsible, while it is taken from him in relation to judicial officers, for whose acts he is not responsible. In the government from which many of the fundamental principles of our system are derived, the head of the executive department originally had power to appoint and remove at will all officers, executive and judicial. It was to take the judges out of this general power of removal, and thus make them independent of the Executive, that the tenure of their offices was changed to good behaviour. Nor is it conceivable, why they are placed, in our constitution, upon a tenure different from that of all other officers appointed by the Executive, unless it be for the same purpose.

But if there were any just ground for doubt on the face of the constitution, whether all executive officers are removable at the will of the President, it is obviated by the contemporaneous construction of the instrument, and the uniform practice under it.

The power of removal was a topic of solemn debate in the Congress of 1789, while organizing the administrative departments of the Government, and it was finally decided, that the President derived from the constitution the power of removal, so far as it regards that department for whose acts he is responsible. Although the debate covered the whole ground, embracing the Treasury as well as all the other executive departments, it arose on a motion to strike out of the bill to establish a Department of Foreign Affairs, since called the Department of State, a clause declaring the Secretary "to be removable from office by the President of the United States." After that motion had been decided in the negative, it was perceived that these words did not convey the sense of the House of Representatives, in relation to the true source of the power of removal. With the avowed object of preventing any future inference, that this power was exercised by the President in virtue of a grant from Congress, when in fact that body considered it as derived from the constitution, the words which had been the subject of debate were struck out, and in lieu thereof a clause was inserted in a provision concerning the chief clerk of the department, which declared that "whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy," the chief clerk should, during such vacancy, have charge of the papers of the office. This change having been made for the express purpose of declaring the sense of Congress, that the President derived the power of removal from the constitution, the act as it passed has always been considered as a full expression of the sense of the legislature on this important part of the American constitution.

Here then we have the concurrent authority of President Washington, of the Senate, and the House of Representatives, numbers of whom had taken an active part in the convention which framed the constitution and in the State conventions which adopted it, that the President derived an unqualified power of removal from that instrument itself, which is "beyond the reach of legislative authority." Upon this principle the Government has now been steadily administered for about forty-five

years, during which there have been numerous removals made by the President or by his direction, embracing every grade of executive officers, from the heads of departments to the messengers of bureaus.

The Treasury Department, in the discussions of 1789, was considered on the same footing as the other executive departments, and in the act establishing it, the precise words were incorporated, indicative of the sense of Congress that the President derives his power to remove the Secretary, from the constitution, which appear in the act establishing the Department of Foreign Affairs. An assistant Secretary of the Treasury was created, and it was provided that he should take charge of the books and papers of the department, "whenever the Secretary shall be removed from office by the President of the United States." The Secretary of the Treasury being appointed by the President, and being considered as constitutionally removable by him, it appears never to have occurred to any one in the Congress of 1789, or since, until very recently, that he was other than an executive officer, the mere instrument of the Chief Magistrate in the execution of the laws, subject, like all other heads of departments, to his supervision and control. No such idea as an officer of the Congress can be found in the constitution, or appears to have suggested itself to those who organized the Government. There are officers of each House, the appointment of which is authorized by the constitution, but all officers referred to in that instrument as coming within the appointing power of the President, whether established thereby or created by law, are "officers of the United States." No joint power of appointment is given to the two Houses of Congress, nor is there any accountability to them as one body; but as soon as any office is created by law, of whatever name or character, the appointment of the person or persons to fill it, devolves by the constitution upon the President, with the advice and consent of the Senate, unless it be an inferior office, and the appointment be vested by the law itself "in the President alone, in the courts of law, or in the heads of departments."

But at the time of the organization of the Treasury Department, an incident occurred which distinctly evinces the unanimous concurrence of the first Congress in the principle that the Treasury Department is wholly executive in its character and responsibilities. A motion was made to strike out the provision of the bill making it the duty of the Secretary "to digest and report plans for the improvement and management of the revenue, and for the support of public credit," on the ground that it would give the executive department of the Government too much influence and power in Congress. The motion was not opposed on the ground, that the Secretary was the officer of Congress and responsible to that body, which would have been conclusive, if admitted, but on other grounds, which conceded his executive character throughout. The whole discussion evinces a unanimous concurrence in the principle, that the Secretary of the Treasury is wholly an executive officer, and the struggle of the minority was to restrict his power as such. From that time down to the present, the Secretary of the Treasury, the Treasurer, Register, Comptrollers, Auditors, and Clerks, who fill the offices of that department, have, in the practice of the Government, been considered and treated as on the same footing with corresponding grades of officers in all the other executive departments.

The custody of the public property, under such regulations as may be prescribed by legislative authority, has always been considered an appropriate function of the executive department, in this and all other Governments. In accordance with this principle, every species of property belonging to the United States, (excepting that which is in the use of the several co-ordinate departments of the Government, as means to aid them in per-

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forming their appropriate functions,) is in charge of officers appointed by the President, whether it be lands, or buildings, or merchandise, or provisions, or clothing, or arms and munitions of war. The superintendents and keepers of the whole are appointed by the President, responsible to him, and removable at his will.

Public money is but a species of public property. It cannot be raised by taxation or custom, nor brought into the Treasury in any other way, except by law; but whenever or howsoever obtained, its custody always has been, and always must be, unless the constitution be changed, intrusted to the executive department. No officer can be created by Congress for the purpose of taking charge of it, whose appointment would not, by the constitution, at once devolve on the President, and who would not be responsible to him for the faithful performance of his duties. The legislative power may undoubtedly bind him and the President, by any laws they may think proper to enact; they may prescribe in what place particular portions of the public money shall be kept, and for what reason it shall be removed; as they may direct that supplies for the army or navy shall be kept in particular stores; and it will be the duty of the President to see that the law is faithfully executed—yet will the custody remain in the executive department of the Government. Were the Congress to assume, with or without a legislative act, the power of appointing officers independently of the President, to take the charge and custody of the public property contained in the military and naval arsenals, magazines, and storehouses, it is believed that such an act would be regarded by all as a palpable usurpation of executive power, subversive of the forms as well as the fundamental principles of our Government. But where is the difference in principle, whether the public property be in the form of arms, munitions of war and supplies, or in gold and silver or bank notes? None can be perceived—none is believed to exist. Congress cannot, therefore, take out of the hands of the executive department the custody of the public property or money, without an assumption of executive power, and a subversion of the first principles of the constitution.

The Congress of the United States have never passed an act imperatively directing that the public moneys shall be kept in any particular place or places. From the origin of the Government to the year 1816, the statute-book was wholly silent on the subject. In 1789 a Treasurer was created, subordinate to the Secretary of the Treasury, and through him to the President. He was required to give bond safely to keep and faithfully to disburse the public moneys, without any direction as to the manner or places in which they should be kept. By reference to the practice of the Government, it is found, that from its first organization, the Secretary of the Treasury, acting under the supervision of the President, designated the places in which the public moneys should be kept, and specially directed all transfers from place to place. This practice was continued, with the silent acquiescence of Congress, from 1789 down to 1816; and although many banks were selected and discharged, and although a portion of the moneys was first placed in the State banks, and then in the former Bank of the United States, and upon the dissolution of that, was again transferred to the State banks, no legislation was thought necessary by Congress, and all the operations were originated and perfected by executive authority. The Secretary of the Treasury, responsible to the President, and with his approbation, made contracts and arrangements in relation to the whole subject-matter, which was thus entirely committed to the direction of the President, under his responsibilities to the American people, and to those who were authorized to impeach and punish him for any breach of this important trust.

The act of 1816, establishing the Bank of the United States, directed the deposits of public money to be made in that bank and its branches, in places in which the said bank and branches thereof may be established, "unless the Secretary of the Treasury should otherwise order and direct," in which event, he was required to give his reasons to Congress. This was but a continuation of his pre-existing powers as the head of an executive department, to direct where the deposits should be made, with the superadded obligation of giving his reasons to Congress for making them elsewhere than in the Bank of the United States and its branches. It is not to be considered that this provision in any degree altered the relation between the Secretary of the Treasury and the President, as the responsible head of the executive department, or released the latter from his constitutional obligation to "take care that the laws be faithfully executed." On the contrary, it increased his responsibilities, by adding another to the long list of laws which it was his duty to carry into effect.

It would be an extraordinary result, if, because the person charged by law with a public duty is one of the Secretaries, it were less the duty of the President to see that law faithfully executed than other laws enjoining duties upon subordinate officers or private citizens. If there be any difference, it would seem that the obligation is the stronger in relation to the former, because the neglect is in his presence and the remedy at hand.

It cannot be doubted that it was the legal duty of the Secretary of the Treasury to order and direct the deposits of the public money to be made elsewhere than in the Bank of the United States, whenever sufficient reasons existed for making the change. If, in such a case, he neglected or refused to act, he would neglect or refuse to execute the law. What would then be the sworn duty of the President? Could he say that the constitution did not bind him to see the law faithfully executed, because it was one of his Secretaries, and not himself, upon whom the service was specially imposed? Might he not be asked whether there was any such limitation to his obligations prescribed in the constitution?—whether he is not equally bound to take care that the laws be faithfully executed, whether they impose duties on the highest officer of state, or the lowest subordinate in any of the departments? Might he not be told, that it was for the sole purpose of causing all executive officers, from the highest to the lowest, faithfully to perform the services required of them by law—that the people of the United States have made him their Chief Magistrate, and the constitution has clothed him with the entire executive power of this Government? The principles implied in these questions appear too plain to need elucidation.

But here, also, we have a contemporaneous construction of the act, which shows that it was not understood as in any way changing the relations between the President and Secretary of the Treasury, or as placing the latter out of Executive control, even in relation to the deposits of the public money. Nor on this point are we left to any equivocal testimony. The documents of the Treasury Department show that the Secretary of the Treasury did apply to the President, and obtained his approbation and sanction to the original transfer of the public deposits to the present Bank of the United States, and did carry the measure into effect in obedience to his decision. They also show that transfers of the public deposits from the branches of the Bank of the United States to State banks, at Chillicothe, Cincinnati, and Louisville, in 1819, were made with the approbation of the President, and by his authority. They show, that upon all important questions appertaining to his department, whether they related to the public deposits or other matters, it was the constant practice of the Secretary of the Treasury to obtain for his acts the approval and sanction of the Presi-

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dent. These acts, and the principles on which they were founded, were known to all the departments of the Government, to Congress, and the country; and, until very recently, appear never to have been called in question.

Thus was it settled by the constitution, the laws, and the whole practice of the Government, that the entire executive power is vested in the President of the United States; that, as incident to that power, the right of appointing and removing those officers who are to aid him in the execution of the laws, with such restrictions only as the constitution prescribes, is vested in the President; that the Secretary of the Treasury is one of those officers; that the custody of the public property and money is an executive function, which, in relation to the money, has always been exercised through the Secretary of the Treasury and his subordinates; that in the performance of these duties, he is subject to the supervision and control of the President, and in all important measures having relation to them, consults the Chief Magistrate, and obtains his approval and sanction; that the law establishing the bank did not, as it could not, change the relation between the President and the Secretary—did not release the former from his obligation to see the law faithfully executed, nor the latter from the President's supervision and control; that afterwards, and before, the Secretary did in fact consult and obtain the sanction of the President, to transfers and removals of the public deposits; and that all departments of the Government, and the nation itself, approved or acquiesced in these acts and principles, as in strict conformity with our constitution and laws.

During the last year, the approaching termination, according to the provisions of its charter, and the solemn decision of the American people, of the Bank of the United States, made it expedient, and its exposed abuses and corruptions made it, in my opinion, the duty of the Secretary of the Treasury, to place the moneys of the United States in other depositories. The Secretary did not concur in that opinion, and declined giving the necessary order and direction. So glaring were the abuses and corruptions of the bank, so evident its fixed purpose to persevere in them, and so palpable its design, by its money and power to control the Government, and change its character, that I deemed it the imperative duty of the executive authority, by the exertion of every power confided to it by the constitution and laws, to check its career, and lessen its ability to do mischief, even in the painful alternative of dismissing the head of one of the departments. At the time the removal was made, other causes sufficient to justify it existed; but, if they had not, the Secretary would have been dismissed for this cause only.

His place I supplied by one whose opinions were well known to me, and whose frank expressions of them, in another situation, and whose generous sacrifices of interest and feeling, when unexpectedly called to the station he now occupies, ought forever to have shielded his motives from suspicion, and his character from reproach. In accordance with the opinions long before expressed by him, he proceeded, with my sanction, to make arrangements for depositing the moneys of the United States in other safe institutions.

The resolution of the Senate, as originally framed, and as passed, if it refers to these acts, pre-supposes a right in that body to interfere with this exercise of executive power. If the principle be once admitted, it is not difficult to perceive where it may end. If, by a mere denunciation like this resolution, the President should ever be induced to act, in a matter of official duty, contrary to the honest convictions of his own mind, in compliance with the wishes of the Senate, the constitutional independence of the executive department would be as effectually destroyed, and its power as effectually transferred to the Senate, as if that end had been accomplished by an amend-

ment of the constitution. But, if the Senate have a right to interfere with the executive powers, they have also the right to make that interference effective; and if the assertion of the power implied in the resolution be silently acquiesced in, we may reasonably apprehend that it will be followed, at some future day, by an attempt at actual enforcement. The Senate may refuse, except on the condition that he will surrender his opinions to theirs and obey; their will, to perform their own constitutional functions; to pass the necessary laws; to sanction appropriations proposed by the House of Representatives; and to confirm proper nominations made by the President. It has already been maintained (and it is not conceivable that the resolution of the Senate can be based on any other principle) that the Secretary of the Treasury is the officer of Congress, and independent of the President; that the President has no right to control him, and consequently none to remove him. With the same propriety, and on similar grounds, may the Secretary of State, the Secretaries of War and the Navy, and the Postmaster General, each in succession, be declared independent of the President, the subordinates of Congress, and removable only with the concurrence of the Senate. Followed to its consequences this principle will be found effectually to destroy one coordinate department of the Government, to concentrate in the hands of the Senate the whole executive power, and to leave the President as powerless as he would be useless—the shadow of authority, after the substance had departed.

The time and the occasion which have called forth the resolution of the Senate, seem to impose upon me an additional obligation not to pass it over in silence. Nearly forty-five years had the President exercised, without a question as to his rightful authority, those powers for the recent assumption of which he is now denounced. The vicissitudes of peace and war had attended our Government; violent parties, watchful to take advantage of any seeming usurpation on the part of the Executive, had distracted our councils; frequent removals, or forced resignations, in every sense tantamount to removals, had been made of the Secretary and other officers of the Treasury; and yet in no one instance is it known, that any man, whether patriot or partisan, had raised his voice against it as a violation of the constitution. The expediency and justice of such changes, in reference to public officers of all grades, have frequently been the topics of discussion; but the constitutional right of the President to appoint, control, and remove the head of the Treasury, as well as all other departments, seems to have been universally conceded. And what is the occasion upon which other principles have been first officially asserted? The Bank of the United States, a great moneyed monopoly, had attempted to obtain a renewal of its charter, by controlling the elections of the people and the action of the Government. The use of its corporate funds and power in that attempt was fully disclosed; and it made known to the President that the corporation was putting in train the same course of measures, with the view of making another vigorous effort, through an interference in the elections of the people, to control public opinion and force the Government to yield to its demands. This, with its corruption of the press, its violation of its charter, its exclusion of the Government directors from its proceedings, its neglect of duty, and arrogant pretensions, made it, in the opinion of the President, incompatible with the public interest and the safety of our institutions, that it should be longer employed as the fiscal agent of the Treasury. A Secretary of the Treasury, appointed in the recess of the Senate, who had not been confirmed by that body, and whom the President might or might not at his pleasure nominate to them, refused to do what his superior in the executive department considered the most imperative of his duties, and became in fact, how-

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ever innocent his motives; the protector of the bank. And on this occasion it is discovered for the first time, that those who framed the constitution misunderstood it; that the first Congress and all its successors have been under a delusion; that the practice of near forty-five years is but a continued usurpation; that the Secretary of the Treasury is not responsible to the President; and that to remove him is a violation of the constitution and laws, for which the President deserves to stand forever dishonored on the Journals of the Senate.

There are also some other circumstances connected with the discussion and passage of the resolution, to which I feel it to be, not only my right, but my duty, to refer. It appears by the Journal of the Senate, that among the twenty-six Senators who voted for the resolution on its final passage, and who had supported it in debate, in its original form, were one of the Senators from the State of Maine, the two Senators from New Jersey, and one of the Senators from Ohio. It also appears by the same Journal, and by the files of the Senate, that the legislatures of these States had severally expressed their opinions in respect to the Executive proceedings drawn in question before the Senate.

The two branches of the legislature of the State of Maine, on the 25th of January, 1834, passed a preamble and series of resolutions in the following words:

"Whereas, at an early period after the election of Andrew Jackson to the Presidency, in accordance with the sentiments which he had uniformly expressed, the attention of Congress was called to the constitutionality and expediency of the renewal of the charter of the United States Bank; and whereas, the bank has transcended its chartered limits in the management of its business transactions, and has abandoned the object of its creation, by engaging in political controversies, by wielding its power and influence to embarrass the administration of the General Government, and by bringing insolvency and distress upon the commercial community; and whereas, the public security from such an institution consists less in its present pecuniary capacity to discharge its liabilities than in the fidelity with which the trusts reposed in it have been executed; and whereas, the abuse and misapplication of the powers conferred have destroyed the confidence of the public in the officers of the bank, and demonstrated that such powers endanger the stability of republican institutions: Therefore Resolved, That, in the removal of the public deposits from the Bank of the United States, as well as in the manner of their removal, we recognise in the administration an adherence to constitutional rights, and the performance of a public duty.

"Resolved, That this legislature entertain the same opinion as heretofore expressed by the preceding legislatures of this State, that the Bank of the United States ought not to be re-chartered.

"Resolved, That the Senators of this State in the Congress of the United States be instructed, and the Representatives be requested, to oppose the restoration of the deposits and the renewal of the charter of the United States Bank."

On the 11th of January, 1834, the House of Assembly and Council, composing the legislature of the State of New Jersey, passed a preamble and series of resolutions, in the following words:

"Whereas, the present crisis in our public affairs calls for a decided expression of the voice of the people of this State; and whereas, we consider it the undoubted right of the legislatures of the several States to instruct those who represent their interests in the councils of the nation, in all matters which intimately concern the public weal, and may affect the happiness or well-being of the people: therefore—

"1. Be it resolved by the Council and General Assembly of this State, That, while we acknowledge, with feelings

of devout gratitude, our obligations to the great Ruler of nations, for his mercies to us as a people, that we have been preserved alike from foreign war, from the evils of internal commotions, and the machinations of designing and ambitious men, who would prostrate the fair fabric of our Union, that we ought, nevertheless, to humble ourselves in His presence, and implore His aid for the perpetuation of our republican institutions, and for a continuance of that unexampled prosperity which our country has hitherto enjoyed.

"2. Resolved, That we have undiminished confidence in the integrity and firmness of the venerable patriot who now holds the distinguished post of Chief Magistrate of this nation, and whose purity of purpose and elevated motives have so often received the unqualified approbation of a large majority of his fellow-citizens.

"3. Resolved, That we view with agitation and alarm the existence of a great moneyed incorporation, which threatens to embarrass the operations of the Government, and by means of its unbounded influence upon the currency of the country, to scatter distress and ruin throughout the community; and that we, therefore, solemnly believe the present Bank of the United States ought not to be re-chartered.

"4. Resolved, That our Senators in Congress be instructed, and our members of the House of Representatives be requested to sustain, by their votes and influence, the course adopted by the Secretary of the Treasury, Mr. Taney, in relation to the Bank of the United States and the deposits of the Government moneys, believing, as we do, the course of the Secretary to have been constitutional, and that the public good required its adoption.

"5. Resolved, That the Governor be requested to forward a copy of the above resolutions to each of our Senators and Representatives from this State in the Congress of the United States."

On the 21st of February last, the legislature of the same State reiterated the opinions and instructions before given, by joint resolutions, in the following words:

"Resolved by the Council and General Assembly of the State of New Jersey, That they do adhere to the resolutions passed by them on the 11th day of January last, relative to the President of the United States, the Bank of the United States, and the course of Mr. Taney, in removing the Government deposits.

Resolved, That the legislature of New Jersey have not seen any reason to depart from such resolutions since the passage thereof; and it is their wish that they should receive from our Senators and Representatives of this State in the Congress of the United States, that attention and obedience which are due to the opinion of a sovereign State, openly expressed in its legislative capacity."

On the 2d of January, 1834, the Senate and House of Representatives, composing the legislature of Ohio, passed a preamble and resolutions in the following words:

"Whereas there is reason to believe that the Bank of the United States will attempt to obtain a renewal of its charter at the present session of Congress; and whereas it is abundantly evident that said bank has exercised powers derogatory to the spirit of our free institutions, and dangerous to the liberties of these United States; and whereas there is just reason to doubt the constitutional power of Congress to grant acts of incorporation for banking purposes out of the District of Columbia; and whereas we believe the proper disposal of the public lands to be of the utmost importance to the people of these United States, and that honor and good faith require their equitable distribution: therefore—

"Resolved by the General Assembly of the State of Ohio, That we consider the removal of the public deposits from the Bank of the United States as required by the best interests of our country, and that a proper sense of public

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duty imperiously demanded that that institution should be no longer used as a depository of the public funds.

"Resolved, also, That we view with decided disapprobation, the renewed attempts in Congress to secure the passage of the bill providing for the disposal of the public domain, upon the principles proposed by Mr. Clay, inasmuch as we believe that such a law would be unequal in its operations, and unjust in its results.

"Resolved, also, That we heartily approve of the principles set forth in the late veto message upon that subject; and,

"Resolved, That our Senators in Congress be instructed, and our Representatives requested, to use their influence to prevent the re-chartering of the Bank of the United States; to sustain the administration in its removal of the public deposits; and to oppose the passage of a land bill containing the principles adopted in the act upon that subject, passed at the last session of Congress.

"Resolved, That the Governor be requested to transmit copies of the foregoing preamble and resolutions to each of our Senators and Representatives."

It is thus seen that four Senators have declared, by their votes, that the President, in the late executive proceedings in relation to the revenue, had been guilty of the impeachable offence of "assuming upon himself authority and power not conferred by the constitution and laws, but in derogation of both," whilst the legislatures of their respective States had deliberately approved those very proceedings, as consistent with the constitution, and demanded by the public good. If these four votes had been given in accordance with the sentiments of the legislatures, as above expressed, there would have been but twenty-four votes out of forty-six for censuring the President, and the unprecedented record of his conviction could not have been placed upon the Journals of the Senate.

In thus referring to the resolutions and instructions of the State legislatures, I disclaim and repudiate all authority or design to interfere with the responsibility due from members of the Senate to their own consciences, their constituents, and their country. The facts now stated belong to the history of these proceedings, and are important to the just development of the principles and interests involved in them, as well as to the proper vindication of the executive department; and with that view, and that view only, are they here made the topic of remark.

The dangerous tendency of the doctrine which denies to the President the power of supervising, directing, and removing the Secretary of the Treasury, in like manner with the other executive officers, would soon be manifest in practice, were the doctrine to be established. The President is the direct representative of the American people, but the Secretaries are not. If the Secretary of the Treasury be independent of the President in the execution of the laws, then is there no direct responsibility to the people in that important branch of this Government to which is committed the care of the national finances. And it is in the power of the Bank of the United States, or any other corporation, body of men, or individuals, if a Secretary shall be found to accord with them in opinion, or can be induced in practice to promote their views, to control, through him, the whole action of the Government, (so far as it is exercised by his department,) in defiance of the Chief Magistrate elected by the people and responsible to them.

But the evil tendency of the particular doctrine adverted to, though sufficiently serious, would be as nothing, in comparison with the pernicious consequences which would inevitably flow from the approbation and allowance by the people, and the practice by the Senate, of the unconstitutional power of arraigning and censuring the official conduct of the Executive, in the manner recently pursued. Such proceedings are eminently calculated to

unsettle the foundations of the Government, to disturb the harmonious action of its different departments, and to break down the checks and balances by which the wisdom of its framers sought to ensure its stability and usefulness.

The honest differences of opinion which occasionally exist between the Senate and the President, in regard to matters in which both are obliged to participate, are sufficiently embarrassing. But, if the course recently adopted by the Senate shall hereafter be frequently pursued, it is not only obvious that the harmony of the relations between the President and the Senate will be destroyed, but that other and graver effects will ultimately ensue. If the censures of the Senate be submitted to by the President, the confidence of the people in his ability and virtue, and the character and usefulness of his administration will soon be at an end, and the real power of the Government will fall into the hands of a body holding their offices for long terms, not elected by the people, and not to them directly responsible. If, on the other hand, the illegal censures of the Senate should be resisted by the President, collisions and angry controversies might ensue, discreditable in their progress, and, in the end, compelling the people to adopt the conclusion, either that their Chief Magistrate was unworthy of their respect, or that the Senate was chargeable with calumny and injustice. Either of these results would impair public confidence in the perfection of the system, and lead to serious alterations of its frame work, or to the practical abandonment of some of its provisions.

The influence of such proceedings on the other departments of the Government, and more especially on the States, could not fail to be extensively pernicious. When the judges, in the last resort of official misconduct, themselves overleap the bounds of their authority, as prescribed by the constitution, what general disregard of its provisions might not their example be expected to produce? And who does not perceive that such contempt of the Federal constitution, by one of its most important departments, would hold out the strongest temptation to resistance on the part of the State sovereignties, whenever they shall suppose their just rights to have been invaded? Thus, all the independent departments of the Government, and the States which compose our confederated Union, instead of attending to their appropriate duties, and leaving those who may offend to be reclaimed or punished in the manner pointed out in the constitution, would fall to mutual crimination and recrimination, and give to the people confusion and anarchy, instead of order and law, until at length some form of aristocratic power would be established on the ruins of the constitution, or the States be broken into separate communities.

Far be it from me to charge, or to insinuate, that the present Senate of the United States intend, in the most distant way, to encourage such a result. It is not of their motives or designs, but only of the tendency of their acts, that it is my duty to speak. It is, if possible, to make Senators themselves sensible of the danger which lurks under the precedent set in their resolution, and, at any rate, to perform my duty as the responsible head of one of the co-equal departments of the Government, that I have been compelled to point out the consequences to which the discussion and passage of the resolution may lead, if the tendency of the measure be not checked in its inception.

It is due to the high trust with which I have been charged; to those who may be called to succeed me in it; to the representatives of the people, whose constitutional prerogative has been unlawfully assumed; to the people and to the States; and to the constitution they have established, that I should not permit its provisions to be broken down by such an attack on the executive department, without at least some effort "to preserve, protect,

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and defend" them. With this view, and for the reasons which have been stated, I do hereby solemnly protest against the aforementioned proceedings of the Senate, as unauthorized by the constitution; contrary to its spirit and to several of its express provisions; subversive of that distribution of the powers of Government which it has ordained and established; destructive of the checks and safeguards by which those powers were intended, on the one hand, to be controlled, and, on the other, to be protected; and calculated, by their immediate and collateral effects, by their character and tendency, to concentrate in the hands of a body not directly amenable to the people, a degree of influence and power dangerous to their liberties, and fatal to the constitution of their choice.

The resolution of the Senate contains an imputation upon my private as well as upon my public character; and as it must stand forever on their Journals, I cannot close this substitute for that defence which I have not been allowed to present in the ordinary form, without remarking, that I have lived in vain, if it be necessary to enter into a formal vindication of my character and purposes from such an imputation. In vain do I bear upon my person, enduring memorials of that contest in which American liberty was purchased; in vain have I since perilled property, fame, and life, in defence of the rights and privileges so dearly bought; in vain am I now, without a personal aspiration, or the hope of individual advantage, encountering responsibilities and dangers, from which, by mere inactivity in relation to a single point, I might have been exempt—if any serious doubts can be entertained as to the purity of my purposes and motives. If I had been ambitious, I should have sought an alliance with that powerful institution, which even now aspires to no divided empire. If I had been venal, I should have sold myself to its designs. Had I preferred personal comfort and official ease to the performance of my arduous duty, I should have ceased to molest it. In the history of conquerors and usurpers, never, in the fire of youth, nor in the vigor of manhood, could I find an attraction to lure me from the path of duty; and now, I shall scarcely find an inducement to commence the career of ambition, when gray hairs and a decaying frame, instead of inviting to toil and battle, call me to the contemplation of other worlds, where conquerors cease to be honored, and usurpers expiate their crimes. The only ambition I can feel, is to acquit myself to Him to whom I must soon render an account of my stewardship, to serve my fellow-men, and live respected and honored in the history of my country. No; the ambition which leads me on, is an anxious desire and a fixed determination, to return to the people, unimpaired, the sacred trust they have confided to my charge—to heal the wounds of the constitution and preserve it from further violation; to persuade my countrymen, so far as I may, that it is not in a splendid Government, supported by powerful monopolies and aristocratic establishments, that they will find happiness, or their liberties protected, but in a plain system, void of pomp—protecting all, and granting favors to none—dispensing its blessings like the dews of heaven, unseen and unfelt, save in the freshness and beauty they contribute to produce. It is such a Government that the genius of our people requires—such a one only under which our States may remain for ages to come, united, prosperous, and free. If the Almighty being who has hitherto sustained and protected me, will but vouchsafe to make my feeble powers instrumental to such a result, I shall anticipate with pleasure the place to be assigned me in the history of my country, and die contented with the belief, that I have contributed in some small degree, to increase the value and prolong the duration of American liberty.

To the end that the resolution of the Senate may not be hereafter drawn into precedent, with the authority of silent acquiescence on the part of the executive depart-

ment; and to the end, also, that my motives and views in the executive proceeding denounced in that resolution may be known to my fellow-citizens, to the world, and to all posterity, I respectfully request that this message and protest may be entered at length on the Journals of the Senate.

ANDREW JACKSON.

April 15th, 1834.

The message having been read—

Mr. POINDEXTER rose and said: I do not rise, Mr. President, to discuss at this time the various topics which are touched in the very extraordinary paper which has been just read to the Senate; nor, indeed, will I give utterance to those feelings of indignation which such a paper, coming from such a source, is so well calculated to excite in the bosom of every honorable member of this body, and of every patriotic citizen in the country. Leaving these matters for future discussion on a more suitable occasion, my purpose is at present to enter my solemn protest against the reception of this paper, and to submit a motion that it be not received. Sir, I should be disposed to go as far as any honorable Senator on this floor in paying due respect to every executive communication to the Senate, coming within the constitutional range of executive power. But when the Chief Magistrate shall think fit to depart from his constitutional sphere, and, under color of his official duties, attempt to make this body the conduit of his popular appeals to the people, fulminating, I will not say calumnies, but the most unfounded charges against the body through which he proposes to promulgate his appeal, I, for one, feel bound to resist him in such a course. Referring to the resolution introduced by the honorable Senator from Kentucky, [Mr. CLAY] the President says that it is "both novel and unprecedented." If it be so, I should be glad to know what appellation ought to be given to this extraordinary paper? Has it any parallel in the past political history of the country? Sir, I venture the declaration, that there is not on record any act of the predecessors of the present Chief Magistrate bearing the slightest resemblance to this outrage on the dignity of the Senate, and the constitutional functions of the executive department of the Government. It may well be characterized as "both novel and unprecedented." No such paper was ever presented to either House of Congress, none such is to be found on the journals of our proceedings, as the one sent to us this morning, under the guise of official authority, from the foundation of the Government down to the present moment. Sir, I will not dignify this paper by considering it in the light of an executive message; it is no such thing. I regard it simply as a paper with the signature of Andrew Jackson, and, should the Senate refuse to receive it, it will not be the first paper with the same signature which has been refused a hearing in this body, on the ground of the abusive and vituperative language which it contained. It will be recollected that a protest similar in its character, couched in terms grossly disrespectful to the Senate, was presented, somewhere about the year 1819, from the same individual, and such was its exceptionable character, that his own friends became ashamed of it. It was objected to, rejected, and sent back for modification, so as to render it respectful to the body to which it was presented. The offensive passages were stricken out, and, thus modified, it was presented and received at the next session of Congress. This effort to denounce and overawe the deliberations of the Senate may properly be regarded as capping the climax of that systematic plan of operations which for several years past has been in progress, designed to bring this body into disrepute among the people, and thereby remove the only existing barrier to the arbitrary encroachments and usurpations of executive power. Destroy public confidence in the Senate, which now stands, thank

Mr. BARR. We see that there is indeed a very substantial record against censure. For example, I quote the President of the United States of America: "I do hereby solemnly protest against the aforementioned proceeding of the Senate as unauthorized by the Constitution, contrary to its spirit and to several of its express provisions, subversive of that distribution of the powers of government which it has ordained and established, destructive of the checks and safeguards by which those powers were intended. The resolution of the Senate contains an imputation upon my private as well as my public character."

And then the President of the United States goes on at length to establish the proposition that censure as a substitute for impeachment is unconstitutional and has no meaning. That document was signed by Andrew Jackson, President of the United States of America. We do have plenty of incidences of resolutions of censure type condemnations. Every year hundreds if not thousands are introduced into the congressional hopper, all with very, very lofty sounding goals, to stop violations of human rights here, to stop military intervention there, to condemn human rights abuses here, to stop brutal killings there, to prevent bombings here. Well, some of these even pass. And I take nothing away from the motivation of those who introduce and vote for these, including myself. But the bombings go on, the killings go on, the abuses of human rights go on. Why? Because censure resolutions have no basis, no power, no results whatsoever.

It would be the same here. If in fact this President lies, misleads and perjures himself, no piece of paper that we pass here condemning him for that is going to stop him from doing it. Either he has stopped already, if people believe that, fine, or we are going to have to remove him from office for having done so in violation of the Constitution. That indeed, not feeling good, not worrying about closure or healing or some process of healing, should be our goal, to do the right thing, not to look for the easy way out but to do the right thing. And if we in the Congress do the right thing, I believe the people of America will support us. They will back us up. They will say, yes, we may not agree with everything you do but, by God, you had the backbone to stand up and say we take the Constitution seriously, we're going to make the tough calls, we're not going to look for an exit strategy, we're looking for a constitutional strategy, you found it, you voted for it, God bless America, and God bless this Congress.

Thank you, Mr. Chairman.

Mr. GEKAS. The time of the gentleman has expired.

Mr. BARRETT. Mr. Chairman, point of personal privilege.

Mr. GEKAS. What does the gentleman refer to?

Mr. BARRETT. The gentleman refers to a member saying healing process, and I just want to plead guilty, I was the one who used the phrase "the healing process." I do want to acknowledge—

Mr. GEKAS. The gentleman is out of order.

Mr. BARRETT. I think he made reference to me.

Mr. GEKAS. The gentleman is recognized for 30 seconds for some purpose.

Mr. BARRETT. He made reference to the person who said "the healing process," that was me. I just want to confirm that it was

me. And that my political philosophy is not to try to find ways to divide this country but to try to find ways to bring this country together.

Mr. GEKAS. The time of both gentlemen has expired. The Chair now recognizes the gentleman from Florida, Mr. Wexler, who moves to strike the last word.

Mr. WEXLER. Thank you, Mr. Chairman. I had planned on making a speech in favor of the censure resolution with all the gusto that I could have. But I have learned, as have Mr. McCollum and Mr. Canady and all the people of Florida in the last 15 minutes, that our finest public servant, our governor, has passed away, Lawton Chiles, who served as a Senator for 18 years, I believe, and who served as the governor of Florida for the last 8 years. Governor Chiles was I think in most Floridians' eyes the epitome of a fine and decent man, a throwback to the age when partisanship didn't play the role it plays, and I don't mean that in any condemning fashion. This man rose above party. He walked the State of Florida the long way, and that is how he got his nickname, "Walking Lawton." He just embodied what is good about America: A poor kid who grew up to be in the United States Senate, made good, did it the honest way, did it the old fashioned way.

And I guess, well, of course there is absolutely no relevance to Governor Chiles' life and what we are doing now. Rather than make a speech about censure, I guess what I would like to do is just use whatever remaining time there is to talk about my feelings and my impression of the experience that the American people have gone through in the last year.

Mr. MCCOLLUM. Would the gentleman yield before you do that?

Mr. WEXLER. Certainly.

Mr. MCCOLLUM. I just want to join you, Mr. Wexler, in expressing my sadness with learning of the passage of Governor Chiles. He was a personal friend. Despite some political differences, he was a good friend when I first came here as a junior Member of Congress and he was a United States Senator. He has been a good man and a good governor for Florida. I will never forget visiting my tornado ravaged area with him for nearly a full day earlier this year, and the great compassion he showed. I feel the loss as a personal human being and as a leader. I share it with you. It is a very non-partisan, very strongly felt feeling that I share tonight. I thank you for taking the time to mention that.

Mr. GEKAS. The Chair exercises the power of the gavel to extend a minute of silence in the recognition of the memory of the Governor of Florida, after which we will return to the gentleman from Florida. One minute of silence.

The time of the period of recognition of the late Lawton Chiles has expired. The Chair now recognizes the gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Mr. Chairman, if I may, I believe Mr. Canady wishes to say some words.

Mr. CANADY. Mr. Wexler, if you would yield I would be deeply grateful.

Mr. WEXLER. Certainly.

Mr. CANADY. I knew Lawton Chiles from the time that I was a child. I worked in his first campaign for the U.S. Senate. That was

one of the first campaigns I was involved in. My father managed his campaigns, and worked for him for about 18 years. He was a good man. He was a dedicated public servant. I didn't agree with him politically in recent years, but I had the utmost respect for him. My prayers go out to his family, his wife Rhea and to his children Bud and Ed and Tandy and Rhea Gaye. They are a fine family. They have meant a lot to the people of Florida.

Mr. CANNON. Mr. Chairman, I ask unanimous consent that the time consumed by Mr. Canady and Mr. McCollum be restored to the gentleman from Florida.

Chairman HYDE. Surely.

Mr. WEXLER. If I may continue, Mr. Chairman.

Chairman HYDE. Mr. Wexler.

Mr. WEXLER. Thank you. I am going to use my time, if I could, to speak about my feelings and my impression of the feelings of many Americans over the last year. When I think, I look back at what has transpired, I will certainly remember the historic nature of this committee, the debates that we have had, and I too respect very much the heartfelt opinions of those in the majority. But I think the things that I am going to remember most, quite frankly, are the night after night arguments that my wife and I had over the President's conduct and morality. And it made us search, it made me search and reevaluate my own morality, my own morality as it relates to our children and the role of morality in public life. I suspect that many, many Americans, regardless of political affiliation, have undergone their own thinking about what the President did, how it relates to our national character and how it relates to their own family. In doing that, I came to a variety of different conclusions, one of which I think for me is the most important. Personally, I have a tendency of seeing things black and white sometimes. Either something is all good or all bad or all right or all wrong. But what I have learned when it comes to morality is that most people are either not all moral or all immoral. They are not all good or all bad. We can strive to be all good, but not too many of us are. And in the President, I see someone who has extraordinary talent and in some ways is extraordinarily moral and in others is extraordinarily immoral.

It would seem to me at this juncture in our history we are living in an age where there are such bitter divisions. We had our government close down 3 years ago without assigning fault. We have campaign after campaign after campaign where we rip each other apart, again without assigning fault. It would seem to me that for the benefit of the country, all of us would come around a censure motion. If this censure isn't this enough of that enough, well, let's make it enough of this or that so that an overwhelming majority of the Members of Congress can vote for it and end this national nightmare.

If I can conclude by using my colleague from Florida's statements, even though I don't agree, let me assume for a moment that Mr. McCollum is correct, and I don't say this in any way to try to challenge his statement, that impeachment is in fact the ultimate censure. Well, this President has already been subject to four articles of impeachment passed by this committee. That is already history. So if in fact impeachment is the ultimate censure, well, then

four articles of impeachment passing out of the Judiciary Committee have got to be awfully close to that ultimate censure. So these articles have passed out of that committee, that is history, that is done. Next week, let it be God's will, let it be the American people's will, that we end this national nightmare and pass a censure resolution.

Thank you.

Chairman HYDE. The gentleman's time has expired.

Before recognizing Mr. Hutchinson, who is next, I have been handed a note. Mr. Gary Ellenwood, the field operations director for C-SPAN, the network who has provided the wonderful pool for televising this inquiry, was just beeped and is on his way to the hospital where his wife Tess is ready to deliver their fourth child. We wish them well.

Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman. I want to say that I do oppose this resolution of censure. But before I go into the details of that, I wanted to express my appreciation to all my colleagues on this committee for the way they have conducted themselves during this hearing, on both sides of the aisle, but I have enjoyed getting to know some of my Democrat colleagues and I appreciate the spirit by which they have offered this resolution.

The Chairman knows that I have from time to time met with a rump group of Democrats to discuss these issues. Some people thought that we were going to come up with some kind of deal or resolution but through the process we realized that there was simply a difference of opinion. My colleagues on the other side of the aisle were forcefully committed to censure. I did not share that view. But even though we did not resolve anything, I believe that the spirit that we gained through those discussions has been beneficial to this committee, and I just wanted to acknowledge my appreciation for everyone who has shared their time with me in that venue.

I also want to comment on my good friend from Massachusetts, Mr. Delahunt, who has referenced the constitutional hearing that we had in which the constitutional scholars talked about censure. And Mr. Delahunt wrote them, they responded, and he was good enough to provide this committee with those responses. I want to now go through some of those.

One was Stephen Presser, Raoul Berger Professor of Legal History at Northwestern University. He said: "Dear Congressman Delahunt: My recollection of the hearing on November 10 is different from yours. I thought there was general agreement that censure would not be constitutional. That is certainly my view. In my opinion impeachment is the remedy specified in the Constitution."

And then there is another letter to Mr. Delahunt from Gary McDowell of the Institute of United States Studies, University of London: "Dear Mr. Delahunt: I have received your letter of December 1 concerning the hearing that was held November 9. I must confess, your letter leaves me more than slightly perplexed, as we seem to have completely different recollections of what was actually said at the hearing. With all due respect, I think your recollection that most, but not all, of the 19 witnesses who testified at the hear-

ing concluded that a resolution [of censure or disapproval] would be constitutional, is completely wrong.”

Mr. DELAHUNT. Would my friend from Arkansas yield?

Mr. HUTCHINSON. I want to finish this discussion and then I will be happy to yield. Next, a letter from John Harrison, professor at the University of Virginia Law School: “Dear Representative Delahunt: Your question led me to reflect on the matter more carefully than I had before. My view at this point is that there are serious constitutional difficulties with Congressional censure of the President as that idea is currently understood.”

And then John O. McGinnis of the Cardozo School of Law wrote to Congressman Delahunt: “As I testified at the hearing, I believe Congress has no power to censure the President as part of the impeachment process or otherwise.”

Griffin Bell wrote that he did not see a problem, I believe is what he says, to Congressman Delahunt, “but the House has adequate power to adopt resolutions, although the use of the legislative power of resolution toward the President may be questioned on separation of powers grounds.”

Charles J. Cooper, lawyer, wrote to Mr. Delahunt: “I would note, however, that serious scholars whom I respect greatly, notably Professor McGinnis, have examined the matter and concluded that censure would not be constitutional.”

And then Richard Parker wrote to Representative Delahunt. He adds: “Any resolution worth its salt must state plainly that the President has with premeditation sought to subvert the process of the Judiciary.” And he says that it is constitutional but you need to have something pretty strong.

Daniel Politt, University of North Carolina Law School says that the Congress has the authority, but wrote to Mr. Delahunt, “However, I am not sure a reprimand is wise. I was very much impressed by the testimony of Arthur Schlesinger on how reprimands, if the practice caught on and spiraled, would seriously weaken the institution of the presidency.”

I would also refer to the good witness that was called by the President’s counsel and the Minority counsel, Father Drinan, who indicated very strongly that he disagreed with censure.

And so I respect the gentleman, but I do believe there are many scholars that have a different recollection and clearly believe that censure would be inappropriate.

Mr. DELAHUNT. Mr. Chairman, I would ask unanimous consent that the gentleman be yielded 2 more minutes for purposes of yielding to me.

Chairman HYDE. Without objection.

Mr. HUTCHINSON. Maybe we can cut it to one and return some, but go ahead, my friend.

Mr. DELAHUNT. I think it is important to really set the record straight, because I remember you and I having this discussion early one morning over eggs, and you did express your position clearly that you had constitutional reservations about the use of censure.

And yet if you remember, the panel that was sitting here, in fact it was the first panel on that day, some Monday with 19 scholars, and you yourself polled that particular group; you posed the ques-

tion, and it was clear from that panel, a majority indicated unequivocally that there was no constitutional impediment. And then you provoked that discussion and gave me the thought to do a review. And I just want to take a minute to report—

Mr. HUTCHINSON. Reclaiming my time. You have addressed that. Reclaiming my time.

Mr. DELAHUNT. Let me just say this. By a 2 to 1 ratio, without any equivocation whatsoever, men such as Professor Gerhardt, Professor Holden.

Mr. HUTCHINSON. Let me reclaim my time, because you will get to address this. Reclaiming my time, I recited the responses that were given, and even some who did raise their hand in support of a censure have expressed strong reservations, and I do not have the same recollection that it was divided. But let me just end by saying I had grits that morning. You had eggs.

Chairman HYDE. The gentleman's time has expired.

Mr. Meehan, the gentleman from Massachusetts.

Mr. MEEHAN. Thank you, Mr. Chairman. Mr. Chairman, before I go on to talk about what censure is, I just want to add a final word about what impeachment is and is not.

Actually they are not my words. They are the words of Representative Frank Riggs, a Republican Member of the House but not a Member of this committee. He was quoted today in the New York Times, and Representative Riggs is undecided about how to vote on the House floor. And this is apparently how he views his choice.

Quote, "What's influenced me the most over the last 24 to 48 hours is the notion that the vote to impeach is the vote to remove. Prior to that, I was favorable to the view that impeachment is censure. I've raised the bar. That's reinforced the gravity of the situation."

No one on this side of the aisle could put it any better. It is such a dangerous precedent for one party to unilaterally move against a President of another party, and I fear for what that means for the future of our country.

But let me talk a bit about censure. You know, so many people seem to consider that censure is simply the alternative to impeachment, and I suppose to a certain extent it is an alternative to impeachment, an alternative to the unconstitutional removal of this President. But that isn't all what censure is. No, censure has a life and a rationale of its own, independent of impeachment.

Indeed, censure is something that we should be doing even if there hadn't been the slightest thought on Capitol Hill of impeaching the President. The President has disgraced himself and the high office that he holds, and I expect better from a President. The American people expect better from a President. And you better believe we have a right to.

Censure is the way we stake the claim to our right to a President who is forthright, a President who doesn't say things that he knows the American people will misinterpret, a President who understands that acting as a role model comes with the job. I have heard that censure amounts to little more than a slap on the wrist, easy to deliver, easy to take. That is absolute nonsense.

Do you think it is easy for me to call a President with whom I proudly assumed office in 1993 reckless or deceitful? Do you think it is easy to cast a vote for a resolution that uses the term "reprehensible" to characterize the behavior of someone whom I have not only endorsed twice, but when we both got to Washington we had a \$300 billion deficit. We have the first balanced budget in a generation, three-decade low unemployment rate, the economy is moving in the right direction. I have been proud to stand tall with this President at events to rally around campaign finance reform and tobacco control. This is difficult.

And for those of you who think the President will just laugh off the approval of a censure resolution and there will be champagne toasts over at the White House, I would refer you to the eloquent and moving statement delivered Thursday night by my friend and colleague from Massachusetts, Mr. Frank, regarding what it is like to be censured. Everyone knows that this President cares very much about his place in history.

Let me tell you if we pass a censure resolution, his place in history will be significantly diminished. No American history textbook written from 1998 on would fail to mention what Bill Clinton did and what this Congress thought of it and how we expressed our views in a tough censure resolution. Meaningless? A slap on the wrist? I think not. Rather a branding, a scarlet letter, a deep and lasting mark of shame, a wound that is painful today and will fester in history.

This censure is anything but meaningless. It is the right thing to do. It is the way that we can get this country over this very difficult period in our history and move on to the future and avoid a terrible, disgraceful trial in the United States Senate.

Mr. Chairman, I yield back the balance of my time.

Chairman HYDE. Would the gentleman yield to the gentlelady from Texas for 2 minutes to make a point of clarification?

Mr. MEEHAN. I would be very happy to yield to the gentlelady from Texas.

Ms. JACKSON LEE. I thank the gentleman, and I thank him for his eloquent remarks, because that was what I wanted to speak to.

We have heard people from different political perspectives in this room today offer out their souls and their consciousness. My colleague from Georgia, my good friend on the other side of the aisle, challenged those of us who for weeks now have talked about healing the Nation, bringing us together, coming to the point of censure, albeit many of us are in so many different ways so different from coming together on a consensus idea.

But I am reminded by this chairman, Jack Brooks, in this room, who is no longer the chairman of this committee or in Congress, from my State of Texas. He was one of those who accepted the call of an ordinary man, Lyndon Baines Johnson, for extraordinary circumstances in 1964, and he rose as a southern Democrat and voted for the 1964 Civil Rights Act. That vote, of course, opened the opportunities for so many of us who had been deprived rights in this Nation.

It was a censorious perspective, Mr. Chairman. And so I do not fall away from trying to heal this Nation and bringing us together as a people.

I yield back, and I thank the gentleman for his time.

Chairman HYDE. I thank the gentlelady.

Mr. DELAHUNT. Mr. Chairman, I would like to raise a point of personal privilege.

Chairman HYDE. The gentleman from Massachusetts, state your point, please.

Mr. DELAHUNT. I would state the point that the accuracy of the material that I entered into the record pursuant to a unanimous consent request has been questioned, and I would like the opportunity to respond.

I think it is important when we talk about precedent and the constitutionality of censure that we are reminded that the best evidence of its constitutionality is that the United States Congress did, in fact, censure President Jackson; did, in fact, censure and rebuke President Polk; did, in fact, condemn and censure President Tyler; and went ahead and censured and entered a statement of disapproval against President Buchanan.

But in terms of the present case, I want to be very clear. We heard from 19 eminent experts on the Constitution. I asked each one of them to clarify his or her position on this question. Twelve responded that there is no constitutional impediment to censure. Another had semantic difficulties with the term censure but agreed that a resolution of disapproval would pass muster. One witness took no position on the question. And only five suggested that a resolution would be unconstitutional.

I daresay let's not hide behind the issue of constitutionality. Let's understand that this is the wisest policy that we could adopt.

Chairman HYDE. I thank the gentleman.

The gentleman from Indiana, Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

The day has been long. I will be brief. I am one of the members of this committee who has advocated that the committee should consider this resolution today. I come to that conclusion for a variety of reasons. One is the resolution from the House. The second is an understanding of the deeply held convictions of many members of this committee, many of whom I have spent a lot of personal time with who I know feel deeply about it, and I respect that.

It seems to me, after all this discussion of what exactly is a resolution of censure regarding the President, there is still not agreement. It is either an action to punish the President or it is an action that doesn't punish the President. If it is an action to punish the President, it is a bill of attainder and unconstitutional. If it is a resolution that does not punish the President, it is meaningless.

For that reason, though I have the greatest respect for those who have offered it, I cannot support the resolution.

Having said that, I yield to the gentleman from Arkansas.

Mr. HUTCHINSON. Thank you.

I thank the gentleman for yielding, and ask unanimous consent to enter into the record the letters that I referred to from the constitutional scholars who testified at the hearing in November.

Chairman HYDE. Without objection, so ordered.

[The information follows:]



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December 1, 1998

Hon. William D. Delahunt  
Congress of the United States  
House of Representatives  
Washington, D.C. 20515-2110

Dear Congressman Delahunt:

My recollection of the hearing on November 10, 1998 is different from yours. I thought there was general agreement that censure would not be constitutional. That certainly is my view.

In my opinion impeachment is the remedy specified in the Constitution for acts that require censure by the House of Representatives. It is then up to the Senate to decide whether the evidence that supported impeachment is sufficient for removal. As I tried to explain in my testimony, I think the acts attributed to President Clinton by Judge Starr are certainly grounds for impeachment and removal, and are just the sort of breaches of duty for which the framers believed impeachment (and removal) were appropriate. As I also testified, I believe that the Constitution imposes an affirmative duty on you to vote for impeachment if grounds for it exist. I think it would be a breach of your Constitutional duty, therefore, if you came to believe that Mr. Starr's referral was factually accurate and you failed to vote for impeachment. As I read the history of impeachment that's your only alternative - a vote for or against impeachment. There is nothing in the *Federalist* or any other contemporary account about censure, and the one time it was done - against President Jackson - it was later withdrawn and acknowledged to be inappropriate.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Stephen Presser".

Stephen Presser



**Institute of United States Studies**  
University of London

3 December 1998

The Honorable William D. Delahunt  
United States House of Representatives  
1517 Longworth House Office Building  
Washington, D.C. 20515  
UNITED STATES OF AMERICA

By fax: 001 202 225 5658

Dear Mr. Delahunt,

I have received your letter of December 1st concerning the hearing on "The Background and History of Impeachment" that was held on November 9, 1998. I must confess, your letter leaves me more than slightly perplexed in so far as we seem to have completely different recollections of what was actually said at the hearing.

With all due respect, I think your recollection that "most — but not all — of the 19 witnesses who testified at the hearing concluded that . . . a resolution [of censure or disapproval] would be constitutional" is completely wrong. I would refer you in the first instance to the coverage the issue received the next day in the *New York Times* where it was properly noted that the majority consensus was that censure would be a violation of the doctrine of separation of powers. This was a view that transcended both ideological and partisan considerations with all sides agreeing that the constitutional issue was fundamental. I am sure that if you review the transcript of the hearing you will see the general sense of the majority on this issue.

The Founders understood better than do many today that the most potentially pernicious branch of our constitutional order is the legislature. As James Madison correctly observed in *The Federalist*, No.48, history had demonstrated that the "legislative power is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." The reason this is a danger, Madison noted, is that a legislature is all too often "inspired by a supposed influence over the people with an intrepid confidence in its own strength." Thus, Madison concluded, "it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions."

A primary reason for the Founders' efforts to curb the tendency of your branch to draw all power into its "impetuous vortex" was to protect the executive branch from being molested by you. Those who framed and ratified the Constitution had seen in their own state constitutions the debilitating effect of having a dominant legislature and a servile executive. By establishing a clear separation of powers — and by giving each branch the means of resisting the encroachments of the others — they sought to create that energy in the executive

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that they deemed essential to good government. Alexander Hamilton summed it up powerfully in *The Federalist*, No. 70: "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution: And a government ill executed, whatever it may be in theory, must be in practice a bad government."

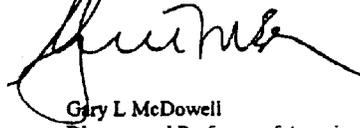
Recognizing as they did that "enlightened statesmen [would] not always be at the helm", the Founders also knew there had to be some means available to remove from office those who might violate their sacred public trust and abuse their positions. But such a means had to be created within the context of the necessary separation of the coordinate powers. The solution was the sole power of impeachment given to the House of Representatives and the sole power to try such impeachments given to the Senate. By such a device the principle of a bicameral legislature would temper the impulses of the legislature to censure and to punish those with whom the most numerous branch might disagree.

Andrew Jackson understood well the unconstitutionality of a censure. The very idea of a censure, he wrote, is a "subversion of that distribution of powers of government which [the Constitution] has ordained and established [and] destructive of the checks and safeguards by which those powers were intended on the one hand to be controlled and the other to be protected." It was for this reason that Jackson argued, as should you, that censure was "wholly unauthorized by the Constitution and in derogation of its entire spirit."

Impeachment is the only power granted by the Constitution to the Congress to deal with errant executives. It is the only means whereby the necessarily high walls of separation between the two branches may be legitimately scaled. Had the Founders intended some other means of punishment to be available to your branch they would have said so, as Chief Justice John Marshall once said, "in plain and intelligible language." That they did not do so should be your only guide in this grave and sensitive matter.

The temptation to do anything possible to avoid exercising the awful constitutional power of impeachment is obviously and understandably great. But such a temptation to take the easy way out by assuming a power not granted should be shunned. And should President Clinton, as a result of bad advice or political pressure, agree to such an unconstitutional punishment as a censure, that would be a breach of his constitutional obligations as great as anything else of which he has been accused. The great office he is privileged to hold deserves his protection against any ill-considered censorious assault from Congress.

Sincerely yours,



Gary L. McDowell  
Director and Professor of American Studies

LATE RESPONSE



UNIVERSITY OF VIRGINIA SCHOOL OF LAW

John C. Harrison  
Professor of Law

December 7, 1998

The Honorable William D. Delahunt  
United States House of Representatives  
Washington, D.C. 20515-2110

Dear Representative Delahunt:

This is in response to your letter of December 1, 1998, concerning Congress' power to censure the President.

Your question led me to reflect on the matter more carefully than I had before. My view at this point is that there are serious constitutional difficulties with congressional censure of the President as that idea is currently understood.

The answer to your question depends on precisely what one means by censure. I assume that censure would take the form of a resolution by one house, resolutions by both houses, a concurrent resolution, or a joint resolution, and that any such resolution would express condemnation of culpable misconduct by the President without purporting to attach legal consequences to that condemnation.

Any attempt to attach legal consequences to such a statement of condemnation would be unconstitutional under the federal Bill of Attainder Clause of Article I, Section 9, as that clause is interpreted by the Supreme Court. The Court has held that the clause forbids both bills of attainder in the strict common law sense and legislative punishments short of attainder in the strict sense, which lesser legislative punishments were known in England as bills of pains and penalties. *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867). Any adverse legal consequences imposed by a censure resolution would constitute punishment, and as the Court interprets the Bill of Attainder Clause, if it stands for nothing else, it stands for the proposition that Congress may not by legislation punish an identified individual.

Censure as I have defined it, and as it seems currently to be contemplated, would have no legal effects. It would be purely expressive. That feature, however, by no means clearly exempts censure from the Bill of Attainder Clause. A resolution of censure, even if purely expressive, still would have a punitive purpose. Expressed moral condemnation is a form of retribution, and acceptance of it is a form of contrition just as acceptance of more concrete punishment is a form of contrition. That punitive purpose would bring a censure resolution within the ban on bills of attainder if one were to conclude that the injury inflicted on the President, although purely expressive, were punishment within the meaning of the Bill of Attainder Clause.

Purely expressive governmental action can violate the Constitution. The mere statement by an Act of Congress that Roman Catholicism is the official religion of the United States likely would violate the Establishment Clause, and the Supreme Court has found that the clause forbids symbolic governmental endorsement of religion, e.g., *Lynch v. Donnelly*, 465 U.S. 668 (1984); *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989).

Whether censure violates the Bill of Attainder Clause thus depends on whether that provision resembles the Establishment Clause by forbidding purely expressive action. Although the question is open, there is substantial reason to think that it does. Punishment, as that idea is normally understood, is not limited to changes in one's legal entitlements and obligations. Moreover, the purpose of the clause is to take questions concerning the culpability of particular individuals away from the legislative process and thereby forestall the especially ugly politics that result when the legislature has power to punish. The impeachment provisions represent a carefully calibrated exception to this principle.

It is also unclear whether Congress has the affirmative power to censure the President. The Constitution grants only limited legislative power to Congress, and its grants do not include authority to reprimand the President for his conduct of office or his non-official actions, or indeed to reprimand anyone who is not a member of Congress. In the absence of any express authority, censure can be sustained only if an act of censure is necessary and proper to carry into execution one of Congress' enumerated powers. See U.S. Const., Art. I, Sec. 8. Which power would be advanced by censure is hard to say.

This question is novel and difficult and has not had the benefit of substantial practice or scholarly commentary. With that qualification in place, I will say that there are serious questions whether Congress may censure the President.

Sincerely,



John C. Harrison

cc:

Hon. Henry J. Hyde  
Hon. John Conyers, Jr.  
Hon. Charles T. Canady  
Hon. Robert C. Scott

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Congressman William Delahunt  
House of Representatives  
Washington, D.C. 20515

Dear Congressman Delahunt:

Dec. 3, 1998

Thank you for your letter of Dec. 1, 1998. I regret to say that I am unable to check a box "yes or no" in response to your question. The reason is that your question asks my opinion about a motion disapproving the President's behavior, but in the first sentence you equate a resolution disapproving the President's behavior with censure. The term "censure" has definite meaning in the context of legislative proceedings from the authority of the Congress to censure one of its members. The term "disapproval," however, has no such fixed meaning in this context.

As I testified at the hearing, I believe Congress has no power to "censure" the President as part of the impeachment process or otherwise. Thus if you mean to ask me the question of whether Congress can censure the President, I would say it is plainly not authorized to do so. For further discussions of my reasons for believing that "censure" has no constitutional basis, please see pages 16-20 of my testimony of Nov. 9, 1998.

On the other hand, I do not believe it is unconstitutional for any member to criticize anyone in the course of a legislative proceeding and thus members of Congress may join together to criticize any person as a kind of collective shout from the floor. To understand the legal nature of such an act, however, shows that it is in no way analogous to censure—the solemn legislative sanction flowing from express authority under the Constitution for the legislature to punish one of its members for "disorderly behavior."

Please do not hesitate to write me again if I can be of further assistance.

Sincerely yours

  
John O. McGinnis

cc: Chairman Henry Hyde

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December 3, 1998

VIA FAX

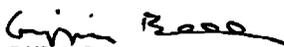
Congressman William D. Delahunt  
Committee on the Judiciary  
Congress of the United States  
House of Representatives  
Washington, D.C. 20515-2110

Dear Congressman Delahunt:

Responding to your inquiry of December 1, my answer is that the impeachment clause of the Constitution treats the House as a grand jury. Hence, a vote, if there is a vote, of a no-bill or a true bill, is the extent of the House's power and duty under the impeachment clause.

The House has adequate power otherwise to adopt resolutions, including a resolution of censure, although the use of the legislative power of resolution toward the President may be questioned on separation of power grounds. The argument would be that the only power against the President under the Constitution is restricted to the impeachment clause.

Yours sincerely,

  
Griffin B. Bell

GBB/bk  
cc: Congressman Bob Barr

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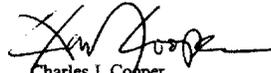
December 2, 1998

The Honorable William D. Delahunt  
Congress of the United States  
House of Representatives  
Washington, DC 20515-2110

Dear Representative Delahunt:

This letter is in response to your December 1, 1998 inquiry as to the constitutionality of censuring the President. Unfortunately, I have not had the opportunity to study the question closely, and so am not prepared to render an opinion as to censure's constitutionality. My testimony focused on the historical and legal precedents underlying the fact that perjury and obstruction of justice constitute "high crimes and misdemeanors." I would note, however, that serious scholars whom I respect greatly—notably, Professor John McGinnis—have examined the matter and concluded that censure would not be constitutional. While their opinions should carry great weight, I am not currently prepared to state my own conclusion on this matter I have not studied.

Respectfully,



Charles J. Cooper



HARVARD LAW SCHOOL  
CAMBRIDGE · MASSACHUSETTS · 02138

December 4, 1998

Dear Representative Delahunt,

As you know -- and as I confirmed in response to your survey three days ago -- I stated to the Committee on November 9 that I see no constitutional barrier to a resolution critical of the President's behavior.

Now that I have a moment, I would like to add one more thing. I believe it would be quite pathetic if any such resolution were weak and mealy-mouthed. Any resolution worth its salt -- as an exercise of the responsibility of the coordinate branch of government -- ought, at the least, to state plainly that the President has "with premeditation sought to subvert the process of the judiciary" and so "degraded the presidency." It surely ought to "condemn" that behavior. I do not want to be portrayed as in any way supportive of any whitewash of someone who has betrayed his office and the American people.

If you pass my response to your survey along to others, I trust that you will include this additional thought as well.

Sincerely,  
A handwritten signature in black ink, appearing to read "R. D. Parker", written in a cursive style.

Richard D. Parker  
Williams Professor of Law



December 2, 1998

919-962-0154  
FAX: 919-962-1277

Honorable William Delahunt:

I think a Congressional resolution disapproving the President's behavior would be constitutional.

Presidents Andrew Jackson and James Polk were reprimanded. So too, the House voted to reprimand, rather than impeach, Judge Aleck Boorman (1890), Emory Speer (1914) and Grover Moscowitz (1930). See my written statement at page 26.

However, I am not sure a reprimand is wise. I was very much impressed by the testimony of Arthur Schlesinger on how reprimands, if the practice caught on and spiraled, would seriously weaken the institution of the Presidency; and the doctrine of Separation of Powers.

Sincerely,

A handwritten signature in cursive script that reads "Daniel H. Pollitt".

Daniel H. Pollitt  
Kenan Professor of Law Emeritus



Mr. GOODLATTE. Would the gentleman from Arkansas yield?

Mr. HUTCHINSON. I would be happy to.

Mr. GOODLATTE. Would the gentleman also say that some of those scholars that testified who said that the censure resolution may be constitutional confirmed that some of them also said that, however, it was inadvisable, that even though it may be constitutional, it may not be a good idea to do it?

Mr. HUTCHINSON. Reclaiming the time, you are precisely right. The scholars, even some that responded saying that it might be constitutional, said it was not preference, it was not good policy.

My staff has just given me the transcript of the hearing on that day. I will just read from that: "Some people have said the President ought to be punished. Mr. Schumer mentioned that, and a fine would be levied." And I asked them to raise their hand if they agreed with that, if that would be constitutional. They all raised their hand that it would be unconstitutional. "And I think I see everybody's hand up except for two." And then I asked them if they would raise their hand if they believed simply a censure without any fine would have some serious constitutional problems, and I responded that it looks like that there were five that would have serious problems with that avenue. And so I thanked them.

I think the gentleman is very close and we are close on these numbers, but there is clearly a dispute on that point. And, as the gentleman from Virginia said, even those who said it might be constitutional believed that it would be bad policy.

Mr. GOODLATTE. Would the gentleman yield further?

Mr. HUTCHINSON. Yes.

Mr. GOODLATTE. Would the gentleman also confirm that when the scholars were asked this question, were they advised that this would be a joint resolution passed by both Houses and requiring the signature of the President, which raises the additional question of whether this constitutes a bill of attainder and therefore would be unconstitutional as a result?

Mr. HUTCHINSON. No. In fact, I think they probably had the understanding that it would be a typical kind of resolution that would be passed where it would not have to be signed by the President in a joint resolution fashion.

I yield back to the gentleman from Indiana.

Mr. PEASE. And I yield the balance of my time to the gentleman from Utah.

Mr. CANNON. Thank you, Mr. Pease.

First of all, I would like to thank my friend Mr. Watt for his generous unanimous consent request on my behalf earlier.

Secondly, I would like to point out that I share the hope with Mr. Frank that the Constitution makes the best-seller list this weekend. I think that one of the possible good things that could come out of this series of events is that people begin to understand the robustness and brilliance of our constitutional system.

I would like to comment briefly on the colloquy between Mr. Boucher and Mr. Inglis. The idea that the censure is an empty vessel that we could fill with our own interpretations of the President's actions leaves me to wonder what the President would see if he looked into the depths of this vessel. And I fear that he would see

nothing to restrain him from lying to the public, to the press and to the Congress in all of our business. That gives me deep concern.

Mr. Meehan's discussion with reference to the budget deficit and the economy would leave me to wonder if it won't become a factor leaving us in the anomolous position of hoping for a bad economy so that we can constrain a bad President.

Mr. Frank, who is my friend and who I believe loves this institution, spoke of his reverence for this institution. That reverence is what makes a censure by this body significant to him. I think it would be significant to me. I hope to go down as one who loves this institution and the other institutions of American government, and I think that most of our colleagues in this House would have the same feeling. But I am concerned that—

Chairman HYDE. The gentleman's time has expired. Does the gentleman desire additional time? Or seek his own time?

Mr. CANNON. May I seek my own time at this point?

Chairman HYDE. Very well. The gentleman is recognized for 5 minutes.

Mr. CANNON. I am concerned that at this point a censure for this President becomes a get-out-of-jail-free card or, rather, an avoid-any-kind-of-serious-punishment-free card.

There has been a great deal of talk today about bipartisanship and the need for bipartisanship. I think that this question is maybe one of the most fundamental that we face. Because, in fact, the American public is divided.

I would like to read and comment upon a letter by Ben Jones, a former member of this body, who deals with that.

"Let me speak," he says, "as a Democrat, one of the 10 percent of Democrats (according to reliable polls) who believe that our President should be impeached. It is clearly a minority position in our party, but we are a party which has always fought for minority viewpoints for inclusion and for a diversity of ideas. I believe that our party is being corrupted by its support of a man who is not deserving of that support."

Let me just say that when I was on the way to the hearing this morning, a fellow stopped his car, jumped out and said, "Representative Cannon." I stopped and looked at him, and I said, "What?" And he then told me that he is a Democrat from Massachusetts, that he is going to tear up his registration card, that he has become a Republican over these hearings.

So there are some intense feelings, granted, by a minority of Democrats.

Though Democrats may win in the short term by succumbing to the popular wishes, in the long term we will be in a moral desert searching for the oasis of our soul. It is our job to clean our own wounds and our job to lead when one of our own has erred.

"As a Member of Congress, I endorsed," this is Ben Jones again, "I endorsed and supported President Clinton even before he announced his candidacy."

I am going to skip down to the next paragraph.

"In January, I wrote that if these allegations were true, the President should take full responsibility and consider resignation to spare the Nation the trauma his actions would surely cause."

We have heard a great deal today about the trauma that we would go through as a Nation because of the actions of this Congress. I submit with Mr. Jones that it is the actions of the President which could cause us that trauma.

"In August, after 7 months of lying and stonewalling by the President, I called for his resignation. I still believe he should resign. And were I a voting member of Congress I would support his impeachment."

"Understand," he goes on, "I think that he has done an excellent job, and I firmly believe that he has more raw political talent than any American of the 20th century."

I, too, believe myself—not quoting from the letter now—that this is a great political person in the White House.

"I think you can truthfully say that the country is in many ways in better shape than when he took office and although I agree with some of his policies I think that he has shown how the Democratic Party can respond to the centrist interests of mainstream America.

But I think that his actions of 1998 have made impeachment a sad necessity."

Then he talks about high crimes and misdemeanors. I will skip that and go on.

"The integrity of the Office of the President is to a great extent dependent upon the trust and respect of the American people. We must have a strong and active political disagreement and it is common sense that in a two party system this will sometimes be partisan. People of good will can agree to disagree, so there will always be an element of partisan opposition to any President but those same polls that show popular aversion to impeachment also show clearly and consistently that in the face of an overwhelming majority of Americans, even while approving of the Presidents' job performance, they do not trust him, do not respect him and believe him to be a liar. This erosion of the integrity of our Nation's highest office is due to the President's actions and not to any political animus toward him."

"The President's defenders have blamed this on the zealous pursuit of a partisan prosecutor but were it not for that zealous pursuit, we would not have known the truth and the undeniable fact is that the President showed arrogant disdain for the truth, the law, the court and the American system of justice. This alone should be cause for his ouster."

"He has violated the public trust, he has disgraced the highest office in the land, he has shown a cynical disrespect for the rule of law, and when accountability has been demanded, he has only shown cowardice. Much worse, he oversaw an organized public relations attack on those who uncovered his lying under oath and orchestrated an attack that lasted for 7 months. This enormous deceit from January to August using the resources of his office and the Democratic Party was only stopped by the appearance of undeniable evidence."

Chairman HYDE. The gentleman's time has expired.

Mr. FRANK. Would the gentleman yield to me for 10 seconds?

Chairman HYDE. Just a moment. Does the gentleman require additional time?

Mr. CANNON. Mr. Chairman, I would like to submit the letter for the record and I do not request additional time.

Mr. FRANK. Will the gentleman yield to me for 10 seconds?

Mr. CANNON. You would have to ask the chair for that.

Chairman HYDE. The gentleman has 10 seconds.

Mr. FRANK. I thank the gentleman. I heard him refer to the Massachusetts party registration card that was going to be torn up. I have never seen one. Maybe you could ask this person instead of tearing it up to show it to me and my colleague from Massachusetts because to our knowledge there is no such thing as a Massachusetts Democratic Party registration card, so it would be nice to see the only one in existence before it is destroyed.

Mr. CANNON. It could have been a card that the Democratic National Committee sent him, Mr. Frank. I don't know.

Chairman HYDE. I think the reason you haven't seen any is they are all torn up.

The letter will be included in the record.

[The information follows:]

Dear Members of Congress,

Let me speak as a Democrat, one of the ten percent of Democrats (according to reliable polling) who believe that our president should be impeached. It is clearly a minority position in our party, but we are a party which has always fought for minority viewpoints, for inclusion, and for a diversity of ideas.

I believe that our party is being corrupted by its support of a man who is not deserving of that support. Though Democrats may "win" in the short term by succumbing to popular wishes, in the long term we will be in a moral desert, searching for the oasis of our soul. It is our job to clean our own wounds, and our job to lead when one of our own has erred.

As a member of Congress I endorsed and supported President Clinton even before he announced his candidacy in 1991. I campaigned for him throughout the country, was a surrogate speaker for him in the '92 campaign, and a Clinton delegate at the '92 convention. I was in Little Rock on election night and at his inauguration. During his first term I vigorously stood up for him when he was way down in the polls and I proudly voted for him again in 1996.

In January, I wrote that if these allegations were true, the President should take full responsibility and consider resignation to spare the nation the trauma his actions would surely cause. In August, after seven months of lying and stonewalling by the President, I called for his resignation. I still believe he should resign, and were I a voting member of the Congress I would support his impeachment.

Understand, I think that he has done an excellent job, and I firmly believe that he has more raw political talent than any American of the twentieth century. I think he can truthfully say that the country is in many ways in better shape than when he took office. And although I disagree with some of his policies, I think that he has shown how the Democratic party can respond to the contrarian interests of mainstream America.

But I think that his actions of 1998 have made his impeachment a sad necessity. "High crimes and misdemeanors" does not refer to specific criminal acts, although certain criminal acts may lead to impeachment. Practically everyone who has studied the intent of the framers agrees, in fact, that a president can be impeached without criminal behavior being an issue. "High crimes and misdemeanors" is intended to describe a gross abuse of a very high and powerful office.

The integrity of the office of the Presidency is to a great extent dependent upon the trust and respect of the American people. We must have strong and active political disagreement, and it is common sense that in a two party system, this will sometimes be partisan. People of good will can agree to disagree, so there will always be an element of partisan opposition to any President. But those same polls that show a popular aversion to impeachment also show clearly and consistently that in fact an overwhelming majority of Americans, even while approving of the president's "job performance", do not trust him, do not respect him, and believe him to be a liar. This erosion in the integrity of our nation's highest office is due to the president's actions, and not to any political animus towards him.

The president's defenders have blamed this on the zealous pursuit of a partisan prosecutor, but were it not for that zealous pursuit, we would not have known the truth. And the undeniable fact is that the president showed arrogant disdain for the truth, the law, the court, and the American system of justice. This alone should be cause for his ouster.

He has violated the public trust. He has disgraced the highest office in the land, he has shown a cynical disrespect for the rule of law, and when accountability has been demanded he has shown only cowardice. Much worse, he oversaw an organized public relations attack on those who uncovered his lying under oath, an orchestrated attack that lasted for seven months. This enormous deceit, from January to August, using the resources of his office and the Democratic party, was only stopped by the appearance of undeniable evidence.

When the full parameters of this deceit are considered, it is impossible for me to avoid the hard truth. The president has so violated his oath, so misled the people who elected him, and so insulted the public trust, that our solemn responsibility as citizens and our duty as stewards of the American ideal demand that we raise our voices in active support of his removal from office.

In my opinion, the proposed articles of impeachment address the enormity of this massive prevarication.

The House of Representatives may or may not impeach this President, but it is my belief that the sum total of the President's offenses far exceed any standard for impeachment. It is also my belief that a "censure" vote is simply a way for members to pretend they have acted forcefully when in fact they have decided the tough question, yea or nay. And a censure resolution that calls for punitive action of some sort would be a case of the legislative branch acting as a judicial

branch in dealing with the executive branch. This would be a gross violation of the balance of powers and is clearly unconstitutional.

It is absurd and weakwilled to simply say that the President has "done wrong" and to pass a non-binding resolution castigating him. This is a charade, an attempt to appear to be doing something forceful and somehow punitive, but in fact doing exactly what the President desperately desires in order to avoid the serious, open discussion of these issues that a Senate trial would provide. Past Presidential "censures" are forgotten historical footnotes. How many know that John Tyler was censured in 1842? Or that in 1848 James K. Polk was condemned jointly by both the House and Senate?

For seven months President Clinton and his surrogates promulgated a purposeful deception upon the people of the country, a deception which in large part was aimed at discrediting the independent counsel. This effort was successful at eroding the counsel's credibility at the very time when the President was lying about his own lying on a daily basis.

One reason I called for the President's resignation some months ago was that I believed that not only were his actions unconscionably dishonorable, but that his resignation would spare the nation the divisiveness and trauma of impeachment proceedings. Although we have gotten a taste of this strain, Mr. Clinton still has the opportunity to step down to spare the nation further scarring, an opportunity that a previous President availed himself of in 1974.

It is my belief that the founders intended for impeachment to deal not with performance in office, but with behavior, with conduct. It was intended not to address political differences, as was the case with the Andrew Johnson impeachment, but with such lapses of character that compromise and weaken the integrity of the office and the viability of the American ideal. In other words, to deal with exactly the kind of situation we find ourselves in now and in which we found ourselves in 1974.

Therefore, I urge those Democratic and Republican members who are "undecided" on this issue to consider the entire range of the President's offenses and to establish a precedent in our generation that this arrogant disregard for simple truth and justice disqualifies one from the privilege of serving in democracy's most honored office.

Yours truly,



Chairman HYDE. The gentlelady from Texas has something she wants.

Ms. JACKSON LEE. I will wait.

Chairman HYDE. You will wait until the end.

Mr. MEEHAN. Mr. Chairman, a point of personal privilege.

Chairman HYDE. I hope it is Mr. Meehan. Yes.

Mr. MEEHAN. It is. My name was mentioned over there, and I thought that Mr. Cannon had mentioned it. So I think I just want to make the record straight because my statement was very, very clear. And my statement did not say the President had done a great job, therefore we should not in any way look the other way. My statement said that censure is not a slap on the wrist. It is very painful to censure a President with whom I have worked and most of us on this side have worked, who has been frankly a great President and has moved our economy in the right direction, and by all accounts is a great leader. What I said was it is difficult and painful to vote for a censure resolution of somebody who has so much talent, so much potential. That is what I stated. So please don't misrepresent my statement.

Mr. CANNON. Mr. Chairman, point of personal privilege. Mr. Meehan has just suggested that I misrepresented. But I referred to his reference to the budget and the economy and have not misrepresented anything that he said beyond that.

Chairman HYDE. Very well. The record is clear. I yield to the gentleman from New Jersey, Mr. Rothman, for 5 minutes.

Mr. ROTHMAN. Mr. Chairman, I move to strike the last word.

Chairman HYDE. The gentleman is recognized for 5 minutes.

Mr. ROTHMAN. Thank you, Mr. Chairman. How did we get here? There was an allegation in a civil rights lawsuit brought by Paula Jones against the President of the United States, Bill Clinton, based on his alleged—the allegations of terribly inappropriate and wrongful misconduct while he was the governor of Arkansas. That was a civil lawsuit. At the end of that civil rights civil lawsuit, the judge had said the President of the United States is not above the law. The President can be sued civilly and be punished civilly if found guilty, and the President is about to pay \$850,000 to settle that civil law claim. The plaintiff felt she was made whole, which was the purpose of going to court in the first place, and she accepted that sum. We are told the President may be brought up on criminal charges for perjury and other things, although most of the Republican and Democratic former prosecutors who came before us said they would never, under any circumstances, bring any of the charges of perjury, abuse of power and obstruction of justice that were brought by Judge Starr for indictment. But nonetheless, when he finishes his term, the President can be prosecuted criminally and if convicted put in prison for his wrongful conduct.

So the President of the United States, as we tell our children all the time, is not above the law. No American is above the law. How did we get involved here in Congress? There were brought before us not questions about the civil or the criminal law, but the constitutional law. Should the duly elected President of the United States be impeached for treason, bribery, or other high crimes and misdemeanors? The allegations were that the President had committed perjury, abuse of power, and obstruction of justice. It is my

belief that anyone who seeks to impeach the President of the United States or convict anyone or indict anyone must bear the burden of proving the charges. Most constitutional legal scholars say the standard of proof for the House of Representatives for the impeachment is a clear and convincing standard of proof.

What is the proof that was presented to us? Judge Starr and Mr. Schippers presented their inferences and conclusions about portions of civil deposition and grand jury testimony from people who were never cross-examined. On the other side, those arguing against impeachment have argued against every single one of the charges, and refuted every single one of the charges. Lawyers Kendall, Ruff and Lowell neutralized the arguments of lawyers Judge Starr and Schippers, lawyer against lawyer, zero to zero, while not one fact witness was brought before this committee. I believe that when the score is zero to zero, the accused does not get convicted, even if the accused, perhaps especially if the accused is the President of the United States and he has been charged with impeachable offenses.

Mr. Chairman, may I have one more minute, please?

Chairman HYDE. You certainly may.

Mr. ROTHMAN. Thank you. And that is why with all my heart I feel that the burden of proof has not been met on the charges to impeach the President of the United States. That is why I voted against the articles of impeachment. The burden of proof had not been met by those who wanted to impeach him. But that is not the end of this matter because I am a father of two kids, and my President waved his finger at us and lied. He chose for us to characterize his relationship with someone, and he lied about it to us on television. I was a fact witness to this, as were we all. And then we know what he admitted the relationship was, an adulterous wrongful relationship that occurred with an intern in our White House. For those offenses, I am prepared to censure this President.

Now, most people would ask, are those impeachable offenses? Most Republican and Democratic constitutional scholars say no. While despicable, they don't rise to the level of treason, bribery or other high crimes and misdemeanors. But nonetheless I feel it incumbent upon myself as a father, as a Congressman and as an American to prove to my kids the President cannot lie to us, he cannot behave dishonorably in our White House and not be punished. And that is where I am. That is why I support these grounds for censure. May I have 30 more seconds, please?

Chairman HYDE. 30 more seconds.

Mr. ROTHMAN. Mr. Hyde has been a gracious, generous chairman, and he has decided to allow us to vote on censure even though he doesn't support it. That tells you something about the kind of man Mr. Hyde is. The new Speaker of the House—

Chairman HYDE. Take a full minute if you like.

Mr. DELAHUNT. You can take an hour if you want.

Mr. ROTHMAN. Thank you. I will accept that. I will take the full minute.

The next Speaker of the House—this is serious. This is the impeachment of our sitting President. The next Speaker of the House of Representatives, Mr. Robert Livingston, has said, as set forth in the Wall Street Journal of November 23, quote, let everybody in

the House of Representatives have a chance to vote on the option of their choice, unquote. He meant censure. Perhaps he knew that two-thirds of the American people were for censure, not impeachment. Perhaps he knew that the majority of constitutional and historical scholars in America say censure, not impeachment. Perhaps he knew that the majority of the Members of the House of Representatives want censure, not impeachment. But as of today, we are told the Republican leadership in the House of Representatives will not let the members of the House of Representatives vote their conscience to choose between impeachment or censure, that the Republican leadership of the House will not let the Members of the House choose between impeachment or censure, that the Republican leadership in the House who the people of America put there, by the way, will only allow a vote on impeachment. And you are going to have to ask yourselves, fellow Americans, and you are going to have to ask your representatives in Congress, is that right? Is that fair? If Mr. Hyde, who believes in impeachment, allowed a vote on censure, why can't the Speaker of the House, Mr. Livingston, allow for a vote on censure and allow our representatives, your representatives the choice between impeachment and censure?

Chairman HYDE. The gentleman's time has expired.

Mr. ROTHMAN. Please let your representatives know how you feel.

Mr. GOODLATTE. Point of order, Mr. Chairman. Is it not correct that the rules of the House provide for members to address the committee?

Chairman HYDE. Address the Chair, you mean?

Mr. GOODLATTE. Yes.

Chairman HYDE. Probably so, but he's finished now.

Mr. GOODLATTE. I suggest we start over.

Chairman HYDE. I move that lie on the table.

The gentlelady from Texas has a unanimous consent request.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I would like to ask unanimous consent to put into the record the statement of the President of the United States dated December 11, 1998.

Chairman HYDE. Without objection, so ordered.

[The information follows:]

**THE WHITE HOUSE**  
**Office of the Press Secretary**

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For Immediate Release

December 11, 1998

STATEMENT BY THE PRESIDENT

The Rose Garden

4:10 P.M. EST

THE PRESIDENT: As anyone close to me knows, for months I have been grappling with how best to reconcile myself to the American people, to acknowledge my own wrongdoing and still to maintain my focus on the work of the presidency.

Others are presenting my defense on the facts, the law, and the Constitution. Nothing I can say now can add to that. What I want the American people to know, what I want the Congress to know is that I am profoundly sorry for all I have done wrong in words and deeds. I never should have misled the country, the Congress, my friends or my family. Quite simply, I gave into my shame.

I have been condemned by my accusers with harsh words. And while it's hard to hear yourself called deceitful and manipulative, I remember Ben Franklin's admonition that our critics are our friends, for they do show us our faults.

Mere words cannot fully express the profound remorse I feel for what our country is going through, and for what members of both parties in Congress are now forced to deal with.

These past months have been a tortuous process of coming to terms with what I did. I understand that accountability demands consequences, and I'm prepared to accept them. Painful though the condemnation of the Congress would be, it would pale in comparison to the consequences of the pain I have caused my family. There is no greater agony.

Like anyone who honestly faces the shame of wrongful conduct, I would give anything to go back and undo what I did. But one of the painful truths I have to live with is the reality that that is simply not possible. An old and dear friend of mine recently sent me the wisdom of a poet, who wrote, "The moving finger writes, and having writ moves on. Nor all your piety, nor wit shall lure it back to cancel half a line. Nor all your tears wash out a word of it."

So nothing -- not piety, nor tears, nor wit, nor torment -- can alter what I have done. I must make my peace with that. I must also be at peace with the fact that the public consequences of my actions are in the hands of the American people and their representatives in the Congress. Should they determine that my errors of word and deed require their rebuke and censure, I am ready to accept that.

Meanwhile, I will continue to do all I can to reclaim the trust of the American people and to serve them well. We must all return to the work, the vital work, of strengthening our nation for the new century. Our country has wonderful opportunities and daunting challenges ahead. I intend to seize those opportunities and meet those challenges with all the energy and ability, and strength God has given me.

That is simply all I can do -- the work of the American people.

Thank you very much.

Chairman HYDE. The gentleman from Wisconsin has a unanimous consent request.

Mr. SENSENBRENNER. Mr. Chairman, I ask unanimous consent that this committee unanimously praise our chairman, Henry Hyde, at the conclusion of this debate for being a very fair, impartial chairman during these very difficult times.

Chairman HYDE. I'm looking around to see who is not applauding. Thank you very much.

Mr. SCHUMER. I would just add in that we also praise our ranking member Mr. Conyers for doing a wonderful job as well.

Chairman HYDE. The gentleman from California, Mr. Rogan, is recognized to strike the last word.

Mr. ROGAN. Mr. Chairman, thank you. Actually, I was enjoying basking in the applause as I was preparing to speak.

Chairman HYDE. We're near the end, ladies and gentlemen. Please attend Mr. Rogan.

Mr. ROGAN. Thank you, Mr. Chairman.

Mr. Chairman, I've made the point a couple of times during debate over the last two days that there is a significance to the oath of office of the President of the United States. In fact, mere election alone does not allow someone to become President. There is a prerequisite in the Constitution. Even after winning an election, one cannot serve as President until they raise their hand and take an oath to preserve, protect, and defend the Constitution of the United States. If somebody is elected President and fails to take that oath, they presumably are precluded from assuming the office of the presidency. It obviously follows that once a President is in office, violation of the oath to preserve, protect, and defend the Constitution would subject them to impeachment.

Mr. Chairman, I wonder if my good friend from Virginia, the maker of this motion, would allow me to yield time to him to respond to a question.

Chairman HYDE. You mean Mr. Boucher?

Mr. ROGAN. Yes.

Chairman HYDE. Mr. Boucher.

Mr. BOUCHER. I am at the gentleman's disposal.

Mr. ROGAN. Thank you. Mr. Chairman, I wonder if the gentleman, as the maker of the motion, would agree with me in the proposition that if the President of the United States violates his oath of office to preserve, protect, and defend the Constitution, that would properly subject him to impeachment?

Mr. BOUCHER. I would say to the gentleman that that conclusion would only be drawn following a presentation of facts that would justify it, and it would depend entirely on what the facts are that lead to that conclusion. It would be the facts themselves that would justify the impeachment action.

Mr. ROGAN. I thank the gentleman. But if the facts did show that there was a violation to preserve, protect, and defend the Constitution, would that subject the President to impeachment?

Mr. BOUCHER. I would have to say to the gentleman once again that it is the facts that would have to govern, and I'm reluctant to reach that conclusion without knowing the facts that are part of the hypothetical.

Mr. ROGAN. I thank the gentleman for his candor. I didn't think that was a terribly difficult question, and I'm sure the gentleman hesitated in his answer for a good reason. But the proposition seems to be self-evident. Let me share why I raise the issue.

In looking at the joint resolution proposed by the gentleman from Virginia, it says that President Clinton didn't just fail—it says he egregiously failed to do two things. It says he egregiously failed to set an example of high moral standards, and it says that in his conduct, the President egregiously failed to conduct himself in a manner that fosters respect for the truth.

That is significant, because the language of the resolution itself reads as follows: it reminds us that implicit in the presidential oath is the obligation that the President do two things. Number one, he must set an example of high moral standards; and number two, he must conduct himself in a manner that fosters respect for the truth.

It seems to be without contradiction that by the very language of the resolution prepared, the oath implicitly requires any President to meet those two basic standards of constitutional decency. And in the very next sentence, this resolution declares that the President has failed in these basic expectations that are implicit within the constitutional oath.

That is not my interpretation of the resolution's language. That is the language of the resolution itself.

By its own language, this resolution states the President violated his oath of office. It concedes the point.

I would also ask my friend from Virginia if he would agree with me that there is no language in the resolution, nor in fact can there be any language in the resolution to preclude censure from later being expunged. There is no language because, this Congress cannot bind a future Congress. There is nothing that can preclude, at a future date, any Congress from voting by a simple majority vote to expunge from the record this censure were it to pass.

Mr. GOODLATTE. Mr. Chairman, I ask unanimous consent that the gentleman from California be given two additional minutes.

Mr. BOUCHER. I would ask the gentlemen if he would yield.

Chairman HYDE. First of all, the gentleman is given two additional minutes.

Mr. ROGAN. Yes, I'm happy to yield to my friend from Virginia.

Mr. BOUCHER. Let me say initially to the gentleman that I think he is correct in saying that a subsequent Congress, if it be the will of that Congress, could decide to repeal a resolution of censure. That did happen in fact in the case of Andrew Jackson's censure by the Senate. But we're still talking about it today, and that Senate did take action with respect to Andrew Jackson and this set of acts by the President of the United States today will be talked about for generations to come. It will be widely highlighted in all of the history books, and a formal action by the Congress of the United States censuring the President for that conduct will live in history. And I'm confident that it would not be reversed by a future Congress.

While I have a few minutes, let me say—

Mr. ROGAN. I was about to reclaim my time and thank the gentleman for his response.

Mr. BOUCHER. If I could ask the gentleman to yield to me just for an additional second. With respect to the initial question the gentleman raised about the oath of office, all this resolution says is that implicit in the oath is the obligation to set a high moral standard and to foster respect for the truth. We believe the President has failed in carrying forth that requirement. That, however, in our opinion is not a ground for impeachment. It is a ground for censure.

Mr. ROGAN. I thank the gentleman.

Mr. BARR. Would the gentleman from California yield?

Mr. ROGAN. I'm wondering if I might have unanimous consent for two additional minutes since I shared so much of my time with the gentleman from Virginia.

Chairman HYDE. Without objection, two additional minutes.

Mr. ROGAN. I thank both the chairman and I thank the committee for its indulgence because I think it is an important issue. In looking at the language for this resolution, one has to come to a conclusion. Either one makes the simple determination that a violation of the presidential oath to preserve, protect, and defend the Constitution is an impeachable offense, or one concludes it is not. And I think that we are really hitting the nail on the head as to where this debate is going.

Ms. WATERS. Would the gentleman yield?

Mr. ROGAN. There is a body of members who do believe that the oath means something, and the violation of that oath places in jeopardy the right of an individual to continue serving as President.

Ms. WATERS. Would the gentleman yield for a question?

Mr. ROGAN. Regrettably, no, because my time is so short. I want to finish my point.

This is significant because the word expungement—the phrase “expungement from the record” has legal as well as historical significance. It does not mean we just turn our back on the censure. It means the censure never happened. If somebody is convicted of a crime, and they later go back to court after an appropriate time has expired and they have served their time, they may petition the court to expunge the record. This means the offender lawfully may answer on a job application that they never have been convicted of a crime, because in the eyes of the law it never happened. And on any given date, any future Congress could, by a simple majority vote, take this piece of paper called censure and erase it from the history books of America. A majority vote later can erase its significance, erase its longevity, and erase its effect. I don't see that as a significant rebuke at all.

Mr. FRANK. Will the gentleman yield?

Ms. WATERS. Would the gentleman yield?

Mr. ROGAN. I yield to the gentleman from Georgia, who was the first person to ask me to yield earlier.

Mr. BARR. Would it also be the gentleman's understanding, being a legislative and constitutional scholar, that the fact that this is a joint resolution requiring before it would even get to the President passage by the Senate and, in fact this House even and the remote possibility that it passed this, if the Senate did not act on it

by the end of this Congress, which is January 3, then it goes out of existence anyway?

Mr. ROGAN. I will answer the question: that is my understanding, but I hesitate to answer it under the false guise as a legislative or constitutional scholar.

Chairman HYDE. The gentleman's time has expired. All time has expired. Without objection, the previous question on the censure resolution is ordered. And the question occurs on the resolution offered by the gentleman from Virginia, Mr. Boucher. All those in favor will signify by saying aye. All those opposed will signify by saying no.

Mr. CONYERS. Could we get a record vote, Mr. Chairman?

Chairman HYDE. A record vote has been requested and the Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. No.

The CLERK. Mr. Sensenbrenner votes no.

Mr. McCollum.

Mr. MCCOLLUM. No.

The CLERK. Mr. McCollum votes no.

Mr. Gekas.

Mr. GEKAS. No.

The CLERK. Mr. Gekas votes no.

Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith votes no.

Mr. Gallegly.

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly votes no.

Mr. Canady.

Mr. CANADY. No.

The CLERK. Mr. Canady votes no.

Mr. Inglis.

Mr. INGLIS. No.

The CLERK. Mr. Inglis votes no.

Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte votes no.

Mr. Buyer.

Mr. BUYER. No.

The CLERK. Mr. Buyer votes no.

Mr. Bryant.

Mr. BRYANT. No.

The CLERK. Mr. Bryant votes no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. Barr.

Mr. BARR. No.

The CLERK. Mr. Barr votes no.

Mr. Jenkins.

Mr. JENKINS. No.  
The CLERK. Mr. Jenkins votes no.  
Mr. Hutchinson.  
Mr. HUTCHINSON. No.  
The CLERK. Mr. Hutchinson votes no.  
Mr. Pease.  
Mr. PEASE. No.  
The CLERK. Mr. Pease votes no.  
Mr. Cannon.  
Mr. CANNON. No.  
The CLERK. Mr. Cannon votes no.  
Mr. Rogan.  
Mr. ROGAN. No.  
The CLERK. Mr. Rogan votes no.  
Mr. Graham.  
Mr. GRAHAM. No.  
The CLERK. Mr. Graham votes no.  
Mrs. BONO.  
Mrs. BONO. No.  
The CLERK. Mrs. Bono votes no.  
Mr. Conyers.  
Mr. CONYERS. Aye.  
The CLERK. Mr. Conyers votes aye.  
Mr. Frank.  
Mr. FRANK. Aye.  
The CLERK. Mr. Frank votes aye.  
Mr. Schumer.  
Mr. SCHUMER. Aye.  
The CLERK. Mr. Schumer votes aye.  
Mr. Berman.  
Mr. BERMAN. Aye.  
The CLERK. Mr. Berman votes aye.  
Mr. Boucher.  
Mr. BOUCHER. Aye.  
The CLERK. Mr. Boucher votes aye.  
Mr. Nadler.  
Mr. NADLER. Aye.  
The CLERK. Mr. Nadler votes aye.  
Mr. Scott.  
Mr. SCOTT. No.  
The CLERK. Mr. Scott votes no.  
Mr. Watt.  
Mr. WATT. Aye.  
The CLERK. Mr. Watt votes aye.  
Ms. Lofgren.  
Ms. LOFGREN. Aye.  
The CLERK. Ms. Lofgren votes aye.  
Ms. Jackson Lee.  
Ms. JACKSON LEE. Aye.  
The CLERK. Ms. Jackson Lee votes aye.  
Ms. Waters.  
Ms. WATERS. Present.  
The CLERK. Ms. Waters votes present.  
Mr. Meehan.

Mr. MEEHAN. Aye.  
 The CLERK. Mr. Meehan votes aye.  
 Mr. Delahunt.  
 Mr. DELAHUNT. Aye.  
 The CLERK. Mr. Delahunt votes aye.  
 Mr. Wexler.  
 Mr. WEXLER. Aye.  
 The CLERK. Mr. Wexler votes aye.  
 Mr. Rothman.  
 Mr. ROTHMAN. Aye.  
 The CLERK. Mr. Rothman votes aye.  
 Mr. Barrett.  
 Mr. BARRETT. Aye.  
 The CLERK. Mr. Barrett votes aye.  
 Mr. Hyde.

Chairman HYDE. No.

The CLERK. Mr. Hyde votes no.

Mr. Chairman, there are 14 ayes, 22 noes, one present.

Chairman HYDE. And the motion is not agreed to. The Chair recognizes the gentleman from Wisconsin, Mr. Barrett, for purposes of a motion.

Mr. BARRETT. Thank you, Mr. Chairman. I move the resolution's adverse recommendation to the full House and ask for five minutes to speak.

Chairman HYDE. The gentleman is recognized for five minutes in support of his motion.

Mr. BARRETT. Thank you, Mr. Chairman. Mr. Chairman, I make this motion because this is one of the avenues available to us to ensure that this issue remains alive for full House consideration. And there have been times when committees that have defeated a measure in committee have nonetheless forwarded the measure to the full House in recognition of the fact that it is an issue of such importance that the entire House should be permitted to act on it. To give you a few examples, NAFTA, Most Favored Nation status for China, base closures, trade with Vietnam, are all issues where the committee of jurisdiction had defeated them but nonetheless the matter to the full House. In addition, from this very committee, the term limits constitutional amendment was sent with no recommendation. So there is a history for doing this.

But I would argue that none of these is more important than the censure resolution of a President of the United States for only the second time in 164 years. And here we get back to the issue of conscience because for many of us this is the ultimate vote of conscience. As I said before, I trust that each and every member on the other side is voting their conscience. And in fact I have heard from many, if not most, members of the other side that their vote in favor of impeachment is a vote of conscience and I will accept them at their word. I simply ask that you return the favor and allow us to vote our conscience as well.

Actually, I think the most appropriate comparison was a vote that took place before most of us were in Congress, although not that long ago, and that was the Persian Gulf War resolution back in January of 1991. In fact, only 13 members of this committee, I think, were in Congress at that time. And as we can recall at that

time, that measure had popular support within the public. But the majority party at the time, the Democratic Party, the majority of the members of the Democratic Party did not support that as evidenced by the final vote. Nonetheless, the measure came to the floor. And I can remember watching that and being really, really proud and I was really, really proud to be an American because I felt that that was an honest debate. I felt that every single Member of Congress put aside partisan differences, put aside partisan concerns to do what in their conscience they thought was the right thing to do for this country. And I would argue here that this country will not accept a sanction that is not a bipartisan sanction. It will continue to divide this country. And I say to the proponents of impeachment, if you want impeachment to be accepted, there has to be to the American people a showing of good faith, a showing that every single member of this Congress was given the opportunity to vote his or her conscience.

I have heard the argument that if you are against impeachment, just vote no. But that's not what the reality is, and I think all of us understand that the American people and the Members of Congress as well feel that what the President did was wrong, that he should be held accountable, but he should not be removed from office. So I guess I'm asking also for the award for eternal optimism because I think that in the end we can do this. We can do this right, and next Thursday when we leave that Chamber, every one of us, we can hold our head high because we did what was right for the country. And every one of us, every single Member of Congress can leave that room and say that they voted their conscience. And if we do that, then this will not have a happy ending because this story is never going to have a happy ending, but the American people will feel that this process gave them a fair shake.

So I hold no illusions that this motion is going to pass in committee now, but over the next four or five days as Americans key into this issue more, I ask you to revisit it and to search your conscience as to what we should be doing.

I had someone ask me today as to whether I thought America has awoken to this yet. I said well, I think they hit the snooze button. They know there's something going on but they want another 10 minutes to sleep. In the next four or five days, people are going to be awake. Again, my final plea is at the end of this process, we can all look each other in the eye and say, I gave you a fair shake. And with that, Mr. Chairman, I would move the question.

Chairman HYDE. Without objection, the previous question is ordered. The question is on the motion offered by the gentleman from Wisconsin, Mr. Barrett. All those in favor will signify by saying aye. All opposed by no. In the opinion of the Chair, the noes have it. The noes have it and the motion is—

Mr. CONYERS. Mr. Chairman, Mr. Speaker—

Chairman HYDE. I'll settle for Mr. Chairman.

Mr. CONYERS. Thank you. Speaker Elect Livingston has publicly said he will consult with you before making a decision as to whether to schedule this matter for the floor. And as you know, traditionally one Democratic alternative is generally made in order even if it fails in committee, a matter of fundamental comity and fairness we've observed across the years. And so the question is consistent

with your sense of procedural fairness. Will you ask Mr. Livingston to make this censure resolution at least in order?

Chairman HYDE. I cannot make that promise, but I of course expect to talk to Mr. Livingston and I'm sure the subject will come up, but I cannot commit to any undertaking of that nature.

Mr. Gekas?

Mr. GEKAS. I just ask unanimous consent to insert into the record a CRS report for Congress on the question of censure of the President by the Congress.

Mr. MEEHAN. Mr. Chairman?

Chairman HYDE. I would like to finish with the motion for Mr. Barrett. In my opinion, the noes have it. The motion is not agreed to.

# CRS Report for Congress

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## Censure of the President by the Congress

Jack Maskell  
Legislative Attorney  
American Law Division

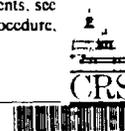
### Summary

Seeking a possible compromise between an impeachment and taking no congressional action, certain Members of Congress and congressional commentators have suggested a congressional "censure" of the President to express the Congress' disapproval of the President's conduct, which has been the subject of an ongoing independent counsel investigation. This report is intended to provide a very brief overview of the basis and precedents regarding a congressional "censure" of the President.

A House, Senate, or congressional "censure" of the President, unlike an impeachment and trial of the President in the legislature,<sup>1</sup> or a congressional punishment of one of its own Members,<sup>2</sup> does *not* have an express constitutional basis. Although there is no express constitutional provision regarding censure of an executive officer, there is also no express constitutional impediment for the Congress, or either House of Congress, to adopt a resolution expressing its reproof, disapprobation or censure of an individual in the Government, or of the conduct of the individual, and, in fact, each House of Congress has adopted such resolutions in the past. Resolutions expressing the House's or Senate's disapproval, censure or reproof of an individual or of his or her conduct have on occasion been adopted, for example, by the Senate (although later expunged) regarding President Jackson in 1834, and by the House in 1860 with regard to President Buchanan. Resolutions disapproving of conduct or censuring the President or other executive official, like similar "sense of the Congress" resolutions, or sense of the House or Senate

<sup>1</sup> *United States Constitution*, Article I, Section 2, clause 5, Article I, Section 3, clauses 6 and 7, Article II, Section 4. For a detailed discussion of impeachment procedures and precedents, see CRS Report No. 98-186A, "Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice," February 27, 1998.

<sup>2</sup> *United States Constitution*, Article I, Section 5, clause 2.



resolutions, would have no particular legal or constitutional consequence,<sup>3</sup> but may, of course, have certain political and/or historical import.

As noted, there is no express constitutional authority for the House or the Senate, or the Congress acting concurrently, to state an opinion on the conduct or propriety of an executive officer in the form of a formal resolution of censure or disapproval. In early congressional considerations, some Members cited to the lack of express constitutional grant of authority in their opposition to resolutions that declared either an opinion of praise or disapproval of the executive.<sup>4</sup> Others argued that impeachment was the proper, and exclusive, constitutional response for the Congress to entertain when the conduct of federal civil officers is called into question, rather than a resolution of censure.<sup>5</sup> An expression of censure of a federal officer by the Congress, in addition to not being an "impeachment" of a civil officer nor a "punishment" of its own Members, would also not, in most cases, appear to be within those inherent or implicit authorities typically imputed to American legislative institutions, such as those recognized in contempt and other procedures to protect the dignity and integrity of the institution and its members and proceedings.<sup>6</sup> Rather, it has become accepted congressional practice to employ a simple

<sup>3</sup> See *Deschler's Precedents*, Volume 7, § 5 (Concurrent Resolutions), and § 6 (Simple Resolutions); Brown, *House Practice*, 104<sup>th</sup> Cong., 2d Sess. at 161 (1996).

<sup>4</sup> Note II *Hinds' Precedents of the House of Representatives*, §1569, pp. 1029-1030 "It was objected that the Constitution did not include such expressions of opinion among the duties of the House . . ." (Citing debate and vote on a resolution of approval of the President's conduct, which was laid on the table, 20 *Annals of the Congress*, 11<sup>th</sup> Cong., 2<sup>nd</sup> Sess., at 92-118, 134-151, 156-161, 164-182, 187-217, 219 (1809)).

<sup>5</sup> Note II *Hinds' Precedents*, *supra* at §1581, pp. 1035-1036, referring to a resolution adopted by the House in 1867. After having conducted investigations into the conduct of administration of the New York custom-house by Mr. Henry Smyth, and finding that "there is not sufficient time prior to adjournment to finish the matter, the House affirmed in the resolution "Henry A. Smyth's unfitness to hold the office," and recommended that he "should be removed from the office of collector" (*Congressional Globe*, 40<sup>th</sup> Congress, 1<sup>st</sup> Session, pp. 255-256, 282-285, 394-395 (1867)). Note also, in 1924, during Congress' Teapot Dome investigation, that the Senate passed a resolution indicating its sense that the President "immediately request the resignation" of the Secretary of Navy. 65 *Congressional Record*, 68<sup>th</sup> Cong., 1<sup>st</sup> Sess., 2223-2245, February 11, 1924. Both of these resolutions, adopted by the House and Senate respectively, were objected to by some as interfering with the President's prerogatives in appointments and removals of executive officials, and the latter action as labeling with a "brand of shame" an individual in the Government without conducting impeachment proceedings. See discussion in Fisher, "Congress and the Removal Power," in *Congress & the Presidency*, Volume 10, at 67-68 (1983). The censure of a judge, recommended in a Judiciary Committee report in 1933 instead of impeachment, was objected to by a Member who explained "I do not believe that the constitutional power of impeachment includes censure." The recommendation of censure was not approved, and the House adopted as a substitute an amendment impeaching the judge. See discussion in *Deschler's Precedents*, *supra* at Ch. 14, § 15, at p. 400. In other instances recommendations of censure, as an alternative to impeachment were made by the Judiciary Committee, but were not acted on by the House. *Deschler's Precedents*, *id.* at 400-401, III *Hinds' Precedents*, *supra* at §§ 2519, 2520, at pp. 1032-1034.

<sup>6</sup> Note, generally, discussion of "collective and aggregate privileges of a legislative assembly" and the "incidental powers" of a legislature in Cushing, *Elements of the Law and Practice of* (continued...)

resolution of one House of Congress, or a concurrent resolution by both Houses, for certain nonlegislative matters, such as to express the opinion or the sense of the Congress or of one House of Congress on a public matter,<sup>7</sup> and a resolution of censure would appear to be in the nature of such a “sense of Congress” or sense of the House or Senate resolution.

Periodically during the nineteenth century Congress debated and considered the censure of a President of the United States. The Senate had adopted a resolution in 1834 stating that certain conduct of President Andrew Jackson, involving a policy dispute concerning the removal of the Secretary of the Treasury and the question of the availability of certain documents, was “in derogation” of the Constitution or the laws of the nation.<sup>8</sup> Three years later, however, upon the strong protestation of the President concerning the prerogatives of his office, and upon the President’s political allies regaining control of the Senate, the Senate revoked and expunged that resolution.<sup>9</sup> The Senate resolution concerning President Jackson did not expressly contain the word “censure” or other specific word of condemnation, and some critics of Congress’ authority to adopt such resolutions of censure have categorized the 1834 resolution as one other than a “censure” or punishment of the executive.<sup>10</sup>

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<sup>6</sup>(...continued)

*Legislative Assemblies in the United States of America*, 245-255, 255-272 (1856); note specifically as to inherent contempt authority, *Anderson v. Dunn*, 19 U.S. 204 (1821). For this reason, that such action does not bear upon the proceedings and privileges of the House, such a resolution would generally not be considered to be a privileged resolution. See 3 *Deschler’s Precedents*, *supra* at Chapter 14, § 1, p. 401.

<sup>7</sup> “Simple resolutions are used in dealing with nonlegislative matters such as expressing opinions or facts .... Except as specifically provided by law, they have no legal effect, and require no action by the other House. Containing no legislative provisions, they are not presented to the President of the United States for his approval, as in the case of bills and joint resolutions.” *Deschler’s Precedents*, Volume 7, § 6. “[Concurrent resolutions] are not used in the adoption of general legislation. .... [They] are used in the adoption of joint rules ... [and] expressing the sense of Congress on propositions .... A concurrent resolution does not involve an exercise of the legislative power under article I of the Constitution in which the President must participate.” *Deschler’s Precedents*, Volume 7, § 5. Brown, *House Practice*, *supra* at 161: “Simple or concurrent resolutions are used ... to express facts or opinions, or to dispose of some other nonlegislative matter.” See also Riddick & Fruman, *Riddick’s Senate Procedure*, 1202 (1992).

<sup>8</sup> The resolution of March 28, 1834, read as follows: “Resolved, That the President, in the late executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both.” Note II *Hinds’ Precedents*, *supra* at §1591, p. 1040.

<sup>9</sup> *Register of Debates*, 24<sup>th</sup> Cong., 2d Sess. 379-418, 427-506 (1837), see discussion in Fisher, *Constitutional Conflicts Between Congress and the President*, 54-55 (4<sup>th</sup> ed. 1997).

<sup>10</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session, 2938-2939, June 13, 1860. Referring to the Senate resolution concerning President Jackson, Representative Bobock noted: “You will observe that in this resolution there is no direct declaration of censure, and no impeachment of the moves of the President. It was simply a declaration that his act was not in conformity with the Constitution and the laws of the land.”

In 1860, the House of Representatives adopted a resolution stating that the President's conduct was deserving of its "reproof," in a matter concerning the conduct of President Buchanan and his Secretary of the Navy in allowing political considerations and alleged campaign contribution "kickbacks" to influence the letting of Government contracts to political supporters, rather than the lowest bidder.<sup>11</sup> After debating both the substance of the charges and the authority of the House to adopt such a resolution, characterized by one Member as "censur[ing] indiscriminately the President of the United States and the Secretary of Navy,"<sup>12</sup> the House adopted the resolution 106-61.<sup>13</sup> It may also be noted that, although not a resolution of censure or disapproval, the House in 1842 adopted a report from a select committee, to which the President's veto message had been referred, which strongly criticized the actions of President Tyler for "gross abuse of constitutional power and bold assumption of powers never vested in him by any law"; for having "assumed ... the whole Legislative power to himself, and ... levying millions of money upon the people, without any authority of law"; and for the "abusive exercise of the constitutional power of the President to arrest the action of Congress upon measures vital to the welfare of the people ..."<sup>14</sup>

Other resolutions of disapproval or censure of a President have been debated on the floor of the House or Senate. The House debated the issue of a resolution criticizing President John Adams in 1800 because of a communication from the President to a judge, which the President's critics deemed to be a "dangerous interference of the Executive with Judicial decisions," concerning a celebrated deportation case.<sup>15</sup> The Senate in 1862 also debated, and tabled a motion for censure of James Buchanan, who had recently been President of the United States, for alleged failures while President to take the necessary action to prevent the secession from the Union of several southern states.<sup>16</sup>

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<sup>11</sup> "Resolved, That the President and Secretary of the Navy, by receiving and considering the party relations of bidders for contracts with the United States, and the effect of awarding contracts upon pending elections, have set an example dangerous to the public safety, and deserving the reproof of this House." *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Sess., 2951, June 13, 1860.

<sup>12</sup> *Id.* at 2951, Mr. Clark of Missouri.

<sup>13</sup> *Id.* at 2951.

<sup>14</sup> *Journal of the House of Representatives*, 27<sup>th</sup> Cong., 2d Sess., 1343, 1346-1352, August 17, 1842.

<sup>15</sup> 10 *Annals of Congress* 532-33, 542-578, 584-619 (1800), discussed in Neuman, "Habeas Corpus, Executive Detention, and the Removal of Aliens," 98 *Columbia Law Review* 961, 995-996 (1998).

<sup>16</sup> 11 *Hinds' Precedents*, *supra* at §1571, p. 1030, citing *Congressional Globe*, 37<sup>th</sup> Congress, 3<sup>rd</sup> Session pp. 101-102, December 16, 1862. A censure resolution concerning President Richard Nixon was introduced in the House in 1974 by Representative Findley of Illinois, but received no floor action. See H. Res. 1288, 93rd Congress, 2d Session. See discussion at 120 *Congressional Record* 26820, August 5, 1974. The resolution stated:

Whereas the people have the right to expect from the President of the United States high moral standards and personal example, as well as great diligence in the exercise of official responsibilities and obligations.

And whereas, Richard M. Nixon, in his conduct of the office of President - despite great achievements in foreign policy which are highly beneficial to every citizen and indeed

(continued...)

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The House or the Senate have also from time to time censured or expressed its disapprobation of other executive officers, or their conduct, in the form of a resolution adopted by the body. In addition to the resolutions that found misconduct on the part of an executive officer and urged the President to seek the officer's resignation,<sup>17</sup> the House has, for example,<sup>18</sup> adopted a resolution in 1896 where it found that a United States Ambassador, by his speech and conduct "has committed an offense against diplomatic propriety and an abuse of the privileges of his exalted position," and therefore, "as the immediate representatives of the American people, and in their names, we condemn and censure the said utterances of Thomas F. Bayard."<sup>19</sup>

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( continued)

to all people of the world - (1) has shown insensitivity to the moral demands, lofty purpose and ideals of the high office he holds in trust, and (2) has, through negligence and maladministration, failed to prevent his close subordinates and agents from committing acts of grave misconduct obstruction and impairment of justice, abuse and undue concentration of power, and contravention of the laws governing agencies of the Executive Branch.

Now, therefore, be it resolved by the House of Representatives that Richard M. Nixon should be and he is hereby censured for said moral insensitivity, negligence and maladministration

<sup>17</sup> See footnote 5, *supra* discussing the 1867 House resolution concerning the New York custom-house administration and Mr. Henry Smyth (II *Hinds' Precedents, supra* at §1581, pp 1035-1036), and the 1924 Senate resolution concerning the Secretary of Navy and the Teapot Dome investigation, 65 *Congressional Record, supra* at 2223-2245, February 11, 1924

<sup>18</sup> The precedents and incidents provided are intended to be examples of House and Senate precedents, and are not designed to be an all-inclusive, definitive list of all resolutions of disapproval or censure of executive officials that may have been adopted or debated by either House of Congress

<sup>19</sup> 28 *Congressional Record*, 54<sup>th</sup> Cong., 1<sup>st</sup> Sess., p. 3034, March 20, 1896

Now, who wants recognition?

Mr. MEEHAN. Could we have a roll call vote?

Chairman HYDE. No, you can't. Ladies and gentlemen, this ends the committee's proceeding—

Mr. SCOTT. Mr. Chairman?

Chairman HYDE. Who seeks recognition? Mr. Scott.

Mr. SCOTT. We have a lot of material in executive session. Is there a procedure for determining how any more of it gets released?

Chairman HYDE. I'm not able to deal with that now.

Mr. SCOTT. I would like to make a unanimous consent request that the Starr letter and answers to our questions be taken out of executive session retroactively.

Chairman HYDE. Without objection, so ordered.

Mr. SCOTT. Thank you.

Chairman HYDE. This ends the committee's proceedings pursuant to House Res. 581. The committee stands adjourned and the Committee of the Judiciary for the 105th Congress slips into history, and I want to congratulate every member for contributing to a challenging, productive two-year session and see you in the next Congress. Committee's adjourned.

[Whereupon, at 6:22 p.m., the committee was adjourned.]

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APPENDIX

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December 11, 1998

**HAND DELIVERED**

The Honorable Henry J. Hyde  
Chairman, Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515-6216

The Honorable John Conyers, Jr.  
Ranking Minority Member,  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515-6216

Dear Chairman Hyde and Representative Conyers:

Thank you for your letter of December 8, which authorizes me to respond to certain written questions of individual Members. In preparing these answers I have, of necessity, relied upon the memory and work of many of my staff members. To a large degree these facts are outside my personal knowledge. Thus, to assist Congress as fully as this Office is capable, I have prepared these answers in consultation with every available attorney and investigator in the Office who has relevant information, and these answers represent the best collective understanding of the Office.

As I said during my testimony, my role in the current proceeding is a limited one, circumscribed by statute. My staff and I, in the course of carrying out our mandate from the Special Division, came upon "substantial and credible information . . . that may constitute grounds for an impeachment." Accordingly, as the Ethics in Government Act requires, we transmitted such information to the House.

While I am happy to explain the Referral and the investigative decisions that underlie it in response to questions, let me reiterate that I am not an advocate for any particular course of action. Congress alone must determine what action that evidence merits.

Honorable Henry Hyde  
Honorable John Conyers, Jr.  
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With that introduction, let me turn to the specific questions posed:

Questions from Representative Lofgren

**1. When did you first hear any information to the effect that a tape recording existed of a woman -- any woman -- who claimed to have had a sexual contact with President Clinton?**

In 1992, during the Presidential primary season, I became aware through media reports that Gennifer Flowers claimed to have had an affair with then-Governor Clinton and to possess tape recordings that, she claimed, related to contacts she had with then-Governor Clinton.

**2. In or about November 1997, did you discuss with any person the possibility that a tape recording might exist on which a woman claimed to have had sexual contact with President Clinton?**

I do not remember any such incident and do not believe any such incident occurred. More specifically:

A. To the extent your question might be taken as a reference to casual conversation about the Gennifer Flowers tapes, it is possible (though unlikely) that I had such discussions with friends and acquaintances in the time period mentioned. I would have no reason to and do not remember any such conversation.

B. To the extent your question might be taken as asking about tapes relating to some unidentified woman who was never subsequently identified, or was subsequently identified as someone other than Ms. Lewinsky, I do not remember any such conversation in November 1997 and I do not believe such a conversation occurred. In Spring 1998, the Office learned of, and I had conversations concerning, the possible existence of a tape recording in which a woman other than Monica Lewinsky stated that she was sexually assaulted by then-Arkansas Attorney General Clinton.

C. One private citizen has alleged to the FBI that a videotape exists of a dinner in McLean, Virginia sometime in November or December 1997 which was allegedly attended by me, my deputy Jackie M. Bennett Jr., Jonah Goldberg, Lucianne Goldberg,

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and Dale Young. Mr. Bennett and I both deny that such an event occurred.

D. Finally, your question might be taken as asking when I first learned of a tape recording of a woman who, though unidentified at the time, I later came to understand was Monica Lewinsky. I did not personally learn of the possible existence of such a tape until on or about January 12. As my testimony reflects, a staff member in our Office has told me that he had heard of the possible existence of such a tape on January 8.

**3. You "requested that [I] release the media" by "waiving any privilege or shield law" and "directing each and every member of [my] staff to waive any privilege."**

As I said during my testimony, in response to a question from Representative Waters, I believe the course you suggest would be unwise in light of the ongoing litigation on the matter. The litigation is, as the Committee knows, under seal. Because of the strictures of Rule 6(e) and the decision of the United States Court of Appeals for the District of Columbia Circuit, see In re Sealed Case No 98-3077, 151 F.3d 1059 (D.C. Cir. 1998), it would be inappropriate to comment further except to reiterate my testimony that the allegations against our Office are groundless. We are confident that the ultimate resolution will demonstrate that our Office conducted itself lawfully and appropriately.

Questions from Representative Conyers

**1. . . . Please complete the process of "checking," "searching" or "double-checking" your recollection and answer the questions to which you either were unable to respond or provide qualified answers. Please also let us know if you would like to amend or supplement any of the answers you gave during your appearance as a result of your "checked," "double-checked" or "searched" recollection.**

Most of these instances are addressed in my specific responses in this letter to the additional questions posed by Members. To the limited extent that they are not addressed in this letter, I have reviewed the transcript of my testimony and have nothing to add to my revised answers.

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Honorable John Conyers, Jr.  
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**2. (a) When did you first learn that Samuel Dash intended to resign his position as your office's ethics adviser if you testified as you did on November 19?**

Several weeks prior to my testimony before the Committee, Professor Dash informed me and another member of my staff that he intended to leave the Office by the end of the year because he thought the majority of the work of the Office had been completed and therefore his counsel was no longer needed.

Later, in the days leading to my testimony, I was told that Professor Dash had expressed concern to a few members of our staff about the tenor of my draft opening statement solely with regard to our discussion of the Referral. Professor Dash, who supported our written Referral, stated that he believed it was inappropriate to repeat in my opening statement our conclusions in the Referral. Professor Dash said that I could answer any questions about our conclusions and support those conclusions, but he felt I should not do so in my opening statement. Rather, Professor Dash recommended that in my opening statement I strongly defend the actions and investigative strategy of our Office because he believed we had acted professionally and ethically and that the attacks were misguided and unfair. I understood the strength of his concern and the possibility that it might cause him to resign.

We subsequently made several modifications to the opening statement that we believed were responsive to the thrust of Professor Dash's concerns. For example, I repeatedly told this Committee that Congress, and not our Office, was responsible for the ultimate evaluation of the information presented. I hoped that the modifications we had made adequately addressed Professor Dash's concerns.

I did not learn of Professor Dash's actual resignation until I heard it on CNN on the morning of November 20. I was surprised by it. Later that morning, after the letter had already been made public, I received a copy of Professor Dash's resignation letter that had been delivered to the security kiosk in the public lobby of our office building.

**(b) If you learned of his intent to resign prior to the hearing, why did you fail to mention that fact when you invoked his name on several occasions during the hearing?**

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I invoked Professor Dash's name in a wholly appropriate manner, reflecting his approval of how the Office has conducted itself. As Professor Dash himself emphasized in his letter of resignation, "I found that you conducted yourself with integrity and professionalism as did your staff of experienced federal prosecutors." Thus, even as he left our Office over a principle he held strongly, Professor Dash offered endorsed the conduct of our Office -- an endorsement I proudly invoked in my testimony.

**(c) Did Mr. Dash write any memoranda, letters, or opinions to you concerning: (i) how to prepare and present a Referral to Congress under 28 U.S.C. 595(c); (ii) whether and how you should make any oral presentation to the Committee? . . . ; (iii) [t]he appropriateness of "off the record" or "background" contacts between members of your Office and the media.**

Professor Dash publicly released a letter responsive to your request on November 20. All other memoranda, letters, and opinions provided by Professor Dash are internal, deliberative documents which under Department of Justice should not be provided to Congress.

**3. You stated during your appearance that you would be willing to provide the Committee with a complete list of private clients that you have represented since accepting the position of Independent Counsel. Please provide such listing.**

Abbott Laboratories  
Alliedsignal Inc.  
Amer. Auto Mfg Assn/Assn Int'l  
American Automobile Manufacturers Assn.  
American Insurance Association  
Amoco Corporation  
Apple Computer Incorporated  
Associated Insurance Companies  
Bell Atlantic Corporation  
Board of Trade, Chicago  
Brown & Williamson Tobacco  
Citisteel Inc.  
CMC Heartland Partners  
E.I. Dupont de Nemours & Co.  
Eleanor M. Hesse  
General Motors Corporation  
GKN plc  
Goodman Holdings/Anglo Irish

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GTE Corporation  
 Hughes Space & Communications, Intl. Inc.  
 Lynde and Harry Bradley Foundation  
 Morgan Stanley, Dean Witter & Co.  
 Motorola, Inc.  
 Nathan Lewin, Esq.  
 News America, Inc.  
 Philip Morris Companies, Inc.  
 Ray Hays, G. Stokley, et al.  
 Raytheon Missile Systems Company  
 Ricky Andrews, Jim Bishop, et al.  
 Ronald S. Haft  
 Senate Select Committee on Ethics  
 Sisters of the Visitation of Georgetown  
 Southwestern Bell Telephone Co.  
 State of Wisconsin  
 Suzuki Motor Corporation  
 United Air Lines, Inc.  
 Victor Posner  
 Vista Paint Corporation  
 Wharf Cable Limited  
 Wind Point Partners II

**4. When did you first learn that Richard Mellon Scaife or any entity associated with him was involved with Pepperdine University and/or the deanship offer that you previously accepted? Please describe the circumstances by which you were so appraised of his involvement.**

To my knowledge, Richard Mellon Scaife had no involvement whatsoever with Pepperdine University's offer of a deanship to me. My understanding is that Mr. Scaife and the Dean and Provost of Pepperdine University have all confirmed this fact. Mr. Scaife's financial contributions to Pepperdine have been a matter of public record, I believe, for many years. In January 1997, I received a large notebook from Pepperdine, which contained a March 1996 memorandum listing "The Sarah Scaife Foundation" as a benefactor of the Pepperdine School of Public Policy. It is perhaps worth noting that Mr. Scaife has reportedly funded groups that have published information highly critical of me and this Office for our work on the Vincent Foster investigation

**5. . . . Did attorneys, agents or others working with or for your Office conduct interviews of Arkansas troopers or others in Arkansas in 1997 in which any questions concerning the**

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**President's involvement with women were asked? If so, how did such questions (not the interviews, but the questions into that subject) relate to any jurisdiction you had at the time? Please send the Committee any interview memoranda or notes of any such interviews.**

During the course of our investigation we have interviewed various current and former Arkansas State Troopers. The allegation and inference that the trooper interviews were an effort to conduct an investigation into rumors of extramarital affairs involving the President are false. We denied this allegation when it was first raised in June 1997 and deny it again today. We sought to determine whether Governor Clinton or Mrs. Clinton had confided in any associates about their dealings with the McDougals, Rose Law Firm and others.

At the end of May 1996, Jim and Susan McDougal and Governor Tucker were found guilty by a jury in Little Rock. Following his conviction, Jim McDougal began cooperating with this Office. In August 1996, he provided the Office with additional relevant facts and information. The Office sought to prove or disprove his testimony and information. In September 1996, Susan McDougal went into civil contempt rather than give testimony to the grand jury, thereby closing off one avenue of possible corroboration.

In connection with the Madison Guaranty Savings and Loan, Capital Management Services, and Whitewater investigations, the Office and its agents analyzed Governor Clinton's telephone message slips, appointment books, and trooper logs during relevant time periods. As noted above, we sought to determine whether Governor Clinton or Mrs. Clinton had confided in any associates about their dealings with the McDougals, Rose Law Firm and others.

Armed with the new evidence from Jim McDougal and the information from the message slips, appointment books, and trooper logs, career prosecutors and experienced investigators determined -- in accordance with standard investigative practice -- that certain Arkansas Troopers should be interviewed. Some had previously been interviewed in February 1995 regarding matters within the Office's core jurisdiction, including contacts between the Clintons and the McDougals, as well as certain issues raised in the Resolution Trust Corporation's criminal referrals. Several experienced agents interviewed a number of troopers identified from the trooper logs for the relevant time frames. Between November 1996 and March 1997, we conducted interviews of

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12 troopers. They were questioned about their knowledge of the Clintons' contacts with the McDougals and other persons relating to the Madison, Whitewater, and Capital Management Services transactions.

The troopers were also asked to identify persons (both men and women) whom President or Mrs. Clinton were close to and in whom they might have confided during the relevant time frames. The troopers who were interviewed identified persons whom they believed were close to either Governor Clinton or Mrs. Clinton.

Many of the troopers identified both men and women who were close associates of Governor and Mrs. Clinton. For example, the two troopers quoted in the June 1997 Washington Post article, Roger Perry and Ronald Anderson, identified men and women whom then-Governor Clinton and Mrs. Clinton might have been close to and confided in. Roger Perry identified 10 individuals close to then-Governor Clinton, 4 of whom were women. Ronald Anderson identified 14 associates of then-Governor Clinton, including 5 women.

Because the troopers interviewed were explicitly promised confidentiality we must respectfully decline to furnish their interviews to the Committee. So too, consistent with Department of Justice policy, we must respectfully decline to make the rough notes of interviews available. We are prepared, of course, to discuss mechanisms by which the Committee can carry out its duties consistent with our pledges of confidentiality.

**6. (a) At any time, have you talked to Richard Porter about any issues relating to the Paula Jones case?**

**(b) If so, please identify the date(s) of each such conversation and the precise content of the conversations.**

I have not spoken with Mr. Porter about any issues relating to the Paula Jones case. This is consistent with Mr. Porter's recollection -- he has publicly stated that he has never spoken with me about the Paula Jones case. The only contact we have had that is at all related to your question was a voice-mail message I received from Mr. Porter in Spring 1998 in which he apologized to me that misinformation about his actions had been used unfairly to attack and embarrass me and the work of this Office.

**7. (a) . . . . Please state whether any one from, or working with, or associated with, your Office investigated**

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**(including asking any questions about or obtaining any documents about) Ms. Steele's adoption of her child?**

**(b) If the answer to the foregoing question is "yes," please tell us what relevance that issue had to any issue under your jurisdiction; and**

**(c) Please respond to Ms. Steele's allegation that the issue of the legality of her son's adoption was raised by your Office in an attempt to pressure her to cooperate with your investigation.**

The investigation concerning Ms. Steele's involvement in the Kathleen Willey matter is pending. Department of Justice policy generally prohibits providing Congress with confidential material relating to an ongoing investigation. Thus we are not in a position to directly answer question 7(a) or 7(b) at this time. Having said that, the Office has not attempted to investigate whether the adoption is proper and legal. We have not obtained or attempted to obtain any documents concerning the adoption of her son from anyone, including any state, local, national, or foreign government or agency. The suggestion that this Office or anyone working on our behalf has attempted in any way to use Ms. Steele's son's adoption to pressure her to change her testimony is absolutely false. Like many other groundless allegations made against the Office, this allegation is one which we cannot fully factually respond to because of the pendency of an investigation. Our Office and the investigators, agents, and attorneys working on our behalf have conducted and continue to conduct a proper, thorough, and professional investigation.

**8. . . . [D]o you admit or deny that during the day or night of January 16, 1998, your associates or agents:**

I was not, of course, present at the Ritz Carlton. Many of these questions appear to rely on Ms. Lewinsky's perception of events as they unfolded that day. It is my understanding, however, that Ms. Lewinsky was, understandably, upset and distraught when approached by this Office -- not due to her treatment by this Office, but due to the gravity of the situation in which she had found herself. Ms. Lewinsky apparently interpreted this Office's actions from the perspective of a very difficult and emotional day. By contrast, Chief Judge Norma Holloway Johnson has ruled, among other things, that:

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- our Office did not violate Ms. Lewinsky's right to counsel, because the right had not yet attached;
- our Office did not violate District of Columbia Rules of Professional Conduct by contacting Ms. Lewinsky because the interview occurred prior to indictment in a non-custodial setting; and
- our Office did not disrupt Ms. Lewinsky's attorney-client relationship by preventing her from contacting Mr. Carter because she was given several unsupervised opportunities to contact anyone she chose, and an agent called Mr. Carter's office to determine if he would be available if Ms. Lewinsky decided she wished to contact him.

The opinion, of course, speaks for itself.

**(a) told Ms. Lewinsky that she could go to jail for 27 years (if you admit that they did, on what basis under what guidelines did they conclude that she could receive that type of sentence)**

Deny. I was not at the Ritz Carlton. I am advised by the Office staff that, during the course of the discussion with Ms. Lewinsky, she was advised of the nature of the possible charges against her and what the maximum penalty would be for each offense. At no time was Ms. Lewinsky told what her actual sentence would be. I note that all of the applicable federal offenses carry maximum penalties in 5-year increments and, consequently, no possible combination of charges could carry a 27-year maximum penalty.

**(b) threatened to prosecute Ms. Lewinsky's mother**

Deny. Again, I was not at the Ritz Carlton. I am advised that the Office did not threaten to prosecute Ms. Lewinsky's mother. The Office staff told Ms. Lewinsky some of the facts and evidence known to the Office, including a reference to her mother's apparent, though limited, knowledge of and involvement in the crimes under investigation.

**(c) told Ms. Lewinsky that she would be less likely to receive immunity if she contacted her attorney**

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Deny. Once again, I was not at the Ritz Carlton. Ms. Lewinsky did not have an attorney for purposes of the criminal investigation. Our view was later confirmed when we learned of the terms of the "Engagement Agreement" between Francis D. Carter and Ms. Lewinsky which clearly limited Mr. Carter's representation of Ms. Lewinsky to Ms. Lewinsky's Jones deposition. We did discuss with a Department official the fact that Frank Carter represented her in connection with the Jones deposition and not in the criminal investigation and our understanding that we could ethically approach her in connection with our criminal investigation. Subsequently, Chief Judge Norma Holloway Johnson held, among other things, that our Office did not disrupt Ms. Lewinsky's attorney-client relationship by preventing her from contacting Mr. Carter.

Second, Ms. Lewinsky was told that she was free to contact Mr. Carter and when she asked about the possibility of doing so we called Mr. Carter's office on her behalf. Hotel records confirm this fact.

Third, we provided Ms. Lewinsky with the phone number of a legal aid or the public defender's office and she was not told that she would risk jeopardizing a possible immunity agreement if she contacted an attorney there. She chose not to call that office. She later retained William Ginsburg to represent her in the criminal matter and we renewed the offer of immunity when he was retained. Ms. Lewinsky and Mr. Ginsburg declined the offer that evening, and we continued to discuss it with her attorneys over the course of the next several days. But the fact is that an immunity offer was made to her both before and after she had retained counsel.

We invited Ms. Lewinsky to cooperate with our investigation. We warned her, though, that any cooperation could be less effective if others (including Mr. Carter) knew she was cooperating. We also told her that she would receive a greater benefit for more effective cooperation.

**(d) told Ms. Lewinsky that they were not "comfortable" with William Ginsburg**

Deny. I was not present at the Ritz Carlton. This is an apparently mistaken reference to the FBI report of interview concerning the meeting with Ms. Lewinsky. That report states "AIC Emmick . . . advised Ginsburg he was uncomfortable with the relationship between Ginsburg and Monica Lewinsky." House Doc.

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105-311, at 1380 (emphasis supplied) (capitalization removed). Thus, nobody from the Office ever told Ms. Lewinsky he or she was not "comfortable" with Mr. Ginsburg.

Mr. Emmick did advise Mr. Ginsburg that he was uncomfortable with the fact that, although Mr. Ginsburg claimed to represent Ms. Lewinsky, Mr. Ginsburg had never spoken to her at all on the subject; and that Mr. Ginsburg had, in fact, been hired by Ms. Lewinsky's father without consulting Ms. Lewinsky personally. Indeed, as the FBI report reflects, Ms. Lewinsky also was unsure initially if Mr. Ginsburg should represent her, because he was a medical malpractice attorney. Mr. Emmick therefore requested that Ms. Lewinsky and Mr. Ginsburg speak on the phone and that Ms. Lewinsky confirm that she was represented by Mr. Ginsburg. After speaking with Mr. Ginsburg, Ms. Lewinsky advised the Office that she had retained Mr. Ginsburg. Thereafter we conducted all further discussions with him or his associate and scrupulously honored their attorney-client relationship.

**(e) when Ms. Lewinsky asked to speak with her mother, said words to the effect that she was 24, she was smart, and she did not need to talk to her mommy**

Admit. Ms. Lewinsky was at all times treated courteously and professionally. According to my staff, Ms. Lewinsky was told that she was 24, she was smart, and she should not need to talk to her mother about cooperating with the investigation. Again, we advised Ms. Lewinsky that her cooperation with the Office, should she choose to cooperate, would be less beneficial to her if the fact of her cooperation became known. In the end, we waited more than 6 hours for Marcia Lewis to arrive from New York. When she arrived: we answered her question; Ms. Lewis and Ms. Lewinsky consulted privately; and they contacted Bernard Lewinsky to help Ms. Lewinsky find an attorney. When they left at the end of the evening both Ms. Lewinsky and her mother specifically thanked the Office staff for being so nice. See House Doc. 105-311, at 1380 (FBI Report of Interview with Monica Lewinsky); 105-316, at 2324 (testimony of Marcia Lewis).

**9. When your agents and attorneys confronted Monica Lewinsky on January 16, 1998, according to her grand jury testimony, they told her that she had committed a crime by signing a false affidavit.**

Our Office advised Ms. Lewinsky that, based on information available to us, we believed she had committed a number of

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offenses, including subornation of perjury, obstruction of justice, conspiracy, and perjury by signing a false affidavit. And, of course, as Ms. Lewinsky later admitted, the affidavit was false.

**(a) Did your Office have a copy of Ms. Lewinsky's signed affidavit at the time?**

Yes.

**(b) If so, how did your Office acquire it? . . . .**

On January 15, we received a faxed copy from the business center located in the office building of James Moody, Linda Tripp's former attorney, which Mr. Moody routinely uses as his fax center. Mrs. Tripp told the Office on January 14 that she "believ[ed] that Lewinsky's affidavit was signed, sealed and delivered yesterday [i.e. on January 13]." House Doc. 105-316, at 3773. Thus, when we received the affidavit, we understood that it had been provided to us by Mr. Moody, who had received it in his capacity as Mrs. Tripp's attorney.

**10. (a) Regardless whether you believe that any statements made to the media by you, or anyone working in your Office, or under your supervision, violated Rule 6(e) of the Federal Rules of Criminal Procedure, do you admit or deny that you, or anyone working in your Office, or under your supervision, supplied any information cited in any of the twenty-four reports for which Chief Judge Norma Holloway Johnson found prima facie violations of Rule 6(e) in her order dated September 24 [sic], 1998?**

**(b) If you admit that you, or anyone working in your Office, or under your supervision, supplied any such information, please identify the particular media stories to which your admission relates.**

As I said in my testimony, this matter is under seal. With all respect, I believe it would be inappropriate to discuss the matter while the litigation is pending. Inasmuch as Representatives Conyers and Nadler have recently asked the Attorney General to remove me for cause for allegedly disclosing sealed materials, to now provide sealed information would be unwise.

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**11. Please provide the name and title of the individual who drove Linda Tripp home from the Ritz Carlton on January 16, 1998.**

To my knowledge, no employee of the Office of Independent Counsel drove Linda Tripp home from the Ritz Carlton on January 16, 1998. One Office investigator recalls that Mrs. Tripp mentioned that her lawyer was going to pick her up at the Ritz Carlton, though we have no certain knowledge of who drove her home. Moreover, to my knowledge, no employee of the Office of Independent Counsel knew that she was going to meet that evening with the attorneys representing Paula Jones. Mrs. Tripp testified before the grand jury that she had not disclosed this to any Office employee:

- Q. [D]id anybody at the Office of Independent Counsel or working for the Office of Independent Counsel know that you were going to meet with Paula Jones' attorneys?
- A. No. It never came up. It was never addressed. It was never shared.

House Doc. 105-316, at 4356.

**12. . . . Isn't it true that your agents or attorneys discussed with Ms. Lewinsky that cooperating would include the possibility of taping conversations with Mr. Jordan, Ms. Currie or the President? If you claim those names were not discussed, is it your position that when Ms. Lewinsky testified about this matter, she was not being truthful?**

At no time during the meeting with Ms. Lewinsky was she asked to tape record a conversation with President Clinton or Vernon Jordan. Ms. Lewinsky was asked to cooperate. We described to her the investigation and identified some of the witnesses and subjects of the investigation, including President Clinton, Mr. Jordan, and Ms. Currie, and their roles. Ms. Lewinsky was told that cooperation would include debriefing, testimony, and, possibly, tape recording conversations with some witnesses and subjects. Ms. Lewinsky was told that we wanted to debrief her before deciding with whom, if anyone, she would be asked to tape record conversations. Although we hoped, when we approached Ms. Lewinsky, that the situation might eventually permit us to have Ms. Lewinsky tape record conversations with some individuals, including possibly Ms. Currie, we did not have any plan to have her tape record conversations with Mr. Jordan or

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President Clinton. Ms. Lewinsky may have reached an incorrect inference as to this Office's intentions based upon our general discussion of the possibility of tape recording conversations and our other general discussions about the nature of our investigation.

**13. . . . For each of the procedures that Ms. Lewinsky testified were used, please indicate whether your agents or attorneys advised any official of the Department of Justice, before hand, about each of the following:**

Generally, our discussions with the Department of Justice did not approach the high level of specificity suggested by your questions. Moreover, the factual and legal premises of many of the questions are wrong. With that introduction:

**(a) That Ms. Lewinsky would be taken to a hotel room**

We discussed with a Department official the plan that Ms. Lewinsky would be met, taken to a private location, spoken to by Office staff, and asked to cooperate. We are uncertain whether the specific location of a hotel room was mentioned.

**(b) That Ms. Lewinsky would be read her Miranda rights**

We believe we informed a Department official that we intended to advise Ms. Lewinsky of her rights, and to tell her that she was free to leave at any time. Miranda warnings were not required because, as Chief Judge Johnson found, Ms. Lewinsky was not in custody. At the Ritz Carlton, FBI agents assigned to the Office approached Ms. Lewinsky in the lobby, asked her to go upstairs, and told her she was not under arrest and was free to leave at any time. Later, in the hotel room, she was again told she was free to leave at any time. At one point, an agent attempted to read from a standard FBI Advice of Rights form, but Ms. Lewinsky became upset and the reading was discontinued.

**(c) That Ms. Lewinsky would be in that room or with your agents or attorneys for 10 or more hours**

No. As the FBI report of interview (and the recently unsealed documents from the litigation relating to the subpoena to Mr. Carter) make clear, the bulk of the time spent with Ms. Lewinsky was attributable to her own insistence that her mother be present; her mother's unwillingness to fly from New York to

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Washington; and her mother's unavoidable delay in arriving due to a train delay. Indeed, 6 hours passed between Ms. Lewinsky's call to her mother and Marcia Lewis's arrival. Over 2 more hours passed as our Office talked with Ms. Lewinsky, Ms. Lewis, Bernard Lewinsky, and Mr. Ginsburg, all with Ms. Lewinsky's approval. During the entire evening, Ms. Lewinsky was never questioned about her involvement in the matters under investigation. When they left at the end of the evening both Ms. Lewinsky and her mother specifically thanked the Office staff for being so nice. See House Doc. 105-311, at 1380 (FBI Report of Interview with Monica Lewinsky); 105-316, at 2324 (testimony of Marcia Lewis).

Thus, the specific amount of time that would be spent with Ms. Lewinsky was not discussed with the Department because it was unknown, and it was not anticipated that the meeting would extend for the length of time it did. Moreover, the factual premise of your question is incorrect as Ms. Lewinsky entered and exited the room on occasion unaccompanied.

**(d) That your agents or attorneys would tell Ms. Lewinsky that she could go to jail for 27 years**

No. The factual premise of your question is incorrect as discussed in my answer to question 8(a), which says: "[D]uring the course of the discussion with Ms. Lewinsky, she was advised of the nature of the possible charges against her and what the maximum penalty would be for each offense. At no time was Ms. Lewinsky told what her actual sentence would be." Consequently, this issue was never discussed with the Department.

**(e) That your agents or attorneys would discourage Ms. Lewinsky from talking with her attorney, Frank Carter**

The factual premise of your question is incorrect, as discussed in my answer to question 8(c), which says: "Ms. Lewinsky did not have an attorney for purposes of the criminal investigation. Our view was later confirmed when we learned of the terms of the 'Engagement Agreement' between Francis D. Carter and Ms. Lewinsky which clearly limited Mr. Carter's representation of Ms. Lewinsky to Ms. Lewinsky's Jones deposition." Subsequently, Chief Judge Norma Holloway Johnson held, among other things, that our Office did not disrupt Ms. Lewinsky's attorney-client relationship by preventing her from contacting Mr. Carter.

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As I also noted in my answer to question 8(c): "We invited Ms. Lewinsky to cooperate with our investigation. We warned her, though, that any cooperation could be less effective if others (including Mr. Carter) knew she was cooperating. We also told her that she would receive a greater benefit for more effective cooperation."

We did discuss with a Department official the fact that Frank Carter represented her in connection with the Jones deposition and not in the criminal investigation; our understanding that we could ethically approach her in connection with our criminal investigation; and our concern that if information regarding our contact with Ms. Lewinsky became known, her ability to assist the investigation would be compromised.

**(f) That if Ms. Lewinsky secured the representation of another attorney, your agents or attorneys would tell her that they were "uncomfortable" with that attorney**

No. The factual premise of your question is incorrect as discussed in my answer to question 8(d), which says: "[T]his is an apparently mistaken reference to the FBI report of interview concerning the meeting with Ms. Lewinsky. That report states 'AIC Emmick . . . advised Ginsburg he was uncomfortable with the relationship between Ginsburg and Monica Lewinsky.' House Doc. 105-311, at 1380 (emphasis supplied) (capitalization removed). Thus, nobody from the Office ever told Ms. Lewinsky he or she was not 'comfortable' with Mr. Ginsburg.

"Mr. Emmick did advise Mr. Ginsburg that he was uncomfortable with the fact that, although Mr. Ginsburg claimed to represent Ms. Lewinsky, Mr. Ginsburg had never spoken to her at all on the subject; and that Mr. Ginsburg had, in fact, been hired by Ms. Lewinsky's father without consulting Ms. Lewinsky personally. Indeed, as the FBI report reflects, Ms. Lewinsky also was unsure initially if Mr. Ginsburg should represent her, because he was a medical malpractice attorney. Mr. Emmick therefore requested that Ms. Lewinsky and Mr. Ginsburg speak on the phone and that Ms. Lewinsky confirm that she was represented by Mr. Ginsburg. After speaking with Mr. Ginsburg, Ms. Lewinsky advised the Office that she had retained Mr. Ginsburg. Thereafter we conducted all further discussions with him or his associate and scrupulously honored their attorney-client relationship."

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Consequently this issue was never discussed with the Department.

**(g) That your agents or attorneys would discourage her from calling her mother**

Not specifically. We discussed with the Department our concern that, if information regarding Ms. Lewinsky's cooperation became known, her ability to assist the investigation would be compromised. We did not specifically address the possibility that disclosure to Ms. Lewis could harm the investigation.

**(h) That your agents or attorneys would raise the issue of immunity without having Ms. Lewinsky's attorney present**

As noted in our response to questions 8(c) and 13(e), Mr. Carter was not Ms. Lewinsky's attorney for purposes of the criminal investigation. We discussed with the Department the propriety of approaching Ms. Lewinsky, notwithstanding Mr. Carter's representation in the Jones matter. And the Department knew we would be seeking Ms. Lewinsky's voluntary cooperation. We are uncertain whether the specific topic of immunity was discussed.

**(i) That your agents or attorneys would raise the possibility of Ms. Lewinsky becoming a cooperating witness and explain to her that such cooperation included the possibility that she would be used to tape record conversations with other people, including possibly Ms. Currie, Mr. Jordan or the President**

We did discuss with a Department attorney the Office's decision to seek Ms. Lewinsky's participation as a cooperating witness, including the possibility of tape recording generally. The factual premise is incorrect, as discussed in my answer to question 12, which says: "At no time during the meeting with Ms. Lewinsky was she asked to tape record a conversation with President Clinton or Vernon Jordan. Ms. Lewinsky was asked to cooperate. We described to her the investigation and identified some of the witnesses and subjects of the investigation, including President Clinton, Mr. Jordan, and Ms. Currie, and their roles. Ms. Lewinsky was told that cooperation would include debriefing, testimony, and, possibly, tape recording conversations with some witnesses and subjects. Ms. Lewinsky was told that we wanted to debrief her before deciding with whom, if

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anyone, she would be asked to tape record conversations. Although we hoped, when we approached Ms. Lewinsky, that the situation might eventually permit us to have Ms. Lewinsky tape record conversations with some individuals, including possibly Ms. Currie, we did not have any plan to have her tape record conversations with Mr. Jordan or President Clinton. Ms. Lewinsky may have reached an incorrect inference as to this Office's intentions based upon our general discussion of the possibility of tape recording conversations and our other general discussions about the nature of our investigation."

**14. . . . Putting aside your personal opinion or position, isn't it true that:**

**(a) "materiality" is a jury question**

Yes. Materiality is a jury question. United States v. Gaudin, 515 U.S. 506 (1995).

**(b) a reasonable juror could vote against a conviction for perjury because he or she did not believe that the statements were material**

The question has been addressed, in part, by prior court rulings. On December 11, 1997 Judge Susan Webber Wright entered an order requiring President Clinton to answer certain questions relating to women such as Ms. Lewinsky, reflecting Judge Wright's views on the materiality of President Clinton's statements. The United States Court of Appeals for the District of Columbia Circuit has also ruled on the materiality of Ms. Lewinsky's affidavit in its opinion affirming the enforcement of the subpoena issued to Mr. Carter, holding that the statements in it were material.

**15. Please provide the date that your Office concluded that there was "no evidence that anyone higher than Mr. Livingstone or Mr. Marceca was in any way involved in ordering the files from the FBI." Please provide the Committee any declination or closing memoranda or other document which includes this conclusion.**

The question seems to imply that our assigned criminal jurisdiction in the FBI files matter focused on the President himself and that we at some point thereafter became aware that certain initial allegations against the President had been found

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to be untrue. But that is not an accurate description of the assigned jurisdiction or the progress of the subsequent investigation. The jurisdiction assigned to us by the Special Division, at the request of the Attorney General, focused on whether Anthony Marceca had violated federal criminal law. Unlike the Whitewater investigation (with respect to David Hale's allegation) or the Lewinsky investigation (with respect to evidence concerning Monica Lewinsky and the President), our initial jurisdiction in the FBI files matter did not arise out of any specific allegation against the President himself. At no point in the investigation did this Office receive evidence demonstrating that anyone higher than Mr. Livingstone or Mr. Marceca was involved.

After the impeachment inquiry began in the House of Representatives, we became aware that the Judiciary Committee was interested in whether this Office possessed additional evidence that "may constitute grounds for an impeachment" against the President. Our investigation into Mr. Marceca and related matters, including our understanding of the handling of the FBI files, had not produced any such evidence. As explained in my answer to question 17, it was appropriate to inform the Congress of that fact during my testimony on November 19. Providing any decisional memoranda relating to an ongoing criminal investigation would violate Department of Justice policy.

**16. Please provide the date that your office concluded that "We do not anticipate that any evidence gathered in that [Travel Office] investigation will be relevant to the Committee's current task. The President was not involved in our Travel Office investigation." Please provide the Committee any declination or closing memoranda or other document which includes this conclusion.**

As to the Travel Office matter, it is again important to understand the events that prompted the criminal investigation. The question implies that our initial criminal jurisdiction focused on the President himself and that we at some point thereafter became aware that certain initial allegations against the President had been found to be untrue. In fact, the jurisdiction assigned to us by the Special Division, at the request of the Attorney General, focused on whether David Watkins had made criminal false statements to the General Accounting Office. Statements made by Mrs. Clinton also became the subject of the criminal investigation. Our initial jurisdiction in the Travel Office matter, unlike certain other investigations

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conducted by this Office, did not arise out of any specific allegation against the President himself. At no point in the investigation did this Office receive evidence showing that President Clinton was involved.

After the impeachment inquiry began in the House of Representatives, we became aware that the Judiciary Committee was interested in whether this Office possessed additional evidence that "may constitute grounds for an impeachment" against the President. Our investigation into statements made by Mr. Watkins and Mrs. Clinton, and into related matters, had not produced any such evidence. As explained in my answer to question 17, it was appropriate to inform the Congress of that fact during my testimony on November 19. Providing any decisional memoranda relating to an ongoing criminal investigation would violate Department of Justice policy.

**17. Please identify the statutory authority which authorized you to make disclosures to the Committee concerning the status of the "Filegate" and "Travelgate" investigations in advance of the filing of a final report on these matters?**

On July 7, 1998, the Special Division of the United States Court of Appeals for the District of Columbia Circuit issued an order authorizing disclosure of information to the House of Representatives that may constitute grounds for an impeachment. That order was issued pursuant to Section 595(c) of Title 28, which requires an independent counsel to provide information that "may constitute grounds for an impeachment" to the House of Representatives. House Resolution 581 authorized the impeachment inquiry. On October 2, 1998, the Committee had inquired of this Office whether we possessed information other than that contained in our September 9 Referral that "may constitute grounds for an impeachment."

Finally, it bears note that on November 19 I did not reveal any particular testimony or the contents of any particular documents gathered during the FBI Files or Travel Office investigation. I was mindful of the need to try to protect the reputations of unindicted individuals and not to go into details of those investigations.

**18. Please send the Committee all documents requested in Rep. Conyers' November 16, 1998, document requests addressed to the custodian of records of your office.**

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As you know, we have already produced some documents responsive to Representative Conyers' request dated November 16. We have previously expressed our concern with providing sensitive investigative documents to the Committee in violation of Department of Justice policy. In addition, the Committee's December 8 request appears to only authorize answering questions. Nonetheless, we are prepared to discuss mechanisms by which the Committee can obtain non-sensitive documents and carry out its duties consistent with our responsibility to follow Department of Justice policies and to maintain the integrity of our investigation.

**19. Please describe the status of any previous or ongoing investigations, actions or inquiries into possible misconduct, including conflicts of interest, leaking, and prosecutorial misconduct, by you, your office or any current or former employee or agent of your office in connection with the various investigations you have or are conducting as Independent Counsel. In your answer, identify which office or person is conducting the inquiry, when you first learned of its existence, and any conclusion reached. Please include any private or public actions as well as any ethics or state or local bar inquires.**

No court or ethics body has ever made a final determination that this Office, or any of its employees, has ever engaged in misconduct. To the extent ongoing and completed investigations have been made public, they are discussed below. To the extent they are not yet public -- because of legal or ethical restrictions on their dissemination -- I am obliged not to provide them to you. We are not interpreting your question to include the various allegations by criminal defendants and grand jury witnesses that have not resulted in investigations.

Francis T. Mandanici

According to Judge Susan Webber Wright, "[n]o one who has objectively considered the matter seriously disputes that Mr. Mandanici is on a personal crusade to discredit the Independent Counsel." In re Starr, 986 F. Supp. 1159, 1161 (E.D. Ark. 1997) (Starr II); accord id. ("Mr. Mandanici's vendetta against conservative forces and his objections to Mr. Starr's involvement in the Whitewater investigation are many and long standing' . . .") (quoting Judge Eisele). In carrying out his "vendetta," Mr. Mandanici has filed numerous complaints against me.

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In August 1996, Mr. Mandanici filed complaints against me in the United States Court of Appeals for the Eighth Circuit and the Supreme Court of the United States. Both alleged conflicts of interest on my part. The Supreme Court returned Mr. Mandanici's papers as inadequate to support action by the Court. The Eighth Circuit took no action, see In re Starr, 986 F. Supp. 1144, 1146 (E.D. Ark. 1997) (Starr I), and denied a petition for rehearing en banc. Our Office learned of both complaints at or near the time they were filed.

In September 1996, Mr. Mandanici filed a complaint alleging conflicts of interest with the United States District Court for the Eastern District of Arkansas. The court forwarded the complaint to Attorney General Janet Reno. In October 1996, Mr. Mandanici filed a similar complaint with the Attorney General directly.<sup>1</sup> On February 7, 1997, Michael E. Shaheen, Jr., Counsel with the Office of Professional Responsibility of the Department of Justice, stated that the Department would take no action because the allegations, even if true, would not warrant my removal from office. See id. I believe that our Office learned of these complaints at or near the time they were filed.

In January 1997, Mr. Mandanici stated that he had filed a complaint with the United States District Court for the District of Columbia and that the court had taken no action. Our Office has found no record of this complaint, other than this reference. I do not remember having knowledge of the District Court complaint before January 1997 and am unsure if any such complaint was, in fact, filed.

In February 1997, Mr. Mandanici filed another complaint with the Attorney General, requesting that I be removed as Independent Counsel for conflicts of interest. On March 25, 1997, Mr. Shaheen again stated that the Department would take no action. I believe that our Office learned of this complaint at or near the time it was filed.

In March 1997, Mr. Mandanici renewed his conflicts of interest allegations with the Eastern District of Arkansas. In June 1997, Mr. Mandanici filed a complaint with the court alleging that our Office was guilty of grand jury leaks and prejudicial public statements. See Starr II, 986 F. Supp. at

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<sup>1</sup> Mr. Mandanici had filed a similar complaint with the Attorney General in April 1996.

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1160. The district court dismissed both of these complaints, citing the Department's decisions, the absence of specific evidence, and Mr. Mandanici's "vendetta." Id. at 1161-62. The Eighth Circuit dismissed Mr. Mandanici's appeal for lack of jurisdiction. See United States Dep't of Justice v. Mandanici (In re Starr), 152 F.3d 741 (8th Cir. 1998). I believe that our Office learned of these complaints at or near the time they were filed.

In April 1998, Mr. Mandanici filed yet another conflicts of interest complaint with the Eastern District of Arkansas, this time concerning the investigation of the David Hale matters. In May 1998, the court dismissed this complaint as premature. Our Office learned of this complaint at or near the time it was filed.

#### Private Actions

In March 1996, Stephen A. Smith filed a lawsuit, Smith v. Starr, No. EIJ96-1557, in the Chancery Court of Pulaski County, Arkansas, for making an allegedly false statement about his guilty plea. I removed this case to the United States District Court for the Eastern District of Arkansas on April 4. On May 16, Mr. Smith voluntarily dismissed the lawsuit. My Office learned of this lawsuit at or near the time it was filed.

In February 1998, James Forman filed a lawsuit, Forman v. Starr, Civ. No. 98-270, in the United States District Court for the District of Columbia, alleging that our Office used illegally created tapes. On February 4, 1998, Judge Hogan sua sponte dismissed the case for failure to state a claim on which relief can be granted. The United States Court of Appeals for the District of Columbia Circuit affirmed the decision of the district court on April 30, 1998. See Forman v. Starr, No. 98-5029, 1998 WL 316137 (D.C. Cir. Apr. 30, 1998) (per curiam) (unpublished). Our Office was ably represented by United States Attorney Wilma A. Lewis and her staff in this matter. Our Office learned of this lawsuit at or near the time it was filed.

Also in February 1998, David E. Kendall, acting on behalf of President Clinton, filed a motion in the United States District Court for the District of Columbia requesting that the court issue an order to show cause why our Office should not be held in contempt for leaking grand jury material. This motion was followed by two similar motions, and was joined by several other persons and entities. (Misc. Nos. 98-55, 98-177, 98-228) On

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June 19, 1998, Chief Judge Norma Holloway Johnson found that news reports presented by the movants established a prima facie violation of Federal Rule of Criminal Procedure 6(e), thus requiring our Office to come forward with evidence that we were not responsible for the alleged leaks of grand jury material. The finding of a prima facie violation is not a finding of misconduct, as the District of Columbia Circuit has adopted a broad approach, requiring the court to accept the words of each news report as true. On August 3, 1998 on writ of mandamus, the District of Columbia Circuit unanimously ordered that further proceedings by the district court or a Special Master be conducted ex parte and in camera. See In re Sealed Case No. 98-3077, 151 F.3d 1059 (D.C. Cir. 1998). On September 25, Judge Johnson referred this matter to a Special Master.<sup>2</sup> We are cooperating with the Special Master's investigation and demonstrating that we did not violate Rule 6(e). That investigation is still pending. Our Office learned of Mr. Kendall's complaint at the time it was filed.

In August 1998, H.L. Watkins, Jr. filed a lawsuit, Watkins v. Starr, Civ. No. 98-2054, in the United States District Court for the District of Columbia, suing the Attorney General, Senator Orrin Hatch, and me for \$40 million for investigating the President. Judge Emmet G. Sullivan sua sponte dismissed the case with prejudice on October 1, 1998. Our Office learned of this lawsuit at or near the time it was filed.

In September 1998, Joseph Fischer filed a lawsuit, Fisher v. Starr, Civ. No. 98-2295, in the United States District Court for the District of Columbia, alleging that the Referral was improper and contrary to law and that the House of Representatives violated the law in releasing the Referral to the public. Our Office is ably represented by United States Attorney Lewis and her staff in this matter, which still is pending. Our Office learned of this lawsuit at or near the time it was filed.

In October 1998, Betty Muka filed a lawsuit, Muka v. Rutherford Institute, Civ. No. 98-2470, in the United States District Court for the District of Columbia, suing a vast number of persons, including all Members of Congress, for \$40 million. Among other things, she alleges that the Ethics in Government Act

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<sup>2</sup> Judge Johnson has sealed the name of the Special Master and, therefore, we are not permitted to reveal it to this Committee.

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is unconstitutional and that our Office has committed various misdeeds. This action is still pending. Our Office learned of this lawsuit at or near the time it was filed.

In November 1998, Harold Beck filed a complaint with the Supreme Court alleging conflicts of interest on my part. The Supreme Court returned this complaint as inadequate to support action by the Court. Our Office learned of this complaint at or near the time it was filed.

Also in November 1998, Barry Weinstein filed a lawsuit, Weinstein v. Hatch, Civ. No. 98-8119, in the United States District Court for the Southern District of New York suing all lawyers who are Members of Congress and me, alleging that it is unconstitutional for lawyers to be Members of Congress. This lawsuit remains pending. Our Office learned of this lawsuit at or near the time it was filed.<sup>3</sup>

#### Other Matters

In April 1996, Senator J. Bennett Johnston asked the Special Division of the United States Court of Appeals for the District of Columbia Circuit to remove me for conflicts of interest. On April 30, 1996, the Special Division advised Senator Johnston that it lacked the power to remove independent counsels. Our Office learned of this complaint at or near the time it was filed.

Beginning in February 1998, this Office was engaged in litigation in the United States District Court for the District of Columbia over a grand jury subpoena issued to Francis D. Carter. (Misc. No. 98-68) In the course of this litigation, Mr. Carter and Monica S. Lewinsky made several allegations of misconduct by our Office. On April 28, 1998, Chief Judge Norma Holloway Johnson issued an opinion thoroughly addressing a variety of issues. The opinion speaks for itself. Our Office

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It appears that Mr. Weinstein attempted to file this lawsuit in July but refused to pay the required filing fees. On November 9, 1998, the Supreme Court of the United States denied an application for injunctive relief allowing Mr. Weinstein to proceed without paying the fees. See Weinstein v. Starr, 119 S. Ct. 442 (1998) (mem.). Our Office was not aware of this aspect of the litigation until the Supreme Court ruled.

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learned of Mr. Carter's and Ms. Lewinsky's allegations at the time they filed the pleadings containing those allegations.

It should be evident that there has been a great volume of unfounded complaints against our Office. We have searched this Office's records and I have searched my recollection. It is always possible, however, that some investigations, actions, or inquiries have escaped our attention.

Questions from Representative Hutchinson

**Do you believe John Huang is a relevant witness to the referral you submitted to Congress on the issue of a pattern of conduct described in Pages 4-9 of the Referral?**

It is my understanding that the Committee has decided not to pursue this line of inquiry. For that reason, and because of the sensitivity of this matter and out of deference to the Department of Justice's ongoing criminal investigation, we believe it would be unwise to express an opinion on this matter.

Questions from Representative Barr

**[C]oncerning the applicability of 18 USC 201 [does this] constitute[] . . . substantial and credible evidence of impeachable offenses?**

I believe that this question is now moot because the four articles of impeachment that are currently before the Committee do not include charges directly relating to bribery or 18 U.S.C. § 201.

**[C]oncerning the Filegate case [have] any of the following persons . . . been interviewed by the Independent Counsel's Office and/or testified before a grand jury . . . : Mac McLarty, Terry Good, Linda Tripp, William Kennedy, and James Carville?**

In connection with our FBI Files investigation, this Office questioned Mr. Good, Ms. Tripp, and Mr. Kennedy. We have questioned Mr. McLarty on matters unrelated to our FBI Files investigation and reviewed his civil testimony on the FBI Files matter. We have never interviewed Mr. Carville.

**[W]hether or not . . . the Filegate matter involved any violation of the federal Privacy Act?**

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The jurisdiction of this Office does not extend to the prosecution of Class B or C misdemeanors or infractions. Therefore, violations of the Privacy Act, standing alone, are not within the jurisdiction assigned to this Office, as violations of the Act are misdemeanor infractions of federal law.

Questions from Representative Scott

Earlier today, at the Committee's request, we submitted an response to Representative Scott's questions. We now supplement that response:

**Considering that the Federal Rules of Criminal Procedure authorize only the grand jury foreperson (or in his absence, the deputy foreperson) to swear a grand jury witness, under what authority, if any, do you assert that President Clinton was duly sworn by a Mr. Bernard J. Apperson of your office (Mr. Apperson was not a member of the grand jury) since Mr. Apperson had no authority to swear the witness?**

The factual and legal premises of the question are both inaccurate. First, as reflected in both the official transcript and on videotape, the oath was administered by Elizabeth Eastman, Notary Public for the District of Columbia, a certified court reporter, duly authorized to administer oaths. 5 U.S.C. § 2903(c)(2). Second, although Rule 6(e) authorizes the foreperson of the grand jury to administer oaths, stating that they "shall have the power" to do so, the Rule does not restrict that authority to administer oaths to the foreperson.

We understand that the unofficial transcript published by the Washington Post, which erroneously reflected that the oath was administered by an employee of this Office, has since been corrected on the Post's website.

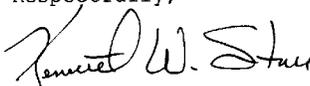
Since initially responding, I have been told of Representative Scott's statement during the hearings that Congress did not receive the "official" transcript of the President's testimony. Congress did receive the official transcript of the President's testimony on August 17, and that transcript clearly reflects that the oath was administered by Ms. Eastman. House Doc. 105-311, at 659 ("I, Elizabeth A. Eastman, the officer before whom the foregoing proceedings were taken, do hereby certify that the witness whose testimony appears in the foregoing was duly sworn by me . . .").

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Representative Scott also mentioned United States v. Prior, 546 F.2d 1254 (5th Cir. 1977), but I believe he misconstrues the case, equating the argument of the defendant with the holding of the Court. The Court found that, as a factual matter, the jury was entitled to conclude that the defendant had been sworn in by the grand jury foreman. The Court nowhere addressed the legal issue raised by Representative Scott.

Moreover, the law is clear that "[n]o particular formalities are required for there to be a valid oath. It is sufficient that, in the presence of a person authorized to administer an oath, as was the notary herein, the affiant by an unequivocal act consciously takes on himself the obligation of an oath, and the person undertaking the oath understood that what was done is proper for the administration of the oath and all that is necessary to complete the act of swearing." United States v. Yoshida, 727 F.2d 822, 823 (9th Cir. 1983); accord United States v. Chu, 5 F.3d 1244, 1247-48 (9th Cir. 1993). Any suggestion that the oath administered to President Clinton was somehow invalid is, with all respect, simply wrong.

Respectfully,



Kenneth W. Starr  
Independent Counsel

cc: Hon. Bob Barr  
Hon. Asa Hutchinson  
Hon. Zoe Lofgren  
Hon. Robert C. Scott