grossly derelict exercise of official power. Nonindictable conduct may rise to this level. For example, a President might be properly impeached if, as a result of drunkenness, he recklessly and repeatedly misused executive authority. The misconduct for which the President is accused does not involve the derelict exercise of executive powers. Most of this conduct does not involve the exercise of executive powers at all. If the President committed perjury regarding his sexual conduct, this perjury involves no exercise of presidential power as such. If he concealed evidence, this misdeed too involved no exercise of executive authority.

□ 1630

By contrast, if he sought wrongfully to place someone in a job at the Pentagon, or lied to subordinates hoping they would repeat his false statements, these acts could have involved a wrongful use of presidential influence, but we cannot believe the President's alleged conduct of this nature amounts to the grossly derelict exercise of executive power sufficient for impeachment.

Perjury and obstructing justice can without doubt be impeachable offenses. A President who corruptly used the Federal Bureau of Investigation to obstruct an investigation would have criminally exercised his presidential powers. Moreover, covering up a crime furthers or aids the underlying crime. Thus a President who committed perjury to cover up his subordinates' criminal exercise of executive authority would also have committed an impeachable offense.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). All Members are reminded to refrain from personal references towards the President of the United States.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Delaware (Mr. CASTLE) is recognized for 5 minutes.

(Mr. CASTLE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Ms. HOOLEY of Oregon. Mr. Speaker, I ask unanimous consent to claim the time allotted to the gentleman from American Samoa (Mr. FALEOMAVAEGA).

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Oregon?

There was no objection.

SHOULD PRESIDENT CLINTON BE IMPEACHED?

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Oregon (Ms. HOOLEY) is recognized for 5 minutes.

Ms. HOOLEY of Oregon. Mr. Speaker, I yield to the gentlewoman from Oregon (Ms. FURSE).

Ms. FURSE. Mr. Speaker, the letter goes on to say:

''It goes without saying that lying under oath is a serious offense. But even if the House of Representatives had the constitutional authority to impeach for any instance of perjury or obstruction of justice, a responsible House would not exercise this awesome power on the facts alleged in this case. The House's power to impeach, like a prosecutor's power to indict, is discretionary. This power must be exercised not for partisan advantage, but only when circumstances genuinely justify the enormous price the nation will pay in governance and stature if its President is put through a long, public, voyeuristic trial. The American people understand this price. They demonstrate the political wisdom that has held the Constitution in place for two centuries when, even after the publication of Mr. Starr's report, with all its extraordinary revelations, they oppose impeachment for the offenses alleged therein.

We do not say that a 'private' crime could never be so heinous as to warrant impeachment. Thus Congress might responsibly determine that a President who had committed murder must be in prison, not in office. An individual who by the law of the land cannot be permitted to remain at large, need not be permitted to remain President. But if certain crimes demand immediate removal of a President from office because of their unspeakable heinousness, the offenses alleged against the President in the Independent Counsel's referral are not among them. Short of heinous criminality, impeachment demands convincing evidence of grossly derelict exercise of official authority. In our judgment, Mr. Starr's report contains no such evidence.

Mr. Speaker, I include the following letter for the record:

OCTOBER 2, 1998.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives.

DEAR MR. SPEAKER: Did President Clinton commit ''high Crimes and Misdemeanors'' for which he may properly be impeached? We, the undersigned professors of law, believe that the misconduct alleged in the Independent Counsel's report does not cross that threshold.

We write neither as Democrats nor as Republicans. Some of us believe that the President has acted disgracefully, some that the Independent Counsel has. This letter has nothing to do with any such judgments. Rather, it expresses the one judgment on which we all agree: that the Independent Counsel's report does not make a case for presidential impeachment.

No existing judicial precedents bind Congress's determination of the meaning of ''high Crimes and Misdemeanors.'' But it is clear that Members of Congress would violate their constitutional responsibilities if they sought to impeach and remove the President merely for conduct of which they disapproved.

The President's independence from Congress is fundamental to the American structure of government. It is essential to the separation of powers. It is essential to the President's ability to discharge such constitutional duties as vetoing legislation that he considers contrary to the nation's interests. And it is essential to governance whenever the White House belongs to a party different from that which controls the Capitol. The lower the threshold for impeachment, the weaker the President. If the President could be removed for any conduct of which Congress disapproved, this fundamental element of our democracy—the President's independence from Congress—would be destroyed.

It is not enough, therefore, that Congress strongly disapprove of the President's conduct. Under the Constitution, the President cannot be impeached unless he has committed ''Treason, Bribery, or other high Crimes and Misdemeanors.''

Some of the charges laid out in the Independent Counsel's report fall so far short of this high standard that they strain good sense: for example, the charge that the President repeatedly declined to testify voluntarily or pressed a debatable privilege claim that was later judicially rejected. These ''offenses'' are not remotely impeachable. With respect, however, to other allegations, the report requires careful consideration of the kind of misconduct that renders a President constitutionally unfit to remain in office.

Neither history nor legal definitions provide a precise list of high crimes and misdemeanors. Reasonable people have differed in interpreting these words. We believe that the proper interpretation of the Impeachment Clause must begin by recognizing treason and bribery as core or paradigmatic instances, from which the meaning of ''other high Crimes and Misdemeanors'' is to be extrapolated. The constitutional standard for impeachment would be very different if, instead of treason and bribery, different offenses had been specified. The clause does not read, ''Arson, Larceny, or other high Crimes and Misdemeanors,'' implying that any significant crime might be an impeachable offense. Nor does it read, ''misleading the People, Breach of Campaign Promises, or other high Crimes and Misdemeanors,'' implying that any serious violation of public confidence might be impeachable. Nor does it read, ''Adultery, Fornication, or other high Crimes and Misdemeanors,'' implying that any conduct deemed to reveal serious moral lapses might be an impeachable offense.

When a President commits treason, he exercises his executive powers, or uses information obtained by virtue of his executive powers, deliberately to aid an enemy. When a President is bribed, he exercises or offers to exercise his executive powers in exchange for corrupt gain. Both acts involve the criminal exercise of presidential powers, converting those awful powers into an instrument either of enemy interests or of purely personal gain. We believe that the critical, distinctive feature of treason and bribery is grossly derelict exercise of official power (or, in the case of bribery to obtain or retain office, gross criminality in the pursuit of official power). Nonindictable conduct might rise to this level. For example, a President might be properly impeached if, as a result of drunkenness, he recklessly and repeatedly misused executive authority.

The misconduct of which the President is accused does not involve the derelict exercise of executive powers. Most of this misconduct does not involve the exercise of executive powers at all. If the President committed perjury regarding his sexual conduct, this perjury involved no exercise of presidential power as such. If he concealed evidence, this misdeed too involved no exercise of executive authority. By contrast, if he sought wrongfully to place someone in a job at the Pentagon, or lied to subordinates hoping they would repeat his false statements, these acts could have involved a wrongful due of presidential influence, but we cannot believe that the President's alleged conduct

of this nature amounts to the grossly derelict exercise of executive power sufficient for impeachment.

Perjury and obstructing justice can without doubt be impeachable offenses. A President who corruptly used the Federal Bureau of Investigation to obstruct an investigation would have criminally exercised his presidential powers. Moreover, covering up a crime furthers or aids the underlying crime. Thus a President who committed perjury to cover up his subordinates' criminal exercise of executive authority would also have committed an impeachable offense. But if the underlying offense were adultery, calling the President to testify could not create an offense justifying impeachment where there was none before.

It goes without saying that lying under oath is a serious offense. But even if the House of Representatives had the constitutional authority to impeach for any instance of perjury or obstruction of justice, a responsible House would not exercise this awesome power on the facts alleged in this case. The House's power to impeach, like a prosecutor's power to indict, is discretionary. This power must be exercised not for partisan advantage, but only when circumstances genuinely justify the enormous price the nation will pay in governance and stature if its President is put through a long, public, voyeuristic trial. The American people understand this price. They demonstrate the political wisdom that has held the Constitution in place for two centuries when, even after the publication of Mr. Starr's report, with all its extraordinary revelations, they oppose impeachment for the offenses alleged therein.

We do not say that a ''private'' crime could never be so heinous as to warrant impeachment. Thus Congress might responsibly determine that a President who had committed murder must be in prison, not in office. An individual who by the law of the land cannot be permitted to remain at large, need not be permitted to remain President. But if certain crimes demand immediate removal of a President from office because of their unspeakable heinousness, the offenses alleged against the President in the Independent Counsel's referral are not among them. Short of heinous criminality, impeachment demands convincing evidence of grossly derelict exercise of official authority. In our judgment, Mr. Starr's report contains no such evidence.

Sincerely,

Jed Rubenfeld, Professor of Law, Yale University.

Bruce Ackerman, Sterling Professor of Law and Political Science, Yale University.

Akhil Reed Amar, Southmayd Professor of Law, Yale University.

Susan Bloch, Professor of Law, Georgetown University Law Center.

Paul D. Carrington, Harry R. Chadwick Sr. Professor of Law, Duke University School of Law.

John Hart Ely, Richard A. Hausler Professor of Law, University of Miami School of Law.

Susan Estrich, Robert Kingsley Professor of Law and Political Science, University of Southern California.

John E. Nowak, David C. Baum Professor of Law, University of Illinois College of Law.

Judith Resnik, Arthur L. Liman Professor, Yale Law School.

Christopher Schroeder, Professor of Law, Duke University School of Law.

Suzanne Sherry, Earl R. Larson Professor of Law, University of Minnesota law School.

Geoffrey R. Stone, Harry Kalven, Jr. Dist. Serv. Professor & Provost, University of Chicago Law School.

Laurence H. Tribe, Tyler Professor of Constitution Law, Harvard University Law School.

Note: Institutional affiliations for purposes of identification only.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Again the Chair would remind all Members to refrain from personal references toward the President of the United States, including references to various types of unethical behavior.

$80 BILLION TAX CUT SHOULD NOT BE VETOED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. FOSSELLA) is recognized for 5 minutes.

Mr. FOSSELLA. Mr. Speaker, I rise today to speak for the millions of American taxpayers, the millions of American taxpayers who believe that they are overtaxed, millions of American taxpayers who go to work every single day, like so many that I represent on Staten Island and in Brooklyn who feel that they send too much of their hard-earned money to Washington and do not see enough of it back home where it belongs.

A couple of weeks ago, this House narrowly passed a tax relief bill to the tune of $80 billion for the American people, specifically targeted to help senior citizens, married couples, and small business owners and farmers.

The reality is, as we stand here today, it stands under the threat of a White House veto. In other words, what we have been fighting for for the last year to bring much needed tax relief to the American people, with the stroke of a pen, will be rejected by the White House.

I think I speak for most of the American people who believe that they pay too much in taxes. When we talk about pittance and sending some of that money back home to Staten Island or Brooklyn or anywhere else across this country, I do not think these folks are asking too much.

We are talking about taking money out of a surplus. Well, let us be real. Where does this surplus come from? It does not fall out of the trees here in Washington. It is generated from the hard-working Americans who go to work every single day, some of whom work 6 and 7 days a week, some of whom are struggling to pay their mortgage or make their car payments or pay a college tuition.

I think the notion comes down to a very fundamental difference between those who want to stand in the way of growth and stand in the way of opportunity and stand in the way of allowing the Americans the freedom to spend their money as they see fit and compare and contrast that to those who just want to keep that tax burden as high as possible to keep the Federal Government growing larger and larger and to allow the bureaucrats and the politicians in Washington to make the choices for the American people that the American people should be making for themselves and their family.

The battle is very clear. The battle is over the size of government. Advocates of the bigger government here want the tax burden to remain high so they can use these excess revenues to create new programs and expand existing ones. That is the facts. It is the conventional common sense of the ordinary American that seems to get lost in the cloud of rhetoric here in Washington.

I look forward every time I can split this town and go back home to Staten Island where I live and where my family is, where the real people are, those people who get up at sunup and work till sometimes 8 or 9 o'clock at night, some of whom work Monday and Tuesday of a 5-day week just to send their money here to Washington. I ask them, do they think they get the money that they deserve that they pay in taxes?

All we are asking for is an $80 billion tax cut, something that they earned for themselves. We believe, at least I believe, that we need a pro growth tax policy, one that will cut marginal income rates to provide incentives to the American people to go out and work and to get to keep more of their hard-earned money, not this typical defending big government, defending big bureaucracy, defending everything that Washington stands for that is bad, as far as I am concerned, and instead sending the money back to create opportunities back in Staten Island and Brooklyn.

If the American people back home want that money to save, if they want it to invest, if they want it to build their local churches or civic organizations and keep that money close to home, then I say let us draw the line in the sand.

Let us send that money back home, stand with the Republican majority here that really had to fight tooth and nail when we listen to that debate to pass that tax bill, and send the message to the White House once and for all that the American people deserve to keep their hard-earned money.

Let us look forward next year, this is a small step, next year come back here and try to reduce the tax burden even more, create a policy where we can reduce those marginal rates again to provide incentives to people to work and to keep more of that money. That is a very simple message, a very simple message that somehow gets lost every time we come around here in the Beltway.

But I think that when I go back home and I talk to the small business owner who is looking for 100 percent deductibility for his health insurance where now it is 40 percent, if I talk to that married couple who is paying a penalty, a penalty for being married, it is ridiculous. Mr. Speaker, let us bring much needed tax relief to the American people.