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105TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
105–830

IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

REPORT

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

together with

ADDITIONAL, MINORITY, AND DISSENTING VIEWS

TO ACCOMPANY

H. RES. 611

DECEMBER 16, 1998 (pursuant to clause 2(l)(5) of rule XI).—Referred to the House Calendar and ordered to be printed

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105TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 105–830

IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

DECEMBER 16, 1998.—Referred to the House Calendar and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL, MINORITY, AND DISSENTING VIEWS

The Committee on the Judiciary, to whom was referred the consideration of recommendations concerning the exercise of the constitutional power to impeach William Jefferson Clinton, President of the United States, having considered the same, reports thereon pursuant to H. Res. 581 as follows and recommends that the House exercise its constitutional power to impeach William Jefferson Clinton, President of the United States, and that articles of impeachment be exhibited to the Senate as follows:

RESOLUTION

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

Resolved, That William Jefferson Clinton, President of the United States, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the United States Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against William Jefferson Clinton, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

In his conduct while President of the United States, William Jefferson Clinton, 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 willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and 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.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

ARTICLE II

In his conduct while President of the United States, William Jefferson Clinton, 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 willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

(1) On December 23, 1997, William Jefferson Clinton, in sworn answers to written questions asked as part of a Federal civil rights action brought against him, willfully provided perjurious, false and misleading testimony in response to questions deemed relevant by a Federal judge concerning conduct and proposed conduct with subordinate employees.

(2) On January 17, 1998, William Jefferson Clinton swore under oath to tell the truth, the whole truth, and nothing but the truth in a deposition given as part of a Federal civil rights action brought against him. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and mislead-

ing testimony in response to questions deemed relevant by a Federal judge concerning the nature and details of his relationship with a subordinate Government employee, his knowledge of that employee's involvement and participation in the civil rights action brought against him, and his corrupt efforts to influence the testimony of that employee.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

ARTICLE III

In his conduct while President of the United States, William Jefferson Clinton, 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, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

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

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

(2) 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.

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

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 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.

(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton

corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

(6) On or about January 18 and January 20–21, 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.

(7) On or about January 21, 23 and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

ARTICLE IV

Using the powers and influence of the office of President of the United States, William Jefferson Clinton, 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 engaged in conduct that resulted in misuse and abuse of his high office, impaired the due and proper administration of justice and the conduct of lawful inquiries, and contravened the 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 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.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subver-

sive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

I. INTRODUCTION

"Equal Justice Under Law"—That principle so embodies the American constitutional order that we have carved it in stone on the front of our Supreme Court. The carving shines like a beacon from the highest sanctum of the Judicial Branch across to the Capitol, the home of the Legislative Branch, and down Pennsylvania Avenue to the White House, the home of the Executive Branch. It illuminates our national life and reminds those other branches that despite the tumbling tides of politics, ours is a government of laws and not of men. It was the inspired vision of our founders and framers that the Judicial, Legislative, and Executive branches would work together to preserve the rule of law.

But "Equal Justice Under Law" amounts to much more than a stone carving. Although we cannot see or hear it, this living, breathing force has real consequences in the lives of average citizens every day. Ultimately, it protects us from the knock on the door in the middle of the night. More commonly, it allows us to claim the assistance of the government when someone has wronged us—even if that person is stronger or wealthier or more popular than we are. In America, unlike other countries, when the average citizen sues the Chief Executive of our nation, they stand equal before the bar of justice. The Constitution requires the judicial branch of our government to apply the law equally to both. That is the living consequence of "Equal Justice Under Law."

The President of the United States must work with the Judicial and Legislative branches to sustain that force. The temporary trustee of that office, William Jefferson Clinton, worked to defeat it. When he stood before the bar of justice, he acted without authority to award himself the special privileges of lying and obstructing to gain an advantage in a federal civil rights action in the United States District Court for the Eastern District of Arkansas, in a federal grand jury investigation in the United States District Court for the District of Columbia, and in an impeachment inquiry in the United States House of Representatives. His resistance brings us to this most unfortunate juncture.

So "Equal Justice Under Law" lies at the heart of this matter. It rests on three essential pillars: an impartial judiciary, an ethical bar, and a sacred oath. If litigants profane the sanctity of the oath, "Equal Justice Under Law" loses its protective force. Against that backdrop, consider the actions of President Clinton.

On May 27, 1997, the nine justices of the Supreme Court of the United States unanimously ruled that Paula Corbin Jones could pursue her federal civil rights action against William Jefferson Clinton. *Clinton* v. *Jones*, 520 U.S. 681 (1997). On December 11, 1997, United States District Judge Susan Webber Wright ordered President Clinton to provide Ms. Jones with answers to certain routine questions relevant to the lawsuit. Acting under the author-

ity of these court orders, Ms. Jones exercised her rights—rights that every litigant has under our system of justice. She sought answers from President Clinton to help her prove her case against him—just as President Clinton sought and received answers from her. President Clinton used numerous means to prevent her from getting truthful answers.

On December 17, 1997, he encouraged a witness, whose truthful testimony would have helped Ms. Jones, to file a false affidavit in the case and to testify falsely if she were called to testify in the case. On December 23, 1997, he provided, under oath, false written answers to Ms. Jones's questions. On December 28, 1997, he began an effort to get the witness to conceal evidence that would have helped Ms. Jones. Throughout this period, he intensified efforts to provide the witness with help in getting a job to ensure that she carried out his designs.

On January 17, 1998, President Clinton provided, under oath, numerous false answers to Ms. Jones's questions during his deposition. In the days immediately following the deposition, he provided a false and misleading account to another witness, Betty Currie, in hopes that she would substantiate the false testimony he gave in the deposition. These actions denied Ms. Jones her rights as a litigant, subverted the fundamental truth seeking function of the United States District Court for the Eastern District of Arkansas, and violated President Clinton's constitutional oath to "preserve, protect and defend the Constitution of the United States" and his constitutional duty to "take care that the laws be faithfully executed."

Beginning shortly after his deposition, President Clinton became aware that a federal grand jury empaneled by the United States District Court for the District of Columbia was investigating his actions before and during his civil deposition. President Clinton made numerous false statements to potential grand jury witnesses in hopes that they would repeat these statements to the grand jury. On August 17, 1998, President Clinton appeared before the grand jury by video and, under oath, provided numerous false answers to the questions asked. These actions impeded the grand jury's investigation, subverted the fundamental truth seeking function of the United States District Court for the District of Columbia, and violated President Clinton's constitutional oath to "preserve, protect and defend the Constitution of the United States" and his constitutional duty to "take care that the laws be faithfully executed."

President Clinton's actions then led to this inquiry. On October 8, 1998, the United States House of Representatives passed House Resolution 581 directing the Committee on the Judiciary to begin an inquiry to determine whether President Clinton should be impeached. As part of that inquiry, the Committee sent written requests for admission to him. On November 27, 1998, President Clinton provided, under oath, numerous false statements to this Committee in response to the requests for admission. These actions impeded the committee's inquiry, subverted the fundamental truth seeking function of the United States House of Representatives in exercising the sole power of impeachment, and violated President Clinton's constitutional oath to "preserve, protect and defend the

Constitution of the United States" and his constitutional duty to "take care that the laws be faithfully executed."

By these actions, President Clinton violated the sanctity of the oath without which "Equal Justice Under Law" cannot survive. Rather than work with the Judicial and Legislative branches to uphold the rule of law, he directly attacked their fundamental truth seeking function. He has disgraced himself and the high office he holds. His high crimes and misdemeanors undermine our Constitution. They warrant his impeachment, his removal from office, and his disqualification from holding further office.

II. NARRATIVE

A. THE PAULA JONES LITIGATION

On May 6, 1994, Paula Corbin Jones filed a federal civil rights lawsuit against President Clinton in the United States District Court for the Eastern District of Arkansas. This lawsuit arose out of an incident that Ms. Jones alleged occurred in 1991 while she was an Arkansas state employee and President Clinton was Governor of Arkansas. Ms. Jones alleged that then Governor Clinton had an Arkansas state trooper invite Ms. Jones to his hotel room where he made a crude sexual advance toward her and she rejected it.

After Ms. Jones brought the lawsuit, President Clinton claimed that the Constitution requires that any such lawsuit be deferred until his term ended. The parties litigated this question, and ultimately the Supreme Court of the United States decided unanimously that Ms. Jones could proceed with her lawsuit without waiting for President Clinton's term to end. *Clinton* v. *Jones*, 520 U.S. 681 (1997).

The discovery phase of the lawsuit began shortly thereafter. During the discovery phase, Judge Susan Webber Wright of the United States District Court for the Eastern District of Arkansas ordered President Clinton to answer certain questions about any history he had of involvement in sexual relationships with state or federal employees. Such questions are standard in sexual harassment lawsuits, and they help to establish whether the defendant has engaged in a pattern and practice of harassing conduct. President Clinton's efforts to resist giving truthful answers to these questions gave rise to this matter.

B. THE RELATIONSHIP BETWEEN PRESIDENT CLINTON AND MONICA LEWINSKY

Monica Lewinsky, a 21-year-old intern, was working at the White House during the government shutdown in November, 1995. Before their first intimate encounter, she had never even spoken with the President. Sometime on November 15, 1995, Ms. Lewinsky made an improper gesture to the President. Rather than rebuff the gesture, President Clinton invited this unknown young intern into a private area off the Oval Office, where he kissed her. He then invited her back to the same area later that day. When she returned, the two engaged in the first of many acts of inappropriate sexual contact.

Thereafter, the two continued their secret liaisons, and they concocted a cover story to use if they were discovered. If Ms. Lewinsky was seen, she was to say she was bringing papers to the President. That story was false. The only papers she brought were personal messages having nothing to do with her duties or the President's. After Ms. Lewinsky moved from the White House to the Pentagon, she and President Clinton disguised her frequent visits to the White House as visits to Betty Currie. Those cover stories play a vital role in the later perjuries and obstruction of justice.

Over the term of their relationship the following significant matters occurred:

1. Monica Lewinsky and President Clinton were alone on at least 21 occasions;
2. They had at least eleven personal sexual encounters, other than phone sex: 3 in 1995, 5 in 1996, and 3 in 1997;
3. They had at least 55 telephone conversations, at least 17 of which involved phone sex;
4. President Clinton gave Ms. Lewinsky 24 presents; and,
5. Ms. Lewinsky gave President Clinton 40 presents.

See generally Appendices at 116–26.

These essential facts form the backdrop for all of the subsequent events. During the fall of 1997, the relationship was largely dormant. Ms. Lewinsky was working at the Pentagon and looking for a high paying job in New York. Discovery in the Paula Jones case was proceeding slowly, and no one seemed to care about the outcome. Then, in the first week of December 1997, things began to unravel.

The sexual details of the President's encounters with Ms. Lewinsky need not be described in detail. However, those encounters are highly relevant because the President repeatedly lied about that sexual relationship in the civil case, before the grand jury, and in his responses to this Committee's questions. In an effort to support the original lies he told in the civil case, he has consistently maintained that Ms. Lewinsky performed sexual acts on him, while he never touched her in a sexual manner. President Clinton's characterization of the relationship directly contradicts Ms. Lewinsky's testimony, the sworn grand jury testimony of three of her friends, and the statements by two professional counselors with whom Ms. Lewinsky contemporaneously shared the details of her relationship.

C. THE EVENTS OF DECEMBER 5–6, 1997—PRESIDENT CLINTON LEARNS MS. LEWINSKY IS ON THE WITNESS LIST

On Friday, December 5, 1997, Ms. Lewinsky asked Betty Currie, President Clinton's personal secretary, if President Clinton could see her the next day, Saturday. Ms. Currie said that he was scheduled to meet with his lawyers all day. Lewinsky 8/6/98 GJT at 107–08. Later that Friday, Ms. Lewinsky spoke briefly to President Clinton at a Christmas party. Lewinsky 7/31/98 302 at 1; Lewinsky 8/6/98 GJT at 108.

That evening, Paula Jones's attorneys faxed a list of potential witnesses to President Clinton's attorneys. The list included the name of Ms. Lewinsky. However, Ms. Lewinsky did not find out that her name was on the list until President Clinton told her ten

days later on December 17. Lewinsky 8/6/98 GJT at 121–23. That delay is significant.

After her conversation with Ms. Currie and her conversation with President Clinton at the Christmas party, Ms. Lewinsky drafted a letter to President Clinton terminating their relationship. Lewinsky 7/31/98 302 at 2. The next morning, Saturday, December 6, Ms. Lewinsky went to the White House to deliver the letter and some gifts for President Clinton to Ms. Currie. Lewinsky 8/6/98 GJT at 108–09. When she arrived at the White House, Ms. Lewinsky spoke to several Secret Service officers, and one of them told her that President Clinton was not with his lawyers, as she had been told, but rather, he was meeting with another woman. Lewinsky 8/6/98 GJT at 111; Mondale 7/16/98 302 at 1. Ms. Lewinsky called Ms. Currie from a pay phone, angrily exchanged words with her, and went home. Lewinsky 8/6/98 GJT at 112–13; Currie 1/27/98 GJT at 37. After that phone call, Ms. Currie told the Secret Service watch commander that President Clinton was so upset about the disclosure of his meeting with the woman that he wanted to fire someone. Purdie 7/23/98 GJT at 13, 18–19.

At 12:05 p.m. on December 6th, records demonstrate that Ms. Currie paged Bruce Lindsey with the message: "Call Betty ASAP." Around that same time, according to Ms. Lewinsky, while she was back at her apartment, Ms. Lewinsky and President Clinton spoke on the telephone. President Clinton was very angry; he told Ms. Lewinsky that no one had ever treated him as poorly as she had. Lewinsky 8/6/98 GJT at 113–14. President Clinton acknowledged to the grand jury that he was upset about Ms. Lewinsky's behavior and considered it inappropriate. Clinton 8/17/98 GJT at 85. Nevertheless, in a sudden change of mood, he invited her to visit him at the White House that afternoon. Lewinsky 8/6/98 GJT at 114.

Ms. Lewinsky arrived at the White House for the second time that day, and she was cleared to enter at 12:52 p.m. Although, in Ms. Lewinsky's words, the President was "very angry" with her during their recent telephone conversation, he was "sweet" and "very affectionate" during this visit. Lewinsky 8/6/98 GJT at 113–15. He also told her that he would talk to Vernon Jordan, a Washington lawyer and close personal friend of President Clinton's, about her job situation. Lewinsky 8/6/98 GJT at 115–16.

President Clinton also suddenly changed his attitude toward the Secret Service. Ms. Currie informed some officers that if they kept quiet about the Lewinsky incident, they would not be disciplined. Currie 7/22/98 GJT at 91–92; Williams 7/23/98 GJT at 25, 27–28; Chinery 7/23/98 GJT at 22–23. According to the Secret Service watch commander, Captain Jeffrey Purdie, the President personally told him, "I hope you use your discretion" or "I hope I can count on your discretion." Purdie 7/17/98 GJT at 3, 7/23/98 GJT at 32. Deputy Chief Charles O'Malley, Captain Purdie's supervisor, testified that he knew of no other incident in his fourteen years of service at the White House in which a President raised a performance issue with a member of the Secret Service Uniformed Division. O'Malley 9/8/98 Dep. at 40–41. After his conversation with President Clinton, Captain Purdie told a number of officers that they should not discuss the Lewinsky incident. Porter 8/13/98 GJT at 12; Niedzwiecki 7/30/98 GJT at 30–31.

When President Clinton was questioned before the grand jury about his statements to the Secret Service, he testified "I don't remember what I said and I don't remember to whom I said it." Clinton 8/17/98 GJT at 86. When confronted with Captain Purdie's testimony, the President testified, "I don't remember anything I said to him in that regard. I have no recollection of that whatever." Clinton 8/17/98 GJT at 91.

President Clinton testified before the grand jury that he learned that Ms. Lewinsky was on the Jones witness list that evening, Saturday, December 6, during a meeting with his lawyers. Clinton 8/17/98 GJT at 83–84. He stood by this answer in response to Request Number 16 submitted by this Committee. The meeting occurred around 5 p.m., after Ms. Lewinsky had left the White House. Lindsey 3/12/98 GJT at 64–66. According to Bruce Lindsey, at the meeting, Robert Bennett, the President's attorney, had a copy of the Jones witness list which had been faxed to Bennett the previous night. Lindsey 3/12/98 GJT at 65–67.

However, during his deposition, President Clinton testified that he had heard about the witness list *before* he saw it. Clinton 1/17/98 Dep. at 70. In other words, if President Clinton testified truthfully in his deposition, then he knew about the witness list before the 5 p.m. meeting. It is reasonable to infer that hearing Ms. Lewinsky's name on a witness list prompted President Clinton's sudden and otherwise unexplained change from "very angry" to "very affectionate" that Saturday afternoon. It is also reasonable to infer that it prompted him to give the unique instruction to a Secret Service watch commander to use "discretion" regarding Ms. Lewinsky's visit to the White House, which the watch commander interpreted as an instruction to remain silent about the incident. Purdie 7/17/98 GJT at 20–21.

D. THE SEARCH FOR A JOB FOR MS. LEWINSKY

Ms. Lewinsky had been searching for a highly paid job in New York since the previous July. She had not had much success despite President Clinton's promise to help. In early November, Ms. Currie arranged a meeting with Mr. Jordan who was supposed to help.

On November 5, Ms. Lewinsky met for 20 minutes with Mr. Jordan. Lewinsky 8/6/98 GJT at 104. No action followed, no job interviews were arranged, and Ms. Lewinsky had no further contacts with Mr. Jordan at that time. Mr. Jordan made no effort to find a job for Ms. Lewinsky. Indeed, it was so unimportant to him that he testified that he "had no recollection of an early November meeting" and that finding a job for Ms. Lewinsky was not a priority. Jordan 3/3/98 GJT at 50, 5/5/98 GJT at 76. Nothing happened during the month of November because Mr. Jordan was either gone or would not return Ms. Lewinsky's calls. Lewinsky 8/6/98 GJT at 105–06.

During the December 6 meeting with President Clinton, Ms. Lewinsky mentioned that she had not been able to reach Mr. Jordan and that it did not seem he had done anything to help her. Clinton 8/17/98 GJT at 84. President Clinton responded by stating, "Oh, I'll talk to him. I'll get on it," or something to that effect. Lewinsky 8/6/98 GJT at 116. There was still no urgency to help Ms.

Lewinsky. Mr. Jordan met President Clinton the next day, December 7, but the meeting had nothing to do with Ms. Lewinsky. Jordan 5/5/98 GJT at 83, 116.

The first activity calculated to help Ms. Lewinsky actually get a job took place on December 11. Mr. Jordan met with Ms. Lewinsky and gave her a list of contact names. The two also discussed President Clinton. Lewinsky 8/6/98 GJT at 119–20. Mr. Jordan remembered that meeting. Jordan 3/5/98 GJT at 41. Mr. Jordan immediately placed calls to two prospective employers. Jordan 3/3/98 GJT at 54, 62–63. Later in the afternoon, he even called President Clinton to report on his job search efforts. Jordan 3/3/98 GJT at 64–66. Suddenly, Mr. Jordan and President Clinton were now very interested in helping Ms. Lewinsky find a good job in New York. Jordan 5/5/98 GJT at 95.

Something happened that changed the priority assigned to the job search. On the morning of December 11, 1997, Judge Susan Webber Wright ordered President Clinton to provide information regarding any state or federal employee with whom he had, proposed, or sought sexual relations. To keep Ms. Lewinsky satisfied was now of critical importance.

E. THE EVENTS OF DECEMBER 17, 1997—PRESIDENT CLINTON INFORMS MS. LEWINSKY THAT SHE IS ON THE WITNESS LIST

On December 17, 1997, between 2:00 and 2:30 in the morning, Monica Lewinsky's phone rang unexpectedly. It was President Clinton. He said that he wanted to tell Ms. Lewinsky two things. One was that Ms. Currie's brother had been killed in a car accident. Second, he said that he "had some more bad news"—that he had seen the witness list for the Jones case and Ms. Lewinsky's name was on it. Lewinsky 8/6/98 GJT at 123. He told Ms. Lewinsky that seeing her name on the list "broke his heart." He then told her that "if [she] were to be subpoenaed, [she] should contact Betty and let Betty know that [she] had received the subpoena." Lewinsky 8/6/98 GJT at 123. Ms. Lewinsky asked what she should do if subpoenaed. President Clinton responded: "Well, maybe you can sign an affidavit." Lewinsky 8/6/98 GJT at 123. Both knew that the affidavit would have to be false and misleading to avoid Ms. Lewinsky's having to testify.

Then, the President made a pointed suggestion to Monica Lewinsky, a suggestion that left little room for compromise. He did not say specifically "go in and lie." What he did say is "you know, you can always say you were coming to see Betty or that you were bringing me letters."

To understand the significance of this statement, one must recall the cover stories that President Clinton and Ms. Lewinsky had previously agreed on to deceive those who protected and worked with the President.

Ms. Lewinsky was to say that she was simply delivering papers when she visited President Clinton. When she saw him, she would say: "Oh, gee, here are your letters," and he would answer, "okay that's good." After Ms. Lewinsky left employment at the White House, she was to return to the Oval Office under the guise of visiting Betty Currie, not President Clinton. Moreover, Ms. Lewinsky promised him that she would always deny the sexual relationship

and always protect him. The President would respond "that's good" or similar language of encouragement.

When President Clinton called Ms. Lewinsky to tell her she was on the witness list, he made sure to remind her of those prior cover stories. Ms. Lewinsky testified that when he brought up the misleading story, she understood that the two would continue their pre-existing pattern of deception. President Clinton had no intention of making his sexual relationship with Ms. Lewinsky a public affair. He would use lies, deceit, and deception to ensure that the truth would not be known.

When the President was asked by the grand jury whether he remembered calling Monica Lewinsky at 2:00 a.m., he responded: "No sir, I don't. But it would—it is quite possible that that happened . . ." Clinton 8/17/98 GJT at 116. When he was asked whether he encouraged Ms. Lewinsky to continue the cover stories of "coming to see Betty" or "bringing the letters," he answered: "I don't remember exactly what I told her that night." Clinton 8/17/98 GJT at 117.

Six days earlier, he had become aware that Ms. Jones's lawyers were now able to inquire about other women. Ms. Lewinsky could file a false affidavit, but it might not work. It was absolutely essential that both parties tell the same story. He knew that he would lie if asked about Ms. Lewinsky; and he wanted to make certain that she would lie also.

But President Clinton had an additional problem. It was not enough that he and Ms. Lewinsky simply deny the relationship. The evidence was accumulating. And the evidence was driving the President to reevaluate his defense. By this time, the evidence was establishing, through records and eyewitness accounts, that President Clinton and Ms. Lewinsky were spending a significant amount of time together in the Oval Office complex. The unassailable facts were forcing President Clinton to acknowledge the relationship. But at this point, he still had the opportunity to establish an explanation for their meetings that did not reveal the sexual relationship. He still had this opportunity because his DNA had not yet been identified on Ms. Lewinsky's blue dress. For that reason, President Clinton needed Ms. Lewinsky to go along with the cover story to provide an innocent explanation for their frequent meetings. And that innocent explanation came in the form of "document deliveries" and "friendly chats with Betty Currie."

When the President was deposed on January 17, 1998, he used the exact same cover stories that Ms. Lewinsky had used. In doing so, he maintained consistency with any future Lewinsky testimony while also maintaining his defense in the Jones lawsuit. In his deposition, he was asked whether he was ever alone with Ms. Lewinsky. He responded: "I don't recall . . . She—it seems to me *she brought things to me* once or twice on the weekends. In that case, whatever time she would be in there, *drop it off*, exchange a few words and go, she was there." Clinton 1/17/98 Dep. at 52–53 (emphasis added).

Additionally, whenever questions were posed regarding Ms. Lewinsky's frequent visits to the Oval Office, President Clinton never hesitated to bring Betty Currie's name into his answers:

A. And my recollection is that on a couple of occasions after [the pizza party meeting], she was there [in the Oval Office] but my secretary, Betty Currie, was there with her.

Clinton 1/17/98 Dep. at 58.

Q. When was the last time you spoke with Monica Lewinsky?

A. I'm trying to remember. Probably sometime before Christmas. She came by to see Betty sometime before Christmas. And she was there talking to her, and I stuck my head out, said hello to her.

Clinton 1/17/98 Dep. at 68. Or in another example:

Q. Mr. President, before the break, we were talking about Monica Lewinsky. At any time were you and Monica Lewinsky together alone in the Oval Office?

A. I don't recall, but as I said, when she worked at the legislative affairs office, they always had somebody there on the weekends. I typically worked some on the weekends. Sometimes they'd bring me things on the weekends. She—it seems to me she brought things to me once or twice on the weekends. In that case, whatever time she would be in there, drop it off, exchange a few words and go, she was there. I don't have any specific recollections of what the issues were, what was going on, but when the Congress is there, we're working all the time, and typically I would do some work on one of the days of the weekends in the afternoon.

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 person there. That's possible.

Q. At any time were you and Monica Lewinsky alone in the hallway between the Oval Office and this kitchen area?

A. I don't believe so, unless we were walking back to the back dining room with the pizza. I just, I don't remember. I don't believe we were alone in the hallway, no.

Q. At any time have you and Monica Lewinsky ever been alone together in any room in the White House?

A. I think I testified to that earlier. I think that there is a, it is—I have no specific recollection, but it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend. That's—I have a general memory of that.

Q. Do you remember anything that was said in any of those meetings?

A. No. You know, we just have conversation, I don't remember.

Clinton 1/17/98 Dep. at 52–53, 58–59.

F. THE EVENTS OF DECEMBER 19, 1997—MS. LEWINSKY RECEIVES A SUBPOENA

President Clinton and Ms. Lewinsky realized their greatest fears on December 19, 1997, when Ms. Lewinsky received a subpoena to testify in a deposition on January 23, 1998 in the Jones case. Lewinsky 8/6/98 GJT at 128. It also called for her to produce gifts given to her by President Clinton, including a hat pin. Extremely distraught, she immediately called Mr. Jordan. Ms. Lewinsky testified that President Clinton previously told her to call Ms. Currie if she were subpoenaed. She called Mr. Jordan instead because Ms. Currie's brother recently died, and Ms. Lewinsky did not want to bother her. Lewinsky 8/6/98 GJT at 128–29.

Mr. Jordan invited Ms. Lewinsky to his office and she arrived shortly before 5 p.m. She was still extremely distraught. Sometime around this time, Mr. Jordan called President Clinton and told him Ms. Lewinsky had been subpoenaed. Jordan 5/5/98 GJT at 145. During the meeting with Ms. Lewinsky, which Mr. Jordan characterized as "disturbing," she talked about her infatuation with President Clinton. Jordan 3/3/98 GJT at 100, 150. Mr. Jordan also decided that he would call a lawyer for her. Jordan 3/3/98 GJT at 161. That evening, Mr. Jordan met with President Clinton and relayed his conversation with Ms. Lewinsky. The details are important because President Clinton, in his deposition, testified that he did not recall that meeting.

Mr. Jordan told President Clinton again that Ms. Lewinsky had been subpoenaed, that he was concerned about her fascination with President Clinton, and that Ms. Lewinsky had asked Mr. Jordan if he thought President Clinton would leave the First Lady. He also asked President Clinton if he had sexual relations with Ms. Lewinsky. Jordan 3/3/98 GJT at 169. President Clinton was asked:

> Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?
>
> A. I don't think so.
>
> Q. Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify in this case?
>
> A. Bruce Lindsey, I think Bruce Lindsey told me that she was, I think maybe that's the first person told me she was. I want to be as accurate as I can.

Clinton 1/17/98 Dep. at 68–69.

In the grand jury, President Clinton first repeated his denial that Mr. Jordan told him Ms. Lewinsky had been subpoenaed. Clinton 8/17/98 GJT at 39. Then, when given more specific facts, he admitted that he "knows now" that he spoke with Mr. Jordan about the subpoena on the night of December 19, but his "memory is not clear." Clinton 8/17/98 GJT at 41–42. In an attempt to explain away his false deposition testimony, the President testified in the grand jury that he was trying to remember who told him first. Clinton 8/17/98 GJT at 41. But that was not the question. So his answer was again false and misleading. When one considers the nature of the conversation between President Clinton and Mr. Jordan, the suggestion that President Clinton forgot it defies common sense.

G. THE EVENTS OF DECEMBER 28, 1997—MS. CURRIE RETRIEVES THE GIFTS

December 28, 1997 is a crucial date because the evidence shows that President Clinton made false and misleading statements to the federal court, the federal grand jury and the Congress of the United States about the events on that date. He also continued his course of obstructing justice.

President Clinton testified that it was "possible" that he invited Ms. Lewinsky to the White House for a visit on this date. Clinton 8/17/98 GJT at 34. He admitted that he "probably" gave Ms. Lewinsky the most gifts he had ever given her on that date and that he had given her gifts on other occasions. Clinton 8/17/98 GJT at 35. Among the many gifts the President gave Ms. Lewinsky on December 28 was a bear that he said was a symbol of strength. Clinton 8/17/98 GJT at 176. Yet on January 17, just three weeks later, the President forgot that he had given any gifts to Monica:

> Q. Well, have you ever given any gifts to Monica Lewinsky?
> A. I don't recall. Do you know what they were?
> Q. A hat pin?
> A. I don't, I don't remember. But I certainly could have.

Clinton 1/17/98 Dep. at 75.

As an attorney, he knew that the law will not tolerate someone who says "I don't recall" when that answer is unreasonable under the circumstances. He also knew that, under those circumstances, his answer in the deposition could not be believed. When asked in the grand jury why he was unable to remember, though he had given Ms. Lewinsky so many gifts only three weeks before the deposition, the President gave a contrived explanation:

> A. I think what I meant there was I don't recall what they were, not that I don't recall whether I had given them.

Clinton 8/17/98 GJT at 51.

President Clinton adopted that same answer in Response No. 42 to the Committee's Requests for Admissions. He was not asked in the deposition to identify the gifts. He was simply asked, "Have you ever" given gifts to Ms. Lewinsky. The law does not allow a witness to insert "unstated premises" or mental reservations into the question to make his answer technically true, if factually false. The essence of lying is in deception, not in words.

His false testimony with respect to gifts also extends to whether Ms. Lewinsky gave him gifts. President Clinton was asked in the deposition if Ms. Lewinsky ever gave him gifts.

> Q. Has Monica Lewinsky ever given you any gifts?
> A. Once or twice. I think she's given me a book or two.

Clinton 1/17/98 Dep. at 76–77.

This is also false testimony. He answered this question in his Response Number 43 to the Committee by saying that he receives numerous gifts, and he did not focus on the precise number. The law again does not support the President's position. An answer that "baldly understates a numerical fact" in "response to a specific

quantitative inquiry" can be deemed "technically true" but actually false. For example, a witness is testifying falsely if he says he went to the store five times when in fact he had gone fifty, even though technically he had gone five times also. So too, when the President answered once or twice in the face of evidence that Ms. Lewinsky brought him 40 gifts, he was lying.

On December 28, one of the most blatant efforts to obstruct justice and conceal evidence occurred. Ms. Lewinsky testified that she discussed with President Clinton her having been subpoenaed and the subpoena's calling for her to produce gifts. She recalled telling him that the subpoena requested a hat pin and that that caused her concern. Lewinsky 8/6/98 GJT at 151–52. He told her that it "bothered" him, too. Lewinsky 8/20/98 GJT at 66. Ms. Lewinsky then suggested that she take the gifts somewhere, or give them to someone, possibly Ms. Currie. The President answered: "I don't know" or "Let me think about that." Lewinsky 8/6/98 GJT at 152-53. Later that day, Ms. Lewinsky got a call from Ms. Currie, who said: "I understand you have something to give me" or "the President said you have something to give me." Lewinsky 8/6/98 GJT at 154–55. Ms. Currie has an unclear memory about this incident, but says that "the best she can remember," Ms. Lewinsky called her. Currie 5/6/98 GJT at 105. Key evidence shows that Ms. Currie's unclear recollection is wrong. Ms. Lewinsky said that she thought Ms. Currie called from her cell phone. Lewinsky 8/6/98 GJT at 154–55. Ms. Currie's cell phone record corroborates Ms. Lewinsky and proves conclusively that Ms. Currie called Ms. Lewinsky from her cell phone several hours after she had left the White House. The evidence strongly suggests that President Clinton directed her to do so.

Ms. Currie's actions buttress that conclusion. There is no evidence that she asked why Ms. Lewinsky would have called her for this strange task. Rather, she simply took the gifts and placed them under her bed without asking a single question. Currie 1/27/98 GJT at 57–58, 5/6/98 GJT at 105–08, 114.

President Clinton stated in his Response to Requests for Admissions No. 24 and 25 from this Committee that he was not concerned about the gifts. In fact, he said that he recalled telling Ms. Lewinsky that if the Jones lawyers request gifts, she should turn them over. He testified that he is "not sure" if he knew the subpoena asked for gifts. Clinton 8/17/98 GJT at 42–43. There would be no reason for Ms. Lewinsky and President Clinton to discuss turning over gifts to the Jones lawyers if Ms. Lewinsky had not told him that the subpoena asked for gifts.

On the other hand, knowing the subpoena requested gifts, his giving Ms. Lewinsky more gifts on December 28 seems odd. But Ms. Lewinsky's testimony reveals why he did so. She said that she never questioned "that we were ever going to do anything but keep this private" and that meant to take "whatever appropriate steps needed to be taken" to keep it quiet. Lewinsky 8/6/98 GJT at 166. The only logical inference is that the gifts—including the bear symbolizing strength—were a tacit reminder to Ms. Lewinsky that they would deny the relationship—even in the face of a federal subpoena.

Furthermore, President Clinton, at various times in his deposition, seriously misrepresented the nature of his meeting with Ms. Lewinsky on December 28. First, he was asked: "Did she tell you she had been served with a subpoena in this case?" He answered flatly: "No. I don't know she had been." Clinton 1/17/98 Dep. at 68.

He was also asked if he "ever talked to Monica Lewinsky about the possibility of her testifying." "I'm not sure . . .," he said. He then added that he may have joked to her that the Jones lawyers might subpoena every woman he had ever spoken to, and that "I don't think we ever had more of a conversation than that about it. . . ." Clinton 1/17/98 Dep. at 70. Not only does Ms. Lewinsky directly contradict this testimony, but President Clinton also directly contradicted himself before the grand jury. Speaking of his December 28, 1997 meeting, he said that he "knew by then, of course, that she had gotten a subpoena" and that they had a "conversation about the possibility of her testifying." Clinton 8/17/98 GJT at 35–36. He had this conversation about her testimony only three weeks before his deposition. Again, his version is not reasonable.

H. THE EVENTS OF JANUARY 5–9, 1997—MS. LEWINSKY SIGNS THE FALSE AFFIDAVIT AND GETS THE JOB

President Clinton knew that Monica Lewinsky was going to sign a false affidavit. He was so certain of the content that when she asked if he wanted to see it, he told her no, that he had seen fifteen of them. Lewinsky 8/2/98 302 at 3. He got his information in part from his attorneys and in part from discussions with Ms. Lewinsky and Mr. Jordan about the content of the affidavit. Besides, he had suggested the affidavit himself and he trusted Mr. Jordan to be certain the mission was accomplished.

In the afternoon of January 5, 1998, Ms. Lewinsky met with her lawyer, Mr. Frank Carter, to discuss the affidavit. Lewinsky 8/6/98 GJT at 192. Mr. Carter asked her some hard questions about how she got her job. Lewinsky 8/6/98 GJT at 195. After the meeting, she called Ms. Currie, and said that she wanted to speak to President Clinton before she signed anything. Lewinsky 8/6/98 GJT at 195. Ms. Lewinsky and President Clinton discussed the issue of how she would answer under oath if asked about how she got her job at the Pentagon. Lewinsky 8/6/98 GJT at 197. He told her: "Well, you could always say that the people in Legislative Affairs got it for you or helped you get it." Lewinsky 8/6/98 GJT at 197. That was another lie.

Mr. Jordan also kept President Clinton advised as to the contents of the affidavit. Jordan 5/5/98 GJT at 224. On January 6, 1998, Ms. Lewinsky picked up a draft of the affidavit from Mr. Carter's office. Lewinsky 8/6/98 GJT at 199. She delivered a copy to Mr. Jordan's office because she wanted Mr. Jordan to look at the affidavit in the belief that if he approved, President Clinton would also. Lewinsky 8/6/98 GJT at 194–95. Ms. Lewinsky and Mr. Jordan conferred about the contents and agreed to delete a paragraph Mr. Carter inserted which might open a line of questions concerning whether she had been alone with President Clinton. Lewinsky 8/6/98 GJT at 200. By contrast, Mr. Jordan said he had nothing to do with the details of the affidavit. Jordan 3/5/98 GJT at 12. He admits, though, that he spoke with President Clinton after confer-

ring with Ms. Lewinsky about the changes made to her affidavit. Jordan 5/5/98 GJT at 218.

The next day, January 7, Monica Lewinsky signed the false affidavit. Lewinsky 8/6/98 GJT at 204–05. She showed the executed copy to Mr. Jordan that same day. Jordan 5/5/98 GJT at 222. She did this so that Mr. Jordan could report to President Clinton that it had been signed and another mission had been accomplished. Jordan 3/5/98 GJT at 26.

On January 8, 1998, Ms. Lewinsky had an interview arranged by Mr. Jordan with MacAndrews and Forbes in New York. Lewinsky 8/6/98 GJT at 206. The interview went poorly. Afterwards, Ms. Lewinsky called Mr. Jordan and informed him. Lewinsky 8/6/98 GJT at 206. Mr. Jordan, who had done nothing from early November to mid December, then called the chief executive officer of MacAndrews and Forbes, Ron Perelman, to "make things happen, if they could happen." Jordan 5/5/98 GJT at 231. Mr. Jordan called Ms. Lewinsky back and told her not to worry. Lewinsky 8/6/98 GJT at 208–09. That evening, MacAndrews and Forbes called Ms. Lewinsky and told that she would be given more interviews the next morning. Lewinsky 8/6/98 GJT at 209.

The next morning, Ms. Lewinsky received her reward for signing the false affidavit. After a series of interviews with MacAndrews and Forbes personnel, she was informally offered a job. Lewinsky 8/6/98 GJT at 210. When Ms. Lewinsky called Mr. Jordan to tell him, he passed the good news on to Ms. Currie—Tell the President, "Mission Accomplished." Jordan 5/28/98 GJT at 39. Later, Mr. Jordan called President Clinton and told him personally. Jordan 5/28/98 GJT at 41.

After months of looking for a job—since July according to the President's lawyers—Mr. Jordan makes the call to a CEO the day after the false affidavit is signed. Mr. Perelman testified that Mr. Jordan had never called him before about a job recommendation. Perelman 4/23/98 Dep. at 11. Mr. Jordan on the other hand, said that he called Mr. Perelman to recommend for hiring: (1) former Mayor Dinkins of New York; (2) a very talented attorney from his law firm, Akin, Gump; (3) a Harvard business school graduate; and (4) Ms. Lewinsky. Jordan 3/5/98 GJT at 58–59. Even if Mr. Perelman's testimony is mistaken, Ms. Lewinsky does not have qualifications that would merit Mr. Jordan's direct recommendation to a CEO of a Fortune 500 company.

Mr. Jordan knew that the people with whom Ms. Lewinsky worked at the White House did not like her and that she did not like her Pentagon job. Jordan 3/3/98 GJT at 43–44, 59. Mr. Jordan was asked if at "any point during this process you wondered about her qualifications for employment?" He answered: "No, because that was not my judgment to make." Jordan 3/3/98 GJT at 44. Yet when he called Mr. Perelman the day after she signed the affidavit, he referred to Monica as a bright young girl who is "terrific." Perelman 4/23/98 Dep. at 10. Mr. Jordan said that she had been hounding him for a job and voicing unrealistic expectations concerning positions and salary. Jordan 3/5/98 GJT at 37–38. Moreover, she narrated a disturbing story about President Clinton leaving the First Lady and how the President was not spending enough time with her. Yet, none of that gave Mr. Jordan pause in making

the recommendation. Jordan 3/3/98 GJT at 156–57. People like Mr. Jordan do not call CEOs for marginal employees unless there is a compelling reason. The compelling reason was that President Clinton told him this was a top priority, especially after Ms. Lewinsky received a subpoena.

I. THE FILING OF THE FALSE AFFIDAVIT

Ms. Lewinsky's false affidavit was important to President Clinton's deposition. It enabled him, through his attorneys, to assert at his January 17, 1998 deposition that " . . . there is absolutely no sex of any kind in any manner, shape or form with President Clinton. . . ." Clinton 1/17/98 Dep. at 54. When his own attorney questioned him in the deposition, the President stated specifically that the now famous paragraph 8 of Ms. Lewinsky's affidavit was "absolutely true." Clinton 1/17/98 Dep. at 204. President Clinton later affirmed the truth of that statement when testifying before the grand jury. Clinton 8/17/98 GJT at 20–21. Paragraph 8 of Ms. Lewinsky's affidavit states:

> I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship.

Appendices at 1235–36.

Ms. Lewinsky reviewed the draft affidavit on January 6, and signed it on January 7 after deleting a reference to being alone with President Clinton. She showed a copy of the signed affidavit to Mr. Jordan who called President Clinton and told him that she signed it. Jordan 3/5/98 GJT at 24–26, 5/5/98 GJT at 222.

Getting the affidavit signed was only half the battle. To have its full effect, it had to be filed with the Court and provided to President Clinton's attorneys in time for his deposition on January 17. On January 14, the President's lawyers called Mr. Carter and left a message, presumably to find out if he had filed the affidavit with the Court. Carter 6/18/98 GJT at 123. On January 15, President Clinton's attorneys called Mr. Carter twice. When they finally reached him, they requested a copy of the affidavit, and asked him, "Are we still on time?" Carter 6/18/98 GJT at 123. Mr. Carter faxed a copy on January 15. Carter 6/18/98 GJT at 123. President Clinton's counsel knew of its contents and used it powerfully in the deposition.

Mr. Carter called the Court in Arkansas twice on January 15 to ensure that the affidavit could be filed on Saturday, January 17. Carter 6/18/98 GJT at 124–25. He finished the Motion to Quash Ms. Lewinsky's deposition in the early morning hours of January 16, and mailed it to the Court with the false affidavit attached for Saturday delivery. Carter 6/18/98 GJT at 134. President Clinton's lawyers called him again on January 16 telling him, "You'll know what it's about." Carter 6/18/98 GJT at 135. President Clinton needed that affidavit to be filed with the Court to support his plans to mislead Ms. Jones's attorneys in the deposition.

On January 15, Michael Isikoff, a Newsweek reporter, called Ms. Currie and asked her whether Ms. Lewinsky had been sending gifts to her by courier. Currie 5/6/98 GJT at 123; Lewinsky 8/6/98 GJT at 228. Ms. Currie then called Ms. Lewinsky and told her about it. Lewinsky 8/6/98 GJT at 228–29. President Clinton was out of town. Later, Ms. Currie called Ms. Lewinsky back and asked for a ride to Mr. Jordan's office. Lewinsky 8/6/98 GJT at 229; Currie 5/6/98 GJT at 130–31. Mr. Jordan advised her to speak with White House Deputy Counsel Bruce Lindsey and White House Press Secretary Mike McCurry. Jordan 3/5/98 GJT at 71. Ms. Currie testified that she spoke immediately to Mr. Lindsey about Mr. Isikoff's call. Currie 5/6/98 GJT at 127.

J. THE EVENTS OF JANUARY 17, 1998—PRESIDENT CLINTON AND MR. BENNETT AT THE DEPOSITION

President Clinton also provided false and misleading testimony in the grand jury when he was asked about his attorney, Robert Bennett's representation to Judge Wright, the judge in the Jones case, that President Clinton is "fully aware" that Ms. Lewinsky filed an affidavit saying that "there is absolutely no sex of any kind in any manner, shape or form, with President Clinton. . . ." Clinton 1/17/98 Dep. at 54. In the grand jury, President Clinton was asked about his lawyer's representation in his presence and whether he felt obligated to inform Judge Wright of the true state of affairs. President Clinton answered that he was "not even sure I paid much attention to what [Mr. Bennett] was saying." Clinton 8/17/98 GJT at 24. When pressed further, he said that he did not believe he "even focused on what Mr. Bennett said in the exact words he did until I started reading this transcript carefully for this hearing. That moment, the whole argument just passed me by." Clinton 8/17/98 GJT at 29.

This last statement by President Clinton is critical. First, he had planned his answer to the grand jurors. He spent literally days with his attorney going over that deposition in detail and crafting answers in his mind that would not be obviously false. Second, he knew that he could only avoid an admission that he allowed a false affidavit to be filed by convincing the grand jury that he had not been paying attention. The videotape of the deposition shows clearly that President Clinton was paying close attention and that he followed his lawyer's argument.

President Clinton had every reason to pay attention. Mr. Bennett was talking about Ms. Lewinsky, at the time the most dangerous person in his life. If the false affidavit worked and Ms. Jones's lawyers could not question him about her, the Lewinsky problem was solved. President Clinton was vitally interested in what Mr. Bennett was saying. Nonetheless, when he was asked in the grand jury whether Mr. Bennett's statement was false, he still was unable to tell the truth—even before a federal grand jury. He answered with the now famous sentence, "It depends on what the meaning of the word "is" is." Clinton 8/17/98 GJT at 58.

But President Clinton reinforced Ms. Lewinsky's lie. Mr. Bennett read to him the paragraph in Ms. Lewinsky's affidavit in which she denied a sexual relationship with President Clinton:

> Q. In paragraph eight of her affidavit, she says this, "I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship." Is that a true and accurate statement as far as you know it?
> A. That is absolutely true.

Clinton 1/17/98 Dep. at 204. When asked about this in the grand jury and when questioned about it by this Committee, the President said that if Ms. Lewinsky believed it to be true, then it was a true statement. Clinton 8/17/98 GJT at 21.

First, Ms. Lewinsky admitted to the grand jury that the paragraph was false. Lewinsky 8/6/98 GJT at 204. Second, President Clinton was not asked about Ms. Lewinsky's belief. Rather, he was asked quite clearly and directly by his own lawyer whether the statement was true. His answer was unequivocally, yes. That statement is false.

Lastly, President Clinton asserts that according to his reading of the definition of "sexual relations" given to him at the deposition, he did not have sexual relations with Ms. Lewinsky. His reading of the definition was an afterthought conceived while preparing for his grand jury testimony. His explanation to the grand jury, then, was also false and misleading.

Apart from that defined term, President Clinton does not explain his denial of an affair or a sexual affair—he cannot. Neither can he avoid his unequivocal denial of sexual relations in the answers to interrogatories in the Jones case—answered before the definition of sexual relations used in the deposition had been developed.

> Q. Did you have an extramarital sexual affair with Monica Lewinsky?
> A. No.
> Q. If she told someone that she had a sexual affair with you beginning in November of 1995, would that be a lie?
> A. It's certainly not the truth. It would not be the truth.
> Q. I think I used the term "sexual affair." And so the record is completely clear, have you ever had sexual relations with Monica Lewinsky, as that term is defined in Deposition Exhibit 1, as modified by the Court?
> Mr. BENNETT. I object because I don't know that he can remember——
> Judge WRIGHT. Well, it's real short. He can—I will permit the question and you may show the witness definition number one.
> A. I have never had sexual relations with Monica Lewinsky. I've never had an affair with her.

Clinton 1/17/98 Dep. at 78.

K. THE EVENTS OF LATE JANUARY, 1998—DEPOSITION AFTERMATH

By the time President Clinton concluded his deposition, he knew that someone was talking about his relationship with Ms. Lewinsky. He also knew that the only person who could be talking was Ms. Lewinsky herself. The cover story that he and Ms.

Lewinsky created and that he used during the deposition was now in jeopardy. He needed not only to contact Ms. Lewinsky, but also to obtain corroboration from his trusted secretary, Ms. Currie. At around 7 p.m. on the night of the deposition, the President called Ms. Currie and asked that she come in the following day, a Sunday. Currie 7/22/98 GJT at 154–55. Ms. Currie could not recall the President ever before calling her that late at home on a Saturday night. Currie 1/27/98 GJT at 69.

In the early morning hours of January 18, 1998—i.e. the night of the deposition, President Clinton learned about the Drudge Report mentioning Ms. Lewinsky released earlier that day. Clinton 8/17/98 GJT at 142–43. Between 11:49 a.m. and 2:55 p.m., Mr. Jordan and President Clinton had three phone calls. At about 5 p.m., Ms. Currie met with President Clinton. Currie 1/27/98 GJT at 67. He told her that he had just been deposed and that the attorneys asked several questions about Ms. Lewinsky. Currie 1/27/98 GJT at 69–70. This, incidentally, violated Judge Wright's gag order prohibiting any discussions about the deposition testimony. He then made a series of statements to Ms. Currie:

> (1) I was never really alone with Monica, right?
> (2) You were always there when Monica was there, right?
> (3) Monica came on to me, and I never touched her, right?
> (4) You could see and hear everything, right?
> (5) She wanted to have sex with me, and I cannot do that.

Currie 1/27/98 GJT at 70–75, 7/22/98 GJT at 6–7.

During Betty Currie's grand jury testimony, she was asked whether she believed that the President wished her to agree with the statement:

> Q. Would it be fair to say, then—based on the way he stated [these five points] and the demeanor that he was using at the time that he stated it to you—that he wished you to agree with that statement?
> A. I can't speak for him, but——
> Q. How did you take it? Because you told us at these [previous] meetings in the last several days that that is how you took it.
> A. (Nodding)
> Q. And you're nodding your head, "yes", is that correct?
> A. That's correct.
> Q. Okay, with regard to the statement that the President made to you, "You remember I was never really alone with Monica, right, was that also a statement that, as far as you took, that he wished you to agree with that?
> A. Correct.

Currie 1/27/98 GJT at 74.

In the grand jury, President Clinton was questioned about his intentions when he made those five statements to Ms. Currie in his office on that Sunday afternoon. He stated:

> And what I wanted to establish was that Betty was there at all other times in the complex, and I wanted to know what Betty's memory was about what she heard, what she could hear. And what I did not know was—I did not know that. And I was trying to figure out in a hurry because I knew something was up.
>
> * * * * *
>
> So, I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could.
>
> * * * * *
>
> . . . I thought we were going to be deluged by the press comments. And I was trying to refresh my memory about what the facts were.

Clinton 8/17/98 GJT at 54, 56, 131. Though Ms. Currie would later intimate that she did not necessarily feel pressured by President Clinton, she did state that she felt he was seeking her agreement (or disagreement) with those statements. Currie 7/22/98 GJT at 27.

Logic tells us that his plea that he was just trying to refresh his memory is contrived and false. First, consider his options after he left his deposition:

> (1) He could abide by Judge Wright's order to remain silent and not divulge any details of his deposition;
>
> (2) He could defy Judge Wright's order, and call Ms. Currie on the phone and ask her open ended questions (i.e., "What do you remember about . . .?"); or
>
> (3) He could call Ms. Currie and arrange a Sunday afternoon meeting—a time when the fewest distractions exist and the presence of White House staff is minimal. He chose the third option.

He made sure that this was a face-to-face meeting—not a 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 her potential testimony.

When Ms. Currie testified before the grand jury, she could not recall whether she had another one-on-one discussion with President Clinton on Tuesday, January 20 or Wednesday, January 21. But she did state that on one of those days, he summoned her back to his office. At that time, he recapped their Sunday afternoon discussion in the Oval Office. When he spoke to her in this second meeting, he spoke in the same tone and demeanor that he used in his January 18 Sunday session. Currie 1/27/98 GJT at 70–75, 7/22/98 GJT at 6–7. Ms. Currie stated that the President may have mentioned that she might be asked about Monica Lewinsky. Currie 1/24/98 302 at 8.

During these meetings, President Clinton made short, clear, understandable, declarative statements *telling* Ms. Currie what his testimony was. He was not interested in what she knew. Rather, he did not want his personal secretary to contradict him. The only way to ensure that was by telling her what to say, not asking her what she remembered. One does not refresh someone else's memory by *telling* that person what he or she remembers. One certainly

does not make declarative statements to someone regarding factual scenarios of which the listener was unaware.

Ms. Currie could not possibly have any personal knowledge of the facts that the President was asking. Ms. Currie could not know if they were ever alone. If they were, Ms. Currie was not there. She could not know that the President never touched Monica. President Clinton was not trying to refresh his recollection—instead, it was witness tampering pure and simple.

President Clinton essentially admitted to making these statements when he knew they were not true. Consequently, he painted himself into a legal corner. Understanding the seriousness of the President "coaching" Ms. Currie, his attorneys have argued that those statements to her could not constitute obstruction because she had not been subpoenaed, and the President did not know that she was a potential witness at the time. This argument is refuted by both the law and the facts.

The Eighth Circuit rejected this argument stating:

> [A] person may be convicted of obstructing justice if he urges or persuades a prospective witness to give false testimony. Neither must the target be scheduled to testify at the time of the offense, nor must he or she actually give testimony at a later time.

United States v. *Shannon,* 836 F.2d 1125, 1128 (8th Cir.), *cert. denied,* 486 U.S. 1058 (1988), *citing, e.g., United States* v. *Friedland,* 660 F.2d 919, 931 (3d Cir. 1981), *cert. denied,* 456 U.S. 989 (1982). Indeed, under the witness tampering statute, there need not even be a proceeding pending, 18 U.S.C. § 1512(e)(1). As discussed, President Clinton and Ms. Lewinsky concocted a cover story that brought Ms. Currie into the fray as a corroborating witness. True to this scheme, President Clinton invoked Ms. Currie's name frequently as a witness who could corroborate his false and misleading testimony about the Lewinsky affair. For example, during his deposition, when asked whether he was alone with Ms. Lewinsky, he said that he was not alone with her or that Ms. Currie was there with Ms. Lewinsky. Clinton 8/17/98 GJT at 58. When asked about the last time he saw Ms. Lewinsky, which was December 28, 1997, he falsely testified that he only recalled that she was there to see Ms. Currie. Clinton 1/17/98 Dep. at 70. He also told the Jones lawyers to "ask Betty" whether Ms. Lewinsky was alone with him or with Ms. Currie in the White House between the hours of midnight and 6 a.m. Clinton 1/17/98 Dep. at 64–66. Asked whether Ms. Lewinsky sent packages to him, he stated that Ms. Currie handled packages for him. Clinton 1/17/98 Dep. at 64. Asked whether he may have assisted in any way with Ms. Lewinsky's job search, he stated that he thought Ms. Currie suggested Mr. Jordan talk to Ms. Lewinsky, and that Ms. Lewinsky asked Ms. Currie to ask someone to talk to Ambassador Richardson about a job at the United Nations. Clinton 1/17/98 Dep. at 72–74.

Ms. Currie was a prospective witness, and President Clinton clearly wanted her to be deposed, as his "ask Betty" testimony demonstrates. He claims that he called Ms. Currie into work on a Sunday night only to find out what she knew. But he knew the truth about his relationship with Ms. Lewinsky, and if he had told

the truth during his deposition the day before, then he would have no reason to worry about what Ms. Currie knew. More importantly, the President's demeanor, Ms. Currie's reaction to his demeanor, and the suggested lies clearly prove that the President was not merely interviewing Ms. Currie. Rather, he was looking for corroboration for his false cover-up, and that is why he coached her.

Soon after his Sunday meeting with Ms. Currie, at 5:12 p.m., the flurry of telephone calls began looking for Ms. Lewinsky. Between 5:12 p.m. and 8:28 p.m., Ms. Currie paged Ms. Lewinsky four times. At 11:02 p.m., President Clinton called Ms. Currie at home to ask if she has reached Ms. Lewinsky. Currie 7/22/98 GJT at 160.

The following morning, January 19, Ms. Currie continued to work diligently for President Clinton. Between 7:02 a.m. and 8:41 a.m., she paged Ms. Lewinsky another five times. After the 8:41 a.m. page, Ms. Currie called President Clinton at 8:43 a.m. and said that she was unable to reach Ms. Lewinsky. Currie 8/22/98 GJT at 161–62. One minute later, at 8:44 a.m., she again paged Ms. Lewinsky. This time, Ms. Currie's page stated: "Family Emergency," apparently in an attempt to alarm Ms. Lewinsky into calling back. That may have been President Clinton's idea because Ms. Currie had just spoken with him. He was quite concerned because he called Ms. Currie only six minutes later, at 8:50 a.m. Immediately thereafter, at 8:51 a.m., Ms. Currie tries a different tactic sending the message: "Good news." Ms. Currie said that she was trying to encourage Ms. Lewinsky to call, but there was no sense of "urgency." Currie 7/22/98 GJT at 165. Ms. Currie's recollection of why she was calling was again unclear. She said at one point that she believes President Clinton asked her to call Ms. Lewinsky, and she thought she was calling just to tell her that her name came up in the deposition. Currie 7/22/98 GJT at 162. Ms. Lewinsky had been subpoenaed. It was no surprise that her name came up in the deposition. There was another and more important reason the President needed to get in touch with her.

At 8:56 a.m., President Clinton telephoned Mr. Jordan who then joined in the activity. Over a course of twenty-four minutes, from 10:29 to 10:53 a.m., Mr. Jordan called the White House three times, paged Ms. Lewinsky, and called Ms. Lewinsky's attorney, Frank Carter. Between 10:53 a.m. and 4:54 p.m., there are continued calls between Mr. Jordan, Ms. Lewinsky's attorney, and individuals at the White House.

Later that afternoon, matters deteriorated for President Clinton. At 4:54 p.m., Mr. Jordan called Mr. Carter. Mr. Carter informed Mr. Jordan that he had been told he no longer represented Ms. Lewinsky. Jordan 3/5/98 GJT at 141. Mr. Jordan then made feverish attempts to reach President Clinton or someone at the White House to tell them the bad news, as represented by the six calls between 4:58 p.m. and 5:22 p.m. Mr. Jordan said that he tried to relay this information to the White House because "[t]he President asked me to get Monica Lewinsky a job," and he thought it was "information that they ought to have." Jordan 6/9/98 GJT at 45–46. Mr. Jordan then called Mr. Carter back at 5:14 p.m. to "go over" what they had already talked about. Jordan 3/5/98 GJT at 146. Mr. Jordan finally reached the President at 5:56 p.m., and tells him that Mr. Carter had been fired. Jordan 6/9/98 GJT at 54.

This activity occurred because it was important for the President of the United States to find Monica Lewinsky to learn to whom she was talking. Ms. Currie was in charge of contacting Ms. Lewinsky. President Clinton had just completed a deposition in which he provided false and misleading testimony about his relationship with Ms. Lewinsky. She was a co-conspirator in hiding this relationship from the Jones attorneys, and he was losing control over her. He never got complete control over her again.

But President Clinton's efforts to obtain false corroboration did not end there. On Wednesday, January 21, 1998, the Washington Post published a story entitled "Clinton Accused of Urging Aide to Lie; Starr Probes Whether President Told Woman to Deny Alleged Affair to Jones' Lawyers." The White House learned the substance of the Post story on the evening of January 20, 1998.

After President Clinton learned of that story, he made a series of telephone calls. At 12:08 a.m. he called his attorney, Mr. Bennett, and they had a conversation. The next morning, Mr. Bennett was quoted in the Post stating: "The President adamantly denies he ever had a relationship with Ms. Lewinsky and she has confirmed the truth of that." He added, "This story seems ridiculous and I frankly smell a rat."

After that conversation, President Clinton had a half hour conversation with White House Deputy Counsel Bruce Lindsey. At 1:16 a.m., he called Ms. Currie and spoke to her for 20 minutes. He then called Mr. Lindsey again. At 6:30 a.m. the President called Mr. Jordan. After that, he again conversed with Bruce Lindsey.

This flurry of activity was a prelude to the stories which President Clinton would soon inflict on top White House aides and advisors. On the morning of January 21, 1998, he met with White House Chief of Staff, Erskine Bowles and his two deputies, John Podesta and Sylvia Matthews. Mr. Bowles recalled entering the President's office at 9:00 a.m. that morning. He then recounts President Clinton's immediate words as he and two others entered the Oval Office:

> And he looked up at us and he said the same thing he said to the American people. He said, "I want you to know I did not have sexual relationships with this woman, Monica Lewinsky. I did not ask anybody to lie. And when the facts came out, you'll understand."

Bowles 4/2/98 GJT at 84. After he made that blanket denial, Mr. Bowles responded:

> I said, "Mr. President, I don't know what the facts are. I don't know if they're good, bad, or indifferent. But whatever they are, you ought to get them out. And you ought to get them out right now."

Bowles 4/2/98 GJT at 84. When counsel asked whether President Clinton responded to Bowles's suggestion that he tell the truth, Mr. Bowles responded: "I don't think he made any response, but he didn't disagree with me." Bowles 4/2/98 GJT at 84.

Deputy Chief of Staff John Podesta also recalled a meeting with President Clinton on the morning of January 21, 1998. He testified

before the grand jury as to what occurred in the Oval Office that morning:

> A. And we started off meeting—we didn't—I don't think we said anything. And I think the President directed this specifically to Mr. Bowles. He said, "Erskine, I want you to know that this story is not true."
>
> Q. What else did he say?
>
> A. He said that—that he had not had a sexual relationship with her, and that he never asked anybody to lie.

Podesta 6/16/98 GJT at 85.

Two days later on January 23, 1998, Mr. Podesta had another discussion with the President:

> I asked him how he was doing, and he said he was working on this draft and he said to me that he never had sex with her, and that—and that he never asked—you know, he repeated the denial, but he was extremely explicit in saying he never had sex with her.

Podesta 6/16/98 GJT at 92. Then Mr. Podesta testified as follows:

> Q. Okay. Not explicit, in the sense that he got more specific than sex, than the word "sex."
>
> A. Yes, he was more specific than that.
>
> Q. Okay, share that with us.
>
> A. Well, I think he said—he said that—there was some spate. Of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever——
>
> Q. Okay.
>
> A. That they had not had oral sex.

Podesta 6/16/98 GJT at 92.

Later in the day on January 21, 1998, President Clinton called Sidney Blumenthal to his office. His lies became more elaborate and pronounced when he had time to concoct his newest line of defense. When the President spoke to Mr. Bowles and Mr. Podesta, he simply denied the story. By the time he spoke to Mr. Blumenthal, he had added three new angles to his defense strategy: (1) he now portrays Ms. Lewinsky as the aggressor; (2) he launches an attack on her reputation by portraying her as a "stalker"; and (3) he presents himself as the innocent victim being attacked by the forces of evil.

Mr. Blumenthal recalled in his June 4, 1998 testimony:

> And it was at this point that he gave his account of what had happened to me and he said that Monica—and it came very fast. He said, "Monica Lewinsky came at me and made a sexual demand on me." He rebuffed her. He said, "I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again." She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker anymore.

Blumenthal 6/4/98 GJT at 49. Mr. Blumenthal said President Clinton told him moments later:

> And he said, "I feel like a character in a novel. I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out. I feel like the character in the novel Darkness at Noon."
>
> And I said to him, "When this happened with Monica Lewinsky, were you alone?" He said, "Well, I was within eyesight or earshot of someone."

Blumenthal 6/4/98 GJT at 50. At one point, Mr. Blumenthal is asked by the grand jury to describe the President's manner and demeanor during the exchange.

> Q. In response to my question how you responded to the President's story about a threat or discussion about a threat from Ms. Lewinsky, you mentioned you didn't recall specifically. Do you recall generally the nature of your response to the President?
>
> A. It was generally sympathetic to the President. And I certainly believed his story. It was a very heartfelt story, he was pouring out his heart, and I believed him.

Blumenthal 6/25/98 GJT at 16–17.

President Clinton also implemented a win-at-all-costs strategy. Former presidential advisor Dick Morris testified that on January 21, 1998, he spoke to President Clinton and they discussed the turbulent events of the day. President Clinton again denied the accusations against him. After further discussions, they decided to have an overnight poll taken to determine if the American people would forgive the President for adultery, perjury, and obstruction of justice. When Mr. Morris received the results, he called the President:

> And I said, "They're just too shocked by this. It's just too new, it's too raw." And I said, "And the problem is they're willing to forgive you for adultery, but not for perjury or obstruction of justice or the various other things."

Morris 8/18/98 GJT at 28. Mr. Morris then recalls the following exchange:

> Morris: And I said, "They're just not ready for it." meaning the voters. President Clinton: Well, we just have to win, then.

Morris 8/18/98 GJT at 30. President Clinton cannot recall this statement.

L. THE EVENTS OF AUGUST 17, 1998—THE GRAND JURY TESTIMONY

On August 17, the last act of the tragedy took place. After six invitations, President Clinton appeared before a grand jury of his fellow citizens and took an oath to tell the truth. He equivocated and engaged in legalistic fencing, but he also lied. Actually, the entire testimony was calculated to mislead and deceive the grand jury and eventually the American people.

On August 16, 1998, President Clinton's personal attorney, David Kendall provided the following statement regarding his testimony:

> There is apparently an enormous amount of groundless speculation about the President's testimony tomorrow. *The truth is the truth. Period. And that's how the President will testify.*

Kendall 8/16/98 Statement.

The untruthful tone, however, was set at the very beginning. Judge Starr testified that in a grand jury a witness can tell the truth, lie, or assert a legal privilege. President Clinton was given a fourth choice. The President was permitted to read a statement:

> When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th deposition. But they did involve inappropriate intimate contact.
>
> These inappropriate encounters ended, at my insistence, in early 1997. I also had *occasional* telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.
>
> I regret that what began as a friendship came to include this conduct, and I will take full responsibility for my actions.
>
> While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.
>
> I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the term "sexual relations," as I understood it to be defined at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses. That, Mr. Bittman, is my statement.

Clinton 8/17/98 GJT at 8–10.

That statement itself is false in many particulars. President Clinton claims that he engaged in wrongful conduct with Ms. Lewinsky "on certain occasions in early 1996 and once in 1997." He does not mention 1995. There was a reason. On the three "occasions" in 1995, Ms. Lewinsky was a twenty-one year old intern. As for being alone on "certain occasions," he was alone with Ms. Lewinsky more than twenty times at least. The President also told the jurors that he "also had occasional telephone conversations with Ms. Lewinsky that included sexual banter." Actually, the two had at least fifty-five phone conversations, many in the middle of the night and in seventeen of these calls, Ms. Lewinsky and President Clinton engaged in phone sex.

Again, President Clinton carefully crafted his statements to give the appearance of being candid, when actually he intended the opposite. In addition, throughout the testimony whenever he was asked a specific question that could not be answered directly with-

out either admitting the truth or giving an easily provable false answer, he said, "I rely on my statement." Nineteen times he relied on this false and misleading statement; nineteen times, then, he repeated those lies. For example:

> Q. Getting back to the conversation you had with Mrs. Currie on January 18th, you told her—if she testified that you told her, Monica came on to me and I never touched her, you did, in fact, of course, touch Ms. Lewinsky, isn't that right, in a physically intimate way?
>
> A. Now, I've testified about that. And that's one of those questions that I believe is answered by the statement that I made.

Clinton 8/17/98 GJT at 138.

He also admitted to the grand jury that, after the allegations were publicly reported, that he made "misleading" statements to particular aides whom he knew would likely be called to testify before the Grand Jury:

> Q. Do you recall denying any sexual relationship with Monica Lewinsky to the following people: Harry Thomasson, Erskine Bowles, Harold Ickes, Mr. Podesta, Mr. Blumenthal, Mr. Jordan, Ms. Betty Currie? Do you recall denying any sexual relationship with Monica Lewinsky to those individuals?
>
> A. I recall telling a number of those people that I didn't have, either I didn't have an affair with Monica Lewinsky or didn't have sex with her. And I believe, sir, that—you'll have to ask them what they thought. But I was using those terms in the normal way people use them. You'll have to ask them what they thought I was saying.
>
> Q. If they testified that you denied sexual relations or relationship with Monica Lewinsky, or if they told us that you denied that, do you have any reason to doubt them, in the days after the story broke; do you have any reason to doubt them?
>
> A. No.

Clinton 8/17/98 GJT at 104–05. President Clinton then was specifically asked whether he knew that his aides were likely to be called before the grand jury:

> Q. 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. You knew that they might be called into a grand jury, didn't you?
>
> A. 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'll also—whenever anybody asked me any details, I said, look, I don't want you to be a witness or I turn you into a witness or give you information that would get you in trouble. I just wouldn't talk. I, by and large, didn't talk to people about it.
>
> Q. If all of these people—let's leave Mrs. Currie for a minute. Vernon Jordan, Sid Blumenthal, John Podesta,

> Harold Ickes, Erskine Bowles, Harry Thomasson, after the story broke, after Judge Starr's involvement was known on January 21st, have said that you denied a sexual relationship with them. Are you denying that?
>
> A. No.
>
> Q. And you've told us that you——
>
> A. I'm just telling you what I meant by it. I told you what I meant by it when they started this deposition.
>
> Q. You've told us now that you were being careful, but that it might have been misleading. Is that correct?
>
> A. It might have been . . . . So, what I was trying to do was to give them something they could—that would be true, even if misleading in the context of this deposition, and keep them out of trouble, and let's deal—and deal with what I thought was the almost ludicrous suggestion that I had urged someone to lie or tried to suborn perjury, in other words.

Clinton 8/17/98 GJT at 106–08.

As the President testified before the grand jury, he maintained that he was being truthful with his aides:

> Q. You don't remember denying any kind of sex in any way, shape or form, and including oral sex, correct?
>
> A. I remember that I issued a number of denials to people that I thought needed to hear them, but I tried to be careful and to be accurate, and I do not remember what I said to John Podesta.
>
> * * * * * * *
>
> Q. Did you deny it to them or not, Mr. President?
>
> A. Let me finish. So, what—I did not want to mislead my friends, but I wanted to find language where I could say that. I also, frankly, did not want to turn any of them into witnesses, because I—and, sure enough, they all became witnesses.
>
> Q. Well, you knew they might be——
>
> A. And so——
>
> Q. Witnesses, didn't you?
>
> A. And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course.
>
> But I also didn't want to do anything to complicate this matter further. So, I said things that were true. They may have been misleading, and if they were I have to take responsibility for it, and I'm sorry.

Clinton 8/17/98 GJT at 100, 105–06. He stated that when he spoke to his aides, he was careful with his wording. He stated that he wanted his statement regarding "sexual relations" to be literally true because he was only referring to intercourse.

However, John Podesta said that President Clinton denied sex "in any way whatsoever" "including oral sex." He told Mr. Podesta,

Mr. Bowles, Ms. Williams, and Harold Ickes that he did not have a "sexual relationship" with that woman. Seven days after the President's grand jury appearance, the White House issued a document entitled, "Talking Points January 24, 1998." This "Talking Points" document outlines proposed questions that the President may be asked. It also outlines suggested answers to those questions. The "Talking Points" purport to state the President's view of sexual relations and his view of the relationship with Monica Lewinsky.

The "Talking Points" state in relevant part as follows:

> Q. *What acts does the President believe constitute a sexual relationship?*
>
> A. I can't believe we're on national television discussing this. I am not about to engage in an "act-by-act" discussion of what constitutes a sexual relationship.
>
> Q. *Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?*
>
> *A. Of course it would.*

Based upon the foregoing, the President's own talking points refute the President's "literal truth" argument.

M. Answers to the Committee's Requests for Admission

In an effort to avoid unnecessary work and to bring this inquiry to an expeditious end, this Committee submitted to the President eighty-one requests to admit or deny specific facts relevant to this investigation. Although, for the most part, the questions could have been answered with a simple "admit" or "deny", President Clinton chose to follow the pattern of selective memory, reference to other testimony, blatant untruths, artful distortions, outright lies and half truths he had already used. When he did answer, he engaged in legalistic hairsplitting in an attempt to skirt the truth and to deceive this Committee.

Thus, on at least twenty-three questions, President Clinton professed a lack of memory despite the testimony of several witnesses that he has a remarkable memory. In at least fifteen answers, he merely referred to "White House Records." He also referred to his own prior testimony and that of others. He answered several of the requests by merely restating the same deceptive answers that he gave to the grand jury.

These half-truths, legalistic parsings, and evasive and misleading answers were calculated to obstruct the efforts of this Committee. They have had the effect of seriously hampering this Committee's ability to ascertain the truth. President Clinton has, therefore, added obstruction of an inquiry by the Legislative Branch to his obstructions of justice before the Judicial Branch.

III. EXPLANATION OF ARTICLES

A. ARTICLE I—PERJURY IN THE GRAND JURY

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a federal

grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate government employee; (2) prior perjurious, false and misleading testimony he gave in a federal civil rights action brought against him; (3) prior false and 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.

1. The Committee concluded that, on August 17, 1998, the President provided perjurious, false, and misleading testimony to a Federal grand jury concerning the nature and details of his relationship with a subordinate government employee

On August 17, 1998, the President gave perjurious, false, and misleading testimony regarding his relationship with Monica Lewinsky before a Federal grand jury. Such testimony includes the following:

> Q. Mr. President, were you physically intimate with Monica Lewinsky?
>
> A. Mr. Bittman, I think maybe I can save the—you and the grand jurors a lot of time if I read a statement, which, which I think will make it clear what the nature of my relationship with Ms. Lewinsky was and how it related to the testimony I gave, what I was trying to do in that testimony. And I think it will perhaps make it possible for you to ask even more relevant questions from your point of view. And, with your permission, I'd like to read that statement.
>
> Q. Absolutely. Please, Mr. President.
>
> A. When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters 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. But they did involve inappropriate intimate contact.
>
> These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 8–9, H. Doc. 105–311, pp. 460–61.

The President referred or reverted to this perjurious, false, and misleading statement many times throughout his grand jury testimony. For examples, see p. 37, lines 23–25, p. 38, lines 1–6; p. 101, lines 11–21; p. 109, lines 6–25, p. 110, lines 7–13; p. 138, lines 16–23; p. 166, lines 23–25, p. 167, lines 1–12.

This statement is misleading. The fact that it was prepared beforehand reveals an intent to mislead. The purpose of the statement was to avoid answering specific questions related to the President's conduct with Ms. Lewinsky. This is evident from the

fact that the President reverted to his statement 19 times in lieu of answering direct questions required by a grand jury witness. He used a prepared statement in order to justify the perjurious answers he gave at his deposition, which were intended to affect the outcome of the *Jones* case. *See* Article II analysis. The above quoted testimony reveals some direct lies. For example, the sexual contact between the President and Ms. Lewinsky was not limited to 1996 and 1997. It began in 1995, when Monica Lewinsky was a 21 year old intern. The President and Ms. Lewinsky were not alone only on "certain occasions." They were alone at least 20 times, and had 11 sexual encounters. The "occasional" telephone conversations that included "sexual banter" actually included 55 phone conversations, during 17 of which they engaged in phone sex.

These direct lies, however, taken alone, do not constitute the heart of the perjury committed by the President. Rather, the fact that he provided to the grand jury a half-true, incomplete and misleading statement as a true and complete characterization of his conduct (as required by the oath), and used that statement as a response to direct questions going to the heart of the investigation into whether he committed perjury and obstructed justice related to his deposition, constitutes a premeditated effort to thwart the investigation and to justify prior criminal wrongdoing.

The President also provided the following perjurious, false, and misleading testimony regarding the nature and details of his relationship with a subordinate employee:

> Q. Did you understand the words in the first portion of the exhibit, Mr. President, that is, "For the purposes of this deposition, a person engages in 'sexual relations' when the person knowingly engages in or causes"?
>
> Did you understand, do you understand the words there in that phrase?
>
> A. Yes. My—I can tell you what my understanding of the definition is, if you want me to——
>
> Q. Sure.
>
> A [continuing]. Do it. My understanding of this definition is it covers contact by the person being deposed with the enumerated areas, if the contact is done with an intent to arouse or gratify. That's my understanding of the definition.
>
> Q. What did you believe the definition to include and exclude? What kinds of activities?
>
> A. I thought the definition included any activity by the person being deposed, where the person was the actor and came into contact with those parts of the bodies with the purpose or intent or gratification, and excluded any other activity.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 14–15, H. Doc. 105–311, pp. 466–67.

This statement is perjurious. At the deposition of the President, his attorney Mr. Bennett, in characterizing the affidavit of Monica Lewinsky in which she stated that she did not have "sexual relations" with the President, stated that "sexual relations" in that affidavit meant "there is no sex of any kind in any manner, shape or

form." The President would have the grand jury, and now the House of Representatives believe that the purposely broad definition of sexual relations, meant to address the affidavit filed, and chosen by the court in the *Jones* case, meant something different than the same words in Ms. Lewinsky's affidavit and that it took into account contorted and strained interpretations of words and meanings. It is unrealistic to contemplate that the President, at his deposition, honestly and without a desire to mislead, gave the meaning to the definition of "sexual relations" that he testified to before the grand jury.

During his deposition in the *Jones* case, President Clinton, having knowledge of the false affidavit executed by Ms. Lewinsky denying any relationship, asserted the same falsehood contained in that affidavit which he encouraged her to file. He denied having a "sexual affair, a sexual relationship or sexual relations" with Monica Lewinsky. Deposition Testimony of President in the *Jones* case, 1/17/98, pp. 78, 204. Thus, the question of whether there was a sexual relationship between the President and this subordinate employee became part of the OIC investigation into whether the chief law enforcement officer of the country committed perjury and obstructed justice, undermining the rule of law in a civil rights sexual harassment case.

The OIC proceeded to gather a substantial body of evidence proving that the President did indeed subvert the judicial system by lying under oath in his deposition and obstructing justice. This evidence includes Ms. Lewinsky's consistent and detailed testimony given under oath regarding 11 specific sexual encounters with the President, confirmation of the President's semen stain on Monica Lewinsky's dress, and the testimony of Monica Lewinsky's friends, family members and counselors to whom she made near contemporaneous statements about the relationship. Ms. Lewinsky's memory and accounts were further corroborated by her recollection of times and phone calls which were shown to be correct with entrance logs and phone records. (For a summary of testimony and citations to the record, see the OIC Referral, pp. 134–40).

As indicated, contrary to this compelling corroborated evidence, President Clinton testified before the grand jury that he did not have "sexual relations" with Ms. Lewinsky. The Committee has concluded that the President lied under oath in making this statement. The obligation to tell the truth, the whole truth, and nothing but the truth requires a complete answer and does not allow a deponent to hide behind twisted interpretations that a reasonable person would not draw. Such "technical accuracy," as defined by the President, may pose an even greater affront to the basic concepts of judicial proceedings because it makes it impossible to achieve the truth-seeking purpose of such a proceeding. Legal hair-splitting used to bypass the requirement of telling the complete truth directly challenges the deterrence factor of the nation's perjury laws, denying a citizen her right to a constitutional orderly disposition of her claims in a court of law.

While the President attempted to justify his perjurious deposition testimony regarding his relationship with Ms. Lewinsky by continuing to supply misleading answers concerning the definition of "sexual relations" used in the deposition, he lied before the

grand jury about his contact with her even under his misleading interpretation of that definition:

> Q. If the person being deposed kissed the breast of another person, would that be in the definition of sexual relations as you understood it in the *Jones* case.
>
> A. Yes, that would constitute contact . . .
>
> Q. So, touching, in your view then and now—the person being deposed touching or kissing the breast of another person would fall within the definition?
>
> A. That's correct sir.
>
> Q. And you testified that you didn't have sexual relations with Monica Lewinsky in the *Jones* deposition, under that definition, correct?
>
> A. That's correct, sir.
>
> Q. If the person being deposed touched the genitalia of another person, would that be" and with the intent to arouse the sexual desire, arouse or gratify, as defined in definition (1), would that be, under your understanding then and now——
>
> A. Yes, sir.
>
> Q [continuing]. Sexual relations?
>
> A. Yes, sir.
>
> Q. Yes it would?
>
> A. Yes, it would. If you had direct contact with any of these places in the body, if you had direct contact with intent to arouse or gratify, that would fall within the definition.
>
> Q. So, you didn't do any of those three things——
>
> A. You——
>
> Q [continuing]. With Monica Lewinsky?
>
> A. You are free to infer that my testimony is that I did not have sexual relations, as I understood this term to be defined.
>
> Q. Including touching her breast, kissing her breast, or touching her genitalia?
>
> A. That's correct.

Grand Jury Testimony of President Clinton 8/17/98 p. 94–95, H. Doc. 105–311 p. 546–47.

Another example of such perjurious, false, and misleading grand jury testimony regarding the nature of this relationship can be found on p. 92, lines 13–17. The President thus testified that even under his strained and unrealistic interpretation of the definition of "sexual relationship", intended to cover that term as used in Ms. Lewinsky's false affidavit, the touching of her breasts and genitalia would fall under that definition and thus would constitute sexual relations. While it is curious that the President would assert that oral sex would not constitute sexual relations, but the touching of breasts would constitute such relations, even under his tortured reconstruction of the definition, the President committed perjury. He denied before the grand jury that he engaged in "sexual relations as I understood that term to be defined at my January 17th, 1998 deposition." As mentioned above, he invoked this statement 19 times. Ms. Lewinsky testified under oath on several occasions that

the President and she did engage in conduct that involved the touching of breasts and genitalia and therefore did constitute sexual relations even under the President's admitted interpretation of the definition.

Ms. Lewinsky had every reason to tell the truth to the grand jury. She was under a threat of prosecution for perjury not only regarding her statements made on these occasions, but on the statements made in her admittedly false affidavit if she did not tell the truth, since truthful testimony was a condition of the immunity agreement she made. As indicated, her testimony is also corroborated.

The vague and evasive responses given by the President were made in violation of the oath he took to tell "the truth, the whole truth and nothing but the truth." He asserted in his grand jury testimony that because of his interpretation behind the motives for the lawsuit being brought, he was entitled in his deposition to answer in a manner that was less than completely truthful. This argument has no basis in law and is detrimental to the purpose of the oath. The technical and hair-splitting legal arguments advanced by the President that he did not have an obligation to tell the complete truth unless a question was posed in a way that he had no choice but to give the complete truth, or that he did not "technically" perjure himself in his deposition, defy the common sense and human experience which must be applied by any prospective fact- finder in this case.

The President did not have to answer untruthfully in the grand jury. The Constitution provided him with the opportunity to assert his Fifth Amendment right to refuse to respond based on his opinion that a completely truthful answer would tend to incriminate him for prior acts of perjury and obstruction of justice. He was apprised of this right in the grand jury proceeding:

> Q. You have a privilege against self-incrimination. If a truthful answer to any question would tend to incriminate you, you can invoke the privilege and that invocation will not be used against you. Do you understand that?
>
> A. I do.
>
> Q. And if you don't invoke it, however, any answer that you give can and will be used against you. Do you understand that, sir?
>
> A. I do.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 4–5, H. Doc. 105–311, pp. 456–57.

Instead of invoking his right, the President chose to place his own personal and political interests ahead of the interests of justice and the nation and continued to assert that he did not have sexual relations with Ms. Lewinsky. He also, as indicated *infra,* lied about the truthfulness of his prior testimony and his efforts to influence others related to the *Jones* action.

The Committee has concluded that the President's statements to the grand jury denying that he had sexual relations with Ms. Lewinsky were calculated to avoid difficult questions regarding his conduct and to project the appearance that he was being forthright with the grand jury and the American people. In fact, his premedi-

tated and carefully prepared statements were perjurious, false and misleading in light of corroborated evidence to the contrary.

2. The Committee concluded that the President provided perjurious, false, and misleading testimony to a Federal grand jury concerning prior perjurious, false and misleading testimony he gave in a federal civil rights action brought against him.

On August 17, 1998, the President gave perjurious, false, and misleading testimony regarding prior statements of the same nature he made in his deposition. Such testimony includes the following:

> Q. Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth on January 17th, 1998 in a deposition in the Paula Jones litigation; is that correct, sir?
>
> A. I did take an oath then.
>
> Q. Did the oath you took on that occasion mean the same to you then as it does today?
>
> A. I believed then that I had to answer the questions truthfully, that is correct.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 6–7, H. Doc. 105–311, pp. 457–58.

> Q. You're not going back on your earlier statement that you understand you were sworn to tell the truth, the whole truth and nothing but the truth to the folks at that deposition, are you, Mr. President?
>
> A. No, sir, but I think we might as well put this out on the table. You tried to get me to give a broader interpretation to my oath than just my obligation to tell the truth. In other words, you tried to say, even though these people are treating you in an illegal manner in illegally leaking these depositions, you should be a good lawyer for them. And if they don't have enough sense to write—to ask a question, and even if Mr. Bennett invited them to ask follow-up questions, if they didn't do it, you should have done all their work for them.
>
> Now, so I will admit this, sir. My goal in this deposition was to be truthful, but not particularly helpful. I did not wish to do the work of the Jones lawyers. I deplored what they were doing. I deplored the innocent people they were tormenting and traumatizing. I deplored their illegal leaking. I deplored the fact that they knew, once they knew our evidence, that this was a bogus lawsuit, and that because of the funding they had from my political enemies, they were putting ahead. I deplored it.
>
> But I was determined to work through the minefield of this deposition without violating the law, and I believe I did.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 79–80, H. Doc. 105–311, pp. 531–32.

The President did not believe that he had given truthful answers in his deposition testimony. If he had, he would not have related

a false account of events to Betty Currie, his secretary, who he knew, according to his own statements in the deposition, might be called as a witness in the *Jones* case. He would not have told false accounts to his aides who, he admitted, he knew would be called to testify before the grand jury. The President understood from previous conversations with Monica Lewinsky that her affidavit, stating that they did not have "sexual relations", was false. He knew that the definition in the *Jones* case was meant to cover the same activity as that mentioned in the affidavit. In fact, the affidavit was directly mentioned in the President's deposition. Rather than tell the complete truth, the President lied about his relationship, the cover stories, the affidavit, the subpoena and the search for a job for Ms. Lewinsky at his deposition. He then denied committing perjury at his deposition before the grand jury. The President thus engaged in a series of lies and obstruction, each one calculated to cover the one preceding it.

Throughout his grand jury testimony, the President acknowledged that he was bound to tell the truth during the January 17,1998, deposition in the Paula Jones case, as well as before the grand jury on August 17, 1998:

> Q. Mr. President, you understand that your testimony here today is under oath?
>
> A. I do.
>
> Q. And 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 grand jury, you could be prosecuted for perjury and/or obstruction of justice?
>
> A. I believe that's correct. . . .
>
> Q. You understand that it requires you to give the whole truth, that is, a complete answer to each question, sir?
>
> A. I will answer each question as accurately and fully as I can.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 457, H. Doc. 105–311.

The President did not answer each question as accurately and fully as he could have. In contrast to his assertions that he testified truthfully when deposed on January 17, 1998, the record reflects that the President did not "work through the minefield of [his deposition in the case of *Jones v. Clinton*] without violating the law." In fact, the Committee has concluded that President Clinton made multiple perjurious, false and misleading statements during his deposition in the case of *Jones v. Clinton.* Thus, his assertion before the grand jury that he did not violate the law in the deposition is itself a perjurious, false, and misleading statement and evidence of his continuing efforts to deny and cover-up his criminal wrongdoing. The details of the President's perjurious, false, and misleading statements made during his deposition in the case of *Jones v. Clinton* are set forth in Article II, Paragraph 2.

3. The Committee concluded that the President provided perjurious, false, and misleading testimony to a Federal grand jury concerning prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action

The President made perjurious, false and misleading statements before the grand jury when he testified he did not allow his attorney to refer to an affidavit before the judge in the *Jones* case that he knew to be false:

> Q. Mr. President, I want to before I go into a new subject area, briefly go over something you were talking about with Mr. Bittman.
>
> The statement of your attorney, Mr. Bennett, at the Paul Jones deposition, "counsel is fully aware"—it's page 54 line 5—"counsel is fully aware that Ms. Lewinsky has filed, has an affidavit which they are in possession of saying that there is no sex of any kind in any manner, shape or form, with President Clinton?
>
> That statement is made by your attorney in front of Judge Susan Webber Wright, correct?
>
> A. That's correct.
>
> Q. That statement is a completely false statement. Whether or not Mr. Bennett knew of your relationship with Ms. Lewinsky, the statement that there was "no sex of any kind in any manner, shape or form, with President Clinton," was an utterly false statement. Is that correct?
>
> A. It depends on what the meaning of the word "is" is. If the—if he—if "is" means is and never has been, that is not—that is one thing. If it means there is none, that was a completely true statement.
>
> But, as I have testified, and I'd like to testify again, this is—it is somewhat unusual for a client to be asked about his lawyer's statements, instead of the other way around. I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 57–58, H. Doc. 105–311, pp. 509–510.

Further perjurious, false and misleading statements from the President's grand jury testimony regarding this issue can be found on p. 24, lines 6–20; p. 25, lines 1–6; p. 59, lines 16–23; p. 60, lines 4–15, and p. 61, lines 4–15.

On January 15, 1998, Robert Bennett, attorney for President Clinton in the case of *Jones v. Clinton,* obtained a copy of the affidavit Monica Lewinsky filed in an attempt to avoid having to testify in the case of *Jones v. Clinton.* Grand Jury Testimony of Frank Carter, 6/18/98, pp. 1, 12–13, H. Doc. 105–316, pp. 420–21. In this affidavit, Monica Lewinsky asserted that she had never had a sexual relationship with President Clinton. At the President's deposition on January 17, 1988, an attorney for Paula Jones began to ask the President questions about his relationship with Ms. Lewinsky. Mr. Bennett objected to the "innuendo" of the questions and he pointed out that Ms. Lewinsky had signed an affidavit denying a "sexual relationship" with the President. Mr. Bennett asserted that this indicated "there is no sex of any kind in any manner, shape

or form," between the President and Ms. Lewinsky, and after a warning from Judge Wright he stated that, "I am not coaching the witness. In preparation of the witness for this deposition, the witness is 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. Deposition of President Clinton in the *Jones* case, 1/17/98, p. 54.

Later in the deposition, Mr. Bennett read the President the portion of Ms. Lewinsky's affidavit in which she denied having 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." Deposition of President Clinton in the case of *Jones v. Clinton,* 1/17/98, p. 204. The grand jury testimony of Monica Lewinsky, given under oath and following a grant of transnational immunity, confirmed that the contents of her affidavit were not true:

> Q. Paragraph 8 . . . [of the affidavit] says, "I have never had a sexual relationship with the President." Is that true?
> A. No.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105–311, p. 924.

When President Clinton was asked during his grand jury testimony how he could have lawfully sat silent at his deposition while his attorney made a false statement ("there is no sex of any kind, in any manner shape or form") to a United States District Court Judge, the President first said that he was not paying "a great deal of attention" to Mr. Bennett when he said this. The President's videotaped deposition, however, shows the President paying close attention and squarely looking in Mr. Bennett's direction while Mr. Bennett was making the 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, as if he understood that to be the case at the time the remark was made, and when he was allegedly not paying attention to the remark. The President stated, "It depends on what the meaning of the word "is" is, and that "[i]f it means there is none, that was a completely true statement." Grand Jury Testimony of President Clinton, 8/17/98, pp. 57–61, H. Doc. 105–311, pp. 509–513; see also id., pp. 24–25, H. Doc. 105–311, pp. 476–77.

It is clear to the Committee that the President perjured himself when he said that Mr. Bennett's statement that there was "no sex of any kind" was "completely true" depending on what the word "is" is. The President did not want to admit that Mr. Bennett's statement was false, because to do so would have been to admit that the term "sexual relations" as used in the Lewinsky affidavit meant "no sex of any kind." Admitting that would be to admit that he perjured himself previously in his grand jury testimony and in his prior deposition. Thus, the President engaged in an evolving se-

ries of lies in sworn testimony in order to cover previous lies he told in sworn testimony and previous obstructive conduct. In all of this, it was the intention of the President to thwart the ability of Paula Jones to bring a case against him and to sidetrack the OIC investigation into his misconduct.

4. The Committee concluded that the President provided perjurious, false, and misleading testimony to a Federal grand jury concerning his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action

a. The President gave perjurious, false and misleading testimony before the grand jury when he denied engaging in a plan to hide evidence that had been subpoenaed in the federal civil rights action against him

The President made the following perjurious, false, and misleading statements before the grand jury regarding efforts to hide evidence that had been subpoenaed in the case of *Jones v. Clinton.*

> Q. Getting back to your meeting with Ms. Lewinsky on December 28, you are aware that she's been subpoenaed. You are aware, are you not, Mr. President, that the subpoena called for the production of, among other things, all the gifts that you had given Ms. Lewinsky? You were aware of that on December 28, weren't you?
>
> A. I'm not sure. And I understand this is an important question. I did have a conversation with Ms. Lewinsky at some time about gifts, the gifts I had given her. I do not know whether it occurred on the 28th, or whether it occurred earlier. I do not know whether it occurred in person or whether it occurred on the telephone. I have searched my memory for this, because I know it's an important issue.
>
> Perhaps if you—I can tell you what I remember about the conversation and you can see why I'm having trouble placing the date.
>
> Q. Please.
>
> A. The reason I'm not sure it happened on the 28th is that my recollection is that Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me. That's the memory I have. That's why I question whether it happened on the 28th, because she had a subpoena with her, request for production.
>
> And I told her if they asked for gifts, she'd have to give them whatever she had, that that's what the law was.

Grand Jury Testimony of President Clinton, 8/17/98, p. 42–43, H. Doc. 105–311, p. 494–495.

Essentially the same perjurious, false, and misleading testimony is repeated by the President later in his grand jury testimony, p. 45, lines 11–23.

The following testimony was also given:

> Q. After you gave her the gifts on December 28th, 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——

A. No, sir, I didn't do that.

Q [continuing]. To give to Ms. Currie?

A. I did not do that.

Grand Jury Testimony of President Clinton, 8/17/98, p. 50, H. Doc. 105–311, p. 502.

Similar perjurious, false, and misleading grand jury testimony of President Clinton can be found on p. 113, lines 16–25, p. 114, lines 1–25 of the transcript from that grand jury testimony of 8/17/98.

On December 19, 1997, Monica Lewinsky was served with a subpoena in connection with the case of *Jones* v. *Clinton.* The subpoena required her to testify at a deposition on January 23, 1998. The subpoena also required her to produce each and every gift given to her by President Clinton. On the morning of December 28, 1998, Ms. Lewinsky met with the President for about 45 minutes in the Oval Office. By this time, President Clinton knew Ms. Lewinsky had been subpoenaed. At this meeting they discussed the fact that the gifts had been subpoenaed, including a hat pin, the first gift Clinton had given Lewinsky. Monica Lewinsky testified that at some point in this meeting she said to the President, "'Well, you know, I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty'. And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic." Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105–311, p. 872; See also 7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395.

President Clinton provided the following explanation to the grand jury and this Committee regarding this conversation: "Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me," but I do not know whether that conversation occurred on December 28, 1997, or earlier. Whenever this conversation occurred, I testified, I told her "that if they asked her for gifts, she'd have to give them whatever she had. . . ." I simply was not concerned about the fact that I had given her gifts. Indeed, I gave her additional gifts on December 28, 1997. Request for Admission number 24; see also Grand Jury Testimony of President Clinton, 8/17/98, p. 43, H. Doc. 105–311, p. 495. The President's statement that he told Ms. Lewinsky that if the attorneys for Paula Jones asked for the gifts, she had to provide them is perjurious, false and misleading. It simply strains logic to believe the President would encourage Monica Lewinsky to turn over the gifts. To do so would have raised questions about their relationship and would have been contrary to all of their other efforts to conceal the relationship, including the filing of an affidavit denying a sexual relationship. The fact that the President gave Ms. Lewinsky additional gifts on December 28, 1998, provides further evidence that the President did not believe Ms. Lewinsky would provide gifts that had been subpoenaed. As Ms. Lewinsky testified, she never questioned, "that we were ever going to do anything but keep this quiet." This meant that they had to take "whatever steps needed to be taken" to keep it quiet. By giving more gifts to Monica Lewinsky after she received a subpoena to appear for a deposition in the case of *Jones* v. *Clinton,* the President was making another gesture of affection towards

Ms. Lewinsky to help ensure that she would not testify truthfully regarding their relationship.

Ms. Lewinsky testified that she was never under the impression from anything the President said that she should turn over to Ms. Jones's attorneys all the gifts that he had given her. Deposition of Monica Lewinsky, 8/26/98, p. 58, H. Doc. 105–311, p. 1337. Additionally, she said she can't answer why the President would give her more gifts on the 28th when he knew she was under an obligation to produce gifts in response to a subpoena. She did testify, however, that, "to me it was never a question in my mind and I—from everything he said to me, I never questioned him, that we were never going to do anything but keep this private, so that meant deny it and that meant do—take whatever appropriate steps needed to be taken, you know, for that to happen . . .. So by turning over these gifts, it would at least prompt [the Jones attorneys] to question me about what kind of friendship I had with the President. . . ." Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 166–67, H. Doc. 105–311, pp. 886–87.

After this meeting on the morning of December 28th, Ms. Currie called Monica Lewinsky and made arrangements to pick up gifts the President had given to Ms. Lewinsky. Monica Lewinsky testified under oath before the grand jury that a few hours after meeting with the President on December 28, 1997, a meeting in which Ms. Lewinsky and President Clinton discussed the fact that gifts given to her by Mr. Clinton had been subpoenaed in the case of *Jones v. Clinton*, Betty Currie called her. The record indicates the following discussion occurred:

> Q. What did [Betty Currie] say?
>
> A. She said, "I understand you have something to give me." Or, "The President said you have something to give me." Along those lines. . . .
>
> Q. When she said something along the lines of "I understand you have something to give me," or "The President says you have something for me," what did you understand her to mean?
>
> A. The gifts.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 154–55, H. Doc. 105–311, pp. 874.

Later in the day on December 28th, Ms. Currie drove to Ms. Lewinsky's home and Ms. Lewinsky gave her a sealed box that contained several gifts Ms. Lewinsky had received from the President, including the hat pin. Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 156–58, H. Doc. 105–311, pp. 875–78. Ms. Currie testified that she understood the box contained gifts from the President. She took the box home and put it under her bed. Grand Jury Testimony of Betty Currie, 5/6/98, pp. 107–8, H. Doc. 105–316, p. 581. In Monica Lewinsky's February 1, 1998 handwritten statement to the OIC, which Ms. Lewinsky has testified is truthful, she stated, "Ms. Currie called Ms. L later that afternoon and said that the Pres. had told her Ms. L wanted her to hold onto something for her. Ms. L boxed up most of the gifts she had received and gave them to Ms. Currie." 2/1/98 Handwritten Proffer of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 715.

Betty Currie testified that she did not recall the President telling her that Ms. Lewinsky wanted her to retrieve and hold some items; that Ms. Lewinsky called her and asked her to come get the gifts. Grand Jury Testimony of Betty Currie, 5/6/98, pp. 105–6, H. Doc. 105–316, p. 581. When asked if a contrary statement by Ms. Lewinsky—indicating that Ms. Currie had in fact spoken to the President about the gift transfer—would be false, Ms. Currie replied: "She may remember better than I. I don't remember." Grand Jury Testimony of Betty Currie, 5/6/98, p. 126, H. Doc. 105–316, p. 584.

Further evidence before the Committee reveals that Betty Currie telephoned Monica Lewinsky regarding the gifts, and not the other way around:

> Mr. Schippers: When Ms. Currie, when they wanted to get rid of the gifts, Ms. Currie went and picked them up, put them under her bed to keep them from anybody else. Another mission accomplished?
>
> Mr. Starr: That's right.
>
> Mr. Schippers: By the way, there has been some talk here that Monica said that she recalled that Betty Currie called her and said, either the President wants me to pick something up, or I understand you have something for me to pick up. Later, Ms. Currie backed off that and said, well, I am not sure, maybe Monica called me. In the material that you made available, you and your staff made available to us, there were 302s in which Monica said, I think when Betty called me, she was using her cell phone. Do you recall that, Judge Starr?
>
> Mr. Starr: I do.
>
> Mr. Schippers: And in that same material that is in your office that both parties were able to review and that we did, in fact, review, there are phone records of Ms. Currie; are there not?
>
> Mr. Starr: There are.
>
> Mr. Schippers: And there is a telephone call on her cell phone to Monica Lewinsky's home on the afternoon of December 28, 1997; isn't there?
>
> Mr. Starr: That is correct.
>
> Mr. Schippers: Once again, Monica is right and she has been corroborated, right?
>
> Mr. Starr: That certainly tends to corroborate Ms. Lewinsky's recollection.

Impeachment Hearing on Inquiry Pursuant to H. Res. 581, Thursday, November 19, 1998, Transcript pp. 407–409.

President Clinton testified before the grand jury, and reiterated to this Committee (Request for Admission number 26) that he did not recall any conversation with Ms. Currie on or about December 28, 1997, about gifts previously given to Ms. Lewinsky and that he never told Ms. Currie to take possession of gifts he had given Ms. Lewinsky. Grand Jury Testimony of President Clinton, 8/17/98, p. 50, H. Doc. 105–311, p. 502; see also Grand Jury Testimony of President Clinton, 8/17/98, pp. 113–114, H. Doc. 105–311, pp. 565–66. This answer is false and misleading because the evidence re-

veals that Betty Currie did call Monica Lewinsky about the gifts and there is no reason for her to do so unless instructed by the President. Because she did not personally know of the gift issue, there is no other way Ms. Currie could have known to call Ms. Lewinsky about the gifts unless the President told her to do so. The President had a motive to conceal the gifts because both he and Ms. Lewinsky were concerned that the gifts might raise questions about their relationship. By confirming that the gifts would not be produced, the President ensured that these questions would not arise. The concealment and non-production of the gifts to the attorneys for Paula Jones allowed the President to provide false and misleading statements about the gifts at his deposition in the *Jones* case. Additionally, Ms. Lewinsky's testimony on this subject has been consistent and unequivocal; she provided the same facts in February, July and August. Betty Currie's cell phone records show that she placed a one minute call to Monica Lewinsky on the afternoon of December 28th.

b. The President made perjurious, false, and misleading statements before the grand jury regarding his knowledge that the contents of an affidavit executed by a subordinate federal employee who was a witness in the federal civil rights action brought against him were untrue

The President provided the following perjurious, false and misleading testimony to the grand jury:

> Q. Did you tell her to tell the truth?
>
> A. Well, I think the implication was she would tell the truth. I've already told you that I felt strongly she could execute an affidavit that would be factually truthful, that might get her out of having to testify. Now, it obviously wouldn't if the Jones people knew this, because they knew if they could get this and leak it, it would serve their larger purposes, even if the judge ruled that she couldn't be a witness in that case. The judge later ruled she wouldn't be a witness in that case. The judge later ruled the case had no merit.
>
> So, I knew that. And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.
>
> Q. If Monica has stated that her affidavit that she didn't have a sexual relationship with you is, in fact, a lie, I take it you disagree with that.
>
> A. No. I told you before what I thought the issue was there. I think the issue is how do you define sexual relationship. And there is no definition imposed on her at the time she executed the affidavit. Therefore, she was free to give it any reasonable meaning.

Grand Jury Testimony of President Clinton, 8/17/98, p. 119–120, H. Doc. 105–311, p. 571–572.

A similar perjurious, false, and misleading statement can be found at p. 20, lines 20–25, p. 21, lines 1–16 of the President's grand jury testimony

The President also provided the following perjurious, false, and misleading testimony regarding his knowledge that the contents of the affidavit were untrue:

> Q. And do you remember that Ms. Lewinsky's affidavit said that she had had no sexual relationship with you. Do you remember that?
>
> A. I do.
>
> Q. And do you remember in the deposition that Mr. Bennett asked you about that. This is at the end of the—towards the end of the deposition. And you indicated, he asked you whether the statement that Ms. Lewinsky made in her affidavit was——
>
> A. Truthful.
>
> Q.—True. And you indicated that it was absolutely correct.
>
> A. I did. And at the time she made the statement, and indeed to the present day because, as far as I know, she was never deposed since the Judge ruled she would not be permitted to testify in a case the Judge ruled had no merit; that is, this case we're talking about.
>
> 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. And I believe that is the definition that most ordinary Americans would give it.

Grand Jury Testimony of President Clinton, 8/17/98, pp. 20–21, H. Doc. 105–311, pp.472–73.

Monica Lewinsky filed an affidavit in the *Jones* case, in which she denied ever having a sexual relationship with the President. During his deposition in that case, the President affirmed that the statement of Monica Lewinsky in her affidavit denying a sexual relationship was "absolutely true." Deposition of President Clinton in the case of *Jones* v. *Clinton,* 1/17/98, p. 204. Monica Lewinsky has stated that she is "100 percent sure" that the President suggested she might want to sign an affidavit to avoid testifying in the case of *Jones* v. *Clinton.* 8/19/98 OIC interview of Monica Lewinsky, pp. 4–5, H. Doc. 105–311, pp. 1558–9, see also Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 123–24, H. Doc. 105–311, pp. 834–44. President Clinton told this Committee he believed he told Ms. Lewinsky "other witnesses had executed affidavits, and there was a chance they would not have to testify." Request for Admission number 18. The President gave the following testimony before the grand jury "And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No I did not." Grand Jury Testimony of President Clinton, 8/17/98, p. 119, H. Doc. 105–311, p. 571.

This testimony is false and misleading because it is not possible that Monica Lewinsky could have filed a full and truthful affidavit, i.e. an affidavit acknowledging a sexual relationship with the President, that would have helped her to avoid a deposition in the *Jones* case. The 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 Weber Wright ruled that Paula Jones was entitled to this information for purposes of discovery. Consequently, if Monica Lewinsky acknowledged a sexual relationship with the President in her affidavit, then she certainly could not have avoided a deposition. The President had to be aware of this and this renders his grand jury testimony on this subject false and misleading.

c. The President made perjurious, false, and misleading statements before the grand jury when he recited a false account of the facts regarding his interactions with Monica Lewinsky to Betty Currie, a potential witness in the federal civil rights action brought against him

The President provided the following perjurious, false and misleading testimony concerning the false account he provided to Betty Currie regarding his relationship with Ms. Lewinsky:

> Q. What was your purpose in making these statements to Miss Currie, if they weren't for the purpose to try to suggest to her if ever asked?
>
> A. Now, Mr. Bittman, I told you, the only thing I remember is when all the stuff blew up, I was trying to figure out what the facts were. I was trying to remember.

Grand Jury Testimony of President Clinton, 8/17/98, p. 138–39, H. Doc. 105–311, pp. 590–91.

For very similar perjurious, false and misleading grand jury testimony of President Clinton, see p. 54, lines 19–25, p. 55, lines 1–25 and p. 56, lines 1–16; p. 130, lines 18–25, p. 131, lines 1–14; p. 141, lines 7–12 and 23–25, p. 142, lines 1–3.

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 Paula Jones case. The President did this shortly after he had been deposed in the case.

In his grand jury testimony and responses to the Committee's Requests for Admission, the President was occasionally evasive and vague on this point. He stated that on January 18, 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." Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 508; Response of President Clinton to Question No. 52 of the Committee's Requests for Admission. The President added that he urged Ms. Currie to "tell the truth" after learning that the Office of Independent Counsel (OIC) might subpoena her to testify. (Id at p. 591.)

The President also stated that he could not recall how many times he had talked to Ms. Currie or when, in response to OIC questioning on the subject of a similar meeting that took place on or about January 20 or 21, 1998. He claimed that by asking questions of Ms. Currie he was only attempting to ". . . ascertain what the facts were, trying to ascertain what Betty's perception was." Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–

311, pp. 592–93; Response of President Clinton to Question No. 53 of the Committee's Requests for Admission.

While testifying before the grand jury, Ms. Currie was more precise in her recollection of the two meetings. 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 [Monica Lewinsky] was there, right? We were never really alone."
>
> You could see hear 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.

In her testimony Ms. Currie indicated that the President's remarks were "more like statements than questions." 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. OIC Referral, H. Doc. 105–3 10, pp. 191–92; Grand Jury Testimony of Betty Currie, 1/27/98, pp. 71–76, H. Doc. 105–316, pp. 559–60.

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.

As to their subsequent meeting on January 20 or 21, 1998, Ms. Currie stated that ". . . it was sort of a recapitulation of what we had talked about on Sunday [January 18, 19981. . . ." Grand Jury Testimony of Betty Currie, 1/27/98, p. 81, H. Doc. 105–316, p. 561.

d. The President made perjurious, false and misleading statements before the grand jury concerning statements he made to aides regarding his relationship with Monica Lewinsky

The President gave the following perjurious testimony under oath before the grand jury:

> Q. Did you deny to them or not, Mr. President?
>
> A. Let me finish. So, what—I did not want to mislead my friends but I want to define language where I can say that. I also, frankly, do not want to turn any of them into witnesses, because I—and, sure enough, they all became witnesses.
>
> Q. Well you knew they might be——
>
> A. And so——
>
> Q. Witnesses, didn't you?
>
> A. And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there is nothing go on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course. But I also didn't want to do anything to complicate this matter further. So, I said things that were true. They may have been misleading, and if they were, I have to take responsibility for it, and I'm sorry.

Grand Jury Testimony of President Clinton 8/17/98, p. 105–106, H. Doc. 105–311 p. 557–558.

Another perjurious, false and misleading statement by the President regarding conversations with his aides is recorded on p. 100, lines 20–25 of the grand jury transcript.

The following grand jury testimony of several Presidential aides demonstrates that the President's testimony that he "said things that were true" to his aides is clearly perjurious, false and misleading.

The record reflects that President Clinton met with a total of five aides who would later be called to testify before the grand jury shortly after the President's deposition in the Paula Jones case and following a *Washington Post* story, published on January 21, 1998, which detailed the relationship between the President and Monica Lewinsky. During the meetings the President made untrue statements to his aides:

Sidney Blumenthal

Testifying before the grand jury on June 4, 1998, Sidney Blumenthal, an Assistant to the President, related the following discussion he had with the President on January 21, 1998:

> He said Dick Morris had called him that day and he said Dick had told him that Nixon—he had read the newspaper and he said "You know, Nixon could have survived if he had gone on television and given an address and said everything he had done wrong and got it all out in the beginning."
>
> And I said to the President, "What have you done wrong?" And he said, "Nothing, I haven't done anything wrong." I said, "Well then, that's one of the stupidest things I've ever heard. Why would you do that if you've done nothing wrong?"
>
> And it was at that point that he gave his account of what had happened to me and he said that Monica—and it came very fast. He said, "Monica Lewinsky came at me and made a sexual demand on me." He rebuffed her. He said, I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again."

Grand Jury Testimony of Sidney Blumenthal, 6–4–98, p. 49, H. Doc. 105–316, p. 185.

John Podesta

In his grand jury testimony on June 16, 1998, then White House Deputy Chief of Staff John Podesta (now Chief Of Staff) testified to the following regarding a January 21, 1998 meeting with President Clinton:

> A. And we went in to see the President.
>
> Q. Who's we?
>
> A. Mr. Bowles, myself and Ms. Matthews.
>
> Q. Okay. Tell us about that.
>
> A. And we started off the meeting—we didn't—I don't think we said anything, and I think the President directed

> this specifically to Mr. Bowles. He said, "Erskine, I want you to know that this story is not true.
>
> Q. What else did he say?
>
> A. He said that—that he had not had a sexual relationship with her, and that he never asked anybody to lie.

Grand Jury Testimony of John Podesta, 6/16/98, p. 85, H. Doc. 105–316, p. 3310.

Erskine Bowles had the following recollection of the same meeting:

> A. And this was the day this huge story breaks. And the three of us walk in together—Sylvia Matthews, John Podesta and me—into the oval office, and the President was standing behind his desk.
>
> Q. About what time of day is this?
>
> A. This is approximately 9:00 in the morning or something—you know, in that area. And he looked up at us and he said the same thing he said to the American people. He said, I want you to know I did not have sexual relationships with this woman Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll understand.

Grand Jury Testimony of Erskine Bowles, 4/2/98, pp. 83–84, H. Doc. 105–316, p. 239.

The record indicates the President also had a January 23, 1998, conversation with John Podesta, in which you stated that you had never had an affair with Monica Lewinsky?

> A. See, we were getting ready to do the State of the Union prep and he was working on the state of the union draft back in his study. I went back there to just to kind of get him going—this is the first thing in the morning—you know, we sort of get engaged. I asked him how he was doing, and he said he was working on this draft, and he said to me that he had never had sex with her, and that—he never asked—you know, he repeated the denial, but he was extremely explicit in saying he never had sex with her.
>
> Q. How do you mean?
>
> A. Just what I said.
>
> Q. Okay. Not explicit, in the sense that he got more specific than sex, than the word "sex."
>
> A. Yes, he was more specific than that.
>
> Q. Okay. Share that with us.
>
> A. Well, I think he said—he said that—there was some spate of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever——
>
> Q. Okay.
>
> A. That they had not had oral sex.
>
> Q. No question in you mind he's denying any sex in any way, shape or form, correct?
>
> A. That's correct.

Grand Jury Testimony of John Podesta, 6/16/98, pp. 91–3, H. Doc. 105–316, p. 3311.

In that same January 23rd conversation with John Podesta, the President stated he was not alone with Monica Lewinsky in the Oval Office, and that Betty Currie was either in his presence or outside his office with the door open while he was visiting with Monica Lewinsky:

> Q. Did the President ever speak to that issue with you, the issue of if he didn't have an improper relationship with Ms. Lewinsky, what was she doing there so often? Did he ever speak to that?
>
> A. He said to me—I don't think it was in this conversation, I think it was a couple weeks later. He said to me that after she left, that when she had come by, she came to see Betty, and that he—when she was there, either Betty was with them—either that she was with Betty when he saw her or that he saw her in the Oval Office with the door open and Betty was around—and Betty was out at her desk.

Grand Jury Testimony of John Podesta, 6/16/98, p. 88, H. Doc. 105–316, p. 3310.

Harold Ickes

On or about January 26, 1998, The President had a conversation with Harold Ickes, in which he made statements to the effect that he did not have an affair with Monica Lewinsky:

> Q. What did the President say about Monica Lewinsky?
>
> A. The only discussion I recall having with him, he denied that he had had sexual relations with Ms. Lewinsky and denied that he had—I don't know how to capsulize it—obstructed justice, let's use that phrase.

Grand Jury Testimony of Harold Ickes, 6/10/98, p. 21, H. Doc. 105–316, p. 1487; See also Grand Jury Testimony of Harold Ickes from 8/5/98, p. 88, H. Doc. 105–316, p. 1610 ("He denied to me that he had had a sexual relationship. I don't know the exact phrase, but the word 'sexual' was there. And he denied any obstruction of justice")).

5. Explanation of the Rogan Amendment to Article I

The Committee adopted an amendment to Article I of the Resolution offered by Representative Rogan of California. Article I addresses certain statements which the President made during his grand jury testimony on August 17, 1997. More explicitly, the Article charges the President with providing perjurious, false, and misleading testimony governing the following topics:

> The nature and details of his relationship with a subordinated Government employee;
>
> Prior testimony in a deposition he gave in a Federal civil rights action against brought against him in the case of *Jones v. Clinton;*
>
> Prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and

His corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

The Rogan amendment supplements the language of Article I by specifying that the President willfully provided perjurious, false, and misleading testimony to the grand jury concerning any one or more of the four topics enumerated. In other words, contrary to his grand jury oath, the President provided perjurious, false, and misleading testimony about "one or more" of the four topics.

The Rogan language simply tracks identical language invoked in the 1974 Articles of Impeachment against President Nixon. Like the evidence in the Nixon precedent, the evidence in the instant case is sufficient to sustain President Clinton's culpability under Article I for his testimony concerning all four topics collectively, or each topic individually.

B. ARTICLE II—PERJURY IN THE CIVIL CASE

1. The Committee concluded that the President provided perjurious, false, and misleading testimony in a Federal civil rights action in response to written questions

On December 23, 1997, William Jefferson Clinton, in sworn answers to written questions asked as part of a Federal civil rights action brought against him, willfully provided perjurious, false and misleading testimony in response to questions deemed relevant by a Federal judge concerning conduct and proposed conduct with subordinate employees.

The evidence reveals that the President Clinton made perjurious, false, and misleading statements in response to written interrogatories in the civil rights case of *Jones v. Clinton*. The perjurious, false, and misleading statements are set forth below:

1. Interrogatory Number 10: Please state the name, address, and telephone number of each and every individual (other than Hillary Rodham Clinton) with whom you had sexual relations when you held any of the following positions:

   a. Attorney General of the State of Arkansas;
   b. Governor of the State of Arkansas;
   c. President of the United States.

On December 11, 1997, the Court issued an order modifying the scope of the interrogatories to incidents from May 8, 1986 to the present involving state or federal employees and compelling the President to answer the interrogatories.

The President's December 23, 1997, supplemental response to Interrogatory Number 10 (as modified by direction of the Court): None

2. Interrogatory Number 11: Please state the name, address, and telephone number of each and every individual (other than Hillary Rodham Clinton) with whom you sought to have sexual relations when you held any of the following positions:

   a. Attorney General of the State of Arkansas;
   b. Governor of the State of Arkansas;
   c. President of the United States.

The same court order modifying the scope of the interrogatories to incidents from May 8, 1986 to the present involving state or federal employees and compelling the President to answer the interrogatories was applicable to this question.

The President's December 23, 1997, supplemental response to Interrogatory Number 10 (as modified by direction of the Court): None

It is clear from the evidence before the Committee that the President did have sexual relations with Monica Lewinsky, a young, subordinate federal employee in the Oval Office complex of the White House while he was President of the United States. It is also evident that he sought to have sexual relations with her. This evidence includes, as cited previously, the sworn testimony of Monica Lewinsky, corroborated by the testimony of others and by phone and entrance records. In addition, DNA evidence before the Committee reveals that the President's semen was found on Ms. Lewinsky's dress.

2. The Committee concluded that the President provided perjurious, false, and misleading testimony in a Federal civil rights action in his deposition

On January 17, 1998, William Jefferson Clinton swore under oath to tell the truth, the whole truth, and nothing but the truth in a deposition given as part of a Federal civil rights action brought against him. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony in response to questions deemed relevant by a Federal judge concerning the nature and details of his relationship with a subordinate government employee, his knowledge of that employee's involvement and participation in the civil rights action brought against him, and his corrupt efforts to influence the testimony of that employee.

The record indicates that on January 17, 1998, before beginning to respond to questions during a deposition in a civil rights lawsuit in which he was a named defendant, the President answered in the affirmative to the question, "Do you swear and affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God." In the President's Response for Admissions Number 5, the President admits that he took an oath to tell the truth before his deposition in the *Jones v. Clinton* case.

a. The President lied in his deposition about the nature of his conduct with a subordinate federal employee who was a witness in the federal civil rights action brought against him

In the President's Deposition he admits that Monica Lewinsky is a federal employee:

> Q. Now, do you know a woman named Monica Lewinsky?
>
> A. I do.
>
> Q. How do you know her?
>
> A. She worked in the White House for a while, first as an intern, and then in, as the, in the legislative affairs office.

Deposition of President Clinton, 1/17/97, p. 1.

The President was asked about his conduct with Monica Lewinsky and in his deposition he denied having sexual relations with Monica Lewinsky. The definition of sexual relations was: "For purposes of this deposition, a person engages in 'sexual relations' when the person knowingly engages in or causes—(1) contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person; (2) contact between any part of the person's body or an object and the genitals or anus of another person; or (3) contact between the genitals or anus of the person and any part of another person's body. 'Contact' means intentional touching, either directly or through clothing."

> Q. Did you have an extramarital sexual affair with Monica Lewinsky?
>
> A. No.
>
> Q. If she told someone that she had a sexual affair with you beginning in November of 1995, would that be a lie?
>
> A. It's certainly not the truth. It would not be the truth.
>
> Q. I think I used the term "sexual affair." And so the record is completely clear, have you ever had sexual relations with Monica Lewinsky, as that term is defined in Deposition Exhibit 1, as modified by the Court.
>
> A. I have never had sexual relations with Monica Lewinsky. I've never had an affair with her.

Deposition of President Clinton, 1/17/98, p. 78.

According to the sworn testimony of Monica Lewinsky, she and the President had 11 sexual encounters, 8 while she worked at the White House and 2 thereafter. The sexual encounters generally occurred in or near the oval office private study. The evidence indicates that the conduct the President had with Ms. Lewinsky met the definition and that he lied about their conduct. According to Ms. Lewinsky, she performed oral sex on the President; he never performed oral sex on her. OIC Referral, H. Doc. 105–310, p. 17.

The record indicates an agreement to deny the conduct and that a relationship existed between the President and Monica Lewinsky:

> Q. Had you talked with [the President] earlier [than December 17] about . . . false explanations about what you were doing visiting him on several occasions?
>
> A. Several occasions throughout the entire relationship. . . . It was the pattern of the relationship to sort of conceal it.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 124, H. Doc. 105–311, p. 844.

The Committee has concluded that the President lied under oath about his relationship with Monica Lewinsky in his deposition in accord with an agreement to lie developed earlier.

b. The President lied in his deposition after being asked if anyone had reported to him within the past two weeks that they had had a conversation with a subordinate federal employee concerning the Jones v. Clinton lawsuit

> Q. . . . within the past two weeks has anyone reported to you that they had had a conversation with Monica Lewinsky concerning this lawsuit?
>
> A. I don't believe so. I'm sorry, I just don't believe so.

Deposition of President Clinton, 1/17/98, pp. 12–13 of public copy.

The record indicates that a telephone conversation took place on January 6, 1998, with Vernon Jordan and President Clinton during which President Clinton discussed Monica Lewinsky's affidavit, yet to be filed, in the case of *Jones v. Clinton*. See Telephone Calls, Table 35, included in Appendix G as referenced in note 928, H. Doc. 105–310, p. 108 (Vernon Jordan telephones the President less than 30 minutes after speaking with Monica Lewinsky over the telephone about her draft affidavit).

The record indicates that the President had knowledge of the fact that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton* on January 7, 1998.

> Q. . . . [Y]ou conveyed . . . both to Betty Currie and to the President—namely, that you knew Ms. Lewinsky had signed the affidavit [on January 7, 1998]?
>
> A. "Right."

Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 223, H. Doc. 105–316, p. 1828.

The record indicates that on or about January 7, 1998, the President had a discussion with Vernon Jordan in which Mr. Jordan mentioned that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton.*

> Q. Okay, do you believe that it would have been during one of these calls [phone conversations between the President and Vernon Jordan on January 7, 1998] that you would have indicated to the President that Ms. Lewinsky had, in fact, signed the affidavit?
>
> A. That, too, is a reasonable assumption.

Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 224, H. Doc. 105–316, p. 1828.

Furthermore, the President acknowledged before the grand jury and to this Committee, that Vernon Jordan discussed Monica Lewinsky's affidavit with him and within two weeks of his deposition. "As I testified before the grand jury, 'I believe that [Mr. Jordan] did notify us' when she signed the affidavit. While I do not remember the timing, as I told the grand jury, I have no reason to doubt Mr. Jordan's statement that he notified me about the affidavit around January 7, 1998." *See* Request for Admission number 29 and Grand Jury testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 525.

c. The President lied in his deposition about his being alone or in certain locations with a subordinate federal employee who was a witness in the action brought against him

President Clinton gave the following testimony under oath in his deposition in the case of *Jones v. Clinton* regarding the subject:

> Q. Is it true that when she worked at the White House she met with you several times?
>
> A. I don't know about several times. There was a period when the Republican Congress shut the government down that the whole White House was being run by interns, and she was assigned to work back in the chief of staffs office, and we were all working there, and so I saw her on two or three occasions then, and then when she worked at the White House, I think there was one or two other times when she brought some documents to me.

Deposition of President Clinton, 1/17/98, pp. 50–51.

> Q. At any time were you and Monica Lewinsky alone in the hallway between the Oval Office and this kitchen area?
>
> A. I don't believe so, unless we were walking back to the back dining room with the pizzas. I just, I don't remember. I don't believe we were alone in the hallway, no.
>
> Q. Are there doors at both ends of the hallway?
>
> A. They are, and they're always open.
>
> Q. At any time have you and Monica Lewinsky ever been alone together in any room in the White House?
>
> A. I think I testified to that earlier. I think that there is a, it is—I have no specific recollection, but it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend. That's—I have a general memory of that.
>
> Q. Do you remember anything that was said in any of those meetings.
>
> A. No. You know, we just have conversation. I don't remember.

Deposition of President Clinton, 1/17/98, p. 58.

The record indicates that a plan existed to cover the fact that they were alone and were having a sexual relationship. Monica Lewinsky provided the following testimony under oath regarding this subject:

> Q. I would like to ask you some questions about any steps you took to keep your relationship with the President secret.
>
> A. A lot.
>
> Q. All right. Well, why don't we just ask the question open-endedly and we'll follow up.
>
> A. Okay. I'm sure, as everyone can imagine, that this is a kind of relationship that you keep quiet, and we both wanted to be careful being in the White House. Whenever I would visit him during—when—during my tenure at the

> White House, we always—unless it was sort of a chance meeting on the weekend and then we ended up back in the office, we would usually plan that I would either bring papers, or one time we had accidentally bumped into each other in the hall and went from that way, so then we planned to do that again because that seemed to work well. But we always—there was always some sort of a cover.
>
> Q. When you say you planned to bring papers, did you ever discuss with the President the fact that you would try to use that as a cover?
>
> A. Yes.
>
> Q. Okay. What did the two of you say in those conversations?
>
> A. I don't remember exactly. I mean, in general, it might have been something like me saying, well, maybe once I got there kind of saying, "Oh, gee here are your letters," wink, wink, wink, and him saying: "Okay that's good," or—
>
> Q. And as part of this concealment, if you will, did you carry around papers when you went to visit the President while you worked at Legislative Affairs?
>
> A. Yes, I did.
>
> Q. Did you ever actually bring him papers to sign as part of business?
>
> A. No.
>
> Q. Did you actually bring him papers at all?
>
> A. Yes.
>
> Q. All right. And tell us a little about that.
>
> A. It varied. Sometimes it was just actual copies of letters. One time I wrote a really stupid poem. Sometimes I put gifts in the folder which I brought.
>
> Q. And even on those occasions, was there a legitimate business purpose to that?
>
> A. No.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 53–55, H. Doc. 105–311, p. 977.

President Clinton was also asked during his deposition on January 17, 1998:

> Q. Has it ever happened that a White House record was created that reflected that Betty Currie was meeting with Monica Lewinsky when in fact you were meeting with Monica Lewinsky?
>
> A. Not to my knowledge.

Deposition Testimony of President Clinton in the case of *Jones v. Clinton,* 1/17/98.

The record indicates the President had such discussions with Monica Lewinsky prior to December 17, 1997 that Betty Currie should be the one to clear Ms. Lewinsky in to see him so that Ms. Lewinsky could say that she was visiting with Ms. Currie instead of with him. Monica Lewinsky provided the following testimony under oath regarding this subject:

> Q. Did you ever [prior to your conversation with the President on December 17] have discussions with the President about what you would say about your frequent visits with him after you had left legislative affairs?
>
> A. Yes.
>
> Q. Yes. What was that about?
>
> A. I think we—we discussed that—you know, the backwards route of it was that Betty always needed to be the one to clear me in so that, you know, I could always say I was coming to see Betty.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 55, H. Doc. 105–311, p. 977.

> Q. Did you come to have a telephone conversation with the President on December 17?
>
> A. Yes . . .
>
> Q. Tell us how the conversation went from there . . .
>
> A. . . . At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up, he sort of said, "You know, you can always say you were coming to see Betty or that you were bringing me letters." Which I understood was really a reminder of things that we had discussed before.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 123, H. Doc. 105–311, p. 843.

In his grand jury testimony, the President himself admits that he was alone with Ms. Lewinsky: "When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong." Grand Jury Testimony of President Clinton, 8/17/98, pp. 8–9, H. Doc. 105–311, pp. 460–61.

d. The President lied in his deposition about his knowledge of gifts exchanged between himself and a subordinate federal employee who was a witness in the action brought against him

The record indicates that the President did present each of these items as gifts to Monica Lewinsky:

1. A lithograph
2. A hatpin
3. A large "Black Dog" canvas bag
4. A large "Rockettes" blanket
5. A pin of the New York skyline
6. A box of "cherry chocolates"
7. A pair of novelty sunglasses
8. A stuffed animal from the "Black Dog"
9. A marble bear's head
10. A London pin
11. A shamrock pin
12. An Annie Lennox compact disc
13. Davidoff cigars

A chart prepared as part of her testimony before the Grand Jury details Monica Lewinsky's visits to the President and the exchange

of gifts during those visits is contained in H. Doc. 105–311, pp. 1251–61.

The record indicates that the President gave false and misleading testimony in his deposition when he responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

> Q. Has Monica Lewinsky ever given you any gifts?
> A. Once or twice. I think she's given me a book or two.

Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 76.

The evidence shows that Ms. Lewinsky gave the President approximately a total of 38 gifts presented on numerous occasions. (See chart in House Document 105–311, pp. 1251–61.)

The record indicates that the President had a discussion with Monica Lewinsky regarding the gifts he had given to Ms. Lewinsky that were subpoenaed in the case of *Jones* v. *Clinton.*

> A. We—we really spent maybe about five—no more than ten minutes talking about the Paula Jones case on [December 28] . . . I brought up the subject of the case because I was concerned about how I had been brought into the case and been put on the witness list . . . And then at some point I said to him, "Well, you know, I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty." And he sort of said—I think he responded, "I don't know" or "Let me think about that." And left that topic.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105–311, p. 872; See also 7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395.

Furthermore, the evidence shows that President Clinton and Monica Lewinsky discussed the hat pin gift on December 28, 1997, after Ms. Lewinsky received a subpoena calling for her to produce all gifts she received from Mr. Clinton, including any hat pins. Ms. Lewinsky stated under oath before the grand jury that "I mentioned that I had been concerned about the hat pin being on the subpoena and he said that that had sort of concerned him also and asked me if I had told anyone that he had given me the hat pin and I said no." Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105–311, p. 1000.

The record indicates that the President stated that he did not recall giving gifts to Ms. Lewinsky even though he had knowledge:

> Q. Well, have you ever given any gifts to Monica Lewinsky?
> A. I don't recall. Do you know what they were?
> Q. A hat pin?
> A. I don't, I don't remember. But I certainly, I could have.

Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 75. See also request for admission number 41 for evidence of numerous gifts Mr. Clinton gave to Ms. Lewinsky.

e. The President lied in his deposition about his knowledge about whether he had ever spoken to a subordinate federal employee about the possibility that such subordinate employee might be called as a witness to testify in the federal civil rights action brought against him.

President Clinton was asked about this subject during his deposition on January 17, 1998:

> Q. Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify on this case?
>
> A. Bruce Lindsey, I think Bruce Lindsey told me that she was, I think maybe that's the first person [who] told me she was. I want to be as accurate as I can. . . .
>
> Q. I believe I was starting to ask you a question a moment ago and we got sidetracked. Have you ever talked to Monica Lewinsky about the possibility that she might be asked to testify in this lawsuit?
>
> A. 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. Seems to me the last time she was there 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'd ever talked to and ask them that, and so I said you would qualify, or something like that. I don't think we ever had more of a conversation than that about it . . ."

Deposition Testimony of President Clinton in the case of *Jones* v. *Clinton,* 1/17/98 pp. 70–71.

The record indicates that the President did indeed tell Monica Lewinsky about the appearance of her name on December 17, 1998:

> Q. . . . Did you come to have a telephone conversation with the President on December 17?
>
> A. 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 that it didn't necessarily mean that I would be subpoenaed, but that that was a possibility, and if I were subpoenaed, that I should contact Betty and let Betty know that I had received the subpoena.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 123, H. Doc. 105–311, p. 843.

The record indicates that the President on or about December 17, 1997, made the suggestion to Monica Lewinsky that the submission of an affidavit in the case of *Jones* v. *Clinton* might prevent her from having to testify:

> A. I believe I probably asked him, you know, what should I do in the course of that and he suggested, he said, "Well, maybe you can sign an affidavit." . . .
>
> Q. When he said that you might sign an affidavit, what did you understand it to mean at that time?
>
> A. I thought that signing an affidavit could range from anywhere—the point of it would be to deter or to prevent me from being deposed and so that 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."

Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 123–24, H. Doc. 105–311, pp. 843–44.

Furthermore, Monica Lewinsky has stated that she is "100% sure that the President suggested that she might want to sign an affidavit to avoid testifying." 8/19/98 OIC interview of Monica Lewinsky, pp. 4–5, H. Doc. 105–311, pp. 1558–9.

f. The President lied in his deposition about his knowledge of the service of a subpoena to a subordinate federal employee to testify as a witness in the federal civil rights action brought against him.

The record indicates that despite evidence revealing the contrary, President Clinton swore in his deposition that Mr. Jordan did not know if Monica Lewinsky had been subpoenaed to testify in that case:

> Q. Did she tell you she had been served with a subpoena in this case?
> A. No. I don't know if she had been.
> Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?
> A. I don't think so.

Deposition Testimony of President Clinton in the case of *Jones* v. *Clinton,* 1/18/98, p. 68.

"I said to the President, 'Monica Lewinsky called me . . . She is coming to see me about this subpoena.'" Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 145 (referencing a December 19, 1997, telephone conversation with the President), H. Doc. 105–316, p. 1815.

The record indicates that the President knew, before his deposition, that Monica Lewinsky had been subpoenaed in the case of *Jones* v. *Clinton.* Monica Lewinsky was served with a subpoena on December 19, 1997, a subpoena that commanded her to appear for a deposition on January 23, 1998 and to produce certain documents and gifts. Monica Lewinsky talked to Vernon Jordan about it that day and Mr. Jordan spoke to the President shortly thereafter. The President and Ms. Lewinsky met on December 28th and discussed the subpoena.

g. The President lied in his deposition about his knowledge of the final conversation he had with a subordinate employee who was a witness in the federal civil rights action brought against him.

When asked in the *Jones* Deposition about his last meeting with Ms. Lewinsky, the President remembered only that she stopped by "probably sometime before Christmas" and he "stuck his head out [of the office], said hello to her." Deposition of President Clinton in the case of *Jones* v. *Clinton,* 1/17/98, p. 68.

The President's answer was perjurious, false and misleading. The evidence reveals that the President and Ms. Lewinsky met for over

45 minutes on December 28, 1997. During this meeting, they exchanged gifts and discussed the subpoena that Ms. Lewinsky had received in the *Jones* case. In the answers to the requests for admission, the President admitted that he met with Ms. Lewinsky on December 28, 1997: "When I met with Ms. Lewinsky on December 28, 1997, I knew she was planning to move to New York, and we discussed her move." Response to Request for Admission No. 22. He further contradicts his deposition testimony and admits that he gave her gifts on that crucial day. See Response to Request for Admission No. 24.

h. The President lied in his deposition about his knowledge that the contents of an affidavit executed by a subordinate federal employee who was a witness in the federal civil rights action brought against him were false.

The record indicates that the President, under oath, affirmed that the assertions made in Monica Lewinsky's affidavit were true, even though he knew they were false. During the January 17, 1998 deposition of President Clinton in the case of *Jones* v. *Clinton,* Robert Bennett, the President's attorney, read parts of the affidavit Monica Lewinsky had executed in the case of *Jones* v. *Clinton.* At one point Mr. Bennett read part of paragraph eight of Monica Lewinsky's affidavit, in which Monica Lewinsky asserts, "I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for reflecting a sexual relationship."

After reading from the affidavit out loud, Mr. Bennett asked the President: "Is that a true and accurate statement as far as you know it?" The President answered, "That is absolutely true." Deposition of President Clinton in the case of *Jones* v. *Clinton,* 1/17/98, p. 204.

During the January 17, 1998 deposition of President Clinton in the case of *Jones* v. *Clinton,* Robert Bennett, President Clinton's attorney, stated "Counsel is fully aware that Ms. Jane Doe #6 has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind in any manner, shape or form, with President Clinton . . ." Deposition of President Clinton in the case of *Jones* v. *Clinton,* 1/17/98, p. 54.

The Grand Jury Testimony of Monica Lewinsky, given under oath and following a grant of transnational immunity, confirmed that the contents of her affidavit were not true:

> Q. Paragraph 8 . . . [of the affidavit] says, I have never had a sexual relationship with the President. Is that true?
> A. No.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 204, H. Doc. 105–3 11, p. 924.

C. ARTICLE III—OBSTRUCTION OF JUSTICE

The following explanations for the individual paragraphs of Article III clearly justify the conclusion that President Clinton, 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, cover up, and conceal the existence of evidence and testimony related to the duly instituted federal civil rights lawsuit of *Jones* v. *Clinton* and the duly instituted investigation of Independent Counsel Kenneth Starr.

Although, the actions of President Clinton do not have to rise to the level of violating the federal statute regarding obstruction of justice in order to justify impeachment, some if not all of his actions clearly do. The general obstruction of justice statute is 18 U.S.C. §1503. It provides in relevant part: "whoever . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or *endeavors* to influence, obstruct, or impede, the due administration of justice, shall be punished . . . " In short, §1503 applies to activities which obstruct, or are *intended to obstruct,* the due administration of justice in both civil and criminal proceedings.

To prove in a court of law that obstruction of justice had occurred, three things have to be proved beyond a reasonable doubt:

First, that there was a pending federal judicial proceeding;

Second, that the defendant knew of the proceeding; and

Third, that the defendant acted corruptly with the intent to obstruct or interfere with the proceeding or due administration of justice.

1. The Committee concluded that on or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false, and misleading.

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

President Clinton admitted that he spoke to Ms. Lewinsky "before Christmas" and that, while he was not "sure" if she would be called to testify in the Paula Jones civil suit, she might "qualify, or something like that." Deposition Testimony of President Clinton in the case of *Jones* v. *Clinton,* 1/17/98, pp. 70–71. While the President has denied asking or encouraging Ms. Lewinsky to lie by filing a false affidavit denying their relationship, he concedes in his response to Question 18 of the Committee's Requests for Admission that he told her that ". . . other witnesses had executed affidavits, and there was a chance they would not have to testify."

Monica Lewinsky was more emphatic on the subject in her grand jury testimony. When she asked the President what she should do if called to testify, he said, "'Well, maybe you can sign an affidavit." . . . [T]he point of it would be to deter or to prevent me from being deposed and so that could range anywhere between . . . just somehow mentioning . . . innocuous things or going as far as maybe having to deny any kind of relationship." Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 123–24, H. Doc. 105–311, pp. 843–44. She further stated that she was "100% sure that the President suggested that she might want to sign an affidavit to avoid

testifying." 8/19/98 Office of Independent Counsel (OIC) interview of Monica Lewinsky, pp. 4 H. Doc. 105–311, pp. 1558–9.

Ms. Lewinsky also notes that 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. See the OIC Referral, H. Doc. 105–310, p. 174.

Furthermore, the 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 Weber 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 and legally.

2. The Committee concluded 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.

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.

Prior to December 17, 1997, the record demonstrates that the President and Monica Lewinsky had discussed the use of fabricated stories to conceal their relationship. The record also reveals that the President revisited this same topic in a telephone conversation with Monica Lewinsky on December 17, 1997; in fact, she was encouraged to repeat these fabrications if called to testify in the Paula Jones case.

In his grand jury testimony as well as his response to the Committee's Requests for Admission, the President claimed that he had "no specific memory" of a conversation prior to December 17, 1997, in which he suggested that Ms. Lewinsky invoke cover stories to explain why she was alone with the President. He conceded, however, that he ". . . may have talked about what to do in a non-legal context at some point in the past, . . .[but that] . . . any such conversation was not in connection with her status as a witness in the *Jones* v. *Clinton* case." Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 569; Responses of President Clinton to Question Nos. 13–15 in the Committee's Requests for Admissions. President Clinton's testimony here is clearly designed to be convenient; he has "no specific memory" of a conversation with Ms. Lewinsky regarding cover stories, but if the conversation did occur, he is certain it was in a "non-legal context."

Ms. Lewinsky's testimony conflicts with that of the President. In her grand jury testimony, she states that. . . this is a kind of relationship that you keep quiet, and we both wanted to be careful being in the White House. Whenever I would visit him . . . unless it was some sort of chance meeting on the weekend and then we ended up back in the office, we would usually plan that I would either bring papers, or one time we accidentally bumped into each other in the hall and went from that way, so then we planned to do that again because that seemed to work well. But . . . there was always some sort of a cover. Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105–311, p. 977.

Ms. Lewinsky admits further that delivering documents to the President was a ruse that had no legitimate business purpose. *Id.*

In addition, the President and Ms. Lewinsky developed a second cover story by using Betty Currie as a source of clearance to the White House for Ms. Lewinsky; in other words, Ms. Lewinsky could claim she was visiting Ms. Currie, and not the President. Id. The President has stated that he had "no knowledge" of any "White House record" constructed for this purpose. Deposition of President Clinton, 1/17/98, p. 54.

Consistent with these events, during a telephone conversation with Monica Lewinsky on December 17, 1997, a conversation in which the President informed Monica Lewinsky that she was on the witness list in the case of *Jones* v. *Clinton,* the President encouraged Ms. Lewinsky to invoke either of these cover stories if called to testify in the Paula Jones case. Ms. Lewinsky stated in her grand jury testimony that: "[a]t some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up, he sort of said, "You know, you can always say you were coming to see Betty or that you were bringing me letters." Which I understood was really a reminder of things we had discussed before." Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 123, H. Doc. 105–311, p. 843.

3. The Committee concluded that on or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

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

On December 19, 1997, Monica Lewinsky was served with a subpoena in connection with the case of *Jones* v. *Clinton.* The subpoena required her to testify at a deposition on January 23, 1998. The subpoena also required her to produce each and every gift given to her by President Clinton. On the morning of December 28, Ms. Lewinsky met with the President for about 45 minutes in the Oval Office. By this time, President Clinton knew Ms. Lewinsky had been subpoenaed. At this meeting they discussed the fact that the gifts had been subpoenaed, including a hat pin, the first gift Clinton had given Lewinsky. Monica Lewinsky testified that at some point in this meeting she said to the President, "Well, you know, I—maybe I should put the gifts away outside my house

somewhere or give them to someone, maybe Betty. And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic." Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105–311, p. 872; See also 7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395. Ms. Lewinsky also testified that both she and the President had a specific concern about the hat pin being on the list; "I mentioned that I had been concerned about the hat pin being on the subpoena and he said that had sort of concerned him also." Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105–311, p. 872; see also 7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395.

President Clinton provided the following explanation to the grand jury and this Committee regarding this conversation: "Ms. Lewinsky said something to me like, "what if they ask me about the gifts you've given me," but I do not know whether that conversation occurred on December 28, 1997, or earlier. Whenever this conversation occurred, I testified, I told her 'that if they asked her for gifts, she'd have to give them whatever she had. . . .' I simply was not concerned about the fact that I had given her gifts. Indeed, I gave her additional gifts on December 28, 1997. I also told the grand jury that I do not recall Ms. Lewinsky telling me that the subpoena specifically called for a hat pin that I had given her." Request for Admission number 24; see also Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 495–98.

Ms. Lewinsky testified that she was never under the impression from anything the President said that she should turn over to Ms. Jones's attorneys all the gifts that he had given her. Deposition of Monica Lewinsky, 8/26/98, p. 58, H. Doc. 105–311, p. 1337.

Additionally, she said she can't answer why the President would give her more gifts on the 28th when he knew she was under an obligation to produce gifts in response to a subpoena. She did testify, however, that, "to me it was never a question in my mind and I—from everything he said to me, I never questioned him, that we were never going to do anything but keep this private, so that meant deny it and that meant do—take whatever appropriate steps needed to be taken, you know, for that to happen. . . . So by turning over these gifts, it would at least prompt [the Jones attorneys] to question me about what kind of friendship I had with the President. . . ." Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp.166–67, H. Doc. 105–311, pp. 886–87.

After this meeting on the morning of December 28th, Ms. Currie called Monica Lewinsky and made arrangements to pick up gifts the President had given to Ms. Lewinsky. Monica Lewinsky testified under oath before the grand jury that a few hours after meeting with the President on December 28, 1997, a meeting in which Ms. Lewinsky and President Clinton discussed the fact that gifts given to her by Mr. Clinton had been subpoenaed in the case of *Jones v. Clinton*, Betty Currie called her. The record indicates the following discussion occurred:

> Q. What did [Betty Currie] say?
>
> A. She said, "I understand you have something to give me." Or, "The President said you have something to give me." Along those lines. . . .

> Q. When she said something along the lines of "I understand you have something to give me," or "The President says you have something for me," what did you understand her to mean?
>
> A. The gifts.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 154–55, H. Doc. 105–311, pp. 874.

Later in the day on December 28, Ms. Currie drove to Ms. Lewinsky's home and Ms. Lewinsky gave her a sealed box that contained several gifts Ms. Lewinsky had received from the President, including the hat pin. Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 156–58, H. Doc. 105–311, pp. 875–78. Ms. Currie testified that she understood the box contained gifts from the President. She took the box home and put it under her bed. Grand Jury Testimony of Betty Currie, 5/6/98, pp. 107–8, H. Doc. 105–316, p. 581. In Monica Lewinsky's February 1, 1998 handwritten statement to the OIC, which Ms. Lewinsky has testified is truthful, she stated, "Ms. Currie called Ms. L later that afternoon and said that the Pres. had told her Ms. L wanted her to hold onto something for her. Ms. L boxed up most of the gifts she had received and gave them to Ms. Currie." 2/1/98 Handwritten Proffer of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 715.

Betty Currie testified that she did not recall the President telling her that Ms. Lewinsky wanted her to retrieve and hold some items; that Ms. Lewinsky called her and asked her to come get the gifts. Grand Jury Testimony of Betty Currie, 5/6/98, pp. 105–6, H. Doc. 105–316, p. 581. When asked if a contrary statement by Ms. Lewinsky—indicating that Ms. Currie had in fact spoken to the President about the gift transfer—would be false, Ms. Currie replied: "She may remember better than I. I don't remember." Grand Jury Testimony of Betty Currie, 5/6/98, p. 126, H. Doc. 105–316, p. 584.

Further evidence before the Committee reveals that Betty Currie telephoned Monica Lewinsky regarding the gifts, and not the other way around:

> Mr. Schippers: When Ms. Currie, when they wanted to get rid of the gifts, Ms. Currie went and picked them up, put them under her bed to keep them from anybody else. Another mission accomplished?
>
> Mr. Starr: That's right.
>
> Mr. Schippers: By the way, there has been some talk here that Monica said that she recalled that Betty Currie called her and said, either the President wants me to pick something up, or I understand you have something for me to pick up. Later, Ms. Currie backed off that and said, well, I am not sure, maybe Monica called me. In the material that you made available, you and your staff made available to us, there were 302s in which Monica said, I think when Betty called me, she was using her cell phone. Do you recall that, Judge Starr?
>
> Mr. Starr: I do.
>
> Mr. Schippers: And in that same material that is in your office that both parties were able to review and that we

did, in fact, review, there are phone records of Ms. Currie; are there not?

Mr. Starr: There are.

Mr. Schippers: And there is a telephone call on her cell phone to Monica Lewinsky's home on the afternoon of December 28, 1997; isn't there?

Mr. Starr: That is correct.

Mr. Schippers: Once again, Monica is right and she has been corroborated, right?

Mr. Starr: That certainly tends to corroborate Ms. Lewinsky's recollection.

Impeachment Hearing on Inquiry Pursuant to H. Res. 581, Thursday, November 19, 1998, Transcript pp. 407–409.

President Clinton testified before the grand jury, and reiterated to this Committee (Request for Admission Number 26) that he did not recall any conversation with Ms. Currie on or about December 28, 1997, about gifts previously given to Ms. Lewinsky and that he never told Ms. Currie to take possession of gifts he had given Ms. Lewinsky. Grand Jury Testimony of President Clinton, 8/17/98, p. 50, H. Doc. 105–311, p. 502; see also Id. at 113–114, H. Doc. 105–311 at 565–66. The Committee believes this answer is false because the evidence reveals that Betty Currie did call Monica Lewinsky about the gifts and there is no reason for her to do so unless instructed by the President. Because she did not personally know of the gift issue, there is no other way Ms. Currie could have known to call Ms. Lewinsky about the gifts unless the President told her to do so. The President had a motive to conceal the gifts because both he and Ms. Lewinsky were concerned that the gifts might raise questions about their relationship. By confirming that the gifts would not be produced, the President ensured that these questions would not arise. The concealment and non-production of the gifts to the attorneys for Paula Jones, allowed the President to provide false and misleading statements about the gifts at his deposition in the case of *Jones v. Clinton*. Additionally, Ms. Lewinsky's testimony on this subject has been consistent and unequivocal; she recited the same facts in February, July and August.

4. The Committee concluded that beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance for 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

Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance for 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.

Although Monica Lewinsky discussed jobs in New York with the President in October, interviewed with Bill Richardson in October

and met with Vernon Jordan regarding her move to New York on November 5, 1997, the effort to obtain a job for Monica Lewinsky in New York intensified after the President learned, on December 6, 1997, that Monica Lewinsky was listed on the witness list for the case of *Jones v. Clinton.*

On December 7, 1997, President Clinton met with Vernon Jordan at the White House. Ms. Lewinsky met with Mr. Jordan on December 11 to discuss specific job contacts in New York. Jordan then made calls to certain New York companies on Ms. Lewinsky's behalf. Jordan telephoned President Clinton to keep him informed of the efforts to get Ms. Lewinsky a job. Grand Jury Testimony of Vernon Jordan, 3/3/98, pp. 64–66, H. Doc. 105–316, pp. 1710–11.

On December 11, Judge Wright ordered President Clinton to answer interrogatories, including whether he has engaged in sexual relations with any government employees. On December 16, the President's attorneys received a request for production of documents that mentioned Monica Lewinsky by name. On December 18 and 23, Monica Lewinsky interviewed with New York based companies that had been contacted by Vernon Jordan. On December 19, Monica Lewinsky was served with a deposition subpoena in the case of *Jones v. Clinton*. On December 22, Vernon Jordan took Monica Lewinsky to see her new attorney, Frank Carter, who had been recommended by Vernon Jordan. During the car ride to Mr. Carter's office, Monica Lewinsky and Vernon Jordan discussed the subpoena, the case of *Jones v. Clinton*, and her job search. Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 138–42, H. Doc. 105–311, pp. 997–98; see also Grand Jury Testimony of Vernon Jordan, 3/3/98, p.183–85, H. Doc. 105–316, p. 1730.

On December 28, 1997, the President had a discussion with Monica Lewinsky at the White House in which they discussed Monica Lewinsky's involvement in the case of *Jones v. Clinton* and her plan to move to New York. Ms. Lewinsky recalled that President Clinton suggested to her that she move to New York soon because by moving to New York, the lawyers representing Paula Jones in the case of *Jones v. Clinton* may not contact her. The following statement was recorded by an OIC investigator after interviewing Monica Lewinsky:

"On December 28, 1997, Lewinsky visited the President at the White House . . . the President said that if Lewinsky was in New York the Jones lawyers might not call; that the sooner Lewinsky moved the better; and that maybe the lawyers would ignore her." 7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395.

The President stated to the Committee he did not suggest that Monica Lewinsky could avoid testifying in the *Jones v. Clinton* case by moving to New York. See Request for Admission number 23.

On January 5, Monica Lewinsky had a telephone conversation with the President in which they discussed the signing of an affidavit in the case of *Jones* v. *Clinton*. Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 191–98, H. Doc 105–311, pp. 1010–12. On January 7, 1998, Monica Lewinsky signed an affidavit to be filed in the case of *Jones* v. *Clinton* in which she denied having a sexual relationship with President Clinton. On or about January 7, 1998, the President had a discussion with Vernon Jordan in which Mr.

Jordan mentioned that he was assisting Monica Lewinsky in finding a job in New York. Mr. Jordan made the following statement before the grand jury: "I'm sure I said, 'I'm still working on her job [in New York]'." To which Jordan quotes the President as responding, "Good." Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 225–26, H. Doc. 105–316, p. 1828–29. President Clinton acknowledges that he was aware that Mr. Jordan was assisting Ms. Lewinsky in her job search in connection with her move to New York. See Request for Admission number 31.

On January 8, 1998, Monica Lewinsky interviewed in New York with MacAndrews and Forbes, a company recommended by Vernon Jordan. Ms . Lewinsky informed Mr. Jordan that the interview did not go well, so he called the Chairman of the Board and Chief Executive Officer at MacAndrews and Forbes. Ms. Lewinsky was given a second interview with MacAndrews and Forbes on the morning of January 9, 1998, and she was given an informal job offer that she informally accepted on the afternoon of January 9th. Ms. Lewinsky conveyed the news of the job offer to Vernon Jordan. Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 206–210, H. Doc. 105–311, pp. 1014–15; Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 229–31, H. Doc. 105–316, p. 1829. On or about January 9, 1998, the President received a message from Vernon Jordan indicating that Monica Lewinsky had received a job offer in New York. Sometime shortly thereafter, Vernon Jordan had a conversation with the President, during which Vernon Jordan testified that he told the President, "Monica Lewinsky's going to work for Revlon and his response was thank you very much." Grand Jury Testimony of Vernon Jordan, 5/28/98, p. 59, H. Doc. 105–316, p. 1903. The President acknowledges that he was informed that Monica Lewinsky had received a job offer in New York, but cannot recall who told him or when he first learned of the job offer. See Request for Admission number 37.

On January 13, 1998, Monica Lewinsky received a formalized job offer from Revlon (a MacAndrews and Forbes company) and was asked to provide references. The evidence shows that President Clinton, after learning of Monica Lewinsky's New York job offer, asked Erskine Bowles if he would ask John Hilley to give Ms. Lewinsky a job recommendation. Mr. Bowles testified that the President told him that "[Monica Lewinsky] had found a job in the private sector, and that she had listed John Hilley as a reference, and could we see if he could recommend her, if asked." Grand Jury Testimony of Erskine Bowles, 4/2/98, p. 78, H. Doc. 105–316, p. 238.

It is logical to infer from this chain of events that the efforts of the President and others at the President's direction to obtain a job in New York for Monica Lewinsky were motivated to influence the testimony of a potential witness in the case of *Jones* v. *Clinton*, if not to prevent her testimony outright. The job search for Monica Lewinsky was intensified in late 1997, when it became likely that Monica Lewinsky would be asked to provide testimony in the case of *Jones* v. *Clinton* and her truthful testimony would be harmful to the President.

5. The Committee concluded that on January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge

On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

On January 15, 1998, Robert Bennett, attorney for President Clinton in the case of *Jones* v. *Clinton,* obtained a copy of the affidavit Monica Lewinsky filed in an attempt to avoid having to testify in the case of *Jones* v. *Clinton*. Grand Jury Testimony of Frank Carter, 6/18/98, pp.112–13, H. Doc. 105–316, pp. 420–21. In this affidavit, Monica Lewinsky asserted that she had never had a sexual relationship with President Clinton. At the President's deposition on January 17, 1998, an attorney for Paula Jones began to ask the President questions about his relationship with Ms. Lewinsky. 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 is no sex of any kind in any manner, shape or form," and after a warning from Judge Wright he stated that, "I am not coaching the witness. In preparation of the witness for this deposition, the witness is 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. Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 54. Later in the deposition, Mr. Bennett read the President the portion of Ms. Lewinsky's affidavit in which she denied having 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." Deposition of President Clinton in the case of Jones v. Clinton, 1/17/98, p. 204. The Grand Jury Testimony of Monica Lewinsky, given under oath and following a grant of transnational immunity, confirmed that the contents of her affidavit were not true:

> Q. Paragraph 8 . . . [of the affidavit] says, "I have never had a sexual relationship with the President." Is that true?
> A. No.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105–311, p. 924.

When President Clinton was asked during his grand jury testimony how he could have lawfully sat silent at his deposition while

his attorney made a false statement ("there is no sex of any kind, in any manner shape or form") to a United States District Court Judge, the President first said that he was not paying "a great deal of attention" to Mr. Bennett when he said this. The President also stated that "I didn't pay any attention to this colloquy that went on." The videotaped deposition shows the President looking in Mr. Bennett's direction while Mr. Bennett was making the 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. The President stated, "It depends on what the meaning of the word 'is' is," and that "if it means there is none, that was a completely true statement." Grand Jury Testimony of President Clinton, 8/17/98, pp. 57–61, H. Doc. 105–311, pp. 509–513; see also *id.,* pp. 24–25, H. Doc. 105–311, pp. 476–77. 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 just passed him by.

6. The Committee concluded that on or about January 18 and January 20–21, 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

On or about January 18 and January 20–21, 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.

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 the case. In his deposition, when asked about whether it would be extraordinary for Betty Currie to be in the White House between midnight and six a.m., the President answered in part, "those are questions you'd have to ask her." Deposition of President Clinton in the case of *Jones* v. *Clinton*, page 21 of the publicly released document. Furthermore, he 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 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 that the *Jones* Lawyers may call her as a witness. That is why the President called her about two hours after the completion of his deposition and asked her to come in to the office the next day, which was a Sunday. See Request for Admission number 47.

In his grand jury testimony and responses to the Committee's Requests for Admission, the President was occasionally evasive and vague on this point. He stated that on January 18, 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." Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 508; Response of President Clinton to Question No. 52 of the Committee's Requests for Admission. The President added that he urged Ms. Currie to "tell the truth" after learning that the Office of Independent Counsel (OIC) might subpoena her to testify. *Id.* at p. 591.

The President also stated that he could not recall how many times he had talked to Ms. Currie or when, in response to OIC questioning on the subject of a similar meeting that took place on or about January 20 or 21, 1998. He claimed that by asking questions of Ms. Currie he was only attempting to ". . . ascertain what the facts were, trying to ascertain what Betty's perception was." Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, pp. 592–93; Response of President Clinton to Question No. 53 of the Committee's Requests for Admission.

While testifying before the grand jury, Ms. Currie was more precise in her recollection of the two meetings. An OIC attorney asked her if the President had made a series of leading statements or questions that were similar to the following:

1. You were always there when she [Monica Lewinsky] was there, right? We were never really alone.
2. You could see and hear everything.
3. Monica came on to me, and I never touched her, right?
4. She wanted to have sex with me and I couldn't do that.

Question No. 53, Committee's Requests for Admission; OIC Referral, H. Doc. 105–310, p. 191.

In her testimony Ms. Currie indicated that the President's remarks were "more like statements than questions." 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. OIC Referral, H. Doc. 105–310, pp. 191–92; Grand Jury Testimony of Betty Currie, 1/27/98, pp. 71–76, H. Doc. 105–316, pp. 559–60.

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. *Id.*

As to their subsequent meeting on January 20 or 21, 1998, Ms. Currie stated that ". . . it was sort of a recapitulation of what we had talked about on Sunday [January 18, 1998] . . ." Grand Jury Testimony of Betty Currie, 1/27/98, p. 81, H. Doc. 105–316, p. 561.

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 in light of the fact that 3 of the 4 statements he made to Ms. Currie were clearly false. This is further evidence that he was trying to influence the testimony of a potential witness. Why would the President be trying to get information from her about false statements or refresh his recollection concerning falsehoods?

7. The Committee concluded that on or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information

On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

The record reflects that on the dates in question President Clinton met with a total of five aides who would later be called to testify before the grand jury. The meetings took place shortly after the President's deposition in the Paula Jones case and following a *Washington Post* story, published on January 21, 1998, which detailed the relationship between the President and Monica Lewinsky. During the meetings the President made false and misleading statements to his aides which he knew would be repeated once they were called to testify.

The President submitted the same response to each of seven questions (Nos. 62–68) relating to this topic as set forth in the Committee's Requests for Admission. The President answered by stating that ". . . I did not want my family friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, *Washington Post* article, I misled people about this relationship. I have repeatedly apologized for doing so." Response of President Clinton to Question Nos. 62–68 of the Committee's Requests for Admission.

The President's public "apology" occurred on August 17, 1998, during a nationally-televised broadcast in which he confessed having made "misleading" statements about the nature of his relationship with Monica Lewinsky. It should be noted, however, that the "apology" was delivered after August 3, 1998, the date on which a White House physician drew a blood sample from the President for DNA testing by the Federal Bureau of Investigation (FBI). The President therefore knew that, potentially, the sample might be matched with semen that may have been preserved on an article of clothing or some other item belonging to Ms. Lewinsky. This, in fact, occurred on August 17, 1998, when the FBI released its DNA report that linked the President (based on his blood sample) to a semen stain on one of Ms. Lewinsky's dresses. OIC Referral, H. Doc. 105–310, p. 136, n. 42 and p. 138, pp. 51 and 52.

According to the aides who met with the President on the days in question, he insisted unequivocally that he had not indulged in a sexual relationship with Ms. Lewinsky or otherwise done anything inappropriate. On January 21, 1998, in a conversation with Sydney Blumenthal, one of his Assistants, the President said that he rebuffed Monica Lewinsky after she "'. . . came at me and made a sexual demand on me.'" The President also told Mr.

Blumenthal, "'I haven't done anything wrong.'" Grand Jury Testimony of Sydney Blumenthal, 6/4/98, p. 49, H. Doc. 105–316, p. 185.

Also on January 21, 1998, the President met with Erskine Bowles, his Chief of Staff, and two of Mr. Bowles' Deputies, Sylvia Matthews and John Podesta. The President began the meeting by telling Mr. Bowles that the *Washington Post* story was not true. (Grand Jury Testimony of John Podesta, 6/16/98, p. 85, H. Doc. 105–316, p. 3310). He said that he had not had a sexual relationship with her, and had not asked anyone to lie. *Id.;* Grand Jury Testimony of Erskine Bowles, 4/2/98, pp. 83–4, H. Doc. 105–316, p. 239.

Two days later (January 23, 1998), as he was preparing for his State of the Union address, the President engaged Mr. Podesta in another conversation in which he ". . . was extremely explicit in saying he never had sex with her." When the OIC attorney asked for greater specificity, Mr. Podesta stated that the President said he had not had oral sex with Ms. Lewinsky, and in fact was ". . . denying any sex in any way, shape or form . . .." Grand Jury Testimony of John Podesta, 6/16/98, pp. 91–3, H. Doc. 105–316, p. 3311. The President also explained that Ms. Lewinsky's frequent visits to the White House were nothing more than efforts to visit Betty Currie. Ms. Currie was either with the President and Ms. Lewinsky during these "visits," or she was seated at her desk outside the Oval Office with the door open. *Id.,* p. 3310.

Finally, on January 26, 1998, the President met with Harold Ickes, another Deputy Chief of Staff to Mr. Bowles. At the time, the President said that he had not had a sexual relationship with Ms. Lewinsky, had not obstructed justice in the matter, and had not instructed anyone to lie or obstruct justice. Grand Jury Testimony of Harold Ickes, 6/10/98, pp. 21, 73, H. Doc. 105–316, pp. 1487, 1539.

By his own admission more than seven months later, the President said that he had told a number of his aides that he did not ". . . have an affair with [Ms. Lewinsky] or . . . have sex with her." He also admitted that he knew that these aides might be called before the grand jury as witnesses. Grand Jury Testimony of President Clinton, 8/17/98, pp. 105–07, H. Doc. 105–311, p. 647.

D. ARTICLE IV—ABUSE OF POWER

1. The President abused his power by refusing and failing 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 by the Committee

Using the powers and influence of the office of President of the United States, William Jefferson Clinton, 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 engaged in conduct that resulted in misuse and abuse of his high office, impaired the due and proper administration of justice and the conduct of lawful inquiries, and contravened the authority of the legislative branch and the truth seeking purpose of a coordi-

nate 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 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.

On November 5, 1998, the Committee presented President Clinton with 81 requests for admission. The requests were made in order to allow the President to candidly dispute or affirm key sworn evidence before the Committee by admitting or denying certain facts. The President responded to the requests on November 27, 1998. After a thorough review of the President's answers, the Committee concluded that several of the President's answers to the 81 questions asked of him by the Committee are clearly perjurious, false, and misleading. In responding in such a manner, the President exhibited contempt for the constitutional prerogative of Congress to conduct an impeachment inquiry. The impeachment duty is a solemn one vested exclusively in the House of Representatives as a check and balance on the President and the Judiciary. The Committee reached the unfortunate conclusion that the President, by giving perjurious, false, and misleading answers under oath to the Committee's requests for admission, chose to take steps to thwart this serious constitutional process.

A further intention of the Committee in propounding these questions to the President was to expedite the impeachment inquiry and offer the President an opportunity to provide exculpatory evidence to the Committee. Unfortunately, the President chose to perpetuate the lying he began at his deposition last January and the lying and legal hairsplitting he engaged in during his grand jury testimony in August. His answers are a continuation of a pattern of deceit and obstruction of duly authorized investigations.

Article IV states the matter quite succinctly, "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."

Several instances of perjurious, false, and misleading statements that President Clinton provided in his answers to the 81 requests for admission propounded by this Committee are set forth below:

a. Request for Admission, Number 19

Q. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

A. I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have

> talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. At 569. That continues to be my recollection today—that is, any such conversation was not in connection with her status as a witness in the *Jones* v. *Clinton* case.

By December 17, 1997, the President knew Ms. Lewinsky was on the witness list in the case of *Jones* v. *Clinton*. The President reiterated to this Committee his grand jury testimony that he "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 569. The President goes on to tell the Committee that "that continues to be my recollection today—that is, any such conversation was not in connection with her status as a witness . . ."

Monica Lewinsky testified before the grand jury that the President did suggest, during a phone conversation resulting from a call from the President in the middle of the night on December 17, using these cover stories if she was called as a witness. Grand Jury testimony of Monica Lewinsky, 8/6/98, p. 123, H. Doc. 105–311, p. 843. This was a reiteration of stories they had concocted and ruses they had implemented long before December 17, 1997, as part of their plan to try to keep their relationship secret. Ms. Lewinsky's recollection has been clear and consistent regarding this phone conversation, as it has been on many other subjects. Furthermore, it is odd that the President has "no specific memory" of a conversation with Ms. Lewinsky regarding cover stories, but if the conversation did occur, he is certain it was in a "non-legal context."

b. Request for Admission, Number 20

> Q. Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of *Jones* v. *Clinton* on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?
>
> A. It's 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," *id.* at 70, reflected my understanding that Ms. Lewinsky had been subpoenaed. That testimony was not false and misleading.

The President argued that it is evident from his testimony in that deposition that he did know that Ms. Lewinsky had been subpoenaed and his answers exhibit this knowledge. He makes this assertion despite the fact that during his deposition in the case of *Jones* v. *Clinton*, he responded "No. I don't know if she had been." when asked the question, "Did she tell you she had been served with a subpoena in this case?" Deposition Testimony of President Clinton, 1/17/98 in the case of *Jones* v. *Clinton*. His subsequent attempts to deny this denial are unreasonable and are still inconsist-

ent with the fact that he actually had discussed the subpoena with Monica Lewinsky on December 28, 1997.

c. Request for Admission, Number 24

> Q. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of *Jones* v. *Clinton*?
>
> A. As I told the grand jury, "Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me," App. At 495, but I do not know whether that conversation occurred on December 28, 1997, or earlier. *Ibid*. Whenever this conversation occurred, I testified, I told her "that if they asked her for gifts, she'd have to give them whatever she had. . . ." App. At 495. I simply was not concerned about the fact that I had given her gifts. *See* App. At 495–98. Indeed, I gave her additional gifts on December 28, 1997. I also told the grand jury that I do not recall Ms. Lewinsky telling me that the subpoena specifically called for a hat pin that I had given her. App. At 496.

In his response to Request for Admission number 24, the President reiterated his grand jury testimony that when he talked to Ms. Lewinsky about subpoenaed gifts he told her "that if they asked her for gifts, she'd have to give them whatever she had." The President's statement that he told Ms. Lewinsky that if the attorneys for Paula Jones asked for the gifts she had to provide them is false and misleading. It simply strains logic to believe the President would encourage Monica Lewinsky to turn over the gifts. To do so would have raised questions about their relationship and would have been contrary to all of their other efforts to conceal the relationship, including a discussion about filing an affidavit denying a sexual relationship.

d. Request for Admission, Number 26

> Q. Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?
>
> A. 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 Ms. Lewinsky; I understand Ms. Currie has stated that Ms. Lewinsky called Ms. Currie to ask her to hold a box. See Supp. At 531.

In his response to Request for Admission number 26, the President denies any conversation with Betty Currie regarding gifts. President Clinton testified before the grand jury, and reiterates to this Committee that he did not recall any conversation with Ms. Currie on or about December 28, 1997, about gifts previously given to Ms. Lewinsky and that he never told Ms. Currie to take possession of gifts he had given Ms. Lewinsky. Grand Jury Testimony of President Clinton, 8/17/98, p. 50, H. Doc. 105–311, pp. 565–66. This answer is false and misleading because the evidence reveals that

Betty Currie did call Monica Lewinsky about the gifts and there was no reason for her to do so unless she was told to do so by the President. Because she did not personally know of the gifts, there is no other way Ms. Currie could have known to call Ms. Lewinsky about the gifts unless the President told her to do so. The President had a motive to conceal the gifts because both he and Ms. Lewinsky were concerned that the gifts might raise questions about their relationship. By confirming that the gifts would not be produced, the President ensured that these questions would not arise. The concealment and non-production of the gifts to the attorneys for Paula Jones allowed the President to provide false and misleading statements about the gifts at his deposition in the case of *Jones* v. *Clinton*. Ms. Lewinsky's testimony on this subject has been consistent and unequivocal, she provided the same facts in February, July and August, 1998. Additionally, the cellular phone records of Betty Currie indicate that Betty Currie called Monica Lewinsky on the afternoon of December 28, 1997.

e. Request for Admission, Number 27

> Q. Do you admit or deny that on or about December 28, 1998 [sic], you requested, instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?
>
> A. 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 Ms. Lewinsky; I understand Ms. Currie has stated that Ms. Lewinsky called Ms. Currie to ask her to hold a box. See Supp. At 531.

Based on the facts set forth in the Committee's explanation of Request for Admission number 26, the President's response to Request for Admission number 27 is also perjurious, false and misleading.

f. Request for Admission, Number 34

> Q. Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones* v. *Clinton* were not true?
>
> A. I was asked at my deposition in January about two paragraphs of Ms. Lewinsky's affidavit. With respect to Paragraph 6, I explained the extent to which I was able to attest to its accuracy. Dep. at 202–03.
>
> With respect to Paragraph 8, I stated in my deposition that it was true. Dep. at 204. In my August 17th grand jury testimony, I sought to explain the basis for that deposition answer: "I believe at the time that she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate." App. At 473.

In the affidavit in question, Monica Lewinsky asserted that she had never had a sexual relationship with President Clinton. The President quotes from his grand jury testimony, "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 it is accurate." Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 473. He made this statement despite the fact that at the President's deposition on January 17, 1988, his attorney asserted that the affidavit indicated "there is no sex of any kind in any manner, shape or form." Later in the deposition, Mr. Bennett read the President the portion of Ms. Lewinsky affidavit in which she denied having a "sexual relationship" with the President and asked the President if Ms. Lewinsky's statement was true and accurate. The President responded: "This is absolutely true." Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 204. The President could not reasonably have believed this affidavit was true in light of the fact that he had engaged in an extensive sexual relationship with Monica Lewinsky. His subsequent explanation defining the term "sexual relationship" as having to include sexual intercourse is contrived and it is not credible that that is what he believed at the time of his deposition. Monica Lewinsky testified before the grand jury under oath and following a grant of transactional immunity that the contents of her affidavit were not true:

> Q. Paragraph 8 . . . [of the affidavit] says, "I have never had a sexual relationship with the President." Is that true?
> A. No.

Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105–311, p. 924.

g. Request for Admission, Number 42

> Q. 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?"
> A. 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. *See* App. At 502–03.

The President's response to Request for Admission number 42 is false and misleading because in his answer, the president tries to explain away his deposition answer in a manner that is simply not believable. The President responded "I don't recall. Do you know what they were?" to the question "Well have you ever given any gifts to Monica Lewinsky?" He tells the Committee this was not false or misleading because he did not mean to suggest that he did not recall giving her gifts, rather, he meant that he did not recall what the gifts were and was asking for reminders. The President had a conversation on December 28, 1997, three weeks before his deposition, in which he discussed subpoenaed gifts with her, including a specific gift, a hat pin. His response of "I don't recall" was perjurious, false, and misleading, as was his explanation to this

Committee. Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 75.

h. Request for Admission, Number 43

Q. Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of *Jones* v. *Clinton* when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

A. My testimony was not false and misleading. As I have testified previously, I give and receive numerous gifts. Before my January 17, 1998, deposition, I had not focused on the precise number of gifts Ms. Lewinsky had given me. App. At 495–98. My deposition testimony made clear that Ms. Lewinsky had given me gifts; at the deposition, I recalled "a book or two" and a tie. Dep. At 77. At the time, those were the gifts I recalled. In response to OIC inquiries, after I had had a chance to search my memory and refresh my recollection, I was able to be more responsive. However, as my counsel have informed the OIC, in light of the very large number of gifts I receive, there might still be gifts from Ms. Lewinsky that I have not identified.

The President's Request for Admission number 43 is also false and misleading because in it he continues to insist that he was being truthful when he responded "once or twice" at the deposition when he was asked if Monica Lewinsky had ever given him any gifts. In fact, the evidence shows that Ms. Lewinsky gave the President approximately 38 gifts presented on numerous occasions. See chart H. Doc. 105–311, pp. 1251–61; Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 76.

i. Request for Admission, Number 52

Q. Do you admit or deny that on January 18, 1998, at or about 5:00 P.M., you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

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.

A. When I met with Ms. Currie, I believe 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. *See* App. At 508.

Some time later, I learned that the Office of Independent Counsel was involved and that Ms. Currie was going to have to testify before the grand jury. After learning this, I stated in my grand jury testimony, I told Ms. Currie, "Just relax, go in there and tell the truth." App. At 591.

j. Request for Admission, Number 53

Q. Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

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.

A. I previously told the grand jury that, "I don't know that I" had another conversation with Ms. Currie within several days of January 18, 1998, in which I made statements similar to those quoted above. "I remember having this [conversation] one time." App. At 592. I further explained. "I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think." App at 593.

I understand that Ms. Currie has said a second conversation occurred the next day that I was in the White House (when she was), Supp. At 535–36, which would have been Tuesday, January 20, before I knew about the grand jury investigation.

The President provided this committee with false and misleading answers to Request for Admissions number 52 and 53. He denies "coaching" Betty Currie after his deposition in the case of *Jones* v. *Clinton*; instead, he responded "I believe I asked her certain questions, in an effort to get as much information as quickly as I could." In number 53, the President quoted his grand jury testimony, "I do not remember how many times I talked to Betty Currie or when. I don't, I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was." Grand Jury testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 593.

These answers are not credible because the statements he made to Ms. Currie were clearly false. Why would he be trying to get information from her about false statements or refresh his recollection concerning falsehoods? When President Clinton was asked in his deposition whether it would be extraordinary for Betty Currie to be in the White House between midnight and six a.m., the President answered in part, "those are questions you'd have to ask her." Furthermore, he invoked Betty Currie's name numerous times throughout the deposition, oftentimes asserting that Ms. Lewinsky was around the oval office to see Ms. Currie and that Ms. Currie talked about Vernon Jordan helping Ms. Lewinsky and Betty talked with Ms. Lewinsky about her move to New York. After mentioning Betty Currie so often during his deposition, it was very logical for the President to assume that the lawyers for Paula Jones may call her as a witness. That explains why the President called her about two hours after the completion of his deposition and

asked her to come into the office the next day, which was a Sunday. In her testimony, Ms. Currie indicated that the President's remarks were "more like statements than questions." 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. Grand Jury Testimony of Betty Currie, 1/17/98, pp. 71–76, H. Doc. 105–316, pp. 559–60.

The evidence clearly reveals the President was not trying to refresh his recollection during a conversation with Betty Currie on January 18, 1998, rather it reveals that President Clinton was attempting to influence the testimony of Betty Currie, 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*.

2. Explanation of the Gekas Amendment to Article IV

Representative Gekas of Pennsylvania offered an amendment to strike paragraphs one, two, and three of Article IV. The amendment was adopted by a vote of 29–5, with three Members voting present. The stricken paragraphs asserted that President Clinton abused the office of the President by lying to the American people, aides and cabinet officials and by frivolously asserting executive privilege in order to impede a federal investigation. The remaining paragraph of Article IV charges that the President abused the office of the President by making perjurious, false and misleading statements in his response to written requests for admission submitted to him by this Committee as part of its impeachment inquiry. The Committee's general conclusion regarding Mr. Gekas's amendment was summed up by Mr. Goodlatte:

> I think that no one should take from the decision to delete these three sections of the article that we don't severely abhor the actions of the President in regard to these three 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 the President lied to his cabinet and others, and I think that he hoped that in so doing that they would carry forth his lies and I think that is wrong as well. And 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'll support this amendment.

Article IV originally read as follows:

> *Using the powers and influence of the office of President of the United States, William Jefferson Clinton, 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 that resulted in misuse and abuse of his high office, impaired the due and proper administration of justice and the conduct of lawful inquiries, and con-*

travened the laws governing the integrity of the judicial and legislative branches and the truth- seeking purpose of coordinate investigative proceedings.

This misuse and abuse of office has included one or more of the following:

(1) As President, using the attributes of office, William Jefferson Clinton willfully made false and misleading public statements for the purpose of deceiving the people of the United States in order to continue concealing his misconduct and to escape accountability for such misconduct.

(2) As President, using the attributes of office, William Jefferson Clinton willfully made false and misleading public statements to members of his cabinet, and White House aides, so that these Federal employees would repeat such false and misleading statements publicly, thereby utilizing public resources for the purpose of deceiving the people of the United States, in order to continue concealing his misconduct and to escape accountability for such misconduct. The false and misleading statements made by William Jefferson Clinton to members of his cabinet and White House aides were repeated by those members and aides, causing the people of the United States to receive false and misleading information from high government officials.

(3) As President, using the Office of the White House Counsel, William Jefferson Clinton frivolously and corruptly asserted executive privilege, which is intended to protect from disclosure communications regarding the constitutional functions of the Executive, and which may be exercised only by the President, with respect to communications other than those regarding the constitutional functions of the Executive, for the purpose of delaying and obstructing a Federal criminal investigation and the proceedings of a Federal grand jury.

(4) 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.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office

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

Paragraph (1)

In consideration of the drafting of Article IV, several members had expressed grave concern regarding the President's lies to the American people with respect to the Paula Jones lawsuit, Monica Lewinsky and his potential criminal culpability. President Clinton made six public statements denying allegations that he had an improper sexual relationship with Monica Lewinsky or obstructed justice in the federal civil rights case of Jones v. Clinton. The Committee concluded that the public trust, which is held by the President of the United States, was deliberately abused by President Clinton when he made these false statements. The intent of President Clinton making false statements to the American public was to utilize the power of the office of the President and convince the public that these allegations were false. The political powers that accompany the office of the President do not include misleading the American public in an attempt to avoid or thwart federal investigation.

President Clinton addressed the nation on August 17, 1998 and continued to mislead the American public. Although President Clinton took this opportunity to disclose his inappropriate sexual relationship, he stated that he had testified truthfully before the grand jury and maintained that his statements in his civil deposition were still "legally accurate." This statement was made from the map room of the White House and aired across the country on almost every radio or television station. The statement was not related to any official business of the White House, it was made in the wake of a federal investigation, and it was designed to mislead. This statement was unlike any other statement President Clinton has ever made and only analogous to a handful of other Presidential statements throughout our history. However, the Committee believes this statement was designed to mislead the American public.

President Clinton has publicly apologized to the American public for his inappropriate relationship but he has continually denied any criminal allegations. The President holds the highest office in the country and the trust of the people. The Committee believes his failure to address these criminal allegations while he has apologized for his personal acts is a deliberate attempt by President Clinton to cloud the issues before the American public. In 1974, the current distinguished Ranking Member, Representative John Conyers, noted that the American public cannot judge a chief executive if he does not or will not speak to the American people truthfully.

The chronology of the President's lies to the American public began almost immediately after the *Washington Post* published an article regarding the Lewinsky-Clinton affair on Wednesday, January 21, 1998. The White House learned about the story on the night of January 20th. The President spoke with Bob Bennett between 12:08 a.m. and 12:39 a.m. on the 21st. Mr. Bennett was quoted in the Washington Post article of the 21st as saying, "The President adamantly denies he ever had a relationship with Ms. Lewinsky and she has confirmed the truth of that." The White House issued a statement later that same the day in response to

the Washington Post story. The statement, personally approved by the President, announced that the President was "outraged by these allegations" and proclaimed that he "has never had an improper relationship with this woman."

President Clinton then began to personally and repeatedly deny his relationship with Ms. Lewinsky to the American people:

1. January 21, 1998, Interview with Mara Liasson, Robert Siegel and Linda Wertheimer, *NPR: All Things Considered.*

> *Siegel.* Mr. President, welcome to the program. Many Americans woke up to the news today that the Whitewater independent counsel is investigating an allegation that you, or you and Vernon Jordan, encouraged a young woman to lie to lawyers in the Paula Jones civil suit. Is there any truth to that allegation?
>
> *The President.* No, sir. There's not. It's just not true.
>
> *Siegel.* Is there any truth to the allegation of an affair between you and the young woman?
>
> *The President.* No. That's not true either, and I have told that—people that I would cooperate in the investigation and I expect to cooperate with it. I don't know any more about it really than you do, but I will cooperate. The charges are not true. And I haven't asked anybody to lie.
>
> *Liasson.* Mr. President, where do you think this comes from? Did you have any kind of relationship with her that could have been misconstrued?
>
> *The President.* Mara, I'm going to do my best to cooperate with the investigation. I want to know what they want to know from me. I think it's more important for me to tell the American people that there wasn't improper relations, I didn't ask anybody to lie, and I intend to cooperate. And I think that's all I should say right now, so I can get back to the work of the country.

2. January 21, 1998, Interview with Jim Lehrer of the *PBS News Hour.*

> *Mr. Lehrer.* "No improper relationship"—define what you mean by that.
>
> *The President.* Well, I think you know what it means. It means that there is not a sexual relationship, an improper sexual relationship, or any other kind of improper relationship.

3. January 21, 1998, Telephone Interview with Morton Kondracke and Ed Henry of *Roll Call*.

> *Mr. Kondracke.* Okay. Let me just ask you one more question about this. You said in a statement today that you had no improper relationship with this intern. What exactly was the nature of your relationship with her?
>
> *The President.* Well, let me say, the relationship's not improper, and I think that's important enough to say. But because the investigation is going on and because I don't know what is out—what's going to be asked of me, I think I need to cooperate, answer the questions, but I think it's important for me to make it clear what is not. And then,

at the appropriate time, I'll try to answer what is. But let me answer, it is not an improper relationship, and I know what the word means. So let's just——

Mr. Kondracke. Was it in any way sexual?

The President. The relationship was not sexual. And I know what you mean, and the answer is no.

4. January 22, 1998, Remarks Prior to Discussions with Chairman Yasser Arafat of the Palestinian Authority and an Exchange With Reporters:

Q. Forgive us for raising this while you're dealing with important issues in the Middle East, but could you clarify for us, sir, exactly what your relationship was with Ms. Lewinsky, and whether the two of you talked by phone, including any messages you may have left?

The President. Let me say, first of all, I want to reiterate what I said yesterday. The allegations are false, and I would never ask anybody to do anything other than tell the truth. Let's get to the big issues there, about the nature of the relationship and whether I suggested anybody not tell the truth. That is false. Now, there are a lot of other questions that are, I think, very legitimate. You have a right to ask them; you and the American people have a right to get answers. We are working very hard to comply and get all the requests for information up here, and we will give you as many answers as we can, as soon as we can, at the appropriate time, consistent with our obligation to also cooperate with the investigations. And that's not a dodge, that's really why I've—I've talked with our people. I want to do that. I'd like for you to have more rather than less, sooner rather than later. So we'll work through it as quickly as we can and get all those questions out there to you.

5. January 26, 1998, Remarks on the After-School Child Care Initiative, *Public Papers of the President,* President Clinton discussed the allegations surrounding his relationship with Miss Lewinsky, in the conclusion of his statement on the After-School Child Care Initiative:

Now, I have to go back to work on my State of the Union speech. And I worked on it until pretty late last night. But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman, Miss Lewinsky. I never told anybody to lie, not a single time—never. These allegations are false. And I need to go back to work for the American people.

6. February 5, 1998, Remarks Prior to Discussions with Prime Minister Blair and an Exchange with Reporters, *Public Papers of the Presidents.*

Q Mr. President, would you like to use this occasion to tell the American people what kind of relationship, if any, you had with Monica Lewinsky?

> *The President.* Well, I've already said that the charges are false. But there is an ongoing investigation, and I think it's important that I go back and do the work for the American people that I was hired to do. I think that's what I have to do now.

President Clinton misled the American public when he addressed the nation on August 17, 1998:

> This afternoon in this room from this chair, I testified before the Office of Independent Counsel and the grand jury. . . . I answered their questions truthfully, including questions about my private life, questions no American citizen would ever want to answer.

President Clinton falsely reassured the American people that ". . . I must take complete responsibility for all my actions, both public and private. And that is why I am speaking to you tonight."

President Clinton misled the American public about his civil deposition: "As you know, in a deposition in January, I was asked questions about my relationship with Monica Lewinsky. While my answers were legally accurate, I did not volunteer information." President Clinton admitted he misled people:

"I know my public comments and my silence about this matter gave a false impression. I misled people, including even my wife. I deeply regret that."

After perjuring himself before the grand jury, President Clinton told the American people there was no public responsibility:

> Now, this matter is between me, the two people I love most—my wife and our daughter—and our God. I must put it right, and I am prepared to do whatever it takes to do so. . . . Nothing is more important to me personally. But it is private, and I intend to reclaim my family life for my family. It's nobody's business but ours.

Committee members found these blatant attempts by the President to deceive the American people to be particularly offensive and violative of the public trust. However, it was the measured judgment of most Committee members that these statements did not rise to the level of an impeachable offense, although the Committee does believe that Presidential lies to the American public could constitute an impeachable offense in other circumstances.

During debate on the Gekas amendment, Mr. McCollum noted that paragraph one was about ". . . lying to the public. Now, I don't think 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 just to do exactly that."

The Committee decided not to follow the Watergate precedent regarding lying to the American public in an attempt to cover-up presidential criminal wrongdoing. Rather, the Committee passed three articles against President Clinton charging him with making similar lies under oath in a deposition, before a grand jury and in answers to requests for admission propounded to him by this Committee.

Mr. Hutchinson aptly summed up the views of many Committee members regarding the deletion of paragraph 1 of Article IV:

> I would have had trouble supporting Article IV without this amendment that would delete paragraphs one, two, and three. But I say that not to diminish the significance or the substantially of the evidence in regard to these three areas. One of them is the President lied to the American public. I think that is extraordinarily serious any time that happened. Obviously there's 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.

Paragraph (2)

Article II, which passed the Committee by a vote of 21–16, includes paragraph seven which asserts that the President tried to obstruct justice and conceal evidence in an ongoing federal grand jury investigation by making false and misleading statements to his aides which the President knew may be repeated if and when the aides testified before the grand jury. Several Members believed the President also abused the power of the office of the Presidency by lying to aides and cabinet members whom he knew would repeat the lies in public statements. The lies to aides that, in the view of the Committee, constituted an attempt to prevent, impede or obstruct the administration of justice are detailed in the explanation section for Article III. Some of the lies that were perpetuated by press aides and cabinet officials are detailed below.

On January 23, 1998, after a meeting with his Cabinet, some Cabinet members answered questions to the press about the allegations.

Secretary of State Madeline Albright: "The president started out by saying that we—the allegations are untrue, that we should stay focused on our jobs, and that he will be fine. . . . I believe the allegations are completely untrue."

Commerce Secretary William Daley: "I'll second that. Definitely."

Health and Human Services Secretary Donna Shalala: "Third it."

Michael McCurry, White House Spokesperson, on January 27, 1998, during a news briefing the Associated Press reported that Mr. McCurry said: "I think every American that heard him knows exactly what he meant."

Anne Lewis, White House Communications Director, on January 26, 1998, interview with Nightline: "I can say with absolute assurance the President of the United States did not have a sexual relationship because I have heard the President of the United States say so."

On January 27, 1998, the Associated Press quoted Ms. Lewis: "Sex is sex, even in Washington. I've been assured."

President Clinton made a deliberate decision to fight criminal allegations surrounding his relationship with Monica Lewinsky. Grand Jury testimony reveals that President Clinton told Richard Morris that he would have to win rather than admit to committing perjury or obstruction of justice. The Committee concluded that President Clinton consciously misled several aides and cabinet members knowing that they would repeat his false statements to the American public. These officials are all federally paid civil serv-

ants who have used their positions in the White House as a pulpit to repeat President Clinton's false statements to the American public. The Committee believe that use of these advisors in an attempt to mislead the American public and beat his criminal allegations was an abuse of the office of the President and his position as head of the executive branch of government.

The President's continued deceptions caused millions of tax dollars to be spent by not only the Office of Independent Counsel in its duly authorized investigation, but also by White House lawyers, communications employees and other government employees who were utilized to help perpetuate the President's lies and defend him from his criminal conduct.

After the grand jury began investigating the allegation of perjury and obstruction of justice, President Clinton had the chance to set the record straight before the grand jury itself, but he declined six invitations in January, February and March of 1998 from the OIC to appear before the grand jury and give his testimony. Although he had no obligation to appear voluntarily before the grand jury, he still continued to perpetuate his lies and abuse the public trust as well as utilizing the power of his office to attack the allegations of criminal conduct. When Mr. Clinton finally testified before the grand jury, he lied several times and then went on national television after his testimony and lied to the American people again.

Many Committee members were also appalled by the President's efforts to spread his lies publicly through his aides and cabinet members. These individuals work for and represent the taxpayers and should not be made unwitting participants in a Presidential cover-up. The majority Committee members believed this was an abuse of the office of the President and the resources that are available to its occupant. Furthermore, Mr. Hutchinson pointed out that lying to aides 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 other false statements that are recited in other articles." However, the Committee concluded that lies to the aides standing alone did not constitute an impeachable offense in this case.

Paragraph (3)

The aspect of executive privilege that was at issue in paragraph three of Article IV dealt with the presidential communications privilege. This privilege derives from the separation of powers principle embodied in the Constitution. It protects the confidentiality of communications between a President and his senior advisers about official government matters. It also protects conversations between one or more senior advisers when the President is not present, if the conversation is about advice to be given to the President on official government matters. The privilege belongs to the President alone and the President must personally direct that it be asserted.

Such conversations are presumptively privileged. However, the privilege can be overcome if a prosecutor conducting a criminal investigation can demonstrate with specificity why it is likely that the presumptively privileged materials contain important evidence and why this evidence is not practically available from other sources.

Several members of the Committee asserted that President Clinton's Assertions of Privilege were an abuse of power because even under the broadest interpretation of the presidential communications privilege, it is intended only to protect communications about official government matters. Moreover, it is a privilege for the use of the President alone. It is not intended to allow the President to cover up embarrassing personal matters. The Members charged that is exactly what President Clinton used it for here—indeed, the President repeatedly argued that he should not be impeached precisely because these matters are purely private in nature.

In addition, they argued that President tried to extend the privilege far beyond any previously known boundaries by claiming it for conversations that White House aides had with grand jury witnesses and their attorneys, the President's private attorneys, Vernon Jordan, and low-level White House employees who do not advise the President. The Members supporting impeachment for abuse of power relating to executive privilege argued that there is no legal basis for including any of these conversations within the privilege. According to this view, if these boundaries of the privilege were accepted, the President could easily cover up almost any wrongdoing. Furthermore, these frivolous assertions of privilege also cost huge amounts of the OIC's time and resources to litigate, many of which the President ultimately abandoned.

Most members of the majority associated themselves with the comments of Mr. McCollum that:

> With regard to executive privilege, I don't think there's any question the President has abused executive privilege here because it can only be used to protect official functions. And in case after case, from Bruce Lindsey all 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 official business they were asserting it in order to protect and keep private matters that concern the personal conduct of the President in the matters we've been discussing here.

However, the prevailing conclusion of the Committee was summed up by Mr. Gekas:

> 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 in the judgment of many, the benefit of the doubt in the assertion of executive privilege.

Although most Members were not prepared to include abuse of executive privilege in an impeachment article against President Clinton, many Members also agreed with Representative Goodlatte's statement that "this Committee should be outspoken in it's 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 do not allow a continued abuse of the executive privilege power."

The following is a list of assertions of Executive Privilege by President Clinton that many Members of the Committee found to be frivolous.

In the course of the Lewinsky investigation, President Clinton abused his power through repeated frivolous assertions of executive privilege by at least five of his aides.

1. Bruce Lindsey

Mr. Lindsey is Assistant to the President and Deputy Counsel and one of President Clinton's closest confidantes. None of the conversations for which Mr. Lindsey claimed executive privilege involved official governmental matters and the privilege was overcome by the need for the information in the criminal investigation.

In addition, Mr. Lindsey claimed executive privilege for a typed statement about privilege that he brought in and read to the grand jury even after he had read it. He claimed executive privilege for his conversations with the President's private lawyers and Vernon Jordan. He claimed executive privilege for conversations he had with attorneys for witnesses who appeared in the grand jury. He claimed executive privilege for a conversation with Stephen Goodin, who is the President's personal aide and who has no responsibility for advising the President.

It should be noted that at some points before the grand jury, Mr. Lindsey took the position that he was not actually asserting the privilege, but that he was merely noting that the answer might be privileged. He further asserted that he would have to get instructions from the President as to whether to assert the privilege. Whatever the technicalities, he refused to answer the questions. *See, e.g.*, Lindsey 2/18/98 GJT at 77–79: Supplemental Materials (H. Doc. 105–316) at 2360.

The President contested the OIC's motion to compel the testimony of Mr. Lindsey. After losing in the District Court, the President abandoned the claim of executive privilege. *In Re Grand Jury Proceedings*, 5 F.Supp. 2d 21 (D.D.C. 1998). However, he continued to pursue a claim of governmental attorney-client privilege with Mr. Lindsey. In addition, despite the earlier abandonment of the claim, Mr. Lindsey again asserted privilege when he appeared in the grand jury on August 28.

See the list, *infra*, for exact questions to which Mr. Lindsey asserted executive privilege.

2. Lanny Breuer

Mr. Breuer is a special counsel to the President working in the White House Counsel's Office. None of the conversations for which Mr. Breuer claimed executive privilege involved official governmental matters and the privilege was overcome by the need for the information in the criminal investigation.

In addition, Mr. Breuer asserted executive privilege for his conversations with the President's private lawyers and his conversations with a low level White House employee about his efforts to

get her an attorney. Neither the private lawyers nor the low level employee fell within the privilege.

Interestingly, the President did not claim executive privilege for Mr. Blumenthal's conversations with the President's private lawyers. Blumenthal 2/26/98 GJT at 27–34; Supplemental Materials (H. Doc. 105–316) at 164–65. In addition, Mr. Breuer asserted executive privilege for conversations with Mr. Blumenthal when Mr. Blumenthal had already testified to the substance of those conversations. *Compare* Breuer 8/4/98 GJT at 19, 22–23, 28; Supplemental Materials (H. Doc. 105–316) at 269–71 *with* Blumenthal 6/25/98 GJT at 30–31, 50; Supplemental Materials (H. Doc. 105–316) at 196, 201.

According to the referral from the Office of the Independent Counsel, on August 11, 1998, the District Court denied Mr. Breuer's claim of executive privilege. On August 21, 1998, the White House appealed to the D.C. Circuit. The White House ultimately abandoned its appeal of this case. It is unknown whether Mr. Breuer has returned to the grand jury. *See* Referral (H. Doc. 105–310) at 208.

See the list, *infra*, for exact questions to which Mr. Breuer asserted executive privilege.

3. Cheryl Mills

Ms. Mills is Deputy Assistant to the President and Deputy Counsel. None of the conversations for which Ms. Mills claimed executive privilege involved official governmental matters and the privilege was overcome by the need for the information in the criminal investigation.

In addition, Ms. Mills claimed executive privilege for her conversations with the President's private lawyers. She claimed executive privilege for conversations she had with witnesses who appeared in the grand jury and their attorneys. She claimed executive privilege for a conversation with Betty Currie, who is the President's personal secretary and who has no responsibility for advising the President.

As far as is publicly known, the OIC never sought to litigate Ms. Mills's claims of executive privilege.

See the list, *infra*, for exact questions to which Ms. Mills asserted executive privilege.

4. Sidney Blumenthal

Mr. Blumenthal is an Assistant to the President who works on a variety of matters. None of the conversations for which Mr. Blumenthal claimed executive privilege involved official governmental matters and the privilege was overcome by the need for the information in the criminal investigation.

The President contested the OIC's motion to compel the testimony of Mr. Blumenthal. After losing in the District Court, the President abandoned the claim, and Mr. Blumenthal answered the questions in the grand jury. *In Re Grand Jury Proceedings*, 5 F.Supp.2d 21 (D.D.C. 1998).

See the list, *infra*, for exact questions to which Mr. Blumenthal asserted executive privilege.

5. Nancy Hernreich

Ms. Hernreich is Deputy Assistant to the President and Director of Oval Office Operations. Ms. Hernreich described her job as executing the President's daily schedule and managing his immediate secretarial staff. Hernreich 2/25/98 GJT at 4–7; Supplemental Materials (H. Doc. 105–316) at 1318–19. None of the conversations for which Ms. Hernreich claimed executive privilege involved official governmental matters and the privilege was overcome by the need for the information in the criminal investigation.

In addition, Ms. Hernreich is a clerical and administrative employee. She does not fall within the category of advisers covered by the privilege—those "who have broad and significant responsibility for investigating and formulating the advice to be given the President on a particular matter." *In Re Sealed Case*, 121 F.3d 729, 752 (D.C. Cir. 1997). In this connection, the President did not assert executive privilege with respect to Betty Currie, who holds a similar job. The President contested the OIC's motion to compel Ms. Hernreich's testimony, but without explanation abandoned the claim immediately before the hearing. *See* Referral (H. Doc. 105–310) at 207.

See the list, *infra*, for exact questions to which Ms. Hernreich asserted executive privilege.

Lying about Assertions of Executive Privilege

Several members of the Committee concluded that the President has lied at least twice about his claims of executive privilege. On March 24, while traveling in Africa, the President publicly stated that he did not know about the assertions of executive privilege and said that the press should ask someone who knows. A week earlier in a sealed filing, White House Counsel Chuck Ruff had filed a declaration in which he told the Court that he had discussed the matter with the President and that the President had directed him to assert the privilege. See Referral (H. Doc. 105–310) at 207–08.

After Judge Johnson ruled against the President on May 27 on executive privilege with respect to Ms. Hernreich, Mr. Blumenthal, and Mr. Lindsey, he abandoned those claims of executive privilege. The OIC thought that the President would no longer claim the privilege in the grand jury. However, Mr. Breuer appeared in the grand jury on August 4 and again made broad claims of executive privilege. On August 11, Judge Johnson again ruled against the President. The same day, Ms. Mills appeared in the grand jury and made broad claims of executive privilege. On August 17, the President told the grand jury that he strongly felt that the original executive privilege decision should not be appealed. On August 21, he filed an appeal in the Breuer case. On August 28, Mr. Lindsey appeared before the grand jury and again asserted executive privilege even though the President had previously abandoned the claim. See Referral (H. Doc. 105–310) at 208–09. The White House later withdrew its appeal of the Breuer executive privilege case.

Questions on which Bruce Lindsey asserted executive privilege

1. Q. Have you received information from him [i.e. Ms. Currie's attorney], sir?

A. No, sir. Not directly.

Q. Directly or indirectly?

A. I don't believe that I can respond to that one. I think that would cover areas that are potentially privileged. Lindsey 2/18/98 GJT at 45; Supplemental Materials (H. Doc. 105–316) at 2355.

2. Mr. Lindsey claimed executive privilege for a typed statement about privileges that he brought in and read to the grand jury. Lindsey 2/18/98 GJT at 57–58; Supplemental Materials (H. Doc. 105–316) at 2357.

3. "Tell the grand jury about all conversations you had about Monica Lewinsky at any time, including, say, since the first of 1998." Lindsey 2/18/98 GJT at 73–74; Supplemental Materials (H. Doc. 105–316) at 2359–60.

4. "As counsel for the presidency or the President, are you aware of any statements to you where the President has indicated that he wanted to limit disclosure of information in this matter, that being the Monica Lewinsky matter?" Lindsey 2/18/98 GJT at 76; Supplemental Materials (H. Doc. 105- 316) at 2360.

5. "Knowing that we may ask you those question, did you go to the President and ask the President whether or not he would waive attorney-client privilege or waive executive privilege?" Lindsey 2/18/98 GJT at 78; Supplemental Materials (H. Doc. 105–316) at 2360.

6. "Well, can we assume that if you had had that conversation and he [i.e. the President] had directed you to answer the questions and to waive the privilege, you'd be doing so today?" Lindsey 2/18/98 GJT at 84; Supplemental Materials (H. Doc. 105–316) at 2361.

7. "Can you tell us about those [i.e. conversations with the President about the Jones case]?" Lindsey 2/18/98 GJT at 84–85; Supplemental Materials (H. Doc. 105–316) at 2361.

8. "Will you tell the grand jurors what those facts [i.e. facts learned from the President about the Paula Jones matter] were?" Lindsey 2/18/98 GJT at 89–90; Supplemental Materials (H. Doc. 105- 316) at 2362.

9. "Tell us what you discussed [with the President about Monica Lewinsky and the Paula Jones matter]." Lindsey 2/18/98 GJT at 90; Supplemental Materials (H. Doc. 105–316) at 2362.

10. "Did you tell the President that Monica Lewinsky was identified as a witness in the Paula Jones case?" Lindsey 2/18/98 GJT at 91; Supplemental Materials (H. Doc. 105–316) at 2362.

11. "Q. When did you first know that Monica Lewinsky was a witness in the Paula Jones case?

A. Can I ask my lawyer whether I can respond to that question?

Q. Yes. Well, why don't you write that down? Why don't you write that down with your questions? From whom did you learn that Monica Lewinsky was identified as a witness? Actually—well—

A. Let me answer it. Without—well, I don't want to waive any privileges here. I certainly don't want to walk down that road.

Monica Lewinsky's name appeared on a witness list provided by the plaintiffs.

Q. From whom did you receive the witness list?

A. Again, you know, I—I'm—we're walking down that road. You know, I don't know if I can respond to that.

Q. When did you receive the witness list?

A. I think I can—well, let me see if I can answer when—Lindsey 2/18/98 GJT at 96–97; Supplemental Materials (H. Doc. 105–316) at 2363.

12. "Has there been a concerted effort known to you, either conducted out of your office or in some other office in the White House, that is designed to criticize the Independent Counsel investigation and this grand jury's work?" Lindsey 2/18/98 GJT at 103; Supplemental Materials at (H. Doc. 105- 316) 2364.

13. "What was discussed [between Mr. Lindsey and Vernon Jordan about the Paula Jones case on January 18]?" Lindsey 2/18/98 GJT at 108, 112; Supplemental Materials (H. Doc. 105–316) at 2365, 2366.

14. "What did you discuss [between Mr. Lindsey, Ms. Mills, and Vernon Jordan about the Paula Jones case on January 19]?" Lindsey 2/18/98 GJT at 113; Supplemental Materials (H. Doc. 105-316) at 2366.

15. After this exchange, Mr. Lindsey was asked a number of questions about when he would assert executive privilege that repeated the questions set out above and his assertions of the privilege. Lindsey 2/18/98 GJT at 115–22; Supplemental Materials (H. Doc. 105–316) at 2366–68.

16. "What was discussed at the meeting—the subject—I mean, the substance of the meeting [among Mr. Lindsey, Ms. Mills, Mr. Ruff, the President, and the First Lady on February 17]. I am now asking you." Lindsey 2/19/98 GJT at 7; Supplemental Materials (H. Doc. 105–316) at 2389.

17. "What was the substance of what occurred at the meeting [among Mr. Lindsey, Ms. Mills, Mr. Ruff, Mr. Breuer, Mr. Eggleston, and the President on February 18]?" Lindsey 2/19/98 GJT at 8; Supplemental Materials (H. Doc. 105–316) at 2389.

18. "What did you talk about at this meeting [among Mr. Lindsey, the President's private lawyers, and the President] on the [January] 17th—before the [President's] deposition?" Lindsey 2/19/98 GJT at 11; Supplemental Materials (H. Doc. 105–316) at 2389.

19. "What was discussed with regard to Monica Lewinsky [among Mr. Lindsey, the President's private lawyers, and the President during the breaks in the President's deposition]?" Lindsey 2/19/98 GJT at 13; Supplemental Materials (H. Doc. 105–316) at 2390.

20. "Again what was discussed at that meeting [among Mr. Lindsey, Mr. Bowles, and the President shortly after the President's deposition]?" Lindsey 2/19/98 GJT at 14; Supplemental Materials (H. Doc. 105–316) at 2390.

21. "At any of these meetings that occurred that day—that is, the day of the [January] 17th—did Betty Currie's name come up?" Lindsey 2/19/98 GJT at 14; Supplemental Materials (H. Doc. 105-316) at 2390.

22. "What was said during that conversation [i.e. Mr. Lindsey's phone conversation with the President in the early morning hours

of January 21, the day the Lewinsky story was first published in the *Washington Post*]?" Lindsey 2/19/98 GJT at 42; Supplemental Materials (H. Doc. 105–316) at 2394.

23. "What did he [Mr. McCurry] say occurred [in a meeting among White House staff in the morning of January 21, the day the Lewinsky story was first published in the *Washington Post*]?" Lindsey 2/19/98 GJT at 44; Supplemental Materials (H. Doc. 105–316) at 2395.

24. "And you will not tell us about the substance of what occurred with your conversation with Mr. McCurry [about a meeting among White House staff in the morning of January 21, the day the Lewinsky story was first published in the *Washington Post*]?" Lindsey 2/19/98 GJT at 45; Supplemental Materials (H. Doc. 105–316) at 2395.

25. "Tell us everything that occurred in the 10 minutes that you talked about the Monica Lewinsky matter [in a meeting among White House Counsel's Office staff, White House press staff, and the President on January 21, the day the Lewinsky story was first published in the *Washington Post*]?" Lindsey 2/19/98 GJT at 48; Supplemental Materials (H. Doc. 105–316) at 2395.

26. "What did you talk to him [the President's personal aide, Stephen Goodin] about [shortly after the Lewinsky story broke]?" Lindsey 2/19/98 GJT at 49; Supplemental Materials (H. Doc. 105–316) at 2396.

27. "What did you [Mr. Lindsey] say, and what did he [Mr. McGrath, an attorney for a witness] say [in a telephone conversation that occurred in early February]?" Lindsey 2/19/98 GJT at 51; Supplemental Materials (H. Doc. 105–316) at 2396.

28. "What did you [Mr. Lindsey and Mr. Podesta's lawyer] talk about [in a conversation that occurred in early February]?" Lindsey 2/19/98 GJT at 53; Supplemental Materials (H. Doc. 105–316) at 2396.

29. "You know they [i.e. other attorneys in the White House Counsel's Office] have [spoken to Betty Currie's attorney]? How do you know that?" Lindsey 2/19/98 GJT at 54; Supplemental Materials (H. Doc. 105–316) at 2396.

30. "Q. Are you prepared to answer any questions about conversations you are aware of about Monica Lewinsky that occurred among White House staff?

A. I believe the answer is that I'm not because of the reasons I stated: the presidential communication, the deliberative process, and/or the attorney-client privilege." Lindsey 2/19/98 GJT at 59; Supplemental Materials (H. Doc. 105–316) at 2397.

31. "Are you prepared to tell us about your discussion with Lanny Breuer about that [i.e. Mr. Breuer's conversation with the attorney for witness, Michael McGrath]?" Lindsey 2/19/98 GJT at 60; Supplemental Materials (H. Doc. 105–316) at 2397.

32. Towards the end of Mr. Lindsey's appearance before the grand jury on February 19, he gave a lengthy explanation of his view of the various privileges that he claimed. Lindsey 2/19/98 GJT at 64–79; Supplemental Materials (H. Doc. 105–316) at 2399–401.

33. "And you decline to answer either one—the substance of either one [of Mr. Lindsey's meetings with Mickey Kantor, one of the

President's private attorneys, after January 20th]?" Lindsey 2/19/98 GJT at 81; Supplemental Materials (H. Doc. 105–316) at 2401.

34. "Are you prepared to discuss the substance of what you heard [from other members of the White House Counsel's Office about the testimony of White House steward Bayani Nelvis]?" Lindsey 2/19/98 GJT at 82; Supplemental Materials (H. Doc. 105–316) at 2401.

35. "Q. Mr. Lindsey, my understanding from discussions with your attorney is, at least as of now, you are going to claim all the privileges you've mentioned with respect to which individuals [i.e. grand jury witnesses], if any, you received information [i.e. how they testified] about; is that correct?

A. That is correct, yes, sir." Lindsey 2/19/98 GJT at 83–84; Supplemental Materials (H. Doc. 105- 316) at 2401.

36. "Okay. Who was that [who asked him why Mr. Lindsey why he did not return Linda Tripp's page in the summer of 1997 regarding Kathleen Willey]?" Lindsey 3/12/98 GJT at 16–17; Supplemental Materials (H. Doc. 105–316) at 2406–07.

37. "Did the President seem concerned about the number of deposition questions he was asked pertaining to Monica Lewinsky when you spoke to him after the deposition?" Lindsey 3/12/98 GJT at 18; Supplemental Materials (H. Doc. 105–316) at 2407.

38. "Was the President concerned about the number of deposition questions asked about Monica Lewinsky?" Lindsey 3/12/98 GJT at 20; Supplemental Materials (H. Doc. 105–316) at 2407.

39. "My question would be after that weekend [i.e. the weekend immediately after the Lewinsky story broke], aside from anything that might have been reported in the press, did you hear directly or indirectly that she [i.e. Betty Currie] might have been talking to representatives from our office?" Lindsey 3/12/98 GJT at 27–28; Supplemental Materials (H. Doc. 105–316) at 2409.

40. "Did Vernon Jordan ever tell you that President Clinton should settle the Paula Jones matter?" Lindsey 3/12/98 GJT at 31–32; Supplemental Materials (H. Doc. 105–316) at 2410.

41. "I had asked you how much of your discussion with Vernon Jordan was related to settlement and you are invoking the privilege on that?" Lindsey 3/12/98 GJT at 36; Supplemental Materials (H. Doc. 105–316) at 2411.

42. "Did you discuss with him [Vernon Jordan] or did he discuss with you how much money would be needed to settle the case and who would raise it?" Lindsey 3/12/98 GJT at 37; Supplemental Materials (H. Doc. 105–316) at 2412.

43. "Can you tell us what that conversation [among Mr. Lindsey, Ms. Mills, and Mr. Jordan on January 19] was about?" Lindsey 3/12/98 GJT at 39; Supplemental Materials (H. Doc. 105–316) at 2412.

44. "Okay. And what was the reason that he [Mr. Jordan] was there [at the January 19 meeting among Mr. Lindsey, Ms. Mills, and Mr. Jordan]?" Lindsey 3/12/98 GJT at 40; Supplemental Materials (H. Doc. 105–316) at 2412.

45. "Q. Are your claiming a privilege as to any Monica Lewinsky/Paula Jones discussions you may have had with the First Lady?

A. I consider at a minimum the First Lady to be an advisor to the President, yes." Lindsey 3/12/98 GJT at 47; Supplemental Materials (H. Doc. 105–316) at 2414.

46. "Did the President know whether Betty Currie had called Vernon Jordan in order to help Monica Lewinsky get a job in New York?" Lindsey 3/12/98 GJT at 53; Supplemental Materials (H. Doc. 105–316) at 2416.

47. "When, if ever, did you know it [i.e. that Ms. Lewinsky had been in the White House on December 6th], if you know it?" Lindsey 3/12/98 GJT at 64; Supplemental Materials (H. Doc. 105-316) at 2418.

48. "What did he [i.e. the President] say [about his relationship with Ms. Lewinsky at a meeting among Mr. Lindsey, Ms. Mills, and the President shortly after the Lewinsky story broke]?" Lindsey 8/28/98 GJT at 22; Supplemental Materials (H. Doc. 105–316) at 2428.

49. "Okay. The Grand Jury also asked the question: In your discussions with the President about the relationship that he had with Ms. Lewinsky, did you ever explicitly ask him, you know, "What exactly did you do with her?" Not, "What didn't you do?"—"What did you do?"" Lindsey 8/28/98 GJT at 84–87; Supplemental Materials (H. Doc. 105–316) at 2444.

50. "And this is a telephone log from the White House log indicating the President spoke to you—called you the morning of January 21, 1998, and spoke to you from the hours of 12:41 to 1:10 a.m. What did you talk about?" Lindsey 8/28/98 GJT at 88; Supplemental Materials (H. Doc. 105–316) at 2445.

51. "This Grand Jury exhibit, BRL–1, also indicates that you called the President back after your conversation with him [Mr. Podesta]—twice. At 1:36 a.m., you talked to him for two minutes; then you called him back again at 1:39 a.m. and talked to him for no more than two minutes. What did you talk about with the President then?" Lindsey 8/28/98 GJT at 90; Supplemental Materials (H. Doc. 105–316) at 2445.

52. "And then, the President called you at 7:14 a.m. that Wednesday, January 21, and you talked from 7:14 a.m. to 7:22 a.m. What did you talk about then?" Lindsey 8/28/98 GJT at 90; Supplemental Materials (H. Doc. 105–316) at 2445.

Questions on which Lanny Breuer asserted executive privilege

1. "All right. Do you recall " and again, I'll go back to the time period we identified when the Washington Post article appeared, January 1, 1998, do you recall Mr. Blumenthal on or about that date revealing to you a conversation he had had with the President regarding Monica Lewinsky?" Breuer 8/4/98 GJT at 19; Supplemental Materials (H. Doc. 105–316) at 269.

Although Mr. Breuer refused to answer this question, Mr. Blumenthal had already testified to the substance of the conversation. Blumenthal 6/25/98 GJT at 30–31, 50; Supplemental Materials (H. Doc. 105–316) at 196, 201.

2. "Do you recall what that [i.e. what else was discussed with Mr. Blumenthal during this conversation] was?" Breuer 8/4/98 GJT at 22–23; Supplemental Materials (H. Doc. 105–316) at 270.

Although Mr. Breuer refused to answer this question, Mr. Blumenthal had already testified to the substance of the conversa-

tion. Blumenthal 6/25/98 GJT at 30–31, 50; Supplemental Materials (H. Doc. 105–316) at 196, 201.

3. "Mr. Breuer, let me pick back up on our discussion of the conversation that you had with Mr. Blumenthal. Did he tell you when he had had the conversation with the President that he related to you?" Breuer 8/4/98 GJT at 28; Supplemental Materials (H. Doc. 105–316) at 271. (Although Mr. Breuer refused to answer this question, Mr. Blumenthal had already testified to the substance of the conversation. Blumenthal 6/25/98 GJT at 30–31, 50; Supplemental Materials (H. Doc. 105–316) at 196, 201.)

4. "Q. The President's private lawyers, where do they fit in?"

A. I will not—conversations that I had with the President's personal lawyers, I will claim privilege over.

Q. Both privileges [i.e. executive privilege and attorney-client privilege]?

A. Both privileges. Breuer 8/4/98 GJT at 45; Supplemental Materials (H. Doc. 105–316) at 276.

5. "Q. Okay. Do you know how Ms. White [an attorney] came to represent Ms. Raines [a White House employee]?

A. I do know the answer to that.

Q. Can you tell us how that came about?

A. Well, I don't believe I can because I think to do that would force me to reveal a conversation that I've had with Ms. Raines. Since Ms. Raines is a White House employee and I would have had a conversation with her in my capacity as special counsel, I think my discussion with Ms. Raines would be protected, given that she was seeking advice, it would be protected by both the attorney- client privilege and executive privilege. Breuer 8/4/98 GJT at 59; Supplemental Materials (H. Doc. 105–316) at 279.

6. "Q. Okay. I guess I'm asking you if you gave Ms. Raines Wendy White's [name]"

A. Right. And I guess I can't answer that, given that I'm trying to preserve the substance of the conversation, so I think you might make a natural conclusion of that, but I really, truly believe that I'm going to try as best I can to preserve the communications I have with White House employees and over the substance of them assert attorney-client privilege and executive privilege. I don't think I can answer that specific question. Breuer 8/4/98 GJT at 65; Supplemental Materials (H. Doc. 105- 316) at 281.

7. Mr. Breuer asserted executive privilege with respect to five meetings he had with the President relating to the Lewinsky matter. Breuer 8/4/98 GJT at 70–78; Supplemental Materials (H. Doc. 105- 316) at 282–84.

8. Mr. Breuer asserted executive privilege with respect to the White House Counsel's Office's preparations for impeachment proceedings. Breuer 8/4/98 GJT at 78; Supplemental Materials (H. Doc. 105–316) at 284.

9. "Have you ever discussed with Mr. Kendall the relationship between the President and Monica Lewinsky?" Breuer 8/4/98 GJT at 79; Supplemental Materials (H. Doc. 105–316) at 284.

10. "Have you ever discussed with Ms. Seligman, who is another of the President's private lawyers, the relationship between the President and Monica Lewinsky?" Breuer 8/4/98 GJT at 80; Supplemental Materials (H. Doc. 105–316) at 284.

11. "Have you ever discussed, again, with Mr. Kantor the relationship between the resident and Monica Lewinsky?" Breuer 8/4/98 GJT at 84; Supplemental Materials (H. Doc. 105–316) at 285.

12. "Have you ever discussed with Mr. Ruff the nature of the relationship between the President and Monica Lewinsky?" Breuer 8/4/98 GJT at 84; Supplemental Materials (H. Doc. 105–316) at 285.

13. "Have you ever discussed with Cheryl Mills the nature of the relationship between the President and Monica Lewinsky?" Breuer 8/4/98 GJT at 84; Supplemental Materials (H. Doc. 105–316) at 285.

14. "Have you had such discussions with Bruce Lindsey?" Breuer 8/4/98 GJT at 85; Supplemental Materials (H. Doc. 105–316) at 286.

15. "And has he [i.e. Bob Bennett] described to you the nature of the relationship between the President and Monica Lewinsky?" Breuer 8/4/98 GJT at 95; Supplemental Materials (H. Doc. 105-316) at 288.

16. Mr. Breuer also asserted executive privilege with respect to whether he had discussed gifts, the President's conversation with Ms. Currie, Ms. Lewinsky's affidavit, and the President's knowledge of Ms. Lewinsky's job search with the persons mentioned in 9–15, above. Breuer 8/4/98 GJT at 95- 103; Supplemental Materials (H. Doc. 105–316) at 288–90.

Questions on which Cheryl Mills asserted executive privilege

1. "Okay. And with respect to the conversation [between Ms. Mills and Mr. Lindsey on the day of the President's deposition] that you don't want to reveal the substance of the conversation, what privileges are you asserting with respect to that?" Mills 8/11/98 GJT at 53; Supplemental Materials (H. Doc. 105–316) at 2890.

2. "Okay. Tell me about that [i.e. the President's direction to Ms. Mills to assert executive privilege] with respect to the privileges being asserted in this matter." Mills 8/11/98 GJT at 53; Supplemental Materials (H. Doc. 105–316) at 2890.

3. "Okay. And how do you know that [i.e. that the President directed Ms. Mills to assert executive privilege]?" Mills 8/11/98 GJT at 54; Supplemental Materials (H. Doc. 105–316) at 2890.

4. "All right. With respect to this conversation [with Mr. Lindsey on the day of the President's deposition] about which you've asserted the privilege, what caused—you don't recall who called whom that day, but what caused the contact between either of you with respect to this conversation?" Mills 8/11/98 GJT at 54; Supplemental Materials (H. Doc. 105–316) at 2890.

5. "Okay. Are you aware of whether or not something happened on Mr. Lindsey's end to cause the conversation to take place? Without respect to what that was." Mills 8/11/98 GJT at 55; Supplemental Materials (H. Doc. 105–316) at 2890.

6. "All right. And what was discussed at that meeting [among the President and various White House attorneys and staff on January 31 or February 1] with respect to the President's relationship with Monica Lewinsky?" Mills 8/11/98 GJT at 66; Supplemental Materials (H. Doc. 105–316) at 2893.

7. After asserting privilege on the previous question, Ms. Mills made a general claim of executive privilege with respect to her con-

versations with the President about Monica Lewinsky. Mills 8/11/98 GJT at 66–68; Supplemental Materials (H. Doc. 105–316) at 2893.

8. "I think I asked you about the contacts you had with the President's outside lawyers with respect to the Paula Jones litigation." Mills 8/11/98 GJT at 71; Supplemental Materials (H. Doc. 105–316) at 2894.

9. "Okay. And with respect to the questions we would ask you as to your conversations with such persons [i.e. grand jury witnesses], would you assert a privilege and decline to provide the information of those conversations?" Mills 8/11/98 GJT at 72–73; Supplemental Materials (H. Doc. 105–316) at 2894–95.

10. "All right. With respect to counsel for such [grand jury] witnesses, are you asserting privilege with respect to that or not?" Mills 8/11/98 GJT at 73; Supplemental Materials (H. Doc. 105–316) at 2895.

11. "Okay. And I want to ask you about your discussion with her concerning her [i.e. Betty Currie's] need for a lawyer. Is that a matter over which you are asserting privilege?" Mills 8/11/98 GJT at 77; Supplemental Materials (H. Doc. 105–316) at 2896

Questions on which Sidney Blumenthal asserted executive privilege

1. "What occurs at these 8:30 and 6:45 p.m., these daily meetings [relating to the Lewinsky matter]?" Blumenthal 2/26/98 GJT at 12–13; Supplemental Materials (H. Doc. 105–316) at 161–62.

After abandoning this claim, Mr. Blumenthal testified that in these meetings senior White House advisers discussed the policy, political, legal, and media impact of various scandals on the Administration and gave various examples of the kinds of matters discussed. Blumenthal 6/4/98 GJT at 25–40; Supplemental Materials (H. Doc. 105–316) at 179–82.

2. "What information have you received from the President [about Monica Lewinsky]?" Blumenthal 2/26/98 GJT at 15; Supplemental Materials (H. Doc. 105–316) at 162.

After abandoning this claim, Mr. Blumenthal testified that the President told him that Ms. Lewinsky had made a sexual advance on him and that he had rebuffed it. The President further told him that Ms. Lewinsky had threatened to tell other people that they had had an affair if he did not have sex with her. The President also told him that he was never alone with Ms. Lewinsky. Blumenthal 6/4/98 GJT at 49–50; Supplemental Materials (H. Doc. 105–316) at 185.

3. "Okay. Can you tell us what information you received from Mrs. Clinton [about Monica Lewinsky]?" Blumenthal 2/26/98 GJT at 15; Supplemental Materials (H. Doc. 105–316) at 162.

After abandoning this claim, Mr. Blumenthal testified that the First Lady told him that the Lewinsky matter was a political attack and that the President had simply been ministering to a troubled young person. Blumenthal 6/4/98 GJT at 46–53; Supplemental Materials (H. Doc. 105–316) at 184–86.

4. "Okay. Did your attorneys, that is either the White House or your private attorneys, indicate to you which privilege—well, let me ask you the question first. What was discussed? What was the

substance of what was discussed [between Mr. Blumenthal and the President about Monica Lewinsky]?" Blumenthal 2/26/98 GJT at 19; Supplemental Materials (H. Doc. 105–316) at 163.

After abandoning this claim, Mr. Blumenthal testified that the President told him that Ms. Lewinsky had made a sexual advance on him and that he had rebuffed it. The President further told him that Ms. Lewinsky had threatened to tell other people that they had had an affair if he did not have sex with her. The President also told him that he was never alone with Ms. Lewinsky. Blumenthal 6/4/98 GJT at 49–50; Supplemental Materials (H. Doc. 105–316) at 185. Blumenthal 6/25/98 GJT at 4–37; Supplemental Materials (H. Doc. 105–316) at 189–98.

5. "What was the substance of the meeting with the First Lady [about Monica Lewinsky]?" Blumenthal 2/26/98 GJT at 25; Supplemental Materials (H. Doc. 105–316) at 164.

After abandoning this claim, Mr. Blumenthal testified that the First Lady told him that the Lewinsky matter was a political attack and that the President had simply been ministering to a troubled young person. Blumenthal 6/4/98 GJT at 46–53; Supplemental Materials (H. Doc. 105–316) at 184–86.

6. "Tell us about the ones [i.e. telephone conversations with the First Lady about Monica Lewinsky] that you do specifically recall?" Blumenthal 2/26/98 GJT at 26; Supplemental Materials (H. Doc. 105–316) at 164.

After abandoning this claim, Mr. Blumenthal testified that he and the First Lady talked about matters in the media about the investigation and not any material facts about Ms. Lewinsky. Blumenthal 6/25/98 GJT at 58–59; Supplemental Materials (H. Doc. 105–316) at 203. He later said they involved leaks, tactics, and congressional reactions. Blumenthal 6/25/98 GJT at 62; Supplemental Materials (H. Doc. 105–316) at 204.

Questions on which Nancy Hernreich asserted executive privilege

1. "Okay. As best you recollect, could you tell us what the conversation was about. Who said what?" Hernreich 2/25/98 GJT at 37; Supplemental Materials (H. Doc. 105–316) at 1324. (The question refers to Ms. Hernreich's conversation with the President about Ms. Lewinsky.)

After abandoning the claim of privilege, Ms. Hernreich testified that the President told her that he did not do "this" (i.e. have a relationship with Ms. Lewinsky) and that the President had at some point mentioned that Ms. Lewinsky was a friend of Walter Kaye. Hernreich 3/26/98 GJT at 12–13; Supplemental Materials (H. Doc. 105–316) at 1341–42. Hernreich 6/16/98 GJT at 90–91; Supplemental Materials (H. Doc. 105–316) at 1406–07.

2. Ms. Hernreich testified that she had been instructed by White House attorneys to invoke executive privilege with respect to any questions about conversations she may have had with senior White House staff about Ms. Lewinsky. Hernreich 2/25/98 GJT at 44–45; Supplemental Materials (H. Doc. 105–316) at 1325.

After abandoning this claim, Ms. Hernreich testified that she may have had discussions with White House attorneys Cheryl Mills or Lanny Breuer about Ms. Lewinsky, but she did not recall the de-

tails. Hernreich 6/16/98 GJT at 53–54; Supplemental Materials (H. Doc. 105–316) at 1400. Ms. Hernreich also testified that she did not have any conversations with senior staff about Ms. Lewinsky's efforts to return to a White House job. Hernreich 6/16/98 GJT at 63–64; Supplemental Materials (H. Doc. 105–316) at 1402.

3. Ms. Hernreich testified that she had been instructed by White House attorneys to invoke executive privilege with respect to any questions about conversations she may have had with the President about Kathleen Willey. Hernreich 2/25/98 GJT at 45–46; Supplemental Materials (H. Doc. 105–316) at 1325.

After abandoning this claim, Ms. Hernreich testified that she had conversations with the President about the suicide of Ms. Willey's husband and efforts to get Ms. Willey a job in the White House. Hernreich 3/31/98 GJT at 104–08; Supplemental Materials (H. Doc. 105–316) at 1384–85. She further testified that later she had a conversation with the President in which she informed him of a call from Ms. Willey in which Ms. Willey informed Ms. Hernreich that a reporter was asking questions about the Willey incident. Ms. Hernreich thought that the President might have told her to relay this information to Mr. Lindsey. Hernreich 6/16/98 GJT at 59–60; Supplemental Materials (H. Doc. 105–316) at 1401.

4. "Then my question to you is now: Tell the grand jurors the content of those conversations, as you remember them. And do you want to tell us that, or do you invoke privilege?" Hernreich 2/25/98 GJT at 54; Supplemental Materials (H. Doc. 105–316) at 1326. (The question refers to Ms. Hernreich's conversation with Bruce Lindsey about Ms. Lewinsky.)

After abandoning this claim, Ms. Hernreich testified that she did not recall any discussions she had with Mr. Lindsey about Ms. Lewinsky and Ms. Tripp. Hernreich 6/16/98 GJT at 51; Supplemental Materials (H. Doc. 105–316) at 1400. She later testified that she might have had ten to twenty conversations with Mr. Lindsey about Ms. Lewinsky, but that only one or two of them would have involved more than general mention of the story in the press. Hernreich 6/16/98 GJT at 99–102; Supplemental Materials (H. Doc. 105–316) at 1408.

5. Q. Okay. I'm not going to go to the content, but let me explain the reason I'm asking it, because I thought as we understood it, that the demarcation for Monica Lewinsky was after the story broke—which would have been on or about January 21st or 23rd, somewhere in that area.

So given that as what you've previously indicated as sort of your framework for invoking executive privilege, the conversations with Bruce Lindsey—I'm not going to ask you the content, but did the conversation with Bruce Lindsey concern Monica Lewinsky?

A. I would like to claim executive privilege on my conversations with Bruce Lindsey.

Q. Even to as to identify the nature of the topic?

A. Yes. Hernreich 2/25/98 GJT at 61; Supplemental Materials (H. Doc. 105–316) at 1328.

After abandoning this claim, Ms. Hernreich testified that she did not recall any discussions she had with Mr. Lindsey about Ms. Lewinsky. Hernreich 6/16/98 GJT at 51; Supplemental Materials (H. Doc. 105–316) at 1400. She later testified that she might have

had ten to twenty conversations with Mr. Lindsey about Ms. Lewinsky, but that only one or two of them would have involved more than general mention of the story in the press. Hernreich 6/16/98 GJT at 99–102; Supplemental Materials (H. Doc. 105–316) at 1408.

6. Ms. Hernreich testified that these conversations did not involve any national security, state secret, or official governmental matters. Hernreich 2/25/98 GJT at 65–66; Supplemental Materials (H. Doc. 105–316) at 1328.

IV. THE CONSTITUTIONAL PROCESS OF IMPEACHMENT

A. GENERAL ARGUMENTS ABOUT IMPEACHMENT

1. Constitutional provisions

The following provisions in the Constitution relate to impeachment:

"The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment." U.S. Const. art. I, sec. 2.

"The Senate shall have the sole power to try all Impeachments." U.S. Const. art. I, sec. 3, cl. 6.

"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, Judgement and Punishment, according to Law." U.S. Const. art. I, sec. 3, cl. 7.

"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." U.S. Const. art. II, sec. 4.

2. Impeachment is not removal from office

Some have suggested that impeachment is equivalent to removal from office. This suggestion is patently false. Article II of the Constitution specifies that the President "shall be removed from Office on Impeachment for, *and* Conviction of" certain offenses. U.S. Const. art. II, sec. 4 (emphasis added). The language is clear on its face.

Elsewhere the Constitution sets forth the procedure that is to be used to address the derelictions of the President, and that procedure demonstrates that impeachment is the charging phase, and trial by the Senate is the conviction and removal phase. Article I gives the House of Representatives "the sole Power of Impeachment," U.S. Const. art. I, sec. 2, and gives the Senate "the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation." U.S. Const. art. I, sec. 3. The Constitution gives each House of Congress a specific duty: the House serves as accuser, the Senate as judge.

Representative Barbara Jordan, a Democrat from Texas who served on the Judiciary Committee during the impeachment inquiry of President Richard Nixon, described this delegation of duties as follows:

> 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.

Debate on Articles of Impeachment, p. 111 (1974).

At the Markup of the Articles of Impeachment, Chairman Hyde echoed these thoughts:

> 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.

Markup Session, Articles of Impeachment of William Jefferson Clinton, Statement of Chairman Henry J. Hyde, December 12, 1998, at 172. It is abundantly clear that removal cannot occur until the Senate's trial has concluded in conviction.

3. Impeachment Does Not Overturn an Election

One rhetorical device that has recently been employed by some who oppose the impeachment of President Clinton is that impeachment of the President will "overturn the election." The suggestion is that the congressional majority is using impeachment for political reasons—to undo a presidential election in which their party did not succeed.

The success of this rhetorical strategy rests wholly on the expectation that those to be persuaded by it will not read the Constitution. The Twenty-Fifth Amendment to the Constitution, which was ratified on February 10, 1967, states: "In case of the removal of the President from office or of his death or resignation, the Vice President shall become President." Since the vice presidential and presidential candidates run for office on the same ticket, impeachment of the President could not possibly result in a change of political party control in the Executive. Any assertion to the contrary is patently false.

4. A Senate Trial of an Impeachment is a Constitutional Process

Another debating tactic recently employed by those who oppose impeachment is to portray the trial in the Senate as an unbearable exercise for the country. This tactic is undoubtedly designed to alarm the public, and to aggravate the discomfort already inherent in the notion of impeaching a president. Representative Charles T.

Canady addressed this argument on December 12, 1998 during the debate on the motion to adopt a joint resolution of censure:

> 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. . . . 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.

Markup Session, Articles of Impeachment of William Jefferson Clinton, Statement of Representative Charles T. Canady, December 12, 1998, at 210–11.

It is clear that a Senate trial following impeachment would not be an extraordinary event, but it would be a methodical procedure of regular constitutional order. Those finding fault with the idea of a trial are really faulting the Constitution, and not those who believe President Clinton has committed offenses deserving impeachment and removal.

B. ARTICLES OF IMPEACHMENT AGAINST PRESIDENT CLINTON

1. Article I—Grand Jury Perjury

a. Facts

Article I charges President Clinton with "willfully provid[ing] perjurious, false and misleading testimony" to a federal grand jury on August 17, 1998. A review of the judicial impeachments of the 1980s makes it clear that when a president knowingly makes false statements under oath, especially when the statements meet the standards of perjury, he has committed impeachable offenses. This is true whether or not the statements are in regard to matters related to his official duties.

The first article of impeachment against President Clinton, in charging that he made perjurious, false and misleading statements to a federal grand jury, can be challenged on two other bases. The first, that the President's statements were literally true, has already been dismissed. The second is that the statements were not material to the matters being considered by the grand jury convened by the Office of Independent Counsel. As one of the matters the grand jury was considering was the OIC's investigation of

"whether Monica Lewinsky or others had violated federal law in connection with the *Jones v. Clinton* case", materiality would be determined by whether the President's affair with Ms. Lewinsky was material to that case. *Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c)*, H.R. Doc. 105–310, 105th Cong., 2d Sess. at 8 (1998).

Unfortunately for the President's argument, on May 26, the United States Court of Appeals for District of Columbia Circuit ruled that President Clinton's affair with Monica Lewinsky was material to the *Jones* v. *Clinton* lawsuit. The court stated that:

> [Monica] Lewinsky tells us . . . the government could not establish perjury because her denial of having had a "sexual relationship" with President Clinton was not "material" to the Arkansas proceeding [the *Jones* case] within the meaning of 18 U.S.C. §1623(a); and her affidavit containing this denial could not have constituted a "corrupt[] . . . endeavor[] to influence" the Arkansas district court. . . .
>
> A statement is "material" if it "has a natural tendency to influence, or was capable of influencing, the decision of the tribunal in making a [particular] determination. . . . The "central object" of any materiality inquiry is "whether the misrepresentation or concealment was predictably capable of affecting, i.e., had a natural tendency to affect, the official decision." . . . Lewinsky used the statement in her affidavit . . . to support her motion to quash the subpoena issued in the discovery phase of the [*Jones*] litigation. District courts faced with such motions must decide whether the testimony or material sought is reasonably calculated to lead to admissible evidence and, if so, whether the need for the testimony, its probative value, the nature and importance of the litigation, and similar factors outweigh any burden enforcement of the subpoena might impose. . . . There can be little doubt that Lewinsky's statements in her affidavit were . . . "predictably capable of affecting" the decision. She executed and filed her affidavit for this very purpose.

In re Sealed Case, No. 98–3052, slip op. at 4–6 (D.C. Cir. May 26, 1998)(citations omitted).

It is true that the above opinion was in regard to whether Ms. Lewinsky could quash a subpoena to produce items and testify in the case of *Jones v. Clinton* regarding her alleged affair with President Clinton. However, the reasons for which the court upheld the subpoena as material to the *Jones* case are directly applicable to whether Ms. Lewinsky's affidavit was material to the *Jones* case. In both cases, the essential question was whether Lewinsky's alleged affair with President Clinton was material to the *Jones* case.

Why would Ms. Lewinsky's affair with President Clinton be material to the *Jones* case? Because in "he-said, she-said" sexual harassment cases such as Paula Jones's, patterns of conduct are important evidence in establishing that harassment has in fact occurred. President Clinton's conduct in relation to other subordinate

employees—such as Ms. Lewinsky—could help establish the veracity of Ms. Jones's claims.

b. Lessons from the Judicial Impeachments of the 1980s

The impeachments of three sitting federal judges in the 1980s provide compelling reasons to believe that President Clinton committed impeachable offenses when he made perjurious, false and misleading statements to the grand jury.

i. Federal Judges vs. Presidents

The argument is frequently made that offenses leading to impeachment when committed by federal judges do not necessarily rise to this level when committed by a president—the argument's basis is said to be that the Constitution provides that Article III judges "shall hold their Offices during good Behavior," U.S. Const. art. III, § 1, and thus that judges are impeachable for "misbehavior" while other federal officials are only impeachable for treason, bribery, and other high crimes and misdemeanors.

The staff of the House Judiciary Committee in the 1970s and the National Commission on Judicial Discipline and Removal in the 1990s have both rejected this argument. In 1974, the staff of the Judiciary Committee's Impeachment Inquiry issued a report which asked whether the good behavior clause "limit[s] the relevance of the . . . impeachments of judges with respect to presidential impeachment standards as has been argued by some[.]" Staff of House Comm. on the Judiciary, 93rd Cong., 2d Sess., *Constitutional Grounds for Presidential Impeachment* (Comm. Print 1974) at 17. The staff concluded that: "It does not. . . . [T]he only impeachment provision . . . included in the Constitution . . . applies to all civil officers, including judges, and defines impeachment offenses as 'Treason, Bribery, and other high Crimes and Misdemeanors.'" *Id.*

The conclusion of the staff report is bolstered by the findings of the National Commission on Judicial Discipline and Removal, chaired by Robert Kastenmeier, former Chairman of the Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice and one of the House managers during the Senate trial of U.S. District Court Judge Harry Claiborne. The Commission concluded that "the most plausible reading of the phrase 'during good Behavior' is that it means tenure for life, subject to the impeachment power. . . . The ratification debates about the federal judiciary seem to have proceeded on the assumption that good-behavior tenure meant removal only through impeachment and conviction." National Commission on Judicial Discipline and Removal, *Report of the National Commission on Judicial Discipline and Removal* 17–18 (1993)(footnote omitted).

The record of the 1986 impeachment of Judge Claiborne also argues against different standards for impeachable offenses when committed by federal judges as when committed by presidents. Judge Claiborne filed a motion asking the Senate to dismiss the articles of impeachment against him for failure to state impeachable offenses. One of the motion's arguments was that "[t]he standard for impeachment of a judge is different than that for other officers" and that the Constitution limited "removal of the judiciary to acts

involving misconduct related to discharge of office." *Memorandum in Support of Motion to Dismiss the Articles of Impeachment on the Grounds They Do Not State Impeachable Offenses* 4 (hereinafter cited as *"Claiborne Motion"*), *reprinted in Hearings Before the Senate Impeachment Trial Committee,* 99th Cong., 2d Sess. 245 (1986)(hereinafter cited as *"Senate Claiborne Hearings"*).

Judge Claiborne's attorney stated to the Senate trial committee that:

> [B]ecause of the separation of powers contemplated by the framers . . . the standard for impeachment of a Federal judge is distinct from the standard of impeachment for the President, Vice President, or other civil officers of the United States because as we know, under article II, section 4, the President, Vice President, and civil officers may be removed on impeachment for [and] conviction of treason, bribery, or other high crimes and misdemeanors.
>
> It is our contention that the Federal judiciary, in order to remain an independent branch, has a different standard, a separate and distinct standard, as far as the ability or the disability to be impeached, and that is that the impeachment process would take place if in fact the judge, who is the sole . . . lifetime appointment of all the officers which are referred to in the Constitution, is not on good behavior, a separate and distinct standard than that which is applicable to the elected officials and the officials who are appointed for a specific term.

Senate Claiborne Hearings at 76–77 (statement of Oscar Goodman).

Judge Claiborne's attorney was arguing that federal judges are not "civil officers" and thus that the impeachment standard in article II, section 4, does not apply; instead, "misbehavior" would be the grounds for impeaching a federal judge. *Id.* at 78–79. *See also Claiborne Motion* at 3–4. He admitted his theory would fall if the Senate concluded that a federal judge was a civil officer. *Senate Claiborne Hearings* at 79.

Representative Kastenmeier responded that "reliance on the term 'good behavior' as stating a sanction for judges is totally misplaced and virtually all commentators agree that that is directed to affirming the life tenure of judges during good behavior. It is not to set them down, differently, as judicial officers from civil officers." *Id.* at 81–82. He further stated that "[n]or . . . is there any support for the notion that . . . Federal judges are not civil officers of the United States, subject to the impeachment clause of article II of the Constitution." *Id.* at 81.

Kastenmeier's argument was repeated by the House of Representatives. U.S. House of Representatives, *Opposition to Motion to Dismiss Articles of Impeachment for Failure to State Impeachable Offenses* (hereinafter cited as *"Opposition to Claiborne Motion"*), *reprinted in Senate Claiborne Hearings* at 441. The House stated that:

> If lack of good behavior were the sole standard for impeaching federal judges, then a different standard would apply to civil officers other than judges. Nowhere in the proceedings of the Constitutional Convention was such a

> distinction made. On the contrary, the proceedings of the Convention show an intention to limit the grounds of impeachment for all civil officers, including federal judges, to those contained in Article II.
>
> On August 20, 1787, a committee was directed to report on "a mode of trying the supreme Judges in cases of impeachment." The committee reported back on August 22 that "the Judges should be triable by the Senate." . . . Several days later, a judicial removal provision was added to the impeachment clause. On September 8, 1787, the judicial removal clause was deleted and the impeachment clause was expanded to include the Vice President and all civil officers. . . . In so doing, the Constitutional Convention rejected a dual test of "misbehavior" for judges and "high crimes and misdemeanors" for all other federal officials.
>
> In Federalist No. 79, Alexander Hamilton confirmed this reading of the Convention's actions with respect to the impeachment standard:
>
>> The precautions for [judges'] responsibility, are comprised in the article respecting impeachments. . . . This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our Constitution with respect to our own judges.

Opposition to Claiborne Motion at 6–7 (citations omitted).

The Senate never voted on Claiborne's motion. However, the Senate was clearly not swayed by the arguments contained therein because the body later voted to convict Judge Claiborne. 132 Con. Rec. S15,760–62 (daily ed. Oct. 9, 1986). The Senate thus rejected the claim that the standard of impeachable offenses was different for judges than for presidents. It can thus be reliably stated that both federal judges and U.S. presidents are impeachable for the same misdeeds: "Treason, Bribery, and other high Crimes and Misdemeanors".

One additional argument can be made in an effort to differentiate the standards of impeachment for judges and presidents. While both judges and presidents are impeachable for committing "Treason, Bribery, and other high Crimes and Misdemeanors", it might be argued that certain high crimes such as perjury are more detrimental when committed by judges and therefore only impeachable when committed by judges. Thus, one article of impeachment against Judge Claiborne charged that he was "required to discharge and perform all the duties incumbent on him and to uphold and obey the Constitution and laws of the United States" and was "required to uphold the integrity of the judiciary and to perform the duties of his office impartially" and that by willfully and knowingly falsifying his income on his tax returns, he had "betrayed the trust of the people of the United States and reduced confidence in the integrity and impartiality of the judiciary, thereby bringing disrepute on the Federal courts and the administration of justice by the courts." *Id.* Judges must lead by example in convincing witnesses before their courts to testify truthfully, and they must be

viewed as impartial when deciding issues in cases—thus it is devastating when they are viewed as being less than truthful.

This argument fails because it is just as devastating to our system of government when presidents commit perjury. As the Judiciary Committee stated in justifying an article of impeachment against President Nixon, the President not only has "the obligation that every citizen has to live under the law[,]" but in addition has the duty "not merely to live by the law but to see that law faithfully applied[.]" *Impeachment of Richard M. Nixon, President of the United States,* H.R. Rep. No. 93–1305, 93rd Cong., 2d Sess. at 180 (1974) (hereinafter cited as *"Impeachment of Richard M. Nixon"*). The Constitution provides that he "shall take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. As Justice Felix Frankfurter has stated, this is "the embracing function of the President." *Id.* at 180, *quoting Youngstown Sheet and Tube Co. v. Sawyer,* 343 U.S. 579, 610 (1952) (Frankfurter, J., concurring). When a president, as chief law enforcement officer of the United States, commits perjury, he violates this constitutional oath unique to his office and casts doubt on the notion that we are a nation ruled by laws and not men.

ii. Perjurious, False and Misleading Statements Made Under Oath or Subject to Penalty for Perjury

a. Judge Harry Claiborne

When Judge Harry Claiborne was impeached, he was serving a sentence in federal prison for filing false federal income tax returns for 1979 and 1980. Judge Claiborne had signed written declarations that the returns were made under penalty of perjury. A jury had found beyond a reasonable doubt that Judge Claiborne had failed to report substantial income in violation of federal law.

The Senate convicted Judge Claiborne of three articles of impeachment. 132 Cong. Rec. S15,760–62 (daily ed. Oct. 9, 1986). The first article had charged that, while serving as a federal judge, Judge Claiborne willfully and knowingly filed under penalty of perjury an income tax return for 1979, which he did not believe to be true and correct as to every material matter in that it substantially understated his income. *Id.* The second article had charged that he had done the same with his income tax return for 1980. *Id.* The third article was mentioned in the previous section.

The first two articles of impeachment charged Judge Claiborne not only with making false statements, but with making perjurious statements. This can be inferred from the fact that the first two articles stated two crucial requirements of perjury, that a falsehood be made knowingly, and that it be "material." A person is guilty of perjury if in a proceeding before or ancillary to any court or grand jury of the United States, he knowingly makes any false material declaration under oath. 18 U.S.C. § 1623(a)(1994 & Supp. 1996). A general perjury provision is found at 18 U.S.C. § 1621. Section 1621 requires that the defendant "willfully" make a false statement. Under this section, the prosecution must present at least two independent witnesses or one witness with corroborating evidence. *See Hammer v. United States,* 271 U.S. 620, 626 (1926).

The prosecution does not have to meet this "two witness rule" under § 1623.

To be material, a statement must have "a natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed." *Kungys v. United States,* 485 U.S. 759, 770 (1988)(quotation marks omitted)(While *Kungys* dealt with materiality under the Immigration and Nationality Act, the Court stated that "[t]he federal courts have long displayed a quite uniform understanding of the 'materiality' concept as embodied in such statutes." *Id. See United States v. Dickerson,* 114 F.3d 464, 466 (4th Cir. 1997), for a section 1623 case involving testimony before a grand jury with a similar definition of materiality.). Of course, the statement must influence the body on the subject before it. *See United States v. Cosby,* 601 F.2d 754, 756 n.2 (5th Cir. 1979). Materiality is determined at the time of the testimony, and "subsequent events do not eliminate that materiality." *See United States v. Manfredonia,* 414 F.2d 760, 765 (2d Cir. 1969) (footnote omitted).

b. Judge Walter Nixon

U.S. District Court Judge Walter L. Nixon, Jr., was impeached in 1989. At the time of his impeachment, he was serving a sentence in federal prison for committing perjury before a federal grand jury. A federal jury had convicted Judge Nixon of two counts of perjury while acquitting him of the underlying illegal gratuity count. He committed the perjury in an attempt to conceal his involvement with an aborted state prosecution for drug smuggling against the son of a man who had benefitted Judge Nixon financially with a "sweetheart" oil and gas investment. The Senate convicted Judge Nixon of two articles of impeachment, which were both based on Nixon's perjurious testimony. *Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr., a Judge of the United States District Court for the Southern District of Mississippi,* S. Doc. No. 101–22, 101st Cong., 1st Sess. 432–35 (1989). The first article upon which he was convicted found that in testimony before the federal grand jury investigating Judge Nixon's business relationship with an individual and a state prosecutor's handling of a drug smuggling prosecution of that individual's son, Judge Nixon knowingly made a material false or misleading statement in violation of his oath to tell the truth to the effect that he never discussed the prosecution with the state prosecutor. *Id.* at 432–35. The second article upon which he was convicted found that in testimony before the same grand jury, Judge Nixon knowingly made a material false or misleading statement in violation of his oath to tell the truth to the effect that he never talked to anyone that in any way influenced anyone with respect to the drug smuggling case. *Id.*

As in the case of Judge Claiborne, the articles of impeachment against Judge Nixon charged him not only with making false statements, but with making perjurious statements. This can be inferred from the fact that the two articles stated two crucial requirements of perjury, that a falsehood be made knowingly, and that it be "material." Of course, the federal jury had found that he had met these two requirements by convicting him of perjury.

c. Judge Alcee Hastings

U.S. District Court Judge Alcee L. Hastings was impeached in 1989. In 1983, a federal jury acquitted Judge Hastings of charges that he and a friend had conspired to solicit a $150,000 bribe from defendants in a racketeering and embezzlement case heard by Judge Hastings in exchange for lenient sentencing. However, in a separate trial, a jury had convicted his alleged co-conspirator on these charges and it was alleged that Judge Hastings won acquittal by lying on the witness stand.

Judge Hastings was found guilty by the Senate on seven of twelve articles of impeachment involving false testimony and on an article stating that he was a participant in the bribery conspiracy. 135 Cong. Rec. 25,330–35 (1989). The seven "false testimony" articles alleged that Judge Hastings knowingly made false statements under oath intending to mislead the trier of fact regarding whether he had (1) entered into an agreement to seek the $150,000 bribe from the defendants, (2) agreed to modify the sentences of the defendants in return for the bribe, (3) agreed in connection with the bribe to return property to the defendants that he had previously ordered forfeited, (4) appeared at a hotel to demonstrate his participation in the bribery scheme, (5) instructed his law clerk to prepare an order returning property to the defendants in the racketeering and embezzlement case in furtherance of the bribery scheme, (6) conducted a telephone conversation with his co-conspirator in furtherance of the bribery scheme, and (7) fabricated certain letters in an effort to hide the bribery scheme. 134 Cong. Rec. 20,206–07 (1988).

Since the articles of impeachment did not charge that Judge Hastings's false statements met a materiality standard, it can be inferred that Congress did not endeavor to impeach him for perjury, but only for making false statements. However, it seems obvious that the false statements made by Judge Hastings would have been found by a court to be material.

d. Conclusion

The recent judicial impeachments make clear that perjury is an impeachable offense. This is not surprising given that courts have long emphasized the destructiveness of perjury to the judicial system. The Supreme Court has stated that "[p]erjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings[,]" *United States v. Mandujano,* 425 U.S. 564, 576 (1976), that "[f]alse testimony in a formal proceeding is intolerable," and that "[p]erjury should be severely sanctioned in appropriate cases." *ABF Freight System v. NLRB,* 510 U.S. 317, 323 (1994).

iii. Conduct not Related to Official Duties

The record of Judge Claiborne's impeachment proceedings make it clear that an individual can be impeached for conduct not related to his or her official duties. Hamilton Fish, ranking member of the Judiciary Committee and one of the House managers in the Senate trial, stated that "[i]mpeachable conduct does not have to occur in the course of the performance of an officer's official duties. Evidence of misconduct, misbehavior, high crimes, and misdemeanors

can be justified upon one's private dealings as well as one's exercise of public office. That, of course, is the situation in this case." 132 Cong. Rec. H4713 (daily ed. July 22, 1986).

Representative Fish's views were reinforced by now chairman of the Judiciary Committee and then House manager Henry Hyde, who stated that "the decision to impeach and convict . . . stands as an admonition to others in public life. It is an opportunity for Congress to restate and reemphasize the standards of both personal and professional conduct expected of those holding high Federal office." 132 Cong. Rec. H4716 (daily ed. July 22, 1986). House manager Romano Mazzoli stated that impeachment reached "corruption, maladministration, gross neglect of duties and other public and private improprieties committed by judges and high Government officials which rendered them unfit to continue in office." 132 Cong. Rec. H4717 (daily ed. July 22, 1986).

Additional evidence that personal misconduct can lead to impeachment is provided by the fact that Judge Claiborne's motion that the Senate dismiss the articles of impeachment for failure to state impeachable offenses was unsuccessful. One of the arguments his attorney made for the motion was that "there is no allegation . . . that the behavior of Judge Claiborne in any way was related to misbehavior in his official function as a judge; it was private misbehavior." *Senate Claiborne Hearings* at 77 (statement of Judge Claiborne's counsel, Oscar Goodman). *See also Claiborne Motion* at 3.

Representative Kastenmeier responded by stating that "it would be absurd to conclude that a judge who had committed murder, mayhem, rape, or perhaps espionage in his private life, could not be removed from office by the U.S. Senate." *Senate Claiborne Hearings* at 81. Kastenmeier's response was repeated by the House of Representatives in its pleading opposing Claiborne's motion to dismiss. *Opposition to Claiborne Motion* at 2.

The House went on to state that:

> [Claiborne's] narrow view of impeachable offenses expressly was offered and *rejected* by the Framers of the Constitution.
>
> . . . As originally drafted, the impeachment clause provided that the President should be "removable on impeachment and conviction of malpractice or neglect of duty."
>
> . . . The provision was subsequently revised to make the President impeachable for "treason, bribery or corruption."
>
> . . . Colonel Mason moved to add the phrase "or maladministration" after "bribery." . . . In response, James Madison objected that "maladministration" was too narrow a standard. Mason soon withdrew his amendment and substituted the phrase "or other high crimes and misdemeanors." This formulation was accepted, along with an amendment to extend the impeachment sanction to the Vice President and all other civil officers. . . . The Framers thus rejected . . . the concepts of professional "malpractice" or "maladministration" as the sole basis for the impeachment of federal officials.
>
> The contrary position urged by Judge Claiborne is incompatible with common sense and the orderly conduct of

government. Little can be added to the succinct argument of Representative Clayton in 1913 on this identical point, during the impeachment proceedings involving Judge Charles Swayne:

> . . . [The contention is that] however serious the crime, the misdemeanor, or misbehavior of the judge may be, if it can be said to be extrajudicial, he cannot be impeached. To illustrate this contention, the judge may have committed murder or burglary and be confined under a sentence in a penitentiary for any period of time, however long, but because he has not committed the murder or burglary in his capacity as judge he cannot be impeached. That contention, carried out logically, might lead to the very defeat of the performance of the function confided to the judicial branch of the government.

. . . As also noted in one commentary:

> An act or a course of misbehavior which renders scandalous the personal life of a public officer, shakes the confidence of the people in his administration of the public affairs, and thus impairs his official usefulness, although it may not directly affect his official integrity or otherwise incapacitate him properly to perform his ascribed functions.

Thus, Judge Claiborne's argument is both inaccurate and illogical in its extraordinary premise that a federal judge may intentionally commit a felonious act outside his judicial functions and automatically find protection from the impeachment sanction.

Id. at 3–5 (citations omitted) (emphasis in original).

Senator Charles Mathias, Jr., chairman of the impeachment trial committee, referred Judge Claiborne's motion to the full Senate, it having jurisdiction over the articles of impeachment. Senate *Claiborne Hearings* at 113. He did state, however, that:

> [I]t is my opinion . . . that the impeachment power is not as narrow as Judge Claiborne suggests. There is neither historical nor logical reason to believe that the Framers of the Constitution sought to prohibit the House from impeaching . . . an officer of the United States who had committed treason or bribery or any other high crime or misdemeanor which is a serious offense against the government of the United States and which indicates that the official is unfit to exercise public responsibilities, but which is an offense which is technically unrelated to the officer's particular job responsibilities.

Id. at 113–14.

The Senate never voted on Judge Claiborne's motion. However, the Senate was clearly not swayed by the arguments contained therein because the body later voted to convict Judge Claiborne. 132 Con. Rec. S15,760–62 (daily ed. Oct. 9, 1986). The Senate thus agreed with the House that private improprieties could be, and were in this instance, impeachable offenses.

The Claiborne case makes clear that perjury, even if it relates to a matter wholly separated from a federal officer's official duties—as to a judge's tax returns—is an impeachable offense. Judge Nixon's false statements were also in regards to a matter distinct from his official duties. Of course, the false statements made by Judge Hastings were intimately related to his official duties, as they were in regard to one of his cases.

2. Article II—Perjury in the Civil Case

Article II charges President Clinton with willfully providing perjurious, false and misleading testimony in sworn answers to written questions asked as part of a federal civil rights action brought against him by Paula Jones, and in a deposition given as part of that action. These actions are impeachable offenses no less than is President Clinton's perjurious, false and misleading testimony to a federal grand jury.

First, as previously stated, a person is guilty of perjury if in a proceeding before or ancillary to any court or grand jury of the United States, he knowingly makes any false material declaration under oath. A federal civil deposition is such an ancillary proceeding. *See, e.g., United States* v. *Wilkinson,* 137 F.3d 214, 225 (4th Cir. 1998), *cert. denied* 119 S.Ct. 172 (1998); *United States* v. *McAfee,* 8 F.3d 1010, 1014 (5th Cir. 1993). Thus, the actions of President Clinton alleged in this article can constitute perjury under federal law.

Second, perjury in civil proceedings is just as pernicious as perjury in criminal proceedings. The Eleventh Circuit has stated that "[w]e categorically reject 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." *United States* v. *Holland,* 22 F.3d 1040, 1047 (11th Cir. 1994), *cert. denied* 513 U.S. 1109 (1995).

Third, certain federal circuits apply a loose definition of materiality to statements made in civil depositions because they are investigatory in nature. For instance, the Second Circuit in stated that "we see no persuasive reason not to apply the broad standard for materiality of whether a truthful answer might reasonably be calculated to lead to the discovery of evidence admissible at the trial of the underlying suit." *United States* v. *Kross,* 14 F.3d 751, 754 (2d Cir. 1994) (a section 1623 case). *See contra United States* v. *Adams,* 870 F.2d 1140, 1147 (6th Cir. 1989) (a section 1623 case) (The test is "whether a truthful statement might have assisted or influenced the tribunal in its inquiry."). The Fifth Circuit stated that "[o]rdinarily, there would appear to be no sufficient reason why a deponent should not be held to his oath with respect to matters properly the subject of and material to the deposition, even if the information elicited might ultimately turn out not to be admissible at the subsequent trial. *United States* v. *Holley,* 942 F.2d 916, 924 (5th Cir. 1991), *aff'd after retrial,* 986 F.2d 100 (1993) (a section 1623 case). In assessing the materiality of statements made in a discovery deposition, some account must be taken of the more liberal rules of discovery.

3. Article III—Obstruction of Justice

Article III charges that President Clinton has "prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him . . . ."

a. Lessons from the Impeachment of President Nixon

This article finds clear precedent in the first article of impeachment the Judiciary Committee approved against President Richard Nixon. That article charged President Nixon with interfering with the investigation of events relating to the June 17, 1972, unlawful entry at the Washington, D.C. headquarters of the Democratic National Committee for the purpose of securing political intelligence.

Using the powers of his office, the president "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 article charged that implementation of the course of conduct included (1) making or causing to be made false or misleading statements to investigative officers and employees of the United States, (2) withholding relevant and material evidence or information from such persons, (3) approving, condoning, acquiescing in, and counseling witnesses with respect to the giving of false or misleading statements to such persons as well as in judicial and congressional proceedings, (4) interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice, the Federal Bureau of Investigation, the Office of Watergate Special Prosecution Force and congressional committees, (5) approving, condoning, and acquiescing in surreptitious payments for the purpose of obtaining the silence of or influencing the testimony of witnesses, potential witnesses or participants in the unlawful entry or other illegal activities, (6) endeavoring to misuse the Central Intelligence Agency, (7) disseminating information received from the Department of Justice to subjects of investigations, (8) making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough investigation of "Watergate" had taken place, and (9) endeavoring to cause prospective defendants and persons convicted to expect favored treatment or rewards in return for silence or false testimony. *Impeachment of Richard M. Nixon* at 2–3.

Article III against President Clinton states that "[t]he means used to implement this course of conduct or scheme included one or more of" seven acts. The first alleged act by President Clinton, "corruptly encourag[ing] a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading", and the second alleged act, "corruptly encourag[ing] a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony[,]" are clearly analogous to the third alleged act of President Nixon. The fourth alleged act by President Clinton was his that he "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 . . . ." This is clearly analogous to the fifth alleged act of President Nixon.

b. Federal Obstruction of Justice Statutes

There are two federal obstruction of justice statutes. The first, section 1503 of title 18 of the United States Code, states, in relevant part, that "[w]hoever . . . corruptly, or by threats or force . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished . . . ." 18 U.S.C. § 1503(a)(1994 & Supp. 1997). The proscribed actions must relate to a pending judicial process. *See, e.g., United States* v. *Walasek,* 527 F.2d 676, 678 (3rd Cir. 1975). The pending judicial process can be a civil action. *See, e.g., Falk* v. *United States,* 370 F.2d 472, 476 (9th Cir. 1967), *cert. denied* 387 U.S. 926 (1967).

The Fifth Circuit has stated that:

> Whatever can be accomplished through intimidating or influencing a witness, juror, or court official is labeled by section 1503 as an obstruction of justice, for the reason that each of these actors has certain duties imposed by law, and the interference with his performance of these duties necessarily disrupts the processes of the criminal justice system.

United States v. *Howard,* 569 F.2d 1331, 1333–34 (5th Cir. 1978)(footnote omitted), *cert. denied* 439 U.S. 834 (1978). Even soliciting a merely prospective witness may provide the basis for a conviction. *See United States* v. *Friedland,* 660 F.2d 919, 931 (3rd Cir. 1981), *cert. denied* 456 U.S. 989 (1982); *Falk* v. *United States,* 370 F.2d at 476.

The second statute, section 1512 of title 18 of the United States Code, states, in relevant part, that:

> Whoever . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to . . . influence, delay, or prevent the testimony of any person in an official proceeding . . . [or] cause or induce any person to . . . withhold testimony, or withhold a record, document, or other object from an official proceeding . . . shall be [punished].

18 U.S.C. §§ 1512(b)(1)–(2)(1994 & Supp. 1996). Either of the two statutes can be used in the case of witness tampering. *See, e.g., United States* v. *Maloney,* 71 F.3d 645, 659 (7th Cir. 1995), *cert. denied* 117 S.Ct. 295 (1996); *United States* v. *Tackett,* 113 F.3d 603, 611 (6th Cir. 1997), *cert. denied* 118 S.Ct. 879 (1998).

The first alleged act by President Clinton, "corruptly encourag[ing] a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading", and the second alleged act, "corruptly encourag[ing] a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony[,]" clearly violate both statutes. The third alleged

act, "corruptly engag[ing] in, encourag[ing] or [supporting] a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him[,]" clearly violates the second statute. The fourth alleged act, that President 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[,]" clearly violates both statutes. The sixth alleged act, "relat[ing] 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[,]" and the seventh alleged act, "ma[king] false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses[,]" clearly violate both statutes. "The most obvious example of a § 1512 violation may be the situation where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it before the grand jury." *United States* v. *Rodolitz,* 786 F.2d 77, 82 (2d Cir. 1986), *cert. denied* 479 U.S. 826 (1986).

4. Article IV—Abuse of Power

Article IV charges President Clinton with "refus[ing] and fail[ing] to respond to certain written requests for admission and willfully ma[king] perjurious, false and misleading sworn statements in response to certain written requests for admission . . . ." In doing such, the President "assumed to himself functions and judgments necessary to the exercise of the sole power of impeachment invested by the Constitution in the House of Representatives"—the Constitution provides that "the House of Representatives . . . shall have the sole Power of Impeachment" U.S. Const. art. I, § 2, cl. 5—and thus warrants impeachment. Chairman Hyde made the written request for 81 admissions by letter dated November 5, 1998. The gravity of the request was made clear by the facts that the answers were to be under oath, Letter from Henry J. Hyde to U.S. President William J. Clinton (Nov. 5, 1998), and that if a response was not provided by President Clinton, the Judiciary Committee would have subpoenaed it. Chairman Hyde sent a letter to the President stating that "[i]f the Committee is not provided complete and specific answers to [the 81 questions] by Monday, November 30, I have no course but to urge the full Committee to subpoena those answers." Letter from Henry J. Hyde to U.S. President William J. Clinton 2 (Nov. 25, 1998).

Far from representing novel grounds for impeachment, Article IV finds clear precedent in the third article of impeachment that the Judiciary Committee approved in the case of President Richard Nixon. That article found that President Nixon had committed impeachable offenses by failing to "produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary" and "willfully disobey[ing] such subpoenas." The items subpoenaed were needed to "resolve . . . fundamental, factual questions relating to Presidential direction, knowledge or approval of actions demonstrated by other evidence to be substantial

grounds for impeachment of the President." The Article found that the President:

> In refusing to produce these papers and things . . . substitut[ed] his judgment as to what materials were necessary for the inquiry, interposed the powers of the presidency against the lawful subpoenas of the House of Representatives, thereby assuming 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 thus warrants impeachment].

Impeachment of Richard M. Nixon at 188.

The Committee found that by not providing the subpoenaed information, President Nixon "interfer[ed] with the discharge of the Committee's responsibility to investigate fully and completely whether sufficient grounds exist[ed] to impeach him." *Id.* at 189. In addition, his "defiance of the Committee forced it to deliberate and make judgments on a record that . . . was 'incomplete'." *Id.* at 190. The President "is obligated to supply . . . relevant evidence necessary for Congress to exercise its constitutional responsibility in an impeachment proceeding." *Id.* at 213. Finally, as Chairman Rodino stated in a letter to President Nixon:

> Under the Constitution it is not within the power of the President to conduct an inquiry into his own impeachment, to determine which evidence, and what version or portion of that evidence, is relevant and necessary to such an inquiry. These are matters which, under the Constitution, the House has the sole power to determine.

Id. at 194, quoting letter from Chairman Rodino to President Richard M. Nixon (May 30, 1974).

By refusing and failing to respond to some of the Judiciary Committee's requests for admissions, and by answering others in a perjurious, false and misleading fashion, President Clinton committed acts and omissions of the same nature as those committed by President Nixon. The 81 requests for admissions went to facts at the heart of the conduct which form the basis of the Committee's impeachment investigation. That full and truthful responses were crucial to the investigation was made clear by the fact that responses were made under oath and, had they not been forthcoming, would have been compelled by subpoena. The information requested was clearly as important to the Committee's investigation in 1998 as were the items sought to be subpoenaed by the Committee in 1974.

Where President Clinton failed to respond, he, just as President Nixon, took it upon himself, as Chairman Rodino had stated, to "determine which evidence, and what version or portion of that evidence, is relevant and necessary to such an inquiry." President Clinton 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 thereby committed impeachable offenses.

President Clinton did no less when he provided the Committee with perjurious, false and misleading responses to other requests

for admissions. It is ludicrous to suppose that it is impeachable to fail to provide certain requested information, yet at the same time not impeachable to provide false information. For it is probable that President Clinton caused more harm to the Committee's investigation by providing false responses than he would have by providing no responses at all. Just as with President Nixon, he showed contempt for the legislative branch and impeded Congress's exercise of its Constitutional responsibility, thus justifying impeachment.

V. COMMITTEE CONSIDERATION OF IMPEACHMENT PROCEEDINGS

On January 16, 1998, in response to Attorney General Janet Reno's request, the Special Division of the United States Court of Appeals for the District of Columbia Circuit, expanded the jurisdiction of Independent Counsel Kenneth W. Starr. The Special Division's order provides in pertinent part:

> The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law other than a Class B or C misdemeanor or infraction in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case *Jones* v. *Clinton.*

In re: Madison Guaranty Savings and Loan Association, Order of the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsels, January 16, 1998 (reprinted in H.R. Doc. 105–311, Part I, at 6–7).

On September 9, 1998, Independent Counsel Starr notified Speaker Gingrich and Minority Leader Gephardt that his office "delivered to the Sergeant at Arms, the Honorable Wilson Livingood, 36 sealed boxes containing two complete copies of a Referral to the House of Representatives." *Letter from Independent Counsel Kenneth W. Starr to The Honorable Newt Gingrich and the Honorable Richard A. Gephardt,* September 9, 1998. The Referral included a narrative, appendices, and supporting documents and evidence (including grand jury transcripts) which supported the Office of Independent Counsel's findings regarding the Lewinsky matter.

Independent Counsel Starr forwarded this information pursuant to the Independent Counsel Reauthorization Act, 28 U.S.C. § 591 *et. seq.,* which provides:

> Information relating to impeachment.—An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title [concerning the assignment of

> judges to the Special Division that appoints an independent counsel] shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

28 U.S.C. § 595(c) (1994). After the Sergeant at Arms received the materials, they were stored in a secure facility in the Ford Building. The room, which is equipped with security technology, is guarded by the U.S. Capitol police around the clock.

Soon after the delivery of the materials from Independent Counsel Starr, a bipartisan meeting of the House leadership was held in the Speaker's office to decide the manner in which the material would be handled. The meeting included Speaker Gingrich, Majority Leader Armey, Minority Leader Gephardt, Rules Committee Chairman Solomon, Rules Committee Democratic Member Frost, Judiciary Committee Chairman Hyde, and Judiciary Committee Ranking Minority Member Conyers. The meeting took place at 5:00 p.m. in room H–230 in the Capitol. The main issue resolved at that meeting was the manner in which the material would be released to the public.

Chairman Hyde's original proposal did not include a provision for the immediate release of documents to the public. Instead, his plan included referring the communication from Independent Counsel Starr to the Judiciary Committee so that the Committee could review the material to determine whether sufficient grounds existed to recommend to the House that an impeachment inquiry be commenced. The material would have been deemed received in executive session and access to the material would have been restricted to the Members of the Committee on the Judiciary. Chairman Hyde's draft resolution also contained investigative authorities, such as staff deposition authority, which would have enabled the Committee begin conducting an investigation. Chairman Hyde's proposal, particularly the provisions regarding the secrecy of the material and the investigative authorities, were rejected.

Although many Democrats and pundits have criticized the House of Representatives and the Committee for releasing the pertinent parts of Independent Counsel's Starr's referral, few know that a chief proponent of immediately releasing the information was Minority Leader Gephardt. Rep. Gephardt favored release because of his concern about leaks coming from the Committee. He argued that it would be futile to hold material back as there would be selective leaking, which would prejudice the President's case. Therefore, he stated that there was a general need to release all the material in the referral—including the appendices and supporting evidence—to the public as soon as possible. In fact, he insisted that all of the information be made public. He expressed his sense that many Members of Congress, who did not serve on the Committee, would demand access to the supporting appendices, and it would be unwise for the Committee to restrict the access to those materials to Judiciary Committee Members only. Minority Leader Gephardt also requested that the President be allowed to obtain a copy of the narrative 24 hours before its public release, but did not insist on his request which he abandoned quickly.

Rep. Conyers argued against the release of the materials as did his chief investigative counsel. They were concerned about the sen-

sitivity of the material, particularly grand jury material, and requested that the Committee be given an opportunity to thoroughly review the material. In fact, Rep. Conyers' position regarding public access to the material was similar to Chairman Hyde's original position. At one point during the meeting, Rep. Conyers and Minority Leader Gephardt argued about the advisability of releasing the material to the public for several minutes. Minority Leader Gephardt's position eventually prevailed with one modification. Instead of releasing all of the material immediately, the House authorized the release of the narrative and then gave the Committee about two and a half weeks to review and release the remaining material by September 28, 1998. Speaker Gingrich, Minority Leader Gephardt, and Rules Committee Chairman Solomon made it clear toward the end of the meeting that the presumption was that the Committee would release all of the relevant material and should only redact personal, degrading, irrelevant, or other sensitive information.

On September 10, 1998, the Committee on Rules received testimony regarding the handling of the Referral. *Hearing before the Committee on Rules on H. Res. 525,* 105th Cong., 2nd Sess. (September 10, 1998). After the hearing, the Committee considered H. Res. 525, which provided for a deliberative review by the Committee on the Judiciary of a communication from an independent counsel, and for the release thereof. *Id.* The full House of Representatives approved H. Res. 525 on September 11, 1998, by a vote of 363–63. 144 Cong. Rec. H7587–H7608 (daily ed. September 11, 1998). As a result of the passage of H. Res. 525, the narrative was ordered printed as a House document. *Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c),* H.R. Doc. 105–310, 105th Cong., 2nd Sess, 129–130 (1998).

In addition to ordering the public release of the narrative, section two of H. Res. 525 directed that the "balance of [the] material . . . shall be released from [executive session status] on September 28, 1998, except as otherwise determined by the committee. Material so released shall immediately be submitted for printing as a document of the House." Pursuant to this directive, the Committee staff reviewed over 60,000 documents in less than three weeks. The task was daunting and required a great deal of staff resources to complete the job within the allotted time frame. After the staff and Members reviewed the material, the Committee met in executive session on September 17, 18, and 25 to consider the staff's recommendations regarding the release of materials and proposed redactions to those materials which were made to protect privacy, remove vulgarities, and protect sensitive law enforcement information, such as the names of FBI agents. *See Votes of the Committee in Executive Session Pursuant to H. Res. 525,* Committee on the Judiciary, House of Representatives, Committee Print, Ser. No. 7, 105th Cong., 2nd Sess. (1998). On September 18 and pursuant to H. Res. 525, redacted appendices to the Referral were ordered printed as a House document, *(Appendices to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) Submitted by the Office of the Independent Counsel, September 9, 1998,* H.R. Doc. 105–311, 105th Cong.,

2nd Sess. (September 18, 1998)), and redacted supplemental materials to the referral were released on September 28. *Supplemental Materials to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) Submitted by the Office of the Independent Counsel, September 9, 1998,* H.R. Doc. 105–316, 105th Cong., 2nd Sess. (September 28, 1998). Also, on September 28, the President's responses to the Referral, which were received by the Committee in executive session, were ordered printed as a House document. *Preliminary Memorandum of the President of the United States Concerning Referral of the Office of the Independent Counsel and Initial Response of the President of the United States to Referral of the Office of the Independent Counsel,* H.R. Doc. 105–317, 105th Cong., 2nd Sess. (September 28, 1998).

Pursuant to H. Res. 525, the Committee was also obligated to "determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." In order to fulfill that important obligation, the Chairman and Ranking Minority Member directed the majority and minority chief investigative counsels to advise the Committee regarding the information referred by the Independent Counsel. The Committee received their orally delivered reports on October 5, 1998. The Committee's Chief Investigative Counsel advised that there was enough information to warrant a full inquiry, while the minority's chief investigative counsel advised against conducting a full inquiry. Following those presentations, the Committee approved a resolution, H. Res. 581, which recommended that the full House of Representatives authorize the Committee to conduct an impeachment inquiry. Also, on that day the Committee considered and approved by voice vote impeachment inquiry procedures which were modeled after the procedures used in 1974. *Authorization of an Inquiry Into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States; Meeting of the House Comm. on the Judiciary Held October 5, 1998; Presentation by Inquiry Staff Consideration of Inquiry Resolution Adoption of Inquiry Procedures,* Committee Print, Ser. No. 8, 105th Cong., 2nd Sess. (December 1998). On October 7, the Committee filed its report on H. Res. 581 in the House. *Investigatory Powers of the Committee on the Judiciary with Respect to its Impeachment Inquiry,* H.R. Rept. 105–795, 105th Cong., 2nd Sess. (October 7, 1998). On October 8, by a vote of 258 to 176, the House passed H. Res. 581, which "authorized and directed [the Committee on the Judiciary] to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America." 144 Cong. Rec. H10119 (daily ed. October 8, 1998).

After the passage of H. Res. 581, Committee staff were directed to investigate fully the allegations and evidence relating to the Referral. Furthermore, the staff met with representatives of the White House to discuss ways in which the inquiry could proceed expeditiously. At an October 21, 1998 meeting, Charles F.C. Ruff, counsel to the President, and his colleagues, were asked to provide exculpatory information to the Committee. They did not supply any information. Also, the White House was provided copies of the

Committee's procedures which, *inter alia*, allowed the President's counsel to call witnesses. They did not exercise this right until the Committee was preparing to vote on articles of impeachment.

In order to move the process forward, the Committee sent the President 81 requests for admission which were to be answered in writing under oath. *Letter from The Honorable Henry J. Hyde to The Honorable William Jefferson Clinton*, November 5, 1998. Notwithstanding repeated requests, the White House did not submit its answers until after three weeks passed. *Letter from Mr. David Kendall, Esq. to The Honorable Henry J. Hyde*, November 27, 1998. Many on the Committee felt that the President's answers were evasive, misleading, and perjurious. His answers became the basis for the fourth article of impeachment.

On October 9, 1998, the Subcommittee on the Constitution held a hearing in which 19 legal and constitutional experts testified on the background and history of impeachment. *The Background and History of Impeachment: Hearing before the Subcomm. On the Constitution, Comm. on the Judiciary*, 105th Cong., 2nd Sess. (November 9, 1998). The purpose of the hearing was to hear from a diverse group of scholars regarding the constitutional standard of impeachment—"high crimes and misdemeanors." The Committee also published two lengthy documents to assist Members with their research into impeachment. *See Constitutional Grounds for Presidential Impeachment: Modern Precedents*, House Comm. on the Judiciary, Comm. Print, Ser. No. 9, 105th Cong., 2nd Sess. (November 1998); *Impeachment: Selected Materials*, House Comm. on the Judiciary, Comm. Print, Ser. No. 10, 105th Cong., 2nd Sess. (November 1998).

On October 19, 1998, the Committee heard testimony from Independent Counsel Starr. *Hearings on Impeachment Inquiry Pursuant to H. Res. 581: Hearing before the Comm. On the Judiciary*, 105th Cong., 2nd Sess. (November 1, 1998). Judge Starr was invited after many Democrats requested that he be called before the Committee. David Kendall, the President's private attorney, questioned Judge Starr for an hour. In all of his questioning, Mr. Kendall never once asked any questions relating to the evidence collected during the grand jury's investigation. On December 1, the Committee adduced testimony from various witnesses regarding the law of perjury. *The Consequences of Perjury and Related Crimes: Hearing before the Comm. on the Judiciary,* 105th Cong., 2nd Sess. (December 1, 1998). Two of the witnesses were women who were prosecuted for perjury arising out of civil cases which had many similarities to the *Jones* v. *Clinton* case. After several months of requesting the White House to submit witnesses, the White House notified the Committee on Friday, December 4, that they wished to call witnesses. This was after the Chairman had already announced that the Committee would consider articles of impeachment the following week. The Committee accommodated the White House's request, and held two days of hearings, including receiving testimony from White House Counsel Charles F.C. Ruff. *Hearings on Impeachment Inquiry Pursuant to H. Res. 581: Hearing before the Comm. On the Judiciary*, 105th Cong., 2nd Sess. (December 9, 1998). The Committee ordered printed Mr. Ruff's submission to the Committee. *Submission by Counsel for President Clin-*

ton to the Committee on the Judiciary of the United States House of Representatives, House Comm. on the Judiciary, Comm. Print, Ser. No. 16, 105th Cong., 2nd Sess. (December 1998).

Finally, on December 10, 11, and 12, 1998, the Committee considered and passed four articles of impeachment. The procedure used to consider the articles of impeachment were similar to and predicated upon the procedures used in 1974. Prior to the consideration of the articles, Rep. Sensenbrenner moved the resolution's favorable recommendation to the House. After the clerk of the Committee reported the resolution, the Committee approved Chairman Hyde's unanimous consent request that provided in pertinent part that ". . . the proposed articles shall be considered as read and open for amendment. Each proposed article and any additional article, if any, shall be separately 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." *See House Committee on the Judiciary Business Meeting*, at 3–6, December 10, 1998 (unofficial transcript). Four articles of impeachment were eventually adopted and ordered reported to the House.

A. VOTES OF THE COMMITTEE

Pursuant to clause 2(l)(2)(B) of House rule XI, the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed herein. The following roll call votes occurred during Committee deliberations on a resolution exhibiting articles of impeachment. Also included is a rollcall vote on a joint resolution sponsored by Rep. Boucher censuring President Clinton. Chairman Hyde allowed a vote on this joint resolution even though it was not germane to the articles of impeachment.

1. Rollcall No. 1—Amendment to Article I Offered by Rep. Rogan

An amendment was offered by Mr. Rogan to Article I of the Hyde resolution which inserted the words, "one or more of the following". This language was inserted so that the statements that comprise the perjurious, false and misleading statements in the August 17, 1998 grand jury testimony of President William Jefferson Clinton did not have to include all the circumstances itemized in the paragraphs of Article I, but could relate to one or more of the following circumstances: statements related to the nature and details of his relationship with a subordinate government employee; prior perjurious, false and misleading testimony given in a federal civil rights action brought against him; prior false and misleading statements he allowed his attorney to make to a federal judge in that civil rights action; and his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence. The amendment was adopted by a vote of 21 ayes to 16 nays.

ROLLCALL NO. 1

Subject: Amendment of Mr. Rogan to the Resolution Impeaching William Jefferson Clinton, President of the United States, for high crimes and misdemeanors. Article I, page 2, line 17, insert after

"concerning" the following: "one or more of the following". Passed by a vote of 21 ayes to 16 noes.

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Inglis	X		
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham	X		
Ms. Bono	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Schumer		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Mr. Lofgren		X	
Ms. Jackson-Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Rothman		X	
Mr. Barrett (WI)		X	
Mr. Hyde, Chairman	X		
Total	21	16	

2. Rollcall No. 2—Article I

Article I states that President William Jefferson Clinton provided perjurious, false and misleading testimony to the federal grand jury regarding one or more of the following: (1) the nature of his relationship with Monica Lewinsky; (2) prior perjurious, false, and misleading testimony he gave in the Paula Jones civil rights case; (3) prior false and misleading statements he allowed his attorney, Bob Bennett, to make in the Paula Jones case; and (4) his efforts to influence the testimony of witnesses and to impede the discovery of evidence in the Paula Jones case. Article I was agreed to, as amended, by a vote of 21 ayes to 16 noes.

ROLLCALL NO. 2

Subject: Article I of the Resolution Impeaching William Jefferson Clinton, President of the United States, for high crimes and misdemeanors. Article I passed, as amended, by a vote of 21 ayes to 16 noes.

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Inglis	X		
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham	X		
Ms. Bono	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Schumer		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Mr. Lofgren		X	
Ms. Jackson-Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Rothman		X	
Mr. Barrett (WI)		X	
Mr. Hyde, Chairman	X		
Total	21	16	

3. Rollcall No. 3—Article II

Article II states that President William Jefferson Clinton provided perjurious, false and misleading testimony as part of the Paula Jones civil rights action brought against him: (1) in his sworn answers to written questions; and (2) in his January 17, 1998 deposition. Article II was agreed to by a vote of 20 ayes to 17 noes.

ROLLCALL NO. 3

Subject: Article II of the Resolution Impeaching William Jefferson Clinton, President of the United States, for high crimes and misdemeanors. Article II passed by a vote of 20 ayes to 17 noes.

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Canady	X		

	Ayes	Nays	Present
Mr. Inglis	X		
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham		X	
Ms. Bono	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Schumer		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Mr. Lofgren		X	
Ms. Jackson-Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Rothman		X	
Mr. Barrett (WI)		X	
Mr. Hyde, Chairman	X		
Total	20		17

4. Rollcall No. 4—Article III

Article III provides that President William Jefferson Clinton obstructed justice in an effort to delay, impede, cover up, and conceal the existence of evidence related to the Paula Jones civil rights case in the following instances: (1) On or about December 17, 1998, President Clinton encouraged Monica Lewinsky to submit a false written statement (affidavit) to the court; (2) On or about December 17, 1998, President Clinton encouraged Monica Lewinsky to give false testimony to the court; (3) On or about December 28, 1998, President Clinton helped in a plan to hide the gifts Monica Lewinsky gave him; (4) Beginning on or about December 7, 1998, and continuing through and including January 14, 1998, President Clinton intensified efforts and succeeded in getting Monica Lewinsky a job to prevent her truthful testimony; (5) On or about January 17, 1998, in his deposition in the Paula Jones civil rights case, President Clinton allowed his attorney, Bob Bennett, to make false and misleading statements about Monica Lewinsky's affidavit; (6) On or about January 18, and January 20–21, 1998, President Clinton made false and misleading statements to Betty Currie, a potential witness, to influence her testimony in the Paula Jones civil case; (7) On or about January 21, 23, and 26, 1998, President Clinton made false and misleading statements to Erskine Bowles, Bruce Lindsey and Sidney Blumenthal, potential witnesses in the criminal case, to influence their testimony. Article III was agreed to by a vote of 21 ayes to 16 noes.

ROLLCALL NO. 4

Subject: Article III of the Resolution Impeaching William Jefferson Clinton, President of the United States, for high crimes and misdemeanors. Article III passed by a vote of 21 ayes to 16 noes.

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Inglis	X		
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham	X		
Ms. Bono	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Schumer		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Mr. Lofgren		X	
Ms. Jackson-Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Rothman		X	
Mr. Barrett (WI)		X	
Mr. Hyde, Chairman	X		
Total	21	16	

5. Rollcall No. 5—Amendment to Article IV Offered by Rep. Gekas

An amendment was offered by Mr. Gekas to Article IV of the Hyde resolution which struck the word "repeatedly" as a description of conduct that resulted in the misuse and abuse of the President's office to correspond with the deletion of Paragraphs 1, 2, and 3. Article IV had set forth several grounds to impeach President William Jefferson Clinton for misuse and abuse of the office of the President. Paragraph 1 of Article IV, which was deleted by the amendment, stated that President William Jefferson Clinton willfully made false and misleading public statements for the purpose of deceiving the people of the United States. Paragraph 2 of Article IV, which was deleted by the amendment, stated that President William Jefferson Clinton willfully made false and misleading statements to members of his cabinet and White House aides, so that these statements would be repeated publicly using public re-

sources for the purpose of deceiving the people of the United States. Paragraph 3 of Article IV, which was deleted by the amendment, stated that as President, using the Office of the White House counsel, William Jefferson Clinton did frivolously and corruptly assert executive privilege for the purpose of delaying and obstructing a federal criminal investigation and the proceeding of the grand jury. The remaining Paragraph 4 of Article IV was rewritten by the amendment and provides that President William Jefferson Clinton made false and misleading sworn statements, refused and failed to respond to certain written requests for admissions asked of him by the House of Representatives of the Congress of the United States (answers to the 81 questions), showing contempt for the impeachment inquiry process. The amendment was adopted by a vote of 29 ayes, 5 noes and 3 present.

ROLLCALL NO. 5

Subject: Amendment by Mr. Gekas to the Resolution Impeaching William Jefferson Clinton, President of the United States, for high crimes and misdemeanors. Article IV. Strikes paragraphs regarding "misuse and abuse of power" with respect to false and misleading sworn statements for the purpose of deceiving the people of the United States, members of his cabinet, and in asserting the executive privilege and inserts a section regarding "perjurious, false and misleading sworn statements" made to the Congress. Passed by a vote of 29 ayes to 5 noes and 3 present.

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Inglis	X		
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon		X	
Mr. Rogan	X		
Mr. Graham	X		
Ms Bono	X		
Ms. Conyers	X		
Mr. Frank			X
Mr. Schumer	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			X
Ms. Jackson-Lee		X	
Ms. Waters		X	
Mr. Meehan			X
Mr. Delahunt	X		
Mr. Wexler		X	

	Ayes	Nays	Present
Mr. Rothman	X		
Mr. Barrett (WI)		X	
Mr. Hyde, Chairman	X		
Total	29	5	3

6. Rollcall No. 6—Article IV

Article IV provides that President William Jefferson Clinton willfully made perjurious, false and misleading sworn statements in response to certain written requests for admissions asked of him by the House of Representatives of the Congress of the United States, (answers to the 81 questions) showing contempt for the impeachment inquiry process. Article IV was adopted by a vote of 21 ayes to 16 noes.

ROLLCALL NO. 6

Subject: Article IV of the Resolution Impeaching William Jefferson Clinton, President of the United States, for high crimes and misdemeanors. Article IV passed, as amended, by a vote 21 ayes to 16 noes.

	Ayes	Nays	Present
Mr. Ssnsenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Inglis	X		
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham	X		
Mrs. Bono	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Schumer		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson-Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Rothman		X	
Mr. Barrett (WI)		X	
Mr. Hyde, Chairman	X		

	Ayes	Nays	Present
Total	21	16	

7. Rollcall No. 7—Censure Resolution

Although not germane to the consideration of a privileged impeachment resolution, Chairman Hyde and the Committee agreed to consider a joint resolution sponsored by Mr. Boucher that would express the sense of Congress with respect to the censure of President William Jefferson Clinton. The joint resolution of censure offered by Mr. Boucher was defeated by a vote 14 ayes, 22 nays and 1 present. The text of the joint resolution follows:

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) in as much 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.

ROLLCALL NO. 7

Subject: Joint Resolution Expressing the sense of Congress with respect to the censure of William Jefferson Clinton. Defeated by a vote of 14 ayes to 22 noes and 1 present.

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Canady		X	
Mr. Inglis		X	
Mr. Goodlatte		X	
Mr. Buyer		X	
Mr. Bryant		X	

	Ayes	Nays	Present
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease		X	
Mr. Cannon		X	
Mr. Rogan		X	
Mr. Graham		X	
Mrs. Bono		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Schumer	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott		X	
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson-Lee	X		
Ms. Waters			X
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Rothman	X		
Mr. Barrett (WI)	X		
Mr. Hyde, Chairman		X	
Total	14	22	1

B. COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

C. COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

Clause 2(l)(3)(D) of rule XI requires each Committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on the Judiciary has received no such findings or recommendations from the Committee on Government Reform and Oversight.

D. NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this resolution does not provide new budgetary authority or increased tax expenditures.

E. COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the resolution will have no budget effect.

F. CONSTITUTIONAL AUTHORITY

Pursuant to clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this resolution in Article I, section 2, clause 5 of the Constitution.

VI. ARGUMENTS ABOUT CENSURE

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, section 4 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, section 3 states that "Judgment in Cases of Impeachment will not extend further than 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 together, 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 trial jury, rather than merely as a legislative body, they infused the process with notions of due process. Under the Constitution, the House impeaches by a majority vote. However, the requirement of removal upon conviction after a two-thirds vote in the Senate 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.

But for the President or any other civil officer, censure as a shaming punishment by the legislature is precluded by the Constitution, since the impeachment provisions permit Congress only to remove an officer of another branch of government and disqualify him from office. Not only would such a punishment undermine the separation of powers by punishing the President or other civil officers of the government in a manner other than expressly provided for in the Constitution, but it would violate the Constitution's prohibition on Bills of Attainder. U.S. Const. art. I, sec. 9, cl. 3. ("No Bill of Attainder or ex post facto Law shall be passed").

A. PROHIBITED BILL OF ATTAINDER

A Bill of Attainder was originally a mechanism by which the British Parliament could punish specific individuals for activities against the interests of the Crown. *Artway v. Attorney General of New Jersey,* 876 F. Supp. 666, 683 (1995), *aff'd in part, vacated in part,* 81 F.3d 1235 (3rd Cir. 1996). It was a feature of the British

Common law abominable to the Framers of our Constitution. *Id.* A Bill of Attainder is a law that is intended to punish a specific individual (or identifiable group of individuals) rather than a regulatory or prophylactic law intended to protect the public. *United States v. Brown,* 381 U.S. 437 (1965). The Bill of Attainder Clause was intended, as the Supreme Court declared in *Brown, id.* at 442, to serve as "a general safeguard against legislative exercise of the judicial function, or more simply trial by legislature." In 1977, the Supreme Court described a Bill of Attainder as "a law that legislatively determines guilt and inflicts punishment upon an identified individual without the provisions of the protections of a judicial trial." *Nixon v. Administrator of General Services,* 433 U.S. 425, 468 (1977). The Court also said that "a major concern that prompted the bill of attainder prohibition [was] the fear that *the legislature, in seeking to pander to the inflamed popular constituency, will find it expedient openly to assume the mantle of judge." Id.* at 480 (emphasis added); cf. *E.E.O.C. v. Sears, Roebuck and Company,* 504 F. Supp. 241 (1980)(finding no bill of attainder violation because "there has been no determination of . . . guilt" nor imposition of punitive measures).

Importantly, the proposed censure resolution is a joint resolution, 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 Senate Floor than a bill, a joint resolution is very clearly a "bill," since it is a measure requiring the signature of the President. A joint resolution of censure—a law formally and publicly expressing condemnation by the legislature directed at a specific individual—confronts squarely the prohibition on Bills of Attainder.

Defenders of presidential "censure" argue that it does not really punish and therefore cannot be a Bill of Attainder. In determining whether a law is punitive within the context of the prohibition of Bills of Attainder, courts look to what are understood as the motivational, functional, and historical tests: (1) whether the legislature intended the law to be punitive; (2) whether the law reasonably can be said to further non-punitive legislative purposes; and (3) whether the punishment was traditionally judged to be prohibited by the Bill of Attainder clause. *See In re McMullen,* 989 F.2d 603, 607 (2d Cir.), *cert. denied,* 114 S. Ct. 301 (1993).

The motivational test is clearly implicated here. As the Congressional Research Service has noted, any argument that censure provisions were not intended to be punitive would "face the task of overcoming express statements by individual Members concerning the appropriate 'punishment' in this particular case." *Censure of the President by Congress,* Jack Maskell, Legislative Attorney, American Law Division, CRS Report for Congress, September 29, 1998, at 9. Indeed, the record is replete with such references. As Representative Pease stated during consideration of the joint resolution of censure:

> It seems to me, after all this discussion of what exactly is a resolution of censure regarding the President, there is still no 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.

Markup Session, Articles of Impeachment of William Jefferson Clinton, Statement of Representative Edward A. Pease, December 12, 1998, at 286 (Statement of Rep. Pease).

In *Nixon v. Administrator of General Services,* the Supreme Court examined claims by President Richard Nixon that the Presidential Recordings and Materials Preservation Act constituted an unconstitutional Bill of Attainder. *Nixon v. Administrator of General Services,* 433 U.S. at 468. Importantly, the Court upheld the District Court's finding that there was "no evidence presented . . . [or] to be found in the legislative record, to indicate that Congress' design was to impose a penalty upon Mr. Nixon . . . as punishment for alleged past wrongdoings." *Id.* at 478. The Court noted that "the objectives of preserving the availability of judicial evidence" was properly within Congress' legislative competence, and agreed with the District Court's conclusion that "the Act before us is regulatory and not punitive in character." *Id.*

In a concurring opinion in *Nixon,* Justice Stevens was concerned that "[t]he statute implicitly condemns him as an unreliable custodian of his papers" and declared that *"[l]egislation which subjects a named individual to this humiliating treatment must raise serious questions under the Bill of Attainder Clause." Id.* at 484 (J. Stevens, concurring opinion)(emphasis added). A resolution *explicitly* condemning a person and subjecting him to humiliating treatment confronts directly the Article I prohibition on Bills of Attainder. Moreover, Professor John C. Harrison of the University of Virginia Law School, who testified at the Committee hearing on "The Background and History of Impeachment," has written that:

> 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.

Letter of John C. Harrison, Professor of Law, University of Virginia Law School, to Representative William Delahunt (December 3, 1998).

B. CENSURE OF PRESIDENT ANDREW JACKSON

The House of Representatives has never before censured a President. Moreover, no President has ever willingly accepted a censure of the Executive by the Legislative Branch. In 1834, the Senate voted to censure President Andrew Jackson on the ground that, in withdrawing federal funds from the Bank of the United States, he had "assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both." Telling are

the words of protest from President Jackson, which the Senate refused to enter on its Journal:

> By an expression 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 abovementioned 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, 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 be transmitted to the Senate.

Gales & Seaton's Register, President's Protest, April 17, 1834, Protest of President Andrew Jackson.

President Jackson 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." *Id.* It was for this reason that President Jackson argued that censure was "wholly unauthorized by the Constitution and in derogation of its entire spirit." *Id.* One of the constitutional scholars appearing before the Committee during the course of its impeachment hearings, Gary McDowell, stated this point eloquently:

> 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.

Letter of Gary McDowell, Director of the Institute for U.S. Studies, University of London, to Representative William Delahunt (December 3, 1998).

It is important to note that the Senate *expunged* the censure of President Andrew Jackson only three years later. Register of Debates, 24th Congress, 2d Sess. 379–418, 427–506 (1837), see discussion in Fisher, *Constitutional Conflicts Between Congress and the President,* 54–55 (4th ed. 1997).

> This is significant because the word expungement, the phrase 'expungement from the record', has legal as well as historical significance. It doesn't mean we just turn our back on it. It means it never happened. If somebody is convicted of a crime and they later go back to court after their conviction is over and they've served their time, if they petition the court to expunge the record, it means they lawfully can answer under oath that they have never been convicted of a crime because it never happened. And on any given date, any future Congress could by a simple majority vote take this piece of paper and erase it from the history books of America, erase its significance, erase its longevity and erase its effect. I don't see that as a significant rebuke at all.

Markup Session, Articles of Impeachment of William Jefferson Clinton, Statement of Representative James E. Rogan, December 12, 1998, at 310.

Constitutional scholar John O. McGinnis testified before the Committee that:

> The current interest in creating new forms of sanctions for the President reflects a cavalier attitude toward constitutional governance, and indeed illustrates the kind of lasting damage that the country risks from presidential misconduct. If a President cannot legitimately deny that he has breached the public trust there will be a widespread feeling that he must be punished. He or his supporters then may be willing to trade the prerogatives of his office for their personal or political benefit. Thus one way a President who has committed serious misconduct poses a threat to the Republic, is the increased likelihood that he

> will agree to disastrous constitutional precedents to protect his own tenure.

Hearing on "The Background and History of Impeachment," before the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 2d Sess., (Nov. 9, 1998) (written statement of Professor John O. McGinnis, Professor of Law, Yeshiva University Cardozo School of Law) at 19.

Representative Canady underscored this point during the markup of Articles of Impeachment:

> 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. . . . 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.

Markup Session, Articles of Impeachment of William Jefferson Clinton, Statement of Representative Charles T. Canady, December 12, 1998, at 208–12.

VII. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF HON. BILL McCOLLUM

CHAIRMAN, SUBCOMMITTEE ON CRIME, COMMITTEE ON THE JUDICIARY

INTRODUCTION

I have carefully reviewed the entire record regarding the allegations of criminal wrongdoing by President Clinton. And it is with a heavy heart that I have concluded that the evidence establishes clearly and convincingly that President Clinton is an oath breaker and a law breaker and should be impeached.

On January 20, 1993, William Jefferson Clinton raised his right hand, placed his left hand on the Bible, and solemnly swore an oath before Congress, the American people, a watching world, and Almighty God to "faithfully 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." That oath obligated the President to faithfully discharge his duties as the chief law enforcement officer of the land and commander-in-chief of the armed forces. Again, on January 17, 1998, before a United States District Court judge in a federal civil rights suit, and on August 17, 1998, before a federal grand jury, President Clinton took an oath to "tell the truth, the whole truth, and nothing but the truth, so help me God." Far from keeping his solemn oaths, President Clinton actively sought to thwart the due administration of justice by repeatedly committing the felony crimes of perjury, witness tampering, and obstruction of justice. He has also repeatedly lied to the American people and to the United States Congress. President William Jefferson Clinton should be impeached.

ANALYSIS

There are three principal considerations in determining whether President Clinton should be impeached: Did he commit any of the crimes for which he stands accused? If so, are such crimes impeachable offenses under the U.S. Constitution? And if they are impeachable, is there any reason why the U.S. House of Representatives, in its discretion, should not impeach him, and what might be the consequences of such inaction?

When considered objectively apart from the hype, the evidence examined by the House Judiciary Committee overwhelmingly establishes that President Clinton committed not one, but numerous serious felony crimes. There is little doubt that a prosecutor could

bring the case to trial, and a strong likelihood that the jury would convict President Clinton for several, if not all, the charged crimes.

Encouraging Ms. Lewinsky's false affidavit and relying on it

Long before Ms. Lewinsky was subpoenaed in the *Jones* v. *Clinton* case, President Clinton and Ms. Lewinsky reached an understanding that they would deny any relationship between them. Ms. Lewinsky learned from the President that her name was on the *Jones* v. *Clinton* witness list. She asked him what to do if she was subpoenaed, and the President suggested she could submit an affidavit that might keep her from having to testify. Ms. Lewinsky testified that she understood President Clinton's suggestion to mean she might be able to execute an affidavit that would avoid her having to disclose the true nature of their relationship. While saying the President never told her to lie in the affidavit, Ms. Lewinsky took his suggestion to file an affidavit, in conjunction with their previous agreement to deny the relationship, and the absence of any suggestion from him that she tell the truth in the affidavit, to mean that he expected her to deny the relationship in the affidavit. Indeed, in the very same conversation in which President Clinton suggested she file an affidavit if subpoenaed, he reminded her of the cover stories they had previously fabricated and encouraged her to continue using them.

Ms. Lewinsky carried out the plan and filed a false affidavit, in which she denied the relationship with President Clinton, in the *Jones* v. *Clinton* case. During the President's civil deposition President Clinton's attorney, Robert Bennett, stated that the President was fully aware of the contents of Ms. Lewinsky's affidavit. Whether or not the President explicitly asked her to file the false affidavit, he clearly encouraged her to, planning to rely on it in his civil deposition, and then doing so. As such, President Clinton committed the crime of obstructing justice.

Concealing evidence

When Ms. Lewinsky was served with a subpoena to testify in the *Jones* v. *Clinton* case, she was also served with a subpoena to produce every gift given to her by President Clinton. Nine days later (on December 28, 1997) she met with the President and expressed concern about the gifts being subpoenaed and particularly about the hat pin named in the subpoena—the first gift he had ever given her. The President asked her if she had told anyone about the hat pin and she said no. Ms. Lewinsky testified that she asked President Clinton if she should put the gifts away outside her house or possibly give them to somebody like Betty Currie. She testified that his response was noncommittal.

In his testimony before the federal grand jury the President said that he told Ms. Lewinsky that if the lawyers for Ms. Jones asked for gifts she would have to give them what she had. She testified that President Clinton never said anything to give her that impression. On the contrary, she was left with the opposite impression: that she was supposed to deny their existence and do whatever was necessary to conceal them. Ms. Lewinsky testified that later that same day Mrs. Currie called her on a cell phone about picking up "something" from her and then came by Ms. Lewinsky's place, say-

ing that the President told her (Mrs. Currie) that Ms. Lewinsky wanted her (Mrs. Currie) to keep to some things for her (Ms. Lewinsky). Ms. Lewinsky boxed up most of the gifts and gave them to Mrs. Currie, who took them home and stored them beneath her bed.

Mrs. Currie testified that Ms. Lewinsky, not Mrs. Currie, placed the call and raised the subject of the gifts, but when confronted with the contrary statement of Ms. Lewinsky, Mrs. Currie changed her testimony and said she didn't remember who made the call but that Ms. Lewinsky's memory may be better than her own. Telephone records show Mrs. Currie made a cell phone call to Ms. Lewinsky on the afternoon in question. Furthermore, it would have been completely out of character for Mrs. Currie to have taken the action without the President's direction or approval inasmuch as she always checked with him before she did anything involving Ms. Lewinsky. And finally, if the President had truly suggested to Ms. Lewinsky that she produce the gifts to Ms. Jones' attorneys she would not have turned right around and called Mrs. Currie to give the gifts to her. The evidence clearly and convincingly leads to the conclusion that Ms. Lewinsky told the truth about the gifts and that the President orchestrated their concealment, or, at a minimum, participated in a scheme to conceal them. As such, President Clinton committed the crime of obstruction of justice.

Perjury in a civil case before the federal judge

On January 17, 1998, President Clinton gave sworn testimony by deposition before Judge Wright in the *Jones* v. *Clinton* case. When he did so he committed perjury repeatedly by testifying that: he had not had sexual relations, a sexual affair, or a sexual relationship with Ms. Lewinsky; he could not recall being alone with her, when he had been alone with her on numerous occasions when they had engaged in sexual activities; and he could not recall giving her any gifts, when he had given her numerous gifts and they were the subject of great concern during several conversations with her in the month preceding his deposition. A fair and objective review of the evidence necessarily leads to the conclusion that the President knowingly and willfully lied about material matters numerous times under oath in the deposition. It requires creative and tortured technical arguments about the definition of perjury—arguments without legal merit—to come to any conclusion other than that President Clinton repeatedly committed the crime of perjury in his deposition in the *Jones* v. *Clinton* case.

Witness tampering

During President Clinton's deposition in the *Jones* v. *Clinton* case, the President used the cover stories involving Betty Currie that he and Ms. Lewinsky had fabricated. Within hours of the deposition, he called Mrs. Currie and asked her to come to the White House on the following day, a Sunday (January 18, 1998). He told her of the deposition and then made a series of statements regarding his relationship with Ms. Lewinsky. He stated, 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?" and "she wanted to have

sex with me, and I can't do that." Mrs. Currie said she felt that President Clinton wanted her to agree with his statements and made these remarks to see her reaction. She testified that she indicated to the President her agreement, although she knew the President and Lewinsky had been alone. A couple of days later the President again met with her and, according to Mrs. Currie, went over precisely the same points. All of these statements volunteered by the President to Mrs. Currie were consistent with the testimony given in his deposition, but were false. And the President knew they were false.

President Clinton claims that he was just trying to refresh his memory when he made these statements to Mrs. Currie. His assertion is highly implausible. For example, how could Mrs. Currie know whether the President and Ms. Lewinsky were ever alone, or whether she (Mrs Currie) "could see and hear everything," or whether Ms. Lewinsky "came on to [the President]," or that he "never touched her" or that "she wanted to have sex with [the President], and [he] can't do that." The only reasonable conclusion is that President Clinton was attempting to enlist her as a witness to back up his false testimony. In doing so President Clinton committed the crime of obstruction of justice and the crime of witness tampering. The fact that Mrs. Currie was not on the witness list in the *Jones* v. *Clinton* case is irrelevant. Under the law, all that is required is that the President had reason to believe that Mrs. Currie might be called to testify.

Grand jury perjury

And finally, President Clinton clearly committed perjury in his testimony before the federal grand jury. Ms. Lewinsky testified before the grand jury that the President engaged in sexual acts that were spelled out in the court's definition in the *Jones* v. *Clinton* case. In his grand jury testimony the President specifically denied these activities. Lewinsky's testimony is credible and the President's is not. Numerous friends, family members and even medical professionals visited by Ms. Lewinsky testified and corroborated Ms. Lewinsky's testimony in great detail. Ms. Lewinsky discussed these matters with these witnesses contemporaneously to the time when she engaged in the acts with the President. The evidence overwhelmingly establishes that President Clinton committed the crime of perjury while testifying before the grand jury.

Impeachable Offenses

Perjury, obstruction of justice, witness tampering and bribery of a witness are all equally grave crimes that undermine the integrity of the judicial system. When people lie under oath in testifying in a civil case or encourage others to do so or conceal evidence or get others to conceal evidence, they prevent at least one of the parties to the suit from receiving a just and fair decision by the court. It is worth noting that the crime of perjury is punished more severely in the federal courts than the crime of bribery. To suggest that perjury and obstruction of justice do not rise to the level of "treason, bribery and other high crimes and misdemeanors" as contemplated for impeachment by the founding fathers defies both common sense

and the state of common law in England at the time the U.S. Constitution was written.

Having concluded that the President committed the impeachable offenses of perjury and obstruction of justice, the question must be asked, what would be the consequences of failing to impeach the President? Such inaction in a notorious case of criminal wrongdoing would send a terrible message to those who testify in civil cases and before grand juries in the future.

Studies show that perjury is occurring more frequently in our courts. Contrary to what some have asserted there are numerous recent examples of federal prosecution of perjury in civil cases. Indeed, there are currently 115 people in federal prison today for perjury in civil cases. If the President is not impeached for these crimes a clear and harmful message will be sent across the country: That there is a double standard, with the President of the United States being exempted from the force of law in these matters, and that these crimes aren't as serious as was once assumed. It is also probable that the failure to impeach in such a notorious case involving so many perjurious statements would lead to more instances of perjury. Furthermore, failure to impeach would make it more difficult for future Congresses to impeach federal judges for perjury and like crimes. As such, failure to impeach would fundamentally undermine the integrity of our court system.

At the same time, there would be serious repercussions in the U.S. Armed Forces if the Commander-in-Chief were to be held to a dramatically lower standard than that applied to officers and enlisted personnel. The men and women in the military would routinely be removed from duty and discharged from service if they engaged in the non-criminal activities that the President engaged in with Ms. Lewinsky, and would face certain court martial if they committed like criminal conduct.

CONCLUSION

The Committee on the Judiciary has carefully examined voluminous evidence, including thousands of pages of sworn testimony, regarding the alleged criminal wrongdoing of President Clinton. The evidence clearly and convincingly establishes that the President, with premeditation, engaged in a pattern of illegal conduct over an extended period of time, so as to prevent a federal court and a federal grand jury from uncovering the truth about his relationship with Ms. Lewinsky. His repeated crimes include perjury, witness tampering and obstruction of justice. These felony crimes are impeachable offenses within the meaning of the U.S. Constitution. President Clinton should be impeached by the House of Representatives.

BILL MCCOLLUM.

ADDITIONAL VIEWS OF MR. COBLE, MR. GALLEGLY, AND MRS. BONO

THE ROLE OF THE COMMITTEE ON THE JUDICIARY IN A PRESIDENTIAL IMPEACHMENT INQUIRY

While there have been several impeachment inquiries conducted concerning the conduct of members of the judicial branch, the William Jefferson Clinton impeachment inquiry was only the second this century, and the third in our nation's history, to investigate the President of the United States. A significant question from the outset was, how were we to proceed?

The distinguished Chairman of our Committee, the Honorable Henry J. Hyde, is not only an astute legislator and lawyer, he is also a student of history. Recognizing that the impeachment of President Andrew Johnson was riddled with problems—it involved high political tensions brought about by the ending of the Civil War; it played out over eighteen months; the originating committee was supplanted by a politically stacked committee in a new Congress; etc.—Mr. Hyde thus spent a significant amount of his time studying the impeachment inquiry of President Richard M. Nixon. That inquiry took place in 1973 and 1974 in the Committee on the Judiciary under the chairmanship of Representative Peter W. Rodino, Jr. of New Jersey—a Democrat. So impressed was Chairman Hyde with the perceived fairness and due process of the Nixon inquiry, he made a historically momentous decision to, as closely as possible, adhere to the precedents of that proceeding. Thus, our committee set out to follow the path of "the Rodino model."

On September 9, 1998 the office of the Independent Counsel, Mr. Kenneth W. Starr, delivered to the House of Representatives a report that contained what the Counsel portrayed as "substantial and credible information that President William Jefferson Clinton committed acts that may constitute grounds for an impeachment." This report was delivered pursuant to Section 595(c) Title 28 of the United States Code, which is part of the Ethics in Government Act. On September 18, 1998, the House passed a Resolution which directed the Independent Counsel report be referred to our Committee with instructions that it be reviewed and released to the public by September 28, 1998. After that on October 8, 1998 by a vote of 258–176 the House approved a resolution directing our Committee to conduct an impeachment inquiry.

At the outset of the work on the Starr referral, Chairman Hyde attempted to guide our Committee on a set of fixed principles which included:

"—that no person is above the law, not even the President;

—that we must submit ourselves to the letter and spirit of the Constitution;

—that we must constantly strive to be fair, thorough, and expeditious in all that we do;

—that we must be tireless in gathering and reviewing all of the relevant facts;

—and that we must keep the American people well informed, in part by giving them as much information as possible."

In addition, he also adhered to his earlier decision to follow the Rodino model. Two key documents from 1974 were updated and reprinted as committee documents. One—"Impeachment—Selected Materials" was a recitation of past impeachment precedents, and the other "Constitutional Grounds for Presidential Impeachment: Modern Precedents", was an updated staff report based directly on the same type of report done by the Rodino staff in 1974.

Although the staff study on the question of an impeachment standard was done early in the Nixon inquiry, the Rodino Committee never actually met and discussed the issue. Mr. Rodino recognized then, as did Chairman Hyde some twenty-four years later, that there is no one standard for what constitutes impeachable conduct. The Framers never intended such a standard. As Representative Lawrence J. Hogan said in the closing debate in 1974 about this question. ". . . Now the first responsibility facing members of this committee was to try to and define what an impeachable offense is. The Constitution does not define it. The precedents which are sparse do not give us any real guidance as to what constitutes an impeachable offense. So each of us in our own conscience, in our own mind, in our own heart, after much study, had to decide for ourselves what constitutes an impeachable offense . . ." Despite this Chairman Hyde once again went the extra step and actually had Representative Charles T. Canady, Chairman of the Subcommittee on the Constitution, convene a special one day hearing on November 9, 1998 concerning the background and history of impeachment, at which a lengthy list of scholars appeared. Following this, our Committee upon Chairman Hyde's recommendation also:

—approved a set of inquiry procedures which were taken almost verbatim from the Rodino committee procedures;

—throughout the hearings utilized the five minute rule and generously allotted additional time to Members when needed, and also allowed Members a ten minute opening statement prior to the final debate on the articles of impeachment; and

—allowed the President of the United States the opportunity to have his counsel represent him at committee deliberations, and to question any witnesses summoned by the committee, and to call witnesses to testify on behalf of the President, and to make an oral and written presentation on the evidence before the committee.

For the historical record, a major difference between the Hyde and Rodino inquiries was openness. With the exception of a couple of occasions when the Hyde Committee went into executive session to discuss appropriately sensitive matters, our impeachment inquiry of the President was held in public before the American people. At every opportunity, material was made public, even though the subject matter at times was extremely reprehensible and disgusting. Nevertheless, Chairman Hyde felt honor bound to operate in open, so that all of our citizens could have faith in the Committee's findings no matter where they led us.

History is forever. It covers the pages of the annals of our time for one and all to see, especially our generations to come. The impeachment inquiry conducted under the leadership of Chairman Henry J. Hyde was public, fair, and just. Mr. Hyde often likes to remind us of the oath every Member of Congress is administered upon their swearing in: "I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

Our Chairman often quotes "A Man for all Seasons." In it at one point Sir Thomas More tells his daughter, "When you take an oath, you hold your soul in your hands, and if you break that oath, you open up your fingers and your soul runs through them and it is lost." At certain times in history, various individuals are placed in a position not of their own choosing. They must step into the arena and with no control of the events or forces to come, they must stand and defend their soul and the principles that form the very foundation of that soul. Our nation was blessed that at this time in our history, such a man walked amongst us, and in the great American tradition, persevered and did that which was both right and just. It was an honor to serve with Henry J. Hyde, and thus will history so record.

HOWARD COBLE.
ELTON GALLEGLY.
MARY BONO.

ADDITIONAL VIEWS OF HON. CHARLES T. CANADY

"Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence."—John Adams.

In the case before the Committee, the facts show a sustained pattern of lying under oath and multiple acts of obstruction of justice by the President of the United States. First, the President through obstruction of justice and false statements under oath sought to conceal the truth in a sexual harassment case in order to defeat the rights of the plaintiff in that case. Then, the President engaged in a nearly year-long cover-up of those earlier offenses—a cover-up that included lying under oath before a federal grand jury and in statements submitted to the Judiciary Committee.

All the attacks on the investigation conducted by the Independent Counsel and on the proceedings of the Judiciary Committee do nothing to alter the facts of the case against William Jefferson Clinton. All the attempts to palliate cannot alter the stubborn facts of the case against the President. The facts cannot be wished away, they cannot be ignored, they cannot be treated as trivial. The facts make a compelling case for impeachment.

The President has engaged in a course of conduct which evidences a calculated contempt for the rule of law. He has directly and repeatedly violated his oath of office to "faithfully execute the office" of President, and breached his duty to "take care that the laws be faithfully executed." He has repeatedly put his selfish personal interests ahead of the dignity and integrity of the high office entrusted to him by the people.

Soon after the adoption of the Constitution, Alexander Hamilton wrote that "an inviolable respect for the Constitution and Laws" is the "most sacred duty and the greatest source of security in a Republic." Hamilton understood that respect for the Constitution itself grows out of a general respect for the law. And he understood the essential connection between respect for law and the maintenance of liberty in a Republic. Without respect for the law, the Constitution is without an adequate foundation. Without respect for the law, our freedom is at risk. Thus, according to Hamilton, those who "set examples which undermine or subvert the authority of the laws lead us from freedom to slavery . . ."

President Clinton by his persistent and calculated misconduct has set a pernicious example of lawlessness—an example which by its very nature subverts respect for the law. His perjury and obstruction of justice have become a byword. The perverse example he has set the inevitable effect of undermining the integrity of the judicial process.

Contrary to the claims of his defenders, the offenses of which the President is guilty are not mere private offenses. Although his crimes were occasioned by his personal misconduct, when the

President attempted to obstruct justice and willfully gave false testimony under oath he committed public wrongs. Perjury and obstruction of justice are not private matters; they are crimes against the system of justice.

Since the early days of our Republic, perjury has been considered a grave offense against justice. John Jay, the first Chief Justice of the United States, said that "there is no crime more extensively pernicious to society" than perjury. According to Jay, perjury "discolors and poisons the streams of justice, and by substituting falsehood for truth, saps the foundations of personal and public rights."

The maintenance in office of a persistent perjurer is inconsistent with maintenance of the rule of law. The impeachment process is intended to preserve the rule of law against the corrupt conduct of the Chief Executive and other high officials. The corrupt conduct of President Clinton is exactly the sort of conduct that the impeachment power was designed to address. The impeachment power must be used to call him to account for his crimes.

NIXON TAX FRAUD ARTICLE OF IMPEACHMENT

In their submission to the Committee, Counsel for the President argue that the failure in 1974 of the Committee to adopt an article of impeachment against President Nixon for tax fraud supports the claim that current charges against President Clinton do not rise to the level of impeachable offenses. The President's lawyers contend that the tax fraud article against President Nixon "was not approved because the otherwise conflicting views of the Committee majority and minority were in concord: submission of a false tax return was not so related to exercise of the President Office as to trigger impeachment."

Wayne Owens and Robert F. Drinan, who were members of the Committee in 1974, have recently testified to the Committee in support of this argument. In a recent opinion piece they assert that in 1974 the Committee decided by a vote of 26 to 12 that President Nixon "should not be impeached for tax fraud because it did not involve official conduct or abuse of presidential powers."

It is, of course, undisputed that the Judiciary Committee rejected the proposed tax fraud article against President Nixon. It is also undisputed that certain Committee members stated the view that tax fraud would not be an impeachable offense. That view is illustrated by the comments of Rep. Waldie that in the tax fraud article thee was "not an abuse of power sufficient to warrant impeachment . . ." Similar views were expressed by Rep. Hogan and Rep. Mayne. Rep. Railsback took the position that there was "a serious question" whether misconduct of the President in connection with his taxes would be impeachable.

Other members who opposed the tax fraud article based their opposition on somewhat different grounds. Rep. Thornton based his opposition to the tax fraud article on the "view that these charges may be reached in due course in the regular process of law." Rep. Butler stated his view that the tax fraud article should be rejected on prudential grounds: "Sound judgment would indicate that we not add this article to the trial burden we already have."

The record is clear, however, that the overwhelming majority of those who expressed a view in the debate in opposition to the tax

fraud article based their opposition on the *insufficiency of the evidence,* and not on the view that tax fraud, if proven, would not be an impeachable offense.

The comments of Wayne Owens in the debate in 1974 are quite instructive. Those comments directly contradict the view that Mr. Owens has expressed in recent days. Although Mr. Owens in 1974 expressed his "belief" that President Nixon was guilty of misconduct in connection with his taxes, he clearly stated his conclusion that "on the evidence available" Mr. Nixon's offenses were not impeachable. Mr. Owens spoke of the need for "hard evidence" and discussed his unavailing efforts to obtain additional evidence that would tie "the President to the fraudulent deed" or that would otherwise "close the inferential gap that has to be closed in order to charge the President." He concluded his comments in the 1974 debate by urging the members of the Committee "to reject this article" "based on that lack of evidence."

In addition to Mr. Owens, eleven members of the Committee stated the view that there was not sufficient evidence of tax fraud to support the article against President Nixon. (*Wiggins:* "fraud . . . is wholly unsupported in the evidence." *McClory:* "no substantial evidence of any tax fraud." *Sandman:* "There was absolutely no intent to defraud here." *Lott:* "mere mistakes or negligence by the President in filing his tax returns should clearly not be grounds for impeachment." *Maraziti:* discusing absence of evidence of fraud. *Dennis:* "no fraud has been found." *Cohen:* questioning whether "in fact there was criminal fraud involved." *Hungate:* "I think there is a case here but in my judgment I am having trouble deciding if it has as yet been made." *Latta:* only "bad judgment and gross negligence." *Fish:* "There is not to be found before us evidence that the President acted willfully to evade his taxes." *Moorhead:* "there is no showing that President Nixon in anyway engaged in any fraud.")

The group of those who found the evidence insufficient included moderate Democrats like Rep. Hungate and Rep. Owens, as well as Republicans like Rep. Fish, Rep. Cohen, and Rep. McClory, who all supported the impeachment of President Nixon.

In light of all these facts, it is not credible to assert that the Committee in 1974 determined that tax fraud by the President would not be an impeachable offense. The failure of the Committee to adopt the tax fraud article against President Nixon simply does not support the claim of President Clinton's lawyers that the offenses charged against him do not rise to the level of impeachable offenses.

In the Committee debate in 1974 a compelling case was made that tax fraud by a President—if proven by sufficient evidence—would be an impeachable offense. Rep. Brooks, who later served as chairman of the Committee, said:

> No man in America can be above the law. It is our duty to establish now that evidence of specific statutory crimes and constitutional violations by the President of the United States will subject all Presidents now and in the future to impeachment . . .
>
> No President is exempt under our U.S. Constitution and the laws of the United States from accountability for per-

> sonal misdeeds any more than he is for official misdeeds. And I think that we on this Committee in our effort to fairly evaluate the President's activities must show the American people that all men are treated equally under the law.

Prof. Charles Black stated it succinctly: "A large-scale tax cheat is not a viable chief magistrate." What is true of tax fraud is also true of a persistent pattern of perjury by the President. An incorrigible perjurer is not a viable chief magistrate.

CHARLES T. CANADY.

ADDITIONAL VIEWS OF HON. STEVE BUYER

The Judiciary Committee of the U.S. House of Representatives of the 105th Congress recently completed an impeachment inquiry of President William Jefferson Clinton. The purpose of the inquiry was to defend the Constitution, search for the truth, and follow the rule of law.

The wisdom of the Founding Fathers is truly amazing. They understood that the nature of the human heart struggles between good and evil. So, the Founders created a system for accountability, comprised of checks and balances. If corruption invaded the political system, the Constitution provides a means to address it. The Founders felt impeachment was so important, language regarding impeachment appears in six different places in the Constitution.[1] The power to impeach rests in the House of Representatives, while the power to remove the President resides in the Senate.

In 1974, the House engaged in a similar impeachment investigation of President Richard M. Nixon. At that time, the House investigated the facts as reported by the Judiciary Committee in order to determine whether the allegations presented reached the level of impeachable offenses. In the present case, the purpose of the inquiry by the Judiciary Committee and the House of Representatives was to determine whether the evidence contained in the Referral by the Office of the Independent Counsel ("OIC") gives rise to impeachment.

In order to place the allegations against President Clinton in the proper context, I will first briefly examine the historical underpinnings of the impeachment clause in terms of our national heritage.[2] I will then discuss the nature of the Paula Corbin Jones sexual harassment lawsuit, which gave rise to the investigation of the President. Further, I will review the evidence and allegations presented to the Judiciary Committee by the OIC, as well as the President's defense as advanced by scholars, historians and legal practitioners. I conclude by explaining why I believe the evidence presented suggests that the President committed impeachable offenses. Finally, I will address censure and why I believe it is extraconstitutional.

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[1] The clauses discussing congressional power are: "The House of Representatives . . . shall have the sole power of Impeachment." U.S. Const. art. I, § 2; "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When 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." U.S. Const. art. I, § 3. "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." U.S. Const. art. II. § 4.

[2] On November 9, 1998, the Constitution Subcommittee of the House Judiciary Committee conducted hearings on the background and history of impeachment wherein we were benefitted by the testimony of numerous scholars and historians. I will refer to the testimony of such individuals. As numerous scholars advised, the Framers of the Constitution purposely used the phrase "Treason, Bribery and other high Crimes and Misdemeanors," as it is rooted in approximately 400 years of English common law.

I. HISTORICAL ANALYSIS OF "TREASON, BRIBERY AND OTHER HIGH CRIMES AND MISDEMEANORS"

At the Constitutional Convention of 1787 the Framers arranged three branches of government with an elaborate system of checks and balances. An integral part of the power over the executive branch is found in Congress' impeachment powers.[3] As stated in a report prepared by the House Judiciary Committee staff in 1974 regarding impeachment, the evidence from the Constitutional Convention "shows that the framers intended impeachment to be a constitutional safeguard of the public trust, the powers of government conferred upon the President and other civil officers, and the division of powers among the legislative, judicial and executive departments."[4] Congress itself has the power of impeachment, a process of presenting and prosecuting charges against the President, Vice President and other civil officers. Under the Constitution, the House does not have the power to punish. In trying cases of impeachment, it is the Senate that acts as the high court. In 1868, the Senate ceased in order to call itself "a high court of impeachment."

In practice, whenever the House of Representatives decides to bring the President of the United States before the bar of the Senate, it adopts, by resolution, Articles of Impeachment approved by the House Judiciary Committee, charging the President with certain high crimes and misdemeanors and enumerating in sufficient detail as to place him on notice of his particular offenses. If the resolution passes the House by simple majority vote, thereupon it chooses leaders to direct the prosecution before the Senate. The case is then conducted in the form of a trial, under the Senate's own rules of due process, with the Chief Justice of the Supreme Court presiding. The prosecution states its case; witnesses for and against the accused can be heard; and attorneys on both sides make their arguments. When the case is fully presented the Senators vote, and if two-thirds of the members present concur in holding the accused guilty, he stands convicted and removed from office; however, if there is a vote of less than two-thirds of the Members present, he is acquitted.

The penalty which the Senate can impose upon any person convicted in a case of impeachment is strictly limited to removal of the offender from office and the imposition of a disqualification to hold and enjoy any future office of honor, trust, or profit under the United States. Any person convicted, however, is still liable, after his removal from office, to indictment, trial, judgment, and punishment for his offenses according to law.

The jurisdiction of the Senate as a court of impeachment extends only over the President, Vice President, and the civil officers of the United States for the offenses of treason, bribery, or other high crimes and misdemeanors. What conduct constitutes an impeachable offense is determined by the House. At the Constitutional Convention, originally George Mason favored including the word "mal-

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[3] *See supra* note 1.

[4] Staff of the House Judiciary Committee, 93rd Cong., Report by the Staff of the Impeachment Inquiry on the Constitutional Grounds for Presidential Impeachment 709 (Comm. Print 1974) [hereinafter staff report]

administration" but he deemed the phrase too ambiguous, and capable of bestowing excessive power in the Senate.[5] As a result, the phrase was replaced with "High crimes and misdemeanors" in order to better define the standard.[6]

Scholars and legal historians differ on exactly what the standard is intended to include. The Committee heard testimony from several scholars who contend that the phrase is narrow and intended to cover conduct relating to abuse of official power or public acts affecting the state,[7] but others argued that the phrase is applicable to objective misconduct relating to fitness in office.[8] One of the witnesses before the Subcommittee on the Constitution stated:

> To be sure, serious crimes committed in the actual performance of official government functions are likely to constitute impeachable offenses in all cases. But the scope of the House's impeachment authority is not confined to such crimes, or even to crimes at all. . . . [T]he crimes of perjury and obstruction of justice, like treason and bribery, are quintessentially offenses against our system of government, visit injury immediately on society itself, whether or not committed in connection with the exercise of official government powers. Indeed, in a society governed by the rule of law, perjury and obstruction of justice cannot be tolerated precisely because these crimes subvert the very judicial processes on which the rule of law so vitally depends.[9]

As noted in the Staff Report of 1974, "impeachment is a constitutional remedy addressed to serious offenses against the system of government . . . they are constitutional wrongs that subvert the structure of government, or undermine the integrity of office and even the Constitution itself, and thus are "high" offenses . . .."[10] The Report also stated that in impeachment proceedings in English practice and in this country, "[T]he emphasis has been on the significant effects of the conduct-undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, [and] adverse impact on the system of government."[11]

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[5] *The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee,* 105th Cong., 2nd Sess. (1998) (statement of Hon. Griffin E. Bell).

[6] *Id.* It is important to note that the phrase is not intended to include only criminal offenses, rather it stems from the word "maladministration" proposed by George Mason. See Staff Report 12.

[7] *See The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee,* 105th Cong., 2nd Sess. (1998) (statements of Susan Low Bloch, Professor of Law, Georgetown University, and Cass R. Sunstein, Professor of Law, University of Chicago Law School). Many also contend that "private" actions of the President do not give rise to impeachable behavior. *See e.g., The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee,* 105th Cong., 2nd Sess. (1998) (statement of Arthur Schlesinger, Jr., Professor of History, City University of New York).

[8] *The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee,* 105th Cong., 2nd Sess. (1998) (statement of John O. McGinnis, Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University).

[9] *The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee,* 105th Cong., 2nd Sess. (1998) (statement of Charles J. Cooper, Esq.).

[10] Staff Report 26.

[11] *Id.*

I concur with the premise that while the crimes alleged against the President may not directly involve the exercise of executive powers, excepting the issue of possible misuse of executive privileges, the alleged crimes, plainly, do involve the violation of the president's executive duties.[12]

Relying on the testimony and advice of the legal scholars, historians and judges that appeared before the Subcommittee on the Constitution, I will not attempt to define the impeachment standard. It is best stated by Justice Joseph Story in "*Commentaries on the Constitution*" (1833), the impeachment power applies to "political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law."[13]

We received testimony regarding impeachment in both English and American history. It is understood that personal misconduct, violations of trust, and other charges of a more private nature can be impeachable offenses.[14] Perjury and obstruction of justice drive a stake in the rule of law. Now the question is whether perjury to conceal private conduct and other actions to thwart and impede justice in a civil rights case in federal court, as well as perjury before a federal grand jury, rise to the level of impeachable offenses.

II. THE JONES V. CLINTON CIVIL LAWSUIT

In May 1994, Paula Corbin Jones filed a sexual harassment lawsuit[15] against William Jefferson Clinton in the United States District Court for the Eastern District of Arkansas.[16] Ms. Jones alleged that the sexual harassment incident took place in a hotel

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[12] The Judiciary Committee voted to amend Article IV and deleted the abuse of power language regarding misuses of the executive privilege.

[13] See Staff Report 16–17.

[14] In 1986 the House of Representatives voted to impeach the Honorable Harry E. Claiborne. On August 10, 1984, while serving as a judge of the United States District Court for the District of Nevada, Judge Claiborne was found guilty by a jury of making a false and fraudulent income tax return for the calendar years of 1979 and 1980 in violation of 26 U.S.C. § 7206(1). The House of Representatives adopted four articles of impeachment charging Judge Claiborne with willfully and knowingly filing false income tax returns, under penalty of perjury, for the years 1979 and 1980. One of the articles of impeachment charged that Judge Claiborne, by willfully and knowingly filing false income tax returns while serving as a Federal Judge, with betraying the trust of the people of the United States and reducing confidence in the integrity and impartiality of the Federal judiciary. Representative Hamilton Fish, ranking member of the Judiciary Committee and one of the House managers in the Senate trial stated, "Judge Claiborne's actions raise fundamental questions about public confidence in, and the public's perception of, the Federal court system. They serve to undermine the confidence of the American people in our judicial system." 132 Cong. Rec. H4713 (daily ed. July 22, 1986).

[15] Title VII of the Civil Rights Act of 1964 does not explicitly refer to "sexual harassment" but makes it unlawful for an employer with fifteen or more employees to discriminate against applicants for employment or employees "because . . . of sex." 42 U.S.C. § 2000e–2(a)(1). Sexual harassment laws have largely developed through judicial opinions, as well as opinions from the Equal Employment Opportunity Commission interpreting Title VII's sex discrimination prohibition. *See* 42 U.S.C. 2000e et. seq. *See also Oncale* v. *Sundowner Offshore Services, Inc.*, 118 S.Ct. 998 (1998)(holding that same sex harassment is actionable under Title VII); *Faragher* v. *City of Boca Raton*, 118 S.Ct. 2275 (1998)(holding employer vicariously liable for harassment by supervisor); *Burlington Industries* v. *Ellerth*, 118 S.Ct. 2257 (1998)(same). The Equal Protection Clause of the Fourteenth Amendment also involves the freedom to be free from gender discrimination unless it is substantially related to an important government objective. *See Beardsley* v. *Webb*, 30 F.3d 524, 529 (4th Cir. 1994). Intentional sexual harassment against employers acting under the color of state law is actionable under the Fourteenth Amendment and § 1983. *Id.*

[16] Referral from Independent Counsel Kenneth W. Starr, 105th Cong., 2d Sess., H.R. Doc. No. 105–310, at 1 (1998) (hereinafter "OIC Referral").

room[17] in Little Rock, Arkansas, while Mr. Clinton was the Governor of Arkansas.[18] The President denied the allegations and argued that Ms. Jones did not have the right to proceed against him because he is a sitting President.[19] The Supreme Court unanimously rejected such an argument stating: "Like every other citizen who properly invokes [the] jurisdiction [of the District Court], [Ms. Jones] has a right to an orderly disposition of her claims."[20] Thus, the Supreme Court determined that Ms. Jones was entitled to proceed with her claim as an ordinary litigant, entitled to discovery from the defendant, President Clinton. The Supreme Court therefore reaffirmed the proposition that no person is above the law.

As is common in sexual harassment litigation, a defendant's past behavior can be relevant and material evidence to establish a pattern of misconduct to support the present allegations and the defendant's propensities. In late 1997, the parties disputed whether the President would be required to disclose information about past sexual relationships[21] with other women,[22] United States District Judge Susan Webber Wright ruled that "the plaintiff [was] entitled to information regarding any individuals with whom the President had sexual relations . . . and who were . . . state or federal employees."[23] In late December the President responded to written discovery requests.[24] When asked under oath to identify women with whom he had sexual relations who were state or federal employees during a specified limited time frame, the President responded "none."[25] On January 17, 1998, the President was questioned under oath at a deposition regarding sexual relationships with women in the workplace.[26] During the deposition, the President denied that he had engaged in a "sexual affair, a "sexual relationship," or "sexual relations" with Ms. Lewinsky, while also stating that he "had no specific memory of being alone with Ms. Lewinsky, that he remembered few details of any gifts they might have exchanged, and indicated that no one except his attorneys had kept him informed of Ms. Lewinsky's status as a potential witness in the [*Jones* v. *Clinton*] case."[27] The evidence shows that the President's testimony during that deposition was perjurious, false, and misleading with the motive to hide the relationship for the

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[17] The allegations in the *Jones* v. *Clinton* case are reminiscent of the facts in the Lewinsky matter. In *Jones*, the plaintiff alleged that "as she left the room . . . the Governor "detained" her momentarily, "looked sternly" at her, and said, "You are smart. Let's keep this between ourselves.'" *Jones* v. *Clinton*, 990 F. Supp. 657, 664 (1998).

[18] OIC Referral at 2. Specifically, Ms. Jones alleged that on the night in question in 1991, Governor Clinton exposed his genitals and asked her to perform oral sex on him. *Id*. at 1 n.3. Ms. Jones was an employee of the Arkansas Industrial Development Corporation at the time of the alleged incident. *Id*.

[19] *Id*. at 2.

[20] *Jones* v. *Clinton*, 117 S.Ct. 1636, 1652 (1997) (holding, *inter alia*, that the Constitution does not afford a sitting president temporary immunity in "all but the most exceptional circumstances," and that the doctrine of separation of powers does not require the court to stay civil proceedings against the President).

[21] The list of "Jane Does" in the *Jones* v. *Clinton* case and the evidence on each of them was held by the Judiciary Committee in Executive Session and redacted from public dissemination.

[22] OIC Referral at 2.

[23] 921–DC–00000461 (Dec. 11, 1997 Order at 3).

[24] OIC Referral at 2.

[25] V002–DC–00000053 (President Clinton's Supplemental Responses to Plaintiff's Second Set of Interrogatories at 2).

[26] OIC Referral at 3.

[27] *Id*. at 3.

purpose to defeat the *Jones* v. *Clinton* suit and deny Ms. Jones her right to a fair trial as an alleged victim of sexual harassment.

III. THE INVESTIGATION BY THE OFFICE OF THE INDEPENDENT COUNSEL

On January 12, 1998, the OIC received information that Ms. Lewinsky was attempting to influence the testimony of a witness by the name of Linda Tripp[28] in the *Jones* v. *Clinton* case, and that Ms. Lewinsky intended to provide false testimony in the case.[29] The information was transmitted to Attorney General Janet Reno, who determined that an independent counsel should examine the matter for criminal wrongdoing.[30] Pursuant to the Independent Counsel statute, the Attorney General applied, and received, the authorization for the jurisdiction of the OIC. Discovery in the *Jones* v. *Clinton* case involving Ms. Lewinsky was then stayed at the request of the OIC,[31] which means that Ms. Jones was prevented from establishing facts that may have been otherwise obtainable through Ms. Lewinsky. The criminal investigation commenced,[32] and the results of that investigation were reported to Congress as required by 28 U.S.C. 595(c).

IV. THE FINDINGS OF THE INDEPENDENT COUNSEL

In his testimony before the House Judiciary Committee, the Independent Counsel explained how the relationship between the President and Ms. Lewinsky became a matter of public concern.[33] First, the President was a defendant in a sexual harassment case which the Supreme Court ordered to proceed even though the defendant is a sitting President.[34] Second, "the law of sexual harassment and the law of evidence allow the plaintiff to inquire into the defendant's relationships with other women in the workplace, which in this case included President Clinton's relationship with Ms. Lewinsky."[35] Third, Judge Wright rejected the President's ob-

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[28] Linda Tripp was also a witness in the OIC open investigation regarding the White House travel office firings and the FBI files.

[29] OIC Referral at 3.

[30] *Id*. The Attorney General also received information regarding Ms. Lewinsky's job search and the possible involvement of Vernon Jordan. *Id*. These allegations were similar to allegations in the ongoing Whitewater investigation regarding possible "hush money" paid to former Deputy Attorney General Webster Hubbel in which Vernon Jordan was involved. *Id*.

[31] *Id*. at 4; see also *Jones* v. *Clinton*, 993 F. Supp. 1217 (1998). The court which granted the Independent Counsel's motion for limited intervention and stay of discovery based its decision on three grounds. *Jones* v. *Clinton*, 993 F. Supp. at 1219–1220. Specifically, the court determined that allowing the evidence of the Lewinsky investigation to be used in the *Jones* case might be unduly prejudicial to the President; see Fed. R. Evid. 403; and might be excluded by the trial judge based on Ms. Jones' burden in proving her sexual harassment claim. *Jones*, 993 F. Supp. at 1219. Further, the court determined that the trial must be conducted as expeditiously as possible. *Id*. Lastly, the court noted that the integrity of the independent criminal investigation warranted excluding evidence concerning Ms. Lewinsky. *Id*. The court determined that the risk of exposing information obtained in the pending criminal investigation outweighed the plaintiff's right to include such information. *Id*. at 1220.

[32] The Independent Counsel was granted jurisdiction to investigate whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law. OIC Referral, Appendices, Part I, H. Doc. 105–311, at 6–7 (1998) [hereinafter H. Doc. 105–311]. Additionally, it had the authority to investigate federal crimes, obstruction of justice, and any material false testimony in violation of criminal law. *Id*.

[33] *See Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee,* 105th Cong., 2nd Sess. 9–10 (1998).

[34] *Id.* at 9. *See also Jones* v. *Clinton*, 117 S.Ct. 1636 (1997).

[35] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee,* 105th Cong., 2nd Sess. 9 (1998).

jections to such questions.[36] Fourth, perjury and obstruction of justice are federal crimes in civil cases, including sexual harassment cases.[37] Fifth, "the evidence suggests that the President and Ms. Lewinsky made false statements under oath and obstructed the judicial process in the *Jones* v. *Clinton* case by preventing the court from obtaining the truth about their relationship."[38]

A. Pattern of deception

The OIC reported to the Committee that between December 5, 1997, and January 17, 1998, the President engaged in a pattern of deceptive behavior.[39] According to the Referral provided by the OIC, on December 5, 1997, Ms. Jones' attorneys identified Ms. Lewinsky as a potential witness in the sexual harassment lawsuit, and the President learned this fact within a day.[40] It is alleged that the President called Ms. Lewinsky at 2:00 a.m. on the morning of December 17, 1997, and informed her that she was a potential witness.[41] According to Ms. Lewinsky, the President suggested that she execute an affidavit to deny a sexual relationship and use "cover stories" or lies to explain why she visited the Oval Office on so many occasions.[42]

It is important to note that an affidavit is a legal document executed under oath. Yet, the President was suggesting that she include falsehoods in the affidavit. The Referral states that on that date the President and Ms. Lewinsky thus had an agreement to lie in their sworn affidavits.[43]

A defendant in pending litigation suggesting that a potential witness in the lawsuit lie in an affidavit to avoid being deposed by the plaintiff is a criminal act that flies in the face of judicial integrity. Every American has the duty when under oath to tell the truth, the whole truth, and nothing but the truth in civil and criminal investigations.

Later, on December 23, 1997, the President answered interrogatories in the *Jones* v. *Clinton* case under oath.[44] Once again, the President, under oath, stated that he had not had sexual relations with any federal employees during a particular time frame.[45] As we now know, in fact the President did have sexual relations with a federal employee during the stated time frame. The effect of such lies was borne by Ms. Jones, who suffered the injustice of not having her day in court; she was precluded from presenting all potentially relevant and material evidence to the court.

On Sunday, December 28, 1997, the President met with Ms. Lewinsky at the White House and discussed the gifts the two had

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[36] *Id.*

[37] *Id.* at 10; *see also United States* v. *Holland,* 22 F.3d 1040, 1047–48 (11th Cir. 1994), *cert. denied,* 513 U.S. 1109 (1995) (rejecting that perjury is less serious when made in a civil proceeding); *United States* v. *McAfee,* 8 F.3d 1010, 1013–14 (5th Cir. 1993) (rejecting the argument that the perjury statute does not apply to civil depositions).

[38] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee,* 105th Cong. 2nd Sess. 10 (1998).

[39] *Id.* at 11.

[40] *Id.*

[41] *Id.* at 12.

[42] *Id.*

[43] *Id.* at 13.

[44] *Id.*

[45] *Id.*

exchanged during their relationship.[46] "Ms. Lewinsky asked the President 'how he thought [she] got put on the witness list.' He speculated that Linda Tripp or one of the uniformed Secret Service officers had told the Jones' attorneys about her. When Ms. Lewinsky mentioned her anxiety about the subpoena's reference to a hat pin, he said 'that sort of bothered [him], too.' He asked whether she had told anyone about the hat pin, and she assured him that she had not. At some point in the conversation, Ms. Lewinsky told the President, '[M]aybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' Ms. Lewinsky recalled that the President responded either 'I don't know' or 'Let me think about that.'"[47] According to Ms. Lewinsky, later that day the President's secretary, Betty Currie, drove to Ms. Lewinsky's home, picked up the gifts, and took them to her home where she stored them under her bed.[48]

It is important to note that these items were under court subpoena. They were potential items of evidence in a pending case. Once again, the facts here demonstrate intent to circumvent the laws. The President testified to the criminal grand jury in August that he had no particular concern about the gifts, yet the circumstantial evidence and the phone records suggest that Ms. Currie was directed to retrieve the gifts. Moreover, when asked about the gifts in the deposition in January 1998 he stated that he did not recall whether he gave Ms. Lewinsky gifts.[49]

B. Ms. Lewinsky's job search when she was a potential witness

After the Supreme Court held that Ms. Jones was entitled to pursue her case against the President, the facts show that the President, with the help of his close friend and confidant Vernon Jordan, was instrumental in finding Ms. Lewinsky employment.[50] The evidence presented suggests that Vernon Jordan's assistance to Ms. Lewinsky in finding a job was intended to placate Ms. Lewinsky or ensure that she would not become a witness *against* the President.[51] The President wanted to keep Ms. Lewinsky on his side of the sexual harassment suit. If Ms. Lewinsky abandoned their "cover stories," the lies they used to keep the affair a secret, the President would have been vulnerable in legal and political respects, as will be discussed below.

C. Fraud upon the court

The evidence shows that in mid-January Ms. Lewinsky submitted a false affidavit in the *Jones* v. *Clinton* case in accordance with the "cover stories" she and the President discussed.[52] The President requested to see the affidavit before appearing for his deposition on January 17 and even stated during the deposition that he was "fully familiar" with the contents of Ms. Lewinsky's affidavit.[53] The evidence presented shows that the President allowed his attorney

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[46] *Id.* at 14.
[47] OIC Referral at 101.
[48] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee,* 105th Cong. 2nd Sess. 14 (1998).
[49] *Id.* at 15.
[50] *Id.* at 16.
[51] *Id.*
[52] *Id.* at 17.
[53] *Id.*

to attest to the truthfulness of Ms. Lewinsky's affidavit, and thus inform the court that "there [was] absolutely no sex of any kind in any manner, shape, or form" between the President and Ms. Lewinsky when he knew such information to be false. Such silence is a fraud upon the court. Further, the President was untruthful in the deposition when he testified that Ms. Lewinsky's affidavit was "absolutely true."[54] Thus, the evidence shows that the President engaged in a pattern of behavior designed to deceive the court in the *Jones* v. *Clinton* case through his own deception and that of Ms. Lewinsky.[55]

The facts also show that the President attempted to coach Ms. Currie after his deposition.[56] In regard to his relationship with Ms. Lewinsky the President stated to Ms. Currie: "you were always there when she was there, right? "We were never really alone," "you could see and hear everything," and "She wanted to have sex with me and I couldn't do that."[57] Ms. Currie testified that he reiterated these instructions again on either January 20 or 21.[58]

D. Damage control

After the relationship involving Ms. Lewinsky became public on January 21, 1998, the President's former media consultant, Dick Morris, called the President to show his empathy.[59] Mr. Morris suggested the President confess.[60] "The President replied, 'But what about the legal thing? You know the legal thing? You know, Starr and perjury and all' . . . Mr. Morris [suggested he conduct a poll and he] called [the President] with the results [of the poll]. He stated that the American people were willing to forgive adultery but not perjury or obstruction of justice. The President replied, 'Well, we just have to win, then.'"[61]

The President then engaged in a full scale attack on truth and honesty. On January 26, 1998, the President wagged his finger at the American people and denied a sexual relationship with "that woman, Ms. Lewinsky." He promised to cooperate with the investigation, yet he refused six requests to testify before the grand jury

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[54] OIC referral at 15. "The President made false statements not only about his intimate relationship with Ms. Lewinsky, but about a whole host of matters. The President testified that he did not know that Vernon Jordan had met with Ms. Lewinsky and talked about the *Jones* v. *Clinton* case. That was untrue. He testified that he could not recall being alone with Ms. Lewinsky. That was untrue. He testified that he could not recall ever being in the Oval Office hallway with Ms. Lewinsky except perhaps when she was delivering pizza. That was untrue. He testified that he could not recall gifts exchanged between Ms. Lewinsky and him. That was untrue. He testified—after a 14 second pause—that he was "not sure" whether he had ever talked to Ms. Lewinsky about the possibility that she might be asked to testify in the lawsuit. That was untrue. The President testified that he did not know whether Ms. Lewinsky had been served a subpoena at the time he last saw her in December 1997. That was untrue. When his attorney read Ms. Lewinsky's affidavit denying a sexual relationship, the President stated that the affidavit was "absolutely true." That was untrue." *Id.* at 18–19.

[55] *Id.* at 19.

[56] *Id.* at 20.

[57] *Id.*

[58] *Id.* at 21.

[59] *Id.* at 22. Mr. Morris then conducted a poll to gauge public opinion. Questions in the poll included the following: "13. If President Clinton did lie and encouraged Monica to lie, do you think he should be removed from office? [the numbers "48–41" were written below the question] 14. If President Clinton lied, he committed the crime of perjury. If he encouraged Monica to lie, he committed the crime of obstruction of justice. In view of these facts, do you think President Clinton should be removed from office? [the numbers "60–30" were written below the question]" OIC Referral, part 2, H. Doc. 106–316, at 2956 (1998)[hereinafter H. Doc. 106–316].

[60] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee,* 105th Cong., 2nd Sess. 21 (1998).

[61] *Id.*

over a period of six months. He lied to his aides about the nature of his relationship with Ms. Lewinsky. Some of these aides then testified before the grand jury and unwittingly perpetuated these falsehoods. They also repeated the falsehoods in the public, the press and to some Members of Congress, who in turn began to characterize her as "a stalker," a "poor child . . . with serious emotional problems," and "she's fantasizing. And I haven't heard she played with a full deck in other experiences," and other similar comments.[62] Chief Investigative Counsel David Schippers accused the White House of employing "the full power and credibility of the White House and the press corps to destroy" Ms. Lewinsky. This tactic was also used to attack the credibility of Paula Jones, the plaintiff in Jones v. Clinton. These actions by the President demonstrate a clear intent to mislead and impede the pursuit of the truth.[63] It is worth noting that sources within the White House stopped these vicious rumors when there rumors that Ms. Lewinsky saved her blue dress stained with semen.

E. Grand jury testimony on August 17, 1998 [64]

Finally, when the President appeared before the federal criminal grand jury on August 17, 1998,[65] he testified that he did not lie in his civil deposition.[66] He also "denied any conduct that would establish that he had lied under oath at his civil deposition. The President thus denied certain conduct with Ms. Lewinsky and devised a variety of tortured and false definitions." [67]

Thus, over the eight-month period at issue, evidence has been presented that the President: made false statements under oath in a civil deposition, made false statements before a criminal grand jury, made false statements to his Cabinet and other professional staff, tampered with witnesses, obstructed justice by tampering with items under subpoena, and attempted to hide under a veil of Presidential authority to conceal the relationship and protect himself from investigation.[68]

F. The allegations are supported by evidence

Physical evidence establishes the relationship between the President and Ms. Lewinsky. DNA tests conducted on semen stains from Ms. Lewinsky's clothing indicate that the President was the source of the semen.[69] The tests demonstrated that the "genetic markers

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[62] Rep. Charles Rangel, Democrat of New York.

[63] *Id.* at 23.

[64] It is important to note that the Independent Counsel received permission from the United States Court of Appeals for the District of Columbia Circuit to disclose grand jury materials in accordance with its duty to report to Congress under 28 U.S.C. § 595(c). OIC REFERRAL 5 n.18. Generally, disclosure of grand jury testimony is prohibited under Rule 6(e) of the Federal Rules of Criminal Procedure. *See* Fed. R. Crim. P. 6 (e).

[65] The President was admonished by members of the Senate as to the absolute requirement that the President answer the questions put to him truthfully. Senator Hatch stated: "So help me, if he lies before the grand jury, that will be grounds for impeachment." *Id.* at 28. Similarly, Senator Moynihan stated that perjury before a grand jury is an impeachable offense. *Id.*

[66] *Id.*

[67] *Id.* Members on the Judiciary Committee have stated that the President was dishonest before the Grand Jury. *Id.* Senator-elect Schumer stated, "it is clear that the President lied when he testified before the grand jury." *Id.* Congressman Meehan stated that the President "engaged in a dangerous game of verbal Twister." *Id.*

[68] *Id.* at 29.

[69] OIC Referral at 11.

on the semen, which match the President's DNA, are characteristic of one out of 7.87 trillion Caucasians.[70]

The allegations are also supported by extensive de-briefing of Ms. Lewinsky.[71] An initial interview was conducted with Ms. Lewinsky on July 27, 1998, to evaluate her credibility.[72] She was further interviewed over fifteen days, and provided testimony under oath on three occasions.[73] The OIC Referral states that: "[i]n the evaluation of experienced prosecutors and investigators, Ms. Lewinsky has provided truthful information. She has not falsely inculpated the President. Harming him, she has testified, is "the last thing in the world I want to do.'"[74]

Testimony and information from numerous confidants of Ms. Lewinsky also provided information to the Independent Counsel.[75] Approximately eleven individuals received contemporaneous information from Ms. Lewinsky about her involvement with the President.[76] These individuals were questioned. Many of them provided testimony under oath before a federal grand jury.[77] Documents also lend support to Ms. Lewinsky's account.[78]

V. VIOLATIONS OF LAW

This constitutional inquiry is not about sex or private conduct. This inquiry is about enforcing the law and demonstrating that: multiple obstructions of justice, multiple instances of perjury, the practice of engaging in false and misleading statements to the court, and witness tampering are attacks on the integrity of our system of justice.

As stated by Mr. Schippers, Chief Investigative Counsel, before the Judiciary Committee on December 10, 1998, "the real issues are whether the President of the United States testified falsely under oath; whether he engaged in a continuing plot to obstruct justice, to hide evidence, to tamper with witnesses and to abuse the power of his office in furtherance of that plot. The ultimate issue is whether the President's course of conduct is such as to affect adversely the Office of the Presidency by bringing scandal and disrespect upon it and also upon the administration of justice, and whether he has acted in a manner contrary to his trust as President and subversive to the Rule of Law and Constitutional government."

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[70] *Id.* at 12.
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.* It is important to note that Ms. Lewinsky engaged in a cooperation agreement that includes safeguards to ensure that she tells the truth. *Id.* Under the cooperation agreement her immunity could be removed altogether by a federal district judge if it is found by a preponderance of the evidence that she lied. The "preponderance" standard, in basic terms, is comparable to a "more likely than not" standard and is not as difficult to prove as the "beyond a reasonable doubt" standard. Thus, if a federal judge finds that she lied, she could be punished to the fullest extent of the law.
[75] *Id.* at 13.
[76] *Id.*
[77] *Id.*
[78] *Id.* at 14.

A. PERJURY

1. Grand Jury Perjury—18 U.S.C. § 1623

The grand jury process is an integral part of our criminal justice system. The Fifth Amendment assures that grand jury proceedings are a prerequisite to federal criminal charges and prosecution; "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." The grand jury engages in a truth finding mission.

Grand juries have the power to direct an investigation, and therefore counteract "suspicions of corruption and partisanship in criminal law enforcement."[79] The importance of the grand jury function is underscored by the fact that perjury in grand jury and court proceedings is discussed separately than perjury in general.[80] The Supreme Court has noted the gravity of perjury:

> In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against the type of egregious offense are therefore imperative. The power of subpoena, broad as it is, and the power of contempt for refusing to answer, drastic as that is—and the solemnity of the oath—cannot insure truthful answers. Hence Congress has made the giving of false answers a criminal act punishable by severe penalties; in no other way can criminal conduct be flushed into the open where the law can deal with it.
>
> Similarly, our cases have consistently—indeed without exception—allowed sanction for false statement or perjury; they have done so even in instances where the perjurer complained that the Government exceeded its constitutional powers in making the inquiry.[81]

2. Perjury In General—18 U.S.C. § 1621

Perjury consists of providing false testimony as to material facts while under oath: "The essential elements of the crime of perjury as defined in 18 U.S.C. § 1621 . . . are (1) an oath authorized by a law of the United States, (2) taken before a competent tribunal, officer, or person, and (3) a false statement willfully made as to facts material to the hearing."[82] Materiality is based on the circumstances and context in which the statement was made.[83] There are no exceptions to perjury for sexual matters.

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[79] Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 8.6 (2d. ed. 1992).

[80] See 18 U.S.C. § 1623; *cf* 18 U.S.C. § 1621.

[81] *United States* v. *Mandujano,* 425 U.S. 564, 576–77(1976)(plurality opinion)(footnote and citations omitted).

[82] *United States* v. *Hvass,* 355 U.S. 570, 574 (1958)(internal quotation marks omitted); see also 18 U.S.C. § 1621. Section 1621 carries a penalty of fines or imprisonment for up to five years.

[83] *See, e.g., United States* v. *Holley,* 942 F.2d 916, 923 (5th Cir. 1991)("the government must prove that Holley's statements were, at the time made, material to the proceeding in which his deposition was taken." (emphasis added.)); *United States* v. *Martinez,* 855 F.2d 621, 624 (9th Cir. 1988)("The proper test is to judge materiality in terms of its potential for obstructing justice at the time the statement is made . . .." (emphasis added)); *United States* v. *Percell,* 526 F.2d 189, 190 (9th Cir. 1975).

Some have argued that perjury is less important in civil cases and is rarely prosecuted. Such assertions are misguided.[84] As stated by the United States Court of Appeals for the 11th Circuit, "we categorically reject 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.*"[85] In fact, this year the Justice Department prosecuted a woman for perjury pertaining to a sexual relationship.[86] The woman, Ms. Battalino, testified before the Judiciary Committee. She was sentenced to one year home detention and fined $3500 in court costs.[87]

B. THE ARTICLES OF IMPEACHMENT

(1) Article I—Grand Jury Perjury

In his conduct while President of the United States, William Jefferson Clinton, 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 willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence

[84] *See, e.g., United States* v. *Wilkinson,* 137 F.3d 214 (4th Cir. 1998)(perjury in civil deposition); *United States* v. *Kersey,* 130 F.3d 1463 (11th Cir. 1997)(perjury in civil deposition and affidavit); *United States* v. *Sassanelli,* 118 F.3d 495 (6th Cir. 1997)(perjury in civil affidavit); *Virgin Islands* v. *Davis,* 43 F.3d 41 (3rd Cir. 1994), *cert. denied,* 515 U.S. 1123 (1995)(perjury in civil case); United States v. *Thompson,* 29 F.3d 62 (2d Cir. 1994)(perjury in bankruptcy proceeding); *United States* v. *Chaplin,* 25 F.3d 1373 (7th Cir. 1994)(perjury in bankruptcy deposition); *United States* v. *Nebel,* 16 F.3d 1222, 1994 WL 12647 (6th Cir. 1994)(unpublished)(perjury in civil deposition); *United States* v. *Kross,* 14 F.3d 751 (2d Cir.), *cert. denied,* 513 U.S. 828 (1994)(perjury in civil deposition); *United States* v. *Markiewicz,* 978 F.2d 786 (2d cir. 1992), *cert. denied,* 506 U.S. 1086 (1993)(perjury in civil deposition); *United States* v. *Clark,* 918 F.2d 843 (9th Cir. 1990)(perjury in civil deposition); *United States* v. *Cox,* 859 F.2d 151 (4th Cir. 1988), *cert. denied,* 488 U.S. 1044 (1989)(unpublished)(perjury in civil trial); *United States* v. *Holley,* 942 F.2d 916 (5th Cir. 1991)(perjury in civil deposition).

[85] *United States* v. *Holland,* 22 F.3d 1040, 1047–48 (11th Cir. 1994), *cert. denied,* 513 U.S. 1109 (1995)(emphasis added); *see also United States* v. *McAfee,* 8 F.3d 1010, 1013–14 (5th Cir. 1993)(rejecting the argument that the perjury statute does not apply to civil depositions "[t]here is no real substantive difference between federal civil and federal criminal proceedings [in regard to perjury].").

[86] *United States* v. *Battalino,* Case No. CR–98–038–S–EJL (D. Idaho); *see also* David Tell, *Bill Clinton: This Precedent's For You, The Weekly Standard,* June 22, 1998, at 9.

[87] David Tell, *Contagious Corruption, The Weekly Standard, August 3, 1998, at 9.*

the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Article I passed the Judiciary Committee by a vote of 21 to 16 on December 11, 1998. I voted in support of its passage.

In the drafting of the Articles of Impeachment, I successfully convinced my colleagues to separate the perjurious conduct of the President into two separate articles, making Article I pertain to grand jury perjury, while making all other perjurious statements into a separate article, Article II. The grand jury system, which common law refers to as the "peoples" panel" to serve as the community's watchdog, has screening and investigative functions to develop evidence in search of the sometimes painful truth with unbridled candor. Throughout legal history, defense lawyers have been critics, often attacking the prosecutor and the process, wherein a grand jury's broad investigative power and independence are linked with criminal procedure, by calling it an "inquisitorial element."

"The Supreme Court has described the grand jury's authority to compel testimony as '[a]mong the necessary and most important of the powers . . . [that] assure the effective functioning of government in an ordered society.'"[88] For this reason, it is proper that the first Article of Impeachment cite grand jury perjury.

The specific allegations contained in the first article are that the President provided perjurious, false and misleading testimony to the grand jury on August 17, 1998, regarding: the nature and details of his relationship with Ms. Lewinsky; prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.[89]

a. The President Willfully Provided Perjurious, False and Misleading Testimony To The Grand Jury Concerning the Nature and Details of The Relationship With A Subordinate Government Employee.

The evidence presented demonstrates that President Clinton committed perjury before the grand jury on August 17, 1998. The President gave false and misleading testimony before the grand jury regarding his conduct with a subordinate federal employee

[88] Wayne R. LaFave & Jerold H. Israel, criminal procedure § 8.6 (2d. ed. 1992)(citation omitted).

[89] H. Res. ———, 105th Cong., 2nd Sess. (1998).

who was a witness in the federal civil rights action brought against him. A key inquiry, which could demonstrate perjury in the civil deposition and in responses to interrogatories from the OIC, was whether the President had a sexual relationship with Ms. Lewinsky as defined in *Jones* v. *Clinton.*

The President lied before the grand jury three times. First, the President stated that oral sex was not included in the definition of sexual relations employed in the *Jones* v. *Clinton* deposition.[90] It is an incredible torture of words for the President to assert that oral sex would not fall under "sexual relationship," "sexual relations," or a "sexual affair." The President interpreted the definition of sexual relations to mean that one who is receiving a sexual favor, or engaged in activity short of sexual intercourse, is not involved in sexual relations.

Second, even if the definition of sexual relations as it was understood by the President is employed, the President engaged in sexual relations with Ms. Lewinsky. The thrust of the President's understanding of the definition of the sex is that if the witness was the person who was touched, rather than provided the touching, then the conduct does not fall under the definition of sexual relations. Substantial and credible evidence shows that on numerous occasions the President did in fact touch Ms. Lewinsky as defined by the court in *Jones* v. *Clinton*. In fact, Ms. Lewinsky testified under oath that she had ten sexual encounters with the President, while several of Ms. Lewinsky's friends, family members and counselors testified that she had informed them of a sexual relationship during the pertinent time period. Another item of evidence includes the DNA test. Yet, before the grand jury, the President lied by stating he did not engage in sexual relations with Ms. Lewinsky.

Third, the President made a false statement as to when his relationship with Ms. Lewinsky began.[91] Before the grand jury the President testified that the relationship did not begin until 1996, when Ms. Lewinsky was a White House employee.[92] However, corroborated evidence shows that the affair began during the government shut-down of November, 1995, when she was only a 22 year old intern.[93] According to Ms. Lewinsky's testimony, after first sexual encounter the President tugged on her intern badge and stated that her status as an intern could be a problem.[94]

Facing such dire circumstances, the President decided to evade the truth before the grand jury. He admitted to an "inappropriate intimate relationship" with Lewinsky but denied that he lied in the *Jones* v. *Clinton* deposition when he said he did not have sexual relations with Ms. Lewinsky.[95] The President did not want to admit that he had oral sex with a 22 year-old White House intern.

The extensive details of the sexual contacts between the President and Ms. Lewinsky was important to this investigation, because it is only through an examination of precisely what sex acts occurred that one can determine whether the President lied. Based on the detailed information provided by Ms. Lewinsky, as well as

[90] Oic Referral at 148.
[91] *Id*. at 149.
[92] *Id*.
[93] *Id*.
[94] *Id*. at 150.
[95] OIC Referral at 146–50.

physical evidence such as DNA evidence, it is clear the President and Ms. Lewinsky engaged in sexual relations under the definition used in the *Jones* v. *Clinton* case.

During the grand jury inquiry, "the President was asked whether Ms. Lewinsky performed oral sex on him, and if so, whether he committed perjury by denying a sexual relationship, sexual affair, or sexual relations with her. The President refused to say whether he had oral sex. Instead, the President said (i) that the undefined terms "sexual affair," "sexual relationship," and "sexual relations" necessarily require sexual intercourse, (ii) that he had not engaged in intercourse with Ms. Lewinsky, and (iii) that he therefore had not committed perjury in denying a sexual relationship, sexual affair, or sexual relations." [96]

The President's defense relies on a twisted, and hair-splitting interpretation of sexual relations. Such a contrived interpretation of the statute flies in the face of testimony which provides "the truth, the whole truth, and nothing but the truth."

If the President admitted a sexual relationship with Ms. Lewinsky before the grand jury, he would have revealed that he lied in the prior proceeding and in his responses to interrogatories. Such concessions would have made him vulnerable as a defendant in the civil rights lawsuit filed by Paula Jones, whose appeal was pending, and would have jeopardized his family structure, and would have caused enormous embarrassment to his family and personal integrity. Thus, in context, the President had motive to lie. In fact, before the Judiciary Committee the White House counsel Mr. Craig stated: "the President's testimony was evasive, incomplete, misleading, and even maddening." Those facts in evidence, coupled with the President's demeanor and motive to lie, comprise compelling evidence as to his state of mind that he willfully gave false testimony to the grand jury.

b. The President Willfully Provided Perjurious, False and Misleading Testimony to the Grand Jury Regarding Prior Perjurious, False and Misleading Testimony Provided in A Federal Civil Rights Action Brought Against Him

The President made a false and misleading statement before the grand jury when he asserted that the testimony he gave in his deposition taken as a part of the civil rights action brought against him in *Jones* v. *Clinton* was truthful.

Throughout his grand jury testimony, the President acknowledged his oath and recognized that he was bound to tell the truth during the January 17, 1998, deposition in the *Jones* v. *Clinton* case, as well as his testimony before the grand jury on August 17, 1998. The record reflects that he lied.

In contrast to his assertions to testify truthfully when deposed on January 17, 1998, and before the grand jury on August 17, 1998, the record reflects that the President lied, thereby committing grand jury perjury.

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[96] *Id. at 146.*

c. The President Willfully Provided Perjurious, False and Misleading Testimony to the Grand Jury Regarding Prior False And Misleading Statements He Allowed His Attorney To Make To A Federal Judge In That Civil Rights Action Brought Against Him

Ms. Lewinsky's affidavit stated that she and the President had no sexual relations at any time. The evidence shows that the President was aware of Ms. Lewinsky's affidavit. Ms. Lewinsky's attorney, Mr. Frank Carter, worked closely with the President's attorney, Mr. Bennett, to ensure the affidavit was filed with the court prior to the civil deposition.[97] The President allowed his attorney to represent to a federal judge that Ms. Lewinsky's affidavit was true and accurate. Thus, the President sat back and allowed his attorney to report facts to the court which he knew to be false.

The President argues that he was unaware of what his attorney was doing at the time and therefore did not allow his attorney to represent false information to the court. Yet, Mr. Schippers presentation of the videotape of the deposition shows that the President was closely following the actions and arguments of his attorney. Furthermore it is incredulous to assert that at the time the court was arguing whether to open "Pandora's Box" the President was unaware of his attorney's actions. As stated, *truthful* information about his relationship with Ms. Lewinsky was potentially disastrous to the President: it would demonstrate he lied in interrogatories answered in December; it would have made him vulnerable as a defendant in a civil rights sexual harassment lawsuit; it would have greatly embarrassed his family; and, it tarnish his political standing.

During the grand jury testimony the President was asked about the deposition. The President argued that when his attorney, Mr. Bennett, informed the court that there "is no sex of any kind . . ." Mr. Bennett was speaking only in the present tense. The President stated, "It depends upon what the meaning of "is" is, and that "if it means there is none, that was a completely true statement."[98] President Clinton is guilty of what C.S. Lewis called "verbicide," murder of the plain spoken word. His attempt to invoke the literal truth defense fails under the reasonableness test.

As stated in the OIC Referral regarding sworn testimony in the affidavit and its use:

> Monica Lewinsky testified that President Clinton called her around 2:00 to 2:30 a.m. on December 17, 1997, and told her that her name was on the *Jones* case witness list. As noted in her February 1 handwritten statement: 'When asked what to do if she was subpoenaed, the Pres. [sic] suggested she could sign an affidavit . . .' Ms. Lewinsky said she is '100% sure' that the President suggested that she might want to sign an affidavit.
>
> Ms. Lewinsky understood the President's advice to mean that she might be able to execute an affidavit that would not disclose the true nature of their relationship. In order 'to prevent me from being deposed,' she said she would

[97] OIC Referral at 174.
[98] OIC Referral, Part I at 476–77.

need an affidavit 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.'

Ms. Lewinsky stated that the President never *explicitly* told her to lie. Instead, as she explained, they both understood from their conversations that they would continue their pattern of covering up and lying about the relationship. In that regard, the President never said they must now tell the truth under oath; to the contrary, as Ms. Lewinsky stated: '[I]t 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 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.'*

Ms. Jones's lawyers served Ms. Lewinsky with a subpoena on December 19, 1997. Ms. Lewinsky contacted Vernon Jordan, who in turn put her in contact with attorney Frank Carter. Based on the information that Ms. Lewinsky provided, Mr. Carter prepared an affidavit which stated: 'I have never had a sexual relationship with the President.'

After Mr. Carter drafted the affidavit, Ms. Lewinsky spoke to the President by phone on January 5th. She asked the President if he wanted to see the draft affidavit. According to Ms. Lewinsky, the President replied that he did not need to see it because he had already 'seen 15 others.'

Mr. Jordan confirmed that President Clinton knew that Ms. Lewinsky planned to execute an affidavit denying a sexual relationship. Mr. Jordan further testified that he informed President Clinton when Ms. Lewinsky signed the affidavit. Ms. Lewinsky's affidavit was sent to the federal court in Arkansas on January 16, 1998—the day before the President's deposition—as part of her motion to quash the deposition subpoena.

Two days before the President's deposition, his lawyer, Robert Bennett, obtained a copy of Ms. Lewinsky's affidavit from Mr. Carter. At the President's deposition, Ms. Jones's counsel asked questions about the President's relationship with Ms. Lewinsky. Mr. Bennett objected to the 'innuendo' of the questions, noting that Ms. Lewinsky had signed an affidavit denying a sexual relationship, which according to Mr. Bennett, indicated that *'there is absolutely no sex of any kind in any manner, shape or form.'* Mr. Bennett said that the President was 'fully aware of Ms. Lewinsky's affidavit.' Mr. Bennett affirmatively used the affidavit in an effort to cut off questioning. The President said nothing—even though, as he knew, the affidavit was false. Judge Wright overruled the objection and allowed the questioning to continue.

> Later, Mr. Bennett read Ms. Lewinsky's affidavit denying a 'sexual relationship' to the President and asked him: 'Is that a true and accurate statement as far as you know it?' The President answered, 'That is absolutely true.'[99]

d. The President Willfully Provided Perjurious, False and Misleading Testimony to the Grand Jury Regarding His Corrupt Efforts To Influence The Testimony Of Witnesses And To Impede The Discovery Of Evidence In That Civil Rights Action

1. The President Gave False and Misleading Testimony Before the Grand Jury When He Denied Engaging in a Plan to Hide Evidence that had been Subpoenaed in the Federal Civil Rights Action Against Him

Starting in November 1995, the President engaged in sexual relations with Ms. Lewinsky. In order to keep the relationship a secret, they devised "cover stories." As discussed, on December 5, 1997, Ms. Jones' attorneys identified Ms. Lewinsky as a potential witness in the case, and the President learned this fact within a day.[100] The President then called Ms. Lewinsky at 2:00 a.m. on the morning of December 17, 1997, and informed her that she was a potential witness.[101] According to Ms. Lewinsky, the President suggested that she execute an affidavit to avoid a deposition, and that they continue with the usual "cover stories" to explain why she visited the oval office on so many occasions.[102] The "cover stories" were lies. The President suggested to a potential witness in a federal civil rights case to lie.

As to the discovery of evidence in the *Jones* v. *Clinton* case, according to the evidence presented by the OIC, Ms. Lewinsky gave the President approximately 38 gifts. On December 28, 1997, the President and Ms. Lewinsky had a conversation about the gifts they exchanged, Ms. Lewinsky said: "'I mentioned that I had been concerned about the hat pin being on the subpoena and [the President] said that that had sort of concerned him also and asked me if I had told anyone that he had given me this hat pin and I said no."[103] Ms. Currie also testified to having had conversations with the President about certain gifts.[104]

That day, the Sunday after Christmas, Ms. Currie went over to Ms. Lewinsky's home and retrieved a box of gifts from her. She took the gifts home and hid them under her bed.

It is unreasonable to believe that a young former White House intern would have the clout to summon the secretary to the President of the United States to her house on the Sunday after Christmas in order to pick up personal gifts so that she could hide them under her bed. Reasonable people do not subscribe to the absurd. These gifts were all under subpoena in the *Jones* v. *Clinton* case. The facts surrounding the retrieval of the gifts lead a reasonable

[99] OIC Referral at 173–75.
[100] *Id.*
[101] *Id.* at 12.
[102] *Id.*
[103] *Id.* at 156.
[104] *Id.*

person to the conclusion that Ms. Currie was instructed to do so by the President.

President Clinton testified before the grand jury, and reiterated to the Judiciary Committee in Request for Admission No. 26, that he did not recall any conversation with Ms. Currie on or about December 28 1997, about gifts previously given to Ms. Lewinsky and that he never told Ms. Currie to take possession of the gifts he had given to Ms. Lewinsky.[105] This answer is false and misleading because the evidence reveals that Betty Currie did place a call to Monica Lewinsky about the gifts and there is no reason for her to do so unless instructed by the President. Because she did not personally know of the gift issue, there is no other way Ms. Currie could have known to call Ms. Lewinsky about the gifts unless the President told her to do so. The President had a motive to conceal the gifts because both he and Ms. Lewinsky were concerned that the gifts might raise questions about their relationship. By confirming that the gifts would not be produced, the President ensured that these questions would not arise. The concealment and non-production of the gifts to the attorneys' for Paula Jones allowed the President to provide false and misleading statements about the gifts at his deposition in the case of *Jones* v. *Clinton*. Additionally, Ms. Lewinsky's testimony on this subject has been consistent and unequivocal; she provided the same facts in February, July and August. Betty Currie's cell phone records show that she placed a one minute call to Monica Lewinsky on the afternoon of December 28th.

2. The President Made False and Misleading Statements Before The Grand Jury Regarding His Knowledge That The Contents of an Affidavit Executed by a Subordinate Federal Employee Who was a Witness in The Federal Civil Rights Action Brought Against Him Were Untrue

Ms. Lewinsky filed an affidavit in the *Jones* v. *Clinton* case, in which she denied ever having a sexual relationship with the President. During his deposition in the case, the President affirmed that the statement of Ms. Lewinsky in her affidavit was "absolutely true." Ms. Lewinsky testified that she is "100 percent sure" that the President suggested that she might want to sign an affidavit to avoid testifying in the *Jones* v. *Clinton* case.

The President told the Judiciary Committee that he believed he told Ms. Lewinsky "other witnesses had executed affidavits, and there was a chance they would not have to testify."[106] Before the criminal grand jury in August, the President testified that he hoped that Ms. Lewinsky could avoid being deposed by filing an affidavit, but that he did not want her to submit a false affidavit.[107]

Such testimony is false and misleading because it would have been impossible for Ms. Lewinsky to file a truthful affidavit without jeopardizing the President by being deposed. Ms. Jones' attorneys were seeking information about other state or federal employees with whom the President had sexual relationships. Judge Susan Weber Wright ruled that Ms. Jones was entitled to such dis-

[105] H. Doc. 105–311, at 502.
[106] Request for Admission No. 18.
[107] H. Doc. 105–311, at 571.

covery information. The President must have been cognizant of such facts which renders his grand jury testimony on these facts false and misleading. In his efforts to be evasive, the President favored a feigned memory after citing Betty Currie as a source for the answer, thus setting up Ms. Currie as a potential witness.

While testifying before the grand jury, Ms. Currie was more precise in her recollection of the two meetings. An OIC attorney asked her if the President had made a series of leading statements or questions that were similar to the following:

1. "You were always there when she [Monica Lewinsky] was there, right? We were never really alone."
2. "You could see and hear everything."
3. "Monica came on to me, and I never touched her, right?'
4. "She wanted to have sex with me and I couldn't do that."[108]

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.[109] 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.

3. The President Made False and Misleading Statements Before the Grand Jury When He Recited a False Account of the Facts Regarding His Interactions with Monica Lewinsky to Betty Currie, a Potential Witness in the Federal Civil Rights Action Brought Against Him

The evidence shows that immediately after the President was deposed in the *Jones* v. *Clinton* case he attempted to influence the testimony of Ms. Betty Currie. Ms. Currie testified that the President discussed Ms. Lewinsky with her, and that his questions were actually statements with which he wanted her to agree.[110]

Before the grand jury the President was vague and evasive on these points. He stated that he talked to Ms. Currie right after his deposition, but that he talked to her in an effort to learn as much about the matter as he could.[111] He further stated that he instructed Ms. Currie to "tell the truth" after learning she could have been called to testify.[112] The President also testified that he could not remember how many times he talked to Ms. Currie, however Ms. Currie testified to two such discussions.

(2) Article II—Other Perjurious Testimony

In his conduct while President of the United States, William Jefferson Clinton, 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 willfully corrupted

[108] OIC Referral at 191–192.
[109] *Id.*
[110] H. Doc. 105–310, at 191–92.
[111] *See* Request for Admission No. 52.
[112] H. Doc. 105–311, at 591.

and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

> (1) On December 23, 1997, William Jefferson Clinton, in sworn answers to written questions asked as part of a Federal civil rights action brought against him, willfully provided perjurious, false and misleading testimony in response to questions deemed relevant by a Federal judge concerning conduct and proposed conduct with subordinate employees.
>
> (2) On January 17, 1998, William Jefferson Clinton swore under oath to tell the truth, the whole truth, and nothing but the truth in a deposition given as part of a Federal civil right action brought against him. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony in response to questions deemed relevant by a Federal judge concerning the nature and details of his relationship with a subordinate Government employee, his knowledge of that employee's involvement and participation in the civil rights action brought against him, and his corrupt efforts to influence the testimony of that employee.
>
> In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive to the rule of law and justice, to the manifest injury of the people of the United States.
>
> Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Article II passed the Judiciary Committee by a vote of 20 to 17 on December 11, 1998. I voted in support of its passage.

The specific allegations contained in Article II are that the President willfully provided perjurious, false and misleading testimony in answers to written questions posed by the plaintiff in *Jones* v. *Clinton* on December 23, 1997, and that the President willfully provided perjurious, false and misleading testimony in answers to questions proposed by the plaintiff's attorney in a deposition on January 17, 1998.

a. On December 23, 1997, the President, in Sworn Answers to Written Questions Asked As Part of A Federal Civil Rights Action Brought Against Him, Willfully Provided Perjurious, False and Misleading Testimony In Response To Questions Deemed Relevant By A Federal Judge Concerning Conduct And Proposed Conduct With Subordinate Employees.

As stated previously, on December 23, 1997, the President answered interrogatories in the Jones case under oath.[113] When asked

[113] OIC Referral. at 13.

under oath to identify women with whom he had sexual relations who were state or federal employees during a specified limited time frame, the President responded "none."[114] The President lied.

b. On January 17, 1998, the President Swore Under Oath To Tell The Truth, The Whole Truth, And Nothing But The Truth In a Deposition Given As Part of A Federal Civil Rights Action Brought Against Him. Contrary To That Oath, the President Willfully Provided Perjurious, False and Misleading Testimony In Response To Questions Deemed Relevant By a Federal Judge Concerning The Nature and Details Of His Relationship With A Subordinate Government Employee And His Corrupt Efforts To Influence The Testimony Of That Employee.

On January 17, 1998, the President was questioned under oath at a deposition regarding sexual relationships with women in the workplace.[115] During the deposition, the President denied that he had engaged in a "sexual affair," a "sexual relationship," or "sexual relations" with Ms. Lewinsky, while also stating that he "had no specific memory of being alone with Ms. Lewinsky, that he remembered few details of any gifts they might have exchanged, and indicated that no one except his attorneys had kept him informed of Ms. Lewinsky's status as a potential witness in the [*Jones* v. *Clinton*] case."[116] Under oath the President stated that he had not had sexual relations with any federal employees during a particular time frame.[117] As we now know, in fact the President did have sexual relations with a federal employee during the stated time frame. The President lied.

According to Ms. Lewinsky, she and the President had ten sexual encounters, eight while she was a White House intern or employee, and two thereafter. The sexual encounters generally occurred in or near the Oval Office private study. The evidence indicates that the conduct the President had with Ms. Lewinsky met the definition of sex, and that he lied about their conduct. Ms. Lewinsky testified that her physical relationship with the President included oral sex but not sexual intercourse.

c. The President Lied in His Deposition About Being Alone in Certain Locations of the White House with A Subordinate Federal Employee Who Was a Witness In The Action Brought Against Him

The evidence is clear that Ms. Lewinsky and the President did have sexual relations when they were "alone." There is no evidence that anyone saw them, or that they were caught in a sex act, which would lead reasonable minds to believe that their relationship was always covert. They were in fact alone. The President's attempt to defend himself on this charge is a tortured definition of the word "alone," wherein it refers to an entire geographical area, rather than the immediate surroundings. When the President said he was

[114] V002–DC–00000053 (President Clinton's Supplemental Responses to Plaintiff's Second Set of Interrogatories at 2).
[115] OIC Referral at 3.
[116] *Id.* at 3.
[117] *Id.*

never alone with Ms. Lewinsky, he meant he was never alone in the White House oval office complex. In fact, the President and Ms. Lewinsky were alone on at least 21 occasions. Naturally, in the literal sense, one is never alone in the cosmos. Reasonable people do not believe the absurd. Reasonable people would believe that the President's testimony was perjurious.

The President relies on the literal truth defense. He asserts that he is never really alone in the White House. There must be a objective reasonable basis for a subjective belief to have merit. The President's subjective belief is neither reasonable nor sufficient to shield him from perjury charges. There was no reasonable basis. The evidence supports that the President lied.

d. The President Lied In His Deposition About His Knowledge of Gifts Exchanged Between Himself and a Subordinate Federal Employee Who Was A Witness in the Action Brought Against Him

The evidence shows that the President presented Ms. Lewinsky with a number of gifts, including, a lithograph, a hat pin, a large "Black Dog" canvas bag, a large "Rockettes" blanket, a pin of the New York City skyline, a box of chocolates, a pair of sunglasses, a stuffed animal from the "Black Dog," a marble bear's head, a London pin., a shamrock pin, an Annie Lennox compact disc, and Davidoff cigars.[118] In the deposition of the President he provided false answers when he testified that Ms. Lewinsky has given him "a book or two." The evidence also shows that Ms. Lewinsky gave the President approximately 38 gifts.[119] The President gave Ms. Lewinsky approximately 24 gifts. The evidence supports that the President lied.

e. The President Lied In His Deposition About His Knowledge Regarding Whether He Had Ever Spoken To A Subordinate Federal Employee About The Possibility That Such Subordinate Employee Might Be Called As A Witness To Testify In The Federal Civil Rights Action Brought Against Him

When asked in the deposition about whether he talked to Ms. Lewinsky about her being called as a witness the President testified that he could not recall. However, the evidence shows that on December 17, 1997, the President called Ms. Lewinsky and informed her that he had seen the witness list and that her name was on it.[120] Moreover, he told her that if she was called as a witness she was to notify Ms. Currie.[121] The evidence supports that the President lied.

f. The President lied in his deposition about his knowledge of the service of a subpoena to a subordinate federal employee to testify as a witness in the federal civil rights action brought against him

In the civil deposition, the President was asked the question:

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[118] OIC Referral at 101.
[119] *Id.* at 157.
[120] *Id.* at 843.
[121] *Id.*.

Q. Did she tell you she had been served with a subpoena in this case?

A. No. I don't know if she had been.

Q. Did anyone other than your attorneys tell you that Monica Lewinsky had been served with a subpoena in this case?

A. I don't think so." [122]

The evidence shows that the President discussed with Vernon Jordan the fact that Ms. Lewinsky was served with a subpoena. The testimony of the President and Vernon Jordan is in direct conflict on this fact.[123] The record indicates that the President knew, before his deposition, that Ms. Lewinsky had been subpoenaed in the case of *Jones v. Clinton*.[124] Ms. Lewinsky was served with a subpoena on December 19, 1997, a subpoena that commanded her to appear for a deposition on January 23, 1998, and to produce certain documents and gifts.[125] Monica Lewinsky talked to Vernon Jordan about the subpoena on December 19, 1997, and Mr. Jordan spoke to the President that afternoon and again that evening.[126] He told the President that he had met with Ms. Lewinsky, she had been subpoenaed, and that he planned on obtaining an attorney for her.[127] On Sunday, December 28, 1997, the President met with Ms. Lewinsky who expressed concerns about the subpoena's demand for gifts he had given her.[128] The evidence supports that the President lied.

g. The President Lied In His Deposition About His Knowledge Of The Final Conversation He Had With A Subordinate Employee Who Was A Witness In The Federal Civil Rights Action Brought Against Him

The testimony of the President and Ms. Lewinsky regarding their last meeting are in direct conflict. The President testified that he stuck his head out of his office and said hello to Ms. Lewinsky at the time of their last meeting. Ms. Lewinsky testified that the President gave her Christmas gifts, and they talked about the *Jones* v. *Clinton* case.[129] Specifically, she wanted to know how she got put on the witness list and they discussed the subpoena and its direct reference to a hat pin which was the first gift he had ever given her.[130] The evidence supports that the President lied.

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[122] Deposition of President Clinton in the case of *Jones* v. *Clinton,* January 18, 1998, p. 068.
[123] OIC Referral at 96.
[124] *Id.* at 97.
[125] *Id.* at 96.
[126] *Id.* at 96–97.
[127] *Id.* at 97.
[128] *Id.*
[129] *Id*. at 101.
[130] *Id*. Corroborating evidence shows that Ms. Currie called Ms. Lewinsky and asked her to come to the White House at 8:30 a.m. on the morning of December 28, the day of their last meeting. WAVES records indicate that the meeting was requested by Ms. Currie and that Ms. Lewinsky entered the White House at 8:16 a.m., December 28, 1997. After she arrived at the Oval Office, she, the President and Ms. Currie played with Buddy, the President's dog, and chatted. Then the President took Ms. Lewinsky into the study and gave her several Christmas presents: a marble bear's head, a Rockettes blanket, a Black Dog stuffed animal, a small box of chocolate, a pair of joke sunglasses, and a pin with the New York skyline on it. Ms. Lewinsky testified that on this occasion she and the President had a "passionate and physically intimate kiss." *Id.*

h. The President Lied In His Deposition About His Knowledge That The Contents Of An Affidavit Executed By A Subordinate Federal Employee Who Was A Witness In The Federal Civil Rights Action Brought Against Him

As discussed elsewhere, the President affirmed to the court in his civil deposition the truth of the statements contained in Ms. Lewinsky's affidavit regarding sexual relations. The President and Ms. Lewinsky concocted a cover story with the willful intent to deceive the court. As the evidence shows, the President did in fact have sexual relations with Ms. Lewinsky. The evidence supports that the President lied.

(3) Article III—Obstruction of Justice

In his conduct while President of the United States, William Jefferson Clinton, 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, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

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

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

(2) 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.

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

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 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 could have been harmed.

(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal Judge characterizing an affidavit, in order to prevent questioning deemed relevant by the Judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

(6) On or about January 18 and January 20–21, 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.

(7) On or about January 21, 23 and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States. Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Article III passed the Judiciary Committee by a vote of 21 to 16 on December 11, 1998. I voted in support of its passage.

Article II, Section 1, clause 8 of the U.S. Constitution states that before a President begins his term, he shall take an oath. William Jefferson Clinton took the following oath: "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." Furthermore, Article II, Section 3 of the United States Constitution states in part that the President shall "take Care that the Laws be faithfully executed." President Clinton abrogated these duties by engaging in a course of conduct that obstructed and impeded the administration of justice. In so doing, he exhibited a complete disregard and lack of respect for the solemnity of the judicial process and the rule of law.

The following explanations for the individual paragraphs of Article III clearly justify the conclusion that President Clinton, 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, cover up, and conceal the existence of evidence and testimony related to the duly instituted federal civil rights lawsuit of *Jones* v. *Clinton* and the duly instituted investigation of Independent Counsel Kenneth Starr.

Although the actions of the President do not have to rise to the level of violating the federal statute regarding obstruction of justice in order to justify impeachment, some if not all of his actions clearly do. The general obstruction of justice statute is 18 U.S.C. §1503. It provides in pertinent part: "whoever . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished. . . "[131] In short, §1503 applies to activities which obstruct, or are intended to obstruct, the due administration of justice in both civil and

[131] 18 U.S.C. § 1503.

criminal proceedings. This section has been interpreted to apply only to pending judicial proceedings.[132] The *Jones* v. *Clinton* civil rights lawsuit was pending at the time of all alleged wrongdoing under this Article.

a. On Or About December 17, 1997, The President Encouraged A Witness In A Federal Civil Rights Action Brought Against Him To Execute A Sworn Affidavit In That Proceeding That He Knew To Be Perjurious, False And Misleading

While the President has denied asking or encouraging Ms. Lewinsky to lie by filing a false affidavit denying their relationship, he concedes in his response to Question 18 of the Committee's Requests for Admission that he told her that ". . . other witnesses had executed affidavits, and there was a chance they would not have to testify."

Ms. Lewinsky was more emphatic on the subject in her grand jury testimony. When she asked the President what she should do if called to testify, he said, "Well, maybe you can sign an affidavit. . . . The point of it would be to deter or to prevent me from being deposed and so that could range anywhere between . . . just somehow mentioning . . . innocuous things or going as far as maybe having to deny any kind of relationship."[133] She further stated that she was "100% sure that the President suggested that she might want to sign an affidavit to avoid testifying."[134]

Ms. Lewinsky claims that the President never explicitly told her to lie. The President and Ms. Lewinsky did have a scheme to mislead and deceive court through the use of cover stories and the proffer of a false affidavit.[135]

Moreover, the 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 Weber Wright ruled that Paula Jones was entitled to this information for the 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 would have been called as a deposition witness and her subsequent truthful testimony would have been damaging to the President both politically and legally.

b. On Or About December 17, 1997, The President 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.

Ms. Lewinsky's statements that no one told her to lie are not dispositive as to whether the President is guilty of obstruction of jus-

[132] *See, e.g., United States* v. *Neal,* 951 F.2d 630, 632 (5th Cir. 1992).
[133] H.Doc. 105–311, at 843–44.
[134] *Id. at 1558–59.*
[135] OIC Referral at 174.

tice. One need not directly command another to lie in order to be guilty of obstruction: "One who proposes to another that the other lie in a judicial proceeding is guilty of obstructing justice. The statute prohibits elliptical suggestions as much as it does direct commands."[136] Indeed, the facts cannot be taken in a vacuum, they must be examined in their proper context. While Ms. Lewinsky and the President both have testified "I never asked her to lie" and "he never asked me to lie," the circumstantial evidence is overwhelming. The statement was not necessary because they concocted the cover story and both understood the willful intent to conceal the relationship in order to impede justice in *Jones* v. *Clinton.*

c. On Or About December 28, 1997, The President Corruptly Engaged In, Encouraged, Or Supported A Scheme To Conceal Evidence That Had Been Subpoenaed In A Federal Civil Rights Action Brought Against Him

See the discussion regarding the evidence and findings under B(1)(d), *supra.*

d. Beginning On Or About December 7, 1997, And Continuing Through And Including January 14, 1998, the President 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

On December 5, 1997, Paula Jones' attorneys notified the President's attorneys of their witness list.[137] The President testified that he was notified the following day.[138]

After having been transferred from the White House to the Pentagon Ms. Lewinsky made repeated demands of the President for a job that would return her to the White House. She sent a letter to the President on July 3, 1997, which "obliquely threatened to disclose their relationship. If she was not going to return to work at the White House, she wrote, then she would 'need to explain to my parents exactly why that wasn't happening.'"[139]

After being rebuffed by the President on December 5, 1997, Ms. Lewinsky drafted a letter to the President expressing her remorse over what appeared to be the end of their affair.[140] The following day she went to the White House to deliver the letter to the President, however she was told she would have to wait approximately forty minutes because the President had a visitor, who she learned was Eleanor Mondale.[141] Upon hearing such news Ms. Lewinsky was "livid."[142] When the President learned that she was aware who he was meeting with, the President became irate and indicated that someone's job was in jeopardy.[143] Such facts are impor-

[136] *United States* v. *Tranakos,* 911 F.2d 1422, 1432 (10th Cir. 1990) (citations omitted).
[137] OIC Referral at 88.
[138] *Id.*
[139] Id. at 66.
[140] *Id.* at 89.
[141] *Id.*
[142] *Id.* at 90.
[143] *Id.*

tant given that the President knew that Ms. Lewinsky was on the witness list for a case in which he was the defendant; he knew that she could be a potential bombshell to his defense strategy in *Jones* v. *Clinton*.

The President then invited her over to the White House that afternoon in order to rectify the situation.[144] During the meeting Ms. Lewinsky informed the President that Vernon Jordan had "done nothing to help her find a job."[145] In response the President, now well motivated to ensure that Ms. Lewinsky would not become a hostile witness to the defense in *Jones* v. *Clinton*, said he would "talk to him. I'll get on it."[146]

On December 11, 1997, Judge Susan Weber Wright ordered that Paula Jones was entitled to information about any state or federal employee with whom he had sexual relations, or proposed or sought to have sexual relations. Keeping Ms. Lewinsky on the team was now of critical importance.

On that same day, December 11, 1997, Vernon Jordan met with Ms. Lewinsky and provided her with the names of three individuals she was to contact for a job.[147] Later that day Vernon Jordan personally called three executives in order to find her a job.[148] Approximately one week later Ms. Lewinsky had two job interviews in New York City.[149]

The evidence shows that on January 7, 1998, Ms. Lewinsky signed the false affidavit. She showed the affidavit on that day to Vernon Jordan, who in turn reported to the President that it had been signed. The following day Vernon Jordan called MacAndrews and Forbes' CEO, Ron Perelman, to "make things happen, if they could happen," because Ms. Lewinsky's interview went poorly. Mr. Jordan called Ms. Lewinsky and told her not to worry. That evening Ms. Lewinsky was called by MacAndrews and Forbes and told that she would be given a second interview the next morning. The next morning, Ms. Lewinsky received her reward for signing the false affidavit. After a series of interviews with MacAndrews and Forbes personnel, she was informally offered a job. When Ms. Lewinsky called Mr. Jordan to tell him, he passed the good news along to Betty Currie. Tell the President, "mission accomplished." Later, Mr. Jordan called the President personally and told him the news.

Mr. Perelman testified that Mr. Jordan had never called him before about a job recommendation. Jordan, on the other hand, said that he called Mr. Perelman for hiring: the former mayor of New York City; a very talented attorney from the law firm Akin Gump; a Harvard Business School graduate; and Monica Lewinsky. How does Ms. Lewinsky fit into the caliber of persons who would merit Mr. Jordan's full attention and direct recommendation to a CEO of a Fortune 500 company?

The President and Ms. Lewinsky both testified that she was not promised a job in exchange for her silence. However, upon examining the compelling evidence in context, reasonable people would

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[144] *Id.*
[145] *Id.*
[146] *Id.* at 91.
[147] *Id.* at 93.
[148] *Id.*
[149] *Id.* at 95.

conclude that the President provided such assistance to Ms. Lewinsky because she was a witness in the civil suit in which he was the defendant and her truthful testimony would be harmful to the President. The quid pro quo of this arrangement was the false affidavit in exchange for Ms. Lewinsky's job in New York.

e. On January 17, 1998, At This Deposition In a Federal Civil Rights Action Brought Against Him, the President Corruptly Allowed His Attorney To Make False And Misleading Statements To A Federal Judge Characterizing An Affidavit, In Order To Present Questioning Deemed Relevant By the Judge. Such False And Misleading Statements Were Subsequently Acknowledged By His Attorney In A Communication To That Judge

On January 15, 1998, Robert Bennett, attorney for President Clinton in the case of *Jones v. Clinton*, obtained a copy of the affidavit Monica Lewinsky filed in an attempt to avoid having to testify in the case of *Jones v. Clinton*.[150] In her affidavit, Ms. Lewinsky asserted that she had never had a sexual relationship with President Clinton. At the President's deposition on January 17, 1998, an attorney for Paula Jones began to ask the President questions about his relationship with Ms. Lewinsky. Mr. Bennett objected to the "innuendo" of the question and he pointed out that she had signed an affidavit denying a sexual relationship with the President. Mr. Bennett asserted that this indicated "there is not sex of any kind in any manner, shape or form," and after a warning from Judge Wright he stated that, "I am not coaching the witness. In preparation of the witness for this deposition the witness is 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 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."[151] The grand jury testimony of Ms. Lewinsky, given under oath and following a grant of transactional immunity, confirmed that the contents of her affidavit were not true:

> Q: "Paragraph 8 . . . [of the affidavit] says, "I have never had a sexual relationship with the President." Is that true?
>
> A: No."[152]

When President Clinton was asked during his grand jury testimony how he could have lawfully sat silent at his deposition while his attorney made a false statement to a United States District Court Judge, the President first said that he was not paying "a

[150] H. Doc. 105–316, at 420–21.

[151] Deposition of President Clinton in the case of *Jones v. Clinton*, January 17, 1998, p. 204.

[152] H. Doc. 105–311, at 924.

great deal of attention" to Mr. Bennett when he said this. The President also stated that "I didn't pay any attention to this colloquy that went on." The videotaped deposition shows the President looking in Mr. Bennett's direction while Mr. Bennett was making the 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. The President stated, " It depends on what the meaning of the word "is" is." and that "if it means there is none, that was a completely true statement."[153] 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 just passed him by.

f. On Or About January 18 and January 20–21, 1998, The President 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

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 *Jones v. Clinton*. The President did this shortly after he was deposed in the case. In his deposition, he invokes Betty Currie's name numerous times. Even though Betty Currie's name was not on the witness list, it is very logical for the President to assume that the plaintiff's lawyers in the *Jones v. Clinton* would call her as a witness. That is why the President called her about two hours after the completion of his deposition and asked her to come into the office the next day, which was a Sunday.[154] Why would the President be trying to get information from Ms. Currie about false statements or refresh his recollection concerning falsehoods. The evidence supports the conclusion that the President was trying to influence the testimony of a potential witness so that she would repeat his rendition of the facts which were meant to deceive the court.

g. On Or About January 21, 23, And 26, 1998, The President Made False And Misleading Statements To Potential Witnesses In A Federal Grand Jury Proceeding In Order To Corruptly Influence The Testimony Of Those Witnesses. The False and Misleading Statement Made By The President Were Repeated By The Witnesses To the Grand Jury, Causing The Grand Jury To Receive False And Misleading Information.

The record reflects that on the dates in question President Clinton met with a total of five aides who would later be called to testify before the grand jury. The meeting took place shortly after the President's deposition in the *Jones v. Clinton* case and following a *Washington Post* story, published on January 21, 1998, which de-

[153] *Id.* at 476–77.
[154] Request for Admission No. 47.

tailed the relationship between the President and Ms. Lewinsky. During the meetings the President made false and misleading statements to his aides which he knew would be repeated once they were called to testify.

The President submitted the same response to each of seven questions (Nos. 62–68) relating to this topic as set forth in the Committee's Requests for Admission. The President answered by stating that "I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, *Washington Post* article, I misled people about this relationship. . . ."[155]

According to aides who met with the President on the days in question, he insisted unequivocally that he had not indulged in a sexual relationship with Ms. Lewinsky or otherwise done anything inappropriate. On January 21, 1998, in a conversation with Sydney Blumenthal, Assistant to the President, the President said that he rebuffed Ms. Lewinsky after she "'came at me and made a sexual demand on me.'" The President also told Mr. Blumenthal, "'I haven't done anything wrong.'"[156] Also on January 21, 1998, the President met with Erskine Bowles, his Chief of Staff, and two of Mr. Bowles' Deputies, Sylvia Matthews and John Podesta. The President began the meeting by telling Mr. Bowles that the *Washington Post* story was not true.[157] Further, the President stated that he had not had a sexual relationship with her, and had not asked anyone to lie.[158]

Two days later, on January 23, 1998, as he was preparing for his State of the Union address, the President engaged Mr. Podesta in another conversation in which he "was extremely explicit in saying he never had sex with her." When the OIC attorney asked for greater specificity, Mr. Podesta stated that the President said he had not had oral sex with Ms. Lewinsky, and in fact was "denying any sex in any way, shape or form . . . ."[159] The President also explained that Ms. Lewinsky's frequent visits to the White House were nothing more than efforts to visit Betty Currie. Ms. Currie was either with the President and Ms. Lewinsky during these "visits," or she was seated at her desk outside the Oval Office with the door open.[160]

Finally, on January 26, 1998, the President met with Harold Ickes, another Deputy Chief of Staff to Mr. Bowles. At the time, the President said that he had not had a sexual relationship with Ms. Lewinsky, had not obstructed justice in the matter, and had not instructed anyone to lie or obstruct justice.[161]

By his own admission more than seven months later, the President said that he had told a number of his aides that he did not "have an affair with [Ms. Lewinsky] or . . . have sex with her." He also admitted that he knew that these aides might be called before the grand jury as witnesses.[162]

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[155] Request for Admissions Nos. 62–68.
[156] Grand Jury Testimony of Deposition of Sydney Blumenthal, June 4, 1998, p.49.
[157] Grand Jury Testimony of John Podesta, June 16, 1998, p. 85.
[158] *Id.*
[159] *Id.* at 91–3.
[160] H. Doc. 105–316, at 3310.
[161] *Id.* at 1487, 1539
[162] H. Doc. 105–311, at 647.

(4) Article IV—Perjury Before the House

> Using the powers and influence of the office of President of the United States, William Jefferson Clinton, 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 engaged in conduct that resulted in misuse and abuse of his high office, impaired the due and proper administration of justice and the conduct of lawful inquiries and contravened the 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 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.
>
> In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.
>
> Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

The House Judiciary Committee voted in favor of reporting Article IV to the House of Representatives by a vote of 21 to 16 on December 12, 1998. I voted in favor of its passage.

> He who permits himself to tell a lie once, finds it much easier to do it a second and third time, till at length it becomes habitual; he tells lies without attending to it, and truths without the world's believing him. This falsehood of the tongue leads to that of the heart, and in time depraves all its good dispositions.[163]

Pursuant to House Resolution 581, on November 5, 1998, the Judiciary Committee sent a letter to the President seeking his cooperation in the impeachment investigation. The letter asked the President to answer 81 questions, under oath, utilizing an enclosed affidavit.

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[163] Letter from Thomas Jefferson to Peter Carr (August 19, 1785).

The President provided false and misleading statements under oath in response to the written requests for admissions. Specifically, the President did not answer completely and honestly request for admissions numbers: 19, 20, 24, 26, 27, 34, 42, 43, 52, and 53. Failure to answer the questions completely and honestly represents a violation of his duty to cooperate with the congressional committee exercising the impeachment power.

I will briefly discuss the pertinent requests for admissions one at a time.

Question 19. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

Answer Provided. The President responded that such cover stories were only in a non-legal context: [I] "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." The President maintained that any such conversation was not in the context of the *Jones* v. *Clinton* case.

Facts as Provided in Referral: Under oath Ms. Lewinsky testified that she had a conversation with the President about her affidavit, and that at some point the President suggested the cover story: "[Y]ou can always say you were coming to see Betty or that you were bringing me letters."

Question 20. Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of Jones v. Clinton on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?

Answer Provided. The President contradicted his deposition testimony. In the answer to request No. 20 the President stated that he did know that Ms. Lewinsky had been subpoenaed.

Facts As Provided In Referral: In the deposition he stated that he did not know about the subpoena, and did not speak with anyone besides his attorneys regarding the subpoena. This question and answer demonstrates a direct contradiction. Thus, it demonstrates an intent to mislead either at the time of the deposition, or in answering the requests for admissions.

Question 24. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of Jones v. Clinton?

Answer Provided. The President stated that when Ms. Lewinsky inquired about the subpoena covering the gifts, he told her if subpoenaed she would have to turn over the gifts.

Facts As Provided In Referral: Ms. Lewinsky testified that she expressed her concern about the Jones case, and suggested that the gifts be put away. According to Ms. Lewinsky, the President responded that he would think about it or consider it. Thus, in the requests for admission the President states that he told her she would have to follow the law. The testimony of Ms. Lewinsky contradicts such assertions.

Question 26. Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?

Answer. The President responded that he did not recall any conversation with Ms. Currie regarding the gifts. Further, he answered that he did not instruct Ms. Currie to retrieve the gifts.

Facts As Provided In Referral: According to Ms. Lewinsky's testimony, Betty Currie called her on the telephone and stated that she understood Ms. Lewinsky had something to give her. Phone record indicate that Ms. Currie initiated the phone call. Thus, the evidence shows that the President was attempting to avert the whole truth and nothing but the truth as to this question.

Question 27. Do you admit or deny that on or about December 28, 1998, you requested, instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?

Answer. The President responded that he could not recall any such conversation. He further stated that he did not instruct Ms. Currie to take possession of the gifts. The evidence as to these matters is discussed in regard to Question 26, supra.

Question 34. Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case Jones v. Clinton were not true?

Answer. As to paragraph 8 pertaining to sexual relations, the President maintained that his deposition answer attesting to Ms. Lewinsky's affidavit was true. In paragraph 8 of Ms. Lewinsky's affidavit she stated that she had not engaged in sexual relations. In the deposition the President affirmed the truthfulness of Ms. Lewinsky's affidavit. In the request for admission answer the President persists in stating that he was truthful because he understood her interpretation of sexual relations to only include sexual intercourse. Such a response is yet another attempt to evade the truth and mislead the Committee.

Question 42. 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?"

Answer. The President stated that his response at the deposition was "I don't recall. Do you know what they were?" The President maintains that by responding in such a manner he did not mean that he could not remember giving her gifts, only that he could not remember what they were.

Facts As Provided In Referral: The evidence shows that only three weeks earlier the President and Ms. Lewinsky had a discussion about the hat pin which was under subpoena. The evidence further shows that both parties expressed concern about that particular gift under subpoena. The President's lawyer, Mr. Ruff, vouched that the President has an impeccable memory. Given that the discussion of gifts was only three weeks earlier, it is highly unlikely that the President could not remember the hat pin in particular. The President's answers were therefore evasive and less than truthful.

Question 43. Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of Jones v. Clinton when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

Answer. The President responded in his deposition by stating that he gives and receives numerous gifts, and that he thought she had given him one or two. In fact, Ms. Lewinsky gave the President approximately 38 gifts. In the request for admissions the President stated that his deposition response was not false and misleading because given the large number of gifts he receives he could not recall a precise amount.

Facts As Provided In Referral: In fact, the President was not even close to the number of gifts she gave him. Once again, taken within the context of the overwhelming evidence, this is another example of the President's feigned memory problems which represents an intent to mislead the Committee and withhold the truth.

Question 52. Do you admit or deny that on January 18, 1998, at or about 5:00 p.m. you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."

b. "You could see and hear everything."

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

d. "She wanted to have sex with me and I couldn't do that."

Answer. In response to the requests for admissions, the President stated that he asked Ms. Currie certain questions, but could not remember exactly what was said.

Facts As Provided In Referral: In fact, Ms. Currie testified that she understood his comments to be statements rather than questions. Further, the record indicates that the President made similar statements at a meeting held around 5 p.m. that day.

Question 53. Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right?" "We were never really alone."

b. "You could see and hear everything."

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

d. "She wanted to have sex with me and I couldn't do that."

Answer. In the answer to the requests for admissions the President stated that in his grand jury testimony he stated that he did not know that he had another conversation with Ms. Currie in which he made statements similar to those quoted.

Facts As Provided In Referral: The record indicates that the President made similar statements to Ms. Currie on another occasion close in time to January 18, 1998.

VI. CONCLUSIONS

Those in defense of the President argue that even if all the evidence is true, the activities do not amount to impeachable offenses. They insist that the President's actions involved private conduct, and the impeachment remedy for corruption does not apply to pri-

vate conduct. Such an argument is both convenient and misguided. In the last twenty years Congress has indeed impeached individuals for private conduct.

There have been three impeachments involving judges since the impeachment of President Nixon. Judge Harry Claiborne was impeached for making a false and fraudulent income tax return. Judge Walter Nixon was impeached for making false and misleading statements before a federal grand jury. Judge Alcee Hastings was impeached for perjury in a criminal trial. The alleged perjury committed by Judge Hastings was to conceal his involvement in a bribery conspiracy. Thus, perjury has played a central role in each of the three judicial impeachments.

During Judge Claiborne's impeachment proceedings, Representative Hamilton Fish stated that: "[i]mpeachable conduct does not have to occur in the course of the performance of an officer's official duties. Evidence of misconduct, misbehavior, high crimes, and misdemeanors can be justified upon one's private dealings as well as one's exercise of public office. That, of course, is the situation in this case."[164]

In the present case, even if the President's actions were "private," the evidence leads a reasonable person to the conclusion that the President lied under oath, obstructed justice and tampered with witnesses.

The President argues that he did not commit perjury because the answers he provided under oath were literally correct. Such a defense relies on a misguided parsing and hair-splitting of words. The law is clear. Perjury charges can be imposed upon a witness who feigns forgetfulness.[165] When a witness feigns forgetfulness, the prosecutor need only prove that the witness had information or knowledge about the events in question.[166] Such circumstances require an examination of all the evidence in the case, or the circumstantial evidence which tends to show that the witness in fact had information about the events in question.[167] If the circumstantial evidence shows beyond a reasonable doubt that the witness had information, a conviction may lie.[168]

Before the grand jury, and throughout this investigation, the President has repeatedly said, "I don't remember," and "I don't recall." When Mr. Ruff, the Chief White House Counsel, testified before the Judiciary Committee in the President's defense he stated that the President has an excellent memory. Interestingly, the President had a motive to lie from the moment Judge Wright ordered that an inquiry into other federal and state employees with whom the President had sexual relations was permissible and relevant to the *Jones* v. *Clinton* case. The overwhelming circumstantial evidence in this case demonstrates that the President feigned forgetfulness on a consistent basis.

For example, the evidence shows that the President met with Ms. Lewinsky on December 28, 1997, and had a discussion about certain gifts the two had exchanged, specifically, the hat pin which

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[164] Cong. Rec. H4713 (daily ed. July 22, 1986).

[165] *See United States* v. *Dean,* 55 F.3d 640 (D.C. Cir. 1995), *cert. denied,* 516 U.S. 184 (1996); *see also United States* v. *Dunnigan,* 507 U.S. 87 (1993).

[166] *See United States* v. *Dean,* 55 F.3d 640 (D.C. Cir. 1995), *cert. denied,* 516 U.S. 184 (1996).

[167] *Id.*

[168] *Id.*

was listed in Ms. Lewinsky's subpoena. The evidence also shows that the President's secretary went to retrieve numerous gifts from Ms. Lewinsky that day, the Sunday after Christmas weekend. In fact, the President was concerned that a reporter questioned Ms. Lewinsky about a hat pin that was a gift from the President. Yet, three weeks later in the *Jones* v. *Clinton* deposition the President could not recall specific gifts, and later testified that he was not concerned about them on that day. Again, examining the cumulative evidence in this case, it is very clear the President had knowledge about this matter, but feigned forgetfulness to the court.

On at least 23 questions the President professed a lack of memory. This from a man who is renowned for his remarkable memory and ability to recall details, as testified to by White House Counsel, Mr. Ruff, before the Judiciary Committee.

In a letter to House leaders, numerous legal scholars stated, "[i]t goes without saying that lying under oath is a very serious offense."[169] They also recognize that perjury is an attack on our system of laws, "[p]erjury and obstructing justice can without doubt be impeachable offenses . . . Moreover, covering up a crime furthers or aids the underlying crime."[170]

Another fact which tends to show that perjury is indeed a high crime worthy of impeachment is the fact that perjury and bribery are accorded the same penalty under the Federal Sentencing Guidelines. The Guidelines are a product of the Federal Sentencing Commission which determines the penalty for criminal offenses by examining the predicate offense, or the crime for which the person was charged, and then lists mitigating and aggravating factors in order to reach a recommended sentence for courts to consider when imposing a punishment on a convicted criminal. According to the Commission, bribery and perjury warrant the same penalty. It follows that the two crimes are comparable in gravity according to the Commission.

VII. CENSURE

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 his 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

[169] Letter from professors of law to Speaker Gingrich and House leaders 3 (Nov. 6, 1998) (on file with Congressman Buyer).

[170] *Id.*

(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.

On December 12, 1998, the Judiciary Committee considered a censure resolution. After lengthy debate, the Committee declined to submit such a resolution by a vote of 14 in favor to 22 in opposition. I opposed the censure resolution.

Congress lacks the power to punish the President aside from formal impeachment procedures. The impeachment clauses of the Constitution specifically provide that the Chief Executive is subject to impeachment by the House and trial by the Senate.[171]

The Framers' decision to confine legislative sanctioning of the executive officials to removal upon impeachment was carefully considered. By forcing the House and Senate to act as a tribunal and trial jury, rather than merely as a legislative body, they infused the process with notions of due process to prevent impeachment from becoming a common tool of party politics. 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 weapon that Congress could not use it to harass executive officials or otherwise interfere with operations of coordinate branches.

The Framers of the Constitution purposely avoided granting the legislature the power to impose nonjudicial punishment, as "such bills are condemned in the Constitution because they represent legislative encroachment on the powers of the judiciary."[172] A bill of attainder "assumes . . . judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial."[173] The impeachment procedures explicitly provided by the Constitution provide such fairness. Censure is an inappropriate method to bypass the impeachment procedures prescribed in the Constitution.

Some members have proposed censure as a sanction from analogy to the legislative procedures by which members of each House censure its own members. The analogy fails because the Constitution expressly provides plenary authority to each House of Congress to fashion penalties for member of the legislative branch short of expulsion, but provides no such authority to discipline officers of other branches in the same manner. It is pursuant to this explicit authority that each House can require one of its members

[171] "The House of Representatives . . . shall have the sole Power of Impeachment." U.S. Const. art. I, § 2. "The Senate shall have the sole Power to try all Impeachments." U.S. Const. art. I, § 3. "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." U.S. Const. Art II, § 4.

[172] *Linnas* v. *INS,* 790 F.2d 1024, 1028, *cert. denied,* 107 S.Ct. 600, 479 U.S. 995 (1986).

[173] *Id.* at 1028, quoting *Cummings* v. *Missouri,* 71 U.S. (4 Wall.) 271, 323, 18 L.Ed. 356 (1866).

to go to the well of the House and receive the judgment of their peers.

For the President or any other civil officer, this kind of shaming punishment by the legislature is precluded, since the impeachment provisions permit Congress only to remove an officer of another branch and disqualify him from office. Not only would such a punishment undermine the separation of powers, but it would violate the Constitution's prohibition on bills of attainder.

The law is clear on legislative punishments without the benefit of a trial. Such punishments violate Article I, section 9 of the Constitution which prohibits bills of attainder. A bill of attainder is defined as a legislative act which inflicts punishment without a judicial trial.[174, 175] In basic terms, that means that other than through impeachment procedures, Congress may not punish the President for past acts. These constitutional prohibitions on bills of attainder prohibit state legislatures, as well as the federal legislature from imposing an expedited or summary punishment for past conduct.[176]

Even a statement of reproval intended to punish the President by discussing his behavior could potentially violate the rule against bills of attainder.[177] Censure measures which include language of proposed articles of impeachment could therefore implicate the bills of attainder prohibition.

In order for a legislative measure to survive the bill of attainder prohibition, it must pass a three prong test. The test requires that the actual purpose, objective purpose, and effect are non- punitive.[178] Courts are directed to examine the legislative intent of the measure to see if the intent was to punish.[179] If the objective purpose was solely remedial, the measure may not qualify as punitive.[180] Similarly, if the intent of the measure is to deter future acts of the same nature, it is likely not punitive.[181] Stated simply, a bill of attainder prohibited by the Constitution contains three components: specification of affected persons, some form of punishment, and lack of a judicial trial.[182]

An integral part of the censure debate was whether the purpose of censure is to punish the President. Would censure serve a valid legislative purpose? What is the intent behind a censure resolution? Is censure merely impeachment under another name? Or is it a novel form of a plea bargain wherein a "deal" is made to miti-

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[174] Historically, the bill of attainder was used to punish a certain person or a group by death, prison, banishment, punitive confiscation of property, or by barring participation in specific employment or vocation. *Artway* v. *Attorney General of the State of New Jersey,* 81 F.3d 1235 (3rd Cir. 1996).

[175] *Nixon* v. *Administrator of General Services,* 433 U.S. 425, 468 (1977); *Linnas* v. *INS,* 790 F.2d 1024, *cert. denied,* 107 S.Ct. 600, 479 U.S. 995 (1986); *WMX Tech., Inc.* v. *Gasconade County, Mo.,* 105 F.3d 1195, 1201 (8th Cir. 1997); *Charles* v. *Rice,* 28 F.3d 1312, 1318 (1st Cir. 1994); *Antonio* v. *Wards Cove Packing Co., Inc.,* 10 F.3d 1485, *cert. denied,* 115 S.Ct. 57, 513 U.S. 809 (9th Cir. 1993); *U.S.* v. *Patzer,* 15 F.3d 934 (10th Cir. 1993).

[176] *Landraf* v. *USI Film Products,* 114 S.Ct. 1483, 1497, 511 U.S. 244 (1994); *Fraternal Order of Police Hobart Lodge No. 121* v. *City of Hobart,* 864 F.2d 5451 (7th Cir. 1988); *Artway* v. *Attorney General of the State of New Jersey,* 81 F.3d 1235, *reh'g denied,* 83 F.3d 594 (3rd Cir. 1996).

[177] *WMX Tech., Inc.* v. *Gasconade County, Mo.,* 105 F.3d 1195, 1201 (8th Cir. 1997); *Selective Service System* v. *Minnesota Public Interest Research Group,* 104 S.Ct. 3348, 3352, 468 U.S. 841 (1984).

[178] *Artway* v. *Attorney General of the State of New Jersey,* 81 F.3d 1235, 1263 (3rd Cir. 1996).

[179] *Id.* at 1263.

[180] *Id.*

[181] *Id.*

[182] *Dehainaut* v. *Pena,* 32 F.3d 1066 (7th Cir. 1994); *Zilich* v. *Longo,* 34 F.3d 359 (6th Cir. 1994).

gate the punishment? In answers to my questions regarding the intent of the authors, Representative Boucher of Virginia stated: "It is not our purpose to have findings of guilt. It is not our intent to punish the President." However, a close examination of the wording in the censure resolution appears that the implicit purpose would be to shame the President, to voice disdain for his actions which undermine the integrity of the office of the president, to reprove his dubious if not criminal acts, i.e., to punish.

The censure resolution uses such words and phrases as, "egregiously failed;" "violated the trust of the American people;" "lessened their esteem;" "dishonored the office;" "made false statements;" "reprehensible conduct;" "wrongly took steps to delay discovery of the truth;" and "fully deserves, the censure and condemnation." The use of these words and phrases is not remedial, on the contrary, it is to shame and condemn the President's misconduct.

Paragraph (2)(A) of the censure resolution states: "William Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate." This is in reference to the President's sexual misconduct. It is an expression of moral condemnation as a form of national retribution. Therefore, in my opinion, it is a legislative punishment neither contemplated by the express provisions nor the design of the Constitution regarding separation of powers.

Some members of Congress argue that censuring the President is a better idea than impeachment because that is "what the American people want." The American people want their elected officials to act under and in accordance with the laws of this nation. Further, the American people want their elected representatives to take a stand on matters of national importance, such as the integrity of our justice system, and for Members of Congress and the Senate to exercise judgment in matters of statecraft based on their intellect, not the emotions of the moment, and for the President to do his duty to faithfully execute and uphold the laws of this nation.

The facts and evidence in this case are overwhelming; the allegations are grave.[183] The Judiciary Committee, endowed with the *responsibility* to investigate this evidence, determined the allegations against the President do rise to the level of impeachable offenses. A minority of Members disagreed and offered a censure resolution as an alternative to impeachment.

* * * * * * *

On December 12, 1998, I delivered the final closing argument for the majority on the Judiciary Committee on the Articles of Impeachment:

STATEMENT OF CONGRESSMAN STEVE BUYER

DECEMBER 12, 1998.

I thank the gentlewoman, Ms. Bono of California, for yielding. I am going to support the Gekas amendment. I will vote for Impeachment Article IV. The President's re-

[183] As discussed, the allegations substantiated by evidence include: perjury while a defendant in a civil rights case, perjury as a witness before a federal grand jury, subornation of perjury, witness tampering, obstruction of justice, and misleading Congress in refusing to answer the requests for admissions completely and truthfully.

sponses to the 81 requests for admissions from the Judiciary Committee were a continuation of a pattern of perjury and obstruction of justice.

When we bring up the issues regarding the impeachment of former Federal judges Mr. Claiborne and Mr. Nixon, what was interesting, at the time we had a Democrat Majority on the Judiciary Committee, and they brought forward Articles of Impeachments. They passed the House. We had managers who 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. Yet now, the President's defenders are arguing Judge Claiborne's position that his private misconduct does not rise to the level of an impeachable offense.

You see, in the defense of the Judges Claiborne and Nixon, the defense lawyers in the trial in the Senate argued that the Federal judges should be treated differently, that they could not be impeached for private misbehavior, because it is extrajudicial. The Democrat Majority at the time rejected that proposition as incompatible with common sense and the orderly conduct of government. Federal judges and the President should be treated by the same standard: impeachment for high crimes and misdemeanors. Well, I agree. I think the Republicans and Democrats at the time in the 1980's on both of those cases agreed and had it right. 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 of North Carolina. 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. I first went through the area of 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 days back as a cadet at The Citadel.

There was this officer who was a Vietnam veteran, walked up to the blackboard, and his name today is Colonel Trez. He was a young major at the time, carrying the fresh memories of battle. He walked over and he wrote this statement on the blackboard and demanded that his young Citadel cadets memorize this statement. It read,

"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 what it meant. I thought I did, but it wasn't until years later that I understood the real meaning from my military 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." Of my fallen comrades, if I permit the eyes of my mind to focus, I can see them. And, if I permit the ears of my heart to listen, I can hear them. The echoes of "do not let my sacrifice be in vain. I fell with the guidon in my hand. Pick it up and stake it in the high ground."

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 them to guide me through the chaos. Throughout this case, I think about people all across America, about America's values and the American character, and I want to put it in plain-spoken words.

I believe we are to defend the Constitution, America's heritage, and define our Nation's character. 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 ap-

preciative and accepting of individual differences. You don't abuse, demean, or mistrust anyone. You don't use, manipulate, exploit, or take advantage of others. You respect the right of individuals.

On the issues of acting responsibly and being accountable, 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 who 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. Live by the Golden Rule.

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 confidence in government by leaving a perjurious President in office.

I yield back my time.

STEVE BUYER.

VIII. MINORITY VIEWS

For only the second time in the history of our Nation, the House is poised to impeach a sitting President. The Judiciary Committee Democrats uniformly and resoundingly dissent.

We believe that the President's conduct was wrongful in attempting to conceal an extramarital relationship. But we do not believe that the allegations that the President violated criminal laws in attempting to conceal that relationship—even if proven true—amount to the abuse of official power which is an historically rooted prerequisite for impeaching a President. Nor do we believe that the Majority has come anywhere close to establishing the impeachable misconduct alleged by the required clear and convincing evidence.

Historian Arthur Schlesinger, appearing before the Committee on November 9, 1998, explained the grave dangers of "dumbing-down" the impeachment process for largely private misconduct:

> Lowering the bar to impeachment creates a novel, indeed revolutionary theory of impeachment, a theory that would send us on an adventure with ominous implications for the separation of owers that the Constitution established as the basis of our political order. [1]

Impeachment is like a wall around the fort of the separation of powers fundamental to our constitution; the crack we put in the wall today becomes the fissure tomorrow, which ultimately destroys the wall entirely. This process is that serious. It is so serious the wall was not even approached when President Lincoln suspended the writ of habeas corpus, nor when President Roosevelt misled the public in the lend-lease program, nor when there was evidence that Presidents Reagan and Bush gave misleading evidence in the Iran-contra affair.

We also note at the outset our profound disagreement with the process that the Judiciary Committee undertook to report this resolution. Without any independent examination of fact witnesses, this Committee essentially rubber-stamped a September 9th Referral from the Office of Independent Counsel (OIC). That Referral contained largely unproven allegations based on grand jury testimony—often inadmissable hearsay evidence—which was never subject to cross examination. Indeed the Committee's investigation of this material amounted to nothing more than simply releasing to the public the Referral and tens of thousands of accompanying pages of confidential grand jury material. In this regard, we decry the partisanship that accompanied this sad three month process at

[1] *The Background and History of Impeachment: Hearings on H. Res. 581 Before the Subcomm. On the Constitution, 105th Cong., 2d Sess.* (1998) (Nov. 9, 1998) ("Subcommittee Hearing"), at 96–7.

nearly every turn, and point out its unfortunate departure from the experience of Watergate in 1974.

There is no question that the President's actions were wrong, and that he has suffered profound and untold humiliation and pain for his actions. But it is also undeniable that, when asked squarely about his relationship with Ms. Lewinsky before the grand jury, the President directly admitted to the improper physical relationship. The core of the charges against the President, thus, is that he did not adequately describe the intimate details of the relationship, and that his attempts to conceal his relationship amounted to a criminal conspiracy. Our review of the evidence, however, convinces us of one central fact—there is no persuasive support for the suggestion that the President perjured himself in his civil deposition or before the grand jury in any manner nearing an impeachable offense, obstructed justice, or abused the powers of his office. A few examples will make the point.

The President's statements under oath in the dismissed *Jones* case were in all likelihood immaterial to that case and would never have formed the legal basis for any investigation. The alleged perjury before the grand jury also involves petty factual disputes which have no standing as impeachment counts. The Majority further alleges that the President attempted to find Ms. Lewinsky a job in order to buy her silence. But the evidence makes clear that efforts to help Ms. Lewinsky find a job began in April 1996, long before she ever was identified as a witness in the *Jones* case. Ms. Lewinsky herself testified that "no one ever asked me to lie and I was never promised a job for my silence."[2] Likewise, while the Majority contends that the President tried to hide gifts he had given Ms. Lewinsky, the evidence makes clear that Ms. Lewinsky—and not the President—initiated the transfer of those items to the President's secretary, Ms. Currie. Finally, while the Committee wisely rejected the abuse of power allegations brought by the OIC, it then improvidently substituted a spurious new charge of abuse largely because they did not like the President's tone in responding to the 81 questions posed by Chairman Hyde.

In this context, we also point out, that since the election of President Clinton in 1992, Congressional Republicans and the OIC have spent tens of millions of dollars of taxpayers' monies on investigations of the President—investigations which have been discredited in the eyes of the public. In the process, Congressional Republicans have perverted the powers of Congressional investigation into a political weapon, setting a dangerous precedent for future generations.

Finally, we note that there is virtual unanimity among Democrats and Republicans that the Senate will not convict President Clinton, and, thus, that the House is merely using the extraordinary powers of impeachment to express its displeasure for presidential actions. We regard this use of the impeachment sword as a perversion of our Constitutional form of government and as a dangerous arrogation of power by the Majority.

The following sets forth an outline of our dissenting views:

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[2] H.R. Doc. No. 311, *infra*, at 1393 (reprinting Lewinsky 7/27/98 OIC 302 at 5).

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I. The Constitutional Standard for Impeachment Has Not Been Satisfied

Impeachment is only warranted for conduct that constitutes "Treason, Bribery, or other high Crimes and Misdemeanors" as set forth in Article II, Section 4 of the Constitution. As virtually all constitutional scholars have noted, there is an important distinction between criminal and impeachable offenses—impeachment serves to protect the nation, *not* to punish the wrongdoer. A review of the language of the Constitution, the history and drafting of the impeachment clause, and subsequent review of its usage all serve to confirm that in all but the most extreme instances, the remedy of impeachment should be reserved for egregious abuses of presidential authority, rather than misconduct unrelated to public office. It is also clear that the President is subject to civil and criminal punishment independently of the impeachment process. The constitutional process of impeachment should not, therefore, be used for punitive purposes.

Members of the Majority have gone to great lengths to misconstrue the power of impeachment as one that is appropriately exercised against a chief executive based on any potentially criminal conduct. This interpretation is flatly inconsistent with the intentions of the Framers and the prior presidential impeachments in this country. It also is contrary to the central conclusions of the Staff Report produced by the Watergate impeachment inquiry staff in 1974.[3]

[3] Staff of the House Comm. on the Judiciary, 93d Cong., 2d Sess (Comm. Print 1974), *Constitutional Grounds for Presidential Impeachment*) (hereinafter, "*Watergate Staff Report*"). At the November 9, 1998, Constitution Subcommittee Hearing on the Background and History of Impeachment, Mr. Scott asked the panel whether they agreed that every felony falls within the definition of "Treason, Bribery or other high Crimes and Misdemeanors." The record shows that not one of the 10 panelists agreed that every felony is an impeachable offense.

Although many have inaptly compared the present proceedings to the genuine constitutional crisis brought about by President Richard Nixon, there are far more dissimilarities than parallels. In using the powers granted by the Independent Counsel Act[4] for the first time to justify the submission of a report to Congress outlining possible impeachable offenses, the OIC departed from the traditional deference shown by past presidential prosecutors. As these other prosecutors have recognized, it is Congress constitutional responsibility to determine whether alleged misconduct by a chief executive constitutes grounds for impeachment. Watergate independent prosecutor Leon Jaworski submitted grand jury materials to Congress that consisted only of grand jury transcripts and a "road map" through the allegations being investigated by the grand jury. His report "provided no analysis and drew no conclusions."[5] To this day, that document remains sealed.[6] Congress, in short, recognized that only it had the right and the responsibility to level public charges of impeachable offenses against the President.

The Committee's constitutional responsibility is quite distinct from cataloging laws that may have been violated. The determination of whether to impeach a President is vastly different than the determination of whether there is evidence of a legal offense. The Majority, by invoking the language of criminal statutes to describe the President's alleged misconduct, directly contradicts one of the main conclusions of the Watergate Staff Report, which it purports to endorse:

> The impeachment of a President must occur only for reasons at least as pressing as those needs of government which give rise to the creation of criminal offenses. But this does not mean that the various elements of proof, defenses, and other substantive concepts surrounding an indictable offense control the impeachment process. Nor does it mean that state or federal criminal codes are necessarily the place to turn to provide a standard under the United States Constitution. Impeachment is a constitutional remedy. The Framers intended that the impeachment language they employed should reflect the grave misconduct that so injures or abuses our constitutional institutions and form of government as to justify impeachment.[7]

The assumption that a president's violation of any of a number of laws may trigger the impeachment provisions of Article II, Section 4 of the Constitution is fundamentally misguided. In fact, as virtually all constitutional experts recognize, not all impeachable offenses are crimes and not all crimes are impeachable offenses. Again, the 1974 Watergate Staff Report is instructive on this issue:

> Impeachment and the criminal law serve fundamentally different purposes. Impeachment is the first step in a remedial process—removal from office and possible disqualification from holding future office. The purpose of im-

[4] Ethics in Government Act, 28 U.S.C. §§ 591–99.
[5] Linda Greenhouse, *Testing of a President,* New York Times, Sept. 12, 1998, at 1A.
[6] Kevin Johnson and Judy Keen, *The Case Against the President,* USA Today, Sept. 14, 1998, at 1E.
[7] *Watergate Staff Report* at 22.

> peachment is not personal punishment; its function is primarily to maintain constitutional government . . . The general applicability of the criminal law also makes it inappropriate as the standard for a process applicable to a highly specific situation such as removal of a President. . . . In an impeachment proceeding a President is called to account for abusing powers that only a President possesses.[8]

A. A PRESIDENT MAY ONLY BE IMPEACHED FOR "TREASON, BRIBERY OR OTHER HIGH CRIMES AND MISDEMEANORS"

With regard to the actual text of the Constitution, the juxtaposition of such serious offenses of Treason and Bribery with the phrase "other high Crimes and Misdemeanors" serves as an important indicator of how the latter term should be defined. In other words, such "other high Crimes and Misdemeanors" must constitute abuses of public office—similar to treason and bribery—to become impeachable conduct.[9]

It also bears emphasis that the word "high" modifies both "Crimes" and "Misdemeanors." As the history of the latter term makes clear, the Framers did not entrust Congress with the power to impeach a popularly elected President simply upon a showing that the executive committed a "misdemeanor" crime as we now understand the term—a minor offense usually punishable by a fine or brief period of incarceration. Instead, an examination of the relevant historical precedents indicates that a president may only be impeached for conduct that constitutes an egregious abuse or subversion of the powers of the executive office.[10]

It is evident from the legislative history surrounding the constitutional convention that the Framers intended impeachment to be a very limited constitutional remedy. At the outset, delegates such as Governor Morris and James Madison objected to the use of broad impeachment language. Morris argued that "corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined,"[11] and Madison noted that impeachment was only necessary to be used to "*defend[] the Community* against the incapacity, negligence or perfidy of the chief Magistrate."[12]

The critical drafting occurred on September 8, 1787. George Mason objected to the fact that the draft was too limited because it applied only to "treason or bribery" and sought to add the term "maladministration." When Madison objected that "so vague a term will be equivalent to a tenure during pleasure of the Senate,"

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[8] *Watergate Staff Report* at 24.

[9] This reading is an example of the standard rule of construction known in Latin as "*ejusdem generis*," or "of the same kind," providing that when a general word occurs after a number of specific words, the meaning of the general word is limited to the kind or class of things in which the specific words fall.

[10] The 1974 Watergate Staff Report at 12 wrote, "Blackstone's *Commentaries on the Laws of England*—a work cited by delegates in other portions of the Convention's deliberations and which Madison later described (in the Virginia ratifying convention) as 'a book which is in every man's hand'—included 'high misdemeanors' as one term for positive offenses 'against the king and government.' . . . 'High Crimes and Misdemeanors' has traditionally been considered a 'term of art,' like such other constitutional phrases as 'levying war' and 'due process.'"

[11] Raoul Berger, Impeachment: The Constitutional Problems, 65 (1973).

[12] *Id.* (emphasis added).

Mason withdrew "maladministration" and substituted "high crimes and misdemeanors agst. the State," which was accepted by the delegates.[13] The narrowness of the phrase "other high Crimes and Misdemeanors" was confirmed by the addition of the language "against the State," reflecting the Convention's view that only offenses against the political order should provide a basis for impeachment. Although the phrase "against the United States" was eventually deleted by the Committee of Style that produced the final Constitution,[14] the Committee of Style was directed not to change the meaning of any provision.[15] It is therefore clear that the phrase was dropped as a redundancy and its deletion was not intended to have any substantive impact.[16]

The construction that "other high Crimes and Misdemeanors" should be limited to serious abuses of official power is further confirmed by the commentary of prominent Framers and early constitutional commentators. Alexander Hamilton wrote in Federalist No. 65 that impeachable offenses "proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust." He stressed that those offenses "may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself."[17] Hamilton's view was endorsed a generation later by Justice Joseph Story in his *Commentaries on the Constitution* when he wrote, "[impeachable offenses] are committed by public men in violation of their public trust and duties. . .. Strictly speaking, then, the impeachment power partakes of a political character, as it respects injuries to the society in its political character."[18] Justice Story added that impeachable offenses "peculiarly injure the commonwealth by the abuse of high offices of trust."[19]

Prior impeachment precedents also demonstrate that, for offenses to be impeachable, they must arise out of a president's public, not private, conduct. In 1868, Andrew Johnson was impeached by the House Republicans because he had removed the Secretary of War, Edwin M. Stanton, who had disagreed with his post-Civil War reconstruction policies.[20] Although the impeachment of President Andrew Johnson failed in the Senate, it bears note that all of the impeachment articles related to alleged public misconduct.[21]

The circumstances surrounding the proposed impeachment of President Nixon also support the view that impeachment should be limited to threats that undermine the Constitution, not ordinary criminal misbehavior unrelated to a president's official duties. All three of the articles of impeachment approved by the House Judici-

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[13] *Watergate Staff Report* at 11–12.

[14] 2 Max Farrand, The Records of the Federal Convention of 1781, 551 (Rev. Ed. 1967).

[15] *Id.* at 553.

[16] *See* Fenton, *The Scope of the Impeachment Power,* 65 N. W. L. Rev. 719, 740 (1970).

[17] Alexander Hamilton, The Federalist Papers, 65 (C. Rossiter, ed., 1991).

[18] 2 Joseph Story, Commentaries on the Constitution §744 (1st ed. 1833) .

[19] *Id*.

[20] Stanton's removal was said to be inconsistent with the Tenure in Office Act, requiring Senate approval for removal of certain officers.

[21] The eleven articles of impeachment related to Johnson's removal of Stanton, the impact of that removal on congressional prerogatives and its impact on post-civil war reconstruction. *See Cong. Globe Supp.*, 40th Cong. 2d Sess. V. II, at 139–40 (April 23, 1868) and 286–89 (April 29, 1868). *See also Cong. Globe Supp.*, 40th Cong. 2d. Sess., at 286–310 (1868).

ary Committee involved misuse of the President's official duties.[22] Even more telling are the circumstances by which the Committee rejected articles of impeachment relating to allegations of income tax evasion. When the Judiciary Committee debated a proposed article of impeachment alleging that President Nixon had committed tax fraud when filing his federal income tax returns for the years 1969 through 1972 filed under penalty of perjury[23] it was defeated by a vote of 26–12. Although some Members believed this count was not supported by the evidence, the primary ground for rejection was that the Article related to the President's private conduct, not to an abuse of his authority as President.[24]

A review of the writings by prominent scholars concerning the issue of impeachment further confirms the general principal that for presidential wrongdoing to rise to the level of an impeachable offense it must relate to grievous abuse of office. The question of whether private presidential misconduct could be impeachable was posed twenty-five years ago by Professor Charles Black, in his seminal work, *Impeachment: A Handbook,* when he posited the following hypothetical:

> Suppose a President transported a woman across a state line or even (as the Mann Act reads) from one point to another within the District of Columbia, for what is quaintly called an "immoral purpose." . . . Or suppose the president actively assisted a young White House intern in concealing the latter's possession of three ounces of marijuana—thus himself becoming guilty of "obstruction of justice." Would it not be preposterous to think that any of this is what the Framers meant when they referred to "Treason, Bribery, or other high Crimes and Misdemeanors," or that any sensible constitutional plan would make a president removable on such grounds?[25]

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[22] The First Article—alleging that President Nixon coordinated a cover-up of the Watergate break-in by interfering with numerous government investigations, using the CIA to aid the cover-up, approving the payment of money and offering clemency to obtain false testimony—qualified as a high Crime and Misdemeanor, because "[the President used] *the powers of his high office* [to] engage . . . in a course of conduct or plan designed to delay, impede, and obstruct [the Watergate investigation]." The Second Article—alleging that the President used the IRS as a means of political intimidation and directed illegal wiretapping and other secret surveillance for political purposes—described "a *repeated and continuing abuse of the powers of the Presidency* in disregard of the fundamental principle of the rule of law in our system of government." The Third Article " alleging that President Nixon refused to comply with subpoenas issued by the Judiciary Committee in its impeachment inquiry—was considered impeachable because such subpoena power was essential to "Congress' [ability] to act as the ultimate safeguard against improper presidential conduct."

[23] The crux of the impeachment article related to allegations that the President understated his income and overstated his deductions for the years 1969 through 1972.

[24] Republican congressmen explicitly emphasized that personal misconduct could not give rise to an impeachable offense. Congressman Tom Railsback (R–IL) noted that there was "a serious question as to whether something involving [the President's] personal tax liability has anything to do with his conduct of the office of the President." Congressman Lawrence J. Hogan (R–MD), quoted from the impeachment inquiry staff report:

As a technical term, high crime signified a crime against the system of government, not merely a serious crime. *This element of injury to the commonwealth, that is, to the state itself and to the Constitution, was historically the criteria for distinguishing a high crime or misdemeanor from an ordinary one.*

Similarly, Democratic Congressman Jerome Waldie (D–CA) echoed the Republican distinction between public and private conduct, and opposed the proposed article because "the impeachment process is a process designed to redefine Presidential powers in cases where there has been enormous abuse of those powers and then to limit the powers as a concluding result of the impeachment process."

[25] Charles L. Black, Impeachment: A Handbook 35–36 (1974).

More recently, a large group of legal scholars and academics have offered their views regarding the impeachability of the misconduct alleged by the Majority. On November 6, 1998, 430 Constitutional law professors wrote: "Did President Clinton commit 'high Crimes and Misdemeanors' warranting impeachment under the Constitution? We . . . believe that the misconduct alleged in the report of the Independent Counsel . . . does not cross that threshold . . . [I]t is clear that Members of Congress would violate their constitutional responsibilities if they sought to impeach and remove the President for misconduct, even criminal misconduct, that fell short of the high constitutional standard required for impeachment." [26]

One week earlier, more than four hundred historians issued a joint statement warning that because impeachment has traditionally been reserved for high crimes and misdemeanors in the exercise of executive power, impeachment of President Clinton based on the facts alleged in the OIC Referral would set a dangerous precedent. "If carried forward, they will leave the Presidency permanently disfigured and diminished, at the mercy as never before of caprices of any Congress. The Presidency, historically the center of leadership during our great national ordeals, will be crippled in meeting the inevitable challenges of the future." [27]

The weight of evidence offered at Committee hearings also supports the view that in all but the most extreme instances, impeachment should be limited to abuse of public office, not private misconduct. This point was made by several of the witnesses at the Constitution Subcommittee Hearing on the Background and History of Impeachment. Chicago Law Professor Cass Sunstein, summarized the standard as follows: "[w]ith respect to the President, the principal goal of the impeachment clause is to allow impeachment for a narrow category of large-scale abuses of authority that come from the exercise of *distinctly presidential powers.* Outside of that category of cases, impeachment is generally foreign to our traditions and prohibited by the Constitution." [28] Professor Sunstein went on to review English Parliamentary precedent, the intent of the Framers and subsequent impeachment practice as all supporting this bedrock principle. In his view, the only exception where purely private conduct would be implicated was in the case of a heinous crime, such as murder or rape:

> [B]oth the original understanding and historical practice converge on a simple principle. The basic point of the impeachment provision is to allow the House of Representatives to impeach the President of the United States for *egregious misconduct that amounts to the abusive misuse of the authority of his office.* This principle does not exclude the possibility that a president would be impeachable for an extremely heinous "private" crime, such as murder or rape. But it suggests that outside such extraordinary (and

[26] Letter from more than 400 Constitutional law professors (Nov. 6, 1998) (submitted as part of the Constitution Subcommittee Hearing Record).

[27] *Statement Against the Impeachment Inquiry,* submitted to the Committee by more than 400 historians (Oct. 28, 1998)(submitted as part of the Constitution Subcommittee Hearing Record).

[28] *Subcommittee Hearing,* (Written Testimony of Cass Professor Sunstein at 2) (emphasis in original).

> unprecedented and most unlikely) cases, impeachment is unacceptable.[29]

Father Drinan, a former House Judiciary Committee Member who participated in the Watergate impeachment process, and now a Professor of Law at Georgetown University, reached the same conclusion, testifying that, "the impeachment of a President must relate to some reprehensible exercise of *official* authority. If a President commits treason he has abused his executive powers. Likewise a President who accepts bribes has abused his official powers. The same misuse of official powers must be present in any consideration of a President's engaging in 'other high crimes and misdemeanors.'[30] Eminent historian Arthur Schlesinger similarly distinguished between private and public misconduct:

> The question we confront . . . is whether it is a good idea to lower the bar to impeachment. The charges levied against the President by the Independent Counsel plainly do not rise to the level of treason and bribery. They do not apply to acts committed by a President in his role of public official. They arise from instances of private misbehavior. All the Independent Counsel's charges . . . derive entirely from a President's lies about his own sex life. His attempts to hide personal misbehavior are certainly disgraceful; but if they are to be deemed impeachable, then we reject the standards laid down by the Framers in the Constitution and trivialize the process of impeachment.[31]

Prominent witnesses called by the White House concurred in these assessments. Former Attorney General Nicholas Katzenbach testified that impeachment must involve "some conduct—some acts—which are so serious as to bring into question the capacity of the person involved to carry out his role with the confidence of the public" and noted that it was clear that "despite the strongly held views of some, the public does not put perjury about sexual relations in the category of 'high crimes or misdemeanors.'"[32] Princeton History Professor Sean Wilentz warned the Committee about the dangers of a largely partisan impeachment, and warned that "these proceedings are on the brink of becoming irretrievably politicized, more so even than the notorious drive to remove Andrew Johnson from office one hundred and thirty years ago."[33]

The one witness jointly selected by the Majority and the Minority—William & Mary Law Professor Michael Gearhardt—also testified that impeachment should principally be limited to abuse of public office:

> [There is a] widespread recognition that there is a paradigmatic case for impeachment consisting of the abuse of power. *In the paradigmatic case, there must be a nexus between the misconduct of an impeachable official and the latter's official duties.* It is this paradigm that Hamilton

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[29] *Id.* at 5, 7, 8, 11, 12 (emphasis in original).

[30] *Id.* (Written Testimony of Robert F. Drinan, S.J. at 3–7).

[31] *Id.* (Written Statement of Arthur Schlesinger, Jr. at 2).

[32] *Hearing before the House Comm. on the Judiciary,* Dec. 8, 1998 (Statement of Nicholas Katzenbach at 3–4).

[33] *Id.* (Written Testimony of Professor Sean Wilentz, at 5).

> captured so dramatically in his suggestion that impeachable offenses derive from "the abuse or violation of some public trust" and are "of a nature which may be peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. This paradigm is also implicit in the founders' many references to abuses or power as constituting political crimes or impeachable offenses.[34]

Even some witnesses called by the Majority cautioned that discretion should be applied before applying the impeachment power in all situations. For example, Duke Law Professor William Van Alstyne stated that the allegations by Mr. Starr constituted "low crimes and misdemeanors" and that "[t]he further impeachment pursuit of Mr. Clinton may well not now be particularly worthwhile."[35] Charles E. Wiggins, a senior judge on the Ninth Circuit, and a former Republican Member of the Judiciary Committee who participated in the Watergate inquiry stated, "I am presently of the opinion that the misconduct admittedly occurring by the President is not of the gravity to remove him from office."[36]

B. THE APPROPRIATE ROLE OF THE HOUSE IN THE IMPEACHMENT PROCESS

It has been repeatedly argued that the House is like a grand jury that simply votes out an article of impeachment based on "probable cause" to believe that impeachable offense have occurred and lets the Senate weigh the actual evidence. This view of the House's role has been offered in support of the proposition that the House does not have to hear evidence or make decisions about who is telling the truth because that is the Senate's job. This cramped view of the appropriate role of the House finds no support in the Constitution and is completely contrary to the great weight of historical precedent. As former Watergate Era Attorney General Elliot Richardson warned:

> A vote to impeach is a vote to remove. If members . . . believe that should be the outcome, they should vote to impeach. If they think that is an excessive sentence, they should not vote to impeach, because if they do . . . the matter is out of your hands . . .[37]

During the debate over the articles of impeachment, Rep. Frank reminded the Members that they should not take the House's independent role to remove the President from office lightly: "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 arti-

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[34] *Id.* (Written Testimony of Professor Michael Gearhardt at 13–14) (footnotes omitted) (emphasis added).

[35] *Id.* (Written Testimony of Professor William Van Alstyne at 6).

[36] *Hearings before the House Comm. on the Judiciary,* "The Consequences of Perjury and Related Crimes," Dec. 1, 1998 (Written Testimony of Hon. Charles E. Wiggins).

[37] *Id.* (Written Testimony of Elliott Richardson).

cles is the conviction that the President ought to be thrown out of office."[38]

The argument that the House is merely the body that accuses and the Senate is the body that tries, undermines the dual protection against misuse of the impeachment power that the founders intended. The Constitution requires more than that the House be a mere rubber stamp for sending allegations of wrongdoing to the Senate; rather Article II intends that the House as well as the Senate look to the same evidence with the same standards. As constitutional expert Professor John H. Labovitz concluded with respect to Watergate, in terms that seem as if they were written for today;

> . . . there were undesirable consequences if the House voted impeachment on the basis of one-sided or incomplete information or insufficiently persuasive evidence. Subjecting the Senate, the President, and the nation to the uncertainty and potential divisiveness of a presidential impeachment trial is not a step to be lightly undertaken. While the formal consequences of an ill-advised impeachment would merely be acquittal after trial, the political ramifications could be much more severe. Accordingly, the house . . . should not vote impeachments that are unlikely to succeed in the senate . . . the standard of proof applied in the House should reflect the standards of proof in the Senate . . .[39]

Professor Labovitz has meticulously documented how, in the Nixon inquiry, everyone agreed—the Majority, the Minority, and the President's counsel—that the standard of proof for the Committee and the House was "clear and convincing evidence." When the articles of impeachment are weighed against this standard, it is clear that the constitutional standard has not been satisfied.

II. The Misconduct Alleged in the Articles Would Never Be Charged As A Criminal Violation

As discussed above, violations of criminal law are not sufficient to establish an impeachable offense. Much of the misconduct alleged in the articles of impeachment could not be the subject of a successful perjury prosecution and experienced prosecutors have persuasively testified that the misconduct alleged in the articles would never be the subject of a criminal prosecution.

A. The Alleged Perjurious Statements Were Immaterial

Both the Majority's allegation that the President committed perjury during his grand jury testimony (Article I) and during his testimony in the *Jones* case (Article II), are predicated on the President's efforts to conceal the nature and extent of his relationship with Ms. Lewinsky. Since so much time of the Committee was taken up with an examination of whether the President's conduct violated criminal law (rather than on whether that conduct amounted to impeachable offenses), some of the relevant issues of

[38] Markup Tr. 12/11/98, at 464.
[39] Labovitz, *Presidential Impeachments,* at 192–3.

law have to be defined. In considering whether such conduct constituted a violation of law, the Committee should have focused on the effect, if any, that this testimony had on the course of that litigation.[40] Accordingly, since the first two Articles are largely based on the presumed seriousness of the President's failure to admit the full extent of his inappropriate relationship during his testimony, the relevance of the testimony must be considered.

Paula Jones was seeking to prove unwelcome and unsolicited conduct by the President. Whatever else it was, the President's relationship with Ms. Lewinsky was neither unwanted nor harassing.[41] If the President's testimony under oath is what supports the allegation of abuse of constitutional magnitude, then the immateriality of that testimony makes clear the insufficiency of the Articles recommending impeachment on that basis.

Paula Jones, a former Arkansas state employee, filed a civil lawsuit against the President in 1994 alleging that he had sexually harassed her during an encounter in a hotel room during a government conference. After protracted discovery, the President's motion for summary judgment was granted on the basis that, even if one assumed the truth of *every allegation* made by Jones concerning the President's behavior, Jones failed to prove that she was entitled to any relief as a matter of law. In light of this fundamental weakness in Jones' case, it is exceedingly difficult to establish that the allegedly misleading statements made by the President during his testimony were legally "material" or "capable of influencing" a court.[42] Simply put, Mrs. Jones would have lost her lawsuit regardless of the President's deposition testimony.

In evaluating the Majority's charge, the rulings made by Judge Wright in the *Jones* case must be considered. These are directly relevant to the question whether the President's allegedly false statements could possibly be characterized as violations of the federal law cited by the Referral and relied upon by the Majority. Judge Wright's order excluding evidence concerning Ms. Lewinsky, and her order granting the President's summary judgment motion, clearly establish that any alleged misleading statements by the President concerning his indisputably consensual and nonharassing relationship with Ms. Lewinsky were simply not material matters.

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[40] A lie under oath becomes a criminal offense only when it is "material" to the proceeding in which it is given. Courts have held a statement to be material if it "has a natural tendency to influence, or was capable of influencing, the decision of the tribunal in making a [particular] determination. Proof of actual reliance on the statement is not required; the Government need only make a reasonable showing of its potential effects." *United States* v. *Barrett,* 111 F.3d 947, 953 (D.C. Cir. 1997) (internal quotation omitted) (brackets in original); *see also United States* v. *Moore,* 613 F.2d 1029, 1037–38 (D.C. Cir. 1979) (same); *United States* v. *Icardi,* 140 F. Supp. 383, 388 (D.D.C. 1956) (same).

Significantly, the Supreme Court's recent decision in *United States* v. *Gaudin,* 515 U.S. 506 (1995) strongly suggests the correctness of this standard. There, the Supreme Court considered the question whether, under the federal false statements statute, 18 U.S.C. § 1001, issues of materiality should be decided by the judge or the jury. In his opinion holding that the issue is for the jury, Justice Scalia endorsed the view that a statement is material only if it has a "'natural tendency to influence, or [be] capable of influencing, the decision of the decisionmaking body to which it was addressed." *Gaudin,* 515 U.S. at 509 (quoting *Kungys* v. *United States,* 485 U.S. 759, 770 (1988)) (brackets in original). The Court's interpretation of § 1001 as embodying a "capable of influencing" definition of materiality should be applied to the perjury statutes, which are very similar in scope and purpose.

[41] *See* Equal Employment Opportunity Statement: Executive Office of the President; 29 CFR § 1604.11a.

[42] *United States* v. *Barrett,* 111 F.3d 947, 953 (D.C. Cir. 1997).

On January 29, 1998, the Independent Counsel intervened in the *Jones* case and moved to exclude from that proceeding any evidence regarding Monica Lewinsky.[43] In her order granting that motion, Judge Wright concluded that evidence relating to Monica Lewinsky was not "essential to the core issues in this case."[44] Since Paula Jones' lawyers would have been precluded from introducing any evidence relating to Lewinsky to attack the President's credibility, the President's testimony was not material to the *Jones* case.

On April 1, 1998, Judge Wright granted the President's motion for summary judgment in the *Jones* case.[45] As required by federal law, in reviewing the President's summary judgment motion, Judge Wright assessed the evidence in the case in the light most favorable to Ms. Jones.[46] Nevertheless, Judge Wright concluded that no "rational trier of fact [could] find for [Ms. Jones]," and therefore that there were "no genuine issues for trial[.]"[47] The court's decision undermines the OIC's assumption that the President's testimony regarding Monica Lewinsky could ever be material to the resolution of the specific claims that Ms. Jones made:

> One final matter concerns the alleged suppression of pattern and practice evidence. Whatever relevance such evidence may have to prove other elements of the plaintiff's case, it does not have anything to do with the issues presented by the President's . . . motion[] for summary judgment . . . Whether other women may have been subjected to workplace harassment, and whether such evidence has allegedly been suppressed, does not change the fact that plaintiff has failed to demonstrate that *she* has a case worthy of submitting to a jury.[48]

If Jones' claims failed for lack of proof, nothing the President said about Ms. Lewinsky could possibly have affected the outcome of the case.

The presence of Judge Wright during the deposition and her decision to allow certain questions to be posed does not suggest, as some have argued, that the President's responses to those questions were inevitably material to the *Jones* case. During a discovery deposition, only questions that are wholly *irrelevant* to the underlying action will be disallowed. Relevance in the discovery stage of civil litigation is an exceedingly broad standard which is *not* co-ex-

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[43] The President's actions in supposedly denying a civil litigant access to evidence has been frequently cited as one reason that the President's alleged perjury may constitute an impeachable offense. It is ironic, therefore, that it was the Independent Counsel's insistence that the allegations relating to Ms. Lewinsky merited criminal investigation which actually deprived Mrs. Jones of the ability to present evidence concerning Monica Lewinsky to the court.

[44] Judge Wright's order further held that "some of this evidence might even be inadmissible as extrinsic evidence under Rule 608(b) of the Federal Rules of Evidence." *Jones* v. *Clinton,* No. LR–C–94–290, Order dated Jan. 29, 1998, at 2. Federal Rule of Evidence 608(b) governs a party's ability to introduce specific instances of a witness' prior conduct in order to impeach the witness' credibility. The rule provides, as a general matter, that a witness' prior conduct may not be proved by extrinsic evidence. Judge Wright clearly thought it possible that proof of the President's alleged relationship with Monica Lewinsky would be inadmissible because, at best, it was relevant only to the President's credibility. *See also Jones* v. *Clinton,* No. LR–C–94–290, Order dated Mar. 9, 1998, at 2 (denying motion to reconsider order excluding Lewinsky evidence because "any evidence concerning Ms. Lewinsky would be excluded from the trial of this matter").

[45] *Jones* v. *Clinton,* No. LR–C–94–290, Memorandum Opinion and Order at 10–11 (E.D. Ark. Apr. 1, 1998).

[46] *Id.* at 3 n.3.

[47] *Id.* at 39.

[48] *Id.* at 38–39 (emphasis in original).

tensive with the concept of materiality. The Federal Rules of Civil Procedure provide that discovery may be had on any subject relevant to a pending case, and that the "information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).[49] Courts have held, however, that the mere fact that testimony was deemed permissible is not sufficient to establish materiality.

> [T]he credibility of a witness is always at issue, but not every word of a witness' testimony is invariably material. The materiality of a particular snippet of testimony is not automatically established by the simple expedient of proving that the testimony was given.[50]

In sum, not all testimony that a judge permits to be elicited during a pretrial discovery proceeding can satisfy the materiality requirement that the information be likely to influence the outcome of the case.

Some Members of the Majority and the OIC in press releases that it issued during the course of the Committee's hearings[51] have alleged that the materiality of the President's alleged false statements in Jones v. Clinton has already been dispositively resolved by the United States Court of Appeals for the District of Columbia Circuit.[52] This assertion is misleading and untrue. The litigation referred to by the OIC involved a legal challenge by Ms. Lewinsky's lawyer, Frank Carter, to a subpoena issued by the OIC for testimony and materials protected by the attorney-client privilege. In seeking to compel testimony that would ordinarily be protected by the attorney-client privilege, the OIC argued that it had reason to believe that the attorney-client relationship had been exploited to facilitate the filing of a false affidavit, which would permit ordinarily privileged material to be disclosed pursuant to the "crime-fraud" exception. In opposing this subpoena to her former attorney, Ms. Lewinsky argued that her affidavit related to matters later excluded from the Jones case and, therefore, was not "material" to that proceeding, thereby rendering the truth or falsity of her affidavit legally irrelevant. The D.C. Circuit, in rejecting this argument, did not hold that Ms. Lewinsky's affidavit was relevant to the underlying Jones litigation. Instead, the Court arrived at the much narrower ruling that Ms. Lewinsky's affidavit was relevant to her motion to quash her own subpoena.

> Lewinsky used the statement in her affidavit . . . to support her motion to quash the subpoena issued in the discovery phase of the Arkansas litigation. . . . There can be no doubt that Lewinsky's statements in her affidavit were . . . predictably capable of affecting this decision.

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[49] The drafters of the rule further explained that testimony is proper at a deposition so long as it is part of "a broad search for facts, . . . or any other matter which may aid a party in the preparation or presentation of his case." Fed. R. Civ. P. 26, 1946 Advisory Committee Note.

[50] *United States* v. *Adams,* 870 F.2d 1140, 1147–48 (6th Cir. 1989).

[51] The practice of the OIC to continue to speak publicly and to issue press releases after it made its' 595(c) Referral to Congress bears note. This report points out the bias, impartiality, and "attitude" with which the Referral was written. The fact that the OIC continued to feel the need to defend itself against all possible criticisms—large and small—demonstrates that it was indeed too vested and partial in this entire event.

[52] Appendices to the Referral (Part 1) H. Doc. 103–311 at 294.

> She executed and filed her affidavit for this very purpose.[53]

That Ms. Lewinsky's affidavit was material to her own motion to quash is not surprising, but that holding does not compel the conclusion that the President's testimony concerning Ms. Lewinsky was material to the Jones case. It is a disservice to the state of the record to suggest that the important threshold question of materiality has been conclusively resolved by the D.C. Circuit. Most importantly, as the Majority has argued time and time again, these are not legal proceedings. Although scholars differ about the materiality issue, it cannot be denied that the President's allegedly false statements played no *actual* role in depriving Ms. Jones of any relief she was seeking as a civil litigant. To the contrary, the negative publicity created by both her case and the OIC's involvement in her civil discovery processes may well led the President to offer her a generous settlement despite the decision dismissing her claims. These are legitimate, common-sense considerations which should have weighed more heavily in this Committee's deliberations about the gravity of the offenses alleged. When Judge Webber Wright ruled on April 1 that no matter what the President did with Ms. Lewinsky, Paula Jones herself had not proven that she had been harmed, the court's opinion confirmed that the President's statements, whether truthful or not, were not of the grave constitutional significance necessary to support impeachment.

B. THE ALLEGED PERJURIOUS STATEMENTS WOULD NEVER MERIT PROSECUTION

On December 9, 1998, a panel of five highly regarded former Democratic and Republican federal prosecutors appeared before the Committee and testified that the OIC's case against the President would not have been pursued by a responsible federal prosecutor. It stood to reason, therefore, that if lawyers could agree that the President's conduct would not even merit a criminal prosecution under ordinary circumstances, how could lawmakers in Congress conclude that it amounted to a "high crime?" The bi-partisan panel consisted of:

> Richard J. Davis, former task force leader for the Watergate Special Prosecution Force, and former Assistant Secretary of the Treasury for Enforcement and Operations;
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> Edward S.G. Dennis, Jr., former Acting Deputy Attorney General of the United States, former Assistant Attorney General for the Criminal Division of the Department of Justice, and former United States Attorney for the Eastern District of Pennsylvania;
>
> Ronald K. Noble, former Under Secretary for Enforcement of the Department of the Treasury, former Deputy Assistant Attorney General of the United States, and former Assistant United States Attorney for the Eastern District of Pennsylvania;
>
> Thomas P. Sullivan, former United States Attorney for the Northern District of Illinois; and

[53] *In re Sealed Case,* slip op. at 4–6 (D.C. Cir., Nos. 98–3052, 98–3053, 98–3059, May 26, 1998).

William F. Weld, former Governor of Massachusetts, former Assistant Attorney General in charge of the Criminal Division of the Department of Justice, former United States Attorney for the District of Massachusetts, and House Judiciary Committee Counsel during Watergate.

In his testimony, Mr. Sullivan told the Committee that federal prosecutions for perjury and obstruction of justice are relatively rare, in part, because they are extremely difficult to prove.[54] He explained that the law of perjury "can be particularly arcane, including the requirements that the government prove beyond a reasonable doubt that the defendant knew his testimony to be false at the time he or she testified, that the alleged false testimony was material, and that any ambiguity or uncertainty about what the question or answer meant must be construed in favor of the defendant."[55] He further stated that, as a general matter, "[f]ederal prosecutors do not use the criminal process in connection with civil litigation involving private parties."[56] That is because "there are well established remedies available to civil litigants who believe perjury or obstruction has occurred."[57] Mr. Sullivan testified that "the evidence set out in the Starr report would not be prosecuted as a criminal case by a responsible federal prosecutor."[58]

Mr. Davis testified that in "making a prosecution decision as recognized by Justice Department policy, the initial question for any prosecutor is, can the case be won at trial? Simply stated, no prosecutor should bring a case if he or she does not believe that based upon the facts and the law, it is more likely than not that they will prevail at trial."[59] Mr. Davis added that "[c]ases that are likely to be lost cannot be brought simply to make a point, to express a sense of moral outrage, however justified such a sense of outrage might be."[60] Like Mr. Sullivan, Mr. Davis noted that perjury cases are difficult to prosecute because "questions and answers are often imprecise."[61]

Significantly, Mr. Davis noted that in civil lawsuits, "lawyers routinely counsel their clients to answer only the question asked, not to volunteer and not to help out an inarticulate questioner."[62] Based on his review of the OIC's evidence, Mr. Davis concluded that there does not exist a prosecutable case of perjury against the President arising out of his grand jury testimony. That is because the President "acknowledged to the grand jury the existence of an improper relationship with Monica Lewinsky, but argued with prosecutors questioning him that his acknowledged conduct was not a sexual relationship as he understood the definition of that term being used in the Jones deposition."[63] Put another way, Mr. Davis testified that it would not be possible to prove that the Presi-

[54] 12/9/98 Tr. at 14–15.
[55] 12/9/98 Tr. at 15.
[56] 12/9/98 Tr. at 15.
[57] 12/9/98 Tr. at 16.
[58] 12/9/98 Tr. at 17.
[59] 12/9/98 Tr. at 24.
[60] 12/9/98 Tr. at 24.
[61] 12/9/98 Tr. at 24.
[62] 12/9/98 Tr. at 24.
[63] 12/9/98 Tr. at 26.

dent perjured himself about his subjective understanding of the definition of "sexual relations" drafted by the Jones attorneys.

Mr. Dennis testified that a criminal conviction of the President "would be extremely difficult to obtain in a court of law" because there "is very weak proof of the criminal intent of the President."[64] In addition, Mr. Dennis told the Committee that the "Lewinsky affair is of questionable materiality to the proceedings in which it was raised."[65] According to Mr. Dennis, perjury and obstruction of justice cases arising out of civil litigation involving private parties are "rare," and "rarer still are criminal investigations in the course of civil litigation in anticipation of incipient perjury or obstruction of justice."[66] That is because in the latter circumstances, "prosecutors are justifiably concerned about the appearance that government is taking the side of one private party against another."[67] Under the facts of the Jones case, Mr. Dennis testified that a criminal prosecution was not warranted and "most likely would fail."[68] He concluded that "[c]ertainly the exercise of sound prosecutorial discretion would not dictate prosecuting such a case."[69]

Mr. Noble testified that "a Federal prosecutor ordinarily would not prosecute a case against a private citizen based on the facts set forth in the Starr referral."[70] He explained that "Federal prosecutors and Federal agents, as a rule, ought to stay out of the private sexual lives of consenting adults."[71] Like his colleagues, Mr. Noble agreed that as a general matter "Federal prosecutors are not asked to bring Federal criminal charges against individuals who have allegedly perjured themselves in connection with civil lawsuits."[72] That is because "[b]y their nature, lawsuits have remedies built into the system. Lying litigants can be exposed to such and lose their lawsuits. The judge overseeing the lawsuit is in the best position to receive evidence about false statements, deceitful conduct and even perjured testimony."[73] Mr. Noble also testified that "[n]o prosecutor would be permitted to bring a prosecution where she believed that there was no chance that an unbiased jury would convict[,]" and for that reason urged the Committee to "consider the impact that a long and no doubt sensationalized trial will have on the country, especially a trial that will not result in a conviction."[74]

Finally, Governor Weld testified that in the Reagan Administration, it was not the policy of the Department of Justice "to seek an indictment based solely on evidence that a prospective defendant had falsely denied committing unlawful adultery or fornication."[75] He also testified that under settled principles of federal prosecution, "the prosecutor has to believe that there is sufficient evidence, admissible evidence, to obtain from a reasonable and unbiased jury

[64] 12/9/98 Tr. at 32.
[65] 12/9/98 Tr. at 32.
[66] 12/9/98 Tr. at 33.
[67] 12/9/98 Tr. at 33.
[68] 12/9/98 Tr. at 34.
[69] 12/9/98 Tr. at 34.
[70] 12/9/98 Tr. at 35.
[71] 12/9/98 Tr. at 39.
[72] 12/9/98 Tr. at 41.
[73] 12/9/98 Tr. at 41.
[74] 12/9/98 Tr. at 45.
[75] 12/9/98 Tr. at 48.

a conviction and to sustain it on appeal" before a decision is made to bring a charge against a potential defendant.[76]

Thus, the former federal prosecutors agreed on a number of points. First, they agreed that the criminal law generally is not used to sanction misbehavior that occurs during civil litigation. As Mr. Sullivan explained, "the thrust of what I am saying is that the Federal criminal process simply is not used to determine truth or falsity in statements in civil litigation, and it is particularly true—I mean, that's true, and it is also even more true when you take a situation, as you have here, that the testimony is even peripheral to the civil case involved."[77] Second, they concurred that testimony concerning the President's relationship with Ms. Lewinsky was not material to the *Jones* lawsuit. Mr. Dennis testified that the "Lewinsky affair is of questionable materiality to the proceedings in which it was raised."[78] Third, the panelists agreed that the OIC's case against the President likely could not be sustained in court. As Mr. Noble put it, "I think that it is fairly clear, and that if a poll were taken of former U.S. attorneys from any administration, you would probably find the overwhelming number of them would agree with the assessment that this case is a loser and just would not be sustained in court."[79]

Fourth, the former prosecutors agreed that the charge of obstruction of justice against the President arising out of his conversations with Betty Currie was weak. In the words of Governor Weld, "I think it [the case for obstruction] is a little thin."[80] And finally, they agreed that a charge should not be brought against a defendant unless it can be sustained at trial. As Mr. Sullivan remarked, "I have had situations where my . . . [law enforcement] agents have said to me after discussion about the evidence—and we concluded that we cannot get a conviction or it is likely that we will lose—let's indict him anyway to show him. My response to that is, get out of my office and never come back."[81]

III. The Articles of Impeachment Fail to Establish Impeachable Offenses

A. ARTICLE I ALLEGING PERJURY BEFORE THE GRAND JURY FAILS TO ESTABLISH IMPEACHABLE OFFENSES

The Committee has approved an article of impeachment concerning the President's grand jury testimony which alleges perjurious testimony with respect to the following subject matters: "(1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights actions brought against him; (3) prior false and 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 actions."

[76] 12/9/98 Tr. at 81.
[77] 12/9/98 Tr. at 58.
[78] 12/9/98 Tr. at 32.
[79] 12/9/98 Tr. at 59.
[80] 12/9/98 Tr. at 75.
[81] 12/9/98 Tr. at 81.

1. The President Did Not Commit Impeachable Offenses When Testifying About "the nature and details of his relationship with a subordinate Government employee"

Specific details of the allegedly perjurious statements described by this subparagraph were not included in the articles. In the absence of such specifics, the Minority has no choice but to presume that the Committee intends to parrot the allegations of grand jury perjury contained in the OIC's Referral. The Referral alleged that the President perjured himself in his grand jury testimony by responding to questions concerning the physical nature of his relationship with Ms. Lewinsky in the following ways:

> The President testified that he understood the definition of "sexual relations" given to him in the Jones deposition not to include oral sex performed on him.
>
> The President asserted that his admittedly intimate contacts with Ms. Lewinsky did not constitute "sexual relations" as the President testified he understood that term to be defined in the Jones deposition.
>
> The President testified that his physical relationship with Ms. Lewinsky did not begin until early 1996, rather than late 1995, as recalled by Ms. Lewinsky.

The Majority Counsel, in his presentation, additionally alleged that the President testified falsely to the grand jury concerning the following issues:

> The exact number of the President's meetings with Ms. Lewinsky.
>
> The exact number of his telephone conversations with Ms. Lewinksy that included sexual banter.

This Committee has not been presented with clear and convincing evidence that the President's testimony on any of subjects was intentionally false. More importantly, there is no real prospect that a Senate trial would ever find sufficient evidence to convict the President of impeachable offenses based on these allegations.

(a) The President did not commit an impeachable offense when testifying about his understanding of the definition of "sexual relations" presented to him during his civil deposition in the Jones case

It is alleged that the President falsely testified before the grand jury that he genuinely believed that the definition of "sexual relations" presented to him in the *Jones* case did not include oral sex. This charge turns, of course, on the nearly impossible task of demonstrating that the President's was not testifying truthfully about his subjective understanding of a complicated and abstract legal definition of "sexual relations" presented to him for the first time on the day of the *Jones* deposition and modified by the presiding judge in response to the President's objections.

At the beginning of the *Jones* deposition, the President was presented with the following definition of sexual relations:

> For the purposes of this deposition, a person engages in "sexual relations" when the person knowingly engages in or causes—

> (1) contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person[.]
>
> (2) contact between any part of the person's body or an object and the genitals or anus of another person; or (3) contact between the genitals or anus of the person and any part of another person's body.
>
> "Contact" means intentional touching, either directly or through clothing.

The proposed use of this definition by the Jones attorney drew heated and protracted objections based on its ambiguous wording and the potential for confusion. The President's lawyer, Robert Bennett, argued: "I think this could really lead to confusion, and I think it's important that the record be clear . . . I do not want my client answering questions not understanding exactly what these folks are talking about."[82] Counsel for the President's co-defendant, former Arkansas trooper Danny Ferguson, also objected. "Frankly, I think it's a political trick [the definition], and I've told you [Judge Wright] before how I feel about the political character of this lawsuit."[83] The President's counsel invited the *Jones* attorneys to questions the President directly about his conduct regardless of the embarrassing nature of the questions. "Why don't they ask him about what happened or what didn't happen?" In retrospect, these objections were especially well-taken since we now know that Jones's attorneys had been extensively debriefed the previous evening by Ms. Lewinsky's confidante, Linda Tripp. Judge Wright, in response to these objections, amended the definition by striking subparts (2) and (3), allowing only subpart (1) to stand. When the plaintiff's attorneys sought to introduce another convoluted definition, Judge Wright, apparently regretting her previous ruling permitting the earlier use of such definitions during questioning, rejected the plaintiff's additional proposed definition due to its confusing nature, and concluded: "I'm not sure Mr. Clinton knows all these definitions, anyway."[84] When the President was later asked by the *Jones* attorneys whether his contacts with Ms. Lewinsky fit within their tortured definition of sexual relations, he understandably denied that this was so.[85]

During the President's August 17, 1998 grand jury testimony, the OIC prosecutor returned to this topic and asked whether the President regarded oral sex as falling within the definition provided to him in the Jones deposition.

> Q: [I]s oral sex performed on you within the definition as you understood it, the definition in the *Jones* . . .
>
> As I understood it, it was not; no.[86]

The President was consistent in his interpretation that sexual relations are distinct from oral sex, and, thus, that his physical relations with Ms. Lewinsky did not meet the definition provided in the Jones case. For example, he testified that when he was presented

[82] Clinton 1/17/98 Depo at 20.
[83] Clinton 1/17/98 Depo at 20.
[84] Clinton 1/17/98 Depo at 25.
[85] Clinton 1/17/98 Depo at 78.
[86] Clinton 8/17/98 GJ at 93.

with the definition in the Jones case he was very uncomfortable because he had to acknowledge that, in one instance, he had engaged in conduct that met the definition of "sexual relations":

> All I can tell you is, whatever I thought was covered, and I thought about this carefully. And let me just point out, this was uncomfortable for me. I had to acknowledge, because of this definition, that under this definition I had actually had sexual relations with Gennifer Flowers, a person who had spread all kinds of ridiculous, dishonest, exaggerated stories about me for money. And I knew when I did that, it would be leaked. It was. And I was embarrassed. But I did it.
>
> * * * * * * *
>
> Let me remind you, sir, I read this carefully. And I thought about it. I thought about what "contact" meant. I thought about what "intent to arouse or gratify" meant. And I had to admit under this definition that I'd actually had sexual relations with Gennifer Flowers. Now, I would rather have taken a whipping than done that, after all the trouble I'd been through with Gennifer Flowers[87]

The lawyers in the *Jones* deposition simply did not ask the question most relevant to uncovering the nature of the physical contact between the President and Ms. Lewinsky. The world now knows why these attorneys asked the questions couched in the definitions they invented. They were, in fact, trying to create the very chaos and confusion that has occurred. They were not seeking information; they already had it from Linda Tripp. What they were seeking was to set the President up. If they had asked real questions, seeking real information, and had raised specific conduct, we might have avoided this charge in the Referral entirely. The President testified that he had no intention of avoiding a question regarding oral sex; he just wasn't asked about it:

> Q. Would you have been prepared, if asked by the Jones lawyers, would you have been prepared to answer a question directly about oral sex performed on you by Monica Lewinsky?
>
> A. If the Judge had required me to answer it, of course, I would have answered it. And I would have answered truthfully. . . .[88]

There is no evidence of intent on the President's part to commit perjury in his grand jury appearance—the President simply explained and re-explained his interpretation of the definition of sexual relations provided to him by the lawyers in the *Jones* case.

When a question is "fundamentally ambiguous," the answers to the questions posed are insufficient as a matter of law to support a perjury conviction.[89] Simply put, *when there is more than one way of understanding the meaning of a question*, and the witness

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[87] Clinton 8/17/98 GJ at 150.

[88] Clinton 8/17/98 GJ at 151.

[89] *See, e.g., United States* v. *Finucan*, 708 F.2d 838, 848 (1st Cir. 1983); *United States* v. *Lighte*, 782 F.2d 367, 375 (2d Cir. 1986); *United States v.* Tonelli, 577 F.2d 194, 199 (3d Cir. 1978); *United States v.* Bell, 623 F.2d 1132, 1337 (5th Cir. 1980); *United States v.* Wall, 371 F.2d 398, 400 (6th Cir. 1967); *United States v.* Williams, 552 F.2d 226, 229 (8th Cir. 1977).

has answered truthfully as to his understanding, he cannot commit perjury.

Even assuming, for the sake of argument, that the President's definition of sexual relations is too narrow, even in the context of the *Jones* deposition, the record shows at most that the President may have been mistaken in construing the definition too narrowly, not that he intended to lie. It is well established that inaccurate or false testimony which is provided as a result of confusion or mistake cannot form the basis for a perjury charge.[90]

(b) The President did not commit an impeachable offense when testifying about the nature of his intimate contacts with Ms. Lewinsky

Article I also appears to encompass the allegation that the President testified falsely when he denied during his grand jury testimony that his intimate physical contact with Ms. Lewinsky fell within the definition presented to him in the *Jones* deposition. We do not believe that the constitutional responsibilities of this Committee compel a detailed regurgitation of the salacious details concerning the alleged physical contact between the President and Ms. Lewinsky. Considerations of personal privacy and institutional dignity must hold some sway in this process, especially where this factual question, even if dispositively resolved against the President, cannot merit his impeachment.

In a prolonged Senate trial, additional evidence could conceivably be amassed concerning the intimate details of the physical relationship between the President and Ms. Lewinsky, but that is not necessary. The President's alleged misstatements *about this matter* would not warrant the inquiry suggested by the Majority. These were statements made in a civil case that was based on allegations of sexual harassment, not consensual sexual relationships; these were statements made under a very narrow and confusing definition of "sexual relations;" and these were statements not material to the decision in the case. In the end, these statements denying an improper relationship were made with the primary purpose of attempting to conceal what the President himself has acknowledged was a serious lapse of judgment concerning a private matter, rather than a corrupt attempt to impede the administration of justice.

It is equally important to note that the evidence does not provide clear and convincing proof that the President has testified in an intentionally false manner concerning the nature of his intimate contacts with Ms. Lewinsky. Article I rests on the OIC's untenable assumption that there is no possibility that Ms. Lewinsky's memory is inaccurate or that she was, to some extent, untruthful. As the Referral states: "There *can be no contention* that one of them has a lack of memory or is mistaken."[91] Independent Counsel Starr at his November 19, 1998 appearance before the Committee all but stated that Ms. Lewinsky was not to be believed on a variety of issues (*e.g.*, whether she was denied a chance to call her attorney when she was first confronted, whether she was asked to wear a

[90] *See United States v.* Dunnigan, 507 U.S. 87, 94 (1993): Department of Justice Manual, at 9–69.214 (Supp. 1997).

[91] Referral at 148.

wire to tape record Vernon Jordan and the President, and whether she really believed that "no one asked her to lie, and no one promised her a job for her silence"). The OIC then reiterated the same lack of confidence in Ms. Lewinsky in its December 11, 1998 written responses to the Committee's questions following his November 19 appearance, repeatedly asserted that Ms. Lewinsky's grand jury testimony concerning the conduct of OIC prosecutors was false. For example, the OIC denied the truthfulness of Ms. Lewinsky's sworn testimony that she had been threatened with a jail sentence of 27 years, that her mother had been threatened with prosecution, and that she had been asked to secretly tape record conversations with Betty Currie, Vernon Jordan and possibly the President. As Rep. Watt asked during his questioning of the Independent Counsel, "how are you picking and choosing what you believe from Ms. Lewinsky?"[92]

More specifically, the record is replete with evidence that Ms. Lewinsky's memory, standing alone, does not constitute clear and convincing evidence on the disputed issues of fact concerning her intimate contacts with the President. If the House is going to discharge its constitutional responsibilities to send charges to the Senate only upon "clear and convincing" evidence, it must review the contradictions in the record with respect to Ms. Lewinsky. This is especially true with respect to times that Ms. Lewinsky was contemporaneously describing "the nature and details" of her relationship with the President to her friends and acquaintances—the very issue about which a trial in the Senate would have to occur. However, the Minority has been seeking, and continues to seek to avoid entirely, any further inquiry into these matters and thereby spare Ms. Lewinsky further personal embarrassment. That is why it has pointed out that the immateriality of these allegedly false statements concerning these matters is dispositive of the issue.

As a general matter, the Independent Counsel's Referral acknowledges (albeit in a footnote) that Ms. Lewinsky has certain credibility problems due to "her perjurious *Jones* affidavit, her efforts to persuade Linda Tripp to commit perjury, her assertion in a recorded conversation that she had been brought up to regard lying as necessary, and her forgery of a letter while in college.[93] As a result, the Independent Counsel placed great weight on statements made by Ms. Lewinsky to her confidantes concerning the nature and character of her physical contacts with the President.[94] Indeed, on the narrow factual question in dispute concerning the exact nature of their physical contacts, Ms. Lewinsky's contemporaneous statements to her associates are the only corroborating evidence offered for Ms. Lewinsky's account. A more detailed examination of the record reveals, however, that the mere fact that, on more than one occasion, Ms. Lewinsky volunteered information to friends about the details of her relationship with the President is not a reliable indicator of the truthfulness of that information.

For example, Ms. Lewinsky confided to her friend, Kathleen Estep, on one occasion, that the President was brought to her

[92] 11/19/98 Hearing Tr. at 236.
[93] Referral at 12, n. 8.
[94] Referral at 13.

apartment at 2:00 a.m. by the Secret Service.[95] Not only did Ms. Estep conclude that Ms. Lewinsky was lying to her about this incident, but the OIC found no evidence that such a visit had occurred.[96] Similarly, Ms. Lewinsky told her friend, Dale Young, that she had recorded some of the President's late night telephone calls to her.[97] No such recordings were ever recovered and Ms. Lewinsky never told the OIC about such recordings during her extensive debriefings with them. When interviewing for a job in New York, Ms. Lewinsky told one of her interviewers that she had lunch with Hillary Clinton the previous week and that the First Lady had offered to help Ms. Lewinsky find an apartment in New York.[98] It was the impression of the interviewer that "Lewinsky's comments strained credulity."[99]

Ms. Lewinsky also offered untruthful details to her friends about the nature of her intimate contacts with the President. For example, Ms. Lewinsky told a friend about a sexual encounter with the President where she was fully unclothed[100], but told the grand jury that neither she nor the President ever fully disrobed.[101] Ms. Lewinsky told both Ashley Raines and Linda Tripp that her sexual relations with the President included, on occasion "reciprocal oral sex."[102] Ms. Lewinsky told the grand jury, however, that she never received oral sex from the President.[103]

These conflicting accounts are all the evidence available to the Committee on this narrow issue. It is not necessary to conclude, however, that either Ms. Lewinsky or the President is intentionally falsifying their respective accounts of their intimate contacts. The record before us suggests that recollections can vary according to the witness' perspective. For example, Ms. Lewinsky testified before the grand jury that she "does not have a memory" of how she "made it clear that she intended to deny" the sexual relationship with the President (as she said in her proffer), but insists she was telling the truth at the time she wrote that.[104] In a remarkable exchange, the OIC prosecutors suggested that one reason for her inability to remember may be her guilt over getting Jordan in trouble:

> Q. But—and I think you also said you feel some—I don't know if this is the reason you don't remember it, but—you have expressed to us that you feel some guilt about Vernon Jordan. Is that correct?
>
> A. Yes.
>
> Q. Okay. Can you tell us why that is?
>
> A. He was the only person who did what he said he was going to do for me and—in getting me the job. And when I met with Linda on the 13th, when she was wearing a wire, and even in subsequent or previous conversations

[95] Estep 8/23/98 302 at 3.
[96] Estep 8/23/98 302 at 3.
[97] Young 6/23/98 GJ at 48.
[98] Nancy Ridson 1/26/98 302.
[99] Nancy Ridson 3/27/98 302.
[100] Erbland 2/12/98 GJ at 26 ("She told me that she had given him [oral sex] and she had had all of her clothes off, . . ").
[101] "[N]either of us ever really took—completely took off any piece of our clothing, I think specifically because of the possibility of encounters . . ." Lewinsky 8/26/98 GJ at 43–44.
[102] Raines 1/25/98 302 at 1; Tripp 7/2/98 GJ at 101.
[103] Lewinsky 8/6/98 GJ at 19.
[104] Lewinsky 8/6/98 GJ at 178–79.

> and subsequent conversations, I attributed things to Mr. Jordan that weren't true because I knew that it had leverage with Linda and that a lot of those things that I said got him into a lot of trouble and I just—he's a good person.[105]

This is not the only failure of Ms. Lewinsky's recollection concerning Mr. Jordan. For example, Ms. Lewinsky told the OIC in an interview that she never explained to Jordan what phone sex was, but testified in her grand jury appearance that she did.[106] The OIC's indulgence of the memory lapses of its star witness on a key point in her proffer does not strike the Minority as wholly unreasonable. Instead, the Independent Counsel gave Ms. Lewinsky the benefit of the doubt based on the apparent assumption that recollections can honestly fail concerning subjects that cause the witness emotional pain.[107] On the basis of the record before us, particularly in light of the gravity of this impeachment proceeding, every consideration should also be given to the possibility that the differing recollections of the President and Ms. Lewinsky may be colored by their differing emotional perspectives concerning the intimate events at issue. As Ms. Lewinsky testified before the grand jury, the President's description of the limited nature of their physical contacts was interpreted by her as a repudiation of the emotional component of their relationship that reduced it to a mere "service contract."[108] It is incumbent on us to consider the possibility that her emotional perspective could lead a mistaken but good-faith recollection about the nature of their contacts.

Likewise, the President's recollection of the limited nature of their sexual contacts was not a subject of emotional indifference to him. Ms. Lewinsky testified to the grand jury that the President's refusal to engage in specific sexual acts was his way of rationalizing his behavior.[109] Ms. Lewinsky herself described the depth of the President's emotional reaction when he rebuffed her sexual overture to him in August of 1997, several months after the President had ended their relationship. According to Ms. Lewinsky, she was "shocked" about the extent to which the President became "visibly upset" and "emotionally upset" about her overture.[110] The President's public expressions of guilt and remorse over his inappropriate conduct underscore this same point.

In light of the contradictory state of the evidence, the uncertain probative worth of Ms. Lewinsky's contemporaneous statements to friends and the other failures of recollection documented in the record, it seems highly unlikely that a Senate trial will ever be able to adduce clear and convincing evidence that the President intentionally lied to the grand jury about the exact nature of his intimate contacts with Ms. Lewinsky.

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[105] Lewinsky 8/6/98 GJ at 179–180.

[106] See Lewinsky 8/6/98 GJ at 143; cf. Lewinsky 8/1/98 OIC 302 at 8; Lewinsky 7/27/98 OIC 302 at 9.

[107] In his testimony before the Committee, Independent Counsel Starr reiterated that people can have different perceptions about these kinds of events without one being called a liar.

[108] Lewinsky 8/20/98 GJ at 54.

[109] Lewinsky 8/20/98 GJ at 24.

[110] Lewinsky 8/26/98 GJ at 51–52; see also Lewinsky 8/20/98 GJ at 70.

(c) The President did not commit an impeachable offense when testifying about the date on which his inappropriate contacts with Ms. Lewinsky began

Article I also alleges that the President made a false statement to the grand jury regarding the timing of the beginning of his relationship with Ms. Lewinsky. The Referral charges the President with making a false statement because he testified to the grand jury that his inappropriate relationship with Ms. Lewinsky began in early 1996, whereas Ms. Lewinsky testified that their relationship began in November 1995. In the Majority Staff's initial presentation to the Committee on October 5, when it was debating whether to recommend the initiation of a formal impeachment inquiry, this particular allegation of false testimony to the grand jury was not even mentioned. During a hearing the Committee conducted on December 1, 1998, the Chairman even stated that this charge was a "particularly weak" one. Now, based on the exact same evidentiary record, the charge has been resurrected. Even assuming Ms. Lewinsky is correct in her recollection, the statement by the President regarding the timing of the relationship is completely immaterial to the grand jury's investigation.

A statement must be material to be perjurious. Certainly the President's testimony concerning the date that his intimate contacts with Ms. Lewinsky began could not have made any difference to the grand jury's inquiry into whether the President lied during the Jones deposition about having sexual relations with Ms. Lewinsky. The President has admitted that he had an inappropriate relationship with Ms. Lewinsky. The differing, yet immaterial, recollections of Ms. Lewinsky and the President as to the commencement of the consensual relationship—a quibble over whether the relationship began in November 1995 or February 1996—could not possibly support a charge of criminal perjury, much less an article of impeachment.

Moreover, the evidence in support of the proposition that the President testified falsely on this point is exceedingly slight. The Independent Counsel's Referral supports this charge by arguing that the President was motivated to lie about the date on which his physical relationship with Ms. Lewinsky started because the President did not want to admit having an inappropriate relationship with an intern.[111] As support for this assertion, the Referral cites a comment from the President to Ms. Lewinsky where, according to Ms. Lewinsky, the President said that her "pink intern pass" was "going to be a problem."[112] The Referral suggests that the President intentionally misled the grand jury concerning the beginning of his relationship to avoid having to acknowledge inappropriate physical contact with Ms. Lewinsky while she was an intern.[113] This is an extremely unconvincing argument.

First, the President's admission in his grand jury testimony of his inappropriate physical contacts with Ms. Lewinsky sparked an entirely foreseeable firestorm of intense public criticism of the President's conduct. The suggestion that the President inten-

[111] Referral at 149.
[112] Lewinsky 7/30/98 302 at 6.
[113] Referral at 149.

tionally sought to mislead the grand jury based on the hope that such public criticism could be muted by obscuring Ms. Lewinsky's employment status at the time the relationship began seems strained, to say the least. Second, the evidence in the record strongly suggests a much more plausible alternative explanation for the President's comment to Ms. Lewinsky about her intern pass: namely, that he was concerned that this pass did not allow her access to the West Wing without an escort. Ms. Lewinsky confirmed that to be the President's concern when he made the statement to her.[114] The attempt to characterize the President's mere confusion over dates as an intentionally perjurious statement finds no persuasive support in the record.

(d) The President did not commit an impeachable offense when testifying about the number of occasions on which he was alone with Ms. Lewinsky and the number of occasions on which they were having phone sex

The Majority Counsel's presentation, alleged not only the false statements to the grand jury outlined above, but also that the President intentionally perjured himself when he admitted to the grand jury that he had been alone with Ms. Lewinsky on "certain occasions" and that he "also had occasional telephone conversations with Lewinsky that included sexual banter." Incredibly, the Majority Counsel charges that these candid admissions were, in fact, intentionally false because the record suggests that the President was alone with Ms. Lewinsky on twenty occasions and that the President had seventeen phone conversations with Ms. Lewinsky that included sexual banter. The Majority Counsel offered no support for his contention that the President's description was intentionally false except to offer his opinion that "[o]ccasional sounds like once every four months or so doesn't it." In fact, the dictionary defines "occasional" as an event "occurring at irregular or infrequent intervals."[115] The meetings between Ms. Lewinsky and the President were, in fact, "irregular and infrequent."[116] The Majority Counsel also refused to offer any reason why he or the grand jury would be legitimately interested in the exact number of telephone calls between the President and Ms. Lewinsky that included sexual banter. The President was never asked about such phone calls during the *Jones* deposition (because phone sex was plainly not within the definition in that case) and this issue was, therefore, wholly irrelevant to the questions that the grand jury was examining concerning the truth of the President's statements during that deposition. The mere fact that the President chose not to include as many salacious details in his statement to the grand jury as the Independent Counsel included in his Referral hardly constitutes an intentional falsehood, much less an impeachable offense. To even refer to such trivial matters amply demonstrates the underlying partisanship of these proceedings and undermines the Majority's claim that this inquiry is not about sex.

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[114] Lewinsky 8/24/98 FBI 302 form at 5.
[115] Webster's Collegiate Dictionary (10th ed. 1997).
[116] Referral at 156 n.160; GJ Exhibit ML–7 (chart prepared by OIC based on Lewinsky's testimony listing, inter alia, all visits with the President).

2. The President Did Not Commit An Impeachable Offense When Testifying About His Prior Testimony In The Jones Civil Deposition

This subsection of Article I represents a dramatic departure from the approach utilized by the Independent Counsel's Referral by alleging that the President's descriptions and justifications for his allegedly perjurious statements in the *Jones* civil deposition were themselves perjurious. The Majority has offered no formal specifications of which statements fall into this category. Instead, in response to objections stated during public debate about the Article's lack of specificity, the Members indicated an intention to refer the full House and the Senate to the presentation by the Majority Counsel and the record of the debates within the Committee. With these stated intentions as the only available guidance concerning the particulars of this subsection, our review suggests that the following statements are at issue:

The President's explanation of his response to questions during the *Jones* deposition concerning who had told him that Ms. Lewinsky had been subpoenaed.

The President's explanation of his response to questions during the *Jones* deposition concerning whether he had exchanged gifts with Ms. Lewinsky.

The President's explanation of why he characterized Ms. Lewinsky's affidavit as "true" during the *Jones* deposition.

Each of these alleged false statements are analyzed in detail in the following section in connection with Article II, which explains why the President's testimony during *Jones* deposition, as well as his explanation of that testimony during his grand jury appearance, was not intentionally false and did not constitute an impeachable offense. See Section III.B, infra.

3. The President Did Not Commit An Impeachable Offense When His Attorney Characterized the Contents of Ms. Lewinsky's Affidavit to the Presiding Judge in the Jones case

In another departure from the approach taken by the Independent Counsel's Referral, the Majority, without the benefit of any additional evidence, has recycled an allegation that Mr. Starr used solely in support of his claim that the President committed perjury during his civil deposition. This approach bootstraps the same facts into a new and separate allegation of grand jury perjury.

The basis for the allegation in this subsection is the President's failure to volunteer information during the *Jones* deposition when Mr. Bennett, while discussing the appropriate scope of questioning by plaintiff's attorneys, characterized Ms. Lewinsky's affidavit as saying that "there is no absolutely no sex of any kind in any manner, shape or form, with President Clinton. . . ."[117] As a threshold matter, no charge of perjury can exist without some perjurious statement by the defendant. Here, of course, the Majority appears to advance a new theory of criminal liability: the imputed perjurious statement. Notwithstanding the legal irrelevance Mr. Bennett's

[117] Clinton 1/17/98 Depo at 54.

statement, the President explained in his grand jury testimony that he was not paying close attention to his lawyer's comments.

> I don't believe I ever even focused on what Mr. Bennett said in the exact words he did until I started reading this transcript carefully for this hearing. That moment, that whole argument just passed me by. I was a witness. I was trying to focus on what I said and how I said it.[118]
>
> I was not paying a great deal of attention to this exchange. I was focusing on my testimony. . . . I'm quite sure that I didn't follow all the interchanges between the lawyers all that carefully. And I don't really believe therefore, that I can say Mr. Bennett's testimony or statement is testimony or is imputable to me. I didn't—I don't know that I was even paying that much attention to it.[119]

The Majority Counsel argues that this was a perjurious statement because the videotape of the deposition supposedly shows that the President was paying attention. The evaluation of the demeanor of a witness is traditionally reserved to the ultimate fact-finder, but a review of the tape does not reveal any outward sign that the President is in fact following or agreeing with Mr. Bennett's colloquy with the judge. The President appears to be looking in Mr. Bennett's direction, but he neither nods his head nor makes any other facial expression from which his awareness of the import of Mr. Bennett's remarks may be inferred. On many other occasions during the videotaped deposition, the viewer can see the President nodding or making some other gesture of acknowledgment which is not the case in this exchange. In addition, the article fails to state that the President obviously was thinking as fast as he could as he just realized that someone was setting him up with respect to the relationship with Ms. Lewinsky. He was, no doubt, taking every break from questions and answers he could to try to figure out how much the *Jones* attorneys knew and where the questions were heading. It is completely logical to think that he was not paying attention under all of these circumstances.

Finally, it is important to note that, as with all of the other alleged perjurious statements, Judge Wright retained the inherent authority to impose sanctions, including criminal contempt, on the President for his alleged conduct during the deposition. Indeed, Judge Wright was invited to do just that by the *Jones* attorneys, but has, to date, declined to take any such action. We believe that the district judge's forbearance in this matter is a legitimate factor that weighs against the supposed gravity of the allegations leveled against the President.

4. The President Did Not Commit An Impeachable Offense When He Testified About Allegations That He Had Obstructed Justice

In another apparent attempt to bolster the article charging grand jury perjury, the Majority has included new allegations of perjury in the grand jury not detailed in the Independent Counsel's Referral concerning the President's responses to questions about the actions that are alleged to constitute obstruction of justice. It is sig-

[118] Clinton 1/17/98 Depo at 29.
[119] Clinton 1/17/98 Depo at 58–59.

nificant that the Independent Counsel, with all his prosecutorial zeal, declined to "double charge" the President with both obstruction of justice *and* separate charges of perjury based solely on his denials that he committed obstruction of justice. The Majority, however, has shown no similar reluctance to pile on duplicative charges. Once again, without a formal statement of the alleged false statements, the Minority is left to guess from the Majority Counsel's presentation, and other exchanges during Committee debates, that this subpart of the article refers to the following statements:

> The President's testimony that he could not recall, but did not dispute, making a 2:00 a.m. telephone call to Ms. Lewinsky on December 17.
>
> The President's testimony concerning his discussion with Ms. Lewinsky on December 28, during which meeting it is alleged that Ms. Lewinsky asked about what to do in response to any request from the *Jones* lawyers for gifts he had given her.
>
> The President's testimony concerning his purpose in speaking with his secretary, Betty Currie, following the *Jones* deposition.

As noted above, these allegations essentially restate charges that are contained in Article III, which alleges obstruction of justice. In order to avoid unnecessary duplication (a goal not shared by these needlessly repetitive articles of impeachment), the Minority's views on the substance of these allegations are discussed below in the section addressing Article III. *See* Section III.C, *infra.*

B. ARTICLE II'S ALLEGATIONS OF PERJURY IN THE JONES CIVIL DEPOSITION FAIL TO ESTABLISH AN IMPEACHABLE OFFENSE

The second article of impeachment charges the President with unspecified instances of perjurious testimony concerning three broad subject-matter areas: (i) the "nature and details of his relationship with a subordinate Government employee"; (ii) his "knowledge of that employee's involvement and participation in the civil rights action brought against him'; and (iii) his "corrupt efforts to influence the testimony of that employee." Although the alleged perjurious statements contemplated by this article are not identified, the Minority believes that the article contemplates at least the following allegations.

1. The President Did Not Commit An Impeachable Offense When He Testified about the Nature of His Relationship with Ms. Lewinsky

During his deposition in the *Jones* case, the President testified that his intimate contact with Ms. Lewinsky could not be accurately characterized as a "sexual relationship," a "sexual affair," or even "sexual relations" as that term was used by Ms. Lewinsky in her affidavit, which was presented to the President during his deposition. It is now a matter of record that the President and Ms. Lewinsky enjoyed intimate contact, but never had sexual intercourse. The question whether the President's responses can be labeled as perjurious turns, therefore, on whether the President testified in an intentionally false manner when he denied various questions inquiring into whether he had "sex" with Ms. Lewinsky.

There is substantial evidence in this record that the President's responses, although evasive and misleading, did reflect a genuinely-held and not unreasonable belief that the limited nature of his intimate contacts with Ms. Lewinsky did not require him to respond affirmatively to the questions put to him on this subject.

The President testified during his grand jury appearance that he understood questions concerning sexual relations to be inquiring into whether he had had intercourse with Ms. Lewinsky:

> If you said Jane and Harry have a sexual relationship, and you're not talking about people being drawn into a lawsuit and being given definitions, and then a great effort to trick them in some way, but you are just talking about people in ordinary conversations, I'll bet the grand jurors, if they were talking about two people they know, and said they have a sexual relationship, they meant they were sleeping together; they meant they were having intercourse together.[120]

Ms. Lewinsky was similarly convinced that her contacts with the President did not constitute "sex." In an illegally recorded telephone conversation with Ms. Tripp, Ms. Lewinsky confided that she did not believe that her contacts with the President amounted to sex:

> Tripp: Well, I guess you can count [the President] in a half-assed sort of way.
> Lewinsky: Not at all. I never even came close to sleeping with him.
> Tripp: Why, because you were standing up.
> Lewinsky: We didn't have sex, Linda. Not—we didn't have sex.
> Tripp: Well, what do you call it?
> Lewinsky: We fooled around.
> Tripp: Oh.
> Lewinsky: Not sex.
> Tripp: Oh, I don't know. I think if you go to—if you get to orgasm, that's having sex.
> Lewinsky: No, it's not. It's——
> Tripp: Its not having——
> Lewinsky: Having sex is having intercourse.[121]

Another friend of Ms. Lewinsky's, Dale Young, testified before the grand jury that Ms. Lewinsky had told her that "she didn't have sex with the President," and that when Ms. Lewinsky referred to sex she meant "intercourse."[122] The genuineness of President Clinton's beliefs on this subject is even supported by the OIC's account of Ms. Lewinsky's testimony during an interview with the FBI:

> [A]fter having a relationship with him, Lewinsky deduced that the President, in his mind, apparently does not con-

[120] Clinton 8/17/98 GJ at 21.
[121] Lewinsky/Tripp 10/3/97 Tr.0018 at 49.
[122] Young 6/23/98 GJ at 91.

> sider oral sex to be sex. Sex to him must mean intercourse.[123]

The record is convincing that these beliefs were not only genuinely held, but objectively reasonable. Numerous dictionary definitions support both the President's and Ms. Lewinsky's interpretation of sexual relations as necessarily including intercourse.

> Webster's Third New International Dictionary (1st ed. 1981) at 2082, defines "sexual relations" as "coitus;"
>
> Random House Webster's College Dictionary (1st ed. 1996) at 1229, defines "sexual relations" as "sexual intercourse; coitus;"
>
> Merriam-Webster's Collegiate Dictionary (10th ed. 1997) at 1074, defines "sexual relations" as "coitus;'
>
> Black's Law Dictionary (Abridged 6th ed. 1991) at 560, defines "intercourse" as "sexual relations;" and
>
> Webster's Tenth Edition defines "sexual relations" as "coitus" which is defined as "intercourse."

In short, the evidence supports only the conclusion that the President's responses with respect to these undefined terms were truthful and good faith responses to indisputably ambiguous questions. There is no evidence to the contrary.

2. The President Did Not Commit An Impeachable Offense When He Testified about Meeting Alone with Lewinsky

Some Minority Members of the Committee have expressed discomfort with the President's responses during the *Jones* deposition to questions about whether he was ever alone with Ms. Lewinsky, some even concluded that they believed his testimony may have been false. The President's counsel, however, has strongly argued that the President's responses on this point cannot be characterized as perjurious.

> President Clinton's deposition testimony regarding whether he was alone with Ms. Lewinsky at various times and places does not constitute perjury. The fundamental flaw in the charge is that it is based on a mischaracterization of the President's testimony—the President did not testify that he was never alone with Ms. Lewinsky.
>
> Both the Starr Referral and Mr. Schipper's presentation to the Committee start from the incorrect premise that the President testified that he was never alone with Ms. Lewinsky. In fact, the President did not deny that he had been alone with Ms. Lewinsky. For example, the President answered "yes" to the question "your testimony is that it was possible, then, that you were alone with her . . .?"[124]

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[123] App. at 1558 (8/19/98 FBI 302 Form Interview of Ms. Lewinsky).

[124] Clinton 1/17/98 Depo at 53. In his grand jury testimony the President stated that he had been alone with Ms. Lewinsky. *See, e.g.,* App. at 481. The term "alone" is vague unless a particular geographic space is identified. For example, Ms. Currie testified that "she considers the term alone to mean that no one else was in the entire Oval Office area." Supp. at 534–35 (1/24/98 FBI Form 302 Interview of Ms. Currie; *see also* Supp. at 665 (7/22/98 grand jury testimony of Ms. Currie) ("I interpret being 'alone' as alone . . . [W]e were around, so they were never alone."). Ms. Currie also acknowledged that the President and Ms. Lewinsky were "alone" on

> Whatever confusion or incompleteness there may have been in the President's testimony about when and where he was alone with Ms. Lewinsky cannot be charged against the President. The *Jones* lawyers failed to follow up on incomplete or unresponsive answers. They were free to ask specific follow-up questions about the frequency or locale of any physical contact, but they did not do so. This failure cannot be used to support a charge of perjury.[125]

In addition to the evidentiary questions raised by the President's counsel, the lack of materiality of any of the President's responses concerning Ms. Lewinsky in the *Jones* litigation undercuts arguments that false statements in this civil deposition could support the criminal charge of perjury, much less constitute an impeachable offense.

3. The President Did Not Commit An Impeachable Offense When He Testified about Gifts He Exchanged with Lewinsky

The President's civil deposition testimony has been seriously mischaracterized by suggestions that the President falsely stated that "he could not recall whether he had given any gifts to Ms. Lewinsky."[126] In fact, the President's response, fairly read, clearly concedes that he had given Ms. Lewinsky gifts, but that he could not specifically recall *what they were.*

> Q. Well, have you given any gifts to Monica Lewinsky?
> A. I don't recall. *Do you know what they were?*[127]

President Clinton confirmed to the grand jury that this was the proper interpretation of his response.

> I think what I meant there was I don't recall what they were, not that I don't recall whether I had given them.[128]

The Majority Counsel, in his December 10 presentation to the Committee, claimed that this response was perjurious on the theory that an answer that "baldly understates a numerical fact" in "response to a specific quantitative inquiry" may be technically true but is actually false.[129] Majority Counsel's belabored construction of the applicable legal principles totally ignores the fact that no "quantitative inquiry" was put to the President on this topic. The President was not asked *how many* gifts he had given to Ms. Lewinsky, but simply *whether* he had given her any gifts. In response to such an inquiry, it is astounding that the Majority Counsel continues to insist that the President's immediate acknowledgment that he had given Ms. Lewinsky gifts amounts to a perjurious statement.[130] The entire theory of alleged perjury by the President

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certain occasions if alone meant that no one else was in the same room. Supp. at 552–53 (1/27/98 grand jury testimony of Ms. Currie).

[125] *Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives,* pp. 77–78 (Dec. 8, 1998).

[126] Referral at 158.

[127] Clinton 1/17/98 Depo. at 75 (emphasis added).

[128] Clinton 8/17/98 GJ at 52:7–8.

[129] Majority Counsel's Presentation (Dec. 10, 1998).

[130] Indeed, the President readily acknowledged having given Ms. Lewinsky certain gifts after they were specifically identified. *See* Clinton 1/17/98 Depo at 75 ("Q. Do you remember giving her an item that had been purchased from The Black Dog store at Martha's Vineyard? A. I do remember that . . ..").

concerning gifts rests, therefore, not on the President's *denials* that gifts had been exchanged, but simply on his failure to recall the gifts with specificity.

Before discussing each specific question concerning gifts, it is important to note that the President testified during his grand jury testimony that he was not especially concerned about the Jones attorneys discovering that he had exchanged gifts with Monica Lewinsky:

I formed an opinion really early in 1996, once I got into this unfortunate and wrong conduct, that when I stopped it, which I knew I'd have to do and which I should have done a long time before I did, that she would talk about it. Not because Monica Lewinsky is a bad person. She's basically a good girl. She's a good young woman with a good heart and a good mind. I think she is burdened by some unfortunate conditions of her upbringing. But she's basically a good person. But I knew that the minute there was no longer any contact, she would talk about this. She would have to. She couldn't help it. It was, it was a part of her psyche.[131]

The President also testified that he did not view an admission about gifts as necessarily indicating a romantic relationship between himself and Monica Lewinsky:

And let me also tell you, Mr. Bittman, if you go back and look at my testimony here, I actually asked the *Jones* lawyers for help on one occasion, when they were asking me what gifts I had given her, so they could—I was never hung up on this gift issue. Maybe its because I have a different experience. But, you know, the President gets hundreds of gifts a year, maybe more. I have always given a lot of gifts to people, especially if they give me gifts. And this was no big deal to me. I mean, it's nice. I enjoy it. I gave dozens of personal gifts to people last Christmas. I give gifts to people all the time. Friends of mine give me gifts all the time, give me ties, give me books, give me other things. So, it was just not a big deal.

* * * * * * *

And when I was asked about this in my deposition, even though I was not trying to be helpful particularly to these people that I though were not well-motivated, or being honest or even lawful in their conduct vis-a-vis me, that is, the *Jones* legal team, I did ask them specifically to enumerate the gifts. I asked them to help me because I couldn't remember the specifics. So, all I'm saying is, it didn't—I wasn't troubled by this gift issue.

* * * * * * *

I have always given a lot of people gifts. I have always been given gifts. I do not think there is anything improper about a man giving a woman a gift, or a woman giving a man a gift, that necessarily connotes an improper relationship. So, it didn't bother me.[132]

Even Linda Tripp's grand jury testimony confirmed that the President expressed no great alarm to Ms. Lewinsky about the

[131] Clinton 8/17/98 GJ at 575–76.
[132] Clinton 8/17/98 GJ at 43, 45 & 46.

prospect that his gifts to her might be surrendered to the *Jones* attorneys.

> But the interesting thing was his take on that, and so then Monica's take on that, was *no big deal*. No one seems to—he said it's still just a fishing net and they're just—you know, maybe he bought 25 hat pins and its known that he bought 25 hat pins . . .[133]

The President also pointed out in his own defense that the specificity of the questions put to him by the *Jones* attorneys made it clear to him that they had specific information concerning his receipt of the gifts:

> It was obvious to me by this point in the deposition, in this deposition, that they had, these people had access to a lot of information from somewhere, and I presume it came from Linda Tripp. And I had no interest in not answering their questions about these gifts. I do not believe that gifts are incriminating, nor do I think they are wrong. I think it was a good thing to do. I'm not, I'm still not sorry I gave Monica Lewinsky gifts.[134]

In order to credit the assertion that the President's failures of memory regarding specific gifts were intentionally false statements rather than genuine memory lapses, one has to accept the notion that the President intentionally misled the *Jones* attorneys about gifts that he did not believe would indicate an improper relationship and about which the *Jones* attorneys clearly had specific information. These premises are inherently implausible. The actual facts concerning the specific gifts about which the President was asked quickly reveals the insubstantiality of these allegations.

The hat pin. In response to specific follow-up questions on this topic, the President conceded that he may have given Ms. Lewinsky a hat pin, but that he had no specific recollection of doing so. There is no persuasive evidence that the President falsely denied that he could not recall whether he gave Ms. Lewinsky a hat pin. The President gave Ms. Lewinsky that gift on February 28, 1997, almost *eleven months* prior to his deposition in the *Jones* case.[135] Under these circumstances, the President's inability to recall whether he had given this specific item to Ms. Lewinsky is hardly so remarkable as to justify the inference that the President's failure of recollection was an intentionally perjurious statement.[136]

It has been argued that the President must have had a specific recollection of the hat pin by citing to Ms. Lewinsky's testimony that she specifically discussed the hat pin with the President on December 28, 1997, after she received a subpoena from the *Jones*

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[133] Tripp 7/29/98 GJ at 105.

[134] Clinton 8/17/98 GJ at 51–52.

[135] Referral at 156.

[136] The Referral also misleadingly suggests that the President also spoke with Currie about the hat pin around the same time that Ms. Lewinsky claims to have discussed with the President the request for it by the *Jones* lawyers. Ms. Currie testified that she did not know when she discussed the hat pin with the President, and her description of their conversation strongly supports the conclusion that it occurred shortly after the President presented Ms. Lewinsky with the hat pin on February 28, 1997. Currie 5/6/98 GJ at 142:9–10 ("I think he may have said something 'Did Monica show you the hat pin I gave her . . .'").

lawyers.[137] According to Ms. Lewinsky, she met with the President on December 28, 1997, and brought up the fact that she had received a subpoena from the *Jones* lawyers asking her to produce, among other things, any hat pin given to her by the President.[138] According to Ms. Lewinsky, the President "said that that had sort of concerned him also and asked me if I had told anyone that he had given me this hat pin and I said no."[139] The entire discussion concerning the *Jones* case, according to Ms. Lewinsky, took "maybe about five—no more than ten minutes."[140] The President testified to the grand jury that he would not dispute Ms. Lewinsky's recollection, but reiterated that he had no recollection of any reference to the hat pin during that conversation:

> Q. Well, didn't she tell you, Mr. President, that the subpoena specifically called for a hat pin that you had . . . given her?
>
> A. I don't remember that. I remember—sir, I've told you what I remember. That doesn't mean my memory is accurate. A lot of things have happened in the last several months, and a lot of things were happening then. But my memory is she asked me a general question about gifts.[141]

The record is simply inconclusive as to whether the President's failure to recall giving a hat pin to Ms. Lewinsky was intentionally false.

In addition, this factual point was not material to the *Jones* lawsuit. The gift of a hat pin would not have signified an inappropriate relationship between the President and Ms. Lewinsky. Indeed, the President readily *conceded* that he may have given Ms. Lewinsky a hat pin and, notwithstanding his inability to summon a specific recollection of that gift, the *Jones* attorneys were free to pose appropriate follow-up questions, which they declined to do.

Book "about" Walt Whitman. When asked if he had ever given Ms. Lewinsky a book "about" Walt Whitman, the President responded by saying that "I give people a lot of gifts, and when people are around I give a lot of things I have at the White House away, so I could have given her a gift, but I don't remember a specific gift."[142] The President had given Ms. Lewinsky a volume of poetry by Walt Whitman called "Leaves of Grass."[143] *Jones*' lawyer, however, inartfully asked the President whether he ever gave Ms. Lewinsky a book "about" Walt Whitman.[144] The allegation that the President responded falsely to this question appears to be premised on the assumption that the President was obligated to guess about what the *Jones* lawyers *intended* to ask and respond accordingly. Our perjury statutes impose no such obligation. Simply put, the President's testimony on this point was not perjurious.

The gold broach. The President also testified that he did not remember giving Ms. Lewinsky a gold broach.[145] Both the Majority

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[137] Referral at 156.
[138] Lewinsky 8/6/98 GJ at 152.
[139] Lewinsky 8/6/98 GJ at 152.
[140] Lewinsky 8/6/98 GJ at 151:18–19.
[141] Clinton 8/17/98 GJ at 45:9–16.
[142] Clinton 1/17/98 Depo. at 75.
[143] Referral at 156.
[144] Clinton 1/17/98 Depo. at 75.
[145] Clinton 1/17/98 Depo. at 75.

Counsel and the Independent Counsel allege that the President knowingly lied in denying any specific recollection of giving the broach to Ms. Lewinsky, but neither has acknowledged that Ms. Lewinsky herself suffered lapses of memory concerning her receipt of that item. For example, in support of its allegation that the President gave Ms. Lewinsky the broach, the Referral directs the reader to the "Chart of Contacts and Gifts" prepared by the OIC from all of the evidence it has received.[146] This chart is described by Ms. Lewinsky during one of her grand jury appearances as a document she prepared in consultation with the Independent Counsel, and that "definitely includes the visits I had with him, as well as most of the gifts we exchanged."[147] Ms. Lewinsky also agreed that the chart was "a pretty accurate rendition or description of [Lewinsky's] memory of all the events."[148] This chart, although reviewed by Ms. Lewinsky on several occasions[149] and cited by the Referral in support of the assertion that the President had given Ms. Lewinsky a gold broach[150], does *not* list the gold broach.

A review of all the statements and testimony given by Ms. Lewinsky reveals that a "broach" is only mentioned once in passing as an item included in the box of items given to Currie on December 28, 1997.[151] The broach is not mentioned, however, in other interviews with Ms. Lewinsky concerning gifts.[152] Ms. Lewinsky's repeated failure to recall the broach she received from the President during multiple interviews with the Independent Counsel is certainly relevant to any assessment of the truthfulness of the President's testimony that he did not recall giving that item to her. The Majority, however, makes no attempt to place these facts in their proper context.

Moreover, one of Ms. Lewinsky's confidante's, Neysa Erbland, testified that she had heard about Ms. Lewinsky's receipt of the broach from the President around Christmas of 1996.[153] The more than one-year gap between the time that the President gave the broach to Ms. Lewinsky and the time that he was asked about it during the *Jones* deposition reinforces the reasonableness of his inability to recall that specific gift.

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[146] Referral at 156 n.160; GJ Exhibit ML–7.

[147] Lewinsky 8/6/98 GJ at 27–28.

[148] Lewinsky 8/6/98 GJ at 28:18–19.

[149] Lewinsky 8/7/98 302 at 1.

[150] Referral at 156 n.160 ("Ms. Lewinsky testified that the President had given her a gold broach, . . .")

[151] Lewinsky 7/27/98 302 at 8.

[152] Lewinsky 7/27/98 302 at 14–15 (Lewinsky lists all gifts received from President, but broach is not itemized); *see also* Lewinsky 7/30/98 302 at 19–21 (similar list does not mention a gold broach).

[153] Erbland 2/12/98 GJ at 41. The Referral misleadingly asserts that Lewinsky made "near-contemporaneous" comments about the receipt of the broach to four of her confidantes. Referral at 156 n.160. With the exception of Neysa Erbland, however, three of these witnesses had no knowledge as to *when* Lewinsky received the broach from the President and each had heard about or seen the gift at *different* times of the year. Raines 1/29/98 GJ at 53:13–18 (cannot recall whether Lewinsky received broach before or after leaving White House); Ungvari 3/19/98 GJ at 44 (saw either the pin or the broach, but cannot recall which one, at Lewinsky's father's house "this past Thanksgiving"); Tripp 7/29/98 GJ at 105 (recounting discussion about broach after Lewinsky received subpoena in December 1997).

4. The President Did Not Commit An Impeachable Offense When He Testified about Whether He Had Talked with Lewinsky about the Possibility She Would Be Asked to Testify in the Jones Case

During the *Jones* deposition, when questioned as to whether he "ever talked to Monica Lewinsky about the possibility that she might be asked to testify?" the President began an answer with "I'm not sure," but then suggested that if he had, it was as part of a conversation in which he joked that every woman he had ever talked to was going to be called as a witness in the Paula *Jones* case.[154] This was a truthful response.[155] The President did not deny that he had had other conversations with Ms. Lewinsky about the *Jones* case. The President expressed uncertainty about whether there were other occasions. The President testified that "*I don't think* we ever had more of a conversation than that about it." when describing the earlier exchange with Ms. Lewinsky over whether she might appear on the witness list.[156] As in so many other instances, the *Jones* attorneys failed to ask appropriate follow-up questions such as "were there any other conversations concerning the possibility that Ms. Lewinsky would testify in the *Jones* case?"

Perjury, of course, requires proof that a defendant knowingly made a false statement as to material facts.[157] As we have already discussed, testimony regarding Ms. Lewinsky was not central to the *Jones* case. Moreover, the following types of answers cannot be characterized as perjurious: literally truthful answers that imply facts that are not true, *see, e.g., United States* v. *Bronston*, 409 U.S. 352, 358 (1973), truthful answers to questions that are not asked, see, e.g., *United States* v. *Corr*, 543 F.2d 1042, 1049 (2d Cir. 1976), and failures to correct misleading impressions. *See, e.g., United States* v. *Earp*, 812 F.2d 917, 919 (4th Cir. 1987). The Supreme Court has made abundantly clear that it is not relevant for perjury purposes whether the witness intends his answer to mislead, or indeed intends a "pattern" of answers to mislead, if the answers are truthful or literally truthful.

Ms. Lewinsky has only testified about one other discussion with the President about the possibility that she "might" be asked to testify. Ms. Lewinsky claims that the President told her during a December 17 phone call that she had appeared on the *Jones* witness list. Subsequent conversations between the President and Ms. Lewinsky about the receipt of her subpoena two days later would not have been responsive to the question posed by the *Jones* attorneys because the "possibility that she might be asked to testify" had become a reality by that point. Even if Ms. Lewinsky's testimony is fully credited, the President's failure to recall that they discussed the possibility that she would be asked to testify in the *Jones* case during their December 17 conversation was an understandable memory lapse. That call was made at 2:00 a.m. and the main purpose of the call was to inform Ms. Lewinsky about the death of Betty Currie's brother.

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[154] Clinton 1/17/98 Depo at 69.

[155] Ms. Lewinsky confirmed the accuracy of the President's recollection of this conversation in her testimony. See Lewinsky 8/24/98 FBI 302 form ("LEWINSKY advised CLINTON may have said during this conversation that every woman he had ever spoken to was going to be on the witness list.").

[156] Clinton 1/17/98 Depo at 70–71.

[157] *United States v. Dunnigan*, 507 U.S. 87, 94 (1993).

5. The President Did Not Commit an Impeachable Offense When He Testified About Whether Lewinsky Had Told Him She Had Been Subpoenaed

It is alleged that the President committed perjury in his deposition when he failed to acknowledge that he knew that Ms. Lewinsky had been subpoenaed at the time he had last seen and spoken to her. The President acknowledged, however, that he knew that Ms. Lewinsky had been subpoenaed, but that he was not sure when was the last time he had seen and spoken with her (but that it was sometime around Christmas), and that he had discussed with her the possibility that she would have to testify.

The allegation that the President denied knowing that Ms. Lewinsky had been subpoenaed the last time he spoke to her illustrates the problem of taking selected pieces of testimony out of context.

> Q. Did she tell you she had been served with a subpoena in this case?
>
> A. No. I don't know if she had been.[158]

This testimony does not support the charge that the President perjured himself by denying that he knew that Ms. Lewinsky had been subpoenaed the last time he had spoken with her. First, the testimony immediately following this exchange demonstrates both that the President was not hiding that he knew Ms. Lewinsky had been subpoenaed by the time of the deposition and that the *Jones* lawyers were well aware that this was the President's position:

> Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?
>
> A. I don't think so.
>
> * * * * * * *
>
> A. Bruce Lindsey, I think Bruce Lindsey told me that she was, I think maybe that's the first person [who] told me she was. I want to be as accurate as I can.
>
> Q. Did you talk to Mr. Lindsey about what action, if any, should be taken as a result of her being served with a subpoena?
>
> A. No.[159]

It is evident from the complete exchange on this subject that the President was not generally denying that he knew that Ms. Lewinsky had been subpoenaed in the *Jones* case. The questions that the *Jones* lawyers were asking the President also make clear that this is what they understood the President's testimony to be.

Second, the President's testimony cannot fairly be read as an express denial of knowledge that Ms. Lewinsky had been subpoenaed the last time he had spoken to her before the deposition. Most importantly, the President was not asked whether he knew that Ms. Lewinsky had been subpoenaed on *December 28th*, which was the last time he had seen her. When the President answered the question, "Did she tell you she had been served with a subpoena in this case?", he plainly was not thinking about December 28th. To the

[158] Clinton 1/17/98 Depo at 68.
[159] Clinton 1/17/98 Depo at 68–70.

contrary, the President's testimony indicates that he was thoroughly confused about the dates of his last meetings with Ms. Lewinsky, and he made that abundantly clear to the *Jones* lawyers:

> Q. When was the last time you spoke with Monica Lewinsky?
>
> A. I'm trying to remember. Probably sometime before Christmas. She came by to see Betty sometime before Christmas. And she was there talking to her, and I stuck my head out, said hello to her.
>
> Q. Stuck your head out of the Oval Office?
>
> A. Uh-huh, Betty said she was coming by and talked to her, and I said hello to her.
>
> Q. Was that shortly before Christmas or——
>
> A. I'm sorry, I don't remember. Been sometime in December, I think, and I believe—that may not be the last time. I think she came to one of the, one of the Christmas parties.[160]

His statement that he did not know whether she had been subpoenaed directly followed this confused exchange and was not tied to any particular meeting with her. By that time it is totally unclear what date the answer is addressing. Given his confusion, which the *Jones* lawyers made no attempt to resolve, it is difficult to know what was being said, much less to label it false and perjurious.

6. The President Did Not Commit An Impeachable Offense When He Testified about Who Had Informed Him That Lewinsky Had Received a Subpoena in the Jones Case

Article II also appears to encompass the claim that the President perjured himself by failing to identify Vernon Jordan as one of the individuals who told him that Ms. Lewinsky had been served with a subpoena. In fact, when asked who had informed him that Ms. Lewinsky had been subpoenaed, the President began to identify the individuals who had conveyed that information to him, but the *Jones* attorneys did not consider the matter sufficiently important to elicit all of the responsive information. To support his perjury claim, the Majority Counsel unfairly rips a single sentence of the *Jones* deposition out of context without ever acknowledging that the President, in response to very next question, began to amend and expand on his answer to the question at issue. The exact sequence is as follows:

> Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?
>
> G. I don't think so.
>
> Q. Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify in this case?
>
> Q. *Bruce Lindsey. I think Bruce Lindsey told me that she was, I think maybe that's the first person who told me she was.*[161]

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[160] Clinton 1/17/98 Depo at 68 (emphasis added).
[161] Clinton 1/17/98 Depo. at 68–69 (emphasis added).

The *Jones* attorneys then proceeded to question the President about the specifics of his conversation with Lindsey concerning this subject. After the President had responded fully to these questions, the *Jones* attorneys failed to ask the obvious follow-up question that had been invited by the President's use of the qualifier "first": who else besides your lawyers told you that Ms. Lewinsky had been served with a subpoena? Criminal sanctions cannot attach to a deposition answer that is incomplete on its face if the lawyer posing the questions is not even interested enough to pursue obvious follow-up questions. Our system of justice does not impose criminal sanctions "simply because a wily witness succeeds in derailing the questioner—so long as the witness speaks the literal truth."[162]

The Independent Counsel's Referral also freely speculated that the President's incomplete answer was motivated by his reluctance to mention Jordan, who continues to be investigated by the Independent Counsel for alleged obstruction of justice relating to Webster Hubbell.[163] The Independent Counsel's insinuations in this regard, however, studiously ignores the fact that the President truthfully identified Bruce Lindsey as one of the individuals who told him that Lewsinky had been subpoenaed.[164] Lindsey, like Jordan, has long been under an unfair cloud of suspicion resulting from the Independent Counsel's investigation into supposedly "obstructionist" activities. If the President, as the Independent Counsel claims, omitted mentioning Jordan out of concern about "admitting any possible link" between Ms. Lewinsky and a person who was already under investigation for "obstructing justice," then this same logic would have militated against mentioning Lindsey. The Independent Counsel's logically inconsistent speculation only serves to highlight the persistent factual weaknesses in the allegations of criminal wrongdoing that have been uncritically adopted by the Majority.

7. The President Did Not Commit An Impeachable Offense When He Testified about Whether Anyone Had Reported to Him about a Conversation with Ms. Lewinsky Concerning the Jones Case in the Two Weeks Prior to the Deposition

During the *Jones* deposition, the President was asked whether, in the "past two weeks" (before January 17) anyone had reported to him that they had had a conversation with Ms. Lewinsky about the *Jones* lawsuit. The President replied he "did not believe so."[165] This allegedly constituted a false statement because Jordan informed the President during a phone call on January 7 that the Lewinsky affidavit had been signed.[166]

The record does not, however, demonstrate that Mr. Jordan told the President about a conversation with Ms. Lewinsky. Jordan made a phone call to the President on January 7 informing him that the Lewinsky affidavit had been signed, but Jordan did not speak with the President about his discussion with Lewinsky on

[162] *United States* v. *Bronston,* 409 U.S. 352, 360 (1973).
[163] Referral at 189.
[164] Clinton 1/17/98 Depo at 68–69.
[165] Clinton 1/17/98 Depo at 68–69.
[166] Referral at 187.

that day.[167] Instead, as Jordan testified before the grand jury, he simply conveyed to the President that the affidavit had been signed (he refers to the conversation with the President as "a simple information flow").[168]

Simply put, the information conveyed by Mr. Jordan to the President on December 7 did not imply that he had talked to Ms. Lewinsky that day. For all the President knew, Jordan learned about the signing of the affidavit from the lawyer that Jordan had put Ms. Lewinsky in touch with, Frank Carter. Indeed, Mr. Jordan had previously transmitted information he learned from Mr. Carter directly to the President.[169]

8. The President Did Not Commit An Impeachable Offense When He Testified about whether he had heard that Mr. Jordan and Ms. Lewinsky had met to discuss the Jones case

When asked during the *Jones* deposition whether the President had heard that Jordan and Ms. Lewinsky had met to discuss the *Jones* case; the President recounted his belief that the two had met to discuss the job search—about which the President readily acknowledged an awareness. It is alleged that this was a false statement because the President had talked to Jordan about Ms. Lewinsky's involvement in the *Jones* case.[170]

> Q. Has it ever been reported to you that [Vernon Jordan] *met* with Monica Lewinsky and talked about this case?
>
> A: I knew that he met with her. I think Betty suggested that he meet with her. Anyway, he met with her. *I, I thought that he talked to her about something else. I didn't know that—I thought he had given her some advice about her move to New York.*[171]

The President, however, was asked only about his knowledge of meetings between Jordan and Ms. Lewinsky concerning the *Jones* case. The assertion that the President "did not recall whether Mr. Jordan had talked to Ms. Lewinsky about her involvement in the *Jones* case," is misleading.[172] The President was never simply asked whether he was aware that Jordan had ever *talked* with Ms. Lewinsky about her involvement in the *Jones* case. Instead, the President recounted his belief that the two had *met* to discuss the job search—about which the President readily acknowledged an awareness.

The President's failure to recall that Jordan told him of meeting with Ms. Lewinsky concerning the *Jones* case, rather than job search, was not intentionally false. Rather, there is substantial evidence to suggest that the President's belief that the meetings between Jordan and Ms. Lewinsky only involved her job search was reasonable because the job search was a major part of the contacts between Ms. Lewinsky and Mr. Jordan. For example, up until December 19, Mr. Jordan's only conversations with Ms. Lewinsky con-

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[167] Referral at 187.
[168] Referral at 187–88.
[169] See Jordan 5/5/98 GJ at 224–26 (Jordan sometimes relayed information to President concerning Lewinsky that he learned from Carter).
[170] Referral, at 186.
[171] Clinton 1/17/98 Depo at 72 (emphasis added).
[172] Referral at 186.

cerned her search for a job in New York.[173] Furthermore, Ms. Lewinsky's job search was one of the topics discussed by Mr. Jordan with the President during their December 19 meeting during which Mr. Jordan told the President that Ms. Lewinsky had been subpoenaed.[174] Mrs. Currie asked Mr. Jordan to help Ms. Lewinsky find a job in New York and testified that it is not possible that the President told her to talk to Mr. Jordan on this topic.[175] Moreover, as Mr. Jordan testified, "Lewinsky was never the main topic of any conversation with the President."[176] The President's further response—that he believed Mr. Jordan met with Ms. Lewinsky to give her advice about her move to New York—was fully accurate.

C. ARTICLE III'S ALLEGATIONS OF OBSTRUCTION OF JUSTICE FAIL TO ESTABLISH AN IMPEACHABLE OFFENSE

The Committee has approved an article of impeachment alleging that the President obstructed justice. The article contends that the "means used to implement this course of conduct or scheme included one or more of the following acts: (1) on or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading; (2) 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; (3) on or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him; (4) [b]eginning on or about December 7, 1997, and continuing through and including January 14, 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; (5) on January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.; (6) [o]n or about January 18 and January 20–21, 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; (7) on or about January 21, 23 and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the

[173] Jordan 3/3/98 GJ at 92.
[174] Jordan 3/3/98 GJ at President. 171 ("I said "You know. I'm trying to help her get a job and I'm going to continue to do that.'")
[175] Currie 5/6/98 GJ at 169–83.
[176] Jordan 3/5/98 GJ at 28 (emphasis added).

testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information."

1. The President did not encourage Ms. Lewinsky to file a false affidavit in the Jones case or testify falsely if deposed in that matter.

There is no doubt that Ms. Lewinsky and the President discussed the desirability of having her submit an affidavit in lieu of testifying, but there is no evidence that the President encouraged her to file a false affidavit, or encouraged her to lie if she were ultimately required to provide a deposition in the *Jones* case. The President testified during his grand jury appearance that "I believed then, I believe now, that Monica Lewinsky could have sworn out an honest affidavit, that under reasonable circumstances, and without the benefit of what Linda Tripp did to her, would have given her a chance not to be a witness in this case."[177] The distinction between the submission of a truthful and a false affidavit is crucial to the Minority's firm conviction that there is no basis for impeachment. The Majority chooses to simply ignore the fact that the *Jones* case involved a claim of unwelcome, harassing conduct while the President's relationship with Ms. Lewinsky was purely consensual. Ms. Lewinsky was prepared to state truthfully that she was not the subject of harassment or any unwelcome advances, and the filing of an affidavit with that statement might have avoided the need for Ms. Lewinsky to reveal her relationship with the President.[178]

Evidence transmitted to Congress by the Independent Counsel, but ignored by the Majority, is equally critical in assessing the Majority's allegations of obstruction of justice. For example, the President testified that he never asked Ms. Lewinsky to lie, and Ms. Lewinsky similarly testified that the President never told her to submit a false affidavit or to lie in any way.[179] Ms. Lewinsky's words on the subject are instructive. During her final appearance before the grand jury, Ms. Lewinsky testified in response to a grand juror's question that:

> I think because of the public nature of how this investigation has been and what the charges aired, that I would just like to say that no one ever asked me to lie and I was never promised a job for my silence.[180]

Ms. Lewinsky made the same point in her earlier proffer to the OIC. She wrote that "[n]either the Pres. nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L to lie."[181] She also stat-

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[177] Clinton 8/17/98 GJ at 69. *See also id.* at 77 ("I believed then, I believe today, that she could execute an affidavit which, under reasonable circumstances with fair-minded, non-politically oriented people, would result in her being relieved of the burden to be put through the kind of testimony that, thanks to Linda Tripp's work with you and with the *Jones* lawyers, she would have been put through"); 116 ("I also will tell you that I felt quite comfortable that she could have executed a truthful affidavit, which would not have disclosed the embarrassing details of the relationship that we had had").

[178] The Minority specifically notes, in that regard, that obstruction of justice requires proof of a specific intent to obstruct a judicial proceeding. *United States* v. *Bashaw,* 982 F.2d 168, 170 (6th Cir. 1992); *United States* v. *Moon,* 718 F.2d 1219, 1236 (2d Cir. 1983); *United States* v. *Rasheed,* 663 F.2d 843, 847 (9th Cir. 1981). There simply is no such proof in this case.

[179] Clinton 8/17/98 GJ at 4, 7; Lewinsky 7/27/98 302 at 12.

[180] Lewinsky 8/20/98 GJ at 105.

[181] Lewinsky 2/1/98 Proffer at 10.

ed that she had asked the President if he wanted to see her affidavit before it was filed, and he said he did not.[182] Ms. Lewinsky believed her denial of a sexual relationship with the President to be true because they had never had sexual intercourse.[183] Nor did Ms. Lewinsky contrive that definition for purposes of litigation. Rather, she made the point to Ms. Tripp in a surreptitiously recorded conversation in which Ms. Lewinsky said that "[h]aving sex is having intercourse."[184] Moreover, she deemed the matter to be a personal one, and none of Paula Jones' business.[185]

The Majority also fails to mention Ms. Lewinsky's crucial testimony that her affidavit was in no way contingent on her receiving assistance with her search for employment. Ms. Lewinsky told the OIC's investigators that:

> [t]here was no agreement with the President, JORDAN, or anyone else that LEWINSKY had to sign the *Jones* affidavit before getting a job in New York. LEWINSKY never demanded a job from JORDAN in return for a favorable affidavit. Neither the President nor JORDAN ever told LEWINSKY she had to lie.[186]

Indeed, the evidence makes clear that Ms. Tripp was the *only* person to suggest a jobs-for-affidavit trade. Ms. Lewinsky repeatedly made that point in her interviews with the OIC's staff, and in her grand jury appearances.[187]

In a further effort to support claims of obstruction of justice, the Majority apparently adopts the OIC's argument that the President and Ms. Lewinsky improperly agreed to use "cover stories" to hide their relationship, and that Ms. Lewinsky could use those cover stories if she were unable to avoid a deposition appearance. While the Majority does not specifically articulate the grounds for its charge, the OIC's Referral acknowledges that these cover stories were created long before Ms. Lewinsky was subpoenaed in the *Jones* case. The OIC nevertheless asserts that the stories were unlawfully continued after the subpoena was served, and that the President failed to advise Ms. Lewinsky to abandon them when she prepared her affidavit.[188]

The Minority believes it constitutionally insignificant that two people in an inappropriate workplace relationship would attempt to conceal their relationship. And, far from inculpating the President, the Minority believes that the long-standing cover stories employed by the President and Ms. Lewinsky actually exculpate him. It is obvious that these cover stories were not designed to obstruct justice, but simply to prevent family members, friends, staff, and the public from learning of the President's concededly inappropriate relationship. Indeed, Ms. Lewinsky testified that she and the President did not discuss denying their relationship after Ms. Lewinsky learned

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[182] Lewinsky 8/2/98 302 at 3.
[183] Lewinsky 2/1/98 Proffer at 10; Lewinsky 7/27/98 OIC 302 at 12.
[184] Tripp Tape 18 at 50.
[185] Lewinsky 8/1/98 FBI 302 form at 10.
[186] Lewinsky 7/27/98 FBI 302 form at 10.
[187] Lewinsky 8/2/98 OIC 302 at 7 ("TRIPP told LEWINSKY not to sign the affidavit until LEWINSKY had a job"); Lewinsky 8/6/98 GJ at 182 (reporting that Tripp said, "Monica, promise me you won't sign the affidavit until you get the job. Tell Vernon you won't sign the affidavit until you get the job because if you sign the affidavit before you get the job, they're never going to give you the job").
[188] Referral at 180.

she was a witness in the *Jones* case.[189] During one of Ms. Lewinsky's grand jury appearances, the following exchange occurred:

> Q. Is it possible that you had these discussions [about denying the relationship] after you learned that you were a witness in the Paula Jones case?
> A. I don't believe so. No.
> Q. Can you exclude that possibility?
> A. I pretty much can . . . .[190]

Thus, the record actually undermines the Majority's contention that the President intended to obstruct justice.

The bottom line is this: the secrecy surrounding an extramarital relationship, standing alone, is far too weak a foundation on which to construct a criminal case, let alone an impeachment of the President. There simply is no evidence that the President sought to have Ms. Lewinsky file a false affidavit or give false testimony in the *Jones* case.

2. The President did not Obstruct Justice by Concealing Gifts that he Gave to Ms. Lewinsky

There is no dispute that the President and Lewinsky exchanged gifts. Nor is it disputed that some of those gifts were transferred by Lewinsky to the President's secretary, Betty Currie, on December 28, 1997, the same day that the President and Lewinsky had a brief meeting at the White House. The article's allegation of obstruction is based on its contention that this transfer of gifts was initiated by the President with the intent to make them unavailable for production in response to a document subpoena served on Lewinsky by lawyers for Paula Jones.[191] Referral at 169–71. A full and fair review of all the relevant testimony strongly suggests that Lewinsky initiated the transfer to Currie without any intervention by the President, and that the President was unconcerned about the possibility that gifts might be produced to the *Jones* lawyers. In fact, the President testified that he told Ms. Lewinsky that she would have to turn over to the *Jones* lawyers whatever gifts she had.[192]

To reach the conclusions contained in this article, the Majority has overlooked key evidence. For example, the Independent Counsel alleges that Lewinsky and the President "discussed the possibility of moving some of the gifts out of her possession." A review of the actual testimony, however, reveals that the Independent Counsel's assertion lacks a basis in the evidence he sent. Ms. Lewinsky testified that when she told the President on December 28, 1997, "maybe I should put the gifts outside my house somewhere or give them to someone, maybe Betty[,]" the President did not respond in the affirmative, but said "I don't know" or "[l]et me think about that."[193] This is hardly the stuff of obstruction.

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[189] Lewinsky 8/20/98 GJ at 63–64.
[190] Lewinsky 8/20/98 GJ at 63.
[191] Referral at 166.
[192] Clinton 8/17/98 GJ at 43. "And I told [Ms. Lewinsky] that if they asked her for gifts, she'd have to give them whatever she had, and that that's what the law was."
[193] Lewinsky 8/6/98 GJ at 152.

The Independent Counsel chose to state the President's response, without bothering to mention the other nine times they asked Ms. Lewinsky the question.[194] Moreover, Ms. Currie stated repeatedly that Ms. Lewinsky called her and raised the issue of picking up the gifts and that the President never asked her to call Ms. Lewinsky for the gifts:

> A. My recollection—the best I remember is Monica calling me and asking me if I'd hold some gifts for her. I said I would.
>
> Q. And did the President know you were holding these things?
>
> A. I don't know.
>
> Q. Didn't he say to you that Monica had something for you to hold?
>
> A. I don't remember that. I don't.[195]

And:

> Q. Exactly how [did] that box of gifts come into your possession?
>
> A. I do not recall the President asking me to call about a box of gifts.[196]

The OIC's argument that the President was concerned about the gifts is inconsistent with evidence that, during the meeting on December 28, he gave Lewinsky *additional* presents for Christmas.[197] It strains believability to suggest that the President was concerned enough about the gifts to cause Lewinsky to surrender possession of them, yet at the same time was foolish enough to give her more gifts that would have to be produced on the very same day. The President's testimony is clear that he told Lewinsky she would have to produce any gifts that remained in her possession, and that Lewinsky—and not he—was worried about having to produce them.[198]

The Referral's conclusion is also unsupported by Currie's testimony that Lewinsky, and not Currie, initiated the telephone call that resulted in Currie retrieving the gifts from Lewinsky's Watergate apartment. According to Currie, Lewinsky called her and expressed concern that people—whom Currie understood to mean *Newsweek* magazine reporter Michael Isikoff—were asking questions about the gifts.[199] The Independent Counsel acknowledges that "Currie testified that Ms. Lewinsky, not Ms. Currie, placed the call and raised the subject of transferring the gifts[,]" but thereafter discounts Currie's testimony by arguing that she ultimately

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[194] Ms. Lewinsky made at least ten distinct statements on this subject during the course of her original proffer, interviews, grand jury testimony and deposition. Although the OIC claims that there was a discussion between Ms. Lewinsky and the President on this subject, the actual testimony does not support the OIC's contention. Lewinsky 2/1/98 proffer at 7; Lewinsky 7/27/98 interview statement at 7; Lewinsky 8/1/98 interview statement at 11; Lewinsky 8/6/98 GJ at 152; Lewinsky 8/13/97 interview statement at 7; Lewinsky 8/20/98 GJ at 65–66 and 70; Lewinsky 8/24 interview statement at 4; Lewinsky 9/3/98 interview statement at 2.

[195] Currie 5/6/98 GJ at 105–6.

[196] Currie 7/22/98 GJ at 175–6.

[197] Referral at 168.

[198] Clinton 8/17/98 GJ at 44–47.

[199] Currie 1/27/98 GJ at 57; Currie 5/6/98 GJ at 124.

said that Lewinsky might have a better recollection of these events.[200]

The Majority claims to have proved that Ms. Currie called Ms. Lewinsky about picking up the gifts, rather than the other way around as Ms. Currie testified, by pointing to a cell phone record (billed at one minute) which reflects a phone call from Ms. Currie to Ms. Lewinsky's number at 3:32 p.m. on December 28th. Aside from the fact that this cell phone record (of a "rounded-up" *one-minute* phone call) proves absolutely nothing about the content of that conversation (or even whether a conversation actually occurred), the Majority fails to note that, according to Ms. Lewinsky's testimony, Ms. Currie came and picked up the gifts at 2:00 p.m. on that day. It seems obvious that a call at 3:32 p.m. was *not* the call to arrange a pick-up that occurred an hour-and-a-half earlier. The Majority, however, refuses to acknowledge any contradictions between Ms. Lewinsky's account and other evidence.[201]

Ms. Lewinsky, of course, recalled that Ms. Currie initiated the conversation that resulted in the transfer of the gifts.[202] In effect, this article of impeachment is based on an answer to an ambiguous leading question to a witness who acknowledges, as any truthful witness might, the possibility that she "might be wrong."

Given the weight that the Independent Counsel attaches to Ms. Currie's supposed concession, it is surprising to find that the transcript of Ms. Currie's testimony does not support his characterization of what was said. The transcript reveals that when Currie spoke the words on which the OIC relies so heavily, she was not talking about who *initiated* the call to transfer the gifts, but apparently whether, *after she picked the gifts up*, she informed the President of that fact. The actual transcript reads as follows:

> Q. What about the President's knowledge about Monica turning over to you the gifts he had given her?
> A. I don't know.
> Q. Did you talk to him about it?
> A. I don't remember talking to him about that, the gifts.
> Q. If Monica said you did, would that not be true?
> A. If Monica said I talked to the President about it?
> Q. Right.
> A. Then she may remember better than I. I don't remember.[203]

Read in its full context, in the entire transcript, this highly ambiguous line of questioning is best understood to be inquiring about the President's knowledge *after the fact* that the gifts had actually been transferred. Had the prosecutor been able to support his point directly, he would have relied on the answer to a question like: "Did the President know, in advance, that Monica intended to turn the gifts over to you?" Or, more appropriately, the answer to a question like "Did the President tell you to retrieve the gifts from Monica?" could have been cited in the Referral. The problem is that

[200] Referral at 167.
[201] Lewinsky 7/27/98 302 at 8.
[202] Lewinsky 8/6/98 GJ at 154.
[203] Currie 5/6/98 GJ at 125–26.

when those questions were asked, Ms. Currie made quite clear that Ms. Lewinsky initiated the transfer.[204]

In an attempt to bridge the gap between the answers it wanted and the ones Ms. Currie gave, the Referral makes a further unsupported suggestion: because Ms. Currie went to Ms. Lewinsky's apartment to pick up the gifts, she must have initiated the contact because "the person making the extra effort . . . is ordinarily the person requesting the favor."[205] Beyond its facial implausibility, the argument fails for a simple reason: there was no "extra effort" made; Ms. Lewinsky's apartment was directly along a convenient route that Ms. Currie could take to get home from work. Ms. Currie testified that she stopped at Ms. Lewinsky's apartment on her way home.[206] Ms. Currie lives in Arlington, Virginia, and anyone familiar with the metropolitan Washington, D.C. area knows that the entrances to both Highways 66 and 50, which provide ready access to Ms. Currie's residence in Arlington, are both within blocks of Ms. Lewinsky's Watergate apartment.[207] This absence of "extra effort" demonstrates a repeated problem with the Referral—when it confronts large gaps in the evidence, it fills the void with illogical and unsupported leaps. Such unsubstantiated assumptions should be no basis for an article of impeachment.

3. The President did not Assist Ms. Lewinsky in Obtaining a Job in New York in Order to Influence her Testimony in the Jones Case

The Committee has approved an article of impeachment concerning the President's alleged attempts to find Ms. Lewinsky a job in New York at a time when she may have been a witness against him in the *Jones* case.[208] The evidence, however, shows that the President's attempt to help Ms. Lewinsky find a job in New York had nothing to do with buying her silence or obstructing a legal proceeding.

The article alleges that "the President assisted Ms. Lewinsky in her job search motivated at least in part by his desire to keep her "on the team" in the *Jones* litigation."[209] This conclusion does not flow from the abundant evidence, which makes clear that Ms. Lewinsky's job search began long before she was identified as a witness in the *Jones* case. On April 5, 1996, Ms. Lewinsky's supervisor at the White House told her that she would need to leave her position in the Legislative Affairs office, and that a job at the Pentagon was available for her.[210] Distraught, she met with the President two days later, and he allegedly promised that he would bring her back to the White House after the November elections.[211] It was common knowledge at the White House that Ms. Lewinsky was transferred because she was deemed to spend too much time in the West Wing.

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[204] Currie 1/27/98 GJ at 57–58; Currie 5/6/98 GJ at 105–06. The President similarly denied asking Currie to retrieve any gifts. Clinton 8/17/98 GJ at 114–15.
[205] Referral at 170.
[206] Currie 5/6/98 GJ at 108, 113.
[207] *Id.* at 116.
[208] Referral at 181.
[209] *Id.* at 185.
[210] Lewinsky 8/6/98 GJ at 61.
[211] *Id.* at 63.

Ms. Currie, who had befriended Ms. Lewinsky, believed that Ms. Lewinsky had been "wronged" by her transfer.[212] As a result, Ms. Currie took it upon herself to try to find Ms. Lewinsky another job at the White House. Ms. Currie contacted White House Deputy Director of Personnel Marsha Scott and asked Ms. Scott to meet with Ms. Lewinsky, but nothing came of the meeting.[213] When November passed and no White House job materialized, she began to complain to Ms. Currie and ask why the President didn't just order that she be returned.[214] When it became clear that she would never receive another White House job, Ms. Lewinsky decided to move to New York City, where her mother had recently taken up residence. Ms. Lewinsky told the President on July 3, 1997, of her decision.[215]

In October 1997, Ms. Currie contacted White House Deputy Chief of Staff John Podesta, with whom she had a longstanding friendship, to see whether he could assist Ms. Lewinsky in finding a job in New York.[216] She did so after the President requested only that she do what she could to help Ms. Lewinsky.[217] Some months earlier, in the summer or fall of 1997, White House Chief of Staff Erskine Bowles, in response to a similar request from the President, also mentioned Ms. Lewinsky's name to Mr. Podesta and asked whether any jobs might be available for her at the White House.[218] While efforts to find a White House job failed, Mr. Podesta succeeded in arranging an interview for Ms. Lewinsky with United Nations Ambassador Bill Richardson. Ultimately, Mr. Richardson offered her a position that she declined.

These efforts to find Ms. Lewinsky a job started far too early to have anything to do with the *Jones* case. Moreover, the Majority repeatedly fails to acknowledge an innocent and highly plausible explanation for the President's actions: he wished to help the woman he was involved with, cared for, and felt guilty about hurting. Instead, the Majority relies on a concocted theory of obstruction without the facts to support it.

The OIC—and presumably the Majority—makes much of the assistance provided to Ms. Lewinsky by White House personnel. But Mr. Podesta made clear in his testimony before the grand jury that there was nothing unusual about these efforts.[219] The Majority also relies heavily on the job-search assistance provided by Vernon Jordan. However, Ms. Lewinsky made clear in her testimony that she—and not the President—first suggested enlisting Mr. Jordan's help.[220] And, as it turns out, the idea for obtaining Mr. Jordan's assistance first arose in a conversation between Ms. Lewinsky and her former friend, Linda Tripp, when one of them—most likely Mrs. Tripp—suggested that Mr. Jordan might be able to help Lewinsky.[221] In response to Ms. Lewinsky's request, the President suggested that she give him a list of New York jobs in which she

[212] Currie 5/6/98 GJ at 45.
[213] *Id.* at 38.
[214] *Id.* at 160.
[215] Lewinsky 8/6/98 GJ at 67–69.
[216] Currie 1/24/98 OIC 302 at 4.
[217] Currie 5/6/98 GJ at 170.
[218] Bowles 4/2/98 GJ at 70.
[219] Podesta 2/5/98 GJ at 27–29, 39, 41–42; Podesta 6/16/98 GJ at 22.
[220] Lewinsky 8/6/98 GJ at 103–04.
[221] *Id.*; Lewinsky 8/20/98 GJ at 23; Lewinsky 7/27/98 OIC 302 at 5.

might be interested.[222] On her own, Ms. Currie also asked Mr. Jordan to assist Ms. Lewinsky.[223] She and Mr. Jordan were old friends, and she was concerned because Ms. Lewinsky was "frantic" to find a job.[224]

The President never asked Ms. Currie to seek Mr. Jordan's assistance and, although Ms. Currie kept the President advised of her efforts, she—and not the President—was the one actively trying to assist Ms. Lewinsky.[225] Mr Jordan confirms that Ms. Lewinsky was referred to him by Ms. Currie, although he acknowledges that he, too, kept the President updated on his efforts.[226] Mr. Jordan routinely tried to assist young people with their careers.[227] Indeed, Mr. Jordan recalled another occasion on which he telephoned Ron Perelman, Chairman of the Board of McAndrews & Forbes Holding Incorporated (the parent company of Revlon, which eventually offered Lewinsky an entry-level position), on behalf of a young lawyer who worked at Mr. Jordan's law firm.[228]

Mr. Jordan also testified, and both Ms. Lewinsky and the President confirmed, that neither told him of their relationship.[229] After her initial meeting with Mr. Jordan in early November 1997, Ms. Lewinsky complained that he was not doing anything to help her find work.[230] Indeed, Ms. Lewinsky contacted Ms. Currie and asked her to speak with Mr. Jordan about why there had been no movement on the job front.[231] Mr. Jordan's conduct is wholly inconsistent with the allegation that he was trying to silence a potentially damaging witness. Mr. Jordan did not exert any pressure on his private sector contacts regarding a job for Ms. Lewinsky.[232]

The Referral unfairly minimizes the job-search efforts of White House personnel that preceded Ms. Lewinsky's December 5 appearance on the witness list in the *Jones* case, and unfairly emphasizes the efforts following that date. A review of the entire record sent to Congress makes clear that efforts to help Ms. Lewinsky began as soon as she was transferred to the Pentagon. In context, the evidence demonstrates that the President himself did little to assist Ms. Lewinsky, and that the efforts he undertook were motivated by a desire to help a person with whom he had been intimate. Indeed, as the President testified, if he had really felt obligated to get her a job, he certainly could have accomplished it.[233] The President also testified that he knew that sooner or later his inappropriate contacts with Ms. Lewinsky would become public knowledge.[234] And still he did not get her a job at the White House. Moreover,

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[222] Lewinsky 8/6/98 GJ at 104.
[223] Currie 5/6/98 GJ at 176.
[224] *Id.* at 172.
[225] *Id.* at 176, 179.
[226] Jordan 3/3/98 GJ at 65.
[227] *Id.* at 76.
[228] Jordan 3/5/98 GJ at 55.
[229] *Id.* at 79.
[230] Lewinsky 8/6/98 GJ at 105.
[231] *Id.*
[232] Fairbarn 1/29/98 FBI 302 form at 1; Halperin 3/27/98 FBI 302 form at 2.
[233] The President said that he did not order Ms. Lewinsky to be hired at the White House. "I could have done so. I wouldn't do it. She tried for months to get in. She was angry." Clinton 8/17/98 GJ at 123.
[234] Clinton 8/17/98 GJ at 135.

the President has connections in New York that he never used to get Ms. Lewinsky a job there.[235]

With respect to Ms. Currie, who took a more active role in assisting Ms. Lewinsky, the evidence indicates that she was motivated by a belief that Ms. Lewinsky had been unfairly transferred from her White House position. Finally, the record makes abundantly clear that Mr. Jordan became involved after Ms. Tripp suggested and Ms. Lewinsky concluded that Ms. Lewinsky should ask for Mr. Jordan's assistance.

For her part, Ms. Lewinsky told the grand jury and the Independent Counsel's investigators that "[n]o one ever asked me to lie and I was never promised a job for my silence."[236] It also bears emphasis that Ms. Lewinsky's grand jury testimony on this key point was elicited not by one of the Independent Counsel's prosecutors, but by a grand juror who asked, "Monica, is there anything that you would like to add to your prior testimony[?]'[237] The OIC's failure to elicit that crucial piece of exculpatory testimony is important for Committee members to consider in determining the overall credibility of the investigation and the scope of their own review.

4. The President Did Not Commit an Impeachable Offense When His Counsel Characterized Ms. Lewinsky's Affidavit to the Presiding Judge During the Jones Deposition

This subparagraph is indistinguishable from the allegation contained in subparagraph 3 of Article I. The Minority views on why these allegations do not establish an impeachable offense are fully set forth, *supra*.

5. The President Did Not Relate to Ms. Currie A False And Misleading Account of Events Relevant to the Jones Suit With an Intent to Influence Her Testimony In Any Legal Proceeding

It is undisputed that the President met with Ms. Currie at the White House the day after his deposition in the *Jones* case. Ms. Currie testified that she and the President also spoke a few days after the deposition—but before the fact of the OIC's grand jury investigation was revealed—about the President's contacts with Ms. Lewinsky.[238] Majority counsel has argued to the Committee that "Ms. Currie was a prospective witness" in the *Jones* case at the time the President spoke to her, and that by referring to Ms. Currie during his deposition, the President indicated that he "clearly wanted her to be deposed as a witness" in the case.[239] The Majority's allegations find no basis in the record, and are a transparent effort to cast perfectly understandable and lawful conduct in the most sinister light possible.[240]

The simple truth is that the President's actions did not obstruct justice because Ms. Currie was not a witness in any proceeding when they spoke, and the President had no expectation that she

[235] Currie 5/6/98 GJ at 182; Currie 5/14/98 GJ at 57.
[236] Lewinsky 8/20/98 GJ at 105; Lewinsky 7/27/98 OIC 302 at 10.
[237] Lewinsky 8/20/98 GJ at 105.
[238] Currie 1/27/98 GJ at 80–82.
[239] Statement of Majority Counsel at 17.
[240] It is worth noting that at least one court has concluded that an obstruction of justice charge cannot be predicated on conduct arising in the context of a civil lawsuit. *Richmark Corp.* v. *Timber Falling Consultants*, 730 F.Supp. 1525 (D. Or. 1990).

would be.[241] Even Mr. Starr acknowledged during his appearance before the Committee that "[t]he evidence is not that she was on a witness list, and we have never said that she was."[242] Nor is it persuasive for the Majority to argue that the President's deposition references to Ms. Currie made it inevitable that her deposition would be taken. The undeniable fact is that following the President's deposition, the *Jones* lawyers never sought to take Ms. Currie's testimony. Indeed, discovery in the *Jones* case was set to close just days after the President's deposition was taken, and it is unlikely that her deposition could have been taken in the few days remaining.

Nor did the President have any way of knowing that the OIC was conducting a grand jury investigation of his relationship with Ms. Lewinsky when he spoke to Ms. Currie. That fact that a grand jury investigation had been commenced was not revealed until the *Washington Post* ran a front-page story on Wednesday, January 21, 1998, entitled "Clinton Accused of Urging Aide to Lie; Starr Probes Whether President Told Woman to Deny Alleged Affair to Jones's Lawyers."[243] Thus, not even the Majority can claim that the President endeavored to obstruct Mr. Starr's criminal probe of his consensual sexual relationship with Ms. Lewinsky.

Put in proper context, the facts reveal that the President's statements to Ms. Currie were not motivated by a desire to influence her testimony, but by the President's knowledge that his deposition testimony would be leaked to the media,[244] and that statements regarding Ms. Lewinsky would be contradicted by aggressive press coverage of the story. The President testified in the grand jury that he never expected the OIC to be involved in the *Jones* suit, and that his concern was that the story about Ms. Lewinsky "would break in the press."[245] Questions during the course of the deposition led the President to believe that "obviously someone had given [*Jones*' lawyers] a lot of information, some of which struck me as accurate, some of which struck me as dead wrong."[246] Following his testimony, the President was worried that he had been asked such detailed questions about what, to that point, he viewed as a secret relationship with Ms. Lewinsky. The President's concerns were borne out when, shortly after the deposition, Internet gossip columnist Matt Drudge reported the President's involvement with Ms. Lewinsky. Drudge's story received wide exposure the next

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[241] Under federal law, an obstruction of justice charge does not lie unless the defendant knew the witness in question to be involved in a legal proceeding. 2 Leonard B. Sand, John S. Siffert, Walter P. Loughlin, and Steven A. Reiss, *Modern Federal Jury Instructions* ¶ 46.01 at 46–14 (1997).

[242] 11/19/98 Tr. at 192.

[243] Referral at 122.

[244] Clinton 8/17/98 GJ at 99. The President explained his state of mind when he appeared at his deposition as follows: [m]y goal in this deposition was to be truthful, but not particularly helpful. I did not wish to do the work of the *Jones* lawyers. I deplored what they were doing. I deplored the innocent people they were tormenting and traumatizing. I deplored their illegal leaking. I deplored the fact that they knew, once they knew our evidence, that this was a bogus lawsuit, and that because of the funding they had from my political enemies, they were putting ahead. I deplored it. Clinton 8/17/98 GJ at 81. *See also id.* at 79 ("I wanted to be legal without being particularly helpful").

[245] Clinton 8/17/98 GJ at 55. *See also id.* at 131 ("I thought we were going to be deluged by press comments").

[246] Clinton 8/17/98 GJ at 132.

morning, January 18, when it surfaced on ABC's *This Week* program.

The President told the grand jury about his reasons for talking to Ms. Currie: "what I was trying to determine was whether my recollection was right and that she was always in the office complex when Monica was there . . . I was trying to get the facts down. I was trying to understand what the facts were . . . I was trying to get information in a hurry. I was downloading what I remembered."[247] The President plainly was hopeful that Ms. Currie was unaware of his relationship with Ms. Lewinsky, and was testing to see how much she knew. The state of her knowledge was important not because he expected her to give testimony in a judicial proceeding, but because it would help dictate the media strategy he adopted following a leak of his testimony about Ms. Lewinsky.[248] To that end, the President testified that he "was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could."[249]

With some variations in wording, Ms. Currie testified that the President made the following statements to her on January 18 regarding Ms. Lewinsky: (1) "[y]ou were always there when she was there, right? We were never alone;" (2) "[y]ou could see and hear everything;'

(3) Monica came on to me, and I never touched her, right?'; and (4) [s]he wanted to have sex with me, and I can't do that."[250] Ms. Currie also testified that a few days later (but before the fact of the OIC's investigation became public), she again talked to the President, and that "it was sort of a recapitulation of what we had talked about Sunday."[251] While the Majority asserts that these questions were an effort by the President to obtain Ms. Currie's acquiescence to those propositions, the totality of her grand jury testimony makes clear that she did not feel pressured by her conversations with the President to change her recollection of events; that she did not believe the President wanted her to say "right" in response to his statements; and that she agreed that the President and Lewinsky generally were not alone because she was near the Oval Office on most occasions when they met.[252]

Ms. Currie testified as follows in the grand jury:

> Q. You testified with respect to the statements as the President made them, and, in particular, the four statements that we've already discussed. You felt at the time that they were technically accurate? Is that a fair assessment of your testimony?
>
> A. That's a fair assessment.[253]

The following exchanges also occurred:

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[247] Clinton 8/17/98 GJ at 55–56.

[248] While the President's efforts to tailor his media strategy in that manner may not be admirable, it certainly is not impeachable, as the Majority plainly conceded when it dropped similar allegations from its article of impeachment charging that the President misused his office.

[249] Clinton 8/17/98 GJ at 56.

[250] Currie 1/27/98 GJ at 71–74.

[251] Currie 1/27/98 GJ at 80–82.

[252] Currie 7/22/98 GJ at 11, 22–23.

[253] Currie 7/22/98 GJ at 18.

Q. Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?

A. None whatsoever.

Q. What did you think, or what was going through your mind about what he was doing?

A. At that time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.

* * * * * * *

Q. That was your impression that he wanted you to say—because he would end each of the statements with "Right?" with a question.

A. I do not remember that he wanted me to say "Right." He would say "Right" and I could have said, "Wrong."

Q. But he would end each of those questions with a "Right?" and you could either say whether it was true or not true?

A. Correct.

Q. Did you feel any pressure to agree with your boss?

A. None.[254]

Significantly, the President testified that when he learned that Ms. Currie had been called to testify before the grand jury, he said, "Betty, just don't worry about me. Just relax, go in there, and tell the truth."[255] The President also testified that "I didn't want her to, to be untruthful to the grand jury. And if her memory was different than mine, it was fine, just go in there and tell them what she thought. So, that's all I remember."[256]

Although the Independent Counsel interviewed the Paula Jones attorneys, they studiously avoided asking them about their intentions with respect to calling Betty Currie as a witness. Moreover, the fact that she was never contacted, never deposed, and never added to the witness list in any way, even after the President's deposition, destroys this obstruction charge.

In sum, the President had no reason to believe that Ms. Currie would be a witness in any proceeding at the time he spoke to her. In contrast, the President knew that once his deposition testimony leaked, the White House would be "deluged" by the media.[257] It is far more likely that, when the President spoke to Ms. Currie, his goal was to keep the media and the public from finding out about his relationship with Ms. Lewinsky. Both the President and Betty Currie, the *only* people involved in this event, both agree that the conversation on January 18 was not about testimony, was not intended to pressure her, and was caused by the inquiries from the press, not for any litigation. The President's desire to keep that relationship secret was obvious and understandable, but not illegal, and certainly not grounds to justify impeachment. The Majority's

[254] Currie 7/22/98 GJ at 23.
[255] Clinton 8/17/98 GJ at 139.
[256] Clinton 8/17/98 GJ at 141.
[257] Clinton 8/17/98 GJ at 132.

evidence falls far short of establishing the existence of an obstruction of justice or other impeachable offense.

6. The President Did Not Obstruct Justice or Abuse his Power by Denying to his Staff his Inappropriate Contacts with Ms. Lewinsky

The Majority alleges that the President obstructed justice by lying to his staff or to the people around him about his inappropriate contacts with Ms. Lewinsky, knowing that they might repeat those statements in a grand jury. But the President's statements to his staff on January 21, 23, and 26, were made to protect his family from discovering his relationship with Ms. Lewinsky. He could not have known then that his staff would be called before the OIC's grand jury. The President did not want to admit he had an inappropriate relationship. This understandable desire falls far short of establishing an impeachable offense.

The Referral lists the statements that the President allegedly made to various aides, and then how the aides testified to what the President said in their grand jury appearances.[258] When asked leading questions in the grand jury, the President acknowledged that he assumed that various staff members might be called to the grand jury.[259] Based only on that acknowledgment, the Majority alleges a ground for impeachment.

However, in its fervor to construct an impeachable offense, the Majority omits important details. First, what the President was denying to his aides was the fact of his private, sexual relationship. This was not comparable to enlisting aides in misrepresenting the progress and success of our troops during the Vietnam War, or misrepresenting the United States' efforts to divert financial assistance from Iran to help the Contras in Nicaragua, or misrepresenting involvement in the Watergate burglaries. This was a man denying to those with whom he worked that he was having an extra-marital relationship with a young woman. The fact that the man was President, and the co-workers were White House employees, should not elevate this everyday occurrence into a constitutional crisis.

Second, the article does not allege, because there are no facts from which to do so, that the President denied that he had an inappropriate relationship with Ms. Lewinsky for the corrupt purpose of influencing their grand jury testimony. But the President's admission after the fact that some people he talked with might be called to testify in the grand jury is not the same as an admission that he intended those people to lie. Indeed, the case cited by the Independent Counsel proves that very point.[260] Criminal convictions require that the actor intend that a person lie. Not one of the individuals identified in the Referral states that the President discussed, or even suggested, that they should testify in any particular way. The point of the President's conversation with the staff had nothing whatsoever to do with the grand jury. It had to do with denying an intimate relationship for the more obvious reasons that these kinds of relationships are always denied. To put the point most simply: does anyone really think the President would

[258] Referral at 123–25, 198–203.
[259] Clinton 8/17/98 GJ at 107.
[260] *See United States* v. *Bordallo,* 857 F.2d 519 (9th Cir. 1988).

have admitted to this relationship even if no grand jury had been sitting?

It is important to note that the President's statements to staff were all made at a time when the media began its firestorm coverage of the OIC's expansion of its jurisdiction. Having announced to the entire country that he was not having a relationship with Lewinsky, it is hardly remarkable that he did the same with his staff. The President was not singling out his staff—he denied the affair to everyone—so he was not motivated by a desire to influence their grand jury testimony. This denial comes nowhere close to meeting the threshold for an impeachable offense.

D. ARTICLE IV ALLEGING ABUSE OF POWER FAILS TO ESTABLISH AN IMPEACHABLE OFFENSE

On November 5, 1998, the Majority sent the President a list of 81 questions that it deemed relevant to its impeachment inquiry. The President responded to those questions on November 27, 1998. The Majority has identified the President's responses to ten of those questions [261] as being "perjurious, false and misleading," and constituting grounds for impeachment.

The manner in which the Majority drafted Article IV causes the Minority considerable concern. Originally, the Majority publicly released a version of the article that contained four clauses.[262] Relying on allegations first propounded by the Independent Counsel, the first clause alleged that the President made misleading statements to the public concerning his relationship with Ms. Lewinsky. Clause two asserted that the President made false statements to aides concerning the relationship knowing that the aides would repeat the statements during appearances before the grand jury. Clause three contended that the President improperly asserted executive privilege to obstruct the OIC's investigation of him, while clause four relied on the President's allegedly perjurious responses to the 81 questions.

During the Committee's debate on Article IV, Rep. Gekas, a member of the Majority, moved to amend the language of that provision by removing the first three clauses and making conforming changes to the preamble. The Gekas Amendment was approved by a vote of 29 "aye," 5 "no," and 3 "present." The Minority was hard-pressed to understand the reasons for the Majority's sweeping changes to the article that it had proposed just days earlier, and Rep. Schumer requested that the Chairman explain the process by which the article was drafted.[263] The Chairman declined to do so.[264] In an interview with the *Washington Post,* however, Rep. Hutchinson, a member of the Majority, "emphasized that [the Article] had been written by staff attorneys and that "[i]t had never been debated [by the Majority Members]. The [Majority] [M]embers

[261] The ten responses that form the basis for Article IV are Numbers 19, 20, 24, 26, 27, 34, 42, 43, 52, 53.

[262] Indicative of the highly partisan nature of the process is the fact that the Majority released its proposed articles of impeachment to the public even as Counsel to the President, Charles F.C. Ruff, was testifying before the Committee.

[263] 12/12/98 Tr. at 15.

[264] 12/12/98 Tr. at 15.

never voted on Article IV."[265] Thus, the Majority offered Article IV even though no Member of the Majority actually voted for it.

The allegation that the President's responses to some of the 81 questions constitute a "misuse and abuse" of his office is curious. In its other articles of impeachment, the Majority elected to charge perjury in the grand jury and perjury during the *Jones* deposition without tying those allegations to any supposed abuse of the Office of the President. Even if one were to assume, for the sake of argument, that the President's responses to some of the 81 questions were false, the Minority fails to understand how those responses could constitute an abuse of power. The text of the revised article reveals a desperate, and ultimately unsuccessful, effort by the Majority to link the President's responses to an official governmental function. The article provides that the President's responses "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."

The Minority notes that the Majority's language in Article IV is not accidental. During Watergate, Article III of the articles of impeachment charged that President Nixon abused the power of his office by failing to comply with subpoenas for documents and things served on him by the Committee. The Nixon article alleged that the President's failure to respond to the subpoenas interposed the powers of the Presidency against lawful subpoenas of the House of Representatives and, as the Majority has alleged here, that the President "thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives."[266] Thus, the present-day Majority has attempted to conjure the ghost of Watergate by couching what are, at best, additional allegations of perjury in terms that are reminiscent of the true abuses of power that occurred during Watergate.

The Minority also takes strong exception to the Majority's efforts to set a "perjury trap" for the President. "A perjury trap is created when the government calls a witness . . . [to testify] for the primary purpose of obtaining testimony from him in order to prosecute him later for perjury."[267] Here, the responses on which the Majority relies to support Article IV all involve subjects on which the President testified either in his Jones deposition, or the grand jury, or both.[268] Over and over since his testimony on those occasions, the President has acknowledged that he misled the country, largely to spare himself and his family the embarrassment of revealing his relationship with Ms. Lewinsky.[269] When the Majority propounded its 81 questions to the President, it knew that he would not change his testimony simply to satisfy its demands. In essence, then, the Majority has manufactured a count of impeach-

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[265] Peter Baker and Juliet Eilperin, *GOP Blocks Democrats' Bid to Debate Censure in House,* Wash. Post, Dec. 13, 1998, at A1.

[266] Report of the Committee on the Judiciary, Impeachment of Richard M. Nixon, President of the United States, House Rep. No. 93–1305, 92nd Cong., 2d Sess. 4 (1974).

[267] *United States* v. *Chen,* 933 F.2d 793, 796 (9th Cir. 1991).

[268] Response No. 19 (cover stories); 20 (knowledge of subpoena served on Ms. Lewinsky); 24, 26, 27, 42, 43 (gifts exchanged with Ms. Lewinsky); 34 (Ms. Lewinsky's affidavit) and 52, 53 (statements to Ms. Currie).

[269] *See, e.g.,* 8/17/98 Tr. of Address to the Nation at 1.

ment against the President simply by requiring him to respond, in writing, to its demands for additional information.

The President's responses to the 81 questions make clear that the Majority has not identified any *new* conduct of the President that warrants impeachment. Every one of the ten responses on which the Majority relies either quotes directly from, or cites to, earlier testimony that the President gave on the referenced subjects. Presumably, the Majority believes that it would be free to manufacture additional articles of impeachment simply by asking the President over and over again about topics on which he is certain not to change his answers, and then accusing the President of lying each time it did not like his responses. In contrast to Watergate, where the Committee premised its abuse of power allegations on President Nixon's affirmative refusal to comply with Committee subpoenas, the Majority here has simply bootstrapped what it believes to be earlier instances of presidential perjury into a new abuse of power article. The Minority completely rejects the Majority's transparent effort to draw a parallel to the events of 1974.

IV. The Credibility of the Impeachment Inquiry Has Been Compromised

Aside from the substantive problems we have with both the lax standard of impeachment that has been applied by the Majority, and the many errors in the culpability of conduct identified, by the OIC, we are also concerned about the process which has brought the House to this point. Our concerns derive from both perceived unfairness and bias in the OIC investigation as well as the Committee's inquiry.

A. Bias in OIC Investigation

The OIC's conduct has raised a great many doubts regarding the fairness of an investigation which has brought this body to the brink of an impeachment vote. Collectively, these actions raise the question whether the OIC was motivated by an effort to conduct an impartial investigation or by prosecutorial zeal to damage a President. Our concerns arise from a number of reasons.

First, many of our problems arise from the Independent Counsel law, and its interaction with impeachment proceedings in particular. The law gives little guidance or specification regarding the manner in which impeachment referrals are to occur. As already noted, in this case, the OIC chose to ignore the Watergate precedent of special prosecutor Jaworski who saw fit to provide only unedited grand jury transcripts to the Committee. Instead, Mr. Starr developed his own impeachment standards, and then went out of his way to argue the case for impeachment to the Congress. It was just such authority that allowed the Referral to be characterized as a "referral with an attitude."[270] Similarly, it was Mr. Starr's unbending advocacy which caused his ethics adviser Samuel Dash to resign the day after his congressional testimony.[271]

[270] Linda Greenhouse, Testing of a President, N.Y. Times, Sept. 12, 1998, at A1.
[271] In his resignation letter, Professor Dash wrote:

Continued

Second, doubts have been raised regarding the appropriateness of the initial selection of Mr. Starr by the three-judge panel. Questions have been raised regarding the propriety of a luncheon meeting between Judge Sentelle, a member of the three-judge panel, and Senator Faircloth, one of President Clinton's severest political critics, shortly before Mr. Starr's appointment as Independent Counsel. Issues have also arisen regarding the appropriateness of Mr. Starr's continued representation of business interests, such as the tobacco industry, who were involved in litigation directly adverse to positions taken by the President. These concerns were compounded when Mr. Starr tentatively accepted a lucrative academic position at Pepperdine University which was largely funded by Richard Mellon Scaife, another harsh critic of the President.

Third, questions have been raised regarding the appropriateness of Mr. Starr's advocacy in support of Paula Jones with respect to constitutional issues arising in her civil lawsuit against President Clinton. Prior to being named Independent Counsel, a lawyer for Paula Jones approached Mr. Starr about drafting an amicus brief arguing against the President's claim of immunity in the *Jones* case,[272] and Mr. Starr ultimately agreed to represent *pro bono* a conservative women's group, the Independent Women's Forum, in their filing of a legal brief opposing the President on this matter.[273] The representation of the Independent Women's Forum did not end until August 8, 1994, four days after Mr. Starr became Independent Counsel.[274] Mr. Starr also appeared on the MacNeil/Lehrer Newshour to argue against the President's immunity claim.[275]

A fourth concern arises from the fact that the OIC appears to have been made aware of allegations of possible wrongdoing at least one week before he sought to expand his investigation into this area. Based on newspaper accounts and Mr. Starr's own testimony, the following time line can be constructed.

—In mid-October of 1997, around the time when Linda Tripp began illegally taping her telephone conversations with Monica Lewinsky, someone placed an anonymous phone call to the

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I resign for a fundamental reason. Against my strong advice, you decided to depart from your usual professional decision-making by accepting the invitation of the House Judiciary Committee to appear before the committee and serve as an aggressive advocate for the proposition that the evidence in your referral demonstrates that the President committed impeachable offenses. In doing this you have violated your obligations under the Independent Counsel statute and have unlawfully intruded on the power of impeachment which the Constitution gives solely to the House.

Letter from Samuel Dash, Professor, Georgetown University Law Center, to Kenneth W. Starr, Independent Counsel (Nov. 20, 1998).

[272] *Impeachment Hearing on Inquiry Pursuant to H. Res. 581,* 105th Cong., 2d Sess. 119 (1998).

[273] Id. at 123; Declaration of Daniel F. Attridge ¶ 13, *Jones v. Clinton* (D.D.C.) (No. 98–042).

[274] Decl. of Daniel F. Attridge ¶ 13, *Jones v. Clinton* (D.D.C.) (No. 98–042).

[275] *MacNeil/Lehrer NewsHour: Presidential Immunity* (PBS television broadcast, May 24, 1994) (transcript available on Lexis). Also raising concern is the fact that Mr. Starr, as a partner at Kirkland & Ellis, was consulted by, and gave legal advice to, lawyers for Paula Jones on approximately half-a-dozen occasions. *Morning Edition: Questions on Starr-Jones Connection* (NPR radio broadcast, Oct. 15, 1998) (transcript available on Lexis). Richard Porter, another Kirkland & Ellis lawyer and former aide to Vice President Dan Quayle, was asked in May 1994, while the Independent Counsel was a partner there, to serve as counsel to Ms. Jones; Mr. Porter declined the representation but faxed the declaration of a *Jones* witness to the Chicago Tribune. Second Decl. of Daniel F. Attridge ¶ 2, *Jones v. Clinton* (D.D.C.) (No. 98–042). In addition, Mr. Porter suggested that Nelson Lund, formerly a counsel to President Bush, represent Ms. Jones in her lawsuit, but Mr. Lund declined the representation and instead recommended Gilbert Davis and Joseph Cammarata. Robert Novak, *Ex-Bush Aides Helped Jones* Find Lawyers, Chicago Sun-Times, May 15, 1994, at 41. Ms. Jones ultimately hired both Mr. Davis and Mr. Cammarata. *Id.*

Rutherford Institute, the conservative organization funding Ms. Jones's lawsuit, saying that the President was having an affair.[276]

—On November 21, 1997, David Pyke, one of Ms. Jones's lawyers, called Ms. Tripp to say that Lucianne Goldberg had contacted him about a woman having an affair with the President.[277] Ms. Tripp confirmed for Mr. Pyke that she knew a woman who was having a two-year affair with the President that started when she was a White House intern.[278] When discussing her becoming involved with the *Jones* lawsuit, Ms. Tripp told Mr. Pyke that she should appear to be a hostile witness.[279]

—On November 24, 1997, the *Jones* lawyers subpoenaed Ms. Tripp.[280] Ms. Goldberg, in January of 1998, began to explore how Ms. Tripp could contact the OIC about the Lewinsky affair.[281] Ms. Goldberg contacted Mr. Porter, the Kirkland & Ellis lawyer who had the opportunity to represent Paula Jones, who, in turn, contacted Jerome Marcus, a Philadelphia attorney.[282]

—On January 8, 1998, Mr. Marcus called Paul Rosenzweig, one of the OIC attorneys to convey Ms. Tripp's information.[283]

—On January 9, 1998, Mr. Rosenzweig informed Deputy Independent Counsel Jackie M. Bennett, Jr., what he had heard about a White House intern and the President.[284] Also on that day, Ms. Goldberg spoke to Mr. Conway to get Ms. Tripp a new, more conservative lawyer; Ms. Tripp hired Mr. Conway's recommendation, James Moody.[285]

—On January 12, Ms. Tripp finally called the OIC, herself, and spoke to Mr. Bennett.[286] That night, the OIC promised to seek immunity for Ms. Tripp from federal prosecution for the illegal taping; the OIC also promised to help Ms. Tripp if state authorities began to investigate the taping.[287]

—On January 16, the Special Division gave permission for the OIC to expand its jurisdiction into the Lewinsky allegations.[288] That day, the OIC gave Ms. Tripp an immunity agree-

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[276] Rene Sanchez & David Segal, Mysterious Efforts Permeate Lewinsky, *Jones* Allegations, Wash. Post, Jan. 31, 1998, at A13.

[277] Supplemental Materials to the Referral to the U.S. House of Representatives Pursuant to Title 28, U.S. Code, Section 595(c) Submitted by the Office of Indep. Counsel, Sept. 9, 1998, H.R. Doc. No. 316, 105th Cong., 2d Sess. 2531–32 (reprinting Lewinsky/Tripp Phone Tr. 005 at 91–102).

[278] *Id.*

[279] *Id.*

[280] Alan C. Miller & Judy Pasternak, Starr's Office Let Tripp Give Details to *Jones'* Lawyers, L.A. Times, Oct. 11, 1998.

[281] *Id.*

[282] *Id.*

[283] *Id.;* The Independent Counsel testified before the Judiciary Committee that "[o]n January 8, an attorney in our office was informed that a witness, who was Linda Tripp, who had been a witness in prior investigations in our office, had information that she wanted to provide. A message was conveyed back that she should provide her information directly." *Impeachment Hearing on Inquiry Pursuant to H. Res. 581,* 105th Cong., 2d Sess. 66 (1998).

[284] Miller & Pasternak, *supra.*

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] *Appendices to the Referral to the U.S. House of Representatives Pursuant to Title 28, U.S. Code, Section 595(c) Submitted by the Office of the Indep. Counsel,* Sept. 9, 1998, H.R. Doc. No. 311, 105th Cong., 2d Sess. 6 (1998) (reprinting January 16, 1998 Order of the Special Division).

ment to protect her from federal prosecution for the taping.[289] Knowing that Ms. Tripp had connections to the *Jones* case, the OIC failed to include in her agreement a clause that prevented Ms. Tripp from speaking to anyone about the OIC's investigation.[290] Ms. Tripp spoke to the *Jones's* lawyers that night, after speaking to the OIC and after leading the OIC to Ms. Lewinsky at the Ritz-Carlton Hotel, thereby setting up the President for his deposition in the *Jones* case.[291]

In particular, we are concerned that rather than immediately reporting any of these facts to the Department of Justice, Mr. Starr's office sought to create their own exigency which left the Attorney General with little choice but to approve his requested extension in jurisdiction. These concerns are exacerbated by the fact that Mr. Starr failed to disclose any previous contacts between himself and his firm and the *Jones* legal team to the Department of Justice.[292]

Fifth, an ongoing investigation into illegal grand jury leaks by the OIC does not give us much further comfort. On June 19, Chief U.S. District Judge Norma Holloway Johnson issued an order holding that "serious and repetitive" leaks to the news media about the OIC's investigation of the Lewinsky allegations justified an inquiry into whether the OIC broke the rule barring dissemination of grand jury material.[293] Subsequently, in a September 25, 1998 ruling, Judge Johnson appointed a special master to conduct an independent investigation of the alleged OIC leaks of grand jury material, "[d]ue to serious and repetitive prima facie violations of Rule 6(e).[294] To date the court has identified 24 separate instances of possibly illegal grand jury leaks. Whether or not one agrees with the OIC view that it is not illegal to leak information which is merely likely to be submitted to the grand jury, or the D.C. Circuit view that such leaks are illegal,[295] it is not difficult to see that the better course of discretion in a politically charged investigation such as this would have been to avoid leaking any information.

Sixth, we are concerned that the OIC may have violated Department of Justice guidelines in gathering its evidence. The Department of Justice rules provide that an attorney for the government should not communicate with a targeted person who government knows is represented by an attorney.[296] At the time the Independ-

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[289] Miller & Pasternak, *supra.*

[290] *Impeachment Hearing on Inquiry Pursuant to H. Res. 581,* 105th Cong., 2d Sess. 126 (1998).

[291] Miller & Pasternak, *supra.*

[292] When members of the OIC went to meet with the Deputy Attorney General to seek permission to expand their jurisdiction to investigate these issues notes were taken by participants at the meeting that were released for the first time by the Committee on December 10, 1998. Reference to those notes indicate that *at no time* did anyone from the OIC even mention to the Justice Department that Mr. Starr or his firm (1) had been contacted to be Ms. Jones's attorney, (2) had given legal advice to Ms. Jones's attorneys, (3) had considered filing a brief on Ms. Jones's behalf, or (4) had helped Ms. Tripp contact the OIC with her illegally obtained tapes.

[293] Order to Show Cause, Misc. No. 98–55, slip. op. at 4 (D.D.C. June 19, 1998).

[294] *In re Grand Jury Proceedings,* Misc. No. 98–228, 1998 U.S. Dist LEXIS 17290, at *32–*38.

[295] It has long been the rule in the D.C. Circuit that the law against disclosing "matters occurring before the grand jury" prohibits disclosing "not only what has occurred and what is occurring, *but also what is likely to occur." In re Motions of Dow Jones & Company,* 1998 U.S. App. LEXIS 8676 (D.C. Cir. May 5, 1998) (emphasis added) (quoting, *SEC* v. *Dresser Indus.,* 628 F.2d 1368, 1382 (D.C. Cir. 1980).

[296] DOJ Manual § 9–13.240 ("an attorney for the government should not overtly communicate, or cause another to communicate overtly, with a represented person who the attorney for the government knows is a target of a federal criminal or civil enforcement investigation and who the attorney for the government knows is represented by an attorney concerning the subject matter of the representation without the consent of the lawyer representing such a person.").

ent Counsel confronted Ms. Lewinsky at the Ritz Carlton, she plainly was a target of the newly-expanded investigation. Yet at that initial confrontation with Ms. Lewinsky, the Independent Counsel tried to negotiate an immunity deal with her without her lawyer, Frank Carter, being present.[297]

Finally, and perhaps most seriously, we are deeply concerned that the OIC intentionally omitted or downplayed exculpatory evidence concerning President Clinton in its referral. For example, even though Ms. Lewinsky appeared twice before the grand jury, for a total of nine hours (plus a two hour deposition after the President's grand jury testimony and several more hours of OIC interviews), OIC prosecutors never asked her to state for the record whether she was encouraged to lie when she submitted her affidavit in the *Jones* case. It was only when a grand juror happened to ask Ms. Lewinsky if she would like to add anything to her testimony, that she stated, "*I would just like to say that no one ever asked me to lie and I was never promised a job for my silence.*"[298]

Similarly, the Referral charges the President with intentionally lying about having sexual relations with Ms. Lewinsky. Yet, OIC prosecutors did not see fit to include in the Referral the statement by Ms. Lewinsky that *she* does not believe that she had sexual relations with the President.[299] In addition, the Referral charges the President with asking Vernon Jordan to secure a job for Ms. Lewinsky in order to keep her from revealing their relationship when she testified in the *Jones* case. The Referral neglects to mention Ms. Lewinsky's statement to the OIC's investigators that "LINDA TRIPP suggested to LEWINSKY that the President should be asked to ask VERNON JORDAN for assistance."[300] The Referral also fails to mention that Ms. Lewinsky testified that Ms. Tripp told her, "Monica, promise me you won't sign the affidavit until you get a job. . . . Tell Vernon you won't sign the affidavit until you get the job. . . ."[301] These same types of concerns animate the problems we have with the OIC's failure to provide prompt notice to the public of its determination to exonerate President Clinton with regard to the Whitewater, Travel Office, and White House file investigations. It became clear at our hearings that the OIC had made this determination before the November elections, yet failed to notify Congress or the public of its findings.

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[297] These tactics also may violate Department of Justice policy which prohibits federal prosecutors from contacting a represented person to discuss an immunity deal without the consent of the attorney representing that person. 28 CFR 77.8. This regulation is intended to ensure that a person's right to counsel is respected. Under this policy, the Independent Counsel never should have contacted Ms. Lewinsky on January 16th and attempted to negotiate an immunity deal with her, without the prior consent of her attorney Frank Carter. In addition, the Independent Counsel may have violated Department of Justice policy by forcing Ms. Lewinsky's mother, Marcia Lewis, to appear twice before the grand jury. It is against Department of Justice policy to subpoena close family member of targets before the grand jury. U.S. Attorney's Manual §9–23.211.

[298] H.R. Doc. No. 311 at 1161 (reprinting Lewinsky 8/20/98 GJ at 105) (emphasis added).

[299] *Supplemental Materials to the Referral to the U.S. House of Representatives Pursuant to Title 28, U.S. Code, Section 595(c) Submitted by the Office of Indep. Counsel,* Sept. 9, 1998, H.R. Doc. No. 316, 105th Cong., 2d Sess. 2664 (reprinting Lewinsky/Tripp Phone Tr. 0018 at 49).

[300] H.R. Doc. No. 311, supra, at 1393 (reprinting Lewinsky 7/27/98 OIC 302 at 5).

[301] *Id.* at 902 (reprinting Lewinsky 8/6/98 GJ, at 182).

B. UNFAIRNESS IN COMMITTEE INVESTIGATION

1. Unfairness in Conducting Committee Inquiry

From the outset, Democrats have insisted that the process for conducting the impeachment inquiry be fair and balanced. We would be remiss if we did not acknowledge that in a few respects we have been able to reach bipartisan accord on procedural matters. For example, when the Majority chose to announce oversight hearings on the History and Background of Impeachment,[302] and the Consequences of Perjury and Related Crimes, we were granted a reasonable opportunity to call our own witnesses. Also, we were able to reach accord concerning permitting Committee staff to review certain materials not initially provided to the Committee from the OIC, and requiring the OIC to respond to additional questions posed by the Members in writing. Chairman Hyde also granted Mr. Conyers' request that the Committee consider a censure alternative to impeachment.

Regrettably, these occasional displays of bipartisanship were overshadowed by numerous other actions undertaken by the Committee which were unfair to the Minority members of the Committee, to the President, and, most importantly, to the American people. All too frequently, partisanship, unilateral decision-making, and fishing expeditions were the hallmarks of this inquiry and damaged its credibility even before it started.

As a threshold matter, we were unable to achieve bipartisan consensus for the manner in which the inquiry was to be conducted. When H. Res. 581, authorizing the Committee inquiry was debated on the floor and at the Committee, Democrats offered an alternative resolution which would have allowed for an impeachment inquiry limited to the matters set forth in the OIC Referral, provided for a full debate on the standards of impeachment and a debate on whether the facts alleged rose to that standard, and provided for an orderly process to hear factual deadlines along with a tentative year-end deadline. Unfortunately, the Minority proposal was spurned on each occasion, the Majority sought no compromise, and the resulting inquiry was unfocused and standardless.

We were also distressed by the Committee's complete failure to consider the direct testimony of any factual witness. The Committee gathered none of its own evidence and took testimony from none of its own witnesses. This was compounded by the oft-repeated statement that it is up to the Minority and the President to call witnesses to establish his own innocence. As a factual matter, this is incorrect—in contravention of the Watergate precedent laid down by Chairman Rodino, the Majority repeatedly rebuffed our efforts to obtain additional evidentiary information.[303] In any event, the Majority position represents a breathtaking denial of the President's right to the presumption of innocence and his right to confront any witnesses making accusations against him. Although the Committee is not bound as a matter of House Rules to provide

[302] Although this hearing should have been called far earlier in the process.

[303] For example, on November 9, Chairman Hyde rejected Mr. Conyers request to issue subpoenas to obtain a variety of evidentiary and witness material. On December 11, the Majority rejected Mr. Scott's motion that the Committee establish a scope of inquiry and hear from witnesses with direct knowledge of the allegations before considering articles of impeachment.

these protections, we believe it is incumbent upon the Committee to provide these basic protections. As Rep. Barbara Jordan (D–TX) observed during the Watergate inquiry, impeachment not only mandates due process, but of "due process quadrupled."[304]

Instead of calling witnesses in order to independently assess their credibility, the Committee chose to rely in total on the OIC Referral and accompanying grand jury transcripts involving testimony solicited by the OIC attorneys. As we describe in more detail above, a principal problem in relying on the OIC Referral is that the case it makes out is largely circumstantial, with many of the critical alleged criminal elements provided by inference and surmise, rather than fact. In addition, numerous aspects of the witness testimony are not only confusing, but contradictory.

Conducting a presidential impeachment inquiry in the absence of factual witnesses totally contravenes the Committee's Watergate precedent. During the Watergate inquiry, the Committee heard direct testimony from nine factual witnesses. The Members were also confronted with massive factual detail compiled by the staff, in the form of 650 "statements of information" and more than 7,200 pages of supporting evidentiary material, furnished to each Member of the Committee in 36 notebooks. Committee Members heard recordings from nineteen presidential conversations and dictabelt recollections. Eventually, the Committee became privy to a tape recording of President Nixon ordering the cover-up the Watergate break in shortly after it occurred.[305] None of these independent factual determinations have been conducted in the present inquiry.

The fact that the Committee has received voluminous materials from the OIC does not relieve us of our obligation to conduct our own independent review of the facts. The Constitution is clear in specifying that the "House of Representatives . . . shall have the *sole* Power of Impeachment."[306] The Framers crafted this requirement with good reason—impeachment as a political process is intended to be subject to political accountability. By contrast, the OIC is subject to no such constraints and no such accountability.[307]

Although the impeachment of a federal judge does not provide the same weighty considerations as the impeachment of a president, it is instructive to note that in such contexts the Committee has chosen to call its own witnesses in order to develop an independent case against the judge charged with misconduct. For example, when Judge Nixon was impeached in 1989, even though he had already been convicted in a jury trial with the full panoply of due process rights, the Committee conducted seven full days of hearings during which nine witnesses testified. An even more telling precedent concerns the 1988 impeachment of Judge Hastings. His impeachment was considered pursuant to a referral by the Judicial Conference under 28 U.S.C. §372(c)(7)(B). Very much like the OIC Referral, the Judicial Conference included a comprehensive re-

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[304] Watergate Impeachment Inquiry, Book I, 349 (April 25, 1974), *cited in* John R. Labovitz, Presidential Impeachment (1978) at 189.

[305] *Impeachment of Richard M. Nixon, President of the United States,* H.R. Rep. No. 93–1305, 93rd Cong., 2d Sess., at 9, 166.

[306] U.S. Const. Art. II, Sec. 2 (emphasis supplied).

[307] *See e.g.,* Julie R. O'Sullivan, *The Interaction between Impeachment and the Independent Counsel Statute,* 86 Geo. L. J. 2193 (1998); Ken Gormley, *Impeachment and the Independent Counsel: A Dysfunctional Union,* Stan. L. Rev. (1998).

port of 841 pages, detailing a variety of potentially impeachable conduct, and including a review of numerous district court records, FBI files, Justice Department investigatory files, grand jury materials, bank, financial and other records, and the locating and interviewing of numerous witnesses. Notwithstanding the magnitude and comprehensiveness of the Judicial Conference Referral, during Judge Hastings' impeachment the Committee opted to hold seven days of hearings during which 12 witnesses testified. An additional 60 witnesses were separately interviewed or deposed.

In failing to call any witnesses who could make out a case against President Clinton and subjecting such witnesses to cross examination, the Majority did not merely deny the President of some trivial rules of procedure. Rather, the Committee has undercut the very cornerstone of our nation's sense of fairness and due process. Summarizing this long and distinguished heritage, the Supreme Court wrote in 1895 that the presumption of innocence "is to be found in every code of law which has reason, and religion, and humanity, for a foundation. It is a maxim which ought to be inscribed in the heart of every judge and juryman."[308] The presumption of innocence has been traced to Deuteronomy, and was embodied in the laws of ancient Rome, Sparta and Athens.[309]

The right to confront and cross-examine one's accusers is specifically referenced in the Sixth Amendment to the Bill of Rights.[310] Justice Frankfurter has eloquently written that "[n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it."[311] The leading treatise on evidence, written by Professor Wigmore, declares that "[t]he belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement . . . should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience.[312] Significantly, these critical protections are not limited to criminal trials, they have been afforded to parties in numerous other legal contexts.[313]

When the allegations that the President undertook efforts to obstruct Kathleen Willey's testimony led nowhere, the Majority expanded the impeachment inquiry to include allegations that the President violated federal campaign finance laws.[314] The Majority took this course despite the fact that both the Senate Governmental Affairs Committee and the House Government Reform and Oversight Committee had investigated the same allegations to no avail. The Republicans on the Judiciary Committee succeeded in their motion to subpoena and depose FBI Director Louis Freeh and Justice Department Campaign Finance Task Force Chief Charles

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[308] *Coffin* v. *United States,* 156 U.S. 432, 456 (1895).

[309] *Id.* at 454.

[310] In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. Amend. VI.

[311] *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 170 (1951).

[312] 5 Wigmore on Evidence (3d ed. 1940) §1367.

[313] *See e.g., In re Gault,* 387 U.S. 1 (1967) (due process protections held to apply in non-criminal juvenile proceedings); *Goldberg* v. *Kelly,* 397 U.S. 254, 262–63 (1970) (due process requirements applicable in context of termination of welfare benefits).

[314] Juliet Eilperin & Ruth Marcus, *Both Sides Harden Impeachment Views: Widening of Probe Irks Democrats,* Washington. Post, Dec. 2, 1998, at A1; Alison Mitchell, *Panel Seeks Fund-Raising Memos, Stirring Democrats,* New York Times, Dec. 2, 1998, at A20.

LaBella.[315] The Republicans ultimately canceled all campaign finance-related fishing expeditions.[316]

The rationale for canceling the depositions would be unclear except for the fact that, contemporaneous to scheduling depositions, the Majority was making efforts to view memoranda prepared by Director Freeh and Mr. LaBella for a Justice Department investigation of the alleged campaign finance violations. The U.S. District Court for the District of Columbia, which controlled access to the memoranda pursuant to a grand jury investigation of the alleged violations, issued a ruling that allowed one staff member from the Majority side of the Committee and one staff member from the Minority side of the Committee to review the memoranda.[317] It was after the Majority reviewed the memoranda that the depositions of Director Freeh and Mr. LaBella were canceled finally. The decision to cancel the depositions in light of whatever information was gleaned from the memoranda reveals that the claims about campaign finance violations had no foundation—a conclusion already reached by Attorney General Janet Reno in her decision not to appoint independent counsels to investigate either the President or Vice President Al Gore.[318]

2. Unfairness in the Drafting of the Articles of Impeachment

The Majority also failed to inform the Minority, the President, or the public in any timely manner what the charges against the President would be. The Referral, itself, listed eleven acts that could constitute grounds for impeachment of the President.[319] At his presentation before the Committee on October 5, 1998, Majority counsel, David Schippers, listed fifteen acts that could constitute grounds for impeachment.[320] First, we heard there were eleven charges, then fifteen, then eleven again, and then three.

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[315] Eilperin & Marcus, supra; Mitchell, supra.

[316] Guy Gugliotta & Juliet Eilperin, *Panel Gives Up Campaign Probe,* Washington Post, Dec. 4, 1998, at A1; Alison Mitchell, *Republicans Drop Bid to Investigate Clinton Campaign,* New York Times, Dec. 4, 1998, at A1.

[317] Peter Baker & Juliet Eilperin, *"Vigorous Defense" of Clinton is Pledged,* Washington Post, Dec. 3, 1998, at A1.

[318] In addition, the following instances of procedural unfairness occurred in connection with our inquiry:

(1) On September 11, 1998, the resolution relating to the release of the OIC materials, H. Res. 525, was introduced in the absence of bipartisan agreement. In particular, the Majority failed to offer the President an opportunity to review and respond to the Referral before it was released, and reneged on their promise that the initial review of the materials would be limited to the Chairman and Ranking Member in order to minimize the risk of damaging leaks.

(2) On September 15, 1998, the Majority unilaterally sought to obtain access to a videotaped copy of the President's January 17 deposition in the Paula Jones case.

(3) On November 5, 1998, Chairman Hyde unilaterally issued a set of 81 questions to President Clinton for his response. The questions were not approved by any other Member of the Committee, and no advance copy was provided to the Minority.

(4) On November 17, 1998, the Majority rejected a request to grant the President's lawyers two hours to question OIC Starr during his testimony. No time limitation on questioning by President Nixon's lawyers was over imposed during the Watergate Inquiry.

(5) On November 24, 1998, Chairman Hyde unilaterally sought to requested that the Secret Service provide information regarding discussions between President Clinton and his High School classmate Dolly Kyle Browing at their 1994 high school reunion. Again, this request was not approved by any other member of the Committee, and no advance copy was provided to the Minority. Ultimately, out of 53 procedural and executive session votes taken by the committee 31 were on straight or near party line votes.

[319] *Referral from Independent Counsel Kenneth W. Starr,* H.R. Doc. 310, 105th Cong., 2d Sess. 129–210 (1998).

[320] *Investigatory Powers of the Committee on the Judiciary with Respect to its Impeachment Inquiry,* H.R. Rep. No. 795, 105th Cong., 2d Sess. 11–24 (1998).

This is in stark contrast with the Watergate inquiry, which not only achieved significant bipartisan agreement on the final articles of impeachment, but achieved even broader consensus on the procedural fairness afforded President Nixon. This was illustrated by the fact that immediately before the Committee voted out impeachment articles, a bipartisan group of Members appeared together on television and stated that the inquiry had been conducted fairly and was nonpartisan.[321] During the Watergate inquiry, the chief Majority and Minority Counsels (John Doar and Albert Jenner, Jr.) coordinated all investigative work on a bipartisan basis, and both ultimately recommended the course of impeachment to the Committee.

On December 9, 1998, the Majority introduced a tentative draft of four articles of impeachment without having had one, single day of hearings on the evidence. The Minority members received this draft only one day before members were to comment on them in open session and near the end of the day that counsel to the President, Charles F.C. Ruff, made his presentation to the Committee. The Majority often complained that the President was ignoring official, Committee procedures and attempting to delay the proceedings,[322] but the Majority itself, failed to identify the charges until the last minute.

Throughout the impeachment process, the Majority has resisted requests to narrow, define or state with precision the allegations of misconduct leveled at the President. While the Independent Counsel's Referral specified eleven possible grounds for impeachment, the Majority Counsel, in his initial presentation to the Committee, declined without explanation to even present some of these grounds to the Committee (e.g., Independent Counsel's Grounds 10 and 11 alleging Abuse of Power) . Instead, they rewrote, redefined, or restated the eleven grounds described by the OIC into fifteen somewhat similar, somewhat different allegations of criminal wrongdoing. As an example, the Independent Counsel alleged that the President obstructed justice by encouraging Lewinsky to file a false affidavit in the *Jones* case.[323] In his presentation to the Committee on October 5, however, the Majority Counsel transformed this straightforward allegation into the central underlying factual element of no fewer than *five* charges of criminal wrongdoing.

This tactic, along with the Majority's subsequent abortive forays into allegations relating to Kathleen Willey, Webster Hubbell and campaign finance, engendered considerable confusion about whether the grounds outlined in the Referral would, in fact, continue to be the basis of any proposed articles of impeachment. The articles of impeachment, when finally drafted, returned to the original allegations and appear to confine themselves to the charges relating to the President's relationship with Ms. Lewinsky. Yet, although the

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[321] On July 21, 1998 Rep. Charles Wiggins (R–CA), Don Edwards (D–CA), Walter Flowers (D–CA), and Robert McClory (R–IL) appeared on the ABC television program "Issues and Answers" and stated that the impeachment inquiry had been conducted fairly. For example, Rep. Wiggins stated "by and large it has been fair . . . I have no great quarrel [with the investigation]." 3 Facts on File Watergate and the White House 210 (1974).

[322] Letter from Thomas E. Mooney, Sr., Chief of Staff, House Comm. on the Judiciary, to Charles F.C. Ruff, Counsel to the President (Dec. 6, 1998); Letter from Thomas E. Mooney, Sr., Chief of Staff, House Comm. on the Judiciary, to Charles F.C. Ruff, Counsel to the President (Dec. 3, 1998).

[323] Referral at 173–80 (Ground VI).

OIC's Referral listed specific allegations, even including the actual statements the prosecutors alleged to be false when they were making false statement charged, and although the Majority Staff's original presentation also included specific charges, the actual Articles of Impeachment abandoned such specificity. Rather the Articles make vague charges, such as accusing the President of making false statement about the "nature and details" of his relationship with Ms. Lewinsky.

This lack of specificity reflects poorly on the impartiality of the process and is totally inconsistent with historical precedent. In the last presidential impeachment proceeding, as pointed out by Rep. Alcee Hastings in his December 9, 1998 letter to Chairman Hyde and Ranking Minority Member Conyers, the Judiciary Committee took pains to ensure that each article of impeachment was accompanied by detailed statements of fact:

> Both of you will recall that the Chair and the Ranking Minority member (with the concurrence of the Committee) directed John Doar, Special Counsel for the Majority, and Albert Jenner, Special Counsel for the Minority, to produce a comprehensive Statement of Information in the inquiry into the conduct of President Nixon. The Statement of Information that the staff produced for that inquiry consisted of numbered 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. As a result, an organized, balanced, and neutral statement of the facts and presentation of the supporting evidence was a part of the Committee record that was available for any Member to review.[324]

A similar format was used to support the articles of impeachment voted out against Judge Hastings.[325] No such effort has been made in this case to supply a detailed road map of the supporting evidence for the articles of impeachment.

To illustrate, in Article I, the charge is misleading testimony concerning "the nature and details of his relationship," but the Article declines to identify which statements are at issue. This lack of specificity would be a grave constitutional defect in any indictment delivered by a grand jury against any criminal defendant. This basic measure of due process, however, has been denied to the President. It is fair to presume that the Majority's unwillingness to specifically identify the charges at issue are rooted in a reluctance to make plain the essential triviality of the allegations of personal misconduct at issue and the salacious nature of the issues that the Senate would be condemned to explore at trial. To have to state that the removal of the President is based on his misstating when his relationship with Ms. Lewinsky started, or how many times he had intimate telephone conversations with her, or where

[324] Letter from Rep. Hastings to Hon. Henry Hyde, Chairman, Committee on the Judiciary, and Hon. John Conyers, Jr., Ranking Minority Member, Committee on the Judiciary, at 1 (Dec. 9, 1998).

[325] Id.

he touched her would demonstrate the frivolity of these charges for something as grave as impeachment.

The Articles also display another unfairness; to the extent that the Articles are occasionally specific, they are unnecessarily duplicative. For example, Majority Counsel has adopted the OIC's allegation that the President tried to influence Ms. Lewinsky to file a false affidavit and lists it in subparagraph 1 of Article III as an obstruction of justice; yet, this same event is included again, renamed as perjury in subparagraph 4 of Article I, as a matter about which the President testified falsely during his grand jury appearance.

V. Censure is an Appropriate and Constitutional Alternative to Impeachment

Throughout the proceedings, but especially during the debate on the actual Articles of Impeachment, the Majority attempted to blunt the impact of its decision. The Chairman emphasized that "impeachment is not the same as removal." Rep. McCollum even went so far, before he corrected himself, to reassure the public by stating that a conviction of the President in the Senate would not have to lead to his removal from office. Both he and other Republicans called the House vote on impeachment "the ultimate censure."

The Majority Member's statements underscore their discomfort with what they were doing—they too realized that President Clinton should not be removed from office for what, in effect, were his misstatements about a private, extra-marital relationship. Yet, the Majority has put the country on a collision course with the constitution by insisting that impeachment of the President is the only means to address misconduct that is serious but falls below the standard for removal.

There are, unfortunately, partisan reasons behind the Majority's insistence that the House be given an impeachment or nothing option. The Republican leadership understands that there are many Members of both parties who believe that an alternative to impeachment is appropriate. If such an alternative were presented, Republicans would have another means to express themselves on the issue of the President's conduct. This, in turn, would siphon votes away from impeachment—the resolution the leadership desires. Keeping its Members in partisan line, however, should not be the motivation behind a decision that prevents Members of the House to voting their conscience. A censure resolution would provide lawmakers on both sides of the aisle a constitutional and appropriate alternative.

At the December 12, l998 Hearings, the Representatives Boucher, Delahunt, Barrett, and Jackson Lee introduced a resolution of censure addressing the President's conduct. Almost all of the Democrats on the Committee voted for the resolution and all expressed a desire that their House colleagues have the chance to vote their consciences on this issue. The resolution read:

> *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 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.

Supporters of that resolution maintained that it would be an appropriate way of bringing closure to events that have too long diverted public and governmental attention from more pressing issues. A vote of censure would condemn actions that most members of Congress and the general public find reprehensive but not impeachable. Such a formal censure could then spare the country the wrenching disruption and policy paralysis that would accompany a full trial in the Senate.

Opponents of censure raised both constitutional and policy objections. The constitutional claim was that censure was not mentioned in the Constitution as an alternative to impeachment. In point of fact, numerous actions by Congress are not explicitly mentioned in the Constitution and yet are indisputably permissible under Congress's general authority. Moreover, Congress expresses its sense on a wide range of issues and the President's conduct would be no different. Indeed, just this most recent Congress, the House expressed its disapproval of President Clinton for: purportedly using White House Counsel office resources for personal legal matters;[326] certifying Mexico under the Foreign Assistance Act;[327] and invoking certain evidentiary privileges.[328]

As to the two principal policy objections that Majority members raised, they are inherently inconsistent. Some claimed that a congressional reprimand would be weak and ineffectual. Yet, others claimed that such an action would be capacitating because it would deter the President from making policy decisions that a congressional majority opposed. The first argument is that a censure without penalties would constitute a "toothless resolution," a "cop-

[326] H. Res. 397.
[327] H. Res. 58.
[328] H. Res. 432.

out."[329] The converse argument is that a censure creates a dangerous precedent that would threaten the independence of executive and judicial officials and upset the separation of powers. Frequent actions of condemnation by Congress could divert attention from important legislative initiatives and open the way for retaliation based on politically unpopular decisions.

The Minority pointed out how Republicans were arguing both sides of the argument for their own political purposes. In addition, Democratic Members noted that only one President has ever been officially censured. This form of condemnation scarcely has been the means to abuse the separation of powers. The unique aspects of the current impeachment inquiry also insure that this is not a step that Congress would take lightly. This is obviously not a case in which Congress simply disagrees with Presidential policy, as was true in some of this nation's earlier censure controversies. At issue here is misconduct that the President himself has acknowledged and that a wide margin of the American public and its democratic leaders find offensive. If it takes this type of conduct, followed by this degree of consensus among Congress and the public, there would be little to fear that this device would be abused in the future.

The Majority's claim that censure would constitute a meaningless wrist slap is equally unpersuasive. Representative Barney Frank, speaking from his own painful experience, noted in Committee hearings:

> 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 will tell you that having been reprimanded by this House of Representatives, where I'm so proud to serve, was no triviality, it is something that when people write about me, they still write about . . . 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 of the implementation of our values, to 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.

So too, as Minority members emphasized, a resolution of censure against the President will be "talked about for generations and will live in history."[330]

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[329] Remarks of Representative Bill McCollum, 12/12/98 Tr. at 188; remarks of Representative Elton Galleghy, 12/12/98 Tr. at 260.

[330] Remarks of Representative Boucher, 12/12/98 Tr. at 308.

A. A CENSURE RESOLUTION IS CONSTITUTIONAL

The authority of Congress to pass resolutions expressing condemnation is well established. Article I, Section 5, (d)(2) of the Constitution authorizes both the House and the Senate the power to punish Members for disorderly behavior. Although the constitutional text provides no similar explicit authority for condemnation of behavior by other individuals, Congress has long assumed that it has such authority. The House and Senate have considered at least a dozen resolutions condemning conduct by executive or judicial officials.[331] Some of the resolutions use the term "censure," while others use language such as "reproof" or "condemn." [332]

The power to express such disapproval is rooted in traditional legislative authority to register the sense of the House, the sense of the Senate or the sense of Congress.[333] Congressional procedural rules have long authorized the use of single or concurrent resolutions to express legislative opinions on a wide range of matters.[334] All the members of this Committee have voted for such resolutions.

The vast majority of scholars, including over two-thirds of the Majority and Minority witnesses who testified at the Judiciary Committee's hearings, believe that a resolution condemning the President, such as the one proposed during the proceedings, would be constitutional.[335] For example, Harvard Law Professor Laurence Tribe has indicated, that a straight censure resolution would be constitutional "[b]ecause such resolutions entail no exercise of lawmaking authority over the other branches of 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." [336] Similarly, the witness called by the Majority and Minority, William and Mary Professor Michael Geahardt concluded that "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." [337]

Other experts in legislative affairs including the committee on Federal Legislation of the Association of the Bar of the City of New York, have similarly concluded that Congress has authority to express its condemnation of presidential conduct through means

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[331] Richard S. Beth, *Congressional Research Service,* Censure of Executive and Judicial Branch Officials, Legislation Proceedings, 6 (Oct. 2, 1998) *(hereinafter Beth); Jack H. Maskell, Congressional Research Service, Censure of the President by Congress,* September 29, 1998, 2–4 (hereinafter, Maskell). It is important to note that the Majority repeatedly asked the Committee to turn to proceedings involving federal judges to find precedents for impeachment. Yet, the same Majority apparently now wants the Committee to ignore the fact that Congress has used its censure power to condemn the actions of these same judges when impeachment was too severe.

[332] Censure is commonly defined as a legislative, administration or other body reprimanding a person, normally one of the other members. (Black's Law Dictionary 224 (6th Ed. 1990)).

[333] Beth at 6, Maskell at 2–4.

[334] William Holmes Brown, 134 House Practice; 4 Guide to the Rules, Precedents & Procedures of the House (1996).

[335] Letter of William D. Delahunt to Henry Hyde, Chairman, Committee on the Judiciary, Dec. 4, 1998.

[336] Letter from Laurence H. Tribe to William D. Delahunt, Dec. 1, 1998.

[337] Letter from Michael J. Gearhardt to William D. Delahunt, Dec. 3, 1998.

other than impeachment.[338] The Congressional Research Service has also stated that censure would be constitutional: "In the case of . . . federal officials [such as the president] censure would be an exercise of the implicit power of a deliberative body to express its views, just as Congress may also express judgments of other persons or events."[339]

Another argument by some of the Majority was that a censure resolution constituted an impermissible "bill of attainder." There is no foundation for such a claim in the text, history, and structure of the Constitution. Article I, Section 9, cl. 2 of the United States Constitution provides that "no Bills of Attainder or ex post facto law shall be passed." This provision refers to acts by the British Parliament that punished executive officials with death or forfeiture of property. The American prohibition against non-judicial punishment is designed to protect the life, liberty, and property of citizens and the independence of executive and judicial officials. As the Supreme Court has interpreted this prohibition, a bill of attainder involves punishment inflicted by legislative enactment against individuals or readily identifiable groups without judicial trial.[340] Censure resolutions passed by one House have not been viewed as bills of attainder because they do not impose a penalty on the life or property of the person being censured.

The course proposed by the Minority has ample precedent. Resolutions of censure were proposed against Presidents John Adams, John Tyler, James Polk, Abraham Lincoln, and former President James Buchanan, and one was voted against President Andrew Jackson.[341] The censure of Andrew Jackson occurred in 1834 over his earlier veto of the bill to renew the Charter of the Second Bank of America and his dismissal of Secretary of the Treasury William J. Duane, who had refused to order the removal of federal deposits from the Bank. Interestingly, the censure of President Jackson, which the Majority condemns because it was later reversed, occurred on a strictly partisan vote. It has been considered in history a political event not reflecting on real or deserved rebuke for Presi-

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[338] Association of the Bar of New York, *Alternatives to Impeachment: What Congress Can Do.* Tribe Panel. *See also* authorities cited in Maskell, supra; and David E. Rovella, Hyde Delay, Wrong on Law, National Law Journal, October 5, 1998 at A6 (noting that surveyed constitutional law experts generally agreed that censure was possible).

[339] Beth *supra. See also* Maskell, *supra* ("It has, however, become accepted congressional practice to employ a simple 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, and a resolution of censure as a concurrent or simple resolution would appear to be in the nature of such a "sense of Congress" or sense of the House or Senate resolution.")

[340] *U.S.* v. *Brown,* 381 U.S. 437 (1965); *U.S.* v. *Lovett,* 328 U.S. 303 (1946); *Nixon Administration* v. *Administration of General Services,* 433 U.S. 425, 468 (1977).

[341] The House of Representatives considered three resolutions condemning John Adams for actions beyond his authority and for interference with the judiciary. All three resolutions were proposed from the floor and none were successful. The presidential conduct at issue arose out of a dispute over extradition. In 1842, the House of Representatives adopted a motion to agree to a select committee report that condemned President Tyler for "gross abuse of constitutional power" for vetoing appropriations bills passed by Congress. Congress twice considered resolutions condemning James Buchanan for conduct allowing political considerations and alleged campaign contribution "kickbacks" to influence government contracts and for his alleged failures to prevent secessions from the Union of several southern states. The proposed censure against President Lincoln responded to his agreement to allow Francis P. Blair, Jr. to hold commissions in the Army while also serving as an elected member of the House of Representatives. There were also censure alternatives proposed concerning President Nixon's conduct with respect to the Watergate break-in and cover-up. Once clear and convincing evidence surfaced from the tape-recorded conversations of the President's involvement with abuse of government agencies, this resolution gave way to impeachment.

dential misconduct. The Majority's willingness to impeach President Clinton on strictly partisan votes in the Committee more resembles the censure of President Jackson than does the Democratic attempt in 1998 to forge a bi-partisan resolution of this crisis.

B. A CENSURE OF THE PRESIDENT IS APPROPRIATE

There is wide consensus among Americans that the President's conduct should not go without some form of rebuke. There is also wide agreement that impeachment is too severe a penalty. Rather than ignoring the will of the people, Congress should find a way to embody their sentiment. Early on in the process, Representative Graham said: "Without public outrage, impeachment is a very difficult thing, and I think it is an essential component of impeachment. I think that is something that the founding fathers probably envisioned."[342] Mr. Graham was correct when he made that statement and the goal of the Committee should have been to find an alternative that reflected the public will. The view that censure is the appropriate remedy is shared by Republicans as well as Democrats. For example former President Gerald Ford, former Republican Presidential candidate Robert Dole, and former Massachusetts Governor William Weld, all support some form of censure or rebuke as the appropriate action by the House.[343]

The consensus of concern about the President's conduct is reflected in the resolution proposed by the Minority. It points out the role of a President to set "an example of high moral standards and conduct himself in a manner that fosters respect for the truth." It also underscores how President Clinton "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 entrusted to him." Far from being a "slap on the wrist" or mild rebuke, as some Majority Members have stated, this resolution would stain President Clinton's place in history as painfully as any Congressional action, short of removal from office, could possibly do.

Members of the Committee also agreed that censure was the proper response to the President's misconduct. Rep. Boucher, a sponsor of the censure alternative, argued to the Committee that the "Framers of the Constitution intended that the impeachment power be used only when the Nation is seriously threatened[,]" *i.e.*, "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."[344] As Rep. Boucher noted, 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."[345]

Rep. Boucher also argued that censure is "preferable to impeachment for yet another reason. ". . . The President and Congress will

[342] 11/19/98 Tr. At 325.
[343] President Gerald R. Ford, *The Path Back to Dignity,* New York Times, Oct. 4, 1998, at D15; Robert Dole, *A Tough but Responsible Solution,* New York Times, Dec. 15, 1998, at A31.
[344] 12/12/98 Tr. at 169.
[345] 12/12/98 Tr. at 169.

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."[346] Rep. Boucher concluded that those "harms are not necessary" because "the Senate will not convict."[347] He urged the Members to "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."[348]

Similarly, Rep. Delahunt, another sponsor of the resolution, argued that 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."[349] Rep. Delahunt noted that the Democratic resolution "does not mince words. It denounces the President's behavior sternly and unambiguously in plain, simple English[,] [and] i[t] acknowledges that the President is not above the law."[350]

In making a request that the Majority permit a vote on censure on the House floor, Mr. Barrett observed 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 the Impeachment to be accepted, there has to be a showing of good faith, a showing that every single Member of this Congress was given the opportunity to vote his or her conscience."[351]

Finally, Rep. Jackson Lee, another sponsor of the censure resolution, noted that the American people 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.[352] Rep. Jackson Lee argued that "[c]ensure is right for this Nation. It causes us to rise above the political divide, and it is not unconstitutional. Th[ere] is no prohibition in the Constitution, and it is right for us to send this motion to the floor of the House."[353] Rep. Jackson Lee urged that a vote for censure is a "[v]ote to heal this Nation[.]"[354]

A pillar of the American justice system is that the punishment must fit the offense. The constitutional scholars from whom the Committee heard all agreed that impeachment should serve to protect the nation, not punish the offender. For Congress to alter that process and impose the ultimate political sanction of removal from office is without historic precedent. If the Majority is to be taken at its word that it wants to demonstrate that the President is not

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[346] 12/12/98 Tr. at 171.
[347] 12/12/98 Tr. at 171.
[348] 12/12/98 Tr. at 171.
[349] 12/12/98 Tr. at 180.
[350] 12/12/98 Tr. at 181. Even Mr. Smith, a Member of the Majority, acknowledged that the Democratic alternative was a "serious and strong resolution." 12/12/98 Tr. at 203.
[351] 12/12/98, Tr. at 318.
[352] 12/12/98 Tr. at 198.
[353] 12/12/98 Tr. at 199.
[354] 12/12/98 Tr. at 199.

above the law, then a censure resolution, which would serve as punishment, is the proper means.

VI. Conclusion

After considering thousands of pages of constitutional history, evidentiary findings, and testimony of witnesses, this Committee should now be in a position to recognize not only what impeachment is, but also what it is not. Impeachment is not a means to express punitive judgements; it is not a vehicle for policing civil litigation or grand jury proceedings; and it is not a means for censuring immoral conduct. Other criminal and judicial sanctions are available for that purpose. Impeachment serves to protect the nation, not punish offenders. As the preceding dissenting views makes clear, removing the President on the basis of the record before us ill serves that national interest.

Both Majority and Minority Members agree that removal from office is appropriate only for conduct that falls within the Constitutional standards of "Treason, Bribery, or Other High Crimes and Misdemeanors." By that standard, the evidence before the Committee falls far short. Some four hundred of the nation's leading historians, and a like number of constitutional law scholars took the trouble to write to the Committee expressing their view that the President's misconduct, even if proven, would not satisfy constitutional requirements for removal from office. As Harvard Law Professor Lawrence Tribe's statement at the November 9 hearings made clear, "weakening the presidency through watering down the basic meaning of "high Crimes and Misdemeanors seems a singularly ill conceived . . . way of backing into a new—and for us untested—form of government." [355]

Majority members of the Committee repeatedly insisted that their role in impeachment proceedings was to protect "the Rule of Law." If so, the appropriate means would be adherence to constitutional standards and basic requirements of procedural fairness and due process. The Committee's own inquiry, and the Independent Counsel's Referral, all far short of those requirements.

As Minority Members of the Committee recognized, the President is not above the law. But neither is he beneath its protections. He is entitled to fair notice of the charges and an unbiased investigation as to their support. The Independent Counsel's Referral and the resulting Articles of Impeachment provide neither. The ethical violations by OIC prosecutors and their failure to provide the Committee with exculpatory materials calls into question the quality and credibility of the information they provided. Since the Committee itself called no fact witnesses and conducted no independent investigation, its record fails to supply the clear and convincing evidence necessary to support impeachment.

[355] *Subcommittee Hearing, supra* (written testimony of Laurence Tribe).

In the long run, history will judge not only the conduct of the President but the conduct of this Committee. Because its proceedings fail to conform to fundamental constitutional standards, Minority Members respectfully dissent.

JOHN CONYERS, Jr.
BARNEY FRANK.
CHARLES E. SCHUMER.
RICK BOUCHER.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
SHEILA JACKSON LEE.
MAXINE WATERS.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
STEVEN R. ROTHMAN.
THOMAS M. BARRETT.

IX. DISSENTING VIEWS

DISSENTING VIEWS OF HON. JERROLD NADLER

While I am in substantial agreement with, and have signed, the Minority Dissenting Views, I wish to clarify my thoughts on the question of congressional censure of the President.

There is no question, as the Minority Views clearly elucidate, that there is ample authority and precedent for the Congress to censure a President, or to express its views, favorable or unfavorable, on any topic.

Moreover, in this case, where a majority of the members of the House of Representatives believes that the President's conduct requires some action by the Congress short of impeachment, it is unconscionable for the Majority to abuse its control of this institution by preventing a vote on censure. Plainly, this matter involves important questions of fact, law and conscience. It is simply wrong to prevent members from being able to vote according to the dictates of their best judgement, conscience, and the concerns of the people who elected them in what can only be interpreted as a cynical attempt to coerce them into voting for impeachment by leaving them no other option. 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 as embodied in the motion of censure proposed by Representatives Boucher, Jackson-Lee, Delahunt and Barrett. The impeachment of a President was reserved by the Framers of the Constitution for only the most severe threats against the nation and our system of government. It exists as a remedy to prevent the President from becoming a tyrant. It should not be used for mere partisan purposes to overturn the will of the people as expressed in two national elections. By providing no alternative to impeachment, even an alternative which a majority of the House, and of the American people deem more appropriate, is little more than moral blackmail and unworthy of this House.

When it was considered in the Judiciary Committee, I supported censure, despite my reservations about the precedent it would set, because of my strong conviction that members should be afforded the opportunity to consider that option in the full House.

Notwithstanding my view that censure is within the power of the Congress, and that members should have the opportunity to vote on the question, I nonetheless have strong reservations about its use by Congress.

First, I oppose censuring the President for any alleged deeds which have been neither admitted nor proven. The authors of the censure resolution offered in the Judiciary Committee took great

care to avoid this error. It is disturbing that the authors of the Articles of Impeachment failed to exercise the same judicious care when they included vague charges based on conjecture and testimony which has not been subject to cross-examination.

Second, I believe that censure sets a worrisome precedent to the extent that it would tend to undermine the comity and relations between coequal branches of government. It would be a regrettable legacy of this matter if Congress gets into the business of issuing sweeping statements on the conduct of future Presidents. In this case, a majority of the American people and the members of this House believe that the President's actions were wrong and deserving of condemnations. The President has acknowledged his actions to his family, before a grand jury, and to the nation. He has sought forgiveness and national reconciliation. But, 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, should their actions violate the law, 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 the illegal acts in the Iran-Contra coverup, nor was President Bush censured for issuing pardons to keep those involved in that illegal conspiracy above the law.

With those reservations on the matter of censure, I join my colleagues in the minority in dissenting. Impeachment, especially impeachment forced on an unwilling nation by partisan strong-arm tactics, will divide this nation for years to come and undermine our democratic system of government.

JERROLD NADLER.

DISSENTING VIEWS OF HON. HOWARD L. BERMAN

The minority dissenting views make several important points about the constitutional standard for impeachment and the appropriate role of the House of Representatives in the impeachment process. I strongly agree with the conclusion that the President's conduct is not impeachable. Nevertheless, I have elected not to sign the minority views because I believe they place too much emphasis on attempting to prove that the President did not lie under oath and possibly coach a potential witness. In addition, while I am troubled by the conduct of the Independent Counsel, I don't believe it should play a central role in the impeachment debate. Rather, that conduct should be investigated in the context of reauthorizing the Independent Counsel statute in the 106th Congress. I have therefore decided to submit my own dissenting views, which consists of my December 10, 1998 opening statement made prior to the mark up of the articles of impeachment:

STATEMENT OF REPRESENTATIVE HOWARD L. BERMAN BEFORE THE COMMITTEE ON THE JUDICIARY DECEMBER 10, 1998

Thank you Mr. Chairman.

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 aisle.

It's certainly true that people sometimes lie, and that people often lie about sex. It is also 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 further to define the kinds of material I un-

> derstand 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's 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 common sense 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 four 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 invest 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 had wanted impeachment to be a non-political decision, totally divorced from public opinion, they would have vested the 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 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 sys-

tem of allowing the President to serve out his term have been overstated.

It is true the President's defense is very troubling. His grand jury testimony, his public statements following the grand jury testimony, his agents' public statements, and his answers to the questions submitted by the Committee are more serious than any wrongdoing that caused this process to begin.

There is something Alice in Wonderland-like in 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 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 ok to lie under oath if the subject matter is sex, or if the subject matter is embarrassing, or to evade civil liability in a sexual harassment suit, or to evade criminal liability?

Many thoughtful Americans wonder whether the deconstruction of our language—the hair-splitting—will damage the culture even beyond the legal system. What will happen if words no longer have common sense 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, indeed, protect all of civilization—is *a special case*!

Everybody is equal under the law. But we make special provisions for one person while he's serving as President.

Few would dispute the fact that the President is immune from criminal prosecution during his term of office. Many would argue that a wise Congress should pass legislation to immunize the President from civil litigation during his term of office.

We invest 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 the 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 common sense 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 in a Democratically controlled Congress, would I vote to oppose impeachment?

I pray that my decision would be the same, regardless of party, regardless of political position.

I hope I've considered only what meets the Constitutional standard and what is best for America.

I find the answer unambiguous. Impeachment must be defeated.

HOWARD L. BERMAN.

DISSENTING VIEWS OF HON. ROBERT C. "BOBBY" SCOTT

I respectfully dissent from the section of the Minority's views relating to the issue of censure. Although censure would be Constitutionally permissible, I can not support censure because of a number of policy problems I believe would be created by adopting this censure resolution now.

I have complained from the beginning about the rank unfairness of these proceedings. As a result of this unfair process, we have an insufficient factual basis to support impeachment and for the same reason, we have not established a sufficient factual basis to support the conclusions drawn by the proposed censure resolution. I opposed the structure of this inquiry and supported instead the fair, focused and expeditious process proposed by the Minority. That plan would have specifically stated the allegations. We would then have been afforded an opportunity to focus on those allegations, if any, we believed to be constitutional. This stage would have then been followed by a fact finding process and a logical conclusion.

Instead of that fair process, we jumped from the allegations to the conclusion that the President should be impeached, skipping the focus and fact finding portions of the rational inquiry. The so-called evidence for impeachment is flimsy, because it is based on contradictory hearsay and dubious inferences. This so-called evidence cited by the Majority might have been proven true, but unfortunately we have not adhered to basic principles of justice and tested that evidence by the traditional ways we test the reliability of evidence: through cross-examination and the opportunity for the accused to rebut this evidence. The evidence before us has been selected by Mr. Starr and consists mainly of answers to questions posed by the prosecutors. It contains no additional answers to questions posed by the President's lawyers nor any rebuttal evidence. And, therefore, it is wrong to draw factual conclusions from the uncross-examined hearsay and inferences drawn by Mr. Starr without the opportunity for the accused to provide any rebuttal. Thus, this process, which fails to establish a factual basis for impeachment, also fails to establish any appropriate factual basis for censure.

There are also serious policy implications when one co-equal branch of government seeks to unilaterally punish another branch, and this problem becomes even worse when there becomes an expectation or responsibility to censure every time one branch is outraged by the conduct of another branch. In addition, while Articles of Impeachment are pending, it is inappropriate to consider a censure resolution, because it diverts attention from the reality that we are on the verge of impeaching the President of the United States for charges that are not supported by the evidence and wouldn't even be impeachable offences, if they were true. Furthermore, it may lower the bar for future impeachments even lower

than the standard we have today which a Majority witness at our Impeachment hearing called "low crimes and misdemeanors". That is because allegations which are clearly not impeachable, but censurable, such as those before us now, would be deemed to warrant a full fledged impeachment inquiry in the future.

Impeachment Inquiries are serious. In our partisan zeal, we have diverted attention from other important issues, such as religious freedom, juvenile justice, and immigration matters, which could not be considered because we were focused on the impeachment inquiry. This impeachment inquiry has unnecessarily trampled on the rights of innocent citizens by releasing embarrassing information, by issuing subpoenas for confidential information, and by voting against a motion to appropriately honor the attorney client privileges of witnesses called to testify before the Committee. Impeachment inquiries should, therefore, only be launched if there are credible allegations of serious, impeachable offenses, not the lesser category of offenses currently before the Committee.

In summary, because we have not had any rational fact finding to prove any of the allegations before the Committee, because coequal branches of government should refrain from censuring one another, and because censure might provoke future impeachment inquiries with flimsy allegations such as those before us, I cannot support censure in the impeachment context.

BOBBY SCOTT.

DISSENTING VIEWS OF HON. ZOE LOFGREN

When I worked on the impeachment proceedings against President Richard M. Nixon as a staffer, I was in awe of the proceedings, of the responsibility, of the effort, of the decorum of the members of Congress engaged in that solemn undertaking.

I observed men and women struggle to overcome party differences and loyalties in order to do what was fair and right, in the interest of the nation, in honor of its history, and as guardians of its future. I believe that's why the country respected the actions taken by the 1974 Congress. An inferior performance could have destroyed our system of government. Instead, public men and women rose up to become statesmen and stateswomen in a difficult hour.

Since before the referral of the Independent Counsel, I have encouraged my colleagues to read the 1974 Judiciary Committee staff report, which sets forth the Constitutional grounds for impeachment adopted by the House in 1974. It is against this constitutional standard that I have measured the conduct of this President. The 1974 Report instructed us that:

> "Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement—substantiality. . . . Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office."

When our Founding Fathers drafted the provisions in our Constitution regarding impeachment and wrote the phrase, "treason, bribery, or other high crimes and misdemeanors," they were concerned with wrongdoing directed against the state. Treason is a crime against the state. Bribery is a crime against the state—an attempt to corrupt the administration of the state. During the Constitutional convention, in addition to treason and bribery, George Mason and James Madison added the phrase "high crimes and misdemeanors," to the grounds for impeachment. Their purpose was to allow impeachment to save our democracy from other "great and dangerous offenses," which a Chief Executive might commit to subvert our constitutional form of government.

The Founders were well aware of the tyranny of the Crown, so they established the process of impeachment as a legislative safety valve against a tyrannical executive. The Founders designed this safety valve for abuses so grave that, in Franklin's words, they suggested assassination as a remedy. Impeachment was the Founders' civilized substitute. Under our Constitution, since impeachment is a remedy for Presidential tyranny, only acts of tyranny can justify

impeachment. That may explain why, after more than two centuries' experience in our democracy, not a single President has been removed and only one has been impeached.

It is clear that the Founders did not want the President to serve at the pleasure of the Congress. That is why they rejected a proposal that the President be impeached for "maladministration" because that would be equivalent, according to Madison, "to a tenure during the pleasure of the Senate." That lesser standard would have unbalanced our constitutional system of checks and balances, and created an unstable parliamentary system rather than the stable system we presently enjoy. Unlike so many other countries with parliamentary systems, we don't suffer from 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 are removed by votes of no confidence.

Alexander Hamilton reaffirmed the jurisdictional scope of impeachment in Federalist No. 65 when he wrote that "the subjects of [the Senate's impeachment] jurisdiction are those offenses which proceed from the misconduct of public men, or in other words from the abuse of the violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done to the society itself."

In 1974, Yale Law Professor Charles Black wrote a primer on impeachment. Pointing out that plainly, not all regular crimes were impeachable, Professor Black wrote:

> "Suppose a president transported a woman across a state line or even (so the Mann Act reads) from one point to another within the District of Columbia, for what is quaintly called an "immoral purpose. . . . Or suppose the president actively assisted a young White House intern in concealing the latter's possession of three ounces of marijuana—thus himself becoming guilty of 'obstruction of justice.' . . . Would it not be preposterous to think that any of this is what the Framers meant when they referred to 'Treason, Bribery, and other High Crimes and Misdemeanors,' or that any sensible constitutional plan would make a president removable on such grounds?"

Thus, Congress had established a standard to apply when faced with the grave responsibility of considering impeachment of the President. However, in 1998 we got off on the wrong foot and, though some of us tried to correct course, we never got it right.

It is unfortunate that Independent Counsel Kenneth Starr did not proceed as cautiously as did Watergate Special Prosecutor Leon Jaworski. When Jaworski forwarded grand jury material to the Congress relating to President Nixon, he didn't stage a press event. In fact, in 1974 no material forwarded to the Judiciary Committee was made public until the committee and the President had a chance to review it. Former Watergate prosecutor Richard Ben-Veniste advised some Members of the Committee in September that the only thing Jaworski sent with the grand jury material was an index; and that index and most of the grand jury material referenced in that index have remained secret to this day.

When we got Starr's Referral, I believed that, at a minimum, we should have read what it said, and discussed it, before we released it to the nation. Instead, we released the Referral and this was followed in fast succession by thousands of pages of additional material that the nation need not have seen. We justified this wholesale release by insisting that the people had a right to know, presumably so they could be persuaded by the facts and constitutional standard as to what was the right course to follow.

From the outset, I subscribed to what several of the members called, "a yardstick of fairness," by which we would measure the conduct of the Committee. Our best yardstick of fairness was our historical experience. We had to compare the procedures we used today with what Congress did a generation ago, when a Republican President was investigated by a Democratic House. Because of the thorough, deliberative procedures used during the Watergate proceedings the ultimate result was not only fair but was perceived to be fair. If we failed to follow this example, I was concerned that we would abdicate the solemn duty that the Constitution had entrusted to us and to us alone. If we fell short of that yardstick of fairness, the American people would correctly see the cause as partisan. I said in the beginning that the damage would be to our country and to our system of government.

While our system of government is based on openness, we repeatedly hid behind closed doors to conduct our business. The House Judiciary Committee met to decide what salacious material to make public but for the most part instead engaged in spirited debate about the Constitution, fairness, our country, and our future. All motions made to open the meeting or to release the transcripts of executive sessions were voted down by the Republican majority.

How ironic that the public was barred from knowing what Committee members said about the Constitution and due process while we deluged that same public with lurid materials in the name of openness and informing the public's discretion.

We should have spent more time reading what George Mason and James Madison said to each other than what Ms. Lewinsky and Ms. Tripp said to each other.

The Minority members co-sponsored a proposal that would have been fair, limited in scope and time, and logical, starting with a consideration of the impeachment standard and whether any of the allegations forwarded by the Independent Counsel met that standard. If we needed more time, for any reason, the Committee could ask for more time. If the Independent Counsel sent another Referral, the Committee could consider it consistent with the statute. I am proud to have played a key role in the development of the "fairness alternative."

The Majority, however, preferred instead an open-ended investigation without any deadline at all. The Democratic Minority preferred a prompt and fair inquiry. The Committee and the House were to split on party lines.

On October 8, 1998, I rose on the floor of the House in opposition to any unfair impeachment inquiry, and said,

> "I fear what Alexander Hamilton warned against in [the] Federalist . . . [that] there will always be the greatest danger that the decision [to impeach] will be regulated

> more by the comparative strength of parties than by the real demonstrations of innocence or guilt.'"

I said, "the question is not whether the President's misconduct was bad. We all know that the President's misconduct was bad. The question is, are we going to punish America instead of him for misconduct? Are we going to trash our Constitution because of his misconduct?"

Since that day we have not heard a single fact witness in Committee, either in public or executive session, although there is no question there are many conflicts in the hearsay documentation provided us by the Independent Counsel. One example of the many conflicts in the evidence is who, if anyone, told whom to get what gifts for what reason. The President has a quite credible explanation that he would not be telling someone to conceal the gifts he gave her—even as he was giving her more gifts. There is only one way to resolve such conflicts, if indeed the facts are material to our inquiry, and that is to question the witnesses. However, we questioned no one with direct knowledge of any of the facts.

Under the circumstances, I have had to compare the evidence that can be gleaned of the President's tawdry affair and cover-up with the Majority's recommended resolution, that we remove him from Office. My conclusion, in reliance on constitutional standards, is that we have clearly lost all sense of proportion. These Articles of Impeachment do not comport with the standard set by our Founding Fathers. They did not mean for us to remove a president for lying about private sexual misconduct, especially when we can prosecute him—if he has committed a crime—when he leaves office.

We do not condone the President's behavior—but impeachment is not the remedy for bad behavior. For that we have courts. If those who seek to hound the President from office believe they have a criminal case against him, then let him pay the penalty of a conviction after he leaves office, if they can get a jury to agree. That is our system of dealing with all but "high crimes and misdemeanors".

Our task has not been made any easier by the way the Majority wrote these Articles. The Committee majority refused to state the specific perjurious statements by which they would have us judge the President. This solemn occasion demands perfect clarity and at least the same due process which would be granted to any person accused of a crime. But the Congress, and the President, are left to guess about the exact nature of what he is supposed to have done wrong.

My friends, neighbors, and even complete strangers approach me in my District to tell me what they think is going on. They call this a coup d'etat. They say that a runaway majority of the House of Representatives seems bent on overturning the result of a democratic election, because they don't like the result.

It is significant that the people we represent were not persuaded that the Majority was doing the right thing. I believe in the American people, and their views on this have been remarkably steady. The opinion of the people may not be determinative of the issue, but it is certainly relevant when we propose to overturn the last two national elections.

When I questioned the fairness of the proceedings in September, the Chairman commended an article by Professors Edwin Firmage and R. Collin Mangrum from the 1974 Duke Law Journal, starting at page 1023, and titled, "Removal of the President." At pages 1044 and 1045, the Professors explained that the public's opinion matters so that Congress' action may be legitimate and perceived as legitimate:

> "The legitimacy of a democratic government must be established in the minds of the people; thus, if a transfer of presidential power is 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."

This same article, at page 1029, states that the impeachment process, while "fundamentally political," 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."

I am troubled that we have endangered the legitimacy by which we govern this nation. We lost our way in the Committee. I hope we may find it when we reach the floor of the House. I hope and trust that the views of the people will inform the judgment of my colleagues before they vote this week. The people say what they think and they vote accordingly. I hope my colleagues may be free to do the same.

In this regard, I sincerely believe we should be permitted to consider censure. There is no constitutional prohibition against it. It has been used to some historical effect to rebuke other Presidents, particularly President Andrew Jackson. The Majority has supported such resolutions on a variety of other issues. Thus, we must ask ourselves why they have ruthlessly prevented a floor vote on the alternative of censure as the appropriate sanction. In doing so, the Majority has effectively disenfranchised those members of both parties, like myself, who feel that rebuke and condemnation is appropriate but impeachment is not.

Taking another backward glance, I have to say that, unlike my experience as a staffer during the 1974 impeachment proceedings, I can't say that the men and women I've observed in these proceedings have overcome party differences and loyalties in order to do what was fair and right in the interest of the nation. If courage is a rare flower this wintry season, as some suggest, this Congress shall likely become a humiliating object lesson for unborn historians to describe how this legislative assembly, riven by partisan differences, compromised rather than preserved the Republic.

The Constitution provides impeachment to protect America from subversion of the Constitution. How ironic that, in this instance, it is Congress' political misuse of impeachment that threatens our Constitution, rather than the tawdry misconduct of the Chief Executive.

If the House votes to impeach, and unless voters engage in massive punishment of the Republican perpetrators, it is inevitable that impeachment will become the routine tool of the losing party. They will seek to win in the House what they cannot gain in the

polling booth. Our country will lose much that has made it strong in that process. I am deeply troubled and saddened that the Republican party would inflict such injury to our country to achieve this short term political goal.

ZOE LOFGREN.

DISSENTING VIEWS OF HON. SHEILA JACKSON-LEE

A. Standard for Impeachment

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. 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. Another one of our Founding Fathers Alexander Hamilton wrote in the Federalist Papers No. 65 that,

> Those [impeachable] offenses which proceed from the misconduct of public men, or, on other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be dominated POLITICAL, as they relate chiefly to injuries done immediately to society itself.

As Hamilton makes clear, criminal conduct alone was and is not enough. The conduct also should involve public office. That should be the standard here as we proceed.

B. Article I—Perjury Grand Jury

This Article of Impeachment focuses on the testimony that the President gave to Independent counsel's grand jury on August 17, 1998. First, it is necessary to discuss what is necessary to garner a perjury conviction in federal courts. First, you must prove that a false statement was made with specific intent. That means that the prosecutor must prove that the declarant had a subjective awareness that his statements were lies. That means, no matter how false a statement is, if the person saying it believes he is telling the truth, then he cannot be found guilty of perjury. Because we have seen no conclusive evidence that the President believes he was, indeed, lying—this charge is simply unwarranted. Second, the false testimony must be about material facts.

I would also like to point out another principle of American law that is pertinent to this perjury allegation. The principle is that the unresponsiveness, the evasiveness, of a witness is not per se perjurious.[1] The burden is on the interrogator to elicit the clear statements that will be used as the basis of their case. And although every defendant is required to be truthful on the stand, there is no requirement that they be helpful to the prosecutor. Courts have continuously rejected perjury charges where there is more than one

[1] *U.S. v. Bronston,* 409 U.S. 352 (1973).

way of understanding the meaning of a question.[2] When asked if he engaged in "sexual relations" with Monica Lewinsky, it is clear that the President was answering within the confines of the narrow definition that was given to him. I think we should all be concerned whether this is enough to support a perjury conviction, and then rises to an impeachable offense.

C. Article II—Alleged False Statements Under Oath in the Jones Deposition

One of the primary allegations of perjury arising from President Clinton's deposition testimony of January 17, 1998, appears to be that he lied under oath about the nature of his relationship with Ms. Lewinsky when he denied in that civil case that he had a "sexual affair," a "sexual relationship," or "sexual relations" with Monica Lewinsky. Webster's Dictionary, Random House, and Black's Law dictionary all define sexual relations as intercourse. But even if you do not believe that sexual relations does not specifically mean intercourse, there is strong evidence that this is what President Clinton believed. This Article should have been summarily dismissed and voted down because there are just too many holes and not enough clear and convincing evidence that the President committed perjury during the Jones deposition.

D. Article III—Obstruction of Justice

Monicia Lewinsky's Grand Jury testimony clearly refutes allegations that President Clinton encouraged her to give perjurious, false and misleading testimony, "Neither the President nor Mr. Jordan asked or encouraged me to lie." This statement by Ms. Lewinsky was made in her February 1, 1998, proffer to the Office of Independent counsel. President Clinton's relationship with Lewinsky was consensual but morally wrong. On the other hand, Ms. Jones was alleging sexual harassment. Lewinsky's relationship with President Clinton was a tangential collateral issue that was not relevant. Therefore, the probability of its admittance at trial was unlikely because it would not have "any tendency to make the existence of any fact that is of consequence to determination of the Jones action more probable." There is no concrete evidence to substantiate the allegation that President Clinton encouraged a witness to execute a false affidavit.

Article III further alleges that on or about January 18 and January 20–21, 1998, President 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.

E. Article IV—Abuse of Power

In 1974, the Judiciary Committee drafted three Articles of Impeachment against President Nixon. Article II charged Richard Nixon with "using the powers of the office of the President of the United States, in violation of his constitutional duty. . . abuse of power. He has repeatedly engaged in conduct impairing the due

[2] U.S. v. Finucan, 708 F.2d 838, 848 (1st Cir. 1983); United States v. Lighte, 782 F.2d 367, 375 (2d Cir. 1986).

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. Here, *there was use of official power and therefore abuse of power.*

Article IV purports to enumerate "conduct that resulted in misuse and abuse of his high office" and credible information that President Clinton's actions since January 17, 1998, regarding his relationship with Monica Lewinsky have been inconsistent with President's constitutional duty to faithfully execute the Laws." It is implausible that one of the counts of Article IV is that "The President misled the American people and the Congress in his public statement on August 17, 1998, when he stated that his answers at his civil deposition in January had been "legally accurate." *ABUSE OF POWER REQUIRES USE OF POWER!* When the President misled the American public on August 17, it was not illegal nor impeachable. There is no evidence that the President's cabinet members were required or instructed to relate information about non-official business to the news media. Further, if we follow this argument to its logical conclusion an individual would be required to maintain "ownership of the original conversation." *There was no use of power by the President, therefore there was no abuse of power.*

F. The Need For a Resolution of Censure

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. 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.

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.* However, several critics continue to suggest that censure is unconstitutional because there is no constitutional provision that expressly authorizes censure. 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.

G. Conclusion

President Clinton's behavior was reprehensible and lacking poor judgment, but it must meet the high constitutional test of a high crime or misdemeanor. . . for it does not, then congress bears the burden of giving the President, or the accused "an honorable acquittal." It must be non-partisan and rational because we are all duly sworn to uphold the Constitution which was written to "form a more perfect union."

Sheila Jackson-Lee.

DISSENTING VIEWS OF HON. MAXINE WATERS

On Friday and Saturday, December 11 and 12, 1998, the House Judiciary Committee embarked on the extraordinary procedure of voting to report from this Committee four articles of impeachment against President 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 conscience. Let history further record that I direct my remarks to my children Ed and Karen to my grandchildren Mikael (20 years of age) and Cameron (10 years of age), to my mother Velma Lee Moore, my 12 brothers and sisters (living and dead), my husband, Ambassador Sidney Williams, my dear friends and supporters, my constituents and the American people:

I did not violate the Constitution of the United States. I voted no on each and every vague and general article of impeachment presented by this committee. Let history record that I 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 President Clinton did not commit perjury, obstruct justice or commit any actions or crimes that rise to the constitutional level of impeachment.

Let history treat me kindly as our children and children's children analyze what we did here in this Committee. Let the historians speak favorably of me because I carefully, honorably, and responsibly exercised my duty to uphold the Constitution of the United States. So help me God!

MAXINE WATERS.

DISSENTING VIEWS OF HON. MARTIN T. MEEHAN

I write separately to state clearly my own views on the Majority's attempt to impeach President Clinton, though I do agree with most of the conclusions contained in the Minority's dissenting views.

President Clinton had an adulterous relationship with Monica Lewinsky, which for understandable reasons, he strove to conceal. His attempts at concealing that relationship long pre-dated Ms. Lewinsky's involvement in the Paula Jones civil case but ultimately came to include answering questions posed to him under oath in a deceptive manner. Contrary to the sweeping conclusions of the Majority, that deception occurred largely within the boundaries of the law. Yet I do suspect that the president's statements crossed the line on a few occasions, most prominently regarding precisely where he touched Ms. Lewinsky.

Thus, the president engaged in shameful conduct, breaking faith not only with his family but also with the American people. He did not, however, commit "Treason, Bribery, or other high Crimes and Misdemeanors." As such, I consider the Majority's approval of articles of impeachment to be a lawless overreach, setting a terrible precedent for the fate of future presidents and bound for the condemnation of history.

The historical precedents and the writings of our Founding Fathers indicate that the impeachment of a president is justified only by presidential conduct which clearly, concretely, and convincingly demonstrates that that president lacks the capacity *to govern.* In other words, impeachment is a means of saving our nation from a president who is unable or unwilling to fulfill his or her core responsibilities or respect the boundaries of his or her power.

President Clinton's conduct, though shameful, does not speak clearly, concretely, and convincingly to his capacity *to govern.* t does tell us that he is reckless in his private life and willing to deceive those who inquire about his recklessness. Yet it just as clearly tells us that this man is far from unmindful of or uncaring about his obligation to act lawfully. Indeed, in reviewing the president's acts of *governance,* I see no failure to execute our laws properly and no lack of respect for the boundaries of the presidential power.

Making sweeping conclusions about a president's capacity *to govern* based on his or her private misdeeds sets a terrible precedent. It is telling that the one presidential impeachment which enjoys history's stamp of approval focused on allegations involving the abuse of presidential power, including using the CIA to impede an FBI investigation of a politically motivated break-in and carrying out a regime of political repression from the White House. In fact, the Watergate-era House Judiciary Committee appears to have recognized the danger of speculating wildly about a president's capacity to govern on the basis of his or her private misdeeds, when it

expressly rejected an article of impeachment alleging that former President Richard Nixon committed tax fraud.

We have heard much about the rule of law during the impeachment process. Our Chairman at one point implied that our society will gravitate towards the horrors of Auschwitz should we fail to impeach this president for allegedly lying under oath. Even less excessive formulations of this argument lack merit. The American people are smart enough to know the difference between right and wrong or legal and illegal, and to recognize that presidents who engage in wrongful or illegal conduct are not worthy of emulation in certain respects. Moreover, no amount of dramatic rhetoric should distract anyone from the fact that this president remains subject to indictment and prosecution for any illegality he might have committed—whether we impeach or not.

The vote by the Majority to impeach President Clinton was the culmination of a process which, I believe, was a credit to neither the Constitution nor the House Judiciary Committee. The Majority voted to impeach this president for allegedly obstructing justice, even though it failed to call material witnesses to resolve key conflicts in testimony that go to the very heart of the obstruction of justice case it seeks to make. In terms of calling witnesses, the Majority instead summoned before the committee two individuals who had been convicted of perjury in a court of law, as if that were sufficient to establish that the president committed "high Crimes and Misdemeanors." The House dumped the independent counsel's gratuitously salacious Referral onto the Internet without having read it first. In short, the Majority acted as little more than a ready conduit for scandal between the Office of the Independent Counsel and the Senate.

And at the end of the process, during the committee's debate on articles of impeachment, members of the Majority suggested that its approval of articles of impeachment had little to do with the president's prospects for remaining in office. Rather, impeachment was merely the "ultimate censure," or a "scarlet letter." Their objective in making this argument is clear. That objective is to impeach the president without alerting the American people to the fact that impeachment is the House's sole contribution to a process by which a president stands to be *removed from office.* With public opinion arrayed strongly against the removal of this president from office, avoiding the "r word" ("removal") might make for smart political spin. But it is just as clearly a stunning abdication of responsibility and accountability for the clear import of the Majority's actions. If one supports the removal of this president, let him or her simply say so, rather than absurdly pretending that impeachment has nothing to do with removal.

It is for these reasons that I fear not only how history will treat what has been done in the name of the House Judiciary Committee but also how those actions will shape history. Shall the vote and debate over whether or not to impeach the President of the United States exhibit the same degree of partisan division and rancor as the votes we cast on such issues as school vouchers and committee ratios? If so, perhaps impeachment will be viewed by generations-to-come to be of no greater gravity than those lesser issues. Shall an independent counsel's fact-finding be the sole factual record

upon which the House Judiciary Committee votes to impeach a president? If so, I would suggest we have much to fear. Indeed, both parties have at different times recognized that independent counsels are hardly infallible in terms of their methods, motives, and conclusions.

Accordingly, I strongly dissent from the decision to impeach President Clinton. We should instead enact a resolution strongly disapproving of the president's conduct. Enactment of a censure resolution would fulfill the House's dual responsibility to express outrage over the president's conduct and to confine impeachment to cases truly involving "Treason, Bribery, or other high Crimes and Misdemeanors." It would punish the president by inflicting a lasting wound to his historical legacy. Just as importantly, it would avoid punishing this country with an unjustified impeachment and a contentious Senate trial.

MARTY MEEHAN.

DISSENTING VIEWS OF HON. WILLIAM D. DELAHUNT

I oppose the articles of impeachment as reported by the Judiciary Committee. I agree with much of the reasoning included in the Minority's Dissenting Views. However, I write separately to clarify my own perspective on a number of matters, including the reliability of the allegations upon which the case for impeachment is based.

I neither condone nor excuse the President's admitted misdeeds. However, I agree with my Minority colleagues that the allegations, even if true, do not form a constitutionally sufficient basis for impeachment. Whatever the Founders meant by "high Crimes and Misdemeanors," it is well-established that impeachment should be reserved for situations in which the incumbent poses so grave a danger to the Republic that he must be replaced before finishing his term of office. The Majority has utterly failed to establish that such is the case here.

As for the allegations themselves, however, I do not believe the Minority is in any better position to assess their accuracy then the Majority. The committee took no direct testimony in this matter. We called not a single witness who could testify to the facts. Instead, we relied solely on the assertions contained in the referral of the Independent Counsel. Those assertions are based on grand jury testimony and other information—much of it ambiguous and contradictory—whose credibility has never been tested through cross-examination.

Even absent such evidentiary problems, Article II of the Constitution imposes upon the committee a solemn obligation—which it may not delegate to the Independent Counsel or any other individual—to conduct a thorough and independent examination of the allegations and make its own findings of fact.

By failing to do this—by merely rubber-stamping the conclusions of the Independent Counsel—we have not only failed to establish a factual basis for the charges set forth in the articles of impeachment, but have abdicated our constitutional role to an unelected prosecutor and recklessly lowered the bar for future impeachments. In so doing, we have sanctioned an encroachment upon the Executive Branch that could upset the delicate equilibrium among the three branches of government that is our chief protection against tyranny.

A related casualty of our cavalier approach to this investigation has been the due process to which even our Presidents are entitled. We released the referral—including thousands of pages of secret grand jury testimony—within hours of its receipt, before either the Judiciary Committee or the President's counsel had any opportunity to examine it. We voted to initiate a formal inquiry against the President without even a cursory review of the allegations. We required the President's counsel to prepare his defense without knowing what charges would be brought. And we released articles

of impeachment—drafted in secrecy by the Majority alone—before the President's counsel had even finished his presentation to the committee.

Having put before the public a one-sided case for the prosecution, some members of the Majority actually suggested that the President had the burden of proving his innocence. When he attempted to do so, those same members accused him of "splitting hairs."

This was perhaps the most disturbing aspect of our proceedings. We live in a nation of laws, in which every person—whether pauper or President—is entitled to due process. This 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 distinguishes this country from a totalitarian one. That is the genius of a Constitution crafted by men who knew and understood the nature of tyranny. As one former United States Attorney testified during our hearings, those who complain most loudly about such "technicalities" are the first to resort to them when it is they who stand accused.

Public confidence in the rule of law is ultimately more important than the fate of one particular President. And the official lawlessness that has characterized this investigation has done far more to shake that confidence than anything of which the President stands accused.

These proceedings stand in stark contrast to those of the Watergate committee—which the Majority had self-consciously adopted as its model. During the Watergate crisis, the Rodino committee managed to transcend partisanship at a critical moment in our national life, and set a standard of fairness that earned it the lasting respect of the American people. As the Judiciary Committee voted to launch this inquiry, I expressed the hope that our proceedings would be equally fair, thorough and bipartisan, and that—whatever our verdict might be—our efforts would be found as worthy of praise.

In at least one important respect, the committee did merit such praise. Chairman Hyde permitted us to offer a censure resolution despite the extraordinary pressures that were brought to bear for him not to do so. In my view, the resolution which I sponsored, together with Mr. Boucher, Mr. Barrett and Ms. Jackson Lee, was—and remains—the most appropriate means of condemning the President's misconduct while sparing the nation the further turmoil and uncertainty of a lengthy Senate trial.

Contrary to the continuing claims of some that censure would be unconstitutional, a score of constitutional experts called as witnesses by both Republicans and Democrats on the Committee agreed in writing—by a margin of almost 4 to 1—that the Constitution does not prohibit censure. And it would be a breathtaking departure from the democratic principles which are the soul of the Constitution to deny the full House an opportunity to vote on an alternative to impeachment.

As we stand on the brink of an impeachment vote for only the second time in our history, we can only hope that the democracy that has survived so many storms will weather this crisis as well,

and that the irresponsible actions of this Committee will not do lasting damage to the country that we all so dearly love.

WILLIAM DELAHUNT.

DISSENTING VIEWS OF HON. STEVEN R. ROTHMAN

During the course of the Judiciary Committee's work concerning the eleven charges brought against President Clinton by Independent Counsel Ken Starr, I have sought to do my duty as a member of the House Judiciary Committee: to keep an open mind, study the historical origins of our Constitution's impeachment standard and subsequent legal precedent, listen carefully and conduct myself in a manner that my constituents, history and my children will respect.

I have worked hard to be attentive to all arguments and points of view on these subjects, no matter from which political party, if any, the author of those views emanated. Now, I have, after all these months of hard work and deliberation, been called upon to vote on Articles of Impeachment.

With regards to the charges of perjury, abuse of power and obstruction of justice brought by Judge Starr against the President emanating from the Paula Jones civil deposition and the later Grand Jury testimony regarding that deposition, none of us on the House Judiciary Committee were fact witnesses to any of the alleged acts. Even Judge Starr has repeatedly admitted that he was not a fact witness to any impeachable offense allegedly committed by the President.

In the present case, however, Judge Starr has chosen only to make opening statements, both written and oral. He has presented no fact witnesses. Instead, he has relied on transcribed portions of statements from people whose civil deposition was taken or who were questioned by his staff before a grand jury. But none of these witnesses was ever cross-examined by the President's counsel or anyone else, even though there was a great deal of conflicting and ambiguous testimony given by each of these witnesses. In addition, the President's counsels, David Kendall and Charles Ruff, and the House Judiciary Committee's minority counsel Abbe Lowell, in their written and oral responses, have rebutted and refuted each and every one of the charges raised by Judge Starr.

Here, when basic facts are in doubt, I firmly believe that it was incumbent upon those advancing the impeachment of a sitting U.S. President, to bring forth the fact witnesses so that we on the House Judiciary Committee could hear them, see them and cross-examine them.

Cross-examination of the people whose words one wants to use to prove something in a judicial proceeding is an old and longstanding requirement of our American system of justice. Being a nation founded by rebels loathe to take the word of government officials only, our Founders gave all accused the right to confront witnesses against them, to put the burden of proving guilt on the accuser and did not require the accused to prove his or her innocence. To put the burden of proof on the accused, in this case President Clinton,

subverts not only the Congress's impeachment power, but two hundred years of American justice.

Some argue that because it is the Senate that conducts the impeachment trial of the President, the House Judiciary Committee should not require certainty of the truthfulness of the impeachment charges. However, when the subject is the impeachment of the President of the United States, 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 send this matter to the Senate.

Our Founders created a democracy in which the President was to be the only person in America elected by all the people. The President was to be in office for only four-year terms and would not be guaranteed any tenure longer than four years at a time. Only in extraordinary circumstances would the Congress be able to remove a sitting President.

As you may know, the Federalist Papers #65 speaks of a real fear that a House of Representatives dominated by one political party would impeach a President of the opposite party without sufficient cause or proof—causing a terrible shock and disruption to our political system.

That is why the Framers of the Constitution set the bar for Presidential impeachment so high. They specifically rejected such standards as "maladministration" and failure to demonstrate "good behavior". Instead, they chose "treason, bribery, or other high crimes and misdemeanors." According to most scholars, that phrase clearly meant offenses as serious a threat to the republic as "treason" or "bribery."

The various experts and scholars who made presentations to the Judiciary Committee reminded us that President Clinton can be sued civilly and criminally for any conduct at issue. He is not above the rule of law. Therefore, no matter what decision this Congress makes about impeaching President Clinton, the world knows, and our children know, that the rule of law in America applies to all of us " even the President.

But this impeachment vote is not about enforcing the civil or criminal law, that is the role of the civil and criminal courts. Our responsibility is to determine if Judge Starr has sufficiently proven any facts upon which our Constitution would permit Congress to remove our duly elected President from office.

In my opinion, Judge Starr's burden of proving his case of perjury, obstruction of justice and abuse of power—by clear and convincing evidence—has not been met.

In particular, given the conflicting interpretations given to the deposition and grand jury witnesses' transcripts relied upon by Judge Starr, it was incumbent upon those seeking President Clinton's impeachment to present us with the facts witnesses who would support the charges. We needed to hear them, see them and cross-examine them in order to have determined the truthfulness of Judge Starr's conclusions of fact and law. None were brought before us. The prosecution's burden was not met. Therefore, I will vote against issuing Articles of Impeachment against President Clinton based on Judge Starr's charges.

However, that is not the end of this matter. As a nation, we must address what we all were witness to in January 1998 when President Clinton 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.

I agree with the overwhelming majority of Republican and Democratic constitutional scholars that the President's televised lie and his relationship with Ms. Lewinsky do not rise to the level of "treason, bribery or other high crimes and misdemeanors." However, I believe that the President's lie to the American people, as well as his admitted adulterous behavior with Ms. Lewinsky in the White House, demands punishment. Only by taking action against that conduct will we be able to look our children in the eyes and tell them that even presidents who lie and conduct themselves with such dishonor will be punished. That is why I will be voting to censure President Clinton on those grounds.

STEVEN R. ROTHMAN.

DISSENTING VIEWS OF HON. TOM BARRETT

Representative Barrett signs on to sections 1, 3(C), 3(D), 4, and 5, but not sections 2, 3(A), and 3(B), of the Minority dissenting views. In so doing, Representative Barrett notes that Articles of Impeachment I, II, and IV are based upon false and perjurious statements allegedly made by President Clinton (1) before a federal grand jury, (2) in the *Jones* deposition, and (3) in response to questions propounded by the Chairman of this Committee. The Majority party fails to state with particularity the words that constitute the allegedly false and perjurious statements, denying the President notice and opportunity to be heard consistent with traditional notions of fairness and due process. The Majority has, moreover, failed to establish the factual basis for these articles by clear and convincing evidence.

TOM BARRETT.

X. APPENDICES

APPENDIX A. HOUSE RESOLUTION 525

In the House of Representatives, U.S., September 11, 1998.

Resolved, That the Committee on the Judiciary shall review the communication received on September 9, 1998, from an independent counsel pursuant to section 595(c) of title 28, United States Code, transmitting a determination that substantial and credible information received by the independent counsel in carrying out his responsibilities under chapter 40 of title 28, United States Code, may constitute grounds for an impeachment of the President of the United States, and related matters, to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced. Until otherwise ordered by the House, the review by the committee shall be governed by this resolution.

SEC. 2. The material transmitted to the House by the independent counsel shall be considered as referred to the committee. The portion of such material consisting of approximately 445 pages comprising an introduction, a narrative, and a statement of grounds, shall be printed as a document of the House. The balance of such material shall be deemed to have been received in executive session, but shall be released from the status on September 28, 1998, except as otherwise determined by the committee. Material so released shall immediately be submitted for printing as a document of the House.

SEC. 3. Additional material compiled by the committee during the review also shall be deemed to have been received in executive session unless it is received in an open session of the committee.

SEC. 4. Notwithstanding clause 2(e) of rule XI, access to executive-session material of the committee relating to the review shall be restricted to members of the committee, and to such employees of the committee as may be designated by the chairman after consultation with the ranking minority member.

SEC. 5. Notwithstanding clause 2(g) of rule XI, each meeting, hearing, or deposition of the committee relating to the review shall be conducted in executive session unless otherwise determined by an affirmative vote of the committee, a majority being present. Such an executive session may be attended only by members of the committee, and by such employees of the committee as may be designated by the chairman after consultation with the ranking minority member.

APPENDIX B. HOUSE RESOLUTION 581

In the House of Representatives, U.S., October 8, 1998.

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendation as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(a) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information;

as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpoenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

APPENDIX C. CORRESPONDENCE

CORRESPONDENCE LOG BETWEEN THE WHITE HOUSE AND THE JUDICIARY COMMITTEE

Date	From	To
09/11/98	Charles F.C. Ruff, Esq., Counsel to the President ...	Chairman Henry J. Hyde and Hon. Newt Gingrich, Speaker of the House
09/17/98	Erskine Bowles, The White House	Chairman Henry J. Hyde.
09/22/98	Charles F.C. Ruff, Esq., Counsel to the President. David E. Kendall, Esq. Williams & Connolly.	Chairman Henry J. Hyde and Hon. John Conyers, Jr., Ranking Minority Member.
10/02/98	Charles F.C. Ruff, Esq., Counsel to the President. David E. Kendall, Esq. Williams & Connolly.	Chairman Henry J. Hyde and Hon. John Conyers, Jr., Ranking Minority Member.
10/21/98	Charles F.C. Ruff, Esq., Gregory B. Craig, David E. Kendall, Counsels to the President.	Chairman Henry J. Hyde and Hon. John Conyers, Jr., Ranking Minority Member.
10/23/98	Charles F.C. Ruff, Esq., Gregory B. Craig, David E. Kendall, Counsels to the President.	Chairman Henry J. Hyde.
11/05/98	Henry J. Hyde, Chairman	Hon. William Jefferson Clinton.
11/06/98	Henry J. Hyde, Chairman	Hon. William Jefferson Clinton.
11/09/98	Thomas E. Mooney, Chief of Staff-General Counsel and David P. Schippers, Chief Investigative Counsel.	Charles F.C. Ruff, Esq., Gregory B. Craig, David E. Kendall, Counsels to the President.
11/16/98	Henry J. Hyde, Chairman	Charles F.C. Ruff, Esq., Counsel to the President.
11/17/98	Henry J. Hyde, Chairman	Charles F.C. Ruff, Esq., Counsel to the President.
11/17/98	Charles F.C. Ruff, Esq., Counsel to the President ...	Henry J. Hyde, Chairman.
11/18/98	Charles F.C. Ruff, Esq., Counsel to the President ...	Thomas E. Mooney, Esq., Chief of Staff-General Counsel.
11/18/98	Charles F.C. Ruff, Esq., Counsel to the President ...	Henry J. Hyde, Chairman.
11/18/98	Thomas E. Mooney, Chief of Staff-General Counsel	Charles F.C. Ruff, Esq., Counsel to the President.
11/20/98	Thomas E. Mooney, Chief of Staff-General Counsel and David P. Schippers, Chief Investigative Counsel.	Charles F.C. Ruff, Esq., Counsel to the President.
11/20/98	Charles F.C. Ruff, Esq., Counsel to the President ...	Thomas E. Mooney, Chief of Staff-General Counsel and David P. Schippers, Chief Investigative Counsel.
11/25/98	Henry J. Hyde, Chairman	The President, The White House.
11/27/98	David E. Kendall, Esq., Counsel to the President	Henry J. Hyde, Chairman.
12/02/98	Gregory B. Craig, Esq., Charles F.C. Ruff, Esq., Counsels to the President.	Henry J. Hyde, Chairman.
12/03/98	Thomas E. Mooney, Chief of Staff-General Counsel	Gregory B. Craig, Esq., Charles F.C. Ruff, Esq., Counsels to the President.
12/04/98	Thomas E. Mooney, Chief of Staff-General Counsel	Charles F.C. Ruff, Esq., Counsel to the President.
12/04/98	Gregory B. Craig, Esq., Charles F.C. Ruff, Esq., Counsels to the President.	Thomas E. Mooney, Chief of Staff-General Counsel.
12/04/98	Charles F.C. Ruff, Esq., Counsel to the President ...	Thomas E. Mooney, Chief of Staff-General Counsel.
12/06/98	Thomas E. Mooney, Chief of Staff-General Counsel	Charles F.C. Ruff, Esq., Gregory B. Craig, Esq., Counsels to the President.
12/07/98	Gregory B. Craig, Esq., Charles F.C. Ruff, Esq., Counsels to the President.	Thomas E. Mooney, Chief of Staff-General Counsel.
12/07/98	Thomas E. Mooney, Chief of Staff-General Counsel	Gregory B. Craig, Esq., Charles F.C. Ruff, Esq., Counsels to the President.

THE WHITE HOUSE
WASHINGTON

September 11, 1998

BY HAND

The Honorable Henry Hyde
Chairman, House Judiciary Committee
2110 Rayburn Office Bldg.
Washington, D.C. 20515

The Honorable Newt Gingrich
Speaker of the House
2428 Rayburn Office Bldg.
Washington, D.C. 20515

Dear Chairman Hyde and Speaker Gingrich:

In our meeting yesterday, Chairman Hyde kindly offered to make publicly available, in conjunction with and in the same manner as the Committee's public release of Independent Counsel Starr's Referral, any response submitted by Mr. Kendall and the White House.

It is our understanding from Speaker Gingrich that this information must be formally received by the Chairman of the Judiciary Committee in order to become an official Committee document, and I am therefore submitting to you, in addition to the enclosed hard copies, a disk copy of our Preliminary Memorandum Concerning Referral of Office of Independent Counsel in Word Perfect format and in html format for posting on the Internet.

We appreciate very much your courtesy and cooperation.

Sincerely,

Charles Ruff

Charles F.C. Ruff
Counsel to the President

THE WHITE HOUSE
WASHINGTON

September 17, 1998

Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Last week, Charles Ruff, John Podesta, and David Kendall met with you and Representative Conyers and personally assured you that the White House has zero tolerance for staff who are found to be prying or encouraging others to pry into the personal lives of Members or any other government official. Let me reassure you: *any* staff who are found to be engaging in such conduct will be fired immediately. In addition, we have made clear to persons outside the White House that we will not tolerate such conduct.

We consider this such a serious matter that we have talked to the appropriate members of the senior staff who interact with the press. Each has given assurances that they have had no contact with Salon magazine or any other news organization, or with anyone outside the White House, to promote stories regarding the private lives of any Member or government official.

If you have information indicating that a staff member has violated White House policy, please notify me immediately. If this is happening, I want to know. To that end, the White House is informing news organizations that it waives any right to journalistic confidentiality about the sources of such stories.

I am committed to taking appropriate action based on any reliable information. I am sure you can understand that I cannot act based solely on rumor, innuendo, or anonymous gossip. Please call me if you would like to discuss this issue.

Sincerely,

Erskine Bowles

cc: Honorable John Conyers

September 22, 1998

The Honorable Henry J. Hyde
Chairman, House Judiciary Committee
2110 Rayburn Office Bldg.
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
House Judiciary Committee
2426 Rayburn Office Bldg.
Washington, D.C. 20515

Gentlemen:

When we met earlier this month, you kindly offered to accept from us any submissions we wished to make that would bear on the Committee's preliminary review of the Independent Counsel's Referral. We write today to bring to the Committee's attention a critical flaw in the Referral -- a flaw that we believe calls into question the fairness of the entire process underlying the Referral and should lead the Members, at the very least, to question the factual premise on which it rests and the legal conclusions it draws.

As we indicated to you on September 11 and September 14, we feared, even before reading the Independent Counsel's Referral, that it would be a one-sided and unfair manipulation of the evidence and the law. Yesterday's release of Ms. Lewinsky's testimony made clear that our fears were, if anything, understated.

It is plain now from the 3200 page appendices to the Starr Referral that the Office of Independent Counsel (OIC) has significantly distorted the testimony of Ms. Lewinsky, quoting it when it suited the OIC's purposes and downplaying it or ignoring it when it did not. The OIC ignored all reasonable standards of fairness in preparing and drafting its Referral. The Referral is stunning in its silence about evidence that supports the President.

Ms. Lewinsky consistently has maintained that neither the President nor anyone acting on his behalf ever urged her to lie, about anything. Aware that this would be her testimony, the OIC did not ask her any questions that might elicit this exculpatory testimony in the grand jury and ended its interrogation of her without clarifying this key point. After the OIC prosecutor announced "We don't have further questions," it was left to a grand juror to ask Ms. Lewinsky if she wished to add to, amplify, or clarify her previous testimony, whereupon Ms. Lewinsky stated:

> "I would. I think because of the public nature of how this investigation has been and what the charges aired [sic], that I would just like to say that no one ever asked me to lie and I was never promised a job for my silence."

App. 1161 (8/20/98 Lewinsky testimony).

As this plainly indicates, Ms. Lewinsky also testified that the efforts of Vernon Jordan to find her a job were not part of any scheme to obstruct justice or buy her testimony.

The decision by Mr. Starr to specifically exclude Ms. Lewinsky's exculpatory statements and express denials raises grave questions about the fundamental fairness of the Starr Referral. The OIC chose to print over 150 pages of gratuitous and graphic sexual detail but could not find space for a single sentence quoting Ms. Lewinsky's sworn testimony which directly undermines the central obstruction-of-justice allegations in the Referral, and, for that matter, the very basis of the Lewinsky investigation.

We have not yet had a chance to analyze properly the 3200 pages released yesterday by the Committee, but we think the OIC's failure to give a fair presentation of Ms. Lewinsky's testimony is indicative of the one-sided nature of the Referral, a document whose true goal was to embarrass the President and inflame the public. We hope that you and the other distinguished Members of your Committee will proceed with due caution and appropriate fairness as you move forward to review the materials the OIC prosecutors have submitted.

We look forward to making additional submissions to the Committee as its review -- and ours -- proceed.

Sincerely,

Charles Ruff

Charles F.C. Ruff
Counsel to the President
The White House
Washington, D.C. 20502

David E. Kendall

David E. Kendall
Williams & Connolly
725 12th Street
Washington, D.C. 20005

October 2, 1998

RECEIVED
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COMMITTEE OF THE JUDICIARY

The Honorable Henry J. Hyde
Chairman, House Judiciary Committee
2110 Rayburn Office Bldg.
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Minority Member
House Judiciary Committee
2426 Rayburn Office Bldg.
Washington, D.C. 20515

By Hand

Gentlemen:

At our meeting in Chairman Hyde's office on September 10, you invited us to submit our views on issues before the Committee as a result of the Starr Referral. Accordingly, we are transmitting to you herewith a Memorandum Regarding Standards for Impeachment.

Sincerely,

Charles Ruff

Charles F.C. Ruff
Counsel to the President
The White House
Washington, D.C. 20502

David E. Kendall
Williams & Connolly
725 12th Street
Washington, D.C. 20005

THE WHITE HOUSE
WASHINGTON

October 21, 1998

The Honorable Henry J. Hyde
Chairman
House Judiciary Committee

The Honorable John J. Conyers, Jr.
Ranking Member
House Judiciary Committee

Re: Proposed Testimony from Constitutional Experts

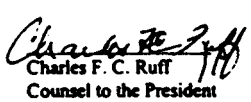
Gentlemen:

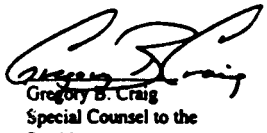
In our joint capacity as Counsel for President Clinton in the impeachment inquiry currently underway in the House Judiciary Committee, we are writing respectfully to request the Committee to schedule hearings -- as its first order of business -- on the meaning of Article II, Section 4. That provision sets forth the constitutional standards governing the impeachment of a President. We believe it is important for the full Committee to address the question of what those standards are, how those standards have evolved through our nation's history, and how those standards should be applied to the allegations and conduct at issue in the impeachment inquiry.

We are of course interested in moving these proceedings forward. To that end, we would suggest that the Committee schedule hearings to be completed during the week of November 9, and that the Committee take testimony from at least two panels of witnesses. One panel would be composed of constitutional scholars, experts and historians designated by the American Bar Association. A second panel would be composed of additional witnesses equally divided between the majority and the minority.

We respectfully submit that the evidence that we are proposing here is necessary and desirable to a full and fair record in the inquiry. We further suggest that the process will not be full and fair if such evidence is not included in the record.

Very truly yours,


Charles F. C. Ruff
Counsel to the President


Gregory B. Craig
Special Counsel to the President

David E. Kendall
Personal Counsel to the President

THE WHITE HOUSE

WASHINGTON

October 23, 1998

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Bldg.
Washington, D.C. 20515

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COMMITTEE OF THE JUDICIARY

Dear Chairman Hyde:

We write to follow up on our meeting with Committee counsel. We appreciate your courtesy and theirs in affording us the opportunity to present our views.

The issue of particular concern to us is the right of the President's counsel to participate in depositions and interviews of witnesses conducted by Committee counsel. When we raised this issue at our meeting, we were informed that, under the rules adopted by the Committee, we would not be allowed to participate, at least in part because a similar request by President Nixon's counsel had been rejected. To our knowledge, no depositions were actually taken in 1974, and, thus, the issue became moot. In any event, even acknowledging that theoretical precedent, in the circumstances of this inquiry we believe that principles of elemental fairness mandate our participation.

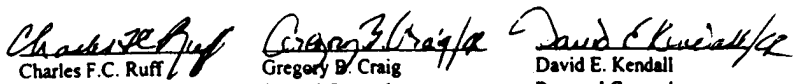
Although the Committee's rules contemplate our being able to attend evidentiary hearings and to "question any witness before the Committee," that right will prove utterly meaningless if the Committee's ultimate judgment is to be based on testimony taken outside the presence of both the Members and the President's counsel. This Committee, above all, needs no instruction in the basic principles of due process; nor does it need to be reminded of the importance our system of justice places on the right of a citizen to confront the witnesses against him -- a right predicated on the belief that truth will emerge most clearly from the interplay of examination and cross-examination. We are certain that the commitment to fairness that you have so eloquently voiced will lead you to grant our request.

Committee counsel also raised with us their concern that the presence of the President's counsel would somehow "chill" the testimony of the witnesses, or at least those who are White House or executive branch employees. With all due respect, any such concern is baseless. We know of no evidence that any witnesses have been "chilled" or otherwise improperly influenced, and, in the absence of such evidence, it would be unfair to deprive the President of the most important right afforded any accused. Further, as you know, the relevant witnesses are represented by personal counsel and have already testified before the grand jury or been interviewed at length by the Independent Counsel.

Chairman Hyde
October 23, 1998
Page 2

This matter is of sufficiently grave import that we would ask for the opportunity to meet with you and to discuss our concerns before a decision is made.

Sincerely,



Charles F.C. Ruff
Counsel to the President

Gregory B. Craig
Special Counsel to
the President

David E. Kendall
Personal Counsel to
the President

cc: Hon. John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 Rayburn House Office Building
Washington, DC 20515-6216
(202) 225-3951

November 5, 1998

The Honorable William Jefferson Clinton
President of the United States
The White House
Washington, DC

Dear Mr. President:

I respectfully seek your cooperation in responding to the enclosed requests for admission in writing and under oath, utilizing the enclosed affidavit. The Committee is seeking this information in order to expedite the inquiry of impeachment authorized pursuant to House Resolution 581.

The enclosed requests for admission are for purposes of the inquiry of impeachment only and the responses you provide shall not be considered to have any bearing or effect on any subsequent or prospective action by the Executive or Judicial branches of the United States that may be related to this matter.

Thank you for your cooperation.

Sincerely,

Henry J. Hyde

HENRY J. HYDE
Chairman

cc: The Honorable John Conyers
Ranking Minority Member

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

REQUESTS FOR ADMISSION
OF WILLIAM J. CLINTON
PRESIDENT OF THE UNITED STATES
RELATING TO THE INQUIRY OF IMPEACHMENT
AUTHORIZED PURSUANT TO H. RES. 581

1. Do you admit or deny that you are the chief law enforcement officer of the United States of America?

2. Do you admit or deny that upon taking your oath of office that you swore you would faithfully execute the office of President of the United States, and would to the best of your ability, preserve, protect and defend the Constitution of the United States?

3. Do you admit or deny that, pursuant to Article II, section 2 of the Constitution, you have a duty to "take care that the laws be faithfully executed?"

4. Do you admit or deny that you are a member of the bar and officer of the court of a state of the United States, subject to the rules of professional responsibility and ethics applicable to the bar of that state?

5. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, in a deposition conducted as part of a judicial proceeding in the case of *Jones v. Clinton* on January 17, 1998?

6. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, before a grand jury empaneled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit on August 17, 1998?

7. Do you admit or deny that on or about October 7, 1997, you received a letter composed by Monica Lewinsky in which she expressed dissatisfaction with her search for a job in New York?

8. Do you admit or deny that you telephoned Monica Lewinsky early in the morning on October 10, 1997, and offered to assist her in finding a job in New York?

9. Do you admit or deny that on or about October 11, 1997, you met with Monica Lewinsky in or about the Oval Office dining room?

10. Do you admit or deny that on or about October 11, 1997, Monica Lewinsky furnished to you, in or about the Oval Office dining room, a list of jobs in New York in which she was interested?

11. Do you admit or deny that on or about October 11, 1997, you suggested to Monica Lewinsky that Vernon Jordan may be able to assist her in her job search?

12. Do you admit or deny that on or about October 11, 1997, after meeting with Monica Lewinsky and discussing her search for a job in New York, you telephoned Vernon Jordan?

13. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, a plan in which she would pretend to bring you papers with a work-related purpose, when in fact such papers had no work-related purpose, in order to conceal your relationship?

14. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that Betty Currie should be the one to clear Ms. Lewinsky in to see you so that Ms. Lewinsky could say that she was visiting with Ms. Currie instead of with you?

15. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that if either of you were questioned about the existence of your relationship you would deny its existence?

16. Do you admit or deny that on or about December 6, 1997, you learned that Monica Lewinsky's name was on a witness list in the case of *Jones v. Clinton*?

17. Do you admit or deny that on or about December 17, 1997, you told Monica Lewinsky that her name was on the witness list in the case of *Jones v. Clinton*?

18. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that the submission of an affidavit in the case of *Jones v. Clinton* might suffice to prevent her from having to testify personally in that case?

19. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

20. Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of *Jones v. Clinton* on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?

21. Do you admit or deny that you gave false and misleading testimony under oath when you stated before the grand jury on August 17, 1998, that you did know prior to January 17, 1998, that Monica Lewinsky had been subpoenaed to testify in the case of *Jones v. Clinton*?

22. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding her moving to New York?

23. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House in which you suggested to her that she move to New York soon because by moving to New York, the lawyers representing Paula Jones in the case of *Jones v. Clinton* may not contact her?

24. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of *Jones v. Clinton*?

25. Do you admit or deny that on or about December 28, 1997, you expressed concern to Monica Lewinsky about a hatpin you had given to her as a gift which had been subpoenaed in the case of *Jones v. Clinton*?

26. Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?

27. Do you admit or deny that on or about December 28, 1998, you requested, instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?

28. Do you admit or deny that you had a telephone conversation on January 6, 1998, with Vernon Jordan during which you discussed Monica Lewinsky's affidavit, yet to be filed, in the case of *Jones v. Clinton*?

29. Do you admit or deny that you had knowledge of the fact that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton* on January 7, 1998?

30. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton*?

31. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that he was assisting Monica Lewinsky in finding a job in New York?

32. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton* prior to your deposition in that case?

33. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, prior to your deposition in that case?

34. Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton* were not true?

35. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

36. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

37. Do you admit or deny that on or about January 9, 1998, you received a message from Vernon Jordan indicating that Monica Lewinsky had received a job offer in New York?

38. Do you admit or deny that between January 9, 1998, and January 15, 1998, you had a conversation with Erskine Bowles in the Oval Office in which you stated that Monica Lewinsky received a job offer and had listed John Hilley as a reference?

39. Do you admit or deny that you asked Erskine Bowles if he would ask John Hilley to give Ms. Lewinsky a positive job recommendation?

40. Do you admit or deny that during your deposition in the case of *Jones v. Clinton* on January 17, 1998, you affirmed that the facts or assertions stated in the affidavit executed by Monica Lewinsky on January 7, 1998, were true?

41. As to each, do you admit or deny that you gave the following gifts to Monica Lewinsky at any time in the past?

    a. A lithograph
    b. A hatpin
    c. A large "Black Dog" canvas bag
    d. A large "Rockettes" blanket
    e. A pin of the New York skyline
    f. A box of "cherry chocolates"
    g. A pair of novelty sunglasses
    h. A stuffed animal from the "Black Dog"
    i. A marble bear's head
    j. A London pin
    k. A shamrock pin
    l. An Annie Lennox compact disc
    m. Davidoff cigars

42. 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?"

43. Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of *Jones v. Clinton* when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

44. Do you admit or deny that on January 17, 1998, at or about 5:38 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his home?

45. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home?

46. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his office?

47. Do you admit or deny that on January 17, 1998, at or about 7:13 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home and asked her to meet with you the next day, Sunday, January 18, 1998?

48. Do you admit or deny that on January 18, 1998, at or about 6:11 a.m., you learned of the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp?

49. Do you admit or deny that on January 18, 1998, at or about 12:50 p.m., you telephoned Vernon Jordan at his home?

50. Do you admit or deny that on January 18, 1998, at or about 1:11 p.m., you telephoned Betty Currie at her home?

51. Do you admit or deny that on January 18, 1998, at or about 2:55 p.m., you received a telephone call from Vernon Jordan?

52. Do you admit or deny that on January 18, 1998, at or about 5:00 p.m., you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

    a. "You were always there when she was there, right? We were never really alone."
    b. "You could see and hear everything."
    c. "Monica came on to me, and I never touched her right?"
    d. "She wanted to have sex with me and I couldn't do that."

53. Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?
    a. "You were always there when she was there, right? "We were never really alone."
    b. "You could see and hear everything."
    c. "Monica came on to me, and I never touched her right?"
    d. "She wanted to have sex with me and I couldn't do that."

54. Do you admit or deny that on January 18, 1998, at or about 11:02 p.m., you telephoned Betty Currie at her home?

55. Do you admit or deny that on Monday, January 19, 1998, at or about 8:50 a.m., you telephoned Betty Currie at her home?

56. Do you admit or deny that on Monday, January 19, 1998, at or about 8:56 a.m., you telephoned Vernon Jordan at his home?

57. Do you admit or deny that on Monday, January 19, 1998, at or about 10:58 a.m., you telephoned Vernon Jordan at his office?

58. Do you admit or deny that on Monday, January 19, 1998, at or about 1:45 p.m., you telephoned Betty Currie at her home?

59. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., you met with individuals including Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, and Rahm Emanuel?

60. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., at any meeting with Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel, and others, you discussed the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp, or any other matter relating to Monica Lewinsky?

61. Do you admit or deny that on Monday, January 19, 1998, at or about 5:56 p.m., you telephoned Vernon Jordan at his office?

62. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you stated that you rebuffed alleged advances from Monica Lewinsky and in which you made a statement similar to the following?: "Monica Lewinsky came at me and made a sexual demand on me."

63. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you made a statement similar to the following in response to a question about your conduct with Monica Lewinsky?: "I haven't done anything wrong."

64. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Erskine Bowles, Sylvia Matthews and John Podesta, in which you made a statement similar to the following? "I want you to know I did not have sexual relationships with this woman Monica Lewinsky I did not ask anybody to lie. And when the facts come out, you'll understand."

65. Do you admit or deny that on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you had never had an affair with Monica Lewinsky?

66. Do you admit or deny that on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you were not alone with Monica Lewinsky in the Oval Office, and that Betty Currie was either in your presence or outside your office with the door open while you were visiting with Monica Lewinsky?

67. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you did not have an affair with Monica Lewinsky?

68. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you had not asked anyone to change their story, suborn perjury or obstruct justice if called to testify or otherwise respond to a request for information from the Office of Independent Counsel or in any other legal proceeding?

69. Do you admit or deny that, on or about January 21, 1998, you and Richard "Dick" Morris discussed the possibility of commissioning a poll to determine public opinion following the *Washington Post* story regarding the Monica Lewinsky matter?

70. Do you admit or deny that you had a later conversation with Richard "Dick" Morris in which he stated that the polling results regarding the Monica Lewinsky matter suggested that the American people would forgive you for adultery but not for perjury or obstruction of justice?

71. Do you admit or deny that you responded to Richard "Dick" Morris's explanation of these polling results by making a statement similar to the following: "[w]ell, we just have to win, then"?

72. Do you admit or deny the past or present existence of or the past or present direct or indirect employment of individuals, other than counsel representing you, whose duties include making contact with or gathering information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

73. Do you admit or deny having knowledge that Terry Lenzner was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

74. Do you admit or deny having knowledge that Jack Palladino was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

75. Do you admit or deny having knowledge that Betsy Wright was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

76. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in an interview with Roll Call, when you stated "Well, let me say, the relationship was not improper, and I think that's important enough to say. But because the investigation is going on and because I don't know what is out – what's going to be asked of me, I think I need to cooperate, answer the questions, but I think it's important for me to make it clear what is not. And then, at the appropriate time, I'll try to answer what is. But let me answer – it is not an improper relationship and I know what the word means."?

77. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in the Oval Office during a photo opportunity, when you stated "Now, there are a lot of other questions that are, I think, very legitimate. You have a right to ask them; you and the American people have a right to get answers. We are working very hard to comply and get all the requests for information up here, and we will give you as many answers as we can, as soon as we can, at the appropriate time, consistent with our obligation to also cooperate with the investigations. And that's not a dodge, that's really why I've – I've talked with out people. I want to do that. I'd like for you to have more rather than less, sooner rather than later. So we'll work through it as quickly as we can and get all those questions out there to you."?

78. Do you admit or deny that you discussed with Harry Thomasson, prior to making public statements in response to questions asked by the press in January, 1998, relating to your relationship with Monica Lewinsky, what such statements should be or how they should be communicated?

79. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman, Ms. Lewinsky?"

80. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "... I never told anybody to lie, not a single time. Never?"

81. Do you admit or deny that you directed or instructed Bruce Lindsey, Sidney Blumenthal, Nancy Hernreich and Lanny Breuer to invoke executive privilege before a grand jury empaneled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit in 1998?

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

SWORN AFFIDAVIT
OF WILLIAM J. CLINTON
PRESIDENT OF THE UNITED STATES
RELATING TO THE INQUIRY OF IMPEACHMENT
AUTHORIZED PURSUANT TO H. RES. 581

AFFIDAVIT

I, William J. Clinton, under penalty of perjury and remedies available to the House of Representatives under the Constitution of the United States, swear or affirm that the foregoing responses to the Requests for Admission submitted by the Committee on the Judiciary relating to the inquiry of impeachment authorized pursuant to H. Res. 581, are the truth, the whole truth, and nothing but the truth.

Sworn this ___ day of November, 1998.

_____
WILLIAM J. CLINTON
President of the United States

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 Rayburn House Office Building
Washington, DC 20515-6216
(202) 225-3951

November 6, 1998

The Honorable William Jefferson Clinton
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

There is a typographical error in request number 27 of the First Set of Requests for Admission of William J. Clinton, President of the United States, Relating to the Inquiry of Impeachment Authorized Pursuant to H. Res. 581 which you received yesterday. That request asks about conduct "alleged to have occurred on December 28, 1998." In fact, the request should have asked about conduct "alleged to have occurred on December 28, 1997."

I would appreciate your making this conforming change in the Requests prior to submitting your response.

Sincerely,

Henry J. Hyde

HENRY J. HYDE
Chairman

cc: Honorable John Conyers, Jr.
Ranking Minority Member

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

November 9, 1998

Charles F.C. Ruff, Esq.
Counsel to the President

Gregory B. Craig, Esq.
Special Counsel to the President

David E. Kendall, Esq.
Personal Counsel to the President

The White House
Washington, D.C. 20500

Dear Messrs. Ruff, Craig and Kendall:

Thank you for your letter of October 23. As we said at our meeting, we will continue to give you the opportunity to present us with your views on the process.

With all due respect to your suggestions, you are certainly aware that the Committee has already met and resolved by a nearly unanimous vote the issues that you are now raising. After extensive bipartisan staff discussions, the Committee met on October 5 and adopted its Impeachment Inquiry Procedures by voice vote with only a single objection heard.

We believe that the reason for the nearly unanimous approval of these procedures is that they are overwhelmingly fair to the interests of the President. When the Committee meets for the "presentation of evidence" (i.e. as an investigative fact-finding body), the procedures adopted afford the President and his counsel the right to:

- respond to evidence received and testimony adduced by the Committee, orally or in writing as shall be determined by the Committee;
- suggest additional testimony or other evidence for the Committee to receive based upon submissions of written requests and precise summaries of what he would propose to show, and in the case of a witness, precisely and in detail what is expected the testimony

of the witness would be if called (the Committee would then determine whether suggested evidence is necessary or desirable to a full and fair record of the inquiry and whether to accept the summaries or receive the suggested additional testimony or evidence);

- attend all hearings at which witnesses are called, including any held in executive session;
- raise objections to the examination of witnesses, or to the admissibility of testimony and evidence which shall be ruled upon by the Chairman or presiding Member (such rulings are final unless overturned by a majority of the Members present); and
- question witnesses called before the Committee, subject to instructions from the Chairman or presiding Member with respect to time, scope and duration of the examination.

These protections for the President track nearly verbatim the protections afforded to President Nixon during the Watergate impeachment inquiry. As you know, the Watergate model was criticized in 1974 not as being unfair to the President but as *being too deferential to the interests of the President*, especially in light of the Constitution's explicit exclusion of the Executive Branch in the impeachment process. In 1974, Representative John Conyers, Jr., now the distinguished Ranking Minority Member of the Committee, said:

> [I]t seems to me that we have gone to great excess in and are probably making a serious mistake that will insure that we never ever emerge from these evidentiary hearings in terms of allowing the President's counsel to take this unlimited and overfull participation in hearings that we are conducting to merely advise the Congress. This is not a trial, and it may be that for one time this committee has been bent over backwards in trying to maintain this theoretical bipartisanship that is going on. And I yield to the subcommittee chairman if he wishes to throw some light on this."

Representative George Danielson felt even stronger in his closing views when he stated:

> In my opinion, the expanded role of the President's counsel was improvidently permitted, for it threatened to transform the proceeding from its constitutional role of the "Grand Inquest of the Nation" to that of an adversary proceeding similar to a judicial trial. I would urge that in any future impeachment inquiries the role of the counsel of the person subject to the impeachment process not be extended beyond that of an observer and auditor. In the Nixon hearings, the extensive participation was permitted out of an overabundance of caution that the hearings be conducted with fairness and that due process be observed. Those goals were not only achieved, but surpassed, and because of excessive participation by President's counsel, both fairness and due process were threatened.

We note that Representative Danielson's statements were made *after President Nixon resigned*. It served as a warning to future Congresses that may conduct impeachment inquiries.

We believe that the premises for your suggestions are misplaced. In paragraph two of your letter of October 23, you state, "....The issue of particular concern to us is the right of the President's counsel to participate in depositions and interviews of witnesses conducted by Committee

counsel...." While you acknowledge that such a request was denied in the Nixon inquiry, you go on to claim that no depositions were taken. You then state that in the case of the current inquiry "...principles of elemental fairness mandate our participation...." We have spent several months researching and reading about impeachment. We have reviewed both the Johnson and Nixon inquiries. We have looked at various judicial impeachments. We have also read a great deal of writing done by various constitutional scholars. In this instance, you appear to be on the wrong side of history, and seem to have some of your facts wrong, as well.

The deposition question was raised in the impeachment inquiry of President Nixon. It was a subject of discussion at about a half-dozen Committee meetings. A key meeting about this subject occurred on April 4, 1974. On that day John Doar, the President Nixon inquiry Special Counsel, appeared before the Committee with some of his staff, including Messrs. Albert Jenner and Joseph Woods and Ms. Hillary Rodham, who had done serious, copious research on the question of Presidential impeachment inquiry participation and produced a document entitled, "Presentation Procedures for the Impeachment Inquiry." Their pertinent conclusion on the subject you have raised, was their fourth procedural question based upon our American historical record. It reads as follows:

> "....4. No record has been found of any impeachment inquiry in which the official under investigation participated in the investigation stage preceding commencement of committee hearings...."

As to your comments on depositions in the President Nixon inquiry, we respectfully submit that you may be incorrect. The Rodino inquiry staff filed monthly reports on their various investigations, and they often cited witness interviews that had been conducted. To our knowledge, this occurred throughout the inquiry. We are also under the impression that several witnesses were deposed as late as June of 1974. If you have different information on these two points, we would be glad to review it.

In paragraph three of your letter, you spoke of due process and the right of a citizen to confront his or her accusers. These same issues were raised in the inquiry of President Nixon. As you know, the Committee is not conducting a trial; that is a power the Constitution grants exclusively to the Senate. We are conducting an inquiry during which we will gather much information, and then decide what information falls under the purview of presidential conduct to be reviewed first by Members of the Committee on the Judiciary, and then later by Members of the House, if the situation warrants it. However, you seem to be attempting to create a whole new precedent which would allow the subject of an investigation to intrude upon the investigation and decide what information is good and what is not. Through eloquent utilization of legal terms, your letter suggests that we are in the arena of criminal law conducting a trial. We are not. Not only is an impeachment inquiry unique to our system of government, it is wholly distinct from the notion of criminality as you are attempting to portray it.

In paragraph four of your letter, you noted that we raised the question of a possible "chill" on any witnesses who might be questioned with a President's lawyer present. You then dismiss that claim as baseless. It is the Committee that is charged with the responsibility to gather the facts and

information in this case. Moreover, as you well know, there are just such allegations of this sort in the referral sent to us by the Independent Counsel. There are also similar stories in the news media about other individuals not covered by the official information we have been provided to date.

We can certainly understand your desire to advance these legal arguments. As Counsel to the President, Special Counsel to the President and Personal Counsel to the President, you operate under the mandate the President declared on September 11 that: "I will instruct my lawyers to mount a vigorous defense, using all available appropriate arguments." We understand that you are carrying out that mandate, we respect it, and we expect nothing less.

However, because you now seek to undo a nearly unanimous vote of the Committee, we have become concerned that your interpretation of mounting a vigorous legal defense may be to dispute every action of the Committee and to refuse to cooperate with the inquiry. An even larger cause of concern, we believe, is the contrast between your pledges for full cooperation at our meeting, behind closed doors, and the public comments of Mr. Craig immediately following the meeting. In our meeting, we discussed our desire to proceed fairly, thoroughly and expeditiously. In response, you made unequivocal pledges of full cooperation. Indeed, you went so far as to say that Mr. Ruff will personally facilitate the production of witnesses and documents. However, immediately following the meeting, Mr. Craig refused to follow through on that pledge. In response to the question, "if the Committee continues with the procedures that it's using thus far, will the White House cooperate with subpoenas, document requests, providing witnesses, that kind of thing?" Mr. Craig answered: "It's a hypothetical; we're not there yet."

We do not view your pledges of cooperation as hypothetical. Indeed, as Chairman Hyde has repeatedly stated and as we reiterated with you at our meeting, the cooperation of the White House is essential to conduct this inquiry expeditiously. Article I, Section 2 of the Constitution provides that "The House of Representatives...shall have the sole Power of Impeachment." The House has directed the Committee on the Judiciary to begin an inquiry of impeachment of President William Jefferson Clinton. Implicit in that mandate is the responsibility to independently investigate and establish all of the relevant facts. This took the Committee nearly six months in the impeachment inquiry of President Nixon, 16 months in the impeachment inquiry of Judge Alcee Hastings and 13 months in the impeachment inquiry of Judge Walter Nixon. It is clear that to meet the Chairman's goal of completing this inquiry in less than three months will require the good faith efforts and actual cooperation of the White House.

Sincerely,

THOMAS E. MOONEY
Chief of Staff-General Counsel

DAVID P. SCHIPPERS
Chief Investigative Counsel

cc: Julian Epstein
Abbe Lowell

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

November 16, 1998

Charles F.C. Ruff, Esq.
Counsel to the President

Gregory B. Craig, Esq.
Special Counsel to the President

David E. Kendall, Esq.
Personal Counsel to the President

The White House
Washington, D.C. 20500

Dear Messrs. Ruff, Craig, and Kendall:

Pursuant to H. Res. 581, the House Committee on the Judiciary will receive testimony from Independent Counsel Kenneth W. Starr on Thursday, November 19, 1998. The Committee will proceed pursuant to the Rules of the House of Representatives, H. Res. 581, the Rules of the Committee, and the Committee's Impeachment Inquiry Procedures.

The Impeachment Inquiry Procedures, adopted by the Committee by voice vote on October 5, 1998, provide that "[t]he 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." If you wish to exercise your privileges under the rules, please provide the Committee with notice as soon as possible, but no later than by close of business on Tuesday, November 17, 1998. Also, please indicate who you would like to conduct such questioning.

The Committee operates under the five-minute rule; that is, each Member of the Committee is given five minutes to question a witness. Counsel for Judge Hastings in his

impeachment inquiry was given ten minutes to question witnesses. As Chairman of the Subcommittee that ran that impeachment inquiry, Representative John Conyers, Jr. stated:

> The subcommittee, in its wisdom, will grant the extraordinary prerogative of his counsel to question any of the witnesses, if he so chooses, for up to a point of time of 10 minutes.

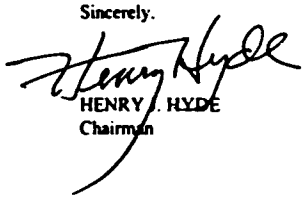
I plan to allow the President's counsel up to thirty minutes to question witnesses.

Should you exercise your privilege to question witnesses under the rules, you should remain cognizant that your role in these proceedings is to assist the Committee in fulfilling its constitutional function. Participation by the respondent's counsel is allowed only at the invitation of the Committee. *See Presentation Procedures for the Impeachment Inquiry*, Impeachment Inquiry Staff Memorandum, April 3, 1974 ("The issue of participation by the official under investigation has been addressed by Committees as a question of grace, not of right . . . .").

Please remain mindful of the purpose of these proceedings. H. Res. 581 directed the Committee to "investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America." The rules adopted by the Committee are "applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 581." Therefore, as representatives of the respondent in these proceedings, the scope of your participation should be limited to allegations against the President, and the facts and evidence in question.

I appreciate your attention to these matters and look forward to your response.

Sincerely,



HENRY J. HYDE
Chairman

cc: The Honorable John Conyers, Jr.

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

November 17, 1998

BY FACSIMILE

Charles F.C. Ruff, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Ruff:

I am in receipt of your letter dated November 17, 1998, in which you rejected my offer to allow you to question Judge Starr at Thursday's hearing for thirty minutes, but instead requested 90 minutes. You also requested that you, Gregory B. Craig, special counsel to the President, and David E. Kendall, personal counsel to the President, all "wish to question Mr. Starr . . . ."

You expressed concern about the time allotted between the Majority and the Minority and stated that the "witness and the Majority would have a total of 225 minutes, and the Minority and the President's counsel a total of 170 minutes." You do a great disservice to the Committee's proceedings by adding the Majority's time with the time allotted to Judge Starr and concluding that the Majority will have more time than the Minority. This is not a Republican or Democrat issue–it is an issue of the Committee's discharging its constitutional duty.

Furthermore, I take issue with your addition. The witness will be given up to two hours to make a statement. The Members of the Committee will proceed to question the witness under the five-minute rule. That means that if every Member of the Committee uses his or her allotted time, the Minority members will question Judge Starr for 80 minutes and the Majority members will inquire of Judge Starr for 105 minutes, i.e. 25 more minutes than the Democrats will question. However, the designated White House counsel will question the witness for up to 30 minutes, the Minority counsel will question the witness for up to 30 minutes, and the Majority counsel will question the witness for 30 minutes. Therefore, if I follow your logic and include you with the Minority, the Minority will question Judge Starr for a total of 140 minutes and the Majority will question him for 135 minutes. Hence, the Minority will receive five more minutes to question Judge Starr than the Majority. I don't know how I can be any fairer.

As you should know, the job of the House is to build a reliable factual record and to determine whether those facts are evidence of impeachable offenses. This is an opportunity to hear from a summary witness about the facts. Given that I have pledged to move expeditiously, you should be encouraged that Judge Starr is appearing for this purpose. Indeed, our proceedings could move along even faster if you answered our requests for admission that were sent to you on November 5, 1998.

You also stated in your letter that because you "have not been informed what the nature and scope of Mr. Starr's testimony will be, it is difficult to predict with any certainty just how long it will take to conduct a full and fair examination." This concern is not credible. I don't think it will be difficult to predict that alleged perjury, subornation of perjury, witness tampering, obstruction of justice, and abuse of power will arise as issues on Thursday.

Your letter seems to indicate that you have a fundamental misunderstanding of your role in these proceedings. In my November 16, letter I noted that "your role in these proceedings is to assist the Committee in fulfilling its constitutional function. Participation by the respondent's counsel is a matter of legislative grace. *See Presentation Procedures for the Impeachment Inquiry*, Impeachment Inquiry Staff Memorandum, April 3, 1974 ("The issue of participation by the official under investigation has been addressed by Committees as a question of grace, not of right . . . .")."

The fact that the Committee approved rules allowing your participation demonstrates the extent to which it wants to be fair to the President. In 1974, this provision met substantial resistance. In fact, Ranking Member Conyers opposed this provision in 1974. *See Impeachment Inquiry Hearings Before the Committee on the Judiciary*, 93rd Cong., 2nd Sess., Book One, 472 (1974) ("I am disturbed about the rights of counsel of the President in these evidentiary hearings . . . ." "I am not going to support any such provision or anything near it."). Rep. Conyers explained that

> as a civil libertarian, it seems to me that we have gone to great excess in and are probably making a serious mistake that will insure that we never ever emerge from these evidentiary hearings in terms of allowing the President's counsel to take this unlimited and overfull participation in hearings that we are conducting to merely advise the Congress. This is not a trial, and it may be that for one time this committee has been bent over backwards in trying to maintain this theoretical bipartisanship that is going on.

Id. at 472.

Many other Democrats, including Reps. Rangel, Brooks, and Danielson, shared Rep. Conyers' concerns. Rep. Danielson explained:

> The President and his counsel are here only as a matter of courtesy extended by the committee and not as a matter of right. They have no standing in this hearing whatever except in connection with the courtesy we have granted to them.
>
> * * *
>
> This is a constitutional, parliamentary proceeding rather than a trial, and the sole power of impeachment being vested in the House of Representatives, I submit that it is probably even unconstitutional for us to permit participation in the actual work of the committee by the official whose activities are subject to the inquiry itself.

Id. at 474.

Other issues of concern were raised in 1974 of which you should be well aware. For example, Rep. Conyers voted against the President's counsel's ability to make objections during Committee hearings, *Id.* at 493, and voted in favor of restricting the President's counsel from having the ability to "cross-examine" witnesses, *Id.* at 505. I raise these issues with you to demonstrate the limited nature of your ability to participate so that you are not surprised should you decide to exercise your rights under the rules.

Furthermore, you should remain mindful of the purpose of these proceedings. H. Res. 581 directed the Committee to "investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America." The rules adopted by the Committee are "applicable to the presentation of evidence in the impeachment inquiry pursuant to H. Res. 581." Therefore, as representatives of the respondent in these proceedings, you shall be confined to allegations against the President, and the facts and evidence in question. You will not be permitted to inquire into other matters not bearing on the question of impeachment. Efforts to utilize these proceedings as a forum to inquire about nongermane matters, such as investigations into the conduct of the investigation that are pending before other bodies, shall not be permitted.

I will reiterate my offer. One attorney, either you, Mr. Craig, or Mr. Kendall may question Judge Starr for not more than 30 minutes. Please advise me of your intentions by 12 p.m. on Wednesday, November 18, 1998.

Sincerely,

HENRY J. HYDE
Chairman

cc: The Honorable John Conyers, Jr.

WASHINGTON

November 17, 1998

The Honorable Henry H. Hyde
Chairman, House Judiciary Committee
2138 Rayburn Office Building
Washington, D.C. 20515

Dear Chairman Hyde:

Thank you for your letter of November 16, 1998.

Mr. Kendall, Mr. Craig and I will be representing the President at Thursday's hearing and, pursuant to the Impeachment Inquiry Procedures adopted by the Committee, wish to question Mr. Starr in discrete areas, depending on the topics he covers during his presentation and his responses to the Members' questions.

Because we have not been informed what the nature and scope of Mr. Starr's testimony will be, it is difficult to predict with any certainty just how long it will take to conduct a full and fair examination. We understand, however, that Mr. Starr has been allocated two full hours for an uninterrupted presentation and the Majority Members 105 minutes for their questions, while the Minority Members will have 80 minutes. We believe, therefore, that it would be fair to grant us 90 minutes for our questions. This would mean that the witness and the Majority would have a total of 225 minutes, and the Minority and the President's counsel a total of 170 minutes.

Although your letter notes that counsel for Judge Hastings was allowed to question witnesses for only ten minutes, we believe that the procedures followed by this Committee in 1974 offer a more compelling analogy. The record of the 1974 hearings reflects that Mr. St. Clair questioned certain witnesses (e.g., William Bittman, Charles Colson, and John Dean) at substantial length. Although the record does not state specifically the times at which questioning began and ended, it is evident that the cross-examination of these witnesses ranged from one-and-a-half to more than two hours. See Testimony of William O. Bittman, Hearing Pursuant to H.R. Res. 803 before the Comm. on the Judiciary (Book II), 93d Cong., 2d Sess., 29-55 (1974); Testimony of Charles W. Colson, Hearing Pursuant to H.R.Res. 803 before the Comm. on the Judiciary (Book III), 93d Cong., 2d Sess., 399-445; Testimony of John W. Dean III, Hearing Pursuant to H.R.Res. 803 before the Comm. on the Judiciary (Book II), 93d Cong., 2d Sess., 258-288.

As the Members of this Committee fully appreciate, it is the guiding principle of our adversarial system that truth emerges most clearly from the interplay of direct and cross-examination. In light of the fact that the Majority has chosen to call as a witness the person responsible for conducting a wide-ranging, four-year investigation of the President -- an investigation that has given rise to serious questions as to its fairness, we submit that anything less than 90 minutes would unfairly constrain our ability to explore the basis for Mr. Starr's testimony and for any conclusions he may proffer.

If you have any questions about our request, please do not hesitate to contact me.

Sincerely,

Charles Ruff

Charles F.C. Ruff
Counsel to the President

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

THE WHITE HOUSE
WASHINGTON
November 18, 1998

Thomas Mooney, Esq.
Chief of Staff and General Counsel
House Judiciary Committee
2138 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Mooney:

This is in response to your letter faxed to me at noon.

First, as to your request for exculpatory material, I reiterate the response we gave at our meeting on October 21: it is difficult to provide exculpatory information until we know the allegations to which we must respond. Given the array of charges in the Independent Counsel's Referral and the still different ones presented by Mr. Schippers, as well as all the comments in the past several days about the expansion of the Committee's inquiry, the rampant speculation about the issues to be covered by Mr. Starr at tomorrow's hearing, and the Independent Counsel's delivery to the Committee of several new boxes of materials to which we have not had access, it simply is not reasonable to expect us to rebut allegations that are, at best, in flux. To the extent that the Committee wishes to have our preliminary views on the Referral itself, I direct your attention to the two submissions we have previously made.

Second, even in ordinary circumstances, a demand that the President respond on a few hours' notice to 81 questions of the sort the Committee asked less than two weeks ago would be unreasonable, but I know that you will appreciate that the responsibilities that have occupied the President in the days since we received the requests have hardly been ordinary. As I informed the Chairman in the letter I sent to him this morning, the President and his counsel have been working on his responses and expect to submit them in the very near future.

Sincerely,

Charles Ruff

Charles F.C. Ruff
Counsel to the President

cc: Julian Epstein, Esq.
Abbe Lowell, Esq.

THE WHITE HOUSE
WASHINGTON
November 18, 1998

The Honorable Henry J. Hyde
Chairman, House Judiciary Committee
2138 Rayburn Office Building
Washington, D.C. 20515

Dear Chairman Hyde:

I was sorry to receive your response to my letter, for I believe that my proposal presented a reasonable alternative that would achieve the goal of both the Committee and the President -- fundamental fairness in this most serious of proceedings contemplated by our Constitution.

I accept the proposition that our role, and indeed the role of all participants, is to assist the Committee in performing its constitutional duty. I submit, however, that, if Mr. Starr is being called "to build a reliable factual record," both the Members and counsel for the President should be given a fair opportunity to test whether the testimony he offers is, indeed, reliable. Our examination of Mr Starr will be fair; it will not be repetitive; and it will deal directly with that very issue.

I agree also that the Committee should proceed expeditiously. Indeed, the President has said from the beginning that all he seeks is a fair, constitutional and expeditious process. He has been working with his lawyers over the less-than-two weeks since receipt of your requests, but you will appreciate that other obligations have intervened. We do anticipate being able to submit his responses in the very near future.

With all due respect, Mr. Chairman, I believe that the decision to limit our examination to thirty minutes, while permitting Mr. Starr to make a two-hour, uninterrupted presentation, is not consistent with the standard of fairness that the Committee has sought to achieve. Nonetheless, we will proceed within the time allotted. Mr. Kendall will conduct the questioning on the President's behalf.

Sincerely,

Charles Ruff

Charles F.C. Ruff
Counsel to the President

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

November 18, 1998

Charles F.C. Ruff, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Ruff:

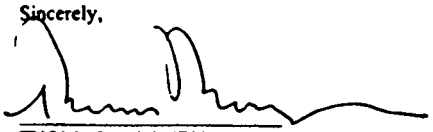
As you know, tomorrow, November 19, 1998, the Committee will receive testimony from Independent Counsel Starr about facts regarding allegations that the President committed impeachable offenses. However, the Committee does not have the benefit of the President's answers to the 81 requests for admission that were sent to him on November 5, 1998. Furthermore, as we stated in our October 21 meeting with you, the Committee is interested in receiving any exculpatory material the President may have. We are concerned that, almost four weeks after making this request for exculpatory material and almost two weeks after sending the President the requests for admission, the Committee has not received any material from you on the President's behalf. Therefore, we renew our request for such material on behalf of the Committee.

Regarding the 81 requests for admission, we would like to point out that the Chairman did not set a hard deadline because he believed the President was ready and willing to cooperate with the Committee's inquiry. On November 6, Mr. Craig said that the White House reply would probably come before November 13. We are dismayed that you have missed your own self-imposed deadline.

The answers to these requests for admission should not be difficult or time consuming. We would observe that you were able to produce a lengthy "prebuttal" to the Office of Independent Counsel's Referral even before it was public. You also produced a rebuttal to the Referral one day after it was made public. Surely, you could reply to the 81 requests for admission by now. As the Chairman has repeatedly and publicly stated, your cooperation is essential in bringing the Committee's inquiry to a fair and timely conclusion.

Because the President's responses to the requests for admission and any exculpatory evidence about which you are aware will help the Committee begin to fulfill its constitutional responsibility tomorrow, we would appreciate your forwarding us this information this afternoon.

Sincerely,



THOMAS MOONEY
Chief of Staff and General Counsel

cc: Julian Epstein, Esq.

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

November 20, 1998

Charles F.C. Ruff, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Ruff:

We are in receipt of your letter of November 20th. We appreciate your willingness to make Mr. Lindsey available pursuant to the Committee's subpoena authorized November 19th. We will get back to you with a time, date and place certain. As you are aware, Mr. Lindsey will be able to bring his personal attorney with him, if he so chooses.

During the Watergate impeachment proceedings, the President's counsel was permitted to attend open and executive session full Committee meetings. However, during the several months preceding the full Committee meetings, the President's counsel was not permitted to participate in any staff investigative procedures nor was the President's counsel permitted access to the evidence that was locked up in the secured area. President's counsel was permitted to be present when approximately 36 volumes of information and evidence were presented to the members at the full Committee meetings. When the Committee concluded that procedure, it then called a total of nine witnesses, including the President's personal attorney. Five of those witnesses were recommended by the President's counsel. In the developmental stages of the investigation, when interviews were conducted by John Doar, at no time was the President's counsel present. For reasons explained in detail in the November 9th letter, it is the decision of the Chairman to adhere to that precedent. We very much appreciate your cooperation in this matter.

Sincerely,

THOMAS E. MOONEY
Chief of Staff-General Counsel

DAVID P. SCHIPPERS
Chief Investigative Counsel

cc: Abbe D. Lowell, Esq.
Julian Epstein, Esq.

THE WHITE HOUSE
WASHINGTON

November 20, 1998

Thomas E. Mooney, Esq.
Chief of Staff-General Counsel
House Committee on the Judiciary
2138 Rayburn House Office Bldg.
Washington, D.C. 20515

David P. Schippers, Esq.
Chief Investigative Counsel
House Committee on the Judiciary
2138 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Messrs. Mooney and Schippers:

This is in response to your letter of November 9, 1998.

Although it appeared, until Wednesday afternoon, that our concern about being excluded from any depositions the Committee chose to conduct might be moot, I want now, in light of recent events, to reiterate my request that counsel for the President be permitted to question the witnesses at the depositions scheduled over the next two weeks.

In your letter you cite to what you describe as the practice followed during the Rodino the inquiry, but I must, with all due respect, reject your analogy. The Committee seems to rely on Watergate precedent when it finds such reliance useful and to ignore that precedent when it does not. I note, for example, that, when we requested an additional hour in which to question Mr. Starr and cited the very clear precedent of the virtually unlimited time afforded Mr. St. Clair, our plea was summarily rejected. (We appreciate the Chairman's willingness to grant Mr. Kendall additional time, although, as you know, we do not believe that to have been sufficient to permit a fair examination.) Here, by contrast, you have turned to a ruling by the Rodino Committee as grounds for precluding our participation at the critical stage of this inquiry.

The decision not to allow Mr. St. Clair to participate in what you call the "investigative phase" of the inquiry is entirely inapposite. As you know, the Rodino staff conducted months of preliminary investigation before the Committee hearings began, and the Committee itself then heard from virtually all the relevant witnesses in a setting that permitted the President's counsel to participate meaningfully at a time when the Members themselves were testing the witnesses' credibility and the strength of the evidence. Here, however, there has been no Committee

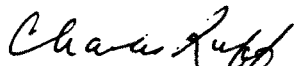
investigation -- other than to review the evidence gathered ex parte by the Independent Counsel. If yesterday's hearing is any example of how the Committee intends to proceed, it appears that the Committee prefers predigested, second-hand recitation of testimony taken outside the hearing room. If that is, indeed, the Committee's preference surely it is desirable -- in the interest of fairness -- that the deposition transcripts reflect the participation of the President's counsel. My request is not, as you put it, an effort to "intrude upon the investigation." It is an effort to participate in what, if past is prologue, may be the closest thing to an evidentiary hearing that the Committee contemplates.

Now, as to the issue of "chilling" witnesses. I reject any notion that anyone acting on the President's behalf has intentionally or unintentionally "chilled" any witness. In any event, surely, it cannot be your position that the presence of the President's counsel could have any effect on Mr. Gecker, an experienced lawyer, or on Nathan Landow, a sophisticated businessman who is represented by one of the city's premier law firms. And I know that you would not even suggest that our presence would chill the testimony of Bruce Lindsey, the President's long-time advisor and current Deputy Legal Counsel, or Bob Bennett, the President's personal counsel.

I urge the Committee to reconsider its decision and allow us to participate, and I ask again for the opportunity to discuss our request with the Chairman.

Finally, as I informed you at our meeting on October 21, it is not necessary to serve subpoenas on current White House employees -- they will voluntarily appear. Mr. Lindsey will make himself available, and I will be happy to discuss with you the time, place and other circumstances of his appearance.

Sincerely,



Charles F.C. Ruff
Counsel to the President

cc: Abbe D. Lowell, Esq.
Julian Epstein, Esq.

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

November 25, 1998

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Committee has resolved to conduct a thorough impeachment inquiry with all deliberate speed. Indeed, I have pledged that, with the cooperation of the White House, the Committee can conclude the inquiry by the end of the year. The Committee is reaching the critical stage of this process; time is of the essence for you to provide any factual basis which disputes the allegations against you.

As we made clear to your counsels at the outset of this process, you can help establish the facts in four ways: (1) provide the Committee with *any* information that tends to dispute *any* of the allegations against you or the facts supporting those allegations, (2) answer the Requests for Admissions presented to you on November 5, (3) inform the Committee of any witnesses that you would ask the Committee to call, and (4) make a presentation to the Committee.

Despite repeated requests for more than a month, the White House has yet to provide the Committee with any materials that tend to exonerate you or even dispute the evidence submitted in the Referral of the Office of Independent Counsel. White House Counsel Charles Ruff's contention that "it is difficult to provide exculpatory information until we know the allegations to which we must respond" avoids addressing the facts. The factual allegations against you and the factual basis supporting those allegations are clear from the Referral and supporting material.

The Committee welcomes *any* facts that tend to dispute the factual assertions in the Referral or that otherwise tend to establish your innocence of *any* of the allegations in the Referral. The failure to provide any exculpatory information, together with Mr. Kendall's failure to contest a single fact in the Referral when questioning the Independent Counsel, lead to the conclusion that the White House does not dispute any of the factual evidence presented in the Referral and supporting materials.

First and foremost to providing exculpatory factual information would be to provide complete and specific answers to the First Set of Requests For Admission. I certainly hope that I can rely on recent statements to the press that the answers will come this week. Based upon White House pledges of good faith, I have provided a great deal of latitude in answering those requests. If the Committee is not provided with *complete* and *specific* answers to those requests by Monday, November 30, I have no course but to urge the full Committee to subpoena those answers.

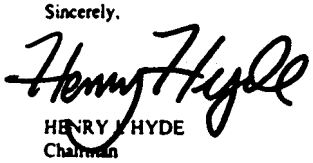
The Committee is in the process of examining witnesses who may provide information relevant to its impeachment inquiry. Pursuant to the Committee's Impeachment Inquiry Procedures, the White House is afforded the privilege to provide information and request the Committee to call certain witnesses. Procedure Three states:

> 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.

As of now, you have not indicated any witnesses for the Committee's consideration. The Committee will also allow you, or your counsel, to appear before the Committee as a witness to present your views to the Committee. If you wish to make a presentation to the Committee or suggest any witnesses for the Committee to call, you, or your counsel, need to inform the Committee of your request and provide the Committee with the necessary information by Wednesday, December 2. Assuming there are no further developments, I am prepared to schedule your presentation for as early as Tuesday, December 8.

Just over ten months ago, you promised the American people that you wanted to present the facts: "I'd like for you to have more rather than less, sooner rather than later." I respectfully suggest that now is the time to present the facts; now is the time for cooperation. As you know, full White House cooperation in an impeachment inquiry is essential to the preservation of our Constitutional system.

Sincerely,



HENRY J. HYDE
Chairman

cc: Members of the Committee on the Judiciary

WILLIAMS & CONNOLLY
725 TWELFTH STREET, N.W.
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November 27, 1998

The Honorable Henry J. Hyde
Chairman, Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

By Hand

Dear Chairman Hyde:

We submit herewith responses by the President to the 81 requests for admission that we received on November 5, 1998.

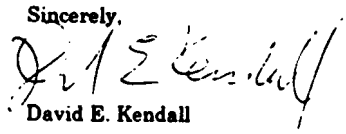
In an effort to be of assistance to the Committee and to provide as much information as possible, we have treated your requests as questions and responded accordingly.

As you know, the President has answered a great many of these questions previously. Where that is the case, we have simply referenced the answers that have been previously given and, in some instances, supplemented those answers.

I want to emphasize again the point I made in the Preliminary Memorandum we submitted to the Committee more than two months ago: the President did not commit or suborn perjury, tamper with witnesses, obstruct justice or abuse power. As you know, we made two formal submissions to the Committee in September and one in October. We will be submitting a further memorandum on behalf of the President in the near future.

I will forward to you a sworn original of the responses before the end of the day.

Sincerely,



David E. Kendall

cc: The Honorable John Conyers, Jr.

RESPONSE OF WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, TO QUESTIONS SUBMITTED BY CONGRESSMAN HENRY HYDE, CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE

INTRODUCTORY STATEMENT

Set forth below are answers to the questions that you have asked me.

I would like to repeat, at the outset, something that I have said before about my approach to these proceedings. I have asked my attorneys to participate actively, but the fact that there is a legal defense to the various allegations cannot obscure the hard truth, as I have said repeatedly, that my conduct was wrong. It was also wrong to mislead people about what happened, and I deeply regret that.

For me, this long ago ceased to be primarily a legal or political issue and became instead a painful personal one, demanding atonement and daily work toward reconciliation and restoration of trust with my family, my friends, my Administration and the American people. I hope these answers will contribute to a speedy and fair resolution of this matter.

1. Do you admit or deny that you are the chief law enforcement officer of the United States of America?

Response to Request No. 1:

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 "[t]he executive Power shall be vested in a President of the United States of America," and the law enforcement function is a component of the executive power.

2. Do you admit or deny that upon taking your oath of office that you swore you would faithfully execute the office of President of the United States, and would to the best of your ability, preserve, protect and defend the Constitution of the United States?

Response to Request No. 2:

At my Inaugurations in 1993 and 1997, I took the following oath: "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."

3. Do you admit or deny that, pursuant to Article II, section 2 of the Constitution, you have a duty to "take care that the laws be faithfully executed?"

Response to Request No. 3:

Article II, Section 3 (not Section 2), of the Constitution states that the President "shall take Care that the Laws be faithfully executed," and that is a Presidential obligation.

4. Do you admit or deny that you are a member of the bar and officer of the court of a state of the United States, subject to the rules of professional responsibility and ethics applicable to the bar of that state?

Response to Request No. 4:

I have an active license to practice law (inactive for continuing legal education purposes) issued by the Supreme Court of Arkansas. The license, No. 73017, was issued in 1973.

5. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, in a deposition conducted as part of a judicial proceeding in the case of *Jones v. Clinton* on January 17, 1998?

Response to Request No. 5:

I took an oath to tell the truth on January 17, 1998, before my deposition in the Jones v. Clinton case. While I do not recall the precise wording of that oath, as I previously stated in my grand jury testimony on August 17, 1998, in taking the oath "I believed then that I had to answer the questions truthfully." App. at 458.[1]

6. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, before a grand jury empanelled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit on August 17, 1998?

Response to Request No. 6:

As the August 17, 1998, videotape reflects, I was asked "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?," and I answered, "I do."

7. Do you admit or deny that on or about October 7, 1997, you received a letter composed by Monica Lewinsky in which she expressed dissatisfaction with her search for a job in New York?

Response to Request No. 7:

At some point I learned of Ms. Lewinsky's decision to seek suitable employment in New York. I do not recall receiving a letter in which she expressed dissatisfaction about her New York job search. I understand Ms. Lewinsky has stated that she sent a note indicating her decision to seek employment in New York, but I do not believe she has said the note expressed dissatisfaction about her search for a job there. App. at 822-23 (grand jury testimony of Ms. Lewinsky).

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[1] Citations to "App." refer to the Appendices to the Office of Independent Counsel Referral to the United States House of Representatives, as published by the House Judiciary Committee. Citations to "Supp." refer to the Supplemental Materials to the Office of Independent Counsel Referral, as published by the House Judiciary Committee. Citations to "Dep." refer to my January 17, 1998, deposition testimony in the civil case, Jones v. Clinton, No. LR-C-94-290 (E.D. Ark.).

8. Do you admit or deny that you telephoned Monica Lewinsky early in the morning on October 10, 1997, and offered to assist her in finding a job in New York?

Response to Request No. 8:

I understand that Ms. Lewinsky testified that I called her on the 9th of October, 1997. App. at 823 (grand jury testimony of Ms. Lewinsky). I do not recall that particular telephone call.

9. Do you admit or deny that on or about October 11, 1997, you met with Monica Lewinsky in or about the Oval Office dining room?

10. Do you admit or deny that on or about October 11, 1997, Monica Lewinsky furnished to you, in or about the Oval Office dining room, a list of jobs in New York in which she was interested?

11. Do you admit or deny that on or about October 11, 1997, you suggested to Monica Lewinsky that Vernon Jordan may be able to assist her in her job search?

12. Do you admit or deny that on or about October 11, 1997, after meeting with Monica Lewinsky and discussing her search for a job in New York, you telephoned Vernon Jordan?

Response to Request Nos. 9, 10, 11 and 12:

At some point, Ms. Lewinsky either discussed with me or gave me a list of the kinds of jobs she was interested in, although I do not know whether it was on Saturday, October 11, 1997. Records included in the OIC Referral indicate that Ms. Lewinsky visited the White House on October 11, 1997, App. at 2594, and I may have seen her on that day.

I do not believe I suggested to Ms. Lewinsky that Mr. Jordan might be able to assist her in her job search, and I understand that Ms. Lewinsky has stated that she asked me if Mr. Jordan could assist her in finding a job in New York. App. at 1079 (grand jury testimony of Ms. Lewinsky); App. at 1393 (7/27/98 FBI Form 302 Interview of Ms. Lewinsky); App. at 1461-62 (7/31/98 FBI Form 302 Interview of Ms. Lewinsky).

I speak to Mr. Jordan often, and I understand that records included in the OIC Referral indicate that he telephoned me shortly after Ms. Lewinsky left the White House complex. Supp. at 1836, 1839. I understand that Mr. Jordan testified

that he and I did not discuss Ms. Lewinsky during that call. Supp. at 1793-94 (grand jury testimony of Vernon Jordan).

13. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, a plan in which she would pretend to bring you papers with a work-related purpose, when in fact such papers had no work-related purpose, in order to conceal your relationship?

14. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that Betty Currie should be the one to clear Ms. Lewinsky in to see you so that Ms. Lewinsky could say that she was visiting with Ms. Currie instead of with you?

15. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that if either of you were questioned about the existence of your relationship you would deny its existence?

19. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

Response to Request Nos. 13, 14, 15, and 19:

I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. at 569. That continues to be my recollection today -- that is, any such conversation was not in connection with her status as a witness in the Jones v. Clinton case.

16. Do you admit or deny that on or about December 6, 1997, you learned that Monica Lewinsky's name was on a witness list in the case of *Jones v. Clinton*?

Response to Request No. 16:

As I stated in my August 17th grand jury testimony, I believe that I found out that Ms. Lewinsky's name was on a witness list in the Jones v. Clinton case late in the afternoon on the 6th of December, 1997. App. at 535.

17. Do you admit or deny that on or about December 17, 1997, you told Monica Lewinsky that her name was on the witness list in the case of *Jones v. Clinton*?

18. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that the submission of an affidavit in the case of *Jones v. Clinton* might suffice to prevent her from having to testify personally in that case?

Response to Requests Nos. 17 and 18:

As I previously testified, I recall telephoning Ms. Lewinsky to tell her Ms. Currie's brother had died, and that call was in the middle of December. App. at 567. I do not recall other particulars of such a call, including whether we discussed the fact that her name was on the Jones v. Clinton witness list. As I stated in my August 17th grand jury testimony in response to essentially the same questions, it is "quite possible that that happened . . . . I don't have any memory of it, but I certainly wouldn't dispute that I might have said that [she was on the witness list]." App. at 567.

I recall that Ms. Lewinsky asked me at some time in December whether she might be able to get out of testifying in the Jones v. Clinton case because she knew nothing about Ms. Jones or the case. I told her I believed other witnesses had executed affidavits, and there was a chance they would not have to testify. As I stated in my August 17th grand jury testimony, "I felt strongly that . . . [Ms. Lewinsky] could execute an affidavit that would be factually truthful, that might get her out of having to testify." App. at 571. I never asked or encouraged Ms. Lewinsky to lie in her affidavit, as Ms. Lewinsky herself has confirmed. See App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); see also App. at 1161 (grand jury testimony of Ms. Lewinsky).

19. For the Response to Request No. 19, see Response to Request No. 13 et al., supra.

20. Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of *Jones v. Clinton* on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?

Response to Request No. 20:

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," id. at 70, reflected my understanding that Ms. Lewinsky had been subpoenaed. That testimony was not false and misleading.

21. Do you admit or deny that you gave false and misleading testimony under oath when you stated before the grand jury on August 17, 1998, that you did know prior to January 17, 1998, that Monica Lewinsky had been subpoenaed to testify in the case of *Jones v. Clinton*?

Response to Request No. 21:

As my testimony on January 17 reflected, and as I testified on August 17, 1998, I knew prior to January 17, 1998, that Ms. Lewinsky had been subpoenaed to testify in Jones v. Clinton. App. at 487. That testimony was not false and misleading.

22. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding her moving to New York?

Response to Request No. 22:

When I met with Ms. Lewinsky on December 28, 1997, I knew she was planning to move to New York, and we discussed her move.

23. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House in which you suggested to her that she move to New York soon because by moving to New York, the lawyers representing Paula Jones in the case of *Jones v. Clinton* may not contact her?

Response to Request No. 23:

Ms. Lewinsky had decided to move to New York well before the end of December 1997. By December 28, Ms. Lewinsky had been subpoenaed. I did not suggest that she could avoid testifying in the Jones v. Clinton case by moving to New York.

24. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of *Jones v. Clinton*?

25. Do you admit or deny that on or about December 28, 1997, you expressed concern to Monica Lewinsky about a hatpin you had given to her as a gift which had been subpoenaed in the case of *Jones v. Clinton*?

Response to Request Nos. 24 and 25:

As I told the grand jury, "Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me," App. at 495, but I do not know whether that conversation occurred on December 28, 1997, or earlier. Ibid. Whenever this conversation occurred, I testified, I told her "that if they asked her for gifts, she'd have to give them whatever she had . . . ." App. at 495. I simply was not concerned about the fact that I had given her gifts. See App. at 495-98. Indeed, I gave her additional gifts on December 28, 1997. I also told the grand jury that I do not recall Ms. Lewinsky telling me that the subpoena specifically called for a hat pin that I had given her. App. at 496.

26. Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?

27. Do you admit or deny that on or about December 28, 1998, you requested, instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?

Response to Request Nos. 26 and 27:

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 Ms. Lewinsky: I understand Ms. Currie has stated that Ms. Lewinsky called Ms. Currie to ask her to hold a box. See Supp. at 531.

28. Do you admit or deny that you had a telephone conversation on January 6, 1998, with Vernon Jordan during which you discussed Monica Lewinsky's affidavit, yet to be filed, in the case of *Jones v. Clinton*?

Response to Request No. 28:

White House records included in the OIC Referral reflect that I spoke to Mr. Jordan on January 6, 1998. Supp. at 1886. I do not recall whether we discussed Ms. Lewinsky's affidavit during a telephone call on that date.

29. Do you admit or deny that you had knowledge of the fact that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton* on January 7, 1998?

30. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton*?

Response to Request Nos. 29 and 30:

As I testified to the grand jury, "I believe that [Mr. Jordan] did notify us" when she signed her affidavit. App. at 525. While I do not recall the timing, as I told the grand jury, I have no reason to doubt Mr. Jordan's statement that he notified me about the affidavit around January 7, 1998. Ibid.

31. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that he was assisting Monica Lewinsky in finding a job in New York?

Response to Request No. 31:

I told the grand jury that I was aware that Mr. Jordan was assisting Ms. Lewinsky in her job search in connection with her move to New York. App. at 526. I have no recollection as to whether Mr. Jordan discussed it with me on or about January 7, 1998.

32. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, prior to your deposition in that case?

33. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, prior to your deposition in that case?

Response to Request Nos. 32 and 33:

I do not believe I saw this affidavit before my deposition, although I cannot be absolutely sure. The record indicates that my counsel had seen the affidavit at some time prior to the deposition. See Dep. at 54.

34. Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton* were not true?

40. Do you admit or deny that during your deposition in the case of *Jones v. Clinton* on January 17, 1998, you affirmed that the facts or assertions stated in the affidavit executed by Monica Lewinsky on January 7, 1998, were true?

Response to Request Nos. 34 and 40:

I was asked at my deposition in January about two paragraphs of Ms. Lewinsky's affidavit. With respect to Paragraph 6, I explained the extent to which I was able to attest to its accuracy. Dep. at 202-03.

With respect to Paragraph 8, I stated in my deposition that it was true. Dep. at 204. In my August 17th grand jury testimony, I sought to explain the basis for that deposition answer: "I believe at the time that she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate." App. at 473.

35. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

36. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

Response to Request Nos. 35 and 36:

I know that Mr. Bennett saw Ms. Lewinsky's affidavit during the deposition because he read portions of it aloud at the deposition. See Dep. at 202. I do not recall whether I saw a copy of Ms. Lewinsky's affidavit during the deposition.

37. Do you admit or deny that on or about January 9, 1998, you received a message from Vernon Jordan indicating that Monica Lewinsky had received a job offer in New York?

Response to Request No. 37:

At some time, I learned that Ms. Lewinsky had received a job offer in New York. However, I do not recall whether I first learned it in a message from Mr. Jordan or whether I learned it on that date.

38. Do you admit or deny that between January 9, 1998, and January 15, 1998, you had a conversation with Erskine Bowles in the Oval Office in which you stated that Monica Lewinsky received a job offer and had listed John Hilley as a reference?

39. Do you admit or deny that you asked Erskine Bowles if he would ask John Hilley to give Ms. Lewinsky a positive job recommendation?

Response to Request Nos. 38 and 39:

As I testified to the grand jury, I recall at some point talking to Mr. Bowles "about whether Monica Lewinsky could get a recommendation that was not negative from the Legislative Affairs Office," or that "was at least neutral," although I am not certain of the date of the conversation. App. at 562-64. To suggest that I told Mr. Bowles that Ms. Lewinsky had received a job offer and had listed John Hilley as a reference is, as I testified, a "little bit" inconsistent with my memory. App. at 564. It is possible, as I also indicated, that she had identified Mr. Hilley as her supervisor on her resume and in that respect had already listed him as a reference. Ibid.

40. For the Response to Request No. 40, see Response to Request No. 34, et al., supra.

41. As to each, do you admit or deny that you gave the following gifts to Monica Lewinsky at any time in the past?

a. A lithograph
b. A hatpin
c. A large "Black Dog" canvas bag
d. A large "Rockettes" blanket
e. A pin of the New York skyline
f. A box of "cherry chocolates"
g. A pair of novelty sunglasses
h. A stuffed animal from the "Black Dog"
i. A marble bear's head
j. A London pin
k. A shamrock pin
l. An Annie Lennox compact disc
m. Davidoff cigars

Response to Request No. 41:

In my deposition in the Jones case, I testified that I "certainly . . . could have" given Ms. Lewinsky a hat pin and that I gave her "something" from the Black Dog. Dep. at 75-76. In my grand jury testimony, I indicated that in late December 1997, I gave Ms. Lewinsky a Canadian marble bear's head carving, a Rockettes blanket, some kind of pin, and a bag (perhaps from the Black Dog) to hold these objects. App. at 484-487. I also stated that I might have given her such gifts as a box of candy and sunglasses, although I did not recall doing so, and I specifically testified that I had given Ms. Lewinsky gifts on other occasions. App. at 487. I do not remember giving her the other gifts listed in Question 41, although I might have. As I have previously testified, I receive a very large number of gifts from many different people, sometimes several at a time. I also give a very large number of gifts. I gave Ms. Lewinsky gifts, some of which I remember and some of which I do not.

42. 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"?

Response to Request No. 42:

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. See App. at 502-03.

43. Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of *Jones v. Clinton* when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

Response to Request No. 43:

My testimony was not false and misleading. As I have testified previously, I give and receive numerous gifts. Before my January 17, 1998, deposition, I had not focused on the precise number of gifts Ms. Lewinsky had given me. App. at 495-98. My deposition testimony made clear that Ms. Lewinsky had given me gifts; at the deposition, I recalled "a book or two" and a tie. Dep. at 77. At the time, those were the gifts I recalled. In response to OIC inquiries, after I had had a chance to search my memory and refresh my recollection, I was able to be more responsive. However, as my counsel have informed the OIC, in light of the very large number of gifts I receive, there might still be gifts from Ms. Lewinsky that I have not identified.

44. Do you admit or deny that on January 17, 1998, at or about 5:38 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his home?

Response to Request No. 44:

I speak to Mr. Jordan frequently, so I cannot remember specific times and dates. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 17, 1998, at or about 5:38 p.m. App. at 2876.

45. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home?

46. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his office?

47. Do you admit or deny that on January 17, 1998, at or about 7:13 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home and asked her to meet with you the next day, Sunday, January 18, 1998?

Response to Request Nos. 45, 46 and 47:

According to White House records included in the OIC Referral, I placed a telephone call to Ms. Currie at her residence at 7:02 p.m. and spoke to her at or about 7:13 p.m. App. at 2877. I recall that when I spoke to her that evening, I asked if she could meet with me the following day. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's office on January 17, 1998, at or about 7:02 p.m. Ibid.

48. Do you admit or deny that on January 18, 1998, at or about 6:11 a.m., you learned of the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp?

Response to Request No. 48:

I did not know on January 18, 1998 that tapes existed of conversations between Ms. Lewinsky and Ms. Tripp recorded by Ms. Tripp. At some point on Sunday, January 18, 1998, I knew about the Drudge Report. I understand that, while the Report talked about tapes of phone conversations, it did not identify Ms. Lewinsky by name and did not mention Ms. Tripp at all. The Report did not state who the parties to the conversations were or who taped the conversations.

49. Do you admit or deny that on January 18, 1998, at or about 12:50 p.m., you telephoned Vernon Jordan at his home?

Response to Request No. 49:

According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 18, 1998, at or about 12:50 p.m. App. at 2878.

50. Do you admit or deny that on January 18, 1998, at or about 1:11 p.m., you telephoned Betty Currie at her home?

Response to Request No. 50:

According to White House records included in the OIC Referral, I telephoned Ms. Currie's residence on January 18, 1998, at or about 1:11 p.m. App. at 2878.

51. Do you admit or deny that on January 18, 1998, at or about 2:55 p.m., you received a telephone call from Vernon Jordan?

Response to Request No. 51:

According to White House records included in the OIC Referral, Mr. Jordan telephoned me from his residence on January 18, 1998, at or about 2:55 p.m. App. at 2879.

52. Do you admit or deny that on January 18, 1998, at or about 5:00 p.m., you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."
b. "You could see and hear everything."
c. "Monica came on to me, and I never touched her right?"
d. "She wanted to have sex with me and I couldn't do that."

Response to Request No. 52:

When I met with Ms. Currie, I believe 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. See App. at 508.

Some time later, I learned that the Office of Independent Counsel was involved and that Ms. Currie was going to have to testify before the grand jury. After learning this, I stated in my grand jury testimony, I told Ms. Currie, "Just relax, go in there and tell the truth." App. at 591.

53. Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."
b. "You could see and hear everything."
c. "Monica came on to me, and I never touched her right?"
d. "She wanted to have sex with me and I couldn't do that."

Response to Request No. 53:

I previously told the grand jury that, "I don't know that I" had another conversation with Ms. Currie within several days of January 18, 1998, in which I made statements similar to those quoted above. "I remember having this [conversation] one time." App. at 592. I further explained, "I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think." App. at 593.

I understand that Ms. Currie has said a second conversation occurred the next day that I was in the White House (when she was), Supp. at 535-36, which would have been Tuesday, January 20, before I knew about the grand jury investigation.

54. Do you admit or deny that on January 18, 1998, at or about 11:02 p.m., you telephoned Betty Currie at her home?

Response to Request No. 54:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 18, 1998, at or about 11:02 p.m. App. at 2881.

55. Do you admit or deny that on Monday, January 19, 1998, at or about 8:50 a.m., you telephoned Betty Currie at her home?

Response to Request No. 55:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 8:50 a.m. App. at 3147.

56. Do you admit or deny that on Monday, January 19, 1998, at or about 8:56 a.m., you telephoned Vernon Jordan at his home?

Response to Request No. 56:

According to White House records included in the OIC Referral, I called Mr. Jordan's residence on January 19, 1998, at or about 8:56 a.m. App. at 2864.

57. Do you admit or deny that on Monday, January 19, 1998, at or about 10:58 a.m., you telephoned Vernon Jordan at his office?

Response to Request No. 57:

According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 10:58 a.m. App. at 2883.

58. Do you admit or deny that on Monday, January 19, 1998, at or about 1:45 p.m., you telephoned Betty Currie at her home?

Response to Request No. 58:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 1:45 p.m. App. at 2883.

59. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., you met with individuals including Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, and Rahm Emanuel?

60. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., at any meeting with Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel, and others, you

discussed the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp, or any other matter related to Monica Lewinsky?

Response to Request Nos. 59 and 60:

I do not believe such a meeting occurred. White House records included in the OIC Referral indicate that Mr. Jordan entered the White House complex that day at 2:44 p.m. Supp. at 1995. According to Mr. Jordan's testimony, he and I met alone in the Oval Office for about 15 minutes. Supp. at 1763 (grand jury testimony of Vernon Jordan).

I understand that Mr. Jordan testified that we discussed Ms. Lewinsky at that meeting and also the Drudge Report, in addition to other matters. Supp. at 1763. Please also see my Response to Request No. 48, supra.

61. Do you admit or deny that on Monday, January 19, 1998, at or about 5:56 p.m., you telephoned Vernon Jordan at his office?

Response to Request No. 61:

According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 5:56 p.m. App. at 2883.

62. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you stated that you rebuffed alleged advances from Monica Lewinsky and in which you made a statement similar to the following?: "Monica Lewinsky came at me and made a sexual demand on me."

63. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you made a statement similar to the following in response to a question about your conduct with Monica Lewinsky?: "I haven't done anything wrong."

64. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Erskine Bowles, Sylvia Matthews and John Podesta, in which you made a statement similar to the

following?: "I want you to know I did not have sexual relationships with this woman Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll understand."

65. Do you admit or deny than on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you had never had an affair with Monica Lewinsky?

66. Do you admit or deny that on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you were not alone with Monica Lewinsky in the Oval Office, and that Betty Currie was either in your presence or outside your office with the door open while you were visiting with Monica Lewinsky?

67. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you did not have an affair with Monica Lewinsky?

68. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you had not asked anyone to change their story, suborn perjury or obstruct justice if called to testify or otherwise respond to a request for information from the Office of Independent Counsel or in any other legal proceeding?

Responses to Requests Nos. 62 – 68:

As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

69. Do you admit or deny that on or about January 21, 1998, you and Richard "Dick" Morris discussed the possibility of commissioning a poll to determine public opinion following the *Washington Post* story regarding the Monica Lewinsky matter?

70. Do you admit or deny that you had a later conversation with Richard "Dick" Morris in which he stated that the polling results regarding the Monica Lewinsky matter suggested that the American people would forgive you for adultery but not for perjury or obstruction of justice?

71. Do you admit or deny that you responded to Richard "Dick" Morris's explanation of these polling results by making a statement similar to the following: "[w]ell, we just have to win, then"?

Response to Request Nos. 69, 70 and 71:

At some point after the OIC investigation became public, Dick Morris volunteered to conduct a poll on the charges reported in the press. He later called back. What I recall is that he said the public was most concerned about obstruction of justice or subornation of perjury. I do not recall saying, "Well, we just have to win then."

72. Do you admit or deny the past or present existence of or the past or present direct or indirect employment of individuals, other than counsel representing you, whose duties include making contact with or gathering information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 72:

I cannot respond to this inquiry because of the vagueness of its terms (e.g., "indirect," "potential," "could be involved"). To the extent it may be interpreted to apply to individuals assisting counsel, please see my responses to Request Nos. 73-75, infra. To the extent the inquiry addresses specific individuals, as in Request Nos. 73-75, infra, I have responded and stand ready to respond to any other specific inquiries.

73. Do you admit or deny having knowledge that Terry Lenzner was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 73:

My counsel stated publicly on February 24, 1998, that Mr. Terry Lenzner and his firm have been retained since April 1994 by two private law firms that represent me. It is commonplace for legal counsel to retain such firms to perform legal and appropriate tasks to assist in the defense of clients. See also Response to No. 72.

74. Do you admit or deny having knowledge that Jack Palladino was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 74:

My understanding is that during the 1992 Presidential Campaign, Mr. Jack Palladino was retained to assist legal counsel for me and the Campaign on a variety of matters arising during the Campaign. See also Response to No. 72.

75. Do you admit or deny having knowledge that Betsy Wright was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 75:

Ms. Betsey Wright was my long-time chief of staff when I was Governor of Arkansas, and she remains a good friend and trusted advisor. Because of her great knowledge of Arkansas, from time to time my legal counsel and I have consulted with her on a wide range of matters. See also Response to No. 72.

76. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in an interview with Roll Call, when you stated "Well, let me say, the relationship was not improper, and I think that's important enough to say. But because the investigation is going on and because I don't know what is out – what's going to be asked of me, I think I need to cooperate, answer the questions, but I think it's important for me to make it clear what is not. And then, at the appropriate time, I'll try to answer what is. But let me answer – it is not an improper relationship and I know what the word means."?

Response to Request No. 76:

The tape of this interview reflects that in fact I said: "Well, let me say the relationship's not improper and I think that's important enough to say . . ." With that revision, the quoted words accurately reflect my remarks. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, I misled people about this relationship, for which I have apologized.

77. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in the Oval Office during a photo opportunity, when you stated "Now, there are a lot of other questions that are, I think, very legitimate. You have a right to ask them; you and the American people have a right to get answers. We are working very hard to comply and get all the requests for information up here, and we will give you as many answers as we can, as soon as we can, at the appropriate time, consistent with our obligation to also cooperate with the investigations. And that's not a dodge, that's really [what] I've - I've talked with [our] people. I want to do that. I'd like for you to have more rather than less, sooner rather than later. So we'll work through it as quickly as we can and get all those questions out there to you."?

Response to Request No. 77:

I made this statement (as corrected), according to a transcript of a January 22, 1998 photo opportunity in the Oval Office. This statement was not false and misleading. It accurately represented my thinking.

78. Do you admit or deny that you discussed with Harry Thomasson, prior to making public statements in response to questions asked by the press in January, 1998, relating to your relationship with Monica Lewinsky, what such statements should be or how they should be communicated?

Response to Request No. 78:

Mr. Thomason was a guest at the White House in January 1998, and I recall his encouraging me to state my denial forcefully.

79. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman, Ms. Lewinsky?"

Response to Request No. 79:

I made this statement on January 26, 1998, although not in response to any question. In referring to "sexual relations", I was referring to sexual

intercourse. See also App. at 475. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, answers like this misled people about this relationship, for which I have apologized.

80. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "...I never told anybody to lie, not a single time. Never?"

Response to Request No. 80:

This statement was truthful: I did not tell Ms. Lewinsky to lie, and I did not tell anybody to lie about my relationship with Ms. Lewinsky. I understand that Ms. Lewinsky also has stated that I never asked or encouraged her to lie. See App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); see also App. at 1161 (grand jury testimony of Ms. Lewinsky).

81. Do you admit or deny that you directed or instructed Bruce Lindsey, Sidney Blumenthal, Nancy Hernreich and Lanny Breuer to invoke executive privilege before a grand jury empanelled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit in 1998?

Response to Request No. 81:

On the recommendation of Charles Ruff, Counsel to the President, I authorized Mr. Ruff to assert the presidential communications privilege (which is one aspect of executive privilege) with respect to questions that might be asked of witnesses called to testify before the grand jury to the extent that those questions sought disclosure of matters protected by that privilege. Thereafter, I understand that the presidential communications privilege was asserted as to certain questions asked of Sidney Blumenthal and Nancy Hernreich. Further, I understand that, as to Mr. Blumenthal and Ms. Hernreich, all claims of official privilege were subsequently withdrawn and they testified fully on several occasions before the grand jury.

Mr. Lindsey and Mr. Breuer testified at length before the grand jury about a wide range of matters, but declined, on the advice of the White House Counsel, to answer certain questions that sought disclosure of discussions that they had with me and my senior advisors concerning, among other things, their legal advice as to the assertion of executive privilege. White House Counsel advised Mr. Lindsey and Mr. Breuer that these communications were protected by the attorney-

client privilege, as well as executive privilege. Mr. Lindsey also asserted my personal attorney-client privilege as to certain questions relating to his role as an intermediary between me and my personal counsel in the Jones v. Clinton case, a privilege that was upheld by the federal appeals court in the District of Columbia.

William J. Clinton
WILLIAM JEFFERSON CLINTON

Subscribed and sworn to before me
this 27th day of November, 1998.

Moira K. Ricketts
Notary Public
MOIRA K. RICKETTS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 28, 2003

THE WHITE HOUSE

WASHINGTON

December 2, 1998

RECEIVED
DEC 04 1998
COMMITTEE OF THE JUDICIARY

The Honorable Henry Hyde
Chairman, House Judiciary Committee
Room 2138 Rayburn House Office Building
United States House of Representatives
Washington, D.C.

Dear Chairman Hyde:

We are writing to respond to your November 25 letter to the President in which you invite us, on behalf of the President, to make a presentation to the Committee about "the factual assertions in the Referral" and to "suggest any witnesses for the Committee to call."

In the seven days since that letter, the Judiciary Committee has dramatically expanded the scope of its investigation to include campaign finance practices during the 1996 presidential election, in addition to the Kathleen Willey matter. We understand that the Committee has been issuing subpoenas and gathering evidence about these additional subjects.

We will of course accept your invitation to appear before the Committee and to present a defense on behalf of the President. In light of the Committee's sudden decision to expand its activities and to pursue additional avenues of inquiry, however, we must assume your invitation extends to these new matters as well. It is plain that the scope of the defense must equal the scope of the inquiry.

To prepare adequately and to represent the President on these matters, we must have access to certain core materials. To that end, we respectfully request access to the following documents in the Committee's possession:

- With respect to the Starr Referral: (1) the decision(s) issued by Chief Judge Norma Holloway Johnson addressing the question of whether Ms. Lewinsky was denied access to her counsel, Mr. Frank Carter, on January 16; (2) evidence relating to the credibility of key witnesses that is in the Committee's possession and not yet been made public; (3) materials related to litigation over the enforceability of Ms. Lewinsky's initial immunity agreement; and (4) evidence relating to the OIC's application to the Attorney General for an expansion of its jurisdiction to include the Lewinsky matter;

- With respect to Kathleen Willey: the material recently provided to the Committee by the OIC; and

- With respect to campaign finance: the Freeh memorandum, the LaBella memorandum in whatever form possessed or reviewed by the Committee, and whatever other documents on this topic that the Committee has obtained.

Once we have reviewed this material, we will be prepared to present a vigorous defense of the President. That presentation may include calling witnesses with respect to any or all of the matters being considered by the Committee. To speed this process and to allow us sufficient time to prepare the President's defense, we urge the Committee to provide these materials as soon as possible (since we believe the Committee currently has all these documents in its possession) or at least forty-eight hours before our appearance before the Committee next week.

Given the uncertainty of the current situation and in light of everyone's desire to complete this work as expeditiously as possible, we believe it would be helpful for us to meet with you and Congressman Conyers to discuss how best to proceed. We would be available for such a meeting at the earliest mutually convenient time.

Sincerely yours,

Gregory B. Craig
Assistant to the President and
Special Counsel

Charles F.C. Ruff
Counsel to the President

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

December 3, 1998

Charles F. C. Ruff, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Gregory B. Craig, Esq.
Assistant to the President and
Special Counsel
The White House
Washington, D.C. 20500

Gentlemen:

I write in response to your letter of December 2, 1998. Your letter responded to Chairman Hyde's invitation to the President to assist the Committee in its impeachment inquiry pursuant to House Resolution 581.

Chairman Hyde's letter indicated that the President could assist the Committee in establishing the facts in four ways: (1) provide the Committee with any information that tends to dispute any of the allegations against the President or the facts supporting those allegations; (2) answer the Requests for Admissions presented to the President on November 5; (3) inform the Committee of any witnesses that the President would ask the Committee to call; and (4) make a presentation to the Committee. Chairman Hyde and the President have repeatedly indicated that they would like to complete this inquiry expeditiously. The President's cooperation with these requests substantially affects the Committee's ability to do so.

Let me review the President's cooperation with these requests briefly. As to the first request, the Committee has received no response. In Mr. Kendall's appearance before the Committee during the November 19 hearing, he used the opportunity to question the methods used in the Independent Counsel's investigation, but he did not ask questions about the underlying facts. Thus, this questioning did not lead the Committee to any evidence tending to dispute any of the underlying facts.

As to the second request, on November 27, 1998, the President responded to the Committee's Requests for Admissions. As Chairman Hyde indicated in his statement of November 30, 1998, the President's responses were evasive. They did not shed any new light on the facts, and they did not lead the Committee to any exculpatory evidence.

As to the third request, your letter indicated that your presentation "may include calling witnesses with respect to any or all of the matters being considered by the Committee." In our meeting on October 21, 1998, I informed you of the Committee's procedures which are identical to those used in the President Nixon impeachment inquiry. The procedures provide that the President's counsel may request the Committee to call witnesses. However, those procedures further provide that to do so you must "submit written requests and precise summaries of what he [i.e. the President's counsel] 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." Once these written summaries are provided to the Committee, the Committee will determine whether to call any of these witnesses. You have now known about these procedures for six weeks – indeed, Chairman Hyde explicitly reminded the President of them in his November 25 letter. Yet the only cooperation the Committee has received is the vague suggestion that your presentation may include calling witnesses. As the Committee's procedures make clear, the White House does not have the authority to call witnesses. If you intend to ask the Committee to call witnesses on December 8, you must comply with the Committee's procedures and submit your requests, summaries, and expected testimony by the close of business tomorrow, December 4.

As to the Committee's fourth request, you responded to the invitation at the last possible moment with a list of new document demands. With respect to at least the first two sets of items requested in your letter, these issues have been on the table for some time, and I do not understand why you did not respond sooner that you needed these documents. Nonetheless, without agreeing to your characterizations of these documents, let me respond to your requests in turn.

- "[T]he decision(s) issued by Chief Judge Norma Holloway Johnson addressing the question of whether Ms. Lewinsky was denied access to her counsel, Mr. Frank Carter, on January 16" – The Committee is not in possession of these documents, and to the best of my knowledge, these documents remain under court seal.

- "[E]vidence relating to the credibility of key witnesses that is in the Committee's possession and not yet been made public" – This request is inherently vague and subject to differing interpretation. However, if you can make a more specific request, Chairman Hyde is open to allowing the President's representatives to review responsive materials in the Committee's secure information facility.

– "[M]aterials related to litigation over the enforceability of Ms. Lewinsky's initial immunity agreement" – The Committee is not in possession of these documents, and to the best of my knowledge, these documents remain under court seal. (An opinion that appears to relate to this matter is in the public domain. *In Re Sealed Case*, 144 F.3d 74 (D.C. Cir. 1998).)

– "[E]vidence relating to the OIC's application to the Attorney General for an expansion of its jurisdiction to include the Lewinsky matter" – These materials are in the Committee's possession, and Chairman Hyde is willing to allow the President's representatives to review these materials in the Committee's secure information facility.

– "With respect to Kathleen Willey: the material recently provided to the Commitee by the OIC" – These materials are in the Committee's possession, and Chairman Hyde is willing to allow the President's representatives to review these materials in the Committee's secure information facility.

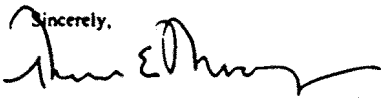
– "With respect to campaign finance: the Freeh memorandum, the LaBella memorandum in whatever form possessed or reviewed by the Committee, and whatever other documents on this topic that the Committee has obtained." – As you well know, the Freeh and LaBella memoranda are in the possession of the Department of Justice – not the Committee. The President is the chief law enforcement officer in the land, which includes directing the Department of Justice. For that reason, he may direct the Attorney General to allow him to review these documents whenever he wants. Aside from that, the Committee does not intend to address them within the limited time period that we have to complete our investigation in this Congress. Accordingly, you will not need any such documents for purposes of your possible presentation next week.

With respect to the materials mentioned above that Chairman Hyde is willing to allow you to review, that review would be under conditions similar to Judge Johnson's order relating to the review of the LaBella and Freeh memoranda – i.e. one person could review the documents in the Committee's secure information facility without making notes or copies.

With respect to your possible presentation next week, Chairman Hyde would appreciate your letting him know who will make the presentation and the amount of time that you request by the close of business tomorrow, December 4. Chairman Hyde would also like you to know that whoever makes the presentation will be subject to at least one full round of questioning by Members of the Committee under the five-minute rule and staff questioning.

I am hopeful that this letter provides you with sufficient information regarding the Chairman's intentions. Please contact me regarding working out the further details of these matters.

Sincerely,



Thomas E. Mooney, Sr.
General Counsel

cc: Julian Epstein

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

December 4, 1998

Charles F. C. Ruff, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Ruff:

Yesterday, I wrote to inform you of the Committee's procedures relating to the possible presentation of the President's views to the Committee regarding the impeachment inquiry that the Committee is conducting pursuant to House Resolution 581. One of the procedures that I outlined was that the President's counsel should expect to be questioned by the Committee.

Since that time, I have seen accounts in the press attributed to White House sources that assert that such questioning is unprecedented. That is incorrect, and I am hopeful that you will assist the Committee in stopping the spread of this misinformation.

During Watergate, the President's counsel, James D. St. Clair, appeared before the Committee on June 27, 1974. The Committee questioned Mr. St. Clair at length which extended his presentation for an additional two days. Thus, the Committee's procedures in this regard closely track the Watergate model.

Aside from the clear precedent, simple fairness dictates the same result. The Committee allowed Mr. Kendall to question Judge Starr at length during which he raised many of the President's concerns about Judge Starr's conduct. In the interest of fairness, it is only right that those who have concerns about the President's conduct be allowed to raise those concerns with whomever will represent him.

Again, I hope that you will assist in stopping the spread of this misinformation. I appreciate your attention to this matter, and I look forward to your response to my letter of yesterday which I hope I will receive later today.

Sincerely,

Thomas E. Mooney, Sr.
General Counsel

cc: Julian Epstein

THE WHITE HOUSE
WASHINGTON

December 4, 1998

Mr. Thomas E. Mooney, Sr., Esq.
General Counsel
Committee on the Judiciary
House of Representatives
Washington, D.C.

Dear Mr. Mooney:

Short of a declaration of war, there is no more significant or grave constitutional process than the impeachment inquiry currently underway in your Committee. Should the House of Representatives approve an article of impeachment against the President and send it to the Senate for trial, the impact on the national government and on the American people as a whole would be profound. For that reason alone, this process must be deliberate, thorough, fair and expeditious.

We realize that the full Committee has conducted two public hearings about impeachment-related issues -- one in which the Committee heard testimony from Mr. Starr, one in which the Committee heard testimony from witnesses about perjury. We also know that the Subcommittee on the Constitution conducted a public hearing on constitutional standards. We have been told that the Committee issued subpoenas and took deposition testimony and, further, that the Committee has held other proceedings in executive session. With the exception of one hour of time provided to us for questioning Mr. Starr at the end of his appearance before the Committee on November 19, however, we have been foreclosed from playing any role.

We are grateful for the opportunity now to do so, and the purpose of this letter is to inform you of our intention to call witnesses to appear and testify as part of the Committee's impeachment inquiry. It is our view that the proceedings to date have been inadequate and incomplete in their exploration of certain important issues relating to the proposed impeachment of President William Jefferson Clinton. For that reason, we propose to call panels of witnesses about some of the very issues that the Committee has considered. We feel it is essential to the President's defense that we be able to call our own witnesses and present our own arguments to address these important questions. We plan to call witnesses to testify about the following topics:

Constitutional Standards for Impeachment;

Standards for Prosecution: For Perjury, Obstruction of Justice and Abuse of Power; and

Prosecutorial Misconduct and the Impact of Tainted Evidence

The Committee has set aside December 8 for the purpose of hearing from the President's counsel, and our request may require some modification of the Committee's plans. We take comfort, however, in the representation that Chairman Hyde made to the full Committee at the beginning of the proceeding on November 19 when he assured the members of the Committee that, "The President's counsel will have unlimited time to present his witnesses at the end of our hearings, when they are ready to do so."

We anticipate that we will require no more than three to four days of the Committee's time to deal with the topics identified above, at which time counsel for the President will present a final argument as to why, given the law, the facts, and these circumstances, this Committee should not report out articles of impeachment to the full membership of the House of Representatives. We believe that, beginning on Tuesday, December 8, our presentation could be concluded by the end of the week.

Sincerely,

Gregory B. Craig
Assistant to the President and
Special Counsel

Charles F. C. Ruff
Counsel to the President

THE WHITE HOUSE

WASHINGTON

December 4, 1998

Thomas E. Mooney, Sr., Esq.
General Counsel
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Dear Mr. Mooney:

This is in response to your letter of today's date, as well as to one aspect of your letter of December 3.

Your characterization of the rights accorded Mr. St. Clair and his treatment by the Committee is misleading. On June 27 and June 28, 1974, Mr. St. Clair was given the opportunity to make the same sort of "initial presentation" as that made by Majority and Minority counsel. On those dates, he submitted to the Committee, orally and through numerous documents, evidence that he wished the Committee to consider. In that role he was, in essence, a witness and was treated as such -- that is, he was questioned by the Members about the evidence he was presenting to them. Even then, the transcript reveals that virtually all of the questioning had to do with technical matters involving the nature of supporting documentation and the like and not at all with the substance of the evidence or the conclusions to be drawn from it. Indeed, on occasion a Member sought to question Mr. St. Clair about his own knowledge or other similar matters, and those questions were withdrawn or ruled inappropriate.

By contrast, we would not be making any evidentiary presentation. Our role cannot, in any sense, be equated with that of Mr. Starr. He was called by the Committee as a fact witness. He was not counsel for the Majority, for the Minority, or for the President. Our intention is to appear as counsel for the President, pursuant to Procedure A(2) of the Impeachment Inquiry Procedures, "to respond to evidence received and testimony adduced by the Committee." We are not fact witnesses. We will be performing the same role that Mr. St. Clair performed on July 24, 1974 -- that is, in the nature of closing argument, be analyzed the evidence already before the Committee and explained why that evidence should lead to a particular result. As you know, Mr. St. Clair was not questioned on that occasion. We are entitled under the Committee's procedures, if there is to be any semblance of fair treatment for the President, to the same opportunity afforded Mr. St. Clair.

This issue is of sufficient import to the fair conduct of these proceedings that it should be discussed in detail. We will make ourselves available at your and the Chairman's convenience.

Sincerely,

Charles Ruff

Charles F.C. Ruff
Counsel to the President

cc: Julian Epstein

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 Rayburn House Office Building
Washington, DC 20515-6216
(202) 225-3951

December 6, 1998

Charles F.C. Ruff, Esq.
Counsel to the President

Gregory B. Craig, Esq.
Special Counsel to the President

The White House
Washington, D.C. 20500

Dear Messrs. Ruff and Craig:

I am in receipt of your two letters of December 4* in which you request that Members forego questions of your presentation and propose to call additional nonfactual witnesses.

In the interests of giving the White House every benefit of the doubt, the Chairman is willing to accommodate your requests, subject to two limitations. First, your requests must comply with the Impeachment Inquiry Procedures that the Committee adopted by voice vote on October 5. Second, the Committee will not undermine its goal of resolving the inquiry this year.

You have consistently ignored the rules adopted by the Committee; rules that you have been aware of for nearly two months. More than seven weeks ago, Committee counsel met with you and explained the privileges that the Committee extended to the White House. Ten days ago, Chairman Hyde reminded the President of the White House's obligation to give the Committee the appropriate notice under those procedures. When your response failed to follow those procedures, you were given an additional two days to respond. Once again, you have failed to comply with Committee procedures and demonstrated contempt for the Committee's process. I am concerned that your recent maneuvers may be little more than an attempt to delay the Committee and turn attention away from the facts before it.

The rules are quite clear. Procedure (A)(3) states:

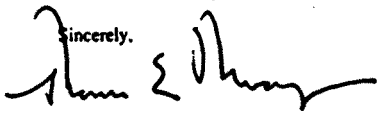
> Should the President's counsel wish the Committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness, precisely and in detail what it is expected the testimony of the witness would be, if called.

Procedure (B)(3) states that "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." Of course, the members of the Committee who are conducting the impeachment inquiry will be permitted to ask questions of anyone who appears before the Committee. I might remind you that this is the fifth time that the Committee has informed the White House of its procedures.

The Committee has already heard from more than thirty witnesses who testified on the constitutional standards for impeachment and the significance of perjury. The Committee has also allowed counsel for the President to personally question the Independent Counsel about any alleged prosecutorial misconduct. Nonetheless, the White House will be permitted to present those witnesses that are approved after you have submitted the names of the proposed witnesses and "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" as required under the Committee's procedures. To preserve the opportunity to present witnesses, you must submit this information by noon on Monday, December 7. You must also submit the name of the counsel that will make a presentation on the President's behalf by noon Monday. The counsel for the President and any approved witnesses that he suggests will be subject to questioning by all of the Members and counsel for the majority and minority.

The White House will be given two entire days to present its case–Tuesday, December 8 and Wednesday, December 9 from 9:00 a.m. to midnight (this gives the White House up to 30 hours to present its case). As the President's counsel prepares his own final presentation to the Committee, please keep in mind that he will need to begin his testimony no later than 1:00 p.m. on Wednesday to allow for questioning by Members and counsel. The presentation by the White House must be completed on Wednesday night so that the Committee can stay on its course to resolve this matter by the end of the year. On Thursday morning, the Committee will hear a presentation by Chief Minority Counsel Abbe Lowell. On Thursday afternoon, Chief Investigative Counsel David Schippers will make a presentation. Opening statements on consideration of articles of impeachment will begin Thursday night, and the debate will continue into Friday.

Sincerely,



THOMAS E. MOONEY
Chief of Staff-General Counsel

cc: Julian Epstein, Minority Chief Counsel

THE WHITE HOUSE
WASHINGTON

December 7, 1998

BY HAND - BY FACSIMILE

Thomas E. Mooney, Esq.
Chief of Staff-General Counsel
Committee on the Judiciary
House of Representatives

Dear Mr. Mooney:

Pursuant to Procedure (A)(3), we are writing to provide you with the names of the witnesses we plan to call to testify before the Judiciary Committee on Tuesday and Wednesday this week (December 8-9) as part of the Committee's impeachment inquiry. See the attached schedule. This attachment provides a complete list of the witnesses that we currently intend to call in the two days that have been allocated for the President to present his defense, but we would appeal to the Committee for some flexibility with respect to one matter. We are still communicating with one potential witness -- who would be testifying on Wednesday morning -- in an effort to work out scheduling conflicts. If we are successful in this endeavor, we would seek leave of the Committee to provide the requisite information about this witness by the close of business today.

Prior to the testimony of the first panel of witnesses in the proceeding on Tuesday, December 8, Mr. Craig will introduce the panelists whom we have invited to testify and will describe -- briefly and generally -- the President's legal and factual defense. Mr. Ruff will make a presentation on behalf of the President on Wednesday afternoon, December 9.

Sincerely,

Gregory B. Craig
Assistant to the President and
Special Counsel

Charles F. C. Ruff
Counsel to the President

PROPOSED SCHEDULE OF WITNESSES

Tuesday, December 8, 1998

10:00 a.m. - Gregory B. Craig, Assistant to the President and Special Counsel, will make an introductory statement outlining the President's factual and legal defense and describing the evidence and the testimony that will be presented to the Committee in the course of the next two days.

Panel #1: Historical Precedents and Constitutional Standards

The Honorable Nicholas Katzenbach: Former Attorney General of the United States and Under Secretary of State; Retired Senior Vice President and Chief Legal Officer of IBM.

Mr. Katzenbach will testify about the adverse impact that the impeachment of President Clinton would have on the constitutional doctrine of separation of powers. He will discuss the dangers to the Constitution and to the institution of the presidency posed by impeaching a president on the basis of a party-line vote and in the face of a public opinion opposed to impeachment.

Professor Bruce Ackerman: Sterling Professor of Law and Political Science at Yale University and author of Volume 2, "We the People" which includes an historical and legal analysis of the impeachment of Andrew Johnson.

Professor Ackerman will argue that, under the constitutional standards adopted by the founding fathers, President Clinton's conduct -- however one might view it legally -- does not rise to the level of an impeachable offense. Professor Ackerman will also argue that the constitutional force of any bill of impeachment approved by this House expires on January 3, 1999, and under the precedents of the Andrew Johnson impeachment, such a bill of impeachment would be open to a motion to quash to be adjudicated by the Chief Justice of the United States before trial in the Senate.

Professor Sean Wilentz: The Dayton Stockton Profesor of History and Director of Program and American Studies at Princeton University. Professor Wilentz is an expert and teacher of American history from the American Revolution through Reconstruction. He is the author of six books and numerous articles and, in recognition of his scholardship, has been awarded the Albert J. Beveridge Award by the American Historical Association and the Frederick Jackson Turner Award by the Organization of American Historians.

Professor Wilentz will testify about the standards for impeachment as elaborated by the framers of the Constitution and will point out important evidence that was ignored or glossed over by

scholars who testified before the Subcommittee on the Constitution. He will also discuss the politics of impeachment and the danger that, by politicizing the process, the institution of the presidency will suffer permanent damage. Finally, he will argue that a vote to impeach President Clinton would represent a far more serious attack on the rule of law than would a vote against impeachment.

Professor Samuel H. Beer: Professor Beer is the Eaton Professor of the Science of Government, Emeritus at Harvard University. He has written and lectured and taught about the genius of the American system of government for over sixty-five years.

Professor Beer will testify that the term "high crimes and misdemeanors" referred to the use of presidential power to attack some fundamental process of the constitutional scheme. That standard is not satisfied by Mr. Starr's allegations against Mr. Clinton. To impeach President Clinton on the basis of these allegations would create a weapon that could be wielded in the future by members of Congress hostile to a future president. This would result in a fundamental change in the American political system, weakening the institution of the presidency and moving to a parliamentary system of government.

2:00 p.m.

Panel # 2: Abuse of Power

The Honorable Elizabeth Holtzman of New York
The Honorable Robert J. Drinan, S.J.of Massachusetts
The Honorable Wayne Owens of Utah

Three former members of the House of Representatives who served as members of the Judiciary Committee during the 1974 impeachment proceeding will testify about abuse of power as the constitutional basis for impeaching a president. They will compare the facts and circumstances relating to the conduct of Prsident Nixon with the facts and circumstances alleged with respect to the conduct of President Clinton. They will testify about the standard of proof -- what facts must be established and to what level of certainty -- that should be satisfied before articles of impeachment are approved, and they will discuss the idea that impeachment is tantamount to a "constitutional censure."

6:00 p.m.

Panel #3 How to Evaluate the Evidence

James Hamilton: Mr Hamilton is a member of the Washington, D. C. Law firm of Swidler Berlin Shereff & Friedman. He served as Assistant Chief Counsel in the Senate Watergate Committee and is author of "The Power to Probe: A Study of Congressional Investigations." He is former Chairman of the Legal Ethics Committee of the D.C. Bar.

Mr. Hamilton will testify about the evidentiary standards applied to the facts and circumstances relating to allegations of abuse of power in the Watergate investigation in 1974 compared with the facts and circumstances of the current investigation. He will put both of these impeachment inquiries into an historical and constitutional context, arguing that the evidence of abuse of power during the Nixon years warranted impeachment while the comparable evidence against President Clinton under consideration by the Committee at the moment does not.

Richard Ben-Veniste: Mr. Ben-Veniste served as an Assitant United States Attorney and Chief of the Special Prosecutions Section in the Office of the united States Attorney for the Southern District of New York. He was also Assistant Special Prosecutor and Chief of the Watergate Task Force from 1968-1973. More recently he served as Minority Chief Counsel to the Senate Whitewater Committee during 1995-96. He has also served as Special Counsel to the Senate Subommittee on Government Operations and as Special Counsel to the Senate Subcommittee on District of Columbia Appropriations.

Mr. Ben-Veniste's presentation to the Committee will compare the methods of gathering and transmitting evidence during the Watergate investigation to Mr. Starr's inquiry and transmittal of evidence to the House Judiciary Committee. He will discuss the importance of public confidence in the fairness and impartiality of the Independent Counsel and will address the questions of proportionality, ethical standards and substance associated with the inquiry now before the House Committee.

Wednesday, December 9, 1998

9:30 a.m. - Prosecutorial Standards for Obstruction of Justice and Perjury

A group of lawyers experienced in the criminal justice system -- primarily as prosecutors -- will testify about prosecutorial standards under which evidence would be evaluated and cases of perjury and obstruction of justice would be brought. They will argue that the facts and circumstances surrounding the conduct of President Clinton fall short of meeting those standards and, in their judgment, would not result in his criminal prosecution.

Thomas P. Sullivan, Esq: Mr. Sullivan is the former United States Attorney for the Northern District of Illinois. Mr. Sullivan is a senior partner at Jenner & Block and has practiced with that firm for the past 44 years. Mr. Sullivan specializes in civil and criminal trial and appellate litigation, and he has served as an instructor at Loyola Law School and for the National Institute for Trial Advocacy.

Richard J. Davis, Esq: Mr. Davis is a partner with the New York law firm of Weil, Gotschal & Manges. He clerked for USDC Judge Jack B. Weinstein (1969-70). He served as an Assistant United States Attorney in the Southern District of New York (1970-73) and was Task Force Leader for the Watergate Special Prosecution Force (1973-75). From 1977-81, he served as Assistant Secretary of the Treasury Enforcement and Operations.

Edward S.G. Dennis, Jr., Esq: Mr. Dennis is a partner in the Litigation Section of the Philadelphia law firm of Morgan, Lewis & Bockius. He joined the firm after 15 years with the Department of Justice during which he held the following positions: Acting Deputy Attorney General. Assistant Attorney General for the Criminal Division; and U.S. Attorney for the Eastern District of Pennsylvania. He is Co-Chairman of the Corporate Investigations and Criminal Defense Practice Group.

William W. Taylor, III, Esq: Mr. Taylor served as Chair of the Criminal Justice Section of the American Bar Association from 1996-97. In that capacity, he organized a task force chaired by former Attorney General Edwin Meese to study the federalization of state crime. From 1979-84, he served as a member of the District of Columbia Commission on Judicial Disabilities and Tenure, serving as its Chair for four years. He is a Fellow of the American College of Trial Lawyers, a member of the The Fellows of the American Bar Foundation, and a member of the National Association of Criminal Defense Lawyers. Mr. Taylor is a 1966 graduate of the University of North Carolina and a 1969 graduate of Yale Law School. He clerked for the Honorable Caleb M. Wright, Chief Judge of the United States District Court for the District of Delaware.

Ronald Noble, Esq: Currently Mr. Noble is Associate Professor of Law at NYU Law School. He served as Undersecretary of the Treasury for Enforcement (1994-96); as Deputy Assistant Attorney General and Chief of Staff in the Crimnal Divison of the Department of Justice (1988-90); as Assistant Uunited States Attorney in the Eastern District of Pennsylvania (1984-88).

1:00 p.m. - The Honorable Charles F. C. Ruff, Counsel to the President

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216
(202) 225-3951

December 7, 1998

Charles F.C. Ruff, Esq.
Counsel to the President

Gregory B. Craig, Esq.
Special Counsel to the President

The White House
Washington, D.C. 20500

Dear Messrs. Ruff and Craig:

The Committee is pleased to accommodate the proposed schedule of witnesses which was received from you this afternoon. While we would have in the normal course of business expected each witness to provide us with a written version of their statement prior to their testimony, we will not insist on it in this instance in light of the short notice of the identity of your witnesses.

Although the Committee had noticed its hearing for Tuesday, December 8 to begin at 9:00 a.m., so as to allow you a full 15 hours in which to present your case, we will instead begin at 10:00 at your request. It is nevertheless our intention to complete testimony by and questioning of all three panels you have proposed for December 8 that day.

The session will begin with brief opening statements by the Chairman and the Ranking Minority Member, after which we will hear from Mr. Craig. I understand that 15 minutes will be sufficient for his testimony. The remaining witnesses from Panel 1 will be allowed 10 minutes each for their oral presentation. Following their testimony, they and Mr. Craig will be available to Members of the Committee for questioning under the five minute rule.

As you have not sought to question the panels on behalf of the President, at the conclusion of questioning of Panel 1 we will move immediately to Panel 2 and then Panel 3, observing the same procedures of 10 minute witness presentations followed by questioning under the 5 minute rule. We do not intend to recess during the session.

In the interest of ensuring that the Committee can complete its questioning of the panel proposed for Wednesday, December 9, we have asked that you begin at 8:00 a.m. We await your

response to this request. In any event, testimony and questioning of that panel will follow the model established on Tuesday. As you did not provide us with information about an additional potential witness for this panel by the end of the business day today - as you requested in your letter - Panel I on Wednesday will be limited to the five witnesses described in the schedule attached to your earlier correspondence.

As you have acknowledged, it is imperative that Mr. Ruff begin his testimony making a presentation on behalf of the President by 1:00 p.m. on Wednesday in order to permit a full examination of the witness by the Committee and its counsel. The schedule that you have proposed and the Committee has accepted will meet that important deadline.

I look forward to hearing from you on behalf of the President beginning promptly tomorrow morning at 10:00 a.m.

Sincerely,

THOMAS E. MOONEY
Chief of Staff - General Counsel

cc: Julian Epstein, Minority Chief Counsel

APPENDIX D. THE COMMITTEE'S 81 REQUESTS TO THE PRESIDENT FOR ADMISSION, THE PRESIDENT'S RESPONSES, AND CITATIONS TO RELEVANT PARTS OF THE RECORD PROVIDED BY THE COMMITTEE'S MAJORITY STAFF

COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES INQUIRY OF IMPEACHMENT AUTHORIZED PURSUANT TO H. RES. 581

REQUESTS FOR ADMISSION OF WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES AND RESPONSES TO THE REQUESTS FOR ADMISSION GIVEN BY THE PRESIDENT AND RELEVANT CITATIONS TO THE RECORD OF EVIDENCE AND LAW RELATED TO THE REQUESTS FOR ADMISSION AND THE RESPONSES THERETO

Question 1. Do you admit or deny that you are the chief law enforcement officer of the United States of America?

Answer. 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 l of the United States Constitution states that "[t]he executive Power shall be vested in a President of the United States of America," and the law enforcement function is a component of the executive power.

Reference. Article II, Section 3 of the U.S. 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 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.

Question 2. Do you admit or deny that upon taking your oath of office that you swore you would faithfully execute the office of President of the United States, and would to the best of your ability, preserve, protect and defend the Constitution of the United States?

Answer. At my Inauguration in 1993 and 1997, I took the following oath: "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."

Reference. Article II, Section 1, clause 8 of the U.S. constitution states that before the President enters on the execution of his office, he shall take, and William J. Clinton did take, the following oath or affirmation: "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."

Question 3. Do you admit or deny that, pursuant to Article II, section 2 [sic] of the Constitution, you have a duty to "take care that the laws be faithfully executed?"

Answer. Article II, Section 3 (not Section 2), of the Constitution states that the President "shall take Care that the Laws be faithfully executed," and that is a Presidential obligation.

Reference. Article II, Section 3 of the United States Constitution states in part that the President shall "take Care that the Laws be faithfully executed."

Question 4. Do you admit or deny that you are a member of the bar and officer of the court of a state of the United States, subject to the rules of professional responsibility and ethics applicable to the bar of that state?

Answer. I have an active license to practice law (inactive for continuing legal education purposes) issued by the Supreme Court of Arkansas. The license, No. 73017, was issued in 1973.

Reference. The Arkansas Rules of Court and Rules of Professional Conduct governing the actions of lawyers licensed to practice law in the State of Arkansas declare that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of justice." (Arkansas Rules of Professional Conduct, Rule 8.4 (b–d)).

The comments following Rule 8.4 assert that "lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney."

Furthermore, "Every attorney now or hereafter licensed to practice law in the State of Arkansas shall be a member of the bar of this State and subject to these procedures. The jurisdiction of the Supreme Court Committee on Professional Conduct shall extend to lawyers on inactive or suspended status." (Arkansas Procedures of the Court Regulating Professional Conduct of Attorneys at Law, Section 1 (A)).

Question 5. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, in a deposition conducted as part of a judicial proceeding in the case of *Jones* v. *Clinton* on January 17, 1998?

Answer. I took an oath to tell the truth on January 17, 1998, before my deposition in the *Jones* v. *Clinton* case. While I do not recall the precise wording of that oath, as I previously stated in my grand jury testimony on August 17, 1998, in taking the oath "I believed then that I had to answer the questions truthfully." App. at 458.[1]

Reference. The record indicates that on January 17, 1998, before beginning to respond to questions during a deposition in a civil rights lawsuit in which he was a named defendant, the President answered in the affirmative to the question "Do you swear and affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God?'

Question 6. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, before a grand jury empaneled as part of a judi-

[1] Citations to "App." refer to the Appendices to the Office of Independent Counsel Referral to the United States House of Representatives, as published by the House Judiciary Committee. Citations to "Supp." refer to the Supplemental Materials to the Office of Independent Counsel Referral, as published by the House Judiciary Committee. Citations to "Dep." refer to my January 17, 1998, deposition testimony in the civil case, *Jones* v. *Clinton,* No. LR–C–94–290 (E.D. Ark.).

cial proceeding by the United States District Court for the District of Columbia Circuit on August 17, 1998?

Answer. As the August 17, 1998, videotape reflects, I was asked "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?," and I answered, "I do."

Reference. The record indicates that on August 17, 1998, before testifying before a grand jury empaneled by the United States District Court for the District of Columbia Circuit to investigate whether the President committed acts of perjury, subornation of perjury, obstruction of justice and witness tampering, President Clinton, having been called for examination by the Independent Counsel, answered in the affirmative to the question "Do you swear and affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God?'

Question 7. Do you admit or deny that on or about October 7, 1997, you received a letter composed by Monica Lewinsky in which she expressed dissatisfaction with her search for a job in New York?

Answer. At some point I learned of Ms. Lewinsky's decision to seek suitable employment in New York. I do not recall receiving a letter in which she expressed dissatisfaction about her New York job search. I understand Ms. Lewinsky has stated that she sent a note indicating her decision to seek employment in New York, but I do not believe she has said the note expressed dissatisfaction about her search for a job there. App. at 822–23 (grand jury testimony of Ms. Lewinsky).

Reference. The record indicates that on October 7, 1997, Ms. Lewinsky may have couriered a letter expressing dissatisfaction with her job search to the President. (H. Doc. 105–310, p. 181; see also Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 102–03, H. Doc. 105–311, p. 988).

Question 8. Do you admit or deny that you telephoned Monica Lewinsky early in the morning on October 10, 1997, and offered to assist her in finding a job in New York?

Answer. I understand that Ms. Lewinsky testified that I called her on the 9th of October, 1997. App. at 823 (grand jury testimony of Ms. Lewinsky). I do not recall that particular telephone call.

Reference. The record indicates that "Lewinsky advised that on October 9 or 10, 1997, Clinton called her between 2:00 and 2:30 in the morning. Lewinsky advised she was asleep when Clinton called. The call lasted for approximately one and one half-hours. Lewinsky and Clinton had their biggest fight ever in this telephone conversation. Clinton said that if he had known how difficult it would be to bring Lewinsky back to the White House, he would have never let her be transferred in the first place. Clinton said he was obsessed with her career and wanted to help her. Clinton said he would get working on a job in New York for Lewinsky." (7/31/98 OIC interview of Monica Lewinsky, pp. 10–11, H. Doc. 105–311, pp. 1460–61; see also Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 104, H. Doc. 105–311, p. 988).

Question 9. Do you admit or deny that on or about October 11, 1997, you met with Monica Lewinsky in or about the Oval Office dining room?

Answer. At some point, Ms. Lewinsky either discussed with me or gave me a list of the kinds of jobs she was interested in, although I do not know whether it was on Saturday, October 11, 1997. Records included in the OIC Referral indicate that Ms. Lewinsky visited the White House on October 11, 1997, App. at 2594, and I may have seen her on that day.

I do not believe I suggested to Ms. Lewinsky that Mr. Jordan might be able to assist her in her job search, and I understand that Ms. Lewinsky has stated that she asked me if Mr. Jordan could assist her in finding a job in New York. App. at 1079 (grand jury testimony of Ms. Lewinsky); App. at 1393 (7/27/98 FBI Form 302 Interview of Ms. Lewinsky); App. at 1461–62 (7/31/98 FBI Form 302 Interview of Ms. Lewinsky).

I speak to Mr. Jordan often, and I understand that records included in the OIC Referral indicate that he telephoned me shortly after Ms. Lewinsky left the White House complex. Supp. at 1836, 1839. I understand that Mr. Jordan testified that he and I did not discuss Ms. Lewinsky during that call. Supp. at 1793–94 (grand jury testimony of Vernon Jordan).

Reference. The record indicates that on "October 11, 1997, at approximately 8:30 a.m., Currie called Lewinsky from the hospital and said Clinton wanted to see Lewinsky at approximately 9:00 a.m., at the White House. Currie told Lewinsky that Clinton had paged Currie to tell her to get in touch with Lewinsky. Lewinsky met alone with Clinton in the dining room." (7/31/98 OIC interview of Monica Lewinsky, p. 11, H. Doc. 105–311, p. 1461; see also Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 104, H. Doc. 105–311, p. 988.)

Question 10. Do you admit or deny that on or about October 11, 1997, Monica Lewinsky furnished to you, in or about the Oval Office dining room, a list of jobs in New York in which she was interested?

Answer. At some point, Ms. Lewinsky either discussed with me or gave me a list of the kinds of jobs *she* was interested in, although I do not know whether it was on Saturday, October 11, 1997. Records included in the OIC Referral indicate that Ms. Lewinsky visited the White House on October 11, 1977, App. at 2594, and I may have seen her on that day.

I do not believe I suggested to Ms. Lewinsky that Mr. Jordan might be able to assist her in her job search, and I understand that Ms. Lewinsky has stated that she asked me if Mr. Jordan could assist her in finding a job in New York. App. at 1079 (grand jury testimony of Ms. Lewinsky); App. at 1393 (7/27/98 FBI Form 302 Interview of Ms. Lewinsky); App. at 1461–62 (7/31/98 FBI Form 302 Interview of Ms. Lewinsky).

I speak to Mr. Jordan often, and I understand that records included in the OIC Referral indicate that he telephoned me shortly after Ms. Lewinsky left the White House complex. Supp. at 1836, 1839. I understand that Mr. Jordan testified that he and I did not discuss Ms. Lewinsky during that call. Supp. at 1793–94 (grand jury testimony of Vernon Jordan).

Reference. The record indicates that on October 11, 1998, President Clinton instructed Monica Lewinsky to draft a list of jobs in which she was interested:

"Question. At some point, did you send the President something like a list of jobs or interests that you might have in New York?

Answer. Yes. He asked me to prepare that on the 11th of October."

(Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 103–104, H. Doc. 105–311, p. 988).

"Lewinsky advised that Clinton asked her to write a list of potential employers, or jobs she was interested in, and to give it to him. On October 16, 1997, Lewinsky sent Clinton the list, which she refers to as a "wish list.'" (8/13/98 OIC interview of Monica Lewinsky, p. 3, H. Doc. 105–311, p. 1545).

Question 11. Do you admit or deny that on or about October 11, 1997, you suggested to Monica Lewinsky that Vernon Jordan may be able to assist her in her job search?

Answer. At some point, Ms. Lewinsky either discussed with me or gave me a list of the kinds of jobs she was interested in, although I do not know whether it was on Saturday, October 11, 1997. Records included in the OIC Referral indicate that Ms. Lewinsky visited the White House on October 11, 1977, App. at 2594, and I may have seen her on that day.

I do not believe I suggested to Ms. Lewinsky that Mr. Jordan might be able to assist her in her job search, and I understand that Ms. Lewinsky has stated that *she* asked me if Mr. Jordan could assist her in finding a job in New York. App. at 1079 (grand jury testimony of Ms. Lewinsky); App. at 1393 (7/27/98 FBI Form 302 Interview of Ms. Lewinsky); App. at 1461–62 (7/31/98 FBI Form 302 Interview of Ms. Lewinsky).

I speak to Mr. Jordan often, and I understand that records included in the OIC Referral indicate that he telephoned me shortly after Ms. Lewinsky left the White House complex. Supp. at 1836, 1839. I understand that Mr. Jordan testified that he and I did not discuss Ms. Lewinsky during that call. Supp. at 1793–94 (grand jury testimony of Vernon Jordan).

Reference. The record indicates that the President agreed to ask Vernon Jordan to assist Monica Lewinsky in her job search:

"Question. What do you have in mind about the first time Vernon Jordan's name would have come up in conversations with the President?

Answer. It was either in that phone call or [at the meeting] on October 11th.

Question. And tell us what was said about Vernon Jordan, whether it was in the phone call or on the 11th.

Answer. I don't remember. I know that I had discussed with Linda and either I had thought or she had suggested that Vernon Jordan would be a good person who is a close friend of the President and who has a lot of contacts in New York, so that he might be someone who might be able to help me procure a position in New York, if I didn't want to go to the U.N.

Question. And what was the President's response?

Answer. I think that was a good idea." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 103–104, H. Doc. 105–311, p. 988)

"Following this conversation, Ms. Lewinsky requested of the Pres. that he ask Vernon Jordan to help secure her a non-governmental position in NY. He agreed to ask Mr. Jordan." (2/1/98

Handwritten proffer of Monica Lewinsky, H. Doc. 105–311, p. 710; see also H. Doc. 105–311, p. 1212.)

Question 12. Do you admit or deny that on or about October 11, 1997, after meeting with Monica Lewinsky and discussing her search for a job in New York, you telephoned Vernon Jordan?

Answer. At some point, Ms. Lewinsky either discussed with me or gave me a list of the kinds of jobs she was interested in, although I do not know whether it was on Saturday, October 11, 1997. Records included in the OIC Referral indicate that Ms. Lewinsky visited the White House on October 11, 1977, App. at 2594, and I may have seen her on that day.

I do not believe I suggested to Ms. Lewinsky that Mr. Jordan might be able to assist her in her job search, and I understand that Ms. Lewinsky has stated that *she* asked me if Mr. Jordan could assist her in finding a job in New York. App. at 1079 (grand jury testimony of Ms. Lewinsky); App. at 1393 (7/27/98 FBI Form 302 Interview of Ms. Lewinsky); App. at 1461–62 (7/31/98 FBI Form 302 Interview of Ms. Lewinsky).

I speak to Mr. Jordan often, and I understand that records included in the OIC Referral indicate that he telephoned me shortly after Ms. Lewinsky left the White House complex. Supp. at 1836, 1839. I understand that Mr. Jordan testified that he and I did not discuss Ms. Lewinsky during that call. Supp. at 1793–94 (grand jury testimony of Vernon Jordan).

Reference. The record indicates that on October 11, 1997, at 10:57 a.m., after meeting with Monica Lewinsky beginning at 9:00 a.m., President Clinton took a phone call from Vernon Jordan. (Presidential call log, H. Doc. 105–311, p. 2829.)

Question 13. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, a plan in which she would pretend to bring you papers with a work-related purpose, when in fact such papers had no work-related purpose, in order to conceal your relationship?

Answer. I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. at 569. That continues to be my recollection today—that is, any such conversation was not in connection with her status as a witness in the *Jones* v. *Clinton* case.

Reference. The record indicates that such a plan existed. Monica Lewinsky provided the following testimony under oath regarding this subject:

"Question. I would like to ask you some questions about any steps you took to keep your relationship with the President secret.

Answer. A lot.

Question. All right. Well, why don't we just ask the question open-endedly and we'll follow up.

Answer. Okay. I'm sure, as everyone can imagine, that this is a kind of relationship that you keep quiet, and we both wanted to be careful being in the White House. Whenever I would visit him during—when—during my tenure at the White House, we always—unless it was sort of a chance meeting on the weekend and then we ended up back in the office, we would usually plan that I would ei-

ther bring papers, or one time we had accidentally bumped into each other in the hall and went from that way, so then we planned to do that again because that seemed to work well. But we always—there was always some sort of a cover.

Question. When you say you planned to bring papers, did you ever discuss with the President the fact that you would try to use that as a cover?

Answer. Yes.

Question. Okay. What did the two of you say in those conversations?

Answer. I don't remember exactly. I mean, in general, it might have been something like me saying, well, maybe once I got there kind of saying, "Oh, gee here are your letters," wink, wink, wink, and him saying: "Okay that's good," or——

Question. And as part of this concealment, if you will, did you carry around papers when you went to visit the President while you worked at Legislative Affairs?

Answer. Yes, I did.

Question. Did you ever actually bring him papers to sign as part of business?

Answer. No.

Question. Did you actually bring him papers at all?

Answer. Yes.

Question. All right. And tell us a little about that.

Answer. It varied. Sometimes it was just actual copies of letters. One time I wrote a really stupid poem. Sometimes I put gifts in the folder which I brought.

Question. And even on those occasions, was there a legitimate business purpose to that?

Answer. No." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 53–55, H. Doc. 105–311, p. 977.)

President Clinton gave the following testimony under oath in his deposition the case of Jones v. Clinton regarding the subject:

"Question. Is it true that when she worked at the White House she met with you several times?

Answer. I don't know about several times. There was a period when the Republican Congress shut the government down that the whole White House was being run by interns, and she was assigned to work back in the chief of staff's office, and we were all working there, and so I saw her on two or three occasions then, and then when she worked at the White House, I think there was one or two other times when she brought some documents to me." (Deposition of President Clinton, 1/17/98, pp. 50–51 (released in news accounts)).

Question 14. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that Betty Currie should be the one to clear Ms. Lewinsky in to see you so that Ms. Lewinsky could say that she was visiting with Ms. Currie instead of with you?

Answer. I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. at 569. That continues to be my recollection today—that is, any such con-

versation was not in connection with her status as a witness in the *Jones* v. *Clinton* case.

Reference. The record indicates the President had such discussions with Monica Lewinsky prior to December 17, 1997. Monica Lewinsky provided the following testimony under oath regarding this subject:

"Question. Did you ever [prior to your conversation with the President on December 17] have discussions with the President about what you would say about your frequent visits with him after you had left legislative affairs?

Answer. Yes.

Question. Yes. What was that about?

Answer. I think we—we discussed that—you know, the backwards route of it was that Betty always needed to be the one to clear me in so that, you know, I could always say I was coming to see Betty." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 55, H. Doc. 105–311, p. 977.)

President Clinton was asked about this subject during his deposition on January 17, 1998:

"Question. Has it ever happened that a White House record was created that reflected that Betty Currie was meeting with Monica Lewinsky when in fact you were meeting with Monica Lewinsky?

Answer. Not to my knowledge." (Deposition Testimony of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98).

Question 15. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that if either of you were questioned about the existence of your relationship you would deny its existence?

Answer. I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. at 569. That continues to be my recollection today—that is, any such conversation was not in connection with her status as a witness in the *Jones* v. *Clinton* case.

Reference. The record indicates that such an agreement to deny existed between the President and Monica Lewinsky:

"*Question.* Had you talked with [the President] earlier [than December 17] about . . . false explanations about what you were doing visiting him on several occasions?

Answer. Several occasions throughout the entire relationship. . . . It was the pattern of the relationship to sort of conceal it." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 124, H. Doc. 105–311, p. 844).

Question 16. Do you admit or deny that on or about December 6, 1997, you learned that Monica Lewinsky's name was on a witness list in the case of *Jones* v. *Clinton*?

Answer. As I stated in my August 17th grand jury testimony, I believe that I found out that Ms. Lewinsky's name was on a witness list in the *Jones* v. *Clinton* case late in the afternoon on the 6th of December, 1997. App. at 535.

Reference. The record indicates that according to the President's sworn testimony, he had such knowledge:

"*Question.* . . . [W]hen did you find out that Monica's name was on that witness list?

"Answer. I believe that I found out late in the afternoon on the 6th." (Grand Jury Testimony of President Clinton, 8/17/98, p. 83, H. Doc. 105–311, p. 535).

Question 17. Do you admit or deny that on or about December 17, 1997, you told Monica Lewinsky that her name was on the witness list in the case of *Jones* v. *Clinton*?

Answer. As I previously testified, I recall telephoning Ms. Lewinsky to tell her Ms. Currie's brother had died, and that call was in the middle of December. App. at 567. I do not recall other particulars of such a call including whether we discussed the fact that her name was on the *Jones* v. *Clinton* witness list. As I stated in my August 17th grand jury testimony in response to essentially the same questions, it is "quite possible that that happened. . . . I don't have any memory of it, but I certainly wouldn't dispute that I might have said that [she was on the witness list]." App. at 567.

I recall that Ms. Lewinsky asked me at some time in December whether she might be able to get out of testifying in the *Jones* v. *Clinton* case because she knew nothing about Ms. Jones or the case. I told her I believed other witnesses had executed affidavits, and there was a chance they would not have to testify. As I stated in my August 17th grand jury testimony, "I felt strongly that . . . [Ms. Lewinsky] could execute an affidavit that would be factually truthful, that might get her out of having to testify." App. at 571. I never asked or encouraged Ms. Lewinsky to lie in her affidavit, as Ms. Lewinsky herself has confirmed. *See* App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); *see also* App. at 1161 (grand jury testimony of Ms. Lewinsky).

Reference. The record indicates that the President told Monica Lewinsky about the appearance of her name on that date:

"*Question.* . . . Did you come to have a telephone conversation with the President on December 17?

"Answer. 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 that it didn't necessarily mean that I would be subpoenaed, but that that was a possibility, and if I were subpoenaed, that I should contact Betty and let Betty know that I had received the subpoena." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 123, H. Doc. 105–311, p. 843).

President Clinton was asked about this subject during his deposition on January 17, 1998:

"*Question.* Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify on this case?

Answer. Bruce Lindsey, I think Bruce Lindsay told me that she was, I think maybe that's the first person [who] told me she was. I want to be as accurate as I can. . . .

Question 18. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that the submission of an affidavit in the case of *Jones* v. *Clinton* might suffice to prevent her from having to testify personally in that case?

Answer. As I previously testified, I recall telephoning Ms. Lewinsky to tell her Ms. Currie's brother had died, and that call was in the middle of December. App. at 567. I do not recall other

particulars of such a call including whether we discussed the fact that her name was on the *Jones* v. *Clinton* witness list. As I stated in my August 17th grand jury testimony in response to essentially the same questions, it is "quite possible that that happened. . . . I don't have any memory of it, but I certainly wouldn't dispute that I might have said that [she was on the witness list]." App. at 567.

I recall that Ms. Lewinsky asked me at some time in December whether she might be able to get out of testifying in the *Jones* v. *Clinton* case because she knew nothing about Ms. Jones or the case. I told her I believed other witnesses had executed affidavits, and there was a chance they would not have to testify. As I stated in my August 17th grand jury testimony, "I felt strongly that . . . . [Ms. Lewinsky] could execute an affidavit that would be factually truthful, that might get her out of having to testify." App. at 571. I never asked or encouraged Ms. Lewinsky to lie in her affidavit, as Ms. Lewinsky herself has confirmed. *See* App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); *see also* App. at 1161 (grand jury testimony of Ms. Lewinsky).

Reference. The record indicates that the President made such a suggestion, despite the fact that he denied it in sworn testimony:

Question. I believe I was starting to ask you a question a moment ago and we got sidetracked. Have you ever talked to Monica Lewinsky about the possibility that she might be asked to testify in this lawsuit?

Answer. 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. Seems to me the last time she was there 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'd ever talked to and ask them that, and so I said you would qualify, or something like that. I don't think we ever had more of a conversation than that about it. . . ." (Deposition Testimony of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98 pp. 70–71 (as released in public sources)).

"Answer. I believe I probably asked him, you know, what should I do in the course of that and he suggested, he said, 'Well, maybe you can sign an affidavit.' . . .

Question. When he said that you might sign an affidavit, what did you understand it to mean at that time?

Answer. I thought that signing an affidavit could range from anywhere—the point of it would be to deter or to prevent me from being deposed and so that 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." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 123–24, H. Doc. 105–311, pp. 843–44).

Furthermore, Monica Lewinsky has stated that she is "100% sure that the President suggested that she might want to sign an affidavit to avoid testifying." (8/19/98 OIC interview of Monica Lewinsky, pp. 4–5 (H. Doc. 105–311, pp. 1558–9).

Question 19. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to

the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

Answer. I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. at 569. That continues to be my recollection today—that is, any such conversation was not in connection with her status as a witness in the *Jones* v. *Clinton* case.

Reference. The record indicates that the President made such a suggestion on December 17, 1997:

Question. Did you come to have a telephone conversation with the President on December 17?

Answer. Yes. . . .

Question. Tell us how the conversation went from there . . .

Answer. . . . At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up, he sort of said, 'You know, you can always say you were coming to see Betty or that you were bringing me letters.' Which I understood was really a reminder of things that we had discussed before." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 123, H. Doc. 105–311, p. 843).

Question 20. Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of *Jones* v. *Clinton* on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?

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," *id*. at 70, reflected my understanding that Ms. Lewinsky had been subpoenaed. That testimony was not false and misleading.

Reference. The record indicates that despite evidence revealing the contrary, President Clinton swore in his deposition that he did not know if Monica Lewinsky had been subpoenaed to testify in that case:

"*Question.* Did she tell you she had been served with a subpoena in this case?

Answer. No. I don't know if she had been.

"*Question.* Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?

Answer. I don't think so." (Deposition Testimony of President Clinton in the case of *Jones* v. *Clinton,* 1/18/98, p. 68 (as released in public sources.))

"I said to the President, 'Monica Lewinsky called me . . .. She is coming to see me about this subpoena.'" (Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 145 (referencing a December 19, 1997, telephone conversation with the President), H. Doc. 105–316, p. 1815).

"Question 21. Do you admit or deny that you gave false and misleading testimony under oath when you stated before the grand jury on August 17, 1998, that you did know prior to January 17, 1998, that Monica Lewinsky had been subpoenaed to testify in the case of *Jones* v. *Clinton*?

Answer. As my testimony on January 17 reflected, and as I testified on August 17, 1998, I knew prior to January 17, 1998, that Ms. Lewinsky had been subpoenaed to testify in *Jones* v. *Clinton*. App. at 487. That testimony was not false and misleading.

Reference. The record indicates that President Clinton swore before the grand jury that he did know that Monica Lewinsky had been subpoenaed to testify in that case:

"[M]y recollection is that I knew by then, of course, that she had gotten a subpoena. And I knew that she was, therefore, was slated to testify . . .. I remember a conversation about the possibility of her testifying. I believe it must have occurred on the 28th." (Grand Jury Testimony of President Clinton, 8/17/98, pp. 35–36, H. Doc 105–311, pp. 487–88).

"Question 22. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding her moving to New York?

Answer. When I met Ms. Lewinsky on December 28, 1997, I knew she was planning to move to New York, and we discussed her move.

Reference. The record indicates that the President had such a discussion with Monica Lewinsky at the White House:

"On December 28, 1997, Lewinsky visited the President at the White House. . . . Lewinsky and the President discussed her move to New York. . . . " (7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395).

"Question 23. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House in which you suggested to her that she move to New York soon because by moving to New York, the lawyers representing Paula Jones in the case of *Jones* v. *Clinton* may not contact her?

Answer. Ms. Lewinsky had decided to move to New York well before the end of December 1997. By December 28, Ms. Lewinsky had been subpoenaed. I did not suggest that she could avoid testifying in the *Jones* v. *Clinton* case by moving to New York.

Reference. The record indicates that the President had such a discussion with Monica Lewinsky at the White House and made such a suggestion:

"On December 28, 1997, Lewinsky visited the President at the White House. . . . the President said that if Lewinsky was in New York the Jones lawyers might not call; that the sooner Lewinsky moved the better; and that maybe the lawyers would ignore her." (7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395).

"Question 24. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of *Jones* v. *Clinton*?

Answer. As I told the grand jury, "Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me,"

App. at 495, but I do not know whether that conversation occurred on December 28, 1997, or earlier. *Ibid.* Whenever this conversation occurred, I testified, I told her "that if they asked her for gifts, she'd have to give them whatever she had. . . ." App. at 495. I simply was not concerned about the fact that I had given her gifts. *See* App. at 495–98. Indeed, I gave her additional gifts on December 28, 1997. I also told the grand jury that I do not recall Ms. Lewinsky telling me that the subpoena specifically called for a hat pin that I had given her. App. at 496.

Reference. The record indicates that the President had such a discussion with Monica Lewinsky:

> Answer. We—we really spent maybe about five—no more than ten minutes talking about the Paula Jones case on [December 28] . . . I brought up the subject of the case because I was concerned about how I had been brought into the case and been put on the witness list. . . . And then at some point I said to him, 'Well, you know, I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105–311, p. 872; See also 7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395).

"Question 25. Do you admit or deny that on or about December 28, 1997, you expressed concern to Monica Lewinsky about a hatpin you had given to her as a gift which had been subpoenaed in the case of *Jones* v. *Clinton*?

Answer. As I told the grand jury, "Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me," App. at 495, but I do not know whether that conversation occurred on December 28, 1997, or earlier. *Ibid.* Whenever this conversation occurred, I testified, I told her "that if they asked her for gifts, she'd have to give them whatever she had. . . ." App. at 495. I simply was not concerned about the fact that I had given her gifts. *See* App. at 495–98. Indeed, I gave her additional gifts on December 28, 1997. I also told the grand jury that I do not recall Ms. Lewinsky telling me that the subpoena specifically called for a hat pin that I had given her. App. at 496.

Reference. The record indicates that the President expressed such concern:

"I mentioned that I had been concerned about the hat pin being on the subpoena and he said that had sort of concerned him also." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105–311, p. 872; See also 7/27/98 OIC Interview of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 1395).

"Question 26. Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?

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 Ms. Lewinsky; I understand Ms. Currie has stated that Ms.

Lewinsky called Ms. Currie to ask her to hold a box. *See* Supp. at 531.

Reference. The record indicates that such a discussion occurred. Monica Lewinsky testified under oath before the grand jury that a few hours after meeting with the President on December 28, 1997, a meeting in which Ms. Lewinsky and President Clinton discussed the fact that gifts given to her by Mr. Clinton had been subpoenaed in the case of *Jones* v. *Clinton*, Betty Currie called her:

"*Question.* What did [Betty Currie] say?

Answer. She said, "I understand you have something to give me." Or, "The President said you have something to give me." Along those lines. . . .

"*Question.* When she said something along the lines of "I understand you have something to give me," or "The President says you have something for me," what did you understand her to mean?

Answer. The gifts." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, pp. 154–55, H. Doc. 105–311, pp. 874–75).

In Monica Lewinsky's February 1, 1998 handwritten statement to the OIC, which Ms. Lewinsky has testified is truthful, she stated, "Ms. Currie called Ms. L later that afternoon and said that the Pres. had told her Ms. L wanted her to hold onto something for her. Ms. L boxed up most of the gifts she had received and gave them to Ms. Currie." (2/1/98 Handwritten Proffer of Monica Lewinsky, p. 7, H. Doc. 105–311, p. 715).

Betty Currie testified that she did not recall the President telling her that Ms. Lewinsky wanted her to hold some items. When asked if a contrary statement by Ms. Lewinsky—indicating that Ms. Currie had in fact spoken to the President about the gift transfer—would be false, Ms. Currie replied: "She may remember better than I. I don't remember." (Grand Jury Testimony of Betty Currie, 5/6/98, p. 126, H. Doc. 105–316, p. 584).

Further evidence before the Committee reveals that Betty Currie telephoned Monica Lewinsky and not the other way around regarding the gifts after the President and Monica Lewinsky discussed the gifts:

> Mr. SCHIPPERS: When Ms. Currie, when they wanted to get rid of the gifts, Ms. Currie went and picked them up, put them under her bed to keep them from anybody else. Another mission accomplished?
>
> Mr. STARR: That's right.
>
> Mr. SCHIPPERS: By the way, there has been some talk here that Monica said that she recalled that Betty Currie called her and said, either the President wants me to pick something up, or I understand you have something for me to pick up. Later, Ms. Currie backed off that and said, well, I am not sure, maybe Monica called me. In the material that you made available, you and your staff made available to us, there were 302s in which Monica said, I think when Betty called me, she was using her cell phone. Do you recall that, Judge Starr?
>
> Mr. STARR: I do.
>
> Mr. SCHIPPERS: And in that same material that is in your office that both parties were able to review and that

we did, in fact, review, there are phone records of Ms. Currie; are there not?

Mr. STARR: There are.

Mr. SCHIPPERS: And there is a telephone call on her cell phone to Monica Lewinsky's home on the afternoon of December 28, 1997; isn't there?

Mr. STARR: That is correct.

Mr. SCHIPPERS: Once again, Monica is right and she has been corroborated, right?

Mr. STARR: That certainly tends to corroborate Ms. Lewinsky's recollection. (Impeachment Hearing on Inquiry Pursuant to H. Res. 581, Thursday, November 19, 1998, Transcript pp. 407–409.)

President Clinton testified about this subject before the grand jury on August 17, 1998:

> *Question.* After you gave her the gifts on December 28, 1997, 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.
>
> *Question.* . . . to give to Ms. Currie?
>
> Answer. I did not do that. (Grand Jury Testimony of President Clinton, 8/17/98, p. 51, H. Doc. 105–311, p. 638).

Question 27. Do you admit or deny that on or about December 28, 1998 [sic], you requested, instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?

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 Ms. Lewinsky; I understand Ms. Currie has stated that Ms. Lewinsky called Ms. Currie to ask her to hold a box. *See* Supp. at 531.

Reference. See Request for Admission No. 24 (H. Doc. 105–311, p. 872). See also Currie quote as set forth in Request for Admission No. 26 (H. Doc. 105–316, p. 584).

Question 28. Do you admit or deny that you had a telephone conversation on January 6, 1998, with Vernon Jordan during which you discussed Monica Lewinsky's affidavit, yet to be filed, in the case of *Jones* v. *Clinton*?

Answer. White House records included in the OIC Referral reflect that I spoke to Mr. Jordan on January 6, 1998. Supp. at 1886. I do not recall whether we discussed Ms. Lewinsky's affidavit during a telephone call on the date.

Reference. The record indicates that such a conversation may have occurred. See Telephone Calls, Table 35, included in Appendix G as referenced in note 928, H. Doc. 105–310, p. 108 (Vernon Jordan telephones the President less than 30 minutes after speaking with Monica Lewinsky over the telephone about her draft affidavit).

Question 29. Do you admit or deny that you had knowledge of the fact that Monica Lewinsky executed for filing an affidavit in the case of *Jones* v. *Clinton* on January 7, 1998?

Answer. As I testified to the grand jury, "I believe that [Mr. Jordan] did notify us" when she signed her affidavit. App. at 525. While I do not recall the timing, as I told the grand jury, I have no reason to doubt Mr. Jordan's statement that he notified me about the affidavit around January 7, 1998. *Ibid.*

Reference. The record indicates that the President had such knowledge:

> *Question.* ". . . [Y]ou conveyed . . . both to Betty Currie and to the President—namely, that you knew Ms. Lewinsky had signed the affidavit [on January 7, 1998]?'
>
> Answer. "Right." (Grand Jury testimony of Vernon Jordan, 5/5/98, p. 223, H. Doc. 105–316, p. 1828)
>
> "I believe that he [Vernon Jordan] did notify us, I think, when she signed her affidavit. I have a memory of that." (Grand Jury Testimony of President Clinton, 8/17/98, p. 73, H. Doc. 105–311, p. 525).

*Question 30.*Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that Monica Lewinsky executed for filing an affidavit in the case of *Jones* v. *Clinton*?

Answer. As I testified to the grand jury, "I believe that [Mr. Jordan] did notify us" when she signed her affidavit. App. at 525. While I do not recall the timing, as I told the grand jury, I have no reason to doubt Mr. Jordan's statement that he notified me about the affidavit around January 7, 1998. Ibid.

Reference. The record indicates that such a discussion occurred:

> *Question.* Okay, do you believe that it would have been during one of these calls [phone conversations between the President and Vernon Jordan on January 7, 1998] that you would have indicated to the President that Ms. Lewinsky had, in fact, signed the affidavit?
>
> Answer. That, too, is a reasonable assumption." (Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 224, H. Doc. 105–316, p. 1828).

Question 31. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that he was assisting Monica Lewinsky in finding a job in New York?

Answer. I told the grand jury that I was aware that Mr. Jordan was assisting Ms. Lewinsky in her job search in connection with her move to New York. App. at 526. I have no recollection as to whether Mr. Jordan discussed it with me on or about January 7, 1998.

Reference. The record indicates that such a discussion occurred:

"I'm sure I said, 'I'm still working on her job [in New York]'." To which Jordan quotes the President as responding, "Good." (Grand Jury Testimony of Vernon Jordan, 5/5/98, p. 226, H. Doc. 105–316, p. 1829).

Question 32. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones* v. *Clinton,* prior to your deposition in that case?

Answer. I do not believe I saw this affidavit before my deposition, although I cannot be absolutely sure. The record indicates that my counsel had seen the affidavit at some time prior to the deposition. *See* Dep. at 54.

Reference. The record indicates that the President was fully aware of the contents of the affidavit of Monica Lewinsky prior to his deposition on January 17, 1998:

During the January 17, 1998 deposition of President Clinton in the case of *Jones* v. *Clinton,* Robert Bennett, President Clinton's attorney, after describing part of Monica Lewinsky's affidavit, stated, "I am not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Jane Doe 6's affidavit, so I have not told him a single thing he doesn't know'" (Deposition of President Clinton in the case of *Jones* v. *Clinton,* 1/17/98, p. 54).

The testimony of Vernon Jordan also indicates that the President had knowledge of the affidavit:

Question. . . . [I]s it accurate that based on the conversations you had with [the President] already, you didn't have to explain to him [on January 7, 1998] what the affidavit was?

Answer. I think that's a reasonable assumption." (Grand Jury testimony of Vernon Jordan, 5/5/98, p. 225, H. Doc. 105–316, p. 1828).

Question 33. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones* v. *Clinton*, prior to your deposition in that case?

Answer. I do not believe I saw this affidavit before my deposition, although I cannot be absolutely sure. The record indicates that my counsel had seen the affidavit at some time prior to the deposition. *See* Dep. At 54.

Reference. The record indicates that the President's counsel viewed a copy of the affidavit and briefed the President. Frank Carter, Monica Lewinsky's former attorney, testified before the grand jury that he provided a copy of Monica Lewinsky's affidavit to Robert Bennett, President Clinton's attorney:

> *Question.* Did Monica ask you if she had shown or discussed the affidavit with either Vernon Jordan or Bennett before she signed it?
>
> Answer. I'm not sure. I'm not sure . . . Bob Bennett did not see this until—I believe Bob Bennett did not see this until the 15th of January when I sent him a copy."(Grand Jury Testimony of Frank Carter, 6/18/98, pp.112–13, H. Doc. 105–316, pp. 420–21).

During the January 18, 1998 deposition of President Clinton in the case of *Jones* v. *Clinton*, Robert Bennett, President Clinton's attorney, after describing part of Monica Lewinsky's affidavit, stated, "I am not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Jane Doe 6's affidavit, so I have not told him a single thing he doesn't know . . ." (Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 54 (as released in public sources)).

Question 34. Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones* v. *Clinton* were not true?

Answer. I was asked at my deposition in January about two paragraphs of Ms. Lewinsky's affidavit. With respect to Paragraph 6, I explained the extent to which I was able to attest to its accuracy. Dep. at 202–03.

With respect to Paragraph 8, I stated in my deposition that it was true. Dep. at 204. In my August 17th grand jury testimony, I sought to explain the basis for that deposition answer: "I believe at the time that she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate." App. at 473.

Reference. The record indicates that the President had such knowledge. In the affidavit executed in the case of *Jones* v. *Clinton*, Monica Lewinsky asserted the following:

"I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship. . . . The occasions that 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." (Affidavit of Jane Doe # 6, para. 8, H. Doc. 105–311, pp. 1235–36.)

During the January 17, 1998 deposition of President Clinton in the case of *Jones* v. *Clinton*, Robert Bennett, President Clinton's attorney, stated "Counsel is fully aware that Ms. Jane Doe #6 has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind in any manner, shape of form, with President Clinton. . . ." (Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 54 (as released in public sources).)

The Grand Jury Testimony of Monica Lewinsky, given under oath and following a grant of transactional immunity, confirmed that the contents of her affidavit were not true:

Question. Paragraph 8 . . . [of the affidavit] says, "I have never had a sexual relationship with the President." Is that true?

Answer. "No." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 204, H. Doc. 105–311, p. 924).

Question 35. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones* v. *Clinton*, at your deposition in that case on January 17, 1998?

Answer. I know that Mr. Bennett saw Ms. Lewinsky's affidavit during the deposition because he read portions of it aloud at the deposition. *See* Dep. at 202. I do not recall whether I saw a copy of Ms. Lewinsky's affidavit during the deposition.

Reference. The record indicates that the President was present when his attorney, Robert Bennett, read from the affidavit executed by Monica Lewinsky. (Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 204 (as released in public sources).)

Question 36. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones* v. *Clinton*, at your deposition in that case on January 17, 1998?

Answer. I know that Mr. Bennett saw Ms. Lewinsky's affidavit during the deposition because he read portions of it aloud at the deposition. *See* Dep. at 202. I do not recall whether I saw a copy of Ms. Lewinsky's affidavit during the deposition.

Reference. The record indicates that the President had such knowledge. During the January 17, 1998 deposition of President Clinton in the case of *Jones* v. *Clinton*, Robert Bennett, the President's attorney, recited portions of the affidavit Monica Lewinsky had executed in the case of *Jones* v. *Clinton*. The President was present when the affidavit was read. (Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 204 (as released in public sources)).

Question 37. Do you admit or deny that on or about January 9, 1998, you received a message from Vernon Jordan indicating that Monica Lewinsky had received a job offer in New York?

Answer. At some time, I learned that Ms. Lewinsky had received a job offer in New York. However, I do not recall whether I first learned it in a message from Mr. Jordan or whether I learned it on that date.

Reference. The record indicates that President received such a message:

"As I recollect, I said Monica Lewinsky's going to work for Revlon and his response was thank you very much." (Grand Jury Testimony of Vernon Jordan, 5/28/98, p. 59, H. Doc. 105–316, p. 1903).

Question 38. Do you admit or deny that between January 9, 1998, and January 15, 1998, you had a conversation with Erskine Bowles in the Oval Office in which you stated that Monica Lewinsky received a job offer and had listed John Hilley as a reference?

Answer. As I testified to the grand jury, I recall at some point talking to Mr. Bowles "about whether Monica Lewinsky could get a recommendation that was not negative from the Legislative Affairs Office," or that "was at least neutral," although I am not certain of the date of the conversation. App. at 562–64. To suggest that I told Mr. Bowles that Ms. Lewinsky had received a job offer and had listed John Hilley as a reference is, as I testified, a "little bit" inconsistent with my memory. App. at 564. It is possible, as I also indicated, that she had identified Mr. Hilley as her supervisor on her resume and in that respect had already listed him as a reference. *Ibid.*

Reference. The record indicates that such a conversation occurred:

"[S]he [Monica Lewinsky] had found a job in the private sector, and that she had listed John Hilley as a reference, and could we see if he could recommend her, if asked." (Grand Jury Testimony of Erskine Bowles, 4/2/98, p. 78, H. Doc. 105–316, p. 238).

Question 39. Do you admit or deny that you asked Erskine Bowles if he would ask John Hilley to give Ms. Lewinsky a positive job recommendation?

Answer. As I testified to the grand jury, I recall at some point talking to Mr. Bowles "about whether Monica Lewinsky could get a recommendation that was not negative from the Legislative Affairs Office," or that "was at least neutral," although I am not certain of the date of the conversation. App. at 562–64. To suggest that I told Mr. Bowles that Ms. Lewinsky had received a job offer and had listed John Hilley as a reference is, as I testified, a "little bit" inconsistent with my memory. App. at 564. It is possible, as I also indicated, that she had identified Mr. Hilley as her supervisor on her resume and in that respect had already listed him as a reference. Ibid.

Reference. The record indicates that the President asked Erskine Bowles if he would ask Mr. Hilley to give Monica Lewinsky a positive job recommendation. See Request for Admission No. 38 (H. Doc. 105–316, p. 238).

Question 40. Do you admit or deny that during your deposition in the case of *Jones* v. *Clinton* on January 17, 1998, you affirmed that the facts or assertions stated in the affidavit executed by Monica Lewinsky on January 7, 1998, were true?

Answer. I was asked at my deposition in January about two paragraphs of Ms. Lewinsky's affidavit. With respect to Paragraph 6, I explained the extent to which I was able to attest to its accuracy. Dep. At 202–03.

With respect to Paragraph 8, I stated in my deposition that it was true. Dep. At 204. In my August 17th grand jury testimony, I sought to explain the basis for that deposition answer: "I believe at the time that she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate." App. at 473.

Reference. The record indicates that the President, under oath, affirmed that the assertions made in Monica Lewinsky's affidavit were true, even though he knew they were false. During the January 17, 1998 deposition of President Clinton in the case of *Jones* v. *Clinton*, Robert Bennett, the President's attorney, read parts of the affidavit Monica Lewinsky had executed in the case of *Jones* v. *Clinton*. At one point Mr. Bennett read part of paragraph eight of Monica Lewinsky's affidavit, in which Monica Lewinsky asserts, "I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for reflecting a sexual relationship."

After reading from the affidavit out loud, Mr. Bennett asked the President: "Is that a true and accurate statement as far as you know it?" The President answered, "That is absolutely true." (Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 204 (as released in public sources)).

Question 41. As to each, do you admit or deny that you gave the following gifts to Monica Lewinsky at any time in the past?

a. A lithograph
b. A hatpin
c. A large "Black Dog" canvas bag
d. A large "Rockettes" blanket
e. A pin of the New York skyline

f. A box of "cherry chocolates'
g. A pair of novelty sunglasses
h. A stuffed animal from the "Black Dog'
i. A marble bear's head j
j. A London pin
k. A shamrock pin
l. An Annie Lennox compact disc
m. Davidoff cigars

Answer. In my deposition in the Jones case, I testified that I "certainly . . . could have" given Ms. Lewinsky a hat pin and that I gave her "something" from the Black Dog. Dep. at 75–76. In my grand jury testimony, I indicated that in late December 1997, I gave Ms. Lewinsky a Canadian marble bear's head carving, a Rockettes blanket, some kind of pin, and a bag (perhaps from the Black Dog) to hold these objects. App. at 484–487. I also stated that I might have given her such gifts as a box of candy and sunglasses, although I did not recall doing so, and I specifically testified that I had given Ms. Lewinsky gifts on other occasions. App. at 487. I do not remember giving her the other gifts listed in Question 41, although I might have. As I have previously testified, I receive a very large number of gifts from many different people, sometimes several at a time. I also give a very large number of gifts. I gave Ms. Lewinsky gifts, some of which I remember and some of which I do not.

Reference. The record indicates that the President did present each of these items as gifts to Monica Lewinsky.

A chart prepared as part of her testimony before the Grand Jury details Monica Lewinsky's visits to the President and the exchange of gifts during those visits is contained in H. Doc. 105–311, pp. 1251–61.

Question 42. 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?'

Answer. 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. See App. at 502–03.

Reference. The record indicates that the President stated that he did not recall even though he had knowledge:

"*Question.* Well, have you ever given any gifts to Monica Lewinsky?

A I don't recall. Do you know what they were?

Question. A hat pin?

A I don't, I don't remember. But I certainly, I could have." (Deposition of President Clinton in the case of *Jones* v. *Clinton*, 1/17/98, p. 75 (as released in public sources). See also request for admission number 41 for evidence of numerous gifts Mr. Clinton gave to Ms. Lewinsky.)

Furthermore, the evidence shows that President Clinton and Monica Lewinsky discussed the hat pin gift on December 28, 1997,

after Ms. Lewinsky received a subpoena calling for her to produce all gifts she received from Mr. Clinton, including any hat pins. Ms. Lewinsky stated under oath before the grand jury that "I mentioned that I had been concerned about the hat pin being on the subpoena and he said that that had sort of concerned him also and asked me if I had told anyone that he had given me the hat pin and I said no." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p. 152, H. Doc. 105- 311, p. 1000).

Question 43. Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of *Jones* v. *Clinton* when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?'

Answer. My testimony was not false and misleading. As I have testified previously, I give and receive numerous gifts. Before my January 17, 1998, deposition, I had not focused on the precise number of gifts Ms. Lewinsky had given me. App. at 495–98. My deposition testimony made clear that Ms. Lewinsky had given me gifts; at the deposition, I recalled "a book or two" and a tie. Dep. at 77. At the time, those were the gifts I recalled. In response to OIC inquiries, after I had had a chance to search my memory and refresh my recollection, I was able to be more responsive. However, as my counsel have informed the OIC, in light of the very large number of gifts I receive, there might still be gifts from Ms. Lewinsky that I have not identified.

Reference. The record indicates that the President gave such false and misleading testimony:

"*Question.* Has Monica Lewinsky ever given you any gifts?

Answer. Once or twice. I think she's given me a book or two. (Deposition of President Clinton in the case of Jones v. Clinton, 1/17/98, p. 76 (as released in public sources)).

The evidence shows that Ms. Lewinsky gave the President approximately 38 gifts presented on numerous occasions. (See chart in House Document 105–311 pp. 1251–61.)

Question 44. Do you admit or deny that on January 17, 1998, at or about 5:38 p.m., after the conclusion of your deposition in the case of *Jones* v. *Clinton*, you telephoned Vernon Jordan at his home?

Answer. I speak to Mr. Jordan frequently, so I cannot remember specific times and dates. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 17, 1998, at or about 5:38 p.m. App. at 2876.

Reference. The record indicates that such a telephone call was made. See Telephone Table 46, Call 2, as referenced in 5/28/98 Grand Jury Testimony of Vernon Jordan, pp. 94–95, as cited in Note 1022, H. Doc. 105–310, p. 118.

Question 45. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones* v. *Clinton*, you telephoned Betty Currie at her home?

Answer. According to White House records included in the OIC Referral, I placed a telephone call to Ms. Currie at her residence at 7:02 p.m. and spoke to her at or about 7:13 p.m. App. at 2877. I recall that when I spoke to her that evening, I asked if she could meet with me the following day. According to White House records

included in the OIC Referral, I telephoned Mr. Jordan's office on January 17, 1998, at or about 7:02 p.m. Ibid.

Reference. The record indicates that such a telephone call was made. See Telephone Table 46, Call 4, as referenced in 1/27/98 Grand Jury testimony of Betty Currie, pp. 65–66, and all that follows, as cited in Note 1021, H. Doc. 105–310, p. 118.

Question 46. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones* v. *Clinton*, you telephoned Vernon Jordan at his office?

Answer. According to White House records included in the OIC Referral, I placed a telephone call to Ms. Currie at her residence at 7:02 p.m. and spoke to her at or about 7:13 p.m. App. at 2877. I recall that when I spoke to her that evening, I asked if she could meet with me the following day. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's office on January 17, 1998, at or about 7:02 p.m. Ibid.

Reference. The record indicates that such a telephone call was made. See Request for Admission No. 44, referencing the "second conversation" between Mr. Jordan and the President, as noted on p. 95 of the 5/28/98 Grand Jury testimony of Vernon Jordan, H. Doc. 105–316, p. 1912.

Question 47. Do you admit or deny that on January 17, 1998, at or about 7:13 p.m., after the conclusion of your deposition in the case of *Jones* v. *Clinton*, you telephoned Betty Currie at her home and asked her to meet with you the next day, Sunday, January 18, 1998?

Answer. According to White House records included in the OIC Referral, I placed a telephone call to Ms. Currie at her residence at 7:02 p.m. and spoke to her at or about 7:13 p.m. App. at 2877. I recall that when I spoke to her that evening, I asked if she could meet with me the following day. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's office on January 17, 1998, at or about 7:02 p.m. Ibid.

Reference. The record indicates that such a telephone conversation occurred:

"The best that I can remember of a call, the President called, just said that he wanted to talk to me. And I said, 'Fine.' He said, 'Could you come in on Sunday?' And I said, 'Fine.'" (Grand Jury Testimony of Betty Currie, 1/27/98, p. 66, H. Doc. 105–316, p. 558; For corroborative evidence, including phone log references, see Note 1021, H. Doc. 105–310, p. 118.)

Question 48. Do you admit or deny that on January 18, 1998, at or about 6:11 a.m., you learned of the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp?

Answer. I did not know on January 18, 1998 that tapes existed of conversations between Ms. Lewinsky and Ms. Tripp recorded by Ms. Tripp. At some point on Sunday, January 18, 1998, I knew about the Drudge Report. I understand that, while the Report talked about tapes of phone conversations, it did not identify Ms. Lewinsky by name and did not mention Ms. Tripp at all. The Report did not state who the parties to the conversations were or who taped the conversations.

Reference. The record indicates that the President learned of the existence of the tapes early in the morning. The "Drudge Report", which discussed the tapes, was available on the Internet at 6:11 a.m.

"*Question.* Mr. President, when did you learn about the Drudge Report reporting allegations of you having a sexual relationship with someone at the White House?

Answer. I believe it was the morning of the 18th, I think . . .

Question. Very early morning hours, sir?

Answer. . . . yeah, I think it was when I got up Sunday morning, I think. Maybe it was late Saturday night. I don't remember." (Grand Jury Testimony of President Clinton, 8/17/98, pp. 142–43, H. Doc. 105–311, pp. 594–95).

This was confirmed by Vernon Jordan during his testimony about a meeting he had with the President on January 19, 1998:

"Answer. . . . He obviously knew about the Drudge Report, it did not require any lengthy discussion.

Question. Well, when you say he obviously knew about the Drudge Report, how do you know he knew about the Drudge Report?

Answer. He acknowledged in some way that he knew about the Drudge Report and I think it's fair to say he was as surprised at this Drudge Report that reported that there had been these taped conversations with this person named Linda Tripp." (Grand Jury Testimony of Vernon Jordan, 3/5/98, p. 126, H. Doc. 105–316, p. 1764.)

Question 49. Do you admit or deny that on January 18, 1998, at or about 12:50 p.m., you telephoned Vernon Jordan at his home?

Answer. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 18, 1998, at or about 12:50 p.m. App. at 2878.

Reference. The record indicates that such a telephone call was made. See Telephone Table 47, Call 2, as referenced on p. 174 of H. Doc. 105–311.

Question 50. Do you admit or deny that on January 18, 1998, at or about 1:11 p.m., you telephoned Betty Currie at her home?

Answer. According to White House records included in the OIC Referral, I telephoned Ms. Currie's residence on January 18, 1998, at or about 1:11 p.m. App. at 2878.

Reference. The record indicates that such a telephone call was made. See Telephone Table 47, Call 3, as referenced on p. 174 of H. Doc. 105–311.

Question 51. Do you admit or deny that on January 18, 1998, at or about 2:55 p.m., you received a telephone call from Vernon Jordan?

Answer. According to White House records included in the OIC Referral, Mr. Jordan telephoned me from his residence on January 18, 1998, at or about 2:55 p.m. App. at 2879.

Reference. The record indicates that such a telephone call was made. See Telephone Table 47, Call 5, as referenced on p. 174 of H. Doc. 105–311.

Question 52. Do you admit or deny that on January 18, 1998, at or about 5:00 p.m., you had a meeting with Betty Currie at which

you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."

b. "You could see and hear everything."

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

d. "She wanted to have sex with me and I couldn't do that."

Answer. When I met with Ms. Currie, I believe 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. *See* App. at 508.

Some time later, I learned that the Office of Independent Counsel was involved and that Ms. Currie was going to have to testify before the grand jury. After learning this, I stated in my grand jury testimony, I told Ms. Currie, "Just relax, go in there and tell the truth." App. at 591.

Reference. The record indicates that the President made statements similar to these to Betty Currie on January 18, 1998 at a meeting held around 5:00 p.m.:

Question. Is that what you remember him saying?

Answer. Could you do the second point again—the video—

Question. Okay. The second—the videotape—

Answer. She was over at the White House, and then she was alone.

Question. Right. That those were among the issues the President brought to your attention when he initially came to your desk?

Answer. The best I remember it, yes, sir.

Question. Okay. And then you told us that the President began to ask you a series of questions that were more like statements than questions.

Answer. Right.

Question. And you were nodding your head correct; is that right?

Answer. That's correct, sir.

Question. Okay. So the President asked you or made a series of statements to you; is that correct?

Answer. That's correct, sir.

Question. Okay. Do you remember what the statements were?

Answer. The best I can remember sir—and it's getting worse by the minutes, seems like—"Monica was never—You were always there when Monica was there. We were never really alone." Those two stick in my mind as two statements he made.

Question. Let me see if I can refresh your recollection as to some others.

Answer. Yes.

Question. Did the President also make the statement: 'Monica came on to me, and I never touched her, right'?

Answer. Yes, that statement was made, sir.

Question. Did the President also state to you at that time: 'She wanted to have sex with me, and I can't do that, right'?

Answer. I don't remember the 'right' part coming after there but—probably without the right."

Question. Okay.

Answer. Or I don't—but that—just that that statement was made, yes, sir.

Question. Okay. And did the President also say to you, 'You could see and hear everything?'

Answer. Correct.

Question. You indicated that the President may not have added the 'right' at the end. But would it be fair to say that the way the President was posing these statements to you, that he wanted you to agree with them?

Answer. Not on that one.

Question. Not on the 'She wanted to have sex with me, and I can't do that'?

Answer. 'I told her I couldn't do that' or something like that. So it wasn't one that I—I may have been saying 'right,' but I don't think he—I don't—the best that I remember on that one, 'She wanted to have sex with me, but I can't—I told her I couldn't do that.'

Question. And that one, he didn't necessarily want you to agree with—it is that what your testimony is—that it was just a statement?

Answer. That—I would call it a statement, sir.

Question. But the way the other statements were posed to you—and I'll read them again. The way the other statements were posed to you—is it correct that the way they were posed, the President wished you to agree with them? And I'll read them back to you.

Answer. The President wished me to agree with them?

Question. Yes.

Answer. Read them again.

Question. You were always there when she was there.

Answer. (Nodding.) Right.

Question. Okay. Is 'right' meaning, correct, he wanted—the President wanted you to agree with that?

Answer. Oh, because I said 'right'—I was always there. Since I can't say what he wanted—but my impression was that he was just making statements.

Question. You added a 'right' to the last statement that I—

Answer. Which one was that?

Question. The 'You were always there when she was there, right?' Is that the way you remember the President stating it to you?

Answer. That's how I remember him stating it to me.

Question. Would it be fair to say, then—based on the way he stated it and the demeanor that he was using at the time that he stated it to you—that he wished you to agree with that statement?

Answer. I can't speak for him, but—

Question. How did you take it? Because you told us at these meetings in the last several days that that is how you took it.

Answer. (Nodding.)

Question. And you're nodding your head 'Yes', is that correct?

Answer. That's correct.

Question. Okay. With regard to the statement that the President made to you, 'You remember I was never really alone with Monica, right?'—was that also a statement that, as far as you took, that he wished you to agree with that?

Answer. Correct.

Question. And to the President's statement to you: You could see and hear everything, right?"—was that also a statement that the president, as far as you could tell, wished you to agree to?

Answer. Not only did he wish me to agree to it, but they were also right. But right.

Question. What do you mean they were also right?

Answer. I was always there. I could always hear. And the last one—

Question. Okay. You could not hear the President—

Answer. Well, read that question.

Question. You could—

Answer. I was always there.

Question. Well, the last one was: 'You could see and hear everything.' That is not correct, is it?

Answer. I could not see and hear everything, no.

Question. Okay. Now, there was a first one: 'You were there when I was'—

A '—when she was there.'

Question. '—when she was there.'

Answer. And that's—to my knowing, that's correct.

Question. Well, but you've already testified that there were several occasions when the President and Ms. Lewinsky were in the Oval Office when you were not there in—

Answer. But if she was there, I was there. She was not—to my knowing, she didn't come to see him or come there, and I wasn't there.

Question. You mean that she was always—you were always there when Ms. Lewinsky came to visit him.

Answer. Mm-hmm.

Question. You were always in the general area.

Answer. Correct.

Question. Okay. You also told us in the last couple days when we discussed this matter with the President, that he appeared to you—when he was going through these statements and talking about what occurred in the deposition, that he appeared to be concerned.

Answer. Appeared to be concerned, yes.

Question. Okay. Let's move on—

Answer. Thank you.

Question. —to the next—the following days. You left the White House after this discussion with the President; is that correct?

Answer. (Nodding.)

Question. When was the next time you heard from him, approximately?

Answer. I was reminded that Monday was a holiday.

Question. "Martin Luther King's birthday."

(Grand Jury Testimony of Betty Currie, 1/27/98, pp. 71–76, H. Doc. 105–316, pp. 559–60).

The evidence also indicates that the President knew the Paula Jones attorneys might contact Betty Currie because he suggested to them several times during his deposition that she may possessed information necessary to answer questions posed by counsel. (Deposition of President Clinton, 1/17/98 (released in news accounts)).

Question 53. Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? "We were never really alone."

b. "You could see and hear everything."

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

d. "She wanted to have sex with me and I couldn't do that."

Answer. I previously told the grand jury that, "I don't know that I" had another conversation with Ms. Currie within several days of January 18, 1998, in which I made statements similar to those quoted above. "I remember having this [conversation] one time." App. at 592. I further explained, "I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think." App. at 593.

I understand that Ms. Currie has said a second conversation occurred the next day that I was in the White House (when she was), Supp. at 535–36, which would have been Tuesday, January 20, before I knew about the grand jury investigation.

Reference. The record indicates that the President made statements similar to these to Betty Currie within several days of January 18, 1998:

". . . [W]hen he called me in the Oval Office, it was sort of a recapitulation of what we had talked about on Sunday. . . ." (Grand Jury Testimony of Betty Currie, 1/27/98, p. 81, H. Doc. 105–316, p. 561).

Question 54. Do you admit or deny that on January 18, 1998, at or about 11:02 p.m., you telephoned Betty Currie at her home?

Answer. According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 18, 1998, at or about 11:02 p.m. App. at 2881.

Reference. The record indicates that such a telephone call was made. See Telephone Table 47, Call 11, as referenced on p. 174 of H. Doc. 105–311.

Question 55. Do you admit or deny that on Monday, January 19, 1998, at or about 8:50 a.m., you telephoned Betty Currie at her home?

Answer. According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 8:50 a.m. App. at 3147.

Reference. The record indicates that such a telephone call was made. See Telephone Table 48, Call 8, as referenced on p. 176 of H. Doc. 105–311.

Question 56. Do you admit or deny that on Monday, January 19, 1998, at or about 8:56 a.m., you telephoned Vernon Jordan at his home?

Answer. According to White House records included in the OIC Referral, I called Mr. Jordan's residence on January 19, 1998, at or about 8:56 a.m. App. at 2864.

Reference: The record indicates that such a telephone call was made. See Telephone Table 48, Call 10, as referenced on p. 176 of H. Doc. 105–311.

Question 57. Do you admit or deny that on Monday, January 19, 1998, at or about 10:58 a.m., you telephoned Vernon Jordan at his office?

Answer. According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 10:58 a.m. App. at 2883

Reference: The record indicates that such a telephone call was made. See Telephone Table 48, Call 16, as referenced on p. 177 of H. Doc. 105–311.

Question 58. Do you admit or deny that on Monday, January 19, 1998, at or about 1:45 p.m., you telephoned Betty Currie at her home?

Answer. According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 1:45 p.m. App. at 2883.

Reference: The record indicates that such a telephone call was made. See Telephone Table 48, Call 21, as referenced on p. 177 of H. Doc. 105–311.

Question 59. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., you met with individuals including Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, and Rahm Emanuel?

Answer. I do not believe such a meeting occurred. White House records included in the OIC Referral indicate that Mr. Jordan entered the White House complex that day at 2:44 p.m. Supp. at 1995. According to Mr. Jordan's testimony, he and I met alone in the Oval Office for about 15 minutes. Supp. at 1763 (grand jury testimony of Vernon Jordan).

I understand that Mr. Jordan testified that we discussed Ms. Lewinsky at that meeting and also the Drudge Report, in addition to other matters. Supp. at 1763. Please also see my Response to Request No. 48. supra.

Reference: The record indicates that Vernon Jordan entered the White House at 2:44 p.m. on January 19, 1998 (H. Doc. 105–316, p. 1995). Vernon Jordan's Grand Jury Testimony reveals that he

and the President had a meeting at that time. (Grand Jury Testimony of Vernon Jordan, 3/5/98, p. 124, H. Doc. 105–316, p. 1763).

Question 60. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., at any meeting with Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel, and others, you discussed the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp, or any other matter relating to Monica Lewinsky?

Answer. I do not believe such a meeting occurred. White House records included in the OIC Referral indicate that Mr. Jordan entered the White House complex that day at 2:44 p.m. Supp. at 1995. According to Mr. Jordan's testimony, he and I met alone in the Oval Office for about 15 minutes. Supp. at 1763 (grand jury testimony of Vernon Jordan).

I understand that Mr. Jordan testified that we discussed Ms. Lewinsky at that meeting and also the Drudge Report, in addition to other matters. Supp. at 1763. Please also see my Response to Request No. 48. supra.

Reference: The record indicates that Vernon Jordan entered the White House at 2:44 p.m. on January 19, 1998 (H. Doc. 105–316, p. 1995). The President met with Vernon Jordan shortly thereafter and they discussed the existence of the Tripp tapes:

> *Question.* Now, with as much specificity as you can, what would you have told him about the Drudge Report?
>
> Answer. That I had seen the Drudge Report. He obviously knew about the Drudge Report, it did not require any lengthy discussion.
>
> *Question.* Well, when you say he obviously knew about the Drudge Report, how do you know he knew about the Drudge Report?
>
> Answer. He acknowledged in some way that he knew about the Drudge Report and I think it's fair to say he was as surprised at this Drudge Report that reported that there had been these taped conversations with this person named Linda Tripp." (Grand Jury Testimony of Vernon Jordan, 3/5/98, p. 126, H. Doc. 105–316, p. 1764).

Question 61. Do you admit or deny that on Monday, January 19, 1998, at or about 5:56 p.m., you telephoned Vernon Jordan at his office?

Answer. According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 5:56 p.m. App. at 2883.

Reference: The record indicates that such a telephone call was made. See Presidential Call Log, H. Doc. 105–311, p. 2882.

Question 62. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you stated that you rebuffed alleged advances from Monica Lewinsky and in which you made a statement similar to the following?: "Monica Lewinsky came at me and made a sexual demand on me."

Answer. As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my rela-

tionship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

Reference: The record indicates that such a conversation occurred. Testifying before the grand jury on June 4, 1998, Sidney Blumenthal, an Assistant to the President, related the following discussion he had with the President on January 21, 1998:

> He said Dick Morris had called him that day and he said Dick had told him that Nixon—he had read the newspaper and he said "You know, Nixon could have survived if he had gone on television and given an address and said everything he had done wrong and got it all out in the beginning."
>
> And I said to the President, "What have you done wrong?" And he said, "Nothing, I haven't done anything wrong." I said, "Well then, that's one of the stupidest things I've ever heard. Why would you do that if you've done nothing wrong?"
>
> And it was at that point that he gave his account of what had happened to me and he said that Monica-and it came very fast. He said, "Monica Lewinsky came at me and made a sexual demand on me." He rebuffed her. He said, I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again." (Grand Jury Testimony of Sidney Blumenthal, 6–4–98, p. 49, H. Doc.105–316, p.185).

During his testimony before the grand jury, President Clinton admitted he made "misleading" statements to aides whom he knew were likely to be called to testify before the grand jury. The President testified as follows:

> "*Question.* Do you recall denying any sexual relationship with Monica Lewinsky to the following people: Harry Thomasson, Erskine Bowles, Harold Ickes, Mr. Podesta, Mr. Blumenthal, Mr. Jordan, Ms. Betty Currie? Do you recall denying any sexual relationship with Monica Lewinsky to these individuals?
>
> Answer. I recall telling a number of those people that I didn't have, either I didn't have an affair with Monica Lewinsky or didn't have sex with her. And I believe sir, that-you'll have to ask them what they thought. But I was using those terms in the normal way people use them. You'll have to ask them what they thought I was saying.
>
> *Question.* You knew that they might be called into a grand jury, didn't you?
>
> Answer That's right." (Grand Jury Testimony of William Jefferson Clinton, 8/17/98, pp. 105–107, H. Doc. 105–311, p. 647).

Question 63. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the Washington Post, you had a conversation with Sidney Blumenthal, in which you made a statement similar to the following in response

to a question about your conduct with Monica Lewinsky?: "I haven't done anything wrong."

Answer. *As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.*

Reference. The record indicates that such a conversation occurred. See Blumenthal testimony in request for admission number 62.

Question 64. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the Washington Post, you had a conversation with Erskine Bowles, Sylvia Matthews and John Podesta, in which you made a statement similar to the following?: "I want you to know I did not have sexual relationships with this woman Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll understand."

Answer. As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

Reference. The record indicates that such a conversation occurred. In his grand jury testimony on June 16, 1998, then White House Deputy Chief of Staff John Podesta (now Chief Of Staff) testified to the following regarding a January 21, 1998 meeting with President Clinton:

> "Answer And we went in to see the President.
>
> *Question.* Who's we?
>
> Answer Mr. Bowles, myself and Ms. Matthews.
>
> *Question.* Okay. Tell us about that.
>
> Answer And we started off the meeting—we didn't—I don't think we said anything, and I think the President directed this specifically to Mr. Bowles. He said, "Erskine, I want you to know that this story is not true.
>
> *Question.* What else did he say?
>
> Answer He said that-that he had not had a sexual relationship with her, and that he never asked anybody to lie." (Grand Jury Testimony of John Podesta, 6/16/98, p. 85, H. Doc. 105–316, p. 3310).

Erskine Bowles had the following recollection of the same meeting:

> "Answer And this was the day this huge story breaks. And the three of us walk in together—Sylvia Matthews, John Podesta and me—into the oval office, and the President was standing behind his desk.
>
> *Question.* About what time of day is this?
>
> Answer This is approximately 9:00 in the morning or something—you know, in that area. And he looked up at us and he said the same thing he said to the American people. He said, I want you to know I did not have sexual relationships with this woman Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll un-

derstand." (Grand Jury Testimony of Erskine Bowles, 4/2/98, pp. 83–84, H. Doc. 105–316, p. 239).

Question 65. Do you admit or deny that on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you had never had an affair with Monica Lewinsky?

Answer. As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

Reference. The record indicates that on January 23, 1998, President Clinton told John Podesta that he had never had sex with Monica Lewinsky in any way whatsoever:

> "Answer See, we were getting ready to do the State of the Union prep and he was working on the state of the union draft back in his study. I went back there to just to kind of get him going—this is the first thing in the morning—you know, we sort of get engaged. I asked him how he was doing, and he said he was working on this draft, and he said to me that he had never had sex with her, and that-he never asked-you know, he repeated the denial, but he was extremely explicit in saying he never had sex with her.
>
> *Question.* How do you mean?
>
> Answer Just what I said.
>
> *Question.* Okay. Not explicit, in the sense that he got more specific than sex, than the word "sex."
>
> Answer Yes, he was more specific than that.
>
> *Question.* Okay. Share that with us.
>
> Answer Well, I think he said—he said that—there was some spate of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever——
>
> *Question.* Okay.
>
> Answer —that they had not had oral sex.
>
> *Question.* No question in you mind he's denying any sex in any way, shape or form, correct?
>
> Answer That's correct." (Grand Jury Testimony of John Podesta, 6/16/98, pp. 91–3, H. Doc. 105–316, p. 3311).

Question 66. Do you admit or deny that on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you were not alone with Monica Lewinsky in the Oval Office, and that Betty Currie was either in your presence or outside your office with the door open while you were visiting with Monica Lewinsky?

Answer. As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

Reference. The record indicates that such a conversation occurred:

Question. Did the President ever speak to that issue with you, the issue of if he didn't have an improper relationship with Ms. Lewinsky, what was she doing there so often? Did he ever speak to that?

Answer He said to me—I don't think it was in this conversation, I think it was a couple weeks later. He said to me that after she left, that when she had come by, she came to see Betty, and that he—when she was there, either Betty was with them—either that she was with Betty when he saw her or that he saw her in the Oval Office with the door open and Betty was around—and Betty was out at her desk." (Grand Jury Testimony of John Podesta, 6/16/98, p.88, H. Doc. 105–316, p. 3310).

Question 67. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you did not have an affair with Monica Lewinsky?

Answer. As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

Reference. The record indicates that such a conversation occurred. Harold Ickes, a former Deputy Chief of Staff at the White House testified before the grand jury that President Clinton told him that he had not had a sexual relationship with Monica Lewinsky:

> *Question.* What did the President say about Monica Lewinsky?
>
> Answer. The only discussion I recall having with him, he denied that he had had sexual relations with Ms. Lewinsky and denied that he had—I don't know how to capsulize it—obstructed justice, let's use that phrase. (Grand Jury Testimony of Harold Ickes, 6/10/98, p. 21, H. Doc. 105–316, p. 1487; See also Grand Jury Testimony of Harold Ickes from 8/5/98, p. 88, H. Doc.105–316, p.1610 ("He denied to me that he had had a sexual relationship. I don't know the exact phrase, but the word 'sexual' was there. And he denied any obstruction of justice")).

Question 68. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you had not asked anyone to change their story, suborn perjury or obstruct justice if called to testify or otherwise respond to a request for information from the Office of Independent Counsel or in any other legal proceeding?

Answer. As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

Reference. The record indicates that such a conversation occurred. Harold Ickes testified before the grand jury that: "The two things I recall, the two things that he again repeated in public—had already said publicly and repeated in public that same Monday

morning was that he had not—he did not have a—or he had not had a sexual relationship with Ms. Lewinsky and that he had done nothing—now I'm paraphrasing—had done nothing to ask anybody to change their story or suborn perjury or obstruct justice." (Grand Jury Testimony of Harold Ickes, 6/10/98, p. 73, H. Doc. 105–316, p. 1539).

During his testimony before the grand jury, President Clinton admitted he made "misleading" statements to aides whom he knew were likely to be called to testify before the grand jury. The President testified as follows:

> *Question.* Do you recall denying any sexual relationship with Monica Lewinsky to the following people: Harry Thomasson, Erskine Bowles, Harold Ickes, Mr. Podesta, Mr. Blumenthal, Mr. Jordan, Ms. Betty Currie? Do you recall denying any sexual relationship with Monica Lewinsky to these individuals?
>
> Answer. I recall telling a number of those people that I didn't have, either I didn't have an affair with Monica Lewinsky or didn't have sex with her. And I believe sir, that—you'll have to ask them what they thought. But I was using those terms in the normal way people use them. You'll have to ask them what they thought I was saying.
>
> *Question.* You knew that they might be called into a grand jury, didn't you?
>
> Answer. That's right." (Grand Jury Testimony of William Jefferson Clinton, 8/17/98, pp. 105–107, H. Doc. 105–311, p. 647).

Question 69. Do you admit or deny that, on or about January 21, 1998, you and Richard "Dick" Morris discussed the possibility of commissioning a poll to determine public opinion following the Washington Post story regarding the Monica Lewinsky matter?

Answer. At some point after the OIC investigation became public, Dick Morris volunteered to conduct a poll on the charges reported in the press. He later called back. What I recall is that he said the public was most concerned about obstruction of justice or subornation of perjury. I do not recall saying, "Well, we just have to win then."

Reference. The record indicates that such a discussion occurred. Richard "Dick" Morris testified before the Grand Jury that during a conversation with the President the same day the Washington Post published a story concerning Monica Lewinsky, Mr. Morris suggested a public poll to test public opinion about the story. President Clinton asked Mr. Morris "When can you do it?", Mr. Morris replied "Tonight." and President Clinton requested Mr. Morris to "Call me tonight with the numbers." (Grand Jury Testimony of Richard Morris, 8/18/98, p. 17, H. Doc. 105–316, p. 2927).

Question 70. Do you admit or deny that you had a later conversation with Richard "Dick" Morris in which he stated that the polling results regarding the Monica Lewinsky matter suggested that the American people would forgive you for adultery but not for perjury or obstruction of justice?

Answer. At some point after the OIC investigation became public, Dick Morris volunteered to conduct a poll on the charges re-

ported in the press. He later called back. What I recall is that he said the public was most concerned about obstruction of justice or subornation of perjury. I do not recall saying, "Well, we just have to win then."

Reference. The record indicates that such a conversation occurred. Richard "Dick" Morris testified before the Grand Jury that he explained the results of a public opinion poll to President Clinton. Mr. Morris testified, "They're just too shocked by this. It's just too new, it's too raw. And the problem is they're willing to forgive you for adultery, but not for perjury or obstruction of justice or the various other things. They're even willing to forgive the conduct. They're not willing to forgive the word. In other words, if in fact you told Monica Lewinsky to lie, they can forgive that, but if you committed subornation of perjury, they won't." (Grand Jury Testimony of Richard Morris, 8/18/98, pp. 28, 29, H. Doc.105–316, pp. 2929, 2930).

Question 71. Do you admit or deny that you responded to Richard "Dick" Morris's explanation of these polling results by making a statement similar to the following: "[w]ell, we just have to win, then" ?

Answer. At some point after the OIC investigation became public, Dick Morris volunteered to conduct a poll on the charges reported in the press. He later called back. What I recall is that he said the public was most concerned about obstruction of justice or subornation of perjury. I do not recall saying, "Well, we just have to win then."

Reference. The record indicates that the President gave such a response. Richard Morris testified before the Grand Jury that after explaining to President Clinton that he would lose political support by admitting to obstructing justice and suborning perjury, President Clinton replied "[w]ell, we just have to win then." (Grand Jury Testimony of Richard Morris, 8/18/98, p. 30, H. Doc. 105–316, p. 2930).

Question 72. Do you admit or deny the past or present existence of or the past or present direct or indirect employment of individuals, other than counsel representing you, whose duties include making contact with or gathering information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Answer. I cannot respond to this inquiry because of the vagueness of its terms (e.g., "indirect," "potential," "could be involved"). To the extent it may be interpreted to apply to individuals assisting counsel, please see my responses to Request Nos. 73–75, infra. To the extent the inquiry addresses specific individuals, as in Request Nos. 73–75, infra, I have responded and stand ready to respond to any other specific inquiries.

Reference. The record indicates that such individuals may have been employed for such a purpose. Richard Morris testified before the Grand Jury that there was a "White House Secret Police Operation", Mr. Morris explained that the operation stemmed "more from Hillary Clinton than from Bill." Mr. Morris identified Terry Lenzner, Jack Palladino and Betsey Wright as members of this group. (Grand Jury Testimony of Richard Morris, 8/18/98, p. 60, H. Doc. 105–316, p. 2937).

Question 73. Do you admit or deny having knowledge that Terry Lenzner was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Answer. My counsel stated publicly on February 24, 1998, that Mr. Terry Lenzner and his firm have been retained since April 1994 by two private law firms that represent me. It is commonplace for legal counsel to retain such firms to perform legal and appropriate tasks to assist in the defense of clients. *See also* Response to No. 72.

Reference. The record indicates that Terry Lenzner may have been contacted or employed for such a purpose. Richard Morris testified before the Grand Jury that Terry Lenzner was a member of the "White House Secret Police Operation" but that he was only aware of Mr. Lenzner from news accounts. (Grand Jury Testimony of Richard Morris, 8/18/98, pp. 60, 72, H. Doc. 105–316, pp. 2937, 2941).

Question 74. Do you admit or deny having knowledge that Jack Palladino was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Answer. My understanding is that during the 1992 Presidential Campaign, Mr. Jack Palladino was retained to assist legal counsel for me and the Campaign on a variety of matters arising during the Campaign. *See also Response to No. 72.*

Reference. The record indicates that Mr. Palladino may have been contacted or employed for such a purpose. Richard Morris testified before the Grand Jury that Mr. Palladino was a member of the "White House Secret Police Operation." (Grand Jury Testimony of Richard Morris, 8/18/98, p. 72, H. Doc. 105–316, p. 2941.)

Question 75. Do you admit or deny having knowledge that Betsey Wright was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Answer. Ms. Betsey Wright was my long-time chief of staff when I was Governor of Arkansas, and she remains a good friend and trusted advisor. Because of her great knowledge of Arkansas, from time to time my legal counsel and I have consulted with her on a wide range of matters. *See also* Response to No. 72.

Reference. The record indicates that Betsey Wright was contacted or employed for such a purpose. Richard "Dick" Morris testified before the Grand Jury that Betsey Wright told him that "what we do is we work on getting material on them to try to induce them not to compromise the President." Betsey Wright was identified by Mr. Morris as a member of the "White House Secret Police Operation." (Grand Jury Testimony of Richard Morris, p. 76, H. Doc. 105–316, p. 2941).

Question 76. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in an interview with *Roll Call,* when you stated "Well, let me say, the relationship was not improper, and I

think that's important enough to say. But because the investigation is going on and because I don't know what is out—what's going to be asked of me, I think I need to cooperate, answer the questions, but I think it's important for me to make it clear what is not. And then, at the appropriate time, I'll try to answer what is. But let me answer—it is not an improper relationship and I know what the word means."?

Answer. The tape of this interview reflects that in fact I said: "Well, let me say the relationship's not improper and I think that's important enough to say. . ." With that revision, the quoted words accurately reflect my remarks. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, I misled people about this relationship, for which I have apologized.

Reference. On August 17, 1998, after testifying before the grand jury, the President addressed the American people from the White House and stated "Indeed I did have a relationship with Ms. Lewinsky that was not appropriate. In fact, it was wrong. It constituted a critical lapse in judgment and a personal failure on my part for which I am solely and completely responsible." (34 Weekly Compilation of Presidential Documents, p. 1638).

Question 77. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in the Oval Office during a photo opportunity, when you stated "Now, there are a lot of other questions that are, I think, very legitimate. You have a right to ask them; you and the American people have a right to get answers. We are working very hard to comply and get all the requests for information up here, and we will give you as many answers as we can, as soon as we can, at the appropriate time, consistent with our obligation to also cooperate with the investigations. And that's not a dodge, that's really what I've—I've talked with our people. I want to do that. I'd like for you to have more rather than less, sooner rather than later. So we'll work through it as quickly as we can and get all those questions out there to you."?

Answer. I made this statement (as corrected), according to a transcript of a January 22, 1998 photo opportunity in the Oval Office. This statement was not false and misleading. It accurately represented my thinking.

Reference. On January 26, 1998, after making the above statement that he would give as many answers as he could, as soon as he could, the President stated publicly "I did not have sexual relations with that woman, Ms. Lewinsky. . . these allegations are false."

Question 78. Do you admit or deny that you discussed with Harry Thomasson, prior to making public statements in response to questions asked by the press in January, 1998, relating to your relationship with Monica Lewinsky, what such statements should be or how they should be communicated?

Answer. Mr. Thomasson was a guest at the White House in January 1998, and I recall his encouraging me to state my denial forcefully.

Reference. The record indicates that such a discussion occurred. On January 22nd, the President Clinton's friend and advisor,

Harry Thomasson traveled from California to Washington, D.C., and stayed in the White House residence for the next 34 days. Mr. Thomasson advised the President on how best to communicate with the public regarding his relationship with Monica Lewinsky. Mr. Thomasson appeared before the grand jury on August 11, 1998:

> *Question.* Okay. Did you talk specifically about his performance in the interview and his responses in the interview? (referring to a January 21, 1998, interview on television with Jim Lehrer)
>
> Answer. Yes. I mean, to the best of my knowledge, I said, "You know, what you said was exactly right, but the press is just saying you were equivocating." You know. And I said, "If the allegation is not true, then you shouldn't equivocate. You should explain it so there's no doubt in anybody's mind that nothing happened."
>
> *Question.* Okay. Did you tell the President that you thought he had equivocated in the interview?
>
> Answer. I told the President that I though his response wasn't as strong as it could have been.
>
> Harry Thomasson testified later that the President replied to Mr. Thomasson's statements by saying "You know, you're right. I should be more forceful than that." Grand Jury Testimony of Harry Thomasson, 8/11/98, pp. 15–16, 27 (H. Doc. 105–316, pp. 3730 and 3733).

Question 79. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman, Ms. Lewinsky?"

Answer. I made this statement on January 26, 1998, although not in response to any question. In referring to "sexual relations", I was referring to sexual intercourse. *See also App. at 475. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, answers like this misled people about this relationship, for which I have apologized.*

Reference. On August 17, 1998, after testifying before the grand jury, the President addressed the American people from the White House and stated "Indeed I did have a relationship with Ms. Lewinsky that was not appropriate. In fact, it was wrong. It constituted a critical lapse in judgment and a personal failure on my part for which I am solely and completely responsible." (34 Weekly Compilation of Presidential Documents, p. 1638).

Question 80. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated " . . . I never told anybody to lie, not a single time. Never?"

Answer. This statement was truthful: I did not tell Ms. Lewinsky to lie, and I did not tell anybody to lie about my relationship with Ms. Lewinsky. I understand that Ms. Lewinsky also has stated that I never asked or encouraged her to lie. *See App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); see also App. at 1161 (grand jury testimony of Ms. Lewinsky).*

Reference. The record indicates that the President made untruthful statements to many of his Cabinet officials, White House aides, and others who would naturally be asked publicly and called as a witness to testify about his relationship with Monica Lewinsky. See Requests for Information Nos. 62–68.

The record indicates that the President may have directly instructed Betty Currie to lie about his relationship with Monica Lewinsky. See Request for Information No. 52.

After the President knew that Monica Lewinsky was on the witness list in the *Jones* case, the record indicates he told her to lie about the time they spent together:

"A . . . At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up, he sort of said, "You know, you can always say you were coming to see Betty or that you were bringing me letters.' Which I understood was really a reminder of things that we had discussed before." (Grand Jury Testimony of Monica Lewinsky, 8/6/98, p.123, H. Doc. 105–311, p. 843).

Question 81. Do you admit or deny that you directed or instructed Bruce Lindsey, Sidney Blumenthal, Nancy Hernreich and Lanny Breuer to invoke executive privilege before a grand jury empaneled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit in 1998?

Answer. On the recommendation of Charles Ruff, Counsel to the President, I authorized Mr. Ruff to assert the presidential communications privilege (which is one aspect of executive privilege) with respect to questions that might be asked of witnesses called to testify before the grand jury to the extent that those questions sought disclosure of matters protected by that privilege. Thereafter, I understand that the presidential communications privilege was asserted as to certain questions asked of Sidney Blumenthal and Nancy Hernreich. Further, I understand that, as to Mr. Blumenthal and Ms. Hernreich, all claims of official privilege were subsequently withdrawn and they testified fully on several occasions before the grand jury.

Mr. Lindsey and Mr. Breuer testified at length before the grand jury about a wide range of matters, but declined, on the advice of the White House Counsel, to answer certain questions that sought disclosure of discussions that they had with me and my senior advisors concerning, among other things, their legal advice as to the assertion of executive privilege. White House Counsel advised Mr. Lindsey and Mr. Breuer that these communications were protected by the attorney-client privilege, as well as executive privilege. Mr. Lindsey also asserted my personal attorney-client privilege as to certain questions relating to his role as an intermediary between me and my personal counsel in the Jones v. *Clinton case, a privilege that was upheld by the federal appeals court in the District of Columbia.*

Reference. The record indicates that Bruce Lindsey, Sidney Blumenthal, Nancy Hernreich and Lanny Breuer all invoked executive privilege when they appeared before the grand jury. Executive privilege, unlike the 5th Amendment privilege against self incrimination, the attorney—client privilege, or the spousal privilege, is not a personal privilege. Executive privilege is constitutionally

based—it is rooted in the doctrine of separation of powers. Executive privilege, which adheres to the office of the president and not the occupant of that office, shields communications relating to the exercise of core presidential functions.

Because executive privilege is constitutionally based and because it adheres to the office of the President, only the President can authorize its assertion. Most legal scholars agree it can not be delegated to subordinates.

The President, while in Africa, publicly denied knowing anything about the assertions. If that is true, his staff invoked the privilege without his authorization which would be unconstitutional and could be viewed as an abuse of power intended to obstruct the investigation.

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