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IMPEACHMENT OF PRESIDENT WILLIAM JEFFERSON CLINTON

THE EVIDENTIARY RECORD PURSUANT TO S. RES. 16

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COMMITTEE PRINT

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AUTHORIZATION OF AN INQUIRY INTO WHETHER GROUNDS EXIST FOR THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

MEETING OF THE HOUSE COMMITTEE ON THE JUDICIARY HELD OCTOBER 5, 1998
PRESENTATION BY INQUIRY STAFF
CONSIDERATION OF INQUIRY RESOLUTION
ADOPTION OF INQUIRY PROCEDURES

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

HENRY J. HYDE, *Chairman*

DECEMBER 1998

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MEETING OF THE HOUSE COMMITTEE ON THE JUDICIARY HELD OCTOBER 5, 1998

PRESENTATION BY INQUIRY STAFF CONSIDERATION OF INQUIRY RESOLUTION ADOPTION OF INQUIRY PROCEDURES

MONDAY, OCTOBER 5, 1998

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

The committee met, pursuant to notice, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Henry J. Hyde (chairman of the committee) presiding.

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

Majority Staff Present: Thomas E. Mooney, Sr., general counsel-chief of staff; Jon W. Dudas, deputy general counsel-staff director; Diana L. Schacht, deputy staff director-chief counsel; Daniel M. Freeman, parliamentarian-counsel; Joseph H. Gibson, chief counsel: Rick Filkins, counsel; Sharee M. Freeman, counsel; John F. Mautz, IV, counsel; William Moschella, counsel; Stephen Pinkos, counsel; Sheila F. Klein, executive assistant to general counsel-chief of staff; Annelie Weber, executive assistant to deputy general counsel-staff director; Samuel F. Stratman, press secretary; James B. Farr, financial clerk; Elizabeth Singleton, legislative correspond-

ent; Sharon L. Hammersla, computer systems coordinator; Joseph McDonald, publications clerk; Shawn Friesen, staff assistant/clerk; Robert Jones, staff assistant; Michael Connolly, communications assistant; Michelle Morgan, press secretary; and Patricia Katyoka, research assistant.

Subcommittee on the Constitution Staff Present: John H. Ladd, chief counsel; and Cathleen A. Cleaver, counsel.

Subcommittee on Courts and Intellectual Property Staff Present: Mitch Glazier, chief counsel; Blaine S. Merritt, counsel; and Vince Garlock, counsel.

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

Subcommittee on Immigration and Claims Staff Present: George M. Fishman, chief counsel; and Laura Ann Baxter, counsel.

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

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

Majority Investigative Staff Present: Abbe D. Lowell, minority chief investigative counsel; Lis W. Wiehl, investigative counsel; Deborah L. Rhode, investigative counsel; Kevin M. Simpson, investigative counsel; Steven F. Reich, investigative counsel; Sampak P. Garg, investigative counsel; John P. Flannery, special counsel; Maria Reddick, staff assistant and clerk, executive session; Stephanie Peters, counsel; and David Lachmann, professional staff.

OPENING STATEMENT OF HENRY J. HYDE, CHAIRMAN, COMMITTEE ON THE JUDICIARY

Mr. HYDE. The committee will come to order. It is the intention of the Chair to conduct today's meeting in the following manner.

First, I will make opening remarks for a period not to exceed 10 minutes, and then Mr. Conyers, the ranking Democrat, will be recognized to make opening remarks for a period not to exceed 10 minutes.

After the conclusion of those two statements, each member will be recognized for 5 minutes to make an opening statement. The Chair normally likes to be liberal on the 5 minutes, but I think you can understand with all of the members here doubtless seeking to make an opening statement, we will have to be rather rigid on the 5 minutes. So I ask you to not ask for extensions of time, if possible.

Second, we will then receive a presentation from Mr. Schippers for a period not to exceed 1 hour and a presentation from Mr. Lowell for a period not to exceed 1 hour.

Thirdly, I will offer a resolution relating to the authorization of an investigation of whether the House should undertake its constitutional responsibility to impeach the President of the United States of America. At that point, members will be recognized under the 5-minute rule to offer amendments to the proposed resolution.

Fourth, I will offer proposed committee rules of procedure for the impeachment inquiry. At that point, members will be recognized under the 5-minute rule to offer amendments to the proposed rules of procedure.

I think if we respect the time constraints we have, we can finish this this evening, and we are going to make every effort to do that.

Mr. CONYERS. If the Chairman will yield, I concur with the procedure you have outlined. I think it is fair, and I think it leads to an orderly beginning of this very serious matter before us. Thank you.

Mr. HYDE. I thank my friend. The Chair recognizes himself for 10 minutes.

On September 18th, the House of Representatives passed a resolution with strong bipartisan support, 363 to 63, directing the referral from the Office of Independent Counsel to this committee with instructions that it be reviewed and released by the 28th of September, unless the committee thought certain information should be held back in the interests of privacy or to protect innocent people.

The House thus placed in our care the task of reviewing more than 60,000 pages of materials in less than three weeks and ultimately deciding what should be placed in the public domain. We have not always agreed on how to handle this information, but we have agreed on the vast majority.

I believe we can also agree that we could not have accomplished this daunting assignment if not for the tireless work of the committee staff, both Democratic and Republican, who worked day and night, sometimes around the clock, to prepare these materials for our review. These men and women rose to the occasion and our gratitude goes out to them.

On September 11th, the Office of Independent Counsel transmitted materials to the House of Representatives that in its opinion constituted substantial and credible evidence that may constitute grounds for impeachment of the President of the United States. The appointment of an Independent Counsel had been recommended by Attorney General Janet Reno and appointed by and served under the direction of the United States Court of Appeals. Judge Starr was selected by a three-judge panel, appointed by the Chief Justice of the U.S. Supreme Court.

Today, it is our responsibility and our constitutional duty to review those materials referred to us and recommend to the House of Representatives whether the matter merits a further inquiry. Let me be clear about this: We are not here today to decide whether or not to impeach Mr. Clinton. We are not here to pass judgment on anyone. We are here to ask and answer this one simple question: Based upon what we now know, do we have a duty to look further or to look away?

We are constantly reminded how weary America is of this whole situation, and I dare say most of us share that weariness. But we

Members of Congress took an oath that we would perform all of our constitutional duties, not just the pleasant ones. As Chairman Peter Rodino stated in 1974, "We cannot turn away out of partisanship or convenience from problems that are now our responsibility, our inescapable responsibility to consider. It would be a violation of our own public trust if we as the people's representatives chose not to inquire, not to consult, not even to deliberate, and then pretend that we had not by default made choices."

This will be an emotional process, a strenuous process, because feelings are high on all sides of this question. But the difficulties ahead can be surmounted with good will and an honest effort to do what is best for the country.

In the first year of the Republic, Thomas Payne wrote, "Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it." For almost 200 years, Americans have undergone the stress of preserving their freedom and the Constitution that protects it.

We are going to work expeditiously and fairly. When we have completed our inquiry, whatever the result, we will make our recommendations to the House. We will do so as soon as we can, consistent with principles of fairness and completeness.

I anticipate several objections to our procedures from our Democratic friends, the first of which deals with their demand that we establish first, before proceeding with any inquiry, what the standards are for impeachment. We don't propose, however, to deviate from the wise counsel of former Chairman Peter Rodino, who during the Nixon impeachment inquiry published a staff report rejecting the establishment of a particular standard for impeachment before inquiring into the facts of the case.

Let me quote from Chairman Rodino's report: "Delicate issues of basic constitutional law are involved. Those issues cannot be defined in detail in advance of full investigation of the facts. The Supreme Court of the United States does not reach out in the abstract to rule on the constitutionality of statutes or of conduct. Cases must be brought and adjudicated on particular facts in terms of the Constitution. Similarly, the House does not engage in abstract advisory or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers. Rather, it must await full development of the facts, an understanding of the events to which those facts relate."

The 20th century has been referred to often as the American century. It is imperative we be able to look back at this episode with dignity and pride, knowing we have performed our duties in the best interests of the entire country. In this difficult moment in our history lies the potential for our finest achievement, proof that democracy works.

I yield to the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Hyde.

And to my colleagues all, we meet today for only the third time in the history of our Nation to consider whether or not to open an inquiry of impeachment against the President of the United States. For more than 200 years we have been guided by that brilliant legacy of our Founding Fathers and of our Constitution which genera-

tion after generation has helped us endure the difficult political and social questions that face us.

I am quite certain that the drafters of that document might shake their heads in puzzlement at the action that is proposed by the majority that we take here today. By now we are all familiar with the constitutional standard for impeachable offenses: treason, bribery and other high crimes and misdemeanors. One of our great Founding Fathers, George Mason, said that the phrase "high crimes and misdemeanors" refers to presidential actions that are great and dangerous offenses or attempts to subvert the Constitution.

Alexander Hamilton, in the Federalist Paper Number 65, wrote that impeachable offenses relate chiefly to injuries done immediately to society itself.

Two hundred years later, this committee was called upon to consider the standard for impeachment of a President in 1974, and at the risk of dating myself, I remain the only member of the committee serving today who was there then.

Our staff issued a report in February of that year that has become a model for scholars and historians alike. The report concluded that impeachment is a constitutional remedy addressed to serious offenses against the system of government, and it is directed at constitutional wrongs that subvert the structure of government or undermine the integrity of office and even the Constitution itself.

Those words are as true today as they were in 1974. An impeachment is only for a serious abuse of official power or a serious breach of official duties. On that, the constitutional scholars are in overwhelming agreement.

The failure to even articulate a standard of impeachment against which the evidence can be measured, a step the 1974 committee took prior to any investigation, is not only a failure of this investigation into the President. The tactics of the investigation into the President have also, in my judgment, been an offense to the tradition of this great country and to the common sense of the American people.

Only yesterday we learned that Judge Starr may have himself misled the American people regarding his contacts with President Clinton's mythical adversaries and his coordination with Paula Jones' attorneys for over a year before he sought to investigate the so-called Lewinsky matter.

Then Mr. Starr, month after month, apparently leaked raw grand jury material to the press, not for legal reasons, but only to embarrass the President of the United States, an act for which Mr. Starr himself is currently being investigated.

Then the Republican leadership directed this committee to dump tens of thousands of pornographic raw grand jury material on the citizens of this land, and denied the President any semblance of due process rights in doing so.

Now, I believe the American people have a deep sense of right and wrong, of fairness and of privacy, and I believe this investigation has offended those sensibilities.

Who are we in this country and what is it that we stand for? Do we want to have prosecutors with unlimited powers, accountable to

no one, who will spend millions of dollars investigating a person's personal life, who then haul before grand juries every person of the opposite sex the person has had contact with, who then record and release videos to the public of the grand jury questioning of the most private aspects of one's sex life?

Now, there is no question that the President's actions were wrong. I submit to all of you that he may be suffering more than any of us will ever know. But I suggest to you, my colleagues across the aisle, in every ounce of friendship that I can muster, that even worse than an extramarital relationship is the use of Federal prosecutors and Federal agents to expose an extramarital relationship.

Yes, there is a threat to society here, but it is from the tactics when an at-all-cost prosecutor is determined to sink a President of the opposition party.

Our review of the evidence sent with the referral convinces many of us of one thing: There is no support for any suggestion that the President obstructed justice or that he tampered with witnesses or abused the power of his office.

A couple of examples. The referral alleges that the President attempted to find Ms. Lewinsky a job in order to buy her silence, but the evidence, the Starr evidence, makes clear that the efforts to help Ms. Lewinsky find a job began in April of 1996, long before she was ever identified as a witness in the *Jones* case. And she herself testified that "No one ever asked me to lie, and I was never promised a job for my silence."

Likewise, while the referral contends that the President tried to hide gifts he had given her, the evidence makes clear that Ms. Lewinsky and not the President initiated the transfer of those items to the President's secretary.

Finally, by alleging abuses of power by the President, the Independent Counsel has simply repackaged his basic allegation of lying about sex in a quite transparent effort to conjure the ghost of Watergate.

Finally, the President's statements under oath in the dismissed *Paula Jones* case were legally immaterial to the case and would have never formed the legal basis for any investigation, again raising the specter that this investigation may have been tainted with politics.

This is not Watergate, it is an extramarital affair. Americans know, and want to finish this, and 99 percent of the facts are already on the table. The investigatory phase will be far less significant than in previous congressional inquiries.

There are only a handful of witnesses that can provide us probative information, all of whom have been before the grand jury three, four, five and six times. It is unlikely that any of the witnesses will change their testimony. In fact, much of this investigation, quite amazingly, turns on whether or how Mr. Clinton touched Ms. Lewinsky. It sounds like a parody, but it is not. It is what Speaker Gingrich and many Republicans are proposing with this resolution.

The open-ended Republican proposal will be seen exactly for what it is if it is brought forward this morning: a means for dragging this matter out well past the upcoming elections. An open-

ended impeachment inquiry threatens to subvert our system of constitutional government. There is no need for this investigation to be open-ended when we can, because of its limited factual predicate, close it down within 6 weeks.

Mr. Chairman, over the past weeks you and I have worked more closely together than at any other time in our careers, and I want to thank you for many untold efforts that you have made, including providing committee Democrats the Watergate rules of operation which we sought. We have worked in a bipartisan manner on some of the issues that have confronted us, and while your hands may have been tied by your leadership on others, you know as well as I that whatever action this committee takes must be fair, it must be bipartisan, for it to have credibility. The American people deserve no less, and history will judge us by how well we achieve that goal.

Thank you very much.

Mr. HYDE. Thank you very much, Mr. Conyers. Now for 5 minutes for purposes of an opening statement, the Chair is pleased to recognize Mr. Sensenbrenner from Wisconsin.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Today we begin the task second only in gravity to Congress' power to declare war. It is important at the outset to note that this debate is not about the fact that President Clinton had an affair with Monica Lewinsky and then lied about it to his family, his staff, his Cabinet and to the American public. It is about Judge Starr's finding that the President violated his oath to tell the truth, the whole truth and nothing but the truth in a successful attempt to defeat Paula Jones' civil rights suit against him.

The material before us contains evidence that President Clinton perjured himself in the Paula Jones deposition and in his testimony before the grand jury, knowingly had his lawyers submit a false affidavit in the *Jones* case, conspired to conceal gifts he had given Monica Lewinsky, tampered with witnesses and obstructed justice.

What is the difference between lies about an affair to family and friends and those made under oath during legal proceedings? Plenty.

Our legal system is based upon the courts being able to find the truth. That is why there are criminal penalties for perjury and obstruction of justice. Even the President of the United States does not have a license to lie. Deceiving the courts is an offense against the public and it prevents them from administering justice.

Every American has a constitutional right to a jury trial. The jury finds the facts. The citizens on the jury cannot correctly find the facts if they do not get truthful testimony.

When Americans come to visit their capital city, they see the words "Equal Justice Under Law" carved in the facade of the Supreme Court building. Those words mean that the weak and the poor have an equal right to justice, as do the rich and the powerful.

If the evidence against the President is true, it is clear his wrongful conduct was designed to defeat Paula Jones' legal claims against him, claims the Supreme Court in a 9 to 0 decision said she had the right to pursue.

Paula Jones' suit claimed her civil rights were violated when she refused then-Governor Clinton's advances and was subsequently harassed at work, denied merit pay raises, and subsequently forced to quit. She had the right to get evidence showing other women such as Monica Lewinsky got jobs, promotions and raises after submitting to Mr. Clinton.

When someone lies about an affair, they violate the trust their spouse and family place in them. But when they lie about an affair in a legal proceeding, they prevent the courts from administering equal justice under law. That is an offense against the public, made even more serious when a poor and weak person seeks the protections of our civil rights laws against the rich and the powerful.

The President denies all the allegations. Someone is lying and someone is telling the truth. An impeachment inquiry is the only way to get to the bottom of this mess. It will give Congress and the American public one last chance to get the truth and the whole truth. If this inquiry uncovers the whole truth, we will have gone a long way to putting this sad part of our history to rest.

Thank you, Mr. Chairman.

Mr. HYDE. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman.

People have talked about what divides us on this committee, but I think there is one thing that I know from my conversations with my colleagues across the committee that unites us: Almost all of us wish we weren't here. Almost all of us think this is an unfortunate situation. It is not why we came here. We came here to try and make public policy and improve people's lives.

This is a part of our duty and we do it. The question is, how do we do it? The chairman phrased the issue quite clearly, that we will deal with this threshold issue, and it is the scope of this inquiry.

We have debated the question of time, although we appear to be getting some convergence on that. The last I heard we were talking about November 25th, the chairman was talking about the end of the year. If one assumes they are not too busy on Thanksgiving and Christmas Day, that timetable starts to look somewhat similar.

But timing is really a secondary issue. Timing is driven by scope. The question we have to deal with and the question that will be presented in our resolution is this: Do we look into what Kenneth Starr has referred to us, or do we get into an open-ended effort to find something somewhere that can justify continuing this process?

Kenneth Starr has given us a very incomplete report. For more than 4 years he has been studying the Whitewater matter, the FBI files, the Travel Office and other matters. He began this year, more than 3 years after the start of his operation, to look into Monica Lewinsky. Now he gives us the most recent thing he has looked into and we have silence on the others. I think that is clearly because Mr. Starr, reflecting his bias, follows the principle that if you don't have anything bad to say, don't say anything at all.

But that ought not to be the cue for this committee. What we have is this problem: I think as we have talked about it, there is a fear on the part of many who want to destroy Bill Clinton, who didn't like the 1992 election and didn't like the 1996 election and

would like to undo it, there is a fear that the matters in the Starr referral do not carry enough weight to justify an impeachment.

The Chairman himself in a very fair way yesterday, apparently on television said that he did not think there were now votes in the Senate for impeachment, and that wouldn't be the case unless public opinion moved. What we have to resist, and I do not impute this to the Chairman, but there are other people who I think have this motive, what we have to resist is an effort to keep going to try and move public opinion.

The Chairman said we shouldn't look away, we should look further. I agree. What we shouldn't do, however, is adopt a resolution which says: Let's look around. Let's see what we can find. Let's see if we can find something in Whitewater and the FBI files and the Travel Office and the Campaign Finance Office.

I sat in two congressional hearings on Whitewater, once under Democrats, once under Republicans. Next door in the Burton committee they have investigated ad infinitum, perhaps ad nauseam. We have had investigations into all of these things. No one has yet come up with anything.

That is why we resist so strongly a resolution that says let's just look into the whole thing, take what Kenneth Starr said about Monica Lewinsky and that matter and let's look into it, would be overwhelmingly adopted. Some of my colleagues agree with my friend from Michigan that even that doesn't justify going further.

The problem for many of us is, we did create a statute and appointed an independent counsel. I don't think much of the job he has done, but he is there and has that statutory responsibility. Therefore, I think we have to look at what he said. But let's look at what he said. Let us not turn this into an impeachment inquiry in search of a high crime. Let's look at what Mr. Starr charged the President with and decide.

I must say, having read the Newt Gingrich report and the Richard Nixon report, that by those standards I don't believe that what Mr. Starr has accused the President of justifies impeachment. That has not been the historical standard for those kinds of misdeeds.

But what we have is a recognition, I am afraid, on the part of others that the Starr report does not rise to the appropriate level, that they cannot get the President on that, although it certainly is to the President's discredit and certainly could lead to some harsh criticism of the President. And what we object to is the resolution, which is so open-ended as to keep hope alive that we can find something so negative about the President, even in ground that has been gone over so frequently. That is why we propose an inquiry that is only about the Starr referral on Monica Lewinsky.

Mr. HYDE. I thank the gentleman.

The gentleman from Florida, Mr. McCollum.

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

What we are embarking upon today is something none of us really want to be doing. We are looking into the question of whether we have an impeachment inquiry of the President of the United States. Impeachment is not good for the country, the inquiry is not good, it would be better if we were not here today, but, unfortunately, the circumstances are grave and the situation merits our at least inquiring, it seems to me.

The issue is not whether the President should be impeached today. That is an issue for another day for us to decide, and we shouldn't prejudge any of the facts or the evidence until we have heard that, if indeed we go forward with an inquiry. The question today for us is, do the allegations that have been presented to us by Kenneth Starr in his report merit further investigation? Some say they do not. I think most of us say they do and are only debating the manner in which we proceed.

This is not about jaywalking, it is not about driving under the influence. Those are not major crimes for which any President would be impeached. But I would suggest to you that what it is about is whether or not we can sustain the constitutional form of our government without going forward at this point. It is about the separation of powers in the three branches of government, the legislative, the executive and the judicial. It is about whether or not what the President may have done, if gone without punishment, without being impeached, without being removed from office, would undermine the judicial system, the third branch of our government.

There are serious questions that have been posed here. If it were proven that the President of the United States committed a felony crime of lying under oath in a deposition in a sexual harassment case, or if it were proven that the President of the United States committed a felony crime of lying to a grand jury under oath, or if it were proven that the President of the United States obstructed justice by trying to encourage someone to file a false affidavit or encouraging other matters that would conceal the evidence from a court or grand jury, would, if that were the case, if those were proven, would it undermine our system of justice if the President of the United States were not impeached or removed from office?

I would submit that indeed it would undermine our system. It would undermine it because when you swear to tell the truth, the whole truth and nothing but the truth when you take an oath, when you become a witness in a court, you are doing what is necessary to make our system of justice work. Truthfulness is the glue that holds our justice system together. When people believe that the President of the United States can lie, commit perjury, and get away with it, what are they going to say the next time they have to go to court? And thousands of them do every day in this country, and they are expected to tell the truth when they get on the witness stand or face the crime of perjury.

I would suggest to you that it should be noted that today in our Federal system, there are 115 people serving time in Federal prison at this present moment for perjury before a grand jury or a Federal court, 115 people. I don't know if the President committed these crimes of perjury, but if he did, that alone it seems to me would merit impeachment and removal from office.

We know for a fact, and I would like exhibits put up, to show this, that Judge Walter Nixon, Jr. was impeached on May 10th, 1989, by a vote of 417 to nothing by the House of Representatives for committing perjury. It says right there, in the course of his grand jury testimony, and having duly taken the oath that he would tell the truth, the whole truth and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make mate-

rial, false or misleading statements to a grand jury, and he was impeached 417 to nothing.

In the next exhibit, please, Judge Alcee Hastings, now one of our colleagues, was impeached on August 3, 1988, by a vote of 413 to 3, for a similar lying under oath for perjury.

It seems to me that these are serious matters. I don't know, again, whether the President committed perjury. That is what it is all about, for us to determine that.

But whether or not he committed even the other matters, witness tampering, obstruction of justice, or all of the other allegations that Kenneth Starr has presented to us as major, serious felony criminal offenses, even if it were only shown to us that the President of the United States lied under oath and committed perjury in the civil deposition he took, or even more seriously, before the grand jury when he testified just a month or so ago, if that is all that is proven, that is enough for us to impeach and enough for him to be thrown out of office. And if we were not to do that, I submit it would undermine our constitutional system and destroy the foundation of our judicial system.

So it is serious today. We do have the basis for going forward with an investigation and an inquiry resolution, and I submit that is what we will do before the end of the day.

Thank you, Mr. Chairman.

Mr. HYDE. I thank the gentleman.

The very distinguished gentleman from New York, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

Mr. Chairman, I would like to take this opportunity to tell the American people about the decision I have reached in this case and how I have reached that decision.

After a careful reading of the Starr report and the other materials submitted by the Office of Independent Counsel, as well as a study of the origins and history of the impeachment clause of the Constitution, I have come to the conclusion that given the evidence before us, there is no basis for impeachment of the President.

I believe that, given the evidence before us, the only charge possible against the President is that he lied to the grand jury and at the deposition about his extramarital affair with Monica Lewinsky. Even assuming the facts presented by the OIC thus far to be true, that crime does not rise to the level of high crimes and misdemeanors cited in the Constitution.

It is my view that the President should be punished and that Congress should quickly reach consensus on a suitable and significant punishment. Then we should move on and get back to solving the serious problems like the deepening economic crisis abroad, and issues close to home like education, health care and security for seniors.

Mr. Chairman, the OIC has basically made three allegations against the President: perjury, obstruction of justice and abuse of power. They all stem from the admitted improper relationship with Monica Lewinsky.

To me it is clear that the President lied when he testified before the grand jury, not to cover a crime but to cover embarrassing personal behavior. And, yes, an ordinary person in most circumstances would not be punished for lying about an extramarital affair, but

the President has to be held to a higher standard and the President must be held accountable. That said, the punishment for lying about an improper relationship should fit the crime.

The OIC's case for obstruction of justice is not supportable by the evidence. Monica Lewinsky herself volunteered that no one had asked her to lie or promised her a job in exchange for silence. Indeed, her efforts to find a job preceded any notion that she might have to testify in the *Paula Jones* case or any other case.

The abuse of power claims by the OIC are in my view the most frivolous. To suggest that any subject of an investigation, much less the President with obligations to the institution of the presidency, is abusing power and interfering with an investigation by making legitimate legal claims, using due process in asserting constitutional rights, is beyond serious consideration.

It is the charges of obstruction of justice and abuse of power where I believe that Ken Starr seriously overreached. He knew that if this case was only about sex and lying about sex, that it would not be found impeachable by Congress. So he made allegations that simply could not be supported in a court but allowed him to release a salacious report. This casts into serious doubt his impartiality.

Article II, Section 4 of the Constitution, Mr. Chairman, states that the President may be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. The framers intended impeachment to apply to public actions related to or affecting operations of government and not to personal or private conduct, even if that conduct is wrong or may be considered criminal.

My full written testimony has an in-depth discussion of precedents and opinions on this matter. Let me just say, that whether you cite the Federalist Papers or legal scholars like Justice Story, the President's actions, while wrong and inappropriate and possibly illegal, are clearly not impeachable.

In conclusion, I would support a motion of censure or a motion to rebuke, as President Ford suggested yesterday, not because it is politically expedient to do but because the President's actions cry out for punishment, and because censure or rebuke, not impeachment, is the right punishment.

It is time to move forward, and not have the Congress and the American people endure a specter of what could be a year-long focus on a tawdry but not impeachable affair. The world economy is in crisis and cries out for American leadership, without which worldwide turmoil is a grave possibility. The American people cry out for us to solve the problems facing America, like health care, education and ensuring that seniors have a decent retirement. This investigation now in its fifth year has run its course. It is time to move on.

[The prepared statement of Mr. Schumer follows:]

PREPARED STATEMENT OF CHARLES E. SCHUMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I would like to take this opportunity to tell the American people about the decision that I have reached in this case, and about how I reached that decision.

After a careful reading of the Starr report and the other material submitted by the Office of the Independent Counsel, as well as a study of the origins and history of the impeachment clause of the Constitution, I have come to the conclusion that there is no basis for impeachment of the President.

I believe that given the evidence thus before us, the only charge possible against the President is that he lied to the Grand Jury and at the deposition about his extra-marital affair with Monica Lewinsky. Even assuming the facts presented by the Office of the Independent Counsel thus far to be true, that crime does not rise to the level of high crimes and misdemeanors cited in the Constitution.

It is my view that the President should be punished and that Congress should quickly reach consensus on a suitable and significant punishment. Then we should move on and get back to solving the serious problems like the deepening economic crisis abroad and issues close to home like education, health care, and security for seniors.

Let me begin by saying that I took this responsibility somberly and seriously. We are determining whether the Congress should undo and void the legitimate democratic expression of the people's will in our most American of all civic acts - the election of our President.

I studied the allegations and the evidence and measured them against the standard set forth in the Constitution of high crimes and misdemeanors.

I refused to be swayed by my deep disappointment in the actions of the President. Or my view that what the President did was irresponsible and wrong.

Mr. Chairman, the OIC has made basically three allegations against the President: perjury, obstruction of justice, and abuse of power—they all stem from the admitted improper relationship with Monica Lewinsky.

The OIC's main charge is perjury.

To me it is clear that the President lied when he testified before the grand jury and at the Paula Jones deposition—not to cover a crime, but to cover embarrassing personal behavior. And yes, an ordinary person in most instances would not be punished for lying about an extramarital affair.

But the President has to be held to a higher standard and the President must be held accountable. That said, the punishment for lying about an improper sexual relationship should fit the crime.

The second charge is obstruction of justice.

The OIC's case for obstruction of justice—in my judgement—is not supportable by the evidence. Monica Lewinsky herself volunteered that no one had ever asked her to lie or promised her a job in exchange for silence. Indeed the tapes of Monica Lewinsky and her confidant Linda Tripp—tapes made unbeknownst to Ms. Lewinsky—revealed that no such promise was made.

The testimony of Ms. Currie and Vernon Jordan do not make a persuasive case of obstruction of justice, as well. At best the evidence is contradictory and inconsistent and would not be entertained in a court of law.

The third charge is abuse of power.

The abuse of power claims by the OIC are, in my view, the most frivolous. To suggest that any subject of an investigation—much less the President with obligations to the institution of the Presidency—is abusing power and interfering with an investigation by making legitimate legal claims, using due process and asserting constitutional rights, is beyond the ken of serious consideration.

The President—on the advice of counsel—asserted privileges, filed motions and made claims of executive privilege that were all legally proper. He won some and lost some. But no court seriously claimed that the arguments were frivolous or in bad faith. If there is any reason to think so, then the proper remedy is a Rule 11 procedure—not impeachment.

I have said very little about Ken Starr during the course of his investigation. But it is these two charges of obstruction of justice and abuse of power, where I believe that Ken Starr seriously overreached. He knew that if this case was about sex and lying about sex, that it was not impeachable. So he made allegations that simply could not be supported in a court but allowed him to release a salacious report. This casts into serious doubt his impartiality.

Article II Section 4 of the Constitution states that the President may be removed from office on impeachment for and conviction of, treason, bribery or other high crimes and misdemeanors. The Framers intended impeachment to apply to public actions related to or affecting the operations of the government and not to personal or private conduct even if that conduct is wrong or may be considered criminal.

The Committee on Federal Legislation of the Bar Association of the State of New York published a study on impeachment in 1974 in which it concluded that:

"The Framers had in mind that only conduct which in some broad fashion injures the interest of the country as a political entity be the basis for impeachment and

removal. The phrase 'other high crimes and misdemeanors' should accordingly be construed as referring only to acts which, like treason and bribery, undermine the integrity of the government."

In Federalist Paper Number 65, Alexander Hamilton wrote:

"The subject of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words, from the abuse or 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."

Even the manager of the impeachment case against President Andrew Johnson said that impeachment requires conduct that is "in nature or consequences subversive of some fundamental or essential principle of government, or [is] highly prejudicial to the public interest."

What President Clinton did was wrong. It was inappropriate. I believe he lied to the grand jury. But what he did is clearly not an impeachable offense as outlined in the Constitution and interpreted by legal scholars.

In conclusion, I would support a motion to censure, or a motion to rebuke as President Ford wrote yesterday—not because it is the politically expedient to do—but because his actions cry out for significant punishment. And because censure and rebuke, not impeachment, is the right punishment.

He should not walk away unscathed by the Congress. He should not receive a slap on the wrist. But his actions do not rise to the level of high crimes and misdemeanors.

It is time to move forward and not have the Congress and the American people endure the specter of what could be a year long focus on a tawdry but not impeachable affair.

The world economy is in crisis and cries out for American leadership—without which worldwide turmoil is a grave possibility.

The American people cry out for us to solve the problems facing America—like health care, education, and ensuring that seniors have a decent retirement.

This investigation, in its fifth year, has run its course. It has occupied too much of our attention. And it is time to move on.

Mr. HYDE. I thank the gentleman. It is time to move on.

The gentleman from Pennsylvania, Mr. Gekas, is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman, I will move on.

It is time once again to reassert what the role is of the Congress in these impeachment proceedings, which begin today with the possibility of a vote, to vote to move into inquiry on impeachment. The House of Representatives acts as a gigantic grand jury to which referral will be made by this Judiciary Committee, acting as a kind of prosecutor-investigator body to evaluate the evidence with which to make presentation to the grand jury. Then the grand jury, this grand House of Representatives, would evaluate the evidence and say in one way or another, yes, there is sufficient evidence to allow the trier of fact to conclude that certain offenses, impeachable offenses, have indeed occurred.

Keeping that in mind, we have the responsibility of reviewing and re-reviewing the referral by the Independent Counsel, which in itself is a duty imposed upon us by statute and by the Constitution. In the referral there are allegations, again, for the evaluation of this committee.

I have had difficulty, for instance, in one allegation in which the Independent Counsel says the President repeatedly and unlawfully invoked the executive privilege to conceal evidence of his personal misconduct from the grand jury. I have difficulty with his conclusion that this assertion of executive privilege on the part of the President was unlawful.

But that is not for me to conclude and to come to a firm termination of thinking simply because I have doubts about it. That is why I have to inquire further into what justification there is for the

allegation by the Independent Counsel that indeed it was an unlawful gesture, this assertion of executive privilege. If I had my way, I would remove that right now as not being worthy of discussion, but we need to inquire further. I could be dead wrong on that.

For instance, the Independent Counsel goes farther in substantiating that portion of his allegations, that the Supreme Court had spoken on this, that in similar circumstances in the case against President Nixon the assertion of executive privilege was unsatisfactory and even perhaps illegal. But that is not enough for me. We must inquire further.

So it is on the question of perjury, to which much commentary has been already attributed by my colleagues. In the courthouse which is so familiar to all of us in every seat of every county government in the United States, the entire structure is bolstered not by the concrete of its foundation, but by the oath, an oath taken by the judge to execute his responsibilities, an oath taken by the jury to exercise its responsibilities, an oath by the sheriff, by the bailiff, by the clerk of court, an oath to administer justice, or else all of us lose the chance at justice.

To allow then a witness at this courthouse scenario, which is so familiar to all of us, to pervert the entire process, the rights of everyone concerned, by giving false testimony, by committing perjury, crushes down against that courthouse and it collapses because of that one fatal flaw that could arise in any single case, whether it is a traffic ticket or murder in the first degree. If we cannot as American citizens recognize the necessity for a strong perjury statute and its enforcement, then we are our own worse enemies in what we feel has to be the further answer of establishing and maintaining justice in our country.

So I am not yet satisfied that there is guilt or innocence with respect to the perjury allegations, but, by darn, it is worth a fuller inquiry by this body.

Mr. HYDE. The gentleman's time has expired. I thank the gentleman.

The distinguished gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman.

How we conduct these hearings may be as important as the ultimate decisions we reach. Perhaps there is a political gain for Republicans or for Democrats to spin a public relations angle on every procedural question, every vote, every statement during these hearings. I don't think so. The only effect of the spinning from either side of the aisle is to cloud thought and degrade whatever dignity Congress still has left. This public relations spinning makes me dizzy. Let us seek some common ground.

Every 4 years the people vote for a President. This popular decision is a defining moment of our constitutional system. The people's vote is almost sacred and should not be altered except under the most extreme circumstances.

The impeachment process is a constitutionally mandated procedure for undoing the people's will, but only when the President is found guilty of treason, bribery or other high crimes and misdemeanors.

The impeachment process is not a legal proceeding. We are not a courtroom. The impeachment process should not be used as a leg-

islative vote of no confidence on the President's conduct or policies. We are not governed by a parliamentary system. The impeachment process is not a rubber stamp for the latest feedback from the political pollsters. The Constitution invests the House of Representatives, not the Gallup poll, with the sole responsibility for the impeachment process.

The majority party has an obligation to recognize that "high crimes and misdemeanors" has a meaning. All felonies are not high crimes and misdemeanors. All high crimes and misdemeanors are not felonies. Because of the deference the Constitution gives to the person who wins a presidential electoral college vote, the standard for impeachment is far more complicated and subtle than a straight reading of a criminal statute. Our deliberations must reflect that reality.

The minority party has an obligation to recognize that a Democratically controlled Congress, at the urging of President Clinton, passed a statute that allowed for the naming of an Independent Counsel by a three-judge panel. The Independent Counsel was in turn given the approval by a Democratic Attorney General to pursue the Monica Lewinsky matter.

I may feel that connections to Whitewater were flimsy and tenuous, I may even regret my vote for the independent counsel statute, but the fact remains, no matter what I think, that statute is the law. The Attorney General gave the okay. That same statute requires the Independent Counsel to report what he believes are grounds for impeachment to the House. It is our obligation to proceed to decide whether the Independent Counsel's contentions are in fact grounds for impeachment.

This is not just about sex, but it is colored by sex. That coloration could be viewed by some as irrelevant. That coloration could be viewed by some as mitigating criminal wrongdoing. It is up to this committee to decide, in this uniquely political and legal and democratic forum, the significance of the context and how, if at all, it affects our determination of whether impeachable offenses have been committed.

I don't share some Members' reluctance to release data to the general population. The American people are not children to be protected by big brother through government control. But the children of America ought to be protected, if at all possible, from a public exposure of irrelevant, if indeed it is irrelevant, sexually explicit hearings regarding the President. Toward this end, I suggest that whatever rules of procedure are adopted, our first order of business is to resolve if the events portrayed in the Starr report's narrative rise to the level of an impeachable offense.

Toward the end of finding common ground, and at Congressman Delahunt's suggestion, I joined with him and two Republicans, Asa Hutchinson and Lindsey Graham, to request that the chair and ranking member, ask the Independent Counsel to forward, at the soonest possible time, any new information he believes relevant to these proceedings. Some of us assume no additional information exists and would like the air cleared. Others read the Starr report and assume there is more to come.

Whatever our expectations, we recognize, without regard to political implications, how vital it is to know the limits and the scope

of the proceeding. Our request was forwarded to Mr. Starr. I urge the Independent Counsel to communicate immediately his intent regarding 595(c) information about any other matter he is charged with investigating, if any exists.

This is a difficult and emotional process. Many of us have extremely strong feelings regarding its outcome and procedures. The more we are able to overcome those passions and work together, the better for both parties, the better for America.

Thank you.

Mr. SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Chairman, some House Democrats have in my opinion unfairly and inaccurately accused Republicans of being fiercely partisan and unfair. My Democrat friends asked for a Watergate-Rodino model. Now they claim they don't want it. The moral of that story is you can never get too much of what you don't want. Be careful what you request, it may be granted.

If Republicans had sought to be unfair, it could have been accomplished by stacking the staff deck. During the Watergate hearings, a total of 134 staffers were assigned, 12 of whom represented the Republican side. What have these current Republicans done regarding staffing? One hundred thirty-four, as in the Watergate era? Indeed not. The staff in the President Clinton investigation is the grand total of 21—14 Republicans, 7 Democrats. Not 122 to 12, but 14 to 7. Obviously fair.

The Democrat strategy in portraying Republicans as unfair is designed to divert attention from the issue at hand, and it is obviously effective, Mr. Chairman, because here am I consuming my time refuting their inaccurate claims. But when one is falsely accused and maintains silence, silence then becomes assent.

Now, for the issue at hand. Many say, conclude this matter immediately. We do not have the luxury of doing so, if we properly discharge our constitutional duty. An inquiry, not necessarily an impeachment, but an inquiry of impeachment must inevitably follow.

Equal justice under the law, powerful words previously mentioned by my friend from Wisconsin. We must remain blind to bias and other distractions when applying the laws, no matter whether we are applying it to an average citizen or to the President of the country, and we must remain evenhanded and impartial before deciding to ascribe guilt or innocence to a person as the truth may warrant.

That in fact is what we are doing here today. A society founded upon the rule of law is one which values truth. Without it, we have no courts which will function. In its absence, we have no civil society. This ultimately means that citizens in our Republic, regardless of the power they have or the position they hold, must make an obligatory commitment to observe the law. As Theodore Roosevelt once said, "Obedience to the law is demanded as a right, not asked as a favor."

Mr. Chairman, it is my hope that our fellow Americans will be understanding as we continue this process and hopefully conclude same sooner rather than later. Constituents send mixed messages,

as each of you know. In calls last week, one said if I don't vote to impeach the President, never to come back home. A second call said if I don't conclude this hearing today, as if I could do that, she will never vote for me again, implying that she had voted for me previously. Yet a third call, my friends: "I hope Coble dies a painful death from prostate cancer."

Now, I am not going to be intimidated by that third call. The first two calls I am going to weigh very soberly. But finally, my friends, Mr. Chairman, and my colleagues on both sides, it is we, after we examine the facts and evidence thoroughly, it is we who must exercise our best judgment.

I thank the Chairman.

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

The gentleman from Virginia, Mr. Boucher.

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

As the committee today establishes the boundaries and the rules of proceeding for its formal inquiry, the most careful consideration should be given to both of the procedural alternatives that will be before the members this afternoon. Whatever the outcome of the formal inquiry, history will recall the process that we employ. What we do today will become part of the constitutional fabric for future impeachment inquiries.

Just as today we seek the guidance and the instruction of precedent from the formal inquiries of past years, future Congresses, when confronted with allegations of impeachable conduct, will examine closely our decisions in this time. The rules we set, the process that we employ, the balances we achieve to assure that the rights of all are protected and that the Nation's interests are served, will influence not just the course of this investigation but future impeachment investigations as well.

Bearing that reality in mind, I urge that the most careful consideration of these rules be provided. The activity upon which we are embarked lies at the very heart of our constitutional structure, and it is essential that our decisions today and in the coming days be motivated not by a partisan interest but by the public interest; that they be made not for reasons of expediency, but that they be made with a view toward the lasting effect that they will have.

Later today I will urge the adoption of a process which meets this test. It will be limited to the matters that have been referred to this committee by the Office of Independent Counsel, and those are the matters that today we actually have before us. It will require that as a first essential step, the committee conduct a thorough review of the constitutional standard for Presidential impeachment which has evolved over the last two centuries.

Before the investigation phase of our work begins, we should establish a shared understanding of that constitutional standard, of the fact that the framers of the Constitution did not intend for impeachment to be a punishment for individual misconduct, of the fact that they intended for impeachment to occur only when that misconduct is so substantial and is so important to the functioning of the office of the President that it is absolutely incompatible with our constitutional system of government.

Our process will then require that the allegations of the Independent Counsel each then be compared to the historical constitu-

tional standard, and that only those allegations which meet that threshold test become the subject of our formal inquiry. These initial steps are essential to an orderly review. They are required for the committee to follow the path so clearly marked for us by the constitutional framers and by our congressional predecessors for the past 200 years.

When we consider later today these procedural alternatives for the conduct of our investigation and our formal review, I urge the members to keep these fundamental principles in mind.

Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, we are here today to decide whether the serious charges against President Clinton merit further inquiry. We are not here to determine guilt or punishment. If necessary, that is for another time and place. President Clinton already has admitted to inappropriate behavior that he himself called wrong, and the Independent Counsel has presented substantial evidence that the President may have lied under oath, obstructed justice and abused his office.

The committee now has a constitutional responsibility to fulfill. If we are to do so and seek the truth, we must proceed with our inquiry. This will not be an easy task; in fact, it will be a difficult ordeal for all Americans. But we will get through it: we are a great Nation and a strong people. Our country will endure because our Constitution works and has worked for over 200 years.

As much as one might wish to avoid this process, we must resist the temptation to close our eyes and pass by. The inquiry into the President's conduct must go on for one simple reason—the truth matters. The President holds a public office we rightly regard as the most powerful in the world. The President serves as a role model for us and for our children. He influences the lives of millions of people. That is why no President should tarnish our values and our ideals.

Actions do have consequences; the difference between right and wrong still exists, and honesty always counts. We should not underestimate the gravity of the case against the President. When he put his hand on the Bible and recited his oath of office, he swore to faithfully uphold the laws of the United States. Not some laws, all laws. When he swore before a judge to tell the truth, the whole truth and nothing but the truth, he assumed responsibility for doing just that.

Now it will be up to us to decide if there is sufficient evidence that he violated his sacred public trust. More than 150 newspapers already have called for President Clinton's resignation. Many others have expressed dismay about his behavior. Prominent Democratic leaders have courageously spoken out.

Senator Joe Lieberman: ". . . the President apparently had extramarital relations with an employee half his age and did so in the workplace, in the vicinity of the Oval Office. Such behavior is not just inappropriate, it is immoral and it is harmful, for it sends a message of what is acceptable behavior to the larger American family, particularly our children. . ."

Senator Robert Kerrey: This is not a private matter. This is far more important for our country and threatens far more than his presidency.

And former Senator Bill Bradley: "Any time the President lies, he undermines the authority of his office and squanders the public's trust, and that is what he did."

Certainly these Democratic leaders know you can't defend the indefensible. There are others, though, who would like to change the subject, who would like to talk about anybody else but the President and about anything else except the allegations of lying under oath, obstruction of justice and abuse of office. Such efforts are an affront to all who value truth over tactics, substance over spin, principles over politics.

I hope that there will be a bipartisan vote by the Judiciary Committee today to support Chairman Hyde's inquiry resolution. Almost 25 years ago, a similar vote occurred on a nearly identical resolution by Chairman Rodino concerning President Nixon. Then, every single Republican joined the Democrats in seeking the truth.

No one is eager to undertake this task. But good can result, and lessons can be learned, such as: No one is above the law. If you do something wrong, you must pay a price. If you don't treat others with respect, it can hurt you. The outcome of this inquiry can be a public reaffirmation of core values, honesty, respect, responsibility. As we go forward, we do so not as partisans but as fact-finders and truth seekers. And it is my hope that we go forward together, the American people and their representatives in Congress, united in our love of country and in our desire to seek a wise and just result for all.

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

Mr. NADLER. Thank you, Mr. Chairman.

This committee faces today a task of monumental and historic proportion. The issue in a potential impeachment is whether to overturn the results of a national election, the free expression of the popular will of the American people. That is an enormous responsibility and an extraordinary power. It is not one we should exercise lightly. It is certainly not one which should be exercised in a manner which either is or would be perceived by the American people to be unfair or partisan.

The work of this committee during the Nixon impeachment investigation commanded the respect and the support of the American people. A broad consensus that Mr. Nixon had to go was developed precisely because the process was seen to be fair and deliberate. If our conduct in this matter does not earn the confidence of the American people, then any action we take, especially if we seek to overturn the result of a free election, will be viewed with great suspicion and could divide our Nation for years to come.

We do not need another "who lost China" debate. We do not need a decade of candidates accusing each other of railroading a democratically elected president out of office or of participating in a disguised coup d'etat. This issue has the potential to be the most divisive issue in American public life since the Vietnam War. Our decisions and the process by which we arrive at our decisions must be

seen to be both nonpartisan and fair. The legitimacy of American political institutions must not be called into question.

We have had 6 years of investigations into the life of this President by special prosecutors, House and Senate committees and assorted free-lance conspiracy theorists. And what do we know? We know that Vince Foster was not murdered but committed suicide. We know that nothing has come of the so-called Whitewater scandal. Nothing has come of Filegate. Nothing of Travelgate. What we are left with are 11 allegations stemming from the President's relationship with Ms. Lewinsky which we must now assess.

In doing so, we need to consider what sort of wrongdoing is impeachable. We need to remember that the framers of the Constitution did not intend impeachment as a punishment for wrongdoing but as a protection of constitutional liberties and of the structure of the government they were establishing against a President who might seek to become a tyrant.

In 1974, the House accepted the findings of this committee in which it reported that impeachable offenses "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 in the sense that word was used in English impeachments."

Further, "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."

The committee stated the issue clearly. "The crucial factor is not the intrinsic quality of behavior but the significance of its effect upon our constitutional system or the functioning of government."

We should, therefore, first determine the standard we will use to determine what is an impeachable offense. As far as I am concerned, we could simply reaffirm the report of this committee adopted by the House in 1974.

Then we should inquire which of the 11 allegations, if proven to be true, would meet the standard and would be, therefore, impeachable offenses. Only then would it make sense to examine the evidence relating to those allegations, if any, determined to constitute impeachable offenses, in order to determine whether there is sufficient evidence to justify going forward with formal impeachment proceedings.

This is the logical process put forward in the Democratic alternative that will be offered later today. It offers us a fair, deliberative, focused and expeditious procedure. Only this or a similar procedure can guarantee the confidence of the American people in our work.

We need to remember that we are tinkering with the results of a free election. Our national unity and the stability of our government depends on the manner in which we exercise the extraordinary power and duty thrust upon us by the Constitution.

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

Mr. NADLER. Fifteen seconds.

Mr. HYDE. Certainly.

Mr. NADLER. Let us exercise that power in the logical and fair manner proposed in the Democratic alternative and not in the unfair and partisan manner which we have proceeded so far and which the majority proposal would continue.

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

Mr. GALLEGLY. Thank you, Mr. Chairman.

First, I would like to start by complimenting you on your efforts to make this process as open, as fair and as bipartisan as humanly possible. Mr. Chairman, we appreciate that.

In my 12 years in Congress, this is undoubtedly the most serious issue I have ever had to deal with and without question the most serious issue that any of us on this committee will likely ever have to deal with. Both Democrats and Republicans must recognize the gravity of the constitutional responsibility that lies before us. How we comport ourselves and how we resolve the question of whether or not to impeach the President will have implications for our political system and for our Nation for many generations to come.

As we investigate these serious charges, I would appeal to my colleagues on both sides of the aisle not to be dilatory or partisan. We should do our best to be evenhanded, and we should not let this issue drag on one day more than is absolutely necessary.

Lastly, I would appeal to all my colleagues to concentrate on the facts. So far, this whole matter has been a contest of spin, spin, spin and more spin. We should get back to the hard work of analyzing the evidence for the purpose of reaching a just result. If at the end of our inquiry the facts do not support the charges, the President should be fully exonerated. On the other hand, if the facts support the allegations, we have a duty to move forward. However, either conclusion for or against impeachment must be grounded on facts and on the truth. For this reason, to arrive at a fair conclusion based on the evidence, I urge all my colleagues on both sides of the aisle to support this resolution.

Mr. HYDE. I thank the gentleman.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you Mr. Chairman.

Mr. Chairman, the allegations against our President are very serious and deserving of our attention. I don't know of anyone who has condoned his behavior. In fact, the President himself has said that his behavior was inappropriate, wrong, indefensible. He has apologized, said he was sorry and has asked for forgiveness.

The question before us, however, is not whether we like or dislike or condone or condemn certain behavior. Our charge is much different and mandated by the oath we took to protect and defend the Constitution. Under Article II section 4 of the Constitution, we have the responsibility to determine whether any of the President's actions justify exercising Congress's power of impeachment. So we ask, even assuming all of the allegations in the 11 counts are true, do any of the Independent Counsel's allegations rise to the level of impeachable offenses? If so, we should investigate those allegations. On the other hand, if we continue to focus on charges that, even if true, do not constitute impeachable offenses, we will continue on a partisan charade simply to embarrass the President and

divert attention from the other important issues before Congress and this committee.

Mr. Chairman, I was happy to hear you announce last week that you have directed the Subcommittee on the Constitution to hold hearings on the question of what are impeachable offenses. Unfortunately, last week's happiness has led to today's disappointment in seeing that we will be voting on whether to open an inquiry before we have had the first hearing on impeachable offenses.

This reminds me of the part in Alice in Wonderland where you are sentenced first and then you have the trial. Here we vote first and then we have the hearing.

The importance of this initial step is crucial in this case, Mr. Chairman, because I am not aware of any constitutional scholar who believes that all of the allegations before us are impeachable offenses as intended by the framers of the Constitution. In fact, half of the leading authorities interviewed by the National Law Journal said that not only did none of the allegations reach that level but also said that the question was not even close.

So it is in that light that we are asked to consider the standards for impeachment before we go further. And even if we don't adopt a standard, we should at least take a moment to consider the history and prior cases of impeachments rather than simply blurt out unreasoned, partisan feelings about whether or not we want the President to continue in office.

Setting the standard for impeachment was the first thing they did in Watergate. We have not taken time to review either that standard as outlined by my colleague from New York or the Republican alternative offered during those proceedings. But, instead, we are taking the first initial step in a rational process. We have spent the first 3 weeks releasing thousands of pages of personal information, including salacious details of intimate sexual contact and rumors and innuendo, without ever determining whether or not the documents were relevant to allegations we will be investigating.

During Watergate, the committee released only that information which was relevant to articles of impeachment which were adopted. In fact, much of the information in the Watergate proceedings has not been released yet, even though it has been over 2 decades since the inquiry was concluded. Instead of following this precedent of releasing only relevant documents, we violated that precedent on a party-line vote.

In Watergate, the President's lawyer was able to review and cross-examine information before it was made public. Again, we chose to violate that precedent on a party-line vote.

As a result of our failure to follow a reasoned approach, any decision we make as a result of this process may have already suffered a devastating erosion of public confidence. I hope this is not the case, but, Mr. Chairman, what is wrong with a fair and reasoned approach? If the President deserves to be impeached, he will be impeached at the end of a fair process, just as he will be impeached at the end of an unfair process. The only difference is that the product of a fair process will have legitimacy and respect, while the product of an unfair process will forever lack credibility and support.

I hope that this committee will rise above partisanship and have the courage to pursue the fair process that our Constitution warrants.

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

Mr. CANADY. Thank you, Mr. Chairman.

It is truly a sad train of events that has brought us to this day. Like most other Americans, I believe it is important that the issues confronting us be dealt with expeditiously. They should not be allowed to linger for month after month after month.

But it is also important that these issues not be treated as inconsequential and swept under the rug. On the contrary, they must be dealt with through a thoughtful, deliberative process in which we focus on determining the truth and doing our duty under the Constitution.

Today, as we consider whether to inquire further into these matters, it cannot be denied that there is substantial evidence before the committee to support the conclusion of the Independent Counsel that the President is guilty of multiple acts of perjury, obstruction of justice and other offenses. If the allegations of the Independent Counsel are substantiated: First, the President, through obstruction of justice and false statements under oath, sought to conceal the truth in a sexual harassment case. Then, the President engaged in a 7-month cover-up of those earlier offenses—a cover-up which culminated in the President's giving of false testimony to the grand jury in August.

The President's lawyers now assert that even if the charges made by the Independent Counsel are true, the House has no recourse under the Constitution. This assertion is wrong, because the offenses charged—if proven—would constitute serious violations of the President's constitutional duty to "take care that the laws be faithfully executed," violations that do undermine the integrity of the President's office, violations that subvert the public respect for law and justice, which is essential to the well-being of our constitutional system, such conduct falls within the scope of high crimes and misdemeanors and demonstrated by the history of the adoption of the Constitution and the impeachment cases over the last 200 years.

As a fallback position, the President's lawyers argue that before we institute an impeachment inquiry we must adopt a fixed definition of impeachable offenses. But in support of this argument, they do not cite a single impeachment case—not one solitary case—in which this committee adopted a fixed standard for impeachment as they suggest we must do now. In the Nixon case, this committee never adopted a fixed definition or standard for impeachable offenses. Not before the inquiry, not during the inquiry, not at the end of the inquiry. It is certainly true that in the Nixon case—after the House had voted to commence an impeachment inquiry—the staff of the Judiciary Committee prepared a report on "Constitutional Grounds for Presidential Impeachment." But that report itself acknowledged that it offered, and I quote, no fixed standards for determining whether grounds for impeachment exist. The staff recognized, as Mr. Hyde noted earlier, that judgments concerning application of the constitutional standard must await the full development of the facts. . . "

More importantly, the inappropriateness of attempts to articulate a fixed standard for impeachable offenses was recognized by the founders. Alexander Hamilton in the Federalist number 65 stated that impeachment proceedings cannot be "tied down" by "strict rules . . . in the delineation" of impeachable offenses. Of course, it would be inappropriate for the committee to recommend the commencement of an impeachment inquiry in the absence of evidence that the President may be guilty of conduct rising to the level of an impeachable offense.

The members of the committee have considered and weighed the pertinent background and history in reaching the judgment we reach today. Every member of this committee is keenly aware of the significance of the decision before us. We make that decision in full awareness that we are accountable for it to the people who elected us. When the President's lawyers argue that the commencement of an inquiry is "for no stated reason at all," they have taken flight from reality. There are indeed reasons that we are here today, and the reasons are serious.

Not long after the Constitution was adopted, one of the framers wrote, "If it were to be asked, What is the most sacred duty and the greatest source of security in a Republic? The answer would be, an inviable respect for the Constitution and Laws—the first growing out of the last . . . Those, therefore, who set examples, which undermine or subvert the authority of the laws, lead us from freedom to slavery; they incapacitate us for a government of laws . . ."

In whatever proceedings we undertake in this matter, Mr. Chairman, it is our solemn duty to set an example that strengthens the authority of the laws and preserves the liberty with which we have been blessed as Americans.

Mr. HYDE. The distinguished gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

From the outset, I have been critical of the process——

Mr. HYDE. Jim, would you move the lights to where the members can see them?

Can you see them now? All right?

The distinguished gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

From the outset, I have been critical of the process we have followed. I spoke against and voted against the original resolution which passed the House and have spoken and voted against each committee action to release more materials to the public.

My opposition to releasing materials to the public has had nothing to do with whether the materials were favorable or unfavorable to the President. Recall that none of us even knew what these materials contained before we cast our first vote on releasing them. My opposition has been based on two principles:

First, the Independent Counsel statute was passed solely to assure investigations, with integrity, of alleged illegal or impeachable conduct in the highest places in our government. The information obtained in such investigations was clearly intended to be used as evidence in either a criminal prosecution or in an impeachment process, i.e. for either a legal purpose or for a constitutional purpose.

Second, and perhaps more importantly, our process in this country has always assured those accused of an offense certain due process rights: the freedom from unwarranted pretrial publicity, the right to be tried in a proceeding that assures due process of law, and the right not to be tried in the press or in the court of public opinion.

The process the House and this committee have followed to date has violated these two principles. Today, as firmly as I have throughout the process, I reaffirm my belief that the process we have followed is unfair, unprecedented and unAmerican.

But the majority of the House and the majority of this committee spoke, and we gave the public sexually explicit hearsay, gossip and other information. Information obtained by the Independent Counsel to be used for legal and constitutional purposes, we released to the public so members of the public could make their personal and political judgments. And they have.

People have made their personal judgments. And let me say straight up that I have not had a single constituent who condones what the President did. But that is not the end of the story.

People have also made their political judgments. Many who never supported the President anyway have used it as a reaffirmation of their existing disdain. Many have separated personal life from public policy and said, "move on." Many have made their political judgment about whether the President should or should not resign. But that, too, is not the end of the story. There is nothing in our Constitution which mandates that Congress weigh in on the political judgment about whether the President should or should not resign.

Nothing in our Constitution mandates that we, as Members of Congress, make either our own personal judgment based on our own personal standards or that we make a political judgment. But what our Constitution does mandate us to do is to make a constitutional judgment based on a constitutional standard. And on whether we meet and honor that mandate, the stability and foundation of our Nation, indeed the very rule of law depends. On whether we meet and honor that mandate, history will certainly judge us.

In meeting and honoring that mandate, it seems to me that the starting place should be putting politics aside and having a clear understanding of what our Founding Fathers and our historical precedents say the constitutional standard means. Without that, we have no standards, and the process will become majority rule and partisan politics, as usual.

I pray that my colleagues will rise to this challenge to put our Constitution, the rule of law and the principles our Founding Fathers left for us above politics. Our oath of office calls us to do this. I say to my colleagues, please answer the call.

Mr. HYDE. The gentleman from South Carolina, Mr. Inglis.

Mr. INGLIS. Mr. Chairman, thank you. I wonder whether I should get those lights, make sure I don't go over.

This proceeding, I believe, is about the search for truth. It is about finding the truth in a very unfortunate circumstance. And the inquiry gives us the opportunity to find that truth.

It occurs to me that we are very fortunate at this point to have agreement on that. Apparently, our colleagues on the other side of

the aisle are going to offer an alternative, both of which, our alternative and theirs, would call for an inquiry. The question is the scope, the question is how it is to be done. But the good news is, apparently, we are in agreement that an inquiry is warranted.

Now, there are some this morning who were rhetorically saying that there should not be an inquiry, that basically their minds are made up, there is no need to further pursue this matter, and it really just does not matter anyway. For those I think there is a very high burden, a very high burden of proof to say that it does not matter, we should just move along.

I wonder what they do with the very lengthy report from Ken Starr. I wonder what they do with the very significant corroboration there. I suppose they just have to say that it just does not matter. But my hope is that America will continue to be a place of commitment to a central truth, a place of freedom coupled with responsibility.

And, really, that is what we are about here. The question is whether the truth matters. And there are some who seem to be saying that the truth really does not matter. It does not matter whether the President lied under oath in the Paula Jones deposition or before the grand jury. It just does not matter whether the President obstructed justice. It does not matter whether the President tampered with witnesses.

Basically, I think what those people who would assert that have to be saying is that power is what matters, power unconstrained by principle. And the risk for us there is that that seems to me to be a sure prescription for tyranny and what the founders wanted to avoid. They wanted a constitutional Republic where power was constrained by truth.

John Adams said, he coined the phrase in 1774, "a government of laws and not of men." If we are going to stick to that now, we must pursue the truth without regard to politics, without regard to the maintenance of power by anyone individual.

Surely, this President is not above the law. None of us are above the law. We must seek the truth now.

Now, I firmly believe that this is a matter that will define us as we go into the next century. I am happy to see that most of our colleagues have mentioned the tremendous historical significance of what we are doing here. Some have mentioned it in the context of the presidency and of this President.

But I think there is something even greater at stake and that is, as a culture, are we going to declare as we go into the next century that truth matters? Again, some would have us say here today, it really doesn't. But I would hope that the conclusion we draw, not just in this committee, as we go forward with this inquiry, but on the floor of the full House, is that truth does matter. And if we reach that conclusion as a culture, then we will be prepared for the next American century, sure that where we started is where we will continue, a constitutional Republic committed to certain essential truths.

Mr. HYDE. I thank the gentleman.

The distinguished gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

I think today is a day that is not only a sad one for our American republic but also one that is serious and has grave implications for our American political system. The public is very concerned about what we are doing here, and I have always found that when you have a concern, when you are losing your way, you can look to beacons to guide your way.

Today, if we put our Constitution first, we will be able to find our way through the thicket that threatens our country and find a path that will serve us into the next century.

I have been giving a lot of thought to the processes we have been using. It occurs to me we would be better off if we 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.

It seems to me that there are Members of the House of Representatives, perhaps even members of this committee, who have very striking differences, even confusion about what the term high crimes and misdemeanors means in our constitutional system of government. And that is why we need to spend time talking about our Constitution and what the role of impeachment is in that wonderful system.

There are some who say that a high crime and misdemeanor is a low crime, in which case we certainly would not need to involve the Congress in reviewing it. We could just call in a jury, a judge, prosecutor and a defense counsel and be done with it.

There are others who say that a high crime and misdemeanor is to punish any kind of misconduct to enforce good behavior. If that is the case, we will have a parliamentary system of government instead of a constitutional one. In England, impeachment was used as a tool by Parliament to tame the king, but it was altered when our Constitution was written because we don't need to tame a king.

We have three branches of government that are ruled by laws and because, as George Mason and James Madison said on September 8 of 1787, we may have no bill of attainder, we need to have a specific form of reference for the use of impeachment, and it is very limited. It is limited to those actions that are so serious and so threaten our constitutional system of government that we may not wait for the next election to take action. Ben Franklin referred to impeachment as the alternative to assassination.

So we believe that, before we begin chasing facts, we ought to know what is the relevance of the facts we are chasing. What are we attempting to prove? That is why the proposal that will be later revealed is so important to so many of us. We need to know and have to reach a common understanding of what is an impeachable offense, what is a high crime and misdemeanor.

I understand that there will be hearings after the vote taken today, but I think that that really is an abdication of our obligation in the Constitution and not consistent with Madison's endeavor to be specific and to avoid ex post facto laws. Even the resolution under which we are operating, H.Res. 525, commits this committee to review the report and report back to the full House. That includes a determination of what constitutes grounds for impeachment, something that is never once referenced in the report from the Independent Counsel and that we have spent no time addressing.

Finally, we must act not as Democrats or as Republicans in this matter but as Americans, because what we do will have an impact not just on the current holder of the presidency but our very system of government on into the future. If we fail to discharge our duties properly, we will contribute to the instability of our American political system at a time when the world looks to us for leadership, not only politically but also economically.

So I hope that we can avoid the admonition in The Federalist paper 65, that there always will be the greatest danger that the decision to impeach—or not—will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt. Let us take care to avoid what Alexander Hamilton feared.

Mr. HYDE. The distinguished gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Mr. Chairman, consideration of an inquiry of impeachment against the President of the United States is a serious matter. This issue has serious consequences for the Nation. But serious matters require serious consideration. This committee has a constitutional duty and a moral duty to examine the charges against the President and to follow the truth wherever it leads.

The charges against the President include perjury, witness tampering and obstruction of justice. These are serious charges, charges that cannot be wiped away by a mere wink and a nod and an apology or someone's interpretation of the latest public opinion poll.

The standard that we follow and the standard we teach our children is that no person is above the law, including the President of the United States. The question before this committee is, did the President intentionally obstruct justice, misleading our judicial system and the American people as part of a calculated, ongoing effort to conceal the facts and the truth and to deny an average citizen her day in court? And were other offenses such as perjury and witness tampering committed as part of this effort, leading to a betrayal of the public trust?

The chairman of this committee during the Watergate inquiry, Peter Rodino, focused on this standard in his historic, "Constitutional Grounds for Presidential Impeachment," when he wrote: "The framers intended impeachment to be a constitutional safeguard of the public trust." The State ratifying conventions provide evidence of this point as well, as framers in North and South Carolina, New York, Pennsylvania and Virginia all discussed impeachment in terms of violating the public trust.

Amid the intense glare of the moment, we must keep in mind that what this committee is considering today is not impeachment or articles of impeachment. Nor is it about matters for which the President has apologized. Rather, the committee must decide, in light of the documented allegations of serious crimes committed by the President, all of which the President has repeatedly denied, whether we should take the next step in the constitutional process by fully and completely investigating the charges determining whether they are well-founded, and deciding whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach.

The historic, fair and proper forum for the development of these documented allegations and for their consideration in light of the Constitution is an inquiry of impeachment. It is during an inquiry that all the evidence, both supporting the President's case and calling it into question, is examined and evaluated. It is during an inquiry that the President, his lawyers, and his defenders present their case. It is during an inquiry, not before, that the committee, after careful consideration of the facts and the historic precedents, applies it to the constitutional standard for impeachment.

Finally, it is during an inquiry that the committee determines whether the President's conduct meets that standard, in violation of his oath to faithfully execute the office of President of the United States and in disregard of his constitutional duty to take care that the laws be faithfully executed.

Mr. Chairman, after reviewing the documented allegations before this committee, all of which the President has denied, after careful consideration of the Constitution and the statements of its framers, and after examining the precedents for proceeding to the next step in the constitutional process, I believe that an inquiry of impeachment against President Clinton is necessary. The serious decision we make today is not about the next election, is not about partisanship, and is not about interpreting opinion polls—it is about upholding the rule of law and the Constitution and following the truth wherever it leads.

If we did not proceed with this inquiry of impeachment, the committee would be doing a grave disservice to our Constitution, our House of Representatives and our sacred trust with the American people.

Mr. HYDE. The distinguished gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, for this opportunity, and thank the ranking member, Mr. Conyers, for his leadership in these procedures that we will undertake today.

Truth does matter, Mr. Chairman, and the Constitution matters as well. It is with great humility and somberness that I sit here today as an American representing the essence of our new America, a Nation filled with those who render justice and those who need it.

This Nation, however, is not second-rate. Ours is a Nation that should not accept second-class justice for any American, be he or she President or citizen. Americans should never return to the time when some were held as chattel and others could not vote or hold property. I for one will never accept a second-class justice for any American, and we should not seek it today.

This morning, my friends, the world is watching us, not so much for what they expect the committee to do but what they hope we will do. And that is to remove partisan politics from this process and, rather, to move constitutionally, calmly and deliberatively in reviewing the facts. Any other action would be premature and partisan. Unfortunately, as Justice Thurgood Marshall chastised the court in *Payne* v. *Tennessee,* power, not reason, may be the currency of this day's decisionmaking.

Twenty-five years ago this committee undertook the constitutional task of considering the impeachment of Richard Nixon. The

process was painstaking, careful and deliberative, and both the Nation and the world were reassured that America's 200-year-old Constitution worked. Impeachment is final, nonappealable, without further remedy, a complete rejection of the people's will; and thereby, I believe, it must be done fully, beyond a doubt, without rancor or vengeance, complying with every woven thread of the Constitution.

Today, by contrast, the world and the American people have been alternatively puzzled, confused and appalled by the reckless media circus our automatic dumping of documents has produced. With all the talk of Watergate in the air, I think it is time to remember four basic points we learned in 1974 and seem to have forgotten since then.

First, impeachment, that is the decision of the House to accuse the President, in this instance, of treason, bribery or other high crimes and misdemeanors, is the end of a careful process of investigating the facts, considering whether they establish a threat to our constitutional form of government, and deciding to require the Senate to conduct a trial.

We have not yet undertaken any of the responsibilities the Constitution imposes on us. Instead, we have let our agenda be completely driven by the views of an independent individual counsel mentioned nowhere in the Constitution. In Watergate, by contrast, this House did not begin a formal inquiry until after extensive investigation by the Judiciary Committee and after Senate hearings.

Before we can talk responsibly about this impeachment inquiry process today, we need to do two things. We must first figure out for ourselves what actually happened. The information already before us suggests we cannot rely automatically on the OIC report. There is no fourth branch of the government.

And then we must ask whether any of these facts establish an impeachable offense. A Yale scholar, Charles Black, said, in short, only serious assaults on the integrity of the processes of government, and such crimes that would so stain a President as to make his continuance in office dangerous to the public order, constitute impeachable offenses.

Second, the Founding Fathers included impeachment as a constitutional remedy because they were worried about presidential tyranny and gross abuse of power. They did not intend impeachment or the threat of impeachment to serve as a device for denouncing the President for private misbehavior, or for transforming the United States into a parliamentary form of government in which Congress can vote "no confidence" in an executive whose behavior it dislikes. All Presidents of this Nation are elected the President of the United States, and it is not the prerogative of this committee to undo that election.

Third, the framers of the Constitution never intended the availability of impeachment as a license for a fishing expedition. Never before has this House authorized a free-ranging, potentially endless investigation into a public official's private behavior or his behavior before he attained Federal office. The Republican resolution calls for that today.

As the Watergate Committee report explained, in an impeachment proceeding a President is called to account for abusing pow-

ers that only a President possesses. In Watergate, as in all prior impeachments, the allegations concerned official misconduct.

Finally, while not every impeachable offense is necessarily a crime, the opposite is also true. Not every potential crime is an impeachable offense. The Founding Fathers deliberately chose the phrase "treason, bribery, or other high crimes and misdemeanors" to convey their view that impeachment was to be limited to abuse of power or serious breach of trust. As James Wilson explained in the Pennsylvania ratification——

Mr. HYDE. The gentlelady's time has expired.

Ms. JACKSON LEE. May I have an additional 15 seconds?

Mr. HYDE. Yes, ma'am.

Ms. JACKSON LEE. In that convention, far from being above the laws, the President is amenable to them in his private character and his public character.

Finally, I say, as was indicated in the words of Martin Luther King, a legal scholar trained in injustice who said from the Birmingham jail, injustice anywhere is a threat to justice everywhere. Whatever attacks one directly affects all indirectly. I would simply say that truth matters, but in this instance, Mr. Chairman, the Constitution matters as well.

Mr. HYDE. I thank the gentlewoman.

I want to congratulate the members. They have been doing very well in keeping within the 5 minutes. It is the proposal of the Chair, intention of the Chair to proceed with all of the opening statements, and then have a short lunch break and then come back with the briefings by the respective counsel, just so you know where we are headed and can plan accordingly.

The Chair now recognizes the gentleman from Indiana, Mr. Buyer.

Mr. BUYER. Mr. Chairman, I think that the issue before us is very clear, and that is whether the Congress should continue to inquire about the conduct of the President to determine whether or not an impeachment is warranted.

I agree with Mr. Inglis of South Carolina. What is obvious here to everyone is that with the Democrat minority now offering an alternative, the issue here is about scope and its duration; that there is no question, it appears, by this committee that we should conduct the inquiry of impeachment. I think that is what is most noteworthy of this action today, by listening to the remarks of Mr. Conyers.

On a baseline question of whether we should proceed with an inquiry of impeachment, there is overwhelmingly bipartisan support on this committee. We may disagree about the details on scope or time, but what is important for the American people to listen here is that there is overwhelming bipartisan support to conduct the inquiry of impeachment.

The office of the President of the United States is one in which is reposed a special trust with the American people. Due to his position and powers of his office, any President is entitled to the benefit of the doubt. The President takes an oath to see that the laws are faithfully executed.

If the President as the chief law enforcement officer of the land violates the special trust by using the powers of his high office to

impede, delay, conceal evidence in or obstruct lawsuits, investigations of wrongdoing, could that not be subversive to the constitutional government, doing great prejudice to the cause of law and justice, thus bringing injury to the people of the United States?

Many might argue that the Starr report is sufficient on its face for Congress to determine its course of action. I would respectfully disagree with this assessment. The Judge Starr report and other aspects raise troubling questions that Congress needs to address.

Every citizen is entitled to equal access to justice. Everyone is entitled to a day in court. The courts are not for the rich and the well-connected. Neither are the courts to be manipulated by the powerful, no matter who they are in our country.

Paula Jones was seeking her day in court as a victim of an alleged sexual harassment in violation of Title VII of the Civil Rights Act. The Starr report has raised allegations that the President may have lied, conspired to hide evidence, suborned perjury in an effort to deny Ms. Jones her due process right, her day in court. If the President as the chief law enforcement officer of the land deceives the courts, could that not be subversive to the constitutional government, doing great prejudice to the cause of law and justice, thus bringing injury to the American people?

I also have concerns related to the President's role as Commander in Chief. The United States Constitution, Article I, Section 8: The Congress shall have the power to raise and support the armies, provide and maintain the Navy, make rules for the government and regulation of the land and naval forces. I, as chairman of the Personnel Subcommittee of the National Security Committee, am detailed with the oversight function to do just that.

America was appalled not long ago when they heard of incidents of sexual misconduct regarding Aberdeen Proving Grounds, Fort Jackson, Fort Leonard Wood, where drill sergeants were having consensual relations with trainees. And, rightfully so, the American people and Members of Congress were outraged by these drill sergeants. You see, these drill sergeants, even though they had consensual relations, by virtue of the power relationship, superior to subordinate, the court martials ruled that they could not have been consensual and the drill sergeants went to prison on rape.

Under the Goldwater-Nichols Act, which sets forth the national command authority, it runs from the President as Commander-in-Chief to the Secretary of Defense to the Chairman of the Joint Chiefs of Staff, all the way to a lowly recruit. In the enforcement of these rules, I am charged to eliminate real and perceived double standards in the enforcement of laws and regulations that pertain to sexual misconduct, sexual harassment and fraternization in the United States military.

Is it worthy of our inquiry to consider it a misdemeanor in office that the President, while acting in his role as Commander-in-Chief of the military, it is alleged that he was on the telephone with a subcommittee chairman of the Appropriations Committee discussing sending troops to Bosnia when he had a subordinate perform a sex act upon him? The discussion and decision of sending American sons and daughters abroad into harm's way is very, very serious.

While I recognize that the Uniform Code of Military Justice does not apply to the President, clearly his conduct at a minimum would be unbecoming of an officer and a gentleman. In the military even a consensual relationship between a superior and a subordinate is unacceptable behavior, prejudicial to good order and discipline. Should we ask the members of the armed forces——

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

Mr. BUYER. May I conclude?

Mr. HYDE. You may have 15 seconds.

Mr. BUYER. Should we ask the members of the armed forces to accept a code of conduct that is higher for troops than for the Commander-in-Chief? Should we accept a double standard, one for the President and one for others?

There are many questions that are left to be asked in this inquiry, Mr. Chairman. The objective of the committee should be as torch bearers. The light of truth should never be feared.

Mr. HYDE. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you, Mr. Chairman. I would to thank you and our ranking member. As policymakers, we find ourselves in the difficult and sad position of deciding whether or not we should proceed with an inquiry to impeach the President of the United States. We are being asked to do this before we define what constitutes an impeachable offense.

However, before this body advances towards an impeachment inquiry, let us consider this. Increasingly, Americans are suspicious of their government and our ability to be fair. I truly believe Americans want us to be fair. As chair of the Congressional Black Caucus, we have insisted on making fairness the top priority from the moment the Office of the Independent Counsel delivered the September 9, 1998 referral to the House of Representatives.

The members of the Congressional Black Caucus have assigned ourselves the role of fairness cop because our history demands we must be the best advocates for ensuring that this process recognizes the rights of everyone involved. African Americans feel strongly about the issue of fairness, because we have had to fight hard for fairness in the criminal justice system. Democracy is threatened when a fair legal process is sacrificed to appease the passions of a few.

After all the pontificating, posturing, and debating, let us think about what is happening to the rights of individuals. Let us take a look at the actions of the Independent Counsel, who appears to be gathering evidence by any means necessary.

How would you feel if your daughter or your son was apprehended without an arrest warrant, held for 10 hours, discouraged from calling legal counsel, mocked for wanting to talk with you as a parent, lied to, misled, frightened, and pressured to be wired to entrap the President of the United States?

Further, we must be concerned about the manner in which Ken Starr recklessly sought his evidence in working with Linda Tripp. It appears that Ken Starr offered to assist Linda Tripp to avoid indictment by calling the Maryland authorities on her behalf. Even though he knew she had committed a felony, he further wired her and sent her back to tape Monica Lewinsky so that he could get

more evidence. It appears that he may have known, for longer than has been indicated, that an illegal wiring was going on.

Simply put, fundamental fairness and due process requires that we adhere to reason and precedent, or else we risk being viewed as no different than the lynch mobs which denied justice to the accused.

Let us have a review of what the majority has done to date. First, it dumped 445 pages of a report needlessly filled with explicit sexual details on the public. Next, they released the President's videotaped grand jury testimony, along with more than 3,000 pages of similar materials.

When that fizzled, Republicans then released 4,600 pages of transcripts and other grand jury testimony. The Republicans did this without giving the President the opportunity to review the materials prior to their release. However, when it came to one of their own, Speaker Gingrich, the Republicans afforded him the opportunity to review and respond to charges of perjury before disclosure to the public. Speaker Gingrich's documents remain under seal even today.

Since September 9, the American public has witnessed a political party that has been willing to bombard the public with sexually explicit materials to further their partisan objectives. Ken Starr has spent over $40 million of the taxpayers' money and 4-½ years investigating the President, with the last 8 months devoted to the Monica Lewinsky matter.

What this party is doing is undermining the process. Impeachment is the most serious decision for Congress to decide, other than declaring war. In the words of George Mason, the man who proposed the language adopted by the framers, impeachment should be reserved for treason, bribery, and high crimes and misdemeanors, where the President's actions were great and dangerous offenses, or attempts to subvert the Constitution, and the most extensive injustice.

Mr. HYDE. The gentlewoman's time has expired.

Ms. WATERS. I ask for 15 more seconds, please, Mr. Chairman.

Mr. HYDE. The gentlewoman may have 15 more seconds.

Ms. WATERS. I want the committee to consider this carefully. The power to impeach the President should not be casually used to remove a President or overturn an election simply because we do not like him or his policies. The Constitution is on trial, and I hope that we will uphold the Constitution and the civil rights of everybody involved.

Mr. HYDE. I thank the gentlewoman.

The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman.

Before this committee today is an issue of process, a process which is designed to seek the truth. While we all apparently now agree that an inquiry is necessary, all of us or none of us tread lightly in this area. The President of our country has been accused of 15 counts of violating the provisions of our Constitution as defined by the standards "high crimes and misdemeanors," many of which, if true, would have disastrous effects on our third branch of government, the judiciary.

For some of my colleagues in this Congress, the issue simply boils down to the separation of the President's private life as opposed to his work as Chief Executive Officer of our Nation. But if that were the case, we would not be looking into the allegations of wrongdoing brought to us by an Independent Counsel appointed by a three-judge panel and supervised by the Attorney General.

This is not a matter of private affairs, nor is it a question of infidelity between the President and his wife. This is also not about politics or polls. It is not about the economy. It is not about who is going to get more Democrats or Republicans elected in November, or even the possibility of a President Gore. No. This is about seeking the truth.

At the end of the day, we may or may not achieve a bipartisan work product, but many of us on this committee can assure the public that it will be done in a nonpartisan fashion.

My experience, as one of three former Federal prosecutors on this panel, has taught me that some matters cannot be rushed to judgment. Justice cannot be rushed, and we should not make arbitrary timetables on such an important task as this. This, in fact, was a concept that was thoroughly rejected three times during the Rodino hearings of 1974.

We must work as a committee to preserve the integrity of that third branch of government, the judiciary. We must also set an example that truth is what we seek, and lying, especially under oath, is not permissible.

We have impeached judges for similar offenses. There are Americans that are even in jail today for such offenses. We cannot simply ignore that portion of the rule of law which states that no man is above the law. The American people deserve more, and we as a Judiciary Committee and ultimately as a Congress, must and shall resolve this matter in a fair, nonpartisan, and expeditious manner.

Mr. HYDE. I thank the gentleman.

The distinguished gentleman from Massachusetts, Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman. I want to express my appreciation for your willingness to accommodate the minority on the issue of subpoena power and committee rules. Though there will be many deviations from bipartisanship today, I hope that we can build upon whatever consensus does exist and eventually proceed in a fully bipartisan manner.

Mr. Chairman, three fundamental facts frame the challenge that this committee faces today. The first fact is that the President's behavior was wrong. He had an adulterous relationship with a White House employee half his age. He then misled the American people about the nature of that relationship and engaged in a dangerous game of verbal "Twister" in his sworn testimony.

The second fact confronting us is that not all wrongdoing amounts to treason, bribery, or other high crimes and misdemeanors. The Founding Fathers set the threshold for removing a President at a high level to prevent Congress from easily reversing the express will of the people.

Finally, the third fact with which we must come to terms is the cost an extensive inquiry into the President's relationship with Monica Lewinsky will impose on our Nation. Indeed, a full-scale ex-

tended impeachment inquiry will come at a steep cost to our country.

The members of this committee should weigh these costs before voting for an endless impeachment inquiry, including the cost of the public discussion in our country. People are having x-rated conversations with our children at kitchen tables all across America, conversations they do not want to have. We already need V-chips to prevent our children from watching the evening news or reading newspapers, two things we used to encourage children to do.

The cost to the institution of the presidency. Future Presidents will be saddled with the dangerous precedents that this committee has set and will set today. Meanwhile, the courts have already eroded presidential power in ways that both liberal and conservative legal experts find alarming. No one has heeded Justice Holmes' time-honored warning that the so-called great cases make for bad law.

The cost to America's global leadership. At a time when the world faces unprecedented economic and political upheaval, erratic international financial markets, terrorism, and bloodshed around the world, Americans want us to address the issues that affect their everyday lives and the lives of their children.

Yet calls for action on these fronts have not made it even close to the headlines of the papers across America, which seem instead to be reserved for the detail of the day about Monica and Bill.

Given these facts, our responsibility is clear. We must conduct an inquiry that is thoughtful and fair. And we must ensure that this inquiry does not drag on any longer than is necessary to sanction the President in a manner commensurate with the seriousness of his wrongdoing.

It means the committee should first ascertain reasonably specific constitutional standards for impeachment, and then ask ourselves whether Ken Starr's best case against the President surpasses or falls short of that instead. If we fail to ask ourselves this fundamental question at the beginning of our inquiry, we have failed the American people.

Prolonging an investigation that inflicts daily damage to our country, where the Independent Counsel's case on its face fell short of high crimes and misdemeanors, would be a wholesale abdication of our responsibility to pursue the public interest.

The minority alternative before the committee would address threshold issues first, where they should be addressed. The minority resolution also imposes reasonable time limits for our examination of the President's conduct on the Lewinsky matter. The reality is that the committee already has all the evidence it needs to resolve the Lewinsky matter. In fact, the American people know more than they ever needed or wanted to know about this tawdry affair.

Leaving the time and scope of this inquiry open-ended is certain to permit excursions into far-flung matters on which we have not even received a single page from this Independent Counsel. It is not in our country's best interest to have this committee be a stage for revivals of Dan Burton's and Al D'Amato's performances of the past few years.

Mr. Chairman, we have heard a lot about the Watergate precedent. Individuals who have served on this committee in 1994, like

Peter Rodino, Caldwell Butler, and Bill Cohen, knew their responsibility was not to make a case against the man but, rather, to analyze facts and the law with a neutral eye and do what was best for our country.

As the committee moves forward, I can only hope that we reverse the present course and put the national interest ahead of partisan interest. Thank you, Mr. Chairman.

Mr. HYDE. I thank the gentleman.

The distinguished gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. I thank the Chairman.

I, like most of my colleagues and, I suspect, most of the American people, would prefer that the President's actions did not force this hearing today. Regardless of how this committee and this Congress chooses to dispose of this serious matter, the Nation will have paid a dear price.

The office of the presidency has been demeaned. The standards of public morality and decency have been diminished. And the American people have been forced to endure a painful process that could have been avoided.

We must determine today if the evidence before us warrants further investigation. We do not sit in judgment. Our role is not to convict or punish or sentence, it is only to seek the truth. To fulfill our constitutional duty, we must determine if the evidence presented to date strongly suggests wrongdoing by the President, and if the alleged wrongdoing likely rises to the level of an impeachable offense; that is, a high crime or misdemeanor.

Let me turn to the facts and the law on these two important issues. The materials submitted by the Independent Counsel have been the subject of intense public scrutiny and debate. What has emerged is the simple fact that, for whatever reason, it appears that the President was not truthful in giving testimony in a civil case, and in all likelihood, he was not truthful in subsequent testimony to a grand jury. Few have denied these conclusions.

Those who would urge an end to this inquiry before it even starts frequently argue that impeachable offenses are only those which result in an "injury to the state." They contend that perjury, or at least perjury relating to sexual matters in a civil action that was subsequently dismissed, results only in an injury to a private litigant and is not impeachable.

That argument is wrong. It is a misstatement of the historic record. Since this is so important in determining whether President Clinton may have committed an impeachable offense, I am going to devote the balance of my opening statement to just that issue.

Perjury has long been considered a crime against the state. By committing perjury, a person has interfered with the administration of justice. In 1890 the Supreme Court said, in *Thomas* v, *Loney*, that, and I quote, "Perjury . . . is an offense against the public justice of the United States. . ."

The U.S. Court of Appeals expressed similar sentiments in *United States* v. *Manfredonia.* When referring to perjury the Court stated, "It is for wrong done to courts and administration of justice that punishment is given, not for effect that any particular testimony might have on the outcome of any given trial."

As a crime against the state, perjury was directly described as a high misdemeanor at its inception in 15th century England. The high misdemeanor description of perjury is significant. While considered a serious offense, perjury was not labeled a felony because the common law courts would have commanded exclusive jurisdiction. Instead, perjury was classified as a "high misdemeanor."

In *Hourie* v. *State*, the Maryland Supreme Court gives us an historic perspective on what it called the "high misdemeanor of perjury." The court said that, "The phrase 'high misdemeanor' connoted a new crime that was just as grave, in terms of its social consequences and in terms of its potential punishment, as the more ancient felonies themselves."

When State governments were first being established in the early days of the American Republic, perjury also was regularly listed in their constitutions as a "high crime or misdemeanor," or some very similar phrase.

The Kentucky Constitution, ratified in 1792, for example, stated that, "Laws shall be made to exclude from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors."

The House and Senate have impeached Federal judges for perjury. Strong evidence exists that President Clinton may have committed perjury, and the historic record clearly demonstrates that perjury can be an impeachable offense.

Based on the facts and the law, I have concluded that this committee has a constitutional duty to proceed to a formal impeachment inquiry. It is my sincere hope that we can proceed and work together in a bipartisan fashion to complete this task as expeditiously as possible, and do what is in the best interests of our country.

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

The distinguished gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Many references have been made today to the conduct of the President. The issue before us today is not just about the conduct of the President. The real issue, the overriding issue, is how this committee will fulfill its own responsibilities at a moment of extraordinary constitutional significance.

Some 3 weeks ago the Independent Counsel, Mr. Starr, referred information to Congress that he alleged may constitute grounds for impeaching the President. But it is not the Independent Counsel who is charged by the Constitution to determine whether to initiate an impeachment proceeding. That is our mandate. He is not our agent, and we cannot allow his judgments to be substituted for our own, or we will fail in our constitutional responsibility.

I am profoundly disturbed at the thought that this committee would base its determination solely on the Starr referral. Never before in our history has the House proceeded with a presidential impeachment inquiry premised exclusively on the raw allegations of a single prosecutor, nor should it now.

It is the committee's responsibility to conduct our own preliminary review to determine whether the information from the Independent Counsel is sufficient to warrant a full-blown investigation, and we have not done that. If we abdicate that responsibility, we

will turn the Independent Counsel Statute into a political weapon with an automatic trigger aimed at every future President, and in the process, we will have turned the United States Congress into a rubber stamp. Just as we did when we rushed to release Mr. Starr's narrative within hours of its receipt, before even this committee or the President's counsel had any opportunity to examine it; just as we did when we released thousands of pages of secret grand jury testimony before either this committee or the President's counsel had an opportunity to examine it, putting at risk individual constitutional rights, jeopardizing future possible prosecutions, and subverting the grand jury system itself by allowing it to be misused for a political purpose. Just as we are about to do again by launching an inquiry when no Member of Congress, even now, has had sufficient time to read, much less analyze, all of the Starr referral.

For all I know, there may be grounds for an inquiry. But before the committee authorizes proceedings that will further traumatize the Nation and distract us from the people's business, we must satisfy ourselves that there is probable cause to recommend an inquiry.

That is precisely what the House instructed us to do. The chairman of the Rules Committee himself anticipated that we might return the following week, and I am quoting, "to secure additional procedural or investigative authorities to adequately review this communication." Yet the committee never sought those additional authorities. Apparently we had no intention of really reviewing and examining the communication.

That is the difference between the two resolutions before us today. The majority version permits no independent assessment by the committee, and asks us, instead, to accept the referral purely on faith. Our alternative ensures that there is a process, one that is orderly, deliberative, and expeditious, for determining whether the referral is a sound basis for an inquiry. If we adopt this approach, I am confident that the American people will embrace our conclusions, whatever they may be.

I yield back.

Mr. HYDE. I thank the gentleman.

The distinguished gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman and all Americans, imagine a place where a dictator, a king, a prime minister, or a President could walk into your home at any time and force you to accede to any demand, however unreasonable. Throughout history, including 18th century Britain, such regimes have been the norm.

The system of rule by law under which we live stands as a stark exception to an historically prevalent notion that a ruler can take whatever he wants, whenever he wants, and from any subject. As we so quickly, however, forget in times of stability and prosperity, our system is a fragile one, a brief flicker of light in an otherwise dark march of human political history.

If we drop our guard, even for a moment, and allow a President to demand citizens to gratify his personal desires, and let him place himself in the way of laws designed to protect or to prevent such conduct, that light will be greatly dimmed, if not snuffed out.

Our Founding Fathers understood the importance of restraining unbridled power because they grew up in a system that did not. The Constitution includes explicit provisions that protect us from the abuse of power, including provisions to prevent us from being forced to quarter soldiers, to stop the government from imprisoning us without cause, and to protect us from involuntary servitude.

The facts of the case before us are not complex. Bill Clinton, first as Governor and then as President, using power entrusted to him, coarsely demanded personal favors from individual citizens. When one of those citizens refused, our Supreme Court voted unanimously to allow her access to the courts.

Yet, instead of apologizing, Bill Clinton continued to abuse his office, to smear that citizen's name, and block her access to justice. Instead of telling the truth to the court and the grand jury, the President lied. Instead of cooperating with the court, he obstructed its efforts. At this very moment, government and private employees are working under his direct orders to block this committee's efforts.

We are witnessing nothing less than the symptoms of a cancer on the American presidency. If we fail to remove it, it will expand to destroy the principles that matter most to all of us.

Any system of government can choose to perpetuate virtue or vice. If this President is allowed to use the presidency to gratify his personal desires in the same way a corrupt county or parish boss solicits money for votes, future occupants will, sadly, do the same.

If the proposition that perjury is sometimes acceptable and is allowed to stand, in the blink of an eye it will become acceptable in every case. Such a precedent would hang forever as an albatross around the neck of our judicial system.

If we stand by while the President obstructs justice and destroys his enemies, our entire government will be contaminated with cynical disdain.

The President of the United States controls at his fingertips the greatest arsenal of destructive power ever assembled in human history, just as the Governor of a State controls the State's police power. He has the ability to destroy one life or billions. He is the single individual charged with the constitutional duty of faithfully enforcing the laws, all the laws of the United States.

When evidence emerges that he would abuse that power or fail in that duty, it is a matter of gravest constitutional importance. If we fail to address such charges, we will soon be left standing dazed and befuddled among the smoldering ruins of a great democracy. We will count the cost of choosing temporal stability over permanent justice, and policies over principle, in diminished freedoms, lost policies, lost lives, and ruined institutions.

History is littered with the wreckage of nations whose leaders bury their heads in the sand as adversity appears on the horizon. America in 1998 must not suffer the same fate. In America we have a right not to be tapped on the shoulder and escorted to a room where a mayor, a Governor, a President, or someone with absolute power mistreats us.

When such conduct occurs, it is the right of any citizen to seek ultimate redress in the one, the only, forum designed for that pur-

pose, where each of us is on a level playing field with any other—our courts, the ultimate equalizer in our system of government.

Mr. Chairman, I also would say that anyone who has made it their goal to hide the truth, obstruct this process today, or use it for political gain, should summon up whatever tattered remains of honor they have left, stand up, and walk out of this room, and taking with them such erroneous arguments as that the need to include graphic detail in the Starr referral was based on whim rather than the need to rebut the President's sorry attempt to deny reality and common sense alike.

Mr. Chairman, imagine if all the journalists, lawyers, and staff who fill this room today disappeared. Imagine if they were replaced with the faces of all the great American heroes who have come before us, the patriots who pledged their lives, fortunes, and sacred honor to create our Republic, the men who gathered in Philadelphia 211 years ago to solidify that with the Constitution.

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

Mr. BARR. I would ask 15 additional seconds.

Mr. HYDE. The gentleman is recognized for 15 additional seconds.

Mr. BARR. The men who gathered in Philadelphia 211 years ago to solidify that with the Constitution, the young soldiers who bled to death on foreign shores to protect it, the prosecutors who put their lives on the line to enforce its laws, every teacher who has led her class in reciting the Pledge of Allegiance, could anyone look into the faces of those people and tell them it really doesn't matter that the President abused his power, lied to the American people, perjured himself, and subverted the rule of law? Anyone who can answer yes to that question does not have the right to sit here today.

Mr. HYDE. The gentleman's time has again expired.

The distinguished gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Mr. Chairman, many of our colleagues have referred to our role here today as the most important work a Member of Congress can perform. I sincerely hope not. This may be the most attention that this committee will ever receive. This may be the biggest news story in which we will ever play a part. But God help the Nation if this is the most important work we will ever do in Congress.

Our work today is not about providing health insurance for more Americans, it is not about peace in the Middle East, or ending genocide in Kosovo. It is not about saving Social Security, reducing class sizes for our children, or approving the quality of life for even one single American.

I am not proud of what we are doing here today, and I would like to tell you why. I am not proud of the personal conduct of the President that has cheapened our national discourse, confused our children, disillusioned our idealists, and empowered our cynics.

While I am very proud of this President's accomplishments, I am not proud of his lapses in moral judgment.

I am not proud of this prosecutor, Kenneth Starr, who has turned government in upon himself, distorted our system of justice in a politically-inspired witch hunt that rivals McCarthyism in its sinister purpose, that asks mothers to betray daughters, Secret

Service officers to betray their highest charge, and lawyers to betray their clients, dead or alive, all in search of a crime to justify 5 years of work and more than $40 million of taxpayers' money.

I am not proud of the political attack culture in Washington that stops at nothing to destroy the lives of public servants, and spawns the likes of Linda Tripp, whose concept of friendship I would not wish on my worst enemy.

Nor am I proud of those in the media, who have fueled this indecent explosion and left objective journalism in its wake.

Now, I would like to tell you what I am proud of. I am proud of this document, the Constitution of the United States of America. I am proud of the Founding Fathers who authored it and envisioned a standard for removing a President high enough to prevent it from ever being used for political purposes to overturn the will of the people.

In the words of Alexander Hamilton, George Mason, and James Madison, a President shall be impeached for treason, bribery, or other high crimes and misdemeanors. Make no mistake about it, "or other high crimes and misdemeanors" means only those offenses that have the gravity and impact of treason and bribery.

I am proud of the millions of Americans who have sifted through mounds of disturbing material to reach the commonsense conclusion that this behavior does not rise to the level of an impeachable offense and have asked us in a loud and clear voice to move on to the Nation's real business.

I am also proud of the basic decency of the American people, who intuitively understand that morality is a complex equation, that good people sometimes do bad things, that moral people sometimes commit immoral acts. None of us should be defined only by our mistakes.

Finally, impeachment is not about adultery. It is rooted in a constitutional standard that has met the test of time. It is about subversion of government. The President had an affair. He lied about it. He didn't want anyone to know about it.

Does anyone reasonably believe that this amounts to subversion of government? Does anyone reasonably believe that this is what the Founding Fathers were talking about? For more than 200 years, since that convention in Philadelphia, Congress has never, never removed a President from office. Is this where we want to set the bar for future Presidents?

I plead with this committee to end this nonsense. We have real work to do for the people who sent us.

Thank you, Mr. Chairman, for your indulgence.

Mr. HYDE. I thank the gentleman. I think I am supposed to admonish you against spontaneous demonstrations, but we will waive that perquisite of the Chair.

The distinguished gentleman from Tennessee, Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman.

Mr. Chairman, I recently visited Gettysburg, Pennsylvania. I went to see again the battlefield there and the cemetery, and to stand near the spot where President Lincoln delivered the Gettysburg Address. That place, in my mind, brings thoughts of hardship and sacrifice and courage and suffering and death on both sides of

that great conflict. Our Nation survived that ordeal that divided us, and in time we grew strong as a result of it.

Today this committee begins an undertaking with the potential to again divide our Nation. We should resolve at the beginning, and as long as it lasts, that our thoughts must be about our Nation and its well-being. If what we ultimately discover justifies it, the Congress should have no hesitation to say, shame upon anybody who would defile our Nation, proceed to a judgment, and hasten to administer the constitutional punishment provided.

Under our system of government, every individual is important. All are entitled to fairness, but none is more important than any other, and that includes the President of the United States.

If the evidence shows offenses that require action, we should have the courage, without fear or favor, without submission to threats or intimidation, to do our duty. If none are shown, we should abandon these efforts and proceed with the serious and important business of our Nation.

In my mind, the task, although painful, is simple. We are bound by the Constitution and the laws. We have information, we have evidence, and we have recent precedents. These are ingredients that make up all the trials that have been conducted in the courts of our land for as long as we have been a Nation.

The object of every trial is to learn the truth and to render justice. Our role today, and it has been said many times in this hearing, is elementary. It is much like a preliminary hearing. It is to determine if we should recommend to the House of Representatives whether an inquiry should take place. The burden required for this is far less than will be required at other stages, if any, of this proceeding.

I hope to be fair, I hope to be impartial, I hope to be nonpartisan, I hope to follow the Constitution, I hope to follow the law, and I certainly will study the evidence carefully. I will be mindful, in all of these deliberations, of the memories of those who suffered and died and were left at Gettysburg and in all our Nation's conflicts, because it is those soldiers who have afforded us throughout history the privilege to engage in self-government.

Today we are engaging in self-government. To them and to every American citizen, we owe the courage to do the duty that has been thrust upon us.

Thank you, Mr. Chairman.

Mr. HYDE. I thank you, Mr. Jenkins.

The distinguished gentleman from New Jersey, Mr. Rothman.

Mr. ROTHMAN. Thank you, Mr. Chairman.

Over the past several weeks I have had a rare opportunity. It has been the opportunity to step into history and to try to learn from one of those who has set the standard for American fairness, and fairness for the Judiciary Committee, the former chairman of this committee, New Jersey's Congressman Peter Rodino.

Over the past several weeks, we have talked on the telephone for hours. Last Thursday I had the great privilege of meeting him in his Newark office. I must say, I walked out of his office with an even greater awareness of our shared commitment to our constitutional form of government and how the decisions this committee will make must be made without partisanship.

After a 4-year investigation, the Independent Counsel, Mr. Starr, has presented the House with 11 allegations of presidential misconduct. Our goal should be to resolve these 11 charges without further delay. However, I will not give my consent to another blank-check, open-ended investigation of the President. That is not the role of our committee. It is not fair to the President, it is not fair to the country, and it is not in our national interest.

If Mr. Starr has more charges, let him bring them forth now, or else we should resolve these Lewinsky charges before the end of this year. President Clinton engaged in a morally wrong relationship with Ms. Lewinsky and engaged in highly inappropriate conduct in trying to hide that relationship. He must be given an appropriate punishment that fits his offenses.

But the questions for our committee and the Nation are two: What is the constitutional import of the President's misconduct? And, number two, what is the most appropriate punishment for the President's actions?

No one wants to be partisan. Democrats, Independents, and Republicans want any inquiry into these matters to proceed fairly. I hope that as we vote on the motions of today and tomorrow, and as we conduct ourselves in the future, we will remember and be guided by the words Chairman Rodino spoke in this very room some 24 years ago: "Our own public trust, our own commitment to the Constitution, is being put to the test. Let us leave the Constitution unimpaired for our children as our predecessors left it to us."

Thank you, Mr. Chairman.

Mr. HYDE. Thank you, Mr. Rothman.

The distinguished gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, let me begin by reflecting back almost 25 years to a time in our history when young lawyers rose to positions of power in our Nation's Capital, lawyers with talent, intellect, and pedigrees from the best schools, lawyers such as Dean, Magruder, Liddy, Colson, all of whom wielded enormous power, but none who valued or respected the rule of law.

Those lawyers were influenced by a President: Richard Nixon. During that time I, like many Americans, judged their actions and found them wanting. I observed the national ordeal from afar. I was studying law at the University of Arkansas. As a student, it was drilled into me that lawyers should have the highest ethical standards, that we are officers of the court, that we have a high responsibility to seek the truth, and that we should never allow a fraud to be committed upon the court.

One of the brightest and most respected young law professors of that time was William Jefferson Clinton. The rule of the law was the mantra, and Watergate was the real-life case study.

I know many are saying this is not Watergate, and I agree. The facts are different. But are not the important questions the same? Is the rule of law less significant today than 25 years ago? Is unchecked perjury, if proven, less of a threat to our judicial system today than when Watergate was an example?

In my judgment, these are not insignificant questions that our committee and the American people must answer. I am always asked: "What do people in Arkansas say?" As Arkansans, we would just as soon change the subject; but we are first Americans, and

we know that as a country, if we ask the right questions and if we follow the Constitution, we will come to the right conclusion.

Today I want to assure my colleagues and my fellow Arkansans that I do not know the conclusion of this matter. I do not have all the answers, but in my judgment, the first step is clear; we must seek out those answers.

Based upon my own independent review of the evidence, it appears there exists reasonable cause to conduct a formal inquiry that is independent, that is fair, and leads to a speedy resolution.

Let me address some of the arguments I have heard this morning. First of all, some say "the President has admitted his error, let's move on." But we must remember, he has not admitted anything from a legal standpoint. He has denied legal wrongdoing. The Independent Counsel has submitted evidence that the President committed perjury, tampered with witnesses, obstructed justice, and abused the power of his office. In responding, the President has done what every citizen is entitled to do. He has proclaimed his innocence and challenged the proof on each charge.

The denial on behalf of the President does not allow this committee to accept the charges as stated but, rather, formal hearings are necessary to weigh the evidence and to determine whether the proceedings should continue or whether impeachment is warranted.

I also hear, "This is just about sex, let us shut it down and go home." If the premise of that statement is correct, I agree. But when the President testified before the Federal grand jury, last August, I recollect everyone was emphasizing to the President, "tell the truth." They were not encouraging him to lie. They were not saying, "Mr. President, it is only about sex, do not worry about it."

These are not questions posed by friends in the locker room, these are questions presented before citizens vested with the responsibility to enforce the criminal laws of our land. Truth was expected by the American public, truth was required by the law of our land, and truth was demanded by all who hold the presidency in high esteem.

Did the President tell the truth? He says yes. The Independent Counsel says no. Therefore it is necessary that we inquire further.

The cynics claim this is a partisan struggle. Let me assure you that this is not about following a party, but it is about following the law and the Constitution, wherever that path may lead. It is not about which party has the votes, but it is about which position is closest to the concept of justice, equity, and historical precedents. Partisan loyalties must be checked at the door of this great institution we all serve. Now we must abide by our oath of office.

The Constitution gives us the standard to follow. We cannot define impeachable offenses to a greater degree than the language of the Constitution, but we all agree the issue is the public trust. Our duty is not to punish anyone and our challenge is to avoid pettiness, but our goal should certainly be to determine whether a breach of the public trust has occurred and, if so, how best to repair it.

As the prophet Nehemiah devoted his life to rebuilding the wall around Jerusalem in times of old, so let this committee commit itself to maintaining the wall of public trust in our society today.

Thank you, I yield back.

Mr. HYDE. I thank the gentleman.

The distinguished gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. This is my first public hearing as the newest member of this committee, Mr. Chairman, and I am honored to serve on this committee under your leadership and the leadership of Mr. Conyers.

Like the other members of this committee, I recognize the seriousness of the job before us. We must seek the truth. I also recognize that the American people expect us, in fact demand from us, that we do our job not as Democrats or Republicans, but as Americans, because ultimately what is at stake here is not Bill Clinton, but what is at stake is the future of the office of the presidency and its relationship with the Congress and the American people.

When I first entered this hearing room only 2 weeks ago, that is how I honestly expected we would operate, simply as Americans. Of course, I recognized that we all came here either as Democrats or Republicans, but I sincerely believed that we would rise above that, that we would leave our partisan coats at the door and conduct these proceedings as 37 independent American jurors.

I was wrong. I am convinced that every decision pertaining to the release of documents was made before any of us ever entered this room. I believe that decision was based on the perceived impact that that release would have, not only on President Clinton, but also on the congressional elections only 4 weeks from now.

That is wrong, too. Our decision should not be based on partisan advantage; our decision should be based on what is right for our country. I have been disappointed, Mr. Chairman, but I am an optimist. I believe that we can work together, that we must work together if our work is to have any credibility.

Many comparisons have been made between Watergate and the issues before us. Some of those comparisons are valid, some are not. But even more instructive to our role, I believe, are the recent comments of Gerald Ford and Jimmy Carter, the two national leaders most responsible for helping this country move beyond the Watergate nightmare.

Jimmy Carter had a strong message. He criticized President Clinton for his actions and for not being truthful, a sober reminder that the President of the United States must provide moral leadership. Gerald Ford had an equally strong message. He stated, "The time has come to pause and consider the long-term consequences of removing this President from office based on the evidence at hand."

He has not called for impeachment but, instead, suggests that a public rebuke in the well of the House would be a fair and appropriate resolution, commensurate with the offenses of President Clinton. Gerald Ford's concern is for our country and the damage to the institution of the President, not Bill Clinton. The comments of our two former Presidents provide a framework to move forward. President Clinton's conduct was wrong and he must be held accountable, but it would hurt our country in the long run to drag this matter out endlessly.

It is time, Mr. Chairman, therefore, for a focused and fair inquiry. There must be finality to this process. For if there is one common thread tying the views of virtually every American to-

gether, it is this: The time has come to put this chapter of our history behind us, and move on to the matters that affect the lives of citizens throughout our country. Let us do it, Mr. Chairman.

I yield back the balance of my time.

Mr. HYDE. I thank the gentleman.

The gentleman from Indiana, Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

Today we address a subject which I suspect no member of the committee wishes were before us: whether to begin an inquiry of impeachment against the President of the United States. No matter what we may think regarding the actions of the President or the many others who have been much in the news these past months, it is not a good thing for the Nation that we find ourselves in the situation we now face. The days ahead of us, no matter their outcome, will be trying for each of us, for this institution, for the President, for our people.

Yet, wishing it were otherwise will not make it so. For whatever reason, we are where we are, and it is our responsibility to make the best of it. Most of my thinking over the past month has been focused on how to do so.

As an undergraduate at Indiana University, I had the good fortune to study with one of the Nation's great political scientists, Dr. Charles Hyneman. My life was affected deeply by his course in political philosophy as we studied the great thinkers, from Plato to the present. Much of our time was spent on the British and American writers, Hobbes and Locke and Burke, Jefferson and Madison, and the collective Publius of the Federalist Papers.

I came to understand then, and believe even more firmly today, that the God-given freedoms which we enjoy are dependent on man-made mechanisms for their protection. In our system, those mechanisms are found in the Constitution and the laws adopted pursuant to the procedure it sets forth, and despite the temptation to trivialize procedure in the legal proceedings of the land or to complain about technicalities in process, a system of laws is at the heart of protecting the freedoms we cherish.

In that course with Professor Hyneman, though, we did more than talk, and write, and theorize. I remember well his announcement one day that we would begin our field work on Saturday, meeting at his home for breakfast and being out for the entire day. He gave us no details, and I remember thinking it odd that a philosophy course would be conducting field work, but since I was a freshman, I was dutifully present.

Two hours later, a half a dozen of us were scattered across the steps of the courthouse at Vevay, Indiana, the place where the local townspeople gathered on Saturday mornings to do the shopping and simply to talk about families and friends, about the ball game the night before, about the crops, about current events. We listened.

I think I learned from that experience, and many others like it since, what the common values are that we share as a people, what the things are that are important in the lives of everyday Americans, what they expect from themselves, their neighbors, and their government. Among them are these: that they love their country; that they understand the need for heroes, and hope that some of

them are in the Nation's leadership; that they believe that all people are entitled to be treated fairly; that their government will ensure both fairness and freedom.

As I have struggled with today's questions, I return to the things affirmed for me in the hills of southern Indiana years ago, and reinforced through the years since: an appreciation of the common sense and the values of the people I represent and an understanding of the absolute necessity of a process to protect liberty.

As a people, we share a heritage which provides a system for the determination of truth, where everyone who has an interest also has the opportunity to be heard. Our duty as members in the matter before us is to ensure that this heritage is sustained and enhanced here. It can only be so if we remain firm in our resolve to find the truth, no matter the political consequences. The Constitution provides our compass. I intend to follow it wherever it may take us.

I yield the balance of my time.

Mr. HYDE. I thank the gentleman very much.

The distinguished gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. I would like to begin, first of all, by expressing my appreciation to you for the thoughtful manner in which you have handled this matter. I believe that Americans generally are recognizing the thoughtfulness of your attempts to meet the reasonable demands of the Democrats. I was pleased to see that the Washington Post and the New York Times have opined in support of your positions on even those difficult issues of scope and duration.

A few days ago, I held a town hall meeting in which Laurie Updike spoke of her two sons in the military. Paul is in the Navy and is stationed in Washington State. He has served on a ship in the Gulf. John is an Army marksman who is currently on his way to Russia and is then going to go to Bosnia.

She shed tears while she spoke of her sons, not because she isn't willing for them to risk all in the defense of freedom, as embodied in our Constitution and our American way of life. She, along with the 500 or so other people who packed the audience and gave her a standing ovation, is concerned that the sacrifices her sons have to make may be in support of decisions that have to do more with the President's will to retain power than with our national interest.

Laurie Updike's distrust of the President is a small insight into the gravity of what we are doing here today. It is the conduct of the President which has caused us to convene. This conduct has been decried in the most extreme terms by members of both parties. It deserves condemnation.

For instance, the President of the United States was apparently engaged with Monica Lewinsky while he was on the phone trying to commit Sonny Callahan, the chairman of the Foreign Operations Subcommittee of the Committee on Appropriations, to support his plans for Bosnia.

In addition, it appears a number of women have taken the position that they had not had a sexual relationship with the President, only to later acknowledge that they had. Are they now trying to enter some sort of exclusive club, or were they pressured earlier? Their reluctance and apparent shame suggests the latter.

What force may have been brought against them to influence their earlier decisions? Was that force derived from public office? Paula Jones had, she felt, a right to redress in the courts for sexual harassment. The President fought those claims but, in doing so, he appears to have lied. Can we allow those who disagree with our claims against them to lie in court?

Our debate is just beginning as to whether that conduct which these examples demonstrate is so reckless as to justify impeachment. Yet my colleagues on the other side are demanding, ad nauseum, a clear standard for what constitutes an impeachable offense.

They speak of the rule of law as requiring such a standard because they apparently misunderstand the meaning of the core concept of the rule of law. It does not require clarity. The law makes clarity paramount only in some narrow circumstances; for instance, it is a defense to a criminal charge that a statute is ambiguous. The President may, in the future, be subject to criminal charges and then all of his lawyers' parsing of words and terms may be relevant.

In most other areas, the law is evolving. Just last year, the Supreme Court expanded the law of sexual harassment to include a supervisor of the same sex. In opposition to the clarity necessary in criminal matters, the rule of law is simple: that no person or position or organization is above the law.

Here we are burdened to determine, each according to his conscience, after the facts are as clear as we can make them, if the President's conduct falls short of the standard the Founding Fathers left intentionally vague. Here we may be partisan in the highest sense. We must argue our views, we must look for facts and characterizations that favor our side.

Mr. Barrett's recollection of the party line votes differs from mine, frankly. Not that that is inappropriate. But as I recall, the Republicans acceded to virtually every—in fact, every motion for redaction that was made in the last hearing that we held. There was a great deal of bipartisanship in that hearing.

After the argument, we must set aside the partisan drive and vote for the truth as we see it. Our duty is to assure that the President is not above the law as set out in the Constitution. We as a committee are sitting to judge, but, at the same time, we will also be judged. Historians, with the aid of hindsight, are often harsh; but our children will be our harshest critics. Our children and their children's children, they must know that we know the difference between right and wrong.

If we proceed unjustly, our colleagues will reject our determinations. If we urge drastic action, our rationale must be clear. If we judge rightly, we shall be honored. Thank you, Mr. Chairman.

Mr. HYDE. Thank you very much, sir. The distinguished gentleman from California Mr. Rogan.

Mr. ROGAN. Thank you, Mr. Chairman. Today the House Judiciary Committee embarks upon a significant moment contemplated by our founders over two centuries ago. In offering my limited contribution to this morning's collection of thought, I want to set forth my own standards as we proceed.

First, for as long as this matter remains within our jurisdiction, I shall speak of it not as a Republican but as an American. To use or manipulate these proceedings for any partisan advantage would be a national tragedy of manifest proportions. In times like these, each of us is obliged to check our party affiliation at the door.

No member of this committee inherited their present responsibilities by swearing allegiance to any political party, to any President, or to any congressional leader. The common bond that connects us, each to the other, is our mutual oath of allegiance to the Constitution of the United States. We must view this oath with nothing short of reverence.

Second, I entered these proceedings with no fixed conclusions as to whether the President committed potentially impeachable offenses. As a former gang murder prosecutor and trial court judge, I believe the presumption of innocence is not a courtesy we grant to the President; it is his as a matter of right. He need not beg our leave to obtain it. Rather, we must passionately respect and defend it.

Third, despite some suggestion to the contrary, the purpose of this hearing is not for us to sit in moral judgment over the President's personal lifestyle. If this President, or any President, has engaged in marital indiscretions, this appropriately is the concern of a limited universe of people. It is the concern of his spouse, it is the concern of his family, it may well be the concern of those who entrusted him with high office. But it is not the concern of the House Judiciary Committee, nor is it the concern of the Congress of the United States. It is not our right or purpose to officially contemplate such matters in the abstract.

However, it is both our purpose and our legal obligation to review the President's alleged conduct within the framework of the rule of law, and whether such conduct violated his obligation to faithfully execute the law.

This is a very critical distinction, because up until now, the heritage of American jurisprudence has been that no person is above the law. Yet, despite the two centuries of tremendous sacrifice for this legacy, the ghosts of patriots past cannot compel us to maintain the standard that no person is above the law. Each generation ultimately makes that choice for itself.

Theodore Roosevelt understood this when he said that no man is above the law and no man is below it, nor do we ask any man's permission when we require him to obey it. His words are important because Roosevelt made no exception to this ideal for those who happen to share his party affiliation or his political agenda. Roosevelt knew the rule of law had to apply to all men or it would apply to no man.

President Kennedy echoed that sentiment shortly before his death, when he said that for one man to defy a law or court order he does not like is to invite us do the same. This leads to a breakdown of all justice. Some societies respect the rule of force. America respects the rule of law.

Mr. Chairman, as we now proceed, may our committee, our Congress, and our people heed the call of our heritage to respect the rule of law and to uphold the truth, no matter where it shall heed. In doing so, we will honor our constitutional duty, and we surely

will fulfill our ultimate obligations, both to conscience and to country. I yield back.

Mr. HYDE. I thank the gentleman.

The distinguished gentleman from South Carolina Mr. Graham.

Mr. GRAHAM. Thank you, Mr. Chairman. The good news is me and Mary Bono stand between now and lunch, and we will try to be short.

As we talk about history and how history will judge what we do, people are having to execute history. We are all tired. I am getting hungry. I want to get on with this. The public wants it over. The buzzing sound you may hear on your television is hopefully not me, but the spin machine is about to crank up here.

Both parties, on October 5, 1998, have come to this conclusion: They both have a resolution investigating the conduct of the President. That is good news. Some of the questions we may have to ask later on to get the truth are distasteful, at best; but the truth is, I have no clue what I am going to do yet. I can tell you that and look you in the eye and honestly mean it. I don't know if censure is appropriate, we should just drop it, or we should throw him out of office.

Nobody knows yet, in my opinion, who really has an open mind about this thing. Is this Watergate or Peyton Place? I don't know. Let me tell you, if I followed the polls, I know what I would do. In my district, people have no use for this President. None, zero, zip. Eighty-two percent of the people in one part of my district want to throw him out of office. If I followed the polls, I could sit up here and rant and rave and become Governor on it. I don't want to be Governor that way. I want to be a good Congressman, who 30 years from now, not just 30 days from now, people thought did the right thing.

The right thing is to take this seriously. Why are we here? We are here because some time ago in Arkansas, some young lady was summoned up to a room where the Governor of Arkansas allegedly dropped his pants and asked her to do some very disgusting things. I have no idea if that is true, but thank God I live in a country where that young lady can go to court.

If it had been a member of my family that had that happen to her, a lawsuit would have been the last thing that person would have had to worry about. This lady made a serious allegation. Her case was dismissed, and that shows you maybe the rule of law works even for the powerful.

But why are we here today? Somewhere between that room in Arkansas and October 5th, something happened. They called the President in to a deposition, because a lot of times in sexual harassment lawsuits, the conduct is behind closed doors with just the man and the woman, and it is who do you believe. That happens more times than not in sexual harassment lawsuits. So in this country, the litigant is allowed to look at the person and their activity and their behavior.

That is exactly what was going on in the Paula Jones lawsuit: Does the President have a pattern of conduct of approaching people that work for him and soliciting sex, mildly or forcefully? The judge allowed that conduct to be investigated, and the President was

placed under oath in the Paula Jones case. Ms. Lewinsky comes up. That is why we are here today.

How would you like it if in your lawsuit, if you find out later on that he lied through his teeth about a member of your family, that the gifts that you wanted to prove were an essential part of the case wound up under the secretary's bed of the guy you are suing, that as soon as he leaves the deposition he goes back and he coaches the witness about what to say; and your government, after knowing all of that, said we are tired of it, let's quit? That is one scenario that may play itself out.

The other scenario is that this guy just has a problem, and he cannot control himself. It is about human failings, and censure is appropriate, and we do not need to turn the country upside down.

Nobody can tell me yet whether this is part of a criminal enterprise or a bunch of lies that build upon themselves based on not wanting to embarrass your family. If that is what it is, about an extramarital affair with an intern and that is it, I will not vote to impeach this President, no matter if 82 percent of the people at home want me to, because we will destroy this country.

If it is about a criminal enterprise where the operatives of the President at every turn confront witnesses against him in illegal ways, threaten people, extort them, if there is a secret police unit in this White House that goes after women or anybody else for this President, that is Richard Nixon times ten and I will vote to impeach him.

Mr. HYDE. I thank the distinguished gentleman. The wedding feast at Caana, the good Lord saved the best wine until last; and in addition to following the Rodino format, we are following the wedding feast in Caana by having the best last: the gentlewoman from California, Mrs. Bono.

Mrs. BONO. This past year has been a very difficult time for our country, and it has been a very difficult time for me personally. For the past 9 months we have become increasingly consumed by this one issue, and it has wounded us as a people.

Finally, today we have the opportunity to begin the healing process that will put this issue behind us, and the truth will not get lost in the process. This is not about Republicans and it is not about Democrats. This is also not about sex. It is bigger than that. It is about the public trust. If the loss of trust is what fuels the cynicism of politicians, then this process is about restoring the fundamental trust that is so important to the country's conscience.

People hope to point to the White House with pride. We believe that the President will tell the truth and set an example for our actions. We parents want our children to respect and admire our President and our leaders.

It is as simple as the old story of George Washington chopping down the cherry tree. These lessons have inspired my kids to dream about becoming the American President when they grow up—both my son and my daughter. I want my kids, I want all kids, to be able to have that dream.

Unfornately the message that they are hearing today makes me lose faith that they will have that goal after all of this is done. That is how damaging this has been.

Our forefathers decided more than 200 years ago that we would no longer be under the rule of the king. Many paid the ultimate sacrifice in the name of that freedom. They wanted to have a President who would be held accountable for his behavior under the law. That is why we have the process that brings us here today.

I have avoided any prejudgment during this process, and I have focused on uncovering the truth. After all, that is what the American people hope for: the truth. We have grown all-too weary of the constant media frenzy that has surrounded this process. The people are tired of lawyers who try to cover up the truth with hyperlegal hair-splitting and clever rhetoric. We have grown weary of the political gamesmanship and perpetual spin because they obscure the facts.

The time has come for the American people to get the facts. It is time to get beyond the emotional reactions and allow ourselves to know the difference between a truth and a lie, or even between a true and a misleading statement. And I am certain that the American people will know the truth when they hear it. I am also certain that we are capable of handling the truth.

Over the past year, I learned a very valuable lesson from the most important people in the world to me, and they are my children. This year they taught me that from the deepest adversity there can be found a ray of hope. From that hope we can draw our strength.

So what can we do now that will make us better as a people? As a Nation, it is time to find that needed strength to endure a process that I hope will be fair. Our goal is to learn the truth. Perhaps the truth will mean that this process ends sooner rather than later. If at the end of the day we find it warrants further action, then we must proceed.

That is why I will listen closely with an open heart and an open mind to the upcoming presentations. Many important issues are raised by Judge Starr's report, and many new important questions may also surface. There are too many questions that need to be answered. I am at a loss to pick the right remedy to cure our national crisis, although several are suggested.

I believe the committee is taking the right path with this inquiry. But honestly, I would just like to know whether the President committed perjury. I would like to know whether he obstructed justice. I would like to know whether he abused power. I would like to know whether we are good enough as the Committee on the Judiciary to come together on this issue. But I do know that we are good enough as a country to work to get past this.

I also know that without this process, none of us will ever know the answers to these questions, and without these answers, our country cannot put this issue behind us. The time has come now for the healing process to begin. Thank you, Mr. Chairman.

Mr. HYDE. I thank the gentlelady.

The Chair would like to announce that we will adjourn, or recess, rather, for 45 minutes, until 1:15, when we will resume promptly, because we wish to finish this this afternoon.

I want to commend the committee. Both sides have done extremely well. It has been informative. If we can continue, we can

finish this this afternoon. So the committee stands in recess until 1:15.

[Whereupon, at 12:35 p.m., the committee recessed, to reconvene at 1:15 p.m., this same day.]

Mr. HYDE. The committee will come to order. Will the members take their seats, please?

The committee will now receive a presentation from Mr. David Schippers and Mr. Abbe Lowell for up to 1 hour each. The Chair does not intend to recognize members to direct questions to the staff during the briefing.

The Chair now recognizes for up to an hour, Mr. Schippers.

Mr. SCHIPPERS. Thank you, Mr. Chairman.

Mr. HYDE. Before you start, Mr. Schippers, Mr. Schumer can make the unanimous consent request.

Mr. SCHUMER. Mr. Chairman, I ask unanimous consent that this letter which—I guess, of September 25th from Kenneth Starr to you and Mr. Conyers be able to be used in this hearing—be considered——

Mr. HYDE. Be considered in open session, although it is appropriately executive session material. Without objection, so ordered.

[The information follows:]

OFFICE OF THE INDEPENDENT COUNSEL,
Washington, DC, September 25, 1998.

HAND DELIVERED

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
2138 Rayburn House Office Building,
Washington, DC.

Hon. JOHN CONYERS, JR.,
Ranking Minority Member,
Committee on the Judiciary,
2138 Rayburn House Office Building,
Washington, DC.

DEAR CHAIRMAN HYDE AND REPRESENTATIVE CONYERS: In recent days various media and Members of congress have publicly commented on the propriety of this Office's actions in contacting Monica S. Lewinsky on January 16, 1998 at the Ritz-Carlton Hotel. At the time we submitted our Referral we viewed these questions as incidental and tangential. Nonetheless, the issue has now been raised publicly and appears to be on the substantiality and credibility of the information we provided to the House in our Referral.

The question of the propriety of our actions has already been litigated and resolved by Chief Judge Johnson. Because Congress may find this material germane to its inquiry, I am conveying to Congress the docketed filings in *In Re Grand Jury Proceedings* (D.D.C. Misc. No. 98–068) and the appeal of that ruling in *In Re Sealed Case* (D.C. Cir. Nos. 98–3052, 98–3053, 98–3059). the filings on the dockets are specified in the attachment to this letter. I call your particular attention to the pleadings and orders filed in the district Court between March 31, 1998, and April 28, 1998, which bear directly on the factual issue of the OIC's contact with Ms. Lewinsky on January 16.

Sincerely,

KENNETH W. STARR,
Independent Counsel.

Mr. SCHUMER. Thank you.

Mr. HYDE. You bet.

Mr. Schippers.

Mr. SCHUMER. I will not let you put any other words in my mouth, Mr. Chairman. Not today, anyway.

STATEMENT OF DAVID SCHIPPERS, CHIEF INVESTIGATIVE COUNSEL

Mr. SCHIPPERS. Thank you, Mr. Chairman.

Mr. HYDE. Pull the microphone a little closer to you so we can hear you.

Mr. SCHIPPERS. Mr. Chairman, members, as the chief investigative counsel for the majority, I have been called upon to advise the Judiciary Committee of the results of our analysis and review of the September 9, 1998, referral from the Office of the Independent Counsel in which there was a conclusion that there is substantial and credible information that President William Jefferson Clinton committed acts that may constitute grounds for an impeachment.

Mr. HYDE. Mr. Schippers, would you pull the mike a little closer to you?

Mr. SCHIPPERS. How is that? Is that better?

Mr. HYDE. Much better.

Mr. SCHIPPERS. In executing the task assigned to us, my staff and I have made a deliberate effort to discount the political aspects of our examination and to ignore any partisan tactics and strategy.

The standard of review was set by me in our very first meeting after the delivery of the material. I reminded the staff that we are not advocates, that we are professionals asked to perform a professional, albeit distasteful, duty. Therefore, I asked them to review the referral and supporting data in the light most favorable to the President.

Throughout this effort, we have been determined to avoid even the suggestion of preference because we view our responsibility as requiring an unbiased, full and expeditious review, untrammeled by any preconceived notions or opinions. Our approach has been solely in keeping with constitutional and legal standards of fairness and impartiality.

Before moving on to the substantive areas of the report, I would like to address two elementary, but basic, concepts of our constitutional government. These will serve to put our conclusions in the proper perspective.

First: The President of the United States enjoys a singular and appropriately lofty position in our system of government. But that position by its very nature involves equally unique and onerous responsibilities, among which are included affirmative obligations that apply to no other citizen.

Specifically, the Constitution of the United States imposes upon the President the explicit and affirmative duty to take care that the laws be faithfully executed. Moreover, before entering upon the duties of his office, the President is constitutionally commanded to take the following oath:

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 President, then, is the chief law enforcement officer of the United States. Although he is neither above nor below the law, he is, by virtue of his office, held to a higher standard than any other American. Furthermore, as Chief Executive Officer and Commander in Chief, he is the repository of a special trust.

Second: Many defendants who face legal action, whether it be civil or criminal, can honestly believe that the case against them is unwarranted and factually deficient. It is not, however, in the discretion of the litigant to decide that any tactics are justified to defeat the lawsuit in that situation. Rather, it is incumbent upon that individual to testify fully and truthfully during the truth-seeking phase. It is then the function of our system of law to expose the frivolous cases. The litigant may not with impunity mislead, deceive or lie under oath in order to prevail in the lawsuit or for other personal gain. Any other result would be subversive of the American rule of law.

The principle that every witness in every case must tell the truth, the whole truth and nothing but the truth, is the foundation of the American system of justice which is the envy of every civilized nation. The sanctity of the oath taken by a witness is the most essential bulwark of the truth-seeking function of a trial, which is the American method of ascertaining the facts. If lying under oath is tolerated and, when exposed, is not visited with immediate and substantial adverse consequences, the integrity of this country's entire judicial process is fatally compromised, and that process will inevitably collapse. The subject matter of the underlying case, whether civil or criminal, and the circumstances under which the testimony is given, are of no significance whatever. It is the oath itself that is sacred and must be enforced.

The Independent Counsel Act provides in relevant part that an independent counsel shall advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment.

In compliance with the statutory mandate, the Office of the Independent Counsel, Kenneth Starr, informed the House of Representatives on September 9, 1998, that it was prepared to submit a referral under that statute. On that day, the Independent Counsel's Office delivered to the House the following material:

A. A referral consisting of an Introduction, a Narrative of Relevant Events and an Identification and Analysis of the Substantial and Credible Information that may support grounds for impeachment of William Jefferson Clinton;

B. An appendix in six three-ring binders totaling in excess of 2,500 pages of the most relevant testimony and other material cited in the referral; and

C. Seventeen transmittal boxes containing grand jury transcripts, deposition transcripts, FBI reports, reports of interviews, and thousands of pages of incidental back-up documents.

Pursuant to House Resolution 525, all of this material was turned over to the Committee on the Judiciary to be held in executive session until September 28, 1998; and at that time the House ordered that all the materials be released to the public, except those which were withheld by action of the committee.

My staff and the minority staff were then instructed by the committee to review the referral, together with all of the other evidence and testimony that had been submitted, for the purpose of determining whether there actually existed substantial and credible evidence that President William Jefferson Clinton may have commit-

ted acts that may constitute grounds to proceed to a resolution for an impeachment inquiry.

Because of the narrow scope of our directive, the investigation and analysis was necessarily circumscribed by the information delivered with the referral. We also considered some information and analysis that was furnished by the counsel for the President. For that reason, we did not seek to procure any additional evidence or testimony from any other source. Particularly, we did not seek to obtain or review the material that remained in the possession of the Office of Independent Counsel. In two telephone conversations with Mr. Bittman, Mr. Lowell and I were assured that the retained material was deemed unnecessary to comply with the statutory requirement under Section 595(c). Though Mr. Bittman offered to make available to both counsel all of the material, my staff and I did not deem it necessary, for that matter, even proper, to go beyond the submission itself. At the suggestion of the minority counsel, the retained material was later reviewed by members of both staffs. The material was, as anticipated, irrelevant.

To support the referral, the House has been furnished with grand jury transcripts, FBI interview memoranda, transcripts of depositions, other interview memoranda, statements, audio recordings and, where available, video recordings of all persons named in the referral. In addition, the House was provided with a copy of every document cited and a mass of documentary and other evidence produced by witnesses, the White House, the President, the Secret Service, and the Department of Defense.

This report is confined solely to that referral and supporting evidence and the testimony supplied to the House and then to this committee, supplemented only by the information provided by the President's counsel. Although the original submission contained a transcript of the President's deposition testimony, no videotape was included. Pursuant to a request by Chairman Hyde, a videotape of the entire deposition was later provided to the committee by the District judge. Both that video and the video of the President's testimony before the grand jury have been thoroughly reviewed by all members of my staff and by me personally.

Apart from the thorough review of President Clinton's deposition and grand jury testimony, the following functions were also performed in preparation for this report:

1. All grand jury transcripts and memoranda of interview of Ms. Currie, Mr. Jordan, Ms. Lewinsky, the Secret Service agents and Ms. Tripp were independently reviewed, compared and analyzed by at least three members of my staff and those of Ms. Currie, Mr. Jordan, Ms. Lewinsky, Ms. Tripp and both appearances of the President by me personally.

2. All of the remaining grand jury transcripts, deposition transcripts and memoranda of the others interviewed were likewise reviewed, compared and analyzed. This involved more than 250 separate documents, some consisting of hundreds of pages. In this regard, my staff was instructed to seek any information that might cast doubt upon the legal or factual conclusions of the Independent Counsel.

3. The entire appendix, consisting of in excess of 2,000 pages, was systematically reviewed and analyzed against the statements contained in the referral.

4. I personally read the entire evidence reference and legal reference that accompanied the referral. I analyzed the legal precepts and theories and read at least the relevant portions of every case cited.

5. In addition to other members of the staff, I personally read and analyzed the 11 specific allegations made by the Independent Counsel, and I also reviewed the evidentiary basis for those allegations. Each footnote supporting the charges was checked to insure that it did, in fact, support the underlying evidentiary proposition. In cases where inferences were drawn in the body of the referral, the validity of those inferences was tested under acceptable principles of Federal trial practice.

6. Each of the literally thousands of back-up documents was reviewed in order to insure that no relevant evidence had been overlooked.

7. Meetings of the entire staff were held virtually on a daily basis for the purpose of coordinating our efforts and to synthesize the divergent material into a coherent report.

Having completed all of those tasks assigned to us, we are now prepared to report our findings to you, the members of this committee. We are fully aware that the purpose of this hearing is solely for the committee to decide whether there is sufficient, credible and substantial evidence to proceed to an impeachment inquiry. This and nothing more. Of course, as members of this committee, you and only you are authorized and encouraged eventually to make your own independent judgment on what constitutes impeachable offenses and the standards of proof that might be applicable. My report, then, represents only a distillation and consensus of the staff's efforts and conclusions for your guidance and consideration.

At the outset, one point needs to be made. The witness Monica Lewinsky's credibility may be subject to some skepticism. At an appropriate stage of the proceedings, that credibility will, of necessity, be assessed, together with the credibility of all other witnesses in the light of all the other evidence. Ms. Lewinsky admitted to having lied on occasion to Ms. Tripp, and she also admitted to having executed and caused to be filed a false affidavit in the *Paula Jones* case.

On the other hand, Ms. Lewinsky obtained a grant of immunity for her testimony before the grand jury and, therefore, has no reason to lie thereafter. Furthermore, the witness' account of the relevant events could well have been much more damaging. For the most part, though, the record reflects that she was an embarrassed and reluctant witness, who actually downplayed her White House encounters. In testifying, Ms. Lewinsky demonstrated a remarkable memory, supported by her personal diary, concerning dates and events. Finally, the record includes ample corroboration of her testimony by independent and disinterested witnesses, by documentary evidence and, in part, by the grand jury testimony of the President himself. Consequently, for the limited purpose of this report, we suggest that Monica Lewinsky's testimony is both substantial and credible.

It has been the considered judgment of my staff and myself that our main focus should be on those alleged acts and omissions by the President which affect the rule of law and the structure and integrity of our court system. Deplorable as the numerous sexual encounters related in the evidence may be, we chose to emphasize the consequences of those acts as they affect the administration of justice and the unique role the President occupies in carrying out his oath faithfully to execute the laws of the Nation.

The prurient aspect of the referral is, at best, merely peripheral to the central issues. The assertions of presidential misconduct cited in the referral, though arising initially out of sexual indiscretions, are completely distinct and involve allegations of an ongoing series of deliberate and direct assaults by Mr. Clinton upon the justice system of the United States and upon the judicial branch of our government which holds a place in the constitutional framework of checks and balances equal to that of the executive and the legislative branches.

As a result of our research and review of the referral and supporting documentation, we respectfully submit that there exists substantial and credible evidence of 15 separate events directly involving President William Jefferson Clinton that could—could—constitute felonies which, in turn, may constitute grounds to proceed with an impeachment inquiry.

I will now present the catalogue of those charges, together with a brief statement of the evidence supporting each.

Please understand that nothing contained in this report is intended to constitute an accusation against the President or anyone else, and it should not be construed as such by anyone. What follows is nothing more than a litany of the crimes that might have been committed based upon the substantial and credible evidence provided by the Independent Counsel and reviewed, tested and analyzed by my staff.

With that caution in mind, I will proceed:

First, there is substantial and credible evidence that the President may have been part of a conspiracy with Monica Lewinsky and others to obstruct justice and the due administration of justice by: (A) providing false and misleading testimony under oath in a civil deposition and before the grand jury; (B) withholding evidence and causing evidence to be withheld and concealed; and (C) tampering with prospective witnesses in a civil lawsuit and before a Federal grand jury.

The President and Ms. Lewinsky had developed a cover story to conceal their activities. On December 6, 1997, the President learned that Ms. Lewinsky's name had appeared on the *Jones* v. *Clinton* witness list. He informed Ms. Lewinsky of that fact on December 17, 1997, and the two agreed that they would employ the same cover story in the Jones case. The President at that time suggested that an affidavit might be enough to prevent Ms. Lewinsky from testifying. On December 19, 1997, Ms. Lewinsky was subpoenaed to give a deposition in the *Jones* case.

Thereafter, the record tends to establish that the following events took place:

1. In the second week of December, 1997, Ms. Lewinsky told Ms. Tripp that she would lie if called to testify and tried to convince Ms. Tripp to do the same.

2. Ms. Lewinsky attempted on several occasions to get Ms. Tripp to contact the White House before giving testimony in the *Jones* case.

3. Ms. Lewinsky participated in preparing a false and intentionally misleading affidavit to be filed in the *Jones* case.

4. Ms. Lewinsky provided a copy of the draft affidavit to a third party for approval and discussed changes calculated to mislead.

5. Ms. Lewinsky and the President talked by phone on January 6, 1998, and agreed that she would give false and misleading answers to questions about her job at the Pentagon.

6. On January 7, 1998, Ms. Lewinsky signed the false and misleading affidavit. The conspirators intended to use the affidavit to avoid Ms. Lewinsky's giving testimony.

7. After Ms. Lewinsky's name surfaced, the conspirators began to employ code names in their contacts.

8. On December 28, 1997, Ms. Lewinsky and the President met at the White House and discussed the subpoena she had received. Ms. Lewinsky suggested that she conceal the gifts that she had received from the President.

9. Shortly thereafter, the President's personal secretary, Betty Currie, picked up a box of the gifts from Ms. Lewinsky.

10. Betty Currie hid that box of gifts under her bed at home.

11. The President gave false and evasive answers to questions contained in interrogatories in the *Jones* case.

12. On December 31, 1997, Ms. Lewinsky, at the suggestion of a third party, deleted 50 draft notes that she had made up to the President. She had already been subpoenaed to testify in the *Jones* case.

13. On January 17, 1998, the President's attorney produced Ms. Lewinsky's false affidavit at the President's deposition, and the President adopted it as true.

14. On January 17, 1998, in his deposition, the President gave false and misleading testimony under oath concerning his relationship with Ms. Lewinsky, about the gifts she had given him, and several other matters.

15. The President, on January 18, 1998, and thereafter, coached his personal secretary, Betty Currie, to give a false and misleading account of the Lewinsky relationship if called to testify.

16. The President narrated elaborate detailed false accounts of his relationship with Monica Lewinsky to prospective witnesses with the intention that those false accounts would be repeated in testimony.

17. On August 17, 1998, the President gave false and misleading testimony under oath to a Federal grand jury on the following points: his relationship with Ms. Lewinsky; his testimony in the January 17, 1998, deposition; his conversations with various individuals; and his knowledge of Ms. Lewinsky's affidavit and its falsity.

At this point, I would like to illustrate some of the details concerning the events immediately before and after the President's deposition on January 17, 1998.

On January 7, 1998, Ms. Lewinsky signed the false affidavit, and it was furnished to Mr. Clinton's civil lawyer. The President reviewed it so he knew that she had denied categorically their relationship when the deposition began.

During the questioning, however, it became more and more apparent to the President that Ms. Jones' attorneys possessed a lot more specific details than the President had anticipated. When the President returned to the White House late on the afternoon of January 17th, the calls began.

After completing his deposition testimony on January 17, 1998, the President and Vernon Jordan exchanged three telephone calls. The President also called Betty Currie and asked her to meet with him in the Oval Office on the following day.

On Sunday, January 18th, at a little after 6 o'clock in the morning, the President learned of the existence of the Linda Tripp tapes through an article in the Drudge Report.

At 11:49 a.m., Vernon Jordan telephones the White House and, within 40 minutes, he meets White House counsel Bruce Lindsey for lunch.

At approximately 1 p.m., the President calls both Vernon Jordan and Betty Currie at their homes.

Between 2:15 and 2:55, the record shows that Vernon Jordan placed one call to the White House and one call to the President himself; and at five o'clock the President meets with Betty Currie. In that meeting, the President informs Ms. Currie that he had been questioned at his deposition about Monica Lewinsky.

During the next 3 hours and 16 minutes, Betty Currie places four pages to Monica Lewinsky's pager requesting that Monica call Kay, a previously agreed upon code name that was being used by Ms. Currie and Ms. Lewinsky.

At 10:09 p.m., Monica Lewinsky finally telephoned Betty Currie at home. She told Betty Currie that she was not in a position to be able to talk but that she would call back later.

At 11:02 p.m., the President telephoned Betty Currie at home as well.

That evening, Vernon Jordan called deputy White House counsel Cheryl Mills.

Although the following day, January 19, 1998, was a national holiday honoring Martin Luther King, Jr., the flurry of activity continued.

Between 7:02 and 8:33 a.m. Betty Currie places three pages to Monica Lewinsky instructing her to "please call Kay."

When Ms. Currie receives no response, she places another page 4 minutes later stating, "Please call Kay at home. It's a social call, thank you."

Four minutes after that page, Ms. Currie pages Monica again with a message, "Kay is at home. Please call."

Ms. Currie received no response to either of those pages or any of them.

Two minutes later, Betty Currie telephones the President from her home. Immediately following her phone call to the President, Ms. Currie places another page to Ms. Lewinsky telling her to please call Kay, re: family emergency.

At 8:50 a.m., 6 minutes later, the President calls Ms. Currie at home. Immediately after the phone call from the President, Ms. Currie once again pages Monica and states "Message from Kay. Please call. Have good news."

Six minutes after the President calls Ms. Currie at her home, he places a call to Vernon Jordan at his home.

During a 24-minute span, from 10:29 to 10:53 a.m., Vernon Jordan places five calls. Three of those calls are placed to the White House, one of which is to Deputy Assistant to the President Nancy Hernreich, and one to White House Chief of Staff, Erskine Bowles. Mr. Jordan also pages Monica Lewinsky instructing her to call him at his office. Mr. Jordan's final call in this time period is to Ms. Lewinsky's attorney, Frank Carter.

After Mr. Jordan concludes his call to Mr. Carter, he receives a phone call from the President.

Between 11:04 and 11:17 a.m., Vernon Jordan places two calls to Deputy White House Counsel Bruce Lindsey. Mr. Jordan again pages Monica Lewinsky with the message, "Please call Mr. Jordan."

At 12:31 p.m., Mr. Jordan uses his cellular phone to once again contact the White House.

At 1:45 p.m., the President telephones Betty Currie at home.

At 2:29 p.m., Vernon Jordan again telephones the White House from a cellular phone and then enters the White House 15 minutes later. Once at the White House, Mr. Jordan meets with President Clinton, Erskine Bowles, Bruce Lindsey, Cheryl Mills, White House Counsel Charles Ruff, Rahm Emanuel and others.

At 2:46 p.m., Frank Carter pages Monica Lewinsky and requests her to please call Frank Carter.

Beginning at 4:51 p.m., the next one hour and four minutes show Vernon Jordan placing 14 calls. Six of those calls are to Bruce Lindsey, three are to Frank Carter, two are to Cheryl Mills, one is to Charles Ruff, and two are to Betty Currie.

At 5:56 p.m., the President telephones Vernon Jordan at his office. Eight minutes later, Mr. Jordan telephones Betty Currie at her home. Finally, at 6:26 p.m., Vernon Jordan telephones presidential aid Steven Goodin.

Second, there is substantial and credible evidence that the President may have aided and abetted, counseled and procured Monica Lewinsky to file and cause to be filed a false affidavit in the case of *Jones* v. *Clinton.*

The record tends to establish the following:

In a telephone conversation with Ms. Lewinsky on December 17, 1997, the President told her that her name was on the witness list in the *Jones* case. The President then suggested that she might submit an affidavit to avoid testimony. Both the President and Ms. Lewinsky knew that that affidavit would need to be false in order to accomplish the result that they wanted.

In that conversation, the President also suggested "you know, you can always say you were coming to see Betty or that you were bringing me letters." Ms. Lewinsky knew exactly what he meant, because it was the same cover story that they had agreed upon earlier.

Thereafter, Ms. Lewinsky discussed the affidavit with and furnished a copy to a confidante of the President for approval. Ms. Lewinsky signed the false affidavit and caused her attorney to provide it to the President's lawyer for use in the *Jones* case.

Third, there is substantial and credible evidence that the President may have aided, abetted, counseled and procured Monica Lewinsky in obstruction of justice when she executed and caused to be filed a false affidavit in the case of *Jones* v. *Clinton* with knowledge of the pending proceedings and with the intent to influence, obstruct or impede that proceeding in the due administration of justice.

The record tends to establish that the President not only aided and abetted Monica Lewinsky in preparing, signing and causing to be filed a false affidavit, he also aided and abetted her in using that false affidavit to obstruct justice.

Both Ms. Lewinsky and the President knew that her false affidavit would be used to mislead the plaintiff's attorneys and the court. Specifically, they intended that the affidavit would be sufficient to avoid Ms. Lewinsky's being required to give a deposition in the *Jones* case. Moreover, it was the natural and probable effect of the false statement that it would interfere with the due administration of justice. If the court and the *Jones* attorneys were convinced by the affidavit, there would be no deposition, and Ms. Lewinsky and the plaintiff's attorneys—I am sorry, there would be no deposition of Ms. Lewinsky, and the plaintiff's attorneys would be denied the ability to learn about material facts and to decide whether to introduce those facts at any subsequent trial.

Mr. Clinton caused his attorney to employ the knowingly false affidavit not only to avoid Ms. Lewinsky's deposition but to preclude the attorneys from interrogating the President about the same subject.

Fourth, there is substantial and credible evidence that the President may have engaged in misprision of Monica Lewinsky's felonies of submitting a false affidavit and of obstructing the due administration of justice both by taking affirmative steps to conceal those felonies and by failing to disclose the felonies, though under a constitutional and statutory duty to do so.

The record tends to establish the following:

Monica Lewinsky admitted to the commission of two felonies: Signing a false affidavit under oath and endeavoring to obstruct justice by using the false affidavit to mislead the court and the lawyers in the *Jones* case so that she would not be deposed and required to give evidence concerning her activities with the President. In addition, the President was fully aware that those felonies had been committed when he gave his deposition on January 17, 1998.

Nonetheless, Mr. Clinton took affirmative steps to conceal these felonies, including allowing his attorney in his presence to use the affidavit and to suggest that it was true. More importantly, the President himself, while being questioned by his own counsel late in the deposition, referring to one of the clearly false paragraphs in Ms. Lewinsky's affidavit, stated, "that is absolutely true."

More importantly, again, the President is the chief law enforcement officer of the United States. He is under a constitutional duty

to take care that the laws be faithfully executed. When confronted with direct knowledge of the commission of a felony, he is required by his office, as is every other law enforcement officer, agent or attorney in the country, to bring to the attention of the appropriate authorities the fact of the felony and the identity of the perpetrator. If he did not do so, the President could be guilty of misprison of felony.

Fifth, there is substantial and credible evidence that the President may have testified falsely under oath in his deposition in *Jones* v. *Clinton* regarding his relationship with Monica Lewinsky.

The record tends to establish the following:

There are three instances where credible evidence exists that the President may have testified falsely about this relationship: One, when he denied a "sexual relationship" in sworn answers to interrogatories; two, when he denied having an "extramarital sexual affair" in his deposition; and, three, when he denied having "sexual relations" or "an affair" with Monica Lewinsky in his deposition.

When the President denied a sexual relationship, he was not bound by the definition that the court later provided. There is substantial evidence obtained from Ms. Lewinsky, the President's grand jury testimony, and DNA test results that Ms. Lewinsky performed sexual acts with the President on numerous occasions. Those terms, given their common meaning, could reasonably be construed to include oral sex. The President also denied having sexual relations with Ms. Lewinsky as the court had defined that term. In the context of the lawsuit and the wording of that definition, there is substantial evidence that the President's later explanation given to the grand jury is an afterthought and is unreasonably narrow under the circumstances. Consequently, there is substantial evidence that the President's denial under oath in his deposition of a sexual relationship, a sexual affair or sexual relations with Ms. Lewinsky was not true.

Six, there is substantial and credible evidence that the President may have given false testimony under oath before the Federal grand jury on August 17, 1998, concerning his relationship with Monica Lewinsky.

The record tends to establish the following:

During his grand jury testimony, the President admitted only to inappropriate intimate contact with Monica Lewinsky. He did not admit to any specific acts. He categorically denied ever touching Ms. Lewinsky on the breasts or genitalia for the purpose of giving her sexual gratification. There is, however, substantial contradictory evidence from Ms. Lewinsky. She testified at length and with specificity that the President kissed and fondled her breasts on numerous occasions during their encounters, and at times there was also direct genital contact. Moreover, her testimony is corroborated by several other friends.

The President described himself as a non-reciprocating recipient of Ms. Lewinsky's services. Therefore, he suggested that he did not engage in sexual relations within the definition given him at the *Jones* case deposition. He also testified that his interpretation of the word "cause" in the definition meant either the use of force or contact with the intent to arouse or gratify. The inference drawn by the Independent Counsel that the President's explanation was

merely an afterthought calculated to explain away testimony that had been proven false by Ms. Lewinsky's evidence appears credible under the circumstances.

Seven, there is substantial and credible evidence that the President may have given false testimony under oath in his deposition given in *Jones* v. *Clinton* regarding his statement that he could not recall being alone with Monica Lewinsky and regarding his minimizing the number of gifts that they had exchanged.

The record tends to establish the following:

President Clinton testified at his deposition that he had no specific recollection of being alone with Ms. Lewinsky in any room at the White House. There is ample evidence from other sources to the contrary. They include Betty Currie, Monica Lewinsky, several Secret Service agents and White House logs. Moreover, the President testified in the grand jury that he was alone with Ms. Lewinsky in 1996 and 1997 and that he had a specific recollection of certain instances when he was alone with her. He admitted to the grand jury that he was alone with her on December 28, 1997, 3 weeks prior to the date of his deposition.

The President was also asked at this deposition whether he had ever given any gifts to Ms. Lewinsky. He responded, "I don't recall." He then asked the *Jones* attorneys if they knew what they were. After the attorneys named specific gifts, the President remembered giving Ms. Lewinsky something from the Black Dog. That testimony, again, was given less than 3 weeks after Ms. Currie had picked up a box of the gifts that the President had given and hidden them under her bed.

In his grand jury testimony nearly 7 months later, he admitted giving Ms. Lewinsky Christmas gifts on December 28, 1997, and on other occasions. When confronted with his lack of memory at the deposition, the President responded that his statement "I don't recall" referred to the identity of specific gifts and not whether or not he actually recalled giving gifts.

The President also testified at his deposition that Ms. Lewinsky gave him gifts "once or twice." Ms. Lewinsky says that she gave a substantial number of gifts to the President. That is corroborated by gifts turned over by Ms. Lewinsky to the Independent Counsel and by a letter to the Independent Counsel from the President's attorney acknowledging that certain gifts given by Monica Lewinsky to the President could not be located. Thus, there is substantial and credible evidence that the President may have testified falsely about being alone with Monica Lewinsky and the gifts he gave to her.

Eight, there is substantial and credible evidence that the President may have testified falsely under oath in his deposition concerning conversations with Monica Lewinsky about her involvement in the *Jones* case.

The record tends to reflect the following:

The President was asked at his deposition if he ever talked to Ms. Lewinsky about the possibility that she would testify in the *Jones* case. He answered, "I'm not sure." He then related a conversation with Ms. Lewinsky or he joked about how the Jones attorneys would probably subpoena every female witness with whom he had ever spoken. He was also asked whether Ms. Lewinsky told

him that she had been subpoenaed. The answer was, no, I don't know if she had been.

There is substantial evidence, much from the President's own grand jury testimony, that those statements were false. The President testified before the grand jury that he spoke with Ms. Lewinsky at the White House on December 28, 1997, and that they spoke about the prospect that she might have to give testimony. He also later testified that Vernon Jordan told him on December 19, 1997, that Ms. Lewinsky had been subpoenaed. That is the date on which she received the subpoena.

Nine, there is substantial and credible evidence that the President may have endeavored to obstruct justice by engaging in a pattern of activity calculated to conceal evidence from the judicial proceedings regarding his relationship with Monica Lewinsky.

The record tends to establish that on Sunday, December 28, 1997, the President gave Ms. Lewinsky Christmas gifts in the Oval Office during a visit arranged by Ms. Currie. According to Ms. Lewinsky, when she suggested that the gifts he had given her be concealed because they were the subject of a subpoena, the President stated, "I don't know," or "Let me think about that."

Ms. Lewinsky testified that Ms. Currie contacted her at home several hours later and stated either I understand you have something to give me, or the President says you have something to give me. Later that same day, Ms. Currie picked up a box of gifts from Ms. Lewinsky's home.

The evidence indicates that the President may have instructed Ms. Currie to conceal evidence. The President has denied giving that instruction, and he contended under oath that he advised Ms. Lewinsky to provide all of the gifts to the *Jones* attorneys pursuant to the subpoena. In contrast, Ms. Lewinsky testified that the President never challenged her suggestion that the gifts should be concealed.

Ten, there is substantial and credible evidence that the President himself may have endeavored to obstruct justice in the case of *Jones* v. *Clinton* by agreeing with Monica Lewinsky on a cover story about their relationship by causing a false affidavit to be filed and by giving false and misleading testimony in his deposition. The record tends to establish that the President and Ms. Lewinsky agreed on false explanations for her private visit to the Oval Office. Ms. Lewinsky testified that when the President contacted her and told her she was on the witness list, he advised her that she could always repeat those cover stories and that she could file an affidavit.

Subsequently, during his deposition, the President stated that he never had a sexual relationship or affair with Ms. Lewinsky. He further stated that the paragraph in Ms. Lewinsky's affidavit denying a sexual relationship with the President was absolutely true, even though his attorney had argued that the affidavit covered "sex of any kind, in any manner, shape or form."

Eleven, there is substantial and credible evidence that the President may have endeavored to obstruct justice by helping Monica Lewinsky to obtain a job in New York City at a time when she would have given evidence adverse to Mr. Clinton if she told the truth.

The record tends to establish the following:

In October, 1997, the President and Ms. Lewinsky discussed the possibility of Vernon Jordan assisting her in finding a job in New York. On November 5, 1997, Mr. Jordan and Ms. Lewinsky discussed employment possibilities, and Mr. Jordan told her that she came highly recommended.

However, no significant action was taken on Ms. Lewinsky's behalf until December when the *Jones* attorneys identified Ms. Lewinsky as a witness. Within days, after Mr. Jordan again met with Ms. Lewinsky, he contacted a number of people in the private sector who could help her find work in New York.

Additional evidence indicates that on the day Ms. Lewinsky signed a false affidavit denying a sexual relationship with the President, Mr. Jordan contacted the President and discussed the affidavit. The next day, Ms. Lewinsky interviewed with MacAndrews & Forbes, an interview arranged with Mr. Jordan's assistance. And when Ms. Lewinsky told Mr. Jordan that the interview went poorly, Mr. Jordan contacted the chief executive officer of MacAndrews & Forbes. The following day, Ms. Lewinsky was offered the job, and Mr. Jordan contacted the White House with the message, mission accomplished.

In sum, Mr. Jordan secured a job for Ms. Lewinsky with a phone call placed on the day after Ms. Lewinsky signed a false affidavit protecting the President.

Twelve, there is substantial and credible evidence that the President may have testified falsely under oath in his deposition concerning his conversations with Vernon Jordan about Ms. Lewinsky.

The record tends to establish that Mr. Jordan and the President discussed Ms. Lewinsky on various occasions from the time she was served until she fired Mr. Carter and hired Mr. Ginsburg. This is contrary to the President's deposition testimony. The President was asked in his deposition whether anyone besides his attorney told him that Ms. Lewinsky had been served. "I don't think so," he responded. He then said that Bruce Lindsey was the first person who told him. In the grand jury, the President was specifically asked if Mr. Jordan informed him that Ms. Lewinsky was under subpoena. "No sir," he answered. Later in that testimony, when confronted with a specific date, the President admitted that he spoke with Mr. Jordan about the subpoena. Both the President and Mr. Jordan testified in the grand jury that Mr. Jordan informed the President on January 7 that Ms. Lewinsky had signed the affidavit. Ms. Lewinsky said she, too, informed the President of the subpoena.

The President was also asked during his deposition if anyone reported to him within the past 2 weeks—that would have been 2 weeks prior to January 17th—that they had a conversation with Monica Lewinsky concerning the lawsuit. The President said "I don't think so." As noted, Mr. Jordan told the President on January 7th that Ms. Lewinsky signed the affidavit. In addition, the President was asked if he had a conversation with Mr. Jordan where Ms. Lewinsky's name was mentioned. He said yes, Mr. Jordan mentioned she had asked for advice about moving to New York. Actually, the President had conversations with Mr. Jordan concerning three general subjects: Choosing an attorney to represent Ms.

Lewinsky, Ms. Lewinsky's subpoena and the contents of her executed affidavit, and Vernon Jordan's success in procuring a New York job for Ms. Lewinsky.

Thirteen, there is substantial and credible evidence that the President may have endeavored to obstruct justice and engage in witness tampering in attempting to coach and influence the testimony of Betty Currie before the grand jury.

The record tends to establish the following:

According to Ms. Currie, the President contacted her on the day he was deposed in the *Jones* case and asked her to meet him the following day. The next day, Ms. Currie met with the President, and he asked her whether she agreed with a series of possibly false statements, including we were never really alone. You could always see and hear everything, and Monica came on to me and I never touched her, right? Ms. Currie stated that the President's tone and demeanor indicated he wanted her to agree with those statements. According to Ms. Currie, the President called her into the Oval Office several days later and reiterated his previous statement using the same tone and demeanor. Ms. Currie later stated that she felt she was free to disagree with the President.

The President testified concerning those statements before the grand jury, and he did not deny that he made them. Rather, the President testified that in some of the statements he was referring only to meetings with Ms. Lewinsky in 1997 and that he intended the word "alone" to mean the entire Oval Office.

Fourteen, there is substantial and credible evidence that the President may have engaged in witness tampering by coaching prospective witnesses and by narrating elaborate detailed false accounts of his relationship with Ms. Lewinsky as if those stories were true, intending that those witnesses believe the story and testify to it before a grand jury.

John Podesta, the President's deputy chief of staff, testified that the President told him that he did not have sex with Ms. Lewinsky in any way whatsoever and that they had not had oral sex. Mr. Podesta repeated those statements to the grand jury.

Sidney Blumenthal, an assistant to the President, said that the President told him more detailed stories. He testified that the President told him that Ms. Lewinsky, who the President claimed had a reputation as a stalker, came at him, made sexual demands at him and threatened him, but he rebuffed her.

Mr. Blumenthal further testified that the President told him that he could recall placing only one call to Ms. Lewinsky. Mr. Blumenthal mentioned to the President that there were press reports that he, the President, had made telephone calls to Ms. Lewinsky and had left voice mail messages. The President then told Mr. Blumenthal that he remembered calling Ms. Lewinsky after Betty Currie's brother died.

Fifteen, there is substantial and credible evidence that the President may have given false testimony under oath before the Federal grand jury concerning his knowledge of the contents of Monica Lewinsky's affidavit and his knowledge of remarks made in his presence by his counsel.

The record tends to establish the following:

During the deposition, the President's attorney attempted to thwart questions pertaining to Ms. Lewinsky by citing her affidavit and asserting to the court that the affidavit represented that "there is absolutely no sex of any kind, manner, shape or form with President Clinton." At several points in his grand jury testimony, the President maintained that he could not be held responsible for this representation made by his lawyer because he was not paying attention to the interchange between his lawyer and the court. The videotape of the deposition shows the President apparently listening intently to the interchange; and, in addition, Mr. Clinton's counsel represented to the court that the President was fully aware of the affidavit and its contents.

The President's own attorney asked him during the deposition whether Ms. Lewinsky's affidavit denying a sexual relationship was "true and accurate." The President was unequivocal. He said, this is absolutely true. Ms. Lewinsky later said the affidavit contained false and misleading statements. The President explained to the grand jury that Ms. Lewinsky may have believed that her affidavit was true if she believed that "sexual relationship" meant intercourse. However, counsel did not ask the President if Ms. Lewinsky thought it was true; he asked the President if it was, in fact, a true statement. The President at that point was bound by the court's definition, and under his own interpretation of that definition, Ms. Lewinsky engaged in sexual relations. An affidavit denying this under the President's own interpretation of the definition is false.

That, Mr. Chairman, is my report to this committee. The guiding object of our efforts over the past 3 weeks has been a search for the truth. We felt it our obligation to follow the facts and laws wherever they might lead, fairly and impartially. If this committee sees fit to proceed to the next level of inquiry, we will continue to do so under your guidance.

Thank you, Mr. Chairman.

[The statement of Mr. Schipper follows:]

PREPARED STATEMENT OF DAVID P. SCHIPPERS, CHIEF INVESTIGATIVE COUNSEL

Mr. Chairman, Mr. Conyers, members of the committee, as chief investigative counsel for the majority I have been called upon to advise the Judiciary Committee of the results of our analysis and review of the September 9, 1998 Referral from the Office of Independent Counsel, in which it concluded that there is substantial and credible information that President William Jefferson Clinton committed acts that may constitute grounds for an impeachment.

In executing the task assigned to us, my staff and I have made a deliberate effort to discount the political aspects of our examination and to ignore any partisan tactics and strategy. The standard of review was set by me in our very first meeting following the delivery of the material. I reminded the staff that we are not advocates, but professionals asked to perform a professional, albeit distasteful duty. Therefore, I asked them to review the referral and supporting data in the light most favorable to the President.

Throughout this effort we have been determined to avoid even the suggestion of preference. We view our responsibility as requiring an unbiased, full and expeditious review, untrammeled by any preconceived notions or opinions. Our approach has been solely in keeping with constitutional and legal standards of fairness and impartiality.

Before moving on to the substantive areas of the report, I would like to address two elementary, but basic, concepts of our constitutional government. They will serve to put our conclusions in the proper perspective.

FIRST: The President of the United States enjoys a singular and appropriately lofty position in our system of government. But that position by its very nature in-

volves equally unique and onerous responsibilities, among which are included affirmative obligations that apply to no other citizen.

Specifically, the Constitution of the United States imposes upon the President the explicit and affirmative duty to "take Care that the Laws be faithfully executed . . ." Article II, Section 3. Moreover, before entering upon the duties of his office, the President is constitutionally commanded to take the following oath:

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 President, then, is the chief law enforcement officer of the United States. Although he is neither above nor below the laws, he is, by virtue of his office, held to a higher standard than any other American. Furthermore, as Chief Executive Officer and Commander in Chief, he is the repository of a special trust.

SECOND: Many defendants who face legal action, whether it be civil or criminal, may honestly believe that the case against them is unwarranted and factually deficient. It is not, however, in the discretion of the litigant to decide that any tactics are justified to defeat the lawsuit in that situation. Rather, it is incumbent upon that individual to testify fully and truthfully during the truth seeking phase. It is then the function of the system of law to expose the frivolous cases. The litigant may not with impunity mislead, deceive or lie under oath in order to prevail in the lawsuit or for other personal gain. Any other result would be subversive of the American rule of law.

The principle that every witness in every case must tell the truth, the whole truth and nothing but the truth, is the foundation of the American system of justice which is the envy of every civilized nation. The sanctity of the oath taken by a witness is the most essential bulwark of the truth seeking function of a trial, the American method of ascertaining the facts. If lying under oath is tolerated and, when exposed, is not visited with immediate and substantial adverse consequences, the integrity of this country's entire judicial process is fatally compromised and that process will inevitably collapse. The subject matter of the underlying case, whether civil or criminal, and the circumstances under which the testimony is given are of no significance whatever. It is the oath itself that is sacred and must be enforced.

> The Independent Counsel Act (Title 18, United States Code, Section 591, et seq.) provides in relevant part: An independent counsel shall advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment.

In compliance with the statutory mandate, the Office of Independent Counsel Kenneth Starr, informed the House of Representatives on September 9, 1998, that it was prepared to submit a referral under the statute. On that day, the Independent Counsel's Office delivered to the House the following material:

A. A referral consisting of an Introduction, a Narrative of Relevant Events and an Identification and Analysis of the Substantial and Credible Information that may support grounds for impeachment of William Jefferson Clinton;

B. An appendix in six three-ring binders totaling in excess of 2500 pages of the most relevant testimony and other material cited in the Referral; and

C. Seventeen transmittal boxes containing grand jury transcripts, deposition transcripts, FBI reports, reports of interviews, and thousand of pages of incidental back-up documents.

Pursuant to House Resolution 525, all of this material was turned over to the Committee on the Judiciary to be held in Executive Session until September 28, 1998. At that time the House ordered that all materials be released to the public, except those which were withheld by action of the committee.

My staff and the minority staff were instructed by the committee to review the referral, together with all of the other evidence and testimony that was submitted, for the purpose of determining whether there actually existed "substantial and credible" evidence that President William Jefferson Clinton may have committed acts that may constitute grounds to proceed to a resolution for an impeachment inquiry.

Because of the narrow scope of our directive, the investigation and analysis was necessarily circumscribed by information delivered with the referral together with some information and analysis furnished by the counsel for the President. For that reason, we did not seek to procure any additional evidence or testimony from any other source. Particularly, we did not seek to obtain or review the material that remained in the possession of the OIC. In two telephone conversations with Mr. Bittman, Mr. Lowell and I were assured that the retained material was deemed unnecessary to comply with the statutory requirement under Section 595(c). Though Mr. Bittman offered to make available to both counsel all of that material, my staff and I did not deem it necessary or even proper to go beyond the submission itself.

At the suggestion of the minority counsel, the retained material was reviewed by members of both staffs. The material was, as anticipated, irrelevant.

To support the referral, the House has been furnished with grand jury transcripts, FBI interview memoranda, transcripts of depositions, other interview memoranda, statements, audio recordings, and, where available, video recordings of all persons named in the referral. In addition, the House was provided with a copy of every document cited and a mass of documentary and other evidence produced by witnesses, the White House, the President, the Secret Service and the Department of Defense.

This report is confined solely to that referral and supporting evidence and testimony supplied to the House and then to this Committee, supplemented only by the information provided by the President's counsel. Although the original submission contained a transcript of the President's deposition testimony, no video tape was included. Pursuant to a request by Chairman Hyde, a video tape of the entire deposition was later provided to the Committee by the District Judge. Both that video and the video of the President's testimony before the grand jury have been thoroughly reviewed by all members of my staff and by me personally.

Apart from the thorough review of President Clinton's deposition and grand jury testimony, the following functions were performed in preparation for this report:

1. All grand jury transcripts and memoranda of interview of Ms. Currie, Mr. Jordan, Ms. Lewinsky, the Secret Service Agents, and Ms. Tripp were independently reviewed, compared and analyzed by at least three members of the staff; and those of Ms. Currie, Mr. Jordan, Ms. Lewinsky, Ms. Tripp and both appearances of the President by me personally.

2. All of the remaining grand jury transcripts, deposition transcripts and memoranda of the others interviewed were likewise reviewed, compared and analyzed. This involved more than 250 separate documents, some consisting of hundreds of pages. In this regard, my staff was instructed to seek any information that might cast doubt upon the legal or factual conclusions of the Independent Counsel.

3. The entire appendix, consisting of in excess of two thousand pages, was systematically reviewed and analyzed against the statements contained in the referral.

4. I personally read the entire evidence reference and legal reference that accompanied the referral. I analyzed the legal precepts and theories, and read at least the relevant portions of each case cited.

5. In addition to other members of the staff, I personally read and analyzed the eleven specific allegations made by the Independent Counsel, and reviewed the evidentiary basis for those allegations. Each footnote supporting the charges was checked to insure that it did, in fact, support the underlying evidentiary proposition. In cases where inferences were drawn in the body of the referral, the validity of those inferences was tested under acceptable principles of federal trial practice.

6. Each of the literally thousands of back-up documents was reviewed in order to insure that no relevant evidence had been overlooked.

7. Meetings of the entire staff were conducted on virtually a daily basis for the purpose of coordinating efforts and to synthesize the divergent material into a coherent report.

Having completed all of the tasks assigned to us, we are now prepared to report our findings to you, the members of this committee. We are fully aware that the purpose of this hearing is solely for the committee to decide whether there is sufficient credible and substantial evidence to proceed to an impeachment inquiry. This and nothing more. Of course, as Members of this Committee, you and only you are authorized and encouraged eventually to make your own independent judgment on what constitutes impeachable offenses and the standards of proof that might be applicable. My report, then, represents a distillation and consensus of the staff's efforts and conclusions for your guidance and consideration.

At the outset, one point needs to be made. The witness, Monica Lewinsky's credibility may be subject to some skepticism. At an appropriate stage of the proceedings, that credibility will, of necessity, be assessed together with the credibility of all witnesses in the light of all the other evidence. Ms. Lewinsky admitted to having lied on occasion to Linda Tripp and to having executed and caused to be filed a false affidavit in the *Paula Jones* case.

On the other hand, Ms. Lewinsky obtained a grant of immunity for her testimony before the grand jury and, therefore, had no reason to lie thereafter. Furthermore, the witness' account of the relevant events could well have been much more damaging. For the most part, though, the record reflects that she was an embarrassed and reluctant witness who actually downplayed her White House encounters. In testifying, Ms. Lewinsky demonstrated a remarkable memory, supported by her personal

diary, concerning dates and events. Finally, the record includes ample corroboration of her testimony by independent and disinterested witnesses, by documentary evidence, and, in part, by the grand jury testimony of the President himself. Consequently, for the limited purpose of this report, we suggest that Monica Lewinsky's testimony is both substantial and credible.

It has been the considered judgment of my staff and myself that our main focus should be on those alleged acts and omissions by the President which affect the rule of law, and the structure and integrity of our court system. Deplorable as the numerous sexual encounters related in the evidence may be, we chose to emphasize the consequences of those acts as they affect the administration of justice and the unique role the President occupies in carrying out his oath faithfully to execute the laws of the Nation.

The prurient aspect of the referral is, at best, merely peripheral to the central issues. The assertions of presidential misconduct cited in the referral, though arising initially out of sexual indiscretions, are completely distinct and involve allegations of an ongoing series of deliberate and direct assaults by Mr. Clinton upon the justice system of the United States, and upon the judicial branch of our government, which holds a place in the constitutional framework of checks and balances equal to that of the executive and the legislative branches.

As a result of our research and review of the referral and supporting documentation, we respectfully submit that there exists substantial and credible evidence of fifteen separate events directly involving President William Jefferson Clinton that could constitute felonies which, in turn, may constitute grounds to proceed with an impeachment inquiry.

I will now present the catalog of those charges, together with a brief statement of the evidence supporting each.

Please understand that nothing contained in this report is intended to constitute an accusation against the President or anyone else; nor should it be construed as such. What follows is nothing more than a litany of the crimes that might have been committed based upon the substantial and credible evidence provided by the Independent Counsel, and reviewed, tested and analyzed by the staff.

With that caution in mind, I will proceed:

I.

There is substantial and credible evidence that the President may have been part of a conspiracy with Monica Lewinsky and others to obstruct justice and the due administration of justice by: (A) providing false and misleading testimony under oath in a civil deposition and before the grand jury; (B) withholding evidence and causing evidence to be withheld and concealed; and (C) tampering with prospective witnesses in a civil lawsuit and before a federal grand jury.

The President and Ms. Lewinsky had developed a "cover story" to conceal their activities. (M.L. 8/6/98 GJ, at pp. 555, 234). On December 6, 1997, the President learned that Ms. Lewinsky's name had appeared on the *Jones* v. *Clinton* witness list. (Clinton GJ, p. 84). He informed Ms. Lewinsky of that fact on December 17, 1997, and the two agreed that they would employ the same cover story in the *Jones* case. (M.L. 8/6/98 GJ, pp. 122–123;

M.L. 2/1/98 Proffer). The President at that time suggested that an affidavit might be enough to prevent Ms. Lewinsky from testifying. (M.L. 8/6/98 GJ, pp. 122–123). On December 19, 1997, Ms. Lewinsky was subpoenaed to give a deposition in the *Jones* case. (M.L. 8/6/98 GJ, p. 128).

Thereafter, the record tends to establish that the following events took place:

(1) In the second week of December, 1997, Ms. Lewinsky told Ms. Tripp that she would lie if called to testify and tried to convince Ms. Tripp to do the same. (M.L. 8/6/98 GJ, p. 127).

(2) Ms. Lewinsky attempted on several occasions to get Ms. Tripp to contact the White House before giving testimony in the *Jones* case. (Tripp 7/16/98 GJ, p. 75; M.L. 8/6/98 GJ, p. 71).

(3) Ms. Lewinsky participated in preparing a false and intentionally misleading affidavit to be filed in the *Jones* case. (M.L. 8/6/98 GJ, pp. 200–203).

(4) Ms. Lewinsky provided a copy of the draft affidavit to a third party for approval and discussed changes calculated to mislead. (M.L. 8/6/98 GJ, pp. 200–202).

(5) Ms. Lewinsky and the President talked by phone on January 6, 1998, and agreed that she would give false and misleading answers to questions about her job at the Pentagon. (M.L. 8/6/98 GJ, p. 197).

(6) On January 7, 1998, Ms. Lewinsky signed the false and misleading affidavit. (M.L. 8/6/98 GJ, p. 203). Conspirators intended to use the affidavit to avoid

Ms. Lewinsky's giving a deposition. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer).

(7) After Ms. Lewinsky's name surfaced, conspirators began to employ code names in their contacts. (M.L. 8/6/98 GJ, pp. 215–217).

(8) On December 28, 1997, Ms. Lewinsky and the President met at the White House and discussed the subpoena she had received. Ms. Lewinsky suggested that she conceal the gifts received from the President. (M.L. 8/6/98 GJ, p. 152).

(9) Shortly thereafter, the President's personal secretary, Betty Currie, picked up a box of the gifts from Ms. Lewinsky. (Currie 5/6/98 GJ, pp. 107–108; M.L. 8/6/98 GJ, pp. 154–156).

(10) Betty Currie hid the box of gifts under her bed at home. (Currie 5/6/98 GJ, pp. 107–108; Currie 1/27/98 GJ, pp. 57–58).

(11) The President gave false answers to questions contained in Interrogatories in the *Jones* case. (V2–DC–53; V2–DC–104).

(12) On December 31, 1997, Ms. Lewinsky, at the suggestion of a third party, deleted 50 draft notes to the President. (M.L. 8/1/98 OIC Interview, p. 13). She had already been subpoenaed in the *Jones* case.

(13) On January 17, 1998, the President's attorney produced Ms. Lewinsky's false affidavit at the President's deposition and the President adopted it as true.

(14) On January 17, 1998, in his deposition, the President gave false and misleading testimony under oath concerning his relationship with Ms. Lewinsky about the gifts she had given him and several other matters. (Clinton Dep., pp. 49–84; M.L. 7/27/98 OIC Interview, pp. 12–15).

(15) The President, on January 18, 1998, and thereafter, coached his personal secretary, Betty Currie, to give a false and misleading account of the Lewinsky relationship if called to testify. (Carrie 1/27/98 GJ, pp. 71–74, 81).

(16) The President narrated elaborate detailed false accounts of his relationship with Monica Lewinsky to prospective witnesses with the intention that those false accounts would be repeated in testimony. (Currie 1/27/98 GJ, pp. 71–74, 81; Podesta 6/16/98 GJ, pp. 88–92; Blumenthal 6/4/98 GJ, pp. 49–51; Blumenthal 6/25/98 GJ, p. 8; Bowles 4/2/98 GJ, pp. 83–84; Ickes 6/10/98 GJ, p. 73; Ickes 8/5/98 GJ, p. 88).

(17) On August 17, 1998, the President gave false and misleading testimony under oath to a federal grand jury on the following points: his relationship with Ms. Lewinsky, his testimony in the January 17, 1998, deposition, his conversations with various individuals and his knowledge of Ms. Lewinsky's affidavit and its falsity.

At this point, I would like to illustrate some of the details concerning the events immediately before and after the President's deposition on January 17, 1998.

These facts appear in the record:

On January 7, 1998, Ms. Lewinsky signed the false affidavit, and it was furnished to Mr. Clinton's civil lawyer. The President reviewed it, so he knew that she had denied their relationship when the deposition began.

During the questioning, however, it became more and more apparent to the President that Ms. Jones' attorneys possessed a lot more specific detail than the President anticipated.

When the President returned to the White House, the calls began:

January 17, 1998
Saturday

4:00 p.m. (approx.).	**THE PRESIDENT** finishes testifying under oath in *Jones* v. *Clinton, et al.*
5:19 p.m.	Vernon Jordan places a call to the White House from a cellular phone.
5:38 p.m.	**THE PRESIDENT** telephones Vernon Jordan at home.
7:02 p.m.	**THE PRESIDENT** telephones Betty Currie at home but does not speak with her.
7:02 p.m.	**THE PRESIDENT** places a call to Mr. Jordan's office.
7:13 p.m.	**THE PRESIDENT** contacts Betty Currie at home and asks her to meet with him on Sunday.

January 18, 1998
Sunday

6:11 a.m.	**THE PRESIDENT** learns about the existence of the Tripp tapes.
11:49 p.m.	Vernon Jordan telephones the White House.

January 18, 1998—Continued
Sunday

12:30 p.m. (approx.).	Vernon Jordan has lunch with Bruce Lindsey. Lindsey informs Jordan about the existence of the Tripp tapes.
12:50 p.m.	**THE PRESIDENT** telephones Vernon Jordan at home.
1:11 p.m.	**THE PRESIDENT** telephones Betty Currie at home.
2:15 p.m.	Vernon Jordan telephones the White House on his cellular phone.
2:55 p.m.	Vernon Jordan telephones THE PRESIDENT.
5:00 p.m.	**THE PRESIDENT** meets with Betty Currie. He tells her that he was questioned at his deposition about Monica Lewinsky, and he suggests that Ms. Currie could "see and hear everything" that occurred when Ms. Lewinsky visited with him.
5:12 p.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home.".
6:22 p.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home.".
7:06 p.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home.".
7:19 p.m.	Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.
8:28 p.m.	Betty Currie pages Monica Lewinsky with the message "Call Kay."
10:09 p.m.	Monica Lewinsky telephones Betty Currie at home.
11:02 p.m.	**THE PRESIDENT** telephones Betty Currie at home.

January 19, 1998
Monday—Martin Luther King Day

7:02 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home at 8:00 this morning."
8:08 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay."
8:33 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."
8:37 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home. It's a social call. Thank you."
8:41 a.m.	Betty Currie pages Monica Lewinsky with the message "Kay is at home. Please call."
8:43 a.m.	Betty Currie telephones the President from home.
8:44 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kate re: family emergency."
8:50 a.m.	**THE PRESIDENT** telephones Betty Currie at home.
8:51 a.m.	Betty Currie pages Monica Lewinsky with the message "Msg. From Kay. Please call, have good news."
8:56 a.m.	**THE PRESIDENT** telephones Vernon Jordan at home.
10:29 a.m.	Vernon Jordan telephones the White House from his office.
10:35 a.m.	Vernon Jordan telephones Nancy Hernreich at the White House.
10:36 a.m.	Vernon Jordan pages Monica Lewinsky with the message. "Please call Mr. Jordan at [number redacted]."
10:44 a.m.	Vernon Jordan telephones Erskine Bowles at the White House.
10:53 a.m.	Vernon Jordan telephones Monica Lewinsky's attorney, Frank Carter.
10:58 a.m.	**THE PRESIDENT** telephones Vernon Jordan at his office.
11:04 a.m.	Vernon Jordan telephones Bruce Lindsey at the White House.
11:16 a.m.	Vernon Jordan pages Monica Lewinsky with the message. "Please call Mr. Jordan at [number redacted]."
11:17 a.m.	Vernon Jordan telephones Bruce Lindsey at the White House.
12:31 p.m.	Vernon Jordan telephones the White House from a cellular phone.
1:45 p.m.	**THE PRESIDENT** telephones Betty Currie at home.
2:29 p.m.	Vernon Jordan telephones the White House from a cellular phone.
2:44 p.m.	Vernon Jordan enters the White House. He meets with THE PRESIDENT, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel and others.
2:46 p.m.	Frank Carter pages Monica Lewinsky with message, "Please call Frank Carter at [number redacted]."
4:51 p.m.	Vernon Jordan telephones Betty Currie at home.
4:53 p.m.	Vernon Jordan telephones Frank Carter at home.
4:54 p.m.	Vernon Jordan telephones Frank Carter at his office. Mr. Carter informs Mr. Jordan that Monica Lewinsky has replaced Mr. Carter with a new attorney.

January 19, 1998—Continued
Monday—Martin Luther King Day

4:58 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
4:59 p.m.	Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.
5:00 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:00 p.m.	Vernon Jordan telephones Charles Ruff at the White House Counsel's Office.
5:05 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:05 p.m.	Vernon Jordan again telephones Bruce Lindsey at the White House Counsel's Office.
5:09 p.m.	Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.
5:14 p.m.	Vernon Jordan telephones Frank Carter at his office.
5:22 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:22 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:55 p.m.	Vernon Jordan telephones Betty Currie at home.
5:56 p.m.	**THE PRESIDENT** telephones Vernon Jordan at his office.
6:04 p.m.	Vernon Jordan telephones Betty Currie at home.
6:26 p.m.	Vernon Jordan telephones Stephen Goodin, an aide to THE PRESIDENT.

II.

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky to file and caused to be filed a false affidavit in the case of *Jones* v. *Clinton, et al.,* in violation of 18 U.S.C. 1623 and 2.

The record tends to establish the following:

In a telephone conversation with Ms. Lewinsky on December 17, 1997, the President told her that her name was on the witness list in the *Jones* case. (M.L. 8/6/98 GJ, p.l23). The President then suggested that she might submit an affidavit to avoid testimony. (Id.). Both the President and Ms. Lewinsky knew that the affidavit would need to be false in order to accomplish that result. In that conversation, the President also suggested "You know, you can always say you were coming to see Betty or that you were bringing me letters." (M.L. 8/6/98 GJ, p.l23). Ms. Lewinsky knew exactly what he meant because it was the same "cover story" that they had agreed upon earlier. (M.L. 8/6/98 GJ, p.l24).

Thereafter, Ms. Lewinsky discussed the affidavit with and furnished a copy to a confidant of the President for approval. (M.L. 8/6/98 GJ, pp. 200–202). Ms. Lewinsky signed the false affidavit and caused her attorney to provide it to the President's lawyer for use in the *Jones* case.

III.

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky in obstruction of justice when she executed and caused to be filed a false affidavit in the case of *Jones* v. *Clinton, et al.,* with knowledge of the pending proceedings and with the intent to influence, obstruct or impede that proceeding in the due administration of justice, in violation of 18 U.S.C. 1503 and 2.

The record tends to establish that the President not only aided and abetted Monica Lewinsky in preparing, signing and causing to be filed a false affidavit, he also aided and abetted her in using that false affidavit to obstruct justice.

Both Ms. Lewinsky and the President knew that her false affidavit would be used to mislead the Plaintiff's attorneys and the court. Specifically, they intended that the affidavit would be sufficient to avoid Ms. Lewinsky being required to give a deposition in the *Jones* case. Moreover, the natural and probable effect of the false statement was interference with the due administration of justice. If the court and the *Jones* attorneys were convinced by the affidavit, there would be no deposition of Ms. Lewinsky, and the Plaintiff's attorneys would be denied the ability to learn about material facts and to decide whether to introduce evidence of those facts.

Mr. Clinton caused his attorney to employ the knowingly false affidavit not only to avoid Ms. Lewinsky's deposition, but to preclude the attorneys from interrogating the President about the same subject. (Clinton Dep., p. 54).

IV.

There is substantial and credible evidence that the President may have engaged in misprision of Monica Lewinsky's felonies of submitting a false affidavit and of obstructing the due administration of justice both by taking affirmative steps to con-

ceal those felonies, and by failing to disclose the felonies though under a constitutional and statutory duty to do so, in violation of 18 U.S.C. 4.

The record tends to establish the following:

Monica Lewinsky admitted to the commission of two felonies: Signing a false affidavit under oath (M.L. 8/6/98 GJ, pp. 204–205) and endeavoring to obstruct justice by using the false affidavit to mislead the court and the lawyers in the *Jones* case so that she would not be deposed and be required to give evidence concerning her activities with the President. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer). In addition, the President was fully aware that those felonies had been committed when he gave his deposition testimony on January 17, 1998. (Clinton Dep., p.54).

Nonetheless, Mr. Clinton took affirmative steps to conceal these felonies, including allowing his attorney, in his presence, to use the affidavit and to suggest that it was true. (Clinton Dep., p. 54). More importantly, the President himself, while being questioned by his own counsel referring to one of the clearly false paragraphs in Ms. Lewinsky's affidavit, stated, "That is absolutely true." (Clinton Dep., p. 203).

More importantly, the President is the chief law enforcement officer of the United States. He is under a constitutional duty to take care that the laws be faithfully executed. When confronted with direct knowledge of the commission of a felony, he is required by his office, as is every other law enforcement officer, agent or attorney, to bring to the attention of the appropriate authorities the fact of the felony and the identity of the perpetrator. If he did not do so, the President could be guilty of misprision of felony.

V.

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition in *Jones* v. *Clinton, et al.* on January 17, 1998 regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

There are three instances where credible evidence exists that the President may have testified falsely about this relationship:

(1) When he denied a "sexual relationship" in sworn Answers to Interrogatories (V2–DC–53 and V2–DC–104);

(2) When he denied having an "extramarital sexual affair" in his deposition (Clinton Dep., p. 78); and

(3) When he denied having "sexual relations" or "an affair" with Monica Lewinsky in his deposition. (Clinton Dep., p. 78).

When the President denied a sexual relationship he was not bound by the definition the court had provided. There is substantial evidence obtained from Ms. Lewinsky, the President's grand jury testimony, and DNA test results that Ms. Lewinsky performed sexual acts with the President on numerous occasions. Those terms, given their common meaning, could reasonably be construed to include oral sex. The President also denied having sexual relations with Ms. Lewinsky (Clinton Dep., p. 78), as the court defined the term. (Clinton Dep., Ex. 1). In the context of the lawsuit and the wording of that definition, there is substantial evidence that the President's explanation given to the grand jury is an afterthought and is unreasonably narrow under the circumstances. Consequently, there is substantial evidence that the President's denial under oath in his deposition of a "sexual relationship", a "sexual affair" or "sexual relations" with Ms. Lewinsky was not true.

VI.

There is substantial and credible evidence that the President may have given false testimony under oath before the federal grand jury on August 17, 1998, concerning his relationship with Monica Lewinsky, in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

During his grand jury testimony, the President admitted only to "inappropriate intimate contact" with Monica Lewinsky. (Clinton GJ, p. 10). He did not admit to any specific acts. He categorically denied ever touching Ms. Lewinsky on the breasts or genitalia for the purpose of giving her sexual gratification. There is, however, substantial contradictory evidence from Ms. Lewinsky. She testified at length and with specificity that the President kissed and fondled her breasts on numerous occasions during their encounters, and at times there was also direct genital contact. (M.L. 8/26/98 Dep., pp. 30–38, 50–53). Moreover, her testimony is corroborated by several of her friends. (Davis 3/17/98 GJ, p. 20; Erbland 2/12/98 GJ, p. 29, 45; Ungvari 3/19/98 GJ, pp. 23–24; Bleiler 1/28/98 OIC Interview, p. 3).

The President described himself as a non-reciprocating recipient of Ms. Lewinsky's services. (Clinton GJ, p. 151). Therefore, he suggested that he did not engage in "sexual relations" within the definition given him at the *Jones* case deposition. (Id). He also testified that his interpretation of the word "cause" in the definition meant the use of force or contact with the intent to arouse or gratify. (Clinton GJ., pp. 17–18). The inference drawn by the Independent Counsel that the President's explanation was merely an afterthought, calculated to explain away testimony that had been proved false by Ms. Lewinsky's evidence, appears credible under the circumstances.

VII.

There is substantial and credible evidence that the President may have given false testimony under oath in his deposition given in *Jones* v. Clinton, et al. on January 17, 1998 regarding his statement that he could not recall being alone with Monica Lewinsky and regarding his minimizing the number of gifts that they had exchanged in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

President Clinton testified at his deposition that he had "no specific recollection" of being alone with Ms. Lewinsky in any room at the White House. (Clinton Dep., p. 59). There is ample evidence from other sources to the contrary. They include: Betty Currie (1/27/98 GJ, pp. 32–33; 5/6/98 GJ, p. 98; 7/22/98 GJ, pp. 25–26); Monica Lewinsky (M.L. 2/1/98 Proffer; M.L. 8/26/98 GJ); several Secret Service Agents and White House logs. Moreover, the President testified in the grand jury that he was "alone" with Ms. Lewinsky in 1996 and 1997 and that he had a "specific recollection" of certain instances when he was alone with her. (Clinton GJ, pp. 30–32). He admitted to the grand jury that he was alone with her on December 28, 1997, only three weeks prior to his deposition testimony. (Clinton GJ, p. 34).

The President was also asked at this deposition whether he had ever given gifts to Ms. Lewinsky. He responded, "I don't recall." He then asked the *Jones* attorney if he knew what they were. After the attorney named specific gifts, the President finally remembered giving Ms. Lewinsky something from the Black Dog. (Clinton Dep., p. 75). That testimony was given less than three weeks after Ms. Currie had picked up a box of the President's gifts and hid them under her bed. (Currie 1/27/98 GJ, pp. 57–58; Currie 5/6/98 GJ, pp. 107–108).

In his grand jury testimony nearly seven months later, he admitted giving Ms. Lewinsky Christmas gifts on December 28, 1997, (Clinton GJ, p. 33) and "on other occasions." (Clinton GJ, p. 36). When confronted with his lack of memory at his deposition, the President responded that his statement "I don't recall" referred to the identity of specific gifts, not whether or not he actually gave her gifts. (Clinton GJ, p. 52).

The President also testified at his deposition that Ms. Lewinsky gave him gifts "once or twice." (Clinton Dep., pp. 76–77). Ms. Lewinsky says that she gave a substantial number of gifts to the President. (M.L. 8/6/98 GJ, pp. 27–28, Ex. M.L.–7). This is corroborated by gifts turned over by Ms. Lewinsky to the Independent Counsel and by a letter to the Independent Counsel from the President's attorney. Thus, there is substantial and credible evidence that the President may have testified falsely about being alone with Monica Lewinsky and the gifts he gave to her.

VIII.

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones* v. *Clinton* on January 17, 1998, concerning conversations with Monica Lewinsky about her involvement in the *Jones* case, in violation of 18 U.S.C. 1621 and 1623.

The record tends to reflect the following:

The President was asked at his deposition if he ever talked to Ms. Lewinsky about the possibility that she would testify in the *Jones* case. He answered, "I'm not sure." He then related a conversation with Ms. Lewinsky where he joked about how the *Jones* attorneys would probably subpoena every female witness with whom he has ever spoken. (Clinton Dep., p. 70). He was also asked whether Ms. Lewinsky told him that she had been subpoenaed. The answer was, "No, I don't know if she had been." (Clinton Dep., p. 68).

There is substantial evidence—much from the President's own grand jury testimony—that those statements are false. The President testified before the grand jury that he spoke with Ms. Lewinsky at the White House on December 28, 1997, about the "prospect that she might have to give testimony." (Clinton GJ, p. 33). He also later testified that Vernon Jordan told him on December 19, 1997, that Ms. Lewinsky had been subpoenaed. (Clinton GJ, p. 42). Mr. Jordan also recalled telling

the same thing to the President twice on December 19, 1997, once over the telephone and once in person. (Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167–170). Despite his deposition testimony, the President admitted that he knew Ms. Lewinsky had been subpoenaed when he met her on December 28, 1997. (Clinton GJ, p. 36). There is substantial and credible evidence that his statement that he was "not sure" if he spoke with Ms. Lewinsky about her testimony is false.

IX.

There is substantial and credible evidence that the President may have endeavored to obstruct justice by engaging in a pattern of activity calculated to conceal evidence from the judicial proceedings in *Jones* v. *Clinton, et al.,* regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. 1503.

The record tends to establish that on Sunday, December 28, 1997, the President gave Ms. Lewinsky Christmas gifts in the Oval Office during a visit arranged by Ms. Currie. (M.L. 8/6/98 GJ, pp. 149–150). According to Ms. Lewinsky, when she suggested that the gifts he had given her should be concealed because they were the subject of a subpoena, the President stated, "I don't know" or "Let me think about that." (M.L. 8/6/98 GJ, p. 152).

Ms. Lewinsky testified that Ms. Currie contacted her at home several hours later and stated, "I understand you have something to give me" or "the President said you have something to give me." (M.L. 8/6/98 GJ, pp. 154–155). Later that same day, Ms. Currie picked up a box of gifts from Ms. Lewinsky's home. (M.L. 8/6/98 GJ, pp. 156–158; Currie 5/6/98 GJ, pp. 107–108).

The evidence indicates that the President may have instructed Ms. Currie to conceal evidence. The President has denied giving that instruction, and he contended under oath that he advised Ms. Lewinsky to provide all of the gifts to the *Jones* attorneys pursuant to the subpoena. (Clinton GJ, pp. 44–45). In contrast, Ms. Lewinsky testified that the President never challenged her suggestion that the gifts should be concealed. (M.L. 8/26/98 Dep., pp. 58–59).

X.

There is substantial and credible evidence that the President may have endeavored to obstruct justice in the case of *Jones* v. *Clinton, et al.,* by agreeing with Monica Lewinsky on a cover story about their relationship, by causing a false affidavit to be filed by Ms. Lewinsky and by giving false and misleading testimony in the deposition given on January 17, 1998, in violation of 18 U.S.C. 1503.

The record tends to establish that the President and Ms. Lewinsky agreed on false explanations for her private visits to the Oval Office. Ms. Lewinsky testified that when the President contacted her and told her that she was on the *Jones* witness list, he advised her that she could always repeat these cover stories, and he suggested that she file an affidavit. (M.L. 8/6/98 GJ, p. 123). After this conversation, Ms. Lewinsky filed a false affidavit. The President learned of Ms. Lewinsky's affidavit prior to his deposition in the *Jones* case. (Jordan 5/5/98 GJ, p. 24–25).

Subsequently, during his deposition, the President stated that he never had a sexual relationship or affair with Ms. Lewinsky. He further stated that the paragraph in Ms. Lewinsky's affidavit denying a sexual relationship with the President was "absolutely true," even though his attorney had argued that the affidavit covered "sex of any kind in any manner, shape or form." (Clinton Dep., pp. 54, 104).

XI.

There is substantial and credible evidence that the President may have endeavored to obstruct justice by helping Monica Lewinsky to obtain a job in New York City at a time when she would have given evidence adverse to Mr. Clinton if she told the truth in the case of *Jones* v. *Clinton, et al.,* in violation of 18 U.S.C. 1503 and 1512.

The record tends to establish the following:

In October, 1997, the President and Ms. Lewinsky discussed the possibility of Vernon Jordan assisting Ms. Lewinsky in finding a job in New York. (M.L. 8/6/98 GJ, pp. 103–104). On November 5, 1997, Mr. Jordan and Ms. Lewinsky discussed employment possibilities, and Mr. Jordan told her that she came "highly recommended." (M.L. 7/31/98 Int., p. 15; e-mail from Lewinsky to Catherine Davis, 11/6/97).

However, no significant action was taken on Ms. Lewinsky's behalf until December, when the *Jones* attorneys identified Ms. Lewinsky as a witness. Within days, after Mr. Jordan again met with Ms. Lewinsky, he contacted a number of people in the private sector who could help Ms. Lewinsky find work in New York. (Jordan 3/3/98 GJ, pp. 48–49).

Additional evidence indicates that on the day Ms. Lewinsky signed a false affidavit denying a sexual relationship with the President, Mr. Jordan contacted the President and discussed the affidavit. (Jordan 5/5/98 GJ, pp. 223–225). The next day, Ms. Lewinsky interviewed with MacAndrews & Forbes, an interview arranged with Mr. Jordan's assistance. (M.L. 8/6/98 GJ, pp. 205–206). When Ms. Lewinsky told Mr. Jordan that the interview went poorly, Mr. Jordan contacted the CEO of MacAndrews & Forbes. (Perelman 4/23/98 Dep., p. 10; Telephone Calls, Table 37, Call 6). The following day, Ms. Lewinsky was offered the job, and Mr. Jordan contacted the White House with the message "mission accomplished." (Jordan 5/28/98 GJ, p. 39).

In sum, Mr. Jordan secured a job for Ms. Lewinsky with a phone call placed on the day after Ms. Lewinsky signed a false affidavit protecting the President. Evidence indicates that this timing was not coincidental.

XII.

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones* v. *Clinton, et al.* on January 17, 1998, concerning his conversations with Vernon Jordan about Ms. Lewinsky, in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish that Mr. Jordan and the President discussed Ms. Lewinsky on various occasions from the time she was served until she fired Mr. Carter and hired Mr. Ginsburg. This is contrary to the President's deposition testimony. The President was asked in his deposition whether anyone besides his attorney told him that Ms. Lewinsky had been served. "I don't think so," he responded. He then said that Bruce Lindsey was the first person who told him. (Clinton Dep., pp. 68–69). In the grand jury, the President was specifically asked if Mr. Jordan informed him that Ms. Lewinsky was under subpoena. "No sir," he answered. (Clinton GJ, p. 40). Later in that testimony, when confronted with a specific date (the evening of December 19, 1997), the President admitted that he spoke with Mr. Jordan about the subpoena. (Clinton GJ, p. 42; Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167–170). Both the President and Mr. Jordan testified in the grand jury that Mr. Jordan informed the President on January 7 that Ms. Lewinsky had signed the affidavit. (Clinton GJ, p. 74; Jordan 5/5/98 GJ, 222–228). Ms. Lewinsky said she too informed the President of the subpoena. (M.L. 8/20/98 GJ, p. 66).

The President was also asked during his deposition if anyone reported to him within the past two weeks (from January 17, 1998) that they had a conversation with Monica Lewinsky concerning the lawsuit. The President said, "I don't think so." (Clinton Dep., p. 72). As noted, Mr. Jordan told the President on January 7, 1998, that Ms. Lewinsky signed the affidavit. (Jordan 5/5/98 GJ, pp. 222–228). In addition, the President was asked if he had a conversation with Mr. Jordan where Ms. Lewinsky's name was mentioned. He said yes, that Mr. Jordan mentioned that she asked for advice about moving to New York. Actually, the President had conversations with Mr. Jordan concerning three general subjects: Choosing an attorney to represent Ms. Lewinsky after she had been subpoenaed (Jordan 5/28/98 GJ, p. 4); Ms. Lewinsky's subpoena and the contents of her executed affidavit (Jordan 5/5/98 GJ, pp. 142–145; Jordan 3/3/98 GJ, pp. 167–172; Jordan 3/5/98 GJ, pp. 24–25, 223, 225); and Vernon Jordan's success in procuring a New York job for Ms. Lewinsky. (Jordan 5/28/98 GJ, p. 39).

XIII.

There is substantial and credible evidence that the President may have endeavored to obstruct justice and engage in witness tampering in attempting to coach and influence the testimony of Betty Currie before the grand jury, in violation of 18 U.S.C. 1512.

The record tends to establish the following:

According to Ms. Currie, the President contacted her on the day he was deposed in the *Jones* case and asked her to meet him the following day. (Currie 1/27/98 GJ, pp. 65–66). The next day, Ms. Currie met with the President, and he asked her whether she agreed with a series of possibly false statements, including, "We were never really alone," "You could always see and hear everything," and "Monica came on to me and I never touched her, right?" (Currie 1/27/98 GJ, pp. 71–74). Ms. Currie stated that the President's tone and demeanor indicated that he wanted her to agree with these statements. (Currie 1/27/98 GJ, pp. 73–74). According to Ms. Currie, the President called her into the Oval Office several days later and reiterated his previous statements using the same tone and demeanor. (Currie 1/27/98 GJ, p. 81). Ms. Currie later stated that she felt she was free to disagree with the President. (Currie 7/22/98 GJ, p.23).

The President testified concerning those statements before the grand jury, and he did not deny that he made them. (Clinton 8/17/98 GJ, pp. 133–139). Rather, the President testified that in some of the statements he was referring only to meetings with Ms. Lewinsky in 1997, and that he intended the word "alone" to mean the entire Oval Office complex. (Clinton 8/17/98 GJ, pp. 133–139).

XIV.

There is substantial and credible evidence that the President may have engaged in witness tampering by coaching prospective witnesses and by narrating elaborate detailed false accounts of his relationship with Ms. Lewinsky as if those stories were true, intending that the witnesses believe the story and testify to it before a grand jury, in violation of 18 U.S.C. 1512.

The record tends to establish the following:

John Podesta, the President's deputy chief of staff, testified that the President told him that he did not have sex with Ms. Lewinsky "in any way whatsoever" and "that they had not had oral sex." (Podesta 6/16/98 GJ, p. 92). Mr. Podesta repeated these statements to the grand jury. (Podesta 6/23/98 GJ, p. 80).

Sidney Blumenthal, an assistant to the President, said that the President told him more detailed stories. He testified that the President told him that Ms. Lewinsky, who the President claimed had a reputation as a stalker, came at him, made sexual demands of him, and threatened him, but he rebuffed her. (Blumenthal 6/4/98 GJ, pp. 46–51). Mr. Blumenthal further testified that the President told him that he could recall placing only one call to Ms. Lewinsky. (Blumenthal 6/25/98 GJ, p. 27). Mr. Blumenthal mentioned to the President that there were press reports that he, the President, had made telephone calls to Ms. Lewinsky, and also left voice mail messages. The President then told Mr. Blumenthal that he remembered calling Ms. Lewinsky after Betty Currie's brother died. (Blumenthal 6/4/98 GJ, p. 50).

XV.

There is substantial and credible evidence that the President may have given false testimony under oath before the Federal grand jury on August 17, 1998, concerning his knowledge of the contents of Monica Lewinsky's affidavit and his knowledge of remarks made in his presence by his counsel in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

During the deposition, the President's attorney attempted to thwart questions pertaining to Ms. Lewinsky by citing her affidavit and asserting to the court that the affidavit represents that there "is absolutely no sex of any kind, manner, shape or form, with President Clinton." (Clinton Dep., p. 54). At several points in his grand jury testimony, the President maintained that he cannot be held responsible for this representation made by his lawyer because he was not paying attention to the interchange between his lawyer and the court. (Clinton GJ, pp. 25–26, 30, 59). The videotape of the deposition shows the President apparently listening intently to the interchange. In addition, Mr. Clinton's counsel represented to the court that the President was fully aware of the affidavit and its contents. (Clinton Dep., p. 54).

The President's own attorney asked him during the deposition whether Ms. Lewinsky's affidavit denying a sexual relationship was "true and accurate." The President was unequivocal; he said, "This is absolutely true." (Clinton Dep., p. 204). Ms. Lewinsky later said the affidavit contained false and misleading statements. (M.L. 8/6/98 GJ, pp. 204–205). The President explained to the grand jury that Ms. Lewinsky may have believed that her affidavit was true if she believed "sexual relationship" meant intercourse. (Clinton GJ, pp. 22–23). However, counsel did not ask the President if Ms. Lewinsky thought it was true; he asked the President if it was, in fact, a true statement. The President was bound by the court's definition at that point, and under his own interpretation of that definition, Ms. Lewinsky engaged in sexual relations. An affidavit denying this, by the President's own interpretation of the definition, is false.

That is my report to this Committee. The guiding object of our efforts over the past three weeks has been to search for the truth. We felt it our obligation to follow the facts and the law wherever they might lead, fairly and impartially. If this committee sees fit to proceed to the next level of inquiry, we will continue to do so under your guidance.

Mr. HYDE. Thank you, Mr. Schippers. You finished on time. That is especially commendable.

Mr. Lowell, you have an hour.

The Chair, in response to some questions and complaints by the Democrats, and I must say I find them with some substance to them, object to Mr. Schippers' remarks as a citizen. He was here testifying as special counsel to the majority and not as a citizen. So those remarks he made at the end which do not refer to the record, to refer to the Starr referral, will be stricken from the record. That will be the order of the Chair.

Mr. Lowell, any time you are ready.

STATEMENT OF ABBE LOWELL, CHIEF INVESTIGATIVE COUNSEL

Mr. LOWELL. I am ready.

Chairman Hyde, Ranking Member Conyers, members of the committee, on behalf of the full minority staff, I appreciate the opportunity to address this committee and to present what are the very different approaches and different analyses between us and the majority staff.

In the time that I have, I will set out the enormous differences in approach between the majority staff's and the minority staff's analysis. I will point to some of the problems caused by the committee's not having begun this process with a discussion of the constitutional standard of impeachment. I will bring the committee's attention to why the huge gaps between the charges in the referral and now as proposed by majority counsel and the actual evidence support the type of fair, focused and expeditious review being proposed by the Democratic members, and we will recommend that part of the committee's work should include evaluating the weight and the credibility of the evidence because of the conduct of the Independent Counsel.

To begin with, we differ from our staff colleagues as we do not believe that this committee or the House of Representatives is supposed to be an extension of the Office of the Independent Counsel. In the majority counsel's presentation, I am sure the committee has heard that in just the two weeks there has been to actually review the evidence, majority counsel has now walked away from two of the grounds submitted by the Independent Counsel and has rewritten or added four others by simply subdividing the charges.

As the committee considers my and my counterpart's summaries of the evidence and what type of inquiry is needed, we offer this observation: The evidence that Congress has received from the Independent Counsel on the Lewinsky matter alone comes after he spent 9 months with a large staff of trained investigators and prosecutors and $4 million. It is a one-sided presentation by a prosecutor. The Independent Counsel's evidence includes 22 interviews or grand jury appearances by Monica Lewinsky, 9 by Betty Currie, 5 by Vernon Jordan and 20 by Linda Tripp.

If, after this much time by this many experienced attorneys spending this much money and conducting these many interviews, the evidence he sent does not support the charges he makes, how does renaming or relisting or further subdividing the grounds using that same evidence, as majority counsel has just done, make the case any stronger or the issues any clearer?

We also seem to differ because we see the committee's constitutional and historic task quite differently from the type of listing of

laws and statutes that the Independent Counsel's referral contains and as majority counsel has just done. The determinations of whether to begin an impeachment inquiry and what type of inquiry to conduct are vastly different than the determination of whether there is evidence of a violation of law or statute; in other words, the Independent Counsel's referral and the majority counsel's presentation suggest that there is some kind of equal sign between a violation by a President of any number of laws in the statute books on the one side and the impeachment provisions of Article II, Section 4 of the Constitution on the other. We read the precedents differently and see that initiating an impeachment process for only the third time in American history takes a far higher threshold than simply making a laundry list of laws a President may have violated. As Mr. Berman said this morning, not all offenses are high crimes and misdemeanors and not all high crimes and misdemeanors come from criminal conduct.

In our review of the evidence contained in the 18 boxes, which includes every piece of evidence that our majority counsel has just detailed, we have been particularly guided by the gravity impressed on us by our own staff predecessors 24 years ago when they wrote:

"Because impeachment of the President is a grave step for the Nation, it is to be predicated upon conduct seriously incompatible with either the constitutional form and principles of government or the proper performance of constitutional duties of the presidential office."

Unlike some, we have also kept one central point in mind: We have reviewed the referral as it was sent, not as a set of theoretical questions about what is or is not an impeachable offense in a vacuum, but a specific set of eleven grounds tied closely with the facts as the Independent Counsel has presented them.

And even though majority counsel has just attempted to add additional grounds or to rename others, they too will fit into the few categories for the committee that I will propose in a few minutes.

As to the referral itself, we have seen or heard the media ask members the largely rhetorical question: "Are you saying that lying under oath or obstruction of justice is not an impeachable offense?"

This may be the basis for excellent classroom debate, but it begs the issue in the actual Starr referral. The question the committee will be called upon to answer is whether the allegations of lying under oath, obstruction and tampering or even as majority counsel renames them as misprision of a crime, false statements, or even conspiracy, tied to the specific facts alleged in the referral and the evidence constitute grounds for proceeding, because wrenching the individual words "perjury," "false statements," "obstruction," or "tampering" from their factual context is not consistent with the historical precedents concerning the constitutional framework for an impeachment proceeding.

And, another defining difference between us and the majority staff is that we agree with our Democratic members who have stated so articulately that the process thus far is backwards. The committee is considering whether to open what type of actual impeachment inquiry without having spent a single minute discussing what conduct by a President rises to an impeachable offense.

This, members of the committee, is the equivalent of a ship's captain leaving on a difficult and uncharted voyage, hoping to find his or her compass somewhere along the way.

Moreover, the entire process has now been started by a referral from an Independent Counsel who states his role "is not to determine whether the President's actions warrant impeachment," but then proceeds to usurp the constitutional role of the House by including eleven reasons why it should do just that.

In this regard, the committee should compare the proceedings today and those 24 years ago; then Special Prosecutor Leon Jaworski wrote what has been called a "road map" of evidence that was neither accusatory nor conclusory; today, the Independent Counsel has written 445 pages of conclusions that read like an indictment. One more important difference to consider is that "road map" written by Mr. Jaworski remains secret to this very day. Mr. Starr's referral and nearly 7,000 pages of evidence can be dialed up on the Internet.

Were the committee to proceed as the Democratic members have been urging, to develop a shared understanding of what constitutes an impeachable offense, the committee might save time and resources because at the end of that consideration, the committee might find that none of the alleged violations, no matter how they were originally named by the Independent Counsel or renamed by majority counsel, and all of which are based on the President's private relationship with Monica Lewinsky, would rise to the constitutional threshold.

Without having what will be the committee's deliberations on this important issue, the staff simply kept in mind the broadest and the least forgiving definition of the constitutional requirement of "high crimes and misdemeanors," and when we did that, this is what we saw.

From the beginning, the framers said that they had to involve "great and dangerous offenses to subvert the Constitution," the quote from George Mason.

Or that, as Alexander Hamilton stated, they require there to be "injuries done immediately to the society itself."

Or, as Republican Ranking Member Edward Hutchinson said, when reviewing the conduct of President Nixon, the offenses had to be "high in the sense that they were crimes directed against or having great impact upon the system of government itself."

And even as the majority staff chooses to rewrite the Starr referral, they, as we, had a ready reference point which they have apparently rejected.

One of the lesser known offenses alleged against President Nixon outside of the Watergate cover-up was that he had purposely and knowingly engaged in tax evasion, including allegations that there was backdating of documents and a false filing under oath to the IRS.

With the Democrats in the majority and the Republicans in the minority judging a Republican President, the Committee voted 26 to 12 that these acts by the President, while perhaps constituting offenses, even criminal offenses, even felonies, were not grounds for impeachment. The Democratic alternative, which tries to put the cart of establishing standards back behind the horse of evaluating

evidence understands this basic question: If President Nixon's alleged lies to the IRS about his taxes were not grounds for impeachment in 1974, how then are alleged lies about President Clinton's private sexual relationship with Ms. Lewinsky grounds in 1998?

The Independent Counsel's referral is composed of 11 separate charges. majority counsel has already seen fit to reject 1 or 2 of these and he has renamed 5 or 6 others. But it is not the number of counts or grounds that matter, it is the underlying conduct. In our law, there is a prosecutor's strategy, which courts routinely disapprove, by which they divide what they believe to be a single offense into many different charges. They do this to make a case look more serious or foreboding.

This is very much what the Independent Counsel has done and now what majority counsel has adopted as his approach. The Independent Counsel can take the same conduct by the President and, with all the laws that exist on the books, call them 1 offense, 10 offenses or 100 offenses. That is what prosecutors do.

But no matter how many different grounds were sent by the Independent Counsel and no matter how majority Counsel may further divide them up or rename them in order to pile on additional charges, they fit into three distinct claims: first, that the President lied under oath about the nature of a sexual relationship with Monica Lewinsky; second, that he committed obstruction when he sought others to help him conceal that inappropriate relationship; and third, that he abused the Office of the Presidency by taking steps to hide that relationship.

So no matter how majority staff may hope to strengthen their recommendation by finding new offenses to tag on, one basic allegation, that is, that the President was engaged in an improper relationship which he did not want disclosed, it is the core charge that Mr. Starr and the majority staff suggest triggers this constitutional crisis.

Some reasons that are offered to support an open-ended inquiry are that the evidence is dense, the evidence supports the charges, and that those charges are serious. The minority staff's review suggests that the committee's inquiry can be as expeditious as the Democrats propose because most of the evidence has already been obtained, and that evidence usually does not support the allegations that have been made.

Time does not permit me to point out how each and every allegation of an offense stated by the Independent Counsel or now relabeled by majority Counsel is not as they contend it to be. And, in the interest of time, I have but will not read out loud the citations to pages in the actual evidence. But I can take the most serious of the charges to demonstrate the serious gap between allegations and proof.

First, as to the allegations that the President lied under oath, whether you call them "lying" or "perjury" or "false statements" or whatever, half the alleged grounds in the Independent Counsel's referral and now seven of the grounds renamed by the majority staff are that the President lied about his relationship with Monica Lewinsky. It is not the actual lie about the relationship that rises to an impeachable offense; I suppose the Independent Counsel agrees that people lie about their improper relationships, but it is

the fact that the lies occurred during a civil lawsuit or before the Independent Counsel's own grand jury that, according to the charges, constitutes the offense.

Majority staff's approach, taking up where Ken Starr left off, would have the committee continue to delve into even more details concerning the physical relationship between the President and Ms. Lewinsky so that, I suppose, the committee could determine who is telling the truth about who touched who, where and when; however, this unseemly process does not have to occur.

The better approach would be to take the Independent Counsel at its charge. If it was the fact that the President lied at his Paula Jones deposition that creates the possibly impeachable offense, then the inquiry required would be to determine the importance or impact of that statement in that specific case.

And this is what the evidence shows: These were misstatements about a consensual relationship made during a case alleging nonconsensual harassment. When Judge Webber Wright of Arkansas ruled on January 29, 1998 that the evidence about Ms. Lewinsky was "not essential to the core issues of the case" and when she then ruled on April 1 that no matter what the President did with any other woman, Ms. Jones herself had not proven that she had been harmed by what she alleged, the judge was giving this committee the ability to determine that the President's statements, whether truthful or not, were not of the legal importance suggested by Mr. Starr, let alone the grave constitutional significance to support impeachment. And a prolonged inquiry is not required to see that proper context.

Furthermore, the referral is quick to conclude that the President committed a serious offense by his interpretation of what did and did not constitute "sexual relations," in a definition invented for a deposition that is the type of gobbledygook that gives lawyers our bad name. But the committee will never read in the 445-page referral what the full evidence shows, that this definition just happened to be shared by Ms. Lewinsky herself. In the transcript of her taped October 3, 1997 conversation with Linda Tripp, Ms. Lewinsky says that she was not having sex with the President because they were not engaged in intercourse. And even a Paula Jones former attorney—after all, it was Paula Jones' attorneys who created that strained definition—agreed in a television interview that the definition would not necessarily include oral sex.

Members of the committee, no one has suggested that the President's answers, even given his explanation that he was "trying to be truthful but not particularly helpful" in what he thought was a lawsuit being run by his political enemies, was not misleading, was not evasive, was not technical. But seen in their entire context of the evidence, they do not have the constitutional impact that the Independent Counsel and majority counsel have just suggested.

Some have raised the impeachment of judges, including Judge Nixon, when they have been convicted for perjury, as a precedent for this committee; but members of this committee especially know that the lies in those cases had to do with the discharge of those judges' duties and that the standards for impeaching judges appointed for life are not the same as for reversing presidential elections.

And in this case, these were statements, the evidence shows the intent of which was to prevent the disclosure of an improper consensual relationship, not to interfere with allegations made by Paula Jones that she had been the subject of unwanted harassment. To put the evidence another way: Is there anyone involved in such an improper relationship who ever wanted it disclosed, and does anyone believe that the President would have revealed his improper relationship with Ms. Lewinsky had the *Paula Jones* case not been pending at the time?

Since the answers to these questions are obvious, the inquiry is not on whether his statements were or were not truthful, but what were their context, what were their impact and what were their subject matter? This, too, the committee can resolve expeditiously.

As the committee considers the charges that the President lied under oath, or however they may now be renamed by the majority staff, remember that one example of why the Independent Counsel would have Congress trigger this inquiry is that the President stated his relationship with Ms. Lewinsky started in 1996, when the Independent Counsel contends it started in late 1995. For the difference of these few months, a constitutional crisis is not warranted.

Turning to the obstruction allegations, because of its reminiscence to the Watergate proceeding, the phrase "obstruction of justice" is one which many have stated is the most egregious ground alleged in the Starr referral and why it was so emphasized by majority counsel who now splits the four contained in the Starr referral, counts 5, 6, 7 and 9 there, into his counts 2, 3, 4, 9, 10, 11, 13, and 14. But they are the same.

Just as the committee cannot divorce the phrase "lying under oath" from the facts about which the President is alleged to have lied, so too it should not divorce the allegations of obstruction, or whatever the majority staff chooses to call them, from the actual evidence.

Perhaps the three widest quoted obstruction charges made by the Independent Counsel are that: First, the President initiated a return of the gifts he had sent Ms. Lewinsky so that they would not be discovered in the *Paula Jones* case; second, he tried to have Ms. Lewinsky submit a false affidavit; and, third, he sought to tamper with the testimony of Ms. Currie. But all of these are undercut by the evidence. As to the gifts, Mr. Starr's referral states "Lewinsky and the President discussed the possibility of removing some gifts from her possession."

Majority counsel contends this to be a potential ground for impeachment and so too calls it obstruction. Certainly this would be a serious charge if true. The actual evidence, however, shows it is not true, no matter how cast as the Independent Counsel first did or as majority staff will label it now. Read the actual testimony and the committee will see that Ms. Lewinsky admits that she was the one who raised the gift issue with the President, not vice versa, and his response was not encouraging. He said, "Let me think about it."

This and his having already told her she would have to turn over whatever she had hardly can support a charge of obstruction or misprision or conspiracy as a criminal offense, let alone to justify

the majority counsel's conclusion of an impeachable one. Read further and the committee will see that contrary to the conclusion that the President was worried about gifts, he actually gave Ms. Lewinsky additional gifts after she had expressed concern about them and after he knew they were subpoenaed—hardly the acts of a man set on obstruction.

Finally, where the actual referral would indicate that it was the President or Ms. Currie who initiated the gift idea, Ms. Currie indicated that the idea came from Ms. Lewinsky. Not satisfied with this answer that did not match the charge that they were preparing, the Independent Counsel then proposed to Ms. Currie that her memory differed from Ms. Lewinsky. When Ms. Currie said that that "might" be the case, that one word "might" was all the Independent Counsel needed to make his charge. But read in its entirety, Ms. Currie's testimony is clear and no leading question or quotation out of context can change the one important thing about her testimony: The President did not ask her to call for or retrieve the gifts.

As to the affidavit, the Independent Counsel charges and majority counsel would argue that more inquiry is needed because the evidence is that the President sought Ms. Lewinsky to submit a false affidavit in the *Jones* case; a serious charge, which again is not contained in the evidence. There is no doubt that the President and Ms. Lewinsky discussed the affidavit and no doubt that neither wanted her to have to testify in a case concerning sexual harassment about what was their improper but entirely consensual relationship. The way Ms. Lewinsky puts it was, "It was a personal one and none of Paula Jones' business."

Wanting an affidavit to avoid this consensual relationship from being exposed, and seeking a false affidavit are not the same, even though the Starr referral jumps right over this difference. And as to the only facts that would matter, both the President and Ms. Lewinsky agreed that he never asked her to file a false affidavit, and that the President did not even want to see the affidavit once it was finished.

And even though the Independent Counsel tries to enhance his charge that the President sought Ms. Lewinsky to lie by "assisting her job search to 'keep her on the team'", hasn't everyone now seen that the job search began by others than the President long before the *Jones* case issue arose, that it was started to remove Ms. Lewinsky from the White House before the election, that Linda Tripp, not the President, suggested getting Vernon Jordan involved, that Ms. Currie pushed getting her then friend a job because she felt badly about Ms. Lewinsky having been transferred, and finally that Ms. Lewinsky, even though she was never asked by the Independent Counsel, made sure she did not finish her testimony before stating "No one asked me to lie and I was never promised a job for my silence."

And committee members, please note this: Despite the Independent Counsel having room in his report for pages and pages of unnecessary specifics, quoting directly from Ms. Lewinsky about where, when, and how she touched the President, he could not find the space in his 450 pages to quote her exact uncompromising,

clear and completely dispositive words on this key issue: "No one asked me to lie and I was never promised a job for my silence."

And as to Betty Currie, while the charge—the Independent Counsel may call it obstruction, majority counsel calls it something different—has been made that the President was trying to tamper with the testimony of Betty Currie, you can look through the 445 page referral and never see the Independent Counsel advise you that Ms. Currie was not listed to be deposed and was not on a witness list in the *Jones* case or even that the President obviously did not know that Linda Tripp had come to the Office of the Independent Counsel to start this investigation. Ms. Currie then was not a "witness" who could have been tampered with.

What the full transcripts of Ms. Currie, the President and the White House staff and reference to the time frame of January 18th do show is that the President's worry was not Ms. Currie being a witness but was the fact that the questions and answers at his deposition were going to be leaked to the press and create a media eruption. The evidence shows that is exactly what his motives were. Because just a few hours after his testimony, the Lewinsky questions and answers were on the Internet and the subject of the next day's, Sunday's, news shows.

And while the Independent Counsel and now the majority staff contend that the President sought to direct Ms. Currie about what to say, Ms. Currie says just the opposite. Her being called back and back and back to the Independent Counsel's grand jury and her now being called before this committee and asked the questions again and again and again did not then and will not now change the facts.

Members of the committee, counts 10 and 11 in the Independent Counsel's referral are in many ways the most illustrative of that referral and should be seen by you to undermine his entire presentation. They have now, as I hear my colleague, been dropped by majority counsel and staff.

Not content—and those are the allegations of abuse of office—not content with charging lying under oath, witness tampering and obstruction of justice about the President's attempt to hide his private relationship, the Independent Counsel has asked the committee to recast these same allegations as an abuse of office, just as majority counsel wants to rename his charges. The term "abuse of office" does indeed invoke the memory of President Nixon's wrongdoing. But the clothes of Watergate do not fit the body of the conduct detailed in this referral.

In effect, grounds 10 and 11 charge that the President lied to his staff or to the people around him about the same inappropriate relationship with Ms. Lewinsky knowing that they might repeat those misstatements and then that the President violated his oath of office because he and his attorneys tried to protect his constitutional rights by asserting privileges of law, including executive privilege and the attorney-client privilege given to presidents and all Americans alike.

Even majority counsel did not take long to dismiss these ideas, as his 15 charges do not include this odd notion of an abuse of office for those reasons, and I now assume that the majority will not pursue those counts.

But as to the misstatements to the staff that might be repeated in the grand jury or even to the public, Independent Counsel's referral continues to divide the charge from what the statement was about. This was not an attempt by a President to organize his staff to spread misinformation about the progress of the war in Vietnam. It was not about a break-in of the Democratic headquarters at the Watergate or even about how funds from arms sales in Iran were diverted to aid the Contras in Nicaragua. This was a President repeating to his staff the same denial of an inappropriate and extremely embarrassing relationship that he had already denied to the public. However wrong the relationship or misleading the denial, it is not nearly the same as those other examples and cannot stand on the same constitutional footing.

As to the ground for impeachment that the President had the audacity to assert privileges in litigation, it is literally shocking that the Independent Counsel, himself a former appellate judge and chief lawyer for the United States before the Supreme Court, would even suggest that the assertion of an evidentiary privilege by the President, on the advice of his lawyers and White House counsel, that was found to exist by a judge in question could ever, under any circumstances, be grounds for an impeachment.

I have heard the Independent Counsel say, as majority counsel just did some minutes ago, that the President should not be above the law. And yet the referral would place him below the law that gives every American the right to assert legally accepted privileges without fearing being thrown out of his job. So if these were so easily dismissed by the majority staff, why would the Independent Counsel suggest these almost frivolous bases?

As the committee decides on the scope of its work, one other issue should be included that may answer that question. We have pointed to just some of the times when the Independent Counsel makes a statement not supported by the evidence he sent or then jumps to a guilty inference when a more innocent explanation was far more obvious. A full and fair inquiry should therefore consider whether numerous actions by the Independent Counsel undermine his claim to impartiality and fairness. Considering this would not be an attempt to divert attention from the President's conduct or for delay. Excesses by the Independent Counsel or any gatherer of the evidence on which you are going to rely, as some have contended is not incidental or tangential. How does the committee know that that is not the case? The Independent Counsel said so himself.

When Monica Lewinsky's testimony was released by the committee, it was Mr. Starr himself who wrote the committee on September 25, 1998, and this is what he said: "At the time we submitted our referral, we reviewed these questions [about his conduct] as incidental and tangential. Nonetheless, the issue has now been raised publicly and appears to bear on the substantiality and credibility of the information we have provided to the House in our referral."

We agree with the Independent Counsel that his conduct bears on the substantiality and credibility of the information he gathered and transmitted. Consequently, on the Independent Counsel's own

invitation to the committee, this, too, should be the subject of its review, and there are at least three important issues.

First, after 4 years of investigation, the part of the case which has caused this impeachment referral was the Lewinsky matter. However, it is not clear whether the Independent Counsel jumped the gun on getting into this area based on the exaggerated and perhaps even manipulated statements of Linda Tripp. It may have begun its dealings with Ms. Tripp earlier than it has said before. It accepted Linda Tripp's apparently unlawfully-obtained tapes and then wired her to trap Ms. Lewinsky before it was given authority by the court to get into these matters.

Second, once it did get involved, its dealings with Ms. Lewinsky, when the Independent Counsel staff detained her for 10 hours, despite her asking for a lawyer; with her mother, who was brought to tears by their conduct; with Ms. Currie, who they returned to the grand jury again and again, with leading and suggestive questions; and with other witnesses, all raise the issue of the quality of the evidence that they obtained and have now used as the foundation for their referral. Because as the weight of evidence diminishes, so must the conclusions the Independent Counsel has done, so, too, the committee must evaluate the quality and substantiality of the evidence.

Finally, if the committee compares the charges and the main points of evidence from the 445-page referral with the news stories that appeared between January and August, it will confirm that not one charge, not one allegation and not one piece of evidence, from the Tripp tapes to the stained blue dress, was not leaked to the press. The Independent Counsel has been asked to show cause why it should not be held in contempt for leaking, and the outcome of that determination, when it is made, as Mr. Starr's invitation would seem to agree, bears on the substantiality and on the credibility of the evidence.

In that same vein, members of the committee, consider this: When the referral was finally delivered to the House of Representatives on September 9, 1998, and it was locked in a secure room, in a matter of minutes the media reported on how many pages and how many counts it contained. Certainly the committee knows that that information could not have come from Capitol Hill where the boxes remained under seal.

Chairman Hyde, Ranking Member Conyers and members, for only the third time in the 200-year history of our country has an impeachment process been invoked. As members on both sides of the aisle have said, this is not a step that should be undertaken lightly; and it is one, as the Democratic members have argued, that should not lead to a fishing expedition to find something better than that which has been sent in the original referral.

The staff has been asked to make a preliminary evaluation of the charges and of the evidence. This preliminary review indicates that the charges are often overstated, based on strained definitions of what is an offense under the law, are often not supported by the actual evidence in the boxes and are sometimes, as with the case of counts 10 and 11 in the referral, the product of zeal to make a case rather than to state the law.

As the minority staff, we have fewer resources than our counterparts, just as the majority has more votes than the minority to pass whatever inquiry it believes is right. But it should be the weight of the evidence and not the number of votes that matter.

Congresswoman Lofgren provided the staff with some history for us to read. In one piece, Alexander Hamilton was called upon to explain the impeachment process to the people being asked to adopt the Constitution, and this is what he said: "Prosecutions of impeachment will seldom fail to agitate the passions of the whole community and to divide it into parties more or less friendly or inimical to the accused. In many cases, it will connect itself with the preexisting factions. And in such cases there will always be the danger that the decision will be regulated more by the comparative strength of the parties than by real demonstrations of innocence or guilt."

As the committee considers the version of events the Independent Counsel suggests might rise to impeachable offenses and then decides between the two alternative resolutions being presented, Hamilton's words seem particularly germane.

Mr. Chairman, Mr. Conyers and members of the committee, on behalf of the minority staff, we appreciate your indulging us the time and will stand ready today and in the future to answer your questions.

Mr. HYDE. Thank you very much.

[The statement of Mr. Lowell follows:]

PREPARED STATEMENT OF ABBE LOWELL, MINORITY CHIEF INVESTIGATIVE COUNSEL

ORAL PRESENTATION

I. INTRODUCTION—MAJORITY AND MINORITY STAFF APPROACHES DIFFER MARKEDLY

—Chairman Hyde, Ranking Member Conyers, and members of the committee, on behalf of the full minority staff, I appreciate the opportunity to address the committee to present what are the very different approaches and analyses between us and the majority staff

—in the time I have, I will set out the enormous differences in approach between the majority staff's and minority staff's analysis, point to some of the problems caused by the committee's not having begun this process with a discussion of a constitutional standard for impeachment, bring the committee's attention to why the huge gaps between the charges in the referral and now as proposed by majority counsel and the actual evidence support the type of fair, focused, and expeditious review being proposed by the Democratic members, and recommend that part of the committee's work should include evaluating the weight and credibility of the evidence because of the conduct of the Independent Counsel

—to begin with, we differ from our staff colleagues as we not believe that this committee or the House of Representatives is supposed to be an extension of the Office of the Independent Counsel; in majority counsel's presentation, I am sure the committee has heard that in the two weeks there has been to actually review the evidence, majority counsel has now walked away from 2 grounds by the OIC and has re-written or added 4 others simply by sub-dividing the charges

—as the committee considers my and my counterpart's summaries of the evidence and what type of inquiry is needed, we offer this observation: the evidence that Congress has received from the Independent Counsel on the Lewinsky matter alone comes after he spent 9 months, with a large staff of trained investigators and prosecutors, and $4 million; it is a one-sided presentation by a prosecutor; the OIC review included 22 interviews or grand jury appearances by Monica Lewinsky; 9 by Betty Currie; 5 by Vernon Jordan and 20 by Linda Tripp;

—if, after this much time by this many experienced attorneys spending this much money, and conducting these many interviews, the evidence he sent does not sup-

port the charges he makes, how does renaming or relisting or further sub-dividing the grounds using the same evidence, as majority counsel has just done, make the case any stronger or the issues any clearer

—we also seem to differ because we see the committee's constitutional and historic task quite differently from the type of listing of laws and statutes that the OIC's referral contains and the majority counsel has just done—the determinations of whether to begin an impeachment inquiry and what kind of inquiry to conduct are vastly different than the determination of whether there is evidence of a violation of a law or statute; it other words, the OIC's referral and majority counsel's presentation suggest that there is some kind of equal sign between a violation by a President of any of a number of laws in statute books on one side and the impeachment provisions of article 11, section 4 of the Constitution on the other; we read the precedents differently and see that initiating an impeachment process for only the third time in American history takes a far higher threshold than simply making a laundry list of laws a President might have violated; as Mr. Berman stated, "not all offenses are high crimes and misdemeanors, and not all high crimes and misdemeanors come from criminal conduct"

—in our review of the evidence contained in the 18 boxes sent, we have been particularly guided by the gravity impressed on us by our own staff predecessors 24 years ago—who wrote

> BECAUSE IMPEACHMENT OF THE PRESIDENT IS A GRAVE STEP FOR THE NATION, IT IS TO BE PREDICATED UPON CONDUCT SERIOUSLY INCOMPATIBLE WITH EITHER THE CONSTITUTIONAL FORM AND PRINCIPLES OF GOVERNMENT OR THE PROPER PERFORMANCE OF CONSTITUTIONAL DUTIES OF THE PRESIDENTIAL OFFICE. *Impeachment Inquiry Staff Grounds Memo at 26–27*

—unlike some, we have also kept one central point in mind—we reviewed the referral as it was sent—not a set of theoretical questions about what is or is not an impeachable offense in a vacuum, but a specific set of eleven grounds tied closely with the facts as the Independent Counsel has presented them

—and, even though majority counsel has just attempted to add additional grounds, or rename others, they too will fit into the few categories for committee consideration that I will propose in a few minutes

—as to the referral itself, we have seen or heard the media ask members the largely rhetorical question: "Are you saying that lying under oath or obstruction of justice is not an impeachable offense?"

—this may be the basis for excellent classroom debate, but it begs the issue in the actual Starr referral; the question the committee will be called upon to answer is whether the allegations of lying under oath, obstruction, and tampering, or even if majority counsel renames them as misprision of a crime, false statements, or even conspiracy, TIED TO THE SPECIFIC FACTS ALLEGED IN THE STARR REFERRAL, constitute grounds for proceeding

—wrenching the individual words "perjury," "false statements," "obstruction," "misprision," or "tampering" from their factual context is not consistent with the historical precedents concerning the constitutional framework for impeachment proceedings

II. STANDARD—THE CART BEFORE THE HORSE.

—and another defining difference between us and majority staff is that we agree with our Democratic members who have stated so articulately that the process thus far is backwards—the committee is considering whether to open what type of actual impeachment inquiry without having spent a single minute discussing what conduct by a President rises to an impeachable offense

—this is the equivalent of a ship's captain leaving on a difficult, uncharted voyage hoping to find his or her compass somewhere along the way

—moreover, the entire process has now been started by a referral from an OIC who states that his role "is not to determine whether the President's actions warrant impeachment" but then proceeds to usurp the constitutional role of the House by concluding eleven reasons why it should do just that

—in this regard, the committee should compare the proceedings today and those 24 years ago; then Special Prosecutor Leon Jaworski wrote what has been called a "road map" of evidence that was neither accusatory nor conclusory; today, the Independent Counsel has written 445 pages of conclusions that read like an indictment; one more important difference to consider is that the "road map" written by Mr. Jaworski remains secret to this very day; Mr. Starr's referral and nearly 7000 pages of his evidence can be dialed up on the Internet

—were the committee to proceed as the Democratic members have been urging, to develop a shared understanding of what constitutes an impeachment offense, the committee might save time and resources because at the end of that consideration, the committee might find that none of these alleged offenses—no matter how they were originally named by the Independent Counsel or renamed by majority counsel—and all of which are based on the President's private relationship with Monica Lewinsky—would rise to the constitutional threshold

—without having what will be the committee's deliberations on the issue, the staff simply kept in mind the broadest and least forgiving possible definition of the constitution's requirement of "high Crimes and Misdemeanors"; when we did we saw that:

—from the beginning, the framers said they had to involve "great and dangerous offenses to subvert the Constitution"—CHART (GEORGE MASON)

—or that, as Alexander Hamilton stated, they require there to be "injuries done immediately to society itself"—CHART (ALEXANDER HAMILTON)

—or as Republican Ranking Member Edward Hutchinson said when reviewing the conduct of President Nixon that the offenses had to be "high in the sense that they were crimes directed against or having great impact upon the system of government itself"—CHART (REP. HUTCHINSON)

—and even as the majority staff chose to rewrite the Starr referral, they, as we, had a ready reference point which they have apparently rejected; one of the lesser known offenses alleged against President Nixon, outside of the Watergate cover-up, was the that he had purposely and knowingly engaged in tax evasion, including allegations that there was back-dating of documents and a false filing under oath to the IRS

—with the Democrats in the majority and the Republican in the minority judging a Republican President, the committee voted 26 to 12 that these acts by the President, while perhaps constituting offenses, even criminal offenses, or even felonies, were not grounds for impeachment; the Democratic alternative, which tries to put the cart of establishing standards back behind the horse of evaluating evidence understands this basic question: if President Nixon's alleged lies to the IRS about his taxes were not grounds for impeachment in 1974, how then are alleged lies about President Clinton's private sexual relationship with Ms. Lewinsky grounds in 1998?

III. EVALUATION OF EVIDENCE: WHAT YOU SEE IS NOT ALWAYS WHAT YOU GET.

—the OIC's referral is composed of eleven separate charges; majority counsel already has seen fit to reject 1 or 2 of these and rename 5 or 6 others; but it is not the number of counts or grounds that matter, it is the underlying conduct; in the our law, there is a prosecutor's strategy which courts routinely disapprove by which they divide what they believe to be a single offense into many different charges; they do this to make a case look more serious or foreboding

—this is very much what the OIC has done and now what majority counsel has adopted as his approach; the OIC and majority counsel can take the same conduct by the President and with all the laws that exist on the books call them one offense, ten offenses, or a hundred offenses; that is what prosecutors do

—but no matter how many different grounds were sent by the Independent Counsel and no matter how majority counsel may further divide them up or rename them to pile on more charges, they all fit into just 3 distinct claims: (1) that the President lied under oath about the nature a sexual relationship with Monica Lewinsky, (2) that he committed obstruction when he sought others to help him conceal that inappropriate relationship; and (3) that he abused the Office of President by taking steps to hide that relationship—CHART (VARIOUS COUNTS)

—so no matter how majority staff may hope to strengthen their recommendation by finding new offenses to tag on, one basic allegation—the President was engaged in an improper relationship which he did not want disclosed—is the core charge that Mr. Starr suggest triggers this grave constitutional crisis

—some reasons that are offered to support an open-ended inquiry is that the evidence is dense, the evidence supports the charges, and those charges are serious; the minority staff's review suggests that the committee inquiry can be as expeditious as the Democrats propose because most of the evidence has already been obtained and, that evidence usually does not support the allegations that have been made

—time does not permit me to point out how each and every allegation of a offense stated by the OIC or now re-labeled by majority counsel is not as they contends it to be, and in interests of time I have but will not read out loud the citations to pages in the evidence, but I can take the most serious of the charges to demonstrate the serious gap between allegations and proof

—first, as to the allegations that the President lied under oath—whether you call in lying, false statements, perjury, or misprision

A. LYING UNDER OATH (COUNTS 1, 2, 3, 4, 8,)(MAJORITY COUNSEL'S 1, 5, 6, 7, 8, 12, AND 15)

—half the alleged grounds in the OIC Referral and now [ ] grounds renamed or by sub-divided by majority counsel are that the President lied about his relationship with Monica Lewinsky

—it is not the actual lie about the relationship that rises to an impeachment offense; I suppose the OIC agrees that people lie about their improper relationships, but it is the fact that the lie occurred during a civil lawsuit or before the OIC's own grand jury that constitutes the offense

—Majority staff's approach, taking up where Ken Starr left off, would have the committee continue to delve into even more details concerning the physical relationship between the President and Ms. Lewinsky so that it could determine who was telling the truth about who touched who where; however, this unseemly process does not have to occur

—the better approach would be to take the OIC at its charge—if it was the fact that President Clinton lied at his Paula Jones deposition that creates the possibly impeachable offense, then the inquiry required would be to determine the importance or impact of that statement in that specific case; and this is what the evidence shows:

—these were misstatements about a consensual relationship made during a case alleging non-consensual harassment; when Judge Webber Wright of Arkansas ruled on January 29, 1998, that evidence about Ms. Lewinsky was "not essential to the core issues of the case", and when she then ruled on April 1 that no matter what the President did with any other woman, Ms. Jones herself had not proven that she had been harmed by what she alleged, the judge was giving the committee the ability to determine that the President's statements, whether truthful or not, were not of the legal importance suggested by Mr. Starr, let alone grave constitutional significance to support impeachment; and a prolonged inquiry is not required to see this context

—furthermore, the referral is quick to conclude that the President committed a serious offense by his interpretation of what did and did not constitute "sexual relations," in a definition invented for a deposition that is the type of gobbledygook that gives lawyers their bad name; but the committee will never read in his 445 Referral what the full evidence shows, that his definition just happened to be shared by Ms. Lewinsky herself

—in the transcript of her taped October 3, 1997, conversation with Linda Tripp, Ms. Lewinsky herself says that she was not having sex with the President because they did not have intercourse

—and even a Paula Jones' former attorney—after all it was her attorneys who created the strained definition—agreed in a television interview that the definition would not necessarily include oral sex

—no one has suggested that the President's answers, even given his explanation that he was trying to be "truthful, but not particularly helpful" in what he thought was a lawsuit being run by his political enemies, were not misleading, evasive, or technical—but seen in the entire context of the evidence they do not have the constitutional impact that the IC and majority counsel suggest

—some have raised the impeachment of judges, including Judge Nixon, for their having been convicted for perjury; but members here certainly know that the lies in those cases had to do with the discharge of those judge's duties and that the standards for impeaching judges, appointed for life, are not the same as for reversing presidential elections

—and, in this case, these were statements, the evidence shows the intent of which was to prevent the disclosure of an improper consensual relationship, not to interfere with allegations made by Paula Jones that she had been subject of unwanted harassment; to put the evidence another way: is there anyone involved in such an improper relationship who ever wanted it disclosed, and does any one believe that the President would have revealed his improper relationship with Ms. Lewinsky had the *Paula Jones* case not been pending at the time?

—since the answers are obvious, the inquiry is not on whether his statements were or were not truthful, but what were their context, impact, and subject matter; this too the committee can resolved expeditiously

—and as the committee considers the charges that the President lied under oath, or however they may be renamed by majority staff, remember that one example of why the OIC would have Congress trigger this inquiry is that the President stated

his relationship with Ms. Lewinsky started in 1996 when the OIC contends it started in late 1995; for the difference of these few months, a constitutional crisis is not warranted

IV. OBSTRUCTION OF JUSTICE (COUNTS 5, 6, 7, 9) (MAJORITY COUNSEL'S 2, 3, 4, 9,10,11, 13, 14)

—turning to the obstruction allegations, because of its reminiscence to the Watergate proceeding, the phrase "obstruction of justice" is the one which many have stated is the most egregious ground alleged in the Starr referral and why it was so emphasized by majority counsel who now splits the 4 into a total of 8

—but just as the committee cannot divorce the phrase "lying under oath" from the facts about which the President is alleged to have lied, so too it should not divorce the allegation of "obstruction", or whatever the majority staff now chooses to call it, from the actual evidence

—perhaps, the three widest quoted obstruction charges made by the OIC are that (1) the President initiated a return of the gifts he had sent Ms. Lewinsky so they would not be discovered in the Paula Jones case, (2) he tried to have Ms. Lewinsky submit a false affidavit, and (3) he sought to tamper with the testimony of Ms. Currie; all of these are undercut by the evidence

A. Gifts

—Mr. Starr's referral states, "Lewinsky and the President discussed the possibility of removing some gifts from her possession" referral at 166; majority counsel contends this to be a potential ground for impeachment and calls it [ ]"; certainly this would be a serious charge if true; the actual evidence, however, shows it is not true, no matter cast as the IC first did or as majority counsel wants to label it now

—read the actual testimony, and the committee will see that Ms. Lewinsky admits that she was the one who raised the gift issue with the President, not vice versa, and his response was not encouraging; he said "let me think about it" (*Lewinsky 8/6/98 GJ* at 152); this and his having already told her she would have to turn over whatever she had (*Clinton 8/17/98 GJ* at 44–47) hardly can support the charge of obstruction (or "misprison" or "conspiracy") as a criminal offense, let alone to justify the majority counsel's conclusion

—read further and the committee will see that, contrary to the OIC's conclusion that the President was worried about the gifts, he actually gave Ms. Lewinsky additional gifts after she expressed concern about them and after he knew they were subpoenaed; hardly the acts of a man set on obstruction

—finally, where the actual Referral would indicate that it was the President or Ms. Currie who initiated the gift idea, Ms. Currie indicated that the idea came from Ms. Lewinsky (*Currie 1/27/98 GJ* at 57; *Currie 5/6/98 GJ* at 124); not satisfied with this answer that did not match the charge he wanted to make, the Independent Counsel then proposed to Ms. Currie that her memory differed from Ms. Lewinsky; when Ms. Currie said that might be the case, that one word "might" was all the IC needed to make his charge (*Referral* at 167); but read in its entirety, Ms. Currie's testimony is clear, and no leading question or quotation out of context can change the one important thing about her testimony—the President did not ask her to call for or retrieve the gifts

B. Affidavit

—the OIC charges (Referral at 173) and the majority counsel would argue (as "misprision") that more inquiry is needed because the evidence is that the President sought Ms. Lewinsky to submit a false affidavit in the Jones case—a serious charge which, again, is not contained in the evidence

—there is no doubt that the President and Ms. Lewinsky discussed an affidavit and no doubt that neither wanted her to have to testify in a case concerning sexual harassment about what was their improper, but entirely consensual relationship (the way Ms. Lewinsky put it was that it was "a personal one and none of Paula Jones' business"—*Lewinsky 8/1/98302* at 10); wanting an affidavit to avoid this consensual relationship from being exposed and seeking a false affidavit are not the same, even though the Starr referral jumps right over the difference

—as to the only facts that would matter, both the President and Ms. Lewinsky agree that he never asked her to file a false affidavit (*Clinton GJ 8/17/98* at 70; *Lewinsky 7/27/98302* at 12) and that the President did not even want to see the affidavit (*Lewinsky 8/2/98302* at 3)

—and even though the OIC tries to enhance his charge that the President sought Ms. Lewinsky to lie by "assisting her job search to 'keep her on the team'" (*Referral* at 185), hasn't everyone now seen that the job search began by others than the President long before the *Jones* case issue arose, that it was started to remove Ms.

Lewinsky from the White House before the election, that Linda Tripp, not the President, suggested getting Vernon Jordan involved (*Lewinsky 8/20/98 GJ* at 23; *Currie 5/6/98 GJ* at 176; *Jordan 3/3/98 GJ* at 65), that Ms. Currie pushed getting her friend a job because she felt badly about Ms. Lewinsky had been transferred (*Currie 5/6/98 GJ* at 45) and, finally, that Ms. Lewinsky, even though never asked by the IC, made sure she did not finish her testimony before stating that "no one asked me to lie and I was never promised a job for my silence" (*Lewinsky 7/27/98 GJ* at 302)

—and note this, despite the Independent Counsel having room in his report for pages and pages of unnecessary specifics quoting directly from Ms. Lewinsky about where, when, and how she touched the President, he could not find the space in his 445 page Referral to quote her exact, uncompromising, clear, and completely dispositive words on this key issue

C. Betty Currie's Testimony

—while the charge (OIC calls it "obstruction"; so does majority counsel) has been made that the President was trying to tamper with the testimony of Betty Currie, you can look through the 445 page Referral and never see the Independent Counsel advise you that Ms. Currie was not listed to be deposed and was not on the witness list in the *Jones* case or that the President obviously did not know about Linda Tripp having come to the OIC to start the investigation; Ms. Currie, then, was not a "witness" who could have been tampered with

—what the full transcripts of Ms. Currie, the President, and the White House staff and reference to the time frame of January 18 do show is that the President's worry was not Ms. Currie being a witness, but was the fact that the questions and answers at the deposition were going to be leaked to the press and create a media eruption; the evidence shows this was exactly his motive because within just a few hours of his testimony, the Lewinsky questions and answers were on the Internet and the subject of the Sunday news shows (*Clinton 8/17/98 GJ* at 81)

—and while the IC [and Mr. majority counsel] contend that the President sought to direct her what to say (*Referral* at 191–92), Ms. Currie says just the opposite; her being called back and back and back to the IC grand jury; and her now being called before this committee and asked the question again and again and again did not then and would not now change the facts (*Currie 7/22/98 GJ* at 22–3)

V. ABUSE OF POWER (COUNTS 10 AND 11)

—Members of the committee, Counts 10 and 11 are in many ways the most illustrative of the OIC Referral and must be seen to undermine his entire referral

—not content with charging lying under oath, witness tampering, and obstruction of justice about the President's attempt to hide his private relationship, the Independent Counsel has asked the committee to re-cast these same allegations as an abuse of office, just as majority counsel wants to rename charges as well

—the term "abuse of office" does invoke the memory of President Nixon's wrongdoing; but the clothes of Watergate do fit the body of the conduct detailed in this referral

—in effect, Grounds 10 and 11 charge that the President lied to his staff or to the people around him about the same inappropriate relationship with Ms. Lewinsky, knowing that they might repeat those misstatements, and that the President violated his oath of office because he and his attorneys tried to protect his constitutional rights by asserting privileges of law—including executive privilege and the attorney client privilege—given to Presidents and all Americans—during the course of the IC's four-year, $40 million inquiry

—even majority counsel did not take long to dismiss these ideas, as his charges do not include this odd notion of "abuse of office" and I assume will not now be pursued by the majority

—as to the misstatements to the staff that might be repeated in the grand jury or even to the public, the referral continues to divide the charge from what the statement was about; this was not an attempt by a President to organize his staff to spread misinformation about the progress of the war in Vietnam, or about a break-in of the Democratic Headquarters at the Watergate, or even about how funds from arms sales in Iran were diverted to aid the Contras in Nicaragua; this was a President repeating to his staff the same denial of an inappropriate and extremely embarrassing relationship that he had already denied to the public directly; however wrong the relationship or misleading the denial, it is not nearly the same as those other examples and cannot stand on the same constitutional footing

—and as to the ground for impeachment that the President had the audacity to assert privileges in litigation, it is literally shocking that the Independent Counsel,

himself a former appellate judge and chief lawyer for the United States before the Supreme Court, would even suggest that the assertion of an evidentiary privilege by the President, on the advice of his lawyers and the White House counsel, that was found to exist by the judge in question could ever, under any circumstances, be the grounds for an impeachment

—I have heard the Independent Counsel say, as majority counsel did too, that a President should not be above the law, and yet the referral would place him below the law that gives every American the right to assert legally accepted privileges without fearing being thrown out of their job

—so if these were so easily dismissed by majority staff, why would the Independent Counsel suggest these almost frivolous grounds?

VI. PROSECUTORIAL EXCESS: WHY IS THE EVIDENCE OFTEN NOT WHAT IT IS PURPORTED TO BE?

—as committee decides the scope of its work, one other issue should be included that may answer this question; we have pointed to just some of the times when the Independent Counsel makes a statement not supported by the evidence he sent or jumps to a guilty inference when a more innocent explanation was more obvious

—a full and fair inquiry should therefore consider whether numerous actions by the OIC undermine his claim to impartiality and fairness; considering this would not be an attempt to divert attention from the President's conduct or for delay

—excesses by the Independent Counsel are not, as some have contended "incidental" or "tangential"; how does the committee know this, the Independent Counsel said so himself

—when Ms. Lewinsky's testimony was released by the committee it was Mr. Starr himself who wrote the committee on 9/25/98: "At the time we submitted our referral we viewed . . . questions [about his conduct] as incidental and tangential. . . . the issue has now been raised publicly and appears to bear on the substantiality and credibility of the information we provided to the House"

—we agree with the Independent Counsel that his conduct bears on the "substantiality" and "credibility" of the information he gathered and transmitted; consequently, on the Independent Counsel's own invitation, this too should be the subject of the committee's review: (CHART—PROSECUTOR EXCESS)

—first, after 4 years of investigation, the part of the case which has caused this impeachment referral was the Lewinsky matter; however, it is not clear whether the Independent Counsel jumped the gun on getting into this area based on the exaggerated and perhaps even manipulated statements of Linda Tripp; it may have begun its dealings with Ms. Tripp earlier that it said, it accepted Tripp's apparently unlawfully-obtained tapes and then wired her to trap Ms. Lewinsky before it was given authority to even get involved in these matters

—second, once it got involved, its dealings: with Ms Lewinsky when they detained her for 10 hours despite her asking for her lawyer, with her mother who was brought to tears by their conduct, with Ms. Currie who they returned to the grand jury again and again with leading and suggestive questions, and with other witnesses, all raise the issue of the quality of the evidence that they then obtained and have now used as the foundation for their referral; because as the weight of the evidence diminishes, so must the conclusions that the OIC and majority staff say flows from that evidence

—finally, if the committee compares the charges and main points of evidence from the 445 page referral with the news stories that appeared between January and August, it will confirm that not one charge, not one allegation, and not one piece of evidence—from the Tripp tapes to the stained dress—was not leaked to the press; the OIC has been asked to show cause why it should not be held in contempt for leaking, and the outcome of that determination, as Mr. Starr's invitation would agree, bears on the substantiality and credibility of evidence; in that same vein consider this—when the referral was finally delivered to the House on September 9 and locked in a secure room, in a matter of minutes, the media reported on how many pages and how many counts it contained; certainly the committee knows that that information could not have come from Capitol Hill, where the boxes remained under seal

VI. CONCLUSION

—Members of the committee for only the third time in the 200 year history of our country has an impeachment process been invoked; as members on both sides of the aisle have said, this is not a step that should be taken lightly and one, as Democratic members have argued, that should not lead to a fishing expedition to find something better than that which was sent by the referral itself

—the staff has been asked to make a preliminary evaluation of the charges and evidence; this preliminary review indicates that the charges are often overstated, based on strained definitions of what is an offense under the law, are often not supported by the actual evidence in the boxes sent, and are sometimes (as with the last two suggested Grounds) the product of zeal to make a case rather than to state the law

—as minority staff, we have fewer resources than our counter-parts, just as the majority has more votes than the minority to pass whatever inquiry it believes is right; but it should be the weight of the evidence and not the number of votes that matter

—Congresswoman Lofgren provided the staff with some history to read; in one piece Alexander Hamilton was called upon to explain the impeachment process to the people being asked to adopt the Constitution, he stated:

> Prosecutions of impeachment "will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases, it will connect itself with the pre-existing factions, . . . and, in such cases, there will always be the danger that the decision will be regulated more by the comparative strength of the parties than by real demonstrations of innocence and guilt. *Federalist No. 65* at 424.

—as the committee considers the version of events the Independent Counsel suggests might rise to impeachable offenses and then decides between the two alternative resolutions being presented, Hamilton's words seem particularly germane

—thank you for indulging me the time and I would be happy to answer any questions

Mr. HYDE. I have a resolution at the desk which all members have before them and which the Clerk will read.

The Clerk read the resolution, as follows:

[The information follows:]

105TH CONGRESS

2D SESSION

H. RES. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HYDE submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

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 recommendations 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.

Mr. HYDE. The Chair recognizes Mr. Boucher of Virginia for purposes of an amendment.

Mr. BOUCHER. Mr. Chairman, I have an amendment in the nature of a substitute at the desk.

Mr. HYDE. The Clerk will report the amendment.

The Clerk read the resolution, as follows:

[The information follows:]

AMENDMENT IN NATURE OF A SUBSTITUTE TO
HYDE RESOLUTION

OFFERED BY MR. BOUCHER, MR. NADLER, MR. SCOTT,
MS. LOFGREN, AND MS. WATERS

Strike all after the resolving clause and insert the following:
That the Committee on the Judiciary (referred to in this Resolution as the "Committee") recommend to the House of Representatives that the House authorize and instruct the Committee to take the following steps within the indicated timeframes in order, fully and fairly, to conduct an inquiry and, if appropriate, to act upon the September 9, 1998, Referral of the Independent Counsel (in this Resolution referred to as the "Referral") in a manner which ensures the faithful discharge of the Constitutional duty of the Congress and concludes the inquiry at the earliest possible time.

SEC. 2. FIRST PHASE; OCTOBER 12-23, 1998.

Commencing on October 12, 1998, and concluding no later than October 23, 1998, the Committee shall take the following steps within the time allotted:

(1) THE CONSTITUTIONAL STANDARD FOR IMPEACHMENT.—The Committee shall convene public hearings to review thoroughly and comprehensively the Constitutional standard for impeachment of the President of the United States (referred to in this resolution as the "impeachment"), most recently recognized by the House of Representatives in 1974. During these hearings, the Committee shall solicit testimony from America's most renowned scholars to understand more fully the Constitutional provisions, historical precedents and legal authorities relative to the impeachment so that Members of the Committee may be better informed as to the constitutional standard for the impeachment.

(2) COMPARISON OF ALLEGATIONS TO THE CONSTITUTIONAL STANDARD FOR IMPEACHMENT.—The Committee shall next convene public hearings to consider which allegations, if any, arising from the Referral, if subsequently proven, could rise to the Constitutional standard for impeachment. After the hearing, the Committee shall meet in public session to decide which of the allegations, if any, if subsequently proven, could rise to the Constitutional standard for impeachment.

(3) SUFFICIENCY OF THE EVIDENCE SUPPORTING THE ALLEGATIONS.—If the Committee has determined that one or more of the allegations could, if subsequently proven, rise to the Constitutional standard for impeachment, the Committee shall convene public hearings for the purpose of determining whether a preliminary review of the evidence in the Committee's possession indicates the need for further proceedings with respect to those allegations arising from the Referral which have been found potentially to meet the Constitutional standard for impeachment. After the hearing, the Committee shall meet in public session for the purpose of determining which allegations arising from the Referral, if any, which have been determined to meet the Constitutional standard for im-

peachment are supported by sufficient evidence in the Committee's possession to justify further proceedings. If the Committee finds there is a necessity for further proceedings, it shall then be in order for the Committee to conduct formal inquiry proceedings with respect to such allegations.

(4) ALTERNATIVE SANCTIONS.—If the Committee finds that none of the allegations could rise to the Constitutional standard for impeachment, or if the Committee finds insufficient evidence to justify further proceedings with respect to those allegations that could rise to the Constitutional standard for impeachment, it shall then be in order for the Committee to consider the propriety of alternative sanctions.

SEC. 3. SECOND PHASE; OCTOBER 26–NOVEMBER 25, 1998.

(a) FORMAL INQUIRY.—If the Committee orders a formal inquiry, the Committee shall conduct its inquiry, including any public hearings it deems necessary, commencing on October 26, 1998.

(b) CONSIDERATION OF REPORT AND RECOMMENDATIONS.—Following the conclusion of the formal inquiry, the Committee shall convene for the purpose of considering any recommendations it may commend to the House of Representatives, including—

(1) any article of impeachment;
(2) alternative sanctions; or
(3) no action.

The Committee shall conclude this activity by November 17, 1998.

(c) ACTION.—If the Committee recommends one or more articles of impeachment or alternative sanctions, the Chairman and Ranking Minority Member of the Committee shall request the Speaker of the House of Representatives and the Minority Leader to convene the House on November 23, 1998, to consider the Committee's recommendations and to conclude its consideration by November 25, 1998.

SEC. 4. ENLARGEMENT OF TIME.

If the Committee is unable to complete its assignments within the timeframes set out in section 2 or 3, a report to the House of Representatives may be made by the Committee requesting an extension of time.

SEC. 5. AUTHORITY.

(a) IN GENERAL.—For the purpose of taking the actions authorized by sections 2 and 3, 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 as it deems necessary for such actions; and

(2) by interrogatory, the furnishing of such information as it deems necessary for such actions.

For purposes of paragraph (1)(B), the term "things" includes books, 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.

(b) AUTHORITY OF COMMITTEE.—The authority of the Committee under subsection (a) may be exercised—

(1) by the Chairman and 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.

(c) ISSUANCE OF SUBPOENAS AND INTERROGATORIES.—Subpoenas and interrogatories authorized under subsection (a) may—

(A) be issued over the signature of the Chairman or Ranking Minority Member or any Member designated by either of them; and

(B) be served by any person designated by the Chairman or Ranking Minority Member or any Member designated by either of them.

(d) OATHS.—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.

Mr. BOUCHER. Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read.

Mr. HYDE. Without objection, so ordered.

The gentleman is recognized for 5 minutes in support of his amendment.

Mr. BOUCHER. Thank you, Mr. Chairman.

On behalf of the Democratic members of the committee, I am pleased to offer this afternoon an alternative for the process by which the committee will pursue in considering the referral of the Independent Counsel.

I particularly want to commend a number of members of this committee who we have worked with over the course of the last 2 weeks in order to structure this alternative. Those members include the gentleman from New York, Mr. Nadler; the gentlewoman from California, Mrs. Lofgren; my Virginia colleague, Mr. Scott; and the gentlelady from California, Ms. Waters. I want to thank them for their many hours of dedicated efforts they have contributed substantially to the structuring of this alternative.

Mr. Chairman, the public interest requires a fair, thorough and deliberate inquiry by the Judiciary Committee of the allegations arising from the referral of the Independent Counsel. But the public interest also requires an appropriate boundary on the scope of that inquiry. We should carefully and thoroughly review the matters forwarded by the Independent Counsel, but the inquiry should not become an excuse for a free-ranging fishing expedition. The potential for such a venture should be strictly limited by the terms of the inquiry resolution itself, and the resolution of inquiry that I am offering this afternoon contains those appropriate restrictions.

The public interest also requires that the matter be brought to conclusion at the earliest possible time that is consistent with the committee conducting a thorough and a complete inquiry.

The country has already undergone substantial trauma. If this committee carries its work beyond the time that is reasonably needed for a complete resolution of the matter now before us, the injury to the Nation will only deepen. We should be thorough, but we should be prompt.

Given that the facts of this matter are generally well known—some would say too well known—and given that there are only a handful of witnesses whose testimony is relevant to the matters arising from the referral, and given the further fact that all of the witnesses whose testimony is relevant have undergone substantial scrutiny by the grand jury already, there is absolutely no reason to prolong this committee's work into next year. A careful and a thorough review can be accomplished between now and Thanksgiving of this fall.

Our resolution requires that the committee hold hearings on the constitutional standard for impeachment which has evolved over 2 centuries and which was most recently recognized by this committee and by the full House of Representatives in 1974.

Our substitute then directs the committee to compare the allegations arising from the referral to the constitutional standard and determine which of the allegations, if any, rise to that standard. If any are found to meet that test, the committee would then determine if there is substantial evidence stated in the referral to sup-

port those allegations. Any of the allegations arising from the referral that pass those initial tests would then become the subject of a formal inquiry and investigation, following which the committee could consider what action it desires to take.

And the committee would have before it a range of actions, beginning with articles of impeachment, extending to alternative sanctions, including recommendations of censure and a no action option.

Under this resolution, the committee would begin its work on October 12th and conclude all proceedings, including the consideration of recommendations by the committee, by November 17th. The House could then complete the consideration of any recommendations the committee might make by November 23rd.

This approach is fair. It is in the public interest, and it is what the American public expects. It gives deference to the constitutional standard for impeachment that was recognized in the 1974 report of the House of Representatives. It offers ample time to consider carefully any of the allegations which arise to the constitutional standard, and it assures that the entire matter can be resolved promptly and that the Nation is not further disadvantaged by a prolonged inquiry which is clearly not justified by the material forwarded to us by the Office of Independent Counsel.

It presents a framework that will enable the committee and the House of Representatives to discharge their constitutional obligations in a manner that is both thorough and expeditious.

Mr. Chairman, I hope it will be the committee's pleasure, after careful review, to adopt this resolution of inquiry which establishes an adequate balance to assure the protection of the rights of all, to assure a thorough review and to assure that this committee completes its work at the earliest possible time.

Mr. HYDE. Without objection, the gentleman from Virginia is yielded an additional minute.

Mr. BOUCHER. I yield to the ranking member.

Mr. CONYERS. On behalf of all of us who have seen this on this side of the aisle, I want to commend you and the gentlemen from New York and Virginia, the gentleladies from California, for bringing forth a reasonable and rational plan. And I think you have put it forward in a highly acceptable way, and I wanted to offer these thanks at this point to you.

Mr. BOUCHER. I thank the gentleman for his comments.

Mr. Chairman, I yield back the balance of my time.

Mr. HYDE. I thank the gentleman.

The gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I rise in opposition to the amendment.

Mr. HYDE. The gentleman is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, this amendment is an attempt to further stall out the process of determining who told the truth and who did not tell the truth in this very sorry mess.

If you look at the text of the resolution, the investigation into whether or not the President committed an impeachable offense is stopped until October 26. Between now and then, the committee is supposed to delve into what the scope of our powers would be in investigating this matter. We are supposed to have constitutional

experts in hearings on that, and a vote would be postponed from today until the end of that period on whether or not to launch a formal impeachment inquiry.

So what is being proposed today is that the impeachment inquiry be stalled out until the conclusion of the scoping process. Then should the committee decide on or about October 23rd to launch an inquiry, the inquiry would begin on October 26 and conclude no later than November 17th when a report would have to be made to the House of Representatives. That gives us 17 working days to do the entire impeachment inquiry, and it gives an invitation to those who would want to stall out the process to do so, either through the resistance of subpoenas, not agreeing to subpoenas, witnesses not cooperating and potentially being cited for contempt.

And it certainly is a blank check for those people who do not want the Judiciary Committee to come to a conclusion to be able to obstruct the process.

Now I have great faith in Chairman Hyde's statements that he does not want to stall the process out. But arbitrary time lines will do precisely that. That is what happened in the Thompson investigation over in the Senate. It is certainly a mistake that should not be made by the Judiciary Committee in discharging this very important responsibility.

Looking back at the previous impeachments that have taken place, the Richard Nixon impeachment took 19 months from the time of the first introduction of a resolution authorizing the Judiciary Committee to conduct full and complete studies and an investigation into the approval of the articles of impeachment against Richard Nixon.

The Alcee Hastings impeachment took 16 months between the referral by the judicial conference to the committee approval of the articles of impeachment.

And the Judge Walter Nixon impeachment took 13 months between the referral by the judicial conference until the committee approved the articles of impeachment against the judge.

Under the constitutional doctrine of separation of powers, we have to develop and submit the evidence independently. That is a constitutional requirement, and it is one that was followed by the Judiciary Committee in all of the impeachments that I have discussed. We cannot do that in 17 days, particularly if we have uncooperative witnesses or people who want to stall out the proceedings.

I think that the amendment by the gentleman from Virginia is extremely well-intentioned. He wants to speed the process up. But you don't do it by stopping the inquiry for 2 weeks while we talk about the constitutional grounds for impeachment and then setting up a time line which is an invitation for people to frustrate the process.

I would hope that his amendment would be voted down.

Mr. HYDE. Is there further discussion?

The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

First, let me simply say that the gentleman from Wisconsin, Mr. Sensenbrenner, is simply wrong when he characterized the resolution as saying that no inquiry into the evidence would be permitted

under this resolution, under the substitute resolution, until after October 26. I refer you to page 3, that in the first phase, which must end by October 23rd, the committee shall meet in public session for the purpose of determining which allegations arising from the referral, if any, which have been determined to meet the constitutional standard for impeachment are supported by sufficient evidence in the committee's possession to justify further proceedings.

I would also point out that, although the resolution does aim to be fair and deliberative and focused and expeditious, as I believe the American people want us to, lest anyone fear, as the gentleman from Wisconsin does, that someone might try to filibuster or that there might not be enough time, although we set up a time frame and say that the committee shall first look at the definition of what is an impeachable standard, personally, as I said before, I would recommend just adopting what the House did in 1974, but we might want to change it, and then should compare the allegations to the standard to see which, if proven to be true, would be impeachable and then should take a preliminary look at the evidence of those allegations that would be impeachable, if proven true, and then, on October 23rd, should decide whether to recommend formal proceedings. That sets up a second phase and all that should be done by October 23rd.

And so the vote that we are taking today would be on October 23rd and that would set up a second phase from October 26th for about a month until just before Thanksgiving to hold those formal proceedings and vote on impeachment or not.

Section 4 of the bill says, "if the committee is unable to complete its assignment within the time frame set out in section 2 or 3, a report to the House of Representatives may be made by the committee requesting an extension of time."

In other words, it is not a rigid time frame. It is saying that these seem to us to be achievable, an achievable time frame, but the committee can ask the House for an extension if it seems necessary.

So, if the majority is afraid the minority or anybody else would filibuster, the majority can vote itself additional time should that happen.

Let me say that it has been almost a month—today is October 5. It is 4 days short of a month since the Special Prosecutor referred his allegations to us. In all that time until today, this committee has spent not an hour, not a day, not a minute discussing the substance of the allegations or discussing anything substantive at all.

We have spent innumerable days and hours instead discussing what crud we should dump on the American people. We have spent lots of time discussing how foully we should foul up the Internet and what we should put out that might be illegal in the Communications Decency Act, if it had not been ruled unconstitutional.

Now we are being asked by the majority to vote today without any discussion of these allegations, without any evidence, discussion of evidence, without any discussion of standards, we should vote today on the momentous question of instituting for the third

time in American history formal impeachment proceedings. I submit that that is very wrong.

I will repeat what I said this morning: We must have a proper process and a process that is seen by the people to be fair. And to me, frankly, the exact timetable is less important than process. The proper process is, first, spend a few days, not as the chairman said a month, a few days, which is what we are talking about, looking to see if we can come up with an agreement or at least narrow it down to two separate views on what are the standards for impeachment.

Then we would compare the allegations with the standards, then look at the evidence. When we are looking at the evidence and when we are discussing it, to discuss the differences between what our distinguished counsels have said, are the allegations set forth impeachable; are the impeachable allegations supported by the evidence; at least do they make a prima facie case deserving of a detailed proceeding, et cetera.

The President, if he is going to be impeached—if the President is going to be impeached at the end of the day, I submit that the procedure we are suggesting will not hinder it, will not make it less or more likely but will make it more fair.

Finally, I would say, if I could have an additional 15 seconds, or 30 seconds, Mr. Chairman.

Mr. HYDE. Without objection, the gentleman is recognized for an additional 30 seconds.

Mr. NADLER. I thank the Chairman.

I also want to observe as a matter of form that this committee is limited, or bound, rather, by the resolution referred to, by the resolution of the House which says that "The Committee on the Judiciary shall review the communication received on September 9th from an Independent Counsel to determine whether sufficient grounds exist to recommend to the House an impeachment inquiry be commenced."

I submit that says that our review should be limited to the communication. We should get another resolution from the House if we want to expand it beyond that.

I also submit that we have not reviewed it and cannot vote on a formal proceeding today. Staff has reviewed it, but this committee has not spent 1 minute reviewing it.

Mr. CONYERS. Will the gentleman yield?

Mr. NADLER. Yes.

Mr. CONYERS. All the gentleman from New York, Mr. Nadler, is saying, my fellow colleagues, is that this is the horse before the cart consideration; that there must be discussion, and that we have a very specific provision within section 4 to request an extension of time; that these are not hard and fast time lines.

I thank the gentleman for his very clear explanation.

Mr. NADLER. Thank you.

I yield back the balance of my time.

Mr. HYDE. If I yield the gentleman from New York 2 additional minutes, will he yield to me?

Mr. NADLER. Certainly.

Mr. HYDE. Thank you.

I am puzzled, and I really mean that, as to what Peter Rodino did on this critical issue of first establishing standards and then finding out what the facts are. Because, as I read the record, that is just the opposite of what Peter Rodino did. I have it here. Let me read it to you and tell me what this means. I honestly don't understand it.

It says, "Similarly, the House does not engage"—and this is Rodino's report from 1974. "Similarly, the House does not engage in abstract advisory or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers. Rather, it must await full development of the facts and understanding of the events to which those facts relate."

Continuing from Mr. Rodino, "This memorandum offers no fixed standards for determining whether grounds for impeachment exist. The framers did not write a fixed standard. Instead, they adopted from English history a standard sufficiently general and flexible to meet future circumstances and events."

The record is that Mr. Rodino refused to first establish standards and then go see what the facts were and see if they fit the standards. It is the other way around. We have the formula: high crimes, misdemeanors, treason, bribery. Now we have to see what the acts are and do they fit under that rubric.

Mr. NADLER. Will the gentleman yield?

Mr. HYDE. Yes, I will yield back your time.

Mr. NADLER. I would like to make a distinction here. I appreciate your question. I would like to venture an answer.

There is a very fundamental difference from what happened in 1974 to what is happening now. In 1974, not a few months of investigation, but there were a couple of years of investigation, and a——

Mr. HYDE. Right. We have the 30 volumes right over there from the Ervin Committee, right over there.

Mr. NADLER. Good. There was 1 year of investigation, followed by a few months of hearings in the Judiciary Committee. The Judiciary Committee then having the facts that it had established, and having in mind whatever its own notion of standards might be, formulated articles of impeachment which it judged to rise to impeachable standards and then issued a report on every impeachability standard.

We, however, have been charged by the House of reviewing a list of allegations referred to us by a special counsel who tells us that they are impeachable, and we are asked to determine whether we should launch a formal inquiry, a formal impeachment proceeding based on his determination that those are impeachable.

I submit that, before we can start examining that, we have to have some notion of what impeachable would be.

Mr. HYDE. How about high crimes and misdemeanors? How is that?

Mr. NADLER. What does it mean? What does it mean?

Mr. HYDE. The Chair is going to try to recapture some order here.

Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, I must oppose the substitute offered by my colleague and neighbor in southwest Virginia. Let me do something that I don't often do. That is to ask that the October 2nd Washington Post editorial entitled "The Impeachment Inquiry" and the October 4 New York Times editorial entitled "The Committee on the Judiciary Vote" be made part of the record.

Mr. HYDE. Without objection, so ordered.

[The information follows:]

[From The Washington Post, Oct. 2, 1998.]

THE IMPEACHMENT INQUIRY

The limits that House Judiciary Committee Democrats have suggested imposing on the panel's forthcoming impeachment inquiry are mostly bad ideas that the Republicans are right to resist. The Democrats say their only goal is to keep the inquiry from being turned into a fishing expedition. No doubt that is a risk, but with one possible exception, the limits they were still discussing yesterday would create greater risks in the opposite direction of obfuscation and delay. The Republicans, if they abuse the impeachment process, will suffer mightily—and deservedly—in terms of precisely the public opinion that they seek to influence. Our guess is that the gravity of the task will be a greater discipline on them than any rule.

The Democrats' first idea is to put a time limit on the committee's deliberations. We favor as quick a resolution of this matter as the committee can achieve, but experience suggests a time limit could encourage delaying tactics instead. The Senate Governmental Affairs Committee conducted a time-limited investigation of fundraising abuses in the 1996 presidential campaign and was foiled in part by witnesses who simply ran the clock. Better than any artificial deadline would be a simple commitment on the part of the Judiciary Committee to work nonstop until the inquiry is complete.

Some Democrats also want the panel to decide in advance what constitutes an impeachable offense, and only then begin an inquiry into the president's behavior if the two seem to match up. Judiciary Chairman Henry Hyde is correct to resist that as well. It's true that in eventually deciding whether the president's conduct constituted an impeachable offense, the committee will have to decide, if only implicitly, how serious such an offense must be. But that kind of judgment is all but impossible to make in the abstract, outside the context of facts that are still emerging and that almost daily paint President Clinton's behavior in slightly different hues.

The White House says an inquiry is unnecessary, that the basic facts are known and it's already clear they don't amount to an impeachable offense. But that's *not* clear. Plainly there are offenses so minor as to permit a before-the-fact judgment that, even assuming the worst, they are not impeachable. Perjury and obstruction of justice, however, are not among them. The committee needs to find the facts.

The Democrats suggest, finally, that the scope of the proposed inquiry is too broad. Absent a further report from the independent counsel, they would limit it to the charges arising out of the Monica Lewinsky affair, and thereby rule out expeditions of the kind some Republicans have threatened into other areas—the FBI files issue or the long-ago White House travel office flap, for example. We agree that without good cause, which does not now exist, the committee ought not venture into such areas. Will a rule or an understanding be a better way of achieving such restraint?

The Watergate parallel keeps being invoked in this connection, wrongly, we believe. Mr. Hyde has based his open-ended resolution of inquiry on the one used by the Judiciary Committee in investigating Richard Nixon's behavior 25 years ago. That has touched off a mostly partisan squabble as to whether the offenses in the two cases are comparable. They aren't, but even if they were, comparison is not the issue. The issue is whether the rules are fair and the inquiry produces a credible result. It won't if the inquiry is artificially constrained, and it won't if it is artificially extended, either. The parties, both of them, need to understand that; this is not one that either side should try to game in advance.

[From the New York Times, Oct. 4, 1998.]

THE JUDICIARY VOTE

This week, for just the second time this century, the House of Representatives is likely to approve an impeachment inquiry into the conduct of a President. Given the serious charges leveled against Bill Clinton by Kenneth Starr—and the need to have those charges resolved in an open, orderly way—that decision is justified and will be supported by many Democrats. But how the inquiry is conducted is a matter that requires very careful consideration by the American people and their representatives.

With midterm elections just a month away, the political conflict promises to be intense. But it need not be disabling, if sensible rules are adopted and followed. The plan proposed by the Republican majority looks sound and fair.

It is essentially the model used 24 years ago by a Democratically controlled House in examining the conduct of Richard Nixon in the Watergate case. It sets no limits on the duration or dimensions of the inquiry. Democratic leaders on Friday urged the House to set a late-November deadline for completion of the Judiciary Committee's work, and to limit the investigation to the Monica Lewinsky case.

Though this page favors the expeditious handling of this case, and believes it could eventually be resolved through a censure that would allow Mr. Clinton to remain in office, an artificial timetable serves no useful purpose. It only invites the White House to stall and forces the committee to rush its work. Though Americans are impatient with the Lewinsky scandal, a snap inquiry would be a disservice to the rule of law.

There is also no reason for the committee to fence off Whitewater, the dismissal of staff at the White House travel office and the White House misuse of Federal Bureau of Investigation background files, matters still being investigated by Mr. Starr. Those who complain that Mr. Starr has spent too much time and money investigating Mr. Clinton cannot now argue that the results of that work should be denied to Congress, if they are germane. But Mr. Starr must tell the Judiciary Committee right away if he has additional evidence of impeachable offenses by Mr. Clinton. The committee, for its part, must assure that marginal matters are not added to its investigation. Nor should the 1996 campaign-finance abuses be included in this inquiry, since Attorney General Janet Reno seems to be moving toward the long overdue appointment of an independent counsel in that area.

The natural contours of an impeachment inquiry accommodate two converging avenues of work, one dealing with the evidence, the other with the constitutional question of what constitutes an impeachable offense. The Judiciary Committee has wisely chosen to consider these in tandem, with the expectation that each inquiry will inform the other. Representative Henry Hyde, the chairman of the committee, has proposed other sensible rules, including subpoena power for the democrats, public hearings and ample opportunity for the White House to defend the President and to contest the committee's work. He has also authorized a bipartisan group of members to review Mr. Starr's files for exculpatory evidence.

In the end, both constitutional and practical considerations argue for keeping the process moving under clear rules. On the first point, the charges against Mr. Clinton cannot now be ignored or allowed to linger. They must be resolved in the way described by the Constitution. On the practical side, gearing up this somber constitutional process will provide incentive for the Republican Congressional leadership and the White House to try to find a settlement that respects both political continuity and the rule of law.

Mr. GOODLATTE. I think they make a very sound case for not restricting the work of this committee on such an important matter of great magnitude, no matter what you think of the evidence. No matter what you think of where this may be headed, the magnitude of an impeachment inquiry against the President of the United States is such that this committee's hands should not be tied in any way that could impair the ability of the committee to operate because of political considerations, of stalling, or raising issues of whether or not a particular witness we call or a particular avenue that we look into is beyond the scope of the inquiry.

I agree wholeheartedly with the chairman that the committee should not engage in a fishing expedition, but I also believe that

if there is credible evidence of additional impeachable offenses offered by a credible source, the committee should stand ready and able to look at those matters, because they affect the overall question of the fitness of the President of the United States to hold the office. We should not look into this matter with one hand tied behind our backs.

Many have complained about the amount of time and money that has been expended by the Independent Counsel in looking into this matter. For heaven's sake, if the Independent Counsel comes forward with additional credible evidence, why would we waste that time and money by not looking into those matters, if indeed they constitute a credible matter for additional consideration by the committee?

So, for those reasons, I must oppose an effort to constrain the work of the committee. We need to do this in an expeditious manner. We need to do this in a way that deals with every matter that is before the committee and any additional credible matter, but we should not tie the hands of the committee. I would oppose the amendment for that reason.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Thank you.

Do you read the Boucher resolution the same way I do? In the enlargement of time section, the wording is that, "If the committee is unable to complete its assignments within the time frames," et cetera, "a report to the House of Representatives may be made by the committee requesting an extension of time."

Do you get the same feeling as I do that this could take us until next April to complete, that it would go longer than the chairman himself has said is a tentative deadline for the end of the year?

Because if the House, first of all, is not in session, we would not be able to get an extension of time. Number two, if the House of Representatives has to be recalled, that, too, would delay. Then we would begin a whole series of other debates having to do with the extension of time.

Do you read that kind of possibility in the Boucher resolution?

Mr. GOODLATTE. Reclaiming my time, I would say to the gentleman that he is quite right; that the risk is, I think, very great with such very short timetables that the slightest delay in the production of documents, in the response of subpoenaed witnesses or any other matter in this process could cause us to have to go back to the full House of Representatives in a very short period of time to ask for an extension. The full House not being in session would delay the matter further while we called them back in.

It seems to me that it is far more appropriate for the committee to do its work under the watchful eye of everyone in this country. We know that if we go beyond the scope of this inquiry in a manner that appears to the public to be a fishing expedition, we are going to be held accountable. We know that if we drag this matter on unnecessarily, we will be held accountable.

The Nation is watching, and we should proceed expeditiously, but not with one hand tied behind our back.

Mr. HYDE. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman and members.

There is a lot of discussion about the time frames that are in the substitute. That is but one part of this plan that we are putting forward. I think that Mr. Boucher and others will agree, as Mr. Nadler has stated, that if we find that we need additional time that there is nothing to preclude our going back to the House and getting the time that we need.

I think what is important about this plan is the fact that it gives us a time frame. It gives us some direction. It talks about moving forward in an orderly way. The time frames that are identified are not necessarily absolute if indeed we need to have extensions. Again, that is but one part of it.

I would suggest that those who have difficulty with the dates as they are indicated propose some alternative dates, but let us move on with the rest of this resolution. This resolution, additionally, is extremely important because, as we have heard today, the reference to high crimes and misdemeanors is language in the Constitution that has many, many interpretations.

It is interesting, as I have looked at definitions and discussions, I find that the definitions go all the way from Gerald Ford in 1974, who said that it means anything that Congress decides that it means, to others who have deemed it to mean acts that are criminal in nature.

I think it would be very wise to have constitutional scholars and others come in and engage us in a discussion about high crimes and misdemeanors. I think it is important because, as we say in this resolution, we cannot put the cart before the horse. We cannot move into inquiry not knowing what the standards are. So I think it is very important for us to have a reasoned discussion about the meaning of the Constitution.

Further, I think that our minority staff pointed out today that, despite the fact that the Independent Counsel has sent us over referrals with the 11 allegations, that the majority staff has gone further and stretched them out to some 15 allegations, and the minority staff pointed out that there are some duplications, no matter how much you stretch it out, and it can be condensed down to about three allegations.

So in order to measure these allegations against a standard, we really do need to know and agree and have a consensus about the allegations. I have never taken what Ken Starr sent over to us to be absolute. I reject that, and as you look at them, I think most of you will, too, because indeed, in my estimation, references to perjury and lying or obstruction of justice all overlap.

I agree with minority staff, that you can condense these down, the allegations, to something much less than 11 allegations. In order to know what evidence to look at to support these allegations, it must be organized in a fashion where the evidence is matched with the allegations that we decide on.

There are a lot of representations in all of the information that has been thrown at us; and, of course, there is a difference in opinion between the principals in this matter, where they disagree. We do not know who is lying and who is not lying, and if we are to

get a handle on this, we must have the allegations that we agree on in order to know what evidence to look at.

Let me just say, because my time is running out, the importance of this resolution is to give us a framework and to give us a guideline and to make sure that we are moving in an orderly fashion. Without that, it is all over the place, Mr. Chairman.

I would respectfully submit that if we are serious about the work that we are about to do, we will adopt this resolution.

Mr. HYDE. I thank the gentlewoman.

The gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, earlier in the day I noted with some amusement that there was some not insignificant degree of applause on the other side when our colleague from Florida, Mr. Wexler, urged his colleagues to—actually, probably he urged all of us to—I think his words were "stop this nonsense."

Now, however, it is somewhat amusing to see the other side urging that there are indeed very grave matters here that indeed require us to not only look into these matters with due dispatch but look into them with great dispatch.

So either the applause earlier in the day signaled the true desires of the other side, and that is to just stop this whole process, otherwise they would not have applauded, or they now have changed their minds in light of the subsequent presentations perhaps by the counsels and agree that it would be premature to stop this nonsense and, indeed, we ought to move forward with an inquiry of impeachment. Perhaps at some point during the course of today's discussion they can clarify what seems to be somewhat of a contradiction.

Mr. Chairman, all of us, particularly those of us who are familiar intimately with our justice system, know that justice arbitrarily forestalled is justice denied. But we also know just as well that justice arbitrarily foreshortened is justice denied. That really is the recipe that this amendment in the nature of a substitute by the gentleman from Virginia would have us do. That is to deny justice by arbitrarily foreshortening the proceedings according to the inquiry of impeachment.

The Chairman read earlier from the 1974 report by the staff of the impeachment inquiry, which included no less a constitutional scholar than Hillary Rodham, and the chairman read very correctly the passages in there which were adopted expressly by Chairman Rodino that indicate that, indeed, there are very basic constitutional questions of law involved, and that the House, similar to the courts, did not engage in abstract advisory or hypothetical debates, but we must, as do the courts, await full development of the facts and understanding of the events to which those facts relate.

The understanding of the events and the facts relate to such things as are noted on page 5 of this report, that "The framers intended the impeachment power to reach failure of the President to discharge the responsibilities of his office."

On page 21, it refers to "his constitutional duties to take care that the laws be faithfully executed."

For example, further, on page 26 and its conclusion, that process "relates to undermining the integrity of the office."

The importance of Chairman Rodino's statement that the chairman cited and the importance of the research done by Ms. Rodham and Mr. Nussbaum and others back in 1973 and 1974 relates to the fact that, because the impeachment proceedings relate to these duties of the President, the integrity of the office, he is fulfilling his duties and responsibilities, it necessarily in every single instance requires that those duties and the responsibilities and the specific actions of the President be inquired into. That is the nature of an inquiry of impeachment, and that is what we are doing here today.

As the chairman knows, there has been no prior impeachment proceeding in the history of this Congress that has done what the Boucher amendment in the nature of a substitute would have us do. That is to, in advance, even before we convene the inquiry itself, to place arbitrary time limits on the extent of that inquiry.

All of those also on this panel, Democrat and Republican alike, who are familiar with proceedings in the courts know full well that courts do not in advance place arbitrary limits on the search for the truth in the disposition of cases. Had they done that, if courts did that, then they would suffer the same fate as the Thompson committee did over in the Senate last year. That is, to give license to the opponents of the fair and sifting search for the truth, that is, this administration, as opposed to the Thompson committee's search for the truth, license to forestall and delay and use every dilatory trick in the book, and then invent some when they have exhausted all of those in the books, in order to see that justice is not done and the facts are not ascertained.

I fear, Mr. Chairman, that that really, indeed, is the agenda behind the Boucher proposal. I would urge all of my colleagues on both sides of the aisle, based on the work of Democrats reflected in the report by the staff of the impeachment inquiry in 1974, based on every single precedent of impeachment proceedings in this House by different parties at different times in our history, by every precedent established in the courts of our land, which do not arbitrarily limit the search for the truth, that the Boucher amendment be defeated.

Mr. HYDE. The gentleman's time has not quite expired.

Mr. BARR. In that case——

Mr. HYDE. In that case, the gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

I think that it is worth reading the sentence that precedes the sentence that has been repeated by the majority found in Mr. Rodino's introduction to the 1974 report. It is as follows. Mr. Rodino is describing, in the 1974 report, the grounds for presidential impeachment, Mr. Rodino said that this report was intended to be a review of the precedents and available interpretive materials in seeking "general principles to guide the committee."

That is something that I think the discussion this afternoon makes clear that we need to do, because we have a variety of suppositions about what we are trying to prove in the course of these proceedings.

If you look at pages 26 and 27 of the report, the only part of the report that was actually officially approved by the House of Representatives, by a vote of 412–3, it says that: "The crucial factor is

not the intrinsic quality of the behavior but the significance of its effect upon our constitutional system with the functioning of our government," and that that is the key issue that faces the Congress when looking at an impeachment matter.

There has been much said about the time lines and whether it is appropriate to try and set some goals for accomplishing these tasks. But I certainly think this is not unprecedented.

I note that in February of 1974 that Mr. Rodino pledged as his goal or target to conclude the impeachment inquiry by April, and that the minority leader at that time, Mr. Rhodes, accepted that target date as the gentleman's word. Mr. Rhodes said that was good enough for him, and they did agree to limit the inquiry or set a goal for the 30th of April.

I would note that if we compare where we are today and where they were 24 years ago, from October of 1973 through February of 1974, there was substantial research done then on the Constitution. In the proposal made by us this afternoon, we propose that 11 days be committed to reviewing the Constitution, the precedents and the law and comparing the allegations in the report to the precedents and the Constitution.

Although I have heard rumors that there may be hearings after the fact—after the vote—I haven't seen any firm proposal to look at the Constitution at all.

Mr. HUTCHINSON. Would the gentlewoman yield?

Ms. LOFGREN. Not at this point, but when I finish I would be happy to do so if I have time.

I also want to note just a couple of things that I think need to be outlined in terms of what we have received today as the standard for impeachment.

Mr. Schippers has indicated—and I'm looking at page 3 of this written report—that the "integrity of the country's entire judicial process is fatally compromised, and the process will inevitably collapse if there is a violation of oath."

It goes on to say that, "The subject matter of the case, whether civil or criminal, and the circumstances under which the testimony is given, are of no significance whatever." I see no citation for this proposition, but it is one of the things that needs to be discussed as we proceed in this matter. It needs to be discussed straight away.

On page 7 of the report from Mr. Starr, he says that acts that are serious, serious matters, as included in these allegations, may constitute grounds for impeachment, but it gives no citation whatsoever. He cites not one authority, not one case, not the Founding Fathers, nothing whatsoever.

I think if we do not take the 11 days that we are proposing to compare the allegations to the Constitution, we will never get to a just answer. We will never be able to fulfill our constitutional duties.

I realize that the majority has the votes. Members of the majority can do essentially whatever they decide to do. But I would beg you to consider when you use your voting authority, the need to review the Constitution and the need to reach a common understanding of what the precedents are, for otherwise we will fail to put our

constitutional obligations as Americans ahead of our role as partisan members of political parties.

Mr. HYDE. The gentlewoman's time has expired.

The Chair yields himself 2 minutes.

First of all, we are going to have hearings. We are going to invite every academician that wants to talk to us and update the current scholarship on standards of impeachment. We are going to do that. But, meanwhile, we do not want to be suspended in amber while time marches on, so we are going to continue our work. But we will have this seminar of intellects on impeachment, although I would suggest there is an awful lot written on it now.

I commend to you the Duke University article, which we have sent around to everybody. But we are going to do that.

Secondly, if we have time for this discussion of standards, I would like to have a standard for what is due process. What is equal protection of the law? What is arbitrary and capricious?

I always thought that what you do is you have that general rubric, and then you look at the fact situation and see, now, as applied, is this regulation arbitrary and capricious? But I guess you have to list and litanize and catalog every possible circumstance to have standards for due process.

It is like pornography, you know it when you see it, but you have trouble defining it.

Mr. FRANK. Mr. Chairman, would you yield?

Mr. HYDE. Surely. I may have to give myself another minute. I hope you realize the downside to yielding to you.

Mr. FRANK. That is okay. In that tradition, I was not sure I knew pornography when I saw it until I got a chance to read the report. Now I feel sure.

Mr. HYDE. How intensely do you read it?

Mr. FRANK. I skim it.

Mr. HYDE. I thought so. I thought I would give you an opportunity to straighten that out.

Mr. FRANK. It is not one of my primary interests.

But I do have a question about the question of standards, because it does seem to me, I mean this very seriously, that we may have already begun to get into the process of defining what is impeachable. Because if I heard correctly from majority counsel, he dropped or at least I guess recommended that we drop one of Mr. Starr's charges, the last charge, the one about invoking executive privilege.

Mr. HYDE. Right.

Mr. FRANK. My question is, is it the intention of the majority to drop that charge? Is that in the process of defining standards?

Mr. HYDE. We haven't gotten that far, Mr. Frank. Once we get into the next phase we will consider that, sure.

Mr. FRANK. So that the recommendations of the counsel of the majority to drop the 11th count, that we have the recommendations from the majority count to drop it——

Mr. HYDE. You may take some consolation in the fact that we may not run with that. It is possible.

Mr. FRANK. I don't mean to be negative. But beyond consolation, here, what I am noting is that, apparently, the majority is in the process of—somebody has an impeachable offense standard. Be-

cause, as I understand the process now, counsel is recommending, and you appeared, sub silentio until now, to be accepting it——

Mr. HYDE. And ambitio, too.

Mr. FRANK. You are dropping this, but it does not meet your standard of impeachment. So we have already begun this process of deciding what is impeachable by dropping one of the counts by Mr. Starr.

Mr. HYDE. I think this is one of the most useful interchanges we have had all day. I just want to make this point: The Nixon impeachment hearings took 7 months, by one calculation, and the other one was 19 months, by Mr. Sensenbrenner's calculation. Judge Hastings was a 16-month investigation. Judge Nixon was a 13-month investigation.

The President here has admitted nothing. We don't agree even on the facts. Mr. Lowell and Mr. Schippers certainly were differing on many of the facts. But this resolution gives us 17 days to investigate that. That is not, if you will pardon the expression, due process.

Mr. FRANK. If you will yield, but as I understood you to say yesterday, you are about 3 weeks beyond us. So if, in fact, you think all this has to happen, were you serious then about thinking you were going to get it done in 19 months, 17 months, and all you have is 3 more weeks between Christmas and Thanksgiving? There appears to be a disparity.

If in fact you need 19 or 17 months, if we have to do independent fact-finding, what did you mean when you said we were going to end by the end of the year?

Mr. HYDE. I can truthfully say I don't understand your question.

Mr. FRANK. Let me rephrase it.

Mr. HYDE. No, no. I understand it.

Mr. FRANK. How can you say, by the end of the year——

Mr. HYDE. I don't know. If you will cooperate and we will get some stipulations, we can end before then. If you will change the pattern of delay and stall ball and lost records, and not you, not you——

Mr. FRANK. Mr. Chairman, if you will yield one more time, I object very much to this charge of stalling. We got this report from Kenneth Starr nearly a month ago. This committee has done nothing but been the publicity transmission belt until then as a committee. Some of us tried earlier to get some of this process started. It is not our responsibility that a month has gone by and nothing has been done until today.

Mr. HYDE. I will accept charges that have some merit to them, but we are almost out of breath, we have been running so fast to move this thing along. Nobody wants it to be delayed 10 minutes, I can assure you that.

Meanwhile, if I may yield to Mr. Canady.

Mr. CANADY. Mr. Chairman, I rise in opposition to this amendment. Many of the reasons for opposing this amendment have already been very well stated. I just want to make the point again that this amendment is totally unprecedented. The proponents of this amendment cannot point to a single impeachment proceeding in the history of our Republic over two centuries in which a procedure such as this was utilized. If I am wrong about that and you

have an example, precedents for this type of process that is recommended here with time limits, and requiring there be a determination of what an impeachable offense is in advance of the consideration of the facts, tell me what the precedent is.

Mr. CONYERS. Will the gentleman yield?

Mr. CANADY. I will be happy to yield to the gentleman.

Mr. CONYERS. The reason is no proceeding has ever had an Independent Counsel before now.

Mr. CANADY. Okay. Again, I still ask for a precedent. I think there will be silence on that question, because there is no such precedent. This proposal is totally without support in the history of the impeachment process of the country. I think it would be a serious mistake for this committee to adopt such a novel, untested approach to dealing with the great matters that are before us.

On this issue of whether we should consider and define what an impeachable offense is, in advance of looking at what conduct was actually involved and what offenses the President may be guilty of, I would refer to what the New York Times has recently said.

The New York Times has endorsed the approach that the chairman of the committee has suggested to us and says this: "The natural contours of an impeachment inquiry accommodate two converging avenues of work; one dealing with the evidence, the other with the constitutional question of what constitutes an impeachable offense. The Judiciary Committee has wisely chosen to consider these in tandem, with the expectation that each inquiry will inform the other.

As Mr. Hyde has already indicated, at Mr. Hyde's request, the Subcommittee on the Constitution will soon conduct a hearing on the background and history of the impeachment process. The purpose of that hearing will be not to frame a fixed definition of impeachable offenses, but to provide further information that will help inform the judgment of each member as we consider any offenses the President may have committed and determine whether the President's conduct involved high crimes and misdemeanors.

That is a process that we should go through. That is the way the process has worked in the past, although I will say that in fact we are going beyond and taking extra steps here by actually holding a hearing on the subject.

In the Nixon case, there was no such hearing. There was not a hearing on what constitutes an impeachable offense and the background and history of impeachable offenses. Instead, the staff prepared a report.

I want to clear up one error that has been repeated time and time again in our deliberations. This goes back to an earlier meeting and a motion that was made by the minority. It has been suggested that in the Nixon case, the House of Representatives, on August 22nd, adopted a definition of "impeachable offenses." That is simply untrue. There is no support for that conclusion.

What the House did on August 20th, which was at the end, at the end of the whole process in the Nixon case, what the House did on that date was to simply accept the report of the committee for printing in the Congressional Record. There was no debate, not a word of debate.

So the notion that somehow——

Ms. WATERS. Would the gentleman yield?

Mr. CANADY. If I have time, I would be happy to yield. I would like to finish this.

There was no debate. Let me read what was said after the vote on that. "Mr. Speaker, in order to make it perfectly clear, the vote by which the House just accepted the report of the committee on the Judiciary was simply the formality of accepting it, and in no way suggesting their approval or disapproval of the contents. The procedural acceptance of the report was for the purpose of printing it in the record, and no explanation or debate was possible since at least 400 members of the House had no knowledge of its complete contents and recommendations, because the report had not been previously reported."

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

Mr. CANADY. The record needs to be set straight on that.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent that the gentleman be given an additional minute.

Mr. HYDE. With reluctance, the gentleman is recognized for another minute.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. CANADY. I yield to the gentleman.

Mr. SCOTT. As your counterpart on the Constitution Subcommittee, can you tell me when our subcommittee will be meeting, and whether or not it would make more sense to have that hearing before we launch an inquiry into impeachment?

Mr. CANADY. I believe the House should move forward as an impeachment inquiry. As part of that process, we will consider the background and history of impeachment. That is the purpose of the hearing. We hope to have that at the earliest possible time, consistent with having the people there who can give us the most thoughtful analysis of the questions before us.

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

The gentleman from Massachusetts, Mr. Delahunt.

Mr. CONYERS. Would the gentleman yield?

Mr. DELAHUNT. Yes, I yield.

Mr. CONYERS. We have had our Constitutional Committee chairman and the ranking member discuss subcommittee hearings, but ladies and gentlemen, the subject of what constitutes impeachable conduct is one of such magnitude that to let that reside in the small number of members within the committee would be something that I would be derelict if I didn't point out. That has to be handled at the full committee level, because it goes to the heart of the Boucher amendment, and it goes to the depth of our argument that there be constitutional analysis as we move along with all of these facts that have been piled on.

I would ask both my ranking member and the chair of the subcommittee to please consider, along with myself and Chairman Hyde, that those hearings be elevated and be made a part of the full committee proceedings, please. I thank Bill for his indulgence.

Mr. DELAHUNT. Reclaiming my time, Mr. Chairman, I just want to——

Mr. HYDE. Mr. Delahunt, will you yield to me for just a second? I just want to respond to the gentleman.

Mr. DELAHUNT. Of course, I yield to the Chairman.

Mr. HYDE. I gently disassociate myself with the request that the whole committee conduct this symposium. I would just as soon let the Constitution Subcommittee do it, although you and I can attend if we want.

Mr. DELAHUNT. Thank you, Mr. Chairman.

I just wanted to note an observation by, I think it was Mr. Sensenbrenner, when he suggested that the adoption of this resolution would stall the process. I don't think we really have a process right now to stall. But the intention of those of us who have cosponsored this resolution is an attempt to expedite, to be expeditious, and at the same time to be deliberative and thorough.

What we are trying to do here is clarify and define what the issues are before this committee. I think we have to go back to the resolution that got us here in the first place, H.R. 525. I am going to read briefly:

"That the Committee on the Judiciary shall review the communication received on September 9th to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry begin."

We are limited to that communication. This is not Watergate, where there was a need for the expenditure of substantial investigative resources and time to bring it to closure.

What the American people want is to bring this matter to closure. We know what the issues are before us. We have heard them today. They have been alluded to. I am certainly not content with the quality of the evidence as presented by Mr. Starr, but there is no need to make the comparison with Watergate. We can get it done in an expeditious fashion, and move on. Whatever our conclusions may be, we then benefit the American people by moving on with the business of the country.

I think the best evidence of the chaos that we are now experiencing is the testimony of the majority counsel. As my friend from Massachusetts observed, counsel has already dismissed two counts and added four others. What we are doing, without defining and having a clear understanding, is making the process an interminable one.

Nobody here wants this to go on for 18 months. If we look at what we are here for, if we examine the resolution, we can get the job done. I urge passage of the Boucher resolution.

Mr. HYDE. The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman.

I have a great deal of respect for the principal proponent of this amendment, and join in on what he says very often, but I have to disagree with him on this occasion. I think it has been well expressed in other parts of this country about hamstringing the committee by placing artificial time periods on it and limiting the scope. I think it indeed is a very bad idea.

I think if we all step back in the calm and look at this, we will realize that we all want to conclude this just as soon as possible. We hear the American people out there complaining about this, too. But on the other hand, there are a lot of people out there that want to see justice done in this case in a fair way. We do not want to rush to a judgment.

In a funny kind of way, too, I think the Thompson subcommittee showed that sometimes when you set deadlines, you actually give incentives to people to slow things down. It is like they are going to run the clock out, almost. I know people up here would not do that, but it is possible that that could be a built-in situation where you have set these artificial deadlines.

We have talked about the Rodino model. I have reviewed some of the legislative history about this and some of the reports. I would agree with our chairman, that it appears to me that we have to continue gathering the facts and getting everyone's story on this, and then put it in the context of this presidency, and determine if it is an impeachable offense. But we have been asked early on to try to follow that precedent. I think we are doing it in this manner.

In terms of the deadline, I looked back to actual votes that occurred in that hearing in terms of setting artificial deadlines. There were actually, as I read this, three efforts to set a final report date of April 30, 1998. That failed 14 to 23. There was an effort to require an interim report by April 30, 1974. That failed 12 to 24. There was an amendment to set a deadline by which the subpoena authority expired. That failed 7 to 29.

So if we are going to use the Rodino model, let us look at things like this, and obviously they thought it was a bad idea back in 1974. That seems to be our precedent.

With that in mind, I am going to join my colleagues in asking everyone to oppose this amendment.

Mr. HYDE. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Mr. Chairman and members, I know that the gentlelady from Texas has a comment.

Ms. JACKSON LEE. And Virginia.

Mr. CONYERS. How many people here have comments? Five.

Mr. HYDE. Okay. Order pizzas.

Mr. CONYERS. In that case, I know I am not, obviously, the closing speaker on our side. I would point out to my colleagues that there is another alternative fallback amendment that the gentleman from California——

Mr. FRANK. No.

Mr. CONYERS. Okay. What we are going to do now is, first of all, let me ask unanimous consent to have a 3-page letter written by 13 law scholars to the Speaker of the House dated October 2, 1998, I ask unanimous consent that it be included in our record.

Mr. HYDE. Without objection, so ordered.

[The information follows:]

October 2, 1998

Hon. NEWT GINGRICH, *Speaker,*
United States House of Representatives.

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

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

No existing judicial precedents bind Congress's determination of the meaning of "high Crimes and Misdemeanors." But it is clear that Members of Congress would

violate their constitutional responsibilities if they sought to impeach and remove the President merely for conduct of which they disapproved.

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

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

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

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

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

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

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

It goes without saying that lying under oath is a serious offense. But even if the House of Representatives had the constitutional authority to impeach for any instance of perjury or obstruction of justice, a responsible House would not exercise this awesome power on the facts alleged in this case. The House's power to impeach, like a prosecutor's power to indict, is discretionary. Thus power must be exercised

not for partisan advantage, but only when circumstances genuinely justify the enormous price the nation will pay in governance and stature if its President is put through a long, public, voyeuristic trial. The American people understand this price. They demonstrate the political wisdom that has held the Constitution in place for two centuries when, even after the publication of Mr. Starr's report, with all its extraordinary revelations, they oppose impeachment for the offenses alleged therein.

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

Sincerely,

JED RUBENFIELD,
Professor of Law, Yale University,
BRUCE ACKERMAN,
Sterling Professor of Law and Political Science, Yale University,
AKHIL REED AMAR,
Southmayd Professor of Law, Yale University,
SUSAN BLOCK,
Professor of Law, Georgetown University Law Center,
PAUL D. CARRINGTON,
Harry R. Chadwick Sr. Professor of law, Duke University School of Law,
JOHN HART ELY,
Richard A. Hausler Professor of Law, University of Miami School of Law,
SUSAN ESTRICK,
Robert Kingsley Professor of Law and Political Science, University of Southern California,
JOHN E. NOWAK,
David C. Baum Professor of Law, University of Illinois College of Law,
JUDITH RESNICK,
Arthur L. Liman Professor, Yale Law School,
CHRISTOPHER SCHROEDER,
Professor of Law, Duke University School of Law,
SUZANNE SHERRY,
Earl R. Larson Professor of Law, University of Minnesota Law School,
GEOFFREY R. STONE,
Harry Kalven, Jr. Dist. Serv. Professor & Provost, University of Chicago Law School,
LAURENCE H. TRIBE,
Tyler Professor of Constitution Law, Harvard University Law School,
CASS SUNSTEIN,
Karl Llewelyn Distinguished Service Professor—University of Chicago Law School.

Note: Institutional affiliations for purposes of identification only.

Mr. CONYERS. Thank you. May I keep firmly fixed, and every member on both sides of the aisle, on the point that for us to let a subcommittee, as distinguished as it may be, handle the constitutional question of what is an impeachable offense, that is a matter that every single one of the 37 of us have to be in attendance. If we are going to expand this subcommittee to everybody, this isn't something that you leave to any of your colleagues, ladies and gentlemen. This goes to the very heart of the matter.

Now, let me just make several points on the Boucher alternative. The first is that there are no arbitrary time limits that will either rush nor stall the search for the truth. I refer you to section 4 in

this very carefully crafted amendment, which says that a report to the House of Representatives may be made by the committee requesting an extension of time, so that no one here can say they voted against this provision because it was fixing time. It says, "request an extension of time."

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I tried to make the point before, with respect to the gentleman from Virginia, when he had the time, that in a diabolical way, the request to the House of Representatives is in itself a stall, even unintentionally brought about; and more diabolically, you give the chance to the majority to determine even a bigger lapse of time and a bigger stall, if we were so inclined, to convene the House of Representatives or to bring this to the attention of the full House sometime in the next year.

Mr. CONYERS. Let me argue on behalf of the Speaker of the House that I don't think he would do that, okay?

I think that this body would give this committee additional time if they so chose. I think the authors of this amendment believe that sincerely.

Now, all we are asking, in the alternative, is that we limit the matter to what has been referred by Independent Counsel; namely, the Lewinsky matter. Nothing else is mentioned in the 37 boxes, the tens upon tens of thousands of papers. That is what we are here for, and that is what our job is. We are limited to Lewinsky at this time.

Now, with regard to the facts and the law and which comes first, please, we have all the facts before us. The facts have been here. The handful of witnesses, factual witnesses, most have been before the grand jury, including the President of the United States, one, two, three, four, five, six times. This is not a search for facts, notwithstanding that there may be honest disagreements about the facts. We are not looking for new facts.

So to begin this proceeding with an examination of existing constitutional scholars' interpretations of what are high crimes and misdemeanors is absolutely appropriate. All we are asking is that we do it in this fashion. Ninety-nine percent of the facts are known.

Might I just remind you that the Congress, under the present Speaker, processed one-half of the Contract With America within 100 days, 100 days, which included several constitutional amendments, radical overhauls of the systems of criminal and civil justice and administrative procedure.

So to suggest that this is either stalling or speeding is a misconception, and I urge my colleagues on the Republican side to please search your consciences and make certain that you understand the importance and the seriousness of the Boucher alternative amendment.

Thank you for your time, Mr. Chairman.

Mr. HYDE. The gentleman from California, Mr. Rogan.

Mr. ROGAN. Mr. Chairman, thank you. First let me express my profound admiration and respect for the author of this particular amendment. I join in the comments of my other colleagues in so doing.

Mr. Boucher is one whose approach to our work on this committee is such that when I do find myself taking issue with a proposal of his, I do so with great caution, because I am so impressed and have such great respect for him.

I must do so, however, Mr. Chairman, in this particular case. A few minutes ago, I took a break to fill my coffee cup in the back room. As I watched these proceedings on C-Span, I noticed that there has been a tendency in the television coverage to do a shot of the painting that we have above us of Chairman Rodino. One of the staff members told me that that has been a constant throughout the day.

I understand this motivation, because the presence of Chairman Rodino and the spirit in which he brought fairness to these hearings 24 years ago is such that it is a perfect reminder for this committee as to how we should proceed.

So there is a reason why, when these same type of limitations were suggested by the minority during Watergate, Chairman Rodino rightfully said that "the Chairman recognizes, as the committee does, that to be locked into a time limit would be totally irresponsible and unwise."

Why is that significant, Mr. Chairman? It is significant because if we set an artificial deadline for this inquiry, then essentially this committee is at the mercy of those over whom we might wish to have evidence produced. They can use dilatory tactics, they can use obstructionist tactics, they can use delaying tactics to preclude us from being able to fulfill our charge.

Chairman Rodino obviously understood that by allowing the committee to set the perimeters for a deadline, the committee kept control of the proceedings, and did not surrender them to external forces.

I was struck by the comments of my dear colleague, Ms. Lofgren, when she related the example of Chairman Rodino giving his word 24 years ago that although he would not accept an artificial deadline, he would pledge to proceed in as expeditious a fashion as possible.

Ms. LOFGREN. Will the gentleman yield? Because he actually said April 30th.

Mr. ROGAN. If I may finish my commentary, then I would be happy to yield to my friend.

I found that instructive, Mr. Chairman. We know from this weekend's news reports that our current chairman has also given his commitment, not just to the committee, but to the country, that he would proceed in as expeditious a manner as possible. That to me is perhaps the most sound guarantee that this committee could ever have, and I daresay that no member of this committee who has worked with our chairman and who knows our chairman would take issue with that pledge.

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

Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman.

Mr. Chairman, we have heard a lot from the other side about precedent that has been set: the precedent set under Watergate, the precedent set under Chairman Rodino. The reality here is that there hasn't been any precedent at all in this case. The document

dump in this case, where we have an Independent Counsel, who by the way spent 41/2 years in investigation, submits a report to this Congress and this committee, and that report is put out in public before we even see it. Unprecedented.

To take the 3,000 pages, included among them secret grand jury testimony, and dump that out to the public before we have had a chance to thoroughly go over that information, is totally unprecedented. The first document was released in Watergate 7 weeks into the formal inquiry. So it has been unprecedented. You cannot retroactively say that we are going to follow precedent that we established with Watergate. It can't be done retroactively.

The Democratic alternative simply says that the first thing we need to do is ascertain a constitutional standard for impeachment based on the fact that we know—now we have to admit we already know basically what the facts are here.

We have the President, who has been under grand jury testimony for 5 hours' worth of testimony on every major network in America. We basically know this is a case that is about a sexual relationship the President had with Monica Lewinsky, and whether or not there was an effort to hide that or cover it up. That is what essentially this is going to come down to.

So this notion that there has been a precedent set is ridiculous, in my view. We have already thrown all the precedents out the window. The question is, can we take the facts as we all understand them and apply them to a constitutional standard about what is an impeachable offense and determine whether the facts, as we know them, rise to the level of high crimes and misdemeanors?

That is the first step we would undertake. It is a process that makes sense, it is a process that is constitutional, and under the circumstances, I believe that it is in the best interests of the country.

And to think that whatever facts we don't know in this case—and I have heard members talk about and the majority counsel talk about how and whether or not the President touched Monica Lewinsky, and whether that is consistent with his civil and criminal deposition. I cannot believe that we need to make comparisons to 18- and 16-month impeachment inquiries, and we are going to conduct that type of an inquiry here, and put this country through that, to make determinations about how the President may or may not have touched a woman during a sexual relationship that he shouldn't have had.

It seems to me we know the facts. The facts are on the table, and they are before the American people. Let's determine whether those facts constitute high crimes and misdemeanors. I think we could do that within a short period of time, as suggested by this amendment. I hope that the majority will look at this amendment and adopt this amendment. I yield back the balance of my time.

Mr. HYDE. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I rise in opposition to this substitute, but I also want to acknowledge the constructive manner in which it is offered. I appreciate the consultations with my Democrat colleagues. I think that they are expressing something in this substitute that many people are concerned about; but in this case,

the chairman has indicated and it is certainly my desire, that we proceed through this inquiry expeditiously, fairly, and independently to come to a conclusion. I believe that we can do that. We all want this to end, but it must be done the right way.

In looking back over the Watergate proceedings, the members of this committee had the same type of debate. My colleague, Mr. Pease, from Indiana, handed me a New York Times article entitled, "House Impeachment Panel Faces Split on Procedure." So the debate we are having is very similar to the debate that was conducted back during the Watergate proceedings, and in fact, the senior Republican member, Representative Edward Hutchinson of Michigan—and he is no relative of mine—he raised the same argument that some Democrats are raising now. He said that the issue, the threshold question of setting a deadline for the committee, needs to be answered before we proceed with the investigation.

That was the case made by the minority then, and Mr. Hutchinson was wrong then; but this Mr. Hutchinson is right now, that we should proceed on. It is interesting how this issue was resolved at that time. The chairman, Chairman Rodino, assured the committee that he would proceed expeditiously and set a goal as to when it would be done. And the minority said, "Well, put it in writing." He said, "Take my word for it."

They went to the floor of the House and in that debate, a Republican, Mr. Rhodes, asked about this and received the assurance of the Democrat chairman. Mr. Rhodes responded, "The gentleman's word is good with me, and I certainly intend to accord him the credibility which he has earned, and he has earned it." That is straight from the Congressional Record.

What a marvelous fashion they worked together to develop bipartisan support on the floor. I certainly think Mr. Hyde and his commitment deserves the same credibility that the previous chairman, Mr. Rodino, did at that time.

My colleague from Massachusetts is arguing that we know the facts in this case. If you just look at the one point of obstruction of justice, the obstruction of justice charge is very serious, in my judgment. I think it is an impeachable offense, whether it occurred during Mr. Nixon's tenure or any other president's.

But the facts are in dispute on this. The big issue is whether Betty Currie, in going and getting the gifts, the evidence under subpoena, and hiding them under her bed, was acting on her own, was acting at the direction of Ms. Lewinsky, or was acting at the direction of the President of the United States.

The factual determination on that issue is critical. It depends on who you believe and how the circumstantial evidence is evaluated. I believe it makes sense that as we go through this process, we have to get to the facts, and an inquiry is the way that we do this.

I believe the substitute that has been offered in good faith is the wrong direction to go because it has the potential for extending all of this. If there was one court challenge to the evidence, if there was one obstruction, we would not be able to complete it in a timely fashion. It would require us to go back to the floor of the House to extend it all. I do not believe we could complete it in a timely fashion.

Mr. Chairman, I believe that the course that you have undertaken is wise, it is appropriate, and it is consistent with the Watergate standard. I recommend to my colleagues that we reject this substitute.

Thank you, Mr. Chairman.

Mr. HYDE. Thank you.

Mr. Wexler.

Ms. JACKSON LEE. Mr. Chairman.

Mr. HYDE. You want to be recognized ahead of Mr. Wexler? That is all right, if Mr. Wexler is amenable.

Ms. JACKSON LEE. I would just like to be recognized or that you realize that we are down at this end. I appreciate it.

Mr. HYDE. I do realize it. I am ever mindful of it. I am happy to recognize you now and unrecognize Mr. Wexler.

Ms. JACKSON LEE. I would not be so unkind to my colleague. Thank you.

Mr. HYDE. Mr. Wexler.

Mr. WEXLER. Thank you, Mr. Chairman. Thank you.

If I may, in the most friendly and respectful way that I know how, I would just first note that I believe that my colleague from Georgia, Mr. Barr and I, are scheduled to be on the show "Crossfire" at 7:30 p.m. In an effort not to ruin the show tonight, I will wait to respond to Mr. Barr's comments earlier until we get on the show. It wouldn't be fair to the program. It is a teaser.

Speaking to the issue before the committee, I think it is fairly clear the choice that we have. On one hand, we can choose the course of the Democratic proposal, which is for me the most prominent part, an inquiry by this committee limited to the allegations contained in the Starr report. It is that simple.

For me the most important thing is that the Democratic proposal says we will inquire into what Mr. Starr sent us. On the other hand, the other alternative apparently supported by the majority, the Republican members of the committee, is to have an inquiry of impeachment by this committee which is not limited to the allegations of the Starr report, but which I think in fairness it would be appropriate to conclude is an inquiry that will include the Starr report, and may include investigation of Whitewater, an investigation of what we call Filegate, and an investigation of what we call Travelgate. It may include an investigation regarding campaign finance alleged abuses. It may include investigation of transfer of technologies to China. It may include many things.

I say so without impugning the motives or suggesting anything other than there is a clear choice: the Democratic proposal which limits our inquiry to the Starr report, or the Republican proposal which, by its very terms, allows investigation into not only the Starr report but almost anything else; in fact, anything else that this committee would deem appropriate to investigate.

When it comes down to that basic denominator, it seems to me that the interests of the American people are better served if this Congress does not go into a series of endless investigations, and we limit ourselves to the terms of the Starr report and the allegations therein in terms of the reference of our question.

That is why I am supporting the Democratic alternative. Thank you.

Mr. SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. I know all of us, I am sure my colleagues on both sides of the aisle here listen to their constituents, talk to the people back home. We get a lot of letters and e-mails and phone calls and people stop us in the supermarket. This is something certainly on their minds much. And whether they are supporters of the President or whether they are critics of the President, I think there is one thing they have in common, and that is that they very much would like to get this done right and get it behind us as soon as possible. I agree with that completely.

I listened intently to Chairman Hyde yesterday when he said that he would like to get this done by the end of this year, and I think that is a worthy goal. Perhaps we could get it done sooner than that. But we need to do it right. If we put a definite time, it has to be done by a certain date, the thing that concerns a lot of us is that it would depend on the good faith of this White House, this administration, to come forward, be forthcoming with the facts and with the evidence, and not to delay. A lot of us have some real concerns about that.

Because this is critically important to our Nation, I would hope that we can work together on this as much as possible. We are going to have disagreements between the Republicans and Democrats on occasion, but I think this is something so important to our country that we should work together as much as possible. I hope we will be able to do that.

At this time I would like to yield to my good friend from South Carolina, Mr. Graham.

Mr. GRAHAM. I thank the gentleman for yielding. There have been two major newspapers' look at both proposals, and they are going to be entered into the record, but I would like to read a little excerpt from the Washington Post.

"The limits that House Judiciary Committee Democrats have suggested imposing on the panel's forthcoming impeachment inquiry are mostly bad ideas that the Republicans are right to resist."

I am not so sure they are all bad ideas. I am just suggesting to you that as we go down the road to finding out what we can do and when we do it, we need to have as much latitude as possible.

But let me suggest instead of the cart before the horse analogy, that everybody right now in my opinion is not seeing the forest for the trees. What happens November 3rd? We are going to have a national election.

Mr. BERMAN. Mr. Chairman, I cannot hear the speaker.

Mr. SENSENBRENNER. The committee will be in order. The point of order that has been raised by the gentleman from New York is correct. If the staff would kindly stop conferring, the gentleman from South Carolina is so soft-spoken, we certainly want to hear what he has to say.

Mr. GRAHAM. I have never been accused of that before, but it is nice to hear.

The "forest for the trees" argument goes like this: No matter what resolution we adopt, the best we can hope for, and I think should do, is try to start the fact-gathering process in some way that will withstand historical scrutiny. I want people 30 years from

now to look at our work product and say it wasn't motivated by the November 3rd election. So whatever we begin to do, we have the election to look at.

Once the election comes and goes, this will be a lame duck Congress. I think we should continue our work through the first of the year, but I really believe for the sake of history the best thing we could do would be have a process that goes to the truth as fair and hard as we can get to the truth, but let the next Congress look at our work product and determine if articles of impeachment should be—let the next Congress determine if this thing should be dropped, because right now there are going to be people involved in the process between now and the first of the year that will not be members of the 106th Congress.

So I really believe Chairman Hyde's idea about how to proceed is the best thing we could do right now. Have no time limits. We can talk to every constitutional scholar in the world, we can have a seance to try to find the Founding Fathers' real intent. I don't care what we do between now and the next Congress, let us do it well, make sure it makes sense for the sake of history, and not rush into judgment and have people make decisions that will affect this country for hundreds of years to come when they are in a lame duck status.

So the "forest for the trees" argument simply goes, slow down, do your job right, and let the new group of people do it.

Mr. NADLER. Will the gentleman yield?

Mr. GRAHAM. Yes.

Mr. NADLER. I commend the gentleman for his emphasis on a proper process. I will not ask him about the timetable, because I think that is one discussion.

But given the concern for proper process, don't you find it strange that we have been asked by the House in the resolution under which we are operating that the Judiciary Committee shall review the communication received September 9th from the Independent Counsel to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced? Here we are prepared to vote on a recommendation to the House that the inquiry be commenced today without having spent any time looking at any evidence at all.

Mr. HYDE. Mr. Chabot would like to reclaim his time.

Mr. CHABOT. I yield to Mr. Graham.

Mr. GRAHAM. I find it strange that I am agreeing with the Washington Post.

Mr. HYDE. Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, thank you very much. Let me add my accolades to Mr. Boucher, Mr. Nadler, Mr. Scott, Ms. Lofgren and Ms. Waters, and join them in what I think is the first concrete effort in which Democrats have joined them in striking the chord for nonpartisanship.

I might too, Mr. Chairman, thank you today for mentioning at least four times the concept of due process. I was attempting a meeting or two ago to secure your support as I offered an amendment which no Republicans voted for, which confirmed that we be guided by the principles of due process and the Fifth Amendment,

but I count as your voicing that expression that we are certainly guided by those provisions. I thank you for that.

Let me also associate myself with the remarks of my ranking member, for I believe that we should join him in asking that all of us attend the Constitution Subcommittee's hearings on such a high and important determination as the constitutional standards.

But let me say as well, there are so many of these fine gentleman that I wish to associate myself with, and certainly Mr. Graham from South Carolina has said something today that I think should be really striking as we debate this issue, and that is the rush to a vote on October 9th. I think the American people really need to sort of understand the parameters in which we work. It is not the parameters set out by the substitute. It is not the parameters of which the chairman has so kindly said that would be followed or would follow, which is to say that he will not limit it or he will limit it if necessary.

But this unnecessary attempt to cast a vote by the House of Representatives on an impeachment inquiry, the very debate we are having today indicates that we are not ready for an impeachment inquiry. Some have said they understand the facts. Others have said, and I associate myself with them, we don't really know the facts.

Let me give you an example why we don't know the facts. One, we have heard over and over again about Ms. Currie's recollection of these gifts under the bed, whether she got called to get them or whether or not Ms. Lewinsky suggested it. There is a disputable fact. The last point that Ms. Currie makes, which was not noted by our esteemed counsel for the Republicans, is even though she said that she might be wrong, it was sort of a guessing answer and suggested that maybe a younger woman like Ms. Lewinsky might have a better memory than hers. But she did not concede the point as to who was the one who initiated calling about the gifts.

The other point that seems to be so much a part of our Republican colleagues' case for lying and perjury is this whole question of whether or not Monica Lewinsky was told to lie or whether or not she was to get a job to keep silent. She indicated in a 302 that no one had forced Lewinsky to sign the *Jones* affidavit before getting a job or no one—she did not stop signing it before getting a job, and Lewinsky never demanded a job from Jordan in return for a favorable affidavit. Neither did the President or Jordan ever tell Lewinsky she had to lie.

We have disputable facts, if anything else. And the very fact of what we are doing today, disputing the facts, arguing constitutional principles, is the very reason why the Republicans' resolution is premature and that the Democratic alternative is in fact the real compromise here, the real extension of Democrats to our Republican colleagues saying to you, join us in this very fair process that does not harness us with Watergate, because we have all been using Watergate for a variety of reasons. I have been using it procedurally on the basis of due process, on the basis of not dumping documents, salacious materials, horrific things on to the Internet. But we cannot be harnessed by Watergate, as you said, because we had the Senate Watergate proceedings, 3 months of constitutional

discussions, and then we proceeded and had a special prosecutor that did not provide an indictment but only information.

I ask my colleagues to look at this in the spirit that it has been offered. It is offered in a compromise because, as you well know, many Democrats have argued the case of why an impeachment inquiry at all? Here this document acknowledges a process by which we can move to that and in a fair manner, and yet gives you an out by suggesting that if we are not finished with our work, Mr. Chairman, we can in fact ask for more time.

I would hope that we here in this room would characterize this alternative not as the Washington Post and New York Times has done, inasmuch as it was written before they saw this alternative, but as it has been presented. Give us, the Democrats, at least the understanding and the agreement, if you read it well, that it is a compromise and an extension of a hand of friendship.

We have a job to do. The Nation is asking us to move on. This gives us, Mr. Chairman, the parameters in which to move on in fairness, in friendship, and collaboration, and understanding the Constitution. I would ask my colleagues to vote for this in a bipartisan and nonpartisan manner.

Mr. HYDE. Taking you up on that, are we ready to vote? Please? The question is being called here.

Mr. FRANK. Question.

Mr. HYDE. I don't want to shut off debate, but I just want to say there are more amendments, there is more time to be consumed. Nobody is saying anything new. They are saying it maybe differently, but I just appeal to your hard hearts.

Who must be heard? I just wanted to see. I am going to, Mr. Buyer. I am just trying to find out who over here. We have Mr. Scott, Mr. Watt, Mr. Rothman and Mr. Barrett. All right. Mr. Buyer, you have 4 to 1 here.

Mr. BUYER. Thank you, Mr. Chairman. Everyone has been referring to this Committee on the Judiciary of the House of Representatives in the 93rd Congress, prepared by the staff under then-Chairman Rodino, and Mr. Chairman, you even earlier had referred to it. But there is a line in here that you did not cite that I find interesting, that says as the factual investigation progresses, it will become important to state more specifically the constitutional, legal and conceptual framework within which the staff and the committee will work. I think that is extremely important.

The other thing I want to note here, I suppose I will take exception with Mr. Conyers, who said all the facts are already known. I would disagree with that. I think there are still facts that are left for us to inquire about.

There is also an area which no one is really touching, and the two presentations given to us by the majority counsel and minority counsel did not touch the area really on misdemeanors in office. I raised it during my opening statement because I am greatly concerned that an impeachment, though, can be based on noncriminal conduct. That is possible. It can occur when the impeachable offense can also be something that is not necessarily indictable but serious misbehavior which may be considered as coming within the category of a high crime and misdemeanor.

So it appears that no one here today wants to talk about the President in his role as Commander-in-Chief. I suppose nobody wants to talk about that because it was purely an act that occurred in the Oval Office when he was speaking with Congressman Sonny Callahan.

When you think of the phone conversation President Clinton had with Congressman Callahan, the President called Sonny in order to get him, as chairman of the Appropriations Subcommittee on Foreign Operations, to vote in favor of funding the peacekeeping mission in Bosnia. This was literally a matter of life and death for American troops and the Bosnian civilians, and a supreme test of our ability to handle the international crisis. What is remarkable is that it is alleged that is exactly the same time the President was eating pizza as Monica Lewinsky performed oral sex on him.

That is worthy of consideration of a misdemeanor in office, and no one wants to talk about the misdemeanors, as if all we want to talk about is the high crimes. I want to make that point because there is further development of this case. I am very uncomfortable about putting time limits on that, as has been requested by Mr. Boucher's substitute.

At this moment I want to yield to Mr. Goodlatte of Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding. On the issue of what constitutes an impeachable offense, I just want to say that those who are advocating that we need to establish a standard or a clear definition so that we can know whether to proceed with an inquiry are in my opinion very wrong, and there is no precedent for that. The term "impeachment" is already defined. The Constitution states that standard in black and white.

Establishing a fixed standard for impeachable offenses was not done in 1974. The Watergate Committee wisely sought to fully understand all the relevant facts without first agreeing on a detailed definition. And here is why. The duty of the House of Representatives ultimately is to decide whether to pass articles of impeachment. Each member of the House at that appropriate time is charged with determining for him or herself whether the conduct of the President is bad enough to warrant impeachment. It a matter of each member's own determination and conscience. In fact, Chairman Rodino never held one hearing on the issue of what constitutes an impeachable offense. If this committee devised a fixed standard or definition, we would be usurping the prerogatives of the members of the House.

Even if a majority of this committee agreed on such a definition, those committee members who disagreed with it would not be bound by the definition. They shouldn't be. Their allegiance isn't to the opinion of the colleagues sitting next to them, it is to the Constitution. Even if the Judiciary Committee could agree on one definition, the full House of Representatives would not and should not be bound by such a definition for the same reason.

The allegiance of each member of this body is to the Constitution, and if in good conscience a member couldn't agree with a committee's definition, he or she would be obligated to reject it. We simply can't tell the House what is or is not an impeachable offense.

I yield back.

Mr. HYDE. The gentleman from Wisconsin, Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. I actually don't think we are as far apart as everybody seems to indicate. Frankly, I don't even think that these two competing motions are mutually exclusive. I think if we had some cool heads sit down and talk back and forth about the differences, I honestly think we would be able to work out the differences.

As I said, I am a new member of this committee but I have got some battle scars. I come from the Government Reform Committee chaired by Chairman Burton. That committee, frankly, has very little respect. I don't want to waste my time, I don't want to waste your time, the country's time, unless we have the respect of the country, and I think that that means that we have to have credibility. And I want to just run through several portions of this competing, if you will, motion, and explain to you why I think they are important.

There has been a lot said on standards. I am not going to touch on the standards. I want to touch on the focus, why we feel it is important to have this focus. We have received the mandate from the House. The mandate from the House was based on the Starr report.

It is true that the Rodino-Watergate resolution was more unlimited, but the key difference, of course, is that it didn't have a report from a special counsel. Now we have a report from a special counsel, so the majority of the work has been done, and it is important for us to say let's concentrate on those efforts. I voted to release that report. I think we should be using that as our document.

Now, what is my concern? Again, coming from the Government Reform Committee, it seemed to me that every time there was an article in the newspaper critical of the Clinton administration, the next week we would have a new hearing on those allegations. There was no focus. It was "What can we throw at the President of the United States and hope something sticks?" Little if anything stuck, but that was the concern, and I think that that is a legitimate concern.

And obviously if the special prosecutor comes back with more recommendations, I don't believe for a minute that we will ignore those, nor should we. So I think we can come up with language that says we are going to focus on the Starr report and if we get additional recommendations from Kenneth Starr, that we would look at those. That is something that I think most people here would agree with.

Let's talk about the time. From my perspective, this is a target date. It is different from the Senate. I have heard several members talk about the Senate. We can't get hung up like the Senate, because they have the 60 vote problem. We don't have the 60 vote problem right here. If you want us to continue, we are going to continue. So that argument is out the window.

What is my concern? I have heard the reference to the process taking 19 months for Watergate, 16 months for Judge Hastings, 13 months for Judge Nixon. I hear that, my head starts to spin, because my wife is pregnant and is due January 11. I want this resolved by January 11, if for no other reason, I would like to be home to see my baby being born.

Mr. HYDE. Without objection, so ordered.

Mr. BARRETT. Thank you, Mr. Chairman. But we can do this. We can do this by then. But the layout, there is this possibility of 19, 16, 13 months, my God, that would be the worst thing for the country.

The country feels that Washington, D.C., right now is in suspended animation, and it is, and we have a duty to set a target. And, if we are wrong, and I understand the concerns that have been raised, if you feel it is going to slow us down by having to go back to the House, there is a way to work around that. We can do it within the committee. But the American people, I believe, expect finality in this proceeding, and, I think, it is our duty to try to provide it.

The third thing I want to talk on real quickly is the options. I think that this motion has a good section on the options, and this is something that I think we have to look at. Again this morning I referred to Presidents Ford and Clinton. I think it is important that we set out some possible options for us to go forward to. If we do that, I think you are going to get a lot of votes, and, I think, that is what we should be doing.

I think we can take the day off. The good chairman and Mr. Conyers can sit down, come back and have a bipartisan vote, take it to the House for a bipartisan vote in the House. That is good for the country. The worst thing for this country is to have this be a partisan, polarized mechanism. There might be some people who want to play Russian roulette in terms of the November 3rd election, but that is not what is right for this country.

What is right for this country is to try to have us work together. I think I have confidence in all of the people on this committee, the 37 of us can show the leadership how to do that. We don't have to listen to somebody else. We should listen to our consciences and do this. I think we will get it done.

Mr. FRANK. Mr. Chairman, if the gentleman will yield, I think the gentleman has done an excellent job of making clear what is at stake here. First of all, this comes after a 4-year-plus Independent Counsel investigation, and that invalidates the previous comparisons. We don't have to do a lot of the independent fact-finding. We have an Independent Counsel, and that is very different from previously.

Secondly, he focuses quite sensibly on the question of scope. Timing is really a function of scope. If you are going to go into the Lewinsky situation and Whitewater and the FBI files and the Travel Office and whatever filters through the wall from the Government Reform Committee next door and campaign finance and China, all things which have been the subject of multiple hearings and investigations, then you need 19 months. You might need 19 years.

If you function by focusing on the Starr report, where there has already been an extensive degree of fact-finding, then the time problem becomes much less of a problem. That is indeed what we ought to be doing. So I think the gentleman has brought a great deal of clarity to the issue.

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

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. I am going to put a different spin on this. I promise you that red light will not illuminate on my watch. I will finish before my 5 minutes.

I just came from the anteroom a few minutes ago, folks, and at least one reporter gave us high marks today. He commended us for the thorough, deliberate manner in which we have conducted ourselves. I think some people may have come here this morning, Mr. Chairman, expecting all the trappings of the commencement of the Third World War, and it hasn't developed. I think it has been a very evenhanded day.

Now, much has been said about Watergate and Chairman Rodino. I wasn't here, but I have read about it and been told about it. During the early days of Watergate, it was certainly not harmonious, but as time went on during the waning days, I think harmony and bipartisanship did come into play. So I am not uneasy at all, at the way this is going. But I want to say this: Chairman Rodino did a good job, I am sure, but he does not hold a corner on the fairness market.

Now, at the risk of being accused by some of my colleagues, Mr. Chairman, of being obsequious, I will say this to the gentleman from Illinois, our able chairman.

Mr. HYDE. Go ahead, be obsequious.

Mr. COBLE. I will say it is my belief that not only today, but throughout this entire exercise, Chairman Hyde has conducted himself, as we say in the rural South, not too shabbily. That may be a left-handed compliment.

Mr. FRANK. Did they say shabbily or shabby?

Mr. COBLE. You are finally learning how to interpret my language, Barney.

Mr. Chairman, in conclusion, and I hate to pour water on this harmonious tone I am giving, I think the Boucher amendment is not the sound approach to take. I think it is unprecedented, it would hamstring us, and it would result in us being unfair, maybe to the President and maybe to others.

I told the chairman my red light would not come on, but now I am told the gentleman from Utah would like for me to yield. On my time, the red light is not illuminating.

Mr. HYDE. You are yielding to Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. I would like to associate myself with the comments of all of my colleagues who have spoken with respect to others of us here, especially Messrs. Rogan and Hutchinson.

Let me say that in my opening statement today I spoke about what is healthy partisan debate. I think we have seen a lot of that today. That means we speak from our own perspective. We argue rather intensively from our own perspective. I don't think anyone following this debate today doesn't see how the party line differs, not the least of which effect of that is the length of the debate.

Frankly, it hasn't been a debate without humor. We have seen the Democratic schizophrenia over the time frame here, and just in the sense of compromise and listening, I would be happy to yield at any time to the gentleman from New York, Mr. Nadler, to have him give us his next position on what I will call the Rodino paradox: which is his refusal to act, Mr. Rodino's refusal to act, in a

vacuum versus why we should act today with what Mr. Nadler I think calls no fact-finding.

The question of all the facts being before us I think has been one of the prominent discussions. I think Mr. Barrett said earlier that we had all of the facts. One thing we haven't really discussed here is that this alternative calls for a 17-day investigation. If you listened to the two presentations by counsel, you know that there are virtually no agreements on facts.

Now, in the last minute or so, let me read a couple of things that I think go to the core of the partisan difference between us and why we need to resolve this I think in a bipartisan fashion.

Some of you may have seen the article called "Bill's Sexscape RX Might Kill Him" by Dick Morris. Morris says it is not the sex that will hurt the President and it is not even the perjury that will hurt the President, but rather it is the systematic attempt or campaign to intimidate, frighten, threaten, discredit and punish innocent Americans whose only misdeeds are the desire to tell the truth in public.

Then, granted, Dick Morris may not be the most credible witness, but this is a man who has been on the inside of White House, who knows how the President works.

Mr. HYDE. The gentleman's time has expired. Does the gentleman ask for additional time?

Mr. CANNON. An additional 2 minutes.

Mr. HYDE. Without objection.

Mr. CANNON. Thank you. Beginning as early as 1990, Clinton surrounded himself, Morris says, with detectives and negative research specialists who collectively have become kind of a secret police force to protect his interests. This is where that term has come from, has emerged in the public debate. Then he lists several people.

"Kathleen Wiley reports her cat was stolen and her tires were slashed on her car. Shortly thereafter, while jogging in the park, a man ran up alongside her, asked about her cat, calling it by name. He said if she wasn't careful, her children would be next.

Former Miss America Elizabeth Lord Grayson says she was offered acting jobs through the Hollywood connection, Clinton operative Mickey Kantor, in return for a sexual encounter with Clinton when she was Miss Arkansas."

Now, Mr. Morris goes on with many of these kinds of allegations. I don't know whether there is substance to those, but I think the American people have a right to understand through a considered debate, without a time limit, what is behind these kinds of allegations by a gentleman who is familiar with the White House and the way it operates.

Mr. HYDE. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I wanted to address only one part of the proposed Democratic resolution. I was kind of hoping that some momentum would develop around Mr. Barrett's motion, but apparently that is not going to happen.

The part of the resolution that I really want to emphasize is the standards part, the first part of the Democratic resolution, which it sounds like maybe we will have some hearings about in a subcommittee, maybe we will not. But it does seem to me that an ap-

propriate starting place is to come together on some acknowledgment about what the historical standard in the Constitution is and what the precedents are related to that.

It is not surprising to me that perhaps my Republican colleagues would not like that to happen. Right now it seems to me that the public is making its own set of judgments, morally and politically, without having any standard, and I am sure that is a lot more palatable to a lot of my colleagues than having some standards that everybody in the country could start to think in terms of.

So I guess the point I am making is the difference between having a constitutional inquiry and having a political inquiry. If we are going to have a constitutional inquiry, then there ought to be some basic understanding of what the standards are for that inquiry.

Second, I would point out that the Starr report came over with 11 allegations but not a single word about what he understood the constitutional standard to be. It was almost like yes, here are some facts; you decide whether they are impeachable or not. I am not going to get into talking about what the standards—I don't know how you say they may be impeachable without having some conception of what impeachable standards are in the Constitution.

The third point I would make is that we just saw here today in the presentations of the majority and the minority counsel a wide, wide divergence of opinion about what the impeachment standard is.

Apparently the majority counsel, if I read his standards correctly, starting on page 2, believes that "the President of the United States enjoys a singularly and appropriately lofty position in our system of government, and that he has affirmative obligations that apply to no other citizen." I didn't know that.

Then he goes on to say that "while the President is not above the law or below the law, he is held to a higher standard than any other American." I didn't know that. If that is the standard we are going to apply for impeachment, then we ought to be talking about that before we start marshalling evidence.

Then he goes on to say, "and the circumstances under which the testimony is given are of no significance whatsoever." That is ridiculous. Should we believe if somebody lies about jaywalking, that is an impeachable offense? That is a circumstance under which the testimony is given.

There have to be some basic guidelines that we are operating under, and right now the majority counsel is operating under one set, the minority counsel is operating under one set, the public is operating under a set, and I think this committee has no conception, and I don't know how we bring to bear these facts for ourselves without having a standard.

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

The Chair would like to recognize Mr. Rothman and then vote. Is that possible? Mr. Scott.

Mr. WATT. Mr. Scott is a cosponsor of this.

Mr. HYDE. Mr. Scott is going to be recognized after Mr. Rothman. Mr. Rothman.

Mr. ROTHMAN. Thank you, Mr. Chairman. I too want to congratulate all the members for the, generally speaking, bipartisan

nature of our discussions, and commend the good will of the discussion here.

But I did, in the sense of bipartisanship, want to point out that when my colleagues on the other side of the aisle point to the New York Times and the Washington Post editorialists as people we should listen to, I will remember that when these editorialists, as they most often do, criticize the policies and judgments of the Republican Party. Unless you want to accept the notion right now that everything they say is true, perhaps we should let ourselves be the judge of what is a fair procedure.

But I did want to ask a couple of questions. Namely, why did Mr. Starr present this report when he did? If there are other matters yet hanging out there that have not—albeit after 4 years and $40 million of expenditures—not yet been resolved, why did he present this referral of 11 allegations and say there might be grounds for impeachment? Why didn't he wait until the rest of these loose ends were tied up?

Well, there are a couple of explanations. One, maybe he thought all the loose ends were tied up and he had nothing else to show the American people after 4 years of work but 11 allegations such as the one he has presented regarding the President's misconduct with Ms. Lewinsky.

If there are other loose ends still out there, then why did he present this report just a few weeks before the election? Is he going to tie those loose ends up a week before the election with another bombshell, or the day before the election with another bombshell? Either way, if we are to accept the good faith of the Independent Counsel that he concluded his work and gave us the results and the end product of his work, then we should rule and resolve the allegations he raised, all 11 of them.

But I agree with my Democratic colleagues and most of America that we should keep our focus on the 11 allegations. There have already been enough congressional committees looking into every single aspect of the President's life, before he was President, when he was Governor, when he was a little boy, after Governor, and now as President. It has been exhaustive, the research and investigation against this President. We ought to focus in on the 11 charges Mr. Starr brought, and if he has more charges, let him bring them forth now. Otherwise, we will have to wonder why he has waited.

I agree with the chairman that the goal should be to resolve these 11 allegations before the end of the year.

Thank you, Mr. Chairman.

Mr. HYDE. The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you very much. I just want to recapitulate for a minute where we are as we go to vote in a couple of minutes on this amendment by Mr. Boucher et al.

First of all, we have an underlying resolution before us to follow the Watergate rules that were provided for in 1974. Those Watergate rules would provide for really quite a bit of fairness for everybody concerned, at least I certainly think so, and I think most of us who have debated it think so. There has been no dispute of the fact that we would have shared investigative powers of equal nature, shared subpoena powers, the President's counsel could sit in

on any of the proceedings, depositions, et cetera. He could come testify if he wanted to, and so on.

At the time of Watergate there was no limit with regard to how much time was going to be involved, although there was, as Chairman Hyde has expressed, an expression by Chairman Rodino that we ought to expedite this, and a general time frame was sort of mentioned or set. But there was no definition either, I dispute with my colleagues, of what impeachable offenses are.

So what are we dealing with today? The real issues that are presented in the Boucher amendment are suggestions that, instead of simply following the Watergate rules that were what we first thought would be appealing to everybody, and I think still should be, that we have three additional basic differences amended to that.

One is that we set a time frame that is very narrow and very short. One is that we somehow have meetings for a couple of weeks to define what an impeachable offense is. And number three is that we not allow the scope of whatever we look at to be added to unless we come back and have another vote on it. I would suggest that we are not in need of any one of these three, and one of them is very harmful.

But we are not in need of the impeachable decision because, frankly, we are never going to decide among ourselves precisely what it is that is an impeachable offense in the broad, general, abstract sense. The Founding Fathers gave us general guidance, high crimes and misdemeanors plus treason and bribery. What "high crimes and misdemeanors" are, I have a lot of historical context that the Subcommittee on Constitutional Law will go into, I am sure. But even in the Rodino Watergate report, it said on its face there is no fixed standard. We are not going to do that in this report.

Yes, there are some allusions to guidelines you can follow and general precepts that they have to be pretty high offenses, and nobody is going to dispute that. But we waste, in my judgment, a couple of weeks discussing that.

Number two, as far as the scope is concerned, Mr. Chairman, I know that there are a lot of folks that don't want to go beyond where we are, and I hope we don't need to. But I don't think we should be fixed and tied down, and those of us in the majority don't think we should be in this resolution anymore than the Watergate crew was when Mr. Rodino presented his.

Last, but not least, and I think the most important part of this, the fundamentally flawed part of the amendment before us is the one that sets the timetable, 17 days, when we have all of these facts in dispute. Clearly the counsels out here were in dispute today about what the facts were about some of the various alleged offenses. I don't know how long it is going to take. I don't think it is going to take months. I hope the chairman is right, we finish this by the end of the year. I think that is a very admirable goal and one we would all like to achieve. Whether we can or not is not clear.

But one thing is for certain: If we set an arbitrary 17 days, things are going to slip, people are going to try to delay and punt, subpoenas may be ignored. As Mr. Sensenbrenner said earlier, they

will try to appeal whatever it is we do. I think if we have a firm general idea we want to get this done in a reasonable time frame, that is far better than an arbitrary 17 days.

So I would urge the defeat of the Boucher amendment. Let us then, I hope, have a bipartisan vote on the underlying proposal, because I think we do share common thought. And that is, for most of us at least, we believe that some inquiry, some further investigation is warranted to clear up the facts of this matter and resolve this once and for all, to get the overhang over our heads out of the way.

Thank you, Mr. Chairman.

Ms. JACKSON LEE. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I will yield for a question.

Ms. JACKSON LEE. Thank you, Mr. McCollum. I am certainly not going to offer this, but just an inquiry to you: If all of the time lines were removed, do you see merits in the amendment outside of the time line issue?

Mr. MCCOLLUM. No, I have indicated I do not, but I think the most egregious part is the time lines. I think it would be a waste of time to go into the impeachment issue. I don't think we could define it. I don't think the scope should be limited. I think the amendment should be defeated, but clearly the time line is the most egregious part of it.

Ms. JACKSON LEE. I thank the gentleman for yielding. I would just remind the gentleman there is a provision to extend the time line.

Mr. HYDE. Mr. Scott.

Mr. SCOTT. The alternative resolution before us has been referred to as the fairness plan because it is fair, focused, deliberate and expeditious. Mr. Chairman, in order to assure basic due process, the order of the decisions we make is just as critical as the decisions themselves.

This fairness plan ensures we follow a logical order of decisionmaking that ensures that we avoid putting the cart before the horse. That may be a novel idea, but it begins first with a question, even assuming all the allegations are true, do any of the Independent Counsel's allegations rise to the level of an impeachable offense? If so, we should proceed on those offenses about those and only those offenses.

Mr. Chairman, during Watergate, even if no fixed standard was achieved, there was at least an understanding of what the impeachment process was about. There were no reports from constitutional scholars that the charges lacked merit, and the question wasn't even close.

In addition to being essential to ensuring fairness to the President, there is another reason why we must first determine whether or not there are any impeachable offenses alleged. If in the end some of the allegations fall short of an impeachable offense, we will have needlessly violated the privacy of innocent people, embarrassed them, ruined their lives, people who are accused of no crimes and have committed no offenses.

If there are no impeachable offenses, clearly there is no need for us to go forward, and we should not use the impeachment process just to dig up dirt on the President.

The process proposed in the alternative resolution is focused. We should not be drawing this probe out in open-ended dragnet fashion, and we should ensure that the constitutionality prescribed in presidential impeachment inquiries is focused only upon those matters which have been found to warrant consideration as impeachable offenses. We should ensure that this committee's resources are not expended in a fishing expedition based on bizarre conspiracy theories.

Mr. Chairman, the importance of first appreciating a standard has been emphasized this morning. We now see that some of the Independent Counsel's allegations are apparently so flimsy that the Republican counsel didn't even mention them. What salacious details have been released which relate only to those clearly meritless charges? And now, here we are with new charges blurted out on a television proceeding an hour before we have to act on them without any prior notice. This exposes the lack of deliberation in our consideration of these charges.

Furthermore, what standard was used to add charges or delete charges? We have heard all kinds of different standards today, many without any connection to the Constitution or the history of impeachment proceedings.

Our responsibility under H.Res. 525 was to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced. We have obviously not given any deliberation to that question. We have just listened to charges and as soon as we hear the charges, we are ready to vote. We have planned a hearing sometime in the vague future. No date has been set.

Mr. Chairman, these are not the Watergate rules. The proceedings so far have not been bipartisan as it has been represented. And, the document dump was not bipartisan. There was a party line vote on whether to release the documents before the President had an opportunity to see them, a party line vote on whether or not we should simply focus—release just that information relating to impeachable offenses. Those were all party line votes, and despite the fact that by adopting a process which ensures fairness, focus and deliberateness, we also can ensure that we can act expeditiously.

The fairness plan provides for an expeditious process with provisions for reasonable extension if somebody is trying to run out the clock.

Mr. Chairman, the issues before us are relatively straightforward and simple. After all, none of the allegations involve suggestions of wholesale misuse of the FBI to spy on political enemies, the abuse of the CIA to undermine our congressional inquiry or the misuse of the IRS to audit political adversaries as the Watergate inquiry involved. Instead, we are talking about admitted inappropriate sexual behavior and allegations about lying and attempts to cover up that behavior.

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

Mr. SCOTT. Could I have 30 additional seconds?

Mr. HYDE. Without objection.

Mr. SCOTT. I believe we have a fail-safe way to assure that we meet all of our responsibilities under the Constitution by adopting

a fair, focused, deliberate and expeditious process for discharging those responsibilities, and I urge my colleagues to adopt it.

Mr. HYDE. The question occurs on the Boucher amendment, and the Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.
Mr. SENSENBRENNER. No.
The CLERK. Mr. Sensenbrenner votes no.
Mr. McCollum.
Mr. MCCOLLUM. No.
The CLERK. Mr. McCollum votes no.
Mr. Gekas.
Mr. GEKAS. No.
The CLERK. Mr. Gekas votes no.
Mr. Coble.
Mr. COBLE. No.
The CLERK. Mr. Coble votes no.
Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Smith votes no.
Mr. Gallegly.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly votes no.
Mr. Canady.
Mr. CANADY. No.
The CLERK. Mr. Canady votes no.
Mr. Inglis.
Mr. INGLIS. No.
The CLERK. Mr. Inglis votes no.
Mr. Goodlatte.
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte votes no.
Mr. Buyer.
Mr. BUYER. No.
The CLERK. Mr. Buyer votes no.
Mr. Bryant.
Mr. BRYANT. No.
The CLERK. Mr. Bryant votes no.
Mr. Chabot.
Mr. CHABOT. No.
The CLERK. Mr. Chabot votes no.
Mr. Barr.
Mr. BARR. No.
The CLERK. Mr. Barr votes no.
Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins votes no.
Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson votes no.
Mr. Pease.
Mr. PEASE. No.
The CLERK. Mr. Pease votes no.
Mr. Cannon.
Mr. CANNON. No.

The CLERK. Mr. Cannon votes no.
Mr. Rogan.
Mr. ROGAN. No.
The CLERK. Mr. Rogan votes no.
Mr. Graham.
Mr. GRAHAM. No.
The CLERK. Mr. Graham votes no.
Mrs. Bono.
Mrs. BONO. No.
The CLERK. Mrs. Bono votes no.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers votes aye.
Mr. Frank.
Mr. FRANK. Aye.
The CLERK. Mr. Frank votes aye.
Mr. Schumer.
Mr. SCHUMER. Aye.
The CLERK. Mr. Schumer votes aye.
Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman votes aye.
Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher votes aye.
Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler votes aye.
Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott votes aye.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt votes aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren votes aye.
Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee votes aye.
Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters votes aye.
Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan votes aye.
Mr. Delahunt.
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt votes aye.
Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler votes aye.
Mr. Rothman.
Mr. ROTHMAN. Aye.

The CLERK. Mr. Rothman votes aye.
Mr. Barrett.
Mr. BARRETT. Aye.
The CLERK. Mr. Barrett votes aye.
Mr. Hyde.
Mr. HYDE. No.
The CLERK. Mr. Hyde votes no.
Mr. HYDE. The Clerk will report.
The CLERK. Mr. Chairman, there are 21 ayes and 17 noes.
Mr. HYDE. And the amendment is not agreed to.
The Chair recognizes Mr. Berman, the gentleman from California.
The CLERK. There are 21 ayes and 16 noes, Mr. Chairman.
Mr. Chairman, there are 21 noes and 16 ayes.
Mr. HYDE. See me after class. The amendment is not agreed to.
The Chair recognizes the gentleman from California, Mr. Berman.
Mr. BERMAN. Mr. Chairman, I have an amendment at the desk.
Mr. HYDE. The Clerk will report the amendment, I think.
The CLERK. Amendment to H.Res. _____, offered by Mr. Berman.
Amend the first section to read as follows:

AMENDMENT TO H. RES. _____

OFFERED BY MR. BERMAN

Amend the first section to read as follows:
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 review the constitutional standards for impeachment and determine if the facts stated in the narrative portion of the Referral of the Independent Counsel, if assumed to be true, would constitute grounds for the impeachment of William Jefferson Clinton, President of the United States of America. If the committee determines that the facts stated in the narrative portion of the Referral, if assumed to be true, would constitute grounds for impeachment, then the committee shall investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach the President. The committee shall report to the House of Representatives such resolutions, articles of impeachment or other recommendations as it deems proper.

Mr. HYDE. The gentleman from California is recognized for 5 minutes in support of his amendment.
Mr. BERMAN. Thank you very much, Mr. Chairman.
My amendment amends only the first paragraph of the underlying resolution that the chairman has introduced. In other words, every other aspect of the procedures suggested by the chairman in the underlying resolution that is before us remains the same.
Initially, I want to apologize to my Democratic colleagues. I have been in this position for 16 years and before that in the California legislature for a long time, and I normally don't offer amendments without talking to my colleagues about what I am going to do. But this idea came to me over the last couple of days as a way to try and resolve some of the differences between us and to both serve the country and serve the concept of bipartisanship.
I would like to just lay out some of the points behind this amendment.

I really speak here to a lot of my Republican colleagues. It is always tough to shift at the last second, to move away from established positions, but I just throw this out to you.

First, what the amendment doesn't do. The amendment I am proposing does not delay the impeachment inquiry. It doesn't make it conditional on some findings down the road. This amendment makes no effort to try and define a constitutional standard beyond what is already in the Constitution.

I think we obviously have to consider what precedent, what the Founding Fathers said, but it makes no effort to define it.

This proposal has no interim deadlines. This proposal has no final deadlines. The chairman of the committee has said he wants to complete this by the end of the year. He is going to try to complete it by the end of the year. That is good enough for me.

What this proposal does do is limit the scope to the 595(c) referral that we have received. I know the arguments that have been made against the approach—Watergate didn't have any limits on its scope—but I would suggest several things have happened since that time, and this is in a very different context. And while many would like to maintain the open-ended nature of an inquiry to deal with what might happen in the future, the chance to put together a bipartisan resolution and get a substantial number of Democrats and to cut through the charge that this is being moved on a partisan basis is worth making a compromise with your desire in its purest sense.

The amendment says, let's limit an inquiry to the referral, and let's assume that the narrative in the Starr report is true and decide if that constitutes grounds for impeachment.

Why do I do that? I think it is the logical order. I think it makes sense on its own. But the real goal is much broader than that.

I cannot believe that anyone in this body wants to go through an evidentiary fact-finding process on a matter that has been investigated over 8 or 9 months to bring in Monica Lewinsky and Linda Tripp to testify and go through this whole process all over again.

As I mentioned in my opening statement, for the sake of the children of America, if we can resolve this question without going through that process, if we can accept the Starr narrative as true—and that means we are not talking about exculpatory evidence that wasn't included in the report or the justification for the original referral—and then decide whether or not, based on a sense of the constitutional standards for impeachment whether the facts in the narrative constitute grounds for impeachment. If the answer is yes, then we have to go through that fact-finding process. But we are making an effort to do this the right way.

I believe the country will be the better for it, I believe this institution will be the better for it, and so I ask you to consider it. It is meant in the spirit of trying to put together a bipartisan approach to this.

Mr. HYDE. I certainly thank the gentleman.

The gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, reluctantly, I rise in opposition to the amendment.

Mr. Chairman, as well-intentioned as Mr. Berman's amendment is, I think it leads us into a constitutional trap which we don't

want to get ourselves put into. In lines 7 and 8, it says that the committee, in the stage that Mr. Berman has described in his investigation, should assume that the facts in the referral that are in the narrative section are assumed to be true.

I do not think we want to do that. The House of Representatives has the constitutional function of determining what the facts are. That was what was done in both the President Nixon and Judge Nixon impeachments, as well as the Judge Hastings and Judge Clayburn impeachments.

Under the doctrine of separation of power, I am afraid the amendment of Mr. Berman's would, in fact, delegate part of our powers effectively to the Independent Counsel's office, because we are assuming everything that he sends over here is true, and that is something that I really don't think we should do.

Now, I would like to read a bit from the memorandum that was submitted in 1974 as the Judiciary Committee began the President Nixon impeachment process.

The third from the last paragraph says, this memorandum offers no fixed standards for determining whether grounds for impeachment exist. The framers did not write a fixed standard. Instead they adopted from English history a standard sufficiently general and flexible to meet future circumstances and events, the nature and character of which they could not foresee.

Further on up in this introduction, they talked about having the inquiry staff go through the evidence, a lot of which was formed by the Erwin Committee and is contained in the green volumes that are over there on the table, which is much more massive than the evidence that Mr. Starr has sent over and which we have released as relevant.

The impeachment memo of 1974 says "as the factual investigation progresses, it will become possible to state more specifically the constitutional, legal and conceptual framework within which the staff and the committee work. Delicate issues of basic constitutional law are involved. Those issues cannot be defined in detail in advance of a full investigation of the facts. The Supreme Court of the United States does not reach out in the abstract rule on the constitutionality of statutes or of conduct. Cases must be brought and adjudicated on particular facts in terms of the Constitution. Similarly, the House does not engage in abstract, adversary or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers. Rather, it must await the full development of the facts and understanding of the events to which those facts relate."

Here there is a huge dispute as to the facts. We heard that from Mr. Schippers and Mr. Lowell during their presentations this afternoon, and I think that that was reflected in the very good debate that we have had on this subject all day.

Mr. Berman's amendment assumes that all of the facts that Judge Starr has sent over to be correct for the purposes of applying the constitutional standard. That I think is putting the cart before the horse, and I do think that this amendment, while well-intentioned, actually does derogate our constitutional powers in the future to future independent counsels or other officials of the executive or judicial branches, and we should not be doing that.

Mr. HYDE. The gentlewoman from California.

Ms. WATERS. Mr. Chairman, this amendment takes me by total surprise. I wish I had been able to see it or discuss it with my friend and colleague from California, Mr. Berman, because it is a leap. It is a leap from where I come from.

I discussed earlier today my concept of fairness, and certainly I would have some difficulty without all parties stipulating to these facts, have some difficulty moving ahead with them. But the more you talked about saving the children of America and the more you talked about the prospects of having Monica Lewinsky and Linda Tripp before this committee, the more I began to think perhaps, just perhaps, there are some possibilities here.

I am very anxious to look for compromise. I have been identified as one of the most partisan on this side of the aisle. And each time I hear it said, I look for ways by which to bring this committee to some consensus, because I think it is important that we do that.

So, Mr. Berman, I would tell you that I have known you for many years, and I have worked very well with you, and I would carefully and somewhat reluctantly support this amendment in the interest of getting rid of the partisan identification that this committee has gotten.

Mr. GEKAS. Would the gentlewoman yield?

Ms. WATERS. Yes.

Mr. GEKAS. If we were to adopt this amendment, I would submit to you we would be stipulating that perjury, in effect, did occur. If the report of the facts that are contained in the Starr report are to be considered as true, then the factual situation in which he concludes in the Starr report that perjury was committed would be for the purposes of this amendment—correct me if I am wrong—would be——

Ms. WATERS. Reclaiming my time, that is not my understanding as to the identification of the narrative portion.

I yield to the maker of the motion first and certainly.

Mr. BERMAN. I believe the gentleman from Massachusetts is going to develop this also, but I just want to turn your attention to it. It is the narrative portion. We will then get into the conclusions. I am not trying to say we should defer our process to Mr. Starr. What I am trying to say is, before we decide to go into a full-blown evidentiary hearing, let us take the facts as he has portrayed them and then decide as a committee if they constitute grounds for impeachment.

Ms. WATERS. Reclaiming my time, I yield to the gentleman from Massachusetts.

Mr. FRANK. The gentleman from Pennsylvania issued an invitation to correct him if he was wrong. In this case, he misread it or read it too hastily. The resolution does not say the facts are true. It says, if assumed to be true. If assumed to be true is very different than true.

And so what the gentleman from California has said is, let us first assume that they are true for the purposes of determining whether, if true, they would be impeachable. Then we will go back to a determination of whether they are true.

Ms. WATERS. Reclaiming my time, I yield to Mr. Rothman.

Mr. ROTHMAN. Thank you.

If I can try to be of assistance to my friend from Pennsylvania, the amendment offered by Mr. Berman does not say that we should accept the conclusions about the facts prepared by Mr. Starr or reached by Mr. Starr. It simply says that for the purposes of deciding whether the facts, if true, reach the level that the Constitution requires the President's impeachment, that we simply assume that the facts are true, not Mr. Starr's conclusion about the facts or inferences from the facts but simply the facts alone.

Mr. HYDE. The gentlewoman's time has expired.

The gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I think we can explain some of the confusion. Mr. Berman is not playing fair. He actually listened to what was being said, drafted up an amendment based in part on some of the arguments and presented it. And, therefore, some of the pre-done arguments don't necessarily fit it.

I have to say that some of the arguments we heard from the gentleman from Wisconsin simply aren't about this amendment. The amendment is very carefully written. The gentleman suggested that this delegates our fact-finding to Mr. Starr. Frankly, there are some of us here who would be very reluctant to delegate anything to Mr. Starr, up to and including mailing a letter.

But the resolution does not say that. What the resolution says is, first, we will say that if you assumed the facts of Mr. Starr's narrative were true, if you assumed they were true, would it then be an impeachable offense? Then if you decided that it was or some parts of it were, you would then go and determine whether sufficient grounds exist.

First, you find out if these facts, if true, would be the grounds. Then you would go and say, okay, then do the grounds exist?

It also avoids the argument that the gentleman from Wisconsin was making about an abstract definition of impeachment. This does not call for an abstract definition of impeachment. It says, remember we have an Independent Counsel now; they didn't have one in Watergate. For that, we may envy them. Maybe some of us now wish that we didn't have an Independent Counsel. But we do, and he is a reality. So are his 4-plus years of investigation.

What this resolution says is, we will take the factual material that the Independent Counsel gave us, and we will not define impeachment in the abstract. We will see whether we think the arguments he makes, if we assume they were true, would be impeachable. It is not delegating anything.

If the facts were true, we say this. What we are saying here is that we continue to do the fact-finding, and we will decide whether or not these are impeachable offenses, not in the abstract.

Here is the crux and here is where I think my friends on the other side are having trouble. This does say that we will focus on the Monica Lewinsky matter. And let us not forget, Kenneth Starr, more than 4 years ago, started looking into Whitewater and the FBI files and the travel office. And he looked and he looked and he looked, and he wanted very much to find something because he really does not like Bill Clinton, but he was not able to find anything.

And so what happened then was Monica Lewinsky, through Linda Tripp, came to his desk. And he then reported to us on the

matter he has been studying since January, not on the matter he has been studying since 4 years ago and 3 years ago and 2 years ago.

Here is the crux of this: What this says is, let us look at what he sent us. And what we have got on the other side have been, from the Speaker and from others, suggestions. Maybe we are going to look at Whitewater. Maybe we will look into the FBI files. The fact is that Kenneth Starr, a dedicated critic of Bill Clinton, has found nothing. You are in a position, if you don't accept this, of kind of invoking that. That is out in the atmosphere. No, they could not come up with anything. Kenneth Starr, who really dislikes Bill Clinton, who thinks he should not be President, he wants him out of there, could not send us anything.

This resolution says, fine. Let us call Mr. Starr's bluff. Let us call everybody's bluff. Let us look at what you sent us. Here is what you sent us, and we will see. If it is true, is it impeachable? And if it is impeachable, then let us go back and see what the facts were. That is the argument.

And the only reason not to adopt that, because this does not do an abstract impeachment, this says, specifically, are these facts impeachable. This does not delegate our fact-finding. It says, if we decide that these facts, if true, would be impeachable, then we will apply them.

What this does is to admit, and I think this is the problem, because I think there are elements out there in the electorate who have some strength in this party who don't want to give up on the ghost of Whitewater, who don't want to give up on the FBI files, who don't want to give up on the travel office.

We talked about forests before trees and carts before horses. You want to make Monica Lewinsky the needle in the haystack. The haystack is all this other stuff that is out there. What people want to do is to use that somehow, and we see it in the right-wing columnists and elsewhere. They want to use that against Bill Clinton without ever having to come to terms with it.

This amendment by Mr. Berman says, we will give a very thorough study of the Monica Lewinsky matter. We will check and see whether those facts would be impeachable and whether they were true. And, the only reason for denying it is that some people don't want to acknowledge that all of this other set of accusations going back over 3½ and 4½ years are untrue.

Mr. HYDE. The gentleman from Tennessee. Would the gentleman yield?

Mr. BRYANT. I would be happy to.

Mr. HYDE. I just want to say that if you read the introduction to the Starr referral, you find that Whitewater, Travelgate, Filegate are still alive. They are not closed out. He has not closed his shop down. This is not the only game in town. They are still pursuing those. They interrupted—they were nearly through with them. They interrupted when they got assigned the Lewinsky matter.

But if we were to adopt Mr. Berman's amendment, that confines us to the narrative part of the Starr referral, and I am unwilling to do that. I want to see what else is there.

Meanwhile, we will go ahead with what we have. We are not out looking for more. We are not trolling for additional subjects. But we would be foolish to foreclose any further referral should one come. The gentleman from Massachusetts is convinced it is over and done with. The language of the introduction indicates otherwise.

Mr. FRANK. Would the gentleman yield?

Mr. BRYANT. I might at the end. Okay.

Mr. FRANK. Mr. Chairman, I think this is really the crux of it, absolutely the crux of it. Because you say Kenneth Starr was almost finished when he was assigned Monica Lewinsky. He was not assigned it. He ran in and grabbed it. He structured it to get it. This is not a case where he was withheld from these other things by the assignment. He was delighted to get it because he was about to, I think, come up with zero. And the point is that there was no reason why he had to stop looking at these other things. He didn't have to interrupt Whitewater. The fact is that we have people here particularly, frankly, on the right wing who don't want to admit that all of this Whitewater, FBI files, travel office and other stuff has come to nothing.

I think it is poisoning the atmosphere. It is being used as kind of a way to try and discredit the President. If Kenneth Starr wants to make a referral, then we will look at it. But to continue this kind of limbo with these things, where you invoke that they still may be around when they have not been able to find anything in 4 years, poisons the atmosphere.

Mr. BRYANT. Mr. Chairman, as I hurriedly read over this amendment, it is deja vu all over again. I thought we just voted on an amendment that would, in essence, convene a hearing on what is impeachable and then go to the facts, which is exactly opposite of the way we read the Rodino hearings and the way that we have been setting our course so far, that we want to get the facts first and then talk about what is impeachment.

The only difference I see between what we just voted down, and now, is that maybe we have taken out the time limit, but we are still talking about a very limited scope of Monica Lewinsky only and a situation where we put the hearing to determine what is an impeachable offense ahead of a determination of what the facts are. Again, very similar to the vote that we just took and voted down.

Now, I have some concerns with it, too, in terms of how would you go about accepting the evidence here. You have got—in the report on the issue of obstruction of justice—you have got Ms. Currie saying one thing, Mr. Lewinsky saying another thing, the President saying a third thing. How would you weigh the credibility and determine who is right there?

On the issue of perjury, you have the President saying, this particular sexual act did not occur. You have Ms. Lewinsky saying, it did occur. How do you weigh the credibility and decide who is right and who is wrong without some sort of factual determination?

I will defer to Mr. Berman since it is his amendment.

Mr. BERMAN. I appreciate that. This is not hard. This is not a courtroom, but let us pretend it is for a second. This is the motion for summary judgment. Take every fact and give credence to the Starr perspective on the facts.

Mr. BRYANT. There is a conflict in fact. The President says X, Ms. Lewinsky says Y.

Mr. BERMAN. I read the Starr report. I saw the way he resolved the factual disputes.

Mr. BRYANT. But we don't accept his conclusions under your amendment.

Mr. BERMAN. My intent in this case is to take the facts and construe them from his perspective. And where they conflict, I am willing to say, okay, we take your story. Now let us discuss whether that is impeachable.

And the point to doing this. I know Peter Rodino, but I am no Peter Rodino—is, one, we have an Independent Counsel law and a 595(c) referral. We didn't have that at the time of Watergate.

And, secondly, look what we might avoid that is not in the Democratic Party's interest, nor in the Republican Party's interest. It is in the country's interest to avoid prolonged hearings, if we can possibly come to a conclusion before we reach that point.

Mr. BRYANT. Well——

Mr. BERMAN. If we can't, then we have to carefully examine all of the facts and deal with all of the problems.

Mr. BRYANT. I understand the basis on which Mr. Berman is submitting this. I think it is a good-faith effort to try to work this out. But I have heard it described, and my first thought was something in the nature of a motion for summary judgment. And my recollection is, when you have a conflict in the evidence, that it is grounds for overturning that. I have a hard time resolving how we can resolve that as a committee, these types of conflicts of evidence.

I think, again, this is very similar to what we just voted on except that we are bifurcating this process, adding another step. And even if you reach that point, then you still have to come back and have that type of hearing. And we talk about the kids being out there. They are going to have to hear it then.

I would, based on, again, recognizing a very good effort to try to strike a compromise, I see this as very similar to what we just voted down. At this point, I would still be voting in opposition to this.

Mr. HYDE. The gentleman from Virginia, Mr. Scott.

Mr. CONYERS. Would the gentleman yield?

Mr. SCOTT. I will.

Mr. CONYERS. I wanted to inquire, because the debate has been excellent, and I know yours will be beautiful and conclusive, if there are other members that care to respond on this matter? Just an indication. Mr. Wexler does. Ms. Lofgren does. Mr. Watt does.

Thank you very much for yielding.

Mr. SCOTT. Thank you, Mr. Chairman.

Just two quick points. One, on the issue of focus, I think we need to remind ourselves how we got here. The initial inquiry was into a land deal over 20 years old. That is what happens when you don't have some kind of focus.

The other point I want to make is on the constitutional standard. It is true that in Watergate there was no fixed standard in Watergate, but they did have an understanding of the purpose of impeachment, the legislative history and the precedents.

And with a reasoned approach, I would agree with the gentleman from Wisconsin, there is a constitutional trap here. The trap is that if we conclude that there are no impeachable offenses even alleged, then we will not be able to proceed with a politically embarrassing hearing. That is a political trap not a constitutional trap.

And, with that, Mr. Chairman, I yield back the balance of my time.

Mr. HYDE. Mr. Canady, do you seek recognition?

The gentleman from Florida.

Mr. CANADY. Thank you.

I want to rise in opposition to this proposal. I respect the intentions of the gentleman from California, but I think that this is just a variation on the theme that we have been debating this afternoon under the resolution that was offered by Mr. Boucher.

I agree with the concerns expressed by the Chairman that this would arbitrarily limit the scope of our inquiry. I think our focus should be on the Lewinsky matter. I don't know that we will ever focus on anything else or that any other information will ever come our way, but I don't think that we should be arbitrarily precluded from considering such information of impeachable offenses if that information comes to us.

I am also concerned that this proposal, the way it is structured, would actually slow down the process. I know that is not the gentleman's intention. I fully respect that. But I am concerned that the proposal, as presented, would delay the committee in conducting its analysis and weighing of the pertinent facts that are at issue here.

I also believe that it simply is wrong for us to assume the truth of facts which the President disputes. I don't think we should go through a process where we say we are going to assume that these facts, which I understand would be taken in the light most unfavorable to the President, if I understand your proposal correctly, we are going to assume these facts, most of them unfavorable to the President, are true for purposes of this analysis. I don't think that is the right way to go about doing this.

I believe that we should weigh the evidence. We should analyze the evidence. We should judge the credibility of witnesses, as any fact finder should do.

If you look at it this way, I believe it would be ill-advised for us to determine that certain assumed conduct of the President constitutes an impeachable offense with the prospect that further investigation, further weighing of the evidence, further judgment concerning the credibility of witnesses, could lead us to a conclusion that the President was not, in fact, guilty of that conduct. I think you set up a process here that I think would set a very bad precedent in this context.

Again, I fully accept that the gentleman has offered this with the best of intentions.

Let me comment on one further point that the gentleman has made, a point of which I am in sympathy. I agree that we should not have a full-scale trial of these issues here in the House. That is not the purpose of the Judiciary Committee or impeachment proceedings in the House. A full-scale trial of these matters, if it becomes necessary, should be conducted only in the Senate. But that

does not mean that we do not have responsibility from the outset to carefully review, carefully analyze, carefully weigh the evidence.

I am concerned that your proposal would unintentionally slow down that process and really prevent us from getting to that core function in a way that would be harmful to the process and would set, I believe, a dangerous precedent for future impeachment proceedings.

For those reasons, I would urge the members of the committee to oppose the gentleman's proposal.

Mr. HYDE. The question occurs on the Berman amendment.

Who is seeking recognition?

Ms. LOFGREN. Mr. Chairman, several of us have indicated an interest in speaking.

Mr. HYDE. Ms. Lofgren is recognized for 5 minutes.

Ms. LOFGREN. I just want to say, I don't know that I will use 5 minutes, but I think there are several things that fall far short of what I think would be ideal in the Berman amendment.

Number 1, on line 2, he would allow a subcommittee rather than the full committee to go through these matters of understanding.

Number 2, the constitutional standard for impeachment is invoked but the committee never reaches a conclusion. But I will say that I think the Berman amendment is an effort at compromise that ought not to be dismissed so readily, even though it does not make every one fully satisfied. I'm also concerned there is no end time involved, there is no guarantee that this would be an expeditious process. Nevertheless, thinking of the chairman's New Year's resolution, perhaps we could hope for an expeditious process.

I think that we need to take a look at some of the comments that have been made here today about the Berman proposal itself, and I think the majority has confused the issue. All over America, law professors are throwing tomatoes at their TV sets about the description or misdescription of the summary judgment motion that I have just heard here today.

Let me try to make it clear. The facts—for the purpose of a summary judgment motion—are assumed to be true only for deciding whether they meet the legal standard. If they don't meet the standard, then you back off those facts. So I think it is very important that we make that clear.

I finally want to say something that I find very alarming, very frightening, and I have heard it here in public, and I have heard it from members on the other side privately.

There seems to be the assumption that the role of the House is a minor one in an impeachment proceeding and that we will automatically, without a lot of review as to the Constitution, be voting articles of impeachment and merely send them off to the Senate for trial. That has not been the process historically in America, and it is frightening to consider that this is the view of many members of the minority, that we would make the very limited tool of impeachment, meant to be, as one law professor said, the axe behind the break-in-case-of-fire mechanism for an executive whose misbehavior has so imperiled the fabric of our institution of government, that we would convert and misshape impeachment to just pass it on to the Senate in this very politicized way. I find this alarming.

Finally, even though I think this motion falls far short of what many of us want and I assume what Mr. Berman would prefer, I am confident that, if we were to adopt this, that we would not regret it, because we will have the kind of discussion, either in the subcommittee or full committee, about the Constitution that is warranted.

I do not want to hear people say that a discussion of the Constitution is a snag or a delay. What could be more important to our deliberations than an understanding of the Constitution under which we are supposed to be operating, that each of us took an oath to uphold? I know that we all meant it and believed it. Fulfilling our oath is not a delay. That is a necessity.

I am confident that, with the eyes of the world watching us, we would then apply that standard well. I would hope that the majority would not just use its voting power to dismiss this compromise measure.

I yield the balance of my time.

Ms. JACKSON LEE. I was anguished, Mr. Berman, over your amendment, because I had indicated earlier in debate that I thought there were some facts in dispute. I made some points about the confusion dealing with the gift issue and the confusion dealing with the question of lying and whether or not you got a job in order to fill out an affidavit.

But as I listened to the debate, more importantly, as I underlined a very strong element here that I think is key, everything that we have been discussing today has been around constitutional standards. And what you are doing for this committee is you are taking us away from the clutter of the dispute of facts and you are saying, let us get down to the job and the task that is to understand the constitutional standard. I think this is a very bipartisan amendment.

Mr. HYDE. The gentlewoman's time has expired.

The question occurs on the Berman amendment. The Clerk will call the roll.

Who wants recognition?

Mr. Watt. The gentleman is recognized for 5 minutes.

Well, let us go over here. Mr. Hutchinson?

Mr. HUTCHINSON. Mr. Chairman, I primarily had some questions and some comments on this, but I want to first comment that I believe the gentleman from California is doing this in order to try to achieve some bipartisan support for what comes out of this committee. I think that is laudable. I think it would send a great signal to the people of America if that could be accomplished.

I did have some questions about this because, as I read this, first of all on the summary judgment part, I think I understand that. We would basically accept the allegations that are made in the report as being true and the question would be whether obstruction of justice or perjury as outlined in the report would measure up to an impeachable offense. Am I correct in that understanding?

Mr. BERMAN. No, Mr. Hutchinson. Not quite. If you will give me 1 minute to respond.

Mr. HUTCHINSON. Well, 30 seconds.

Mr. BERMAN. We are not a court of law. We are not a jury. We will not ultimately decide whether something is perjury or obstruc-

tion of justice. We will look at facts and determine if they constitute grounds for impeachment.

Mr. HUTCHINSON. Is that the reason it is confined to the narrative portion of the referral?

Mr. BERMAN. Yes.

Mr. HUTCHINSON. The second question, I want to make clear, the way I read this, it would not be limited in scope, but I think your comments as well as those from the gentleman from Massachusetts indicate that it would be limited in scope.

Mr. BERMAN. Yes, it is limited to the referral from the Independent Counsel.

The chairman and the ranking member have asked the Independent Counsel if he has any more substantial and credible information that shows presidential conduct that might justify impeachment, and if he does, to please send it to us quickly. If we receive another 595(c) referral, I say we should look at that. But now we shall focus on what we have.

Mr. HUTCHINSON. Let me reclaim my time. I know that we need to move on.

I thank the gentleman from California. I do appreciate what he has done and his honest answers to this. I think if we are going to examine the standards for impeachment that we have to consider the whole report. I would be a little bit concerned about restricting it to the narrative portion of the report.

Also, we want to keep this process moving, and it would be a concern to me if we had to go back to the full House for an additional vote that would slow it down, and we would not be able to get to a resolution of this in a timely fashion.

So, with that, Mr. Chairman, I yield back the balance of my time.

Mr. FRANK. Will the gentleman yield?

Mr. HYDE. Someone over here. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. Maybe I should lean forward in my chair consistently so the chairman can see me. I seem to be having a little trouble.

Mr. HYDE. I am not as flexible as I used to be, Mr. Watt. I certainly don't deny you any opportunity to speak.

Mr. WATT. Well, I would hope not.

Mr. FRANK. This amendment will give you a chance to be more flexible, Mr. Chairman.

Mr. WATT. I yield to Mr. Frank.

Mr. FRANK. I thank the gentleman.

I want to say, Mr. Berman may have been taken for granted, but there are two lines of his amendment that people are forgetting about. If we decide that the narrative, if assumed to be true, would be grounds for impeachment, then look at lines 13 and 14, then the committee shall investigate fully and completely whether sufficient grounds exist, et cetera. In other words, it is first the summary judgment proceeding, but if, in effect, on summary judgment type rules we decide it is impeachable, then look at lines 13 and 14. Then the committee shall investigate fully and completely whether sufficient grounds exist. That is fact-finding. That is everything.

So much of the arguments are just about a different amendment. Mr. Berman has full fact-finding. If we first determine that the

facts alleged are impeachable, then we go into this process and look at lines 13 and 14.

Mr. WATT. I thank the gentleman. I acknowledge a level of frustration here that is growing, because I am not sure what rules we are going to be—what process we are going to be following in this committee, what standards we are going to be applying in making our decision. We have how many people on this committee? Thirty-seven. I bet you we got 37 different opinions now about what constitutes impeachment.

You add the two that the majority counsel and the minority counsel have, that is 39. They have no idea how to go and marshal the facts because there are light years between what the majority counsel said and what the Minority counsel said, light years. We don't have any common ground here that I am able to decipher.

I am happy to yield to the gentleman.

Mr. CANNON. I agree with your premise that there are 37 opinions. They are, generally speaking, highly informed opinions. Most of us are lawyers. Most of us studied constitutional law. Those who have not, worked very hard to figure it out.

I fail to understand why this is not just an attempt to delay the process, since I can't imagine anybody on either side changing their vote based upon their background and understanding of constitutional law and, secondly, understanding what the Starr report already says.

Mr. WATT. Let me reclaim my time. Because I acknowledge that this is not a perfect vehicle for getting to what I am trying to get to. I would be the first to acknowledge that. But it is a hell of a lot better than what we have going right now. We don't have any standard right now. And, unless we start with some kind of standard, other than 37 different opinions, we are going to be really in a serious problem. We will be doing a lot of work and spending a lot of money and spending a lot of time without having any basic, even minimal agreement about what the standard is.

It would be nice to just talk to you about what your standard is. I heard for the first time what the majority counsel's standard is today, and I was horrified. I will be honest with you. I could not believe what the majority counsel was saying to us the standard was that we should be applying.

Mr. CANNON. Why will a discussion—why will this protracted process yield more concurrence than we have developed in the—I think the average age in here is probably 50 or 60. Who knows? Why is debating going to change that greatly?

Mr. WATT. We should just keep applying all of these different standards as we move along, not have any edification of the public or the committee members?

I hope we will have some edification for the majority counsel. If he thinks that the standards that he outlined in the first three pages of his presentation today are the standards that I am going to apply, then I think the first thing we need to do is educate our counsel.

And I would love to have somebody come in here who knows something about the precedents and history and talk about the Founding Fathers and what they intended. Isn't that what we are

supposed to be proceeding on? Or are we just proceeding on 37 different conceptions of what we think impeachment is?

Mr. CANNON. If the gentleman will yield, there are going to be 37 votes in this committee.

Mr. WATT. Sure. And we won't ever get to any conclusion about it until we have wasted taxpayer money, wasted endless hours of time. And we will get out there, and maybe we will have a consensus about it, which, if we talked about it at the beginning, could have developed from the very beginning and saved ourselves and the taxpayers a lot of money and time.

Mr. HYDE. The question now occurs on the Berman amendment.

The Clerk will call the role.

The CLERK. Mr. Sensenbrenner.

Mr. SENSENBRENNER. No.

The CLERK. Mr. Sensenbrenner votes no.

Mr. McCollum.

Mr. MCCOLLUM. No.

The CLERK. Mr. McCollum votes no.

Mr. Gekas.

Mr. GEKAS. No.

The CLERK. Mr. Gekas votes no.

Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble votes no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith votes no.

Mr. Gallegly.

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly votes no.

Mr. Canady.

Mr. CANADY. No.

The CLERK. Mr. Canady votes no.

Mr. Inglis.

Mr. INGLIS. No.

The CLERK. Mr. Inglis votes no.

Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte votes no.

Mr. Buyer.

Mr. BUYER. No.

The CLERK. Mr. Buyer votes no.

Mr. Bryant.

Mr. BRYANT. No.

The CLERK. Mr. Bryant votes no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. Barr.

Mr. BARR. No.

The CLERK. Mr. Barr votes no.

Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins votes no.

Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson votes no.
Mr. Pease.
Mr. PEASE. No.
The CLERK. Mr. Pease votes no.
Mr. Cannon.
Mr. CANNON. No.
The CLERK. Mr. Cannon votes no.
Mr. Rogan.
Mr. ROGAN. No.
The CLERK. Mr. Rogan votes no.
Mr. Graham.
Mr. GRAHAM. No.
The CLERK. Mr. Graham votes no.
Mrs. Bono.
Mrs. BONO. No.
The CLERK. Mrs. Bono votes no.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers votes aye.
Mr. Frank.
Mr. FRANK. Aye.
The CLERK. Mr. Frank votes aye.
Mr. Schumer.
Mr. SCHUMER. Aye.
The CLERK. Mr. Schumer votes aye.
Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman votes aye.
Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher votes aye.
Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler votes aye.
Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott votes aye.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt votes aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren votes aye.
Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee votes aye.
Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters votes aye.
Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan votes aye.

Mr. Delahunt.
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt votes aye.
Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler votes aye.
Mr. Rothman.
Mr. ROTHMAN. Aye.
The CLERK. Mr. Rothman votes aye.
Mr. Barrett.
Mr. BARRETT. Aye.
The CLERK. Mr. Barrett votes aye.
Mr. Hyde.
Mr. HYDE. No.
The CLERK. Mr. Hyde votes no.
Mr. COBLE. Mr. Chairman, how am I recorded?
The CLERK. Mr. Coble votes no.
Mr. HYDE. The Clerk will report.
The CLERK. Mr. Chairman, there are 16 ayes and 21 noes.
Mr. HYDE. The amendment is not agreed to.
The Chair has been in consultation with the ranking member, and we expect votes imminently. Does anybody know down here?
Mr. CONYERS. The answer is yes.
Mr. HYDE. In any event, we anticipate a couple of votes. The Democrats would like to caucus and——
Mr. CONYERS. Would the chairman yield so that I could announce to my colleagues on this side that we will meet, if there is going to be a brief recess or whatever time before the vote, if we could repair to 2142 for just a few moments, if it is the Chair's intention.
Mr. HYDE. Sure.
Mr. NADLER. Mr. Chairman.
Mr. HYDE. Ms. Jackson Lee wishes to be recognized.
Ms. JACKSON LEE. I am sorry if I make an inquiry. I did not hear what the ranking member said. Are we recessing now?
Mr. CONYERS. The Chair is going to stop now, anticipating the votes, and we will be meeting in caucus in the library immediately after such recess.
Ms. JACKSON LEE. Does that mean that we are going to come back again this evening?
Mr. CONYERS. It means exactly that.
Ms. JACKSON LEE. All right.
Mr. HYDE. We fully expect to finish this evening. We will move in that direction, but you folks would like time for a caucus. There are going to be a couple votes. Let us take a recess until immediately after the votes and when you return from your caucus.
The committee will stand at ease until we come back.
[Recess.]
Mr. HYDE. The committee will come to order.
The gentlewoman from Texas is recognized for 5 minutes to strike the last word.
Ms. JACKSON LEE. Mr. Chairman, I thank the gentleman very much.

We have come a long way this day. Many of us may disagree with how far and where we have gone and where we are going.

Mr. Chairman, with the consideration of time, I had an amendment that I would like to briefly speak about, but I am not going to offer it.

I raise it because I am puzzled and I have a sense of unreadiness. I know we are about to vote on a resolution, now that amendments that I would have been able to accept, that would have given us constitutional parameters, have not been adopted.

I had intended to offer an amendment, because of the nature of the present amendment, to have us finish our work, in response I believe to the heightened sensitivity of Americans, a concern of what this will do to our Nation, the responsibility that we have in the international arena, that we would finish this work by December 10, 1998.

This goes beyond my good friend's amendment that was offered earlier in the day, and it certainly goes beyond, to a certain extent, Mr. Berman, because Mr. Berman was, I think, astute enough to narrow the referral, narrow the investigation to deem the facts as true as those in the referral.

I ask my colleagues on the Republican side, why can't we limit the time? Why can't we, in a bipartisan way, limit the time inasmuch as the resolution that we are voting on today is not ending, and with no focus?

It means, as I understand the resolution presented, Mr. Hyde, that we can now investigate and draw in any and everything, even though we have all acknowledged that this investigation has been going on for almost 5 years, even under Mr. Ken Starr's predecessor, and we have brought nothing forward on Whitewater, we have brought nothing forward on Travelgate, on Filegate.

We have a referral on Ms. Lewinsky, and yet what we vote on today, what I understand you present to the House on October 9th, will be this kind of expansion, fishing-type resolution. Adding insult to injury is that we find out, in fact, that the resolution has no end time.

Mr. Chairman, I do respect what you have offered, and I understand you said that you will be sensitive about time constraints. I don't want to cover up anything, and my colleagues don't want to cover up anything, but we have not established the constitutional parameters, even on these allegations of Ms. Lewinsky. Yet, now we are looking to expand this by this vote today.

I am a little concerned, and I thought maybe if I offered the thought, that I could draw collaborative and bipartisan support for us voluntarily limiting ourselves to a certain time to end the pain, the divisiveness and, as well, allow this Nation to go on with its business.

Might I just say this, Mr. Chairman. We have cited Watergate in so many different ways. We have even harnessed ourselves to Watergate, as Watergate has allowed us support for arguments, and then it has certainly posed opposition to arguments.

But one point I think ran true through many of the themes of the Federalist Papers and, as well, constitutional scholars: The purpose of impeachment is not personal punishment, as cited by

the Watergate staff in February, 1974; its function is primarily to maintain a constitutional government.

Frankly, I believe that we are treading on very difficult ground here by moving forward with this resolution that now is open-ended. We have not established the constitutional basis of impeachable offenses. You are now suggesting that we start anew—and I am not sure what this resolution will suggest—start anew the issues of Whitewater, start anew the issues of Travelgate, start anew the issues of Filegate.

Frankly, Mr. Chairman, Mr. Starr has not presented anything to suggest that he has any further information on these alleged incidences that have been under investigation for so long.

Can we, in the spirit of harmony, in the spirit of collaboration, concede to a time certain, December 10, 1998, which will give us time to either determine whether there are areas of impeachment, to determine whether there are alternatives and, likewise, have enough time in this Congress for this Senate to receive whatever we might so choose to present; or, in the alternative, to determine realistically that we have not reached the level of these incidences becoming impeachable offenses?

December 10th gets us before the holiday. It is after the Thanksgiving holiday. We have committed to coming back here after the election. I know many of us are committed to doing so if you call us, Mr. Chairman. I am just stunned that, although we have had the tone of bipartisanship, the minority has not been able to gain the goodwill and good faith of this majority to, in fact, draw us together around some issues of commonality.

Let me, as well, say what has been said on occasions, as I close, Mr. Chairman. The President is not above or beneath the law.

I would just hope that we would be able to do that.

Mr. HYDE. The gentlewoman's time has expired.

Ms. JACKSON LEE. Mr. Chairman, I would ask an additional minute so I could yield to you and ask a question about the time element.

Mr. HYDE. The gentlewoman is recognized for 1 additional minute.

Ms. JACKSON LEE. Mr. Chairman, can we come to an agreement on working towards a reasonable time certain, not to cover up, not to deny my colleagues on the other side of the aisle their fair assessment of the facts, but recognizing where we are, Mr. Chairman, in this process?

Mr. HYDE. I would say to the gentlewoman that we are opposed to arbitrary time lines, as was Peter Rodino in the Nixon impeachment. We find that is an invitation to delay. We are going to move as swiftly as human hands and feet and minds can do it, because nobody wants this to be attenuated and stretched out. But arbitrary time limits put more stresses and strains on trying to get the job done. They don't help us.

I would just ask you to accept the fact that we want to move this thing along. I have announced my New Year's resolution, to have it over by then. But I can't tell how cooperative people will be that we find necessary to depose or have testify. There is a record of footdragging here, and I am not talking about this committee.

But we will not just generally impose artificial time limits. We are following the Rodino format, which you asked us to do. He had resisted artificial time lines. Senator Thompson said the greatest mistake he ever made in his investigation was acceding to time lines. So we have gone to school on that.

We decided that we will do our best to accelerate this, but we don't wish to succumb to artificial time lines.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I would reclaim my time for a last word. I was hoping that we could, not in the spirit of delay or to give witnesses the opportunity to delay, but for people to realize that we are now voting for an open-ended, unending, with no cessation of time, to keep this going.

I just hope we will come to our senses, Mr. Chairman, as we move forward.

Mr. HYDE. I thank the gentlewoman.

Mr. HYDE. The question occurs on the resolution. The Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.
Mr. SENSENBRENNER. Aye.
The CLERK. Mr. Sensenbrenner votes aye.
Mr. McCollum.
Mr. MCCOLLUM. Aye.
The CLERK. Mr. McCollum votes aye.
Mr. Gekas.
Mr. GEKAS. Aye.
The CLERK. Mr. Gekas votes aye.
Mr. Coble.
Mr. COBLE. Aye.
The CLERK. Mr. Coble votes aye.
Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Smith votes aye.
Mr. Gallegly.
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly votes aye.
Mr. Canady.
Mr. CANADY. Aye.
The CLERK. Mr. Canady votes aye.
Mr. Inglis.
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis votes aye.
Mr. Goodlatte.
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte votes aye.
Mr. Buyer.
Mr. BUYER. Aye.
The CLERK. Mr. Buyer votes aye.
Mr. Bryant.
Mr. BRYANT. Aye.
The CLERK. Mr. Bryant votes aye.
Mr. Chabot.
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot votes aye.
Mr. Barr.

Mr. BARR. Aye.
The CLERK. Mr. Barr votes aye.
Mr. Jenkins.
Mr. JENKINS. Aye
The CLERK. Mr. Jenkins votes aye.
Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson votes aye.
Mr. Pease.
Mr. PEASE. Aye.
The CLERK. Mr. Pease votes aye.
Mr. Cannon.
Mr. CANNON. Aye.
The CLERK. Mr. Cannon votes aye.
Mr. Rogan.
Mr. ROGAN. Aye.
The CLERK. Mr. Rogan votes aye.
Mr. Graham.
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham votes aye.
Mrs. Bono.
Mrs. BONO. Aye.
The CLERK. Mrs. Bono votes aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers votes no.
Mr. Frank.
Mr. FRANK. No.
The CLERK. Mr. Frank votes no.
Mr. Schumer.
Mr. SCHUMER. No.
The CLERK. Mr. Schumer votes no.
Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman votes no.
Mr. Boucher.
Mr. BOUCHER. No.
The CLERK. Mr. Boucher votes no.
Mr. Nadler.
Mr. NADLER. No.
The CLERK. Mr. Nadler votes no.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott votes no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt votes no.
Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren votes no.
Ms. Jackson Lee.
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee votes no.
Ms. Waters.

Ms. WATERS. No.
The CLERK. Ms. Waters votes no.
Mr. Meehan.
Mr. MEEHAN. No.
The CLERK. Mr. Meehan votes no.
Mr. Delahunt.
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt votes no.
Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler votes no.
Mr. Rothman.
Mr. ROTHMAN. No.
The CLERK. Mr. Rothman votes no.
Mr. Hyde.
Mr. HYDE. Aye.
The CLERK. Mr. Hyde votes aye.
Mr. Chairman, there are 21 ayes and 16 noes.
Mr. HYDE. The resolution is ordered reported.
Mr. Barr is recognized for a unanimous consent request.

STATEMENT OF HON. BOB BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARR. Mr. Chairman, I ask unanimous consent that I be allowed to insert the statement that was given earlier by majority counsel. It was a very moving statement, and I would like to adopt it as my own, in final remarks.

Mr. HYDE. Without objection, so ordered.

Mr. Chairman, may I be permitted to make a personal observation.

I am speaking no longer as a Chief Investigative Counsel, but rather as a citizen of the United States, who happens to be father and grandfather.

To paraphrase St. Thomas More in Robert Bolt's excellent play "A Man for All Seasons," the laws of this country are the great barriers that protect the citizens from the winds of evil tyranny. If we permit one of those laws to fall, who will be able to stand in the guts that will follow?

Members of the committee, it is not only the people in this room, or the immense television audience that are watching; 15 generations of our fellow Americans, many of whom are reposing in military cemeteries throughout the world, are looking down upon, and judging what you do today.

Mr. BARR. Mr. Chairman, I also ask unanimous consent to insert the Judicial Watch Interim Report dated September 28, 1998.

Mr. HYDE. Without objection.

[The information follows:]

JUDICIAL WATCH INTERIM REPORT ON CRIMES AND OTHER OFFENSES COMMITTED BY PRESIDENT BILL CLINTON WARRANTING HIS IMPEACHMENT AND REMOVAL FROM ELECTED OFFICE

Founded in 1994 by its Chairman and General Counsel Larry Klayman, Judicial Watch, Inc. is a non-profit, public-interest law firm dedicated to using the courts to fight corruption in government and the legal profession.

Judicial Watch Interim Report on Crimes and Other Offenses Committed by President Bill Clinton Warranting His Impeachment and Removal from Elected Office

INTRODUCTION

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.

United States Constitution, Article II, Section 4

In his conduct 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 violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

> *Beginning around the Fall of 1994, William Jefferson Clinton, his agents and subordinates engaged in bribery through the sale of taxpayer-financed trade mission seats in exchange for campaign contributions. Subsequent thereto, President Bill Clinton, using the powers of his high office, engaged personally and through his close agents and subordinates, in a course of conduct or plan designed to delay, impede and obstruct the investigation of such bribery; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.*

Throughout his terms of office, William Jefferson Clinton has repeatedly engaged, personally and through his close subordinates and agents, in conduct violating the constitutional rights of citizens, breaching the national security, impairing the due and proper administration of justice, and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies.

In all of this, William Jefferson Clinton has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office.[1]

Judicial Watch, Inc. respectfully submits to the United States Congress its Interim Report on Crimes and Other Offenses Committed by President Bill Clinton Warranting His Impeachment and Removal from Elected Office.

As the United States House of Representatives considers whether to launch impeachment proceedings against President William Jefferson Clinton over his conduct relating to the Paula Jones sexual harassment lawsuit and resulting criminal grand jury investigations, we ask that it also consider this additional evidence, developed over the last several years through Judicial Watch's civil lawsuits, Freedom of Information Act requests, and other investigations of government corruption.[2]

Judicial Watch has uncovered evidence that President Clinton and his agents have violated a number of federal laws relating to bribery, campaign fundraising, the theft of government services, privacy, corruption of federal law enforcement, abuse and misuse of federal agencies (including the Internal Revenue Service), perjury, civil rights violations, obstruction of justice, graft and likely breaches of national security.

The evidence uncovered by Judicial Watch overwhelmingly indicates that President Clinton condoned, directed and effected this lawbreaking. It also shows that he was aided and abetted by, among others, Hillary Rodham Clinton, Vice President Albert Gore, late Commerce Secretary Ronald Brown, Attorney General Janet Reno, and other key White House personnel, including Leon Panetta, John Podesta, Harold Ickes, Bruce Lindsey, Bernard Nussbaum, and Labor Secretary Alexis Herman.

For example, Judicial Watch has uncovered key evidence in the massive political espionage, witness tampering and intimidation operation popularly known as "Filegate." In "Filegate," the Clinton White House, the Federal Bureau of Investigation ("FBI"), Hillary Rodham Clinton, former White House Counsel Bernard Nussbaum, and Clinton appointees Craig Livingstone and Anthony Marceca, illegally obtained and misused the FBI files of former Reagan and Bush Administration staffers and others to gain sensitive information on perceived political opponents and material witnesses for use in its smear campaigns. Judicial Watch represents the victims of "Filegate" in a civil lawsuit.

The "Filegate" political espionage, witness tampering and intimidation operation, a horrendous violation of the Privacy Act and other laws, continues to this day. It represents the means by which the Clintons defend the various scandals which threaten their hold on power. The evidence indicates that the Clinton Administration, with the direct knowledge and participation of the President, continues to illegally compile, maintain and disseminate sensitive information on perceived adversaries from confidential government files. Contrary to previous Clinton Administration explanations, Judicial Watch discovered that it was a high-level Clinton political appointee who illegally ordered the release of Linda Tripp's confidential information from her Pentagon file in a clear effort to intimidate her from telling what she knew of Clinton White House illegal activities, and to destroy her credibility. Judi-

cial Watch also uncovered evidence indicating that President Clinton authorized the illegal release of Kathleen Willey's letters, stored in a White House filing system subject to the Privacy Act, in an effort to intimidate and smear her. Like Ms. Tripp, Ms. Willey is a material witness in on-going criminal grand jury investigations and civil lawsuits.

Part of the pattern of "Filegate" is President Clinton's use of private investigators, the Reno Justice Department, the FBI, the IRS, and political operatives such as James Carville to obstruct justice, silence witnesses and intimidate investigators. For example, Judicial Watch has uncovered evidence that President Clinton personally participated in this operation by threatening "to destroy," and then defaming one witness, Dolly Kyle Browning, if she dared to tell the truth about their 30-year friendship and sexual relationship.

President Clinton's political appointee and former IRS Commissioner Margaret Milner Richardson also illegally used the IRS to audit public interest groups thought to be hostile to the Clinton Administration, including the Western Journalism Center.

Through discovery in its civil lawsuit against the Clinton Commerce Department, Judicial Watch also has found evidence that President Clinton condoned and participated in a scheme, conceived by First Lady Hillary Rodham Clinton and approved by the President, to sell seats on U.S. Department of Commerce trade missions in exchange for political contributions. Bribery is specifically highlighted in the U.S. Constitution as an offense warranting impeachment.

In President Clinton's push to sell taxpayer-financed government services to raise money for his political operations, national security likely was breached by his Commerce Department appointees and those involved in his fundraising scheme, such as John Huang. While Judicial Watch is at an interim stage of investigation in this sensitive area, the breaches of national security uncovered at the Clinton Commerce Department raise real questions of treasonous activities by the President and members of his Administration.

To cover-up this illegal fundraising and likely national security breaches, President Clinton's top two staffers, then-Chief of Staff Leon Panetta and Deputy Chief of Staff John Podesta, ordered late Commerce Secretary Ron Brown to obstruct justice and defy federal Court orders. The evidence also indicates that Secretary Brown personally consulted with President Clinton in furtherance of this cover-up.

In addition to the illegal sale of taxpayer-financed services, such as seats on government trade missions, for political contributions, the President and Mrs. Clinton have illegally solicited and received monies directly from private citizens and others. The creation and use of legal defense funds is not only prohibited under federal law, but they have proved to be a means whereby lobbyists, influence peddlers and foreign powers have tried to influence the Administration, contrary to U.S. national security interests.

This President's Administration has also misused government lawyers to obstruct investigations into his wrongdoing. His Commerce Department lawyers obstructed Court-ordered discovery into the illegal sale of taxpayer-financed trade mission seats for political contributions. His Justice Department lawyers threatened investigators with criminal prosecution, timed the indictment of a major whistle-blower witness to try to force her into silence, and consistently obstructed Court processes to cover-up Clinton-appointee wrongdoing, perjury and destruction of evidence.

In sum, Judicial Watch has uncovered a pattern of conduct by this President and his agents that indicates he has run, in effect, a criminal enterprise from the White House to obtain and maintain hold on the Office of the President of the United States. Indeed, he is likely in violation of the Racketeering Influenced and Corrupt Organizations Act (RICO), a charge recently filed against him by Dolly Kyle Browning in federal court.[3] This pervasive corruption, flowing from the Oval Office, is the common thread throughout the various "high crimes and misdemeanors" outlined in this interim report.

PART I

FILEGATE

Crimes and Other Offenses Relating to the Misuse of FBI and other Government Files that Warrant Impeachment and Removal from Office of President Bill Clinton

I. Introduction.

Judicial Watch has been investigating the misuse of information in government files since September 1996, when it filed a class-action lawsuit on behalf of eight (8) former Reagan and Bush Administration appointees and employees whose FBI

background investigation files were improperly obtained by the Clinton White House. That lawsuit is pending before The Honorable Royce C. Lamberth of the U.S. District Court for the District of Columbia.(4)

In the course of its investigation, Judicial Watch has uncovered substantial evidence of unlawful misuses of information in government files, abuses of power and violations of the Privacy Act. The substantial evidence uncovered by Judicial Watch's investigation links key presidential advisors such as James Carville, Harold Ickes, Lanny Davis, Kenneth Bacon and even the President himself, to this unlawful conduct. The obvious purpose behind the unlawful misuse of this information is to discredit, if not destroy, perceived adversaries and critics of the President.

Importantly, the evidence uncovered during the course of Judicial Watch's investigation, which still continues, goes beyond acquisition of the over 900 FBI background investigation files on former Reagan and Bush Administration appointees and employees. It also includes evidence of misuse of information in government files, and attempts to discredit or destroy the credibility of key witnesses in Independent Counsel Kenneth W. Starr's investigation of the Monica Lewinsky matter, including Ms. Linda R. Tripp and Ms. Kathleen Willey, if not Judge Starr himself. It also includes attempts to discredit and destroy congressional adversaries and other perceived opponents. At times, information in government files is released directly to the media by Clinton Administration officials. Other times, information is leaked to members of the media, such as *The New Yorker* magazine's Jane Mayer, *Salon Magazine* and Geraldo Rivera, so that it can be disseminated to the public without it being associated directly with, or coming from, the Clinton Administration.

Most recently, this tactic of attempting to discredit and destroy the credibility of perceived adversaries has manifested itself in revelations about the personal lives of Speaker Newt Gingrich, House Judiciary Chairman Henry Hyde, and Representatives Dan Burton and Helen Chenoweth, coupled with threats broadcast by Roger Clinton and published in *Salon Magazine* and other publications and news outlets. For example, in what can only be described as a thinly-veiled threat against perceived adversaries and other critics of the President, *Salon Magazine* has "reported" that:

[D]ie-hard Clinton loyalists are spreading the word that a long-ignored but fearsome tactic has now resurfaced as an element in the president's survival strategy: The threat of exposing the sexual improprieties of Republican critics, both in Congress and beyond, should they demand impeachment hearings in the House.(5)

Jonathon Broder, the editor of *Salon* "reports" "one close ally of the president" as saying that "[t]he Republicans with skeletons in their closets must assume everything is known and will come out. So the question is: Do they really want to go there?"(6) "Sources in the Clinton camp say they are focusing their attention not only on issues of marital infidelity but also on issues of character," according to Mr. Broder.(7) Mr. Broder "reports" that his "sources" say "among those under scrutiny" are House Speaker Newt Gingrich, House Majority Leader Richard Armey, Chairman Dan Burton of the House Government Reform and Oversight Committee and Chairman Henry Hyde of the House Judiciary Committee.(8)

Salon is not alone in reporting details of Clinton's sexual scorched-earth plan. *Insight Magazine* reports that:

> [It] has learned from a variety of sources—lawmakers and Hill staffers, journalists and dirt-diggers themselves—of several active gumshoe probes into GOP figures, including a governor suspected of a series of office romances and a House member. An entrapment bid was launched recently on a prominent Republican senator, claim private investigators. It failed.(9)

As further revealed by *Insight,* one Democratic member of Congress, who had the courage to call for President Clinton's resignation, was subsequently hit by the Clinton "smear machine:"

Clinton aides also demonstrated their readiness to play dirty in the last week of August when they "reminded" TV talk-show hosts of the highly dubious "controversy" surrounding Pennsylvania Democratic Representative Paul McHale's military record. The White House prompt—McHale was said to have misrepresented what medals he'd been awarded—was apparent punishment for the Pennsylvanian calling on the president to resign. It was so clearly dishonest that even Geraldo Rivera apologized for picking it up from a source close to the White House.(10)

Representatives Burton and Gingrich were hit about a month after *Salon's* "scorched-earth" article. Faced with imminent publication of details about his family life, Chairman Dan Burton, who is conducting campaign finance investigations of President Clinton, recently was forced to admit, in the face of an imminent smear campaign against him, that in the early 1980s he fathered a child out of wedlock

and provided continuing child support payments to the mother.[11] *Salon* itself recently committed an act of self-fulfilling prophecy by publishing articles detailing allegations about the sex lives of House Speaker Newt Gingrich[12] and House Judiciary Chairman Henry Hyde.[13]

Thus, as more revelations about the Lewinsky matter become public and the President comes under increasing threat of impeachment and possible indictment, the White House and its allies are increasingly resorting to scorched-earth tactics to avoid impeachment or resignation. Indeed, given the Clintons' proclivities for controversy, if not scandal, it is likely that they ordered the gathering of FBI files and other information early on in their Administration for later use—whenever it became necessary.

II. Applicability of the Privacy Act.

Judicial Watch's "Filegate" lawsuit is premised on common law invasion of privacy claims and the Privacy Act, a federal law enacted in 1974 as a result of misuse of information in government files and other abuses of power during the Nixon Administration.

The protections afforded by the Privacy Act take effect whenever a federal agency maintains a "system of records" containing information on individuals "from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5). Importantly, agencies must "maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President." 5 U.S.C. § 552a(e)(1). They also must maintain only information that is accurate, timely and complete. 5 U.S.C. § 552a(e)(5). Agencies are specifically prohibited from maintaining records that describe "how any individual exercises rights guaranteed by the First Amendment, unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."[14] 5 U.S.C. § 552a(e)(7).

Each agency maintaining records on individuals must publish, at least annually in the Federal Register, notice of the existence of each system of records it maintains. By law, this notice must also include information about the system, including its name and location of the system, categories of individuals on whom records are maintained in the system, categories of documents maintained in the system, each routine use of records contained in the system, policies and practices regarding storage, retrievability, access controls, retention and disposal, the title and business address of the official who is responsible for the system of records, procedures whereby an individual can be notified at his request if the system contains a record pertaining to him, procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system and how he can contest its contents, and categories of sources of records in the system. 5 U.S.C. § 552a(e)(4).

There is to be no disclosure of any record about individuals maintained in a system of records "except pursuant to a written request by, or with the prior written consent of," the subject. 5 U.S.C. § 552a(b). Importantly, a disclosure need not be public to be unlawful; an "intra-agency" disclosure may also violate the Privacy Act where the disclosure is made to officers or employees who have no need for the record in the performance of their official duties. *Parks* v. *Internal Revenue Service,* 618 F.2d 677 680–81 & n.1 (10th Cir. 1980); 5 U.S.C. § 552a(b)(1).

There are limited exceptions to this general rule of non-disclosure, the most important of which is the "routine use" exception. 5 U.S.C. § 552a(a)(7). Each type of "routine use" must, however, be published at least annually in the Federal Register. 5 U.S.C. § 552a(e)(4)(D). Agencies are required to keep an accounting of disclosures. 5 U.S.C. § 552a(c).

Finally, the Privacy Act provides for civil and criminal sanctions. Any officer or employee who willfully discloses subject material in any manner to a person or agency not entitled to receive it, shall be guilty of a crime and fined not more than $5,000. 5 U.S.C. § 552a(i)(1). Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) also shall be guilty of a crime and fined not more than $5,000. 5 U.S.C. § 552a(i)(2).

FBI background investigation files, such as those at issue in "Filegate," are admittedly maintained in a system of records by the FBI. Consequently, it cannot be questioned that they are covered by the Privacy Act. In fact, the FBI admitted as much in Judicial Watch's lawsuit. In response to the lawsuit, however, the Clinton White House claimed that the Privacy Act did not apply to it. In a Memorandum and Order dated June 12, 1997, the Court rejected this claim and confirmed that

the Privacy Act did, in fact, apply to the White House.[15] However, the Privacy Act also makes clear that any time a federal official maintains records on individuals that can be accessed by reference to an individual's name, the protections of the Privacy Act come into play. It does not matter what information is stored in the file. To release anything from a covered file—even a press clipping—violates the Privacy Act.[16]

III. Factual Background.

The origins of the Clinton White House's misuse of information in government files predate 1993. Former presidential advisor Dick Morris admitted that the 1992 Clinton campaign used private investigators, at U.S. taxpayers' expense, to obtain private and embarrassing information to coerce and extort the silence of women sexually involved with President Clinton while he was Governor of Arkansas. The effort was run by Betsy Wright, who, at crucial and relevant times, Secret Service logs show later visited Craig Livingstone, one of the key players in "Filegate," at odd hours in the White House.[7]

Unknown to the public, in 1993 the Clinton White House obtained the FBI files of Billy Dale, the former head of the White House Travel Office, and Barney Brasseux, a White House Travel Office employee.[18] Apparently, these FBI files were obtained by the Clinton White House shortly after Mr. Dale, a twenty-year veteran of the White House Travel Office, Mr. Brasseux, and several other employees of the White House Travel Office were fired by the Clinton White House to allow their replacement with personal friends of the President and Hillary Rodham Clinton. Mr. Dale was subsequently indicted on trumped-up charges of fraud. Later, Mr. Dale was completely exonerated of any wrong-doing. He even received an award of attorneys' fees for having to defend himself against the baseless charges brought against him. It is likely that the reason for indicting Mr. Dale was to avoid the appearance that he was fired simply to allow the Clintons to bring their personal friends into the White House Travel Office. It is also likely that the reason Mr. Dale's and Mr. Brasseux's FBI files were obtained was to try to find damaging information about them to avoid the appearance of political cronyism in firing them.

About this same time, numerous press reports were circulating about illegal drug use and improper sexual conduct among White House staffers. Apparently to counter these and possibly other charges, or to retaliate against Reagan and Bush Administration appointees and employees for the release of information about President Clinton's passport during the 1992 election, the Clinton White House also obtained over 900 FBI background investigation files on former Reagan and Bush Administration appointees and employees. Surely, this information could also be very useful to discredit and destroy perceived adversaries, or simply to intimidate them. Among the FBI files unlawfully obtained by the Clinton White House were those of some prominent individuals, such as former Bush Secretary of State James A. Baker (who, not coincidentally, had been involved in the Clinton passport controversy), former Bush Press Secretary Marlin Fitzwater,[19] Kenneth Duberstein and Tony Blankley, a former aide to Speaker Newt Gingrich.[20] The FBI file of Ms. Linda R. Tripp, a Bush Administration "hold-over" who was apparently perceived to be a potential threat at that time, was also obtained. Ms. Tripp would later be transferred to the Department of Defense and suffer yet another violation of her Privacy Act rights.

The evidence shows that the Clinton White House knowingly requested the FBI files of Republicans "who were no longer working there."[21] Mari Anderson, Craig Livingstone's assistant, testified to Judicial Watch that she, Livingstone and Anthony Marceca were aware that Republicans, such as James Baker and Marlin Fitzwater, no longer had access to the White House, but that their FBI files were obtained anyway.[22] Anderson also testified that Livingstone regularly left their office with FBI files in tow.[23] A log, which was to have chronicled any removal of the FBI files to other areas in the White House, mysteriously developed a six-month gap, reminiscent of the eighteen-minute gap in Richard Nixon's oval office tapes.[24]

While working for Clinton White House Counsel Bernard Nussbaum, whose name appears on the requisition forms for the FBI files, Ms. Tripp was in a bird's-eye view position to witness the unlawful conduct that would later become known as "Filegate." In discussions with Judicial Watch, Ms. Tripp admitted to having witnessed FBI files on former Reagan and Bush Administration appointees and employees "stacked up to the ceiling" in Assistant White House Counsel William Kennedy's office.[25] As reported by Ms. Lucianne Goldberg, Ms. Tripp's literary agent and friend, Ms. Tripp also "witnessed a White House secretary loading up FBI files on a computer" in the White House Counsel's Office.[26] Ms. Tripp also told Tony Snow, a nationally-syndicated columnist for *The Detroit News* and commentator for the Fox News Channel, that:

> [S]he was shaken by White House dishonesty during investigations of Vince Foster's death, *Filegate, Travelgate,* and reports of drug abuse among administration employees. "It's chilling," she says, "to watch high government officials lie under oath.(27)

(Emphasis added). Finally, Ms. Tripp reportedly saw a document evidencing Mrs. Clinton's direct involvement in the firings at the White House Travel Office.(28)

In the course of Ms. Paula Corbin Jones' sexual harassment lawsuit, President Clinton, through his lawyers, David Kendall, Esq. of Williams & Connolly and Robert Bennett, Esq. of Skadden, Arps, Slate, Meagher & Flom, hired Terry Lenzoer's private investigation firm, Investigative Group International, Inc. ("IGI"), apparently to obtain information for use in that lawsuit and elsewhere.(29) Lenzner and IGI were later retained to provide similar services for other matters involving the President, including the Lewinsky matter. When Judicial Watch deposed Lenzner on March 13, 1998, he revealed that Larry Potts, a disgraced senior FBI official who allegedly gave the "shoot on sight" orders at the Ruby Ridge massacre, is "virtually a partner" of his in running IGI.(30) In addition, Lenzner testified that Howard Shapiro, Esq., the former General Counsel of the FBI who also left the Bureau in disgrace because of the "Filegate" matter, serves as IGI's principal attorney.(31) Indeed, Lenzner, a former Department of Justice lawyer, has worked closely with the FBI. Thus, Lenzner, Potts and Shapiro all had close ties to FBI personnel and were in a position to solicit information from inside the FBI. Significantly, on March 3, 1998, FBI Director Louis Freeh issued a warning to all FBI personnel against providing information to FBI alumni and others about the various investigations involving the President.(32) Obviously, Director Freeh must have been concerned that information in FBI files had been and was being leaked to individuals with close ties to the FBI such as Lenzner, Potts and Shapiro.

At his deposition, Lenzner confirmed that he had investigated perceived Clinton adversaries, including members of the media, public interest groups and even members of the judiciary.(33) However, he selectively invoked the "work product" doctrine to avoid having to answer specific questions about who IGI had investigated.(34) Hiding behind the "skirts" of David Kendall and Robert Bennett, Lenzner asserted the "work product" doctrine in response to some questions, but tellingly failed to do so in response to others. For example, Lenzner testified that he had not been asked or retained to investigate Kathleen Willey, but refused to state whether he had been retained to investigate Linda Tripp:

> Plaintiffs' Counsel: Have you been approached or retained to investigate . . . Kathleen Willey?
> Lenzner: No.
> Plaintiffs' Counsel: Linda Tripp?
> Lenzner's Counsel: Same privileged objections. Same instruction.
> Lenzner: I will accept my instruction on that.(35)

The clear implication behind this selective invocation of the work-product doctrine, however disingenuous those invocations are, was that Lenzner, in fact, has been investigating these perceived adversaries of the President. A report in the *San Francisco Examiner* directly linked Lenzner to the recent dissemination of private information smearing House Judiciary Committee Chairman Henry Hyde.(36) Rather than let his private investigators, Lenzner and Potts, answer questions in Judicial Watch's "Filegate" lawsuit, incredibly, the President has sought to intervene personally to prevent this questioning.(37)

When the most recent Clinton scandal involving Ms. Lewinsky broke in late January 1998, the Clinton White House again reverted to releasing information in government files—and threatening further releases—in order to silence and discredit its perceived adversaries. During a February 8, 1998 interview, George Stephanopoulos, a former top adviser to and continuing confidante of President Clinton, and other top advisors in the White House, told a national television audience on ABC's *This Week with Sam Donaldson and Cokie Roberts* that there is an "Ellen Rometsch" strategy by "White House allies" to attack perceived adversaries of the Clinton Administration:

> Sam Donaldson: We know what the White House tactics are. I mean, they've been almost open about it. Attack the press—and perhaps with good reason—attack the [I]ndependent [C]ounsel—perhaps for some good reason—and stonewall on the central issue, which is the President of the United States. And if he has nothing to hide, why is he hiding?
>
> George Stephanopoulos: I agree with that. And there's a different, long-term strategy, which I think would be far more explosive. White House allies are already starting to whisper about what I'll call the Ellen Roemech

(sic) strategy. . . . She was a girlfriend of John F. Kennedy, who also happened to be an East German spy. And Robert Kennedy was charged with getting her out of the country and also getting John Edgar Hoover to go to the Congress and say, don't you investigate this, because if you do, we're going to open up everybody's closets. And I think that in the long run, they have a deterrent strategy on getting a lot of . . . [FBI files].

Sam Donaldson: Are you suggesting for a moment that what they're beginning to say is that if you investigate this too much, we'll put all your dirty linen right on the table? Every member of the Senate? Every member of the press corp?

George Stephanopoulos: Absolutely. The President said he would never resign, and I think some around him are willing to take everybody down with him.(38)

Historically, the "Ellen Rometsch" strategy refers to the late FBI Director J. Edgar Hoover's and Attorney General Robert F. Kennedy's successful efforts to collect and use FBI files to blackmail Republican members of Congress to prevent an investigation into President John F. Kennedy's affair with an East German spy, Ellen Rometsch.(39) Judicial Watch deposed Stephanopoulos to learn the identities of the "White House allies" about which he spoke on ABC's *This Week*.(40) However, Stephanopoulos asserted his privilege as a "journalist" not to reveal confidential sources.(41) Judicial Watch recently filed a motion with the Court to try again to compel Stephanopoulos to release this information.

Pursuant to this "Ellen Rometsch" strategy, the Clinton Administration apparently orchestrated the release of confidential information from Ms. Tripp's Department of Defense ("DOD") personnel file. On March 23, 1998, *The New Yorker* magazine published an article by Jane Mayer stating that Ms. Tripp had failed to disclose information about a twenty-year old arrest on a security clearance form.(42) As such, forms are themselves confidential, Privacy Act records. Questions thus arose concerning how Ms. Mayer had obtained this information. In a March 17, 1998 article entitled "Bill's Secret Police," Dick Morris questioned the release of this information and the implications it had for the Clinton Administration's claim that "Filegate" was an innocent bureaucratic mistake:

> [N]o journalist questioned how Tripp's confidential file ended up in *The New Yorker*. Instead, all the papers dutifully reported on her arrest and her lack of candor in disclosing it. . . . The White House secret police have struck again. Desperate to discredit Linda Tripp, President Clinton's most damning accuser, the president's men are most likely the ones who delved into confidential Pentagon files to dig up and dish out dirt on Tripp. . . . *The release of the Tripp file lends a new credibility to the Republican allegations that the White House's possession of confidential FBI files on GOP leaders and potential adversaries was no "mistakes" as the president's men piously claimed. Is Linda Tripp the latest victim of a file dump?*(43)(Emphasis added.)

Accordingly, Judicial Watch began an inquiry into the circumstances behind the release of this information, as it was obviously relevant to its "Filegate" investigation.

On April 30, 1998, Judicial Watch deposed Clifford Bernath. Bernath, Principal Deputy Assistant to the Secretary of Defense for Public Affairs, had been publicly portrayed by the Clinton Administration as the "career" Department of Defense official responsible for having released the confidential information in Ms. Tripp's personnel file to reporter Jane Mayer. The Clinton Administration also portrayed Bernath as having acted alone. At his deposition, however, Bernath testified that he was directed to obtain and release the information by his superior, Kenneth Bacon, Assistant Secretary of Defense for Public Affairs, a Clinton political appointee.(44) Bernath testified he told Mayer that Bacon "has made it clear it's [the release of the Tripp information] a priority,"(45) because Mayer "was on deadline and whenever a reporter is on deadline, we call that a priority."(46) As the Court later noted, Bernath's revelation that he was told to release the Tripp information by a Clinton political appointee was understood by the Court as conflicting with the Clinton Justice Department's statements to the Court that the release was made by a career official.(47)

Judicial Watch then deposed Bacon on May 15, 1998. Bacon testified that Mayer initially contacted him about obtaining the information from Ms. Tripp's personnel file,(48) and that he then told Bernath to search the file to find out whether Ms. Tripp had disclosed information about her twenty-year old arrest on her security clearance form.(49) Bacon also testified that he "was very aware of what Mr. Bernath

was doing and . . . did nothing to stop it."[50] Thus, it was a Clinton Administration political appointee, not a career civil servant, who was at the heart of this obvious violation of Ms. Tripp's privacy rights.

This stands in marked contrast to Secretary of Defense William Cohen's public statements that Bernath had acted on his own in releasing the information.[51] Although Secretary Cohen said the release of Ms. Tripp's information was "certainly inappropriate, if not illegal,"[52] neither Secretary Cohen nor the White House told the public about the involvement of Bacon or others.[53] Secretary Cohen said Bernath "was responding to an inquiry from the press" without mentioning that a Clinton political appointee, Bacon, had directed Bernath to do so.[54] Bacon testified that, after Secretary Cohen made his statement on *Fox News Sunday,* he told the Secretary that the statement should be corrected.[55] Yet Bacon testified that he was unaware of Secretary Cohen ever correcting his statement; nor was he aware of either the Department of Defense or the Clinton Administration ever acknowledging publicly he was involved in the release of information in Ms. Tripp's confidential personnel file.[56] When Judicial Watch questioned Bacon about Secretary Cohen's involvement in the matter, Clinton Justice Department lawyers instructed him not to answer.[57] Judicial Watch has moved the Court to compel answers.

Judicial Watch also learned that, after Bernath's role in the release of information in Ms. Tripp's confidential personnel file became known publicly, Bernath apparently attempted to destroy evidence of his wrong-doing. Specifically, Bernath testified that between April 1–10, 1998, he deleted all of the files on his computer's hard drive.[58] Yet Bacon testified that, by March 17 or 18, Bernath told him he "had asked for a legal review" of the circumstances behind the release.[59] This was confirmed by a March 18, 1998 New York Post article in which Pentagon spokesman Lt. Col. Dick Bridges is quoted as stating that Bernath had "requested a Pentagon inquiry to examine the propriety of his actions."[60] Therefore, Bernath had deleted potential evidence from his computer at a time when he obviously knew that his role in the release of information in Ms. Tripp's confidential personnel file would be investigated, if it was not being investigated already. In commenting on Bernath's deletion of files on his computer, the Court stated that "cause for concern should exist when an upper-level government employee completely deletes his hard drive when this hard drive may have information relevant to an ongoing criminal investigation, let alone the instant case,"[61] and "it is highly unusual and suspect for such an action to have been undertaken by Bernath when matters relating to Tripp are being investigated by the Office of the Independent Counsel."[62]

Judicial Watch also discovered that after information in Ms. Tripp's confidential personnel file was released, Bernath was given a new job at higher pay with, ironically, responsibility for teaching about the Privacy Act. Bacon testified that "sometime during the week of March 16th,"[63] he selected Bernath to run the American Forces Information Service, which entitled Bernath to grade and pay increase.[64] It is reported that in his new job, Bernath "has direct control over the Fort Meade school that teaches privacy regulations to public affairs officers."[65] Bacon testified that "I offered him that job because I thought he was the best of the three candidates."[66] It appears far more likely that Bernath was being rewarded for his improper conduct.

Throughout this controversy surrounding the release of information in Ms. Tripp's confidential, Department of Defense personnel file, an unknown factor was whether there had been White House involvement in the release. The key role of Bacon, a political appointee, made that link very likely. Judicial Watch then uncovered the release of a list of over 1,000 individuals whose FBI background files were unlawfully obtained by the Clinton White House.[67] Among the names on the list was Ms. Tripp. Consequently, her FBI background file also had been obtained by the Clinton White House. As an FBI background investigation file would likely contain information on prior arrests, this would seem to answer the question of how Jane Mayer, a former colleague of Sidney Blumenthal and close friend of the Clintons, knew to ask Bacon the precise question of whether Ms. Tripp had disclosed any arrests on her security clearance form. Finally, when Judicial Watch deposed Clinton advisor Harold Ickes on May 21, 1998, it also learned that Ickes had dinner with Bacon and discussed Ms. Tripp and Ms. Lewinsky during the period leading up to the release of the information in Ms. Tripp's confidential personnel file. This indicates a direct link between the Clinton White House and the release of information in Ms. Tripp's confidential personnel file in violation of her Privacy Act rights, obviously in an attempt discredit and intimidate her. Importantly, Ms. Tripp's FBI file was obtained about one (1) year after she began to work in the White House Counsel's Office Bernard Nussbaum. Did the White House know then that Ms. Tripp had the potential to be a whistleblower and thus began gathering information to use against her, if

necessary? At a press conference on the courthouse steps on July 29, 1998, after her Starr grand jury testimony, she stated:

> As a result of simply trying to earn a living, I became aware between 1993 and 1997 of actions by high government officials that may have been against the law. For that period of nearly five years, the things I witnessed concerning several different subjects [at the White House] made me increasingly fearful that this information was dangerous, very dangerous, to possess.(68)

It also appears that, soon after the Lewinsky story became public, the White House Counsel's Office requested information from White House files on Ms. Tripp, Ms. Willey and Ms. Lewinsky. On June 30, 1998, Judicial Watch deposed Terry Good, Director of the White House Office of Records Management ("ORM"). Mr. Good testified that, upon request of the White House Counsel's office, his office searched its computer database for records concerning Ms. Tripp, Ms. Willey and Ms. Lewinsky, and retrieved records on all three (3) individuals.(69)

With regard to Ms. Tripp, Good testified as follows:

> Q: Has any office of the White House or person made a request with regard to information or documentation concerning Linda Tripp?
> A: I believe the counsel's office probably did, yes.
> Q: Who made that request?
> A: I do not know.
> Q: What was that request about?
> A: Again, if I don't remember the request, I can't tell you what it was about. All I can say is it probably was about anything and everything that we might have in our files relating to Linda Tripp." (70)

At about that same time, Representative Gerald Solomon wrote a letter to President Clinton asking whether anyone had pulled Ms. Tripp's White House files. However, Representative Solomon did not receive a response.(71) Representative Solomon cited Good's deposition and the President's failure to respond in a recent letter to Independent Counsel Kenneth Starr, referring to the matter as a "potential obstruction of a Congressional investigation" and "intimidation of a federal witness." (72)

With regard to Ms. Willey, a witness in the Lewinsky investigation, evidence indicates that President Clinton was directly involved in the violation of her Privacy Act rights in an effort to discredit her and harm her reputation. In testifying before the Lewinsky investigation grand jury, Ms. Willey accused President Clinton of making an improper sexual advance towards her in the White House. Ms. Willey then repeated these accusations during a March 15, 1998 television appearance on "60 Minutes." At his deposition, Good testified that, in response to a request from the White House Counsel's Office, ORM searched its files for documents concerning Ms. Willey and obtained a handwritten letter(s) Ms. Willey wrote to the President.(73) The letter(s) was then provided to the White House Counsel's Office, as were documents concerning Ms. Tripp and Ms. Lewinsky.(74) The letter(s) was then released to the media.(75)

According to White House Press Secretary Mike McCurry, "I'm sure the President knew that we were putting the letters out and I'm sure that he approved." (76) In fact, James Carville was forced to admit at his March 16, 1998 deposition in Judicial Watch's "Filegate" investigation that President Clinton sought his advice about Ms. Willey's letters prior to their release:

> Q: When was the last time you talked to the President?
> A: Saturday.
> Q: Was that in person or by phone?
> A: By phone.
> Q: Who called who?
> A: The President called me.
> Q: And how long was the conversation?
> A: Not very long. Maybe five minutes or so.
> Q: What was discussed?
>
> * * *
>
> A: He said that there were some—there was a Kathleen Willey, and what he said was there was some letters that she had written, and they were—his lawyers were considering—I think were considering about making them public, and what did I think about it?
> Q: And what did you tell him?

A: I'm not sure if I know what's in there, but if it was something that was past the time that she made this allegation, it was probably a pretty good idea.
Q: Did he ask you to help make them public?
A: No, sir.(77)

Former White House Chief of Staff Thomas "Mack" McLarty also testified in Judicial Watch's "Filegate" case that he and the President discussed Willey's credibility "a day or two" after her interview on "60 Minutes":

A: . . . After her "60 Minutes" interview, I believe the President commented to me that he thought a mutual friend had made a remark about her credibility was not that high in Richmond. I didn't know the mutual friend. He thought I did. . . .
Q: Who is the mutual friend?
A: I don't recall his name. I didn't know him. I think the President thought I did know him, and I just don't—I don't remember who it was. I didn't know the person.(78)

During his grand jury testimony, the President admitted that Ms. Willey's letters were taken from White House files.(79) He also admitted that he authorized their release,(80) and testified that the letters "shattered Kathleen Willey's credibility."(81) Thus, the Good, Carville and McLarty depositions, and the President's grand jury testimony directly implicate President Clinton in this violation of Ms. Willey's Privacy Act rights in order to discredit and harm her reputation, and thereby undermine the accusations she had made against the President.

Carville appears to have played a significant, if not central role in misusing information in government files against perceived adversaries of the President.(82) When Judicial Watch subpoenaed Carville to appear for a deposition in its "Filegate" investigation, it also required him to produce documents in his possession, custody and control.(83) After a prolonged Court fight over obtaining the required documents, Carville finally gave in and produced voluminous quantities of information in his possession and in the possession of his business entity, Education and Information Project, Inc. ("EIP"). Included among the documents produced to Judicial Watch were facsimiles to Carville from the White House—the Chief of Staffs Office the White House Counsel's Office in particular—enclosing documents on perceived adversaries of the President. These documents included information on Independent Counsel Kenneth Starr, former FBI Agent Gary Aldrich, philanthropist Richard M. Scaife and Republican strategist Donald Sipple.(84) The White House Chief of Staffs Office even faxed excerpts from Sipple's divorce proceedings to Carville.(85)

Judicial Watch's review of documents and other materials provided by Carville and EIP revealed evidence of other likely attempts to destroy and obstruct members of the staff of the Independent Counsel, and Judicial Watch has delivered to the Court tape recordings made by James Carville in this regard. These Carville tape recordings show that Carville was probing into the sexual and personal backgrounds of investigators. As the tape recordings evidence potential obstruction of justice and other criminality, Judicial Watch informed the Independent Counsel of their existence. The Independent Counsel has yet to issue a subpoena for the tape recordings.

Also included among the documents Judicial Watch subpoenaed from Carville and EIP was an EIP "target list" identifying Independent Counsel Kenneth Starr, Speaker Newt Gingrich (indeed, in the September 27, 1998 edition of NBC's "Meet the Press," Carville admitted he was targeting Gingrich), Representative Dan Burton, Senator Fred Thompson and former Secretary of Education Bill Bennett as "Individuals to Target" for "expos[ing] the motives and methods behind Republican partisan attacks against the President and the Democratic Party."(86) At his deposition, Carville also was forced to admit that he stays in regular contact with David Kendall, who hired Terry Lenzner as the President's private investigator.(87) Moreover, former Carville aides and employees—Tom Janenda and Glen Weiner—are now staffing the White House opposition research office.(88) Based on all of the direct and circumstantial evidence obtained thus far, as well as Carville's own repeated threats to destroy Clinton adversaries, he appears to be the "ringleader" of President Clinton's smear operations—in violation of the Privacy Act and other laws.

Carville is apparently not the only Clinton advisor or aide misusing information in government files against perceived adversaries of the President. Lanny Davis, a "Special Counsel to the President," testified at his deposition in Judicial Watch's "Filegate" investigation that he was hired by the Clinton White House Counsel's office and worked closely with that office.(89) That office, which helped to orchestrate the unlawful transfer of hundreds of FBI files, and, according to Linda Tripp, loaded

them onto White House computers, is at the very center of egregious violations of privacy rights and other unlawful conduct.

Davis' testimony shows, at the very least, that he unlawfully maintained a system of records on notable Clinton adversaries without fulfilling the proper notice requirements as mandated by the Privacy Act. Davis testified that during his tenure at the Clinton White House, he personally maintained files containing information about prominent Clinton adversaries, such as Judge Kenneth Starr,(90) Senator Fred Thompson,(91) Representative Dan Burton,(92) Senator Henry Hyde,(93) Monica Lewinsky,(94) Kathleen Willey,(95) and David Hale.(96) Davis also maintained files containing information about Larry Lawrence, Roger Tamraz, Doris Matsui, Webster Hubbell, Nora and Gene Lum, John Huang, Pauline Kachanalak, Johnny Chung, and Charlie Trie.(97) Many of these files were identified, either in whole or in part, by the individual's name, such as "Starr," "Monica Lewinsky," "Kathleen Willey" and "John Huang."(98) Davis also testified that he was "eclectic" in his judgment as to what to put in such files, and that he would generally include any document that he might need to use at some point.(99) Such documents included public statements and stories by the media.(100) Yet, Davis admitted that the media "frequently does not" publish accurate information, undoubtedly thanks to his assistance.(101)

Davis admitted that he maintained these files so that he could disseminate information to the media and thus help them write "good" and "bad" stories.(102) Yet before Davis released information from any of these files to the media, he never consulted with anyone referenced in the materials, never sought their permission, and knew of no one at the Clinton White House who did so.(103) Davis, Ickes and Carville continue to advise the Clinton White House on impeachment and other issues,(104) and it is likely that they continue to receive information from government files.

Judicial Watch also plans to question others in the White House suspected of participating in these unlawful smear operations such as Sidney Blumenthal, Rahm Emanuel, Ann Lewis and Mike McCurry.

In the course of its investigation, Judicial Watch has uncovered evidence of possible crimes involving obstruction of justice and abuse of power. During his deposition in Judicial Watch's "Filegate" investigation, Harold Ickes implicated himself, President Clinton and others in possible obstruction of justice in the Independent Counsel's "Filegate" investigation. After it was publicly reported that Dick Morris had told Sherry Rowlands that Mrs. Clinton was the "mastermind" of "Filegate," Mr. Morris lamely tried to recant in having any independent knowledge of Mrs. Clinton's role. Rather, he claimed that his comments were based on polling data which reflected a public perception that Mrs. Clinton was behind the "Filegate" scandal. Consequently, the Independent Counsel staff subpoenaed the polling data. At his Judicial Watch deposition, Mr. Ickes testified to an effort to delay production of this polling data until after the 1996 elections.(105)

Finally, Judicial Watch is submitting this interim report for Congress' consideration at this time because it has uncovered substantial, additional evidence of unlawful conduct in the Clinton Administration, and because it appears that, while Independent Counsel Kenneth Starr has been given the responsibility to investigate the "Filegate" matter, unfortunately his efforts apparently have been devoted almost exclusively to the Lewinsky and Whitewater investigations.

In fact, it would appear the Independent Counsel's investigation of "Filegate" is still at an early stage, if indeed any real investigation is being conducted at all.(106) Key "Filegate" witnesses recently deposed by Judicial Watch have yet to be questioned by the Independent Counsel about the matter. Thomas "Mack" McLarty, the White House Chief of Staff during the time period the FBI files were obtained unlawfully, incredibly testified that he was never questioned about "Filegate" before a grand jury:

> Q: But you never answered questions concerning Filegate before a Grand Jury, to the best of your knowledge.
> A: To the best of my knowledge and memory, that is correct.(107)

Likewise, ORM Director Terry Good, who stored FBI files for Craig Livingstone for several months, testified that he has "never been interviewed by anybody" from the Independent Counsel's office.(108) Earlier this year, the Independent Counsel staff questioned Defendant Hillary Rodham Clinton for only about nine (9) minutes on the subject of "Filegate." According to Mandy Grunwald, one of the Clintons' friends and media advisors, even Mrs. Clinton remarked about the conduct of the Independent Counsel staff in questioning her so briefly. Ms. Grunwald testified that Mrs. Clinton thought the Independent Counsel staff "came to the White House for what was very little business."(109)

Judicial Watch sought to take the deposition of Ms. Tripp on September 4, 1998, but the Independent Counsel intervened to try to convince the Court to postpone the deposition temporarily. In light of the fact that the Independent Counsel's investigation of "Filegate" appears to be in its preliminary stages only and that no meaningful report will likely be forthcoming any time soon, Judicial Watch hopes that the Independent Counsel will withdraw its objection and allow Ms. Tripp's deposition to go forward without further delay. Judicial Watch believes that it is important for the American public to learn what Ms. Tripp witnessed while working in the Clinton White House precisely because the Independent Counsel's report on "Filegate" will not be issued any time soon—particularly since Judicial Watch depositions confirm that its investigation is seemingly still in an infant state.

It is also important that the full facts of "Filegate" be made public at this time because the "Filegate" strategy of misusing information in government files concerns not just the unlawful acquisition of FBI files of former Reagan and Bush Administration appointees and employees, but is part of a continuing campaign to smear witnesses and obstruct justice in the numerous on-going investigations of the President. By smearing, or at least threatening to smear its perceived adversaries and critics, the Administration hopes to intimidate them and gain their silence. This reaction is most typified by the response to Pennsylvania Representative Paul McHale's recent call for President Clinton's resignation. When Representative McHale subsequently appeared on *Rivera Live,*(110) one of the prime mouthpieces of the President, he was confronted with claims that he had misrepresented his military credentials. This type of information concerning military credentials would almost surely have come from government files, and Judicial Watch will seek discovery on this matter. The misuse of information, obstruction of justice and abuse of power apparently has become the last line of defense for a severely weakened Administration. Judicial Watch is thus providing these preliminary results from its "Filegate" investigation so that Congress can be fully informed at this critical time as it considers the future of the Clinton Presidency.(111)

PART II

IRS–GATE

Crimes and Other Offenses Relating to the Misuse of the Internal Revenue Service that Warrant Impeachment and Removal from Office of President Bill Clinton

I. Introduction.

President Clinton's pattern of using government agencies and their files to harass and intimidate those he considers to be his political adversaries apparently extends to the Internal Revenue Service ("IRS"). Among several of his targets was the Western Journalism Center ("WJC").

On May 13, 1998, Judicial Watch, on behalf of WJC, a non-profit organization established to promote education in journalism and investigative reporting,(112) sued former IRS Commissioner Margaret Milner Richardson, IRS agent Thomas Cederquist, and several unnamed IRS officials for violating its First Amendment rights to freedom of speech and freedom of the press, as well as its Fourth Amendment right to freedom from unreasonable searches and seizures. The gravamen of WJC's suit was that these IRS officials violated WJC's constitutional rights in retaliation for WJC's having sponsored an investigation into the death of former Deputy White House Counsel Vincent Foster. Importantly, Ms. Richardson is a close personal friend of First Lady Hillary Rodham Clinton, and had worked on President Clinton's 1992 presidential campaign.(113)

Mr. Foster's death on July 20, 1993 was ruled a suicide by Independent Counsels Robert Fiske, and Kenneth Starr, the United States Park Police, and the Federal Bureau of Investigation. Because the official investigations left significant questions unanswered, WJC sponsored an investigation and published statements that challenged the official results. As a consequence, WJC was targeted by the Clinton Administration and subsequently audited by the IRS. Afterwards, WJC's tax status remained unchanged and no additional taxes or penalties were assessed.(114) However, WJC's ability to investigate and report on government corruption was severely curtailed by the audit.

WJC's lawsuit alleges that the IRS audit was not about taxes; it was about illegal use of the IRS for political retaliation.(115) Thus, the case presents yet another example of the Clinton Administration's use of governmental power to intimidate and destroy its perceived adversaries.

The audit violated WJC's constitutional rights. Not only was WJC subjected to an onerous and burdensome audit to retaliate against it for its prior reporting, but it

also was prevented from further exercising its First Amendment rights, because WJC was forced to devote its limited personnel and resources to the audit instead of to its journalistic endeavors. Because WJC was required to turn over substantial quantities of information and documentation, the audit also violated WJC's Fourth Amendment right of freedom from unreasonable searches and seizures. Also, the audit had a chilling effect on WJC's ability to raise funds.

Evidence indicates that WJC was not the only likely victim of President Clinton's IRS. A later survey by WJC revealed that at "least 20 non-profit organizations 'unfriendly' to the Clinton administration have faced Internal Revenue Service audits since 1993," while "not a single prominent public policy organization friendly to the Clinton Administration has apparently been targeted for audit in the same period, according to two random samples and research into the non-profit community."(116) The targeted organizations included *National Review, American Spectator,* Citizens Against Government Waste and the Heritage Foundation.(117) In January 1997, even the left-leaning Public Broadcasting Service found "that a remarkable number of Bill Clinton's critics have recently become the target of IRS audits." (118)

These reports are consistent with the Clinton Administration's use of the IRS in the White House Travel Office matter. In 1993–94, UltrAir, a charter company used by the White House Travel Office, as well as Billy Dale, the former director of that office, audited by the IRS.(119) Associate Counsel to the President William Kennedy had reportedly sought to have the FBI investigate UltrAir and Dale in order to replace them with allies of the President.(120) Kennedy reportedly advised an official of the FBI that the IRS would be used to investigate the White House Travel Office if the FBI did not do so.(121) Subsequently, both UltrAir and Dale were audited by the IRS, with no income tax violations being found.(122)

II. Background of the WJC.

WJC is a 501(c)(3) tax-exempt, charitable organization and, as such, pays no federal income tax. WJC was granted 501(c)(3) status by the IRS in August of 1996.

WJC's operations are funded by contributions from its supporters and foundations, who, in turn, are able to deduct these contributions from their own federal income taxes. WJC's contributors rely on WJC's 501(c)(3) status when making contributions.

WJC's journalism credentials are substantial. It was founded by Joseph Farah, an award-winning journalist and former editor of *The Sacramento Union,* and James G. Smith, the former President of *The Washington Star,* to promote journalism education and investigative reporting. WJC was formerly the publisher of *Inside California,* which focused primarily on investigations concerning the state of California. WJC currently is the publisher of *Dispatches,* a bi-weekly investigative publication that focuses primarily on national events. Its extensive investigative reporting has been widely cited and credited in such influential national publications as *The Los Angeles Times, The Oakland Tribune, The Orange County Register, The Sacramento Bee, The San Francisco Chronicle, The San Francisco Examiner, The Wall Street Journal* and *Investor's Business Daily.*

WJC's investigative reporting is non-partisan. For example, it undertook an extensive investigation into the National Education Association's political power. It also undertook a substantial investigation into the "militarization" of the federal government during both Republican and Democratic administrations. It also undertook an extensive investigation into corruption, waste, fraud and abuse in California government during a Republican administration.

III. Details of the Harassment.

The audit clearly was intended to harass WJC. In July 1996, WJC learned that it was being audited by the IRS. On at least two separate occasions, the IRS agent conducting the audit, defendant Thomas Cederquist, admitted to WJC's accountant that "this is a political case," and "the decision is going to be made at the national level."

During the course of the audit, WJC was asked to produce documents about its decision to undertake an investigation into Mr. Foster's death and about why opposing viewpoints were not presented in published statements about its investigation. At least five (5) IRS "Information Document Requests" (Form 4565) were served on WJC demanding the production of thousands of pages of documents and substantial quantities of information. One document request, dated August 16, 1996, sought the following materials, among others, relating directly to the investigation into Foster's death:

> Copies of all documents relating to the selection of Christopher Ruddy as an investigative reporter and how the topic was selected. Who was on the review committee? What review process is used for peer review? Were any

other projects considered? What about any opposing viewpoints? Why were they not presented in your advertisements? (123)

When WJC's executive director challenged the audit as being retaliatory in an opinion article published in *The Wall Street Journal* (124) and charged that the IRS had undertaken other politically-inspired audits of perceived adversaries of President Clinton and his Administration, the scope of the audit was enlarged. The IRS then began audits of two of WJC's largest individual donors, as well as several individuals WJC had retained to provide expert and research services for its Foster investigation.

Evidence unknown to WJC at the time, but later revealed, showed Clinton Administration targeting of WJC. WJC learned of a December 1994 internal memorandum prepared by Associate White House Counsel Jane C. Sherburne that outlined strategies for addressing various political scandals confronting President Clinton and his Administration.(125) WJC was specifically named in the memorandum for its investigation into Foster's death.(126) WJC later learned of a 1995 report prepared by the White House Counsel's Office in conjunction with the Democratic National Committee entitled "Communication Stream of Conspiracy Commerce," that purported to document a "right wing" conspiracy to convey "fringe" stories about political scandals to the mainstream media.(127) The first news organization identified on the first page of this report was WJC.(128)

The tremendous burden imposed on WJC because of the tax audit, including the time WJC was forced to devote to the audit and the funds it was compelled to expend, severely curtailed WJC's ability to exercise its First Amendment rights. WJC was effectively forced to shut down its investigative reporting and other activities, including its investigation into Foster's death. One of WJC's investigative reporting publications, *Inside California,* was terminated as a result of the audit.(129)

Because of the audit, several foundations and other contributors who had made donations to WJC in the past and/or were considering making donations to WJC, decided against making new and/or additional donations either because they feared retaliatory audits or because they feared that the ongoing audit would lead to the revocation of WJC's 501(c)(3) tax exempt status and, consequently, that their donations would not be tax-deductible. As a result of this funding loss, WJC was forced to lay off at least two members of its already small staff, which further limited WJC's ability to exercise its First Amendment rights.

In May 1997, defendant Cederquist undertook a two-day examination of documentation in WJC's offices. Cederquist did not appear for the second day of this examination, however, as IRS Agent John Grisso appeared in Cederquist's place. During this second day of the examination, Agent Grisso stated to Farah that he did not understand why so much time and energy had been devoted to the WJC audit because "there was nothing there." Agent Grisso advised Farah that he would recommend that a "no-change" letter be issued.

Ultimately, the Clinton Administration failed to destroy WJC, which has become an influential source of news and commentary on the Internet.

IV. Conclusion.

The likely reason for the audit was to retaliate against WJC for sponsoring an investigation into the Foster death, punish it for challenging the results of the official investigations, limit its ability to continue to both investigate and publish materials perceived as being harmful to the President and his Administration, and discourage potential donors from contributing.

The lawsuit is based on *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Investigation,* 403 U.S. 388 (1971), wherein the U.S. Supreme Court declared that federal officials may be held liable in their individual capacities for violating a person's constitutional rights while acting under color of federal law. Judicial Watch expects the lawsuit to serve as a warning and deterrent to IRS officials, that they cannot violate citizens' constitutional rights without being held personally accountable.

This personal accountability includes President Clinton. Any impeachment inquiry should include the misuse of the IRS, as demonstrated by the experience of WJC and other organizations that President Clinton perceives as his adversaries.(130)

PART III

COMMERCEGATE / CHINAGATE

Crimes and Other Offenses Relating to the Illegal Sale of U.S. Department of Commerce Trade Mission Seats for Campaign Contributions that Warrant Impeachment and Removal from Office of President Bill Clinton

I. Introduction.

After the elections of 1994, and the Democrats' loss of Congress, I became aware, through my discussions with [late Commerce Secretary] Ron [Brown], that the trade missions were being used as a fundraising tool for the upcoming Clinton-Gore presidential campaign and the Democratic Party. Specifically, Ron told me that domestic companies were being solicited to donate large sums of money in exchange for their selection to participate on trade missions of the Commerce Department. Ron expressed to me his displeasure that the purpose of the Commerce trade missions had been and were being perverted at the direction of The White House.

Affidavit of Nolanda Butler Hill, January 17, 1998 (131)

* * * * *

Question: You are aware, however, that Alexis Herman would set up briefing sessions for participants that went on trade missions before they went overseas? You were aware of that?

Nolanda Hill: I was.

Question: And at those briefing sessions appeared the President and Vice President.

Nolanda Hill: I was told that by Secretary Brown.

* * * * *

Question: You've mentioned, to some extent—I'll let your testimony speak for itself—Harold Ickes. Anybody else? . . .

Nolanda Hill: Ultimately, [Ron Brown] believed that the President of the United States was, at least tangentially.

Question: Involved?

Nolanda Hill: Yes, sir. It was his re-election that was at stake.

Question: Ron believed that the President of the United States knew the trade missions were being sold and their purpose being perverted?

Nolanda Hill: Yes, sir.

Nolanda Butler Hill Court Testimony, March 23, 1998 (132)

In the Fall of 1994, Judicial Watch first became aware of evidence that the Clinton Commerce Department was illegally selling seats on its international trade missions in exchange for political contributions.(133) Reports in *Business Week and The Wall Street Journal* showed that there was a high incidence of Democratic Party contributors on these taxpayer-financed trade missions.(134)

The fact that the President installed the former head of the Democratic National Committee, Ronald H. Brown, as Commerce Secretary also raised concerns about Clinton Commerce Department operations. When Brown brought his entire DNC fundraising staff with him to Clinton Commerce, these suspicions increased.

After Judicial Watch filed requests with the Clinton Commerce Department for information regarding these trade missions under the Freedom of Information Act ("FOIA"), it was immediately stonewalled and was forced to file a lawsuit in 1995 to obtain the requested information.(135) Even after filing suit, the Clinton Administration continued to stonewall.(136)

Over the next three (3) years, Judicial Watch, in its efforts to uncover what the Clinton Commerce Department was hiding from the American people, found substantial, compelling evidence that seats on Clinton Commerce Department trade missions were indeed being sold in exchange for campaign contributions, with the knowledge and complicity, if not at the direction of, officials at the highest levels of the Clinton White House, including the President, Hillary Rodham Clinton and Vice President Al Gore. In addition, Judicial Watch's attempts to uncover the truth were obstructed through perjury, obstruction of justice, intimidation and retaliation that has marred other recent investigation of Clinton scandals, including the Paula Jones and Monica Lewinsky matters. In short, the court process was obstructed by Clinton appointees at his Commerce Department and elsewhere by:

- Perjury;
- Submission of false sworn declarations;
- Destruction and shredding of evidence;

- Improperly withholding documents contrary to Court orders;
- Threats and intimidation of witnesses and investigators; and
- Misconduct by Clinton Administration lawyers.

Nevertheless, Judicial Watch, through its investigations and the legal discovery process, found "smoking gun" documents detailing the sale the trade mission seats for campaign contributions in the files of the Clinton White House, Clinton Commerce Department, and the DNC, including:

- Memos from the Clinton White House files of Harold Ickes and Alexis Herman showing that the $100,000 DNC Managing Trustee Program included the sale of the Clinton Commerce Department trade mission seats (among other government-financed perks) and was designed to net President Clinton's DNC political operation $40 million; (137)
- A brochure by the Democratic National Committee showing that "foreign trade mission" seats were available for $100,000 contributions to the DNC; (138)
- A list of DNC minority donors found in the files of a key Clinton Commerce Department Official; (139)
- A Clinton Commerce Department memo indicating that the DNC donors were input into the Commerce Department government database;(140) and
- A DNC memo showing that the DNC provided the names of donors to the Clinton Commerce Department for trade missions to Russia and Belgium.(141)

In January 1998, Judicial Watch uncovered a witness, Nolanda Butler Hill, a close confidante and business partner of late Commerce Secretary Brown, with whom Secretary Brown had shared key details about the campaign-contributions-for-seats-on-trade-missions scheme, as well as the Clinton Administration's efforts to stonewall Judicial Watch's lawsuit. Secretary Brown had even shown important documents to Ms. Hill that detailed this unlawful sale of taxpayer-financed government services. With Ms. Hill's uncontroverted testimony providing the capstone to its investigation, Judicial Watch has proven beyond all reasonable doubt that not only was the Clinton Administration engaged in an unlawful scheme to sell seats on Commerce Department trade missions in exchange for campaign contributions, but that a criminal cover-up was ordered by President Clinton's top aides to thwart Judicial Watch's Court-ordered investigation and to hide the culpability of the President, Mrs. Clinton, the Clinton Administration and the DNC for their use of Commerce Department trade missions as a political fundraising vehicle.

Ms. Hill testified that then White House Chief of Staff Leon Panetta and Deputy Chief of Staff John Podesta ordered Commerce Secretary Brown to defy Court orders and obstruct the Judicial Watch suit until after the 1996 federal elections. Ms. Hill's sworn testimony implicated the President's top staff members in obstruction of justice.

Ms. Hill also tied the sale of trade mission seats directly to President Clinton. In both a sworn affidavit and Court testimony, Ms. Hill explained that:

- The First Lady conceived of the idea to sell the trade mission seats in exchange for political contributions;
- The President knew of and approved this scheme;
- The Vice President participated in this scheme;
- Commerce Secretary Ron Brown helped implement the illegal fundraising operation out of the Clinton Commerce Department;
- Presidential White House aides Harold Ickes and (now Labor Secretary) Alexis Herman helped orchestrate the sale of the Commerce trade mission seats;
- The President's top fundraisers at the DNC and his reselection campaign (Marvin Rosen and Terrence McAuliffe) helped coordinate the selling of these taxpayer resources in exchange for political contributions;
- Presidential Chief of Staff Leon Panetta and Deputy Chief of Staff John Podesta ordered the cover-up of these activities; and
- The President's appointees at the Commerce Department have committed perjury, destroyed and suppressed evidence, and likely breached our nation's security.

Even more troubling than the revelations about the unlawful sale of seats on Commerce Department trade missions in exchange for campaign contributions, and the criminal cover-up that followed,(142) is evidence of likely national security breaches also uncovered by Judicial Watch's investigation. From the beginning of Judicial Watch's investigation, national security issues always were a concern. In

fact, Bernard Schwartz of Loral Space and Communications Corporation ("Loral"), a major Clinton donor who had participated in a key 1994 trade mission to China and was quoted in the *Business Week* and *The Wall Street Journal* articles that helped pique Judicial Watch's interest in the trade missions, now stands at the heart of a scandal over Clinton Commerce Department-approved missile technology transfers to China. Documents relating to Schwartz, Loral, and other entities involved in the current China technology transfer scandal were among those requested by Judicial Watch in its first FOIA request to the Clinton Commerce Department. Schwartz went on this key trade mission to China with Secretary Brown shortly after making a $100,000 contribution to the DNC. During the trade mission, Secretary Brown set up an important meeting for Schwartz with a Chinese government official that later led to the missile deals that are now the subject of various national security investigations.

In addition, Judicial Watch also uncovered the removal by Ira Sockowitz, an official at the Clinton Commerce Department and confidante of alleged Chinese agent John Huang, of top secret documents relating to satellite encryption and intelligence reports on China, Russia and India. These documents have since been impounded by Court order. Other documents, which have been withheld by the Clinton Commerce Department, indicate that Ron Brown's Chief of Staff at the Clinton Commerce Department, William Ginsburg, kept allegedly *personal* diaries detailing "state secrets," including information on satellite surveillance, intelligence personnel and capabilities, notes of a meeting of the National Security Council, among other "national security" information.(143) He too removed documents from the Department when he left its employ.

The Judicial Watch investigation also uncovered John Huang, the Commerce official/DNC fundraiser now believed to have been a spy for the Chinese Government. To date, Judicial Watch lawyers are the only investigators to have questioned John Huang under oath. Since Judicial Watch deposed Huang in October 1996, it has been learned, largely contrary to his sworn testimony, that Huang:

- Raised money for the DNC while at the Clinton Commerce Department;
- Received over 100 top secret intelligence briefings at Commerce;
- Continued his contacts while at the Clinton Commerce Department with his former employers at the Lippo Group, an Indonesian company that has also been linked to Chinese intelligence;
- While still working at the Clinton Commerce Department, had access to the office of Stephens, Inc., a firm with close ties to the Lippo Group; and
- Maintained contact with the Chinese Government.(144)

According to President Clinton, Huang is a close friend—going back to his governorships in Little Rock.

Indeed, any complete understanding of China's plan to influence the electoral process and spy on American interests must begin with an examination of the operations of President Clinton's Commerce Department. Many of the key figures associated with the "Chinagate" scandal all had direct connections to it:

John Huang worked for the Clinton Commerce Department, before moving to the DNC.

Commerce Secretary Ron Brown, now deceased, organized the Clinton Commerce Department trade missions to China now under scrutiny.

Johnny Chung informally participated in the Clinton Commerce Department trade mission to China in 1994. Chung later admitted to funneling $100,000 from the Chinese military to the DNC.

Bernard Schwartz, Chief Executive Officer of Loral, participated in the Clinton Commerce Department trade mission to China in 1994.

Charlie Trie, who was indicted earlier this year on charges that he illegally funneled foreign money to the Democrats, also participated in the 1994 Clinton Commerce Department China trade mission.

Wang Jun, the powerful Chinese communist "princeling" and friend of Clinton fundraiser Charlie Trie, met with Secretary Ron Brown shortly after attending a fundraising coffee with President Clinton. The same day as Wang Jun's meeting with Secretary Brown, President Clinton signed a controversial waiver allowing Bernard Schwartz's Loral to work with the Chinese on launching a satellite into space.(145)

James and Mochtar Riady's Lippo Group, in addition to benefitting from ex-employee John Huang's placement at Commerce, benefitted directly from deals negotiated by him on Clinton Commerce Department trade missions.

The DNC, the recipient of most of the illegal foreign money, coordinated with the Clinton Commerce Department and White House to sell seats on the taxpayer-financed trade missions.

In short, the crimes at the Clinton Commerce Department were not solely related to the illegal sale of taxpayer-financed trade mission seats in exchange for political contributions, but likely include breaches of national security as well. Key Clinton fundraisers such as John Huang, the Riadys, Charlie Trie, Marvin Rosen and Terry McAuliffe, were able to use the Clinton Commerce Department for the benefit of their overseas patrons, while DNC donors such as Loral's Bernard Schwartz and Johnny Chung were allowed to use the Clinton Commerce Department trade missions as the means to advance their business dealings with the Chinese government—business dealings that eventually led to the illegal transfer of missile and other high technology to China, and the transfers of hundreds of thousands of illegal dollars from the Chinese Government to the DNC; an obvious *quid pro quo.*

Congress now has before it other evidence, uncovered by Independent Counsel Kenneth Starr's investigation, that President Clinton has committed impeachable acts relating to the Paula Jones sexual harassment lawsuit, and other issues that warrant his impeachment and removal from office. President Clinton's misuse of his Commerce Department for political fundraising and the subsequent cover-up, and the national security breaches that likely resulted from this scheme, provide even more compelling evidence of why he must be impeached, removed from office, and, at the appropriate time, subject to criminal prosecution along with those that aided and abetted him.

II. Judicial Watch's Investigation Has Uncovered Substantial, Compelling Evidence that Seats on Taxpayer-Financed, Commerce Department Trade Missions Were Sold in Exchange for Campaign Contributions.

During the course of its investigation, Judicial Watch discovered substantial, compelling evidence that the Clinton Administration sold seats on taxpayer-financed Commerce Department trade missions in exchange for campaign contributions to the DNC/1996 Clinton-Gore re-election campaign.

At a March 23, 1998 evidentiary hearing in Judicial Watch's FOIA lawsuit, Ms. Nolanda B. Hill, a close confidante and business partner of the late Commerce Secretary Ron Brown,(146) testified, under oath, that Secretary Brown told her that he was ordered by the Clinton White House to begin selling Commerce trade mission seats in exchange for political contributions to the DNC/1996 Clinton-Gore re-election campaign.(147) Ms. Hill's oral testimony confirmed written testimony she had given to Judicial Watch in an affidavit on January 17, 1998:

> After the elections of 1994, and the Democrats' loss of Congress, I became aware, through my discussions with Ron [Brown], that the trade missions were being used as a fundraising tool for the upcoming Clinton-Gore presidential campaign and the Democratic Party. Specifically, Ron told me that domestic companies were being solicited to donate large sums of money in exchange for their selection to participate on trade missions of the Commerce Department. Ron expressed to me his displeasure that the purpose of the Commerce trade missions had been and were being perverted at the direction of The White House.(148)

According to what Secretary Brown told Ms. Hill, the trade mission seats were being sold in part because of "panic" by the President and First Lady induced by their Democratic Party's loss of Congress to the Republicans in 1994:

> [Ron Brown's] discussion with me centered around the panic of—or his perception of panic—with the President and First Lady, after the loss of Congress to the Republicans, and that that was going to—they were afraid they wouldn't be able to raise money, and they were really worried about it.(149)

Ms. Hill testified that Secretary Brown told her that it was Hillary Rodham Clinton who ordered that the trade mission seats be sold:

> Q: And did he not say to you that—and I am kind of paraphrasing—Hillary believes that every thing is politics and politics is driven by money; correct?
>
> A: He did say those—close to those words, as I recall. . . .
>
> Q: And he told that you that, in fact, it was Hillary's idea to use the trade missions to raise money; correct?
>
> A: He initially believed that she was very instrumental, and he gave her a lot of credit.(150)

Secretary Brown told Ms. Hill that he was "[j]ust doing my chores for Hillary Rodham Clinton" and he complained, "I'm not a mother"—expletive deleted—"king tour guide for Hillary Clinton."(151)

Importantly, Secretary Brown told Hill that the President himself was involved in the sale of seats on Commerce Department trade missions:

> A: Ultimately he believed that the President of the United States was, at least tangentially.
> Q: Involved?
> A: Yes sir. It was his re-election that was at stake.
> Q: Ron believed that the President of the United States knew the trade missions were being sold, and their purpose was being perverted?
> A: Yes, sir.(152)

In fact, Ms. Hill testified that Secretary Brown resented the Clinton's involvement in the misuse of the Commerce Department trade missions, which he believed had become nothing more than a "street level protection racket." (153)

Ms. Hill also testified that, in addition to the President and Mrs. Clinton, high level Clinton Administration officials were also directly involved. The Commerce Department's Office of Business Liaison, then run by former DNC fundraiser Melissa Moss, worked with the President's Office of Public Liaison at the White House, then run by Labor Secretary Alexis Herman, to set up White House "briefing sessions" for trade mission participants with either President Clinton or Vice President Gore, or both.(154) Hill also testified that Clinton's top political aide, former Deputy Chief of Staff Harold Ickes, served as the White House's "point man" for the sale of seats on Commerce Department trade missions:

> Q: . . . Harold Ickes was involved in the sale of trade missions, too, wasn't he?
> A: It was my understanding through Secretary Brown that Mr. Ickes was the political point man for the White House. . . . Mr. Ickes, according to what Secretary Brown told me, participated heavily in determining what happened from a political standpoint.(155)

Clinton's top political fundraisers for the DNC and his re-election campaign, Terry McAuliffe and Marvin Rosen, were also heavily involved in the illegal sale of the trade mission trips, according to what Secretary Brown told Ms. Hill:

> Q: And [Terry McAuliffe] was instrumental, based on your discussions with Ron, in working with the White House and coordinating the sale of seats on trade missions; correct?
> A: He was certainly highly involved, according to Ron.
>
> * * * * *
>
> Q: And another person who was highly involved from the DNC in coordinating the sale of seats on trade missions for campaign contributions was Marvin Rosen; correct?
> A: I understood from Ron that that was correct.
> Q: And these people worked with the White House in furthering what Ron thought was a perversion of his trade missions; correct?
> A: That's correct.(156)

Indeed, the sworn testimony of Ms. Hill indicated that donors had to pay the DNC/Clinton-Gore campaign a minimum of $50,000 in order to receive access to government services—Commerce trade mission seats:

> In early 1996, Ron showed me a packet of documents, about 1 inch thick, which he removed from his ostrich skin portfolio. Ron told me that these documents had been provided to him from Commerce Department files as part of the collections efforts to produce documents to Judicial Watch in this case. I only reviewed the top five or six documents, which were on Commerce Department letterhead under the signature of Melissa Moss of the Office of Business Liaison. What I reviewed comprised letters of Ms. Moss to trade mission participants, each of which specifically referenced a substantial financial contribution to the Democratic National Committee (DNC). My response was immediate and decisive. I told Ron he must instruct that production of these documents and all responsive documents be immediate and I advised him to mitigate his own damages by releasing Ms. Moss from her duties and admonishing her for using the offices of the Commerce Department for partisan political fundraising.(157)

Ms. Hill testified in open Court that she understood that $50,000 was the minimum "the White House was charging to go on a trade mission. . . ."[158] According to Ms. Hill, Secretary Brown was personally offended that the White House put such a low dollar figure on his trade trips. "I'm worth more than $50,000 a pop," Secretary Brown told her.[159] A DNC brochure soliciting members for its "Managing Trustee" program shows that participation in "foreign trade missions" was only one of the perks available to a contributor who donated at least $100,000 to the DNC.[160] Documents from the White House files of Harold Ickes and Alexis Herman also clearly show that the $100,000 DNC Managing Trustee Program, which included trade missions, among other taxpayer-financed *quid pro quos,* was designed to net President Clinton's DNC political operation $40 million.[161] Importantly, Alexis Herman was listed on the documents as the person to see to purchase a "ticket" on a Clinton Commerce Department trade mission.[162]

Additional evidence corroborates Ms. Hill's testimony that seats on Clinton Commerce Department trade missions were being sold in exchange for contributions to the DNC/1996 Clinton-Gore re-election campaign. In the course of discovery in its FOIA litigation, Judicial Watch discovered a list of DNC "minority donors" in the possession of the Clinton Commerce Department.[163] Apparently, this list of DNC contributors had been sent by the DNC to the Commerce Department to select participants on trade missions.

Just recently, Judicial Watch discovered additional documents from the DNC that provide further corroboration of Ms. Hill's testimony. A January 13, 1994 memorandum from DNC official Eric Silden clearly demonstrates the DNC's direct role in selecting participants for Commerce Department trade missions:

> *Sally Painter at Commerce called to ask for a list of candidates for a trade mission to Russia. She needs an initial list by tomorrow (Friday 1/14) of* 20–30 names. . . . Ari will use the "Belgium trade mission list" as a base of names, to be augmented by additional names that he feels are relevant to Russian trade. It was suggested that he contact Reta Lewis to determine which names on the Belgium list will be included in the delegation, so that they are not also submitted to Commerce for the Russian delegation. . . . Bob will be the point contact with Commerce, as I will not be in the office on Friday afternoon to deliver the list to Sally. (Emphasis added.)[164]

Judicial Watch has subpoenaed similar materials from the DNC, and will depose top DNC officials Terry McAuliffe and Marvin Rosen in the next few weeks. Even without the additional evidence that Judicial Watch is likely to uncover, it is clear that during the Clinton Administration, the Commerce Department has become nothing more than an arm of the DNC, where taxpayer-financed government services can be bought and sold in exchange for campaign contributions. Even the liberal Center for Public Integrity, after examining some of the evidence uncovered by Judicial Watch, concluded this was a "pay to play" scheme:

> When Ron Brown was simultaneously a partner at the preeminent Washington law and lobbying firm of Patton, Boggs and Blow and chairman of the Democratic National Committee (DNC), he was renowned as the consummate deal-maker. By all appearances, Brown's Department of Commerce has continued to apply the art of the deal. As one Justice Department investigator put it, a corporation can "pay to play." American giants such as AT&T and ARCO, among others, which made contributions to the DNC, have gotten seats on Brown's plane when he has traveled to far-off lands to meet with foreign governments in an effort to promote American business.
>
> The seat on the secretary's plane can be viewed essentially as the quo in the quid pro quo relationship between contributors and the administration. Those DNC contributors, with Brown's assistance, were in a position to cut their own deals for projects in those foreign countries whose representatives attended meetings with the U.S. delegation. Some companies came away from the trips with million and sometimes billion dollar deals.
>
> Others came away with expanded business contacts that led to future deals. And others went in search of tax breaks. For example, gas and oil company representatives on the Russia trip argued for a lowering of the excise tax on oil imposed by the Yelstin government. The Texas-based TGV/Diamond Shamrock company came away from the South America trip with a tax break from Argentina worth an estimated $20–$30 million.[165]

In sum, Judicial Watch has uncovered substantial, compelling evidence demonstrating a massive sell-off of taxpayer-financed services—namely seats on Commerce Department trade missions—upon the orders of, and with the direct knowl-

edge and participation, of the President and Mrs. Clinton. This illegal sale of taxpayer-financed services violates several federal statutes against the misappropriation of government funds, bribery and graft, as well as a host of campaign fundraising statutes, including but hardly limited to 18 U.S.C. § 600, *et seq.*

III. The Cover-Up.

Judicial Watch's attempts to uncover evidence of the unlawful sale of seats on Commerce Department trade missions began immediately after Judicial Watch filed its September 12, 1994, September 13, 1994 and October 19, 1994 FOIA requests, which were thwarted at every turn.(166)

After the Clinton Commerce Department received Judicial Watch's FOIA requests, Melissa Moss, a former DNC fundraiser who became Director of the Department's Office of Business Liaison, telephoned Judicial Watch Chairman Larry Klayman on October 18, 1994 to try to persuade Judicial Watch to substantially limit the scope of the FOIA request.(167) When Mr. Klayman refused to limit the scope of the request, Moss abruptly ended the conversation, angrily slamming the phone down.(168) The following day, October 19, 1994, Ms. Moss sent Judicial Watch a letter via facsimile falsely claiming that Judicial Watch had, in fact, voluntarily agreed to limit the scope of its FOIA request to a list of trade mission participants.(169) Judicial Watch wrote back to Ms. Moss that same day to correct her false statements.(170) Judicial Watch believes that the likely intent behind Ms. Moss' false facsimile was to create a false record if litigation ensued.

Moss had more reason to be worried than angry. Ms. Hill would later testify that she reviewed letters from Ms. Moss to trade mission participants, on Department letterhead, detailing the campaign-contribution-for-trade-mission-seat scheme that would be withheld from Judicial Watch in violation of FOIA and in contravention of a Federal Court order. According to Ms. Hill, Moss placed that telephone call with Secretary Brown's knowledge, to try and convince Judicial Watch not to pursue its FOIA requests regarding the trade missions.(171) Moss' telephone call and false facsimile to Mr. Klayman in 1994 were among the first known efforts by a Clinton Administration official to cover-up the fact that taxpayer-financed government services were being sold in exchange for political contributions. It was far from being the last.

In January 1995, Judicial Watch was forced to file suit in federal district court after the Commerce Department failed to turn over the requested information on trade mission trips pursuant to FOIA.(172) Not coincidentally, the Clinton Commerce Department then tried to create the appearance of complying with the FOIA, and in doing so it cleverly attempted to place Judicial Watch in a "Catch-22." It required that Judicial Watch pay $13,131 in alleged search and duplication costs in order to obtain the requested documents.(173) As an all-volunteer, non-profit organization, Judicial Watch simply could not afford such an exorbitant fee. Seeing through this ruse, the Court ordered the Clinton Commerce Department to agree to produce responsive documents under a fee waiver, within twenty-four (24) hours.(174)

The Commerce Department then produced some 28,000 pages of documents. Notably absent from this production of documents, however, was any correspondence, notes or memoranda of Secretary Brown, or any documents to or from the White House and/or the DNC concerning trade missions. The failure to produce such documents was inexplicable, if not incredible, and provided *prima facie* evidence that the Clinton Commerce Department had withheld documents.(175)

At approximately this same time, the Clinton Commerce Department provided Judicial Watch with a *Vaughn* index of documents allegedly exempt from FOIA.(176) Because of its suspicions that the Clinton Commerce Department had not produced all responsive documents, and because of the Clinton Commerce Department's previous lack of straightforwardness, Judicial Watch asked the Court to review a portion of the withheld documents *in camera.* After this *in camera* review, the Court found that the Clinton Commerce Department's *Vaughn* index "fail[ed] in many instances 'to supply [the Court] with even the minimal information necessary to make a determination' of whether the documents [were] properly withheld."(177) Accordingly, the Court directed that a second *Vaughn* index be prepared and allowed Judicial Watch to begin discovery into the Clinton Commerce Department's search for responsive documents.(178) After the submission of a revised *Vaughn* index and a second *in camera* review, the Court determined that fully one half of the documents that the Clinton Commerce Department was withholding from Judicial Watch were, in whole or in part, improperly claimed as being exempt from FOIA.(179)

Importantly, at that point the Court could have simply ordered the Clinton Commerce Department to conduct a second search for responsive documents. However, given the Clinton Commerce Department's previous failure to respond and its improper withholding of responsive documents, the Court obviously recognized the fu-

tility of a second search. Moreover, given that two (2) years had already passed since Judicial Watch submitted its first FOIA requests, the Clinton Commerce Department would have had substantial opportunity to remove, if not destroy, responsive documents—which, as shown by subsequent discovery, turned out to be the case. Thus, the only true option was to allow discovery into the adequacy of the first search and the whereabouts of other responsive documents. The Court thus permitted Judicial Watch to question Commerce Department officials under oath about their "search" for requested documents.(180)

The discovery process commenced, and Judicial Watch began the investigation that would ultimately expose John Huang and spark the campaign finance and "Chinagate" scandals. President Clinton's agents grew increasingly worried about Judicial Watch's lawsuit and increased their efforts to cover-up the sale of trade mission seats. Ms. Hill later testified that:

> In the spring of 1995, when this Court ordered production of documents to Judicial Watch, Ron [Brown] became very concerned and he thus began to discuss with me the strategy of handling the defense of the Judicial Watch lawsuit.
>
> * * * * *
>
> In late fall 1995, after several rulings or statements by this court, Ron himself became more involved in the defense of the case. Specifically, he told me that he had decided to personally review any documents that might be damaging to the Clinton Administration, or in any way be sensitive. *Ron told me that he was very worried about the potential damage of the Judicial Watch case to the Clinton Administration.*(181) (Emphasis added.)

In fact, Secretary Brown took the extraordinary step of turning over responsibility for responding to Judicial Watch's FOIA requests to the Office of the Secretary. This was confirmed in a telephone conversation with Judicial Watch Chairman Larry Klayman prior to the commencement of the lawsuit. During that phone conversation Brenda Dolan, a Clinton Commerce Department FOIA officer, admitted that Judicial Watch's FOIA requests had been taken from her and given to the Office of the Secretary. She further admitted that this was a highly unusual occurrence that did not square with usual Department procedures.(182)

Secretary Brown personally involved himself in the FOIA process because of his concerns about what the Judicial Watch suit might expose. He also was ordered to do so by the Clinton White House, with whom he stayed in routine contact about the case.(183) As Ms. Hill would later testify in both her January 17, 1998 affidavit and at the March 23, 1998 evidentiary hearing, President Clinton's two top deputies, then White House Chief of Staff Leon Panetta, and Deputy Chief of Staff John Podesta, directly ordered Brown to defy the Court's orders and obstruct the Judicial Watch suit until after the 1996 elections:

> I further learned through discussions with Ron [Brown] that The White House, through Leon Panetta and John Podesta, had instructed him to delay the case by withholding the production of documents prior to the 1996 elections, and to *devise a way not to comply with the court's orders.*(184) (Emphasis added.)
>
> * * * * *
>
> Q: And that Leon Panetta had told Ron that, quote, "He had the responsibility of containing the Judicial Watch lawsuit?"
>
> A: Yes.
>
> Q: And you responded to Ron, did you not, by telling him that that strategy of stall, stall, stall would not work forever?
>
> A: Yes, in part.(185)

Weekly reports sent by Secretary Brown to Chief of Staff Leon Panetta at the Clinton White House confirm Panetta's involvement, as they discussed the status of Judicial Watch's FOIA requests.(186)

Ms. Hill would later testify about Mr. Panetta's and Mr. Podesta's efforts to obstruct justice and cover-up the sale of trade mission seats for the President's re-election effort:

> Q: And you learned that Leon Panetta and John Podesta had instructed him to delay the case for political reasons?
>
> A: Yes.
>
> Q: Now, do you remember Ron saying to you that Panetta and Podesta wanted him to, quote, "slow pedal" the case until after the [1996] elections? Those were the words that were used, was it not?

A: Yes.
Q: And that Ron mimicked Leon Panetta and laughed when he used the words "slow pedal?"
A: Well, he did a pretty good Leon Panetta.
Q: Imitation?
A: (Nods head affirmatively.)[187]

Ms. Hill's testimony indicates that the President was *personally* aware of this unlawful obstruction. She would later testify that, shortly after she saw Commerce Department correspondence indicating that trade mission seats were being sold in exchange for political contributions, Secretary Brown and the President had a meeting. This meeting occurred just before Brown took his fateful trip to Croatia:[188]

Q: What did he tell you was the reason he went to see the President?
A: . . . It concerned the independent counsel investigation.
Q: Ron was also concerned about the situation at the Commerce Department; correct?
A: He was very concerned about the attempt by Congress to shut down the Commerce Department.
Q: And he was also concerned about this lawsuit; correct, Judicial Watch's lawsuit?
A: He was concerned about it, yes, sir.
Q: And you had actually suggested to him that he go see the President, didn't you?
A: I suggested to him that that—yes, I did.
Q: And Ron relayed to you—there was a meeting between Ron and the President at that time, Ron told you; did he not?
A: Ron told me that there was.[189]

The evidence thus shows that key White House officials, acting on the likely command of the President himself, ordered Secretary Brown to obstruct the lawsuit and defy Court orders. This obstruction of justice would involve the use of perjury, the destruction of documents and threats and intimidation of witnesses and investigators.

A. False Sworn Declarations

Secretary Brown himself submitted a sworn statement, which Judicial Watch later learned was patently false and misleading. In his March 14, 1996 declaration, Secretary Brown testified:

> 1. I did not direct, supervise, or otherwise participate in determining, the scope of the Department of Commerce's search for and/or preparation of response to the Freedom of Information Act ("FOIA") requests made the basis of this suit. 2. I do not maintain documents responsive to the FOIA requests made the basis of this suit, nor at the time of the FOIA requests did I maintain any such documents.[190]

In reviewing this declaration, U.S. District Court Judge Royce C. Lamberth remarked about its obviously careful wording:

> Well, unfortunately, the Secretary died before his deposition, but that statement from the Secretary raises more questions than it answers. . . . He didn't say there were no such documents or that he never had any such documents . . . which would have been the logical thing to say. . . .[191]

Ms. Hill would later testify that, not only did Secretary Brown maintain responsive documents in his office, but he even showed her clearly responsive documents on Clinton Commerce Department letterhead, under Melissa Moss' signature, which he kept in an ostrich skin portfolio.[192] These documents have never been produced to Judicial Watch despite Ms. Hill's advice to Secretary Brown that they be produced immediately,[193] and were likely destroyed after Secretary Brown's death.[194]

Ms. Hill also later testified that Secretary Brown told her that his declaration was purposely misleading:

A: He felt like the wording was truthful, but it was crafted very carefully.
Q: How was it crafted very carefully?
A: The words "in determining." He felt like he could truthfully say that he didn't determine the scope of the search.
Q: Why was that important?
A: I don't think I understand.

Q: In other words, he didn't want to be part - he didn't want to be implicated in the aspect of actually searching? He didn't want to have to swear to that; correct?
A: That's right.
Q: Because of the sensitive nature of some documents, showing the involvement of the White House in selling trade missions?
A: He just didn't want to be involved.
Q: Dealing with the White House, the sale of trade missions; correct?
A: He didn't want to be involved with the FOIA issue.
Q: Because of the legal ramifications; correct?
A: He was under investigation by independent counsel.
Q: So the answer is yes?
A: Yes.(195)

Secretary Brown carefully crafted a misleading affidavit to the Court and unlawfully withheld responsive documents. He personally showed Ms. Hill "smoking gun" Commerce Department documents under Melissa Moss' signature detailing the sale of the taxpayer-financed trade mission seats for political contributions to the DNC.(196) He obviously complied with his orders from the White House, and in doing so obstructed justice.

In addition, the Clinton Commerce Department touted Anthony Das, the Executive Secretary in the Executive Secretariat of the Office of the Secretary of Commerce, as the person charged with overseeing the search for and production of documents responsive to Judicial Watch's FOIA request. In a sworn declaration dated March 10, 1995, Mr. Das testified that, as Executive Secretary, he had "been delegated authority to initially respond to the requests for records of the Executive Secretariat," and that, upon receipt of such a request, it was the job of the Executive Secretariat to "direct[] all other Department offices which might have responsive records to conduct searches for records."(197)

Contrary to his sworn declaration, at his March 27, 1996 and October 9, 1996 depositions, Das made it clear that his role in the search for responsive documents was minimal, if not non-existent. First, Das testified that he never reviewed Judicial Watch's FOIA requests.(198) Das also testified that he never discussed the document search with Secretary Brown, although he had frequent contact with him.(199) He also testified that he didn't know of anyone searching Secretary Brown's office.(200) Upon reviewing these obvious inconsistencies between Das' declaration and his deposition testimony, the Court asked Clinton Justice Department counsel:

> Don't you think it's rather curious that you would file with me an affidavit from Das saying the Secretary had no records and then admit in his deposition he never asked the secretary?(201)

Clinton Justice Department lawyer, Assistant U.S. Attorney Bruce Hegyi, responded that Das somehow knew Brown did not keep records in his office.. Thirty-eight (38) subsequent depositions showed no one asked about or searched Secretary Brown's office for responsive documents.

Additional evidence of false, sworn declarations arose when Judicial Watch deposed Mary Ann McFate, Director of the Office of Organization and Management Support at the Commerce Department's International Trade Administration ("ITA"). Ms. McFate submitted no less than eight (8) sworn declarations claiming responsibility for the search for and production of responsive documents *throughout* the Clinton Commerce Department.(202) However, at her October 15, 1996 deposition, Ms. McFate testified that her search for documents was limited solely to the ITA, although the ITA was clearly not the only branch of the Clinton Commerce Department possessing responsive documents.(203) Ms. McFate also testified at her deposition that she was not involved in searching any other bureaus or offices of the Clinton Commerce Department.(204) Accordingly, the declarations of Ms. McFate, submitted by the Clinton Commerce Department's Office of General Counsel, were clearly false and misleading.(205)

B. Destruction of Evidence

The letters Ms. Hill reviewed, which detailed the unlawful sale of seats on Commerce Department trade missions in exchange for campaign contributions, were never turned over to Judicial Watch or the Court.(206) This alone constitutes evidence of obstruction of justice. In addition, however, Ms. Hill testified that Secretary Brown kept documents in his office that were responsive to Judicial Watch's FOIA request and which the Court had ordered to be produced:

A: I became aware that [late Commerce Secretary Ron Brown] kept documents related to this [Judicial Watch FOIA] lawsuit. He had some in his office. . . .

Q:And what types of documents were they?

A: The ones that I know about were documents relating to Commerce Department activities that had been subpoenaed.

Q: And ordered by the Court to be produced?

A: Yes, sir.(207)

Depositions taken by Judicial Watch revealed the likely fate of these and other likely responsive documents that were never produced to Judicial Watch.

Although Judicial Watch's lawsuit seeking production of documents concerning trade missions was pending, and although the Clinton Commerce Department was under a Court order to produce all responsive documents, several witnesses testified about the wholesale shredding of documents in the Office of the Secretary after Brown's death. In a sworn affidavit volunteered by Mr. Robert Adkins, a former Commerce Department employee who worked with Clinton fundraiser and Commerce Department appointee John Huang, Mr. Adkins testified that there was so much shredding of Clinton White House and DNC documents at the Clinton Commerce Department that the shredder broke. "Among the documents which I personally saw shredded," Adkins said, "were . . . documents bearing the logo of the Executive Office of the President as well as documents bearing the logo of the Democratic National Committee." (208)

Ms. Barbara Schmitz and Ms. Melanie Long, Secretary Brown's "Executive Assistant" and "Special Assistant," respectively, both testified at their depositions that documents from Secretary Brown's office were shredded after his death.(209) Ms. Dalia Traynham, who was in charge of scheduling for Secretary Brown, testified at her deposition that she had been assigned the task of shredding documents after Secretary Brown's death, even though she previously had never been asked to shred documents.(210) In fact, during an October 18, 1996 hearing, the Clinton Commerce Department was forced to admit that documents from Secretary Brown's office were shredded without determining whether any of them were responsive to Judicial Watch's FOIA request.(211) In light of the pendency of Judicial Watch's lawsuit and the existence of a Court order requiring production of all responsive documents, this massive shredding of documents in Secretary Brown's office after his death constitutes clear evidence of obstruction of justice.

Judicial Watch uncovered further evidence of obstruction of justice as well. In the more than thirty-nine (39) plus depositions taken by Judicial Watch thus far in this case, curiously few individuals in the Clinton Commerce Department admit to having taken any notes concerning trade missions and other relevant and important matters. No one admits to having seen Secretary Brown ever taking any notes.(212) Few notes were ever produced to Judicial Watch in response to its FOIA requests. Ms. Melinda Yee, one of the few witnesses who admitted to having taken notes(213)—who was, in fact, the designated "note-taker" for the trade missions to China and India—admitted that she destroyed her notes from the very important China trade mission.(214)

Yee held several positions in the Clinton Commerce Department, including Director of Policy Development Programs at the ITA, and Senior Adviser to the Chief of Staff. Yee also has been a very important figure in Democratic fundraising activities and was a close confidante of John Huang.(215) Yee also once described herself as a close friend of the Riady family, which, through the Lippo Group, employed Huang before he was appointed to the Clinton Commerce Department.(216)

Yee went on several Clinton Commerce Department trade missions, including one to China in 1994 in which key Commerce Department officials Ira Sockowitz, Ginger Lew, and Jude Kearney also participated.(217) It was on this 1994 trade mission to China that the Clinton Commerce Department advocated a joint-venture project between Entergy Corporation (a large Clinton donor), the Lippo Group (another large Clinton donor), and a Chinese Government-owned electric power company.(218) Campaign fundraising scandal figures Bernard Schwartz, Charlie Trie, Johnny Chung, and Tricia Lum also participated in this trade mission.

Importantly, at her deposition, Yee admitted to having taken notes on the China and India trade missions, and other matters.(219) It has also been reported in the press that Yee served as the designated note-taker on these key trade missions. Although Yee appears to be one of the few persons in the Clinton Commerce Department who admitted to having kept notes about the trade missions, at her deposition she was also forced to admit having destroyed these notes, along with other documents.(220)

Not only were these documents responsive to Judicial Watch's FOIA requests—which had been pending for a substantial period of time when Yee is said to have destroyed them—the federal Court had specifically ordered that the documents be produced.(221) Although Yee claims that she was never informed of Judicial Watch's FOIA requests or the Court's orders (222)—a claim which is not believable given the substantial publicity surrounding Judicial Watch's case and her constructive notice of Court orders given her positions at Commerce—she reportedly contacted one of her lawyers, John Tisdale, who is also a law partner of Deputy White House Counsel Bruce Lindsey, one of the President's closest confidantes, around the same time she says she destroyed her notes.(223) Tellingly, she also said that she was instructed by her attorney not to answer questions about this odd contact with the Lindsey firm at the time of her deposition.(224) Given the clear importance of these documents to this case, as well as to the campaign finance and Chinagate scandal as a whole, their destruction exemplifies clear evidence of obstruction of justice.

C. Concealment of Evidence

Judicial Watch's depositions yielded further evidence of obstruction of justice—in the form of concealment of evidence. The existence of key documents—never produced to Judicial Watch and the Court—only became known when witnesses testified about them at deposition. Other key documents were only produced to Judicial Watch when the group learned about them during the discovery process.

Emblematic of the efforts to "slow-pedal," if not prevent, the production of documents to Judicial Watch, was the deposition of Lesia Thornton, the FOIA officer assigned to the Office of the Secretary at the time of the Judicial Watch FOIA request. At her deposition, Ms. Thornton produced detailed, typed notes—some of which contain multiple entries per day—that she personally kept concerning her involvement in the response to Judicial Watch's FOIA requests.(225) Ms. Thornton's notes describe a complete lack of cooperation from Office of Business Liaison Director Melissa Moss, the former DNC fundraiser whose letters detailing the Clinton Commerce Department's sale of seats on taxpayer-financed trade mission were reviewed by Ms. Hill, but never produced to Judicial Watch. Ms. Thornton's notes state that Moss, who had worked intimately with Secretary Brown on selecting participants for the trade missions, "made it more than obvious that she just didn't want to do the [FOIA] request. She said her office has more important things to do."(226) Ms. Thornton was distressed and frustrated by this conduct: "I have made every effort humanly possible to obtain these documents, however I still do not have them." Ms. Thornton also noted: "When we were leaving Melissa's office she made the comment that 'we are going to try to get this done since [Larry Klayman of Judicial Watch] is threatening to sue'—Judith [Clinton Commerce Department Counsel Judith Means] then said, 'If he sues; he sues.' " (227)

Ms. Thornton's personal notes also make reference to John Ost, who had worked with Melissa Moss in the Office of Business Liaison. At Mr. Ost's deposition, Judicial Watch learned that he received a facsimile from the DNC listing companies that the DNC was recommending for participation in the trade missions.(228) Mr. Ost testified that he turned this document over to his supervisors to be produced to Judicial Watch.(229) The document, which would have provided further corroboration that trade missions seats were being sold illegally, was never produced to Judicial Watch.

Another key document, the DNC "Minority Donor's List" found in the files of the Clinton Commerce Department, was produced two years late and only after being "uncovered" by Judicial Watch during a deposition.(230) At his May 27, 1998 deposition, Graham Whatley, an assistant to Deputy Assistant Secretary Jude Kearney at the Clinton Commerce Department, revealed that Kearny kept a list of 139 minority donors in his files.(231) Importantly, it was Kearney who selected the participants for Secretary Brown's trade missions.(232) At least five (5) of these donors participated in a trade mission to South Africa with Secretary Brown.(233)

Morever, at her deposition Ms. Traynham also testified that her office prepared schedules for Secretary Brown, which included meetings held in Washington to prepare for various trade missions. She also testified that these schedules listed the meetings' participants, and indicated the subjects to be discussed. Traynham further testified that back-up copies of these schedules were stored on computer.(234) As with other key documents and records, the existence of these materials was also concealed from Judicial Watch. Prior to Traynham's deposition, Judicial Watch had not received and was given no information about records reflecting Secretary Brown's schedules. Although these schedules contained information responsive to Judicial Watch's FOIA requests, no such schedules were ever produced to Judicial Watch.

Another top official at the Commerce Department, former Deputy Undersecretary David Rothkopf, took a large stack of documents with him when he left the Depart-

ment to join Kissinger & Associates. The Court remarked on June 27, 1997 that this was a particularly "unique" way of defeating FOIA regulations.(235)

In response to a deposition subpoena from Judicial Watch, Rothkopf testified that he handed over some documents to the Clinton Justice Department without reviewing them.(236) Without knowing what documents were allegedly given to the Clinton Justice Department, Judicial Watch has been unable to confirm either that the documents were returned to the Commerce Department, or that they were produced to Judicial Watch pursuant to Court orders.

D. Perjury

In addition to the perjury committed by Secretary Brown and others in the submission of false declarations to the Court, a host of other Clinton Administration witnesses perjured themselves under oath.

Prominent among these is Melissa Moss, the key Clinton fundraiser at the Commerce Department. Moss falsely testified at her October 10, 1996 deposition that fundraising was not a factor in selecting participants for Commerce Department trade missions, and that she did not conduct fundraising out of the Commerce Department for the DNC.(237) Ms. Hill reviewed Moss's videotaped deposition testimony and swore in her affidavit that Moss did not tell "the truth in response [to] a number of questions concerning Commerce Department trade missions, as well as other representations she has made under oath."(238) In addition to having seen letters on Commerce Department stationary under Moss' signature concerning the sale of seats on Commerce Department trade missions,(239) Ms. Hill testified:

> Q: Okay. Now, Melissa Moss worked with the White House, based on your discussions with Ron, over the trade missions; correct?
>
> A: Yes.
>
> Q: So when she says that trade missions weren't a factor in terms of getting campaign contributions, that's false, isn't it?
>
> A: Yes.
>
> Q: When she says that she was not engaging in fundraising, based upon what you know, having seen those documents, that's false isn't it?
>
> A: Yes, sir.
>
> Q: And when she says that she didn't know of criteria to choose trade mission participants other than the ones she listed, which she claimed were based on economic considerations, that's false, isn't it?
>
> A: Yes, sir.(240)

Further evidence of Moss' illegal fundraising activities on behalf of the DNC and the President's re-election campaign(241) came from the files of the Clinton Commerce Department. A series of letters from prospective and actual trade mission participants, and internal memoranda from top Commerce officials show that political contributions were indeed a factor.(242) On April 8, 1994, businessman Ko Saribekian, a participant in the Clinton Commerce Department trade mission to Russia, wrote Secretary Brown to thank him. Obviously referring to the expected political contributions, Saribekian wrote:

> Again I thank you and your exceptional team for the opportunity to participate and I look forward to repaying the generosity of Department of Commerce in some way in the months ahead. Melissa and I are keeping in touch about the latter.(243)

It thus seems quite clear that Moss was using the Commerce Department trade missions for political fundraising to benefit President Clinton. It also seems quite clear that Moss continuously lied about this activity and worked to cover it up.

It is also beyond dispute that John Huang, the DNC fundraiser and Commerce official now believed by many to be an intelligence agent for the Chinese Government,(244) also perjured himself at his October 29, 1996 deposition. Before moving to the DNC, Huang was Deputy Assistant Secretary for International Economic Policy at the Clinton Commerce Department. At his October 29, 1996 deposition, Huang testified that he was, in effect, little more than a "budget clerk" at the Clinton Commerce Department.(245) Subsequent revelations indicate he was much more. In fact, it is now clear that Huang participated in the planning of Clinton Commerce Department trade missions,(246) and had extensive telephone contacts with Asian and American business people, diplomats and lawyers, many of whom, such as Webster Hubbell and Joe Giroir, had ties to Huang's former employer, the Lippo Group.(247) Huang also participated in numerous departmental meetings concerning Asia policy,(248) and even received frequent intelligence briefings.(249) These revelations indicate Huang was not "walled-off" while at the Clinton Commerce Department, contrary to the obviously false, public testimony of former Commerce Official

Jeffrey Garten before Senator Fred Thompson's Government Affairs Committee, which investigated some of the various fundraising issues arising from the 1996 federal elections.

In addition, at his deposition Huang testified that he kept virtually no records at the Clinton Commerce Department.(250) Although he was under subpoena, Huang produced no documents at his deposition.(251) He stated that his notes were thrown away, his reports were destroyed, his computer files were erased and copies of his correspondence were not kept.(252) However, subsequent news reports, including a report in the December 30, 1996 edition of *The New York Times,* portray Huang as a "pack rat" who left the Clinton Commerce Department with and kept "bulging files."(253) Moreover, at the March 19, 1997 deposition of Huang's secretary, Ms. Janice Stewart, she admitted that Huang kept detailed desk diaries that documented his activities at the Clinton Commerce Department day-by-day and hour-by-hour.(254) No desk diaries were produced to Judicial Watch until Ms. Stewart made them known more than two (2) years after Judicial Watch's FOIA requests. When copies of these desk calendars were eventually produced to Judicial Watch, they were illegible in many places and therefore essentially useless. Indeed, to this day, the Public Integrity Section of the Clinton Justice Department, which maintains the originals of Huang's diaries, has refused to produce them for inspection and copying, despite a Court subpoena requiring their production.(255)

E. Intimidation and Tampering With Witnesses and Investigators

As it has done to contain its numerous other scandals, the Clinton Administration went to extreme lengths to cover-up the sale of the taxpayer-financed trade mission seats for campaign contributions, even attempting to intimidate and retaliate against witnesses and Judicial Watch itself.

Foremost among these apparent efforts was the indictment of Ms. Hill on fraud and tax evasion charges only a week before she was to testify at the March 23, 1998 evidentiary hearing.(256) When Judicial Watch uncovered Ms. Hill and obtained an affidavit from her in January 1998, the affidavit was presented to the Court. In her affidavit, Ms. Hill testified that she feared retaliation from the Clinton Administration:

> I would like to come forward and tell this court everything I know about the failure to produce documents to Judicial Watch and this court. I am concerned, however, that if I do so, the Clinton Administration, and more particularly its Justice Department, will try to retaliate against me. As a result, I look to this court for guidance on how I can come forward and tell all I know in the interest of justice.(257)

Consequently, on February 4, 1998, the Court ordered Ms. Hill's affidavit be kept under seal, specifically because Ms. Hill was concerned about retaliation.(258) Judicial Watch lawyers argued as well that the affidavit should not be provided to Main Justice by the Office of the U.S. Attorney for the District of Columbia, which was representing the Clinton Commerce Department. On February 13, 1998, Ms. Hill agreed to testify at an evidentiary hearing before the Court on March 23, 1998.(259) After learning about this scheduled hearing, Assistant U.S. Attorney Bruce Hegyi, who represented the Clinton Commerce Department in this matter and already had been sanctioned for other misconduct apparently provided this information and a copy of Ms. Hill's affidavit to "Main" Justice, despite the fact that the information was under seal. When Judicial Watch later raised this issue before the Court, Hegyi did not deny it.

Between March 10, 1998 and March 13, 1998, Ms. Hill's legal counsel, Christopher Todd, who also represents President Clinton's private detective Terry Lenzner, and, apparently, Webster Hubbell's accountant, was reportedly told by Deputy Attorney General Eric Holder and Mary Spearing, Chief of the Fraud Section of the Criminal Division of the Clinton Justice Department, or others at "Main" Justice, that "[Holder] is not pleased by Ms. Hill's involvement with Judicial Watch, and her coming forward in this case."(260) According to Todd, Holder also told him that Ms. Hill is "*persona non grata* at the Justice Department."(261) On March 14, 1998, Ms. Hill was indicted on tax charges,(262) obviously in an attempt to retaliate against her and/or short-circuit her testimony at the upcoming March 23, 1998 evidentiary hearing by forcing her to invoke her Fifth Amendment rights against self-incrimination. Fortunately, however, the Court ordered Ms. Hill to testify in a manner which would not implicate her Fifth Amendment rights.

Tellingly, before her indictment, Ms. Hill had not been formally notified that she was under investigation, which is highly unusual whenever indictments are issued. Furthermore, at Ms. Hill's arraignment, the Clinton Justice Department admitted that they had not had time to prepare an inventory of evidence against Ms. Hill,

indicating that the charges were hurriedly prepared.(263) And, after Ms. Hill testified at the March 23, 1998 evidentiary hearing, the Clinton Justice Department re-indicted her, purportedly to correct typographical errors in the original indictment. Clearly, this re-indictment was nothing more than another warning against further cooperation with Judicial Watch and the Court.

Clinton Commerce Department personnel were also subjected to intimidation and retaliation. Graham Whatley, the career civil servant who revealed the existence of the DNC "Minority Donors List" in the files of top Commerce official Jude Kearney, was promptly fired by the Clinton Administration after his deposition.(264)

Ms. Christine Sopko served as Kearney's secretary. Ms. Sopko testified that she had turned over the DNC "Minority Donors List" to Clinton Commerce Department and Clinton Justice Department lawyers at least three (3) months before Mr. Whatley's deposition. Sopko, a non-political career employee, broke down in tears as she testified about being afraid of losing her job.(265) She also testified that she believed Whatley had been fired for revealing the existence of this DNC document.(266)

An attempt was even made to intimidate and coerce Judicial Watch's General Counsel, Larry Klayman, into agreeing to a settlement of the case, in an obvious attempt to cover-up the scandal. In April 1997, Judicial Watch was the first to depose Mr. John Dickerson, the CIA officer who regularly briefed John Huang at the Commerce Department. Because of the potentially sensitive nature of the deposition, it was to take place at the federal courthouse in Washington, DC rather than at Judicial Watch's offices. However, the Clinton Administration made no efforts to conceal Dickerson from the public. (*Indeed, it had already lifted his "cover."*) Dickerson, AUSA Hegyi and other CIA, Clinton Justice Department and Clinton Commerce Department personnel used public entrances and exits to the Courthouse, and had lunch together in the Courthouse's public cafeteria, where members of the press frequently congregate. The Clinton Administration later claimed that Dickerson was videotaped by a news crew as he left an admittedly public exit from the Courthouse later that day.

Apparently upon returning to his office, AUSA Hegyi and his supervisor, Deputy Chief John Oliver Birch, telephoned Mr. Klayman's office. In grave, menacing tones, they informed Mr. Klayman about what had allegedly transpired, alleging that he had blown the cover of a CIA operative, and then placed a call to the Court. After this initial conversation with the Court, Mr. Klayman called the Court and offered to make himself available for an immediate *in camera* conference in order to support any steps necessary to remedy the alleged videotaping. During the ensuing conference on the evening of April 4, 1997, Mr. Klayman advised the Court of a routine press inquiry about when and where the Dickerson deposition would take place:

> I was asked by the press, in response to their knowledge that I was taking Mr. Dickerson's deposition, whether they could have a copy of the video. And I said no; that its going to be transcribed and that Your Honor would have to have an opportunity to review it, and only then would it be releasable. . . . I did tell them that it was being held in camera at the courtroom. . . .(267)

Mr. Klayman also stated that it was not his understanding that information about the date and place of the deposition had been sealed by the Court, and that he would support any effort by the Clinton Administration, through the Court, to obtain the alleged videotape of Dickerson:

> . . . But technically speaking . . . Your Honor did not seal or order confidential where it was taking place or the date. And I am here to try to facilitate anything that I can do to help in this matter, not here to cover my own rear end, for lack of a better word on the court record, because I feel strongly about this as everybody else.(268)

In what was clearly a threat of criminal prosecution, Deputy Chief Birch responded by invoking the Specter of the "Pentagon Papers" case, adding pointedly:

> . . . [I]t may be that it would be appropriate for me to relate to the Court the position of the United States Attorney's Office, what we perceive to be our options right now for purposes of both the Court *and for purposes of unilaterally, the Government.*(269)

(Emphasis added). The Court adjourned the conference without taking any further action.(270)

Immediately upon leaving the conference room, AUSA Hegyi and Deputy Chief Birch approached Mr. Klayman and another Judicial Watch attorney who had attended both the Dickerson deposition and the April 4, 1997 hearing. In what can only be viewed as a coercive attempt to force settlement, he asked whether Judicial

Watch would now agree to submit the case to a "settlement judge" (*i.e.,* a judge other than Judge Lamberth). On April 7, 1997, Judicial Watch filed a pleading with the Court to record these same events.[271] This improper attempt to coerce a settlement from Judicial Watch constitutes a clear violation of Rule 8.4(g) of the District of Columbia Rules of Professional Conduct, which prevents the threat of criminal charges to gain an advantage in civil litigation.[272] In addition, it also constitutes a clear abuse of power by the Clinton Administration. Later, the Clinton Administration filed pleadings to have Mr. Klayman held in criminal contempt, and then criminally prosecuted. The Court summarily denied the request.[273]

Even Secretary Ron Brown was fearful of crossing the Clinton White House. Ms. Hill testified that one of the reasons Secretary Brown did not want to turn over incriminating documents to Judicial Watch was because he needed the support of the Clinton White House as he faced his own Independent Counsel investigation:

> A: [Secretary Brown] was concerned about the independent counsel investigation that he was under, and the potential for how he was going to—not the potential, but the catch 22, because he didn't want to be put in the position that he was in, of appearing to be non-responsive, while at the same time he felt the support of the White House during the pendency of the independent counsel investigation.
>
> Q: So he was concerned that he needed the support on the independent counsel side, and the White House needed his support with regard to the sale of trade missions and exposing that; correct?
>
> A: (No response.)
>
> Q: In other words, he was between a rock and a hard place. He didn't want to have to turn the White House in for selling trade missions?
>
> A: He didn't want to do anything that would rock the boat.
>
> Q: So the answer is yes?
>
> A: I think the answer is what I said. He didn't want to do anything that would rock the boat—
>
> Q: With the White House?
>
> A:—with the White House.
>
> Q: With the White House?
>
> A: Yes.[274]

Indeed, it was about his own independent counsel investigation, and the "catch-22" he was in over the illegal sale of seats on Commerce Department trade missions and cover-up, that he went to see President Clinton shortly before he was killed.[275]

F. Misconduct BY Clinton Commerce Department Counsel

In addition to false declarations, destruction of evidence, concealment of evidence, perjury and attempted intimidation of and retaliation against key witnesses, and even Judicial Watch itself, the Clinton Administration has misused government lawyers to cover-up its unlawful conduct. It is very important to understand the obstructionist role lawyers in the Clinton Commerce Department's Office of General Counsel ("OGC") played in impeding the flow of Judicial Watch's investigation, and in thwarting the Court's orders—conduct which is contrary to their obligations as public servants, and contrary to their obligations as officers of the Court and members of the bar.

Several key lawyers for the Clinton Commerce Department admitted to playing significant roles in "responding" to Judicial Watch's FOIA requests. These lawyers include: Barbara Fredericks, Judith Means and Elise Packard. All were deposed by Judicial Watch in early 1997. The depositions of these OGC lawyers demonstrate that they: (1) gave advice on responding to Judicial Watch's FOIA requests; (2) examined documents; (3) prepared the Clinton Commerce Department's *Vaughn* indexes, which contained numerous, spurious claims of exemption and attorney-client privilege; (4) prepared sworn declarations submitted to the Court; (5) prepared witnesses for deposition; and (6) attended depositions In this case, often disrupting the process.[276]

Importantly, in her January 18, 1998 affidavit and at the March 23, 1998 evidentiary hearing, Ms. Hill testified that Barbara Fredericks helped to draft the false and misleading declaration of Secretary Brown.[277] The declaration Fredericks helped to draft was carefully worded to avoid Secretary Brown having to acknowledge any involvement in the search for documents responsive to Judicial Watch's FOIA requests.[278] It also falsely asserted that Secretary Brown did not "maintain documents responsive to the FOIA requests made the basis of [Judicial Watch's] suit, nor at the time of the FOIA requests did [Secretary Brown] maintain any such documents."[279] In fact, Ms. Hill testified that not only did Secretary Brown maintain documents responsive to Judicial Watch's FOIA requests in his office, he had

even showed her responsive documents on Commerce Department letterhead and under Melissa Moss' signature that he kept in an ostrich skin portfolio.(280)

The evidence also reveals that Judith Means was intimately involved in providing the Clinton Commerce Department's response to Judicial Watch's FOIA requests.(281) Means testified that she met with John Ost and his supervisor to answer questions about withholding documents responsive to Judicial Watch's FOIA requests under claim of exemption.(282) Ost would later testify that he provided his supervisor with a facsimile from the DNC to the Commerce Department listing companies that the DNC was recommending for participation in trade missions.(283) In addition, Means also testified that she met with Melissa Moss, who had signed the letters Secretary Brown showed to Ms. Hill concerning the sale of seats on trade missions.(284) However, at her deposition, Means failed to produce her notes of these meetings.(285) Neither the facsimile from the DNC Ost provided to his supervisor nor the Moss' letters have ever been provided to Judicial Watch.(286) Obviously, Means' notes of her meetings with Ost, Ost's supervisor and Moss might shed light on the disappearance of these crucial pieces of evidence.

The testimony in Judicial Watch's case also shows that OGC lawyers knew about the DNC "Minority Donors List" long before its existence was revealed by Graham Whatley.(287) Indeed, Christine Sopko testified that she turned over this list of 139 contributors to the DNC to her superiors months earlier.(288) A number of donors on the list, which included bankers, union officials, and corporate executives, attended a trade mission to South Africa with Secretary Brown in November 1993. The list thus constitutes further *primo facie* evidence that the Clinton Commerce Department was doing political fundraising by selling seats on the taxpayer-financed trade missions. OGC lawyers also reviewed the now-missing documents previously maintained in Secretary Brown's office.(289)

When confronted with evidence of obstruction and unlawful conduct by Commerce Department officials—such as the shredding of documents in Secretary Brown's office,(290) the destruction of documents by Melinda Yee,(291) and the removal of classified, national security documents by Ira Sockowitz(292)-Clinton Commerce Department lawyers testified that, in effect, they did nothing.

The issue of the adequacy of the Clinton Commerce Department's search for computer files has also assumed a central role in this case. Court orders dated December 6, 1996 and February 13, 1997 charged the Clinton Commerce Department's OGC with the specific responsibility of searching for and producing computer files responsive to Judicial Watch's FOIA requests. Yet, OGC not only failed in its responsibilities to supervise the search for responsive computer files throughout the agency,(293) it also failed to search even its own computers, even though the existence and location of these records was well known.(294)

As General Counsel to the Clinton Commerce Department, Ginger Lew was the ultimate supervisor of all the attorneys who participated in the Department's response to Judicial Watch's FOIA requests. She was also a confidante of John Huang and very active in Asian–American politics. Lew later left the Clinton Commerce Department to become Deputy Administrator of the Small Business Administration ("SBA") under Erskine Bowles, who is now White House Chief of Staff. Lew was instrumental in having her special assistant at OGC, Ira Sockowitz, join her at the SBA.(295)

Like John Huang before her, Lew went to great lengths to avoid being deposed, and to avoid producing subpoenaed documents. She and her counsel initially sought to avoid service of a subpoena, then attempted to "voluntarily" appear for the deposition at Judicial Watch's offices so as to avoid having to produce documents. The gamesmanship then escalated.

When Judicial Watch was forced to postpone Lew's deposition because of the evasive tactics it had encountered in attempting to serve its deposition subpoena, Lew's counsel and counsel for the Clinton Justice Department then conducted an unauthorized and essentially unlawful deposition of Lew and a court reporter to elicit false and misleading testimony. The Court would later rebuke counsel for Lew and the Clinton Justice Department saying, "[W]hat you're just giving him and waiving around today is a purported transcript of a deposition that is totally unauthorized."(296) The Court also rebuked Ms. Lew for refusing to accept Judicial Watch's subpoena:

> Why would a person like Ms. Lew, who is a lawyer, not just say to her lawyer, "Accept the subpoena. Don't go play all these games and have people chasing all over town looking for me to serve me?" Why would a lawyer do that? I don't understand that.(297)

Ultimately, Judicial Watch was able to at least begin its deposition of Lew on March 12, 1997. This deposition demonstrates that Lew is an astute political opera-

tive.[298] It is also clear from her demeanor during the deposition that Lew was not being candid. She has still failed to produce the requested documents, and, in the middle of the deposition, she, the Clinton Justice Department counsel, and Lew's counsel all arbitrarily walked out of the court proceeding, without authorization from the Court. The obstruction Lew committed and condoned further substantiates and corroborates the other evidence and testimony that there was a desperate effort on the part of Secretary Brown, under orders and pressure from the President's top political aides, to cover-up the fact that taxpayer-financed trade missions were being used as a fundraising tool for President Clinton's re-election, and other political needs. It is important to remember that Lew was the Clinton Administration's lead lawyer at Commerce.

The testimony of these lawyers also shows that they directly obstructed the public's right to know about the operations of its government pursuant to FOIA. Incredibly, OGC lawyers directly obstructed court processes by participating in the drafting of false declarations, the misapplication—with an error rate found by the Court of least fifty percent (50%)—of exemptions from disclosure under FOIA,[299] the invocation of spurious claims of attorney-client privilege, and the failure to disclose documents in their custody or control (*e.g.,* the "Minority Donors List"). None of them felt a duty to investigate acts of wrongdoing by others in the Clinton Commerce Department, such as the destruction by Melinda Yee of her notes and other documents, the removal of classified documents by Ira Sockowitz, and the disappearance of documents from Secretary Brown's office. In fact, according to them, they did not even have an obligation to report this evidence of obstruction of justice to the Clinton Commerce Department's Inspector General, the Department of Justice, or the Court.

In light of the role of attorneys to uphold the law, the conduct of OGC lawyers has been most troubling. While one OGC attorney, Gordon Fields, acknowledged that government lawyers have an obligation to the American people and not just the Administration or department which they serve,[300] the conduct of the OGC lawyers in this matter demonstrates anything but such an obligation. In fact, the conduct of the OGC lawyers in this matter, obviously under orders from supervisors acting on behalf of the Clinton Administration, amount to obstruction of justice.

G. Clinton Justice Department Complicity

This is the Justice Department. And so I cannot imagine a more seriously jeopardizing situation for Ms. Hill to be in at this point in time.

Stephen Charles, Ms. Hill's lawyer, just prior to her court testimony on March 23, 1998.[301]

Throughout this case, it has not only been the Clinton Commerce Department and its lawyers that have attempted to thwart Judicial Watch's efforts to obtain documents responsive to its FOIA requests. The Clinton Commerce Department has enjoyed the apparent approval and complicity of the Clinton Justice Department as well.

For example, in a February 24, 1997 article asking "How Honest Is Justice's Probe?" *Investor's Business Daily* noted that the Clinton Justice Department is defending some of the very same Clinton Commerce Department officials it is supposedly investigating for illegal fundraising.[302] Deputy Attorney General Eric Holder, who admittedly owed his former position as U.S. Attorney for the District of Columbia in part to Secretary Brown, who admittedly recommended him,[303] and who obviously owes his current position to President Clinton,[304] publicly announced on NBC's *Meet the Press* that he was "intimately involved" in the Chinagate probe.[305] In early 1997, however, Holder tried to shut down Judicial Watch's lawsuit. "[This lawsuit] is not about whether in fact Secretary Brown 'sold seats on trade missions to big contributors to the Democratic Party' . . .," Holder wrote in filing a motion with the Court.[306] Holder's inherent conflict-of-interest only adds to the already substantial conflict-of-interest of the Clinton Justice Department.

The end result has been the lack of any serious investigation by the Clinton Justice Department.[307] While Attorney General Janet Reno claims to be conducting an investigation of the campaign finance scandal that will leave "no stone . . . unturned,"[308] depositions taken in this case demonstrate the contrary. About a year after the scandal exploded, in the summer of 1997, discovery confirmed that neither the Clinton Justice Department nor the FBI had called one Clinton Commerce Department official before the grand jury. Not even Huang's secretary, Janice Stewart, had been interviewed by the Clinton Justice Department or the FBI.[309] Likewise, Ginger Lew, the supervisor of Ira Sockowitz at both the Clinton Commerce Department and the SBA, had not been interviewed either.[310] Nor have many others.[311]

In addition to the telling lack of any meaningful investigation by the obviously conflicted Clinton Justice Department, the conduct of Clinton Justice Department lawyers in Judicial Watch's case has been marked by a pattern of litigation misconduct and abuse, including outright suppression of evidence. For example, Clinton Justice Department counsel unilaterally terminated the depositions of Anthony Das and Ginger Lew. With regard to the Das deposition, the Court had granted Judicial Watch the right to subpoena documents from Das prior to his being deposed.(312) Yet, when Das appeared for his deposition, he produced no documents. Bruce Hegyi, the Clinton Justice Department lawyer defending the deposition, unilaterally declared that Das had no obligation to produce the subpoenaed documents, then Das, Hegyi and the OGC lawyers attending the deposition walked out!(313) The Court ultimately issued sanctions for this outrageous misconduct.(314) Similarly, after engaging in substantial "gamesmanship" prior to her actual deposition, Lew also failed to produce subpoenaed documents when she was finally deposed. Then, in the middle of the deposition, she, Hegyi, OGC counsel and Lew's counsel all arbitrarily walked out again, without any authorization from the Court. Motions are pending before the Court to sanction this additional misconduct at Lew's deposition.(315)

In addition, the Court has repeatedly criticized Clinton Justice Department counsel for improper use of "speaking objections" during depositions, which have had the obviously intended effect of tipping-off witnesses about how to respond to Judicial Watch's questioning. This grossly improper misconduct has been repeated in deposition after deposition.(316) During a June 27, 1997 hearing, the Court, responding to the Clinton Justice Department's rationalizations for its improper conduct, went to the heart of the matter:

> [T]he one thing that just leaps out at me is that in a case in which the government is being accused of [a] cover-up, and, in which I have suggested that government counsel should take certain actions not to suggest answers to witnesses, I don't understand this whole approach that you continue to take in your brief about, "Well, we can always try to clarify ambiguous questions, and, therefore . . ." I mean, you're going to be constantly accused of tipping off witnesses and suggesting answers to witnesses by putting your head in the sand with that kind of approach. That's why I said to the government that you need to reexamine your approach. I just don't understand it."(317)

Clinton Justice Department counsel was admonished again for using these blatantly obstructionist tactics during a number of depositions.(318)

The Clinton Justice Department also has made repeated, material misrepresentations of fact. To cite just a few of the more significant examples, when Judicial Watch took the deposition of John Dickerson, who briefed John Huang on intelligence matters, the Clinton Justice Department represented that Huang had received 37 intelligence briefings. However, it was later reported in the press that Huang actually had received as many as 109 briefings.(319)

Likewise, the Clinton Justice Department represented that the office of Melinda Yee—the official note-taker on Commerce Department trade missions who later admitted to having destroyed all of her notes despite the fact that the Court had ordered them to be produced to Judicial Watch—was searched by Dawn Evans Cromer, Carola McGiffert and Beth Bergere.(320) When Judicial Watch deposed these individuals, however, it became clear that they had never been assigned to conduct any such search, had not conducted any such search, and did not even know that their names had been given to the Court as the individuals who conducted a search of Ms. Yee's office.(321)

Moreover, the Clinton Commerce and Justice Departments also were involved in suppressing the crucial DNC "Minority Donors List" for months before Judicial Watch learned of its existence at the May 28, 1997 deposition of Graham Whatley. Clinton Justice Department counsel made repeated false representations that they were "surprised" by this revelation.(322)

The lies by Clinton Administration officials continued. During his June 13, 1997 Senate confirmation hearing for the post of Deputy Attorney General, U.S. Attorney Eric Holder testified that he had no involvement in this case and had not signed any pleadings or memoranda.(323) While a cursory review of the court file shows the contrary, taken at face value, Holder's testimony likely means that this case—which has paramount political and national security ramifications—is being run by "Main" Justice—and out of the Attorney General's office.

This is a massive conflict-of-interest. According to a memorandum recently produced in another Judicial Watch anti-corruption case, the DNC requested Attorney General Reno's assistance in raising $40 million for the 1996 Clinton-Gore re-elec-

tion campaign.[324] Thus, it appears Attorney General Reno herself is most likely involved in the Clinton campaign fundraising scandal.

In light of this memorandum, and Attorney General Reno's refusal to appoint an Independent Counsel despite overwhelming evidence of criminal misconduct on the part of Clinton Administration officials, and her Department's obvious conflict of interest, it would certainly appear that the litigation misconduct in this case is attributable to partisan political loyalties to the Clinton Administration.

IV. Clinton's Fundraising Push Likely Resulted in Breaches of National Security

As Judicial Watch uncovered evidence that seats on Clinton Commerce Department trade missions were being sold in exchange for campaign contributions, it also uncovered alarming evidence about likely breaches of national security. In the four (4) years that Judicial Watch has investigated this unlawful sale of taxpayer-financed, government services, it also discovered John Huang, the removal by Ira Sockowitz, a confidante of both Huang and Ginger Lew, of classified, national security documents from a Commerce Department safe, the removal of national security information by Secretary Brown's Chief of Staff, William Ginsburg, curious links between former Clinton Commerce appointees and Iridium World Communications, Ltd., and more. Although Judicial Watch is only at an interim stage in its investigation of these sensitive issues, the potential national security breaches already discovered raise ominous questions about further unlawful conduct by the President and his Administration.

A. John Huang, Accused Spy, Had A Role in Commerce Trade Missions and Other Clinton Fundraising Schemes

While investigating the sale of taxpayer-financed trade mission seats by the Clinton Commerce Department, Judicial Watch uncovered John Huang, the Clinton fundraiser/Commerce operative believed by many to be an agent for the Chinese Government.[325] To date, only Judicial Watch has deposed Huang under oath.[326] This deposition uncovered Huang's lies and sparked the Clinton controversy called "Chinagate." Not surprisingly, the Clinton Administration and its allies at the DNC did their best to prevent Huang from testifying under oath, and Huang himself went into hiding from federal agents trying to serve him with a deposition subpoena.[327] In attempting to learn of Huang's whereabouts, DNC officials later lied to the Court.[328]

Indeed, Judicial Watch has learned that, not only was Secretary Brown ordered by the White House to sell seats on (Commerce Department trade missions, but he was also forced to hire Huang. Ms. Hill testified that Mrs. Clinton was involved in Huang's placement at the Clinton Commerce Department:

> Q: And he told you, Secretary Brown, did he not, that John Huang was forced into the Commerce Department by the Hillary Rodham Clinton Arkansas group at the White House? He told you that, didn't he?
> A: Yes, sir.[329]

Indeed, as we now know, Huang was the "top priority for placement" in the new Clinton Administration by the Lippo Group, the Jakarta-based business conglomerate that has substantial dealings and joint operations with the Chinese Government, and is headed by the Riady family.[330] James and Mochtar Riady have been longtime friends and strong financial supporters of the Clintons dating back to when President Clinton was the Governor of Arkansas. Mochtar and James Riady are believed by U.S. authorities to "have had a long-term relationship with a Chinese intelligence agency."[331] Before being placed at Commerce, Huang was the top U.S. executive for Lippo, and "the political power that advise[d] the Riady family on issues and where to make contributions."[332]

In fact, it is now clear that Huang participated in the planning of Clinton Commerce Department trade missions,[333] and had extensive telephone contacts with Asian and American business people, diplomats, lawyers, and fundraisers, many of whom, such as Webster Hubbell and Joe Giroir, had ties to Huang's former employer, the Lippo Group.[334] In February 1997, *The Washington Times* reported that "[t]elephone records show that while at Commerce, he made and received dozens of calls from Lippo lobbyists and executives while he worked on sensitive trade missions."[335]

Huang also participated in departmental meetings on Asia policy[336] and, astonishingly, received more than a hundred CIA intelligence briefings, many on matters related to areas that his old employers at the Lippo Group would have an interest.[337] While working for the Clinton Commerce Department Huang made "more than 400 telephone calls . . . to Lippo and some of its business representatives. . . ."[338]

Huang also made a number of visits, while supposedly working for the Clinton Commerce Department, to the offices of Stephens, Inc., a firm that had close ties to the Lippo Group. Paula V. Greene, a former secretary for Stephens Inc., testified before Senator Fred Thompson's fundraising investigation that:

> Huang had unrestricted use of the telephone, copier and fax machine in the spare office when he stopped by "sometimes two, three times a week, perhaps not every week," she said. But Ms. Greene said she did not know whom he called or whether Huang transmitted any faxes.(339)

The Clinton Administration gave Huang access to top-secret information apparently without even conducting an overseas background check on him.(340) Moreover, press reports indicate that Huang "held top-secret clearances for three years, although he worked at Commerce for only 18 months," and "initially was issued a top-secret clearance in January 1994, five months *before* he resigned as a top executive at the . . . Lippo Group."(341) Electronic intercepts have also apparently confirmed that, at a minimum, he committed economic espionage by passing government secrets to the Lippo Group.(342) Indeed, some believe he may have endangered the lives of U.S. intelligence agents.(343) *The Washington Post's* Bob Woodward reported on November 14, 1997, that the FBI had uncovered "reports considered reliable but unconfirmed that Huang, while serving as a senior Commerce Department official in the Clinton administration, passed a classified document to the Chinese government."(344)

Coupled with the risk of this Clinton-appointee's activities to national security, was his illegal fundraising at the Clinton Commerce Department. Huang testified at his deposition that he had little contact with the DNC and the Clinton White House while at the Clinton Commerce Department.(345) In fact, he was in regular contact with top Democratic fundraisers, and often supplied them with names of prospective donors in the Asian-American community, and was the "king-maker" for Asian-American political appointments in the Clinton Administration.(346) The DNC even credited him for raising money while working at the Clinton Commerce Department.(347)

Also, contrary to his Judicial Watch testimony, Huang was a frequent White House visitor and often talked with key White House officials, including President Clinton. According to logs kept by the Secret Service, Huang made at least 78 visits to the White House beginning July 1, 1995, at least a dozen of which were while he was working at the Commerce Department.(348) He was also in regular contact with top Democratic fundraisers, and often supplied them with names of prospective donors in the Asian–American community.(349) Indeed, President Clinton personally lobbied on Huang's behalf to ensure that he would be placed in a high-level DNC fundraising post after leaving Commerce.(350)

Despite Huang's false and misleading testimony in the Judicial Watch lawsuit, and his unlawful fundraising activities,(351) the Clinton Justice Department has yet to prosecute, much less interview him. In fact, Judicial Watch has seen first-hand the Justice Department's complicity in covering-up these offenses. Just one among many examples—the Clinton Justice Department's Criminal Division Chief until recently was John Keeney. Keeney's son is one of Huang's personal lawyers, and represented Huang during his Judicial Watch deposition.(352) Huang only surfaced because of the relentless due diligence of Judicial Watch—and only after a nationwide manhunt in which he temporarily evaded service of a court subpoena with the cooperation of the White House and the DNC.(353)

A final, important note. By testifying nearly two years ago in Judicial Watch's lawsuit against the Clinton Commerce Department, Huang waived any Fifth Amendment rights he may have been able to assert. Thus, Huang cannot now "take the Fifth." Judicial Watch has moved the Court to continue Huang's deposition.

B. Ira Sockowitz, Special Assistant at Commerce, Misappropriated Government Secrets on Encryption and Satellite Technology and Likely Harmed National Security

In addition to the sale of seats on trade missions and the mysterious operations of John Huang at the Commerce Department, in 1996 the Clinton Administration abruptly gave Commerce the power to control exports of sensitive technology to China. This came as a shock to many experts because it is generally believed that, unlike the State Department, which served as the technology gatekeeper in the past, the Commerce Department is not equipped to properly guard against national security breaches. In fact, according to a top defense expert in the Bush Administration, "[i]t was tantamount to a complete overthrow of the old export-control regime."(354)

Even more shocking was that such a transfer of power would be authorized by President Clinton when the Commerce Department could not even control breaches of security within its own building. Thanks to an anonymous tip in October 1996, shortly after authority for export controls on technology was shifted to the Commerce Department, Judicial Watch discovered that Ira Sockowitz, a former Special Assistant in the Commerce Department's Office of General Counsel, removed 136 files containing classified satellite encryption data from a safe in his former office after he had had left OGC to work at the Small Business Administration.(355) Sockowitz had worked at OGC under Ginger Lew, a confidante of John Huang, then joined Lew at the SBA after she left OGC for that agency. Sockowitz' replacement at OGC, Jeffrey May, allowed Sockowitz unsupervised access to the safe in his former office, apparently allowing Sockowitz to remove the classified satellite encryption data.(356)

The sensitivity of this information is immeasurable—encryption data are used by U.S. intelligence to keep instructions sent to communication satellites, including instructions for nuclear missiles, secret.(357) Undoubtedly, the documents Sockowitz took with him contained information extremely vital to U.S. national security—and likewise invaluable to rival nations. Despite this alarming security breach, the Clinton Justice Department decided in a matter of only weeks without any real investigation, that there was no case against Sockowitz. It came to this astonishing conclusion without even questioning Lew or his replacement at OGC, Jeffrey May.(358) In pursuing its own case against the Clinton Commerce Department, Judicial Watch may have uncovered how these secret files were used. Both Sockowitz and Lew were involved in the process of selecting participants for trade missions.(359) In fact, Sockowitz was put in charge of screening companies seeking to participate in trade missions. One such mission was the now-controversial 1994 trade mission to China during which Loral's Bernard Schwartz began a business relationship with a Chinese government official that would ultimately lead to U.S. satellites being launched on Chinese rockets and the possibly unlawful transfer of missile technology to the Chinese.

At his deposition in Judicial Watch's lawsuit, Sockowitz admitted that he kept classified materials, as well as documents concerning trade missions, in the safe in his Commerce Department office at OGC.(360) Sockowitz also admitted that he took some of these documents from the Clinton Commerce Department—including documents that were responsive to Judicial Watch's FOIA requests—and stored them in another safe at the SBA.(361) Lew, Sockowitz's boss, testified that she knew of no reason why Sockowitz would have taken these documents with him, because they would be of no value to anyone at the SBA.(362)

On November 5, 1996, the Court ordered that Sockowitz's safe at SBA, which already had been taken into custody by special agents from the SBA's Office of Inspector General ("IG"),(363) was to be inventoried by Commerce Department officials no later than November 13, 1996. The Court also ordered that Sockowitz's safe and computer at the Commerce Department remain in the custody of the Commerce Department IG, pending further order from the Court. The resulting inventory of Sockowitz's safe at SBA revealed that not only did it contain documents responsive to Judicial Watch's FOIA requests, but also highly sensitive, classified national security intelligence data on China, Russia and India, as well as the highly sensitive satellite encryption and telecommunications data previously mentioned.(364) Some of these materials were ultimately turned over to the Central Intelligence Agency. When another organization sought access to some of these same documents through FOIA, both the Commerce Department and the National Security Agency stated, in sworn affidavits, that the release of these documents "could harm national security."(365)

According to Nolanda Hill, Secretary Brown was also worried about Sockowitz' activities at the Commerce Department:

> Q: And I believe you told me that Ira [Sockowitz] funneled information to others, that Ron was aware of that?
> A: I don't believe I used those words.
> Q: What words did you use?
> A: He—Ron—Secretary Brown was concerned that that might be happening.(366)

Additional questioning of Hill, and the later deposition of Lauri Fitz–Pegado, another close confidante of Secretary Brown who traveled with him on nearly every trade mission, and the Commerce Department's Director of the Foreign Commercial Service, revealed what may have happened with the highly sensitive satellite encryption and telecommunications data misappropriated by Sockowitz. Ms. Hill testified:

Q: You knew that Ira Sockowitz had been close to (top Commerce official) Laurie Fitz–Pegado at the Commerce Department from your discussions with Ron?

A: Not close. I mean—

Q: Or had worked with her in some way?

A: I knew that he—she had worked—that he had worked with her, yes.(367)

At the July 18, 1997 and August 1, 1997 deposition of Fitz–Pegado, Judicial Watch discovered that she and at least three (3) other former Clinton Commerce Department employees, who also had access to top-secret classified information, left Commerce and went to work for Iridium World Communications, Ltd.(368) Iridium is a multi-billion dollar company that is building a global wireless communication network that will enable subscribers to communicate using handheld telephones and pagers virtually anywhere in the world.(369) Iridium's global network operates through combining a series of low-orbit satellites with land-based wireless systems. The sixty-six (66) low-earth-orbit satellites communicate with each other through encrypted messages. Iridium is owned, in part, by state-controlled entities in China, Russia and India.(370) These are the same three (3) countries that were the subject of classified intelligence data secretly removed by Sockowitz from the Clinton Commerce Department and stored in his safe at the SBA.(371)

Obviously, Iridium stood to benefit enormously from the sensitive satellite encryption and telecommunications data that Sockowitz apparently removed from his safe at the Clinton Commerce Department and later kept in his safe at the SBA. Also, Fitz–Pegado seemingly had few qualifications for either her Clinton Commerce Department position, or her Iridium position, and ostensibly was hired because she was a close confidante of Secretary Brown and had accompanied him on trade missions.(372) It is more likely that Fitz–Pegado and her staff were extremely attractive to Iridium and its foreign joint-venture partners because they had access to top-secret, classified national security information while at the Clinton Commerce Department.

The Clinton Administration's transfer to the Commerce Department of the power to control exports of highly sensitive technology, without even minimally adequate measures to properly protect that information, raises serious national security questions. Moreover, the revolving door uncovered by Judicial Watch raises the additional concern that highly sensitive information may have already been compromised. Were the individuals at the Clinton Commerce Department approving technology transfers to China on behalf of, or to aid companies they planned to work for after leaving the government?

C. The Infamous 1994 Trade Mission Trip to China

Press reports indicate that the Clinton White House expended substantial effort on the 1994 trade mission to China.(373) The most likely reason for this substantial effort is because during the trip, the Lippo Group, John Huang's former employer, the Chinese Government, and Entergy Corporation, a company with offices in Arkansas, successfully concluded negotiations for the building of a power plant in China.(374) According to Ms. Hill, Secretary Brown was ordered by Clinton to further the negotiations on behalf of Huang's Lippo Group. In attendance on the China trip were Melinda Yee, the mission's official note-taker who later testified at her Judicial Watch deposition that she destroyed all of her notes, Ira Sockowitz, who would later remove classified satellite encryption data and classified national security intelligence on China, Russia and India from his office at OGC, and Bernard Schwartz, Chief Executive Officer of Loral.(375)

Sockowitz reportedly claimed that he did not recall seeing Huang or Yee on the trip, but did recall sitting next to Bernard Schwartz at a dinner in Beijing with Chinese officials.(376) Huang reportedly pushed for Schwartz to be on the China trip, and Secretary Brown reportedly arranged a meeting between Schwartz and a top official of China's Ministry of Post and Telecommunications.(377) Schwartz later recalled that the meeting "helped open doors that were not open before."(378) Soon after the trip, Schwartz won the satellite transmission rights for a multi-billion dollar mobile telephone network in China.(379) Schwartz also reportedly lobbied hard to get satellite export control authority moved from the State Department to Commerce, and contributed heavily to the Democratic Party in the process. Indeed, he has provided some $1.9 million to Democrats since 1992, and was the party's largest, single donor in 1997.

In the months before Loral received the Clinton Administration's permission to launch a satellite from China, Schwartz reportedly attended three events inside the White House with President Clinton.(380) He was also under scrutiny at the time for earlier assistance to China that U.S. officials feared improperly aided the com-

munist country's missile program. Some believe Loral may well have passed sensitive satellite launch data to China Aerospace, an entity that is controlled by the People's Liberation Army, which, perhaps not coincidentally, is also an owner of Iridium. In fact, the Pentagon recently reported that Loral's data disclosure "harmed" national security.

D. Commerce Official's Diaries Detail Information of "State Secrets"

In addition to the top secret documents taken by Ira Sockowitz from the Clinton Commerce Department,(381) Judicial Watch also uncovered that Secretary Brown's Chief of Staff, William Ginsburg, recorded classified information in "personal" diaries he kept in his office. The Clinton Administration itself admits that Ginsberg's allegedly "personal" diaries detailed "state secrets," including information on satellite surveillance, intelligence personnel and capabilities, and notes of a meeting of the National Security Council on an unnamed foreign country, among other "national security" information.(382) The similarities between the contents of the diaries and the materials taken by Sockowitz, notably the secret satellite information, are striking.

Ginsburg's 12-volume diaries, consisting of 3,600 pages, could prove to be the "Rosetta stone" of how the Clinton Commerce Department operated under Secretary Brown. The diaries detail John Huang's attempts to maintain a security clearance after leaving the Clinton Commerce Department,(383) and concerns about Clinton donor/China trade mission participant Bernard Schwartz of Loral. The Associated Press recently reported a key detail in the Ginsburg diaries concerning Schwartz's connection to the Clinton Commerce Department:

> Sometimes the relationship was a little too close for comfort.
>
> When Loral was in the process of buying Unisys Corp.'s defense division in 1995, the Commerce Department's chief of staff [William Ginsberg] wrote in his diary of concerns that a big donor like Schwarz might be seeking an audience with top department officials at a time when he needed to resolve a federal contract dispute involving Unisys during the deal.
>
> "Key: not to talk to Loral (Bernard Schwartz) re this," then-Commerce chief of staff William Ginsberg wrote.(384)

The Ginsberg diaries are currently in limbo, as the Clinton Commerce Department and Ginsberg "fight" over whether the diaries belong to the government or to Ginsberg personally.(385) In the meantime, it is "beyond dispute that a top Clinton Commerce Department official was recording top secret information into what he considered at the time to be his personal diaries, which he later removed without authorization from the Department. And as with the secreting of top secret data by Ginsberg's colleague Ira Sockowitz, this potentially serious breach of national security was uncovered only through Judicial Watch's refusal to be thwarted by the Clinton Administration's obstruction of justice in this case. It was not discovered by Janet Reno and her Justice Department.

E. More Chinese Ties—Johnny Chung.

Another Clinton donor tied to the Chinese Government is Johnny Chung. Chung recently admitted that he funneled at least $100,000 of the $300,000 he received from Chinese military intelligence to Democrat causes in the summer of 1996. The conduit for the money was Liu Chao-ying, whose father was the head of China's military at the time the donations were made to the DNC.(386)

Chung likely achieved his China connections through the Clinton Commerce Department. According to *The Washington Post,* investigators have searched through "fragments of data gathered from U.S. intelligence surveillance intercepts and business records" to trace the relationship between Chung and his Chinese military patrons:

> The documents also trace the history of their partnership, showing how Chung's political donations—which ultimately totaled $366,000 and were all eventually returned by the Democratic National Committee—led directly to meetings with Commerce Department officials. They suggested he attend a U.S. trade mission in Beijing, where Chung was introduced to senior Clinton administration officials, as well as the network of Chinese executives that would eventually include Liu.
>
> * * * * *
>
> The same month as his donation to the party, Democratic operatives introduced Chung to then-Deputy Assistant Commerce Secretary Jude Kearney, who in turn suggested that Chung join a Commerce Department trade mis-

> sion to China, according to Chung's proposed testimony—or proffer—to the Senate investigators. (Kearney said through an attorney that he did not recall making that suggestion, but did not dispute Chung's account.)
>
> The trip was Chung's first visit to China. Indirectly, it led to Chung's meeting with Liuand, in a previously unreported twist on the campaign finance scandal, to his hooking up with another Democratic fund-raiser, Yah Lin "Charlie" Trie, who was indicted earlier this year on charges that he illegally funneled foreign money to the Democrats.
>
> Chung made the trip at his own expense and was not listed as a member of the official U.S. delegation, but Kearney met him at the Beijing airport and escorted him to a restaurant where they met Trie's wife, Chung's proffer said. Kearney then took Chung to a hotel where they met then-Commerce policy official Melinda Yee, the proffer said. Chung later attended functions where he met with government officials and executives from the United States and China, and had his picture taken with Commerce Secretary Ronald H. Brown.(387)

Clearly, the Clinton Commerce Department trade mission to China in 1994 was a confluence of illegal fundraising and illicit deal-making—which lead eventually to likely breaches of national security including a massive attempt by a foreign power to subvert the electoral process in the United States. At best, this is serious malfeasance by the Clinton Administration. At worst, and more likely, the Clinton Administration's disinterest in breaches of national security was purposeful—so as to allow the campaign fundraising operation run out of the Clinton White House and Commerce Department to proceed unchecked. It is thus clear that the campaign fundraising abuses at the Clinton Commerce Department, ordained and then covered-up by the Clinton White House, gave rise to likely breaches of national security.

F. More Chinese Ties—Charlie Trie

Yet another Clinton donor with links to the Clinton Commerce Department is Charlie "Yah Lin" Trie, who is under investigation for funneling illegal foreign donations to the DNC.(388) Trie also helped the Chinese communist arms dealer Wang Jun to gain access to a fundraising coffee with President Clinton.(389)

Documents uncovered by congressional investigators demonstrate the nexus of money, access and China at the Clinton Commerce Department:

> A key ally [of Trie's], according to the documents, was Jude Kearney, a deputy assistant secretary in the Commerce Department's International Trade Administration.
>
> In October 1993, Trie helped shepherd Kearney, a fellow Arkansan, around China.
>
> "It was very helpful to have someone around who knew the ropes," Kearney wrote Trie after the trip.
>
> In June 1994, Kearney joined Trie's business associates and guests at a table at a Democratic National Committee fund-raising dinner while Trie sat at Clinton's table. That fall, according to the documents, Kearney supported a request by Trie to host a party for the participants on a U.S. trade mission to China. Kearney said last year he couldn't recall whether Trie actually ever hosted the party. In February 1995, Trie sat at first lady Hillary Rodham Clinton's table at another Democratic fund-raiser.
>
> The documents show that in September 1995, Kearney asked the U.S. Embassy in Beijing to invite Trie to events with Mrs. Clinton during her trip to China. Upon Trie's return to the United States, he attended a White House dinner with other large Democratic givers, including postal union leader Moe Biller, Miramax Films co-chairman Harvey Weinstein and oil executive Roger Tamraz, who was raising money for Democrats while being wanted in Lebanon on bank fraud charges.
>
> Later Trie joined a Commerce Department discussion of Asian issues with the chief executive officers of Boeing, Lockheed Martin and other companies and such federal policymakers, including Deputy Commerce Secretary David Barram and Small Business Administrator Philip Lader. And in January 1996, Kearney and Trie both attended a meeting of the Chinese Association for Science and Technology.(390)

Judicial Watch uncovered that Trie had regular access to Deputy Assistant Secretary Kearney, meeting with him several times.(391) Kearney's secretary, Christine

Sopko, testified that the schedule and agenda for the 1994 trade mission to China was faxed to Trie from Kearney's office and that Trie, who had no security clearance, may have had access to classified documents in Kearny's office.(392) Even more worrisome is that Kearney's office in the Clinton Commerce Department had a back door through which individuals could come and go unseen by the staff outside.(393)

Trie is now under indictment for "purchas[ing] access to high-level government officials in the United States by contribution and soliciting contributions to the DNC."(394) The Clinton Justice Department, which issued the indictment, has yet to charge any of the officials who accepted or benefitted from Trie's bribes.

V. Conclusion

Judicial Watch will continue to pursue its investigation, but Congress must, nonetheless, act. The Clinton Commerce Department has essentially pled *nolo contendre* to Judicial Watch concerns about the shredding of documents, perjury, and the outright refusal to produce documents in response to court orders. In an extraordinarily desperate legal move, the Clinton Justice Department, speaking for the Clinton Commerce Department, asked the Court to close the Judicial Watch case by entering a judgement against *itself*. The Clinton Commerce Department has offered to do a "second search" for trade mission documents and pay Judicial Watch, using taxpayer money, at least $2 million dollars in attorneys' fees and costs. Judicial Watch will not be bribed, especially with taxpayer funds, and has opposed this Clinton Administration ploy to make the investigation into the illegal sale of trade mission seats go away.

Instead, Judicial Watch has asked the Court to begin immediate criminal contempt proceedings against those who have obstructed justice in this case—namely, Clinton agents Leon Panetta, John Podesta, Melissa Moss, Jude Kearney and others.

In the meantime, more documents corroborating that illegal fundraising occurred at the Clinton Commerce Department emerged just recently. The documents, memos from Clinton Commerce official Sally Painter (Melissa Moss's deputy in Commerce's Office of Business Liaison), are more "smoking guns." One memo, dated January 24, 1994, indicates that Painter "will be meeting with Eric Silden of the DNC on 1/24 to discuss key business types that we want for the database and other interactions that should take place."(395) Another document by Silden also confirms the DNC provided donor names to the Commerce Department.(396) The Associated Press reported:

> But in a Jan. 13, 1994, electronic-mail memo to his colleagues at the DNC, staff member Eric Silden reported that Commerce official Sally Painter had called "to ask for a list of candidates for a trade mission to Russia."
>
> Silden's e-mail suggested that DNC staffers use a list of suggested participants for a trade mission to Belgium as a starting point for coming up with a list for the Russia trip.(397)

Based in part on these new documents, the Court authorized a subpoena for more Commerce records and computers, and authorized the depositions of key Clinton fundraisers Terry McAuliffe and Marvin Rosen, among other DNC officials.(398) McAuliffe and Rosen were two of the Clinton fundraisers implicated in wrong-doing by Nolanda Hill in her court testimony on the trade mission sales.(399) The DNC will now have to turn over more documents that could further expose the DNC–Commerce–White House illegal fundraising apparatus.

A separate Judicial Watch case, against the Clinton-appointee-dominated Federal Election Commission ("FEC"), could also further expose the scheme to sell trade mission seats for political contributions to the light of day. Having already uncovered the sale of seats on Clinton Commerce Department trade missions, Judicial Watch filed a complaint with the FEC on August 26, 1996, to investigate and take appropriate action to redress this illegal activity. Without taking any action for a year and a half, the FEC casually dismissed Judicial Watch's complaint on December 15, 1997. As a result, Judicial Watch filed suit.

Ironically, while commencing controversial investigations into GOPAC and other alleged illegal Republican campaign finance abuses, the General Counsel of the FEC, Lawrence Noble—a partisan Democrat—moved to have Judicial Watch's complaint dismissed, claiming, with great bombast, that it was frivolous and, in echoes of prior acts of intimidation by the Clinton Administration, that Judicial Watch's Chairman, Larry Klayman, should be sanctioned.(400)

The Court strenuously disagreed and found that the FEC's inaction, in the face of serious allegations of bribery, were "inexplicable." The Court, in denying Mr. Noble's motion to dismiss and motion for sanctions, took the added step of entering judgment itself (*i.e., sua sponte*) against the FEC. In so doing, the Court gave the

FEC 120 days, or until early November 1998, to decide how it would handle Judicial Watch's allegations. The Court also noted that, "[f]or some reason [perhaps because its enforcement arm is run by a Democrat, General Counsel Lawrence Noble], the FEC is attempting to thwart a review of [Judicial Watch's] charges. . . ."(401)

Senator John McCain, the Chairman of the Senate Committee on Commerce, Science, and Transportation (which has oversight responsibility for the Clinton Commerce Department), has also recently expressed concern about the evidence of the sale of the Clinton Commerce Department seats and its link to national security:

> When the decision makers are cloaked in the shadows of impropriety, we lose confidence. When I see memos such as this one (MEMO RE WHITE HOUSE ACTIVITIES), advertising how favors such as inclusion in Department of Commerce trade missions can be bought for a campaign contribution, I can't help but wonder whether the same agency can be trusted to make responsible decisions regarding national security.(402)

A reasonable analysis of the documentary and testimonial evidence unearthed by Judicial Watch would indicate that President Clinton and First Lady Hillary Rodham Clinton were heavily involved in the theft of government resources to sell for contributions for President Clinton's re-election bid. This fundraising push, to the degree it involved individuals such as Clinton-hire John Huang and policies such Clinton-approved hi-tech transfers to China through Commerce, compromised our nation's security. The President's two White House deputies, then–Chief of Staff Leon Panetta and Deputy Chief of Staff John Podesta, ordered the late Commerce Secretary Ron Brown to cover-up these crimes. Clinton's agents at Commerce and the Department of Justice did their level best to accomplish this.

If it were not for Judicial Watch's exposure of John Huang; if it were not for Judicial Watch's refusal to walk away with $2 million in taxpayer dollars offered by Clinton's agents; if it were not for Judicial Watch's investigations that have uncovered key documents and witnesses such as Nolanda Hill, and if it were not for a diligent and alert Court, then the President, his appointees, and agents might have gotten away with this criminal enterprise.

The overwhelming evidence of President Clinton's illegal activities related to the Commerce trade mission sales are now before this Congress. We respectfully request, in the context of expected impeachment proceedings on other serious issues, that Congress consider whether the actions of this President and his appointees in this matter also warrant his impeachment and removal from office.(403)

PART IV

TRUST–GATE

Crimes and Other Offenses Relating to The Presidential Legal Expense Trust that Warrant Impeachment and Removal from Office of President Bill Clinton

The Presidential Legal Expense Trust (the "Trust") was established by private trustees on behalf of Bill and Hillary Clinton in June 1994.(404) It was allegedly established to pay the President's legal fees incurred in defending against the numerous scandals of his Administration, as well as the private litigation brought against him, *i.e.,* the Paula Jones lawsuit. In fact, the Trust was an illegal scheme, unlawfully soliciting and/or receiving something of value for the President, which violated the anti-bribery laws of the United States. Indeed, members of Congress have recognized the "grave legal and ethical questions" raised by the President's Trust.(405) In so doing, they pointed to the sweeping prohibition in 5 U.S.C. § 7353(a), which states that:

> [N]o Member of Congress or officer or employee of the executive, legislative, or judicial branch *shall solicit or accept anything of value*. . . .(406)

They also noted that the implementing regulations carrying this prohibition into effect make the point even clearer.(407) Those regulations address the standards of ethical conduct for employees of the Executive Branch, and state that "an employee shall not, *directly or indirectly, solicit or accept* a gift."(408) According to Congressman Cox and Congresswoman Pryce, "[i]t would be difficult to draft a clearer prohibition."(409)

It was also quite clear to most commentators at the time, including Paul Gigot, that influence peddlers would use the opportunity to effectively bribe the President and Mrs. Clinton:

> Now that President and Mrs. Clinton have established their Legal Expense Trust, I'm thinking about writing a check for $500. Since Mr. Clinton we will be informed of my gift, maybe I'll get that interview he's somehow always resisted. Come to think of it, if I doubled by gift to $1,000, maybe I'll get Hillary too.
>
> * * * * *
>
> Indeed, that's why Congress passed a law (5 U.S. Code 7363) that says executive branch officials can't "solicit or accept" gifts from people whose interests they might affect. In view of this ban, I asked a senior White House official for the defense fund's legal rationale.
>
> * * * * *
>
> All of this goes beyond law to the power and conduct of the presidency. By so blithely ignoring the law, the Clinton White House has again shown how easily it will cut ethical corners. And by begging for money, it undermines the president's credibility and demeans his office. Which is why someone else should try to restore presidential dignity. First someone could sue to test the legality of the defense fund.(410)

On August 4, 1994, Judicial Watch brought suit challenging the Trust, creatively alleging that the actions of the trustees, in providing advice to the President and Mrs. Clinton on the workings of the Trust, were tantamount to a federal advisory committee, and thus either needed to be completely open to public scrutiny, or shut down.(411)

Because the trustees chose not to make the Trust's operations public, Judicial Watch pressed its case to a conclusion. While finding that the Trust was not subject to the Federal Advisory Committee Act(412) because it was a private, not governmental, activity, the Honorable Royce C. Lamberth of the U.S. District Court for the District of Columbia ruled that it nevertheless raised "major public policy, legal and ethical questions," which he could not reach under his jurisdiction.(413)

Ironically, by finding the Trust to be a private activity, the Court effectively "indicted" it, as his ruling thrust it into the realm of criminal activity. Consequently, Judicial Watch requested that Attorney General Reno investigate the matter and appoint an independent counsel. She refused to do so.(414)

It was later discovered, as predicted, that the Trust was indeed a convenient conduit for attempted bribery. It eventually became known to the public that hundreds of thousands of dollars were being laundered into its accounts by Charlie Trie, money which came from foreign, possibly Communist Chinese sources.(415) As a result, the Trust was closed as of January 1, 1998.(416)

However, a few weeks later on February 17, 1998, a new Trust was established, which is even more illegal than the first.(417) The Office of Government Ethics (an office that serves at the pleasure of the White House) found that the first Trust could receive but not solicit; the second Trust now solicits as well.(418) Indeed, a number of fat-cat donors, including Hollywood moguls such as Steven Spielberg and Barbara Streisand, have pumped huge amounts of cash into the operation.(419) It is undoubtedly only a matter of time until it is again revealed that influence peddlers, such as Charlie Trie and his Chinese benefactors, have found a new way to infiltrate the second Trust. Indeed, at the time that Charlie Trie was laundering Chinese money into the first Trust, he was also seeking and obtaining confidential communications from the President, undoubtedly for his Chinese benefactors, about American intentions over the then-brewing international crisis in the Straits of Taiwan.(420)

That these defense funds were simply an illegal means to raise money through influence peddlers, and not a genuine attempt to pay the President's legal bills, was even conceded by presidential adviser Dick Morris, who correctly questioned why Bill and Hillary Clinton could not simply take out bank loans at market rates, and pay the loans back after they left office. Then, they will obviously benefit from multimillion dollar book deals, speaking engagements, and others sources of income, which will make them wealthy beyond expectations.

Last Sunday, *The Washington Post* reported Clinton's chief fundraiser, Terrence McAuliffe (who also participated, according to Nolanda Hill, in the illegal sale of seats on Commerce Department trade missions) has been enlisted to raise more illegal funds to pay a possible settlement in the Paula Jones lawsuit.(421) The President's "chutzpah" and penchant for being bought by illegal influence peddlers apparently knows no limits.

The legal defense funds of the Clintons are tantamount to a violation of the bribery provision of Section 4, Article 2 of the U.S. Constitution, which states:

Section 4—All civil offices forfeited for certain crimes

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.

"Bribery" is:

The offering, giving, receiving, or soliciting of any thing of value to influence action as official or in discharge of legal or public duty.

Black's Law Dictionary 239 (rev. 4th ed. 1968). The President has unlawfully solicited and received enormous sums of money and other things of value from persons who obviously want something in return. This is simply illegal.

CONCLUSION

In the last four years, Judicial Watch has uncovered substantial and credible evidence that warrants an impeachment inquiry concerning the activities of President Clinton and his agents. The serious violations of personal privacy rights, witness intimidation, national security breaches, and bribery, graft and obstruction of justice perpetrated by this Administration against the American people cannot be addressed and rectified through censure, or even impeachment, however. To prevent this from ever happening again, Congress should not only vote articles of impeachment, and convict the President, it must require that criminal prosecutions follow any such removal from office.

While Judicial Watch's cases and investigations are continuing, so too must the inquiries undertaken by, and in progress before, the U. S. Congress. Now is the time for all concerned Senators and Representatives to put partisan politics aside, and move aggressively and seriously to clean up the rampant corruption which is destroying the very fabric of our democratic government.

Respectfully submitted,

LARRY KLAYMAN,
Chairman & General Counsel.

THOMAS J. FITTON,
President.

ALLAN J. FAVISH,
Senior Attorney.

JUDICIAL WATCH, INC.

ENDNOTES

[1] Language borrowed from Articles of Impeachment Adopted by the Committee on the Judiciary of the House of Representatives, Summer 1974.

[2] Judicial Watch is a non-partisan, public interest law firm that uses the courts to fight corruption in the government and legal profession. *See* Summary of Judicial Watch Cases and Lists of Judicial Watch Depositions, attached collectively as Appendix Exhibit 1.

[3] Amended Complaint, *Dolly Kyle Browning, et al.* v. *William Jefferson et al.,* No. 98–1991 (D.D.C. filed September 14, 1998), attached as Appendix Exhibit 187.

[4] Complaint, *Alexander, et al.* v. *Federal Bureau of Investigation, et al.,* Nos. 96–2123/97–1288 (D.D.C. filed September 12, 1996/June 9, 1997) ("*Alexander* v. *FBI*"), attached as Appendix Exhibit 2.

[5] Jonathan Broder & Harry Jaffe, "Clinton's Sexual Scorched-Earth Plan," *Salon Magazine,* August 5, 1998 (emphasis omitted), attached as Appendix Exhibit 3.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Jamie Dettmer, "A National Lampoon," *Insight Magazine,* September 21, 1998, attached as Appendix Exhibit 4.

[10] *Id.*

[11] Edward Walsh, "Burton Fathered Child In Extramarital Affair," *The Washington Post,* September 5, 1998, at A1, attached as Appendix Exhibit 5.

[12] Stephen Talbot, "Newt's Glass House," *Salon Magazine,* August 28, 1998, attached as Appendix Exhibit 6.

[13] David Talbot, "This Hypocrite Broke Up My Family," *Salon Magazine,* September 16, 1998, attached as Appendix Exhibit 7.

[14] A record maintained in violation of this prohibition need not even be kept in a "system of records." *Boyd* v. *Secretary of the Navy,* 709 F.2d 684, 687 (11th Cir. 1983); *Clarkson* v. *IRS,* 678 F.2d 1368, 1373–77 (11th Cir. 1982); *Albright* v. *United States (I),* 631 F.2d 915, 918–20 (D.C. Cir. 1980).

[15] Memorandum Opinion at 3–7, *Alexander* v. *FBI,* June 12, 1997, attached as Appendix Exhibit 8.

[16] *Clarkson* v. *IRS,* 678 F.2d 1368, 1372 (11th Cir. 1982); *Murphy* v. *NSA,* 2 Gov't Disclosure Serv. (P–H) ¶ 81,389, at 82,036–37 (D.D.C. September 29, 1981); *see also* OMB Guidelines, 40 Fed. Reg. 56,741, 56,742 (1975).

[17] Secret Service WAVES Logs, attached as Appendix Exhibit 9.
[18] House Comm. On Gov't Reform and Oversight, Investigation into the White House and Dept. of Justice on Security of FBI Background Files, H.R. Doc. No. 862, 104th Cong., 2nd Sess. 62–65 (1996) ("House Report"), attached as Appendix Exhibit 10.
[19] House Report at 55, 59, attached as Appendix Exhibit 10.
[20] Defendant's Response to Request #3, *Alexander* v. *FBI,* (showing requests by White House personnel for access to FBI background investigation files or summary reports on former Reagan and Bush Administration appointees and employees, the dates requested and the dates returned), attached as Appendix Exhibit 11.
[21] George Lardner, Jr., "White House Contradicted on FBI Files," *The Washington Post,* George Lardner, Jr., October 5, 1996, at A1, attached as Appendix Exhibit 12.
[22] Deposition of Marl Anderson at 354–360, May 7, 1998 ("Anderson Depo."), attached as Appendix Exhibit 13.
[23] *Id.* at 287–89.
[24] Office of Personnel Security Logs, attached as Exhibit 13 to Anderson Depo., attached as Appendix Exhibit 14.
[25] Lucianne Goldberg, Linda Tripp's literary agent, confirmed this in part to CBS News on July 6, 1998. *See* CBS News Transcript, Monday, July 6, 1998, attached as Appendix Exhibit 15. Ms. Goldberg also has routinely discussed Ms. Tripp's knowledge of "Filegate" on Fox News Channel.
[26] Brian Blomquist, "Tripp: Telling the Truth's Very Easy," *New York Post,* July 1, 1998, attached as Appendix Exhibit 16.
[27] Tony Snow, "Tripp: 'Fear is a magnificent motivator,'" *The Detroit News,* Monday, August 3, 1998, attached as Appendix Exhibit 17 .
[28] Don Van Natta, Jr. & Francis X. Clines, "Starr Finally Confronts His Target," *The New York Times,* August 17, 1998, attached as Appendix Exhibit 18.
[29] Williams & Connolly Press Release, attached as Appendix Exhibit 19.
[30] Deposition of Terry Lenzner at 90–91, March 13, 1998 ("Lenzner Depo."), attached as Appendix Exhibit 20.
[31] *Id.* at 85–90.
[32] Timothy J. Burger, "Freeh to FBI: Beware of Active Alumni," *Legal Times,* attached as Appendix Exhibit 21.
[33] Lenzner Depo. at 70–78, 284–85, attached as Appendix Exhibit 20. Among members of the judiciary Lenzner has apparently investigated are Justice Clarence Thomas, Judge Robert Bork and other judges who work in the District of Columbia. *Id.* at 284–86.
[34] *Id.* at 67–85, 231–244.
[35] *Id.* at 362; *see also id.* at 364 (Lenzner admitting, however disingenuously, that he had not been retained to investigate Judicial Watch, but refusing to answer whether he had been retained to investigate Landmark Legal Foundation).
[36] Matt Beer, "As GOP Calls for Probes, Hyde Scoop Source Exposed," *San Francisco Examiner,* September 18, 1998, at A6, attached as Appendix Exhibit 22.
[37] Motion of President Clinton to Intervene, *Alexander* v. *FBI,* August 31, 1998, attached as Appendix Exhibit 23.
[38] Transcript of Weekly Roundtable at 2–3, February 8, 1998, attached as Appendix Exhibit 24.
[39] *See* excerpt from Seymour M. Hersch, *The Dark Side of Camelot,* at 387–411, attached as Appendix Exhibit 25.
[40] The Court sharply rebuked Stephanopoulos after he obviously failed to search for documents responsive to the subpoena *duces tecum* Judicial Watch served on him, but falsely testified at deposition that he had. "This leads the court to conclude that Stephanopoulos failed to conduct any search for responsive documents and did so without explanation, and that some of his deposition testimony on this point is not truthful." Order at 25 n.4, *Alexander* v. *FBI,* May 28, 1998, attached as Appendix Exhibit 26. In addition to having been found to have lied to the Court, Stephanopoulos was also ordered to be redeposed, and to pay Judicial Watch's attorneys' fees and costs. *Id.* at 26.
[41] Stephanopoulos still maintains close contact with officials of the White House and allies such as James Carville, with whom he speaks at least several times a day. Deposition of George Stephanopoulos at 43–44, March 9, 1998 ("Steph. Depo."), attached as Appendix Exhibit 27. He appears to be a conduit of information from the White House to the public, using his mantle at ABC and Newsweek in part to broadcast White House threats.
[42] Jane Mayer, "Portrait of a Whistleblower," *The New Yorker,* at 34, March 23, 1998, attached as Appendix Exhibit 28.
[43] Dick Morris, "Bill's Secret Police Strike Again," *New York Post,* March 17, 1998, attached as Appendix Exhibit 29.
[44] Deposition of Clifford Bernath at 270:9–10, 319:19–320:16, April 30, 1998 ("Bernath Depo."), attached as Appendix Exhibit 30.
[45] *Id.* at 319:19–320:16.
[46] *Id.* at 321:2–7.
[47] Transcript of Motions Hearing at 43–45, *Alexander* v. *FBI,* April 30, 1998, attached as Appendix Exhibit 31.
[48] Deposition of Kenneth Bacon at 195:4–196:12, May 15, 1998 ("Bacon Depo."), attached as Appendix Exhibit 32.
[49] *Id.* at 211:4–22.
[50] *Id.* at 236:6–8.
[51] *See* transcript of *Fox News Sunday* at 9, April 26, 1998, attached as Appendix Exhibit 33.
[52] *Id.*
[53] *Id.*
[54] *Id.*

[55] Bacon Depo. at 354:14–20.
[56] *Id.* at 362:20–363:15.
[57] *Id.* at 364:02–367:09.
[58] *Id.* at 301:1–20.
[59] *Id.* at 296:20–298:7.
[60] Deborah Orin & Brian Blomquist, "Pentagon Admits Leaking Tripp's Personnel Files," *New York Post,* March 18, 1998, attached as Appendix Exhibit 34.
[61] Memorandum Opinion at 38, *Alexander* v. *FBI,* July 10, 1998, attached as Appendix Exhibit 35.
[62] *Id.*
[63] Bacon Depo. at 388:2–3, attached as Appendix Exhibit 32.
[64] *Id.* at 385:6–388:3.
[65] Bill Sammon, "Tripp Leak Violated Policy at Pentagon," *The Washington Times,* June 8, 1998, attached as Appendix Exhibit 36.
[66] Bacon Depo. at 387:7–9, attached as Appendix Exhibit 32.
[67] Defendant's Response to Request #3, *Alexander* v. *FBI* (showing requests by White House personnel for access to FBI background investigation files or summary reports on former Reagan and Bush Administration appointees and employees, the dates requested and the dates returned), attached as Appendix Exhibit 11.
[68] "Text of Linda Tripp's Remarks," *The Washington Post,* July 29, 1998, attached as Appendix Exhibit 37.
[69] Deposition of Terry Good at 226–27, 257, 273–74, 277, 279, 282–85, June 30, 1998 ("Good Depo."), attached as Appendix Exhibit 38.
[70] *Id.* at 273:22–274:13.
[71] Bill Sammon, "White House Combed Tripp File as Scandal was Breaking," *The Washington Times,* July 17, 1998, at A10, attached as Appendix Exhibit 39.
[72] *Id.*
[73] Good Depo. at 189, 226–27, 257, 265–66, attached as Appendix Exhibit 38.
[74] *Id.* at 257, 273–74, 277–81, 284–85.
[75] Peter Baker, "Clinton Told Jones Team He Had No Willey Notes," *The Washington Post,* March 29, 1998, at A1, attached as Appendix Exhibit 40.
[76] Press Briefing of Mike McCurry at 6, March 17, 1998, attached as Appendix Exhibit 41.
[77] Deposition of James Carville at 239:10–240: 17, March 16, 1998 ("Carville Depo."), attached as Appendix Exhibit 42.
[78] Deposition of Thomas F. McLarty, III at 261:6–262: 17, August 5, 1998 ("McLarty Depo."), attached as Appendix Exhibit 43.
[79] Excerpt from President Clinton's Grand Jury Testimony at 8, August 17, 1998, as published by *The Washington Post,* attached as Appendix Exhibit 44.
[80] *Id.* at 9 ("But, now when '60 Minutes' came with the story and everybody blew it up, I thought we would release it.").
[81] *Id.* at 8.
[82] In January, 1998, Carville publicly "declared war"on Independent Counsel Kenneth Starr. *See* Transcript of *Meet the Press* at 16, January 25, 1998, attached as Appendix Exhibit 45.
[83] The Court strongly rebuked Carville and his counsel for their efforts to delay Carville's deposition, finding that they had tried to mislead the Court: "In light of the entire panoply of facts currently before the court, the only logical conclusion this court can reach is that [Carville's counsel] and Carville sought to mislead this court from the outset and to delay this deposition. There is simply no other explanation as to why Marsh [of the law firm of McDaniel and Marsh] and Carville have not been completely forthcoming with the court from the outset of this unnecessary travail." Memorandum and Order at 12–13, *Alexander* v. *FBI,* March 13, 1998, attached as Appendix Exhibit 46.
[84] Documents from the files of Carville's EIP on Starr, Aldrich, Scaife and Sipple, attached collectively as Appendix Exhibit 47.
[85] *Id.*
[86] Proposal Outline and EIP's Next Target: Dan Burton, EIP Memos to Carville, attached as Appendix Exhibit 47.
[87] Carville Depo. at 194:20–195:14, 256:5–15, attached as Appendix Exhibit 42.
[88] Deposition of Thomas P. Janenda at 9:10–10:14, 19:14–20:1, 55:21–57:15, 147:6–148:17, 261:16–262:2, April 16, 1998 ("Janenda Depo."), attached as Appendix Exhibit 48.
[89] Deposition of Lanny Davis at 28:20–78:8, July 30, 1998 ("Davis Depo."), attached as Appendix Exhibit 49. Contrary to impressions he provides on television, Mr. Davis remains a close Clinton adviser to this day. Robert G. Kaiser & John F. Harris, "White House Gets Outsiders' Advice," *The Washington Post,* September 26, 1998, attached as Appendix Exhibit 50.
[90] *Id.* at 195:6–197–15.
[91] *Id.* at 197:16–200:2.
[92] *Id.* at 200:5–7.
[93] *Id.* at 216:16–217:8.
[94] *Id.* at 221:14–16.
[95] *Id.* at 224:17–225:1.
[96] *Id.* at 233:19–234:3. Davis later acquired the help of interns to help maintain these files, which were kept in a file drawer and in a gray filing cabinet in his office. *Id.* at 201:22–202:21, 207:19.
[97] *Id.* at 219:13–221:8–13, 236:2–12, 239:5–11.
[98] *Id.* at 195:14–16, 221:18–21, 224:20–225:1, 236:5–6.
[99] *Id.* at 196:7–197:15.
[100] *Id.* at 196:14–19.
[101] *Id.* at 256:14–20.

[102] *Id.* at 204:17–206:1, 237:10–238:22. Davis also admitted to disclosing information from Starr's file to persons inside the Clinton White House. *Id.* at 207:1–9.
[103] *Id.* at 241:15–242:3.
[104] Robert G. Kaiser & John F. Harris, "White House Gets Outsiders' Advice," *The Washington Post,* September 26, 1998, attached as Appendix Exhibit 50.
[105] Deposition of Harold Ickes at 386–436, May 21, 1998 ("Ickes Depo."), attached as Appendix Exhibit 51; *Id.* at Exhibit 11.
[106] William Safire, "Unclosed Filegate, On a Burner Too Far Back," *The New York Times,* July 23, 1998 ("Starr has never come to closure. Years passed. . . . Fortunately for the public interest in privacy, an organization called Judicial Watch launched a class-action suit in behalf of people whose files had been unlawfully examined."), attached as Appendix Exhibit 52.
[107] McLarty Depo. at 47:15–19, attached as Appendix Exhibit 43.
[108] Good Depo. at 296–301, 344, attached as Appendix Exhibit 38.
[109] Deposition of Mandy Grunwald at 138, April 23, 1998 ("Grunwald Depo."), attached as Appendix Exhibit 53.
[110] Geraldo Rivera routinely boasts about his "Presidential sources."
[111] The above substantial and credible evidence shows the likely violation of the following federal laws: 5 U.S.C. § 552a (the Privacy Act), 18 U.S.C. § 1503 (obstruction of justice), 18 U.S.C. § 1505 (obstruction of proceedings before departments, agencies, and committees), 18 U.S.C. § 1510 (obstruction of criminal investigation), 18 U.S.C. § 1512 (tampering with a witness, victim, or an informant), 18 U.S.C. § 1513 (retaliating against a witness, victim, or an informant), 18 U.S.C. § 1621 (perjury), 18 U.S.C. § 1622 (subornation of perjury), and 18 U.S.C. § 2071(b) (concealment, removal, or mutilation of public records).
[112] WJC publishes news at its sophisticated Internet site (http://www.WorldNetDaily.com).
[113] "Scandals: Misusing the IRS . . .," *New York Post,* February 2, 1997, attached as Appendix Exhibit 54.
[114] "IRS Clears WJC in 'Political' Audit," WorldNetDaily.com, June 16, 1997, attached as Appendix Exhibit 55.
[115] *Western Center for Journalism, d.b.a. Western Journalism Center* v. *Thomas Cederquist, et al.*, No. S–98–0872 (E.D. Cal. filed May 13, 1998), attached as Appendix Exhibit 56. The lawsuit is before the United States District Court in Sacramento, California, near WJC's headquarters in Fair Oaks, California.
[116] Joseph Farah and Sarah Foster, "Just How Political Has IRS Become? At Least 20 Groups Critical of Clinton Targeted," WorldNetDaily.com, June 24, 1997, attached as Appendix Exhibit 57.
[117] "Organizations Targeted by IRS," WorldNetDaily.com, June 24, 1997, attached as Appendix Exhibit 58.
[118] Rowan Scarborough, "PBS Story on IRS Audits Joins Media Called Not 'Credible,'" *The Washington Times,* January 25, 1997, attached as Appendix Exhibit 59.
[119] Investigation of the White House Travel Office firings and Related Matters, Committee on Government Reform and Oversight, H.R. Rep. No. 104–849, 104th Cong., 2d. Sess. 102–108 (1996) ("H.R. Travel Office Report"), attached as Appendix Exhibit 60.
[120] *Id.* at 28–29, 102–108, attached as Appendix Exhibit 61.
[121] *Id.*
[122] *Id.*
[123] Information Document Request, U.S. Department of the Treasury—IRS, August 16, 1996, attached as Appendix Exhibit 62.
[124] Joseph Farah, "The White House Plays Politics With the IRS," *The Wall Street Journal,* October 22, 1996, attached as Appendix Exhibit 63.
[125] Jane Sherburne, "Task List," December 13, 1994, republished in H.R. Travel Office Report at 759–71, attached as Appendix Exhibit 64.
[126] *Id.* at 765.
[127] John F. Harris & Peter Baker, "White House Memo Asserts a Scandal Theory," *The Washington Post,* January 10, 1997, at A1, attached as Appendix Exhibit 65.
[128] Overview, attached as Appendix Exhibit 66.
[129] Sarah Foster, "IRS 'Political' Audit Kills Journal," WorldNetDaily.com, July 21, 1997, attached as Appendix Exhibit 67.
[130] The above substantial and credible evidence shows the likely violation of the following federal laws: 26 U.S.C. § 7212 (attempts to interfere with administration of internal revenue laws), 18 U.S.C. § 1512 (tampering with a witness, victim, or an informant), and 18 U.S.C. § 1513 (retaliating against a witness, victim, or an informant).
[131] Affidavit of Nolanda Butler Hill ("Hill Affidavit") at para. 7, January 17, 1998, attached as Appendix Exhibit 68.
[132] Transcript of Evidentiary Hearing at 66–67, 76, *Judicial Watch, Inc.* v. *U.S. Department of Commerce,* No. 95–0133 (D.D.C. March 23, 1998) ("March 23, 1998 Hearing"), attached as Appendix Exhibit 69.
[133] Commerce trade missions and so-called "business development conferences" included trips in 1993 to Tokyo, Saudi Arabia, France, Venezuela, South Africa, Mexico, and Russia. In 1994, they included trips to the Middle East, Russia (two trips), Poland, South Africa, Latin America, China, Indonesia, Northern Ireland and Ireland, and Belgium. In 1995, they included trips to India, the Middle East, Belgium, Spain, China, Latin America, Senegal, France (two trips), Switzerland, the Netherlands, Germany, the Middle East, Spain, Ireland, South Africa, Bosnia and Croatia, and Brazil, Argentina, and Chile.
[134] Susan B. Garland, "Clinton Cozies Up to Business—Corporate Gifts to the DNC Have Reached Unprecedented Levels," *Business Week,* September 12, 1994; Helene Cooper & Rick Wartzman, "Traveling Pals—How Ron Brown Picks Who Joins His Trips Abroad Raises Doubts—Commerce Chief Takes Along Many Big Contributors to Democratic Groups," *The Wall Street Journal,* September 9, 1994, attached collectively as Appendix Exhibit 70.

[135] Complaint for Declaratory and Injunctive Relief, *Judicial Watch, Inc.* v. *U.S. Department of Commerce,* No. 95–0133 (D.D.C. filed January 19, 1995) ("*Judicial Watch* v. *Commerce*"), attached as Appendix Exhibit 85.

[136] Chronology: A History of Clinton Administration Obstruction in the Continuing Suit Which Uncovered John Huang, the Unauthorized Removal of Classified Satellite Encryptions and CIA Reports from the Commerce Department, and Caused the Chinagate Scandal at 23–24, *Judicial Watch* v. *Commerce,* May 26, 1998, attached as Appendix Exhibit 71.

[137] "The Managing Trustee Program" and "Memorandum from Martha Phipps to Ann Cahill Re: White House Activities," May 5, 1994, collectively attached as Appendix Exhibit 72.

[138] "DNC Managing Trustee Events & Member Requirements," attached as Appendix Exhibit 73, *see also* Byron York, "The Alexis Nexis," *The American Spectator,* March 1997, attached as Appendix Exhibit 74.

[139] DNC "Minority Donors List," attached as Appendix Exhibit 75.

[140] Clinton Commerce Department Office of Business Liaison Memos (from Sally Painter to Melissa Moss), attached collectively as Appendix Exhibit 76.

[141] "Memorandum from Eric Silden Re: Trade Mission to Russia," January 13, 1994, attached as Appendix Exhibit 77.

[142] On Friday, September 25, 1998, the Court ordered that motions for orders to show cause be issued and served on Leon Panetta, John Podesta, and others. Recently, on September 11, 1998, the Court also ordered discovery of the DNC and Messrs. Rosen and McAuliffe, among others.

[143] Defendant's Memorandum of Points and Authorities in Support of Motion for a Protective Order at 2–3, *Judicial Watch* v. *Commerce,* April 9, 1997, attached as Appendix Exhibit 78.

[144] Huang lied about most of these issues in his Judicial Watch deposition and would normally have faced prosecution for perjury, but for Janet Reno's Justice Department. The Clinton Justice Department has not even questioned Huang. Judicial Watch will seek accountability for perjury by Huang in its lawsuit. *See* "John Huang: In His Own Words," *Fox News,* October 24, 1997, attached as Appendix Exhibit 79.

[145] Nolanda Hill would later tell reporter and Judicial Watch adviser Andy Thibault that "[t]he waiver signature and the [Wang Jun] meeting with Ron [Brown] happening the same day was significant—it was no coincidence. Ron [Brown] assured Clinton he had taken care of Charlie Trie's people. That is the real story." See Andy Thibault, "What Ron Brown Said About the Chinese" at 2, NewsMax.com, September 23, 1998, attached as Appendix Exhibit 80.

[146] Secretary Brown himself was scheduled to testify in the Judicial Watch lawsuit but was killed in Croatia April 3, 1996, before he could do so.

[147] March 23, 1998 Hearing at 55–56, attached as Appendix Exhibit 69.

[148] Hill Affidavit at para. 7, attached as Appendix Exhibit 68.

[149] March 23, 1998 Hearing at 58, attached as Appendix Exhibit 69.

[150] *Id.*

[151] Id. at 60–61.

[152] *Id.* at 76.

[153] *Id.* at 63.

[154] *Id.* at 66–67.

[155] *Id.* at 68–69.

[156] *Id.* at 99–100.

[157] Hill Affidavit at para. 11, attached as Appendix Exhibit 68.

[158] March 23, 1998 Hearing at 61, attached as Appendix Exhibit 69.

[159] *Id.*

[160] "DNC Managing Trustee Events & Member Requirements," attached as Appendix Exhibit 73; *see also* Byron York, "The Alexis Nexis," *The American Spectator,* March 1997, attached as Appendix Exhibit 74.

[161] "The Managing Trustee Program" and "Memorandum from Martha Phipps to Ann Cahill Re: White House Activities," May 5, 1994, attached collectively as Appendix Exhibit 72.

[162] *Id.*

[163] DNC "Minority Donors List," attached as Appendix Exhibit 75.

[164] "Memorandum from Eric Silden Re: Trade Mission to Russia," January 13, 1994, attached as Appendix Exhibit 77.

[165] "Tripping With the Secretary: Ron Brown's Foreign Trade Missions," The Center for Public Integrity Web Site, attached as Appendix Exhibit 81.

[166] Judicial Watch filed a third FOIA request on October 19, 1994, attached as Appendix Exhibit 82.

[167] Judicial Watch letter to Melissa Moss, October 19, 1994, attached as Appendix Exhibit 83.

[168] *Id.*

[169] *Id.*; Melissa Moss letter to Judicial Watch, October 19, 1994, attached as Appendix Exhibit 84.

[170] Judicial Watch letter to Melissa Moss, October 19, 1994, attached as Appendix Exhibit 83.

[171] March 23, 1998 Hearing at 114, attached as Appendix Exhibit 69.

[172] Complaint for Declaratory and Injunctive Relief, *Judicial Watch* v. *Commerce,* January 19, 1995, attached as Appendix Exhibit 85.

[173] Department of Commerce letter to Judicial Watch, April 4, 1995, attached as Appendix Exhibit 86.

[174] Order, *Judicial Watch* v. *Commerce,* May 16, 1995, attached as Exhibit 87.

[175] Communications from the Clinton White House to the DNC concerning the sale of seats on trades missions were later found in the files of former White House Chief of Staff Harold Ickes, as well as in the files of Alexis Herman, now the Secretary of Labor. *See* "The Managing Trustee Program" and "Memorandum from Martha Phipps to Ann Cahill Re: White House Activities," May 5, 1994, attached collectively as Appendix Exhibit 72.

[176] A *Vaughn* index essentially is an inventory of documents that the government has identified as being responsive to a FOIA request, but which the government claims are exempt from production under FOIA. In a proper *Vaughn* index, the government should provide the author, date and subject of an exempt document, along with other identifying information, and the reason why the document is being withheld. The purpose of a *Vaughn* index is to provide a Court with enough information about a document to determine whether it is properly being withheld.

[177] Memorandum and Order at 2, *Judicial Watch* v. *Commerce,* February 1, 1996, attached as Appendix Exhibit 88.

[178] *Id.* at 6, 8–9.

[179] Memorandum Opinion at 39, *Judicial Watch* v. *Commerce,* September 5, 1996, attached as Appendix Exhibit 89.

[180] *Id.* at 2–3.

[181] Hill Affidavit at paras. 8, 10, attached as Appendix Exhibit 68.

[182] Complaint at para. 9, *Judicial Watch* v. *Commerce,* January 19, 1995, attached as Appendix Exhibit 85.

[183] Excerpts of Weekly Reports from Commerce Secretary Ron Brown to White House Chief of Staff Leon Panetta, attached as Appendix Exhibit 90; *see also* March 23, 1998 Hearing at 78–79, attached as Appendix Exhibit 69.

[184] Hill Affidavit at para. 9, attached as Appendix Exhibit 68.

[185] March 23, 1998 Hearing at 88, attached as Appendix Exhibit 69.

[186] Excerpts of Weekly Reports from Commerce Secretary Ron Brown to White House Chief of Staff Leon Panetta, attached as Appendix Exhibit 90; *see also* March 23, 1998 Hearing at 78–79, attached as Appendix Exhibit 69.

[187] March 23, 1998 Hearing at 85–86, attached as Appendix Exhibit 69.

[188] Ironically, Judicial Watch had been scheduled to depose Secretary Brown the week of his Croatia trip. It was postponed at his request.

[189] *Id.* at 100–101.

[190] Declaration of Ronald H. Brown, March 14, 1996, attached as Appendix Exhibit 91.

[191] Transcript of Motions Hearing at 40–41, August 7, 1996, attached as Appendix Exhibit 92.

[192] March 23, 1998 Hearing at 38, 41, 61, attached as Appendix Exhibit 69; Hill Affidavit at para. 11, attached as Appendix Exhibit 68.

[193] March 23, 1998 Hearing at 41, attached as Appendix Exhibit 69.

[194] Judicial Watch depositions confirmed that documents from Secretary Brown's office were shredded by his assistants after his death. Videotaped Deposition of Barbara Schmitz at 11:02–11:03 a.m., October 9, 1996 ("Schmitz Depo."); Videotaped Deposition of Melanie Long at 3:54 p.m., October 10, 1996 ("Long Depo."); *see also* "Shredding Tears," *The American Spectator,* June 1996, attached as Appendix

[195] March 23, 1998 Hearing at 93–94, attached as Appendix Exhibit 69.

[196] *Id.* at 38–41, 61; Hill Affidavit at para. 11, attached as Appendix Exhibit 68.

[197] Declaration of Anthony Das at para. 3, March 10, 1995, attached as Appendix Exhibit 94.

[198] Deposition of Anthony A. Das at 17–19, March 27, 1996 ("Des Depo. I"), attached as Appendix

[199] *Id.* at 31–32, attached as Appendix Exhibit 96; Deposition of Anthony A. Das at 41, 43, 46–47, October 9, 1996 ("Des Depo. II"), attached as Appendix Exhibit 97.

[200] Das Depo. II. at 43, attached as Appendix Exhibit 98.

[201] Transcript of Motions Hearing at 38–39, *Judicial Watch* v. *Commerce,* August 7, 1996, attached as Appendix Exhibit 99.

[202] Declarations of Mary Ann McFate, April 6, 1995, June 6, 1995, June 7, 1995, July 17, 1995, March 29, 1996, August 23, 1996, October 17, 1996, November 13, 1996, March 5, 1997, and July 23, 1998, attached collectively as Appendix Exhibit 100.

[203] Deposition of Mary Ann McFate at 52, 59–60, October 15, 1996 ("McFate Depo."), attached as Appendix Exhibit 101.

[204] *Id.*

[205] Some of the persons, such as Ms. McFate, participating in the false declarations and other obstruction, recently received $10,000 cash awards from the Clinton Administration. Plaintiff's Praecipe, *Judicial Watch* v. *Commerce,* March 23, 1998, attached as Appendix Exhibit 102.

[206] Hill Affidavit at para. 11, attached as Appendix Exhibit 68.

[207] March 23, 1998 Hearing at 36, attached as Appendix Exhibit 69.

[208] Affidavit of Robert G. Adkins at para. 3, January 28, 1997, attached as Appendix Exhibit 103.

[209] Schmitz Depo. at 11:02–11:03 a.m.; Long Depo. at 3:54 p.m.; *see also* "Shredding Tears," *The American Spectator,* June 1996, attached as Appendix Exhibit 93.

[210] Videotaped Deposition of Dalia Traynham at 3:01–3:07 p.m., November 26, 1996 ("Traynham Depo.").

[211] Transcript of Status Call at 38–39, *Judicial Watch* v. *Commerce,* October 18, 1996, attached as Appendix Exhibit 104.

[212] *See, e.g.,* Videotaped Deposition of Laurie Fitz-Pegado at 16:11 p.m., July 18, 1997 ("Fitz-Pegado Depo."); Videotaped Deposition of James Hackney at 11:18–11:19 a.m., January 21, 1997 ("Hackney Depo."); Deposition of John Huang at 199–200, October 29, 1996 ("Huang Depo."), attached as Appendix Exhibit 105; Videotaped Deposition of Melissa Moss at 4:59 p.m., October 10, 1996 ("Moss Depo."); Deposition of Melinda Yee at 289–91, December 2, 1996 ("Yee Depo."), attached as Appendix Exhibit 106.

[213] Yee Depo. at 144–46, attached as Appendix Exhibit 106.

[214] *Id.* at 154–55, 58.

[215] *Id.* at 108–12.

[216] *See* Videotaped Deposition of David Rothkopf at 3:57–4:01 p.m., April 1, 1997 ("Rothkopf Depo.").

[217] Yee Depo. at 154–55, attached as Appendix Exhibit 106.

[218] *Id.* at 206–11, 225–26.
[219] *Id.* at 144–46, 154–55, 160, 208–12.
[220] George Archibald, *Id.* at 160–61, 168–71, 208–09, 212, attached as Appendix Exhibit 106; *see also* "Papers on Fund Raising Trashed, Note Taker Says," *The Washington Times,* December 6, 1996; "The Tangled Web, Continued," *The Washington Times,* December 17, 1996; and "Brown's Papers: The Chase Goes On," *Investor's Business Daily,* January 30, 1997, attached collectively as Appendix Exhibit 107.
[221] Memorandum and Order at 2, *Judicial Watch* v. *Commerce,* August 30, 1996, attached as Appendix Exhibit 108.
[222] Yee Depo. at 84–95, 141–44, 160–61, attached as Appendix Exhibit 106.
[223] *Id.* at 305–07; *see also* George Archibald, "Papers on Fund Raising Trashed, Note Taker says," *The Washington Times,* December 6, 1996, attached as Appendix Exhibit 107.
[224] Yee Depo. at 307–10, attached as Appendix Exhibit 106.
[225] Lesia Thornton's "Notes to File," attached as Appendix Exhibit 109.
[226] *Id.* at entry dated 10/20/94, 2:15 p.m.
[227] *Id.*
[228] Videotaped Deposition of John Ost :08–11:10 a.m., May 30, 1997 ("Ost Depo."); *see also* Brian Blomquist, "DNC Sought Trips for Big Donors: Ex-Commerce Aide," *New York Post,* June 28, 1997; and Jerry Seper ,"Ex-Commerce Official Testifies DNC Sent Trip-for-Donations List—Backs Key Part of Public Interest Firm Judicial Watch's Suit," *The Washington Times,* July 1, 1997, attached collectively as Appendix Exhibit 110.
[229] Ost Depo. at 11:08–11:10 a.m.
[230] DNC "Minority Donors List," attached as Appendix Exhibit 75.
[231] Jerry Seper, "Commerce Kept List of DNC Donors—Aide Backtracks on Department's Denials," *The Washington Times,* May 31, 1997; Associated Press, "Donors List at Commerce Called 'Personal Document'," *The Washington Post,* June 1, 1997; Jerry Seper, "Commerce Admits Keeping List of Donors," *The Washington Times,* June 15, 1997, attached collectively as Appendix Exhibit 111.
[232] Whatley Depo. at 11:36 a.m.; Kearny Depo. at 1:36–1:46 p.m.
[233] Associated Press, "Commerce Says List of Donors a Mystery," *The Times-Picayune,* June 1, 1997, attached as Appendix Exhibit 112.
[234] Traynham Depo. at 2:30–2:31, 2:36–2:37, 2:50–2:52 p.m.
[235] Transcript of Status Call at 27, *Judicial Watch* v. *Commerce,* June 27, 1997, attached as Appendix Exhibit 113.
[236] Rothkopf Depo. at 11:06–11:13 a.m.
[237] Moss Depo. at 2:41–2:52 p.m.
[238] Hill Affidavit at para. 13, attached as Appendix Exhibit 68.
[239] March 23, 1998 Hearing at 40–42, attached as Appendix Exhibit 69.
[240] March 23, 1998 Hearing at 108–09, attached as Appendix Exhibit 69.
[241] Ms. Hill confirmed the familiarity of Ms. Moss to the President. *Id.* at 113. She was also photographed by the press hugging the President at Secretary Brown's funeral.
[242] Letters and Memoranda from Clinton Commerce Department files, attached collectively as Appendix Exhibit 114.
[243] *Id.*
[244] Bob Woodward, "Findings Link Clinton Allies to Chinese Intelligence," *The Washington Post,* February 10, 1998 (Senate Governmental Affairs Committee "has 'unverified information' that Huang, the former Lippo [Group] executive and Democratic fund-raiser, may have a direct financial relationship with the Chinese [G]overnment."), attached as Appendix Exhibit 115.
[245] Huang Depo. at 163–64, 172–73, attached as Appendix Exhibit 105.
[246] *Id.* at 177–79, 194–99, 209–19.
[247] Huang Chronology at 3–10, attached as Appendix Exhibit 116; Associated Press, "Huang's Access to Secrets Was Underestimated—Actions at Commerce, Calls to Lippo Compared," *The Washington Post,* April 30, 1997; *see also* James Bennet, "For Democrats, All Kinds of Answers," *The New York Times,* December 30, 1996, attached collectively as Appendix Exhibit 117.
[248] Huang Depo. at 177–78, attached as Appendix Exhibit 105.
[249] Associated Press, "Huang's Access to Secrets Was Underestimated—Actions at Commerce, Calls to Lippo Compared," *The Washington Post,* April 30, 1997 ("The [Clinton Commerce] [D]epartment has identified 109 meetings in 1994 and 1995 attended by Huang and at which classified information 'might have been discussed. . . .'"), attached as Appendix Exhibit 117.
[250] Huang Depo. at 182–92, attached as Appendix Exhibit 105.
[251] *Id.* at 182–83, 190–92.
[252] *Id.*
[253] James Bennet, "For Democrats, All Kinds of Answers," *The New York Times,* December 30, 1996, attached as Appendix Exhibit 117.
[254] Videotaped Deposition of Janice Stewart at 10:59–11:00 a.m., March 19, 1997, ("Stewart Depo.").
[255] Plaintiffs Motion to Compel Attorney General Janet Reno to Obey a Subpoena for the Diaries of John Huang, Motion to Shorten Time to Respond, and Request for a Status Conference, *Judicial Watch* v. *Commerce,* July 21, 1997, attached as Appendix Exhibit 118; *see also* Plaintiffs Reply to Opposition of Department of Justice to Plaintiffs Motion to Compel and Request for Expedited Oral Argument, *Judicial Watch* v. *Commerce,* August 5, 1997, attached collectively as Appendix Exhibit 119.
[256] Judicial Watch Chairman and General Counsel Larry Klayman accused the Justice Department of leaking Hill's sealed affidavit and then retaliating against her. Assistant U.S. Attorney Bruce Heygi has yet to deny leaking the Hill affidavit to "Main" Justice. *See* Judicial Watch's Request, Memorandum, and Rule 108 Certification Concerning Expedited In Camera Conference on Newly Discovered Documents Bearing on Obstruction of Justice, *Judicial Watch* v. *Commerce,* September 9, 1998, attached as Appendix Exhibit 120.

[257] Hill Affidavit at para. 14, attached as Appendix Exhibit 68.
[258] Chronology: A History of Clinton Administration Obstruction in the Continuing Suit which Uncovered John Huang, the Unauthorized Removal of Classified Satellite Encryptions and CIA Reports from the Commerce Department, and Caused the Chinagate Scandal at 23–24, *Judicial Watch* v. *Commerce,* May 26, 1998, attached as Appendix Exhibit 71.
[259] *Id.*
[260] *Id.*
[261] *Id.*
[262] *Id.*
[263] Transcript of Arraignment at 7–8, March 20, 1998, attached as Appendix Exhibit 121.
[264] Videotaped Deposition of Christine Sopko at 10:20 a.m., July 2, 1997 ("Sopko Depo.").
[265] Sopko Depo. at 10:20 a.m.; *see also* Supplemental Notice to the Court, *Judicial Watch* v. *Commerce,* July 3, 1997 (noting that Sopko advised the Clinton Justice Department of the minority donors list as early as April 1, 1997), attached as Appendix Exhibit 122.
[266] *Id.*
[267] Transcript of Hearing at 8, *Judicial Watch* v. *Commerce,* April 4, 1997.
[268] *Id.* at 8.
[269] *Id.* at 8–9.
[270] *Id.* at 11–14.
[271] [Un]Sealed Praecipe Concerning Events Immediately Following Sealed Court Session of Evening of April4, 1997, *Judicial Watch* v. *Commerce,* April7, 1997.
[272] *Id.; see also* D.C. Rules of Professional Conduct, Rule 8.4(g) (November 1996) ("It is professional misconduct for a lawyer to . . . seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter."); Plaintiffs Opposition to Motion for Order to Show Cause Why Judicial Watch, Inc. and Larry Klayman Should Not Be Held in Contempt and Cross-motion for Attorneys Fees, Costs, and Other Such Relief the Court Deems Appropriate, *Judicial Watch* v. *Commerce,* June 17, 1997.
[273] Order, *Judicial Watch* v. *Commerce,* June 27, 1997, attached as Appendix Exhibit 123.
[274] March 23, 1998 Hearing at 84–85, attached as Appendix Exhibit 69.
[275] *Id.* at 100–01.
[276] Deposition of Barbara Fredericks at 143–44, 165–66, January 3, 1997 ("Fredericks Depo."), attached as Appendix Exhibit 124; Videotaped Deposition of Gordon Fields at 1:44–1:47 p.m., April 2, 1997 ("Fields Depo."); Videotaped Deposition of Judith Means at 10:35 a.m., 10:41–10:42 a.m., January 6, 1997 ("Means Depo."); Videotaped Deposition of Elise Packard at 10:38 a.m., January 9, 1997 ("Packard Depo.").
[277] March 23, 1998 Hearing at 93–94, attached as Appendix Exhibit 69; Declaration of Ronald H. Brown, March 14, 1996, attached as Appendix Exhibit 91.
[278] *Id.*
[279] Declaration of Ronald H. Brown, March 14, 1996, attached as Appendix Exhibit 91.
[280] Hill Affidavit at para. 11, attached as Appendix Exhibit 68; March 23, 1998 Hearing at 38–41, 61, attached as Appendix Exhibit 69.
[281] Lesia Thornton Memo, attached as Appendix Exhibit 109.
[282] Means Depo. at 2:13 p.m.
[283] Ost Depo. at 11:07–11:17 a.m.
[284] Means Depo. at 11:28 a.m.
[285] *Id.*
[286] Plaintiff's Request for a Status Conference During Week of June 9, 1997 or as Soon Thereafter as Possible, *Judicial Watch* v. *Commerce,* June 4, 1997, attached as Appendix Exhibit 125.
[287] Sopko Depo. at 10:20–21 a.m.
[288] *Id.*
[289] Fredericks Depo. at 108, 188–98, 204–07, attached as Appendix Exhibit 124; Means Depo. at 12:10 p.m.
[290] Schmitz Depo. at 3:01–3:07 p.m.
[291] Yee Depo. at 160, attached as Appendix Exhibit 106.
[292] Videotaped Deposition of Ira Sockowitz at 5:01–5:14 p.m., October 28, 1996 ("Sockowitz Depo."); Fields Depo. at 2:31–32 p.m.
[293] Videotaped Deposition of Andrea Torczon at 11:33 a.m., July 1, 1997 ("Torczon Depo.").
[294] *Id. at 11:01 a.m.*
[295] Videotaped Deposition of Ginger Lew at 4:08–4:09 p.m., March 12, 1998 ("Lew Depo.").
[296] Transcript of Status Call at 108, *Judicial Watch* v. *Commerce,* June 27, 1997, attached as Appendix Exhibit 126.
[297] *Id.* at 86.
[298] Indeed, while at a previous post at the Carter State Department, Ms. Lew, who was born in China, recommended the removal of diplomatic recognition for Taiwan, a position that President Carter later embraced. This provoked the ire of Senator Jesse Helms and others.
[299] Memorandum and Order at 2, *Judicial Watch* v. *Commerce,* February 1, 1996, attached as Appendix Exhibit 88.
[300] Fields Depo. at 2:14 p.m.
[301] March 23, 1998 Hearing at 8, attached as Appendix Exhibit 69.
[302] Paul Sperry, "How Honest is Justice's Probe?—DOJ Lawyers Have Ties to Fund-Raiser Huang," *Investor's Business Daily,* February 24, 1997; *see also* Paul Sperry, "Is Fund-Raising Probe Tainted—Reno's Tactics Look Suspicious: Ex-Prosecutors," *Investor's Business Daily,* April 15, 1997; "Vacuum at Justice," *The Wall Street Journal,* April 30, 1997; and "The Holder Hearing," *The Wall Street Journal,* June 12, 1997, attached collectively as Appendix Exhibit 127.
[303] Holder admitted that Secretary Brown recommended him for U.S. Attorney. "Vacuum at Justice," *The Wall Street Journal,* June 12, 1997, attached as part of collective Appendix Exhibit 127.

[304] Holder reportedly also has been offered a federal judgeship, perhaps even the next Supreme Court appointment.

[305] Transcript from NBC's "Meet the Press" Interview with Deputy Attorney General Holder at 4, May 24, 1998, attached as Appendix Exhibit 128.

[306] Defendant's Reply to Plaintiffs Opposition to Defendant's Motion for Referral of Cause to a District Judge or Magistrate Judge for Mediation at 4, *Judicial Watch* v. *Commerce,* April 28, 1997, attached as Appendix Exhibit 129.

[307] "The 99% Cover-Up," *Investor's Business Daily,* August 24, 1998, attached as Appendix Exhibit 130.

[308] Roberto Suro, "Reno Concedes Problems in Funds Probe," *The Washington Post,* October 16, 1997, attached as Appendix Exhibit 131.

[309] Stewart Depo. at 2:25 p.m.

[310] Lew Depo. at 4:29–4:32.

[311] Judicial Watch Deponents Questioned by FBI or Department of Justice, attached as Appendix Exhibit 132.

[312] Memorandum and Order, *Judicial Watch* v. *Commerce,* February 1, 1996; Order, *Judicial Watch* v. *Commerce,* March 21, 1996, attached collectively as Appendix Exhibit 133.

[313] Das Depo. I at 49–54, attached as Appendix Exhibit 96.

[314] Transcript of Motions Hearing at 54–57, *Judicial Watch* v. *Commerce,* August 7, 1996, attached as Appendix Exhibit 134.

[315] Toni Locy, "Commerce Penalized for Lawyer's Actions," *The Washington Post,* August 8, 1996, attached as Appendix Exhibit 135.

[316] Das Depo. I at 40–41, attached as Appendix Exhibit 96.

[317] Transcript of Status Call at 38, *Judicial Watch* v. *Commerce,* June 27, 1997, attached as Appendix Exhibit 136.

[318] Memorandum and Order at 3, *Judicial Watch* v. *Commerce,* February 13, 1997; *see also* George Archibald, "Judge Rebukes Government Lawyer—Blasts Effort to Prevent Questioning of Commerce Official," *The Washington Times,* February 4, 1997, attached collectively as Appendix Exhibit 137.

[319] Associated Press, "Huang's Access to Secrets Was Underestimated—Actions at Commerce, Calls to Lippo Compared," *The Washington Post,* April 30, 1997, attached as Appendix Exhibit 117.

[320] Defendant's Notice of Discharge of Obligation Pursuant to Its Representation at December 6, 1996 Status Conference, *Judicial Watch* v. *Commerce,* December 8, 1996, attached as Appendix Exhibit 138.

[321] Videotaped Deposition of Dawn Evans Cromer at 11:36–11:40 a.m., June 20, 1997 ("Cromer Depo."); Videotaped Deposition of Carola McGiffert at 2:58–3:05 p.m., April 3, 1997 ("McGiffert Depo.").

[322] DNC "Minority Donors List," attached as Appendix Exhibit 75. *See also* Jerry Seper, "Commerce Kept List of DNC Donors—Aide Backtracks on Department's Denials," *The Washington Times,* May 31, 1997; Associated Press, "Donors List at Commerce Called 'Personal Document'," *The Washington Post,* June 1, 1997; and Jerry Seper, "Commerce Admits Keeping List of Donors," *The Washington Times,* June 15, 1997, attached collectively as Appendix Exhibit 111.

[323] "Orrin Hatch's Matador D," *The Wall Street Journal,* June 18, 1997, attached as Appendix Exhibit 139.

[324] Donald Fowler Memorandum to Members of the Cabinet (with handwritten note "Janet, Happy New Year") from the files of Attorney General Reno, December 31, 1995, attached as Appendix Exhibit 140.

[325] *See, e.g.,* Bob Woodward, "Findings Link Clinton Allies to Chinese Intelligence," *The Washington Post,* February 10, 1998 (Senate Governmental Affairs Committee "has 'unverified information' that Huang, the former Lippo [Group] executive and Democratic fund-raiser, may have a direct financial relationship with the Chinese [G]overnment."), attached as Appendix Exhibit 115; *see also* "Campaign Finance Key Player: John Huang," *The Washington Post* (http://www.washingtonpost.com) ("Investigators are also exploring whether Huang may have served as an 'agent of influence' of the People's Republic of China, perhaps funneling money from Beijing into American political campaigns."), attached collectively as Appendix Exhibit 141.

[326] Huang has been described as "the star witness [the Senate Governmental Affairs Committee] ha[s] been looking for." *See* Judi Hasson & Judy Keen, "China Meddling, Panel Told," *USA Today,* July 9, 1997, attached as Appendix Exhibit 142.

[327] *See* John Fund, "The Department of Political Favors," *The Wall Street Journal,* October 29, 1996. As previously discussed, the Clinton Commerce Department has consistently attempted to thwart Judicial Watch's efforts to conduct discovery on these matters. Consistent with its "scorched earth" policy against all who confront the Administration with its unlawful and/or unethical conduct, the Commerce Department went so far as to issue a false, misleading, and defamatory press release on November 1, 1996, just days after the October 29, 1996 deposition of John Huang. It was also the eve of the 1996 presidential election. The official press release claimed that John Huang "had absolutely nothing to do with the [Judicial Watch] FOIA matter," and denounced Judicial Watch's lawsuit as "reckless" and "unsubstantiated."(328)

[328] Transcript of Status Call at 25–31, *Judicial Watch* v. *Commerce,* October 25, 1996, attached as Appendix Exhibit 144.

[329] March 23, 1998 Hearing at 70, attached as Appendix Exhibit 69.

[330] *See, e.g.,* Alan Miller & Glen Bunting, "Huang Said 'Top Priority' for Cabinet Job," *Los Angeles Times,* July 15, 1997; Robert D. Novak, "John Huang Delivers," *The Washington Post,* October 31, 1996 ("A clue to why Bill Clinton and the Democratic Party received heavy contributions from Indonesia's billionaire Ready family: its successful campaign in 1993 to block the presidential appointment of an unfriendly banking regulator."); attached collectively as Appendix Exhibit 145.

[331] Bob Woodward, "Findings Link Clinton Allies to Chinese Intelligence," *The Washington Post,* February 10, 1998, attached as Appendix Exhibit 115.

[332] Alan Miller & Glenn Bunting, "Huang Said 'Top Priority' for Cabinet Job," *Los Angeles Times,* July 15, 1997, attached as Appendix Exhibit 145.

[333] Huang Depo. at 177–79, 194–99, 209–19, attached as Appendix Exhibit 105; 1995 Calendar of John Huang, attached as Appendix Exhibit 146.

[334] Huang Chronology at 3–10, attached as Appendix Exhibit 116; "Huang's Access to Secrets Was Underestimated—Actions at Commerce, Calls to Lippo Compared," *The Washington Post,* April 30, 1997; "For Democrats, All Kinds of Answers," *The New York Times,* December 30, 1996, attached collectively as Appendix Exhibit 117.

[335] Jerry Seper, "Huang Given Top-Secret Clearance After Move to DNC," *The Washington Times,* February 9, 1997, attached as Appendix Exhibit 147.

[336] Huang Depo. at 177–78, attached as Appendix Exhibit 105.

[337] Associated Press, "Huang's Access to Secrets Was Underestimated—Actions at Commerce, Calls to Lippo Compared," *The Washington Post,* April 30, 1997 ("The [Clinton Commerce] Department has identified 109 meetings in 1994 and 1995 attended by Huang and at which classified information 'might have been discussed."), attached as Appendix Exhibit 117.

[338] "Huang Used Office Across Street," *USA Today,* July 18, 1997, attached as Appendix Exhibit 148.

[339] *Id.; see also* Edward Walsh & Anne Farns, "Panel Hears of Huang's Frequent Visits to Firm," *The Washington Post,* July, 18, 1997 ("[Huang] also sometimes picked up letter-sized 'packages' that were delivered to him there, [Greene] said"), attached as Appendix Exhibit 149.

[340] Jerry Seper, "Huang Given Top-Secret Clearance After Move to DNC," *The Washington Times,* February 9, 1997, attached as Appendix Exhibit 147.

[341] *Id.* (emphasis added.)

[342] John Solomon, "Congressman Accuses Huang of Passing Secrets to Ex-employer," *USA Today,* June 13–15, 1997, attached as Appendix Exhibit 150.

[343] *See, e.g.,* Brian Blomquist, "Spies Tell Panel Huang May Have Risked Lives," *New York Post,* July 17, 1997; Jerry Seper, "Did Huang Briefings Put Lives at Risk?," *The Washington Times,* July 1, 1997, attached collectively as Appendix Exhibit 151.

[344] Bob Woodward, "FBI Had Overlooked Key Files In Probe of Chinese Influence," *The Washington Post,* November 14, 1997, attached as Appendix Exhibit 152.

[345] Huang Depo. at 164–66, attached as Appendix Exhibit 105.

[346] *See, e.g.* Phil Kuntz, "Huang, While at Commerce Department, Talked to Democratic Fund-Raisers," *The Wall Street Journal,* November 13, 1996; David Willman and Alan C. Miller, "Records Show Visits to Eximbank Director," *Los Angeles Times,* January 29, 1997, attached collectively as Appendix Exhibit 153.

[347] Edward Walsh & Anne Farns, "Panel Hears of Huang's Frequent Visits to Firm," *The Washington Post,* July 18, 1997 (". . . the DNC credited Huang for soliciting two contributions totaling $ 17,000 from [Lippo executive Kenneth] Wynn while Huang was working at Commerce."), attached as Appendix Exhibit 149.

[348] Susan Schmidt & Charles Babcock, "DNC Fund-Raiser Huang Visited White House Often," *The Washington Post,* October 31, 1996, attached as Appendix Exhibit 154.

[349] *See, e.g.* Phil Kuntz,"Huang, While at Commerce Department, Talked to Democratic Fund-Raisers," *The Wall Street Journal,* November 13, 1996, attached as Appendix Exhibit 153.

[350] *See* Huang Chronology at 3–10, attached as Appendix Exhibit 116; Judy Keen & Judy Hasson, "Sullivan Says Huang Unusual Hire," *USA Today,* July 10, 1997 ("When Huang came to the DNC in November 1995 . . . [h]e had no professional fund-raising experience . . . [b]ut Huang had powerful, insistent patrons who really wanted him to get the job. One of them was the [P]resident of the United States. So Huang became the third-ranking fund-raiser at the DNC."), attached as Appendix Exhibit 155.

[351] *See, e.g.* Brian Blomquist, "DNC Sought Trips for Big Donors: Ex-Commerce Aide," *The New York Post,* June 28, 1997 ("The DNC agreed to return much of the money raised by Huang after that money was found to be foreign and illegal."), attached as Appendix Exhibit 110; Bob Woodward, "Findings Link Clinton Allies to Chinese Intelligence," *The Washington Post,* February 10, 1998 ("Huang, the former Lippo executive and Democratic fund-raiser, may have a direct financial relationship with Chinese government. Last year, the DNC returned more than half of some $3 million Huang collected for the party, saying its origins could not be established"), attached as Appendix Exhibit 115.

[352] Huang Depo. at 2, attached as Appendix Exhibit 105; *see also* Paul Sperry, "How Honest is Justice Probe? DOJ Lawyers Have Ties to Fund-Raiser Huang," *Investors Business Daily,* February 24, 1997 ("The Justice Department is defending some of the same Commerce Department officials it's investigating for illegal fundraising"), attached as Appendix Exhibit 127.

[353] John Fund, "The Department of Political Favors," *The Wall Street Journal,* October 29, 1996, attached as Appendix Exhibit 143.

[354] Michael Chapman, "An Inside Job at Commerce?—Satellite Secrets Left Department With Official," *Investors Business Daily,* June 19, 1998, attached as Appendix Exhibit 156.

[355] *See, e.g.* Terence P. Jeffrey, "The Mysterious Actions of Ira Sockowitz," *Human Events,* February 28, 1997 ("On Aug. 2, 1996, Ira Sockowitz formally left his job as a Commerce Department lawyer. . . . When [he] walked out of the Commerce Department building he carried a box containing 136 documents, many of them classified."), attached as Appendix Exhibit 157.

[356] Videotaped Deposition of Jeffrey May at 11:31–11:37 a.m., June 10, 1997 ("May Depo.").

[357] *See, e.g.,* Michael Chapman, "An Inside Job at Commerce?—Satellite Secrets Left Department With Official," *Investors Business Daily,* June 19, 1998, attached as Appendix Exhibit 156; Timothy Maier, "'Commerce-ial' Espionage?," *Insight,* September 1, 1997 ("The classified information Sockowitz took was so sensitive it threatened to put the National Security Agency, or NSA, out of business. . . ."), attached as Appendix Exhibit 158.

[358] Michael Chapman, "An Inside Job at Commerce?—Satellite Secrets Left Department With Official," *Investors Business Daily,* June 19, 1998, attached as Appendix Exhibit 156.
[359] Sockowitz Depo. at 3:37–3:38, 5:01–5:08 p.m.
[360] Sockowitz Depo. at 4:50 p.m.
[361] *Id.* at 5:01 p.m.
[362] Lew Depo. at 4:25–4:26 p.m.
[363] Notice of Filing of Declaration by Non-Party SBA–IG Pursuant to November 5, 1996 Order, *Judicial Watch* v. *Commerce,* November 13, 1996; *see also* Declaration of James F. Hoobler, Inspector General for the SBA at 1–2, November 13, 1996, attached collectively as Appendix Exhibit 159.
[364] Notice of Filing of SBA's (Redacted) Document Inventory; Notice of Filing of Declaration by Non-Party SBA–IG Pursuant to November 5, 1996 Order, *Judicial Watch* v. *Commerce,* November 13, 1996; *see also* Jerry Seper, "Secret Papers' Move Probed for DNC Links," *The Washington Times,* February 14, 1997 ("'The documents are so classified that we were not allowed to look at them,' a congressional source said. . . . FBI and congressional investigators, the sources said, are trying to determine if the documents were being stored for Mr. Huang. . . .") attached collectively as Appendix Exhibit 160.
[365] Terrence P. Jeffrey, "The Mysterious Actions of Ira Sockowitz," *Human Events,* February 28, 1997, attached as Appendix Exhibit 157.
[366] March 23, 1998 Hearing at 97, attached as Appendix Exhibit 69.
[367] *Id.*
[368] Fitz-Pegado Depo. at 11:02–11:08 a.m.
[369] "FAQ" and "Investor Relations" pages from Iridium's Internet site, attached as Appendix Exhibit 161.
[370] *Id.*
[371] Notice of Filing of SBA's (Redacted) Document Inventory, *Judicial Watch* v. *Commerce,* November 1, 1996, attached as Appendix Exhibit 160; Notice of Filing of Declaration by Non-Party SBA–IG Pursuant to Nov. 5, 1996 Order, *Judicial Watch* v. *Commerce,* November 13, 1996, attached as Appendix Exhibit 159.
[372] Fitz-Pegado Depo. at 10:15–10:36 a.m., 10:42–11:23 a.m., and 2:22 p.m.; *see also* Timothy Maier, "'Commerce-ial' Espionage?" *Insight,* September 1, 1997, attached as Appendix Exhibit 158.
[373] Michael Chapman, "An Inside Job at Commerce?—Satellite Secrets Left Department With Official," *Investors Business Daily,* June 19, 1998, attached as Appendix Exhibit 156.
[374] *Id.*
[375] *Id.*
[376] *Id.*
[377] *Id.*
[378] Ruth Marcus & John Mintz, "Big Donors Calls Favorable Treatment a 'Coincidence'," *The Washington Post,* May 25, 1998, attached as Appendix Exhibit 162.
[379] *Id.*
[380] "Loral CEO Frequent Administration Guest," *The Associated Press,* May 21, 1998, attached as Appendix Exhibit 163.
[381] The satellite encryptions were likely provided to Sockowitz by Hoyt Zia, Chief Counsel for the Commerce Department's Bureau of Export Controls. During his deposition, Huang admitted that Zia, who he was in contact with during his flight from U.S. marshals prior to his deposition, is a close friend.
Chronology: A History of Clinton Administration Obstruction in the Continuing Suit Which Uncovered John Huang, the Unauthorized Removal of Classified Satellite Encryptions and CIA Reports from the Commerce Department, and Caused the Chinagate Scandal at 20, *Judicial Watch* v. *Commerce,* May 26, 1998, attached as Appendix Exhibit 116. After Huang left the Commerce Department to work for the DISC, Zia, who was also deposed, admitted that he and other Asian Americans in the Clinton Administration would meet with Huang during the evenings to help with DNC fundraising. *Id.; see also* Kenneth R. Timmerman, "Loral Exams," *The American Spectator,* July 1998, attached as Appendix Exhibit 163.
[382] Defendant's Motion for a Protective Order, *Judicial Watch* v. *Commerce,* April 9, 1997, attached as Appendix Exhibit 164.
[383] *Id.;* Defendant's Memorandum of Points and Authorities in Support of Motion for a Protective Order at 1, *Judicial Watch* v. *Commerce,* April 9, 1997, attached as Appendix Exhibit 164.
[384] "Loral CEO Frequent Administration Guest," *The Associated Press,* May 21, 1998, attached as Appendix Exhibit 163.
[385] Defendant's Motion for a Protective Order, Defendant's Memorandum of Points and Authorities in Support of Motion for a Protective Order at 5–6, *Judicial Watch* v. *Commerce,* April 9, 1997, attached as Appendix Exhibit 164.
[386] Jeff Gerth, "Democrat Fund-Raiser Said to Name China Tie," *The New York Times,* May 15, 1998 ("At one fund-raiser to which Chung gained admission for her, she was photographed with President Clinton"), attached as Appendix Exhibit 165.
[387] David Jackson & Leena H. Sun, "Liu Deals With Chung: An Intercontinental Pole," *The Washington Post,* May 24, 1998, attached as Appendix Exhibit 166.
[388] Bob Woodward, "Findings Link Clinton Allies to Chinese Intelligence," *The Washington Post,* February 10, 1998, attached as Appendix Exhibit 115.
[389] "Campaign Finance Key Player: Yah Lin 'Charlie' Trie," *The Washington Post* (http://www.washingtonpost.com), September 26, 1998, attached as Appendix Exhibit 167.
[390] Jonathan D. Salant, "Panel Looks at Fund-Raiser's Access," *The Associated Press,* February 26, 1998, attached as Appendix Exhibit 168.
[391] Sopko Depo. at 11:25 a.m.
[392] *Id.* at 11:57 a.m
[393] *Id.* at 2:06 p.m.

[394] Roberto Suro, "Trie Enters Plea of Not Guilty," *The Washington Post,* February 6, 1998, attached as Appendix Exhibit 169.

[395] Clinton Commerce Department Office of Business Liaison Memos (from Sally Painter to Melissa Moss), attached collectively as Appendix Exhibit 76.

[396] "Memorandum from Eric Silden Re: Trade Mission to Russia," January 13, 1994, attached as Appendix Exhibit 77.

[397] Kevin Galvin, "Probe Looks at Trips, Fund Raising," *The Associated Press,* September 17, 1998 attached as Appendix Exhibit 170.

[398] Order, *Judicial Watch* v. *Commerce,* September 11, 1998, attached as Appendix Exhibit 171.

[399] March 23, 1998 Hearing at 99–100, attached as Appendix Exhibit 69.

[400] Defendant Federal Election Commission's Motion for Sanctions Under Rule 11, *Judicial Watch, Inc.* v. *Federal Election Commission,* No. 1:98CV00386 (D.D.C. June 8, 1998), attached as Appendix Exhibit 172.

[401] Memorandum Opinion at 6, *Judicial Watch, Inc.* v. *Federal Election Commission,* No. 1:98CV00386 (D.D.C. July 6, 1998), attached as Appendix Exhibit 173.

[402] Statement of Senator John McCain, Chairman, Senate Committee on Commerce, Science and Transportation, Full Committee Hearing on the Transfer of Satellite Technology to China, September 17, 1998, attached as Appendix Exhibit 174.

[403] The above substantial and credible evidence shows the likely violation of the following federal laws: 18 U.S.C.§ 201 (bribery of public officials end witnesses), 18U.S.C. § 211 (acceptance or solicitation to obtain appointive public office), 18 U.S.C. § 371 (conspiracy to commit offense or to defraud the United States), 18 U.S.C. § 372 (conspiracy to impede or injure officer), 18 U.S.C. § 402 (contempts constituting crimes), 18 U.S.C. § 494 (uttering or publishing a false public record), 18 U.S.C. § 600 (promise of employment or other benefit for political activity); 18 U.S.C. § 601 (deprivation of employment or other benefit for political contribution); 18 U.S.C. § 607 (use of a public building to solicit political funds), 18 U.S.C. § 792 (harboring or concealing persons involved in espionage), 18 U.S.C. § 793 (gathering, transmitting or losing defense information), 18 U.S.C. § 794 (gathering or delivering defense information to aid foreign government), 18 U.S.C. § 798 (disclosure of classified information), 18 U.S.C. § 1016 (making a false acknowledgment), 18 U.S.C. § 1503 (obstruction of justice), 18 U.S.C. § 1505 (obstruction of proceedings before departments, agencies, and committees), 18 U.S.C. § 1509 (obstruction of court orders), 18 U.S.C. § 1510 (obstruction of criminal investigation), 18 U.S.C. § 1512 (tampering with a witness, victim, or an informant), 18 U.S.C. § 1513 (retaliating against a witness, victim, or an informant), 18 U.S.C. § 1621 (perjury), 18 U.S.C. § 1622 (subornation of perjury), 18 U.S.C. § 1623 (false declarations before grand jury or court), 18 U.S.C. § 1924 (unauthorized removal and retention of classified documents or material), 18 U.S.C. § 2071(b) (concealment, removal, or mutilation of public records), and 2 U.S.C. § 441e (contributions by foreign nationals).

[404] Presidential Legal Expense Trust, June 28, 1994, attached as Appendix Exhibit 175.

[405] *See* Correspondence of Congressman Christopher Cox and Congresswoman Deborah Pryce to the Office of Government Ethics at 1, August 3, 1994 ("Congressional Correspondence"), attached as Appendix Exhibit 176.

[406] 5 U.S.C. § 7353(a) (emphasis added); Congressional Correspondence at 2.

[407] Congressional Correspondence at 2 (*quoting* 5 C.F.R. § 2635.202(a)).

[408] 5 C.F.R. § 2635.202(a) (1998) (emphasis added).

[409] Congressional Correspondence at 2.

[410] *See, e.g.* Paul A. Gigot, "Why a President Shouldn't Have to Go Begging," *The Wall Street Journal,* July 1, 1994, attached as Appendix Exhibit 177.

[411] *See* Complaint at para. 21, *Judicial Watch, Inc.* v. *Hillary Rodham Clinton, et al.,* No. 94–1688 (D.D.C. filed August 4, 1994), attached as Appendix Exhibit 178; *see also* Presidential Legal Expense Trust, June 28, 1994, attached as Appendix Exhibit 175.

[412] 5 U.S.C. App. 2, attached as Appendix Exhibit 179.

[413] Memorandum Opinion at 6, 11, *Judicial Watch, Inc.* v. *Hillary Rodham Clinton, et al.,* No. 94–1688 (February 21, 1995), attached as Appendix Exhibit 180. The court also noted that " [t]o the court's knowledge, there have been no other funds established by a sitting president to offset his personal legal fees and costs. *Id.* at 6.

[414] *See* Letter to Judicial Watch, Inc. from John C. Keeney, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, August 30, 1994, attached as Appendix Exhibit 181. It is interesting to note that Keeney's son is one of John Huang's personal lawyers, and represented Huang during his Judicial Watch deposition.

[415] *See, e.g.* Peter Baker, "Clinton Defense Fund Gave Back $640,000," *The Washington Post,* December 17, 1996 ("When Trie arrived, he told [the Executive Director of the Trust] he had heard about the Clintons' financial troubles and wanted to help. He then produced two large manila envelopes filled with hundreds of checks and money orders, most for $1,000 or less. . . ."); Stephen Labaton, "White House Reports Many Visits by Fund-Raiser," *The New York Times,* December 19, 1996; Associated Press, "Donations Raiser Often at White House," *The Washington Times,* December 19, 1996; "Trie Often Paid Visits to the White House," *The Wall Street Journal,* December 19, 1996; Ruth Marcus, "Businessman Trie Has Visited White House At Least 23 Times," *The Washington Post,* December 19, 1996; Peter Baker & Ruth Marcus "Clinton Kept Ties to Key Supporter Despite Doubts," *The Washington Post,* December 18, 1996, attached collectively as Appendix Exhibit 182.

[416] *See, e.g.* Jeanne Cummings, "Clinton Closes Fund for His Legal Fees After Steep Drop in Contributions in 1997," *The Wall Street Journal,* December 31, 1997; John F. Harris, "President Decides to Close Money-Losing Defense Fund," *The Washington Post,* December 31, 1997; Neil A. Lewis, "Clinton Legal Fund Proves Inadequate; New Effort Sought," *The New York Times,* December 31, 1997, attached collectively as Appendix Exhibit 183. To this day, the Clintons have never returned the interest accrued on the illegal Communist Chinese monies laundered into the Trust by Charlie Trie.

[417] *See, e.g.* The Clinton Legal Expense Trust ("the second Trust"), February 17, 1998; Letter from Judicial Watch, Inc. to Anthony F. Essaye, Esq., September 1, 1998; attached collectively as Appendix Exhibit 184.

[418] *Id. see also* Peter Baker, "President Testified to Late Gifts to Lewinsky," *The Washington Post,* August 22, 1998 ("The newly reconstituted defense fund, operat[es] with looser rules governing solicitations and large donations. . . ."); Don Van Natta, Jr., "Clinton Defense Fund Nets More Than $2 Million in 6 Months," *The New York Times,* August 13, 1998 ("The new trust is free of some of the restrictions that had been on the original fund prohibiting solicitations and limiting annual contributions to $1,000 per individual."), attached collectively as Appendix Exhibit 185.

[419] *Id.*

[420] This was disclosed during Senator Fred Thompson's campaign finance hearings before the Governmental Affairs Committee.

[421] Peter Baker, "Clinton Consults Former Fund-Raiser About Jones Deal," *The Washington Post,* September 27, 1998, attached as Appendix Exhibit 186.

Ms. JACKSON LEE. Mr. Chairman.

Mr. HYDE. The gentlewoman from Texas.

Ms. JACKSON LEE. Let me inquire—and I appreciate Mr. Barr's courtesy to Mr. Schippers—if any of us wanted to extend such a courtesy to Mr. Lowell for any personal comments he might desire to make, could we do so within the record?

Mr. HYDE. Yes, absolutely.

Mr. FRANK. Mr. Chairman, parliamentary inquiry. Will Mr. Schippers appear in the record as a statement of Mr. Schippers or Mr. Barr?

Mr. BARR. Mr. Barr.

Mr. FRANK. Mr. Schippers' statement will appear as Mr. Barr's statement?

Mr. BARR. Yes.

Mr. FRANK. Have we passed the copyright legislation yet, Mr. Chairman?

Ms. JACKSON LEE. Mr. Chairman, I have not finished my inquiry. The other inquiry was just an additional question on the Constitutional Subcommittee and the joining of other members, the meeting of the Constitutional Subcommittee and other members being——

Mr. HYDE. All members may attend the meeting of the Constitutional Subcommittee, and it will be up to the Chairman of the Constitutional Subcommittee to determine their participation in the proceeding.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Ms. WATERS. Mr. Chairman.

Mr. HYDE. I would like to finish my business, if I may, just for one moment.

The members will be given 2 days, as provided by the House rules, in which to submit additional dissenting or minority views. Without objection, the staff is directed to make technical and conforming changes.

Mr. Conyers.

Mr. CONYERS. Thank you. I am hoping that the Constitutional Subcommittee will never schedule meetings that conflict with the full committee's meetings on this same subject. I urge the chairman of the subcommittee to please keep that in the front of his mind.

Mr. HYDE. I think that is an excellent suggestion.

I move that the committee adopt the rules of procedure for the impeachment inquiry which the members have before them and which the clerk will designate.

The CLERK. House Committee on the Judiciary Impeachment Inquiry Procedures.

Mr. HYDE. I ask unanimous consent that further reading of the rules be dispensed with.

HOUSE COMMITTEE ON THE JUDICIARY IMPEACHMENT INQUIRY PROCEDURES

The Committee on the Judiciary states the following procedures applicable to the presentation of evidence in the impeachment inquiry pursuant to H.Res. XX, subject to modification by the Committee as it deems proper as the inquiry proceeds.

1A. The Committee shall conduct an investigation pursuant to H.Res. XX

1. Any Committee Member may bring additional evidence to the Committee's attention.

2. The President's counsel shall be invited to respond to evidence received and testimony adduced by the Committee, orally or in writing as shall be determined by the Committee.

3. Should the President's counsel wish the Committee to receive additional testimony or other evidence, he shall be invited to submit written requests and precise summaries of what he would propose to show, and in the case of a witness, precisely and in detail what it is expected the testimony of the witness would be, if called. On the basis of such requests and summaries and of the record then before it, the Committee shall determine whether the suggested evidence is necessary or desirable to a full and fair record in the inquiry, and, if so, whether the summaries shall be accepted as part of the record or additional testimony or evidence in some other form shall be received.

B. If and when witnesses are to be called, the following additional procedures shall be applicable to hearings held for that purpose:

1. The President and his counsel shall be invited to attend all hearings, including any held in executive session.

2. Objections relating to the examination of witnesses, or to the admissibility of testimony and evidence may be raised only by a witness or his counsel, a Member of the Committee, Committee counsel or the President's counsel and shall be ruled upon by the Chairman or presiding Member. Such rulings shall be final, unless overruled by a vote of a majority of the Members present.

3. Committee counsel shall commence the questioning of each witness and may also be permitted by the Chairman or presiding Member to question a witness at any point during the appearance of the witness.

4. The President's counsel may question any witness called before the Committee, subject to instructions from the Chairman or presiding Member respecting the time, scope and duration of the examination.

C. The Committee shall determine, pursuant to the Rules of the House, whether and to what extent the evidence to be presented shall be received in executive session.

D. The Chairman is authorized to promulgate additional procedures as he deems necessary for the fair and efficient conduct of Committee hearings held pursuant to H.Res. XX, provided that the additional procedures are not inconsistent with these Procedures, the Rules of the Committee, and the Rules of the House. Such procedures shall govern the conduct of the hearings, unless overruled by a vote of a majority of the Members present.

E. For purposes of hearings held pursuant to these rules, a quorum shall consist of ten Members of the Committee.

F. Information obtained by the Committee pursuant to letter request, subpoena, deposition, or interrogatory shall be considered as taken in executive session unless it is received in an open session of the Committee. The Chairman is authorized to determine whether other materials received by the Committee shall be deemed executive session material.

I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman and members, I have reviewed the rules and the procedures that are involved, and if there are any of them to be passed out, maybe some of our members would like them. We have had them already.

Mr. HYDE. They were before.

Mr. CONYERS. Let us say that it is critical that the subpoena power is shared between the chairman and the ranking member, that the rules track the Watergate provisions; and on this score, we are quite satisfied with the procedures.

I would urge that the members join in support.

I would like to particularly thank the chairman and his chief of staff, Tom Mooney, for the cooperation that they gave to our staff in crafting this important set of rules.

Mr. HYDE. I want to thank the ranking member and thank his staff for their cooperation, as well.

The question occurs on the motion to adopt the committee rules.

Ms. LOFGREN. Mr. Chairman.

Mr. HYDE. Ms. Lofgren.

Ms. LOFGREN. Very briefly, I will vote for these rules. But I would like to note that how we will operate is not just the rules we adopt, but how we act. These are the same rules that were in use in 1974.

I would note that in 1974 that never once was a subpoena requested by either side appealed to the full committee. I am hopeful that that cooperation would again be the pattern of this proceeding.

I yield back.

Mr. HYDE. I thank the gentlewoman.

The question occurs on the motion to adopt the committee rules of procedure.

All those in favor vote aye.

Opposed, no.

Without objection——

Ms. WATERS. No.

Mr. HYDE. One no. The ayes have it.

Without objection, the staff is directed to make technical and conforming changes.

The committee stands adjourned.

[Whereupon, at 7:58 p.m., the committee adjourned.]

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