

COMMUNICATIONS/RESEARCH INFORMATION PACKET:

September 25, 1998

file Re: Impeachment

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Note: Italicized Items Produced by DNC Research

General Information

Let's Get Closure, Let's Get Back To Work:
The Country & American Families Face Real Challenges

The Choice: Reasonable Closure or Open-Ended Investigation?

American People Say Reasonable Closure. Do we really want to put off dealing with the important issues facing our country in order to have the Republican Congress drag out hearings into this for another 8,10 or 12 months?

"Do you think the Judiciary Committee of the U.S. House of Representatives should begin holding hearings to determine whether or not to impeach President Clinton, or don't you think it's necessary?"

Not necessary	61	
Hold hearings	35	[CBS News, 9/21/98]

"Given the things that you've heard and seen about Bill Clinton over the past few weeks regarding the Monica Lewinsky situation, what do you think is the best course of action for Congress to follow..."

Drop the matter without any further action	39	
Pass a resolution of censure, which is a formal reprimand	30	
Begin the impeachment process now	27	[NBC News, 9/21/98]

"Based on what you know at this point, do you think that Bill Clinton should or should not be impeached and removed from office?"

Should not	66	[CNN/Gallup/USA
Should be	32	Today, 9/21/98]

The Country: Let's Get to Work on the Nation's Agenda

The country and America's families face real challenges. President Clinton wants to focus on these issues.

Save Social Security First -- President Clinton wants to protect Social Security so that we don't either have a sub-standard retirement or put an unconscionable burden on our children and grandchildren.

Pass A Real Patients Bill of Rights -- There are 160 million people in this country in managed care plans. Those families deserve a strong, enforceable patients' bill of rights to assure the quality health care they need.

Keep Our Economy Strong By Ensuring Stability Abroad -- With today's global economy our own prosperity is jeopardized by events around the world. Problems in Russia, Asia and South America demand American attention and leadership.

THE PRESIDENT'S VIDEOTAPED TESTIMONY

During the President's deposition, Ken Starr's prosecutors asked him unnecessary, invasive, salacious questions about sex at least 81 times -- an average of one sex question every three minutes. The President truthfully answered the prosecutors' questions, acknowledging on at least 10 separate occasions that he had an inappropriate relationship with Ms. Lewinsky. Starr's report to Congress reflected the salacious nature of the prosecutors' questions, mentioning sex 548 times -- but Whitewater only twice.

1. THE PROSECUTORS' QUESTIONS: ALL SEX, NO WHITEWATER

What Starr's Prosecutors Did -- And Didn't -- Ask The President	
Topic	Number of Questions
Sex	81
Whitewater	0
The Travel Office Matter	0
The FBI Files Matter	0

2. THE PROSECUTORS' REPORT: ALL SEX, NO WHITEWATER

What's in -- and What's Not in -- Ken Starr's Report	
Word (includes variations)	Number of Mentions
Sex	548
Whitewater	2
FBI Files	0
Travel Office	0

Talking Points
Release of the President's Grand Jury Deposition and Other Materials
September 20, 1998

- What the Republicans on the Judiciary Committee have done is unfair and driven purely by partisanship. In vote after vote, the Republicans voted along party lines to release salacious and unnecessary details. There was no effort to be bi-partisan.
 - The Republican Committee members abdicated their obligation to consider the information and determine the legal standards that apply, including the most significant standard: what constitutes an impeachable offense under the Constitution;
 - Instead, what we have now is verdict first, and deliberation second -- if at all.
 - The tape released today shows the President making a painful acknowledgment: admitting to an inappropriate intimate relationship with Ms. Lewinsky. This is not a pleasant thing to have to admit -- or to watch.
 - In acknowledging the relationship, the President drew the line at going into explicit detail. He answered the questions relevant to a criminal inquiry, but he declined to discuss specific encounters in a graphic and gratuitous way.
 - Before the President's testimony, Ken Starr and his staff knew the President was not going to provide sexually explicit testimony: the President's attorney informed the Independent Counsel that the President would answer all questions related to the investigation, but he would not be graphic. Nevertheless, the Independent Counsel tried, question after question, for hour after hour, to force the President to do what he already knew he would not do.
 - Let's understand why there is even is a tape to talk about: The American public is going through this process today because an Independent Counsel and partisan members of Congress want to embarrass and humiliate the President by releasing salacious details of allegations of personal wrongdoing.
 - The grand jury process is supposed to be secret for a reason:
 - because it is a one-sided presentation of untested allegations and inherently unfair because the target has no right to respond or opportunity to defend himself and
 - to protect the privacy of everyone involved.
- This principle of fundamental fairness was violated and that is why most Americans opposed releasing this Grand Jury tape.
- The creation of this tape, its release by Congressional Republicans, and the garbage-dump of other documents proves that rather than a neutral search for the truth, this effort is nothing more than a crusade to obliterate the proper Constitutional process, overturn a national election, embarrass and harass the President, and drive him from office.
 - Fair-minded Americans are repulsed by these tactics and reject them.
 - The question before the House is not whether the President has done something wrong. He has admitted that he has. The question is, whether this constitutes an impeachable offense that warrants taking the most powerful step under the Constitution short of declaring war. The clear answer from history, the law, the Constitution and constitutional scholars, and from the American people today is no.

Religious Leaders Respond To The President's Request For Forgiveness

Joan Brown Campbell, General Secretary Of The National Council Of Churches.

"In such a painful time, the Clinton family deserves our quiet support. Our churches invite all people to join us in private and caring prayers." [Fort Worth Star-Telegram, 9/12/98]

National Coalition of American Nuns.

In a resolution regarding President Clinton, the National Coalition of American Nuns wrote: *"Whereas [w]e do not condone the sexual misconduct of President Clinton, but understand the desire to protect one's private, personal life from public intrusion, and Whereas [w]e accept the President's apology to the nation and believe that the humiliation he has suffered is ample retribution, and Whereas [w]e expect the President now to continue with matters of State, and Whereas [o]ur faith in a loving and forgiving God gives us hope in obtaining forgiveness from our neighbors when we stumble and fall, and Whereas [o]ur nation was created on the firm foundation of "We the people," and we believe it is time for we, the people, and the President to go forward in unity toward the nation's quest for justice and peace."* [National Coalition of American Nuns Annual Meeting, 9/11/98 - 9/13/98]

Rev. Calvin Butts, Abyssinian Baptist Church.

"I'm a hard Clinton critic -- have been since the very beginning. And I've leaned on him mighty hard in sermons, but I believe that he has demonstrated he deserves our respect, our love, and forgiveness." [CNN Sunday, 9/13/98]

Rev. T.D. Jakes, Potter's House.

"Americans can relate to [President Clinton's] human frailty and are looking to see if it's possible to restore fallen people...What message would we send to the American people if we tell them it's impossible to change? That would be far more devastating." [Washington Post, 9/12/98; Associated Press, 9/13/98]

Rev. J. Philip Wogaman, Foundry United Methodist Church.

Rev. Philip Wogaman on the September 11, 1998, White House prayer breakfast: *"The session set a tone of getting beyond the smallness of our current focus and moving to a bigness of spirit."* [Washington Post, 9/12/98]

Rev. Eric Andrews, St. Paul the Apostle Church.

"A hallmark of our faith is that there is always a door for sinners to return to...And so it was we had to hear confession after confession this week from our president, the leader of the free world." Rev. Andrews urged people to be less skeptical when judging President Clinton's sincerity: *"As you feel acceptance and forgiveness, you must be able to extend that to someone else whoever they may be."* [Associated Press, 9/14/98]

Rabbi Stephen Fuchs, Congregation Beth Israel.

"When all is said and done, I believe history will remember President Clinton, like King David, as an outstanding leader...As we approach our Holy Day season, let us remember that none of us is perfect...Let us extend forgiveness to the president, as our tradition teaches, and let our great nation heal." [Associated Press, 9/13/98]

Rabbi Alan Cohen, Beth Shalom Congregation.

"Even though he made a bad mistake, he's a deeply religious person, and I think he desires to change his ways...I felt he expressed a sincere desire to help himself, to change himself." President Clinton spoke to Rabbi Cohen after his speech to Religious Leaders on September 11. Cohen's reaction: *"I was struck by the eye contact. He looked me straight in the eye...I'm willing to give the benefit of the doubt to someone when they look me in the eye."* Cohen said, *"I am one of those who believes leaders must live by higher standards, and he didn't do it...But people can change, and he should be given that chance."* [Kansas City Star, 9/14/98]

Rev. Ivan Dawson, Redemptorist Catholic Church.

"In a case like this, where Clinton has humiliated himself and the country is embarrassed, now is the time for everyone to show an act of mercy, which God shows us in the gospel today. Who is the prodigal son today in America? It can only be Clinton....Whatever he's done, he has come back, made it public. He's trying to keep his dignity." [Kansas City Star, 9/14/98]

Rev. Cecil Williams, Glide Methodist Church.

In a letter to President Clinton, Rev. Cecil Williams of the Glide Methodist Church in San Francisco said, *"Like Job, you and Hillary have stood your ground, and in the presence of God, forgiveness is being revealed to the nation....It won't be long, Bill, it won't be long. Again, you'll continue your great work as president."* [Kansas City Star, 9/14/98]

Rev. Darrell E. Mount, Trinity United Methodist Church.

According to the *New York Times*, "In a broad diversity of churches of many denominations, conservative and liberal, large and small, ministers emphasized the theme of forgiveness, saying no one is free of sin, and that only God has the power to judge, to forgive and to redeem. 'God loves Bill Clinton,' said the Rev. Darrell E. Mount, pastor at Trinity United Methodist Church in downtown Denver. 'And Hillary. And Monica. And Chelsea. God loves each one of those persons caught in this lost situation.'" [New York Times, 9/14/98]

Rev. Vincent Kelly, St. John the Baptist Roman Catholic Church.

"At this juncture in the history...forgiveness is in order." [Sun-Sentinel (Fort Lauderdale), 9/13/98]

Pastor Emanuel Cleaver, United Methodist Church.

"I'm ready to move on...God will deal with President Clinton, and is probably doing so now." Cleaver said of Clinton's critics, *"A lot of people are condemning the president as if they were sinless."* [Kansas City Star, 9/14/98]

Rev. C. Welton Gaddy, Executive Director Of Interfaith Alliance.

Rev. C. Welton Gaddy said those asking Clinton to resign are using *"personal tragedy to advance partisan political agendas."* [Fort Worth Star-Telegram, 9/12/98]

Rev. Brenda Stiers, Riverside Church.

According to the *New York Times*, "[S]ome ministers also chastised the independent counsel Kenneth W. Starr for issuing a sexually salacious report, the public for devouring it, news organizations for circulating it and politicians who appear to be rushing to judgment. 'We pray for the moral discernment of the media that knows sexual details can increase ratings,' preached the Rev. Brenda Stiers, executive minister of the Riverside Church in Manhattan. 'We ask you to restrain us from having an immediate political reaction and instead take us to the deep recesses of our hearts where moral decisions are made.'" [New York Times, 9/14/98]

Q&A:

Q&A Excerpts:

CNN Late Edition

Sunday, September 13, 1998

Deputy Chief Of Staff John Podesta

Perjury -- Did The President Have Sexual Relations With Miss Lewinski?

Q: **BLITZER:** *Did the president have sexual relations with Monica Lewinsky?*

A: **PODESTA:** I think the president has said to the American public that he had an inappropriate sexual relationship with Ms. Lewinsky, and he told that to the grand jury.

Q: **BLITZER:** *But he, when he was asked on January 17 in the Paula Jones deposition did you have sexual relations with Monica Lewinsky, he said no. And when he was asked August 17 before the grand jury whether his testimony on January 17 was accurate, he said it was. Was he lying?*

A: **PODESTA:** He wasn't lying either time. I think that, again, what the president has said and said on Friday is that he doesn't want a bunch of legal language to interfere with the real message to the American people, that he had an inappropriate sexual relationship with Ms. Lewinsky, that it was wrong, that he has apologized for that, that he did not come forward. He misled the American public. And he has said that was wrong. And he's apologized for that.

And I don't think that it's, I think that Ken Starr would like us to get into a bunch of legalisms about this, quite frankly, because he wants to drag this salacious material that he has put into the report into the public record I think, really, for the purpose of humiliating the president and maybe even forcing [him] from office.

Q: **BLITZER:** *But if the president did have sexual relations with Monica Lewinsky, you can't simply, it's not a matter of legally parsing out these words. He either did or he didn't. If he did, he lied before the grand jury and before the federal judge in the Paula Jones deposition....What I'm hearing you say is the president may have lied, but he didn't commit perjury.*

A: **PODESTA:** What I'm saying to you, Wolf, is that Mr. Starr's charge was to put before the Congress evidence of whether the president committed impeachable offenses. Nothing in that report would a prosecutor in America bring to a courtroom and argue that the president has committed criminal perjury. And that's what he's put before the Congress. Beyond that, I think I'll stick with what the president said, which is that he doesn't want to hide behind a bunch of, you know, legal mumbo-jumbo. He has said what he did was wrong. And he has apologized for it. He would like to move on. I think the American people would like to move on as well.

Wasn't The OIC "Forced" To Include The Graphic Sexual Details?

Q: **BLITZER:** *The independent counsel says he had no choice but to include these graphic descriptions because the president refused to answer specific questions. Monica Lewinsky says the sexual relationship was two-way, that he stimulated her and she stimulated him. Wouldn't that have fallen into the definition of sexual relations that the Paula Jones lawyers gave the president on January 17?*

A: **PODESTA:** Wolf, I told you I'm not going down this road. I think that, I think that Mr. Starr's motivation for putting all of this salacious detail, which I think is offensive to the American people, into this report had nothing to do with whether he did or he didn't commit perjury.

It was really intended to put it in the public record, to try to humiliate and embarrass the president, I think with the hope, perhaps, of forcing him from office. And I don't think that's going to happen.

Are You Questioning Or Disputing Ms. Lewinski's Testimony?

Q: **BLITZER:** *Are you disputing what Monica Lewinsky testified to?*

A: **PODESTA:** Wolf, for the past seven months we have not attacked Ms. Lewinsky. We're not going to do it this morning, and we're not going to do it in the future.

Q: **BLITZER:** *OK.*

A: **PODESTA:** I think that, you know, we don't even know what her testimony is, quite frankly. I mean, all we have is the narrative rendition of Mr. Starr's report, which is one-sided. As the New York Times described it yesterday, it's a document with attitude.

Do You Believe The President's Word Now?

Q: **BLITZER:** *Do you believe -- can you believe the president, again, if he tells you something?*

A: **PODESTA:** Yes.

Is There Any Chance The The President Will Resign?

Q: **BLITZER:** *Do you believe there is any chance the president will resign?*

A: **PODESTA:** Wolf, no, I don't. Let me -- let me answer both those questions. I don't think he will resign, I don't think he should resign.

I believe in this president. He is a decent man. I know him. I think he made a big mistake and he has apologized for it. And it has hurt him, it has hurt his family, it has hurt me, it has hurt people in the White House, but it is a big mistake, judged against a life in which he has done great good for this country. And I think he has helped this country for the last six years, I think he has much more to give in the next two.

Has The President Read -- Or Will He Read The Starr Report?

Q: **BLITZER:** *Has President Clinton read Ken Starr's 445 page report?*

A: **PODESTA:** He has not. Actually, we talked about that yesterday. He told me that he was not going to read it. And I believe he's not read Mr. Kendall's reply, both of his replies either.

Q: **BLITZER:** *Why?*

A: **PODESTA:** I think he's decided that he's said what he has to say to the country. And he is working on the healing process. He's trying to heal his family. He is getting back to the work of the people. He's got a very aggressive schedule next week to get back out and work on the economy, on health care, a state visit with Vaclav Havel. And I think that he is trying to put this episode, painful as it is, behind him and move on.

Q: **BLITZER:** *Wouldn't he want to, though, see the specifics so that he could help you and the rest of the legal and political team deal with the fallout?*

A: **PODESTA:** I think that he is helping us deal with the fallout, in the sense that he's apologized to the American public. He's admitted that he's done something wrong. And I think on Friday, if you saw him at the prayer breakfast, I think he was both very contrite and very open and very honest in the way he's dealt with this.

But I think the way he most can help us deal with the fallout of this is to get back to work, to work on the economy, to work to try to make sure that we pass the bills in Congress that will fund public education, pass a strong health care bill of rights, and that's what he's going to do.

Has The First Lady Read The Starr Report?

Q: **BLITZER:** *What about the first lady? Has she read it?*

A: **PODESTA:** I don't know the answer to that. I doubt that she's read it, and, quite frankly, Wolf, I hope that she hasn't read it, because I think there's much in that report that was intended to be hurtful. So I kind of rather hope that she hasn't read it.

How Do You Feel About The President's Character?

Q: **KING:** *Would you have an employee who loved you -- would you have them go out and say things for you that were not right? It's a fair question, Ann, because it's a question of character. Where in all of this -- all right -- you like all of his policies and he's a great leader. Where does character come in the viewpoint of an employee?*

A: **LEWIS:** Character for me has always been -- I care about it a lot -- do you use your strength, do you use your power to make life better for other people. That for me has always been the real test of character....

As I look at what this president has achieved whether it is children who are now going to get health insurance, whether it is people who have jobs because the economy is better because he worked so hard. I know he tries to use his strengths and use his power to make it a better place. Did he do something that was wrong? Yes. Has he said so? Yes. Is he suffering through this on this spiritual journey that he talked about today? Yes, he is. And for me, that's -- that's the way people have to go.

What Is Your Reaction To The Starr Report?

Q: **KING:** *What -- I know you're a communications director and how much you liked it. What about this report disappointed Ann Lewis?*

A: **LEWIS:** I was startled by this report. I mean, this is about , as -- the report says, consideration of impeachment of the president of the United States.

Q: **KING:** *Not anything in the report?*

A: **LEWIS:** And therefore -- what was in the report and what was not in the report disappointed me because if you were about something that serious, that sober, that you would really suggest to Congress that I have information that you should think about, cancel the results of the last election, remove a president, what's in this report? Remember, this is the special counsel who, for four years, \$40 million -- you know the drill -- started with investigating Whitewater, with the land deal. Somebody did a word count by the end of the day. You know what's in the report? Do you know how often Whitewater is mentioned? Two times.

Q: **KING:** *But the question...*

A: **LEWIS:** Sex is mentioned 540 times.

What Shocked You About The Starr Report?

Q: **KING:** *As a partisan, what about the man you like, shocked you in that report? You read the report. You must of found things you didn't know.*

A: **LEWIS:** I read the report.

Q: **KING:** *You knew everything?*

A: **LEWIS:** No, but so much of this had been leaked, had been hyped. Remember, last night we were watching television. There's reporters coming. The president's lawyers said can we have an hour to look at it? They said no. Can we have a few minutes to look at it which everyone else who's in this circumstance has always been done. They said no. And there we were watching on television people saying here's what's in the report -- point one, point two, point three. So this had been leaked selectively which has been the nature of this investigation. We knew it was coming. And we knew because the president had said to us, I did something wrong.

Q: **KING:** *Your shock is that this is not impeachable?*

A: **LEWIS:** My shock is that there is such a distance or such a gap between what was supposed to be a serious document and what was actually there, between the charges -- the headlines, obstruction -- I mean, these are very serious -- tampering. The facts are not there.

Is The President Going To Fight -- Or Resign?

Q: **KING:** *One other things, is he going to fight it, as he said, or is there a side of Ann Lewis that thinks he might resign if this got too bad?*

A: **LEWIS:** No.

Q: **KING:** *He won't resign.*

A: **LEWIS:** I have heard the president -- that is not his way. He believes that he's got a job to do. He believes the people have reaffirmed this, that he's made a difference for this country. And he's not walking away from the job. He's there to say, here's what I have done -- I know what I have done wrong, but I want a chance -- give me that chance to show you not just that I know that I have done wrong, but I am going to go on and do an even better job for you.

The Charges:
No Grounds For Impeachment

KEY POINTS -- SEPTEMBER 14, 1998

RECENT NEWS ABOUT THE STARR REPORT

WHAT'S IN -- AND WHAT'S NOT IN -- KEN STARR'S REPORT

Word (includes word variations)	Number of Mentions
Sex	548
Whitewater	2
FBI Files	0
Travel Office	0

I. LEGAL EXPERTS: STARR REPORT FALLS FAR SHORT OF IMPEACHABLE OFFENSES:

Lawrence Walsh, Former Federal Judge and Independent Counsel in the Iran-Contra Investigation: "It's [the Starr report] intended to shock the American public, arouse the House and Senate and make it very difficult to defend the president," said [Walsh] 'He [Starr] just thinks sex is a real big thing. He was investigating the president's sexual activities. The concern with perjury and obstruction of justice is a ... veneer. He doesn't have a clean case of obstruction so he goes on and on to try to create a circumstantial case. Lewinsky's testimony is not cross-examined. Are you going to impeach a president because at the time he gave a deposition he said he hadn't touched her bare skin? It's a strained report .. a lot of rambling around.' Walsh said." [Philadelphia Inquirer, 9/12/98]

Bruce Yannett, Former Iran-Contra Prosecutor: "I was stunned by how weak this thing [the report] is As a criminal prosecution it's frankly pathetic" [Associated Press, 9/12/98]

Jeffrey Jacobovitz, Trial Attorney: "I think this [Starr] report was designed to humiliate the president. I think Mr. Starr went way overboard on it. I think the word sex was mentioned 500 times and Whitewater was mentioned twice." [CNN Saturday, 9/12/98]

William & Mary Law Professor Michael Gerhardt: "I just find that [charges of abuse of office] to be incredibly thin." [Washington Post, 9/12/98]

Bruce Yannett, Former Iran-Contra Prosecutor: The Boston Globe reported, "Bruce Yannett, a former prosecutor on independent counsel Lawrence Walsh's Iran-Contra staff, noted that in Starr's account, Lewinsky - not Clinton - first suggests that she should return his gifts. 'The obstruction stuff is very flimsy,' Yannett said, after reviewing the report." [Boston Globe, 9/12/98]

Former National Association Of Criminal Defense Lawyers President Neal Sonnett: "I think Ken Starr has succeeded in his intention to throw enough mud on the president so it will take a long time to scrape it off What he has not done is make a case for impeachment. The salacious details, the graphic nature of the writing is in there to tar the president and prejudice the American people against him." [Miami Herald, 9/12/98]

Richard H. Pildes, a Constitutional Law Expert at The University of Michigan Law School: According to the New York Times, Pildes "said the [Starr] report often went beyond standard legal arguments. 'There

are some aspects of it,' he said, 'that make it read like the almost fanatical zeal of a Medieval inquisitor'" [New York Times, 9/13/98]

Lawrence Walsh, Former Federal Judge and Independent Counsel in the Iran-Contra Investigation During the Reagan Administration: "'The issue of perjury (in the Jones civil case) was immaterial and the case was thrown out,' [Walsh] said. 'So what you have is a prosecutor working in an area where he shouldn't be. You can rail against the president for sexual promiscuity but don't make a crime of it.'" [Philadelphia Inquirer, 9/12/98]

2. MEDIA ORGANIZATIONS: STARR REPORT FALLS FAR SHORT OF IMPEACHABLE OFFENSES:

Washington Post: "Were President Clinton an ordinary target in a run-of-the-mill criminal investigation, it is highly unlikely, many legal experts agree, that the evidence upon which Starr bases his impeachment argument that Clinton lied under oath, obstructed justice, and tampered with a witness ever would have resulted in criminal charges." [Washington Post, 9/12/98]

Washington Post Editorial: "Even more arrogant is the aggressive advocacy for impeachment in Mr. Starr's document [T]he willingness of the prosecutors to draw inferences and make judgments plainly designed to color Congress's judgment is unmistakable and sharply in contrast to the restraint shown by the special prosecutor during Watergate." [Washington Post, 9/13/98]

Boston Globe: "Nowhere in his 445-page report does independent counsel Kenneth W. Starr lay out charges against President Clinton regarding Whitewater, the complex land and banking deal that sparked Starr's four-year, \$40 million investigation. Nor does the report focus on two other matters that Starr was authorized to examine: 'Travelgate' ... and 'Filegate.'" [Boston Globe, 9/12/98]

St. Louis Post-Dispatch Editorial: "[T]here are troubling aspects to the Starr report and investigation. It is like a tower of blocks wobbling on top of the shaky foundation of a sexual relationship between two consenting adults - albeit an immoral, adulterous, pitifully adolescent relationship. Indeed, Mr. Starr's report is structured like a steamy confessional novel - all the better to feed the public's appetite for titillation. It is organized into chapters named for each sexual encounter. Danielle Steele couldn't have done much better. Absent are the more serious scandals that Mr. Starr spent four years and \$40 million investigating - Whitewater, Filegate, Travelgate, etc. That's disturbing because the prior investigation was Mr. Starr's fig leaf for probing White House sex." [St. Louis Post-Dispatch, 9/13/98]

Washington Post: "The weakest part of Starr's case, [legal experts] said, is the attempt to transform some of the president's actions, particularly his court battles on executive privilege, into violations of his constitutional duties." [Washington Post, 9/12/98]

St. Louis Post-Dispatch editorial: "Most disturbing is Mr. Starr's claim that the president 'illegally' invoked various legal privileges to try to slow Mr. Starr's investigation. It is absolutely true that Mr. Clinton's claim of executive privilege was exaggerated and calculated to buy time. But only an overreaching prosecutor would claim it was illegal. The president has to be able to assert his prerogatives in the court without fearing they'll land him in front of the Senate Finally, one searches to put this case built on sex and lies into perspective. It does not represent the kind of abuse of power and office that Watergate or the Iran-Contra scandal represented. Covering up sex in the Oval Office is not like covering up a political burglary or an illegal foreign war." [St. Louis Post-Dispatch, 9/13/98]

The New York Times

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SATURDAY, SEPTEMBER 12, 1998

The Law

Starr's Aggressive Advocacy

By LINDA GREENHOUSE

WASHINGTON, Sept. 11 — The phrase runs like a grim mantra through Kenneth W. Starr's report to Congress: "There is substantial and credible information that President Clinton..."

News Analysis Indeed, the White-water independent counsel's 445-page "referral," specifying 11 possible grounds for impeaching the President, is brimming with information: dates, times, quotations from previously secret grand jury testimony, graphic descriptions of sexual encounters between Mr. Clinton and Monica S. Lewinsky.

It is the way the report marshals and characterizes the information it presents that converts it into an aggressive piece of legal advocacy. Few of the factual assertions are left to speak for themselves. "The President's linguistic parsing is unreasonable," the report says of Mr. Clinton's struggle to avoid acknowledging the sexual nature of the relationship. At many other points, the report characterizes the President's testimony as deceptive, "not plausible," or defying "common sense."

In short, this is a document with attitude. It serves up a worst-case scenario: conversations that some might find inconclusive, ambiguous, or at worst suggestive, like the exchanges between the President and Betty Currie, his secretary, in the period surrounding Mr. Clinton's

deposition in the Paula Corbin Jones sexual misconduct civil lawsuit, are characterized as a criminal obstruction of justice. Mr. Clinton's public denial on Jan. 26 of sexual relations with "that woman, Miss Lewinsky" was not simply a politically disastrous whopper of historic proportions. It was part of an impeachable offense, a Presidential failure of the constitutional duty to faithfully execute the laws, the report says, in an echo of the form, if far from the

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Starr Revealed As Aggressive In Advocacy

Continued From Page 1

substance, of the article of impeachment accusing Richard M. Nixon with "abuse of power" in 1974.

Prosecutors considering seeking criminal indictments typically prepare in-house memorandums outlining a potential case, much as Mr. Starr has done here. But those memorandums usually contain a section that the Starr report conspicuously omits — a frank discussion of possible defenses to the accusations and of vulnerabilities in the prosecution's case.

The analogy is not exact, of course; This is not a criminal case, in which a prosecutor must prove conduct that meets the precise statutory definition of a criminal offense. Impeachment is an open-ended concept, essentially what a majority of the House decides it to be.

Nonetheless, this report is notable for its failure to acknowledge that there might be more than one way to view at least some of the evidence. For example, Mr. Starr concludes that the President "orchestrated" the concealment of gifts he had given Ms. Lewinsky, a question on which the evidence is certainly suggestive but not conclusive. In trying to make the case that this episode amounted to an obstruction of justice, the report simply dismisses contrary interpretations with the statement that "those inferences fall outside the range of reasonable possibility."

The Starr report is in sharp contrast to the information Leon Jaworski, the Watergate independent counsel, gave the House Judiciary Committee that was considering the impeachment of President Nixon in 1974. Mr. Jaworski handed the committee a briefcase stuffed with 800 pages of documents, 13 White House tape recordings, and a "road map," essentially an index to the material. He provided no analysis and drew no conclusions.

As anticipated, the Starr report is rife with details of sexual encounters, toward which the independent counsel adopts a tone of pained necessity. "The President's testimony unfortunately has rendered the details essential," the report asserts, arguing that Mr. Clinton's sworn de-

A sharp contrast from the report by the Watergate independent counsel.

nials of a "sexual relationship," "sexual affair," and "sexual relations" amounted to perjury. The implication that Mr. Starr was somehow compelled to offer up such unpleasant material raises the question of whether this was a road that any independent counsel needed to travel in the first place. It raises the further question of whether the conduct depicted amounts to high crimes and misdemeanors, or low comedy.

Where Mr. Starr finds criminality, others might find pathos or even farce, if only the context for these disclosures was not so heavily freighted. In a scene reminiscent of a Feydeau bedroom comedy, Ms. Lewinsky is depicted as "walking away briskly" from an encounter with the President as Harold Ickes unexpectedly enters the Oval Office through another entrance.

The sexual details were widely anticipated to be shocking, and some of them undoubtedly are, but the prevailing image is one of banality rather than pornography. According to Ms. Lewinsky's grand jury testimony, as quoted in the report, President Clinton told her that she made him feel young, and she in turn fantasized about marriage. She also offered him "my stupid ideas about what I thought should be done in the Administration."

Even lawyers not particularly friendly toward Mr. Clinton may dispute Mr. Starr's assertion that the President's invocation of various legal privileges to shield aides from having to testify was itself an impeachable offense. Although the White House lost initial rounds of some of these battles, appeals on lawyer-client privilege and a Secret Service "protective function" privilege are pending at the Supreme Court.

In the one privilege case growing out of the Starr investigation that the Court has decided — and which the report does not mention — the Justices ruled against Mr. Starr unanimously.

The Court rebuffed his effort to obtain notes taken by the lawyer for Vincent Foster, the deputy White House counsel who committed suicide in 1993, ruling that the age-old lawyer-client privilege survives the death of the client.

THE STARR REPORT: NO GROUNDS FOR IMPEACHMENT

I. GENERAL CRITICISM OF STARR'S REPORT

Washington Post: "Were President Clinton an ordinary target in a run-of-the-mill criminal investigation it is highly unlikely, many legal experts agree, that the evidence upon which Starr bases his impeachment argument that Clinton lied under oath, obstructed justice, and tampered with a witness ever would have resulted in criminal charges." [Washington Post, 9/12/98]

New York Times: "[T]his report is notable for its failure to acknowledge that there might be more than one way to view at least some of the evidence." [New York Times, 9/12/98]

Lawrence Walsh, Former Federal Judge and Independent Counsel in the Iran-Contra Investigation: "It's [the Starr report] intended to shock the American public, arouse the House and Senate and make it very difficult to defend the president," said [Walsh] 'He [Starr] just thinks sex is a real big thing. He was investigating the president's sexual activities. The concern with perjury and obstruction of justice is a ... veneer. He doesn't have a clean case of obstruction so he goes on and on to try to create a circumstantial case. Lewinsky's testimony is not cross-examined. Are you going to impeach a president because at the time he gave a deposition he said he hadn't touched her bare skin? It's a strained report...a lot of rambling around.' Walsh said." [Philadelphia Inquirer, 9/12/98]

Bruce Yannett, Former Iran-Contra Prosecutor: "I was stunned by how weak this thing [the report] is As a criminal prosecution it's frankly pathetic" [Associated Press, 9/12/98]

Geoffrey Hazard, University of Pennsylvania Law Professor: The New York Post reported, "University of Pennsylvania law professor Geoffrey Hazard said if he were voting, he would turn thumbs down on impeachment. 'I would say this guy lied to us, the behavior was terrible -- but it was not use of government power for perversion of public policy,' he said." [New York Post, 9/12/98]

Jeffrey Jacobovitz, Trial Attorney: "I think this [Starr] report was designed to humiliate the president. I think Mr. Starr went way overboard on it. I think the word sex was mentioned 500 times and Whitewater was mentioned twice." [CNN Saturday, 9/12/98]

Jeffrey Dannenberg, Former Chair of the New York State Bar Association's Committee on Federal Constitution and Legislation: According to the New York Post, "[Dannenberg] said he does not believe the framers of the Constitution had Starr's type of charges in mind when they said officials may be removed from office for treason, bribery or other high crimes and misdemeanors." [New York Post, 9/12/98]

Gerard Lynch, Columbia Law Professor and Former Federal Prosecutor: "I think it's clear that this is not the kind of conduct for which the ordinary person would be indicted -- much less a President would be impeached." [New York Daily News, 9/12/98]

Former National Association Of Criminal Defense Lawyers President Neal Sonnett: "I think Ken Starr has succeeded in his intention to throw enough mud on the president so it will take a long time to

scrape it off What he has not done is make a case for impeachment. The salacious details, the graphic nature of the writing is in there to tar the president and prejudice the American people against him." [Miami Herald, 9/12/98]

Lawrence Fox, Former Chair of the American Bar Association's Ethics Committee: "You don't have to show the severed head of a victim to show that a victim died, and you don't have to show all these graphic details about sex to show that sex took place It's fun to read, but it just isn't necessary." [Washington Post, 9/12/98]

Washington Post Editorial: "Even more arrogant is the aggressive advocacy for impeachment in Mr. Starr's document [T]he willingness of the prosecutors to draw inferences and make judgments plainly designed to color Congress's judgment is unmistakable and sharply in contrast to the restraint shown by the special prosecutor during Watergate." [Washington Post, 9/13/98]

Washington Post Editorial: "Unfortunately, however, Mr. Starr did not satisfy himself with making allegations that the evidence unambiguously supports, nor did he act in the restrained manner we would have hoped.... The decision to write the report in a form that resembles a steamy paperback smacks of an effort to embarrass the president." [Washington Post, 9/13/98]

Baltimore Sun: "He [Starr] builds a suggested case for impeachment out of a pile of sometimes very specific testimony, a host of inferences about what opaque statements really meant, a few damaging pieces of physical evidence, and a wide array of debatable conclusions." [Baltimore Sun, 9/12/98]

Baltimore Sun: Reuters reported, "The Baltimore Sun ... [said] Starr's report added little to what had already leaked to the media and that its accusations would not be strong enough to force Clinton from office. 'The nation is embarrassed, President Clinton is diminished. But at first reading, the test of impeachable crimes is not met,' said the Sun. It called the report's dissemination on the Internet with the blessing of Congress 'the greatest exercise in history of mass prurience, character assassination, participatory democracy and lawmakers' sincere quest for guidance -- all in one.' The Starr report 'contains nothing that was not generally known when the American people told pollsters that they wanted all this to go away.'" [Reuters, 9/12/98]

William & Mary Law Professor Michael Gerhardt: "I think it has little to do with his exercise of power. It's fairly clear that the term 'high crimes and misdemeanors' was not meant to include mistakes of judgment, and it seems to me this case is going to turn on the extent to which his mistakes breached the public trust in him and his office." [Miami Herald, 9/12/98]

Boston Globe: "Nowhere in his 445-page report does independent counsel Kenneth W. Starr lay out charges against President Clinton regarding Whitewater, the complex land and banking deal that sparked Starr's four-year, \$40 million investigation. Nor does the report focus on two other matters that Starr was authorized to examine: 'Travelgate' ... and 'Filegate.'" [Boston Globe, 9/12/98]

Chicago Tribune: "Notably absent from Starr's report was any mention of the three matters other than the Lewinsky episode that he has been charged with pursuing since his appointment four years ago: The Whitewater land deal, the misuse of FBI files by the White House, and the Clintons' firing of the White House travel office staff. That suggests that Starr has concluded that none of Clinton's activities in those areas constitute impeachable offenses." [Chicago Tribune, 9/12/98]

Richard H. Pildes, a Constitutional Law Expert at The University of Michigan Law School: According to the New York Times, Pildes "said the [Starr] report often went beyond standard legal arguments. 'There are some aspects of it,' he said, 'that make it read like the almost fanatical zeal of a Medieval inquisitor.'" [New York Times, 9/13/98]

Erwin Chemerinsky, a Constitutional Law Specialist at the University of Southern California Law School: "It reads to me like a brief filed by one side, a prosecutor's brief But in many places,' Mr. Chemerinsky added, 'it reads more like a political argument than a legal brief.'" [New York Times, 9/13/98]

New York Times: "Some legal scholars have been noting in recent months that constitutional history suggests that 'high crimes and misdemeanors' refers to governmental offenses, not personal misdeeds." [New York Times, 9/13/98]

James McKay, the Independent Counsel Who Investigated Former Attorney General Edwin Meese: "After reading parts of the report Friday from the Internet, Mr. McKay said he was disappointed. 'I think the point could have been made without the specific pornographic discussions To me it doesn't give rise to impeachable offenses. It's very depressing that it all had to come out.'" [New York Times, 9/13/98]

Washington Post: "A number of outside legal experts agreed with the Clinton team that the case mounted against the president by independent counsel Kenneth W. Starr would face major weaknesses as a criminal prosecution and at the very least would likely be substantially pared back." [Washington Post, 9/13/98]

Former Federal Prosecutor E. Lawrence Barcella Jr.: Barcella "said the raunchy details were unnecessary. "I didn't need to know 95 percent of this to understand what the report's conclusions and rationale are," he said. 'If you manage to drag your way through it, you find the obstruction of justice, witness tampering and abuse of power arguments are painfully thin. What you come back to is lying about an adulterous affair, which he obviously did.'" [AP Online, 9/12/98]

Larry Otter, a Former Prosecutor in New Jersey: "It [the report] just leads me to the conclusion that there is some vindictiveness going on here," said Larry Otter, a Dublin, PA, lawyer and former prosecutor in New Jersey. "I don't need to know about anyone's private sex life," he said. "I don't condone what he (Clinton) did. I don't condone adultery. But I don't think it is an impeachable offense." [Philadelphia Inquirer, 9/12/98]

Lawrence Barcella, a Former Prosecutor in Washington: Barcella "described Starr's report as 'incredibly detailed and graphic and 95 percent unnecessary.' The evidence of obstruction of justice, intimidation of witnesses and abuse of power, even if assumed to be accurate, is 'very thin and doesn't amount to anything,' he said. "And whether there was one lie or 12 (by Clinton), it's lying about sex," he said. "He was trying desperately to hide an adulterous affair. I don't know of any case where anyone was prosecuted for lying about an adulterous affair." [Philadelphia Inquirer, 9/12/98]

St. Louis Post-Dispatch Editorial: "The Framers of the Constitution made impeachment an arduous process for good reason. It overturns the results of an election. Impeachment is a national decision requiring nonpartisan deliberation. Caution is particularly appropriate in light of Kenneth W. Starr's case against the president, which rests on the flimsy foundation of sex in the Oval Office. A striking feature of Mr. Starr's report to Congress is notably short on new evidence of abuse of office. Moreover, Mr. Starr's report is a work of unadulterated advocacy, quite unlike Leon Jaworski's report on Richard Nixon. Mr.

Starr sometimes stretches the facts and invents novel and disturbing theories of wrongdoing." [St. Louis Post-Dispatch, 9/13/98]

St. Louis Post-Dispatch Editorial: "But there are troubling aspects to the Starr report and investigation. It is like a tower of blocks wobbling on top of the shaky foundation of a sexual relationship between two consenting adults - albeit an immoral, adulterous, pitifully adolescent relationship. Indeed, Mr. Starr's report is structured like a steamy confessional novel - all the better to feed the public's appetite for titillation. It is organized into chapters named for each sexual encounter. Danielle Steele couldn't have done much better. Absent are the more serious scandals that Mr. Starr spent four years and \$40 million investigating - Whitewater, Filegate, Travelgate, etc. That's disturbing because the prior investigation was Mr. Starr's fig leaf for probing White House sex." [St. Louis Post-Dispatch, 9/13/98]

2. ABUSE OF POWER

New York Times: "Even lawyers not particularly friendly toward Mr. Clinton may dispute Mr. Starr's assertion that the President's invocation of various legal privileges to shield aides from having to testify was itself and impeachable offense." [New York Times, 9/12/98]

Washington Post: "[Legal experts] said that the independent counsel's evidence on the questions of obstruction and witness-tampering are, as the report acknowledges, largely circumstantial; the report offers no 'smoking gun' of a Watergate-style conspiracy to thwart investigators." [Washington Post, 9/12/98]

William & Mary Law Professor Michael Gerhardt: "I just find that [charges of abuse of office] to be incredibly thin." [Washington Post, 9/12/98]

Washington Post: "The weakest part of Starr's case, [legal experts] said, is the attempt to transform some of the president's actions, particularly his court battles on executive privilege, into violations of his constitutional duties." [Washington Post, 9/12/98]

Los Angeles Times: "The report appears weaker in claiming that the president 'obstructed justice' and 'abused his constitutional authority' by, among other things, refusing to testify for seven months before the grand jury. In his report, Starr concluded that Clinton's 'refusals to testify sooner substantially delayed this office's investigation.' In no other instance would a defendant's refusal to appear before a grand jury be charged as an obstruction of justice, legal experts said. Starr, however, cites it as the basis for one of his 11 impeachment counts. [Los Angeles Times, 9/12/98]

Susan Low Bloch, a Professor of Constitutional Law at Georgetown University: "'Abuse of power comes when you do something as president only a president can do,' said Susan Low Bloch But for Starr to say Clinton's acts created an impeachable abuse of power borders on legal and political absurdity, she said. 'Anybody can perjure themselves,' Bloch said. 'That's not abuse of power. This whole situation is way out of control and way out of proportion.'" [Kansas City Star, 9/12/98]

Eric M. Freedman, a Hofstra University Professor of Constitutional Law and History: "If you start defining abuse of power to include ordinary political actions because they are taken for the 'wrong' reason, the system couldn't possibly work," Freedman said. "By that reasoning, you could impeach a congressman for voting against campaign finance reform because he's looking out for his interest rather than the public good." [Kansas City Star, 9/12/98]

St. Louis Post-Dispatch editorial: "Most disturbing is Mr. Starr's claim that the president 'illegally' invoked various legal privileges to try to slow Mr. Starr's investigation. It is absolutely true that Mr. Clinton's claim of executive privilege was exaggerated and calculated to buy time. But only an overreaching prosecutor would claim it was illegal. The president has to be able to assert his prerogatives in the court without fearing they'll land him in front of the Senate Finally, one searches to put this case built on sex and lies into perspective. It does not represent the kind of abuse of power and office that Watergate or the Iran-Contra scandal represented. Covering up sex in the Oval Office is not like covering up a political burglary or an illegal foreign war." [St. Louis Post-Dispatch, 9/13/98]

3. OBSTRUCTION OF JUSTICE

New York Times: "In trying to make the case that this episode [the return of gifts] amounted to an obstruction of justice, the report simply dismisses contrary interpretations with the statement that, 'those inferences fall outside the range of reasonable possibility.'" [New York Times, 9/12/98]

New York Times: "In short, this is a document with attitude. It serves up a worst-case scenario: conversations that some might find inconclusive, ambiguous, or at worst suggestive, like the exchanges between the President and Betty Currie, his secretary, in the period surrounding Mr. Clinton's deposition in the Paula Corbin Jones sexual misconduct civil lawsuit, are characterized as criminal obstruction of justice." [New York Times, 9/12/98]

Washington Post Editorial: "In addition, some of Mr. Starr's allegations are insufficiently supported. It is a stretch, for example, for Mr. Starr to claim that the president committed obstruction when he lied to his aides knowing that they would then testify falsely before the grand jury. Mr. Starr further accuses the president of abusing his constitutional authority by failing to cooperate with Mr. Starr's own investigation, declining several times to testify before the grand jury and asserting executive privilege. Mr. Starr's arrogant contention that mounting a vigorous defense against Mr. Starr is an impeachable offense is difficult to support." [Washington Post, 9/13/98]

Columbia Law Professor Gerald Lynch: "Falsely denying guilt in a conversation with a friend or colleague who then testifies is not usually treated as obstruction or witness tampering Such charges typically involve a very explicit and clearly intentional effort to introduce false information into the record of a case." [Washington Post, 9/12/98]

Associated Press: "Starr is on shakier ground when he alleges obstruction of justice and witness tampering, legal analysts said." [AP Online, 9/11/98]

Fred Lawrence, Vice Dean Of Boston University Law School: "Obstruction of justice would be impeachable It would depend on the strength of the evidence. And based on a summary of [Starr's report] it's not very strong." [Boston Globe, 09/12/98]

Bruce Yannett, Former Iran-Contra Prosecutor: The Boston Globe reported, "Bruce Yannett, a former prosecutor on independent counsel Lawrence Walsh's Iran-Contra staff, noted that in Starr's account, Lewinsky - not Clinton - first suggests that she should return his gifts. 'The obstruction stuff is very flimsy,' Yannett said, after reviewing the report." [Boston Globe, 9/12/98]

Michael Gerhardt of William and Mary College: "That portion of the report [obstruction of justice], at least on first glance, appears to sort of rest mostly on inference or innuendo. There seems to be an inference or assumption almost really made in that part of the report that the president must have had a bad intent, or must of have knowingly made certain communications with the understanding that certain results would ensue. That strikes me, at least initially, as rather tenuous." [NPR, "Weekend All Things Considered," 9/12/98]

4. PERJURY

Lawrence Walsh, former federal judge and independent counsel in the Iran -Contra investigation during the Reagan administration: "'The issue of perjury (in the Jones civil case) was immaterial and the case was thrown out,' [Walsh] said. 'So what you have is a prosecutor working in an area where he shouldn't be. You can rail against the president for sexual promiscuity but don't make a crime of it.'" [Philadelphia Inquirer, 9/12/98]

Associated Press: "The case is weakest when dealing with allegations that Clinton tried to get others to lie for him, lawyers said Friday." [AP Online, 9/11/98]

Former Iran-Contra Prosecutor John Douglass: Douglass said Starr's obstruction allegation "is not a case that a prosecutor would ever expect a jury to convict on and it's not a case that, were the target not the president of the United States, any prosecutor would be included to bring." Douglass argues that Clinton's "silence in the face of his counsel's arguments doesn't constitute perjury" and such a charge would never reach a criminal court. [Associated Press, 9/12/98]

Gerard Lynch, Columbia Law Professor and Former Federal Prosecutor: "It seems to me it would be extraordinarily difficult to prove Clinton knew his testimony was literally false." [New York Daily News, 9/12/98]

Law School Vice Dean And Former Prosecutor Fred Lawrence: The Boston Globe reported, "By contrast, [Fred] Lawrence, the [Boston University Law School] vice dean and a former federal prosecutor, argues that the perjury case may be even less persuasive as a crime justifying impeachment because Clinton's alleged lying was semantical." [Boston Globe, 9/12/98]

History:

**No Comparison To Watergate --
No Grounds For Impeachment**

**SENATE MAJORITY LEADER TRENT LOTT
ON THE STANDARDS FOR IMPEACHMENT**

"[E]ven as to those acts which we would concur in characterizing as abusive and which the President appeared to direct or countenance, neither singly nor in the aggregate do they impress us as being offenses for which Richard Nixon, or any President, would be impeached or removed from office..."

-- Minority Views of then-Rep. Trent Lott and 9 other House Republicans
House Judiciary Committee Report on Nixon Impeachment, 8/20/74

I. Trent Lott Was One of Only 10 Lawmakers on the House Judiciary Committee to Vote Against Each Article of Impeachment Considered Against Richard Nixon in 1974

In 1974, then Representative Trent Lott (R-MS) Lott was one of only 10 Republicans who voted against each of the articles of impeachment that were considered by the committee. The Committee considered a total of five articles of impeachment against Nixon, and eventually approved three charging him with: 1) Obstruction of justice (by a vote of 27-10); 2) Abuse of Power (by a vote of 28-10); and 3) Contempt of Congress (by a vote of 21-17). [1974 CQ Almanac, p. 897 and 884-888]

II. Lott and Nine Other House Republicans Filed Minority Views Criticizing Article II of the Impeachment Against Nixon Dealing with Abuse of Power.

On August 5, 1974 President Nixon released tapes of his conversations which clearly showed his role in the Watergate cover up. Subsequently, on August 9, President Nixon resigned. Even after these events, the ten Republicans who voted against each article of impeachment, including Lott, filed a minority view included as part of the Judiciary Committee's report "Impeachment of Richard M. Nixon President of the United States," accepted by the full House on August 20, 1994.

While Lott and the others conceded that the charge of obstruction of justice contained in Article I of the impeachment was "sustained by the evidence" of Nixon's taped conversations, they still maintained that even President Nixon's "abusive" acts did not "*impress [them] as being offenses for which Richard Nixon, or any President would be impeached or removed from office.*" As they wrote in their report:

"[Moreover] even as to those acts which we would concur in characterizing as abusive and which the President appeared to direct or countenance, neither singly nor in the aggregate do they impress us as being offenses for which Richard Nixon, or any President, would be impeached or removed from office, when considered, as they must be, on their own footing, apart from the obstruction of justice charge under proposed Article I which we believe to be sustained by the evidence." ["Impeachment of Richard M. Nixon President of the United States" Report of the Committee on the Judiciary House of Representatives, 8/20/74, p. 360]

III. Which Acts Do Not Merit Impeachment? Improper Wire Taps, Misusing the CIA and the IRS, and Ordering Aides to Break into the Brookings Institution.

As a result of the Watergate investigation it was learned that President Richard Nixon:

- 1) **Wire Tapped Private Citizens:** Used the FBI, CIA, Secret Service and White House aides to undertake surveillance activities, including wire tapping newsmen and administration officials.
- 2) **Misused The CIA:** Ordered his chief of staff H.R. Haldeman to persuade the CIA to ask the FBI to limit its investigation of the Watergate burglary.
- 3) **Ordered Brookings Break-in:** Was heard on tape instructing Haldeman to break into the Brookings Institution and steal material related to the Vietnam War.
- 4) **Misused the IRS:** Misused the IRS to accelerate or initiate IRS investigations or audits of political critics or opponents of the President. [Report of Chief Majority Counsel John Doar, CQ Almanac 1974 p. 875; Pittsburgh Post-Gazette, 8/27/98; San Francisco Examiner, 11/21/96]

**THEN-REP. TRENT LOTT'S STANDARDS FOR IMPEACHMENT IN 1974:
"SERIOUS MISCONDUCT DANGEROUS TO THE SYSTEM OF GOVERNMENT"**

In 1974, then-Representative Trent Lott (R-MS), along with nine other House Republicans who voted against each Article of Impeachment considered by the Judiciary Committee, filed minority views to the Committee's report on President Nixon's impeachment. The report was filed after President Nixon turned over tapes clearly showing his role in the Watergate cover up and the President's subsequent resignation. While Lott and the others conceded that the charge of obstruction of justice contained in Article I of the impeachment was "sustained by the evidence" of Nixon's taped conversations, they still maintained that even President Nixon's "abusive" acts in Article II did not "impress [them] as being offenses for which Richard Nixon, or any President would be impeached or removed from office."

Although the report was filed after the President's resignation, Lott and the others said that "it was no less necessary, that we record our views" noting that "we have an obligation, both to our contemporaries and to posterity, not to perpetuate, unchallenged, certain theories of the evidence, and of law..." Among their findings were the following:

I. A SITTING PRESIDENT CAN BE IMPEACHED "ONLY FOR SERIOUS MISCONDUCT DANGEROUS TO THE SYSTEM OF GOVERNMENT."

"It is our judgement , based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government established by the Constitution. [p. 365]

II. ABSENT THE "ELEMENT OF DANGER TO THE STATE," THE FOUNDING FATHERS INTENDED PRESIDENT TO SERVE OUT TERM.

"Absent the element of danger to the State, we believe the Delegates to the Federal Convention of 1787, in providing that the President should serve for a fixed elective term rather than during good behavior or popularity , struck the balance in favor of stability in the executive branch." [p. 365]

III. IF CONGRESS WANTS TO REMOVE SITTING PRESIDENT ABSENT ELEMENT OF "DANGER TO THE STATE," THEY SHOULD AMEND THE CONSTITUTION TO ADOPT A PARLIAMENTARY "VOTE OF NO CONFIDENCE" SYSTEM.

"We have never had a British parliamentary system in this country and we have never adopted the device of a parliamentary vote of no-confidence in the chief executive. If it is thought desirable to adopt such a system of government, the proper way to do so is by amending our written Constitution -- not by removing the President." [p. 365]

Source: "Minority Views of Representatives Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorehead, Maraziti and Latta," Impeachment of Richard M. Nixon President of the United States, Report of the Committee on the Judiciary House of Representatives, 8/20/74

IV. A PRESIDENT CAN NOT BE IMPEACHED BASED ON “ONE-SIDED DOCUMENT” USING HEARSAY EVIDENCE.

“The ‘evidence’ relied on in the committee report is based essentially on the Summary of Information prepared by the majority staff. The facts and inferences contained in this one-sided document were drawn selectively from Statements of Information also, prepared by the inquiry staff...[A] fair examination of the character of that ‘evidence’ reveals that it is comprised of layer upon layer of hearsay. We venture to say that ninety per cent of the ‘evidence’ against the President would have been inadmissible in any court of law in the United States. We do not regard this as a legal quibble. Multiple hearsay evidence is inadmissible in our system of justice, not for some arcane and technical reason, but because it is considered unreliable.” [p. 372 and 373]

V. IN ORDER TO IMPEACH A SITTING PRESIDENT, ALL EVIDENCE MUST BE SUBJECTED TO CROSS EXAMINATION.

“Hearsay evidence is not subject to the test of cross-examination-- described by the preeminent American scholar of the law of evidence as ‘beyond any doubt the greatest legal engine ever invented for the discovery of truth.’ Our courts have been particularly sensitive to government proceedings which affect an individual’s employment and have required that an individual be afforded an opportunity to cross-examine his accusers before such governmental action can be taken.” [p. 373]

VI. CONSIDERING THE IMPEACHMENT OF A SITTING PRESIDENT REQUIRES CONSIDERATION OF “THE COLLECTIVE RIGHTS OF THE ELECTORATE WHICH CHOSE HIM.”

“It might be argued that the rights of confrontation and cross-examination have less vitality in an impeachment proceeding than in other contexts, because the occupancy of public office is not an individual right of the respondent. But this is precisely the reason why the Committee’s reliance on hearsay evidence, untested by cross examination is so disturbing. For it is not the personal rights of the President which were at stake, but rather the collective rights of the electorate which chose him to serve as the Chief Executive for a fixed term of four years.” [p. 373-374]

VII. IT WOULD BE “IRRESPONSIBLE” TO CONSIDER IMPEACHMENT OF A SITTING PRESIDENT BASED ON “CHARGES WHICH COULD NOT BE PROVED AT TRIAL.”

“In our view it would have been irresponsible to recommend to the House any Article of Impeachment grounded upon charges which could not be proved at trial, to whatever standard of proof and under whatever rules of evidence the Senate might reasonably be expected to apply. Because of the Committee’s excessive reliance on hearsay and multiple hearsay evidence, we were obliged to conclude -- like the subcommittee which investigated the conduct of Judge Emory Speer in 1914 -- ‘that the competent legal evidence at hand is not sufficient to procure a conviction at the hand of Senate.’” [p. 374]

VIII. IT WOULD BE “SERIOUSLY UNWISE” TO IMPEACH A SITTING PRESIDENT WITHOUT “CRIMINAL ACTS OR AT LEAST CRIMINAL INTENT.”

“There are types of misconduct by public officials -- for example, ineptitude, or unintentional or “technical” violations of rules or statutes, or “maladministration” -- which would not be criminal; nor could they be made criminal, consonant with the Constitution, because of the element of criminal intent or mens rea would be lacking. Without a requirement of criminal acts or at least criminal intent, Congress would be free to impeach these officials. The loss of this freedom should not be mourned; such a use of the impeachment power was never intended by the framers, is not supported by the language of our Constitution, and, if history is to guide us, would be seriously unwise as well.” [p. 371]

IX. THE FOUNDING FATHERS DID NOT INTEND THAT A SITTING PRESIDENT COULD BE IMPEACHED FOR “GENERAL MISBEHAVIOR.”

“The argument that the President should be impeachable for general misbehavior, because some English impeachments do not appear to have involved criminal charges, also takes too little account of the historical fact that the Framers, mindful of the turbulence of parliamentary uses of the impeachment power, cut back on that power in several respects in adapting it to an American context.” [p. 367]

X. CONTRAVENING THE “WILL OF THE ELECTORATE” BY IMPEACHING SITTING PRESIDENT REQUIRES THE “STRONGEST POSSIBLE PROOF OF PRESIDENTIAL WRONGDOING.”

“The removal of a President by impeachment in mid-term, however, should not be too easy of accomplishment. For it contravenes the will of the electorate. In providing for a fixed four-year term, not subject to interim votes of No Confidence, the Framers indicated their preference for stability in the executive. That stability should not be jeopardized except on the strongest possible proof of presidential wrongdoing.” [p. 379-380]

TRENT LOTT ON IMPEACHMENT: WHAT A DIFFERENCE 24 YEARS MAKE

Today, Senate Majority Leader Trent Lott (R-MS) Said A Person Doesn't Have to "Violate the Law" to Be Impeached...

9/15/98 "I don't think that for a person to be impeached he has to necessarily even violate the law. It can be, you know, abuse of the public trust." [Senate Majority Leader Trent Lott News Conference (as transcribed by Federal Document Clearing House, 9/15/98)]

...But Back In 1974, Lott Argued It Would Be "Seriously Unwise" To Impeach Without "Criminal Acts Or At Least Criminal Intent."

8/20/74 "There are types of misconduct by public officials -- for example, ineptitude, or unintentional or 'technical' violations of rules or statutes, or 'maladministration' -- which would not be criminal; nor could they be made criminal, consonant with the Constitution, because of the element of criminal intent or mens rea would be lacking. Without a requirement of criminal acts or at least criminal intent, Congress would be free to impeach these officials. The loss of this freedom should not be mourned; such a use of the impeachment power was never intended by the framers, is not supported by the language of our Constitution, and, if history is to guide us, would be seriously unwise as well." ["Minority Views of Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorehead, Maraziti and Latta," Impeachment of Richard M. Nixon President of the United States, Committee on the Judiciary House of Representatives, 8/20/74, p. 360]

**STANDARDS FOR IMPEACHMENT:
Republican Minority Views in 1974**

"[E]ven as to those acts which we would concur in characterizing as abusive and which the President appeared to direct or countenance, neither singly nor in the aggregate do they impress us as being offenses for which Richard Nixon, or any President, would be impeached or removed from office..."

-- Minority Views of 10 House Judiciary Committee Republicans
House Judiciary Committee Report on Nixon Impeachment, 8/20/74

I. 10 Lawmakers on the House Judiciary Committee Voted Against Each Article of Impeachment Considered Against Richard Nixon in 1974

In 1974, 10 House Judiciary Committee Republicans voted against each of the articles of impeachment that were considered by the committee. The 10 were: Representatives Edward Hutchinson (MI), Henry Smith (NY), Charles Sandman (NJ), Charles Wiggins (CA), David Dennis (IN), Wiley Mayne (IA), Trent Lott (MS), Carlos Moorehead (CA), Joseph Marzaziti (NJ), and Delbert Latta (OH). The Committee considered a total of five articles of impeachment against Nixon, and eventually approved three charging him with: 1) Obstruction of justice (by a vote of 27-10); 2) Abuse of Power (by a vote of 28-10); and 3) Contempt of Congress (by a vote of 21-17). [1974 CQ Almanac, p. 897 and 884-888]

II. 10 House Republicans Filed Minority Views Criticizing Article II of the Impeachment Against Nixon Dealing with Abuse of Power.

On August 5, 1974 President Nixon released tapes of his conversations which clearly showed his role in the Watergate cover up. Subsequently, on August 9, President Nixon resigned. Even after these events, the ten Republicans who voted against each article of impeachment, filed a minority view included as part of the Judiciary Committee's report "Impeachment of Richard M. Nixon President of the United States," accepted by the full House on August 20, 1994.

While the ten Republicans conceded that the charge of obstruction of justice contained in Article I of the impeachment was "sustained by the evidence" of Nixon's taped conversations, they still maintained that even President Nixon's "abusive" acts did not "*impress [them] as being offenses for which Richard Nixon, or any President would be impeached or removed from office.*" As they wrote in their report:

"[Moreover] even as to those acts which we would concur in characterizing as abusive and which the President appeared to direct or countenance, neither singly nor in the aggregate do they impress us as being offenses for which Richard Nixon, or any President, would be impeached or removed from office, when considered, as they must be, on their own footing, apart from the obstruction of justice charge under proposed Article I which we believe to be sustained by the evidence." ["Impeachment of Richard M. Nixon President of the United States" Report of the Committee on the Judiciary House of Representatives, 8/20/74, p. 360]

III. Which Acts Do Not Merit Impeachment? Improper Wire Taps, Misusing the CIA and the IRS, and Ordering Aides to Break into the Brookings Institution.

As a result of the Watergate investigation it was learned that President Richard Nixon:

- 1) **Wire Tapped Private Citizens:** Used the FBI, CIA, Secret Service and White House aides to undertake surveillance activities, including wire tapping newsmen and administration officials.
- 2) **Misused The CIA:** Ordered his chief of staff H.R. Haldeman to persuade the CIA to ask the FBI to limit its investigation of the Watergate burglary.
- 3) **Ordered Brookings Break-in:** Was heard on tape instructing Haldeman to break into the Brookings Institution and steal material related to the Vietnam War.
- 4) **Misused the IRS:** Misused the IRS to accelerate or initiate IRS investigations or audits of political critics or opponents of the President. [Report of Chief Majority Counsel John Doar, CQ Almanac 1974 p. 875; Pittsburgh Post-Gazette, 8/27/98; San Francisco Examiner, 11/21/96]

REPUBLICAN MINORITY VIEWS ON STANDARDS FOR IMPEACHMENT IN 1974: “SERIOUS MISCONDUCT DANGEROUS TO THE SYSTEM OF GOVERNMENT”

In 1974, the ten House Judiciary Committee Republicans who voted against each Article of Impeachment considered by the Judiciary Committee filed their minority views to the Committee's report on President Nixon's impeachment. The report was filed after President Nixon turned over tapes clearly showing his role in the Watergate cover up and the President's subsequent resignation. While the 10 Republicans conceded that the charge of obstruction of justice contained in Article I of the impeachment was "sustained by the evidence" of Nixon's taped conversations, they still maintained that even President Nixon's "abusive" acts in Article II did not "impress [them] as being offenses for which Richard Nixon, or any President would be impeached or removed from office."

Although the report was filed after the President's resignation, the ten Republicans said that "it was no less necessary, that we record our views" noting that "we have an obligation, both to our contemporaries and to posterity, not to perpetuate, unchallenged, certain theories of the evidence, and of law..." Among their findings were the following:

I. A SITTING PRESIDENT CAN BE IMPEACHED “ONLY FOR SERIOUS MISCONDUCT DANGEROUS TO THE SYSTEM OF GOVERNMENT.”

"It is our judgement, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government established by the Constitution." [p. 365]

II. ABSENT THE “ELEMENT OF DANGER TO THE STATE,” THE FOUNDING FATHERS INTENDED PRESIDENT TO SERVE OUT TERM.

"Absent the element of danger to the State, we believe the Delegates to the Federal Convention of 1787, in providing that the President should serve for a fixed elective term rather than during good behavior or popularity, struck the balance in favor of stability in the executive branch." [p. 365]

III. IF CONGRESS WANTS TO REMOVE SITTING PRESIDENT ABSENT ELEMENT OF “DANGER TO THE STATE,” THEY SHOULD AMEND THE CONSTITUTION TO ADOPT A PARLIAMENTARY “VOTE OF NO CONFIDENCE” SYSTEM.

"We have never had a British parliamentary system in this country and we have never adopted the device of a parliamentary vote of no-confidence in the chief executive. If it is thought desirable to adopt such a system of government, the proper way to do so is by amending our written Constitution -- not by removing the President." [p. 365]

Source: "Minority Views of Representatives Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorehead, Maraziti and Latta," Impeachment of Richard M. Nixon President of the United States, Report of the Committee on the Judiciary House of Representatives, 8/20/74

IV. A PRESIDENT CAN NOT BE IMPEACHED BASED ON “ONE-SIDED DOCUMENT” USING HEARSAY EVIDENCE.

“The ‘evidence’ relied on in the committee report is based essentially on the Summary of Information prepared by the majority staff. The facts and inferences contained in this one-sided document were drawn selectively from Statements of Information also, prepared by the inquiry staff...[A] fair examination of the character of that ‘evidence’ reveals that it is comprised of layer upon layer of hearsay. We venture to say that ninety per cent of the ‘evidence’ against the President would have been inadmissible in any court of law in the United States. We do not regard this as a legal quibble. Multiple hearsay evidence is inadmissible in our system of justice, not for some arcane and technical reason, but because it is considered unreliable.” [p. 372 and 373]

V. IN ORDER TO IMPEACH A SITTING PRESIDENT, ALL EVIDENCE MUST BE SUBJECTED TO CROSS EXAMINATION.

“Hearsay evidence is not subject to the test of cross-examination-- described by the preeminent American scholar of the law of evidence as ‘beyond any doubt the greatest legal engine ever invented for the discovery of truth.’ Our courts have been particularly sensitive to government proceedings which affect an individual’s employment and have required that an individual be afforded an opportunity to cross-examine his accusers before such governmental action can be taken.” [p. 373]

VI. CONSIDERING THE IMPEACHMENT OF A SITTING PRESIDENT REQUIRES CONSIDERATION OF “THE COLLECTIVE RIGHTS OF THE ELECTORATE WHICH CHOSE HIM.”

“It might be argued that the rights of confrontation and cross-examination have less vitality in an impeachment proceeding than in other contexts, because the occupancy of public office is not an individual right of the respondent. But this is precisely the reason why the Committee’s reliance on hearsay evidence, untested by cross examination is so disturbing. For it is not the personal rights of the President which were at stake, but rather the collective rights of the electorate which chose him to serve as the Chief Executive for a fixed term of four years.” [p. 373-374]

VII. IT WOULD BE “IRRESPONSIBLE” TO CONSIDER IMPEACHMENT OF A SITTING PRESIDENT BASED ON “CHARGES WHICH COULD NOT BE PROVED AT TRIAL.”

“In our view it would have been irresponsible to recommend to the House any Article of Impeachment grounded upon charges which could not be proved at trial, to whatever standard of proof and under whatever rules of evidence the Senate might reasonably be expected to apply. Because of the Committee’s excessive reliance on hearsay and multiple hearsay evidence, we were obliged to conclude -- like the subcommittee which investigated the conduct of Judge Emory Speer in 1914 -- ‘that the competent legal evidence at hand is not sufficient to procure a conviction at the hand of Senate.’” [p. 374]

VIII. IT WOULD BE “SERIOUSLY UNWISE” TO IMPEACH A SITTING PRESIDENT WITHOUT “CRIMINAL ACTS OR AT LEAST CRIMINAL INTENT.”

“There are types of misconduct by public officials -- for example, ineptitude, or unintentional or “technical” violations of rules or statutes, or “maladministration” -- which would not be criminal; nor could they be made criminal, consonant with the Constitution, because of the element of criminal intent or mens rea would be lacking. Without a requirement of criminal acts or at least criminal intent, Congress would be free to impeach these officials. The loss of this freedom should not be mourned; such a use of the impeachment power was never intended by the framers, is not supported by the language of our Constitution, and, if history is to guide us, would be seriously unwise as well.” [p. 371]

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“The argument that the President should be impeachable for general misbehavior, because some English impeachments do not appear to have involved criminal charges, also takes too little account of the historical fact that the Framers, mindful of the turbulence of parliamentary uses of the impeachment power, cut back on that power in several respects in adapting it to an American context.” [p. 367]

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WATERGATE COMPARISON:

'74 House Judiciary Committee Voted Against "Tax Evasion" As An Impeachable Offense

On July 30, 1974, the House Judiciary Committee debated a proposed article to the impeachment of President Richard Nixon which charged that the President had: 1) "*unlawfully received compensation in the form of Government expenditures*"; and 2) "*knowingly failed to report certain income and claimed deductions...which were not authorized by law.*" The Committee voted the article down 12 to 26. Here is a sample of some of the comments made in the Committee's final report and during debate on the article.

The Report: "*The opponents for the tax fraud section stated that...even if fraud were shown, the offense of tax evasion did not rise to the level of an impeachable offense...[T]hey argued that even if tax fraud were proved, it was not the type of abuse of power at which the remedy of impeachment is directed.*" ["Impeachment of Richard M. Nixon, President of the United States," House Judiciary Committee. 8/20/74 p. 222-223]

Rep. Tom Railback (R-IL): "*...I think the committee has gone far enough, and I suggest that there is a serious question as to whether something involving his personal tax liability has anything to do with his conduct of the office of the President.*" ["Debate on Articles of Impeachment," House Committee on the Judiciary, July 24,25, 26 27, 29, 30, 1974, p. 524]

Rep. Trent Lott (R-MI): "*It [the President's taxes] is a good political issue. But is it one that you impeach a President for? We the people don't like the idea that our President has not payed taxes commensurate with his income. But will we not admit that he is entitled to make those deductions which, according to his counsel and the law are legal? You may not like it, but do you impeach a President for mere negligence in filing personal income taxes?*" ["Debate on Articles of Impeachment," House Committee on the Judiciary, July 24,25, 26 27, 29, 30, 1974, p. 532]

Rep. Lawrence Hogan (R-MD): "*One of the other things that troubles me very much about this is the not only unfairness but this in no way rises to the level of an impeachable offense. The staff report on grounds for Presidential impeachments makes clear, and I am quoting: 'As a technical term, high signified a crime against the system of government, not merely a serious crime. This element of injury of the commonwealth, that is, to the state itself and to the Constitution, was historically the criteria for distinguishing a high crime or misdemeanor from an ordinary one.' Now, obviously in the drafting of this, the words previously were included against the United States after high crimes and misdemeanors, so that it is clear that that is what the Founding Fathers intended.*" ["Debate on Articles of Impeachment," House Committee on the Judiciary, July 24,25, 26 27, 29, 30, 1974, p. 541-542]

Rep. Wiley Mayne (R-IA): *"Now, even if criminal fraud had been proved, and I think quite clearly it is not, then we would still have the question whether it is a high crime or misdemeanor sufficient to impeach under the Constitution, because that is why we are here, ladies and gentleman, to determine whether the President should be impeached, not to comb through every minute detail of his personal taxes for the past 6 years, raking up every possible minutia which could prejudice the President on national television. I certainly do not believe that Madison and the Framers of the Constitution had in mind any such recital as we are hearing here tonight."*
["Debate on Articles of Impeachment," House Committee on the Judiciary, July 24,25, 26 27, 29, 30, 1974, p. 545]

Rep. Ray Thornton (D-AR): *"I think it is apparent that in this area there had been a breach of faith with the American people with regard to incorrect income tax returns and the improper expenditure of public funds. But it is my view that these charges may be reached in due course in the regular process of law. This committee is not a tax court nor criminal court nor should it endeavor to become one. Our charge is serious and full enough, in determining whether high crimes and misdemeanors affecting the security of our system of Government must be brought to the attention of the full House, debated there, and if found to exist, presented to the Senate."*
["Debate on Articles of Impeachment," House Committee on the Judiciary, July 24,25, 26 27, 29, 30, 1974, p. 549]

NO COMPARISON TO WATERGATE:

Quotes from People Who Were There

- ☐ **Former Nixon Attorney General Elliot Richardson:** *"Mr. Clinton's initial misconduct differs markedly from the intertwined abuses of power that characterized Watergate."* [New York Times, 9/18/98]
- ☐ **Former Nixon Counsel John Dean:** Asked how the Starr report compared with Watergate: *"Well, I don't think they're comparable...[T]he nature of the conduct is substantially different."* [CNN's "Late Edition," 9/13/98]
- ☐ **Former Nixon Speech Writer William Safire:** *"If forthrightly confessed, perjury about workplace dalliance should not be enough to force out a President."* [New York Times, 9/14/98]
- ☐ **Former Press Aide to Watergate Special Prosecutor Archibald Cox Jim Doyle:** *"Down the road, 20 years from now, this is going to look like a coup d'état."* [Daily News (New York), Lars Erik Nelson column, 9/18/98]
- ☐ **Reporter Bob Woodward:** *"It's not somebody overexercising his power. It's really not somebody abusing his power in a Nixonian way...And so a lot of people may say, 'Hey, now wait a minute. This isn't a constitutional issue, this is something else.'"* [PBS "Washington Week in Review," 9/11/98]
- ☐ **Reporter Carl Bernstein:** *"This is about the conduct of the president's private life. And is it tawdry? Absolutely. But does it rise to the level of Watergate? No, I don't think it does."* [CNN Morning News, 8/18/98]
- ☐ **Former Senator Howard Baker (R-TN):** According to the New York Times, "[M]any, like Mr. Baker, think another resignation following President Richard M. Nixon's would set a bad precedent, moving the country away from a system of separation of powers toward a parliamentary system." [New York Times, 9/17/98]
- ☐ **Former Watergate Prosecutor Richard Ben-Veniste:** *"It had been reported that Mr. Starr was going to follow the example of the Watergate prosecutors in transmitting evidence as a statute permanent him to do relating to his view of impeachable offenses. Instead, he has set himself up, not only as investigator and prosecutor, but as judge and jury..."* [NBC's "Meet the Press," 9/13/98]
- ☐ **Former Rep. Elizabeth Holtzman (D-NY):** *"Impeachment has to be about what only a President can do. It was created to protect the government and the public from an abuse of power, not to create a parliamentary system of government where the leader becomes unpopular and is removed."* [Daily News (New York), 9/10/98]

NO COMPARISON TO WATERGATE:

Quotes from People Who Were There

❑ **Former Nixon Attorney General Elliot Richardson: President's Initial Conduct "Differs Markedly" From Nixon's**

In a *New York Times* Op-Ed, former Nixon Attorney General Elliot Richardson: *"Mr. Clinton's initial misconduct differs markedly from the intertwined abuses of power that characterized Watergate. Richard Nixon faced impeachment for those abuses as well as for covering up the Watergate break-in and defying subpoenas. By contrast, Bill Clinton's attempts to evade and conceal the truth are his only potentially impeachable offenses...Removing Mr. Clinton from office might well be an excessive penalty given the noncriminal, nonofficial character of his initial offense as well as this society's disposition to cloak sexual behavior from public exposure."* [*New York Times*, 9/18/98]

❑ **Former Nixon Counsel John Dean: "Conduct Is Substantially Different"**

Former Counsel to President Richard Nixon John Dean asked how the Starr report compared with Watergate: *"Well, I don't think they're comparable. I looked at the grounds and went through them, and sort of compared them in my own mind to the grounds that were set forth in the bill of impeachment. Mr. Starr alleges roughly 11 counts. If you break down in a similar way the Nixon bill of impeachment, you have about 20 counts. You also have a lot of sub-activity under the Nixon bill of impeachment that is far wider and broader than anything that Mr. Starr has alleged. So there's really a great difference. Also, the nature of the conduct is substantially different."* [CNN's "Late Edition," 9/13/98 (emphasis added)]

Dean on the Starr report: *"I find the entire report is really an extraordinary document. It's extraordinary because I can find no precedent for it; I can find no authority for it."* Dean: *"He (Watergate special prosecutor Leon Jaworski) provided a roadmap with no recommendations, no conclusions. That document to this day remains sealed."* [*USA Today*, 9/14/98]

❑ **Former Nixon Speech Writer William Safire: Allegations in Starr Report "Should Not Be Enough To Force Out a President"**

In his column, former Nixon speech writer William Safire wrote: *"Many will find poetic justice in Clinton's escaping discovery of high crimes and being brought down by lower crimes. But poetic justice, or rough justice, is not real justice. If forthrightly confessed, perjury about workplace dalliance should not be enough to force out a President."* [*New York Times*, 9/14/98 (emphasis added)]

❑ **Former Watergate Prosecutor Cox Press Aide Jim Doyle: In 20 Years "This Is Going to Look Like a Coup D'état"**

Jim Doyle, a press aide to then-Watergate Special Prosecutor Archibald Cox: *"Down the road, 20 years from now, this is going to look like a coup d'état."* [*Daily News (New York)*, Lars Erik Nelson column, 9/18/98]

□ **Reporter Bob Woodward: This Is Not Abusing Power “In A Nixonian Way”**

Washington Post reporter who covered Watergate Bob Woodward: “Well, I--I--I think not. And that's one of the problems, but the real--really the ultimate question, and Michael's right, is this impeachable? I hate to go back to Watergate, but that is the most recent occurrence when impeachment was considered in a very serious way. And what Clinton did here--he had an intimate sexual relationship with a young woman on the staff in the White House. It's really basically sad. It's not somebody overexercising his power. It's really not somebody abusing his power in a Nixonian way. And so I think the reaction, in part, is going to be one of sadness. You read the details of this and there's--there's something adolescent about the relationship between Clinton and Monica. Not just on her side. And so a lot of people may say, ‘Hey, now wait a minute. This isn't a constitutional issue, this is something else.’ Whatever that's going to be, God knows.” [PBS “Washington Week in Review,” 9/11/98 (emphasis added)]

Woodward: “I mean, first of all, some historical perspective might be useful... Monica Lewinsky is allegedly the chief accuser of Clinton. If you go back to Watergate, it was John Dean, the White House counsel, and when Dean left the White House, he spirited away evidence. And if you go back to what that evidence was, they were top-secret documents in which President Nixon essentially said, ‘We're going to use the FBI and the CIA to break into people's homes and offices, wiretap and open their mail.’ In other words, he authorized a police state. Now, 25 years later, the issue turns on not something of that magnitude, but a dress.” [NBC's “Meet the Press,” 8/9/98 (emphasis added)]

□ **Reporter Carl Bernstein: “Just No Proportionality Here”; Doesn't Rise To the Level of Watergate**

Washington Post reporter who covered Watergate Carl Bernstein: “...I think there are very few apt comparisons with Watergate. I think Watergate was a unique event in our history in which a president of the United States used the powers of his office, really, in a criminal way... Well, I think that Watergate was about a vast and pervasive abuse of constitutional authority by a president of the United States who used his office to create the equivalent of a police state in terms of ordering break-ins and fire bombings and using the IRS to harass political enemies, et cetera... This is not about the conduct of the presidency. This is about the conduct of the president's private life. And is it tawdry? Absolutely. But does it rise to the level of Watergate? No, I don't think it does.” [CNN Morning News, 8/18/98 (emphasis added)]

Bernstein: “Well, this is about the private consensual sexual life of the president. Watergate, as Bob notes, was about a vast and pervasive abuse of power by, really, a criminal president of the United States, who ordered break-ins, who ordered fire bombings, who ordered illegal wiretappings, who took the agencies of government and used them for his own political purposes and then who tried to thwart the electoral process itself through illegal means.” [NBC's “Meet the Press,” 8/9/98]

Bernstein: “I mean, there's just no proportionality here. And I think it's time that thoughtful people really stepped back in this whole event since January and say, I think, “What is this about? What was this statute establishing a special counsel intended to cover?” Was it really intended to cover the president's private sexual behavior, or was it meant to deal with situations in which a president abuses his presidential power the way President Nixon did? I think we're talking apples and oranges here and we're at the precipice of a very dangerous and perhaps tragic situation...” [NBC's “Meet the Press,” 8/9/98 (emphasis added)]

❑ **Former Senator Howard Baker (R-TN): Resignation Would Set Bad Precedent Move Us Towards Parliamentary System**

According to the *New York Times*, “Still, former Senator Howard W. Baker Jr., who played a crucial role in the Watergate case, said that his ‘best guess’ was that the House would vote to recommend impeachment to the Senate, and that the Senate would then vote to acquit or take no vote. Through this entire messy process, which might well involve calling Ms. Lewinsky to testify, the pressure would no doubt mount on Mr. Clinton to resign. He will resist, and many, like Mr. Baker, think another resignation following President Richard M. Nixon’s would set a bad precedent, moving the country away from a system of separation of powers toward a parliamentary system.” [*New York Times*, 9/17/98 (emphasis added)]

❑ **Former Watergate Prosecutor Richard Ben-Veniste: Starr’s Report Did Not Follow Example of Watergate of Prosecutors**

Former Watergate Prosecutor Richard Ben-Veniste: “*And I believe that the report itself is a flagrant and arrogant misuse of the power and authority of an independent counsel. It had been reported that Mr. Starr was going to follow the example of the Watergate prosecutors in transmitting evidence as a statute permanent him to do relating to his view of impeachable offenses. Instead, he has set himself up, not only as investigator and prosecutor, but as judge and jury, and has had the arrogance to write Articles of Impeachment and to make an argument here, a prosecution argument, for the removal of the president of the United States. This report has gone so far beyond what he was authorized to do that it has now merged Starr, the prosecutor, and Starr, the supermarket tabloid.*” [NBC’s “Meet the Press,” 9/13/98 (emphasis added)]

❑ **Former Rep. Elizabeth Holtzman (D-NY): “Impeachment Has to Be about What Only a President Can Do”**

Then-Rep. Elizabeth Holtzman “*During Watergate, the impeachment effort came about because the American people demanded it when Richard Nixon had special prosecutor Archibald Cox fired and the attorney general resigned and the country said, ‘Enough is enough.’ Here you have impeachment proceedings being triggered by one person, the independent counsel, about whom serious questions of conflict of interest have been raised.*” [*Boston Globe*, 9/15/98]

“*The report is being made public before the committee has a chance to review it. During Watergate, the House Judiciary bent over backwards to be fair to the president. We always gave him the benefit of giving us his views. Here you have a report by a special independent counsel who is defining impeachable offenses for the country.*” According to the *Boston Globe*, “This is not what Holtzman imagined would happen when she helped write the law that allows an independent counsel to present evidence of possible impeachable offenses to Congress. ‘I am one of the authors of the special prosecutor law, I am ashamed to say,’ Holtzman said.” [*Boston Globe*, 9/15/98]

“*At one point, we considered an article of impeachment for a tax deduction Nixon took that may have been improper. The committee rejected it. Why? Because we decided that any person could do that. You could do it. I could do it. A taxi driver could do it. Impeachment has to be about what only a President can do. It was created to protect the government and the public from an abuse of power, not to create a parliamentary system of government where the leader becomes unpopular and is removed.*” [*Daily News (New York)*, 9/10/98 (emphasis added)]

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As a result of the Watergate investigation it was learned that President Richard Nixon...

- 1) **WIRE TAPPED PRIVATE CITIZENS:** Used the FBI, CIA, Secret Service and White House aides to undertake surveillance activities, including wire tapping newsmen and administration officials.
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Sources:

- 1) Report of Chief Majority Counsel John Doar, CQ Almanac 1974 p. 875
- 2) Pittsburgh Post-Gazette, 8/27/98
- 3) San Francisco Examiner, 11/21/96
- 4) Report of Chief Majority Counsel John Doar, CQ Almanac 1974 p. 875
- 5) Report of Chief Majority Counsel John Doar, CQ Almanac 1974 p. 875

The President's Actions Do Not Constitute Impeachable Offenses:
William Weld On Charlie Rose
September 16, 1998

-- Excerpts --

Charlie Rose: Well, that's the only thing that's gonna cause this guy to quit. I mean, for good reason. He doesn't think he's done anything wrong and that's impeachable.

William Weld: Well that's true. I don't think that his crimes are of the type that the framers, the founders, thought should justify removal by the Senate.

Charlie Rose: Yeah.

William Weld: That we don't--

Charlie Rose: The punishment does not fit the action, the deed.

William Weld: We don't have a parliamentary system and it's not supposed to be possible to bounce out a president because his poll ratings go down to 19 percent. And this guy's poll ratings haven't even gone down to 19 percent....

Charlie Rose: ...Tell me-- and you've known Bill Clinton for how long?

William Weld: Actually I've known Hillary for 25 years.

Charlie Rose: You worked on the Watergate--

William Weld: We were in the same little unit on what constitutes ground for impeachment when Nixon was under the gun.

Charlie Rose: Right.

William Weld: Hillary and I probably know more about that legal topic than all but a half-dozen people in the United States 'cause that's the last time it was plumbed in detail.

Charlie Rose: *And nothing you've seen is an impeachable offense because you know a lot about it, right?*

William Weld: That's right. It's because of the character of the underlying offense being personal as opposed to usurping the power of another branch or something like that.

Charlie Rose: Lot's of people will argue, though, that it doesn't matter what you lie about it's the act of lying.

William Weld: Well, I don't agree with that, Charlie. I mean, until last year there was a legal doctrine called the "exculpatory no."

Charlie Rose: Right.

William Weld: And, if you're only offense was denying that you'd done something wrong, the judges would give you a pass on it. Now, they removed that doctrine in the Supreme Court last year. But I think they would have done well to cut out a little safe harbor for personal conduct, self-regarding conduct, like an office affair. And I know it's not entirely self-regarding. It has an impact on the intern and the family and his family. But it's not like takin' a million dollars from the sultan of Brunei. Let me put it that way.

**Partisanship:
Republicans Are Not
Proceeding Fairly**

PARTISANSHIP

The House Judiciary Committee: 1974 Versus 1998

Citing the precedent of the 1974 inquiry into President Richard Nixon's possible impeachment, the House Judiciary Committee began its consideration of Ken Starr's referral last week with pledges of bipartisanship -- even nonpartisanship. How are they doing? Here are some questions that both committees faced and their respective decisions.

Question	Rodino Committee Decision 1974	Hyde Committee Decision 1998
Bipartisanship?	YES House Judiciary Committee: "On February 22, 1974, the full Committee on the Judiciary <u>unanimously</u> adopted a set of procedures governing confidentiality for the handling of material gathered in the course of its impeachment inquiry." ["Impeachment of Richard M. Nixon President of the United States," Report of the Committee on the Judiciary, House of Representatives, 8/20/74, <i>emphasis added</i>]	NO Rep. Barney Frank: "This is a new concept, unfortunately, of unilateral bipartisanship. Bipartisanship can't be unilateral. And you will see when the votes are released that we -- that virtually every vote was on a party-line vote on every issue because we believe bipartisanship has simply not been part of the process." [FDCH, 9/18/98]
Report to Congress Contained Analysis?	NO New York Times: "The Starr report is in sharp contrast to the information Leon Jaworski, the Watergate independent counsel, gave the House Judiciary Committee that was considering the impeachment of President Nixon [Jaworski] <u>provided no analysis and drew no conclusions</u>" [New York Times, 9/12/98]	YES New York Times: "In short, this is a document with attitude. It serves up a worst-case scenario: conversations that some might find inconclusive, ambiguous, or at worst suggestive, like the exchanges between the President and Betty Currie, his secretary, in the period surrounding Mr. Clinton's deposition in the Paula Corbin Jones sexual misconduct civil lawsuit, are characterized as criminal obstruction of justice." [New York Times, 9/12/98]

Question	Rodino Committee Decision 1974	Hyde Committee Decision 1998
Prosecutor's Report Released?	NO John Dean: "He [Jaworski] provided a roadmap with no recommendations, no conclusions <u>That document to this day remains sealed.</u>" [USA Today 9/14/98]	YES Associated Press: "The House voted today to beam worldwide a prosecutor's report that accuses President Clinton of perjury and obstruction of justice in the Monica Lewinsky affair, the first act in a potential impeachment drama. The House voted 363-63 to release the 445-page report ... via the Internet, a fashion unthinkable just a few years ago. The resolution passed over the objections of some Democrats who argued it was unfair that Clinton didn't get a chance to see the report in advance." [AP Online 9/11/98]
Released Grand Jury Information?	NO CBS News: "During Watergate, prosecutor Leon Jaworski convinced Judge John Sirica to let grand jury information on Nixon go to the House impeachment investigators. That was a precedent, <u>but the actual grand jury testimony stayed secret.</u>" [CBS Evening News 9/17/98]	YES Associated Press: "The House Judiciary Committee voted today to release the videotape of President Clinton's grand jury testimony and 2,800 pages of material, including Monica Lewinsky's explicit descriptions of their sexual relationship." [AP 9/18/98]
Subpoena Power for Minority?	YES 1974 CQ Almanac: "[T]he Judiciary Committee unanimously agreed to ask the House for special subpoena power for the impeachment inquiry. To counter charges of partisanship, the subpoena power would be exercised by the full committee or by [Chairman] Rodino and [Ranking Member] Hutchinson acting jointly. Should Rodino and Hutchinson disagree on issuing a particular subpoena, either man could then ask the full committee to resolve the dispute." [1974 CQ Almanac, p. 867]	NO Roll Call: "Rules Chairman Gerald Solomon (R-N.Y.) and Judiciary Chairman Henry Hyde (R-Ill.) want to pass a rules package in the coming weeks that will grant Hyde the power to detain uncooperative witnesses and issue subpoenas <u>without Democratic approval</u>, as well as delineating how the investigation will be conducted." [Roll Call 9/14/98]

SELECTED QUOTES FROM HOUSE SPEAKER NEWT GINGRICH:

“I don’t think the Congress could move forward only on Lewinsky” [Washington Post, 8/24/98]

“This is about lawbreaking. This is not about sex. This is not about gossip. This is not about soap operas.” [AP Online, 4/30/98]

“It’s not about scandals in the gossipy sense or sexual behavior in the gossipy sense. It’s about whether or not the law has been violated, and if so, is it a pattern of violation [or] is it a one-time event.” [Washington Post, 8/24/98]

BIPARTISANSHIP "ALIVE AND FLOURISHING"???

**NEW YORK TIMES REPORTS THAT GOP SEEKS PARTISAN ADVANTAGE
FROM PUBLISHING STARR MATERIALS**

HYDE SAYS BIPARTISANSHIP IS FLOURISHING...

"[House Judiciary Committee Chairman Rep. Henry] Hyde offer the television a genial pronouncement: "The spirit of bipartisanship is alive and flourishing." [New York Times, 9/19/98]

...BUT NEW YORK TIMES SAYS THAT REPUBLICANS ARE USING THE STARR MATERIALS TO GAIN A PARTISAN ADVANTAGE OVER DEMOCRATS

New York Times:

"So it is not surprising that Speaker Newt Gingrich, who earlier this month said he would leave the impeachment process to the judicious Mr. Hyde, reversed course this week and strongly urged his Republican colleagues, in a closed-door meeting, to vote to release a second wave of more damaging evidence compiled by Mr. Starr. Indeed, Republicans had hoped to resolve the issue earlier in the week. In time for the Sunday public affairs television shows, a Republican involved in the debate said." [New York Times, 9/19/98]

New York Times:

"Although there are Republicans, including Senator Orrin G. Hatch of Utah, who have expressed deep concern over the effect the Lewinsky imbroglio is having on public life, others see partisan advantage to pushing the scandal to the limit and further damaging President Clinton." [New York Times, 9/19/98]

New York Times:

"The overriding issue was the insistence by House Republicans on prompt publication of President Clinton's testimony to Kenneth W. Starr's grand jury -- a torrent of still more salacious and embarrassing material, which they calculate will damage him further -- even if it risks a backlash against them." [New York Times, 9/19/98]

New York Times:

"Public opinion polls show that the public wants Washington to put the scandal behind it, and even Republican voters expressed reluctance about releasing the tape of the President's grand jury testimony, though conservative Republicans favored the release. But in an off-year election when a low turnout is expected, Congressional Republicans are dependent on these conservative voters and are thus following their instincts about how hard to push President Clinton." [New York Times, 9/19/98]

New York Times:

"Within the Republican Party's conservative wing, there have been some jarring contradictions. Representative Christopher Cox, a California conservative, took to the airwaves this week to urge the public release of Mr. Starr's case, despite its salaciousness. Three years ago, it was Mr. Cox who was a champion of Republican legislation to ban indecent material from the Internet. In a speech on the House floor, he expressed worries about having his two children find "offensive material" there." [New York Times, 9/19/98]

FAIRNESS?

McCollum: Starr Report Was "Not Supposed To Be...Objective"

FRANK: Yeah. And this was also in the [Starr] report itself. Here's what -- here's the -- here's what it says. He says -- *this is from Starr's letter. On page 174, his referral states, "Miss Lewinsky has stated that the president never explicitly told her to lie."* Well, when you hear that, "Oh, he never explicitly told her to lie," maybe he hinted at it? But here's what Lewinsky said. Lewinsky herself said in the grand jury, "I would just like to say that no one ever asked me to lie." That is a very big difference between the statement "No one ever asked me to lie" and Kenneth Starr's rephrasing of that including the word explicitly. Putting the word explicitly in clearly changes the meaning and is an example of the dishonesty of his approach.

BLITZER: Why -- well, we spoke about that with Rahm Emanuel, but, **Congressman McCollum, how do you justify the fact that that quote, which seems to be at the heart of the obstruction of justice case, was not included in Ken Starr's 445...**

(CROSSTALK)

FRANK: ...distorted way.

MCCOLLUM: **Because, look, the Ken Starr report is not supposed to be some objective rendition of everything. It is a complaint, in essence. Ken Starr is a prosecutor. He's laying out the case against the president. He sent up all the materials. It's going to be our job, and it is the job of the Judiciary Committee first, to go through all of this. This material was released. It's going to be all debated in due course, and I think it's appropriate that it be brought up.**

[CNN "Late Edition," 9/16/98 (Emphasis Added)]

PARTISAN HOUSE, PARTISAN HEARINGS

According to Roll Call, in a closed-door meeting of the House GOP caucus, "Gingrich carefully avoided talking directly about Clinton's problems, but Members got his point loud and clear. *'Newt knows Clinton's problems are the biggest break we've gotten in years.'* said one leadership source. *'Our bosses know what he means.'*" [Roll Call, 9/17/98]

1. House Republicans Released Starr Report Without Giving White House Any Chance to Review and Respond To It

Republicans Ignore Precedent, Will of the American People; Release Report Without Giving President a Chance to Respond. Defying precedent, Newt Gingrich and the House Republicans released Starr's report without giving the President's lawyers even one hour to review it. Starr's report is a one-sided collection of rumors, innuendo, allegations, interpretations, and gossip -- as well as some facts. But Republicans presented it to the public as a factual, balanced document, and refused to give the President's lawyers even one hour to respond to it. According to a CBS poll, 59 percent of Americans think the report should not have been released; 60 percent think Starr included salacious details to embarrass the President. [CBS web page, 9/13/98]

Historically, the subjects of similar reports have had a chance to respond before the report was released:

- House Speaker Newt Gingrich demanded, and received, the right to review the House Ethics Committee's report of his wrongdoing in 1996-97. Gingrich said, *"If we have some time to review it, that report should become public."* [Washington Times, 9/16/96]
- Attorneys for former Presidents Ronald Reagan and George Bush and other Iran-Contra figures had access to Lawrence Walsh's report long before it was released in January, 1994. The subjects of Walsh's report had four months to respond -- and Walsh's final report included an appendix containing 1,150 pages of rebuttals from people named in the report. [New York Times, 8/20/93; Associated Press, 9/29/93; 1994 CQ Almanac, p. 468; Facts on File World News Digest, 1/20/94]

2. Gingrich, House Republicans Rushed to Release Videotape of President's Deposition

Despite the fact that 70 percent of Americans oppose the tape's release, House Republicans -- at the urging of House Speaker Newt Gingrich -- rushed to release the videotape of President Clinton's grand jury deposition, even though grand jury information is generally prohibited from being released. Even some moderate Republicans agree think the release of the tape is unnecessary. GOP Rep. Nancy Johnson said, *"if the details aren't necessary, we don't need to drag ourselves and our children through that,"* and Rep. Amo Houghton added, *"We don't need it. We've got the picture."* Gingrich was upset at the moderates' stance, and pushed the GOP caucus to release the material. [New York Times, 9/17/98]

- New York Times: "Some legal experts said the release [of the videotape] would create an atmosphere of unfairness against the President that was difficult to justify." [New York Times, 9/17/98]
- Duke University Law Professor Sara Sun Beale: *"If the public took from this the idea that the principle of grand jury secrecy isn't being observed, there would be a lot of damage from that."* [New York Times, 9/17/98]

3. Republicans Rush to Judgement Before Reviewing Evidence

The House of Representatives will vote to decide if articles of impeachment should be brought against the President. However, despite the fact that the full House has yet to see one piece of evidence, 47 of the 228 Republicans in the House (21%) have called for the President's resignation. Of the 53 total calls for resignation by current House and Senate members, 51 are from Republicans -- 96 percent. [National Journal's "Cloakroom" web page, 9/17/98]

4. House Republicans Want to Include Unrelated Matters in Hearings

In August, Newt Gingrich said, *"I don't think the Congress could move forward only on Lewinsky"* Then Ken Starr sent Congress a report that was all about Lewinsky -- 548 uses of the word sex, and only two mentions of the word "Whitewater." After the report was made public, legal experts and the American people agreed that it was not enough to remove the President from office. Now Republicans are talking about including other matters in any impeachment hearings they may hold. Newt Gingrich wants to include the Whitewater land deal, which has been investigated by two independent counsels -- at a cost of over \$40 million -- and two congressional committees. Gingrich also wants to include other partisan investigations in any impeachment action. [Washington Post, 8/24/98; Washington Post, 9/17/98]

5. Republicans Use Hearings to Attack President in Campaign Ads, Fundraising Letters

Republicans are already using possible impeachment as a campaign tactic against Democrats. Republican candidates are running ads and sending out fundraising appeals that attack the President personally. Gingrich and Congressional Republicans released the videotape of the President's deposition so they can use it in campaign ads. As GOP media advisor Marc Rotterman said of personal attacks on the President, *"This type of ad is red meat for our base."* [Washington Post, 9/17/98]

6. House Republicans Ignore Precedent, Want to Give Hyde Extraordinary Powers

Republicans are trying to give Judiciary Chairman Henry Hyde extraordinary powers during any impeachment hearings. Despite the fact that the minority was consulted on subpoenas in both the Watergate and Iran-Contra hearings, Republicans want Hyde to have the power to unilaterally subpoena witnesses. Republicans also want Hyde to be able to suspend privileges such as spousal privilege and attorney-client privilege and control of access to non-public documents. [CNN/Time "AllPolitics" web page, 9/10/98]

Positive Editorials And Op-Eds

Scandal does not justify Clinton's removal

OPPOSING VIEW Even critics cite his many accomplishments.

By George J. Mitchell

Early this month, I joined President Bill Clinton on a historic journey to Northern Ireland. He received a hero's welcome from Protestants and Catholics alike.

It was richly deserved; the fresh promise of peace in Ireland exists because of the president's courage, commitment and effectiveness.

"It wouldn't have happened if (not) for

him," a Protestant working man was reported as saying. "He's a good man."

President Clinton's improper relationship with Monica Lewinsky was seriously wrong. It was indefensible. So, too, were his efforts to keep it from his family, his staff and the American people.

The question posed to the House of Representatives by the report of the independent counsel is whether the president should be impeached. The answer provided by USA TODAY is that the president should resign.

As a former Senate majority leader, federal judge and United States attorney, I

say he should not be impeached. As a citizen, I say he should not resign.

I believe the American people agree with me. They continue to approve of the job he has done, even as they criticize his actions in the Lewinsky matter.

They know there are more jobs and less crime at home thanks to his policies. They support his efforts to balance the budget, better our schools and improve health care for all Americans. They appreciate his work to bridge our racial divide.

Clinton was twice elected by the American people. His resigning from office would reverse the will of the people as ex-

pressed through two democratic elections and would represent an unwarranted abandonment of public responsibility.

The president deserves the criticism he has received for his actions. But those actions do not justify his removal from office, by impeachment or resignation.

The world needs strong American leadership. That means an active and effective President Clinton.

Terrorists threaten American lives and property around the world; the political and economic crises in Russia and Japan; the Asian economy; the Middle East; the Balkans: The list is long of the problems and conflicts that affect American lives and American interests.

Even his critics acknowledge the presi-

dent's demonstrated ability and accomplishments.

I saw firsthand in Northern Ireland the difference he made. He also made a difference in Bosnia, where he brought a genocidal war to an end.

He has worked for peace, freedom and human rights in the Middle East, in Asia and in Latin America.

He must now go back to work on our problems at home and to protecting and advancing American interests around the world.

The White House arranged for former senator George J. Mitchell, chairman of the peace negotiations in Northern Ireland, to provide this Opposing View.

Clinton's still the man to lead us

OPPOSING VIEW He has done a good job running the country.

By Mario M. Cuomo

On the first Tuesday of November 1996, about 92 million Americans traveled to schools, churches and firehouses from Maine to Hawaii to cast their votes for president of the United States. More than 45 million of them said Bill Clinton was their choice to lead our nation into the 21st century.

On this, the second to last Tuesday of September 1998, USA TODAY suggests that President Clinton abandon the office and forgo the responsibility that was vested in him nearly two years ago. Most Americans believe that is not a good idea.

They are right!

The disagreement is not about guilt and responsibility. The president's relationship with Monica Lewinsky was wrong, and so was his dissembling about it. He confessed as much.

And, of course, he does not deserve impunity — nor has he received it. Newspapers all over the country have castigated the president.

And who can measure the personal pain of humiliation the president will live with for the rest of his life?

The American people do not condone adultery or lying. They simply want to keep the president in place because he is good at running the country.

He has been the captain at the wheel who steered us through troubled waters, ridding us of a huge deficit, leading the fight against crime, creating levels of employment and eco-

nomic security unprecedented in this nation's history. And we still need him.

Those who call for resignation or impeachment rush to judgment. All we've seen from independent counsel Ken Starr or the House Judiciary Committee are reams of secret grand jury information and testimony, gathered in a one-sided fashion with no regard for due process, no opportunity for cross-examination and no patience for the full story.

The public release of the president's grand jury testimony, unfair as it was, did present a chance for the American people to see that the president can rise to the occasion and make his case forcefully, respectfully and honestly, when given the opportunity.

It is no small irony that, while Clinton's grand jury testimony aired on most networks, he was delivering a speech to the United Nations on the subject of global terrorism.

Clinton's leadership in combating those who would harm the international rule of law, when shown in contrast to Starr's fixation on the sexual details of the president's private life, helps establish the disproportion of the array of charges against him.

In the wake of all we know — including the unprecedented telecast of grand jury testimony Monday — the president's conduct simply did not rise to the level of "treason, bribery or other high crimes and misdemeanors" envisioned by the Founding Fathers as justification for removing a president from office, thereby repudiating the vote of 45 million citizens.

The White House arranged for former New York governor Mario M. Cuomo to provide this Opposing View.

Sometimes, Evidence of Guilt Isn't Everything

By Elliot Richardson

The issues raised by Kenneth Starr's report to the House Judiciary Committee are not legal but judgmental and value-related. That does not mean, however, that they cannot be dealt with rationally.

When I was United States Attorney for the District of Massachusetts from 1959 to 1961 I sometimes decided not to prosecute someone, even in cases where there was clear evidence of guilt.

Any one of many factors could lead to this result: the insignificance of the defendant's role in whatever crime had been committed; the absence of serious harm done by him; the preferability of a civil, rather than criminal, remedy. I also had to recommend sentences for all defendants who had been convicted.

Congress, like any prosecutor, should use common sense.

These instances of prosecutorial discretion were subject to the influence of slight variations of circumstance and small differences of degree. Narrow legalisms had no bearing on the decision I reached. It always came down instead to a matter of judgment.

The same was often the case when I served as Massachusetts Attorney General and Attorney General of the United States. All these experiences helped to form my perspective on the unenviable task now thrust upon Congress by Mr. Starr's report. That task, too, calls both for prosecutorial discretion and for the kind of balanced deliberation that should go into the framing of a criminal sentence.

To begin with, it will be important for the Judiciary Committee to assess the seriousness of President Clinton's sexual relationship with Monica Lewinsky and his subsequent attempts to conceal that relationship. The former was not a crime. It would never have been the subject of investigation by Mr. Starr or any other independent counsel and could not conceivably have been grounds for impeachment.

Mr. Clinton's initial misconduct

Elliot Richardson, a former Attorney General of the United States, served under seven Presidents.

differs markedly from the intertwined abuses of power that characterized Watergate. Richard Nixon faced impeachment for those abuses as well as for covering up the Watergate break-in and defying subpoenas. By contrast, Bill Clinton's attempts to evade and conceal the truth are his only potentially impeachable offenses. That is why his lawyers have labored mightily to show that deliberately misleading statements do not by themselves constitute "perjury."

The House of Representatives, however, is not constrained by the technicalities of criminal law when it considers the charges against Mr. Clinton. Given the number, context and persistence of Mr. Clinton's misleading statements, and given whom he was trying to deceive, the House could well conclude that they constitute grounds for impeachment.

But there is another, even weightier, question: would the President's removal from office be in the national interest?

The Judiciary Committee should now address that question on the assumption that Mr. Starr's accusations are substantially true. If the committee nonetheless concludes that the President's removal from office is not desirable, it can choose not to prosecute. This would open the way to outcomes other than trial and conviction.

Removing Mr. Clinton from office might well be an excessive penalty given the noncriminal, nonofficial character of his initial offense as well as this society's disposition to cloak sexual behavior from public exposure.

If for these or other reasons the House concludes that the President's removal from office is not required, it can then consider censure. This would be the logical fallback for members who felt that no action at all would be too lenient.

On the basis of what I now know, censure would seem to be the appropriate solution. This opinion is shared, apparently, by a wide range of important players in the current crisis. Senator Orrin Hatch of Utah, chairman of the Senate Judiciary Committee, who would preside over Mr. Clinton's trial should the House vote to impeach him, is reportedly exploring a "middle way." So is Lloyd Cutler, the former White House counsel, who has been discussing strategy with Presidential aides.

And while censure might further diminish the President's effectiveness, it would be only one more factor for Mr. Clinton to deal with as he tries to salvage his leadership.

For the country's sake, let's hope that a censure vote will close this ugly chapter and allow us to get on with more important things. □

The New York Times

FRIDAY, SEPTEMBER 18, 1998

No, the charges do not rise to level of 'high' crimes

By Alan Dershowitz

Impeachment and removal of an American president is the closest thing, under our system of government, to a bloodless coup or a nonviolent revolution.

Our Constitution provides for presidential impeachment as an extraordinary measure of last resort against an incumbent who has engaged in the most serious kind of official misfeasance or malfeasance. Unlike parliamentary systems, which can remove a prime minister by a legitimate vote of no confidence, our constitutional system does not permit removal on the basis of general dissatisfaction with the policies, preferences or lifestyle of a president.

The removal of a president is different from the removal of a judge, senator or congressman (and certainly of a CEO of a corporation). A single judge or legislator is not an entire branch of government; whereas the president is the executive branch of our government.

For one branch to remove another is to upset the delicate system of checks and balances. It should occur only when the president's actions or inaction are clearly inconsistent with his continued services as our head of state — when his nonremoval

would pose a clear and present danger to our body politic.

Former president Gerald Ford is often quoted as saying an impeachable offense is anything a majority of Congress says it is. But it is forgotten that he was talking about the impeachment of a Supreme Court justice. He later acknowledged that the criteria for removing a president are much more restrictive, requiring a high crime of state.

It is against this background that the Ken Starr report must be evaluated. At bottom, Starr charges President Clinton with engaging in an improper — though entirely lawful — sexual relationship and then trying to keep it secret by lying about it in a civil case, trying to prevent the other side from obtaining evidence of it and using the power of his office to defend himself against his enemies. Virtually everyone who engages in an improper sexual relationship tries to hide it. They lie to their spouses, hide the evidence and concoct cover stories.

Clinton is not the first president — or senator, congressman or judge — to have engaged in this pattern of conduct. But he is the first to have a special prosecutor assigned to uncover his sexual deceptions.

Not surprisingly, he was caught, and now he

has been publicly humiliated by a prosecutorial account of the details of his sexual activities, which is unprecedented in American public life.

Even if every word of the Starr report — the multiple hearsay, the uncorroborated opinions, the uncorroborated inferences, the rampant speculation — were true, Starr's accusations would not rise to the level of an impeachable offense for an American president. What Starr accuses the president of doing would not even generally be the basis of a criminal prosecution against an ordinary citizen. Litigants in civil cases are rarely prosecuted for lying or covering up peripheral aspects of their sex lives in civil cases, especially dismissed civil cases.

But even if what the president is accused of doing were to be deemed a crime — it is not the sort of "high" crime or misdemeanor the framers had in mind when they established the criteria for impeachment.

Those who argue that it is not about sex, but rather perjury and obstruction of justice, forget the lessons of history. Whenever sex has been used in an effort to bring down an opponent — whether by J. Edgar Hoover against Martin Luther King Jr. or Joseph McCarthy against political opponents — the argument has always been made that it was not about sex, but rather "national security," "character" or mendacity. But it has always been about sex, and this case is most assuredly about sex as well.

Indeed, the original mandate for the independent counsel — to investigate Whitewater and then filegate and then the travel office — has come up empty.

Moreover, it is unlikely that all of what Starr alleges could actually be proved at a fair trial, where the burden would be on him. The hearsay, rumors and uncorroborated recollections relied on by Starr to establish some of the most serious allegations would have difficulty passing the crucible of cross-examination and confrontation.

Some are now arguing that it "would be better for the country" if Clinton were to resign or be removed. That is a shortsighted view. The precedent that would be established by forcing a chief executive out of office for what are essentially sexual sins would damage our delicate system of checks and balances and would create the risk of instability. It would also legitimize a form of sexual McCarthyism that would soon become a cancer in our body politic.

For all of these reasons it would be wrong — as a matter of high principle — for President Clinton to resign. He should fight impeachment and removal, not only for his sake, but also for the sake of our constitutional system and the continued stability of our government.

Alan Dershowitz is the Felix Frankfurter professor of law at Harvard University.

Richard Cohen

Menace to Society

Back in the 19th century, a German-born chap named Thomas Nast popularized the donkey as the symbol of the Democratic Party. Why he chose it, I cannot say, because the donkey is steadfast, stubborn and able to bear almost any burden. This is not the Democratic Party of today. Its symbol ought to be the chicken.

Where are the Democrats willing to take on Ken Starr and question his tactics? Where are the politicians who will cease their endless moralizing—we know adultery and lying are wrong—and point out that while Clinton might be a moral midget, Starr is a menace to us all.

Yet from most Democrats comes not a peep about Keyhole Ken. Are any of them chagrined at what Monica Lewinsky revealed in her grand jury testimony? Do they have anything to say about a prosecutor who tells a potential target that she should not call her lawyer, even though she already has one, and threatens her with a jail sentence—27 years—that is more than most murderers get? This sort of behavior is worrisome.

As is always the case in these matters, some lawyers are not bothered by what Starr's guys did last Jan. 16 at the Ritz-Carlton Hotel, while others express dismay. Politicians, though, ought to express revulsion. Lewinsky, after all, was not some drug dealer, some terrorist, some hardened criminal whose apprehension would lead the nightly news. She was merely the young woman with whom the president had had a sexual relationship. That did not exactly make her a menace.

Why the hardball tactics? Because Starr and his aides had concluded that Clinton was a bad man, a prevaricator, a trimmer and liar and amoral womanizer who was unworthy of the presidency. They are entitled to their opinion, but it is a political and moral one—not one based on a legal finding. As far as we know, until finding

out about Lewinsky, they had not been able to come up with anything that would lead to impeachment. Whitewater? Filegate? Travel office? Zip, zip, zip.

“Clinton has behaved

abominably, but not in a way that threatens us all.

That's not the case with Starr, though.”

Then the odious Linda Tripp comes along. This suburban Judas tells Starr about the Clinton-Lewinsky affair and how they both lied about it to Paula Jones's lawyers—Lewinsky in an affidavit, Clinton in his deposition. What's more, Tripp told Starr that Clinton and his friend Vernon Jordan were seeking to buy Lewinsky's silence with a job in New York.

To Starr and his boys, this was a song they thought they had heard before. No matter that they could not prove that Clinton's associates had arranged hush money for Webster Hubbell, they now saw the same (nonexistent?) pattern with Lewinsky. They snookered her into meeting Tripp at the hotel and then told her that unless she cooperated, jail—not a glamorous New York job—was in her future. Trouble was, Lewinsky later told the grand jury that she had never been promised a job in exchange for silence.

What's apparent by now is that Starr and his team were so deter-

mined to get Clinton that they felt justified in abusing their power. They hauled Hillary Rodham Clinton before the grand jury. They hauled Lewinsky's mother before the grand jury. They brought in the Secret Service, and they asked Sidney Blumenthal whom in the press he had spoken with. They wanted Lewinsky to wear a wire, entrap Betty Currie, maybe even the president.

Whether any of this is illegal or unethical prosecutorial behavior, I cannot say. I can only say it is outrageous. Out of some zealous political or religious or moral conviction, Starr felt entitled to use the full resources of the United States government to prove, in the most tacky detail imaginable, that Bill Clinton had had an affair—and lied about it. I knew that without the detail. We all knew that.

Rep. Henry Hyde, the chairman of the Judiciary Committee, was asked if he would exercise oversight over Starr. He blew off the question, an autumnal indiscretion for sure. But since neither he nor his fellow Republicans will raise these questions, then the Democrats ought to. After all, this is the gravest of matters: a pedal-to-the-floor attempt to depose a president as morally unfit for his office. The voters in the last election thought otherwise.

I understand the Democrats are in a pickle. Clinton has behaved abominably, but not in a way that threatens us all. That's not the case with Starr, though. Unrestrained and unprincipled, he is precisely the sort of zealous prosecutor we all ought to fear.

Since the Republicans are so intent on toppling Clinton that they do not care about civil liberties and fair play, the Democrats ought to screw up their courage and scream bloody murder—bray like a donkey and not scatter like chickens.

The Washington Post

THURSDAY, SEPTEMBER 24, 1998

Enough of Starr's Smut

Henry Hyde is a man of good judgment, much respected for his moderation. The chairman of the House Judiciary Committee should tell independent counsel Kenneth Starr to cut it out, to stop flooding this capital with pornography.

Every day there is a new dump of smut. Monday's two-volume delivery ran to 3,183 pages. We are reading ourselves blind for nothing, to read over and over again the details of the president's illicit, admitted lust for Monica Lewinsky. Starr's view of Americans is that we are such donkeys that we cannot understand the simplest facts unless they are pounded into our heads over and over again. How many times, for instance, did his prosecutors have to ask Lewinsky if the president felt her breasts "either directly or through clothing"? What difference does it make?

Do members of the Judiciary Committee, or anyone else for that matter, need to pin down that particular fact in order to make an informed judgment about the impeachment of the president?

Kenneth Starr has succeeded in reviving himself as an issue in the White House sex scandal. After Clinton made his surpassingly stupid, half-baked repentance speech on Aug. 17, Starr's zealotries and excesses faded. Clinton's clumsy pass at an apology infuriated the country, outraged loyalists and galvanized the forces of impeachment. But this week, with its thousands of pages of prurient and insistent prying, the country slipped back to its original dilemma about the two compulsives, both obsessed by sex, who dominate our political life. Two wrongs don't make a right.

By now everyone over the age of 8 knows the unlovely love story of how the trophy-hunting intern and the lifelong cruiser of chicks met in George Stephanopoulos's office and produced a kind of fusion as noxious as the nuclear leak at Three Mile Island. There was the byplay over papers and pizza, the sizzling glances, the voracious, wordless oral sex. The telephone calls from Capitol Hill are part of the sordid legend. The leader of the free world lobbied Congress while Monica was doing her stuff at his direction. Does it sound a little like the emperor and the slave girl? Did W.J. Clinton of Hope, Ark., feel more of a man for the girl at his feet, did he just get a kick out of having his particular brand of sexual satisfaction while pressing for

Medicare with a congressman who could not possibly be having that much fun? Who knows? Who cares?

Sixteen more cartons are going to be decanted next Monday, adding hundreds of pages to such detail as: who unzipped Bill, what Monica ate at breakfast with Vernon Jordan and what he ate and who paid. Afterward, the country may want to go through a national car wash or an eight-day hymn-singing revival. But it won't know any better what should be done with our wayward president or how we can save our impressionable teenagers from following in his footsteps.

We know it all already. We have read the Starr report; we have seen the video of Clinton in his four hours before the grand jury.

Starr is doubtless outraged by Clinton's spurt in the polls since the airing of his grand jury testimony. This was supposed to finish him off. As usual, his enemies did him an enormous favor, spreading tales of a presidential blowup and walkout, of a distraught, demoralized fallen star. The reality was quite different. Clinton looked a bit bleak at first, as he clung to his weird views about sex that is not sex and ducked questions about kissing breasts and inserting cigars in inappropriate places.

But he has this gift for living in the moment, and there were times when he seemed to forget where he was and to be enjoying the exchange. The invincible sociability of the born politician surfaced, and he seemed to forget where he was and to be rather enjoying the exchanges. When Starr staff attorney Robert Bittman was asking the president about the fateful semen-stained dress, another man might have expired of shame. But Clinton reminded him that he had given a blood sample. "You came over here and got it. . . . We met that night and talked."

There are better ways of learning about a president's personality. Airing grand jury testimony is expensive to the system. People are appalled at Clinton's reckless pursuit of sex in the Oval Office. But Starr is also guilty of single-minded recklessness. Grand jury confidentiality is central to our system. We offer its protection to gangsters. He threw over our First Citizen's right to privacy.

Plainly, we know enough to decide. There is nothing to be gained from piling on. The president said he was wrong, claims he's sorry. To be impeached, he must have committed a crime against the nation. The House must decide—and can do it without further input from Starr's pornography press.

The web of lies behind Starr's smear campaign

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While would-be drama critics dispute the value of actually seeing and hearing President Clinton's grand jury testimony yesterday, those who sift through real evidence can spend much more rewarding hours.

Just for example, three things are crystal clear from material now on the public record as well as from halfhearted admissions and omissions from independent counsel Kenneth Starr's argumentative referral to the House of Representatives:

- Starr's office smeared prominent attorney and presidential friend Vernon E. Jordan Jr. to hoodwink Attorney General Janet Reno into getting his jurisdiction expanded to include the Monica Lewinsky case.

- Starr's office then smeared Jordan, along with the first Lewinsky lawyer, Francis D. Carter, in order to give his investigation juice with the press.

- And while he has backed away from both those lawyers because his investigation yielded not a credible shred of evidence against these men (in fact, it produced the opposite), Starr's office continues to use the smear to avoid owning up to an unconscionable act of defamation.

Along the way, the evidence as compiled and released so far shows how Starr's office created the blatantly false impression of a broad and deep conspiracy to suborn perjury and obstruct justice to provide a legitimate-appearing cover for a grubby tale of a president fooling around with a 21-

year-old White House intern and then trying to keep his conduct from his family and the country.

Starr's pitch to Reno was that he should get the Lewinsky case because the intimations of coverup from Lewinsky's rantings on the famous Linda Tripp tape recordings were similar to his ongoing probe of onetime Associate Attorney General Webster Hubbell and that there was an "overlap" with "potential subjects and witnesses," specifically Vernon Jordan.

Baloney: Starr called a zillion people before grand juries here and in Little Rock. Hubbell had become a cooperating witness after pleading guilty to defrauding his onetime Little Rock law partners, and Starr didn't like what Hubbell told him. So he minutely examined the Clintonites (Jordan was one of them) who helped Hubbell find work during the period when he was protesting his innocence to the world and who ceased helping him after he confessed. Not one witness statement or document ever indicated that the job search was anything more than well-connected friends helping a false friend.

That, however, didn't stop Starr from insinuating otherwise and then using unchecked babble by Lewinsky on some of the Tripp tapes to double the smear via the press.

Sure enough, when the Lewinsky story broke in January, Starr's office, with extra help from onetime Tripp literary agent Lucianne Goldberg, put out investigative material to the effect that Lewinsky was heard on the tapes telling Tripp that Jordan had "instructed her to lie" (ABC News) and that she discussed perjury in his car on the way to meet her lawyer, Frank Carter (The Washington Post). In subsequent leaks, stories were floated that she had made sure her affida-

vit denying a sexual relationship with President Clinton was not officially filed until after Jordan had arranged a job for her with Revlon in New York.

It took months, but those ugly clouds of insinuation were blown away by the facts. For starters, Lewinsky's grand jury testimony is radically different from what is known about her statements to Linda Tripp. Involving Jordan in her famous job search turns out to have been her own idea, long before she was on the Jones case's horizon. She lied both to Jordan and to Carter about her relationship with the president (just as Clinton technically lied to Jordan). And Carter's timing in filing the Lewinsky affidavit turns out to have had nothing to do with her Revlon job.

Despite the facts, Starr's referral to the House continues the smear. Sometimes using selected quotes from the obviously discredited Tripp tapes, sometimes throwing in gratuitous or un rebutted remarks from Lewinsky's grand jury testimony to insinuate what he doesn't dare allege. Most of the sourcing in his so-called "narrative" wouldn't pass editorial muster at a supermarket tabloid.

Apart from the yearlong smears of good men with impeccable standing around here, Starr's misbehavior in just this one element of the case illustrates what a minefield a genuine impeachment inquiry could become.

It's one thing to stimulate press accounts and talk show shouting matches. It is something else again to make a credible case worthy of a constitutional process about anything more than inexcusable, reckless sexual activity and an effort to keep it secret that included lying.

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Starr's Own Shading

Kenneth W. Starr's mandate as independent counsel was to gather and evaluate evidence relating to possible wrongdoing by President Clinton and to report to Congress any information that might be a basis for impeachment. He was not to act as judge and jury in assessing whether Clinton deserves a punishment prescribed by the Constitution. That is solely Congress' responsibility. Starr was to do his work free from partisan bias, as the "independent" in his title is meant to signify. Now Clinton's lawyers charge that Starr's report to Congress contains a "critical flaw" that deliberately distorts the case against Clinton and raises doubts about its fairness and the legal conclusions it draws. They have a point.

Two of the 11 potential grounds for impeachment cited in the independent counsel's report stem from inferences that Clinton or someone acting in his behalf asked Monica S. Lewinsky to lie about their sexual relationship and that Lewinsky was promised a job in exchange for her silence. If true, this would support allegations of witness tampering and obstruction of justice. But in her testimony before the grand jury Lewinsky denied both allegations. The Starr report's interpretation of her testimony is that Clinton "never explicitly" told Lewinsky to lie or "explicitly" spelled out the job proposal. In fact, Lewinsky swore in plain words that these things never happened, and so far as is known there is no credible evidence to contradict those assurances. The Starr report can do no better than surmise that wrongdoing was accomplished indirectly, through winks and nods. But where is the proof?

It is significant that in the grand jury room Starr's staff never directly asked Lewinsky whether she had been urged to lie or had been promised a job if she took part in a cover-up. It was left to a grand juror to get Lewinsky's denial of these allegations on the record, by asking whether she had anything more she wanted to say.

In an ordinary criminal case a prosecutor who hid potentially exculpatory evidence from the defense would be in deep trouble. By trying to minimize and obscure the significance of Lewinsky's denials, Starr has shaded the record and buttressed the suspicions of those who question his objectivity. None of this exonerates Clinton for his behavior or excuses him from the lies he told. But it does seem to weaken some of the case Starr has taken so long to construct and should alert Congress that it would be wise to regard the Starr report as something less than holy writ.

Pig Vs. Prig

It's not only our President who has a certain genius for, as the Starr report puts it, refusing to achieve "completion" in sex. Look at the media. From the moment the All Monica bell went off in January — with Sam Donaldson's immortal prediction that "If he's not telling the truth, I think his Presidency is numbered in days" — the press has been promising a national orgasm in the form of the resignation, impeachment or tarring-and-feathering of Bill Clinton. But, in the eternal Groundhog Day that is Monicagate, the consummation, however devoutly wished, never arrives.

The teasingly orgiastic buildup is always the same. The Paula Jones case document dump, the Kathleen Willey "60 Minutes" interview, the Aug. 17 Presidential "apology," the Starr report, and now the televised grand jury inquisition were all hyped like the Super Bowl — only to come and go, leaving the essential civic equation unchanged. Most Americans suspected early on that the President had had sex with Monica Lewinsky and most long ago concluded he lied about it, under oath and not. And yet two-thirds of the country doesn't want him to leave office.

Why? It's certainly not that anyone loves Bill Clinton or believes he's capable of honesty. His personal approval numbers are in the toilet. Nor is his Presidency more than an empty shell, even for those who agree with his politics; an unfocused lame duck before the Lewinsky story broke, he has been stripped of the moral and political authority to accomplish anything, at least in the domestic arena, in what months he has left.

Looking for a theory to explain a self-stained and humiliated President's illogical hammerlock on his office, the Clinton lynch mob, talking heads and politicians alike, blames the public. The American people, we're repeatedly told, are whores who will not only sell out their principles to the Dow Jones average (never mind its recent decline) but who

may have abandoned moral judgments entirely (if we are to believe William Bennett's new screed, "The Death of Outrage"). Last week an exasperated James Dobson, head of the G.O.P.'s powerful family-values auxiliary, Focus on the Family, went so far as to declare "that our greatest problem is not in the Oval Office — it is with the people of this land."

But the people of this land whom he sees as the "problem" are also, as it happens, an American majority that sees people like Mr. Dobson as the problem: preacher-politicians who want to legislate the most intimate acts of human life — sex and religion. And Kenneth Starr, by his own actions, not those of his political foes, has signaled that he is one of those politicians — by speaking under Pat Robertson's auspices while serving as Independent Counsel, by dropping all the other Clinton scandals to fixate on Monica, and finally by producing both a report and a grand jury interrogation that chill the rest of us not so much with their salacious detail as with their vision of what America might be like if the Starrs, Robertsons and Dobsons were in power beyond this one investigation.

Americans sense that the government prosecutor who uses his office not merely to catalogue repetitive sex acts but to gratuitously determine if (and how) they reached "completion" is an avatar for the political movement that wishes to revive punitive divorce laws, enforce state sodomy statutes (especially against homosexuals), roll back *Roe v. Wade* and police libraries, TV, movies and the Internet for smut (unless it's state-sanctioned, like the Starr report). The two-thirds of the people in this land who reject such invasive politics, many of them far more honorable than Bill Clinton, would rather have a piggish President they don't admire, and perhaps actively deplore, in the White House than lend any vindication to the crusade of a zealous prig out of "The Crucible."

Monicagate will yield more Super Bowl events — the tainted Linda Tripp tapes, further bimbo eruptions and perhaps even impeachment hearings in which the mob is treated to the spectacle of Congress interrogating Ms. Lewinsky to nail the President on his sworn lies about his contact with her breasts and genitalia. But Mr. Starr was and is Mr. Clinton's best insurance policy. No matter how many doomsdays the media predict, the only way the public is likely to give the President the boot is if the Independent Counsel abdicates first. □

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