

Testimony
of
Elizabeth Holtzman
before
The House Judiciary Committee
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Mr. Chairman, Members of the Committee

I thank you for the privilege of appearing before you on this historic day and hope my experiences as a member of the House Judiciary Committee during Watergate will be of assistance to you and the members of the House in your deliberations.

Let me begin by saying Mr. Chairman, I welcome the opportunity to appear before you. While we had our disagreements when we served together in the House, I had tremendous regard for your ability to be thoughtful and open-minded. These very qualities are what the Committee sorely needs now.

Nearly a quarter of a century ago, sitting where you are now, I never imagined that in my lifetime we would see another impeachment. I am saddened to be here today. I love this Committee, I love the Congress and I love my country. But if this Committee and the House vote along party lines for the impeachment of President William Jefferson Clinton on the information presently available, the credibility of the Committee and the Congress will be severely damaged for a very long time. This impeachment will be viewed by the nation and by history with as much disapproval as that of Andrew Johnson.

I know that many on this Committee and many in the country believe the President's conduct to be reprehensible and unacceptable. I do not disagree--and I am not here to excuse that conduct. Let us remember, however, that the goal of impeachment is not to punish a president, but to protect the nation. Impeachment now will punish the nation, not protect it.

Consider how much the country will be harmed by an impeachment trial in the Senate if the House votes any articles of impeachment. A trial (which could last for months) will disrupt the workings of the Supreme Court -- the Chief Justice will have to preside every day over the Senate trial. It will disrupt the workings of the Senate. It will disrupt the Presidency.

That is one of the reasons that impeachment cannot be voted lightly. The danger to the nation of having a president remain in office must be greater than the danger caused by the wholesale disruption of our government that an impeachment trial will bring. The American people are not likely to look kindly on a government shutdown #2.

During Watergate, I spent many long hours pouring over books and studies to understand the meaning of the term "high crimes and misdemeanors." The framers of the constitution wrote the impeachment clause because they were fearful that the monarchy they had just overthrown in

the revolution would return -- that the newly created chief executive, the president, would become a tyrant.

But Independent Counsel Kenneth Starr's referral makes out no case of abuse of power, a subject I have been asked to address by the White House. In Watergate, the article of impeachment that charged abuse of power was, in a way, the most serious -- and it was the one that received the largest number of Republican votes. Think of what presidential abuses we saw then; getting the CIA to stop an FBI investigation; getting the IRS to audit political enemies; illegally wiretapping members of the National Security Council staff and of the press; a special unit in the White House to break into the psychiatrist's office of a political enemy -- and on and on.

By contrast what does Mr. Starr point to as an "abuse of power" in his referral? Acts that do not in the farthest stretch of the imagination constitute any such abuse. Mr. Starr claims that the President did not voluntarily appear before a grand jury but had to be subpoenaed to appear. That is surely not an abuse of power. Mr. Starr attacks the fact that the President authorize executive privilege to be claimed for a handful of staff members and required the Independent Counsel to prove his need for their testimony in court. Of course, once the court ruled that the testimony was required, then the President withdrew the claim. That too is not an abuse. Mr. Clinton's telling the American people that he did not have a sexual relationship with Monica Lewinsky is also not an abuse of power.

Parenthetically, I want to note that as one of the authors of the Independent Counsel statute, I believe that Mr. Starr overstepped his jurisdiction by arguing for impeachment on this ground or any ground. Both the referral and his appearance here go far beyond what the statute permits. We never intended to create a Grand Inquisitor for Impeachment.

I want to make a few other brief points.

I have heard it said that this Committee views itself as a kind of grand jury and that it merely needs probable cause -- not overwhelming evidence -- to impeach. Instead, it is the Senate that must have substantial evidence to act. But if you use the analogy of a grand jury then you should not be impeaching at all. No indictment would be sought by a prosecutor when there is no chance for conviction. And it is almost universally conceded that there are not enough votes in the Senate to convict President Clinton and remove him from office. In fact, federal prosecutors need to have a substantial likelihood of success before they can recommend indictment to the grand jury. Why is this the case? Because prosecutions that go nowhere use up precious resources (and let us not forget how much money has already been spent on investigating President Clinton); it is almost an abuse of power to indict someone, seriously damage that person's reputation and force that person to the tremendous burden of putting up a defense when there is little or no likelihood of conviction. The same analogy holds true here -- impeachment should not be voted by the House unless there is a strong likelihood of conviction in the Senate.

Impeachment is not a kind of super-censure, designed simply to besmirch a President's reputation. Impeachment is a tool to remove a President from office; it is a last resort to preserve our democracy. It must not be perverted or trivialized.

Also, to use a different metaphor, this is not a football game where one player, the House, simply hands off the ball to another player, the Senate.

In Watergate, when we voted for impeachment, we did so because we believed that President Richard Nixon should be and would be removed from office. We didn't operate on some watered down standard of evidence; we didn't think we were passing the buck to the Senate, where the real action would take place; we voted as if we were in the Senate, as if we ourselves were deciding on his removal, as if the case had been proven to us beyond a reasonable doubt. The same standard should be followed here. You don't just casually overturn the majority vote of the American people.

Let me add how difficult it was to cast the vote for impeachment. It was solemn, hard and unpleasant. Much as I disliked Richard Nixon's policies, I did not relish for one moment voting. It was one of the most solemn and unpleasant duties I have ever had to perform. I think other members felt the same way.

Unless this Committee and the House act on a bipartisan basis and reach out for the common ground, as we did during Watergate, unless you have the full support of the American people for the enormous disruption of our government that an impeachment trial will entail, unless you have overwhelming evidence of the serious abuse of power that impeachment requires -- none of which have been true so far -- you should not, you must not vote to impeach.