

**STATEMENT OF EDWARD S.G. DENNIS, JR.
BEFORE THE
CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY**

December 9, 1998

Mr. Chairman,

I am opposed to the impeachment of President Clinton. My opposition is grounded in part in my belief that a criminal conviction would be extremely difficult to obtain in a court of law due to weak proof of the criminal intent of the President, the questionable materiality of the Lewinsky affair to the proceedings in which it was raised and the probable sympathy a jury would have for any person charged with perjury for dancing around questions put to them that demanded an admission of marital infidelity, unless those answers were essential to the resolution of a substantial claim. On another level, I sense an impeachment under these circumstances would prove extremely divisive for the country, inflaming the passions of those who would see impeachment as an attempt to thwart the election process for insubstantial reasons.

Perjury and obstruction of justice are serious offenses. They are felonies. However, in my experience, perjury or obstruction of justice prosecutions of parties in private civil litigation are rare. Criminal investigations in the course of civil litigation in anticipation of incipient perjury or obstruction of justice are rarer still. In such circumstances, prosecutors are justifiably concerned about the appearance that the government is taking the side of one private party against another. The oath taken by witnesses demands truthful testimony at depositions and in grand jury proceedings. Nonetheless, imprecise, ambiguous, evasive and even misleading

responses to questions don't support perjury prosecutions even though such responses may raise serious questions about the credibility of a witness on a particular subject. Proof that a witness' testimony is untrue is not sufficient alone to prove perjury, and proof that a witness is intentionally evasive or nonresponsive is not sufficient to prove perjury either. Courts are rigorously literal in passing on questions of ambiguity in the questions and the responses of witnesses under oath and generally give the accused the benefit of any doubt on possible interpretations of the questions and the meaning of the allegedly perjurious response. Perjury cases are very difficult to win under the most favorable circumstances for the prosecutor.

I believe the question of whether there were sexual relations between the President and Ms. Lewinsky is collateral to the harassment claim in the Jones case. The President has confessed to an inappropriate relationship with Ms. Lewinsky. The Jones case was dismissed and is now settled. The circumstances simply would not warrant bringing a criminal prosecution and a criminal prosecution would likely fail. Certainly the exercise of sound prosecutorial discretion would not dictate prosecuting such a case.

The consequences of the impeachment of the President of the United States are far reaching. These consequences are grave and impact the entire nation. Impeachment in my view should not serve as a punishment for a President who has admittedly gone astray in his family life, as grave as that might be in personal terms. Where there is serious doubt, as there must be in this case, prudence demands that Congress defer to the electoral mandate.