

**STATEMENT OF CHARLES F.C. RUFF, COUNSEL TO THE
PRESIDENT**

Mr. Chairman, Congressman Conyers, members of the committee, as Counsel to the President, I appear before you today on behalf of the person who under our Constitution has twice been chosen by the people to head one of the three coordinate branches of government. Necessarily, I appear also on behalf of the man whose conduct has brought us to what for all of us is this unwelcome moment. Neither the President nor anyone speaking on his behalf will defend the morality of his personal conduct. The President had a wrongful relationship with Monica Lewinsky. He violated his sacred obligations to his wife and daughter. He misled his family, his friends, his colleagues and the public, and in doing so he betrayed the trust placed in him not only by his loved ones but by the American people.

The President knows that what he did was wrong. He has admitted it. He has suffered privately and publicly. He is prepared to accept the obloquy that flows from his misconduct and he recognizes that, like any citizen, he is and will be subject to the rule of law. But, Mr. Chairman, the President has not committed a high crime or misdemeanor. His conduct, although morally reprehensible, does not warrant impeachment. It does not warrant overturning the mandate of the American electorate.

If statements in this body and to the press accurately reflect what is in your minds and hearts, many in the Majority have already reached a verdict. I hope that for some that is not true. Indeed, if there is only one whose mind remains open, I will do my best to respond to your questions, to address your concerns, try to convince you that your constitutional duty, your historical duty, and your duty to the people you represent, is to vote against any article of impeachment.

In the nature of this extraordinary proceeding, no one can claim the ability to reach the absolute right answer. No one can claim to be free from doubt. But when all the questions have been asked and answered, when all the debate has ended. And when you look within yourselves and ask should I vote to exercise the most awesome power I am granted in our system of government, I have no doubt that you will reach your decisions on the merits and, I hope, unswayed by mere partisanship.

This committee has heard much in the last 2 days and in prior hearings on the subject of what the Founding Fathers meant to include within the term "high crimes and misdemeanors," and I will not even attempt to engage in the kind of scholarly discourse that has filled this room over the last days and weeks. But I suggest to you that although there are differences of opinions which have been voiced, the weight of scholarly and historical teaching is on

one side: that nothing the President did falls within the constitutional definition of an impeachable offense.

Yes, there were witnesses who disagreed; enough to give anyone who wishes it some intellectual cover. But I suggest to you that any fair-minded observer must conclude that the great weight of the historical and scholarly evidence leads to the conclusion that in order to have committed an impeachable offense, the President must have acted to subvert our system of government. And members of the committee, that did not happen.

There has been a tendency, I think, in the debate over standards, to conflate some of the issues in what may not be a very helpful fashion. Let me say that there is one thing that I think all would agree on, and that is that the Framers made it clear in their debate and in the drafting of article II, section 4, that they intended to place substantial constraints on the use of the impeachment power. They used language flowing directly from the history of impeachments in England that was clearly designed to reach conduct that involved abuse of official power.

Within those constraints, however, and quite rightly, the framers did not and could not anticipate the specific circumstances that might give rise even to the consideration of impeachment. Instead, they made it clear that in the nature of our republican form of government, impeachment of the President was not to be the equivalent of an expression of disagreement, but was to be reserved for only the most serious matters that threaten the very fabric of our political structure.

It is not enough to say, however, that the issue must be decided on a case-by-case basis, for that suggests that what is impeachable is to be left to the unfettered judgment of each Congress. Even if, as the events of 1974 and the events of 1998 reveal, it is not possible to set down rules that will govern every case, it is possible to set down principles, and we must. And those principles must be faithful to the intent of the framers and, most importantly, must be consistent with the form of government we live under and the delicate relationship between the legislative branch and the executive branch that is the hallmark of that government.

The debate over whether misconduct or even criminal conduct arises out of personal rather than official matters is in some sense misguided, I think. One can certainly conceive of acts arising out of a purely personal matter that would be presumptively impeachable, bribery of a judge to rule in the President's favor in some private matter, but that is not to say that you should ignore the roots from which a President's misconduct stems. If he were to perjure himself about some serious official act he had taken, one might find that he had abused his office. On the other hand, if a perjury arose in a purely personal setting, one could sensibly ask, indeed should sensibly ask, whether—no matter how serious such a violation may be—when viewed in the abstract, he has demonstrated an inability to continue to lead the Nation, which must be the test for each of you.

One need only look to something that has been discussed at great length before this committee, and that is the decision in 1974, not even in the face of very strong evidence, to return an article of impeachment based on President Nixon's alleged tax evasion, to test

for yourself whether there indeed is a dividing line of constitutional importance between misconduct arising out of official matters and misconduct arising out of personal matters. But the core principle governing your deliberation should be that the only conduct that merits the drastic remedy of impeachment is that which subverts our system of government or renders the President unfit or unable to govern.

Such a standard impresses on all of us the recognition that impeachment is indeed a grave act of extraordinary proportions, to be taken only when no other response is adequate to preserve the integrity of government

Now you must, of course, as you all recognize far better than I, not set so high a bar as to make it impossible to act when our system of government is threatened, but you must not set so low a bar that you encourage future Congresses to set foot on this perilous path when the matter is uncertain and there is a danger that partisan forces alone will tip the balance. We should always look to the political process to deal with officials who breach their public trust. Impeachment must be the last resort.

Now, I want to talk very briefly about the record before you, because there has been much discussion on that subject. Yesterday we were chastised by some members of the Majority for not bringing forward so-called fact witnesses, as though somehow the burden was on us to bring that kind of evidence before the committee.

Now, I admit that I come to this exercise with the instincts of a former prosecutor and a former defense lawyer, but I really found that criticism to turn the world I know on its head.

This committee has determined in its wisdom simply to accept at face value all of the conclusions reached in the Independent Counsel's referral and to look to whatever backup information was provided in support of those conclusions. But with that decision, I suggest to you, comes the obligation to look into that record and to ask what the witnesses really said.

It seemed odd to me, as I listened to that criticism, that the committee should accept a predigested conclusion and then turn to the accused and say, bring us witnesses to convince us we were wrong.

What we tried to do in the submission that we gave to the committee yesterday, and what I will do much more briefly today, is to show you that your premise is wrong; that the very record on which you rely does not support the conclusion it purports to reach.

Some time ago, when Independent Counsel Starr testified, my colleague, Mr. Kendall, asked him whether he had ever met any of the witnesses on whom his referral relies. We asked that not out of some desire to launch an ad hominem attack on Mr. Starr, but because it seemed to us that some personal sense of the witnesses on whom the referral was relying, in recommending so grave a matter as the impeachment of the President, was important. It was important for him in making his judgments and important for you in making your judgments about the reliability of the evidence before you and the reliability of the Independent Counsel's recommendation.

You must, I think, also ask as you look to that record and test whether it is adequate for your purposes, did the Independent Counsel come to its task with the same sense of constitutional

gravity that must guide these proceedings? Was there anyone in the Office of Independent Counsel who questioned the credibility of particular testimony or asked whether all the relevant facts were being considered?

Even if occasionally heated in its rhetoric, this committee's debates do lend to this process some of the value of the adversarial give-and-take that trial lawyers believe is important in seeking the truth. But none of that healthy tension between adversaries was brought to bear on the witnesses who appeared before the grand jury.

The members here are left with essentially the cold text of the referral and its supporting materials, followed by—and I truly do not mean to speak unkindly of the Independent Counsel—a recitation of that text by a witness who was, in all candor, equally impervious to any efforts to reach behind the surface and touch the reality of the events that are at issue here.

In our memorandum submitted to you yesterday, we attempted to set out a point-by-point rebuttal of the 11 grounds advanced by the Independent Counsel. We even, and I am sorry, Congressman Inglis—he doesn't appear to be here—we even set out some facts, and I will talk about those.

Today I want to touch only on some of the issues raised in the referral for the purposes of pointing out for the committee its principal deficiencies and to highlight those areas in which myth appears to have replaced fact in the committee's debates and in public discourse.

I want to begin by coming to grips directly with the issue that I think has been the principal focus of the committee's attention and concern: the President's grand jury testimony. We take this as our starting point to address the concerns oft-stated by Congressman Graham and others, whether if the President were proved to have committed perjury before the grand jury, such conduct would, without more, merit impeachment.

Mr. Chairman, members of the committee, we firmly believe, first, that the President testified truthfully before the grand jury; but, second, that no matter what judgment you reach about that testimony, there could be no basis for impeachment on any reasonable reading of the constitutional standards.

But that said, we do want to use our time today to address the issues that appear to be most troubling to the committee, for we recognize that only by doing so can we assist you in performing your constitutional duties.

I need to stop here because I want to address an issue that probably has been heard, brooded about more frequently than any other over the course of this committee's work, and it falls under the heading, I suppose, of legalisms.

What are they? Well, whatever they are, they have caused a great deal of pain to those of us engaged in trying to represent the President over the last many months. I and my fellow lawyers have been accused by the media, by some of you, heaven forfend, of actually employing legalisms in defending our client. And, Mr. Chairman, I have to plead guilty on my behalf and on behalf of every lawyer who ever argued some point of law or nuanced fact to establish his client's innocence. But I am worried here not about wheth-

er lawyers will ultimately recover from these attacks, I am worried that our sometimes irresistible urge to practice our profession will stand in the way of securing a just result in this very grave proceeding for this very special client.

However, I do suggest that it is not legalistic to point out that the President did not say what some accuse him of saying. It is not legalistic to point out that a witness did not say what some rely on her testimony to establish. It is not legalistic to point out that a witness was asked poorly framed or ambiguous questions, and it is not legalistic to argue that a witness' answer was technically true, even if not complete. Yet, however proper it may be to make those arguments in a proceeding such as this one and for a witness such as the President, there is a risk that they will get in the way of answering the ultimate question: Did the President do something so wrong and so destructive of his constitutional capacity to govern that he should be impeached?

Even if we were successful, as I am confident we would be, in defending the President in a courtroom, that would not suffice to answer that question. For it is within your power, even if hesitantly exercised, to decide that even though there is insufficient proof to establish that the President committed perjury, he nonetheless should be impeached. But I suggest to you that even then, our oft-criticized legalisms are relevant to you. They are relevant because they were not just dreamed up by scheming lawyers looking for a good closing argument. Instead, they reflect the judgments of lawyers, judges and, yes, legislators through the centuries, that we must take special care when we seek to accuse a witness of having violated his oath.

Among the protections that the law has created, including laws enacted by this body, are the requirement that the witness intentionally testified falsely; that his testimony be material; the requirement that the question not be ambiguous; that the burden is on the questioner to ask the right question; and that the witness may be truthful but nonetheless misleading, without having violated the law. The Supreme Court has so told us.

It cannot be the rule, to add to an old phrase, that close only counts in horseshoes, hand grenades and perjury. The Supreme Court in *Bronstin* made it clear that our adversarial system requires that we take great care when we ask whether a witness has perjured himself. It made clear that we rely largely on the adversarial process, particularly in civil cases, to test the truthfulness of witness testimony; and we do not, as the panel preceding me I think made eminently clear, look to prosecutors to police the civil litigation system.

What does it really mean to say that these are legalisms? Well, granting the system's belief in the sanctity of the oath, which no one would deny, they reflect the judgment of society, of the legislature, of the judiciary, that those who would charge perjury must bear a heavy burden.

The Office of Independent Counsel would have the committee believe that in three respects the President committed perjury in his testimony before the grand jury: first, by stating that his relationship with Miss Lewinsky began in February 1996 rather than November 1995; second, by stating that he believed that a particular

form of intimate activity was not covered by the definition of sexual relations approved by Judge Wright in the Jones case; and third, by stating that he had not engaged in specific types of sexual conduct, theoretically in order to conform his testimony to his civil deposition.

Now as to the first of these, you must begin your consideration with the proposition that the President acknowledged to the grand jury that he did have a wrongful intimate relationship with Ms. Lewinsky. What then might have led him to change by 3 months the date on which that relationship began? Well, the referral surmises, it must have been because although the President was prepared to make the most devastating admission of misconduct any husband and father could imagine, he still wanted to have the grand jury believe that when their relationship began, Miss Lewinsky was a 22-year-old employee rather than a 22-year-old intern.

Well, putting aside for the moment the fact that under no circumstances would any reasonable prosecutor or any judge or jury find such a discrepancy material, there is absolutely no proof of any such purpose on the President's part. Not one witness, including Ms. Lewinsky, even suggested such a thing.

The only proof the referral offers is a mischaracterization of the record. The contention that the President's concern about Ms. Lewinsky—about Miss Lewinsky's badge reflected concern about her status, that is as an intern, rather than as was clearly the case, her ability to move freely in the West Wing of the White House. Other than this misleading representation, we are left only with the referral's bare speculation, clearly contrived simply in order to find some fine point in the President's testimony that he could trump it as false.

As to the second of the three perjury allegations, the Independent Counsel would have the committee find that the President testified falsely, because the Independent Counsel has concluded that the President's statement of his own belief in the meaning of the definition of sexual relations in the Jones case is not credible.

At least here the Independent Counsel is candid enough to acknowledge that he has no evidentiary basis for that conclusion; the referral simply states it to be the case and moves on.

I suggest that those of you who have been prosecutors know as a matter of practical experience, and those of you who have not been prosecutors or even lawyers know as a matter of common sense, that no one could or would ever be charged with perjury because the prosecutor did not find credible a witness' statement of his personal belief, much less his personal belief about the meaning of a definition used in a civil deposition.

And so we come to the third. The referral alleges that the President lied when he admitted having one form of sexual contact with Ms. Lewinsky but denied having certain other forms of contact, as the Independent Counsel would have it, in order to make his grand jury testimony consistent with the definition under which he testified in the Jones deposition.

We will not drag the committee into the salacious muck that fills the referral. Instead, let each Member assume that Miss Lewinsky's version of the events is correct; and then ask, am I pre-

pared to impeach the President because after having admitted having engaged in egregiously wrongful conduct, he falsely described the particulars of that conduct?

Let each Member even assume that the President testified as he did because he did not want to admit that in a civil deposition, confronted with a narrowly, even oddly framed definition, he had succeeded in misleading opposing counsel; and then ask yourself, am I prepared to impeach the President for that?

The answer must be no.

Does it not speak volumes that after 4 hours of hostile interrogation, prosecutors armed with information from countless documents and witnesses, the referral is able to identify only these three instances that even it is prepared to argue constitute false testimony?

The Independent Counsel had the opportunity to press the President on every point of his Jones testimony that they might have thought was false or misleading. They were experienced cross-examinationers, unfettered by judicial supervision, and this is what they accomplished.

When one scrapes away all the rhetoric, what one finds is this: The referral alleges that the President lied to a grand jury about the details of sexual conduct, not to conceal his wrongful relationship with a 22-year-old employee, but to avoid admitting in a civil deposition he had misled plaintiff's counsel about an embarrassing matter that the Court ultimately found immaterial.

Now, I do not in any sense, and nor would any of my colleagues, suggest that we take false testimony lightly. We are, as most of you are, members of a profession that values truthful testimony. What we do suggest is that if you were to conclude as to this aspect of their relationship that Miss Lewinsky was telling you the truth and the President was not, you might know—no, you should conclude that his conduct was wrong, deserving of severe condemnation; but you could not in good conscience and consistent with your constitutional responsibility conclude that the President should be impeached.

Surely the same result must follow to the extent that the referral alleges that the President committed perjury in the Jones deposition.

As any fair reading of the deposition must conclude, the questions were oddly and vaguely framed. The Jones counsel didn't follow up when they had the opportunity. Counsel were indeed invited to ask, by the President's lawyer, specific detailed questions and declined to do so. They decided to proceed on the basis of a truncated, artificial definition of sexual relations.

The President has said that he made no effort to be helpful, that he did not want to reveal his relationship, understandably. His answers were frequently evasive and incomplete, as my colleague, Mr. Craig said yesterday, even maddening. They were misleading but they were not perjurious and, a fortiori, they cannot be the basis for an impeachment.

Now this conclusion is, in my view, only fortified by an assessment of the remaining allegations in the OIC referral. The President did not obstruct justice. He did not tamper with witnesses. He did not abuse the powers of his office. The referral's overreaching

claims of impropriety are themselves but an attempt to lend artificial weight to allegations of perjury that, standing alone, Independent Counsel knew could not support the result for which he has been such a zealous advocate.

Let me examine at least part of the record that is before you. If the committee is going to rely on the testimony before it, contained in the submissions from the Independent Counsel, it must take all of that testimony. It cannot accept the Independent Counsel's picking and choosing. It cannot accept the Independent Counsel's assessment of the credibility of witnesses.

Let me just touch on two examples that demonstrate, I believe, how the committee can be misled by the referral into assuming a reality that does not exist.

First is the Independent Counsel's charge that the President conspired with Ms. Lewinsky to conceal gifts he had given her. The central events, as the Independent Counsel has described them, are these: that on Sunday, December 28th, 1997, Ms. Lewinsky visited the President at the White House. The Independent Counsel alleges they discussed the fact—in quotes, they discussed the fact that she had received a subpoena to testify in the Jones case and to produce any gifts that she had.

The President then gave Ms. Lewinsky a number of gifts because he believed she was moving to New York and it was Christmas time.

She went back to her apartment and sometime thereafter, on that day, according to the Independent Counsel, Betty Currie, the President's secretary, called and told Ms. Lewinsky that she understood that Ms. Lewinsky had something for her. Ms. Currie then drove to Ms. Lewinsky's apartment, took the gifts from her and put them under her bed. That is the essence of the Independent Counsel's description as it tries to deal with whether this constituted an obstruction of justice.

Now, the introduction to this issue as offered by Independent Counsel when he testified before you was that the President and Monica Lewinsky on December 28th, quote, met and discussed what should be done with the gifts subpoenaed from Ms. Lewinsky.

If you look at the record before you, I suggest to you you will find little or nothing to support that conclusion. For one thing, to the extent one is trying to determine whether indeed the President of the United States engaged in some obstruction of justice by urging or causing the concealment of evidence in the Jones case, begin by noting that there is not one single suggestion anywhere in any testimony that the President suggested, brought up, hinted at the notion of Ms. Lewinsky's concealing these gifts, in any manner.

Note as well that there is not one iota of proof that the President ever even mentioned Betty Currie in the context of this gift discussion. Note as well that Monica Lewinsky gave at least 10, and there may be more, versions of this event. The Independent Counsel chose one, the one the Independent Counsel thought was most injurious, most reflective of what that office believed to have been improper conduct. They don't tell you about the other nine. They don't tell you about all of the ones in which Ms. Lewinsky doesn't mention the President saying anything to her or, at worst, says, uhm, I will think about it. Doesn't mention the ones in which the

story they want to tell is not reflected in their critical witness' testimony.

And if you move to the issue of who triggered the picking up of the gifts, you face a comparable problem. According to what I have to say is a simplistic summation by the Office of Independent Counsel, it is easy. Betty Currie called Monica Lewinsky; said, the President tells me you have got something for me to pick up, or I understand that you have something for me to pick up; all of which fits neatly into a theory that it all must have happened at the President's instigation.

The problem is, Betty Currie says, never had such a conversation with the President. Betty Currie says, Monica Lewinsky called me. The President says, never had such a conversation with Betty Currie; didn't know anything about Betty Currie going to pick up gifts.

Where is that? Where is that in the Independent Counsel's assessment of its case?

Indeed, presumably it is the Independent Counsel's theory that the reason for this transfer of the gifts from Monica Lewinsky to Betty Currie had directly to do with the Jones subpoena. The problem with that is that what Betty Currie says about her conversations with Monica Lewinsky is nothing about Jones; references to people asking about the gifts and, in particular, a reporter, Michael Isikoff. Indeed, it is interesting that, in possession of Betty Currie's description of that telephone call, that conversation, the Independent Counsel never even asked Monica Lewinsky, is that right? Did you really say to Betty Currie that the reason you wanted to get rid of these gifts was because people were asking you, including Michael Isikoff? Never even asked her the question, much less put it before this committee.

But let me point not to conflicting testimony, one version by Ms. Lewinsky, another version by Ms. Currie. Let me point to the actual events about which there is no conflict on December 28th. On that day, the President gave gifts to Ms. Lewinsky. The Independent Counsel would have this committee believe that on the very day in which the President and Ms. Lewinsky, and maybe Betty Currie, are conspiring to get rid of the gifts that she already had, the President added to the pile. That's very strange conduct for a bunch of conspirators. Very strange conduct.

Why would the President, so concerned about the possibility that she might have to turn over gifts, give her a bunch and encourage her to send them all to Betty Currie on the same day? I don't think there is a sensible answer to that question; certainly not one offered by the Independent Counsel.

Let me just briefly suggest to you that a similar analysis on the issue of the job search leads to the same result. The referral would have you believe that there was an inextricable link between the assistance given to Monica Lewinsky in searching for a job and her role in the Jones case, either as a witness or in connection with her affidavit. It does so, although I must say it does admit that there is only circumstantial evidence to support the theory, by offering a chronology that essentially focuses only on the events of late December and January. And indeed if you look at pages 183 to 184 of the referral, you will see that they talk about what happens on

January 5th, Monica Lewinsky declines the U.N. job; January 7th, Monica Lewinsky signs the affidavit and Vernon Jordan informs the President that the affidavit has been signed. January 8th, the very next day, Miss Lewinsky is interviewed by MacAndrews & Forbes, on Vernon Jordan's recommendation. Shortly thereafter, after it is reported that that interview did not go very well, Vernon Jordan calls Ron Perlman, and ultimately Ms. Lewinsky is reinterviewed and offered a job.

What could possibly be more incriminating?

Well, you might want to know, as I am sure you do if you have done your homework and you have looked at this record, that Monica Lewinsky was looking for a job months before any of this happened. Mainly, candidly, she wanted a job in the White House; spent a lot of the spring of 1997 looking for a job in the White House.

Now, there was one person who I guarantee you from personal experience in the last 2 years could have gotten her a job in the White House. That's the President of the United States. It didn't happen; never pushed the button, never called anybody and said put her back in legislative affairs, give her a job with them. It didn't happen. Strange.

Indeed, if you look at the record you will see that the President gave only limited assistance to Ms. Lewinsky in her job search, never put any pressure on anybody. Vernon Jordan has helped a lot of people in this town and he helped Monica Lewinsky, and he didn't do it because she was a witness in the Jones case or because she was going to file an affidavit.

Monica Lewinsky told the President as early as July that she wanted to move to New York. The reason for that is she had been told by her friend, Linda Tripp, that she wasn't going to get a job in the White House. Failing that, New York looked good to her.

When the issue of the U.N. job arose, she pursued it during the summer, and Vernon Jordan begins to help her later in the fall, met with her in November. And at the same time, by the way, just so that the conspiracy gets broader and broader, Ken Bacon at the Pentagon, her boss, was helping to get her a job, too.

You will search the referral in vain for an honest description of these events. And those are facts, not new, because they have been resting in your hands for months, but new if you ask the question: Were they in the referral; have they been the focus of discussion? In that sense, I suggest to you, members of the committee, that they are new and they are important.

And one last piece on this subject. To the extent that it has been suggested that there was some linkage between the job search and the filing of her affidavit in the Jones case, I direct your attention to Ms. Lewinsky's interview with the FBI on July 27th in which she said, as clearly as anyone possibly could, there was no agreement to sign the affidavit in return for a job. You can search for awhile, too, before you find that in the referral.

Indeed, it is noteworthy that Ms. Lewinsky's friend, Linda Tripp, was the one who recommended, at a time when we now know she had other roles in life, not signing the affidavit until she had a job. Now this is not a new fact, because we have been very vocal about it from the very beginning, but it is a fact that isn't in the referral

in any meaningful sense. And that is, of course, her statement in the grand jury, not in response to any question from a prosecutor but in response to a question from a conscientious grand juror. And she said, Ms. Lewinsky said, I think because of the public nature of how this investigation has been and what the charges have been that are aired, I would just like to say that no one ever asked me to lie. I was never promised a job for my silence.

Lastly and very briefly, on what we surmise to be the articles that may be under consideration here, although of course we have not been given any specific information about what they may contain and thus our defense is modestly handicapped, let me touch very briefly on the issue of abuse of power in the assertion of executive privilege.

From the very first day that this story broke in January of this year, impeachment has loomed on the horizon for all of us in the White House.

We were faced with the truly unique experience of coping with a grand jury inquiry by a prosecutor who had a statutory mandate to inquire into whether there were grounds for impeachment of the President. I considered personally the question of whether we should raise any issue of executive privilege on behalf of the President in response to any documents that were subpoenaed or questions asked of particular witnesses. We fully understood from earlier litigation what our obligations were when the issue of executive privilege arises. It is to assess whether indeed the President had conversations which go to the essence of his official responsibilities and which need to be preserved as confidential so that he can, in fact, receive the most candid and sensible advice to which he is entitled.

But step 1, whenever we contemplate assertion of executive privilege, is accommodation. There are some on this committee with whom we have engaged in accommodation in other settings in similar situations, and we do so as well when prosecutors seek information from us.

We accommodate by trying to get into the hands of in this case the prosecutors and in some cases congressional committees the facts, information which they need in order to perform their duty, and to screen off only those limited areas of inquiry that go to the heart of the confidential advice and discussion between the President and his senior advisers, and that is what we did here.

We tried, albeit unsuccessfully, to accommodate the interests of the Independent Counsel, and only when he rejected all efforts towards accommodation were we required upon his filing of a motion to compel to assert executive privilege, and we did so in two areas with respect to two nonlawyer staff members of the White House, and ultimately—although initially only one lawyer, ultimately three lawyers, the latter really being linked to a wholly separate area of disagreement having to do with attorney/client privilege.

Now, one cannot read the Independent Counsel's description of what happened in the executive privilege area and come away, I think, with any true understanding of what happened. There is no indication of our efforts to accommodate, no indication that we understood the need to provide facts about the underlying conduct at issue, indeed no indication that we produced thousands and thou-

sands of pages of documents without once ever raising the issue of executive privilege.

Instead what happened is that the Office of Independent Counsel took the position that executive privilege simply didn't apply at all to his inquiry because it all arose out of the personal conduct of the President, and we litigated that issue, and we litigated it on the ground that we weren't seeking to protect information about the President's personal conduct, what we were seeking to protect was the advice that he was getting and the discussions that he was having among senior advisers with respect to the conduct of his official business in the most extraordinary high-tension, hectic era that has ever been my—I won't say pleasure, has ever been my experience in this city.

We had state visits. We had the State of the Union address. We had the core business of the President to worry about, and we told that to the judge, and guess what? Although you will never read it in the referral, the judge agreed with us. She said these conversations are presumptively privileged. And she instructed the Independent Counsel to make a factual showing, which is what happens in executive privilege claims, it is a qualify privilege, to demonstrate that their need for this information was greater than our interest in confidentiality, and only then did the Independent Counsel finally and reluctantly acknowledge that indeed executive privilege properly was asserted here. Made a showing, the judge, ex parte. We don't know what it was. The judge found that it overcame our interest in confidentiality, and that was the end of the assertion of executive privilege for Ms. Hernreich, Mr. Blumenthal, the two nonlawyers involved. That all happened by March. There was no delay, no great hurdles to be overcome.

Most importantly, I think you need to understand what really happened. This was not the President throwing out willy-nilly whatever privilege claims he thought might stand in the way of an investigation. This was his lawyers' advice that the interests of the Presidency dictated protecting not the facts, but the day-to-day advice he was getting about running the Presidency and the discussions among his senior advisers.

Now, if you ever had any question about the extent to which the Independent Counsel's referral sought to color, sought to paint the blackest picture of this insidious effort to assert a privilege recognized by the Constitution and by the Supreme Court in as limited a way as was necessary to protect the core interests of the President, look to pages 207 and 208 of the referral.

At the bottom of page 207 we find the following: The tactics employed by the White House have not been confined to the judicial process. On March 24, while the President was traveling in Africa, he was asked about the assertion of executive privilege. He responded, you should ask someone who knows. He also responded, I haven't discussed that with the lawyers, I don't know. And the referral said this was untrue. Unbeknownst to the public, in a declaration filed in District Court on March 17, 7 days before the President's public expression of ignorance, White House counsel Charles F.C. Ruff, that's me, informed Chief Judge Johnson that he "had discussed" the matter with the President, who had directed the assertion of executive privilege.

And not satisfied with noting that in the referral, Independent Counsel, when he appeared before this committee, engaged in a colloquy with Congressman Cannon. I hope the Congressman will excuse me for making use of his dialogue.

Mr. Cannon, according to the sworn declaration of White House counsel Charles Ruff, the President personally directed him to assert executive privilege to prevent you from questioning some of his assistants. When he was in Africa, however, President Clinton denied knowing about the assertion of executive privilege. Which is it? Did Mr. Ruff ever amend his declaration, or is the President lying to the public on his Africa trip?

Mr. Starr: To my knowledge, Congressman, there was never an amendment to the declaration, and the declaration was filed on March 17, and then the President's statement in Africa was on March 24. So they can't both be right. Either the President had discussed with Mr. Ruff the indications of the executive privilege, or he had not. Both cannot be true.

Well, unhappily, at least I think, for the Independent Counsel, both are true, because what really happened was that I did, as my declaration says, consult with the President of the United States. He did authorize me to assert executive privilege. And if you look at—and I will have to take a minute to find it—at pages 174 and 175 in our submission of yesterday, what really happened in March in Africa was not what the Independent Counsel said happened. The Independent Counsel completely misstated the questions posed to the President, and by carefully selecting only a portion of his answer, took his response entirely out of context.

The actual exchange was this. Question by the press: Mr. President, we haven't yet had the opportunity to ask you about your decision to invoke executive privilege. Why shouldn't the American people see that as an effort to hide something from them?

The President: Look, that is a question that is being asked and answered back home by the people responsible to do that. I don't believe I should be discussing that here.

Question: Could you at least tell us why you think the First Lady may be covered by that privilege, why her conversation might fall under that?

Answer, and this is where the quote comes from: "I haven't discussed it with the lawyers. I don't know. You should ask someone who does."

By the way, the First Lady was found by Judge Johnson to be covered by the executive privilege, but it would have been nice, whatever argument the referral wanted to make, to at least put the full statement in the record so you could assess and not simply rely on the Independent Counsel's assessment of what happened.

Some commentators, and indeed some Members of Congress, have suggested that the work of this committee, and indeed the work of the House, should be treated as nothing more than some preliminary proceeding designed to package a bundle of evidence and send it over to the Senate. Some have likened the committee's work to that of a grand jury whose only task is to determine whether there is probable cause to believe that the President has committed an impeachable offense.

Members of the committee, nothing could be further from the constitutional truth. With all respect, nothing could be a greater abdication of your responsibility. This is not routine business. This is not a charging device pushing hundreds of thousands of cases out into the criminal justice system. Only twice before has this committee ever voted out articles of impeachment. Such a vote is not intended to say, well, we think there may be some reason to believe that William Clinton has done something wrong, but we will let the Senate sort out the thing at trial. This vote is intended to speak the constitutional will of the people.

To say we believe that on the evidence before us the President of the United States should be removed from office, no member of this committee and no Member of the House can take shelter behind the notion that an article of impeachment is the equivalent of nothing more than a criminal complaint or an indictment or some formalistic slap on the wrist. Each Member, and I need not tell you this, must weigh the weightiest burden that our Constitution contemplates, the burden of making an individual determination that the President has committed such grave offenses against our polity that he is no longer fit to serve, that the will of the people should be overturned.

If there is any analogy to the grand jury, it is this, and you heard it from some of my former colleagues in the prosecution business, and you heard it from others: For any professional prosecutor, the true test, and it is certainly true for serious cases, and one can conceive of no case more serious than this, is whether there is sufficient evidence on the basis of which a prosecutor could convince a jury beyond a reasonable doubt that an offense had been committed. This is not, as Congressman Canady suggested earlier today, a matter of counting noses in the Senate. It is not a question of whether a majority vote in the House somehow gives permission to put this responsibility in the hands of the Senate. They only require a majority vote in the grand jury, and we require a unanimous vote in a criminal case at trial.

This is a matter of testing the charges that you are going to consider and asking yourself not would I win if I really litigated this in the Senate, but rather do I have enough evidence to justify putting the country through the horror that we all know will follow if, in fact, there is an impeachment.

In closing, I urge you to ask, as Senator Fessenden asked 130 years ago, is the evidence before you of such character to commend itself at once to the minds of all right-thinking—forgive me—men as beyond all question an adequate cause for impeachment. And finally ask, what is best for our Nation?

Thank you, Mr. Chairman.