

**STATEMENT OF ABBE LOWELL, MINORITY CHIEF
INVESTIGATIVE COUNSEL**

Mr. Chairman, Ranking Member Conyers and members of the committee, on behalf of the Minority staff, all of my colleagues who are in this room, who have worked so hard over the last 3 months, I appreciate this chance to present our work.

Two months ago, on October 5th, you allowed us to address you on the issue of opening an impeachment inquiry, and we will be referring to parts of that presentation in order to demonstrate that this committee does not have constitutional grounds to put forward the impeachment of the President of the United States.

This week, Mr. Chairman, you brought the committee's attention to and quoted historian Arthur Schlesinger from his 1980s book, which dealt with the type offenses that were in Watergate. Rather than using his quotes about those very significant excesses of President Nixon, I think it would be better to cite what Professor Schlesinger said on November 9th, right here, about the insignificant offenses of President Clinton. He said, lowering the bar for impeachment creates a novel, revolutionary theory of impeachment, which would send us on an adventure with ominous implications for the separation of powers that the Constitution established as the basis of our political order. It would permanently weaken the Presidency.

With the time I have today, Mr. Chairman, I would like to first set out the framework for an impeachment. In other words, I would like to address the questions of what an impeachment is and what it is not.

Second, I will take some time, taking you through what you have designated as the evidence, to demonstrate that there are no clear facts on which to base such an action.

Third, I would briefly compare the facts against the constitutional requirements that an impeachment may proceed only for high crimes and misdemeanors and only on the basis of clear and convincing evidence.

And fourth, I would like to further explain how the process used in this matter should cause this committee to have second thoughts about proceeding with the third impeachment in American history.

There has been a lot of confusing talk about what an impeachment is. The Minority staff has now poured over thousands of pages of constitutional history, legal articles and testimony, and we can begin this day, Mr. Chairman, explaining what an impeachment is not. Impeachment is not a means to punish the President. Impeachment is not a means to send a message to our children that the President isn't above the law. There are better ways to do that.

Impeachment is not a vote of confidence for Independent Counsel Starr. Impeachment is not a penalty for the President not answer-

ing the 81 questions as some of you would have wished. Impeachment is not a form of rebuke or censure for the President's conduct. In fact, impeachment is not about the President's conduct. It is about Congress' conduct.

Just because the President might disgrace his office by his actions, and just because the Independent Counsel may have shown partiality and zeal in his investigation, this House can do better. The road to dishonor in office can end in this committee, in this room, on this very day, because what an impeachment is, of course, is the single device to remove from the office the Chief Executive who you decide is constitutionally disqualified to serve, and by doing so overturn two national elections. As many of you have said, it is the political equivalent of the death penalty.

Back in October, Mr. Chairman, I think the committee was listening to one another. Some have said we no longer are. News reports indicate that a majority of the committee's Republicans have already stated publicly that they will support at least one article of impeachment. I hope these reports are not true and that these debates have some purpose. If the reports are true, however, I hope your colleagues on the House floor are still listening.

In what Minority and Majority staff present to you today, we wish we could ask each of you to change places so that Republicans would hear the arguments as Democrats and Democrats hear them as Republicans.

Others have noted the portraits behind you of the two Chairs of this committee who have had the terrible burden of presiding over impeachment inquiries. Interestingly, the portrait of Chairman Hyde hangs over the Democrats, and that of Chairman Rodino hangs over the Republicans.

This should be the model for today's events. We should see, if we can see, the issues through the eyes of the other side just this once.

With that in mind, Chairman Rodino recently had the opportunity to reminisce about that day 24 years ago that the gavel was in his hand. I would like you to listen to what he said.

[Videotape played.]

Mr. Chairman, you echoed the same thoughts before the heat of the lights and the rhetoric in this room were turned on. In a January interview, you said that you were reluctant to begin hearings because committee Democrats would not be for it, and you also said, quote, at the end of the day the Democrats have to agree. I would be loath to start something that I didn't think we could finish, and right now I doubt that Democratic support would be present.

We are well served to listen to what you and Chairman Rodino were saying, and we are also well served to listen to the country.

During our November 19th hearing, Congressman Graham accurately stated, and I quote, without public outrage impeachment is a very difficult thing, and I think it is an essential component of impeachment. I think that is something that the Founding Fathers probably envisioned, end quote.

The public has been telling us for months and in every way they possibly can that they do not want to see a trial in the Senate where the issues will be about sex, and that they want there to be a censure or other alternatives to impeachment as the means to

demonstrate that the President is not above the law. So before this week is out, I hope we listen to the wisdom of the Nation as well.

As we have participated in every hearing and listened to all the statements, it appears that many in the Majority seem to be going out of their way to find reasons to impeach, when our history tells us it should be the other way around. To this end, the committee has been too willing to dilute the constitutional standard of what makes up a high crime and misdemeanor by equating a violation of a statute, even a criminal statute, to a violation of Article II, Section 4. It has been too willing to lower the burden of proof to suggest that the House is nothing more than a grand jury, seeking to find probable cause. It has been too willing to reverse the presumption of innocence so that you ask why the President has not called fact witnesses when that is the obligation of the committee. It has been too willing to water down these proceedings to compare an impeachment of our only elected President to those where one of a thousand appointed Federal judges is involved, and as Judge Higginbotham said, it has been too willing to liken the impeachment of a President to a perjury conviction by a basketball coach.

The lowering of the bar, as Professor Schlesinger has described it, must not continue.

One of the constitutional scholars from whom you heard, Professor Jack Rakove, defined it well when he said, quote, impeachment is a remedy to be deployed only in unequivocal cases where the insult to the constitutional system is grave. And in the most important part of what he said, he added, there would have to be a high degree of consensus on both sides of the aisle in Congress and in both Houses to proceed.

Mr. Chairman, some have asked whether the role of the Minority staff is the same as the President's counsel. It is not. We are not here to defend the President. He, better than anyone, has said that his conduct was not defensible, and he has apologized for it. We are here, however, to strenuously defend the requirements the Constitution poses on all of us before we would even consider the word impeachment. Our obligation is to leave Article II, Section 4 the way we found it on November 9th.

For the Minority staff, resort to the impeachment process is like resort to that fire extinguisher behind the glass door with a big sign that reads, break only in case of emergency. We are asking you not to break the glass unless there is literally no other choice.

From listening to our constitutional scholars, we learned that debates about impeachment are like the wall protecting the fort of the Constitution's separation of powers. The crack you put in the wall today becomes the gash tomorrow, which ultimately leads to the wall crumbling down. It is that serious. It is so serious that the wall was never even approached when President Lincoln suspended the writ of habeas corpus; nor when President Roosevelt misled the public about involvement in the Lend-Lease program; nor when President Reagan misled the country and Congress about involvement with Iran-Contra.

So, members of the Committee, before you stop listening to each other, consider that a House vote for impeachment, as Majority Leader Trent Lott said last week, requires the Senate to begin a trial. Unlike your proceedings, all Senators would be involved to

have to hear the real testimony of all the real witnesses, not a summary from a prosecutor. This would have to occur no matter how long it took on the floor of the Senate with the Chief Judge presiding.

Are the issues of the President's conduct in the case so grave that you would doom the country to additional months of this ordeal and government paralysis on the slimmest of votes on the House floor and no likely conviction in the Senate?

When Mr. Starr testified 2 weeks ago, I began to review his evidence with him, but I ran out of time. I would like to do that now. The Majority would break that glass and vote for articles of impeachment, one based on the President's perjury in the grand jury; the second on perjury in the civil deposition; the third on obstruction of justice; and the fourth called abuse of power.

Mr. Scott has pointed out time and time again that this process has been something of a moving target; first, with Mr. Starr proposing 11 grounds, then with Majority counsel dicing those charges into 15, and now with the Majority putting forth articles that basically match the three categories the Minority staff summarized for you on October 5th, except that the grand jury and deposition statements by the President have been divided into two separate articles.

At the end of this process, we are about where we started. If you will turn to tab 1 in your exhibit books, it is a chart of how the articles describe the proposed allegations, allegations on the articles of impeachment that the President lied about an improper sexual relationship; the President obstructed justice by asking others to conceal that improper relationship; that the President abused his office by taking other steps to conceal that same improper private relationship. No matter how they are dressed up, redivided, renamed, reorganized or duplicated, they all have the same central point: The President's improper relationship with Miss Lewinsky, nothing more.

Well, we are not quite where we are when we started off. It is a little odd for me to make a presentation about why there are no grounds for impeachment before the Majority has set out why such articles might exist. Similarly, it is a little odd to have the President's counsel make a defense when the charges were given to him afterwards. Mr. Chairman, I ask you and the committee to note that as we get closer and closer to a day of great constitutional moment, votes on articles of impeachment, we have gotten farther and farther away from one basic constitutional requirement: Notice of the charges.

These draft articles that we all received last evening have article 1 alleging that the President committed perjury or lied at the grand jury; article 2, the same offenses for the civil deposition; article 3, obstruction of justice; and article 4, abuse of power.

If you look, as we did last night, we cannot find in these articles what statements the Majority contends were lies. Instead of precision, there is the phrase in article 1 that the President gave misleading testimony concerning, quote, the nature and details of his relationship, end quote. Article 2 reads no better.

Mr. Chairman, I know you and the staff are trying to be fair, but how is it fair to make these kinds of unspecified charges in these

halls in the People's House on something as grave as impeachment? We should be doing better than filing charges that would be thrown out for vagueness in every courtroom in the land.

The decision to make these vague charges and to have me speak first leaves me no choice but to assume, and I hope my assumption is correct, that the phrases in the proposed articles match the original allegations made by Mr. Starr. However, I have to say it would have been better if the articles had just said so.

On October 5th, I described the process by which prosecutors pile on charges to make their cases more serious. With that in mind, Mr. Chairman, I asked how it makes things clearer for the committee and the House for Majority staff to have taken various charges and to have repeated them over and over again. For example, Majority counsel has adopted the Independent Counsel's allegation that the President tried to influence Miss Lewinsky to file a false affidavit, and they list it in proposed article 3, clause 1, as an obstruction of justice. Yet, I see that they have also included the exact same event, renaming it as perjury, in article 1, clause 4, by listing it as something the President lied about in his testimony. Surely, the committee can see through this tactic.

For a week or more, the Majority has stated that the President or the Minority did not call fact witnesses. Mr. Inglis repeated that charge to White House Counsel Ruff yesterday. But in America it should not have been our burden to do so. However, if it is fact witnesses you need, then it will be fact witnesses you get.

Mr. Chairman, on behalf of the Minority, I now call to the stand Monica Lewinsky, Betty Currie, Vernon Jordan, Linda Tripp and the President of the United States.

You see, their sworn testimony contained in the same boxes on which Majority counsel is relying to put forth articles of impeachment actually proves the President's case, and this is what the witnesses have to say.

With respect to the charge that the President lied about his relationship, even members of the Majority such as Mr. Graham have stated that the President's answers to surprise questions in his deposition, consisting of gobbledygook definitions of the phrase "sexual relations," should not be grounds for impeachment. Yet there apparently was a change of mind.

The proposed articles of impeachment include two separate articles for the President's statements. So if you truly want to go forward on impeachment based on what the President has admitted were strained and evasive answers to questions at the civil deposition, I thought you and the public should hear how this all first started.

Even though Majority counsel has told us that they want parts of President Clinton's deposition in that case released, I thought you should have the whole picture and hear the amazing exchange between three lawyers and a judge that went into the contorted definition of sexual relations at the Paula Jones deposition that has gotten us all here today. Please pay attention to how long all this takes, and listen to how all of them, and especially Judge Webber Wright, accurately predicted that the twisted definition would create havoc and confusion.

But as you watch and listen, remember this: On January 17th, when the deposition was taken, the Paula Jones attorneys in the room already had Linda Tripp and her tapes. They knew they were setting up the President. They knew that they were trying to create havoc and confusion. But the President, his counsel, the lawyer for Trooper Danny Ferguson, and Federal Judge Webber Wright had no idea what they and Linda Tripp were planning. And so when Judge Webber Wright concludes, in the portion you are about to hear, quote, if you want to know the truth, I am not sure Mr. Clinton knows all of these definitions, she could have not known how correct she was.

[Videotape played.]

Mr. Chairman, I think it is worth repeating that in this, and I am sorry for the length, 10 or 15 minutes of lawyers and judges trying to come up with the definition that has now brought us to this constitutional moment, does anybody in this room, does anybody in the United States, have a clear conception of what the definition of sexual relations were if those three people and that judge in that context had to spend that much time getting to the point?

Let me end by reminding you what the judge just ended by saying: It is just going to make it very difficult. If you want to know the truth, I am not sure Mr. Clinton knows all these definitions anyway.

To those who would impeach the President and condemn him for not being more forthcoming in that deposition, put yourself in his position on that day. He was being set up by the Paula Jones attorneys and Linda Tripp, who had met with the Office of Independent Counsel just the day before. He knew that there was some collusion going on to embarrass him not about sexual harassment, but about a consensual affair. So his responses were an attempt to answer the questions evasively.

In the 20/20 hindsight of almost a year, we know he could have, should have, acted better. But are his responses to all those questions you put to White House Counsel Ruff yesterday so hard to understand that you would impeach him for acting as anyone would in that circumstance?

In his grand jury appearance, the President explained his situation on that very day, and when you listen to what he is saying and put it in the context of what you now know what was happening behind the scenes with Paula Jones and Linda Tripp and the attorneys, any fair-minded person would see that these were not impeachable reactions to that setup predicament.

[Videotape played.]

Despite this context, the Majority staff has decided to include the civil deposition as a separate article for impeachment, perhaps to add the appearance of more wrongdoing. But without this committee demeaning the impeachment process by exalting one answer like, we were not alone, and then try to figure out whether it was all right to mean alone in the Oval Office, or alone in the pantry, or alone in the hallway, the context of the material we have just presented to the committee and to the public should put that attempt to rest and dispose of this article once and for all.

This would leave as the core of the perjury allegations the charge that the President lied under oath at his August 17th grand jury appearance. These are vaguely described in article 1.

Mr. Chairman, how did we get to perjury, which is what article 1 suggests? Independent Counsel Starr's referral goes out of its way not to make a perjury charge, because that offense, as many of you on the committee who have been lawyers in the courtroom know, is one of the hardest to prove.

On October 15th, Majority counsel chopped and diced Mr. Starr's grounds into four others, but he, too, did not include one called perjury. While the Majority convened a perjury hearing a few weeks ago, many of the witnesses were, in fact, talking about other crimes. And as all the Federal prosecutors who testified here said, this would never be a real case in a real court. So if lawyers can conclude that this would not be charged as a crime, how do you as lawmakers allow it to be charged as a high crime?

On October 5th, Minority staff also suggested that the committee did not have to delve into the he said, she said salacious facts about this charge. Then, as now, the better approach would be to take the Independent Counsel at its charge. If it was President Clinton's lying about Miss Lewinsky in the Paula Jones case that creates all of these impeachable offenses, then the committee and the House can resolve this issue by deciding the importance or impact of that statement in that specific case.

I see in article 2 the Majority has put in the phrase, quote, deemed relevant when talking about the President's statements, and I certainly understand why they would want to have that phrase in the article. But they are obviously wrong. When Judge Webber Wright—if you look in your books to tab 2, and I will put up the chart—ruled on January 29th that the evidence about Miss Lewinsky was, quote, not essential to the core issues of the case, end quote, and might even be inadmissible, end quote, now when she made that same ruling on March 9th, 1998, and when she ruled on April 1st that no matter what President Clinton did with Miss Lewinsky, Paula Jones herself had not proven that she had been harmed, she gave this committee the ability to determine that the President's statements, whether truthful or not, were not of the grave constitutional significance to support an impeachment in any courtroom in America. So certainly in the halls of Congress, the President's misstatements about a consensual relationship made during a case alleging nonconsensual harassment was not material then and are not grounds for impeachment now.

But if reviewing the testimony in its proper context is not enough for the committee, and if it wants instead to go ahead with this article of impeachment, let us make sure that the committee, House Members who will be voting on this on the floor, and the American people understand what will be the subject of a Senate trial.

Again, putting aside the Majority's attempt to list as perjury clauses that it makes in other places, there were three allegations of grand jury lies that I have to guess fit into the article's phrase about, quote, the nature and details of the relationship. They are, first, as they were in the Starr referral, the date when the relationship began; second, whether the President really believed that the

term "sexual relations" did not include one type of sex; and, third, whether the President touched Monica Lewinsky.

As to the date when the relationship began, the actual charge is that Monica Lewinsky testified that the affair began in November 1995, but the President said it started in February 1996. How can you in good faith ask this Nation to endure a Senate trial to determine the difference between 3 months? How much more trivial could an impeachment charge and a trial, let alone one paralyzing the Senate and the Supreme Court, possibly be?

Mr. Chairman, you said during the perjury hearing that this article, this charge, quote, did not strike you as a serious count, end quote, and yet that is exactly what the Independent Counsel has charged and that which Majority counsel has now hidden in the vagueness of article 1.

The second allegation is that the President lied when he said his belief was that the phrase "sexual relations," as used in the Paula Jones deposition, did not include oral sex. When many in the Majority asked how we can condone perjury in our society, this is the lie about which they are talking. How would you have a trial in the Senate to conclude whether the President was right about what he thought the phrase "sexual relations" meant? You heard and saw the gyrations that it took three lawyers and a judge to deal with this silly expression. So who would you call to determine that the President did not believe the interpretation? The answer is that you don't have to call anyone. You have enough information right now to conclude that such a trial is unnecessary.

The video you saw proved that the term "sexual relations" was defined by Paula Jones' attorneys for Paula Jones' case. With that in mind, let me read what one of Ms. Jones' attorneys has said about that phrase when he appeared on MSNBC and was asked. Paul Cammarata said, quote, it is out of my definition of sexual relationships on a personal basis, and I think you have to understand the definition he was operating on when questioned, end quote. If Mr. Cammarata, one of her lawyers, can understand that the phrase "sexual relations" can exclude certain types of sex, how does this committee, in good faith, base an article of impeachment on the President interpreting it in the exact same way?

But there is more. Listen to the witnesses, Monica Lewinsky and Linda Tripp, before the Independent Counsel confronted her, before she went back and forth over an immunity agreement, and before this became so important that the definition of sex will sink us into a constitutional quagmire. Listen to the woman who you would have the United States Senate call as a witness as she defines the term in the exact same way you now accuse the President of lying about.

[Linda Tripp tape 018 played, transcript page 49.]

Where is the impeachable offense when the President's testimony and Miss Lewinsky's are the same? Is this what you are going to bring to the floor of the Senate?

So the perjury that some in the Majority have said tears at the fabric of our political system comes down to whether the President lied about whether he touched Ms. Lewinsky. I suspect that that must be the nature and details allegation in article 1.

Mr. Chairman, no one, no one, certainly not Congress and certainly not Miss Lewinsky and her family, wants to cause further embarrassment or loss of privacy to her. In short, no one wants to have to have her testify. Members of the committee, Members of the House, before you force that terrible result, before you necessitate her testimony in the Senate, before you put the country through that unseemly spectacle of a trial requiring Miss Lewinsky to describe what part of him touched what part of her, you must accept that such a trial to defend the charge that you are putting forth about something called the nature and details of their relationship necessarily would have to elicit prurient and salacious information. Such a he said, she said drama, if you really want it, would also have to include questions into the inconsistencies in Miss Lewinsky's testimony that the Independent Counsel seemed to ignore in his referral.

Mr. Goodlatte yesterday asked White House Counsel Ruff about all the corroborating evidence, but I am not sure what he meant. By way of example, do you want the Senate to be required to determine what Miss Lewinsky meant when she said this about herself?

[Linda Tripp tape 006 played, transcript page 8.]

As another example, do you want the Senate to have to examine various statements that Ms. Lewinsky made, as you now want to charge it, about the, quote, nature and details of her relationship that are clearly erroneous?

What do I mean? I mean statements like the one she made to her friend Kathleen Estep that the Secret Service took the President to a rendezvous at her apartment; for statements she made to friends Ashley Raines and Neysa Erbland that she had relations with the President in the Oval Office without any clothes; or statements she made to the White House steward Bayani Nelvis that the President invited her to go to Martha's Vineyard with him when the First Lady was out of the country; or statements she made to New York job interviewers that she had lunched with the First Lady, who then offered to help find her a place to live in New York?

Members of the committee, we know that none of those things happened because not even the Independent Counsel claims that they did, but that type of embellishment would require scrutiny in a Senate trial, if you really want to send that body that event, and if you really want to charge the President lied about the, quote, nature and details of Ms. Lewinsky and his private relationship.

Is that what you want to put the country through? How do we justify an inquiry into these matters, and how do you justify to Miss Lewinsky and to her family that after all they have gone through, you will subject her to the ordeal to resolve those issues? You can avoid this result by recognizing that the same inconsistencies which a Senate trial would have to explore also mean that the evidence available for you today to have to resolve, this he said, she said conflict, do not amount to the threshold of evidence required in the House to send charges to its sister body about something called the nature and details of the relationship.

When he was here, look, for example, on page 58 of his testimony, Ken Starr said over and over, when he was asked questions concerning the events at the Ritz-Carlton or about Miss Lewinsky

being asked to wire the President, that sometimes perceptions can be different without someone being called a liar. I think you can use Mr. Starr's admission in foregoing that spectacle that I have just explained would have to occur in a Senate trial.

Finally, as to the article of perjury, some of the Majority have now confused the three very precise allegations of lying in the referral with some general criticism of the President for stating that he didn't recall something or that he didn't remember the details of something. In fact, the Majority staff has now included in article 4 the charge that the President abused his power by such statements in his answers to the 81 questions that were posed to him.

This allegation, however, was not what the Independent Counsel charged on September 9th. It was not what Majority counsel alleged on October 5th, and it is a dangerous precedent. Given statements from President Roosevelt's failure to remember that he promised military support for Panama in its conflict with Colombia over the canal, to President Reagan's failures to remember how funds flowed to the Contras, this committee should not make Presidential lapses of memory into impeachable offenses or the office could go vacant forever.

But now that the Majority staff has included this as a charge, let me show you why this tactic and this charge is unfair for impeachment. Remember that despite being prepared for weeks for his appearance before this committee, and having practice sessions with his assistants, and knowing the criticisms about which he was going to be asked, this is how the prosecutor, whose material you have chosen to rely on, answered many of your questions.

[Videotape played.]

Before this committee starts making the phrase, "I don't recall," "I don't remember," "I'd have to think about it" something that you would bring to the floor of the Senate, see what an unfair tactic that really is.

As to article 2 alleging obstruction of justice, on October 5, we recognized that the charge, reminiscent to Watergate, was the most egregious of the four grounds alleged in the Starr referral. And in majority counsel's dividing those into eight total charges, as they were presented by the referral—and again I can only assume that that is what the majority means in article 3 of the proposed articles of impeachment—the charges are:

First, the President tried to have Ms. Lewinsky submit a false affidavit;

Second, the President initiated a return of gifts he had sent Ms. Lewinsky so they would not be discovered in the Paula Jones case;

Third, the President sought to keep Ms. Lewinsky quiet with a job; and.

Fourth, the President sought to tamper with the testimony of Ms. Currie.

Let me turn to each in order, and rather than relying on conclusions and inferences from the Starr referral, let's listen to the actual witnesses.

If you turn to tab 3 in your exhibits, we will put up the chart. As to the claim the President did not seek to claim—I'm sorry—that the President did not seek to have Monica Lewinsky file a false affidavit with respect to this issue, both Ms. Lewinsky and

the President agreed with the very obvious point that she could have filed a completely truthful affidavit denying any sexual harassment and therefore avoided being called as a witness in the Paula Jones case. This is how completely the President explained this basic point.

[Videotape played.]

That tape—I think we have got one tape out of order and I will come back to that.

What the President said was that Monica Lewinsky could file a completely honest and truthful affidavit in a suit about sexual harassment, saying she was not sexually harassed, and by doing so, hopefully avoid having to be deposed.

Consider that Monica Lewinsky in January 1998 in a conversation, when Linda Tripp was wired, when speaking about her affidavit, Ms. Lewinsky, a sworn witness for this committee to consider said, quote, no matter how she was wronged, "It was my," meaning Ms. Lewinsky's choice, "about the affidavit."

Then, members of the committee, read what Ms. Lewinsky said the first time she ever came in to see the Independent Counsel, not after the sessions where they went over and over her testimony. She wrote in what the law calls a proffer the following statement, and I quote: "Neither the President nor Mr. Jordan, nor anyone on their behalf, asked or encouraged me to lie," end quote. You can find that in her February 1, 1998, proffer statement that she gave to the Office of Independent Counsel contained in the first appendix the committee issued in this matter.

Add to your consideration Ms. Lewinsky's grand jury testimony about the affidavit when she stated that it could range between just somehow mentioning innocuous things to actually denying sexual relations as that term was defined.

If you want or if you need more evidence, you can find it. In her August 6 grand jury appearance when she was the one who admitted that she, quote, "would strongly resist," end quote, any attempt by President Clinton to make her reveal their relationship.

Do you want more evidence? Then consider that on this all-important issue of the President apparently, supposedly telling Ms. Lewinsky to file a false affidavit, she testified that when she asked the President if he wanted to see the affidavit, the President, quote, "told Ms. Lewinsky not to worry about the affidavit," end quote.

And, finally, listen to Ms. Lewinsky on December 22, 1997, give you the most important statement, again before she was confronted by the Office of Independent Counsel, made their witness and given their immunity. As to the President wanting or knowing about her lie, this is what she told Linda Tripp.

[Audiotape played.]

"You told him you were going to lie, haven't you?"

"No."

By the way, the witness, Ms. Lewinsky, also was uncontradicted in the 17 boxes of information that it was she, not President Clinton, who undertook each and every one of these steps that went beyond merely trying to deny their improper relationship. She invented the code names with Betty Currie. She, and no one else, was responsible for the talking points. She, with the prodding of

Linda Tripp, not the President, decided to hide her dress. And it was her idea to delete e-mails and files from her computer.

For these acts, Ms. Lewinsky was given immunity, and the Independent Counsel and majority staff would have you vote that it was the President who obstructed justice. Before you do that, let me have you listen to another witness. I would like to recall Independent Counsel Starr to the stand so you can hear that the proof actually contradicts this article of impeachment.

[Videotape played.]

He went on to say "yes," and our referral includes that. You have to look in the boxes.

Certainly the majority cannot claim to need a trial in the Senate for the issue of the gifts exchanged between the President and Ms. Lewinsky. If you turn to tab 4, there is a chart of the charge, and what we do in these charts, members of the committee, is that we list all the contradictory evidence which undermines the charge.

As to this one, rather than the President trying to hide or care about gifts, the witness, Ms. Lewinsky, admitted that she raised the issue with the President, not vice versa. She offered sworn testimony describing this conversation on at least 10 occasions. In seven of these, including the very first time she saw the Independent Counsel and the last time she saw the Independent Counsel, she indicated that it was the President who never responded to this issue. In only two of all of her statements does she even state the outrageous lines leading to this article of impeachment that all the President ever said on the subject of gifts, when she raised it, about hiding them, giving them back, was, quote, "I don't know, let me think about it." And then Ms. Lewinsky said, "He left that topic."

This is hardly the stuff of obstruction. The Independent Counsel chose to state the President's response without bothering to tell you and the American people about the other nine times they asked Ms. Lewinsky the same question.

Well, let's call Betty Currie to the stand; let her be your witness you want to hear from. She stated repeatedly that Ms. Lewinsky called her and raised picking up the gifts and that the President never asked her to call Ms. Lewinsky. Here is her testimony.

She was asked, and she said, "My recollection, the best I remember, is Monica calling me and asking me if I would hold some of the gifts for her. I said I would." The question was, "And did the President know you were holding these things?" Ms. Currie answered, "I don't know." Independent Counsel asked, "Didn't he say to you that Monica had something for you to hold?" Ms. Currie answered, "I don't remember that. I don't."

That is in her grand jury testimony on May 6.

She was also asked by the Independent Counsel, "Exactly how did that box of gifts come into your possession?" Ms. Currie swore under oath, "I do not recall the President asking me to call about a box of gifts."

Let me recall to the stand the President so that you can recall that it was he, not Linda Tripp, not Lucianne Goldberg, who gave Ms. Lewinsky the proper advice.

[Videotape played.]

He said, "If they asked you about the gifts, you'd have to give them up. That's what the law is."

Finally, the evidence is as uncontradicted as evidence could possibly be that on December 28, 1997, the President gave Ms. Lewinsky the most gifts he had ever given her on one day, because of Christmas and Ms. Lewinsky moving to New York. He did this after Ms. Lewinsky had been subpoenaed for gifts. And yet this charge, your article of impeachment, would have you believe that on December 28 he gave Ms. Lewinsky the gifts and a few hours later hatched some scheme and some conspiracy by asking Ms. Currie to go and retrieve the very gifts he had just given.

The Independent Counsel's charge and that clause in the article of impeachment defies logic so let me ask this: Where does the majority expect to find the clear and convincing evidence that this obstruction concerning gifts occurred if it does not exist in the nine grand jury and other appearances by Betty Currie, the 22 by Monica Lewinsky, and the 20 by Linda Tripp? What will you give a Senate trial to do?

A damning allegation reminiscent of the worst of Watergate is when a President suborns perjury in another witness. That is what majority's proposed article 3 suggests when it alleges that the President sought to influence the testimony of Betty Currie. But the actual evidence is not that the President was talking to Ms. Currie as any potential witness, but that he was talking to his secretary about a media storm that was about to erupt. It is not surprising, improper or impeachable for the President to want to hide his improper relationship and even hope that in conversations he might test what others knew about it. Yet this proposed article of impeachment alleges that which does not exist, and is literally impossible to prove, no matter whether a Senate trial would take a day or a year.

On January 18, 1998, when the President called Ms. Currie for a meeting, there were days left in the schedule for taking any evidence in the Paula Jones case. And again the majority staff couches their charge as the President trying to influence, quote, "a potential witness," end quote. But the plain, uncontradicted and dispositive fact is simply this: Betty Currie was not listed as either a deposition or a trial witness in that case and the article of impeachment is wrong to state the opposite.

Some of you have asked, did it matter if the President said during his deposition, quote, "You will have to ask Betty Currie," end quote. But even after he said that, Ms. Currie was never added to any witness list, never contacted by the Paula Jones attorneys. And although the Independent Counsel interviewed the Paula Jones attorneys, they never asked them a question about Betty Currie becoming a witness.

Do you want to know why? Because the answer that she was never contacted, never deposed and never added to the witness list in any way, even after the President suggested that they talk to Betty Currie, destroys this subornation charge.

Members of the committee, most of you—I think almost all of you—are lawyers. Your colleagues on the floor are going to be looking to you to give them guidance about the law. Certainly for something as grave as an impeachment, do not rewrite 100 years of law.

You know as well as I that there cannot be subornation of a witness unless the person involved is a witness. Ms. Currie was not, and this article of impeachment has no legal grounds on which to stand.

Equally important, there is no need to waste the Senate's time with a trial, because President Clinton and Betty Currie, the only people involved in this event, both agree that the conversation on January 18 was not about testimony, was not intended to pressure her and was caused by inquiries from the press, not any litigation.

There has been so much misinformation about what was said between the President and Ms. Currie, including Mr. Graham's attempt to make this short conversation into some wild conspiracy to get Ms. Lewinsky, that perhaps it is best to let their own words speak for themselves. Let's recall the President to the stand first.

[Videotape played.]

You want corroboration? I will give you corroboration. Let's call Ms. Currie to the stand and see what she would say.

She was asked the following question: "You testified that he wanted you to say 'right' at the end of those four statements, I was never alone" —you know the four statements. This is what Ms. Currie said: "I do not remember that he wanted me to say 'right.' I could have said 'wrong.'"

Independent Counsel didn't like that answer, so asked: "Did you feel any pressure to agree with your boss?" She answered, "None." You can find that in her July 22, 1998, grand jury appearance.

Finally, I would like to call one more witness. When Mr. Starr was here, this is how he resolved the issue completely for you in response to questions Senator-elect Schumer put to him.

[Videotape played.]

This committee does not have to go any further than the admission of witness Independent Counsel Starr to see that this charge 2 and this article may not go forward on the record. If there is no proof that the President had the wildest idea, even in spite of the invitation to do so, that Betty Currie would ever be contacted, would ever become a witness, would ever be deposed, then you have no choice on the record but to see the obvious conclusion, that it was the Drudge report, the media inquiries and the President knowing that his deposition testimony was about to be leaked that caused all the events that you would impeach him over on a charge that does not exist.

As to the fourth allegation about the job search, how can the majority cause the crisis a Senate trial would incur based on an article of impeachment alleging obstruction of justice by trying to get Ms. Lewinsky a job? Each and every one of you knows that there is no contradiction by any witness—not Linda Tripp, not Monica Lewinsky, not the President, not Betty Currie, not the White House staff, not Ambassador Bill Richardson and his staff, not even the New York interviewers—that the job search began long before Ms. Lewinsky was even a dream to the Paula Jones attorneys and had nothing to do with that case.

How ironic is it that Linda Tripp went to see Ken Starr with a great tale about obstruction of justice, which you have now decided to adopt in your proposed article, and that this obstruction of justice was by Vernon Jordan who, she said, was keeping Monica

Lewinsky quiet by offering to help get her a job, when it was Linda Tripp herself and not the President who suggested that they get Vernon Jordan involved. We know now that Ms. Tripp owes Vernon Jordan an apology for that false charge, and she owes him one as well for this.

[Audiotape played.]

"Right now, I don't think he's aware of the whole situation."

"No, he's not."

Boy, Ms. Tripp, I couldn't have said it any better myself.

And finally, while it has been pointed out to the committee many times, it cannot be pointed out too often, because this statement by your witness, Monica Lewinsky, answers this charge about obstruction of justice and leaves this committee and the House with no proof.

Ms. Lewinsky, even though never asked by the Independent Counsel, made sure she did not finish her grand jury testimony before stating, quote, "No one asked me to lie, and I was never promised a job for my silence." And you know where that one is all too well by now.

Members of the committee, in light of the statement where will you find the evidence of obstruction to send to the Senate, let's listen to Independent Counsel Starr, who agrees.

[Videotape played.]

Do you find trial material and any contradiction in the evidence on this? Speak to your colleagues in law firms and in law courtrooms all over the world. They won't.

I need to address on this final part of article 3 something that is new. Not content with Independent Counsel Starr's 11 charges, the majority seems to have decided it needed one more and somehow they have added as an obstruction of justice the President allowing his private attorney to make a statement about the definition of sexual relations in the deposition, that they say the President knew to be false.

Well, we have dealt twice with the issue of whether this definition makes enough sense for anyone to understand, and we have dealt with the issue of how it helps this process be fair for the majority to add charges over and over about the same basic issue, the President lying about sex. But there is one new point to make.

When the majority was on one of its frolics to expand this inquiry into new matters, there was a ruckus raised to take the deposition of Robert Bennett, the attorney apparently involved in this articles charge. But just as fast as the majority scheduled that deposition, it canceled it. That was more than a little bit unfair, when it was planning to make a charge never before known, based on testimony it then conveniently engineered never took place.

Mr. Chairman, article 3 raises the specter—I am sorry, article 4 raises the specter of abuse of power. We saw this charge back on September 9 in the Independent Counsel's referral, but then we never saw it again until this week. The term "abuse of power" does evoke the memory of President Nixon's offenses in 1974. Yet those who have appeared here as witnesses with Watergate knowledge—former Attorney General Eliot Richardson, Judge Charles Wiggins, Father Robert Drinan, former Member Elizabeth Holtzman, former Member Wayne Owens, Watergate Prosecutor Richard Ben-

Veniste, House Judiciary Committee staff member William Weld—all could tell you that the acts you are considering today are not the same.

In Watergate, abuse of power was proved with tapes of President Nixon telling his aides to get the CIA to stop an FBI investigation, to create a slush fund to keep people quiet, with tapes that you can hear in directing the break-in of people's offices, or to get the IRS involved in going after political enemies. Here, the charge stands on tapes of Monica Lewinsky and Linda Tripp talking about going shopping.

As it is presented to you in 1998 and as originally contained in Mr. Starr's grounds 10 and 11, abuse of power means that the President lied to his staff or to the people around him about the same inappropriate relationship with Ms. Lewinsky, knowing that they might repeat those lies and that the President then violated his oath of office because he and his attorneys tried to protect his constitutional rights by asserting privileges of law.

Members of the committee, I know you have had only one night to review the proposed articles of impeachment. We on the Democratic side did. But as you did, I hope you saw how the majority proposes to dress up this almost frivolous charge. Look on page 7 of the draft articles. You will see the impeachable offense is that by denying his affair to the Cabinet and to his staff, who then also made public denials, believing that to be the case, the President, quote, "was utilizing public resources for the purposes of deceiving the public," end quote. If this were not so serious a proceeding, I would have thought that this was included for the humor.

As to the substantive charge that misstatements to the staff might be repeated in the grand jury or even to the public, this article of impeachment merely repeats in another form the same charge, that the President wanted to conceal his private sexual relationship from anyone and everyone he could. As my daughter would say, "Duh."

As the committee takes up this proposal, keep focused that this was not an attempt by a President to organize his staff to spread misinformation about the progress of the war in Vietnam or about a break-in in Democratic headquarters at the Watergate, or even about how funds from arm sales in Iran were diverted to aid the Contras. This was a President repeating to his staff the same denial of an inappropriate and extremely embarrassing relationship, the same denial that he had already made to the public.

Does this article of impeachment envision that the President, having already made public denials, would have then gone inside the White House and told his staff something else? However wrong the relationship or however misleading the denial was, it is not nearly the same as those other examples I have just given you.

I heard Mr. Sensenbrenner say 2 days ago that there was no difference between a President lying about illegal bombing in Southeast Asia and about a private sexual affair. But, members of the committee, let us not lose sight of the fact that unlike the case in 1974, Bill Clinton's alleged crimes are not those of an errant President, but are those of an unfaithful husband.

Mr. Chairman, I hope you can agree with me in 1998 that these statements by the President are not proper grounds for an im-

peachment. Your words in 1987 explaining the untruths told by government officials in the Iran-Contra matter—something far more important to America than the President's private sex life, I think—answer completely the article of impeachment today. Speaking not about testimony under oath but about statements made in public, you said then, and I quote, "It seems too simplistic to condemn all lying. In the murkier grayness of the real world, choices often have to be made. All of us at some time confront conflicts between rights and duties, between choices that are evil and less evil. And one hardly exhausts moral imagination by labeling every untruth and every deception an outrage," end quote.

Mr. Chairman, the President's trying to hide his totally inappropriate relationship to his aides and to the American public seems to be exactly the, quote, "murkier grayness of the real world," end quote, about which you were eloquently speaking.

As to the ground for impeachment that the President had the audacity to assert privileges in litigation, White House counsel Ruff did a complete job of disproving any possible issue the committee could have. Let me only add one note: that it still remains shocking to me, as I hope it does to all the lawyers on this committee, that you would even consider as an article of impeachment an assertion of an evidentiary privilege by the President on the advice of his lawyers and the White House counsel that was found to exist by a judge, that that could ever be grounds for an impeachment.

I have heard the Majority state that a President should not be above the law. And yet this proposed article would place him below the law that gives every American the right to assert legally-accepted privileges without fearing being thrown out of his job.

Members of the committee, in light of the high threshold and the need for clear and convincing evidence, what can you make from the fact that the Minority staff is demonstrating that the evidence is so slight that it does not even exist on many of the charges? After all, you have 18 boxes from the Independent Counsel and 450 pages of a referral. But that is exactly the point. Members, you now know that all you have before you is the material that was sent by the Independent Counsel. The committee has gathered no information on its own. On November 19, this committee heard an entire day from Independent Counsel Starr, who sent you the material. Many Majority members criticized Democrats for asking Mr. Starr and his deputies about their conduct instead of about the facts.

Mr. Chairman, it would have been totally inappropriate to ask Mr. Starr about the so-called facts of the case. He admitted on that day that he was not a fact witness and was not even the person who asked any question in any deposition or in any grand jury appearance. What Mr. Starr admitted he was, however, was the man who made the decisions concerning whether a referral should be sent to Congress, when it should be sent, what it should include, and what it should omit, how it should be written and what it should charge. In fact, this is how Mr. Starr described his responsibility.

[Videotape played.]

It is precisely because there is such a large gap between what Mr. Starr's charges state and what the evidence actually shows

that we asked those questions, because as Mr. Starr told you when he sent you his letter on September 25, his conduct and that of his office bears on the substantiality and the credibility of the evidence. And his letter you may find in tab 5 of your exhibits, and on the chart that we have put before the room.

As this committee has chosen to receive Mr. Starr's referral and its conclusions and the material he decided to send in determining whether there is clear and convincing evidence to support impeachment and, as we claim, indeed I think as the Minority staff has proven, that such large gaps exist in the evidence, it was essential on November 19, as it is now, to determine whether his material can be trusted, whether it is accurate, whether it is complete, and whether it is biased.

Let me give you one example. If Mr. Starr concluded, as he did, that President Clinton tried to influence the testimony of Betty Currie but the facts are that there was no testimony to influence because she was not a witness at the time, and if the facts from Betty Currie's own mouth was that she was not being directed or pressured as to what to say, then you have to question how Mr. Starr could make that bald assertion. This is why questions to his conduct were so important.

Members of the committee, the danger of accepting one-sided facts solely from prosecutors was most recently and vividly demonstrated by the acquittal of former Secretary of Agriculture Mike Espy. The Independent Counsel in that case brought 38 felony counts against Mr. Espy over the receipt of \$33,000 in gifts. That Independent Counsel stated that the conduct he was charging corrupted the workings of government and were heinous crimes. But the judge dismissed eight counts when the Government rested, and the jury made short order of the rest.

Ordinarily cross-examination of witnesses and motions made to trial judges are the devices to make sure evidence is reliable. However, in our proceedings before this committee, these tried and true methods of getting at the truth have not occurred. Given the results of the Espy case, you can readily see that relying on the charges of one-sided presentations by prosecutors in general and Independent Counsels in specific, can lead to fairly completely erroneous conclusions. So questions asked of Mr. Starr about whether his office and he had a conflict of interest, whether they pushed Monica Lewinsky too hard to become their witness, whether they violated Department of Justice rules—and if you look at tab 7 and the chart we have put up, we list the rules that were involved in their conduct that day and in their investigation—if they violated those rules on their way to Congress, or whether they were leaking material to the press, are not to suggest that Ken Starr is a bad man. They are to suggest that he was operating under a bad law. And if you accept the findings from that bad law without asking tough questions about how the evidence was gathered, you run the risk of giving the material he sent far more weight than it deserves.

When you now resolve the enormous differences between what the referral concludes and what the evidence we have demonstrated shows, in order to determine whether the material he sent is clear and convincing enough for something as important as

an impeachment, please recall that you have every reason to question the strength of that evidence when it is presented with such opinion as Mr. Starr chose to do.

As we often use Watergate as a precedent in this room, I pointed out that day that special prosecutor Leon Jaworski said in his report that, quote, "Facts would have to stand on their own, contain no comments, no interpretations, and not a word or phrase of accusatory nature," end quote. You can see that at tab 8 of your exhibit book. I did that so that you could see that Mr. Starr's referral, which was described as having, quote, "an attitude," end quote, must be viewed more skeptically. Mr. Starr shouting in his testimony phrases like, quote, "concocted false alibis," end quote; quote, "engaging in a scheme," end quote; quote, "premeditated pattern of obstruction," end quote, does not make the evidence clear and convincing. And the fact that Mr. Starr's own ethics adviser believed that Mr. Starr crossed the line, quote, "to serve as an aggressive advocate that the President committed impeachable offenses," end quote—you may find that resignation letter on tab 9—that should serve as a red flag to you not to accept everything written in that report and every decision that Mr. Starr admitted he was responsible for as gospel.

Moreover, and more importantly, this entire referral results from charges made by Linda Tripp, who is responsible for the Office of Independent Counsel—for getting the Office of Independent Counsel in the case just a few days before she gave the fruits of her illegal tapes to the Paula Jones attorneys so they could set up the President and create the events that are now before the committee.

If some of you are not comfortable with the relationship that existed between Linda Tripp, the Paula Jones attorneys, and the Office of Independent Counsel, you are not alone. Compare how Mr. Starr answered questions about whether he had the ability and the motive to have stopped Linda Tripp here when he was testifying to his prime time television statements on the news show 20/20. This is what he said when he was testifying before you.

[Videotape played.]

And this, giving the TV a chance to recover, is what he told Diane Sawyer.

[Videotape played.]

He didn't make that admission in here. He did make it a few days later. Yesterday Mr. Canady agreed with White House counsel Ruff that members needed to go beyond the referral into the actual material sent to Congress. When there is any ambiguity in that material or anyplace where it is not clear, and any leap that it makes, look at this list that you can find on tab 10 of your exhibit book calling into question the objectivity of the Office of Independent Counsel, and you will see that you cannot simply assume or adopt the conclusions that that office has made. And so, Mr. Chairman, I hope this time I was better able to explain why we asked those questions of Mr. Starr and the significance of those questions to your evaluation of the evidence.

Now that we have shown the very little evidence that actually exists, let me turn to the constitutional law that applies to the facts. When I appeared on October 5, the Majority was resisting the Minority's request to begin an inquiry with a full and fair hear-

ing to discuss the constitutional threshold for impeachment. We have now heard from a number of witnesses, and I think we all agree that these were important witnesses to hear from, and we learned from those witnesses.

We learned, for example, that over 400 historians all took the time to write the committee, and you can find their letter on tab 11, and here is their letter. And they wrote, quote: "That The theory of impeachment" that is now contained, as it turns out, in your proposed articles, quote, "underlying these efforts is unprecedented in our history and are extremely ominous for the future of our political institutions. If carried forward," they warned us, "they will leave the presidency permanently disfigured and diminished, at the mercy, as never before, of the caprices of Congress." End quote.

We learned that over 200 constitutional legal scholars wrote the committee and said that even if the offenses that you are considering were true, they did not rise to an impeachable level. We even learned from the Majority's witnesses called before the committee, such as joint witness Professor Michael Gerhardt who said that the offenses, quote, had to be "great or dangerous, causing some serious injury to the Republic; the framers emphasized that the ultimate purpose of impeachment was not to punish but to protect and to preserve the public trust."

And we learned from Professor William Van Alstyne who eloquently concluded his testimony and said: "If the President did that which the special counsel report has declared are crimes of such a low order that it would unduly flatter the President by submitting him to a trial in the Senate, I would not bother to do it." End quote.

With that high standard in mind, members of the committee, the Majority must not further dilute the Constitution by arguing phrases like the House is a grand jury that simply votes out an article of impeachment and lets the Senate worry about it, or when it states that the House does not have to hear evidence or make decisions about who is telling the truth, because that is the Senate's job.

Former Watergate-era Attorney General Eliot Richardson said it best when he warned, quote: "A vote to impeach is a vote to remove. If Members believe that should be the outcome, they should vote to impeach. If they think that it is an excessive sentence, they should not vote to impeach because if they do, the matter is out of your hands." End quote.

If you try to rewrite history by contending that the House is merely the body that accuses and the Senate is the body that tries, you forfeit the double protection that the founders intended to exist. Contrary to having the House be a mere rubber stamp for sending allegations of wrongdoing to the Senate, the Constitution actually requires that the House as well as the Senate look to the same evidence with the same standard. One constitutional writer, Professor John Labovitz, examined the history and how it applied to Watergate and concluded with words that seem as if they were written for today's events.

He said, quote: "there were undesirable consequences if the House voted impeachment on the basis of one-sided or incomplete information or insufficiently persuasive evidence. Subjecting the

Senate, the President and the Nation to the uncertainty and potential divisiveness of a presidential impeachment trial is not a step to be lightly undertaken. While the formal consequences of an ill-advised impeachment would merely be acquittal after trial, the political ramifications could be much more severe. Accordingly, the House, and this needs to be noted, the House should not vote impeachments that are unlikely to succeed in the Senate. The standards of proof applied in the House should reflect the standards of proof in the Senate." End quote.

Professor Labovitz then meticulously documented that in the Nixon inquiry, everyone agreed, the Majority, the Minority and the President's lawyer, that the standard of proof for the committee and the House was clear and convincing evidence.

Former member of this committee Elizabeth Holtzman said it shorter and perhaps more simply when she was here on Tuesday and she said, quote: "We voted as if we were the Senate." End quote.

Again speaking to 1974, there is one more introductory thought I would like to make on this subject of burden and the requirement that you find proof by clear and convincing evidence. On October 5 when we appeared before you, we suggested, as a frame of reference, that which is even more compelling today. That was the bipartisan vote against an article of impeachment for President Nixon's lying to the IRS about his taxes. Please be clear that the article proposed in 1974 included allegations that President Nixon's tax returns, like all filings with government agencies, had the import of an oath. Please also be clear that allegations included the fact that the lies in that matter were purposeful, included backdated documents and were about something important, the means by which our government is funded. Please also keep in mind, in light of Mr. Canady's questions to Mr. Ruff, that while some Members did justify their no votes because they felt the evidence was insufficient, that others, including the key Democrats which made this a bipartisan rejection of the article of impeachment, did so because they said that it was not an impeachable offense.

With all of that in mind, let us ask what we asked you 3 months ago. If President Nixon's alleged lies to the Internal Revenue Service about his taxes were not grounds for impeachment in 1974, how then are the alleged lies by President Clinton about his private sexual relationship with Ms. Lewinsky grounds in 1998?

Just last week, you heard from someone who could help with the answer to that question, and I know we were listening when Majority witness former Watergate-era committee member and now Federal Judge Charles Wiggins said, and I quote: I confess to you that I would recommend that you not vote to impeach the President. I find it troubling that this matter has grown to the consequences that it now occupies on the public screen." End quote.

Mr. Chairman and members of the committee, one of the articles that you propose uses the phrase "abuse of power." That phrase does have a Watergate ring, and I am sure it is why it has been resuscitated even without evidence. But in a way, it is a good thing that the Majority has made that attempt. You see, the committee is right to be on the lookout for Watergate similarities, because

that sad chapter of American history really does describe that which are truly impeachable offenses. But calling something a Watergate offense does not make it so. The more you look at Watergate, the more you will see just how different these proceedings are. In the end, Watergate was a congressional event which both sides could identify as serious and substantial enough to call for truly bipartisan action, just as both you, Mr. Chairman, and Chairman Rodino understood needed to be the case.

But that is not the situation today. Both Watergate and today's inquiry started with a referral from a special prosecutor sending grand jury material to the Congress. But that is where the similarity ends. The Office of Independent Counsel today certainly hasn't acted like Mr. Jaworski's office did back then, and the two Judiciary Committees have not acted the same either. The Judiciary Committee in Watergate kept the evidence to itself, until it could be sure what was relevant and what was not. It did not dump the material into the public. The Judiciary Committee in Watergate had agreements on what witnesses to call and what evidence to gather. It did not go on unilateral excursions from one matter to the next, like the Paula Jones case to campaign finance reform, in hopes of finding something more. The Judiciary Committee in Watergate heard from actual witnesses whose credibility could be assessed. It did not rely on the conclusions of a prosecutor. The Judiciary Committee in Watergate agreed that the House needed clear and convincing evidence. It did not state that it was a mere rubber stamp to send prosecutor's material to the Senate for a trial. And finally, the Judiciary Committee in Watergate took its actions, including the most important actions of voting articles of impeachment, with bipartisan votes.

I raise all of these comparisons, because the more we all try to dress ourselves up in the clothes of Watergate, the more we see they simply do not fit. But it does not have to be so. This does not have to be the case. In this last moment, in these last sessions when it really finally counts, this committee can reach back in its history to rise as did our Watergate counterparts. It can in the end merge the portrait behind you on the right and the one on the left. It can, in effect, create another chapter of congressional history for which we can be as proud as we are proud about our counterparts 24 years ago.

When you gave us the high honor and privilege of addressing you on October 5, we ended the presentation by reading what we thought was the most important part of the history of how the impeachment clause was ratified in the Constitutional Conventions. If you recall, we described Alexander Hamilton's explanations and his warnings, when he was seeking to assure the fears of the country that the impeachment clause would not be misused, and what he said then seems so, so germane today. Hamilton stated that prosecutions of impeachment, quote, "will seldom fail to agitate the passions of the whole community and to divide it into parties more or less friendly or inimical to the accused. In many cases, it will connect itself with the preexisting factions, and in such cases there will always be the danger that the decision will be regulated more by the comparative strength of the parties than by real demonstrations of innocence and guilt."

And you all have Federalist Paper 65 probably on your desks.

Mr. Chairman, members of the committee, Members of the House, beyond this committee's walls, we truly are at a moment where we can avoid, quote, "connecting this important debate to preexisting factions," end quote. We are at a place where if we slip, the decision, quote, "can be regulated more by the strength of the parties than by real demonstrations of innocence or guilt," end quote.

Even though the Majority has all the votes it needs to do as it pleases, we conclude today the way we began in October, by urging that we all listen to Hamilton's plea, by urging that we listen to each other, and by urging that we especially listen to the American people who are asking you to find a truly bipartisan way to avoid the course on which you are now embarked.

Mr. Chairman, Mr. Ranking Member Conyers, members of the committee, thank you for your attention, and I thank my staff as well.