105TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 105–795

INVESTIGATORY POWERS OF THE COMMITTEE ON THE JUDICIARY WITH RESPECT TO ITS IMPEACHMENT INQUIRY

OCTOBER 7, 1998.—Referred to the House calendar and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H. Res. 581]

The Committee on the Judiciary, having had under consideration H. Res. 581, authorizing and directing the Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of William Jefferson Clinton, President of the United States, reports the same to the House with a recommendation that the resolution be adopted.

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THE RESOLUTION

The resolution is as follows:

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information;

as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpoenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of

them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

PURPOSE AND SUMMARY

The purpose of this resolution, which was adopted by the Committee on the Judiciary after thoughtful and considerable debate, is to authorize the Committee to investigate whether William Jefferson Clinton, President of the United States, has committed offenses requiring the House of Representatives to exercise its constitutional responsibility of impeachment. This resolution provides the parameters for a fair, thorough and independent review of the facts.

The scope of the inquiry authorized by this resolution will permit consideration of any matter necessary to the Committee's inquiry into the existence or nonexistence of sufficient grounds for impeachment. The authorization in this resolution is wholly consistent with historical precedent, including the Watergate impeachment investigation conducted by the Committee on the Judiciary.

This resolution empowers the Committee to require the production of documents and other records and the attendance and testimony of such witnesses as it deems necessary, by subpoena or otherwise. It authorizes the Committee to take such testimony at hearings or by deposition. Depositions may be taken by counsel to the Committee, without a member of the Committee being present, thus expediting the presentation of information to the Committee. This resolution further authorizes the Committee to require the furnishing of information in response to interrogatories propounded by the Committee. Like the deposition authority, the authority to compel answers to written interrogatories is intended to permit the Committee to conduct a thorough investigation under as expeditious a schedule as possible. Interrogatories should prove particularly useful in providing a basis for the efficient exercise of the Committee's subpoena power, by enabling it to secure inventories and lists of documents, materials, records and the names of potential witnesses.

The Committee's investigative authority is intended to be fully co-extensive with the power of the House in an impeachment investigation with respect to the persons who may be required to respond, the methods by which response may be required, and the types of information and materials required to be furnished and produced.

It is the intention of the Committee that its investigation will be conducted in all respects on a fair, impartial and bipartisan or nonpartisan basis. In this spirit, the power to authorize subpoenas and other compulsory process is committed by this resolution in the first instance to the Chairman and the Ranking Minority Member

acting jointly. If either declines to act, the other may act alone, subject to the right of either to refer the question to the Committee for decision prior to issuance, and a meeting of the Committee will be convened promptly to consider the question. Thus, meetings will not be required to authorize issuance of process, so long as neither the Chairman nor the Ranking Minority Member refers the matter to the Committee. In the alternative, the Committee possesses the independent authority to authorize subpoenas and other process, should it be felt that action of the whole Committee is preferable under the circumstances. Thus, maximum flexibility and bipartisanship are reconciled in this resolution.

After careful consideration, the Committee determined not to establish a deadline for its final action. The Committee concluded that it is not now possible to predict the course and duration of its inquiry and that establishment of dates would be artificial and unrealistic and thus misleading. The Committee was anxious to avoid an arbitrary deadline that might ultimately operate as an unnecessary hindrance to an early and just conclusion to its inquiry.

REFERRAL FROM THE INDEPENDENT COUNSEL

The Constitution provides that the President "* * * shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors" (Article II, section 4), and that the "House of Representatives * * * shall have the sole Power of Impeachment" (Article I, section 2, clause 5). To that end, an independent counsel must advise the House of Representatives of any "substantial and credible information which * * * may constitute grounds for an impeachment." 28 U.S.C. § 595(c). The Independent Counsel statute was first enacted in 1978 as Title IV of the Ethics in Government Act of 1978, and has been reauthorized three times since. Most recently it was supported by Attorney General Janet Reno [1] and signed into law by President Clinton on June 30, 1994.

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[1] During the reauthorization process of the Independent Counsel Act, Attorney General Reno testified as follows:

> In 1975, after his firing triggered the Constitutional crisis that led to the first version of this Act, Watergate special prosecutor Archibald Cox testified that an independent counsel was needed in certain limited cases and he said, "The pressure, the divided loyalty, are too much for any man, and as honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is absolutely essential." Now, nearly two decades later, I could not state it any better.
>
> It is neither fair nor valid to criticize the Act for what politics has wrought, nor to expect the Act to solve all our crises. The Iran-Contra investigation, far from providing support for doing away with the Act, proves its necessity. I believe that this investigation could not have been conducted under the supervision of the Attorney General and concluded with any public confidence in its thoroughness or impartiality.
>
> The reason that I support the concept of an independent counsel with statutory independence is that there is an inherent conflict whenever senior Executive Branch officials are to be investigated by the Department and its appointed head, the Attorney General. The Attorney General serves at the pleasure of the President. Recognition of this conflict does not belittle or demean the impressive professionalism of the Department's career prosecutors, and permit me to say again, I have been so impressed with the lawyers in the Department of Justice at every level. They are non-political, they are splendid lawyers, and they have enjoyed the opportunity to work with your staff on this legislation.
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> * * * * * * *
>
> It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an appearance of conflict in the person who is,

On September 9, 1998, Independent Counsel Kenneth Starr wrote to Speaker Gingrich and Minority Leader Gephardt notifying them of his transmission to the House of a referral prepared pursuant to 28 U.S.C. §595(c). In response, the House Sergeant-at-Arms was directed to take control of the materials until the House decided how to proceed. During that time, 36 boxes of materials delivered to the House were safeguarded by the Sergeant-at-Arms and no person had access to the materials. Two days later, on September 11, 1998, the House passed H. Res. 525 by a vote of 363–63. H. Res. 525 conferred jurisdiction over the Independent Counsel's referral to the Committee on the Judiciary and directed the Committee to, among other things, "determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced."

Pursuant to 28 U.S.C. §595(c), the Office of Independent Counsel (OIC) submitted what it believed to be substantial and credible information that President Clinton obstructed justice during the *Jones* v. *Clinton* sexual harassment lawsuit by lying under oath and concealing evidence of his relationship with a young White House intern and federal employee, Monica Lewinsky. After a federal criminal investigation of the President's actions began in January 1998, the President allegedly lied under oath to the grand jury and obstructed justice during the grand jury investigation. The Independent Counsel also alleged substantial and credible information that the President's actions with respect to Monica Lewinsky constitute an abuse of authority inconsistent with the President's constitutional duty to faithfully execute the laws. Specifically, the Independent Counsel alleged that there is substantial and credible information supporting the following eleven possible grounds for impeachment:

1. President Clinton lied under oath in his civil case when he denied a sexual affair, a sexual relationship, or sexual relations with Monica Lewinsky.

2. President Clinton lied under oath to the grand jury about his sexual relationship with Ms. Lewinsky.

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in effect, the chief prosecutor. There is an inherent conflict here, and I think that that is why this Act is so important.

It is worth noting that only a few matters that have been investigated by independent counsels over the last decade resulted in convictions. Far more covered individuals accused of wrongdoing have been cleared at the close of an independent counsel's investigation. This role of declining to prosecute a Government official is, I suggest, as important a part as any process in the prosecution. The credibility and public confidence engendered by the fact that an independent and impartial outsider has examined the evidence and concluded that prosecution is not warranted serves to clear a public official's name in a way that no Justice Department investigation ever could.

It is telling that on occasion covered individuals, including former Attorney General Edwin Meese, have called for an appointment of an independent counsel to investigate the allegations against them. I doubt the public would have accepted with confidence the decision not to prosecute had each of those individuals been cleared not by an impartial outside prosecutor but by the Attorney General and his Justice Department.

The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent, as I have said, the actual or perceived conflicts of interest. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly-placed Executive officials.

The Independent Counsel Reauthorization Act of 1993: Hearings on S.24 Before the Senate Comm. on Governmental Affairs, 103rd Cong., 1st Sess. (S. Hrg. 103–437) at 11–12 (Testimony of Attorney General Reno).

3. In his civil deposition, to support his false statement about the sexual relationship, President Clinton also lied under oath about being alone with Ms. Lewinsky and about the many gifts exchanged between Ms. Lewinsky and him.

4. President Clinton lied under oath in his civil deposition about his discussions with Ms. Lewinsky concerning her involvement in the *Jones* case.

5. During the *Jones* case, the President obstructed justice and had an understanding with Ms. Lewinsky to jointly conceal the truth about their relationship by concealing gifts subpoenaed by Ms. Jones's attorneys.

6. During the *Jones* case, the President obstructed justice and had an understanding with Ms. Lewinsky to jointly conceal the truth of their relationship from the judicial process by a scheme that included the following means: (i) both the President and Ms. Lewinsky understood that they would lie under oath in the *Jones* case about their sexual relationship; (ii) the President suggested to Ms. Lewinsky that she prepare an affidavit that, for the President's purposes, would memorialize her testimony under oath and could be used to prevent questioning of both of them about their relationship; (iii) Ms. Lewinsky signed and filed the false affidavit; (iv) the President used Ms. Lewinsky's false affidavit at his deposition in an attempt to head off questions about Ms. Lewinsky; and (v) when that failed, the President lied under oath at his civil deposition about the relationship with Ms. Lewinsky.

7. President Clinton endeavored to obstruct justice by helping Ms. Lewinsky obtain a job in New York at a time when she would have been a witness harmful to him were she to tell the truth in the *Jones* case.

8. President Clinton lied under oath in his civil deposition about his discussions with Vernon Jordan concerning Ms. Lewinsky's involvement in the *Jones* case.

9. The President improperly tampered with a potential witness by attempting to corruptly influence the testimony of his personal secretary, Betty Currie, in the days after his civil deposition.

10. President Clinton endeavored to obstruct justice during the grand jury investigation by refusing to testify for seven months and lying to senior White House aides with knowledge that they would relay the President's false statements to the grand jury—and did thereby deceive, obstruct, and impede the grand jury.

11. President Clinton abused his constitutional authority by (i) lying to the public and the Congress in January 1998 about his relationship with Ms. Lewinsky; (ii) promising at that time to cooperate fully with the grand jury investigation; (iii) later refusing six invitations to testify voluntarily to the grand jury; (iv) invoking Executive Privilege; (v) lying to the grand jury in August 1998; and (vi) lying again to the public and Congress on August 17, 1998—all as part of an effort to hinder, impede, and deflect possible inquiry by the Congress of the United States.[2]

The Committee was in no way bound by these allegations and reviewed the material in an independent, fair, and thorough manner.

[2] Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c), H. Doc. 105–310, 2nd Sess, 105th Cong., 129–130 (1998).

COUNSEL'S REVIEW AND REPORT ON THE REFERRAL FROM THE INDEPENDENT COUNSEL

Introduction

Pursuant to H. Res. 525, the Committee was obligated to "determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." In order to fulfill that important obligation, the Chairman and Ranking Minority Member directed the majority and minority chief investigative counsels to advise the Committee regarding the information referred by the Independent Counsel. The Committee received their orally delivered reports on October 5, 1998. The following summarizes the report delivered by the Committee's Chief Investigative Counsel, David Schippers.

Concepts of Constitutional Government

The President of the United States enjoys a singular and appropriately lofty position in our system of government. But that position by its very nature involves equally unique and onerous responsibilities, among which are included affirmative obligations that apply to no other citizen.

Specifically, the Constitution of the United States imposes upon the President the explicit and affirmative duty to "take Care that the Laws be faithfully executed . . ." U.S. Const., Article II, Section 3. Moreover, before entering upon the duties of his office, the President is constitutionally commanded to take the following oath:

> I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

U.S. Const., Article II, Section 1.

The President is the chief law enforcement officer of the United States. Although he is neither above nor below the law, he is, by virtue of his office, held to a higher standard than any other American. Furthermore, as Chief Executive Officer and Commander in Chief, he is the repository of a special trust.

Second, many defendants who face legal action, whether it be civil or criminal, may honestly believe that the case against them is unwarranted and factually deficient. It is not, however, in the discretion of the litigant to decide that any tactics are justified to defeat the lawsuit in that situation. Rather, it is incumbent upon that individual to testify fully and truthfully during the truth seeking phase. It is then the function of the system of law to expose the frivolous cases. The litigant may not with impunity mislead, deceive or lie under oath in order to prevail in the lawsuit or for other personal gain. Any other result would be subversive of the American Rule of Law.

The principle that every witness in every case must tell the truth, the whole truth and nothing but the truth, is the foundation of the American system of justice which is the envy of every civilized nation. The sanctity of the oath taken by a witness is the most essential bulwark of the truth seeking function of a trial, the American method of ascertaining the facts. If lying under oath is

tolerated and, when exposed, is not visited with immediate and substantial adverse consequences, the integrity of this country's entire judicial process is fatally compromised and that process will inevitably collapse. The subject matter of the underlying case, whether civil or criminal, and the circumstances under which the testimony is given are of no significance whatever. It is the oath itself that is sacred and must be enforced.

The Independent Counsel's Referral

The Independent Counsel Act provides in relevant part: "An independent counsel shall advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment." 28 U.S.C. § 595(c). In compliance with the statutory mandate, the Office of Independent Counsel Kenneth Starr informed the House of Representatives on September 9, 1998, that it was prepared to submit a referral under the statute. On that day, the Independent Counsel's Office delivered to the House the following material:

> a Referral consisting of an Introduction, a Narrative of Relevant Events and an Identification and Analysis of the Substantial and Credible Information that may support grounds for impeachment of William Jefferson Clinton;
>
> an Appendix, in six three-ring binders totaling in excess of 2500 pages, of the most relevant testimony and other material cited in the Referral; and
>
> seventeen transmittal boxes containing grand jury transcripts, deposition transcripts, FBI reports, reports of interviews, and thousands of pages of incidental back-up documents.

Pursuant to H. Res. 525, with the exception of the Referral which was ordered printed as a document of the House, all of this material was turned over to the Committee on the Judiciary to be held in Executive Session until September 28, 1998. The resolution provided that all materials would be released to the public at that time, except those which were withheld by prior action of the Committee.

Staff Review of the Referral

The majority and minority staffs were instructed by the Committee to review the Referral, together with all of the other evidence and testimony that was submitted, for the purpose of determining whether there actually existed "substantial and credible" evidence that President Clinton may have committed acts that may constitute grounds to justify conducting an impeachment inquiry.

Because of the narrow scope of that directive, the investigation and analysis was necessarily circumscribed by information delivered with the Referral together with some information and analysis furnished by the counsel for the President.[3] For that reason, staff did not seek to procure any additional evidence or testimony from any other source. Particularly, the staff did not seek to obtain or

[3] See Preliminary Memorandum of the President of the United States Concerning Referral of the Office of Independent Counsel and Initial Response of the President of the United States to Referral of the Office of Independent Counsel, 2nd Sess., 105th Cong., H. Doc. 105–317 (September 28, 1998).

review the material that remained in the possession of the OIC. In two telephone conversations with the OIC, Mr. Lowell, the Minority Chief Investigative Counsel, and Mr. Schippers were assured that the retained material was deemed unnecessary to comply with the statutory requirement under Section 595(c). Though the Office of Independent Counsel offered to make available to the Committee all of that material, the staff did not deem it necessary or even proper to go beyond the submission itself. However, at the suggestion of the Minority Chief Investigative Counsel, the material remaining in the possession of the OIC was reviewed by members of both staffs at the OIC. The material was, as anticipated, irrelevant.

To support the Referral, the House has been furnished with grand jury transcripts, FBI interview memoranda, transcripts of depositions, other interview memoranda, statements, audio recordings, and, where available, video recordings of all persons named in the Referral. In addition, the House was provided with a copy of every document cited and a mass of documentary and other evidence produced by witnesses, the White House, the President, the Secret Service and the Department of Defense.

The report delivered by the Chief Investigative Counsel was confined solely to that Referral and supporting evidence and testimony supplied to the House and then to this Committee, supplemented only by the information provided by the President's Counsel. Although the original submission contained a transcript of the President's deposition testimony, no video tape was included. Pursuant to a request by Chairman Hyde, a video tape of the entire deposition was later provided to the Committee by District Judge Susan Webber Wright.

Apart from the thorough review of President Clinton's deposition and grand jury testimony, the following functions were performed in preparation for the report delivered by Chief Investigative Counsel Schippers:

1. All grand jury transcripts and memoranda of interview of Ms. Currie, Mr. Jordan, Ms. Lewinsky, the Secret Service Agents, and Ms. Tripp were independently reviewed, compared and analyzed by at least three members of the staff; and those of Ms. Currie, Mr. Jordan, Ms. Lewinsky, Ms. Tripp and both appearances of the President by Mr. Schippers personally.

2. All of the remaining grand jury transcripts, deposition transcripts and memoranda of the others interviewed were likewise reviewed, compared and analyzed. This involved more than 250 separate documents, some consisting of hundreds of pages. In this regard, the staff was instructed to seek any information that might cast doubt upon the legal or factual conclusions of the Independent Counsel.

3. The entire Appendix, consisting of in excess of two thousand pages, was systematically reviewed and analyzed against the statements contained in the Referral.

4. Chief Investigative Counsel Schippers personally read the entire Evidence Reference and Legal Reference that accompanied the Referral. He analyzed the legal precepts and theories, and read at least the relevant portions of each case cited.

5. In addition to other members of the staff, Mr. Schippers personally read and analyzed the eleven specific allegations made by

the Independent Counsel, and reviewed the evidentiary basis for those allegations. Each footnote supporting the charges was checked to insure that it did, in fact, support the underlying evidentiary proposition. In cases where inferences were drawn in the body of the Referral, the validity of those inferences was tested under acceptable principles of federal trial practice.

6. Each of the literally thousands of back-up documents was reviewed in order to insure that no relevant evidence had been overlooked.

7. Meetings of the entire staff were conducted on virtually a daily basis for the purpose of coordinating efforts and to synthesize the divergent material into a coherent report.

Having completed all of the tasks assigned, the staff was prepared to report their findings to the Members of the Committee. The report presented to the Committee represented a distillation and consensus of the staff's efforts and conclusions for the Committee's guidance and consideration.

Monica Lewinsky's Credibility

Monica Lewinsky's credibility may be subject to some skepticism. At an appropriate stage of the proceedings, that credibility will, of necessity, be assessed together with the credibility of all witnesses in the light of all the other evidence. Ms. Lewinsky admitted to having lied on occasion to Linda Tripp and to having executed and caused to be filed a false affidavit in the Paula Jones case.

On the other hand, Ms. Lewinsky obtained a grant of immunity for her testimony before the grand jury and, therefore, had no reason to lie thereafter. Furthermore, the witness' account of the relevant events could well have been much more damaging. For the most part, though, the record reflects that she was an embarrassed and reluctant witness who actually downplayed her White House encounters. In testifying, Ms. Lewinsky demonstrated a remarkable memory, supported by her personal diary, concerning dates and events. Finally, the record includes ample corroboration of her testimony by independent and disinterested witnesses, by documentary evidence, and, in part, by the grand jury testimony of the President himself. Consequently, for the limited purpose of this report, staff suggest that Monica Lewinsky's testimony is both substantial and credible.

Staff Focus

It has been the considered judgment of the staff that the Committee's main focus should be on those alleged acts and omissions by the President which affect the rule of law, and the structure and integrity of our court system. This recommendation, however, in no way should be construed to prejudice any of the Committee's future deliberations. Members of this Committee are appropriately free to emphasize or de-emphasize particular issues, facts, or conclusions. Deplorable as the numerous sexual encounters related in the evidence may be, the staff chose to emphasize the consequences of those acts as they affect the administration of justice and the unique role the President occupies in carrying out his oath faithfully to execute the laws of the nation.

The prurient aspect of the Referral is, at best, merely peripheral to the central issues. The assertions of Presidential misconduct cited in the Referral, though arising initially out of sexual indiscretions, are completely distinct and involve allegations of an ongoing series of deliberate and direct assaults by Mr. Clinton upon the justice system of the United States, and upon the Judicial Branch of our government, which holds a place in the constitutional framework of checks and balances equal to that of the Executive and the Legislative branches.

As a result of the research and review of the Referral and supporting documentation, the staff report concluded that there exists substantial and credible evidence of fifteen separate events directly involving President William Jefferson Clinton that could constitute felonies which, in turn, may constitute grounds to proceed with an impeachment inquiry.

Nothing contained in the report is intended to constitute an accusation against the President or anyone else, nor should it be construed as such. What follows is nothing more than a litany of the crimes that might have been committed based upon the substantial and credible evidence provided by the Independent Counsel, and reviewed, tested and analyzed by the staff.

POTENTIAL FELONIES COMMITTED BY THE PRESIDENT

I

There is substantial and credible evidence that the President may have been part of a conspiracy with Monica Lewinsky and others to obstruct justice and the due administration of justice by:

(A) Providing false and misleading testimony under oath in a civil deposition and before the grand jury;

(B) Withholding evidence and causing evidence to be withheld and concealed; and

(C) Tampering with prospective witnesses in a civil lawsuit and before a federal grand jury.

The President and Ms. Lewinsky had developed a "cover story" to conceal their activities. (M.L. 8/6/98 GJ, at pp. 54–55, 234). On December 6, 1997, the President learned that Ms. Lewinsky's name had appeared on the *Jones* v. *Clinton* witness list. (Clinton GJ, p. 84). He informed Ms. Lewinsky of that fact on December 17, 1997, and the two agreed that they would employ the same cover story in the *Jones* case. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer). The President at that time suggested that an affidavit might be enough to prevent Ms. Lewinsky from testifying. (M.L. 8/6/98 GJ, pp. 122–123). On December 19, 1997, Ms. Lewinsky was subpoenaed to give a deposition in the *Jones* case. (M.L. 8/6/98 GJ, p. 128).

Thereafter, the record tends to establish that the following events took place:

(1) In the second week of December, 1997, Ms. Lewinsky told Ms. Tripp that she would lie if called to testify and tried to convince Ms. Tripp to do the same. (M.L. 8/6/98 GJ, p. 127).

(2) Ms. Lewinsky attempted on several occasions to get Ms. Tripp to contact the White House before giving testimony in the *Jones* case. (Tripp 7/16/98 GJ, p. 75; M.L. 8/6/98 GJ, p. 71).

(3) Ms. Lewinsky participated in preparing a false and intentionally misleading affidavit to be filed in the *Jones* case. (M.L. 8/6/98 GJ, pp. 200–203).

(4) Ms. Lewinsky provided a copy of the draft affidavit to a third party for approval and discussed changes calculated to mislead. (M.L. 8/6/98 GJ, pp. 200–202).

(5) Ms. Lewinsky and the President talked by phone on January 6, 1998, and agreed that she would give false and misleading answers to questions about her job at the Pentagon. (M.L. 8/6/98 GJ, p. 197).

(6) On January 7, 1998, Ms. Lewinsky signed the false and misleading affidavit. (M.L. 8/6/98 GJ, p. 203). Conspirators intended to use the affidavit to avoid Ms. Lewinsky's giving a deposition. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer).

(7) After Ms. Lewinsky's name surfaced, conspirators began to employ code names in their contacts. (M.L. 8/6/98 GJ, pp. 215–217).

(8) On December 28, 1997, Ms. Lewinsky and the President met at the White House and discussed the subpoena she had received. Ms. Lewinsky suggested that she conceal the gifts received from the President. (M.L. 8/6/98 GJ, p. 152).

(9) Shortly thereafter, the President's personal secretary, Betty Currie, picked up a box of the gifts from Ms. Lewinsky. (Currie 5/6/98 GJ, pp. 107–108; M.L. 8/6/98 GJ, pp. 154–156).

(10) Betty Currie hid the box of gifts under her bed at home. (Currie 5/6/98 GJ, pp. 107–108; Currie 1/27/98 GJ, pp. 57–58).

(11) The President gave false answers to questions contained in Interrogatories in the *Jones* case. (V2–DC–53; V2–DC–104).

(12) On December 31, 1997, Ms. Lewinsky, at the suggestion of a third party, deleted 50 draft notes to the President. (M.L. 8/1/98 OIC Interview, p. 13). She had already been subpoenaed in the *Jones* case.

(13) On January 17, 1998, the President's attorney produced Ms. Lewinsky's false affidavit at the President's deposition and the President adopted it as true.

(14) On January 17, 1998, in his deposition, the President gave false and misleading testimony under oath concerning his relationship with Ms. Lewinsky about the gifts she had given him and several other matters. (Clinton Dep., pp. 49–84; M.L. 7/27/98 OIC Interview, pp. 12–15).

(15) The President, on January 18, 1998, and thereafter, coached his personal secretary, Betty Currie, to give a false and misleading account of the Lewinsky relationship if called to testify. (Currie 1/27/98 GJ, pp. 71–74, 81).

(16) The President narrated elaborate detailed false accounts of his relationship with Monica Lewinsky to prospective witnesses with the intention that those false accounts would be repeated in testimony. (Currie 1/27/98 GJ, pp. 71–74, 81; Podesta 6/16/98 GJ, pp. 88–92; Blumenthal 6/4/98 GJ, pp. 49–51; Blumenthal 6/25/98 GJ, p. 8; Bowles 4/2/98 GJ, pp. 83–84; Ickes 6/10/98 GJ, p. 73; Ickes 8/5/98 GJ, p. 88).

(17) On August 17, 1998, the President gave false and misleading testimony under oath to a federal grand jury on the following points: his relationship with Ms. Lewinsky, his testimony in the January 17, 1998 deposition, his conversations with various indi-

viduals and his knowledge of Ms. Lewinsky's affidavit and its falsity.

The following facts illustrate some of the details concerning the events immediately before and after the President's deposition on January 17, 1998.

These facts appear in the Record:

On January 7, 1998, Ms. Lewinsky signed the false Affidavit, and it was furnished to Mr. Clinton's civil lawyer. The President reviewed it, so he knew that she had denied their relationship when the deposition began.

During the questioning, however, it became more and more apparent to the President that Ms. Jones' attorneys possessed a lot more specific detail than the President anticipated. When the President returned to the White House, the following calls were made:

JANUARY 17, 1998

SATURDAY

4:00 p.m. (approx.)—THE PRESIDENT finishes testifying under oath in *Jones* v. *Clinton, et al.*

5:19 p.m.—Vernon Jordan places a call to the White House from a cellular phone.

5:38 p.m.—THE PRESIDENT telephones Vernon Jordan at home.

7:02 p.m.—THE PRESIDENT telephones Betty Currie at home but does not speak with her.

7:02 p.m.—THE PRESIDENT places a call to Mr. Jordan's office.

7:13 p.m.—THE PRESIDENT contacts Betty Currie at home and asks her to meet with him on Sunday.

JANUARY 18, 1998

SUNDAY

6:11 a.m.—THE PRESIDENT learns about the existence of the Tripp tapes.

11:49 a.m.—Vernon Jordan telephones the White House.

12:30 p.m. (approx.)—Vernon Jordan has lunch with Bruce Lindsey. Lindsey informs Jordan about the existence of the Tripp tapes.

12:50 p.m.—THE PRESIDENT telephones Vernon Jordan at home.

1:11 p.m.—THE PRESIDENT telephones Betty Currie at home.

2:15 p.m.—Vernon Jordan telephones the White House on his cellular phone.

2:55 p.m.—Vernon Jordan telephones THE PRESIDENT.

5:00 p.m.—THE PRESIDENT meets with Betty Currie. He tells her that he was questioned at his deposition about Monica Lewinsky, and he suggests that Ms. Currie could "see and hear everything" that occurred when Ms. Lewinsky visited with him.

5:12 p.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."

6:22 p.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."

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7:06 p.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."
7:19 p.m.—Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.
8:28 p.m.—Betty Currie pages Monica Lewinsky with the message "Call Kay."
10:09 p.m.—Monica Lewinsky telephones Betty Currie at home.
11:02 p.m.—THE PRESIDENT telephones Betty Currie at home.

JANUARY 19, 1998

MONDAY—MARTIN LUTHER KING DAY

7:02 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home at 8:00 this morning."
8:08 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay."
8:33 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."
8:37 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home. It's a social call. Thank you."
8:41 a.m.—Betty Currie pages Monica Lewinsky with the message "Kay is at home. Please call."
8:43 a.m.—Betty Currie telephones the President from home.
8:44 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kate re: family emergency."
8:50 a.m.—THE PRESIDENT telephones Betty Currie at home.
8:51 a.m.—Betty Currie pages Monica Lewinsky with the message "Msg. From Kay. Please call, have good news."
8:56 a.m.—THE PRESIDENT telephones Vernon Jordan at home.
10:29 a.m.—Vernon Jordan telephones the White House from his office.
10:35 a.m.—Vernon Jordan telephones Nancy Hernreich at the White House.
10:36 a.m.—Vernon Jordan pages Monica Lewinsky with the message, "Please call Mr. Jordan at [number redacted]."
10:44 a.m.—Vernon Jordan telephones Erskine Bowles at the White House.
10:53 a.m.—Vernon Jordan telephones Monica Lewinsky's attorney, Frank Carter.
10:58 a.m.—THE PRESIDENT telephones Vernon Jordan at his office.
11:04 a.m.—Vernon Jordan telephones Bruce Lindsey at the White House.
11:16 a.m.—Vernon Jordan pages Monica Lewinsky with the message "Please call Mr. Jordan at [number redacted]."
11:17 a.m.—Vernon Jordan telephones Bruce Lindsey at the White House.
12:31 p.m.—Vernon Jordan telephones the White House from a cellular phone.
1:45 p.m.—THE PRESIDENT telephones Betty Currie at home.
2:29 p.m.—Vernon Jordan telephones the White House from a cellular phone.

2:44 p.m.—Vernon Jordan enters the White House. He meets with THE PRESIDENT, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel and others.

2:46 p.m.—Frank Carter pages Monica Lewinsky with message, "Please call Frank Carter at [number redacted]."

4:51 p.m.—Vernon Jordan telephones Betty Currie at home.

4:53 p.m.—Vernon Jordan telephones Frank Carter at home.

4:54 p.m.—Vernon Jordan telephones Frank Carter at his office. Mr. Carter informs Mr. Jordan that Monica Lewinsky has replaced Mr. Carter with a new attorney.

4:58 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

4:59 p.m.—Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.

5:00 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:00 p.m.—Vernon Jordan telephones Charles Ruff at the White House Counsel's Office.

5:05 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:05 p.m.—Vernon Jordan again telephones Bruce Lindsey at the White House Counsel's Office.

5:09 p.m.—Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.

5:14 p.m.—Vernon Jordan telephones Frank Carter at his office.

5:22 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:22 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:55 p.m.—Vernon Jordan telephones Betty Currie at home.

5:56 p.m.—THE PRESIDENT telephones Vernon Jordan at his office.

6:04 p.m.—Vernon Jordan telephones Betty Currie at home.

6:26 p.m.—Vernon Jordan telephones Stephen Goodin, an aide to THE PRESIDENT.

II

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky to file and caused to be filed a false affidavit in the case of *Jones* v. *Clinton, et al.,* in violation of 18 U.S.C. §§ 1623 and 2.

The record tends to establish the following:

In a telephone conversation with Ms. Lewinsky on December 17, 1997, the President told her that her name was on the witness list in the *Jones* case. (M.L. 8/6/98 GJ, p. 123). The President then suggested that she might submit an affidavit to avoid testimony. (Id.). Both the President and Ms. Lewinsky knew that the affidavit would need to be false in order to accomplish that result. In that conversation, the President also suggested "You know, you can always say you were coming to see Betty or that you were bringing me letters." (M.L. 8/6/98 GJ, p. 123). Ms. Lewinsky knew exactly what he meant because it was the same "cover story" that they had agreed upon earlier. (M.L. 8/6/98 GJ, p. 124).

Thereafter, Ms. Lewinsky discussed the affidavit with and furnished a copy to a confidant of the President for approval. (M.L. 8/6/98 GJ, pp. 200–202). Ms. Lewinsky signed the false affidavit and caused her attorney to provide it to the President's lawyer for use in the *Jones* case.

III

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky in obstruction of justice when she executed and caused to be filed a false affidavit in the case of *Jones* v. *Clinton, et al.,* with knowledge of the pending proceedings and with the intent to influence, obstruct or impede that proceeding in the due administration of justice, in violation of 18 U.S.C. §§ 1503 and 2.

The record tends to establish that the President not only aided and abetted Monica Lewinsky in preparing, signing and causing to be filed a false affidavit, he also aided and abetted her in using that false affidavit to obstruct justice.

Both Ms. Lewinsky and the President knew that her false affidavit would be used to mislead the Plaintiff's attorneys and the court. Specifically, they intended that the affidavit would be sufficient to avoid Ms. Lewinsky being required to give a deposition in the *Jones* case. Moreover, the natural and probable effect of the false statement was interference with the due administration of justice. If the court and the *Jones* attorneys were convinced by the affidavit, there would be no deposition of Ms. Lewinsky, and the Plaintiff's attorneys would be denied the ability to learn about material facts and to decide whether to introduce evidence of those facts.

Mr. Clinton caused his attorney to employ the knowingly false affidavit not only to avoid Ms. Lewinsky's deposition, but to preclude the attorneys from interrogating the President about the same subject. (Clinton Dep., p. 54).

IV

There is substantial and credible evidence that the President may have engaged in misprision of Monica Lewinsky's felonies of submitting a false affidavit and of obstructing the due administration of justice both by taking affirmative steps to conceal those felonies, and by failing to disclose the felonies though under a constitutional and statutory duty to do so, in violation of 18 U.S.C. § 4.

The record tends to establish the following:

Monica Lewinsky admitted to the commission of two felonies: Signing a false affidavit under oath (M.L. 8/6/98 GJ, pp. 204–205); and endeavoring to obstruct justice by using the false affidavit to mislead the court and the lawyers in the *Jones* case so that she would not be deposed and be required to give evidence concerning her activities with the President. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer). In addition, the President was fully aware that those felonies had been committed when he gave his deposition testimony on January 17, 1998. (Clinton Dep., p. 54).

Nonetheless, Mr. Clinton took affirmative steps to conceal these felonies, including allowing his attorney, in his presence, to use the affidavit and to suggest that it was true. (Clinton Dep., p. 54). More importantly, the President himself, while being questioned by

his own counsel referring to one of the clearly false paragraphs in Ms. Lewinsky's affidavit, stated, "That is absolutely true." (Clinton Dep., p. 203).

More importantly, the President is the chief law enforcement officer of the United States. He is under a Constitutional duty to take care that the laws be faithfully executed. When confronted with direct knowledge of the commission of a felony, he is required by his office, as is every other law enforcement officer, agent or attorney, to bring to the attention of the appropriate authorities the fact of the felony and the identity of the perpetrator. If he did not do so, the President could be guilty of misprision of felony.

V

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition in *Jones* v. *Clinton, et al.* on January 17, 1998 regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

There are three instances where credible evidence exists that the President may have testified falsely about this relationship:

(1) when he denied a "sexual relationship" in sworn Answers to Interrogatories (V2–DC–53 and V2–DC–104);

(2) when he denied having an "extramarital sexual affair" in his deposition (Clinton Dep., p. 78); and

(3) when he denied having "sexual relations" or "an affair" with Monica Lewinsky in his deposition. (Clinton Dep., p. 78).

When the President denied a sexual relationship he was not bound by the definition the court had provided. There is substantial evidence obtained from Ms. Lewinsky, the President's grand jury testimony, and DNA test results that Ms. Lewinsky performed sexual acts with the President on numerous occasions. Those terms, given their common meaning, could reasonably be construed to include oral sex. The President also denied having sexual relations with Ms. Lewinsky (Clinton Dep., p. 78), as the court defined the term. (Clinton Dep., Ex. 1). In the context of the lawsuit and the wording of that definition, there is substantial evidence that the President's explanation given to the grand jury is an afterthought and is unreasonably narrow under the circumstances. Consequently, there is substantial evidence that the President's denial under oath in his deposition of a "sexual relationship," a "sexual affair" or "sexual relations" with Ms. Lewinsky was not true.

VI

There is substantial and credible evidence that the President may have given false testimony under oath before the federal grand jury on August 17, 1998, concerning his relationship with Monica Lewinsky, in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

During his grand jury testimony, the President admitted only to "inappropriate intimate contact" with Monica Lewinsky. (Clinton GJ, p. 10). He did not admit to any specific acts. He categorically denied ever touching Ms. Lewinsky on the breasts or genitalia for the purpose of giving her sexual gratification. There is, however, substantial contradictory evidence from Ms. Lewinsky. She testified

at length and with specificity that the President kissed and fondled her breasts on numerous occasions during their encounters, and at times there was also direct genital contact. (M.L. 8/26/98 Dep., pp. 30–38, 50–53). Moreover, her testimony is corroborated by several of her friends. (Davis 3/17/98 GJ, p. 20; Erbland 2/12/98 GJ, p. 29, 45; Ungvari 3/19/98 GJ, pp. 23–24; Bleiler 1/28/98 OIC Interview, p. 3).

The President described himself as a non-reciprocating recipient of Ms. Lewinsky's services. (Clinton GJ, p. 151). Therefore, he suggested that he did not engage in "sexual relations" within the definition given him at the *Jones* case deposition. (*Id*). He also testified that his interpretation of the word "cause" in the definition meant the use of force or contact with the intent to arouse or gratify. (Clinton GJ, pp. 17–18). The inference drawn by the Independent Counsel that the President's explanation was merely an afterthought, calculated to explain away testimony that had been proved false by Ms. Lewinsky's evidence, appears credible under the circumstances.

VII

There is substantial and credible evidence that the President may have given false testimony under oath in his deposition given in *Jones* v. *Clinton, et al.* on January 17, 1998, regarding his statement that he could not recall being alone with Monica Lewinsky and regarding his minimizing the number of gifts that they had exchanged in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

President Clinton testified at his deposition that he had "no specific recollection" of being alone with Ms. Lewinsky in any room at the White House. (Clinton Dep., p. 59). There is ample evidence from other sources to the contrary. They include: Betty Currie (1/27/98 GJ, pp. 32–33; 5/6/98 GJ, p. 98; 7/22/98 GJ, pp. 25–26); Monica Lewinsky (M.L. 2/1/98 Proffer; M.L. 8/26/98 GJ); several Secret Service Agents and White House logs. Moreover, the President testified in the grand jury that he was "alone" with Ms. Lewinsky in 1996 and 1997 and that he had a "specific recollection" of certain instances when he was alone with her. (Clinton GJ, pp. 30–32). He admitted to the grand jury that he was alone with her on December 28, 1997, only three weeks prior to his deposition testimony. (Clinton GJ, p. 34).

The President was also asked at this deposition whether he had ever given gifts to Ms. Lewinsky. He responded, "I don't recall." He then asked the *Jones* attorney if he knew what they were. After the attorney named specific gifts, the President finally remembered giving Ms. Lewinsky something from the Black Dog. (Clinton Dep., p. 75). That testimony was given less than three weeks after Ms. Currie had picked up a box of the President's gifts and hid them under her bed. (Currie 1/27/98 GJ, pp. 57–58; Currie 5/6/98 GJ, pp. 107–108).

In his grand jury testimony nearly seven months later, he admitted giving Ms. Lewinsky Christmas gifts on December 28, 1997 (Clinton GJ, p. 33) and "on other occasions." (Clinton GJ, p. 36). When confronted with his lack of memory at his deposition, the President responded that his statement "I don't recall" referred to

the identity of specific gifts, not whether or not he actually gave her gifts. (Clinton GJ, p. 52).

The President also testified at his deposition that Ms. Lewinsky gave him gifts "once or twice." (Clinton Dep., pp. 76–77). Ms. Lewinsky says that she gave a substantial number of gifts to the President. (M.L. 8/6/98 GJ, pp. 27–28, Ex. M.L.–7). This is corroborated by gifts turned over by Ms. Lewinsky to the Independent Counsel and by a letter to the Independent Counsel from the President's attorney. Thus, there is substantial and credible evidence that the President may have testified falsely about being alone with Monica Lewinsky and the gifts he gave to her.

VIII

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones* v. *Clinton* on January 17, 1998, concerning conversations with Monica Lewinsky about her involvement in the *Jones* case, in violation of 18 U.S.C. §§1621 and 1623.

The record tends to reflect the following:

The President was asked at his deposition if he ever talked to Ms. Lewinsky about the possibility that she would testify in the *Jones* case. He answered, "I'm not sure." He then related a conversation with Ms. Lewinsky where he joked about how the *Jones* attorneys would probably subpoena every female witness with whom he has ever spoken. (Clinton Dep., p. 70). He was also asked whether Ms. Lewinsky told him that she had been subpoenaed. The answer was, "No, I don't know if she had been." (Clinton Dep., p. 68).

There is substantial evidence—much from the President's own grand jury testimony—that those statements are false. The President testified before the grand jury that he spoke with Ms. Lewinsky at the White House on December 28, 1997, about the "prospect that she might have to give testimony." (Clinton GJ, p. 33). He also later testified that Vernon Jordan told him on December 19, 1997, that Ms. Lewinsky had been subpoenaed. (Clinton GJ, p. 42). Mr. Jordan also recalled telling the same thing to the President twice on December 19, 1997, once over the telephone and once in person. (Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167–170). Despite his deposition testimony, the President admitted that he knew Ms. Lewinsky had been subpoenaed when he met her on December 28, 1997. (Clinton GJ, p. 36). There is substantial and credible evidence that his statement that he was "not sure" if he spoke with Ms. Lewinsky about her testimony is false.

IX

There is substantial and credible evidence that the President may have endeavored to obstruct justice by engaging in a pattern of activity calculated to conceal evidence from the judicial proceedings in *Jones* v. *Clinton, et al.,* regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. §1503.

The record tends to establish that on Sunday, December 28, 1997, the President gave Ms. Lewinsky Christmas gifts in the Oval Office during a visit arranged by Ms. Currie. (M.L. 8/6/98 GJ, pp. 149–150). According to Ms. Lewinsky, when she suggested that the

gifts he had given her should be concealed because they were the subject of a subpoena, the President stated, "I don't know" or "Let me think about that." (M.L. 8/6/98 GJ, p. 152).

Ms. Lewinsky testified that Ms. Currie contacted her at home several hours later and stated, "I understand you have something to give me" or "the President said you have something to give me." (M.L. 8/6/98 GJ, pp. 154–155). Later that same day, Ms. Currie picked up a box of gifts from Ms. Lewinsky's home. (M.L. 8/6/98 GJ, pp. 156–158; Currie 5/6/98 GJ, pp. 107–108).

The evidence indicates that the President may have instructed Ms. Currie to conceal evidence. The President has denied giving that instruction, and he contended under oath that he advised Ms. Lewinsky to provide all of the gifts to the *Jones* attorneys pursuant to the subpoena. (Clinton GJ, pp. 44–45). In contrast, Ms. Lewinsky testified that the President never challenged her suggestion that the gifts should be concealed. (M.L. 8/26/98 Dep., pp. 58–59).

X

There is substantial and credible evidence that the President may have endeavored to obstruct justice in the case of *Jones* v. *Clinton, et al.,* by agreeing with Monica Lewinsky on a cover story about their relationship, by causing a false affidavit to be filed by Ms. Lewinsky and by giving false and misleading testimony in the deposition given on January 17, 1998, in violation of 18 U.S.C. §1503.

The record tends to establish that the President and Ms. Lewinsky agreed on false explanations for her private visits to the Oval Office. Ms. Lewinsky testified that when the President contacted her and told her that she was on the *Jones* witness list, he advised her that she could always repeat these cover stories, and he suggested that she file an affidavit. (M.L. 8/6/98 GJ, p. 123). After this conversation, Ms. Lewinsky filed a false affidavit. The President learned of Ms. Lewinsky's affidavit prior to his deposition in the *Jones* case. (Jordan 5/5/98 GJ, pp. 24–25).

Subsequently, during his deposition, the President stated that he never had a sexual relationship or affair with Ms. Lewinsky. He further stated that the paragraph in Ms. Lewinsky's affidavit denying a sexual relationship with the President was "absolutely true," even though his attorney had argued that the affidavit covered "sex of any kind in any manner, shape or form." (Clinton Dep., pp. 54, 104).

XI

There is substantial and credible evidence that the President may have endeavored to obstruct justice by helping Monica Lewinsky to obtain a job in New York City at a time when she would have given evidence adverse to Mr. Clinton if she told the truth in the case of *Jones* v. *Clinton, et al.,* in violation of 18 U.S.C. §§1503 and 1512.

The record tends to establish the following:

In October, 1997, the President and Ms. Lewinsky discussed the possibility of Vernon Jordan assisting Ms. Lewinsky in finding a job in New York. (M.L. 8/6/98 GJ, pp. 103–104). On November 5, 1997, Mr. Jordan and Ms. Lewinsky discussed employment possi-

bilities, and Mr. Jordan told her that she came "highly recommended." (M.L. 7/31/98 Int., p. 15; e-mail from Lewinsky to Catherine Davis, 11/6/97).

However, no significant action was taken on Ms. Lewinsky's behalf until December, when the *Jones* attorneys identified Ms. Lewinsky as a witness. Within days, after Mr. Jordan again met with Ms. Lewinsky, he contacted a number of people in the private sector who could help Ms. Lewinsky find work in New York. (Jordan 3/3/98 GJ, pp. 48–49).

Additional evidence indicates that on the day Ms. Lewinsky signed a false affidavit denying a sexual relationship with the President, Mr. Jordan contacted the President and discussed the affidavit. (Jordan 5/5/98 GJ, pp. 223–225). The next day, Ms. Lewinsky interviewed with MacAndrews & Forbes, an interview arranged with Mr. Jordan's assistance. (M.L. 8/6/98 GJ, pp. 205–206). When Ms. Lewinsky told Mr. Jordan that the interview went poorly, Mr. Jordan contacted the CEO of MacAndrews & Forbes. (Perelman 4/23/98 Dep., p. 10; Telephone Calls, Table 37, Call 6). The following day, Ms. Lewinsky was offered the job, and Mr. Jordan contacted the White House with the message "mission accomplished." (Jordan 5/28/98 GJ, p. 39).

In sum, Mr. Jordan secured a job for Ms. Lewinsky with a phone call placed on the day after Ms. Lewinsky signed a false affidavit protecting the President. Evidence indicates that this timing was not coincidental.

XII

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones* v. *Clinton, et al.* on January 17, 1998, concerning his conversations with Vernon Jordan about Ms. Lewinsky, in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish that Mr. Jordan and the President discussed Ms. Lewinsky on various occasions from the time she was served until she fired Mr. Carter and hired Mr. Ginsburg. This is contrary to the President's deposition testimony. The President was asked in his deposition whether anyone besides his attorney told him that Ms. Lewinsky had been served. "I don't think so," he responded. He then said that Bruce Lindsey was the first person who told him. (Clinton Dep., pp. 68–69). In the Grand Jury, the President was specifically asked if Mr. Jordan informed him that Ms. Lewinsky was under subpoena. "No sir," he answered. (Clinton GJ, p. 40). Later in that testimony, when confronted with a specific date (the evening of December 19, 1997), the President admitted that he spoke with Mr. Jordan about the subpoena. (Clinton GJ, p. 42; Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167–170). Both the President and Mr. Jordan testified in the Grand Jury that Mr. Jordan informed the President on January 7 that Ms. Lewinsky had signed the affidavit. (Clinton GJ, p. 74; Jordan 5/5/98 GJ, 222–228). Ms. Lewinsky said she too informed the President of the subpoena. (M.L. 8/20/98 GJ, p. 66).

The President was also asked during his deposition if anyone reported to him within the past two weeks (from January 17, 1998) that they had a conversation with Monica Lewinsky concerning the

lawsuit. The President said, "I don't think so." (Clinton Dep., p. 72). As noted, Mr. Jordan told the President on January 7, 1998, that Ms. Lewinsky signed the affidavit. (Jordan 5/5/98 GJ, pp. 222–228). In addition, the President was asked if he had a conversation with Mr. Jordan where Ms. Lewinsky's name was mentioned. He said yes, that Mr. Jordan mentioned that she asked for advice about moving to New York. Actually, the President had conversations with Mr. Jordan concerning three general subjects: Choosing an attorney to represent Ms. Lewinsky after she had been subpoenaed (Jordan 5/28/98 GJ, p. 4); Ms. Lewinsky's subpoena and the contents of her executed Affidavit (Jordan 5/5/98 GJ, pp. 142–145; Jordan 3/3/98 GJ, pp. 167–172; Jordan 3/5/98 GJ, pp. 24–25, 223, 225); and Vernon Jordan's success in procuring a New York job for Ms. Lewinsky. (Jordan 5/28/98 GJ, p. 39).

XIII

There is substantial and credible evidence that the President may have endeavored to obstruct justice and engage in witness tampering in attempting to coach and influence the testimony of Betty Currie before the grand jury, in violation of 18 U.S.C. § 1512.

The record tends to establish the following:

According to Ms. Currie, the President contacted her on the day he was deposed in the *Jones* case and asked her to meet him the following day. (Currie 1/27/98 GJ, pp. 65–66). The next day, Ms. Currie met with the President, and he asked her whether she agreed with a series of possibly false statements, including, "We were never really alone," "You could always see and hear everything," and "Monica came on to me and I never touched her, right?" (Currie 1/27/98 GJ, pp. 71–74). Ms. Currie stated that the President's tone and demeanor indicated that he wanted her to agree with these statements. (Currie 1/27/98 GJ, pp. 73–74). According to Ms. Currie, the President called her into the Oval Office several days later and reiterated his previous statements using the same tone and demeanor. (Currie 1/27/98 GJ, p. 81). Ms. Currie later stated that she felt she was free to disagree with the President. (Currie 7/22/98 GJ, p. 23).

The President testified concerning those statements before the grand jury, and he did not deny that he made them. (Clinton 8/17/98 GJ, pp. 133–139). Rather, the President testified that in some of the statements he was referring only to meetings with Ms. Lewinsky in 1997, and that he intended the word "alone" to mean the entire Oval Office Complex. (Clinton 8/17/98 GJ, pp. 133–139).

XIV

There is substantial and credible evidence that the President may have engaged in witness tampering by coaching prospective witnesses and by narrating elaborate detailed false accounts of his relationship with Ms. Lewinsky as if those stories were true, intending that the witnesses believe the story and testify to it before a grand jury, in violation of 18 U.S.C. § 1512.

The record tends to establish the following:

John Podesta, the President's Deputy Chief of Staff, testified that the President told him that he did not have sex with Ms. Lewinsky "in any way whatsoever" and "that they had not had oral sex." (Po-

desta 6/16/98 GJ, p. 92). Mr. Podesta repeated these statements to the grand jury. (Podesta 6/23/98 GJ, p. 80).

Sidney Blumenthal, an Assistant to the President, said that the President told him more detailed stories. He testified that the President told him that Ms. Lewinsky, who the President claimed had a reputation as a stalker, came at him, made sexual demands of him, and threatened him, but he rebuffed her. (Blumenthal 6/4/98 GJ, pp. 46–51). Mr. Blumenthal further testified that the President told him that he could recall placing only one call to Ms. Lewinsky. (Blumenthal 6/25/98 GJ, p. 27). Mr. Blumenthal mentioned to the President that there were press reports that he, the President, had made telephone calls to Ms. Lewinsky, and also left voice mail messages. The President then told Mr. Blumenthal that he remembered calling Ms. Lewinsky after Betty Currie's brother died. (Blumenthal 6/4/98 GJ, p. 50).

XV

There is substantial and credible evidence that the President may have given false testimony under oath before the federal grand jury on August 17, 1998 concerning his knowledge of the contents of Monica Lewinsky's affidavit and his knowledge of remarks made in his presence by his counsel in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

During the deposition, the President's attorney attempted to thwart questions pertaining to Ms. Lewinsky by citing her affidavit and asserting to the court that the affidavit represents that there "is absolutely no sex of any kind, manner, shape or form, with President Clinton." (Clinton Dep., p. 54). At several points in his grand jury testimony, the President maintained that he cannot be held responsible for this representation made by his lawyer because he was not paying attention to the interchange between his lawyer and the court. (Clinton GJ, pp. 25–26, 30, 59). The videotape of the deposition shows the President apparently listening intently to the interchange. In addition, Mr. Clinton's counsel represented to the court that the President was fully aware of the affidavit and its contents. (Clinton Dep., p. 54).

The President's own attorney asked him during the deposition whether Ms. Lewinsky's affidavit denying a sexual relationship was "true and accurate." The President was unequivocal; he said, "This is absolutely true." (Clinton Dep., p. 204). Ms. Lewinsky later said the affidavit contained false and misleading statements. (M.L. 8/6/98 GJ, pp. 204–205). The President explained to the grand jury that Ms. Lewinsky may have believed that her affidavit was true if she believed "sexual relationship" meant intercourse. (Clinton GJ, pp. 22–23). However, counsel did not ask the President if Ms. Lewinsky thought it was true; he asked the President if it was, in fact, a true statement. The President was bound by the court's definition at that point, and under his own interpretation of that definition, Ms. Lewinsky engaged in sexual relations. An affidavit denying this, by the President's own interpretation of the definition, is false.

COMMITTEE CONSIDERATION

On October 5, 1998, the Committee met in open session and ordered reported the resolution printed herein by a vote of 21 to 16, a quorum being present.

Need for the Resolution

Because the issue of impeachment is of such overwhelming importance, the Committee decided that it must receive authorization from the full House before proceeding on any further course of action. Because impeachment is delegated solely to the House of Representatives by the Constitution, the full House of Representatives should be involved in critical decision making regarding various stages of impeachment. With the passage of H. Res. 525, the full House has already directed the release of the Referral from the Independent Counsel, set the parameters for public release of other related materials, and directed the Committee to review the Referral and accompanying materials in order to make a recommendation to the House.

Also, a resolution authorizing an impeachment inquiry into the conduct of a president is consistent with past practice. According to Hind's Precedents, the "impeachment of President Johnson was set in motion by a resolution authorizing a general investigation as to the execution of the laws." When the first attempt to impeach President Johnson failed, the House "referred to the Committee on Reconstruction the evidence taken by the Judiciary Committee in the first attempt to impeach President Johnson." 3 Hind's Precedents, § 2408.

The impeachment investigation of President Nixon was explicitly authorized by the full House. During debate of H. Res. 803 in 1974, Congressman Rodino, then chairman of the Committee on the Judiciary, stated:

> We have reached the point when it is important that the House explicitly confirm our responsibility under the Constitution.
>
> We are asking the House * * * to authorize and direct the Committee on the Judiciary to investigate the conduct of the President of the United States * * *.
>
> * * * * * * *
>
> Such a resolution has always been passed by the House. The Committee has voted unanimously to recommend that the House of Representatives adopt this resolution. It is a necessary step if we are to meet our obligations * * *.

Furthermore, numerous other impeachment inquiries were authorized by the House directly, or by providing investigative authorities, such as deposition authority, to the Committee on the Judiciary.

In addition to the historical precedent regarding impeachment investigations of presidents, the House directed the Committee on the Judiciary "to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." H. Res. 525 contemplates that the House would consider

the Committee's recommendation before the Committee proceeded further.

Rules Committee Chairman Solomon, the sponsor of H. Res. 525, indicated that the House would have to act to authorize an impeachment investigation. During floor debate, he stated:

> If this communication from Independent Counsel Starr should form the basis for future proceedings, it is important to note that Members will need to cast public, to cast recorded, and extremely profound votes in the coming weeks and months.
>
> * * * * * * *
>
> Mr. Speaker, I want to point out, again, just to clarify, this resolution does not authorize or direct an impeachment inquiry. * * * It is not the beginning of an impeachment process in the House of Representatives. It merely provides the appropriate parameters for the Committee on the Judiciary, the historical proper place to examine these matters, to review this communication and make a recommendation to the House as to whether we should commence an impeachment inquiry. That is what this resolution before us today does.[4]

During debate on H. Res. 525, Congressman Sensenbrenner noted the following:

> The resolution charges the Committee on the Judiciary with the awesome responsibility of reviewing the full referral by Mr. Starr to determine if there are sufficient grounds to recommend to the House that an impeachment inquiry be commenced.
>
> * * * * * * *
>
> After evaluating Mr. Starr's evidence, the Committee on the Judiciary has two choices. Either it will find that there is no substantial evidence of impeachable activity by the President or it will recommend commencing a formal impeachment inquiry.[5]

President's Procedural Rights

Prior to the October 5, Committee meeting, some raised concerns about "procedural fairness" and encouraged the Committee to adopt rules, similar to those adopted by the Committee in 1974, which would provide the President with certain procedural rights. After voting on the Hyde resolution, the Committee adopted, by voice vote, a number of protections for the President. The President and his counsel shall be invited to attend all executive session and open committee hearings. The President's counsel may cross examine witnesses. The President's counsel may make objections regarding the pertinency of evidence. The President's counsel shall be invited to suggest that the Committee receive additional evidence. Lastly, the President or the President's counsel shall be invited to respond to the evidence adduced by the Committee at an appro-

[4] 144 Cong. Rec. H7588 (daily ed. September 11, 1998) (statement of Rep. Solomon).
[5] Id. at 7600 (statement of Rep. Sensenbrenner).

priate time. The provisions will ensure that the impeachment inquiry is fair to the President.

Issues Relating to Defining Standards for Impeachment

The minority and the White House have demanded that the Committee needs to adopt standards of impeachment before it proceeds. Standards, however, already exist. They are found in Article Two, Section Four of the Constitution and include "Treason, Bribery, or other high Crimes and Misdemeanors."

Our founding fathers did not adopt these words without debate or forethought. These words are not arbitrary or capricious. They have meaning to which facts must be applied. Indeed, the meaning of these words have been applied in the House of Representatives numerous times, four of which occurred in the past 25 years. Impeachment precedents, like court precedents, can be helpful to the Committee as it proceeds and will help inform the judgment of all Members of the House. It would be presumptuous of this Committee to state as fact the manner in which all Members should judge the evidence. All Members, after a consideration of the facts and the law of impeachment, must exercise their constitutional responsibility as they deem appropriate.

Both The New York Times and The Washington Post recently editorialized that the Committee need not decide in advance what constitutes an impeachable offense. According to The New York Times,

> The natural contours of an impeachment inquiry accommodate two converging avenues of work, one dealing with the evidence, the other with the constitutional question of what constitutes an impeachable offense. The Judiciary Committee has wisely chosen to consider these in tandem, with the expectation that each inquiry will inform the other.[6]

The Washington Post observed the following:

> Some Democrats also want the panel to decide in advance what constitutes an impeachable offense, and only then begin an inquiry into the President's behavior if the two seem to match up. Judiciary Chairman Hyde is correct to resist that as well. It's true that in eventually deciding whether the President's conduct constituted an impeachable offense, the committee will have to decide, if only implicitly, how serious such an offense must be. But that kind of judgment is all but impossible to make in the abstract, outside the context of facts that are still emerging and that almost daily paint President Clinton's behavior in slightly different hues.[7]

Notwithstanding the assertion made by some Members, neither the House nor the Committee ever adopted a standard for impeachment in 1974. Proponents of the argument that standards were set in 1974 rely on a staff report prepared for the use of the Rodino Committee. However, the report explicitly stated that this "memo-

[6] Editorial, The New York Times, October 4, 1998.
[7] Editorial, The Washington Post, October 2, 1998.

randum offers no fixed standards for determining whether grounds for impeachment exist. The framers did not write a fixed standard. Instead they adopted from English history a standard sufficiently general and flexible to meet future circumstances and events, the nature and character of which they could not foresee."[8] Therefore, one could conclude that impeachable offenses cannot be defined in advance of full investigation of the facts. The report also stated that

> Delicate issues of constitutional law are involved. Those issues cannot be defined in detail in advance of full investigation of the facts. The Supreme Court of the United States does not reach out, in the abstract, to rule on the constitutionality of statutes or of conduct. Cases must be brought and adjudicated on particular facts in terms of the Constitution. Similarly, the House does not engage in abstract, advisory or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers; rather, must await full development of the facts and understanding of the events to which those facts relate.[9]

Furthermore, in the foreword to the report, Chairman Rodino explicitly stated that "the views and conclusions contained in the report are staff views and do not necessarily reflect those of the committee or any of its members."[10]

Issues Relating to Scope of the Inquiry

Some members proposed to limit the scope of the Committee's inquiry. The Rodino Committee's impeachment inquiry was not limited. Likewise, this inquiry should not be limited. In fact, the language authorizing the inquiry tracks the language used to authorize the Nixon impeachment inquiry. The charge of the Committee under the proposed resolution will be to determine whether the President has committed impeachable offenses. Chairman Hyde repeated his public statement that he would not troll for new issues to investigate. The inquiry will not be a fishing expedition. However, if information is brought to the Committee's attention that makes substantial and credible allegations that impeachable offenses may have been committed, then the Committee will have to deal with them. Judge Starr noted in the Referral that other issues may be forthcoming. The grand jury continues to meet and many parts of his investigation are ongoing. No one knows whether Judge Starr or any other source will send the Committee additional information. However, the Committee should be prepared for any eventuality.

Issues Relating to Time Limits/Deadlines

During debate on the proposed resolution and amendments thereto, the minority sought to impose time limits and deadlines on the inquiry. Chairman Hyde disagreed that such a deadline is necessary, but did agree that the Committee should act expeditiously

[8] Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, 2nd Sess., 93rd Cong., House Committee Print, 2, (Feb. 22, 1974).
[9] Id.
[10] Id. at Foreword.

and fairly. He reiterated his public statement that it is his hope that the Committee will complete the inquiry by the end of December—which he has referred to as his "New Year's Resolution." He also noted, however, that achieving this goal will only be possible if Committee Democrats and the White House fully cooperate with the inquiry. Many felt that an absolute deadline would do nothing more than discourage cooperation and encourage delay and obstruction.

A time deadline could force the Committee to rush to judgment. The Committee should not be stampeded into making hasty decisions, determinations, or conclusions. Time limits or arbitrary subject matter limits will prevent this Committee from proceeding in an orderly and regular fashion. Courts of law do not have such constraints imposed on them when individuals go to trial, and neither should the Committee as it embarks on one of the most solemn and grave responsibilities imposed on the House by the Constitution. Moreover, the Committee should not invite anyone, through the imposition of an arbitrary time table, to obstruct, impede, or delay the Committee's proceedings.

In 1974, when the Committee considered H. Res. 803, Rep. McCloy offered an amendment requiring the Committee to submit its final report by April 30, 1974, thus limiting the inquiry to roughly 3 months. The amendment was rejected by a vote of 15 Ayes and 23 Nays.

Based on the time-limited investigation conducted by the Senate Governmental Affairs Committee into fund-raising abuses in the 1996 presidential campaign, The Washington Post recently observed that "experience suggests a time limit could encourage delaying tactics . . . ."[11] It is important to discourage delaying tactics by avoiding the imposition of the arbitrary deadline suggested by my Democratic colleagues. It is important to remember that the Rodino Committee explicitly rejected the adoption of a deadline when such an amendment was offered. That process lasted a total of nineteen months, and complemented a one and one-half year investigation conducted by the 1974 Ervin Committee in the Senate.

When judging the speed with which the Committee moves to conclude the inquiry, Members of the House and the public should remain mindful of another important fact. On January 21 of this year when the Lewinsky story broke, the President and various White House surrogates denied, delayed, and distracted the American people instead of coming clean early on in the process. The Committee is now asked to hastily fulfill our constitutional responsibility. The process should be concluded as quickly as possible. The Committee should not consume one minute more than is necessary to do a professional and competent job, but we should not take one minute less to do the same. The American people deserve professionalism, competence, the considered judgment of the Committee. Anything less would be a disservice to the nation.

Issues Relating to the Public Printing of Certain Materials

Since the transmission by the OIC of the Referral on September 9, 1998, pursuant to 28 U.S.C. § 595(c) (1994), accompanied by

[11] Editorial, The Washington Post, October 2, 1998.

grand jury material, to the House of Representatives, and the subsequent publication and dissemination of the narrative of the Referral and portions of the grand jury material by the Committee on the Judiciary, questions have been raised as to legal authority of the Independent Counsel to transmit such materials and that of the House to publically disseminate it. The House of Representatives and the Committee have been criticized for causing some of the material to be printed as a House document. The following is a brief explanation of the legal bases of these actions.

Under 28 U.S.C. § 595(c), an independent counsel is directed "to advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment." The provision does not define the form in which an independent counsel is to "advise" the House, and there has been no prior experience under that provision. However, it hardly stretches the imagination that advice of such importance and magnitude was intended to be in written form and would be accompanied by materials supporting such momentous allegations. Under the only other analogous statutory investigative and reporting mechanism of which we are aware that might lead to an impeachment proceeding, the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 372(c) (1994), a certified written determination that impeachment of a judge may be warranted and a record of the proceedings conducted by a judicial council is to be forwarded by the Judicial Conference to the House of Representatives. 28 U.S.C. 372(c)(8)(A). Thus a written report accompanied by supporting evidence is certainly an appropriate advisement vehicle.

Independent counsels traditionally conduct their investigations through grand juries.[12] As a consequence, the strict limitations of Federal Rule of Criminal Procedure 6(e)(2), providing that matters occurring before a grand jury are to be kept secret, are triggered. The interests underlying the principle of grand jury secrecy were enunciated by the Supreme Court in *United States* v. *Procter & Gamble Co.,* 356 U.S. 677, 681 n. 6 (1958):

> (1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before [the] grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammeled disclosure by persons who have information with respect to the commission of crimes; (5) to protect [the] innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt.

[12] See 28 U.S.C. 594(a)(1) (authorizing the conduct of proceedings before grand juries).

The prohibition on disclosure, however, is not absolute and may be overcome by a showing of "particularized need." [13] The *Douglas Oil* standard applies to both governmental bodies and private litigants, but it has been recognized by the Supreme Court that the interests that underlie the policy of grand jury secrecy are affected to a lesser extent when disclosure to a governmental body is requested.[14]

Moreover, Federal Rule of Criminal Procedure 6 (e)(3)(c)(i) authorizes a court to make disclosures "preliminarily to or in connection with a judicial proceeding." Consistently, and without any exception the Committee is aware of, the courts have held that a House investigation preliminary to impeachment is a judicial proceeding within the scope of the exception to the Rule. Indeed, courts have held that investigations conducted by committees of judicial councils pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, supra, are within the exception and granted access to grand jury material.[15]

In addition, in at least three instances the House has directly requested and received grand jury materials in impeachment proceedings. In 1811, a grand jury in Baldwin County in the Mississippi territory forwarded to the House a presentment specifying charges against Washington District Superior Court Judge Harry Toulmin for possible impeachment action.[16] In 1944, the House Committee on the Judiciary received grand jury material pertinent to its investigation into allegations of impeachable offenses committed by Judges Albert W. Johnson and Albert L. Watson.[17] Finally, in 1989, the House Judiciary Committee petitioned and received grand jury material pertinent to impeachable offenses committed by Judge Walter L. Nixon.[18]

The case law with respect to what a congressional committee may do with 6(e) material released by a court, while sparse, is unequivocal: a committee is free to do with it as it will, as long as it complies with the rules of the House with respect to dissemination. The courts have conceded that they are powerless to place restrictions on the use of the material once it is in hands of a com-

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[13] See *Douglas Oil Co.* v. *Petrol Shops Northwest*, 441 U.S. 211, 222 (1979).

[14] *United States* v. *Sells Engineering, Inc.*, 463 U.S. 418, 445 (1983) ("Nothing in *Douglas Oil*, however, requires a district court to pretend that there are no differences between governmental bodies and private parties.")

[15] See, e.g., In re Report and Recommendations of June 5, 1992 Grand Jury Transmission of Evidence to House of Representatives, 370 F. Supp. 1219, 1228–1230 (D.D.C. 1974), mandamus denied sub nom *Haldeman* v. *Sirica*, 501 F. 2d 714, 715 (D.C. Cir. 1974)(granting access to House Judiciary Committee in President Nixon impeachment); In re Grand Jury Proceedings of Grand Jury No. 81–1 (Miami), 669 F. Supp. 1072, 1075–76 (S.D. Fla. 1987), aff'd 833 F. 2d 1438, 1444–45 (11th Cir. 1987) (granting access to House Committee on the Judiciary in Judge Hastings impeachment); In re petition to Inspect and Copy Grand Jury Materials, 735 F. 2d 1261 (11th Cir.) cert. denied, 469 U.S. 884 (1984) (granting access to grand jury materials to investigating committee of Judicial Council in preliminary investigation of Judge Hastings under 28 U.S.C. 372(c)). See also *Kilbourn* v. *Thompson*, 103 U.S. 168, 190 (1880)(dicta)(supporting conclusion that power to impeach includes power to obtain evidence).

[16] 3 Hind's Precedents of the House of Representatives, section 2488 at 985, 986 (1907).

[17] Conduct of Albert W. Johnson and Albert L. Watson, United States District Judges, Middle District of Pennsylvania: Hearings before the Subcommittee of the Committee on the Judiciary to Investigate the Official Conduct of United States District Court Judges Albert W. Johnson and Albert L. Watson, 79th Cong., 1st Sess. (1945).

[18] *Nixon* v. *United States*, Civ. No. H 88–0052 (G) (S.D. Miss., Hattiesburg Div.), referenced in Impeachment of Walter L. Nixon, Jr., H. Rept. 101–36, 101st Cong., 1st Sess. (1989); See also Judge Walter L. Nixon, Jr. Impeachment Inquiry: Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, 100th Cong., 2nd Sess. (1988).

mittee. Thus Judge Sirica, having ruled that the recommendation of the grand jury and the request of Chairman Rodino of the House Committee on the Judiciary should be honored, noted that "the Court relinquishes its own control of the matter," but took the opportunity to admonish the Committee to "receive, consider and utilize the Report with due regard for avoiding unnecessary interference with the Court's ability to conduct fair trials of persons under indictment."[19]

The courts in dealing with the Hastings materials elaborated the rationale for plenary congressional control more fully. In the district court, Judge Hastings asked that the court delay releasing the grand jury materials until the House Committee on the Judiciary had modified its procedures to "permit disclosure only to the extent necessary for the Committee to perform its legitimate functions."[20] The court refused to impose the condition, stating:

> . . . Ancillary to the sole power of impeachment vested in the House by the Constitution is the power to disclose the evidence that it receives as it sees fit. Again, recognition of the doctrine of separation of powers precluded the judiciary from imposing restrictions on the exercise of the impeachment power. The court cannot review or amend the voluntary restriction that the Committee has placed on disclosure. Nor can the court indirectly compel the Committee to amend its confidentiality procedures by withholding disclosure. The same principles that deny a court the power to enjoin a congressional subpoena duces tecum when Congress is engaged in a legitimate function apply here. See *Eastland,* 421 U.S. at 501–03, 95 S. Ct. at 1820–21.
>
> In any event, limiting disclosure to the Committee would be inappropriate. All members of the House are entitled to examine the record in exercising the power of impeachment. . . .[21]

The appeals court affirmed the district court's ruling that it would not delay Committee access to force it to adopt stricter confidentiality procedures, commenting that "even assuming that the court could withhold disclosure until procedures were adopted which limited access, Congress would be free to amend or abandon the procedures at any time."[22] The court then concluded with a succinct statement of the law in this area:

> We do not read the District Court opinion either to have imposed or not imposed confidentiality strictures upon the Committee. Judge Butzner's order expressly declined to place limitations upon the Committee. Judge King's order, which Judge Butzner refused to stay, merely took note that the Committee had advised the court that it intended to "receive the requested grand jury materials in executive session in accordance with the confidentiality procedures

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[19] 370 F. Supp. at 1231.

[20] 669 F. Supp. at 1078 (Hastings had conceded that the court had no power to limit the Committee's power to disclose after it had received the records).

[21] Id.

[22] 833 F. 2d at 1445.

> agreement." What we must decide is simply whether to disclose the materials to the Judiciary Committee; what the Committee does after disclosure is outside of our jurisdiction. The reason for this conclusion is basic; as stated above, the sole power of impeachment is vested in the House. The Speech and Debate Clause prevents us from questioning. The Speech and Debate Clause is applicable because impeachment is viewed as a legislative activity in the sense that it is one of the "other matters which the Constitution places within the jurisdiction of either House." *Gravel* v. *United States,* 408 U.S. 606, 625, 92 S. Ct. 2614, 2627, 33 L. Ed. 2d 583 (1972) (defining legislative activity).[23]

In the instant situation the transmission of the 6(e) material was properly authorized by a court and the release of certain grand jury materials by your Committee has been authorized by the House. More particularly, on July 2, 1998, Independent Counsel Starr made an "Ex Parte Motion for Approval of Disclosure of Matters Before a Grand Jury"[24] to the Special Division for Appointing of Independent Counsels of the U.S. Court of Appeals for the District of Columbia in order to comply with his obligation under 28 U.S.C. §595(c), which was granted by the panel on July 7. The Independent Counsel delivered his Referral together with 36 sealed boxes containing two complete copies of the Referral and supporting materials to the Sergeant of Arms of the House. The Independent Counsel advised that "[t]he contents of the Referral may not be publically disclosed unless and until authorized by the House of Representatives. Many of the supporting documents contain information of a personal nature that I respectfully urge the House to treat as confidential." On September 11, 1998, the House adopted H. Res. 525, 144 Cong. Rec. H 7607, which directed that the House Judiciary Committee review the Independent Counsel's transmittal. It ordered that the 445 pages comprising an introduction, a narrative, and statement of grounds, be printed as a House document. The balance of the material was deemed to be received by the Committee in executive session and was to be released by September 28, 1998, unless otherwise determined by the Committee. The released material was ordered to be printed as a House document.

In sum, then, it would appear that the transmission of grand jury materials by the Independent Counsel was in conformity with the requirements of Rule 6(e) and that subsequent public release of some of the materials was within the constitutional prerogative of the House to "determine the Rules of its proceedings." Art I, sec. 5, cl. 2.

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[23] Id. See also, In re *North,* 16 F. 3d 1234 (D.C. Cir. 1994) (Special panel holds that final report of Iran-Contra independent counsel that contained 6(e) material did not preclude release of the report where the material had already lost its protected character by previous disclosure).

[24] Federal Rule of Criminal Procedure 6(e)(3)(D) explicitly authorizes ex parte proceedings when the government is the party seeking release of grand jury materials. In such circumstances there is no obligation to provide notice to any other interested party. In re Grand Jury Proceedings of Grand Jury No. 81–1 (Miami), supra, 669 F. Supp. At 1070.

SECTION-BY-SECTION ANALYSIS

Resolved Clause

The resolved clause of the resolution authorizes and directs the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the Chairman, to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States. Except for the name of the President, the Resolved clause is the same as the Resolved clause in H. Res. 803, 2d Sess., 93d Cong., (1974), which authorizes the impeachment of Richard M. Nixon.

Section Two

This resolution empowers the Committee to require the attendance and testimony of such witnesses as it deems necessary, by subpoena or otherwise. It authorizes the Committee to take such testimony at hearings or by deposition. Depositions may be taken before counsel to the Committee, without a member of the Committee being present, thus expediting the presentation of information to the Committee. This resolution further authorizes the Committee to require the furnishing of information in response to interrogatories propounded by the Committee. Like the deposition authority, the authority to compel answers to written interrogatories is intended to permit the Committee to conduct a thorough investigation under as expeditious a schedule as possible. Interrogatories should prove particularly useful in providing a basis for the efficient exercise of the Committee's subpoena power, by enabling it to secure inventories and lists of documents, materials, and things and the names of potential witnesses. Like the Resolved clause, section two of the Hyde resolution is the same, word-for-word as section two of H. Res. 803.

The Committee's investigative authority is intended to be fully co-extensive with the power of the House in an impeachment investigation—with respect to the persons who may be required to respond, the methods by which response may be required, and the types of information and materials required to be furnished and produced.

The power to authorize subpoenas and other compulsory process is committed by this resolution in the first instance to the Chairman and the Ranking Minority Member acting jointly. If either declines to act, the other may act alone, subject to the right of either to refer the question to the Committee for decision prior to issuance, and a meeting of the Committee will be convened promptly to consider the question. Thus, meetings will not be required to authorize issuance of process, so long as neither the Chairman nor the Ranking Minority Member refers the matter to the Committee. In the alternative, the Committee possesses the independent authority to authorize subpoenas and other process, should it be felt that action of the whole Committee is preferable under the circumstances. Thus, maximum flexibility and bipartisanship are reconciled in this resolution.

VOTE OF THE COMMITTEE

Pursuant to clause 2(l)(2)(B) of House rule XI, the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed herein. The following rollcall votes occurred during Committee deliberations on the Hyde resolution (October 5, 1998).

1. An amendment in the nature of a substitute by Mr. Boucher and others to the Hyde resolution to establish time limits to conduct the impeachment inquiry and to divide the process of an impeachment inquiry in two phases. The first phase would have involved holding hearings on the constitutional standard for impeachment, comparing the allegations to the constitutional standard for impeachment, and determining the sufficiency of the evidence supporting the allegations. The amendment in the nature of a substitute would have also provided an option for alternative sanctions, if warranted. The second phase would have provided for a formal impeachment inquiry. The amendment was defeated by a vote of 16 Ayes to 21 Nays as follows:

ROLLCALL NO. 1

Subject: An Amendment in the nature of a substitute offered by Mr. Boucher to the Hyde Resolution. Defeated by a vote of 16 ayes to 21 nays.

	Ayes	Nays	Present
MR. SENSENBRENNER		X	
MR. MCCOLLUM		X	
MR. GEKAS		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. CANADY		X	
MR. INGLIS		X	
MR. GOODLATTE		X	
MR. BUYER		X	
MR. BRYANT		X	
MR. CHABOT		X	
MR. BARR		X	
MR. JENKINS		X	
MR. HUTCHINSON		X	
MR. PEASE		X	
MR. CANNON		X	
MR. ROGAN		X	
MR. GRAHAM		X	
MS. BONO		X	
MR. CONYERS	X		
MR. FRANK	X		
MR. SCHUMER	X		
MR. BERMAN	X		
MR. BOUCHER	X		
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON-LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MR. ROTHMAN	X		

	Ayes	Nays	Present
MR. BARRETT (WI)	X		
MR. HYDE, CHAIRMAN		X	
TOTAL	16	21	

2. An amendment by Mr. Berman to the Hyde resolution which would have authorized and directed the Committee to review the constitutional standards for impeachment and determine if the facts stated in the narrative portion of the Referral, if assumed to be true, would constitute grounds for impeachment. If the Committee determined the facts would constitute grounds for impeachment, then the Committee would have been authorized to investigate whether "sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach the President." The amendment was defeated by a vote of 16 Ayes to 21 Nays as follows:

ROLLCALL NO. 2

Subject: Amendment offered by Mr. Berman to the Hyde Resolution. Defeated by a vote of 16 ayes to 21 nays.

	Ayes	Nays	Present
MR. SENSENBRENNER		X	
MR. MCCOLLUM		X	
MR. GEKAS		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. CANADY		X	
MR. INGLIS		X	
MR. GOODLATTE		X	
MR. BUYER		X	
MR. BRYANT		X	
MR. CHABOT		X	
MR. BARR		X	
MR. JENKINS		X	
MR. HUTCHINSON		X	
MR. PEASE		X	
MR. CANNON		X	
MR. ROGAN		X	
MR. GRAHAM		X	
MS. BONO		X	
MR. CONYERS	X		
MR. FRANK	X		
MR. SCHUMER	X		
MR. BERMAN	X		
MR. BOUCHER	X		
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON-LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MR. ROTHMAN	X		
MR. BARRETT (WI)	X		
MR. HYDE, CHAIRMAN		X	

	Ayes	Nays	Present
TOTAL	16	21	

3. Hyde motion to favorably report the Hyde resolution, authorizing and directing the Committee on the Judiciary to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, the President of the United States. The resolution was adopted by a vote of 21 Ayes to 16 Nays.

ROLLCALL NO. 3

Subject: Motion to favorably report the Hyde resolution authorizing the Judiciary Committee to conduct an inquiry into whether sufficient grounds exist to impeach the President of the United States. Adopted by a vote of 21 ayes to 16 nays.

	Ayes	Nays	Present
MR. SENSENBRENNER	X		
MR. MCCOLLUM	X		
MR. GEKAS	X		
MR. COBLE	X		
MR. SMITH	X		
MR. GALLEGLY	X		
MR. CANADY	X		
MR. INGLIS	X		
MR. GOODLATTE	X		
MR. BUYER	X		
MR. BRYANT	X		
MR. CHABOT	X		
MR. BARR	X		
MR. JENKINS	X		
MR. HUTCHINSON	X		
MR. PEASE	X		
MR. CANNON	X		
MR. ROGAN	X		
MR. GRAHAM	X		
MRS. BONO	X		
MR. CONYERS		X	
MR. FRANK		X	
MR. SCHUMER		X	
MR. BERMAN		X	
MR. BOUCHER		X	
MR. NADLER		X	
MR. SCOTT		X	
MR. WATT		X	
MS. LOFGREN		X	
MS. JACKSON-LEE		X	
MS. WATERS		X	
MR. MEEHAN		X	
MR. DELAHUNT		X	
MR. WEXLER		X	
MR. ROTHMAN		X	
MR. BARRETT (WI)		X	
MR. HYDE, CHAIRMAN	X		
TOTAL	21	16	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

ties under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

Clause 2(l)(3)(D) of rule XI requires each Committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on the Judiciary has received no such findings or recommendations from the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the resolution will have no budget effect.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this Resolution in Article I, section 2, clause 5 of the Constitution.

ADDITIONAL VIEWS OF REPRESENTATIVE CHARLES T. CANADY

The President's lawyers have argued that even if all the charges made against the President by the Independent Counsel are true, the President's conduct does not rise to the level of "high crimes and misdemeanors" for which the President can be impeached. These views are submitted as a brief response to that argument.

While it is important that we not rush to judgment concerning the President's guilt, it should be obvious that if the charges against the President are ultimately substantiated, the President has violated his oath of office and breached his constitutional duty to "take care that the laws be faithfully executed." Perjury, obstruction of justice and the other offenses charged against the President are indeed serious matters.

Although Congress has never adopted a fixed definition of "high crimes and misdemeanors," there is much in the background and history of the impeachment process that contradicts the position advanced by the President's lawyers. Here I refer to two reports prepared in 1974 on the background and history of impeachment.

There has been a great deal of comment on the report on "Constitutional Grounds for Presidential Impeachment" prepared in February 1974 by the staff of the Nixon impeachment inquiry. Those who assert that the charges against the President do not rise to the level of "high crimes and misdemeanors" have pulled some phrases from that report out of context to support their position. In fact, the general principles concerning grounds for impeachment set forth in that report indicate that conduct involving perjury and obstruction of justice would be impeachable. Please consider this key language from the staff report describing the type of conduct which gives rise to impeachment:

> The emphasis has been on the significant effects of the conduct—*undermining the integrity of office, disregard of constitutional duties and oath of office,* arrogation of power, abuse of the governmental process, adverse impact on the system of government. (emphasis added)

Perjury and obstruction of justice clearly "undermine the integrity of office." Their unavoidable consequence is to erode respect for the office of the President. Such offenses also clearly are in "disregard of [the President's] constitutional duties and oath of office." Thus, the principles contained in the Nixon impeachment inquiry staff report—a report cited time and again by the President's lawyers and his other defenders—actually support the conclusion that the charges against the President constitute "high crimes and misdemeanors."

The thoughtful report on "The Law of Presidential Impeachment" prepared by the Association of the Bar of the City of New York in

January of 1974 also places a great deal of emphasis on the impact of presidential misconduct on the integrity of office:

> It is our conclusion, in summary, that the grounds for impeachment are not limited to or synonymous with crimes . . . . Rather, we believe that *acts which undermine the integrity of government* are appropriate grounds whether or not they happen to constitute offenses under the general criminal law. In our view, the essential nexus to damaging the integrity of government may be found in acts which constitute corruption in, or flagrant abuse of the powers of, official position. It may also be found in acts which, without directly affecting governmental processes, *undermine that degree of public confidence in the probity of executive and judicial officers that is essential to the effectiveness of government in a free society.* What specific acts meet this test will vary with circumstances, including the particular position in government held by the person charged. At the heart of the matter is the determination—committed by the Constitution to the sound judgement of the two Houses of Congress—that the officeholder has demonstrated by his actions that he is unfit to continue in the office in question. (emphasis added)

The commission of perjury and obstruction of justice by a President are acts which without doubt "undermine that degree of public confidence in the probity of the [the President] that is essential to the effectiveness of government in a free society." Such acts inevitably subvert the respect for law which is essential to the well-being of our constitutional system.

Finally, it is important to understand that the significance of the offenses charged against the President is not diminished by the fact that they do not directly involve the President's official conduct. Although the President's lawyers have argued that the underlying conduct of the President which gave rise to the alleged perjury and obstruction of justice was a private matter which should not be the subject of an impeachment inquiry, elsewhere they have claimed:

> Any conduct by the individual holding the Office of the President, whether it is characterized as private or official, can have substantial impact on a President's official duties.

Perjury and obstruction of justice—even regarding a private matter—are offenses that have a substantial impact on the President's official duties because they are so clearly at odds with his preeminent duty to "take care that the laws be faithfully executed."

In light of the historic principles regarding impeachment, the charges against the President—charges which are supported by substantial evidence—demand that the House proceed with an impeachment inquiry as recommended by the House Judiciary Committee.

CHARLES T. CANADY.

ADDITIONAL VIEWS OF MR. BERMAN

I am not enthusiastic about setting interim or final deadlines for an impeachment inquiry. Although it appears that most of the facts in the Lewinsky matter have already been gathered by the Independent Counsel, it is unrealistic to determine in advance how long a thorough examination of all evidence—both inculpatory and exculpatory—might take.

It is also unnecessary to set a deadline since any resolution of inquiry adopted by the House will automatically expire at the end of the 105th Congress, and will have to be renewed by the 106th Congress. Chairman Hyde has stated that his goal is to complete an inquiry by the end of this year, and I take the Chairman at his word.

The amendment I proposed did not include a deadline or timetable. Instead, it required the Committee to assume, for the sake of argument, that the facts stated in the narrative portion of the Starr report are true. Operating under that assumption, the Committee would determine whether the President's conduct—as described in the narrative—constitutes grounds for impeachment. If the answer was no, then there would be no need for a prolonged investigation, and we could spare our children from exposure to sexually explicit hearings. Regrettably, my compromise amendment was rejected by the Republican majority.

HOWARD L. BERMAN.

DISSENTING VIEWS TO HYDE IMPEACHMENT INQUIRY RESOLUTION

We strongly oppose the Republican resolution of impeachment inquiry. Although we would support a fair, orderly and expeditious review into whether any of the allegations in the Referral by the Office of Independent Counsel ("OIC") rise to the level of impeachable offenses, we cannot support the Republican proposal. That resolution would permit an investigation of unlimited scope and indefinite duration. It is not difficult to envision this investigation turning into a taxpayer-funded fishing expedition that will delve into irrelevant and embarrassing aspects of the President's and the First Lady's personal lives and rehash previous failed investigations by the Republicans. Such an unlimited and unfocused inquiry is irresponsible, and serves neither the interests of justice or the American people.

We have a number of serious concerns with the resolution of impeachment inquiry proposed by the Republicans. First, the resolution is totally open-ended. There is no limitation on the scope of the impeachment inquiry, which could go well beyond the eleven possible grounds for impeachment submitted by the OIC or the fifteen possible grounds laid out by The Majority Counsel. The Republican leadership has already threatened to broaden the inquiry to include Whitewater and investigations into FBI personnel files, the firing of White House travel employees and campaign finance.

The Republican resolution is also arbitrary. It makes no threshold attempt to decide whether any of the allegations made in the OIC Referral would, if proven, constitute grounds for impeachment. Under the Republican resolution, the Nation could be plunged into months, if not years, of hearings and debate over highly specific and salacious details concerning sexual improprieties. We believe that it is far more sensible for the Committee to first determine which allegations, if any, constitute impeachable offenses. Then, and only then, would it be appropriate to consider whether the actual facts support the allegations .

Finally, the Republican resolution provides no timetable or endpoint. The public rightly wants to resolve this matter in a fair and expeditious manner. If the process requires the Committee to consider a particular factual issue, we believe we can do so quickly. Because of the Independent Counsel's prior investigatory work, the vast majority of the facts are already known, and our own investigatory phase should be far less significant than previous congressional inquiries. There are only a small handful of witnesses who are critical, and all of them, except the President, have already testified before the grand jury on several occasions. By and large their accounts are not significantly at odds, and any differences could be resolved in short order.

Because of these concerns, Democratic Members offered two reasonable and fair alternatives to the Republican inquiry. The first was a substitute amendment offered by Mr. Boucher, Mr. Nadler, Mr. Scott, Ms. Lofgren, and Ms. Waters. The Boucher, et al., amendment would: (1) limit the inquiry to the matters raised in the OIC's Referral; (2) allow a full debate regarding standards of impeachment and whether the facts alleged rise to that standard before formal inquiry proceedings take place; and (3) provide for an orderly process with a fixed deadline of November 25, 1998. In the event the Committee is unable to complete its work within this time frame, the substitute would allow the Committee to request an extension of time from the full House.

As Mr. Boucher explained when offering the amendment:

> The public interest requires a fair, thorough and deliberate inquiry by the Judiciary Committee of the allegations arising from the referral of the Independent Counsel. But the public interest also requires an appropriate boundary on the scope of that inquiry * * *. The country has already undergone a substantial trauma. If this Committee carries its work beyond the time that is reasonably needed for a complete resolution of the matter now before us, the injury to the Nation will only deepen. We should be thorough, but we should be prompt.

The Boucher, et al., substitute was defeated on a straight party line vote.

Mr. Berman next offered an alternative addressing the scope of the inquiry that required the Committee to assume, for the sake of argument, that the facts in the narrative portion of the Starr report are true. Using that assumption, the Committee would then determine whether the President's conduct would constitute grounds for impeachment. If the answer were yes, then the Committee could proceed with a careful examination of all factual evidence. However, if the answer was no, then there would be no need for an impeachment inquiry.[1] The amendment would allow each Member to decide if the specific facts alleged by the OIC met whatever standard he or she believes is appropriate for impeachment. The Berman amendment is similar to the summary judgement standard that is routinely applied in courts throughout this country.

Adoption of the Berman amendment would allow the Committee to avoid, to the maximum degree possible, a highly public and embarrassing debate over intimate physical details. As Mr. Berman stated:

> [The amendment] is for the sake of the children of America. If we can resolve this question without going through that [damaging] process [of probing into intimate details], if we can accept the Starr narrative as true, and that means we are not talking about exculpatory evidence * * * and then deciding whether or not, based on a sense

[1] Indeed it is worth noting that on a jury of twelve prominent constitutional law professors, all but two believe that from a constitutional standpoint, President Clinton should not be impeached for the things the OIC claims he did. Harvey Beckman, Top Profs: "Not Enough to Impeach," National Law Journal, Oct. 5, 1998, at A1.

> of the Constitution and what those standards really mean, whether this constitutes grounds for impeachment, then, if there is no other way and no other alternative, we have to go through that process. But we are making an effort to do this the right way.

The Berman amendment was also rejected along a party-line vote of 16–21.

Throughout the course of the debate over the Boucher and Berman amendments, the Majority sought to argue that Democratic positions were inconsistent with the precedent set in 1974 when the House approved the Watergate impeachment inquiry.[2] We strongly disagree with this contention. First, we believe it is disingenuous to claim full adherence to the Watergate precedent when the Republicans have already violated many of the principles of fairness and confidentiality observed in Watergate. For example, the OIC Report was released without granting the President any advance opportunity to respond. By contrast, in Watergate, the Judiciary Committee received charges of alleged misconduct by President Nixon in closed-door hearings for seven weeks with the President's lawyer in the same room, and these materials were not released to the public until the conclusion of this evidentiary presentation, well after the White House had full knowledge of their contents and an opportunity to respond. In addition, this Committee has released thousands of pages of confidential grand jury transcripts and FBI interview records without giving any party or their attorneys a chance to review or even to suggest proposed redactions. The Majority has also released a videotape of the President's August 17, 1998 testimony to the public, an act without precedent in the Nation's history, let alone in the Watergate proceedings. By comparison, the grand jury information submitted by Special Prosecutor Jaworski to the Committee during the Watergate investigation was kept strictly confidential in executive session and it remains under seal to this date.

Second, the critical distinction between the present matter and Watergate, and indeed all other impeachment proceedings (presidential and judicial), is that the OIC Report constitutes the first referral made to Congress under the Independent Counsel statute. Independent Counsel Starr has already completed most of the investigatory work performed in Watergate and other impeachments, and the Committee should be in a position to conduct any remaining inquiries in a short and orderly manner. This is because we already have in our possession a more than 400-page report along with more than 60,000 pages of supporting materials resulting from a seven-month investigation. By the same token, it would seem completely inappropriate to use the fact of the OIC Referral as an excuse to launch a renewed inquiry into campaign finance and other wholly unrelated topics, as the Republican resolution would allow us to do.

In addition, with regard to the actual charges involved, there is no credible comparison between Watergate and the OIC Referral. Watergate involved the wholesale corruption of our political system. The abuses included wiretapping of private citizens as well as

[2] H. Res. 805, 93rd Cong., 2d Sess. (1974).

the misuse of the FBI, CIA and IRS.[3] The wrongdoing involved in Watergate was so broad and comprehensive that it defied limitations on congressional inquiry. Today, we start the process four years and $40 million into the Independent Counsel's inquiry and have already received numerous specific factual allegations purporting to constitute grounds for impeachment. There is no legitimate reason for us to go beyond the OIC Referral at this point, notwithstanding Speaker Gingrich's demands to the contrary.[4]

Finally, it bears emphasis that the Democratic proposals are entirely consistent with the Watergate precedent, in that they would force the Judiciary Committee to come to terms with the seriousness of the charges as a constitutional matter before proceeding into the factual phase. Indeed, in the Watergate matter, the Committee compiled original documents regarding the constitutional grounds for impeachment in October of 1973, and then in February of 1974, the bipartisan staff prepared a comprehensive report entitled "Constitutional Grounds for Presidential Impeachment."[5] The 1974 report served as the compass for the entire impeachment inquiry.

At our hearings, Chairman Hyde posed the question, "based on what we now know, do we have a duty to look further, or to look away?" Our answer is that if we do look further, we must do so in a fair, reasonable and expeditious manner. If we are to go down the treacherous and polarizing path of an impeachment inquiry, it is imperative that we first grapple with the threshold question of whether the allegations charged by Mr. Starr and the Republicans would, if proven, rise to the level of "treason, bribery, or other high crimes and misdemeanors" as required by the Constitution. It is also imperative that this matter be handled expeditiously and fairly. The Republican resolution does not provide these safeguards, and we urge its rejection.

JOHN CONYERS, JR.
BARNEY FRANK.
CHARLES E. SCHUMER.
HOWARD L. BERMAN.
RICK BOUCHER.
JERROLD NADLER.
BOBBY SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
MAXINE WATERS.
MARTY MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
STEVEN R. ROTHMAN.
THOMAS M. BARRETT.

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[3] See, Impeachment of Richard M. Nixon President of the United States, Report of the Judiciary Committee (Feb. 1974).

[4] See, e.g., Deborah Orin, "Starr's Report Likely to be Very Sex-plicit; Expect Starr Sex-plicit," N.Y. Post., Aug. 24, 1998 at 16 ("House Speaker Newt Gingrich said Congress shouldn't act based on a 'single human mistake' and should look at Starr's reports on Whitewater," Travelgate and Filegate.").

[5] Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, House Comm. on the Judiciary (Feb. 1974).

DISSENTING VIEWS OF THE HONORABLE WILLIAM D. DELAHUNT OF MASSACHUSETTS

I oppose the resolution of inquiry as reported by the Judiciary Committee. I do so based on the concerns expressed in the Minority's dissenting views, and for the additional reasons set forth below.

I

On September 9, 1998, Independent Counsel Kenneth W. Starr referred information to the House that he alleged may constitute grounds for impeaching the President. In the 30 days that have elapsed since our receipt of that referral, neither the Judiciary Committee nor any other congressional committee has conducted even a preliminary independent review of the allegations it contains.

In the absence of such a review, we have no basis for knowing whether there is sufficient evidence to warrant an inquiry—other than the assertion of the Independent Counsel himself that his information is "substantial and credible" and "may constitute grounds for impeachment."

I believe that our failure to conduct so much as a cursory examination before launching an impeachment proceeding is an abdication of our responsibility under Article II of the Constitution of the United States. By delegating that responsibility to the Independent Counsel, we sanction an encroachment upon the Executive Branch that could upset the delicate equilibrium among the three branches of government that is our chief protection against tyranny. In so doing, we fulfill the prophecy of Justice Scalia, whose dissent in *Morrison v. Olson* (487 U.S. 654, 697 (1988)) foretold with uncanny accuracy the situation that confronts us.

II

The danger perceived by Justice Scalia flows from the nature of the prosecutorial function itself. He quoted a famous passage from an address by Justice Jackson, which described the enormous power that comes with "prosecutorial discretion":

> What every prosecutor is practically required to do is to select the cases * * * in which the offense is most flagrant, the public harm, the greatest, and the proof the most certain. * * * If the prosecutor is obliged to choose his case, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation

> of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself. *Morrison,* 487 U.S. 654, 728 (Scalia, J., dissenting), *quoting* Robert Jackson, The Federal Prosecutor, Address Delivered at the Second Annual Conference of United States Attorneys (April 1, 1940).

The tendency toward prosecutorial abuse is held in check through the mechanism of political accountability. When federal prosecutors overreach, ultimate responsibility rests with the president who appointed them. But the Independent Counsel is subject to no such contraints. He is appointed, not by the president or any other elected official, but by a panel of judges with life tenure. If the judges select a prosecutor who is antagonistic to the administration, "there is no remedy for that, not even a political one." 487 U.S. 654, 730 (Scalia, J., dissenting). Nor is there a political remedy (short of removal for cause) when the Independent Counsel perpetuates an investigation that should be brought to an end:

> What would normally be regarded as a technical violation (there are no rules defining such things), may in his or her small world assume the proportions of an indictable offense. What would normally be regarded as an investigation that has reached the level of pursuing such picayune matters that it should be concluded, may to him or her be an investigation that ought to go on for another year. 487 U.S. 654, 732 (Scalia, J., dissenting).

Under the Independent Counsel Act, there is no political remedy at any point—unless and until the Independent Counsel refers allegations of impeachable offenses to the House of Representatives under section 595 (c). At that point, the statute gives way to the ultimate political remedy: the impeachment power entrusted to the House of Representatives under Article II of the Constitution.

III

Section 595 (c) of the Independent Counsel Act provides that:

> An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment. 28 U.S.C. 595 (c).

The statute is silent as to what the House is to do once it receives this information. But under Article II, it is the House—and not the Independent Counsel—which is charged with the determination of whether and how to conduct an impeachment inquiry. He is not our agent, and we cannot allow his judgments to be substituted for our own. Nor can we delegate to him our constitutional responsibilities.

Never in our history—until today—has the House sought to proceed with a presidential impeachment inquiry based solely on the raw allegations of a single prosecutor. The dangers of our doing so have been ably described by Judge Bork, who has written that:

> It is time we abandoned the myth of the need for an independent counsel and faced the reality of what that institution has too often become. We must also face another reality. A culture of irresponsibility has grown up around the independent-counsel law. Congress, the press, and regular prosecutors have found it too easy to wait for the appointment of an independent counsel and then to rely upon him *rather than pursue their own constitutional and ethical obligations.* Robert H. Bork, Poetic Injustice, National Review, February 23, 1998, at 45, 46 (emphasis added).

We must not fall prey to that temptation. For when impeachment is contemplated, the only check against overzealous prosecution is the House of Representatives. That is why—whatever the merits of the specific allegations contained in the Starr referral—we cannot simply take them on faith. Before we embark on impeachment proceedings that will further traumatize the nation and distract us from the people's business, we have a duty to determine for ourselves whether there is "probable cause" that warrants a full-blown inquiry. And we have not done that.

IV

What will happen if we fail in this duty? We will turn the Independent Counsel Act into a political weapon with an automatic trigger—a weapon aimed at every future president.

In *Morrison,* Justice Scalia predicted that the Act would lead to encroachments upon the Executive Branch that could destabilize the constitutional separation of powers among the three branches of government. He cited the debilitating effects upon the presidency of a sustained and virtually unlimited investigation, the leverage it would give to the Congress in intergovernmental disputes, and the other negative pressures that would be brought to bear upon the decision making process.

Whether these ill-effects warrant the abolition or modification of the Independent Counsel Act is a matter which the House will consider in due course. For the present, we should at least do nothing to exacerbate the problem. Most of all, we must be sure we do not carry it to its logical conclusion by approving an impeachment inquiry based solely on the Independent Counsel's allegations. If all a president's political adversaries must do to launch an impeachment proceeding is secure the appointment of an Independent Counsel and await his referral, we could do permanent injury to the presidency and our system of government itself.

V

If the House approves this resolution, it will not be the first time in the course of this unfortunate episode that it has abdicated its responsibility to ensure due process and conduct an independent review. It did so when it rushed to release Mr. Starr's narrative within hours of its receipt, before either the Judiciary Committee or the President's counsel had any opportunity to examine it. It also did so when the committee released 7,000 pages of secret grand jury testimony and other documents hand-picked by the Independent Counsel—putting at risk the rights of the accused, jeopardizing future prosecutions, and subverting the grand jury system itself by allowing it to be misused for political purposes.

These actions stand in stark contrast to the process used during the last impeachment inquiry undertaken by the House—the Watergate investigation of 1974. In that year, the Judiciary Committee spent weeks behind closed doors, poring over evidence gathered from a wide variety of sources—including the Ervin Committee and Judge Sirica's grand jury report, as well as the report of the Watergate Special Prosecutor. All before a single document was released. Witnesses were examined and cross-examined by the President's own counsel. Confidential material, including secret grand jury testimony, was never made public. In fact, nearly a generation later it remains under seal. The Rodino committee managed to transcend partisanship at a critical moment in our national life, and set a standard of fairness that earned it the lasting respect of the American people.

Today the Majority makes much of the claim that their resolution adopts the language that was used during the Watergate hearings. While it may be the same language, it is not the same process. Too much damage has been done in the weeks leading up to this vote for the Majority to claim with credibility that it is honoring the Watergate precedent. But it is not too late for us to learn from the mistakes of the last three weeks. If we adopt a fair, thoughtful, focused and bipartisan process, I am confident that the American people will honor our efforts and embrace our conclusions, whatever they may be.

WILLIAM D. DELAHUNT.

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