

Additional Dissenting Views of Representative Sheila Jackson Lee

A. STANDARD FOR IMPEACHMENT

George Mason, a Framers of the Constitution, stated that “high crimes and misdemeanors” refers to Presidential actions that are “great and dangerous offenses” or attempts to subvert the Constitution.” This is the proper standard for impeachment. James Hamilton, a former Assistant Chief Counsel for the Senate Watergate Committee, defined impeachment as “a crime against the state.” An impeachable offense must relate chiefly to official injuries done to society. Another one of our Founding Fathers Alexander Hamilton wrote in the Federalist Papers No. 65 that,

Those [impeachable] offenses which proceed from the misconduct of public men, or, on other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be dominated POLITICAL, as they relate chiefly to injuries done immediately to society itself.

As Hamilton makes clear, criminal conduct alone was and is not enough. The conduct also should involve public office. That should be the standard here as we proceed.

B. ARTICLE I- PERJURY BEFORE GRAND JURY

This Article of Impeachment focuses on the testimony that the President gave to Independent counsel’s grand jury on August 17, 1998. First, it is necessary to discuss what is necessary to garner a perjury conviction in federal courts. First, you must prove that a false statement was made with specific intent. That means that the prosecutor must prove that the declarant had a subjective awareness that his statements were lies. That means, no matter how false a statement is, if the person saying it believes he is telling the truth, then he cannot be found guilty of perjury. Because we have seen no conclusive evidence that the President believed he was, indeed, lying--this charge is simply unwarranted. Second, the false testimony must be about material facts.

I would also like to point out another principle of American law that is pertinent to this perjury allegation. The principle is that the unresponsiveness, the evasiveness, of a witness is not per se perjurious.¹ The burden is on the interrogator to elicit the clear statements that will be used as the basis of their case. And although every defendant is required to be truthful on the stand, there is no requirement that they be helpful to the prosecutor. Courts have continuously rejected perjury charges where there is more than one way of understanding the meaning of a question.² When asked if he engaged in “sexual relations” with Monica Lewinsky, it is clear that the

¹U.S. v. Bronston, 409 U.S. 352 (1973).

²U.S. v. Finucan, 708 F.2d 838, 848 (1st Cir. 1983); United States v. Lighte, 782 F.2d 367, 375 (2d Cir. 1986).

President was answering within the confines of the narrow definition that was given to him. I think we should all be concerned whether this is enough to support a perjury conviction, and then rises to an impeachable offense.

C. **ARTICLE II- ALLEGED FALSE STATEMENTS UNDER OATH IN THE JONES DEPOSITION**

One of the primary allegations of perjury arising from President Clinton's deposition testimony of January 17, 1998, appears to be that he lied under oath about the nature of his relationship with Ms. Lewinsky when he denied in that civil case that he had a "sexual affair," a "sexual relationship," or "sexual relations" with Monica Lewinsky. Webster's Dictionary, Random House, and Black's Law dictionary all define sexual relations as intercourse. But even if you do not believe that sexual relations does not specifically mean intercourse, there is strong evidence that this is what President Clinton believed. This Article should have been summarily dismissed and voted down because there are just too many holes and not enough clear and convincing evidence that the President committed perjury during the Jones deposition.

D. **ARTICLE III-OBSTRUCTION OF JUSTICE**

Monica Lewinsky's Grand Jury testimony clearly refutes allegations that President Clinton encouraged her to give perjurious, false and misleading testimony, "Neither the President nor Mr. Jordan asked or encouraged me to lie." This statement by Ms. Lewinsky was made in her February 1, 1998, proffer to the Office of Independent counsel. President Clinton's relationship with Lewinsky was consensual but morally wrong. On the other hand, Ms. Jones was alleging sexual harassment. Lewinsky's relationship with President Clinton was a tangential collateral issue that was not relevant. Therefore, the probability of its admittance at trial was unlikely because it would not have "any tendency to make the existence of any fact that is of consequence to determination of the Jones action more probable." There is no concrete evidence to substantiate the allegation that President Clinton encouraged a witness to execute a false affidavit.

Article III further alleges that on or about January 18 and January 20-21, 1998, President Clinton related a false and misleading account of events relevant to a federal civil rights action brought against him to a potential witness in that proceeding.

E. **ARTICLE IV-ABUSE OF POWER**

In 1974, the Judiciary Committee drafted three Articles of Impeachment against President Nixon. Article II charged Richard Nixon with "using the powers of the office of President of the United States, in violation of his constitutional duty...abuse of power. He has repeatedly engaged in conduct impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies. Here, *there was use of official power and therefore abuse of power.*

Article IV purports to enumerate “conduct that resulted in misuse and abuse of his high office” and credible information that President Clinton’s actions since January 17, 1998, regarding his relationship with Monica Lewinsky have been inconsistent with President’s constitutional duty to faithfully execute the Laws.” It is implausible that one of the counts of Article IV is that “The President misled the American people and the Congress in his public statement on August 17, 1998, when he stated that his answers at his civil deposition in January had been “legally accurate.” ***ABUSE OF POWER REQUIRES USE OF POWER!***

When the President misled the American public on August 17, it was not illegal nor impeachable. There is no evidence that the President’s cabinet members were required or instructed to relate information about non-official business to the news media. Further, if we follow this argument to its logical conclusion an individual would be required to maintain “ownership of the original conversation.” ***There was no use of power by the President, therefore there was no abuse of power.***

F. **THE NEED FOR A RESOLUTION OF CENSURE**

President Clinton’s conduct, although wrong, should OT be regarded as an impeachable offense because it was not the product of an illegal use of power or a breach of the public trust as suggested by the Framers of the Constitution. In 1691, Solicitor General Somers told the British Parliament that “the power of impeachment ought to be, like Goliath’s sword, kept in the temple, and not used but on great occasions.

Censure is neither a substitute for a federal pardon nor is it a cover-up. Therefore, the President is still subject to civil and criminal punishment for any alleged crimes he may have committed by the court system after he leaves office. ***The United States Constitution does not prohibit censure.*** However, several critics continue to suggest that censure is unconstitutional because there is no constitutional provision that expressly authorizes censure. Censure is a sensible historically proven solution for addressing the President’s disturbing behavior. It is time for America to move forward; it is time to put this unsettling controversy and divisiveness aside; it is time for the business of the American people to take first priority.

G. **CONCLUSION**

President Clinton’s behavior was reprehensible and lacking poor judgment, but it must meet the high constitutional test of a high crime or misdemeanor...for if it does not, then congress bears the burden of giving the President, or the accused “an honorable acquittal.” It must be non-partisan and rational because we are all duly sworn to uphold the Constitution which was written to “form a more perfect union.”