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Was Justice Served in the Impeachment and Trial of President Clinton?

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On February 12th 1999, the United States Senate, sitting as a court of impeachment in the trial of William Jefferson Clinton, 42nd President of the United States, voted on the two articles of impeachment, or charges, levied against the President. Presented by a group of 13 'House Managers', members of the House of Representatives Judiciary Committee (all Republicans in this case), both charges failed to gain a guilty verdict and result in the subsequent removal from office that is an impeachment trial's sanction. The charge of perjury was defeated by a vote of 55 to 45. The charge of obstruction of justice split the 100 Senators equally at 50-50, thus failing to reach the two-thirds majority threshold required for conviction.[i]

The vote was the culmination of a constitutional process that has its origins in Article II, Section 4 of the Constitution of the United States of America, which reads: "*The President, Vice President and all civil officers of the United States, shall be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanours.*"[ii]

The Constitution provides that the House of Representatives is sole authority to bring an article of impeachment before the Senate, which will act as a jury and effectively try the case. Can a case be made for looking at such a question as that posed in the title of this paper? Is it not clear and apparent - transparent even - given the full glare of the media spotlight which burned during this process, that 'justice' was done; what is more was seen to be done, openly and in accordance with the rules and procedures provided for in the constitution?

The source of the question comes from the man charged with carrying out the investigation of the President, the Independent Counsel. It was Robert W. Ray who declared, *"justice has been seen to have been served."*[iii] This paper will contend that arguments over guilt or innocence are not the yardstick by which to determine whether 'justice' was done. Indeed, perhaps the question of 'was justice served' is unanswerable with any degree of certainty. As with much in this whole affair, it depends on how one defines 'justice'. This paper will provide a definition of justice. It will examine whether the outcome of the investigation, impeachment and trial meets the requirements of that definition by conducting a chronological description and analysis and finally a summative and interpretative conclusion aimed at providing an answer to the question.

Outcome of the Investigation, Impeachment and Trial

"The terms of the accommodation certainly vindicate the actions by the House impeachment Managers based on the facts and the law. It's my hope that today's action will place all public officials, regardless of position, on notice that lying under oath will result in sanctions."[iv]

"Whatever the aftershocks of the case of the House managers versus Bill Clinton, it is evident that Congress has been compromised, the process has been bastardised, the people have been victimized and the press has been sensationalized, tabloidised and trivialized."[v]

By coming to an agreement with both the Arkansas Bar Committee on Professional Conduct and perhaps more importantly with Independent Counsel Robert W. Ray, the investigation that started with the Whitewater inquiry was finally over.[vi]

As a result Clinton left office without the fear of facing criminal prosecution. Instead he had to accept a five-year suspension from practising law and a fine of $25,000 in lieu of counsel costs as penalty for a violation of Arkansas Bar rules of conduct in written evidence in the Paula Jones case. In other words he was forced to admit that he lied under oath. He further agreed not to seek restitution of his legal expenses incurred during the Monica Lewinsky investigation, to which he was entitled.

This penalty was in addition to the contempt of court ruling made against the President by the Jones case Judge, Susan Webber Wright, concerning his evidence. Clinton had also made the decision to settle with Jones out of court, including legal fees and court costs. This represents the full scale of the penalty imposed on the President for his wrongdoings. He made the required statements of self-confession and technically left office as innocent as the day he entered.[vii]

But the case took a heavy toll on Clinton, especially when one considers he was judged innocent. He had to endure seven years of increasingly detailed personal and private examination of all aspects of his life and conduct and left office with a legacy that will almost certainly forever be presaged by the stigma of his humiliation at the hands of Congress. His public exposure as a liar and serial adulterer and his failings as a husband, father and man will always be talked about before any serious consideration of any political achievements.[viii]

In his statement on the closure of proceedings against him, Clinton admitted, referring to his wrongdoing, that he had *"paid a high price for it, which I accept because it caused so much pain to so many people."*[ix] For his part the Independent Counsel made it clear that he saw this as the rendering up of the 'final account' to President Clinton. In this statement Robert Ray drew upon the words of historical jurists to support his decision. Echoing the words of late Supreme Court Justice George Sutherland who believed *"that the prosecutor's foremost obligation is not to win a case, but to ensure that "justice shall be done,""* Ray went on to declare *"this resolution… means that justice has, in fact, been done."*[x]

Was Ray limiting his remarks to the purely technical administration of the rule of law? Is it not appropriate for a wider definition of justice to be composed, within which fairness, partisanship and morality are constituent elements? In other words, is justice more than just the legal system and the penal code? The first task of this analysis will therefore be to define the terms under which the question will be answered.

"It depends on what the meaning of 'is' is."[xi]

"At the time of the deposition, it had been – that was well beyond any point of improper contact between me and Ms. Lewinsky. So that anyone generally speaking in the present tense, saying there is not an improper relationship, would be telling the truth if that person said there was not, in the present tense; the present tense encompassing many months."[xii]

Judge Ray 'inherited' the *Referral from Independent Counsel Kenneth W. Starr*[xiii], universally known as the Starr Report and did not produce any more evidence. The actions described in the Starr Report itself were largely unchallenged by the President's legal team. Furthermore the President had from January 1998 until the trial ended in which to give his analysis of events.

That he chose not to on numerous occasions under oath and in any number of interviews and other opportunities when pressed on the matter suggests that there was very little, if anything that was factually incorrect within the Starr Report. I will analyse assumptions made both within the report and by those interpreting it at the time. This consequently means that the report will be challenged and criticised, but not its statements of fact. Nevertheless it remains true that justice does not operate in a vacuum and this matter was certainly no exception. I will therefore draw on sources from the wider culture and society at large in order to assist the debate surrounding justice.

Before it is possible to put Judge Ray's words to the test it is necessary to clarify what the terms, scope and measurement of this paper are. Definitions of justice made by protagonists in President Clinton's impeachment exist only in the context in which they were made. As this was a partisan battle for victory it is incorrect to 'adopt' them in what should be a bipartisan discussion.

I have turned to a source untainted by partisanship or the politics of the day. I have utilised definitions of justice expounded by *Webster's Third International Dictionary*. Under the entries for 'justice', 'just', 'justly' and 'do justice' there are a number of phrases and meanings which help greatly in coming towards a composite definition which will serve this paper's purpose. Clearly Judge Ray was thinking essentially of 'legal justice' in his remarks. It is therefore apposite that our discussion considers "*conforming to or consonant with what is legal or lawful"* and, "*in a manner appropriate to or required by the case,"* as given in seeking to agree or disagree with him and that "*the assignment of merited rewards or punishments,"* is the outcome both of his enquiry and the matter as a whole.

However, so much of what has been written and said about this matter demands that we take a broader definition than the purely legal in establishing its full meaning and impact. Therefore, "*to treat fairly or according to merit,"* and finally, "*acting or being in conformity with what is morally right or good"* complete the definition.

Deception and Discovery

"In his January 17th deposition for example, this man renowned for his memory of people and places answered "I don't remember" 71 times, "I don't know" 62 times, and "I don't believe so" or "I don't think so", etc., another 134 times."[xiv]

"...the OIC subpoenaed a Washington bookstore, Kramerbooks & afterwords, for receipts of all her book purchases since 1995. "It was such a violation," she complains. "It seemed that everyone in America had rights except for Monica Lewinsky. I felt like I wasn't a citizen of this country anymore."[xv]

The investigation of the President was authorised under the United States Legal Code as prescribed in the Independent Counsel Act. Originally Attorney General Janet Reno chose Robert Fiske to act as Independent Counsel and investigate whether there was any wrongdoing within the executive branch concerning a failed real estate deal in Arkansas, known as Whitewater.[xvi] Initial investigations surrounding this matter had appeared to implicate Clinton whilst he was governor of the state.

On August 9th 1994, Kenneth Starr replaced Fiske after lobbying by Republican politicians complaining that Fiske was 'soft' on Clinton. Starr was a former Solicitor General in the Bush administration and clearly a Republican. Much has been made of this by Clinton supporters in an attempt to portray Starr as ideologically akin to those anti-Clintonites behind the Jones suit. But considering that no-one had heard of Lewinsky in August 1994 (not even Clinton) and that nobody had any idea that what did happen would happen it is churlish to suggest that Starr was *premeditated* in his determination to set out to trap Clinton over sexual peccadillo's.

How did an investigation into a land deal turn into one of the greatest sex scandal stories of the century? The seeds for this were sown even before Starr was appointed as Independent Counsel and were planted on the President's home soil in Arkansas.

On May 6th 1994, Paula Jones, a former Arkansas state government employee, filed a sexual harassment suit against President Clinton accusing him of an unwanted sexual advance in a Little Rock hotel room on May 8th 1991. This suit was eventually dismissed on April 1st 1998, Judge Susan Webber Wright ruling that even if proven, Jones did not suffer any form of hardship or injury as a result, so was due no damages. Clinton later settled with Jones with no apology or admission of guilt.[xvii] It was not however, the guilt or innocence of the President in this particular matter that caused him so many problems later on.

The trials and tribulations that beset Clinton this time were caused by his legal relationship with a member of his White House staff and his illegal attempts to prevent the knowledge of that relationship coming to the attention of the public by having to testify about it in the Jones case.

His first problem arose on May 27th 1997, when the United States Supreme Court ruled unanimously to allow the Jones case to conclude whilst the President was still in office.[xviii] In order to attempt to find similar behaviour by Clinton so as to support Jones' case her lawyers asked Clinton to provide details of any sexual relations he had engaged in with other Arkansas state or federal employees. They would also question him in person on this matter.

Jones' lawyers knew about Lewinsky (because they had been told about her) and as soon as the President denied the affair, as he did during his January 17th 1998 deposition, he set off the chain of events that would eventually lead to impeachment proceedings.[xix]

President Clinton's lawyer could have advised his client not to co-operate with the investigation, which although it would have led to Judge Wright finding Clinton in contempt and probably being fined, would not have exposed the President to questions about his personal life. The case would have been dismissed sooner and there would have been no Starr Report or impeachment proceedings.

How did Starr find out about Lewinsky and why did he get authority to pursue this when he was supposed to be investigating Whitewater? How did he manage to get Lewinsky to incriminate the President in perjury, subornation and obstruction charges?

Lewinsky shared details of her relationship with Clinton with a co-worker who also had been a one-time White House secretary, Linda Tripp. What Lewinsky did not originally realise was that Tripp had an agenda other than that of friendship in her conversations with her. Tripp had *"a reputation for taking young interns under her wing, thereby gaining their confidence respect and allegiance."*[xx] What she also had was a dislike of Clinton bordering on hatred, a reputation for scandalous gossip and a plan to write a book provisionally entitled '*What I saw in the Clinton White House.*' She was the source of a *Newsweek* article in August 1997, concerning Clinton's alleged sexual advances towards Kathleen Willey, another White House aide. At the time Clinton's lawyer Robert Bennett poured scorn on Tripp's claims, branding her unreliable.[xxi]

As a result of the story Tripp was almost certain to be contacted by lawyers acting for Jones eager to find evidence of a pattern of behaviour by Clinton. Tripp claimed that her decision to record, first in note form but then on tape, her conversations with Lewinsky came out of a desire to be able to prove her story rather than have Bennett and the White House 'spin doctors' humiliate her again. However, Tripp had contact with self-confessed right-wing publisher Lucianne Goldberg, regarding the aforementioned book, who reportedly told her to get hard evidence of what Lewinsky was telling her about her affair with the President and that mention of the story with her name linked to it would increase her book deal chances.[xxii]

Tripp's recording of their conversations supported details of the affair between Clinton and Lewinsky. This gave Starr ammunition with which he could start an inquiry and pressure Lewinsky to confess all and crucially 'allow' Clinton to perjure himself. It did not however give Starr the 'smoking gun' to *prove* that the affair had happened, to *prove* it was sexual in nature or to *prove* that both Lewinsky and Clinton had criminal intent in lying in order to conceal it, thereby perjuring themselves.

Tripp's claims of self-defence fail to convince. She told *Newsweek* to look for evidence of Clinton having an affair with an intern. She admitted in her grand jury evidence that she wanted this to become public knowledge.[xxiii] She continued to brief Goldberg, a devout anti-Clintonite who was indicative of a group determined in their efforts to incriminate, and hopefully force the removal of, President Clinton on whatever grounds they could find.[xxiv]

Lewinsky's name subsequently appeared on the list of witnesses that the Jones lawyers wished to hear from. The request for disclosure specifically mentioned personal gifts exchanged between Clinton and Lewinsky, which made it clear that the Jones team had been provided with details of the affair. Clinton, according to Lewinsky, advised her to present an affidavit to the court to avoid deposition and explained to her that she would only have to provide the gifts she had in her possession to the court. This conversation and its interpretation was a key factor in the matter. Lewinsky gave evidence that as a result she decided to give the gifts to the President's private secretary Betty Currie for safekeeping.[xxv] The Starr Report suggests that Clinton told her to rid herself of the gifts and told Currie to go and fetch them from Lewinsky. If this was true then it was a clear conspiracy to obstruct justice.

In early January 1998 Tripp disclosed all she knew to Starr. Her interview by Starr's team took place the day prior to President Clinton's deposition in *Jones v. Clinton*, January 17th 1998. Starr shared knowledge with the Jones lawyers. He was aware through Tripp that Lewinsky had signed a false affidavit claiming no relationship with the President; Tripp had it on tape that she had done so. She had also tried to get Tripp to falsely testify. Lewinsky, pre-occupied with stopping Tripp from disclosing details of her affair with Clinton had given Tripp written advice on how to concoct a similarly untruthful affidavit herself that would suppress knowledge of the affair after Tripp had threatened to tell the truth to the Jones lawyers.[xxvi]

In addition to getting a full 'run-down' from Tripp, the Jones/Starr team extended their net to include Lewinsky herself. With the assistance of Tripp, FBI officers working for Starr detained Lewinsky, also on January 16th. Lewinsky maintains that they used undue psychological pressure on her in an effort to persuade her to, in effect, do as Tripp had done, by recording private conversations with the President. The fact that she initially refused to implicate the President in perjury claims meant that Starr would need to find other ways of corroborating the Tripp tapes without Lewinsky's help. This made Lewinsky subject to prosecution.[xxvii]

Jones' lawyers were thus 'lying in wait' for the President at his deposition on January 17th 1998. He denied ever being alone with Lewinsky and despite being given an extraordinarily detailed, but euphemistic definition of sex, claimed never to have had sexual relations with her.[xxviii]

Clinton continued with this line outside court. On January 26th he denied any wrongdoing, legal or moral in front of television cameras. He was emphatic and forceful in declaring *"I did not have sexual relations with that woman, Miss Lewinsky…I never told anybody to lie. These allegations are false."*[xxix] He repeated this privately to his staff and fellow Democrat politicians. So much so that the following day, January 27th, Hillary Rodham Clinton told NBC's *Today* programme that the whole affair was *"a vast right-wing conspiracy."* It is true that Goldberg, Tripp and the Jones lawyers (sponsored by anti-Clintonite funds) were politically motivated, but this does not make it a vast conspiracy, although it does have a clear impact on 'justice' as defined for the purposes of this paper.[xxx]

Starr, now armed with his information from Tripp, was aware that President Clinton would probably attempt to suppress the truth in his deposition to the Jones lawyers. He was thus anticipatory of the crime when on January 16th he was granted a request made of his overseeing panel to extend the terms of his inquiry to include possible obstruction of justice in the case of *Jones v. Clinton*.[xxxi]

Starr's team detained Lewinsky for over twelve hours on January 16th, keeping her away from her attorney, Frank Carter, who, having no idea of developments, faxed her perjurious affidavit to the Little Rock, Arkansas courthouse where Judge Wright was hearing the Jones complaint. Thus a misdemeanour, *signing* a knowingly false affidavit, became a felony offence, *submitting* a knowingly false affidavit.[xxxii]

In view of the existence of the Tripp tapes, which whilst not proving him a liar, cast enough doubt to set Starr investigating for corroboration, Clinton's choice of untruth and evasion before the Jones lawyers was therefore a crucial element in escalating matters. Without Lewinsky's assistance Starr therefore undertook, between January and August, a meticulous and hard-edged investigation into her involvement with Clinton. Using the format of a grand jury, Starr sequestered as much detail as he could from phone records, White House entry logs, and Secret Service personnel and by issuing a subpoena to almost anybody who had had anything to do with Lewinsky in the previous three years. For its part the White House conducted a policy of obstruction and delay. It 'dragged its feet' over providing records and launched a legal attempt to try to stop Secret Service officers giving evidence to the grand jury.[xxxiii]

Amongst those subpoenaed was President Clinton's Secretary, Betty Currie. Seen as a conduit between the President and Lewinsky, she was centrally placed to implicate Clinton by giving details of her knowledge of the affair and by telling Starr who told her to retrieve Lewinsky's gifts. For the most part Currie stalled. However, she did tell Starr that on returning from giving evidence to Jones' lawyers, the President had spoken to her concerning his affair with Lewinsky. Clinton admitted that he said, *"You could see and hear everything" and "Monica came onto me and I never touched her, right."*[xxxiv] If these were veiled instructions to Currie as to what she was to say if questioned, as Starr asserted, then Clinton probably suborned Currie to perjure herself. Clinton would claim that what he said to Currie was meant as a means to jog his own memory. However as a lawyer himself he knew that Starr would subpoena Currie.

Starr's case against the President was thus assisted in great part by the President choosing to repeatedly deny any wrongdoing. He continued to adopt this position whenever questioned and his telling the story to his closest advisors and cabinet officials led to a united front being set up around him. Tabloid reporting of salacious details of Lewinsky's past was augmented by White House sources.[xxxv]

On July 28th 1998, Starr and Lewinsky's lawyers finally reached agreement on an immunity deal that removed Lewinsky from legal threat. Her initial reticence at implicating the President had evaporated as he and his aides had intensified their campaign of vitriol against her. With her co-

operation, Starr could now produce the 'smoking gun,' required to prove beyond doubt that much of what Clinton said under oath about his relationship with Lewinsky was lies.[xxxvi]

In a taped conversation with Tripp, Lewinsky had referred to an encounter with the President where her dress had become stained with his semen. At Tripp's suggestion she kept the dress in that state.[xxxvii] Starr now had access to the dress and had the stain DNA analysed. The existence of the dress proved both the essential truth of much of the Tripp tapes, which had now 'done their job' in forcing Lewinsky to co-operate with Starr, and were corroborated by Lewinsky's 'new' (post-immunity) testimony.

The President now came under severe pressure from Starr to give evidence to his grand jury. Clinton agreed to give evidence via closed-circuit television from the White House. The President was clearly in a dilemma, albeit one of his own making. If he admitted that he had, actually, engaged in a sexual affair with Lewinsky, then he opened himself up to a charge of perjury in his January 17th testimony in *Jones v. Clinton*. If he continued to deny the affair then Starr had the evidence of the now 'tame' Lewinsky, especially 'the dress', to contradict him. He would thus be open to a charge of perjuring himself before the grand jury.

For some weeks prior to his appearance the media debated Clinton's options. It was now widely accepted that he had in fact engaged in sex with Lewinsky. Many observers counselled the President to admit the affair and then offer a 'realistic' apology to the American people. Polls had been demonstrating that people did not feel that he should be removed from office.[xxxviii] Clinton would then be throwing himself on the mercy of the Republican Congress, which faced with the task of trying to remove a popular and popularly twice-elected President would probably back down. Such was conventional wisdom.

On August 17th 1998 President Clinton gave evidence to the grand jury. He was specifically asked about the legality of his answers to questions posed by the Jones lawyers. Despite the evidence of Lewinsky to prove his answers false, the President stuck by his story to a great degree. He accepted that he had conducted an improper relationship with Lewinsky, but still maintained he had not conducted sexual relations with her. To do this he relied on the infamous definition, well known throughout the world for its euphemistic qualities and its failure to correspond with what most people would consider sex; Lewinsky would be having relations with him, but he would not be contemporaneously having relations with her. He also admitted that as the Jones lawyers were his adversaries, he had tried to give legally correct answers without being helpful, e.g. responding to the actual wording of the question rather than its contextual meaning. [xxxix]

At the end of Clinton's testimony it was clear that he was caught 'red-handed' on the moral 'charge' of having had sexual relations outside of marriage with a young member of his staff. It was clear too, that he had at best allowed, and at worst sanctioned, a full-scale attack on the credibility of Lewinsky, who was proven to be truthful in most of what she said. Aware of the fact that she had testified truthfully to Starr and was corroborated by other evidence he had assembled, he must have known his lies were about to be exposed.

For Starr the business at hand was to report to the House of Representatives Committee on the Judiciary in order for them to be able to decide whether grounds had been established that would lead to an impeachment inquiry.

For Clinton the matter at hand was to deal with a firestorm of controversy concerning almost all aspects of his conduct since January (or even since November 1995, if you look at it one way). He decided to attempt to head off that inevitable furore by addressing the nation on television on the evening of his grand jury appearance.

Confession and Counterattack

"...He denatured his words of 'regret' and responsibility-taking with rancour directed explicitly at Kenneth Starr...the defiant rhetoric instantly re-polarised Bimbroglio. And it brought forth, almost instantaneously, vocal calls for resignation and impeachment by Republicans who, until now, had managed to keep such threats largely to themselves."[xl]

Some of those I talked to were angry at him for dragging it out and disgusted that he really did something so boorish. Others expressed weariness at Clinton's endless semantic hair-splitting. "This is the classic 'I didn't inhale,'" said one top lieutenant. "I wish he didn't have that tendency. It's something very painful."[xli]

By repeating the false testimony of the Jones deposition and also engaging in the same battle of semantic argument over the definition of acts that require no detailed definition, the President was demonstrating the paucity of his case against the accusations. He had added a second strand of perjury and it would also be shown to all Americans that, as he finally admitted to a relationship with Lewinsky, his 'from the heart' denials of the previous five months had been a sham. He was thus not only a liar, but had continued to repeatedly tell the same lie even though those hearing it had long since ceased to believe it. It was this lack of regard for the process and his attitude that he could seemingly do as he pleased, that shone through in the President's short address on television on the evening of August 17th.

Having decided not to take the opportunity to tell the 'whole truth' it was essential for the President to try to strike a tone which would stave off increasingly vociferous calls for him to resign or face impeachment. Two weeks before the President's testimony and address, Senate Judiciary Committee Chairman, Orrin Hatch (Republican-Utah) who would be a key figure in any impeachment process, had held out an olive branch to Clinton. Speaking on NBC's '*Meet The Press*', he had suggested that if the President made a fulsome apology then the matter could still be ended short of impeachment. Clinton ignored this and other similar 'peace offers'.

He began by appearing to pave the way for the type of confession 'required' to bring matters to a close, by accepting that *"I must take complete responsibility for all my actions, public and private,"*[xlii] before going on to admit to the falsehood of his position since the matter was first aired: *"Whilst my answers (to the Jones lawyers), were legally accurate, I did not volunteer information. Indeed, I did have a relationship with Miss Lewinsky that was inappropriate. In fact it was wrong. It constituted a critical lapse in judgement and a personal failure on my part for which I am solely responsible."*[xliii]

He addressed the fact that he had consistently said the opposite for five months, *"my public comments and silence gave a false impression"* and that this *"misled people, including even my wife. I deeply regret that."*[xliv] Clinton spent the remainder of his speech in full attack on those pursuing him. The Jones case was, a *"politically inspired lawsuit,"*[xlv] and the reason he answered her lawyers as he did was not his shame at potentially being found to have had an affair nor the fact that this would give credibility to Jones. It was instead out of *"real and serious concerns about (the) Independent Counsel investigation."*[xlvi]

Clinton thus hurtled into the attack on Kenneth Starr claiming, *"this has gone on too long, cost too much and hurt too many innocent people...now this matter is between me and the two people I love most, my wife and our daughter, and our God."*[xlvii] His evidence to the grand jury, he demanded, must represent the end of the matter, for *"it is private and I intend to reclaim my private life for my family. It is nobody's business but ours. Even Presidents have private lives. It is time to stop the pursuit of personal destruction and to end prying into private lives and to get*

on with our national life."[xlviii] Growing visibly frustrated and angry, the President concluded, *"Now it is time, in fact it is past time, to move on."*[xlix]

The overall effect of the address was that the President appeared to consciously 'throw down the gauntlet', both to Starr and to the Republicans. His approval ratings in polls were high and he obviously felt he could take on his detractors in this manner.[l] After all, he was popular and Starr was not, much of his unpopularity being created by Clinton's supporters, whether they believed Clinton's innocence or not.[li] Clinton seemed to be relying on the fact that he was a twice-elected President; indeed elected both times when there was much concern about the very sort of behaviour he now admitted to with Lewinsky. Moreover, the fact remained that in order to unseat him the Republican Party would have to 'fly in the face' of that popularity.

It is easy to suggest that the President, by his 'anti-conciliatory' posture and 'aggressive defensiveness' gave succour and energy to those most determined to do him harm and forced his defenders to seek a different form of defence than claiming innocence. The polarisation was completed by the manner in which the partisanship of Republican-Democrat congressional politics became the driving force behind the whole outcome of the affair.

Partisanship and Precedent

"Some years ago, Douglas MacArthur in a memorable speech at West Point, asserted the ideal of our military forces as duty, honour, country. You don't have to be a soldier in a far off land to feel the force of those words – they are our ideal here today as well. We here have another ideal, to attain justice through the rule of law. Justice is always and everywhere under assault and it is our duty to vindicate the rule of law as the surest protector of that fragile justice."[lii]

"On the basis of my research and experiences, I am convinced that if President Clinton were an ordinary citizen, he would not be prosecuted. If President Clinton were ever to be prosecuted or impeached for perjury on the basis of the currently available evidence, it would indeed represent an improper double standard: a selectively harsher one for the president…the usual laxer one for everyone else."[liii]

It was perhaps in hope as much as anticipation that the Chairman of the House Committee on the Judiciary, Representative Henry Hyde (Republican–Illinois) made his initial remarks on the day following the President's testimony and televised address. *"If the Independent Counsel has any substantial and credible information that may constitute grounds for impeachment, he has an explicit statutory duty to send a report to the House. It is our Constitutional duty to provide a full, fair and independent review of these facts in their proper context. Until then, we simply should not speculate about how the House would proceed."*[liv]

The debate now was centred not on whether the President had committed any wrongdoing, but whether such conduct amounted to 'high crimes and misdemeanours' as the constitution demands if impeachment is to follow. Throughout this time the President continued to receive favourable opinion poll scores on his performance and whether he should stay in office.[lv] His public defenders were still 'out in force', but now rather than attacking Lewinsky they attacked Starr as a 'patsy' for the Republican Party and the Republican Party itself.[lvi] There was very little public criticism of the President from Democrat ranks, despite the fact that he had specifically and personally told them that the charges were groundless earlier in the year.

On September 9th the Starr Report was delivered to Congress. It was eight thousand words in length, with over fifty thousand words of supporting evidence and seventeen carrying cartons of other documentation. At its core was the allegation of eleven separate grounds for impeachment of President Clinton.[lvii]

President Clinton and his legal team did not wait to receive a copy of the report before they condemned it. They released what was essentially a 'pre-buttal', in anticipation of what the Starr Report might contain.[lviii] However, it went further than merely repeating the President's version of events. In direct and confrontational language the document questioned just about every possible aspect of the affair to date. For example, when discussing 'original intent' the President's counsel were dismissive in the extreme of pro-impeachment claims of justification, *"it was never designed to allow a political body to force a President from office for a very personal mistake."[lix]*

A general summation of the style and content of the document can be gathered from this extract. *"...the OIC report is left with nothing but the details of a private sexual relationship, told in graphic details with the intent to embarrass. Given the flimsy and unsubstantiated basis for the accusations, there is a complete lack of any credible evidence to initiate an impeachment enquiry concerning the President. And the principle purpose of this investigation, and the OIC's report, is to embarrass the President and titillate the public by producing a document that is little more than an unreliable, one-side account of sexual behaviour."*[lx]

The Judiciary Committee was not tardy in its own examination of the report. On September 10th, Hyde obtained bipartisan agreement to enable the release of 'narrative portions' of the Starr Report to the public, once the Judiciary Committee had the opportunity to review such material. The first releases took place the following day.

The process of evaluation of the material presented by Starr continued until early October. In the meantime the House of Representatives took the unprecedented decision to release a videotape of President Clinton's grand jury testimony along with a further two thousand, eight hundred pages of the Starr Report. This footage actually helped support the President in the eyes of the public. It showed him in obvious distress as unseen voices off camera asked him searching and detailed questions about his sexual proclivities.

Whilst the White House condemned the release as a partisan measure aimed at letting Americans actually see their President lie under oath and hence disapprove of him even more, they must have been pleased that it appeared to have the opposite effect and garner him more sympathy. For some Americans this was a 'bridge too far' and they blamed the Republicans for demeaning the office of the presidency beyond a level they were prepared to accept.

It was not as if Clinton was looking for a further term in office and he was, it was generally agreed, performing his duties well. Above all, they had known he was 'Slick Willie' when they elected him each time. It must have been galling for pro-impeachment forces and anti-Clintonites to see that the response of the American people was still an overwhelming "so what."[lxi]

Hyde showed resoluteness and determination to be seen to be following an impartial and bipartisan approach and to be painstakingly thorough in the investigation. House Democrats knew Hyde's resolve better than most and tried to 'short-circuit' the inquiry by 'pre-defining' impeachable conduct. The aim was to establish a threshold for 'high crimes and misdemeanours' under which the President's actions would be viewed not serious enough to warrant continuing.

Republicans on the committee saw this as undermining the seriousness of the alleged crimes. They preferred to retain the right for the House to, in effect, be the sole arbiter on what does or does not constitute an impeachable offence. Whilst this could be argued to place the executive at the mercy of the legislature, which was clearly not the intention of the framers of the constitution, there was a majority in favour of proceeding in this manner.[lxii]

The House Committee on the Judiciary, voting along party lines on October 4th, passed a resolution determining that an 'impeachment inquiry' be held. The full House began to debate whether to so enquire on October 5th,[lxiii] with Hyde making an opening statement that, if taken without regard to the political context of the affair, appears difficult to argue with.

"We are here to ask and answer this one simple question: based on what we now know, do we have a duty to look further or to look away? We are constantly reminded how weary America is of this whole situation, and I daresay most of us share that weariness. But, we as members of Congress took an oath that we would perform all of our constitutional duties, not just the pleasant ones. We cannot turn away out of partisanship or convenience…It would be a violation of our own public trust…In this difficult moment in our history, lies the potential for our finest achievement – proof that democracy works."[lxiv]

These words are in marked contrast to the argumentative and confrontational style of the Clinton 'rebuttal' and attempt to claim the 'higher ground' in the debate for the Republican's. However, even amongst those serving on his committee resided some who were less inclined to see the matter in procedural and constitutional terms and more interested in the political angle and the opportunity to 'get rid' of a President they personally objected to.

Representative James F. Sensenbrenner Jr. (Republican-Wisconsin) used more direct language to summarise the import of proceedings then taking place. *"Someone is telling the truth and someone is lying"* was a succinct, although perhaps unsubtle way of looking at the issue.[lxv]

Sensenbrenner again produced appropriate, but direct terms to encapsulate the decision the full House was faced with in its October 8th vote on whether to hold an inquiry. *"If the House votes down this inquiry, in effect, it will say that even if President Clinton has committed as many as 15 felonies, nothing will happen!"*[lxvi] Thirty-one Democrats were minded to ignore party whips and voted in favour.[lxvii]

There was then a short but critical hiatus. On November 3rd Democrat candidates did better than widely anticipated in the mid-term congressional elections. The election was in the eyes of the media a virtual referendum on Clinton. The fact that there was not a wholesale exodus of Democrats to vote for Republicans was analysed as repudiation of the Republican's approach to the whole Lewinsky affair. The results were seen to possibly herald a swift end to matters – yet again those doing the analysis underestimated the venerable Hyde and his determination to see the 'job done'.[lxviii]

When the Judiciary Committee reconvened on November 5th, Hyde, aware of the apparent public irritation over the continued 'attack' on the President set out the schedule for completion of the inquiry. Early November was marked by a series of background hearings and presentations. The Judiciary Committee Sub-committee on the Constitution invited a range of scholars and historians to speak on the history and scope of impeachment.[lxix]

The overwhelming opinion from amongst this group was that the charges against the President did not amount to impeachable conduct and would not have been deemed so by the framers of the constitution. For example, Professor Jack Rakove of Stanford University stated, *"Whatever misconduct took place lies at the far boundaries of what might be considered impeachable,"*[lxx] Arthur Schlesinger Jr. declared more directly, *"The charges levied against the President by the Independent Counsel plainly do not rise to the level of treason and bribery."*[lxxi]

With such a wealth of academic and historical opinion against them and with a clear message having been sent by the American people, in opinion poll after opinion poll and in the November 3rd elections it is hard to fathom why the Republican Party in the House continued to pursue this

matter. Even if the matter did go to the Senate for trial as was destined, then the two thirds majority needed to impeach the President would be very unlikely to transpire as there were forty five Democrat Senators who could vote down the charges.

A key to why the House Republicans pressed on; even when their decision to do so appeared to distance themselves from Republican Senators can be found in an article written by Henry Hyde for the *Chicago Tribune* on February 19th, 1999, shortly after the President's acquittal. He states, "the impeachment…was a historic constitutional test…of whether the United States government remains a government of laws, not of men. At issue was the Constitution and the rule of law. The Constitution and the rule of law would win, or they would lose."[lxxii]

There are no grounds for suggesting that Hyde was being anything other than honest regarding his own motivation. Nevertheless it remains that he was very much the unwitting 'straight' face for a pernicious and vindictive group of confirmed anti-Clintonites, who therefore revelled in his refusal to be shipwrecked on the sea of public opinion. It is also fair to suggest that, given the level of public support he enjoyed and the clear reticence of Senators to remove him from office the President could have ended the whole business at almost any stage by a brief, but heartfelt admittance of wrongdoing and apology.

On November 19th the full impeachment inquiry began. No new evidence was heard, but Starr gave a blow-by-blow recital of the main allegations he had formed, in an appearance lasting many hours. Following this the Judiciary Committee, on November 26th drafted four recommended articles of Impeachment. They alleged perjury, subornation to perjury, abuse of office and obstruction of justice. Two weeks later the Judiciary Committee voted (along party lines) to adopt these drafts and present them to the full House of Representatives.

On December 19th, two of the Articles of Impeachment were rejected, but two alleging perjury and obstruction of justice were carried by votes of the House of Representatives. Debate about trial rules and procedures took place before the trial of the President was set to start on January 7th 1999.[lxxiii]

Anti-Climax and Acquittal

"All in all the impeachment process was expeditious, enlightening and devastating, both to Clinton's credibility and to the case for impeachment. History will show that Bill Clinton as president was a liar, a woman-abuser, an adulterer and someone who showed contempt for his country."[lxxiv]

"Now that the Constitution has been rescued and sexual McCarthyism discredited, perhaps the most durable legacy of the Lewinsky mess is the central location of the right-wing slime on the American political landscape."[lxxv]

The trial began on January 13th 1999 and lasted just over five weeks. There were many protracted procedural debates both inside the Senate chamber, almost all decided by votes split along party lines and in the office of Senate Majority Leader Trent Lott (Republican-Mississippi). The Senate managed the trial closely, not allowing the calling of witnesses and generally ensuring that the trial was conducted with due deference to the seniority and sobriety of their branch of Congress.[lxxvi]

The one hundred Senators were sworn in as 'judge-jurors', but the implied independence of mind and confidentiality of thought of that position did not last long. In fact many Senators were

already on record with their views and many of those who were not soon ensured they were by walking out of the chamber immediately after each session to give instant opinion on proceedings to the waiting media.

The whole trial lacked any sense of suspense. The Democrats were almost 'duty bound' in the world of bifurcated politics, to vote 'for' the President on all key issues. There appeared to exist a small group of 'moderate' Republicans who, whilst clearly finding the conduct of the President objectionable and probably felonious either did not believe the case for deeming such conduct impeachable was strong or did not wish to enable the removal of a popular President on a charge viewed with derision by large sections of American society. The potential price that the Republicans might pay at the hands of the electorate, who saw the dragging out of the affair as their fault was simply not worth the risk.[lxxvii]

Rather like Hyde however, Lott felt it necessary to 'go the distance' with the trial. No small part of the Republican dilemma lay in the fact that whilst they were essentially a centrist group in the Senate and therefore generally did not have ideological hatred of Clinton, they were nevertheless part of a party that had moved far to the right of them and who would expect at least a demonstration of righteous indignation against the President.

It was perhaps a 'blessing in disguise' for Lott that his Democrat opposite number Tom Daschle (Democrat-South Dakota), was in a similar situation. Democrats were keen to be seen to express their dislike for the President's conduct (and perhaps for his using them as a 'human shield' around his lies), but did not wish to allow him to be removed from office. Although a few 'old fashioned' liberal Democrats introduced motions to either curtail the trial or leave matters short of voting on the charges, Daschle marshalled his forces with equal discipline as did Lott.

It was therefore with no element of shock or even mild surprise that on February 12th 1999 both charges were defeated under the rules of impeachment trials.[lxxviii] Such an outcome had been fairly obvious from the point at which it became evident that the House would push matters to the ultimate stage in the process.

In the end both sides seemed satisfied and relieved that the whole matter was over. There was some bitterness on behalf of the 'House Managers' and Starr 'made noises' about leading a criminal prosecution against the President whilst he remained in office.[lxxix] However, the country did not appear scandalised that the President escaped removal, nor did the state collapse in crisis at the sight of a vote to remove him. The fears expressed by both sides as to what would happen if the Senate either did or did not remove the President failed to materialise.

Politics returned to normal quickly afterwards and the attention turned to other matters, most notably the Presidential Election 2000 and the issue of whether 'Hillary' (minus the Clinton, let alone the Rodham) would run for the Senate. Clinton continued, after a decent period for 'reflection' to govern as if nothing had happened, and began the long process of 'winding down' his presidency.

With the election of 2000 bringing a Republican administration under George W. Bush to the White House the future jeopardy for Bill Clinton once again came into question. The Ray 'accommodation' thus proved an 'eleventh hour' rescue for Bush, enabling him not to have the difficult task of deciding whether to grant a pardon against prosecution for Clinton as Gerald Ford had done for Richard Nixon in the early 1970s.

Interpretative Summation

"By forcing an informal plebiscite not on his own personal morality, but on the morality of everybody except himself, Clinton had achieved the acme of corruption that comes with the enlistment of wide and deep complicity."[lxxx]

"Americans have reached a level of political sophistication at which they can take in their stride the knowledge that the nation's political and intellectual leaders are their peers, and not their paragons. The nation does not depend on the superior virtue of one man."[lxxxi]

It is hard to argue that proceedings were not carried out in a manner *conforming to or consonant with what is legal or lawful*. The investigation was conducted under the auspices of a federal law – The Independent Counsel Act. This law was a 'Democrat' law brought in after Watergate and the Attorney General interpreting it was an appointee of the target. It is also true that the Jones case *was* a 'politically inspired' lawsuit, with the plaintiff being funded by right-wing ideologues fundamentally opposed to the respondent. However Paula Jones was someone with a 'genuine' grievance, 'adopted' by those with a hatred of the President, but with no issue on which to attack him. It was not a case of the entire allegation being fabricated.

Starr's methods were severely criticised by the Clinton team. Much of this was clearly tactical, meaning to cause mischief and bad publicity and undermine the investigation. Nevertheless the case was specifically enhanced by Tripp's audio taped conversations with Lewinsky. Without these Lewinsky and Clinton could have denied all with no fear of perjury since no controvertible evidence would exist. That Tripp was subsequently investigated under Maryland state law for illicitly taping the calls, questions legality and lawfulness. However, evidence obtained in this manner was *"not excludable in federal proceedings."*[lxxxii]

When the matter went to Congress, both the House and Senate created legal precedent of their own in several aspects of their decision-making on this matter. The decisions to release details of grand jury testimony and to allow the President full legal representations in his grand jury appearance are examples. What is more, they re-wrote the rules of impeachment inquiries and trials as they went along. This was both necessary and legal. It demonstrated that whilst mindful of precedent, they did pay some attention to the context of the issues at debate. That they did not heed the overall context of public hostility to the inquiry remains at issue. Secondly, Congress has the right to decide its own procedures and rules. When those rules can be questioned for unconstitutionality, difficulties arise. The constitution is unspecific at best on all issues of impeachment, save the fact that the House 'accuses', the Senate 'judges' and if found proven the accused is impeached and removed. Thus 'de facto' legality exists in the decisions of Congress.

The judgement of what is *in a manner appropriate to or required by the case* is not set down. No judgement can be made against statutory documentation. Precedent is rare and spread out over nearly one hundred and fifty years. As the elected representatives of the American people, the House of Representatives and the Senate found things to be carried out appropriately; this seems to have to suffice. When both party caucuses in Congress act out of motivations prioritising political gain and expediency over 'appropriateness', the issue as to whether such outcomes obtained can be termed 'justice' is debatable.

Regarding the conduct of the inquiry, again precedent and legal statute render little help. Starr was 'overseen' by a panel of judges 'The Special Division', selected by the Chief Justice of the U.S. Supreme Court. What is more he had to regularly face injunction from the White House

defence team and win the right to proceed as he did within the U.S. Court of Appeals. Not even the combative Presidential defence team impugned the impartiality of these judges.

Starr's investigative team did have a relatively 'free hand' in investigative procedure. The initial attempts they made to attempt to 'turn' Lewinsky were criticized as inappropriate. She claims they attempted to coerce evidence, threatening huge prison sentences if she did not co-operate. Whilst these potential penalties were exaggerated, it remains that she did not give the desired help due to being so threatened. Therefore the threats had no effect on the outcome. Likewise, her being kept from her lawyer, when rules state that Lewinsky should be represented at interview, can be accepted if one accepts that the lawyer may be a co-conspirator in the alleged felony. As the felony was the submission of a perjurious affidavit, which the attorney doubtless drafted and a friend of the President selected the attorney for Lewinsky, it seems reasonable to exclude him.

One of the central concerns of Clinton's defenders was that after spending forty million dollars, 'all' Starr could unearth were lies about sex. This was clearly a deliberate simplification. Nevertheless this was an extraordinarily well-resourced investigation, in terms of manpower and finance. Whether a 'normal' prosecutor would have received such resources with which to conduct an inquiry is a question that deserves being raised. An inquiry of such depth would surely find 'something' about most of us. Therefore careful use of the power and powers of the Independent Counsel machinery is required. Following the Clinton 'experience' the Independent Counsel act was not renewed. Perhaps this implies that reflective thinking by Congress suggested that the mode of the inquiry was not *appropriate to or required by the case*, although how they will now investigate alleged wrongdoing within the executive branch remains to be seen.

The flexibility of an impeachment investigation is at the core of the discussion regarding *the assignment of merited rewards or punishments*. By utilising the constitutional impeachment clause those seeking to punish the President were limiting themselves to an 'all or nothing' gambit. Since the only punishment for a President convicted in the Senate is removal from office, the stakes are monumentally high. The Republican's were unsuccessful in their attempt to portray the offences committed by Clinton as meriting this sanction.

If another, albeit 'lesser' in their eyes, form of punishment had been available, then they may have been able to win over both the public and more importantly, some Democrat congressmen. Obvious Democrat partisanship, justified by them as being due to the failure of the actions of the President to be classed as high crimes and misdemeanours, would have surely been tested by a decision to invoke a censure by the legislature. It was no small factor in the acquittal of Clinton, that several Republican Senators agreed that the penalty was too severe, and turned away from convicting, whilst not wishing this to be seen as a vindication of the President's conduct.

The feeling therefore persists that Clinton 'escaped' lightly from this affair. Whilst his awarded penalties were relatively slight, there was a greater penalty in terms of the destruction of his personal credibility and public shaming that the President paid. This was severe punishment for a man who shaped his life from an early age to the achievement of this office.

Did the prosecutors treat the President *fairly or according to merit*? Cries of 'unfair' were raised about the way in which the President and Lewinsky were 'caught'. White House counsel were determined to portray the Starr detention of Lewinsky and the decision to 'allow' Clinton to perjure himself before the Jones trial as a 'sting operation'. This conjures up visions of FBI men plotting to assist a crime being committed so that they could catch the perpetrators. The evidence does not support this. Lewinsky was not 'stung,' since she had already suborned Tripp to perjure herself and obstructed justice by 'hiding' gifts before she was detained by the FBI. Further, there was no evidence to suggest that it was due to any direct or indirect influence of or by Starr, that

she was cited as a witness in the Jones case in the first place. Likewise, Clinton was not 'stung' by Starr. He was 'stung' by a combination of his own lack of judgement and Linda Tripp.

The final item in this paper's definition of justice is the morality clause. There were clearly parallel narratives abroad in the conducting of this matter. These were, briefly, *"one, a reckless, immoral President commits a series of crimes in order to conceal a tawdry and shameful affair, crimes compounded by a campaign of public lying and slanders…the other…the confluence of a stupid law (the Independent Counsel law), a marginal lawsuit (the Jones suit) begotten and nursed by political partisanship, a naïve and imprudent judicial decision by the Supreme Court in that suit, and the irresistible human impulse to conceal one's sexual improprieties, allows a trivial escapade… to balloon into a grotesque and gratuitous constitutional drama."*[lxxxiii] Impossibly, *"both narratives are correct"*[lxxxiv] or at least an objective mind could identify the truth in elements of each.

What distinguishes the definition sympathetic to the President from the harsher view is the existence of a moral element. It can be argued that whilst the President received justice in a purely technical sense, up to and including being found technically innocent, the fact remains that he behaved morally reprehensibly. If this was so, then justice has not been served. The President has not been punished for this, it was never officially prescribed he observe any form of moral restraint. Impeachment and removal from office should not have been the punishment, since lack of morals is not a high crime or misdemeanour. If it were then very many previous Presidents would have perished at the hands of impeachment. Perhaps they should have. Perhaps Clinton's conduct was merely the latest in a string of executive moral abuses.

There is, explicitly, no law that demands of politicians the duty of decent moral conduct. Whilst many may still believe that it is implicit in the responsibilities we demand of them that politicians, especially the President of the United States, s*hould* demonstrate moral leadership, this matter shows them to be in a minority and out of touch with mainstream views, if we believe opinion poll findings.[lxxxv]

Therefore politicians should receive the same treatment under the law as anyone else. By this measurement it is a breach of the definition of justice as it is defined for this paper when a married man, of great worldly and sexual experience conducts himself in the manner that President Clinton did with Monica Lewinsky, a woman of less than half his age. There was no way that any relationship between them could be based on a meeting of equals, especially when one accepts the emotional background and previous behaviour of them both. One does not have to be a member of the 'Christian right' to believe this.

If one is content to leave aside any issue of morality linked to his position of President, it can still be seen as a liaison that raises fundamental questions about the judgement of the President. His fitness for office if only on the grounds of the huge potential for a breach of security that such a liaison entails is also questionable. The lies and denials that follow almost inevitably from such behaviour merely confirm the moral bankruptcy of the President.

However, morality emanates from the society and culture in which we live. That most Americans knew the truth about Clinton and said 'so what?' almost excuses him and implicates America. Perhaps, *"the moral forces were out of step with the country as a whole."*[lxxxvi] Perhaps *"the President's acquittal is a sad commentary on the prevailing values in America today."*[lxxxvii]

When Bill Clinton came to power in 1992 he pledged that he would build a government that would *"look more like America than previous administrations."*[lxxxviii] What could not be known at that stage, but what 'Monicagate' proved beyond doubt was that Clinton saw America as a place embodied more by the values of '*The Jerry Springer Show*' than '*The Waltons*'. In such an environment 'justice' is clearly relative and retributive. These definitions embody the

type of 'raw justice' that was exercised in the investigation, impeachment and trial of President Clinton.

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[i] For details of how each Senator voted, see http://cnn.com/ALLPOLITICS/stories/1999/02/12/senate.statements

[ii] Ralph Ketcham, "*The Anti-Federalist Papers and the Constitutional Convention Debates,"* New York: Penguin: 1986, 365.

[iii] Office of the Independent Counsel Press Release, January 20 2001.

[iv] F. James Sensenbrenner, Jr., Chairman U.S. House of Representatives Committee on the Judiciary and House impeachment manager, gives his view on the outcome arranged between Independent Counsel Robert W. Ray and outgoing President Bill Clinton. (*U.S. House of Representatives Committee on the Judiciary, News Advisory,* Jan. 19th, 2001)

[v] 'Editorial*', The Nation,* Mar. 1st, 1999

[vi] http://cnn.com/2001/AL…ies/01/19/clinton.transcript/index/html

[vii] http://cnn.com/2001/AL…ies/01/19/clinton.transcript/index/html

[viii] Bert A Rockman, "Cutting With The Grain: Is There A Clinton Leadership Legacy?" in *The Clinton Legacy* ed. by Colin Campbell and Bert A. Rockman, New York and London: Chatham House: 2000, 274-294

[ix] http://cnn.com/2001/AL…ies/01/19/clinton.transcript/index/html

[x] Office of the Independent Counsel Press Release, Jan. 20th 2001

[xi] Videotaped Oral Deposition of William Jefferson Clinton in *'Jones v. Clinton',* Civil Action No. LR-C-94-290, E.D. Ark., Jan. 17th, 1998, p.54

[xii] 'Testimony of William Jefferson Clinton to grand jury. Aug. 17th, 1998.' (Appendices to the Referral to the U.S. House of Representatives, H. Doc. No.311, 105th Cong., 2d Sess. [Sept.18th, 1998])

[xiii] H.Doc. No.310, 105th Cong., 2d Sess. [Sept.11th, 1998]

[xiv] Carl M. Cannan, documenting President Clinton's propensity to give 'convoluted, nearly technically perfect answers' to avoid the truth emerging. (National Review, Jan. 25th, 1999)

[xv] Monica Lewinsky comments on her feelings at being at the centre of the Independent Counsel investigation to her biographer. ('Monica's Story' by Andrew Morton, 215)

[xvi] http://cnn.com/ALLPOLITICS/resources/1998/lewinsky

[xvii] http://cnn.com/2001/AL…ies/01/19/clinton.transcript/index.html

[xviii] Richard A Posner, *"An Affair of State,"* Cambridge, Massachusetts and London: Harvard University Press: 1999, 217-230

[xix] Oral Deposition of William Jefferson Clinton in '*Jones v. Clinton'* Civil Action No. LR-C-94-290, E.D. Ark., January 17 1998

[xx] Andrew Morton, *"Monica's Story,"* London: Michael O'Meara Books, 1999, 94

[xxi] Morton, 124-125

[xxii] Ibid. 92-99

[xxiii] Supplementary Materials to the Referral to the U.S. House of Representatives H.Doc. No.311, 105th Cong. 2d Sess. [September 18 1998] vol.3, p.4238

[xxiv] Morton, 96-98

[xxv] Lewinsky testimony to grand jury, August 20 1998.http://time.com/time/daily/scandal/monica/aug205.html

[xxvi] Morton, 173

[xxvii] Posner, 26

[xxviii] For the wording of this definition see http://time.com/time/daily/scandal/monica/aug61.html

[xxix] BBC 6 o'clock News, January 27 1998

[xxx] For details of the Rutherford Institute, who funded Jones' suit, and other 'hard right' groups, see http://barf.org/archive/rutherford.html

[xxxi] Posner, 26

[xxxii] Morton, 175-191

[xxxiii] Morton, 219-220

[xxxiv] Grand jury testimony of William Jefferson Clinton. Aug, 17th, 1998

[xxxv] Christopher Hitchens, "*No One Left To Lie To,"* New York and London: Verso: 1999, 144-147

[xxxvi] Morton, 245-246

[xxxvii] Ibid. 144-145

[xxxviii] Pious, 159-161

[xxxix] http://time.com/time/daily/scandal/testimony/temp3.html

[xl] Editorial, New Republic, Sept. 7th 1998

[xli] Journalist Dana Milbank conveys the mood in the White House in the aftermath of Clinton's speech. (New Republic, Sept. 7th 1998)

[xlii] NBC News Special, August 17 1998

[xliii] Ibid.

[xliv] Ibid.

[xlv] Ibid.

[xlvi] Ibid.

[xlvii] Ibid.

[xlviii] Ibid.

[xlix] Ibid.

[l] Pious, 159-161

[li] Posner, 71

[lii] *Floor Statement by Henry Hyde*, House of Representatives, Committee on the Judiciary, Oct. 8th, 1998

[liii] *Testimony of Alan M. Dershowitz*, House of Representatives Judiciary Committee, Dec. 1st, 1998

[liv] Press Release*, 'Hyde Statement on President's Testimony' House of Representatives, Committee on the Judiciary,'* August 18 1998

[lv] Richard M Pious, "Presidential Impeachment Politics" in *Understanding the Presidency*, Second Edition ed. by James P. Pfiffner and Roger H. Davidson, New York: Addison Wesley Longman, 2000, 159-161

[lvi] Posner, 71

[lvii] Full transcript of the Starr Report can be found at http:/time.com/time/daily/scandal/starr.html

[lviii] Preliminary Memorandum Concerning Referral of Office of Independent Counsel

[lix]Ibid.1

[lx] Ibid. 4

[lxi] Colin Campbell, "Demotion? Has Clinton Turned the Bully Pulpit into a Lectern?" in *The Clinton Legacy* ed. by Colin Campbell and Bert A. Rockman, New York and London: Chatham House: 2000, 66

[lxii] House of Representatives Committee on the Judiciary, News Release October 2 1998

[lxiii] House of Representatives Committee on the Judiciary, Hyde Statement October 5, 1998

[lxiv] Honourable Henry Hyde, Opening Statement on Resolution of Impeachment Inquiry, House of Representatives, October 5, 1998

[lxv] Committee on the Judiciary, *Sensenbrenner Statement*, October 5, 1998

[lxvi] Floor Statement by Congressman F. James Sensenbrenner Jr. October 8 1998

[lxvii] Pious, 158

[lxviii] James P Pfiffner, "President Clinton's Impeachment and Senate Trial" in *Understanding the Presidency*, Second Edition ed. by James P. Pfiffner and Roger H. Davidson, New York: Addison Wesley Longman, 2000, 461-462

[lxix] For a full list of those academics testifying at this meeting, see http://house.gov/judiciary/22405.html

[lxx] House of Representatives, Committee on the Judiciary, Rakove Statement November 9 1998

[lxxi] Schlesinger Statement to House of Representatives, November 9 1998

[lxxii] Henry Hyde, "An issue of principles, not politics" *Chicago Tribune*, February. 18, 1999

[lxxiii] For full text of all four Articles of Impeachment and voting details on each, see Pfiffner, 463 and 479-497

[lxxiv] Andrew Sullivan delivers a post-acquittal swipe at the Clinton legacy in an attempt to defend the impeachment process. (New Republic, Mar. 8th, 1999)

[lxxv] Eric Alterman gives a different reading of the motivations behind and lessons to be learned from the whole affair. ('Republic opinion' The Nation, Mar. 11th 1999)

[lxxvi] Pfiffner, 464-465

[lxxvii] Pfiffner, 466

[lxxviii] For details of how each Senator voted, see http://cnn.com/ALLPOLITICS/stories/1999/02/12/senate.statements/

[lxxix] http://washingtonpost.com/wp-srv/politics/special/clinton/stories/021399.html

[lxxx] Christopher Hitchens, 'No One left To Lie To' p.149

[lxxxi] Richard A. Posner, 'Affair of State' p.266

[lxxxii] Posner, 61

[lxxxiii] Posner, 91

[lxxxiv] Posner, 92

[lxxxv] Pious, 159-163

[lxxxvi] Rockman, 286

[lxxxvii] Senator Robert Smith, quoted by Richard L. Berke in "Far Right Sees The Dawn of the Moral Minority" *The New York Times*, Review Section, February 21 1999

[lxxxviii] News Conference, 'Congressional Quarterly Weekly Report' November 14, 1992, 3643.