

The Presidency in Crisis: A Conversation with Congressman Peter Rodino on October 8, 1998[†]

Congressman Peter W. Rodino^{*}
Professor Paula A. Franzese^{**}
Dean Ronald J. Riccio^{***}

I. INTRODUCTION — PROFESSOR PAULA FRANZESE

We are living in interesting times. Our national landscape has become something akin to the Jerry Springer show, with all sorts of wacky characters commanding our attention — Linda Tripp, Matt Drudge, Dick Morris, Rush Limbaugh, conspiracy theorists, Arianna Huffington, the prognosticators, pundits, and commentators all out in droves — with one of the all-time lows achieved on a recent episode of “Politically Incorrect,” as Florence Henderson, Melissa Gilbert, and Meatloaf offered prescriptions for reform.

As recounted in *The New York Times*, Congress is beginning, for the second time this century, to climb the impeachment tree.¹ Each time the limbs divide, Congress must decide, one way or the other. Each decision will take them closer to one of the outermost branches: impeachment, resignation, censure, or some other form of congressional sanction.² This week the House of Representatives votes on whether to launch a formal impeachment inquiry. No one doubts that an inquiry will be approved. But exactly what the House

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^{*} Congressman, United States House of Representatives, 1949-1989; Chair of the House Judiciary Committee, 1973-1989; Professor of Law, Seton Hall University School of Law.

^{**} Professor of Law, Seton Hall University School of Law. B.A., Barnard College; J.D., Columbia University School of Law.

^{***} Dean, Seton Hall University School of Law. B.A., Seton Hall University; J.D., Seton Hall University School of Law.

¹ See David E. Rosenbaum, *Impeachment: Decisions, Decisions*, N.Y. TIMES, Oct. 4, 1998, § 4, at 1.

² See *id.*

Judiciary Committee will investigate is another matter. What we do know, as a testament to the legacy and genius of Congressman Peter Rodino, is that the inquiry will be modeled on the rules used during the Watergate hearings and the Rodino Report that was issued twenty-four years ago.

When the Watergate inquiry began, there were significant doubts about the extent of President Nixon's involvement and culpability.³ Senator Howard Baker kept asking, "[W]hat did the President know and when did he know it?"⁴ To answer this question, it took more than a year and required testimony from the President's top aides and Nixon's own tape-recorded comments in the Oval Office.⁵

In the current scandal, the important facts are known, down to the tawdriest details. The testimony of the main witnesses, including President Clinton, is on public record, having been taken by a grand jury and published by Congress.⁶

So will the Judiciary Committee hold public hearings?⁷ If so, who will be summoned to testify?⁸ Will the scope of the inquiry be expanded to include other areas, such as the Whitewater real estate deal, campaign finance abuses, and the misuse of personnel records in the White House? Whatever the scope, if the House Judiciary Committee, after hearings, recommends Articles of Impeachment, to go forward the matter requires a majority vote in the House. In other words, the House essentially votes, by majority, on whether or not to indict. Thereafter, the matter is tried on the Senate floor, with Chief Justice Rehnquist presiding.⁹ An impeachment conviction requires a two-thirds Senate vote.¹⁰

We will first address the allegations of the Starr report. We will examine the issue of whether there are grounds for impeachment. Since history is instructive, we will then discuss the factual background of the Watergate scandal and explore what it has taught us. Next, we will present a fifteen minute videotape retrospective of the Watergate inquiry. Finally, we will engage in a conversation with our very own Chairman of the Board, the former chair of the House Ju-

³ *See id.*

⁴ *Id.*

⁵ *See id.*

⁶ *See id.*

⁷ *See Rosenbaum, supra* note 1 at 1.

⁸ *See id.*

⁹ *See* U.S. CONST., art. I, § 3, cl. 6 ("The Senate shall have the sole Power to try all Impeachments.").

¹⁰ *See id.*

diciary Committee who presided over the Watergate inquiry and achieved what today seems unachievable — a bipartisan inquiry of unrivaled integrity and rigor.

A. *The Starr Report*

The Independent Counsel Kenneth Starr has specified eleven grounds on which the House could initiate impeachment proceedings.¹¹ Five of the grounds are based on allegations of perjury, four on obstruction of justice, one on witness tampering, and one on abuse of the power of the office.¹² The report alleges that President Clinton lied under oath in his deposition in the Paula Jones case about his sexual relationship with Monica Lewinsky and lied to the Kenneth Starr grand jury about his sexual relationship with Lewinsky. As for the obstruction of justice and abuse of power charges, Starr argues, for example, that by misleading and lying to the public — including that now infamous, finger-wagging statement about not having had sexual relations with “that woman”¹³ — President Clinton violated his constitutional duties. The President’s public denial is cast in the report as an “intentional and calculated falsehood” meant to deceive Congress and the people.¹⁴ The report alleges that Clinton used his aides “as agents of the president’s deception,” allowing them to issue forceful public denials.¹⁵ Those actions, plus his assertions of privilege in court to defend a lie, amounted to an abuse of his authority and a violation of his oath of office.¹⁶

B. *Do the Offenses, if Proven, Constitute Grounds for Removal from Office?*

An impeachable offense requires, as a constitutional matter, “treason, bribery or other high Crimes and Misdemeanors.”¹⁷ The meaning of “high crimes and misdemeanors” has been a subject of intense debate for centuries.¹⁸ The term was defined by Alexander Hamilton as “offences which proceed from the misconduct of public [officials], or, in other words, from the abuse or violation of some

¹¹ See Office of the Independent Counsel, *Referral to the United States House of Representatives*, reprinted in N.Y. TIMES, Sept. 12, 1998, at B1.

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.*

¹⁵ *Id.*

¹⁶ See *id.*

¹⁷ U.S. CONST. art. II, §4, cl. 1.

¹⁸ See Lloyd N. Cutler et al., *No Time For Partisans*, N.Y. TIMES, Sept. 25, 1998, at A27.

public trust. They are of a nature which may with peculiar propriety be denominated *political*, as they relate chiefly to injuries done immediately to the society itself."¹⁹

The process of impeachment is inherently political, not criminal, and is intended to remove public officials found to have abused their powers.²⁰ The term itself — “high crimes and misdemeanors”— is a term of art, limited to impeachments. There is no such thing as a “high crime” in the criminal law, and an impeachable offense does not have to be a criminal offense. Since the fourteenth century, the term was used in England to charge officials with a wide range of criminal and non-criminal offenses. Significantly, the Rodino Report concluded that “impeachment is not limited to criminal acts, and includes non-criminal violations as well.”

While the criminal process is primarily punitive in nature, impeachment, in the words of Professor Lawrence Tribe, is intended “to deter certain behavior and cleanse the body politic.”²¹ Many maintain that the clause “high crimes and misdemeanors” has moral underpinnings because the framers believed that virtue was vital to good leadership.²² This begs the question for our troubled times: Should we expect virtue from our leaders? If the Starr report is about sex and a lie about sex, are we out of bounds? On the one hand, impeachment is a non-violent revolution. The bar should be set above the realm of sexual misconduct. On the other hand, perjury, obstruction of justice, and abuse of power are serious infractions, and could signal the presidential death knell.

History is, indeed, instructive. We know that a high crime and misdemeanor must be more than an unpopular policy decision. It seems closer to abuse or violation of some public trust, such as corruption, neglect of duty, or misuse of funds. In 1868, President Andrew Johnson was spared removal from office by a single vote in the Senate.²³ He endured impeachment proceedings on the basis of his vetoing a series of Reconstruction bills and refusing to enforce the military occupation of the Southern states. That case taught that policy disagreements do not constitute grounds for impeachment. There have been seven federal impeachment convictions in the nation’s history. All of those were federal judges who were subse-

¹⁹ THE FEDERALIST NO. 65, at 331 (Alexander Hamilton) (Gary Wills ed., 1982).

²⁰ See John Cloud, *What Exactly Are “High Crimes and Misdemeanors”?*, TIME, Sept. 21, 1998, at 39.

²¹ Cloud, *supra* note 20, at 39.

²² See Robert H. Bork, *The Clinton Meltdown*, NAT’L REV., Oct. 12, 1998, at 29, 32.

²³ See Cloud, *supra* note 20, at 39.

quently removed from office for conduct such as drunkenness, senility, bribery, accepting kickbacks, tax evasion, and, perhaps most significantly, lying to a grand jury.²⁴

It seems beyond dispute that President Clinton lied when he denied having a sexual relationship with Ms. Lewinsky. Few, if any, could reasonably take the position that what occurred between the two was not sex. The more difficult question is whether this warrants impeachment. It is not in the same category as treason, bribery, or rampant corruption. However, perjury, even on private matters, is a significant breach of trust in the judicial process.²⁵

Hence, the great debate: On the one hand, some maintain that this is "just about sex,"²⁶ and that, in the words of *New York Times* columnist Maureen Dowd, Starr "has made a case for divorce but not for impeachment."²⁷ Walter Shapiro, describing the report as "gripping, Linda-Tripping, and bodice-ripping," opined that "Clinton's sordid middle-aged misdemeanors do not justify impeachment."²⁸ Essentially, the argument is that although the conduct complained of is immoral and reflects poor judgment, it does not rise to the level of an impeachable offense. By contrast, others assert, in the words of Judge Robert Bork:

Sex is not the gravamen of the report but merely the predicate for the cover-up allegations. If a man was charged with lying about a break-in and inducing others to lie, you might, if you were brainless, say the whole thing was just about a 'third rate burglary' . . . To prove the charges of perjury and obstruction of justice, a prosecutor would have to prove the burglary, just as Starr, to prove his charges, had to establish the sex.²⁹

C. *Watergate. A Valid Comparison?*

Journalist Carl Bernstein recently told students in Helena, Montana that "President Clinton's sex scandal is not on the same level as President Nixon's abuse of office."³⁰ "Watergate," he told Tim Russert on *Meet the Press*, "was about a vast and pervasive abuse of power and authority by a criminal President of the United States."³¹

²⁴ See *id.*

²⁵ See Bork, *supra* note 22, at 32.

²⁶ See *id.* at 29 (quoting Maureen Dowd).

²⁷ *Id.* (citing Maureen Dowd).

²⁸ *Id.*

²⁹ *Id.*

³⁰ James S. Rosen, *Overrating Watergate*, NAT'L REV., Oct. 12, 1998, at 30.

³¹ Interview by Tim Russert with Carl Bernstein and Bob Woodward, *Meet the Press*, 1998 WL 8610273 (Aug. 9, 1998).

Clinton, by contrast, lied under oath in a civil case "and may have even obstructed justice in an attempt to hide a truly reckless consensual relationship with a White House intern."³² Bob Woodward agreed, telling Tim Russert that "no matter how some people are going to try to elevate this to a grand constitutional issue, it is unfortunately about sex."³³ The argument essentially boils down to this: What Nixon did was sinister, what Clinton did was sordid. By contrast, others, like writer David Frum, argue that Watergate was, at bottom, "an attempt by a president to conceal his wrongdoing by corrupting the institutions of government. And what is the Lewinsky affair about? The very same thing. All unhappy cover-ups, it turns out, are alike." Or are they?

To help answer, I am pleased to introduce our Dean, Ronald J. Riccio, and Congressman Peter Rodino.

II. DEAN RONALD RICCIO'S CONVERSATION WITH CONGRESSMAN PETER RODINO

Dean Riccio: Thank you, Professor Franzese. That was very enlightening and interesting. Congressman Rodino, Mr. Chairman, the question that we hear on most of the talk shows, and now on the news, is what is the definition and what is the meaning of high crimes and misdemeanors? When you were the Chairman of the House Judiciary Committee, what was the governing standard that you used for defining high crimes and misdemeanors?

Cong. Rodino: Well, Dean Riccio, I would like to thank Professor Franzese for an informative recitation and presentation. It is true that the term "high crimes and misdemeanors," as stated in the Constitution, is very difficult to define. By taking some lessons from history, however, we can point out what the framers intended them to

³² Tom Brazaitis, *Experts Duel Over Comparing Clinton Scandal to Watergate*, PLAIN DEALER (Cleveland), Sept. 27, 1998, at 25A.

³³ Interview by Tim Russert with Carl Bernstein and Bob Woodward, CNBC, 1998 WL 7206011 (Aug. 15, 1998).

mean. First of all, we have got to immerse ourselves in the Constitution. Additionally, we must determine what the Constitution demands in situations in which we, as a nation, must decide whether or not to remove the most powerful man in the world who is elected by the people every four years. It is not a simple event to consider. It is not a simple issue to take into account. Indeed, it is a grave matter that affects not only the institutions of government, but the integrity of the system as well. Basically, it is a determination that must assess whether or not the rights and privileges of our citizens have been harmed or in some way endangered by the President's actions.

To give you an example, in the Watergate Hearings, as discussed earlier by Professor Franzese,³⁴ after the Committee had been authorized to proceed with an inquiry, the Committee staff undertook a very extensive, and exhaustive investigation. That inquiry produced 650 statements of information, which were corroborated by 7,200 pages of evidentiary material.

The staff report was presented to our Committee without any inferences as to whether or not what had been collected in those 650 statements of information amounted to grounds to consider impeaching the President. As a matter of fact, the staff had been ordered to state in its report that in no way were these statements of information meant to imply that there were grounds for such an action. The staff was not *concluding* for the Committee, it was merely *presenting* to the Committee. Today, however, we have a set of alleged facts that had been predetermined by the independent counsel as containing credible evidence that impeachable offenses may have occurred. The Committee on the Judiciary, whose role is to define impeachable offenses, failed to determine whether Presi-

³⁴ See *supra* notes 3-5, 30-33, and accompanying text.

dent Clinton's alleged actions rose to such a level prior to Mr. Starr's own determination.

I have to state very emphatically that it was imperative for the Committee to have a complete understanding of the background of what constituted "high crimes and misdemeanors." And for that purpose, only fifteen days after our Committee had been authorized, the staff presented to the Committee for its consideration all of the materials that had been collected on the background and history of what constituted "high crimes and misdemeanors." In other words, it became vitally important that before we impeached a sitting President, we would first have to determine whether these were acts that were directed toward doing harm to the rights, the privileges, the liberties of the individual, and to the Constitution itself. That is basic and was basic.

Dean Riccio:

If we accept that as the government standard — doing harm to the people, upsetting the constitutional system — what about perjury and obstruction of justice? Would all perjuries and all obstructions of justice under your governing standard be impeachable offenses?

Cong. Rodino:

No. I think perjury and obstruction of justice are indeed serious offenses. Nonetheless, one has to consider the gravamen of the action that brings about the perjury or the lying, and I believe that one has to consider whether the action of lying is for the purpose of avoiding embarrassment. Is the action one that offends our sensibilities? Is it one that we consider has arisen out of an immoral act? Or, rather, is the lie based upon personal misconduct, which has no substantial and harmful effect on the rights of the individual citizenry? Another question one must ask is whether or not the people are harmed by the President's misconduct, insofar as they are deprived of basic liberties, such as the

right of privacy. Are they deprived of a certain privilege that they have in being free from intrusion by wire taps or otherwise? That, in my judgment, is what is at the gravamen of an action that has to be considered as constituting a certain ground for impeachment.

Additionally, we have to remember that, in 1974, we outlined generally what we considered to be very important standards. Moreover, I think that it would serve us well to remember that these standards were presented to the Committee in a report after discussing and debating them for a period of time long before the Committee had to make a judgment on the matter. Indeed, we concluded that not all presidential misconduct is sufficient to constitute grounds for impeachment.

There is a further requirement — substantiality. In deciding whether this further requirement has been met, the facts must be considered as a whole in the context of the office, not in terms of separate or isolated events, because impeachment of the President is indeed a grave step for the nation. It is to be predicated wholly upon conduct seriously incompatible either with the constitutional form and principles of our government or with proper performance of constitutional duties of the President's office. That, I believe, is the gravamen of what the founding fathers intended impeachable offenses to mean. It should not be considered as a matter that arises out of the kind of misconduct that we find merely to be reprehensible or personally offensive.

Dean Riccio:

Why not?

Cong. Rodino:

Because it must affect the rights, the privileges, and the liberties that are spelled out for us in the Bill of Rights. This is the difference that exists between what has occurred now and what occurred in 1974. In Watergate, there were

many allegations that involved not only the President's misconduct, but the very way he directed his office. The President illegally utilized the Internal Revenue Service by directing his aides to conduct illegal audits of private citizens who may have been his political enemies. The President's tapes unequivocally revealed that he directed his Chief of Staff, Halderman, to instruct acting FBI Director Gray to forgo any proposed investigation concerning the possible cover-up of Watergate because, "It involves national security matters." Indeed, when this tape was released, even those members who had voted against that article of impeachment stated, upon learning of this conduct, that, had they known, they would have voted to impeach.

Dean Riccio:

Is there any remedy, other than removal from office, that would be available in the event the Committee and the House were to impeach President Clinton?

Cong. Rodino:

In 1974, the Committee's authorization not only provided us with subpoena power, which I shared jointly with the ranking Republican member, it also authorized us to, in the event we were not able to present articles that would impeach him, develop other recommendations that the Committee deemed appropriate. I am certain that if the Hyde Committee does proceed in that same manner, and as I understand it their authorization is much the same as our empowerment to go forward at that time, then I think it would be appropriate for the Committee to, not having found grounds that would constitute impeachable offenses, recommend other actions.

I am sure that the public is aware of the recommendation suggested by President Ford that if the Committee does not come forward with a finding of an impeachable offense, then there should be a censure. Historically, Con-

gress has addressed the issue of censure. In fact, it has been done in the past with certain members of Congress who were censured rather than disqualified. The member was called upon to come before the well of the House and remained standing while the censure rebuke was read publicly.

Dean Riccio:

So, with respect to the recommendation of President Ford that President Clinton be put in "the well", that would mean he would go to the well of the House floor and someone designated by the House of Representatives would then read charges and make statements against him and he would stand there and take it. Is that it?

Cong. Rodino:

The Committee would notify the House that it has not found that there are impeachable offenses. It would then report to the House that it recommends censure. Censure takes place by calling the person to the well of the House, where a rebuke might be read outlining all the offenses. In effect, this consists of telling the offender that he has committed the following actions — actions which the House considers to be offensive and immoral, but at the same time, in accordance with constitutional dictates, not impeachable offenses. Whether or not this manner of censure, calling an individual member to the well of the house, is applicable to the President, is unclear.

Dean Riccio:

We would now like to give the audience the opportunity to ask questions of Congressman Rodino.

III. OPEN FORUM CONVERSATION WITH CONGRESSMAN RODINO

Q:

Good afternoon, Congressman Rodino. Today, the House did vote for an open-ended

inquiry with thirty-one Democrats joining the Republicans. Since it is open-ended, if the House was to investigate and find that President Clinton was involved in the FBI files scandal, or that some of his enemies are being investigated by the IRS or prosecuted in other ways after they testified against him, would you consider those impeachable offenses?

Cong. Rodino: You are asking me a hypothetical?

Q (follow-up): Yes.

Cong. Rodino: Yes, if indeed those actions impacted adversely upon the rights of the individual and denied certain rights of privacy they may be impeachable offenses. For example, as with the Nixon inquiry, by having audits made or by going into personal files and misusing them, that would be an example of an impeachable offense. We might point out, however, the Starr report, if I am reading it correctly, and I've read it a number of times, relates strictly and solely to sexual misconduct and the consequences of that sexual misconduct, such as lying to the people and possibly perjury.

Q: If the President's conduct does not rise to the level of impeachable offenses, but he nonetheless starts to lose his moral authority to lead the country, do you feel that the President has a duty to resign, to leave the office for the betterment of the country, rather than waiting around for the diminishment of the office itself?

Cong. Rodino: Well, as one who believes in the Constitution and who, in 1974, labored strenuously attempting to understand what the Constitution means when it says that removal from office should occur when the President is found guilty of impeachable offenses, I would assert that we have got to abide by the Constitution. If the

Constitution says that impeachable offenses are only based on those offenses that harmfully affect the public at large, then I am going to abide by the Constitution. And it becomes a question as to whether the Committee that is conducting the inquiry does seek to recommend other kinds of actions. But as to whether or not the President should resign in the face of such allegations, the Constitution does not provide for it.

If we are to deviate from that, then we are ignoring the constitutional mandate. Then we are saying to ourselves: Forget the history of our country, which is based on preserving and protecting the Constitution; let us consider instead how we feel as a democracy and that because we are offended we should force the President from office. That is a parliamentary system and unless we are in a parliamentary system, which, thankfully, we are not, then I believe that it is important to abide by the Constitution.

Q (follow-up):

If any President disgraced the office in some way as to hurt his ability to lead, but not to the extent of an impeachable offense, do you believe that he should then take the initiative and step down for the good of the country?

Cong. Rodino:

That is a question that is left to the person who holds that office to decide. Insofar as I am concerned, I believe that it is important that we say that we abide by the Constitution. We understand that the Constitution preserves our rights and a system of government that we all enjoy. And, if I recall a statement that I made in 1974, let us not leave the Constitution so impaired that we cannot abide by it later. Let us leave the Constitution as unimpaired for our children as our forefathers left it to us.

Q:

You seem to feel that an impeachable offense has to rise to a level where somebody's liberties were taken away from them and if that

does not happen, then the person should not be impeached. Hypothetically, would lying in a civil deposition, even though it is a case just about sex, mean that the alleged victim's liberty was taken away from her?

Cong. Rodino: I believe that question itself is one that begs another question — whether it goes to the heart of what I am talking about. Then we can ask whether or not the position that President Clinton took in the Paula Jones case rises to the level of an impeachable offense. We know even the judge in that case dismissed certain actions that were taken there. The question as to whether or not his alleged lies were in fact perjurious, that in itself has to be considered as to whether or not it reaches that kind of threshold that affects everybody else and not just Paula Jones.

Q (follow-up): Are you saying, then, that the President's actions must affect the country as a whole and not just one person? How many people does it really have to affect to rise to the level of an impeachable offense?

Cong. Rodino: I do not know, except that it has to be so serious and grave and not one act of misconduct. It has to be an act that reaches the level of substantiality — it must be the kind of public conduct committed by him in his presidential role, which brings grave and serious harm to the system of government.

Q (follow-up): So, it is not just the number of people, but the actual injurious effect, I guess we would say. For instance, if President Clinton went out and assaulted a homeless man with no family, would that be an impeachable offense? It did not affect a lot of people on the whole. It just affected that one single person.

Cong. Rodino: You are assuming that is the case; I am not going to assume that is the case.

Q: My question has to do with public sentiment. What role does public sentiment have in these proceedings?

Cong. Rodino: Well, speaking politically and apart from talking about what the Constitution demands, the country undoubtedly is offended. There are some, however, as you know from reading the press, who say that this is sexual misconduct between him and another woman. Therefore, why should we bother? Now that is a question for the people to answer at the polls. The type of question now is whether the action that he has committed so offends the people, yet they feel, in some ways, that he should stay in office. In other words, they feel that he should not be impeached, but yet they find his actions to be very offensive. So, if we are going to just judge his polls, then we are going to revert not to a constitutional system, but a parliamentary system that is based upon the whim of the people. In that system, you take a poll and if you do not like the leader, then, no matter what the case may be, he is removed from office.

Prof. Franzese: I'll mention that CNN reported this morning that their most recent poll finds that President Clinton enjoys a sixty-three percent approval rating.

Q: My question is, in hindsight, do you think that creating the office of independent counsel was a big mistake? In fact, has it not really turned out to be driven by partisan politics inasmuch as one party tries to bring down the other? Should we probably do away with it or just let it die?

Cong. Rodino:

I am glad that you asked that question. After the findings in Watergate, in order to try to avoid the circumstances that occurred, or that occurred as we saw it during the Nixon Administration, we proposed the independent counsel statute to take out of the hands of the Administration or the White House the power to sit in judgment on certain cases. It was never intended, insofar as I know, to concede that the independent counsel has the power to decide whether or not grounds constituted impeachable offenses. The independent counsel acted in accordance with the Congressional authorization, which permitted him to look into the possibilities. But that is not what we intended.

Remember that the House has the sole power to impeach. Attorney General Janet Reno is a member of the Executive Branch. She designated Mr. Starr to go forward. She delegated a certain authority which was, in my judgment, to determine whether or not there were grounds that Congress might consider as possible impeachable offenses. And, if I may say, Mr. Starr's report was unvarnished. It was never presented to the Committee to scrutinize before being released to the public. And for its determination as to whether or not there were grounds to go forward, a decision already, in effect, had been made that these were grounds that the Committee should consider as possible impeachable offenses. Mr. Starr outlined eleven areas and, again, he may have done so under the authority given to him by the House when the statute setting up the independent counsel was actually legislated.

However, I frankly have to find fault with that because the Constitution grants the sole power of impeachment to the House, and the House makes the original determination, as we did in 1974, whether grounds exist for impeaching the President. We set up an inquiry staff that collected 650 statements of information, to-

gether with 7,200 pages of evidentiary material, that were then presented under certain rules of confidentiality and procedure. It was entirely different, as I recall. What may occur now, hopefully, may be that the Judiciary Committee again goes over the grounds that Mr. Starr went over and considers whether or not there are sufficient grounds to conclude that there may be impeachable offenses.

Q:

Mr. Congressman, I want to thank you for coming here this evening. I have two questions. They are both fairly short. First, when you were speaking earlier, you commented that a possible impeachable offense would be when the President has done something to undermine the people's confidence in his ability to lead his government. The Constitution says the President shall faithfully execute the laws of this country. If it is found that the President has perjured himself, whether it be in a deposition or in the grand jury testimony, he has, I assume we can agree on this, not faithfully executed the laws. Could that be a violation of that constitutional mandate? Could that be grounds for an impeachable offense?

Cong. Rodino:

That could be if the gravamen of the matter where he perjures himself is such that it has a harmful effect on what I believe to be very sacrosanct — our rights, our privileges, our liberties, which are the foundation upon which we live. It becomes as such if it is indeed that the system of government is undermined. And that is what I think is the gravamen. Not whether or not he lied about something, but what did that lie affect? Let's take the case of Richard Nixon and the allegations made there, and there were many. Not only did he actually mislead the people, not only did he lie, but there were many other matters where, in effect, he had gravely harmed the integrity of the system of justice.

And it was not in just that one case. But if history tells us anything, it tells us that no President should undertake secret political intelligence, intrude upon people, break into their homes, trying to find information illegally, and charge those people for the purposes of improving his status in office, in other words, his political self-preservation.

Q (follow-up): My second question is, throughout the history of our country, many federal judges have been impeached. Could you speak about some of the offenses found to have been impeachable in those cases? Additionally, does what the President has been charged with rise to the level of what is considered to be an impeachable offense for those federal judges?

Cong. Rodino: Well, you realize that you are now talking about a judge who is there for good behavior and he is not the President. He is not the person who possesses all the powers that a President has. Therefore, the offenses for which he may be impeached relate to the conduct of his office. We impeached during my time a couple of judges who were charged with accepting bribes. They were removed from office. We impeached another judge for submitting a fraudulent income tax report. But again, that is the level in which we find ourselves where we are considering the question of behavior of judges. We must recognize we have hundreds of federal judges, who are appointed. We have only one president, with enormous powers, elected by all the people.

Prof. Franzese: I would add to this exchange that there have been seven federal impeachment convictions in the nation's history. As the Congressman recounts, all were federal judges. The charges included the following: drunkenness in one instance, senility in another, bribery in an-

other, accepting kickbacks in another, tax evasion in two others. Then, perhaps, most damning and most troublesome, in 1989, federal District Court Judge Nixon (perhaps aptly named), was impeached. The conviction went forth to the Senate on the basis of the judge having lied to a grand jury.

Q:

Hello, Congressman. I have two questions as well. The first question is, from what I understand, one of the articles of impeachment against President Nixon was that he lied to the American people. I think it has been fairly well established that President Clinton has done the same thing. What is your comment on that?

Cong. Rodino:

President Nixon was not impeached for having lied to the American people. He was impeached for obstruction of justice, abuse of power, and for the contemptuous kind of disregard for the Constitution itself. Nixon's impeachment occurred when he refused actually to provide us with information so that the Congress could do what the Constitution commanded it to do — to investigate whether it believes there are grounds for impeachment.

I might point out that, and I think it is important because I am sure you do not know the history of it, but there were five articles of impeachment that were brought against Richard Nixon. The fourth article of impeachment, which was debated for a long time, was one that charged the President with having acted in a secret manner and not having informed the Congress about actions that he was taking in Cambodia — the bombing of Cambodia. There were many people who were outraged that the President had ordered the bombing of Cambodia. This was charged in the debate.

And I must point out that I think it is significant that I voted against that article of impeachment and the basis that I used was that the

President of the United States is also the Commander-in-Chief of the Armed Forces. Do we question that judgment? I also know that there were many times when the President had appeared on television and lied repeatedly to the people. It was not an impeachable offense. Other than that, we learned afterwards that he had not conducted an investigation as he said he had. That was misleading but we did not impeach him for that. We did impeach him for obstructing justice when the people who ordinarily would conduct investigations failed to do so because of his orders.

Q (follow-up):

That leads into my second question. Some of the statements that you made about the things that happened during the investigation, as far as tapes that were subpoenaed and were not released until two years later and digging up information on political enemies and political opponents, is strikingly similar to what we hear is taking place in this situation. We have had a four-year investigation where certain records were subpoenaed and they show up two years later on a coffee table in the White House out of nowhere. Also, we have charges of a scorched earth policy that the Clinton Administration uses in digging up information on Henry Hyde from thirty years ago. Hypothetically, is that similar to what you are saying?

Cong. Rodino:

There have been no reports that what they investigated there was grounds for impeachment. There have been allegations. As a matter of fact, even Mr. Starr, who in my judgment has gone as far as he can go, nonetheless has not made any charges insofar as Whitewater, Travelgate, and Filegate are concerned. Thus far, what has occurred is a four-year investigation that has cost the people millions and millions of dollars.

The inquiry that we conducted back in 1974 was conducted by a staff that had been set

up by me apart from the Committee itself, which consisted of Republican and Democratic members. We appointed to the staff individuals who we believed to be objective and non-partisan to conduct the non-partisan inquiry. The special counsel whom I selected to head that Committee was, I learned after I appointed him, a Republican. I made it clear that the inquiry should be thoroughly fair and thoroughly objective. He was to make no public comment and, during his inquiry, he was merely to collect the facts and present them to the Committee for the Committee's consideration alone.

He put together a staff that collected all of this material, which was then presented under certain rules of procedure that had been adopted unanimously. He then presented the factual statements. That is something that one has to be mindful to show, to demonstrate that it was not partisan in any way. The vote authorizing our Committee to go forward was 410 to 4.

Q:

Good Evening, Congressman. I was watching Governor Whitman on television the other night and I would like you to address something that she brought up. She talked about members of the military and that some of them were dismissed because they have had affairs with married men and other immoral conduct. And I think that is very unfair because they are now watching their President get away with the very same thing. I understand your concern. I understand Congress's concern with the integrity of the Constitution, but do you not think that Congress should also take into consideration the integrity of the office. I mean, how can the American people have respect for its officers or its government or its legal system?

Cong. Rodino:

Well, again, I must revert to why I think it is absolutely essential that there be a real understanding of why the Constitution demands that

impeachable offenses be such that they are not just matters that may be offensive to the people. They must be matters that affect the people, the system of justice, the integrity of the system adversely.

I think if we are to consider what Governor Whitman said, her remarks should be taken into account by Congress in considering whether or not certain laws leave us in limbo as to what constitutes reprehensible conduct. But I do not believe that when you consider the kinds of actions that you are talking about, whether it be in the military or otherwise, that we can say that it is an impeachable offense. We have to recognize, as I believe the Committee did in 1974, that we cannot possibly stray from the command of the Constitution.

It was as a result of that thinking that we had Caldwell Butler, who was a Republican, speak. He talked about the Constitution. He talked about the fact that these various allegations against Nixon were indeed founded on fact. He was one of those who had been helped in being elected and re-elected by Richard Nixon. Yet, despite that, he found that there were impeachable offenses and that we had to be brave. He studied the Constitution and understood what it was all about and responded to its command.

Notwithstanding the sincerity of the members of Congress who go forward with this, I am gravely concerned that partisanship and putting party above principle is what is driving them. I would hope that would not be the case. Take Walter Flowers from Alabama, who came from that kind of Nixon country where if he voted for impeachment, the people, his constituents, would be so terribly upset and outraged that they might have voted against him. He had been one of those who was a Nixon follower, yet he talked about the Constitution, and he voted

in accordance with its command for the good of the people.

And so did Tom Railsback, who initially wondered whether or not these allegations could survive. But after serious study and contemplation, he put the Constitution above his party. And to tell you what actually occurred, he lost his voice. He was unable to speak clearly. That is how Tom Railsback really agonized over the question as to whether or not the President should have been impeached.

And then there was Barbara Jordan. Although she was a Democrat and, although one might say that she was predisposed, she spoke with words that are now immortalized. As a black woman, she remembered that when she was first looked upon, she was not looked upon as part of "we the people" when the Constitution was drafted. Blacks were not considered equal. And she pointed to that. But she said, "notwithstanding that, I have now become part of 'we the people' by constitutional amendment, by statute, and my faith in the Constitution is solid, total, and complete, and that is what I will use as a measure of judgment against Richard Nixon."

Prof. Franzese:

We'll close with these three comments and questions and then formally adjourn.

Q:

Good evening, Congressman. I just wanted to thank you for coming here tonight. It is an honor to be able to talk with you about this. I watched the two hours of debate this afternoon and I could not resist the temptation to come here and ask you personally, since they were invoking your name so much before the Congress. You are the most popular Congressman today among the majority party. What is your personal opinion, procedurally, on the Committee following your model as you conceived it?

Cong. Rodino:

Well, procedurally, I believe that they are now, as they voted today, voting to authorize the Judiciary Committee to proceed with an investigation. Under our authorization, we had to investigate completely and fully as well. And they are doing the same. The sole difference is that we, as a Committee, were authorized before any material was presented to the Committee. Judge Starr, on the other hand, presented all of the material to the Committee and stated that they constitute substantial evidence or material that may or may not be grounds for impeaching.

And, as a matter of fact, we received the investigative report from Leon Jaworski, who was the special prosecutor in the case at Watergate and the grand jury proceedings. We received the report under the rules of confidentiality after Judge Scirica had heard the arguments and stated that the Judiciary Committee had indeed adopted rules of procedure and confidentiality so that we could go forward. So, there is a difference.

I can only point out that this Judiciary Committee has been given little time to debate the question that is, I think, most important and most significant: What constitutes high crimes and misdemeanors? That is grave and important. And you know, I might say just in closing, that it was Thomas Jefferson who said more than two hundred years ago that we can no longer say that there is nothing new under the sun. This whole chapter in the history of man is new. He was referring to the Constitution. He is the same statesman who wrote the Declaration of Independence that talked about the inalienable right to life, liberty, and the pursuit of happiness, which is incorporated in the very heart and the soul of the Constitution. And, unless we recognize the sanctity of that Constitution which has preserved, protected, and defended us for so long, then what do we have?

Prof. Franzese:

Let's hear from our last two commentators together and then we'll offer Congressman Rodino the opportunity to share with us one last departing thought.

Q:

Thank you Congressman. My question is a slight change of direction and a little bit more of a general procedural question that has to do with the historical nature of the office of the Presidency. It is my recollection that from the time of the founding fathers, there has been a question of whether a President should be subject to civil suit while in office. There were some obvious reasons for precluding that: the security of the country, the efficiency of its running, and those high qualities of the office and responsibilities that you had mentioned. Where would you draw the lines or what are your opinions about immunity for the office for the good of the country? I would like to hear your opinions on where we might draw those lines, of how we might look at those lines in the future, and have we opened up a possible can of worms with what the country is going through now. Thank you.

Prof. Franzese:

Where do we draw the line? Let's combine this with the last question.

Q:

Congressman Rodino, I would just like to say thank you for coming to the Law School to enlighten us and commend you on your courage during the Watergate hearings and for making the decision to impeach. I wonder if you have any thoughts on the course that these present proceedings might take. Professor Franzese described the proceedings as a growing tree, in that they might expand the scope and present an infinite inquiry beyond Mr. Starr's referral into issues such as the campaign contribution scandal, for which Janet Reno has been asked twice to appoint an independent counsel to in-

investigate yet refuses to do so. Do you have any comment on that?

Cong. Rodino:

I believe that the authorization given to the Committee is that it may go beyond the scope of just what has been presented by Starr. Mr. Starr has not, as yet, presented his full report on Whitewater, Travelgate, and Filegate, and that may be something that they need to explore. I think one has to consider what is really for the good of the country. Politicians, and they all are politicians, as I was, have to consider the good of the country first. And up until now, there has not yet, I believe, been sufficient grounds on which to say that there may be impeachable offenses. It could be that a Committee could do so after scrutinizing all of the Starr report and all of the evidence that is still in those boxes. The Committee has the authorization to go beyond the Starr report. Whether or not it does, I guess again is going to depend upon whether or not people who are there acting as judges are going to consider whether they are doing this for political purposes or whether they are doing it in keeping with what they believe is a constitutional mandate. I think they would have to take the whole thing into consideration.

We have heard many people's comments on television and in the media. They all talk about Kenneth Starr and whether or not he considered the whole matter objectively. This is why I believe it was so important that the Starr report, rather than to be dumped on the public, be given to the people we have elected to examine and evaluate the evidence. It would have been more in keeping with what I feel the Congress has an obligation to do: to examine all of those so called facts that he had compiled, whether or not they were or were not material and credible. We all wonder about some of the material that has been described as salacious, repugnant, and unnecessary. I recall that we

were strict in our rules of confidentiality to adhere to what we thought was evidentiary and necessary to try to prove a point.

Prof. Franzese:

This has been a poignant, extraordinarily fine occasion, one that we will be able to recount to our children and thereafter to their children. Congressman Rodino, you are a statesman and a role model for all ages. As we adjourn, we wish to take this opportunity to demonstrate to you our affection and our gratitude.