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# The Impeachment Trial of President William Clinton

## by Douglas O. Linder

In 1999, for only the second time in United States history, the Senate conducted an impeachment trial of a President. The acquittal of William Jefferson Clinton on February 12 came as no great surprise, given the near party-line vote on impeachment charges in the House of Representatives leading to the trial.

Despite its predictable outcome, the impeachment trial of President Clinton is well worth studying, both for what it says about the failure of the judiciary and political institutions to respond adequately to an unprecedented situation, and what it tells us about the failures of Bill Clinton, the all-too-human occupant of the nation's highest office. The trial also raises fascinating questions about the distinction between *public* morality and *private* morality.

### Background: The Paula Jones Sexual Harassment Suit

The impeachment saga of President Clinton has its origins in a sexual harassment lawsuit brought in Arkansas in May, 1994 by Paula Jones, a former Arkansas state employee. In her suit, Jones alleged that on May 8, 1991, while she helped to staff a state-sponsored management conference at the Excelsior Hotel in Little Rock, a state trooper and member of Governor Clinton's security detail, Danny Ferguson, approached her and told her that the Governor would like to meet her in his hotel suite. Minutes later, Jones, seeing this as an opportunity to advance her career, took the elevator to Clinton's suite. There, according to her disputed account, Clinton made a series of increasingly aggressive moves, culminating in his dropping his pants exposing an erection--and then asking Jones to "kiss it." Jones claimed that she stood and told the Governor, "I'm not that kind of girl." As she left, Clinton stopped her by the door and said, "You're a smart girl, let's keep this between ourselves." (There is strong reason to question Jones's story, as Clinton's security guard reported that Jones seemed pleased when she left the hotel room--and that anything that happened inside appeared to be consensual.)

Lawyers for Clinton argued that the Jones suit would distract him from the important tasks of his office and should not be allowed to go forward while he occupied the White House. Clinton's immunity claim eventually reached the United States Supreme Court. The Court ruled unanimously in May, 1997 against the President, and allowed discovery in the case to proceed. As Federal Appeals Court Judge (and Reagan appointee) Richard A. Posner noted in *An Affair of State: The Investigation, Impeachment, and Trial of President Clinton*, the Court's "inept," "unpragmatic," and "backward-looking" decision in *Clinton v Jones*, and an earlier decision by the Court upholding the constitutionality of the act authorizing the appointment of independent counsels, had major consequences:

"Clinton's affair with Monica Lewinsky, an affair intrinsically devoid of significance to anyone except Lewinsky, would have remained a secret from the public. The public would not have been worse for not knowing about it. There would have been no impeachment inquiry, no impeachment, no concerns about the motives behind the President's military actions against terrorists and rogue states in the summer and fall of

1998, no spectacle of the United States Senate play-acting at adjudication. The Supreme Court's decisions created a situation that led the President and his defenders into the pattern of cornered-rat behavior that engendered a constitutional storm and that may have embittered American politics, weakened the Presidency, distracted the federal government from essential business, and undermined the rule of law."

As a result of the Supreme Court's action, Judge Susan Weber Wright allowed discovery to proceed in the Paula Jones lawsuit. Judge Wright ruled that lawyers for Jones, in order to help prove her sexual harassment claim, could inquire into any sexual relationships that Clinton might have with subordinates either as Governor of Arkansas or as President of the United States. A critical moment in the cascade of events that would eventually lead to impeachment came on December 5, 1997 when Jones's lawyers submitted a list of women that they would like to depose. Included on the list was the name of Monica Lewinsky.

### **The President and Monica Lewinsky**

Monica Lewinsky came to Washington in July 1995 to work as a White House intern at age 21, newly graduated from Lewis and Clark College in Portland. In her first few months on the job, the aggressive and sexually experienced Lewinsky met and flirted with the President, but no opportunities for close personal contact arose. In November 1995, however, Lewinsky was assigned to the West Wing and she soon found herself alone with Clinton. He asked if he could kiss Lewinsky. She quickly consented. Later that evening, the two would have the first of what eventually would be ten sexual encounters over a sixteen-month period. After eight of the encounters had taken place, in April 1996, Clinton's deputy chief of staff--most likely aware of the threat the young intern posed--reassigned Lewinsky to the a position in the Department of Defense. The following month Clinton told a disappointed Lewinsky ("He was my sunshine," she later told a grand jury) he was ending the relationship, but he revived it briefly in early 1997.

The encounters followed a predictable pattern. Generally they occurred on weekend mornings in and around the Oval Office (including a study, a hallway, and a bathroom), when few people except Clinton's personal secretary, Betty Currie, would be around the West Wing. Although many private meetings between the two involved no sexual activity, when they did they generally included Lewinsky fellating the President and the President fondling her breasts and genitalia. On three occasions, Lewinsky performed oral sex while the President talked on the phone. Lewinsky told Clinton she would like to have vaginal intercourse with him, but he resisted. He also terminated the oral sex sessions before ejaculation until their last two encounters.

When Clinton again told Lewinsky in May 1997 that their sexual relationship was over, she redoubled efforts that began the previous year to enlist the President's assistance in finding employment. Lewinsky received a job offer from U. N. Ambassador Bill Richardson several months later, but she turned it down, preferring to find private sector employment. Clinton golfing buddy and power broker Vernon Jordan, acting at what he presumed to be the President's request through Betty Currie, met with Lewinsky to discuss employment possibilities in November 1997.

Less than two weeks after Lewinsky's name appeared on the Jones deposition list, Clinton told her the news. He advised her that filing an affidavit might avoid the necessity of a deposition (but only, he need hardly have said, if she denied a sexual relationship), and he reminded her of their "cover story" for her frequent trips to Oval Office--that she was just delivering documents. Two days after discussing the matter with Clinton, Lewinsky received a subpoena to appear for a deposition in January 1998. She called Vernon Jordan, who again met with her and referred her to an attorney, who proceeded to draft an affidavit that reflected her denial of any sexual involvement with the President.

Just after Christmas, Lewinsky spoke again with Clinton, raising her concern that the subpoena had requested that she bring to the deposition any gifts--and there were many--that she had received from him. Although Clinton apparently informed Lewinsky that she was obligated to give the lawyers for Jones any gifts in her possession, a call came later that day from Currie, indicating that she understood Lewinsky had some items she'd like to give her for safekeeping. (Currie, in her testimony, disagreed with Lewinsky's version of events and claimed that the call about the presents came from Lewinsky, not her.) Currie drove to Lewinsky's home and carted away a box of Clinton gifts and put them under her bed.

In early January 1998, Lewinsky signed an affidavit, with the intent of filing it for the Jones case, claiming her relationship with the President was non-sexual. The day after Lewinsky showed the affidavit to Vernon Jordan, Jordan made a call to Ronald Perelman, a friend and member of the Board of Directors of Revlon, encouraging him to hire Lewinsky. The job offer from Revlon came just two days later.

### **Linda Tripp Gets Involved**

The source of the information that put Monica Lewinsky's name on the deposition list for the Jones case was Linda Tripp. Tripp had served in the Bush White House, and was held over in her job when Clinton became president in 1993. Tripp came to despise Clinton. In 1996, when she considered how to expose what she considered to be West Wing scandals, she contacted a conservative literary agent and self-described Clinton-hater, Lucianne Goldberg. Goldberg urged Tripp to write an expose, but at that time Tripp's concern with keeping her job caused her to reject the suggestion.

Tripp's name came to public attention in August 1997 when it appeared in a Newsweek article in which she recalled running into a White House volunteer, Kathleen Willey, shortly after Willey had been kissed and fondled by Clinton in his private office. (Willey, according to Tripp, was "happy and joyful" and the incident was "not a case of sexual harassment.") Paula Jones's lawyers, of course, took note of Tripp's account--and undoubtedly determined at that time to add Tripp to their list of potential witnesses.

Months before the Willey story broke, however, Tripp learned from her then-friend, Monica Lewinsky, that she was having an affair with the President. Tripp told the

reporter for Newsweek, Michael Isikoff, when he approached her to ask about Willey's encounter with Clinton that the better story involved a White House intern, who she left unnamed. Tripp, partly for her own self-defense and partly out of a desire to damage the President's reputation, began secretly taping (in violation of the state law of her home state of Maryland) her own conversations with Lewinsky with a \$100 recorder she picked up from a nearby Radio Shack.

During one of her taped conversations with Lewinsky in November 1997, Tripp learned that her friend had in her closet a blue dress that still bore the semen stain from a sexual encounter with the President some nine months earlier. Tripp excitedly called Michael Isikoff with the remarkable news, and urged that the reporter have the dress DNA tested. Isikoff pointed out an obvious problem: even if Newsweek could somehow obtain the dress, the test would be meaningless without a sample of Clinton's DNA--and how could the magazine get that? Tripp, however, continued to take an active interest in preserving the semen evidence, urging Lewinsky not to have the dress dry cleaned--as she had planned--for a family occasion because it might be useful for her own "protection" and, besides, the dress made her look "really fat."

In early January 1998, at the encouragement of Luciane Goldberg and backers of the Jones lawsuit (who, by this time, had been filled in by Tripp on details of the Lewinsky matter), Tripp contacted Kenneth Starr's Office of Independent Counsel. Tripp told Starr's staff all she knew about the Lewinsky-Clinton scandal and presented them with a collection of damaging tapes of her private conversations with Lewinsky.

### **The Starr Investigation**

By late 1997, despite the several year long "Whitewater" investigation costing tens of millions of dollars, the Office of Independent Counsel (OIC) failed to produce the necessary "substantial and credible" evidence of an impeachable offense that would justify referring the matter to Congress for further action. It seemed only a matter of weeks before the OIC would be forced to close its far-reaching effort to identify wrongdoing by the President. The removal of Independent Counsel Robert Fiske, a moderate Republican, and his replacement--by a three-judge panel headed by David Sentelle (a Reagan appointee and protégé of Senator Jesse Helms)--with conservative Kenneth Starr was a key turning point in the investigation. Starr had no hesitation about aggressively taking the investigation in a new direction.

About the same time, Judge Wright appeared ready to dismiss Paula Jones's sexual harassment suit after testimony in her deposition proved inconsistent with her initial pleadings. (For example, in her pleadings Jones claimed that the incident at the Excelsior Hotel took place after 2:30, but in her deposition she placed the encounter in the morning after evidence made clear that the Governor had returned to his mansion after the luncheon at the hotel.) The judge also seemed angered and frustrated by leaks of salacious details in the press, in obvious defiance of her gag order, and that presented a second justification for dismissal. The President's camp had every reason to be confident that the case would never go to trial--if they could prevent any new bombshells about Clinton's sexual activities with subordinates.

In January 1998, it all blew up. According to the Starr Report eventually submitted to Congress, that month the OIC "received information that Monica Lewinsky was attempting to influence the testimony of one of the witnesses in the Jones investigation [Tripp], and that Ms. Lewinsky herself was prepared to provide false information under oath in that lawsuit." The Report added that "Ms. Lewinsky had spoken to the President...about being subpoenaed to testify in the Jones suit." Based on these representations, and a "sting tape" of a conversation between Tripp and Lewinsky, the OIC sought and obtained permission from Attorney General Reno to expand his investigation to encompass the Lewinsky affair. (In seeking permission from Reno, the OIC neglected to mention its prior contacts with lawyers for Paula Jones, including Starr's own previous discussions with Jones's lawyers on the immunity issue that reached the Supreme Court. Had the OIC disclosed these contacts, a conflict concern might have either resulted in their request being turned down, or a new independent counsel appointed.)

On January 16, the day before the President would be deposed in the Jones case, authorization for the expanded investigation came from Janet Reno. That afternoon, acting in concert with Linda Tripp, who had invited Lewinsky to the food court of the Pentagon City Mall for lunch, FBI agents acting for the OIC seized Lewinsky and escorted her to room 1012 in the Ritz-Carlton Hotel. There OIC lawyers would--for the next eleven hours--press her to cooperate in their investigation by agreeing to wear a wire and secretly record her conversations with President Clinton. Despite warnings her that she could face up to 27 years in prison for perjury and obstruction of justice (in fact, two years would be a far more likely punishment), Lewinsky refused. Her decision might well have saved the Clinton presidency.

The next day, lawyers for Paula Jones, having been fully briefed on the details of the Lewinsky affair, threw a series of questions at the President during his deposition that left him surprised and, at times, flustered. Clinton, however, generally stuck to his script and continued to deny the existence of a sexual relationship with Lewinsky. In fact, the President went so far as to deny ever even being "alone" with Lewinsky.

Back in his Oval Office on the following day, Clinton discussed the Lewinsky affair with Betty Currie in a manner that strongly suggested an attempt to influence her future statements about her boss's relationship with the young intern. He told his personal secretary, "We were never really alone," "You could see and hear everything," and "Monica came on to me, and I never touched her, right?" Clinton would later spin the discussion as an attempt to refresh his recollection about his relationship with Lewinsky--a wildly implausible explanation, given that some of the questions he asked Currie she was in no position to answer.

The American public first learned of allegations of a Clinton affair with Lewinsky on January 21, 1998. The President stuck with his "deny-it-all" strategy, at one point memorably wagging his finger in a televised interview and insisting, "I did not have sexual relations with that woman, Miss Lewinsky." Several of Clinton's aides (including

Sidney Blumenthal, who was later deposed in the Senate trial) assured by the President that his relationship with Lewinsky was non-sexual, appeared in various venues to denounce Starr's investigations as "a puritanical witch hunt" and to call into question Lewinsky's credibility.

The denials from the White House continued into summer, when the President became aware of that his semen stain remained on the blue dress that Monica Lewinsky wore into the Oval Office on a February day in 1997, and that Lewinsky had signed an immunity agreement with the Office of Independent Counsel. In the meantime, Starr's office had interviewed Secret Service agents, friends of Lewinsky, examined hundreds of emails and White House telephone records, and listened to dozens of hours of taped conversations between Tripp and Lewinsky.

On August 17, 1998, the President faced a federal grand jury called to consider whether he committed perjury, or otherwise obstructed justice, in the Paula Jones case. Clinton maintained that while he was being as unhelpful as possible to Jones's lawyers in his earlier deposition, he had not actually lied. He insisted on his right to adopt a very narrow (and very odd) definition of "alone," and stated that oral sex was not, in his opinion, "sexual relations" within the meaning of that term as adopted in the Jones case. He conceded that fondling Lewinsky would be "sexual relations" and so, implicitly, denied the former intern's allegation that he had fondled her breast and genitalia on several occasions. He explained his discussion with Currie as an innocent attempt to check his recollection of facts against hers, and denied that Vernon Jordan's job hunting efforts were in any way tied to Lewinsky's decision to file an affidavit falsely denying a sexual relationship with the President. The night, when his exhausting deposition was over, Clinton appeared on national television from the Map Room of the White House to admit, "I did have a relationship with Miss Lewinsky that was not appropriate"--and to lash out at Kenneth Starr for invading his private life. "It is time to stop the pursuit of personal destruction," the President said, "and get on with our national life."

### **The House Votes to Impeach**

In the days following his grand jury testimony, calls for impeachment mounted. In the House, Republican Majority Whip Tom De Lay called his aides back to Washington from their summer vacations to announce that it would be his mission to drive Bill Clinton from office. "This is going to be the most important thing I do in my political career," he told them," and I want all of you to dedicate yourselves to it or leave." De Lay arranged a conference call that included most of the House Republican leadership to urge impeachment. Although Speaker Newt Gingrich initially opposed the idea, by the time the call was over, he had come around to believing the cause was right.

In the days following Clinton's admission that he had lied to the American public about the Lewinsky affair, many Congressional expressed their disappointment with the President. Vermont Senator Patrick Leahy scolded Clinton: "Bill, you're a fool! You're a damn, damn, damn fool!" California Senator Dianne Feinstein announced that her "trust in his credibility has been badly shattered." New York Senator Patrick Moynihan warned that "we can be our own worst enemies if we do not hew to our best standards."

In late August 1998, the survival of the Clinton presidency seemed in real doubt.

Kenneth Starr was required by law to present the House with "any substantial and credible information" that might provide a ground for impeachment. On September 9, Starr piled thirty-six boxes of evidence on the Lewinsky scandal into two vans and ordered them driven to Capitol Hill for deposit. Two days later, the Starr Report, a 453-page summary of the evidence against the President, was released to the public over the Internet. The report outlined the case for eleven counts against Clinton, including perjury in his Jones and grand jury depositions, obstruction of justice, and one count asserting abuse of office. Late night comics and critics of the President relished the incredibly explicit details of the report, ranging from the fact that the President took calls from Congressman while receiving oral sex to an account of his inserting his cigar in Lewinsky's vagina. The embarrassing details, which were unnecessary to the prosecution case, were seen by some commentators as a spiteful effort by the OIC to debilitate the Clinton presidency.

Responsibility for recommending action on impeachment fell to the House Judiciary Committee and its Chairman, Henry Hyde. (Hyde, meanwhile, had his own problem to manage: reports surfaced that the widely respected septuagenarian congressman had had an affair some thirty years earlier.) The committee voted to release a videotape of Clinton's four hours of testimony before the grand jury, as well as over 7,000 other pages of evidence, including DNA test results, love notes from Lewinsky to the President, transcripts of Lewinsky's conversations with Linda Tripp, and White House phone logs. After pouring over the evidence and listening to its appointed counsel, the Committee, voting 21 to 16 along party lines on October 5, authorized a full impeachment inquiry. Democrats on the committee, arguing that the case came down to "lying about sex," generally favored censure as an alternative. The Committee's decision was ratified by the full House three days later, with thirty-one Democrats joining the majority.

Mid-term elections on November 3 brought good news for the President. Before the election, Gingrich predicted that Republicans would gain twenty House seats. In fact, they lost five. Despite the losses, widely interpreted as a public vote against impeachment, Hyde determined to press forward with the inquiry, although on a faster timetable. Privately, Hyde thought impeachment was dead, telling Democratic congressman Charles Schumer, "Charlie, don't worry about it: the committee will report out the articles, but they'll die on the House floor." The disappointing election results convinced Bob Livingston to challenge Gingrich for the position of House Speaker. Within hours of Livingston's decision, Gingrich announced his resignation. One week after Gingrich's surprise announcement, there was another big development: Clinton and Paula Jones finally agreed to settle the sexual harassment lawsuit that had caused all the President's miseries.

Over the course of the next month, the Judiciary Committee considered the evidence and sought to separate Clinton's minor transgressions from those that might form the basis for articles of impeachment. The highlight of the committee's hearings came with the testimony of Kenneth Starr. While Republican members asked questions designed to



help Starr lay out his case against the President, Democratic members--preferring to put Starr himself on trial-- asked questions that supported their goal of portraying Starr as a zealot. Democratic member John Conyers characterized Starr as "a federally paid sex policeman." As another part of the process, the Committee drafted a set of 81 questions for the President to answer concerning a series of events relating to the Lewinsky scandal and his prior testimony. The President answered, but--in the opinion of Committee Republicans--in a quarrelsome, unresponsive way. Frequently, he responded to questions by saying he did not recall something. Irritated by his answers, some undecided House Republicans moved toward favoring impeachment.

After listening to a panel of experts on impeachment and lawyers for the President earlier in the week, the Judiciary Committee voted on December 11 and 12 to approve four articles of impeachment. The next day, Hyde joined Tom De Lay and Majority Leader Richard Armey in calling for the President to resign. Clinton, the same day, tells reporters that the thought "never crossed my mind."

The next week, as the President juggled ordering U. S. planes to launch missile strikes on Iraq with phone calls to undecided Republican House members, impeachment moved to a final vote in the House. Adding to the drama was the resignation the same day of Bob Livingston on the floor of the House following disclosure of an affair of his own (stemming from an offer by *Hustler* publisher Larry Flynt to pay \$1 million for "documentary evidence of illicit sexual relations" involving high-ranking members of Congress). Minority Leader Richard Gephardt rose to ask Livingston to reconsider his decision to step down, telling his colleagues, "We need to stop destroying imperfect people at the alter of an unobtainable morality." When the final vote came, the House approved two of the four impeachment articles sent up by the Judiciary Committee, rejecting Article II, based on perjury in the Jones deposition, and Article IV containing general charges relating to his unresponsive answers to Judiciary Committee questions and abuse of his office.

That evening, December 19, 1998, on the South Lawn of the White House surrounded by Democratic supporters, the President thanked those who voted against the impeachment articles and urged that we "stop the politics of personal destruction. We must," he said, "get rid of the poisonous venom of excessive partisanship, obsessive animosity, and uncontrolled anger." Polls taken that week suggested that the American public sided with Clinton, with 60% opposing impeachment.

### **Trial in the Senate**

"Hear, ye! Hear, ye! Hear, ye!" the Senate's sergeant at arms called out on January 7, 1999. "All persons are commanded to keep silent, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate the articles of impeachment against William Jefferson Clinton, president of the United States."

The impeachment trial of the President formally opened before all 100 senators with the reading of the charges against the President and the swearing in of the presiding officer, Chief Justice William Rehnquist, dressed in a black robe with four bright yellow braids

on each sleeve, a fashion idea that Rehnquist had taken from a judge in Gilbert and Sullivan's *Iolanthe*.

The next day, the Senate met in a closed session to hammer out a bipartisan plan (passed on a vote of 100 to 0) for procedural rules to govern the trial. Each side would get twenty-four hours to present its case without witnesses. The Senators would then have two days for a question-and-answer session, only after that would the Senate vote on motions to dismiss or requests for witnesses.

The House managers, who would prosecute Clinton in the Senate, plotted strategy. A key question they faced was whether to call live witnesses and, if so, how many and which ones. A preliminary list drawn up included many names: the judge in Jones case, Susan Weber Wright, Monica Lewinsky, Secret Service agents, Kathleen Willey (a White House volunteer who claimed to have been groped by Clinton), Vernon Jordan, various Clinton aides, and even New York mayor Rudy Giuliani (who, as a former U. S. attorney, could address the subject of prosecutions of public officials). Senate Majority Leader Trent Lott, and Minority Leader Tom Daschle, were not, however, thrilled at the prospect of live witnesses. They saw live witnesses as a threat to their desire to stage a speedy and dignified trial that would not become an embarrassing national spectacle. Both leaders understood that the prospects of at least a dozen Democratic Senators voting to convict, the minimum necessary for the required two-thirds vote, were exceedingly slim--barring some new shocking revelation about the President's conduct.

The trial got underway in earnest on January 14. "Well, let's begin," the Chief Justice announced, adding, "Fight fair." House Manager James Sensenbrenner opened the prosecution case with a monotonous summary of the case that left some Senators, such as Alaska's Ted Stevens, asleep. Other senators, including Joseph Biden, Arlen Specter, and Bob Kerry, took extensive notes. Following Sensenbrenner, three other managers had somewhat better luck keeping senators alert with a parade of charts, timelines, and video clips aimed at demonstrating a pattern of illegal obstruction of justice. Even Democratic senators conceded that Manager Asa Hutchinson's outlining of the sequence of events in the Lewinsky affair was especially effective. Some appeared to be having second thoughts about their intended votes.

As opening arguments continued for another four hours the next day, senators struggled to remain engaged during what became, in Peter Baker's description in *The Breach*, "a law school seminar on perjury and obstruction of justice." The only break in the tedium came when Iowa's Democratic Senator Tom Harkin stood and shouted, "Mr. Chief Justice, I object." Harkin's objection turned out to be to the managers' practice of referring to the senators as "jurors" when in fact their role required them to take account not only the evidence, but the effect impeachment might have on the nation. Chief Justice Rehnquist generally agreed and told the Manager Bob Barr, "Counsel should refrain from referring to the senators as jurors."

The following day, arguments by the managers focused mostly on whether Clinton's conduct met the constitutional standard of a "high crime" justifying removal. In his

address, Henry Hyde insisted that the label of "Clinton-haters" had been attached to the managers: "This is not a question of who we hate; it's a question of what we love. And among the things we love are the rule of law, equal justice before the law, and honor in our public life."

Wheelchair-bound Charles Ruff opened the case for the President on January 19, only hours before President Clinton would deliver his State of the Union Address. Ruff told the senators that the overzealous managers had "concocted a witches' brew of charges" and were making "a rush to judgment." He accused the managers of fudging the facts to suit their case. He concluded by suggesting that senators were free to "find his personal conduct distasteful," but they should ask themselves whether "for the first time in our history, the actions of a president have so put at risk the government the framers created that there is only one solution." Continuing arguments for the President the next day, Greg Craig said that Clinton did not commit perjury in his grand jury deposition, but rather was guilty only of "nitpicking and arguing with the prosecutors." The task of wrapping up opening arguments for the President's team fell to an ex-senator from Clinton's home state of Arkansas, Daryl Bumpers. Bumpers proved a good choice, as he--in his folksy way--summed up what he saw as the major problem with the managers' case: "When you hear somebody say, 'This is not about sex,' it's about sex." The punishment, Bumpers argued, is "totally out of sync" with the charge.

The two-day question-and-answer session became an opportunity for senators to throw softballs to their respective sides. Republican senators turned their questions into Trent Lott, who sent them on to a team of three Republican senators who weeded out the unhelpful questions, and put them in an order suiting the manager's goals. A list of 179 additional proposed questions were left in a binder for any senator willing to "ask" them. Democrats also orchestrated their question-asking, deciding on a strategy of leading with a series of prepared questions, then improvising to best suit the flow of the arguments. Chief Justice Rehnquist asked the questions, first one from the Republicans, then one from the Democrats. One of the few questions to produce any real surprise came from Senators John Edwards of North Carolina and Herb Kohl of Wisconsin. The two Democratic senators noted in their question, that "both sides have spoken in absolutes" while "it strikes many of us as a closer call." In view of this, Edwards and Kohl asked, "Even if the President engaged in the alleged conduct, can reasonable people disagree with the conclusion that, as a matter of law, he must be convicted and removed from office--yes or no?" Manager Lindsay Graham dismayed many of his Republican colleagues when he answered, "Absolutely." Graham admitted the Constitution gave no definitive answer and said, "If I was sitting where you are, I would probably get down on my knees before I made that decision."

The day after the question-and-answer period, Monica Lewinsky, having been ordered to fly from Los Angeles to Washington to meet with the House managers, reluctantly appeared at the Capitol's Mayflower Hotel to discuss with three congressmen her possible testimony in the Senate trial. Lewinsky was worried, telling a friend: "I'm nervous about what he'll [Starr] will do to me if he doesn't get what he wants." Lewinsky, after receiving assurances that her answers were covered by her immunity agreement,

answered the managers' questions. The questions ranged from why she kept her stained dress (it made her look fat) to what she thought should happen to Clinton ("I think he should be censured but not removed"). The managers concluded from their interview that Lewinsky would make a great live witness. They narrowed their wish list of witnesses to three: Lewinsky, Vernon Jordan, and Sidney Blumenthal. The media frenzy surrounding Lewinsky's return to Washington, however, was giving some Republican senators second thoughts about whether they wanted her or any other live trial witnesses.

On January 27, the Senate met to vote on a motion by Democratic Senator Harry Byrd of West Virginia to dismiss the impeachment case against the President. When the Chief Justice called for the clerk to call the roll, everyone knew that the motion would fail along nearly strict party lines. It did. The motion was defeated 56 to 44, with only one Democratic senator, Russ Feingold of Wisconsin, not voting with his party. A second roll call vote followed almost immediately on the motion to allow the managers to depose their three witnesses. It passed on the same 56 to 44 vote.

Over the first three days in February, House managers deposed Lewinsky, Jordan, and Blumenthal. Lewinsky's deposition took place in a hotel suite before a throng of over forty attorneys and congressional aides. Under Congressman Edward Bryant's inartful questioning, she proved a dominating and unhelpful witness, often answering with just a "yes" or a "no." She described her present feelings toward the President as "mixed" and claimed that she filed her false affidavit in the Jones case for her own interests, not Clinton's. Most observers left the deposition believing that Lewinsky was no victim. Tom Griffin, the Senate's chief lawyer, having witnessed the deposition, described it to Trent Lott as "a disaster."

Support for live witnesses collapsed after the Lewinsky deposition. The Senate voted 70 to 30 against issuing Lewinsky a subpoena to testify. Instead, on a 62 to 38 vote, the Senate authorized each side to show video excerpts of deposition testimony by each of the three witnesses. On February 6, the managers projected video images of Lewinsky, Jordan, and Blumenthal on four flat screens at the front of the chamber. Clinton's lawyers did the same, offering an uninterrupted twenty-minute clip of Lewinsky that showed her intelligence and near total control of her questioner.

Closing arguments began two days later. Ruff, for the President, accused the managers of having "a vision more focused on retribution" than the best interests of the country. Each of the thirteen managers offered reasons to impeach, including Asa Hutchinson who urged the senators to "have the political courage to follow the facts" despite "enormous pressure to ignore" them. Hyde, speaking last, ended with the call, "Let right be done."

Senators met behind closed doors to consider their votes. Each senator was allotted fifteen minutes to make a statement. Most attention was focused on a handful of senators whose votes were not clear. Republican John McCain announced that he concluded the president "deliberately subverted the rule of law" and that he would vote guilty on both articles. The one Democrat whose vote was in doubt, Russ Feingold, called the case "close" but said that "if we must err, let us err on the side of avoiding divisions, let us err

on the side of respecting the will of the people." Feingold would vote to acquit.

On Friday, February 12, 1999, Chief Justice Rehnquist intoned, "The question is on the first article of impeachment. Senators, how say you? Is the respondent, William Jefferson Clinton, guilty or not guilty?" Not guilty, it turned out: fifty-five senators, including ten Republicans, voted to acquit on the perjury count. The vote on the second article was closer, 50 to 50, but still far short of the two-thirds vote required for conviction. Five Republicans voted "not guilty" on the second article relating to obstruction of justice: John Chafee (RI), Susan Collins (ME), Jim Jeffords (VT), Olympia Snow (ME), and Arlen Specter (PA).

President Clinton read a statement two hours later. He expressed the hope that "all Americans--and I hope all Americans--here and Washington and throughout our land--will rededicate ourselves to the work of serving our nation and building our future together."

### **Lessons from the Trial**

This is a trial that never should have happened. Clinton should have reached an early settlement (or defaulted) in his suit with Jones, which would have happened if he'd been honest with his own lawyers about his sexual history. The Supreme Court should have struck down the independent counsel law as a violation of separation of powers when it had a chance to do so in 1988. The Supreme Court missed a second chance to prevent impeachment when it failed to recognize, in *Clinton v Jones*, that civil suits against a sitting president had the serious potential to be a major distraction from the president's duties. Clinton should not have trusted Lewinsky to be discreet. Kenneth Starr should not have engaged in a sting operation against the President of the United States, and the Administration should not have engaged in an operation to trash the OIC. Finally, of course, the President should not have lied under oath about his relationship with Monica Lewinsky.

Yet, the trial did happen--and what can be learned from the experience? Several things, it turns out.

We learned that politics are very likely to determine how one views evidence in impeachment case--not a surprising lesson to be sure, but the final votes in both the House and Senate turned out to be *surprisingly* partisan. Moreover, the analysis of academics--people trained to look objectively at evidence--who threw themselves into the impeachment fray was, if anything, even more partisan than that of the politicians.

We learned that the Administration's decision to go on "a war footing" when allegations of the President's affair with Lewinsky first surfaced proved costly. Relentless attacks by Clinton and his aides on the Office of Independent Counsel and Linda Tripp angered Republicans, polarized debate, and made impeachment by the House inevitable. (At the same time, the aggressive approach might have made acquittal in the Senate inevitable.)

We learned also that an impeachment trial is not necessarily a national calamity and

might even have some benefits. George W. Bush has shown that the presidency was not seriously weakened by the ordeal. The public might be better off today for having had to think seriously about issues of both private and public morality during the impeachment process. The Clinton-Lewinsky scandal also contributed to a franker national discussion about sex and, by demonstrating how many skeletons exist in the closets of politicians, might--it is hoped--cause future elections to turn more on matters of substance than what one of the candidates did in bed sometime in the past.

Finally, as Richard Posner astutely observes in *An Affair of State*, the impeachment of William Clinton has "by the dint of its riveting detail" made it "difficult to take presidents seriously." The destruction of the mystique of the presidency is for "those who think that authority depends upon mystery" a consequence to be lamented. But Posner disagrees: "My guess is that they are wrong, that Americans have reached a level of political sophistication at which they can take in stride the knowledge that the nation's political and intellectual leaders are their peers, and not their paragons. The nation does not depend upon the superior virtue of one man."

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