Appendix I: In the matter of – William Blount

Articles

Exhibited by the House of Representatives of the United States, in the name of themselves, and of all the people of the United States, against WILLIAM BLOUNT, in maintenance of their impeachment against him for high crimes and misdemeanours.

Article 1

That, whereas the United States, in the month of February, March, April, May and June, in the year of our Lord , one thousand seven hundred and ninety-seven, and for many years then past, were at peace with his Catholic Majesty the King of Spain; And whereas, during the months aforesaid, his said Catholic Majesty and the King of Great Britain were at war with each other,—yet, the said William Blount, on or about the months aforesaid, then being a Senator of the United States, and well knowing the premises, but disregarding the duties and obligations of his high station, and designing and intending to disturb the peace and tranquility of the United States, and to violate and infringe the neutrality thereof, did conspire and contrive to create, promote, and set on foot, within the jurisdiction and territory of the United States, and to conduct and carry on, from thence, a military hostile expedition against the territories and dominions of his said Catholic Majesty in the Floridas and Louisiana, or a part thereof, for the purpose of wresting the same from his Catholic Majesty, and of conquering the same for the King of Great Britain, with whom his said Catholic Majesty was then at war, as aforesaid, contrary to the duty of his trust and station as a Senator of the United States in violation of the obligations of neutrality, and against the laws of the United States, and the peace and interests thereof.

Article 2

That, whereas on the twenty-seventh day of October, in the year of our Lord one thousand seven hundred and ninety-five, a treaty of friendship, limits and navigation had been made and concluded between the United States and his Catholic Majesty, by the fifth article thereof it is stipulated and agreed, "that the two high contracting parties shall, by all the means in their power, maintain peace and harmony among the several Indian nations who inhabit the country adjacent to the lines and rivers, which, by the preceding articles, form the boundaries of the two Floridas. And the better to obtain this effect, both parties oblige themselves expressly to restrain by force all hostilities on the part of the Indian nation living within their boundary: so that Spain will not suffer her Indians to attack the citizens of the United States, nor the Indians inhabiting their territory; nor will the United States permit these last-mentioned Indians to commence hostilities against the subject of his Catholic Majesty, or his Indians, in any manner whatever." Yet the said William Blount, on or about the months of February, March, April, May and June, in the year of our Lord one thousand seven hundred and ninety-seven, then being a Senator of the United States, and well knowing the premises, and that the United States were then at peace with his said Catholic Majesty, and that his Catholic Majesty was at war with the King of Great Britain, but disregarding the duties of his high station, and the stipulations of the said treaty, and the obligations of neutrality, did conspire and contrive to excite the Creek and Cherokee nations of Indians, then inhabiting within the territorial boundary of the United States, to commence hostilities against the subjects and possessions of his Catholic Majesty, in the Floridas and Louisiana, for the purpose of reducing the same to the dominion of the King of Great Britain, with whom his Catholic Majesty was then at war, as aforesaid, contrary to the duty of his trust and station as a Senator of the United States, in violation of the said treaty of friendship, limits and navigation, and of the obligations of neutrality, and against the laws of the United States, and the peace and interests thereof.

Article 3

That, whereas by the ordinances and acts of Congress for regulating trade and intercourse with the Indian tribes, and for preserving peace on the frontiers, it has been made lawful for the President of the United States, in order to secure the continuance of the friendship of the said Indian tribes, to appoint such persons, from time to time, as temporary agents, to reside among the Indians as he shall think fit: And whereas, in pursuance of the

said authority, the President of the United States, on or about the eighth day of September, in the year of our Lord one thousand seven hundred and ninety-six, did appoint Benjamin Hawkins, to be principal temporary agent for Indian affairs, within the Indian nations south of the river Ohio, and north of the territorial line of the United States: And whereas, the said Benjamin Hawkins accepted the said appointment, and on the twenty-first day of April, in the year of our Lord one thousand seven hundred and ninety-seven, and for a long time before and afterwards, did exercise the functions, powers and duties attached to the same, yet the said William Blount, on or about the said twenty-first day of April, in the year of our Lord one thousand seven hundred and ninety-seven, then being a Senator of the United States, and well knowing the premises, did, in the prosecution of his criminal designs and of his conspiracies aforesaid, and the more effectually to accomplish his intention of exciting the Creek and Cherokee nations of Indians, to commence hostilities against the subject of his Catholic Majesty, further conspire and contrive to alienate and diverse the confidence of the said Indian tribes or nations from the said Benjamin Hawkins, the principal territory agent aforesaid, and to diminish, impair, and destroy the influence of the said Benjamin Hawkins with the said Indian tribes, and their friendly intercourse and understanding with him, contrary to the duty of his trust and station as a Senator of the United States: and against the ordinances and laws of the United States, and the peace and interests thereof.

Article 4

That, whereas by the ordinances and acts of Congress aforesaid, it is made lawful for the President of the Unites States to establish trading houses at such places and posts on the western and southern frontiers, or in the Indian country, as he shall judge most convenient for the purposes of carrying on a liberal trade with the several Indian nations within the limits of the United States, and to appoint an agent at each trading house established as aforesaid with such clerks and assistances as may be necessary for the execution of the said acts: And whereas, by a treaty made and concluded on the second day of July, in the year of our Lord one thousand seven hundred and ninety-one between the United States and the Cherokee nation of Indians, inhabiting within the limits of the United States, it is stipulated and agreed that "the United States will send such and so many persons to reside in said nation as they may judge proper, not exceeding four, who shall qualify themselves to act as interpreters." And whereas, the President of the United States, as well in pursuance of the authorities in this article mentioned, as of the acts of Congress referred

to in the third article, did appoint James Carey to be interpreter for the United States to the said Cherokee nation of Indians, and assistant at the public trading-house established at the Tellico Block-house, in the State of Tennessee: And whereas, the said James Carey did accept the said appointments, and on the twenty-first day of April, in the year of our Lord one thousand seven hundred and ninety-seven, and for a long time before and afterwards, did exercise the functions and duties attached to the same; yet the said William Blount, on or about the said twenty-first day of April, in the year last aforesaid, then being a Senator of the United States, and well knowing of the premises, did, in prosecution of his criminal designs, and in furtherance of his conspiracies aforesaid, conspire and contrive to seduce the said James Carey from the duty and trust of his said appointments, and to engage the said James Carey to assist in the promotion and execution of his said criminal intentions and conspiracies aforesaid; contrary to the duty and trust and station as a Senator of the United States, and against the laws and treaties of the United States, and against the laws and treaties of the United States, and the peace and interests thereof.

Article 5

That, whereas certain tribes or nations of Indians inhabit within the territorial limits of the United States, between whom, or many of them, and the settlements of the United States, certain boundary lines have, by successive treaties, been stipulated and agreed upon, to separate the lands and possessions of the said Indians, from the lands and the possessions of the United States and the citizens thereof: And whereas, particularly by the treaty in the last article mentioned to have been made with the Cherokee nation, on the second day of July, in the year of our Lord one thousand seven hundred and ninety-one, the boundary line between the United States and the said Cherokee nation, was agreed and defined; and it was further stipulated that the same should be ascertained and marked plainly by three persons appointed on the part of the United States, and three Cherokees on the part of their nation: And whereas, by another treaty made with the said Cherokee nation on the twenty-sixth day of June, in the year of our Lord one thousand seven hundred and ninety-one, was confirmed and established, and it was mutually agreed that the said boundary line should be actually ascertained and marked in the manner prescribed by the said last mentioned treaty: And whereas, in pursuance of the said treaties, commissioners were duly nominated and appointed on the part of the United States, to ascertain and mark the said

boundary line; yet the said William Blount, on or about the twenty-first day of April, in the year of our Lord on thousand seven hundred and ninety-seven, then being Senator of the United States, and well knowing the premises; in further prosecution of his said criminal designs and of his conspiracies aforesaid, and the more effectually to accomplish his intention of exciting the said Indians to commence hostilities against the subjects of his Catholic Majesty, did further conspire and contrive to diminish and impair the confidence of the said Cherokee nation in the government of the United States, and to create and foment discontents and disaffection among the said Indians, towards the government of the United States, in relation to the ascertainment and marking of the said boundary line: contrary to the duty of his trust and station as a Senator of the United States, and against the peace and interests thereof.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusation or impeachment, against the said William Blount, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said William Blount may be put to answer the said crimes and misdemeanours, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as are agreeable to law and justice.

Appendix II: In the matter of – John Pickering

Article 1

That whereas George Wentworth, surveyor of the district of New Hampshire, did, in the port of Portsmouth, in the said district, on waters that are navigable from the sea by vessels of more than ten tons burthen, on the fifteenth day of October, in the year of one thousand eight hundred and two, seize the ship called the Eliza, of about two hundred and eighty-five tons burthen, whereof William Ladd was later master, together with her furniture, tackle, and apparel, alleging that there had been unladen from on board of said ship, contrary to law, sundry goods, wares, and merchandise, of foreign growth and manufacture, of the value of four hundred dollars and upwards, and did likewise seize on land within said district, on the seventh day of October, in the year one thousand eight hundred and two, two cables of the value of two hundred and fifty dollars, part of the said goods, which were alleged to have been unladen from on board the said ship as aforesaid, contrary to law: and whereas Thomas Chadbourne, a deputy marshal of the said district of New Hampshire, did, on the sixteenth day of October, in the year one thousand eight hundred and two, by virtue of an order of the said John Pickering, judge of the district court of the said district of New Hampshire, arrest and detain in custody, for trial, before the said John Pickering, judge of the said district court, the said ship called the Eliza, with her furniture, tackle, and apparel, and also the two cables aforesaid; and whereas, by an act of Congress passed on the second day of March, in the year one thousand seven hundred and eighty-nine, it is among other things provided that "upon the prayer of any claimant to the court, that any ship or vessel, goods, wares, or merchandise, so seized and prosecuted, or any part thereof, should be delivered to such claimant to the court, that any ship or vessel, goods, wares, or merchandise, so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or

vessel, goods, wares, or merchandise, who shall be sworn in open court for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties, to be approved by the court, execute a bond in the usual form to the United States, for the payment of a sum equal to the sum of which the ship or vessel, goods, wares, or merchandise, so prayed to be delivered and appraised, and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the ship or vessel, so claimed, have been paid or secured, in like manner as if the goods, wares, or merchandise, ship or vessel, had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares, or merchandise, to be delivered to the said claimant"; yet the said John Pickering , judge of the said district court of the said district of New Hampshire, the said act of Congress not regarding, but with intent to evade the same, did order the ship called Eliza, with her furniture, tackle, and apparel, and the said two cables, to be delivered to a certain Eliphalett Ladd, who claimed the same, without his, the said Eliphalett Ladd's, producing any certificate from the collection and naval officer of the said district that the tonnage duty on the said ship, or the duties on the said cables, had been paid or secured, contrary to his trust and duty as judge of the said district court, against the laws of the United States, and to the manifest injury of their revenue.

Article 2

That whereas, at a special district court of the United States begun and held at Portsmouth, on the eleventh day of November, in the year one thousand eight hundred and two, by Johnson Pickering, judge of said court, the United States, by Joseph Whipple, their collector of said district, having libeled, propounded, and given the said judge to understand and informed that the said ship Eliza, with her furniture, tackle, and apparel, had been seized as aforesaid because there had been unladen therefrom, contrary to law, two cables and one hundred pieces of check, of the value of four hundred dollars and upwards, and having prayed in their said libel that the said ship, with her furniture, tackle, and apparel, might, by the said court, be adjudged to be forfeited to the United States and be disposed of according to law, and a certain Eliphalett Ladd, by his proctor and attorneys, having come into the said court and having claimed the said ship Eliza, with her with her tackle, furniture, and apparel, and having denied that the said two cables and the said one hundred pieces

of check had been unladen from the said ship, with her furniture, tackle, and apparel, might be restored to him, the said Eliphalett Ladd, the said John Pickering, judge of the said district court, did proceed to the hearing and trial of the cause thus depending between the United States on the one part, claiming that said ship Eliza, with her furniture, tackle, and apparel, as forfeited bylaw, and the said Eliphalett Ladd, on the other part, claiming the said ship Eliza, with her furniture, tackle, and apparel,, in his own proper right; and whereas John S. Sherburne, attorney for the United States in and for the district of New Hampshire, did appear in the said district court, as his special duty it was by law, to prosecute the said cause in behalf of the United States, and did produce sundry witnesses to prove the facts charged by the United States in their libel, filed by their collector as aforesaid in the said court, and to show that the said ship Eliza, with her tackle, furniture, and apparel, was justly forfeited to the United States, and did pray the said court that the said witnesses might be sworn in behalf of the United States, yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so, as aforesaid, produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States in the trial of the said cause did order and decree the said ship Eliza, with her furniture, tackle, and apparel, to be restored to the said Eliphalett Ladd, in violation of the laws of the United States and to the manifest injury of their revenue.

Article 3

That whereas it is provided by an act of Congress, passed on the twenty-fourth day of September, in the year one thousand seven hundred and eighty-nine, "that from all final decrees in a district court in causes of admiralty and maritime jurisdiction, where the manner in dispute exceeds the sum or value of three hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court to be held in such district;" and whereas, on the twelfth day of November, in the year one thousand eight hundred and two, at the trial of the aforesaid cause, between the United States, on the one part, claiming the said ship Eliza, with her furniture, tackle, and apparel, as forfeited, for the causes aforesaid, and the said Eliphalett Ladd, on the other part, claiming the said ship Eliza, with her furniture, tackle, and apparel, in his own proper right, the said John Pickering, judge of the said district court of the district of New Hampshire, did decree that the said ship Eliza, with her tackle, furniture, and apparel, should be restored to the said Eliphalett Ladd, the

claimant: and the said district of New Hampshire, and prosecuting the said cause for and on the part of the United States, on the said twelfth day of November, in the year one thousand eight hundred and two, in the name and behalf of the United States, claim an appeal from the said decree of the district court to the next circuit court to be held in the said district of New Hampshire, and did pray the said district court to allow the said appeal, in conformity to the provisions of the act of Congress last aforesaid, yet he said John Pickering judge of the said district court, disregarding the authority of the laws, and wickedly meaning and intending to injure the revenues of the United States, and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal, as prayed for and claimed by the said John S. Sherburne in behalf of the United States, contrary to his trust and duty as judge of the said district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice.

Article 4

That whereas, for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, on the eleventh and twelfth days of November, in the year one thousand eight hundred and two, being then judge of the district court in and for the district of New Hampshire, did appear upon the bench of the said court for the purposes of administering justice in a state of total intoxication, produced by the free and intemperate use of inebriating liquors, and did then and there frequently, in a most prophane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States; and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge and degrading to the honor and dignity of the United States. And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at anytime hereafter any further articles, or other accusation or impeachment against the said John Pickering, and also of replying to his answers which he shall make to the said articles, or any of them, offering proof to all and every the aforesaid articles and to all and every other articles, impeachment, or accusation which shall be exhibited by them, as the case shall require, do demand that he said John Pickering may be put to answer the said high crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Appendix III: In the matter of – Samuel Chase

Article 1

That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "faithfully and impartially and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason before the circuit court of the United States held for the district of Pennsylvania, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive and unjust. viz:

1. In delivering an opinion in writing on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in this defence.
2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States which they deemed illustrative of the position upon which they intended to rest the defence of their client.
3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest the question of law, as well as the question of fact, involved in the verdict which they were required to give.

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the same John Fries was deprived of the right secured to him by the eighth article amendatory of the Constitution, and was condemned to death without

having been heard, by counsel, in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which, ultimately, rest the liberty and safety of the American people.

Article 2

That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond. In the month of May, one thousand eight hundred, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial because he had made up his mind as the publication from which the words charged to be libellons in indictment were extracted, and the said Basset was accordingly sworn, and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

Article 3

That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

Article 4

That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance, viz:

1. In compelling the prisoner's counsel to reduce to writing and submit to the inspection of the court for their admission or rejection all questions which the said counsel meant to propound to the abovenamed John Taylor, the witness.
2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused,

and although it was manifest that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel, and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did, at the same time, manifestly tend.
4. In repeated and vexatious interruptions of said counsel on the part of the said judge, which at length induced them to abandon their cause, and their client, who was thereupon convicted and condemned to fine and imprisonment.
5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

Article 5

And whereas it is provided by the act of Congress, passed on the 24th day of September, 1780, entitled "An act to establish the judicial courts of the United States," that for any crime or offence against the United States the offender may be arrested, imprisoned, or bailed agreeably to the usual mode of process in the state where such offender may be found: and whereas it is provided by the laws of Virginia that, upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending to appear and answer such presentment at the next court: yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

Article 6

And whereas it is provided by the thirty-fourth section of the aforesaid act entitled "An act to establish the judicial courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the cases where they apply; and whereas by the laws of Virginia it is provided that in cases not capital the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which

such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

Article 7

That, at a circuit court of the United States for the district of Delaware, held at New Castle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer by refusing to discharge the grand jury, although entreated by several of the said jury so to do: and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make by observing to the said grand jury that he, the same Samuel Chase understood "that a highly seditious temper had manifested itself in the State of Delaware among a certain class of people, particularly in New Castle County, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue and regardless of special order; that the name of the printer was"—but checking himself, as if sensible of the indecorum which he was committing, added "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter," or words to that effect; and that, with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the district attorney of the United States the necessity of procuring a file of the papers to which alluded (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser"), and by a strict examination of them to find some passage which might furnish the groundwork of a prosecution against the printer of the said paper, thereby degrading his high judicial functions and tending to impair the public confidence in and respect for the tribunals of justice, so essential to the general welfare.

Article 8

And whereas mutual respect and confidence between the Government of the United States and those of the individual States and between the people and those governments, respectively, are highly conducive to that

public harmony without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled on the matters coming within the providence of the grand jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury and of the good people of Maryland against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase then and there, under pretence of exercising his judicial right to address the said grand jury as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury and of the good people of Maryland against the Government of the United States by delivering opinions which, even if the judicial authority were competent to their expression on a suitable occasion and in a proper manner, were at the time and as delivered by him highly indecent, extrajudicial, and tending to prosecute the high judicial character with which he was invested to the low purpose of an electioneering partizan.

Appendix IV: In the matter of – Andrew Johnson

Article 1

That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully and in violation of the Constitution and laws of the United States, issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate, that is to say, on the twelfth day of December in the year last aforesaid having reported to said Senate such suspension with the evidence and reasons for his action in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterwards, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, said Edwin Mr. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said twenty-first day of February, being lawfully entitled to hold said office of Secretary for

the Department of War, which said order for the removal of said Edwin M. Stanton is in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D.C., February 21, 1868.*

"SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

"You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

"Respectfully yours,

"ANDREW JOHNSON.

"To the Hon. EDWIN M. STANTON, *Washington, D.C.*"

Which order was unlawfully issued with intent then and there to violate the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from office of Secretary for the Department of War, the said Edwin M. Stanton being then and there Secretary for the Department of War, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

Article 2

That on the said twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States, and the act aforesaid, issue

and deliver to one Lorenzo Thomas a letter of authority in substance as follows: that is to say:

"EXECUTIVE MANSION,
"*Washington, D.C., February 21, 1868*.

"SIR: The Hon. Edwin M. Stanton, having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully yours,

"ANDREW JOHNSON.

"To Brevet Major GENERAL LORENZO THOMAS
"*Adjutant General U.S. Army, Washington, D.C.*"

Then and there being no vacancy in said office of Secretary of the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

Article 3

That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D.C., February 21, 1868*.

"SIR: The Hon. Edwin M. Stanton, having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully yours,

"ANDREW JOHNSON.

"To Brevet Major GENERAL LORENZO THOMAS
"Adjutant General U.S. Army, Washington, D.C."

Then and there being no vacancy in said office of Secretary of the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

Article 4

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States, and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-first, eighteen hundred and sixty-one, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high crime in office.

Article 5

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and on divers other days and times in said year, before the second day of March, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in pursuance of

said conspiracy, did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United states, did then and there commit and was guilty of a high misdemeanor in office.

Article 6

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said department, contrary to the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-one, eighteen hundred and sixty-one, and with intent to violate and disregard an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

Article 7

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord on thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said department, with intent to violate and disregard the act entitled, "An act regulating the tenure of certain civil offices," passed, March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.

Article 8

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent

unlawfully control the disbursements of the moneys appropriated for the military service and for the Department of War, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, and with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

"EXECUTIVE MANSION,
"*Washington, D.C., February 21, 1868.*

"SIR: The Hon. Edwin M. Stanton, having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully yours,

"ANDREW JOHNSON.

"To Brevet Major GENERAL LORENZO THOMAS
"*Adjutant General U.S. Army, Washington, D.C.*"

Whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

Article 9

That said Andrew Johnson, President of the United States, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, in disregard of the Constitution, and the laws of the United States duly enacted, as commander-in-chief of the army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the army of the United States, actually in command of the department of Washington and the military forces thereof, and did then and there, as such commander-in-chief, declare to and instruct said Emory that part of a law of the United States, passed March second, eighteen

hundred and sixty-seven, entitled "An act making appropriations for the support of the army for the year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the army, and, in case of his inability, through the next rank," was unconstitutional, and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by General Orders for the government and direction of the army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson might make and give, and should not be issued through the General of the army of the United States, according to the provisions of the said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles, or other accusation of impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, DO DEMAND that the said Andrew Johnson may be put to answer the high crime and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

Article 10

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the

Unites States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States, and the several branches thereof, to impair and destroy the regard and respect of all good people of the Unites States for the Congress and legislative powers thereof, (which all officers of the government ought inviolably to preserve and maintain,) and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly, and before divers assemblages of the citizens of the United States, convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and on divers and other days and times, as well before as afterward, make and deliver, with a loud voice, certain intemperate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces, as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and in hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:

Specification first.—In this, that at Washington, in the District of Columbia, in the Execution Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"So far as the executive department of the government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and co-extensive with the wound. We thought, and we think, that we had partially succeeded; but, as the work progresses, as reconstruction seemed to be taking place, and the country was becoming reunited, found a disturbing and marring element opposing us. In alluding to that element I shall go no further than your convention, and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and occasion justify.

"We have witnessed in one department of government every endeavor to prevent the restoration of peace, harmony and union. We have seen

hanging upon the verge of the government, as it were, a body called, or which assumes to be, the Congress of the United States, while, in fact, it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. * * * We have seen Congress gradually encroach, step by step, upon constitutional rights, and violate, day after day and month after month, fundamental principles of the government. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification second.—In this, that at Cleveland, in the State of Ohio, heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the government."

* * *

"In conclusion, besides that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the Union of these States? No; on the contrary, they had done everything to prevent it; and because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run great risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of American people?

Specification third.—In this, that at St. Louis, in the State of Missouri, heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back—if you will go back and ascertain the cause of the riot at New Orleans, perhaps you will not be so prompt in calling out 'New Orleans." If you will take up the riot at New Orleans, and trace it back to its source or its immediate cause, you will find out who is responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the

radical Congress, you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will find there that speeches were made incendiary in their character, exciting in that portion of the population, the black population, to arm themselves and prepared for the shedding of blood. You will also find that the convention did assemble in violation of law, and the intention of that convention was to supercede the reorganized authorities in the State government of Louisiana, which had been recognized by the government of the United States; and every man engaged in that rebellion in that convention, with the intention of superceding and uptuning the civil government which had been recognized by the government of the United States, I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced, *having its origin in the radical Congress*.

* * *

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed, and every drop of blood that was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor, because I exercised the veto power in attempting, and did arrest for a time, a bill that was called a 'Freedman's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all

that. Now, my countrymen, here to-night, it is very easy to indulge in epithets; it is easy to call a man Judas and cry out traitor; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot-Judas. There was a Judas, and he was one of the twelve apostles. Oh! yes, the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendall Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas." * * *

"Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance—soldiers and citizens—to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help I will veto their measures when any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of a high misdemeanor in office.

Article 11

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the eighteenth day of August A.D. eighteen hundred and sixty-six, at the city of Washington, and the District of Columbia, by public speech, declare and affirm, in substance, that the thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to

approve the same, and also thereby denying, and intending to deny, the power of the said thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the twenty-first day of February, A.D. eighteen hundred and sixty-eight, at the city of Washington, in the District of Columbia, did, unlawfully, and in disregard of the requirements of the Constitution, that he should, take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, by unlawfully devising and contriving, and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from forthwith assuming the functions of the office of Secretary for the Department of War notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from the said office of Secretary for the Department of War; and also, by further unlawfully devising and contriving, and attempting to devise and contrive means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," approved March second, eighteen hundred and sixty-seven; and, also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, whereby the said Andrew Johnson, President of the United States, did, then, to wit, on the twenty-first day of February, A.D. eighteen hundred and sixty-eight at the city of Washington, commit, and was guilty of, a high misdemeanor in office.

Appendix V: In the matter of – Richard M. Nixon

Article 1

In his conduct of the office of the President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

On June 17, 1972, and prior thereto, agents of the Committee for Re-election of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon, using the powers of his high office, engaged personally through his subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

The means used to implement this course of conduct or plan included one or more of the following:

(1) making or causing to be made false or misleading statements to lawfully authorized investigative officers and employees of the United States;
(2) withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States;
(3) approving, condoning, acquiescing in, and counseling witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings;

(4) interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, the Office of Watergate Special Prosecution Force, and Congressional Committees;
(5) approving, condoning, and acquiescing in, the surreptitious payment of substantial sums of money for the purposes of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such unlawful entry and other illegal activities;
(6) endeavoring to misuse the Central Intelligence Agency, an agency of the United States; disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employees of the United States, for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability;
(7) making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation and had been conducted with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and personnel of the Committee for the Re-election of the President, and that there was no involvement of such personnel in such misconduct; or
(8) endeavoring to cause prospective defendants, and individuals duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

Article 2

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional

rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies.

This conduct has included one or more of the following:

(1) He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

(2) He misused the Federal Bureau of Investigation, the Secret Service, and other executive personnel, in violation or disregard of the constitutional rights of citizens, by directing or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; he did direct, authorize, or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; and he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

(3) He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derived from campaign contributions, which unlawfully utilized the resources of the Central Intelligence Agency, engaged in covert and unlawful activities, and attempted to prejudice the constitutional right of an accused to a fair trial.

(4) He has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know that his close subordinates endeavored to impede and frustrate lawful inquiries by duly constituted executive, judicial, and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee, and the cover-up thereof, and concerning other unlawful activities, including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, the electronic surveillance of private citizens, the break-in into the offices of Dr. Lewis Fielding, and the campaign financing practices of the Committee to Re-elect the President.

(5) In disregard of the rule of law, he knowingly misused the executive power by interfering with agencies of the executive branch, including the Federal Bureau of Investigation, the Criminal Division, and the Office of Watergate Special Prosecution Force, of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

Article 3

In his conduct of the office of the President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and willfully disobeyed such subpoenas. The subpoenaed papers and things were deemed necessary by the Committee in order to resolve by direct evidence fundamental, factual questions relating to Presidential direction, knowledge, or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things, Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments as necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

Appendix VI: In the matter of – William Jefferson Clinton

Article 1

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning on or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Article 2

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of the President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

The means used to implement this course of conduct or scheme included one or more of the following acts:

(1) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false or misleading.
(2) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony if and when called to testify personally in that proceeding.
(3) On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.
(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.
(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

(6) On or about January 18 and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding , in order to corruptly influence the testimony of that witness.

(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Notes

1 Original Meaning

1. U.S. Constitution, Article II, Section 4.
2. Proceedings of Commissioners to Remedy Defects of the Federal Government (September 11, 1786), reprinted in Arthur Taylor Prescott, *Drafting the Federal Constitution* (Baton Rouge: Louisiana State UP, 1941) 3–11.
3. Although the day fixed for meeting had been Monday, May 14, James Madison recorded in his notes that "a small number only had assembled. Seven states were not convened until Friday, May 25th." James Madison, *Notes of Debates in the Federal Convention of 1787* (New York: Norton, 1987) 23 ("Notes").
4. Madison had been the first delegate from outside Pennsylvania to come to Philadelphia, arriving on May 5. George Mason, the last of the Virginia delegates arrived on May 17. The delegation immediately began meeting for several hours a day. Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Knopf, 1996) 59. Indeed, as Rakove has noted, Madison came to Philadelphia with his own plan for the new government. Jack N. Rakove, *James Madison and the Creation of the American Republic*, 2d ed. (London: Longman, 2002) 49.
5. Madison, *Notes*, 30–33.
6. Rakove, *Original Meanings*, 59.
7. William Pierce, a delegate from Georgia, wrote that "Mr. Randolph . . . came forward with the postulate, or first principles, on which the convention acted, and he supported them with a force of eloquence and reasoning that did him great honor." Prescott, *Drafting the Federal Constitution*, 33.
8. Raoul Berger observed that "in the impeachment debate, the convention was almost exclusively concerned with the President." Berger, *Impeachment: The Constitutional Problems* (Cambridge, MA: Harvard UP, 1973) 100.
9. This hostility toward the exercise of royal power in the colonies was translated into a conception of separation of powers that would later find form in the Constitution. Harvey C. Mansfield, "Separation of Powers in the American Constitution," Bradford P. Wilson and Peter W. Schramm, eds., *Separation of Powers and Good Government* (Lanham: Rowman & Littlefield, 1994) 9. Joseph M. Besette and Gary J. Schmitt also noted the effect of the colonial experience on the convention's conception of the presidency. Joseph M. Besette and Gary J. Schmitt, "Executive Power and the American Founding," Wilson and Schramm, eds., *Separation of Powers and Good Government*, 51–52.

10. Max Farrand noted that over the course of the convention the conception of the president had evolved from an office dependent on the Congress to "an independent figure of importance." Thus, Farrand wrote, "It was a new officer whom they were creating and he loomed all the larger in their eyes that from the very limitations of their experience they were compelled to think of him in terms of monarchy, the only form of national executive power they knew." Max Farrand, *The Framing of the Constitution of the United States* (New Haven: Yale UP, 1972) 161–162. Akhil Reed Amar similarly observed that "Nothing quite like this new office had ever existed." Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005) 131.

    The fear of centralized power in the president was reflected in the convention debates. Although favoring a "vigorous executive," Charles Pinckney warned that conferring congressional powers such as peace and war on the president "would render the executive a monarchy, of the worst kind, to wit an elective one." Edmund Randolph similarly described the president as "The foetus of monarchy." Madison, *Notes*, 45–47. George Mason (who would later propose high crimes and misdemeanors as grounds for removing the president) warned that "If strong and extensive Powers are vested in the Executive, and that Executive consists of only one Person, the Government will of course degenerate…into a monarchy." Robert A. Rutland, ed., *The Papers of George Mason* (Chapel Hill: North Carolina UP, 1970) vol. 3: 897. Thus, David K. Nichols observed that "the purpose of the constitutional provisions regarding the presidency was to prevent the president from becoming a tyrant." David K. Nichols, "Congressional Dominance and the Emergence of the Modern Presidency," Wilson and Schramm, eds., *Separation of Powers and Good Government*, 121–122.
11. Carol Berkin, *A Brilliant Solution: Inventing the American Constitution* (New York: Harcourt, 2002) 152.
12. Madison, *Notes*, 32.
13. Ibid., 49.
14. Madison's comments were recorded in an aide memoire of William Pierce of Georgia. Max Farrand, ed., *The Records of the Federal Convention* (New Haven: Yale UP, 1966) vol. 1: 74. Madison did not record these comments in his *Notes*.
15. Madison, *Notes*, 116.
16. Dickinson explained that he "did not like the plan of impeaching the great officers of state" but it was necessary "to place the power of removing somewhere." Roger Sherman also recommended that the president be subject to removal by Congress "at pleasure." Madison opposed making the president "the mere creature of the legislature," because to do so would be "a violation of the fundamental principles of good government." Both Madison and James Wilson opposed removal of the president by the state legislatures. The Dickenson motion was rejected. Ibid., 55–58.
17. Ibid., 120.
18. Ibid.
19. Ibid., 139.

20. Ibid., 150–151. In the meantime, the delegates had continued to be concerned with the independence of the president. Opposing the proposal that the president be appointed by Congress, Gouverneur Morris argued that "If the Executive be chosen by the National Legislature, he will not be independent of it; and if not independent, usurpation and tyranny on the part of the legislature will be the consequence." Ibid., 308. Madison likewise saw the threat of tyranny in dependence of the president on the Congress. Madison noted that "The Executive could not be independent of the Legislature if dependent on the pleasure of that branch for reappointment," and observed that "a dependence of the Executive on the Legislature, would render it the Executor as well as the maker of laws; and then according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in tyrannical manner." Ibid., 311. The proposal that the president serve during good behavior, similar to judges, had implications for impeachment. Madison argued that such an indeterminate term would depend on "the practicality of instituting a tribunal for impeachment as certain and as adequate in the one case as in the other." Skeptical, Mason stated that "It would be impossible to define the misbehavior in such a manner as to subject it to popular trial; and perhaps still more impossible to compel so high an offender holding his office by such tenure to submit a trial." Ibid., 312. Mason's comment on the impossibility of defining "misbehavior" strongly suggests Mason did not have criminality in mind for the grounds of impeachment since if he had, Mason could simply have referred to settled law. Later, Morris argued that impeachment was a "dangerous part of the plan" because even the threat of impeachment would hold the president "in such dependence that he will be no check on the legislature." Ibid., 323–324.
21. Ibid., 331.
22. Ibid. Mason was not necessarily referring to violations of the criminal laws as "great crimes." Addressing the Virginia Ratification Convention on June 14, 1788, Mason expressed skepticism that senators would convict themselves of bribery if they were impeached. Rutland, *The Papers of George Mason*, vol. 3: 1076–1077.
23. Madison, *Notes*, 332.
24. Ibid.
25. Ibid.
26. Madison also argued that removal of the executive by means of impeachment was necessary because in contrast to the legislature or "any other public body holding public offices of limited duration," the powers of the executive would be exercised by a single individual and therefore, "loss of capacity or corruption was more within the compass of probable events." To Madison, either this loss of capacity or corruption "might be fatal to the republic." Ibid., 332–333.
27. Ibid., 333–334.
28. Ibid., 334.
29. Ibid., 335.
30. Ibid.

31. Ibid., 372, 383.
32. Ibid., 379.
33. Ibid., 393.
34. Debate on the impeachment provision had been postponed on August 27 at the request of Gouverneur Morris. Ibid., 535. The impeachment provision along with the other provisions that had been postponed was referred to the "Committee of Eleven," comprised of a member of each delegation. Ibid., 569.

    On September 4, the Committee of Eleven issued a partial report to the convention of "additions and alterations" to the proposed constitution. In that report, the committee proposed that the president be removed "on impeachment by the House of Representatives, and conviction by the Senate, for Treason or bribery." Ibid., 575. The committee's report was taken up by the convention on September 8.
35. A reference to the impeachment of Warren Hastings, governor general of India, then pending in the Commons.
36. Madison, *Notes*, 605.
37. Ibid.
38. Ibid. A short time later, the clause was amended by substituting "United States" for "State." Ibid., 606. However, without explanation in the record, when the Committee on Style and Arrangement submitted the draft of the Constitution in final form on September 12, the clause "against the Untied States" had been dropped and the provision as adopted by the convention stated that "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 misdemeanors." Ibid., 624.
39. For example, in the debate concerning extradition under Article XV of the draft prepared by the Committee of Detail, which provided for the return of persons charged with "treason, felony or high misdemeanor" (Ibid., 394), Madison recorded that "the words 'high misdemeanor,' were struck out, and the words 'other crime' inserted in order to comprehend all proper cases: it being doubtful whether 'high misdemeanor' had not a technical meaning too limited." Ibid., 545.
40. Peter Charles Hoffer and N.E.H. Hull, *Impeachment in America, 1635–1805* (New Haven: Yale UP, 1984) 46–47.
41. Hoffer and Hull, *Impeachment in America*, 47.
42. Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge, MA: Harvard UP, 1974) 202; John Adams, *Papers of John Adams*, ed. Robert J. Taylor, vol. 1 (Cambridge, MA: Harvard UP, 1977) 252 (ed. note).
43. Those opposing payment of colonial officials from the civic list viewed the practice as a threat to their autonomy over their local officials. John Quincy Adams, *Life of John Adams* printed in John Adams, *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little, 1856) vol. 1: 116–117.
44. A committee of the assembly immediately denounced Hutchison's royal salary as "a dangerous innovation which renders him a governor not dependent on the people, as the charter has prescribed . . . It destroys that mutual check

and dependence which each branch of the legislature ought to have upon the others, and the balance of power which is essential to all free governments." Bailyn noted that when it was learned a short time later that the judges would also receive salaries from the crown, "indignation, fear, and rage roared like a sheet of flame across the troubled community." Bailyn, *The Ordeal of Thomas Hutchinson*, 203, 205.

45. Adams, *Papers of John Adams*, vol. 1: 252–253 (ed. note); Bailyn, *The Ordeal of Thomas Huntchinson*, 206. As described by Bailyn, "the Boston Proceedings found a wide and fervent audience throughout Massachusetts." Ibid., 206, 207.
46. Adams, *Papers of John Adams*, vol. 1: 310 (ed. note); also Bailyn, *The Ordeal of Thomas Hutchinson*, 207, 209.
47. The essence of Brattle's argument concerning judicial compensation and the independence of the judiciary was that judges held a life estate in their commissions because they served "during good behavior" and therefore the source of their compensation was irrelevant. In this regard, Brattle contended that "The Governor and Counsel cannot legally or constitutionally remove a justice of the Superior Court… unless there is a fair hearing and trial, and then judgment that he had behaved ill." Adams contended that "No such tenure had ever actually existed in Massachusetts or elsewhere," and cited a variety of precedents, including Lord Coke's *Institutes of the Lawes of England* (1628), to the effect that judges held their offices at the King's pleasure. Adams argued that the Massachusetts charter granted to the General Court the authority to create the courts and define their responsibilities. Adams, *Papers of John Adams*, vol. 1: 268–306.
48. Bailyn, *The Ordeal of Thomas Hutchinson*, 207.
49. Massachusetts Historical Society, Journals of the House of Representatives of Massachusetts 1773–1774 (Boston, 1981) 117.
50. Adams, *Papers of John Adams,* vol. 2: 8. When the General Court went into session in January 1774, statements from the judges were accepted.
51. Bailyn, *The Ordeal of Thomas Hutchinson*, 265–266. Adams made a similar observation in his autobiography. John Adams, *Diary and Autobiography of John Adams*, ed. L.H. Butterfield, vol. 3 (Cambridge, MA: Harvard UP, 1961) 298.
52. Although by his own account, Adams' suggestion of impeaching the judges was initially received by Winthrop's guests as novel (see *Diary*, 300 and letter to William Tudor, *Works of John Adams*, vol. 10: 237, 238), in fact another prominent lawyer, Josiah Quincy, had raised the prospect of impeachment in an article published by the *Boston Gazette and Country Journal* on January 4, 1768. In that article, Quincy inveighed against the "usurpation of public authority" by British officials who had "obtained, by a veneral *Amassment of Power*, such unlimited sway, in the State, as to be able with impunity, *to Condemn the Innocent as a Judge and destroy the Constitution as a Statesman*." *Boston Gazette and Country Journal*, January 4, 1768, 1 (emphasis original). Quincy noted in "happy contrast," however, that the "wise and venerable ancestors" of the Americans who had been "conscious of the predominate vices of mankind," had been "eminently careful in guarding every avenue where it would be probable the ambitious and intrepid Enemy would labor

to enter, by strategies and force, in order to destroy that nobel fabrick…the *British Constitution*." Under that constitution, "no subject, however great and powerful, is beyond the reach of a strict examination into his conduct, or out of danger of a scourage for his crimes." The vehicle for this "strict examination" and "scourage," Quincy explained, was impeachment of a commoner or peer by the Commons and trial before the Lords. Quincy discussed the procedure for impeachment citing various British authorities and impeachment proceedings. *Boston Gazette and Country Journal*, 1.

53. John Adams, letter to William Tudor, January 24, 1817, Adams, *Works of John Adams*, vol. 10: 236.
54. Adams, *Diary* (*The Works of John Adams*, vol. 2), 329–330.
55. Adams, *Diary* (*The Works of John Adams*, vol. 2), 330.
56. *Journals of the House of Representatives of Massachusetts 1773–1774,* 146–147.
57. Adams, *Diary* (*The Works of John Adams*, vol. 2), 331; letter to William Tudor, *The Works of John Adams*, vol. 10: 239.
58. Adams, *Papers of John Adams*, vol. 2: 11,13.
59. Ibid., 13–14.
60. Ibid., 14.
61. Ibid., 16. The House added that, in any event, his compensation was "always fully equal to the Merit of his Services" because "as it is well known…he was appointed to said Office without previous Education and regular Study in the law." Ibid., 17.
62. Ibid., 17. This description of Oliver's high crimes and misdemeanors closely parallels the language used in the impeachments of, for example, Lord Kimbolton, Denzil Hollis, Sir Arthur Hazelrig, John Pym, John Hampden, and William Strode for high treason, where it was charged that "they have traitorously endeavoured to subvert the fundamental laws and government of this kingdom, to deprive the king of his regal power, and to place in the subjects an arbitrary and tyrannical power, over the lives, liberties and estates of his majesty's liege subjects" and "they have traitorously endeavoured, by many foul aspersions upon his majesty and his government, to alienate the affections of his people, and to make his majesty odious to them." Thomas Bayly Howell, *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783* (London: R. Bagshaw, 1809) vol. 4: 83 ("State Trials"); and William Cobbett, *The Parliamentary History of England from the Earliest Period to the Year 1803* (London: T.C. Hansard, 1808) vol. 2: 1005 ("Parliamentary History of England"). Similar language can be found in the impeachment of Edward, Earl of Clarendon, the Lord High Chancellor of England, for "high Treason and other high Crimes and Misdemeanors" in 1663. Howell, *State Trials*, vol. 6: 291; and Cobbett, *Parliamentary History of England*, vol. 4: 157; and in the impeachment of Thomas, Earl of Danby, the Lord High Treasurer of England, in 1678 also for "high Treason and other high Crimes and Misdemeanors." Howell, *State Trials*, vol. 2: 600; and Cobbett, *Parliamentary History of England*, vol. 4: 693.

63. Adams, *The Papers of John Adams*, vol. 2: 10 (ed. note).
64. Adams, *Diary* (*The Works of John Adams*, vol. 2), 332. Adams, *The Life of John Adams* (*The Works of John Adams*, vol. 1), 139. Adams also referred to this rebellion of the jurors in his letter to William Tudor in 1817. Adams, *The Works of John Adams*, vol. 10: 240–241.
65. Adams, *Diary* (*The Works of John Adams*, vol. 2), 330 and Letter to William Tudor, Adams, *The Works of John Adams,* vol. 10: 238.
66. Mason, *The Papers of George Mason*, vol. 1: 303 (ed. note).
67. Ibid., 308.
68. Hoffer and Hull, *Impeachment in America*, 10. For example, both Hale's *Pleas of the Crown* and Blackstone's *Commentaries* were in John Adam's library. H. Trevor Colbourn, *The Lamp of Experience*: *Whig History and the Intellectual Origins of the American Revolution* (Indianapolis: Liberty Fund, 1998) Appendix A.
69. Sir Matthew Hale, *Pleas of the Crown: A Methodical Summary*, vol. 1 (London: Professional Books, 1972) 150.
70. Blackstone, *Commentaries*, vol. 4: 256.
71. Ibid., 256–258.
72. Blackstone described maladministration as including embezzlement of public funds and "contempts of the executive magistrate, as demonstrate themselves by some arrogant and undutiful behavior towards the king and government." These were contempts: against the King's prerogative (such as: "preferring the interests of a foreign potentate to those of our own," or "doing or receiving anything that may create an undue influence in favor of such extrinsic power, as by taking a pension from any foreign prince without consent of the King," or disobeying the lawful commands of the King); against the King's person and government (such as: speaking or writing against the King or government, wishing the King ill, circulating scandalous stories against the King, or "doing any thing that may tend to lessen him in the esteem of his subjects, may weaken his government, or may raise jealousies between him and his people"); against the King's title (such as: denying the King's right to the crown, stating that the common law "ought not to direct the right of the crown of England," or refusing to take oaths required by statute for public office); and against the King's palaces or courts of justice (such as: striking the King's person, drawing a sword or assaulting a judge in Westminster Hall or the Assises, aiding a prisoner to escape, or injuring those who are "immediately under the protection of a court," including adversaries, lawyers, jurors, or dissuading a witness from testifying). Ibid., 121–126.
73. Ibid., 121.
74. Ibid., 258.
75. Richard Wooddeson, *A Systematical View of the Laws of England; As Treated of in a Course of Vinerian Lectures, Read at Oxford, During a Series of Years, Commencing in Michaelmas Term, 1777*, vol. 2 (Dublin: E. Lynch, 1792) 601–602 ("A Systematical View of the Laws of England").
76. Blackstone, *Commentaries*, vol. 4: 258.

77. Ibid., 258.
78. Wooddeson, *A Systematical View of the Laws of England*, vol. 2: 596–597.
79. Blackstone, *Commentaries*, vol. 4: 308.
80. Sir Matthew Hale, *The History of the Common Law of England*, ed. Charles M. Gray (Chicago: Chicago UP, 1971) 35. W.S. Holdsworth also commented on the distinction between accusation by appeal and by impeachment in his treatise. Holdsworth wrote that appeal and impeachment were "historically very far apart." W.S. Holdsworth, *A History of English Law*, vol. 1 (London: Methuen, 1903) 381. Blackstone also distinguished between attainder and impeachment. Blackstone wrote that the "acts of parliament to attaint particular persons of treason or felony, or to inflict pains and penalties, beyond or contrary to the common law, to serve a special purpose" were "to all intents and purposes new laws, made pro re nata, and by no means an execution of such as are already in being." On the other hand, Blackstone viewed "an impeachment before the lords by the commons of Great Britain, in parliament," as "a prosecution of the already known and established law…being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom." Blackstone, *Commentaries*, vol. 4: 256. Wooddeson agreed. Wooddeson, *A Systematical View of the Laws of England*, vol. 2: 611.
81. To Holdsworth, it was "only natural that the Commons, when they discovered that royal officials or others had broken the law, and that the government of the state was therefore badly conducted, should make a complaint to the House of Lords, which took the form of an accusation against the delinquents; and that the Lords should entertain and deal with it." Thus, it was Holdsworth's view that "the practice of impeachment arose partly from the alliance of the two Houses to secure the sanctity of the law as against royal officials or favourites, and partly from the wide and indefinite jurisdiction which the House of Lords exercised at the time." Holdsworth, *A History of English Law*, vol. 1: 380–381. Wooddeson shared this view of impeachment as carrying the law "into effectual execution where it might be obstructed by too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction, by reason of the peculiar quality of the alleged crimes." Wooddeson, *A Systematical View of the Laws of England*, vol. 2: 611.
82. Sir James Fitzjames Stephen, *A History of the Criminal Law of England*, vol. 1 (London: Macmillan, 1883) 146. Also at this time, "during the rule of Henry III," Hubert deBurgh, the Lord Chief Justice and "one of the King's favorites," was tried before Parliament. According to Sir Edward Coke, deBurgh had gained the King's favor by counseling the King to cancel the *Magna Carta* and the *Carte de Forestra*. Subsequently, deBurgh "fell into the King's heavy indignation" and he was convicted by Parliament for his actions. Sir Edward Coke, *The Golden Passage in the Great Charter of England Called Magna Carta* (London: E. and C. Dilly, 1775) 5–6. This parliamentary trial appears to have taken place in the aftermath of the civil war between the crown and the barons in 1264–1265. The reference to Parliament is probably to assemblies of nobles summoned by the King to discuss "the business of the King

and his kingdom." Goldwin Smith, *A Constitutional and Legal History of England* (New York: Scribner, 1955) 146–148.

83. Stephen, *A History of the Criminal Law of England*, vol. 1 (New York: Scribner, 1955) 146–147.
84. Ibid., 147–148. T.F.T. Plucknett disputed Berkeley's contentions. T.F.T. Plucknett, *Studies in English History* (London: Hambledon, 1983) 545–546.
85. Stephen, *A History of the Criminal Law of England*, vol. 1: 148. Hallam similarly observed that the charges against Latimer were "The earliest instance of parliamentary impeachment, or of a solemn accusation of any individual by the commons at the bar of the lords." Henry Hallam, *The Constitutional History of England: From the Accession of Henry VII to the Death of George II*, 7th ed., vol. 1 (London: John Murray, 1854) 357. Stephen, *A History of the Criminal Law of England,* vol. 1: 147–148.
86. John Hatsell, *Precedents of Proceedings in the House of Commons*, vol. 4 (London: Hansard and Sons, 1818) 56–57.
87. Ibid., 69.
88. Ibid., 69–72.
89. Thomas Salmon, *Critical Review of the State Trials and Impeachments for High Treasons*, vol. 1 (London: J. and J. Hazard, 1737) 1 ("Critical Review of the State Trials"). Hatsell, *Precedents of Proceedings in the House of Commons*, vol. 4: 57. According to M.V. Clarke, by the time that Commons lodged its charge against de la Pole, "impeachments had become a recognized part of parliamentary practice and a recognized form of the expression of hostility to royal officials and servants." M.V. Clarke, "The Origin of Impeachment," Herbert Edward Salter, ed., *Oxford Essays in Medieval History* (Oxford: Clarendon Press, 1934, Freeport: Books for Libraries Press, 1968) 165.
90. Salmon, *Critical Review of the State Trials*, vol. 1, 1; Hatsell, *Precedents of Proceedings in the House of Commons*, vol. 4: 57.
91. Salmon, *Critical Review of the State Trials*, vol. 1: 1. He was later impeached and convicted of treason in 1388 and he was executed. Ibid. These charges were brought before Parliament by "appeal" of the Duke of Gloucester, who was the uncle of Richard II, and other "lords appellant." Stephen described the "substance of the charges" against de la Pole as having been "that they have led Richard II to misgovern in various ways, and in particular that they had induced him to resist or evade an act passed in 1386 which particularly put the Royal Power in commission, and that they had procured an opinion from five judges and a sarjeant-at-law that the commission so issued was void, and that those who procured it were liable to be punished as traitors." Ibid., 152.
92. M.V. Clarke attributed the reemergence of impeachment to Sir Edward Coke. Clarke, "The Origin of Impeachment," 185.
93. Stephen, *A History of the Criminal Law of England*, vol. 1: 158. Hatsell made this observation as well. Hatsell, *Precedents of Proceedings in the House of Commons*, vol. 4: 72. Hallam noted that impeachment "had fallen into disuse…partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of

parliament against an obnoxious subject." Hallam, *The Constitutional History of England*, vol. 1: 357. Holdsworth also noted that "the practice of impeachment fell into abeyance (like the other branches of the judicature of the Parliament) between 1459 and 1621. The place of impeachments was taken by acts of attainder." Holdsworth, *A History of English Law*, vol. 1: 190. George Burton Adams similarly in his *Constitutional History of England* observed that impeachment had "fallen into abeyance" because "during the whole or nearly two centuries parliament had not attempted seriously to oppose the sovereign." George Burton Adams, *Constitutional History of England* (New York: Holt, 1926) 280–281. Sir David Lindsay Keir has suggested that removal of ministers during the Tudor period was more the result of the loss of royal favor than of judicial process. Sir David Lindsay Keir, *The Constitutional History of Modern Britain* (London: Adam & Charles Black, 1966) 39.

94. David L. Smith, *A History of the Modern British Isles 1603–1707* (Oxford: Blackwell, 1998) 59.
95. Howell, *State Trials*, vol. 2: 1120, 1132. Hallam, *The Constitutional History of England*, vol. 1: 357.
96. Sir Francis Bacon, the Lord Chancellor, also was impeached on charges of corruption for having accepted bribes to influence litigation and to obtain offices in government. Howell, *State Trials*, vol. 1: 73. Bacon was convicted and as a consequence was fined £ 40,000 and deprived of public office. Smith, *A History of the Modern British Isles*, 59. Keir, *The Constitutional History of Modern Britain*, 193.
97. Howell, *State Trials*, vol. 2: 1135–1136; Cobbett, *Parliamentary History of England*, vol. 1: 1232.
98. J.R. Tanner, *English Constitutional Conflicts of the Seventeenth Century* (Cambridge: Cambridge UP, 1966) 47–50.
99. Tanner, *English Constitutional Conflicts of the Seventeenth Century*, 50. As M.V. Clarke observed, "Impeachment was, in fact, a direct challenge to the royal prerogative, but, by discreet simulation of the 'ancient law of the land,' a bridge was thrown up between normal usage and revolution… It had grown naturally into the 'Law of Parliament.'" Clarke, "The Origin of Impeachment," 189.
100. Hallam, *The Constitutional History of England*, vol. 1: 358.
101. Howell, *State Trials*, vol. 2: 1184; Cobbett, *Parliamentary History of England*, vol. 1: 1411.
102. Howell, *State Trials*, vol. 2: 1184; Cobbett, *Parliamentary History of England*, vol. 1: 1411.
103. Howell, *State Trials*, vol. 2: 1184; Cobbett, *Parliamentary History of England*, vol. 1: 1411.
104. There was, however, the tortured proceedings against the Duke of Buckingham in 1626, reflecting the Commons' displeasure with the policy regarding Spain and France. In 1626, the Earl of Bristol, an opponent of Buckingham, was accused by Charles I of high treason relating to his duplicity in the negotiation of a treaty with Spain. His defense to the charge

included accusations concerning Buckingham's own actions in Spain. Buckingham, in turn, was impeached by Commons on charges that he had conspired to encourage Charles to convert to the Roman Church as a consequence of his marriage to Henrietta Maria, sister of Philip, King of Spain. Buckingham was also impeached for "Misdemeanors, Misprisions, Offences and Crimes" in regard to his service as lord high admiral, including allegations that he had procured the position corruptly and had misused his office for personal gain. Howell, *State Trials*, vol. 2: 1268; Cobbett, *Parliamentary History of England*, vol. 1: 1411.

105. Howell, *State Trials*, vol. 3: 1283.
106. Ibid.
107. Tanner, *English Constitutional Conflicts of the Seventeenth Century*, 75.
108. Howell, *State Trials*, vol. 3: 1283.
109. Ibid.
110. Cobbett, *Parliamentary History of England*, vol. 2: 526–527.
111. Tanner, *English Constitutional Conflicts of the Seventeenth Century*, 77.
112. Howell, *State Trials*, vol. 3: 1283; David A. Smith, *Constitutional Royalism and the Search for Settlement 1640–1649* (Cambridge: Cambridge UP, 1994) 69–70.
113. *House of Commons Journal*, vol. 2 (21 May 1642).
114. Smith, *A History of Modern British Isles*, 122–123; Tanner, *English Constitutional Conflicts of the Seventeenth Century*, 108–111.
115. Howell, *State Trials*, vol. 4: 122–123. Lord Kimbolton and his codefendants had been charged with high treason on January 3, 1641. Ibid., 83.
116. Ibid., 131–132.
117. Tanner, *English Constitutional Conflicts of the Seventeenth Century*, 15.
118. Howell, *State Trials*, vol. 4: 28; Cobbett, *Parliamentary History of England*, vol. 2: 861.
119. In 1642, two years after the impeachment of Wren, Laud himself was charged with high treason on the grounds the he had caused the King to dissolve Parliament in 1628, as well as for other actions he had taken in furtherance of his stated intention "to shake and alter the true Protestant Religion established in the Church of England." Laud was attainted and beheaded. Howell, *State Trials*, vol. 4: 315.
120. Ibid., 151; Cobbett, *Parliamentary History of England*, vol. 2: 1147.
121. Howell, *State Trials*, vol. 4: 159–166; Cobbett, *Parliamentary History of England*, vol. 2: 1406. Guerney was removed from office and imprisoned in the Tower of London.
122. Howell, *State Trials*, vol. 4: 167–170. No action by the Lords appears to have been taken.
123. Ibid., 171–172; Cobbett, *Parliamentary History of England*, vol. 2: 1407. It does not appear that any action was taken by the Lords.
124. Howell, *State Trials*, vol. 4: 914–916; Cobbett, *Parliamentary History of England*, vol. 3: 838. Maynard was committed to the Tower at the pleasure of the Commons. The proceedings against Maynard were later dropped and his seat in the Commons was restored.

125. Tanner, *English Constitutional Conflicts of the Seventeenth Century*, 217–218, 227–229. For example, in 1663, the Earl of Bristol charged Edward Hyde, Earl of Clarendon and lord high chancellor, with "High Treason and Other Crimes and Misdemeanors" for having accused the King of being inclined to "popery" and having assisted "papists" and thereby having attempted "to alienate from him the affections of his subjects." The impeachment was dismissed by the Lords on the grounds that an impeachment could not be brought by one peer against another. Howell, *State Trials*, vol. 4: 291–318; Cobbett, *Parliamentary History of England*, vol. 4: 276; Salmon, *Critical Review of the State Trials and Impeachments for High Treason*, vol. 1: 302. Hyde was subsequently blamed for England's humiliating defeat by the Dutch navy and the ensuing Treaty of Breda and was impeached for treason in 1667. The impeachment failed before the Lords but fearing trial before a special court of peers and realizing that he no longer enjoyed the protection of the King, Hyde fled England and died in exile at Rouen in December 1674. Smith, *A History of the Modern British Isles*, 218. In 1673, an attempt was made to impeach the Earl of Arlington for being a "promoter of popery and popish counsels." Commons rejected a motion to remove Arlington from his royal employments and no further action appears to have been taken. Howell, *State Trials*, vol. 6: 1053; Cobbett, *Parliamentary History of England*, vol. 4: 650.
126. The abuse of authority could be purely personal as it had been in the case of Lord Viscount Mordaunt, who was impeached in 1666 for high crimes and misdemeanors in connection with a personal vendetta against William Tayleur. Tayleur's daughter had rebuffed Mordaunt's advances and had threatened to inform Mordaunt's wife. In retaliation, Mordaunt ejected Tayleur from his residence, withdrew his employment, imprisoned him illegally for twenty weeks, and threatened to imprison him repeatedly for the rest of his life. The matter ended when the King prorogued Parliament. Howell, *State Trials*, vol. 6: 786; Cobbett, *Parliamentary History of England*, vol. 4: 348.
127. Harding, *A Social History of English Law*, 260. Frederick G. Marcham noted that in the late seventeenth and early eighteenth centuries the view had prevailed in the Commons that ministers should be held accountable for their actions even if the King could not. Between 1690 and 1715, eleven ministers and ex-ministers were impeached but the Commons did not proceed to trial before the Lords because it was recognized that the Lords were not amenable to impeachments for purely political purposes. Frederick G. Marcham, *A Constitutional History of Modern England 1485 to the Present* (New York: Harper) 210–211. Clayton Roberts made a similar observation in his reply to Raoul Berger in "The Law of Impeachment in Stuart England," *Yale Law Review* (1975) vol. 84: 1419.
128. Howell, *State Trials*, vol. 6: 866–868; Cobbett, *Parliamentary History of England*, vol. 4: 408–409. No action was taken by the Lords.
129. Howell, *State Trials*, vol.6: 869–878; Cobbett, *Parliamentary History of England*, vol. 4: 409–413. It does not appear that further action was taken by the Lords.

130. Cobbett, *Parliamentary History of England*, vol. 4: 693–695.
131. Smith, *A History of the Modern British Isles*, 252. Smith, *A Constitutional and Legal History of England*, 360.
132. Howell, *State Trials*, vol. 8: 127–136; and Cobbett, *Parliamentary History of England*, vol. 4: 1067–1074; Hatsell, *Precedents of Proceedings in the House of Commons*, vol. 4: 125; Salmon, *Critical Review of the State Trials and Impeachments for High Treason*, 330. It appears that Danby had been acting on behalf of Charles II and that the payments were to obtain England's neutrality. Lovell, *English Constitutional and Legal History*, 384. The Danby impeachment may also have been part of a larger contest between Parliament's control of finance and the King's prerogative in foreign affairs. Keir, *The Constitutional History of Modern Britain*, 255. In any event, the proceedings were brought to an end by the King's prorogation of Parliament on December 30, 1678 and the dissolution of Parliament on January 24, 1679. Tanner, *English Constitutional Conflicts of the Seventeenth Century*, 240, 241.

    In the face of renewed impeachment proceedings, Danby was granted a royal pardon. However, the pardon was held not to bar impeachment and this was confirmed by the Act of Settlement of 1701. Smith, *A Constitutional and Legal History of England*, 369; Albert Thomas Carter, *Outlines of English Legal History* (London: Butterworth, 1899) 84–85. This exception to the pardoning power was later enshrined in Article II, Section 2(1) of the U.S. Constitution which grants the president authority to issue "pardons for offences against the United States, except in cases of impeachment."
133. Howell, *State Trials*, vol. 8: 127–137; Cobbett, *Parliamentary History of England*, vol. 4: 1222–1223. Parliament was dissolved before any action was taken by the Lords. Also in 1680, the lord chief justice, William Scroggs, was impeached of "High Treason and Other Great Crimes and Misdemeanors" for having obstructed the return of indictments against "many papists," including the Duke of York and for "absenting himself from church." Scroggs and other judges were also charged with "countenancing of popery, and discouragement of Protestants," by enjoining publication of a periodical "wherein the superstitions and cheats of the Church of Rome were from time to time exposed." The proceedings were abandoned in anticipation of the prorogation of Parliament. Howell, *State Trials*, vol. 8: 163–174; Cobbett, *Parliamentary History of England*, vol. 4: 1274–1277.

    At this time, Commons asserted jurisdiction to impeach offenders for common law crimes. In 1688, Edward Fitzgerald was impeached for high treason for having advocated that Charles II be deposed. The Lords directed that the case be referred to the King's Bench for trial. Although the Commons disagreed, Parliament was dissolved and Fitzgerald was tried by the King's Bench and upon conviction was executed. W.W. Costin and J. Steven Watson, eds., *The Law and Working of the Constitution: Documents 1660–1914* (London: Adam and Charles Black, 1925) 185–186.
134. Howell, *State Trials*, vol. 14: 323. The Lords ordered the charges to be dismissed after the Commons in two successive Parliaments had failed to act.
135. Cobbett, *Parliamentary History of England*, vol. 5: 939.

136. Orford was also charged with mismanagement in his capacity as commander in chief of the Navy by procuring a commission and provisions for the privateer William Kidd and for allowing the escape of French naval forces. Howell, *State Trials*, vol. 14: 233–1259; Salmon, *Critical Review of the State Trials and Impeachments for High Treason*, 866.
137. Howell, *State Trials*, vol. 14: 250–261; 294–298; 311; 312; Cobbett, *Parliamentary History of England*, vol. 5: 1266–1277; 1299–1305; 1313. Orford, Sommers, and Halifax were ultimately acquitted by the Lords. Several years earlier in 1698, a group of merchants had been charged with high crimes and misdemeanors for engaging in commerce with France in violation of English Law. After confessing their guilt, they were fined and imprisoned at Newgate. Cobbett, *Parliamentary History of England*, vol. 5: 1175–1177.
138. Smith, *A History of the Modern British Isles*, 319.
139. Howell, *State Trials*, vol. 15: 39–40, 471–471, Cobbett, *Parliamentary History of England*, vol. 6: 809–812, 883–887; Hatsell, *Precedents of Proceedings in the House of Commons*, 256. Sacheverell was enjoined from preaching for three years and his sermons were ordered to be burned by the hangman.
140. The Committee of Secrecy in the Commons charged additionally that Oxford had weakened the army in Flanders by advising the Queen to send an expeditionary force to Canada, which proved to be a costly failure, and then had prevented the Commons from inquiring into the matter. Oxford was acquitted of all charges by the Lords. Howell, *State Trials*, vol. 15: 1046–1103, 1178; Cobbett, *Parliamentary History of England*, vol. 7: 74–103; Salmon, *Critical Review of the State Trials and Impeachments for High Treason*, 866.
141. Howell, *State Trials*, vol. 15: 1007–1014, Cobbett, *Parliamentary History of England*, vol. 7: 138–142.
142. Howell, *State Trials*, vol. 15: 994–1006; Cobbett, *Parliamentary History of England*, vol. 7: 143–155. Hallam described the impeachments of Oxford and Bolingbroke as "an intemperate excess of resentment at their scandalous dereliction of public honour and interest." Hallam, *The Constitutional History of England*, vol. 3: 312.
143. Howell, *State Trials*, vol. 15: 1013–1043; Cobbett, *Parliamentary History of England*, vol. 7: 143–155.
144. Howell, *State Trials*, vol. 16: 767–1395; and Cobbett, *Parliamentary History of England*, vol. 8: 420–453.
145. Stephen, *A History of the Criminal Law of England*, vol. 1: 160.
146. Holdsworth, *A History of English Law*, vol. 1: 381–382. F.W. Maitland drew this contrast with the Tudor period as well. Maitland, *The Constitutional History of England*, 246. Radcliff and Cross noted, however, that associating the grounds for impeachment with criminal conduct limited its effectiveness on controlling ministerial behavior. Geoffrey R.Y. Radcliffe and Geoffrey N. Cross, *The English Legal System*, ed. G.J. Hand and D.J. Bently, 6th ed. (London: Butterworths, 1977) 224.
147. Quoted in Marcham, *A Constitutional History of Modern England*, 210.

148. Bryce D. Lyon, *A Constitutional and Legal History of Medieval England* (New York: Norton, 1980) 558–559.
149. Ibid., 559.
150. Robert, Earl Russell, *An Essay on the History of English Government and Constitution: From the Reign of Henry VII to the Present Time* (New York: Kraus Reprint, 1971) 117.
151. Raoul Berger argued that to understand impeachment under the Constitution it was necessary to begin with English precedent. Berger contended that the meaning of high crimes and misdemeanors lay not in statutory or common law crime but was a crime "by the course of Parliament." Drawing on the impeachments of the seventeenth and eighteenth centuries, Berger concluded that in impeachment, Parliament had defined a category of political crimes that were distinct from known, ordinary criminal law offenses. These political offenses included: misapplication of funds; abuse of official power; neglect of duty; encroachment on or contempt of Parliament's prerogatives; and corruption in public office. Berger, *Impeachment: The Constitutional Problems*, 54–71. Selden and Holdsworth had the same view of Parliament's authority to pronounce the law. John Selden, *Table Talk of John Selden*, ed. Samuel Harvey Reynolds (Oxford: Clarendon, 1892) 100; Holdsworth, *A History of English Law*, vol. 1: 380–384.

    Berger's thesis concerning political crimes was criticized by Clayton Roberts, who faulted Berger for failing to give greater weight to those instances in which the Lords either acquitted the accused or took no action when offenses other than violations of known law were charged in an impeachment. In Roberts' view, while the Commons may have sought to define a category of offenses other than violations of known law, the Lords had opposed that effort. Roberts, "The Law of Impeachment in Stuart England," 1430–1436.

    Although Roberts' critique of Berger's thesis and of the meaning of high crimes and misdemeanors has weight, the relevance to the intent of the Framers of so fine an analysis of what the Lords found acceptable or unacceptable is at least questionable.
152. Quincy also noted in this regard that: "The Spencers, Father and Son, were Impeached, for that they prevented the great Men of the Realm from giving their Counsel to the King, except in their Presence," and "that they put good Magistrates out of Office, and advanced bad." *Boston Gazette and Country Journal*, January 4, 1768: 1.
153. Ibid.
154. Adams, *Works of John Adams*, vol. 10: 238–239. Adams also referred to his conversation with Major Hawley in his diary. Adams, *Works of John Adams*, vol. 2: 330.
155. Indeed, as Robert A. Rutland, the editor of George Mason's papers, noted, "Reports from England on the impeachment of Warren Hastings, the Viceroy of India, had an impact on Americans who were already convinced that corruption flourished throughout the British Empire. Hastings had been impeached for 'high crimes and misdemeanors' an expression

Mason soon borrowed." Rutland, *The Papers of George Mason*, ed. note, vol. 3: 980.

156. Alfred Lyall, *Warren Hastings* (Freeport: Books for Libraries Press, 1970, first published in 1889) 3.
157. Ibid., 29; and P.J. Marshall, ed., *The Oxford History of the British Empire: The Eighteenth Century* (Oxford: Oxford UP, 2001), 122, 165, 510, 513, 539–540 ("The Oxford History of the British Empire").
158. H.V. Bowen, "British India, 1765–1813: The Metropolitan Context," Marshall, *The Oxford History of the British Empire*, 540.
159. Ibid., 540–541.
160. Ibid., 541.
161. Conor Cruise O'Brien, "Warren Hastings in Burke's Great Melody," Geoffrey Carnal and Colin Nicholson, eds., *The Impeachment of Warren Hastings* (Edinburgh: Edinburgh UP, 1989) 61–62, 65. Lyall suggested that Burke may also have seen an attack on Hastings as serving a larger political objective in the contest with Pitt. Lyall, *Warren Hastings*, 186. Lord Macauley dismissed the contentions that Burke had personal or political motives for his pursuit of Hastings. Macauley found overreaching on Burke's part, however. Macauley also sensed that Burke may have been pushed forward by his own loss of standing. Thomas Babington Macauley, *Warren Hastings* (New York: Chautauqua Press, 1886) 143.
162. O'Brien, "Warren Hastings in Burke's Great Melody," 66.
163. Jeremy Bernstein, *The Dawning of the Raj: The Life and Trials of Warren Hastings* (Chicago: Ivan R. Dee, 2000) 209.
164. Ibid., 211–212. O'Brien has suggested that: "The main burden of Burke's charges against Hastings is that Hastings was in the habit of selling to the highest bidder the right to tax and that this practice resulted in vicious extortion and oppression." O'Brien, "Warren Hastings in Burke's Great Melody," 68.
165. Edmund Burke, *On Empire, Liberty, and Reform: Speeches and Letters of Edmund Burke*, ed. David Bromwich (New Haven: Yale UP, 2000), 388. With respect to the charges, Burke argued "It is by this tribunal that statesmen who abuse their power are accused by statesmen and tried by statesmen, not upon the niceties of a narrow jurisprudence, but upon the enlarged and solid principles of state morality." O'Brien, "Warren Hastings in Burke's Great Melody," 66–67. Here again, Burke made clear his view, and presumably that of the Commons whom he represented, that the high crimes and misdemeanors charged against Hastings were abuses of official power, not ordinary criminal offenses.
166. Earl Russell described the impeachment as "a long punishment." Russell, *An Essay on the History of the English Government and Constitution*, 119. Stephen described it as "a blot on the judicial history of the country." Stephen, *A History of the Criminal Law of England*, 160. Macauley noted that Hastings himself had remarked that "the arraignment had taken place before one generation, and the judgment was pronounced by another." Macauley, *Warren Hastings*, 170.

167. In his essay, "Personal Responsibility and Government—A Role for Impeachment?" A.W. Bradley has taken the opposite position that "[w]hat we can be sure of is that the framers were not influenced by the Hastings impeachment, since the convention in Philadelphia completed its work five months before the trial in Westminister Hall began." Carnall, *The Impeachment of Warren Hastings*, 173. Bradley is of course correct that the framers were not influenced by a trial that had not yet commenced. Nevertheless, the allegations against Hastings had been in the public record and the public press for at least a year before the convention convened and the Commons voted to impeach Hastings while the convention was in session. Thus, while the convention was not influenced by the trial, the circumstances coupled with Mason's reference to Hastings strongly suggest that the charges of misconduct lodged against Hastings directly influenced the delegates' decision to accept high crimes and misdemeanors as grounds for impeachment and removal.
168. The charges against Hastings are set forth in Edmund Burke, *The Works of the Right Honorable Edmund Burke*, 4th ed., vol. 3 (Boston: Little, 1871) 106.
169. A ninth state, New Jersey, provided in its constitution adopted on July 2, 1776, that judges could be removed who were "adjudged guilty of misbehavior, by the Council, on an impeachment of the Assembly." *Constitution of New Jersey*, Art. 12.
170. *The Constitution or Form of Government, Agreed to and Resolved Upon by the Delegates and Representatives of the Several Counties and Corporations of Virginia*, June 29, 1776.
171. *Constitution of the State of Delaware*, Art. 23.
172. *Constitution of North Carolina*, Art. 23 ("The Governor, and other offices, offending against the State, by violating any part of this constitution, maladministration, or corruption, may be prosecuted, on impeachment of the General Assembly.").
173. *Constitution of New York*, Art. 33 ("The power of impeaching the officers of the State, for mal and corrupt conduct in their respective offices, be vested in the representations of the people in Assembly.").
174. *Constitution of Vermont*, Sec. 20 ("Every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office, or after his resignation, or removal for maladministration.").
175. *Constitution of South Carolina*, Art. 23 ("That form of impeaching all officers of the State for mal and corrupt conduct in their respective offices, not amenable to any other jurisdiction, be vested in the House of Representatives.").
176. *Constitution of Georgia*, Art. 49.
177. *Constitution of Massachusetts*, Art. 8.
178. Hoffer and Hull, *Impeachment in America*, 78. Hoffer and Hull observed that the prospect of impeachment had curbed misuses of power such as intimidation of citizens, insubordination and overreaching. Impeachment had also posed a threat to incompetent officials.

179. Ibid., 79–83.
180. Ibid., 81–82.
181. Ibid., 83–85.
182. In contrast, debate over the presidency figured prominently in the debates. Fear of an elected monarch was a significant part of the Anti-Federalist critique. Jackson Turner Main, *The Anti-Federalists: Critics of the Constitution* (Chapel Hill: North Carolina UP, 1961) 141; Saul Cornell, *The Other Framers: Anti-Federalism and the Dissenting Tradition in America* (Chapel Hill: North Carolina UP, 1961) 31. Such fears were reflected in the November 6, 1787, letter of "An Officer of the Late Continental Army," Bailyn, *The Debates on the Constitution*, vol. 1: 100, and the November 22, 1787, letter of "Cato," ibid., 399. Patrick Henry warned the Virginia convention on June 7, 1787, that the president could become king by virtue of his command of the army. Henry questioned "by what law" the president would be punished. Ralph Ketchum, *The Anti-Federalist Papers and the Constitutional Debates* (New York: New American Library, 2003) 213–216. Thomas Jefferson also saw the risk that such an "officer for life" would be a target for the intrigues and bribery of a foreign power desirous of an executive who was sympathetic. David N. Mayer, *The Constitutional Thought of Thomas Jefferson* (Charlottesville, Virginia UP, 1994) 91–95, 224–226.
183. *Independent Gazetteer* (Philadelphia), September 28, 1787, Bernard Bailyn, ed., *The Debate on the Constitution*, vol. 1 (New York: The Library of America, 1993) 26–27 (emphasis original).
184. Noah Webster (writing as "A Citizen of America"), "An Examination into the Leading Principles of the Federal Constitution," Bailyn, *The Debate on the Constitution*, vol. 1: 141 (emphasis original). Contrary to Webster's view, however, as discussed in chapter 2, the Senate later concluded in the matter of Senator William Blount that members of Congress were not subject to impeachment.
185. George J. Graham, "Pennsylvania, Representation and the Meaning of Republicanism," Michael Allen Gillespie and Michael L. Lienesch, eds., *Ratifying the Constitution* (Lawrence: Kansas UP, 1989) 52.
186. "Dissent of the Minority of the Pennsylvania Convention," Pennsylvania Packet, December 18, 1787, Bailyn, *The Debate on the Constitution*, vol. 1: 546; Ketchum, *The Anti-Federalist Papers and the Constitutional Debates*, 235.
187. Bailyn, *The Debate on the Constitution*, vol. 2: 24.
188. Rakove suggests they were not. Rakove, *Original Meanings,* 132.
189. Alexander Hamilton ("Publius"), Federalist 65, Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. Benjamin F. Wright (New York: Barnes, 1996) 426 (emphasis original). Hamilton continued his discussion of the impeachment power in Federalist 66. There, he answered the criticism of the Anti-Federalists concerning the Senate as the adjudicatory body for impeachments. With respect to the Anti-Federalists' argument that trial in the Senate contravened the principle of separation of powers, Hamilton noted that legislative impeachment was "an essential check in the hands

of that body upon the encroachments of the executive," and that dividing the authority between the two houses "avoids the inconvenience of making the same persons both accusers and judges." Ibid., 431. Hamilton also responded to the Anti-Federalist arguments that trial by the Senate allowed an undue accumulation of power by noting that the House was given the sole authority to institute impeachments. Ibid., 432–433. Hamilton answered the criticism raised by the Pennsylvania dissenters that the Senate would be called upon to judge the conduct of persons whose appointments it had approved by noting that in approving presidential appointments, the Senate exercised no choice and therefore, "it could hardly happen, that the majority of the Senate would feel any other complacency towards the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy." Ibid., 433–434. Finally, Hamilton addressed the contention raised in the Lowndes-Rutledge debate in South Carolina that involvement of the Senate in ratifying treaties "would constitute the senators their own judges, in every case of a corrupt or perfidious execution of that trust." Hamilton noted first that: "The *joint agency* of the Chief Magistrate of the Union, and of two-thirds of the members of a body selected by the collective wisdom of the legislatures of the several states, is designed to be the pledge for the fidelity of the national councils in this particular." In contrast, however, Hamilton argued, "so far as might concern the misbehavior of the Executive in perverting the instructions or contravening the views of the Senate, we need not be apprehensive of the want of a disposition in that body to punish the abuse of their confidence or to vindicate their own authority." Ibid., 434–436.

190. In his lectures on the law delivered many years later, Wilson wrote that "impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments." James Wilson, *The Works of James Wilson*, ed. Robert McCloskey (Cambridge, MA: Harvard UP, 1967) vol. 1: 246.
191. Gillespie and Lienesch, *Ratifying the Constitution*, 349. After adoption of the Bill of Rights, North Carolina became the twelfth state to ratify the constitution. Ibid., 364.
192. Bailyn, *The Debate on the Constitution*, vol. 2: 873.
193. Ibid., 877. Iredell explained that while the consequences of conviction were removal from office and disqualification from holding "any place of honor, trust, or profit," the person would nevertheless remain subject to criminal trial and to receive "such common-law punishment as belongs to a description of such offenses, if it be punishable by that law." Philip B. Kurland and Ralph Lerner, eds., *The Founders' Constitution* (Chicago: Chicago UP, 1987) vol. 4: Article II, Section 2, Clause 2, Document 22.
194. Bailyn, *The Debate on the Constitution*, vol. 2: 880.
195. Ibid., 882.
196. Ibid., 883.
197. Ibid., 383. In this, Iredell's views coincided with the Anti-Federalist writing under the name "Brutus," who in a letter to the *New York Journal* on March

20, 1788, said with respect to the removal of judges that "Errors in judgment, or want of capacity to discharge the duties of the office, can never be supposed to be included in these words, *high crimes and misdemeanors*. A man may mistake a case in giving judgment, or manifest that he is incompetent to the discharge of the duties of a judge, and yet give no evidence of corruption or want of integrity. To support the charge, it will be necessary to give in evidence some facts that will show, that the judges committed the error from wicked and corrupt motives." Ibid., 375 (emphasis original).

198. Ibid., 883. Iredell argued, as Hamilton had in Federalist 66 that in either instance, the Senate would be the appropriate forum in which to try a charge of misdemeanor.

2 The Impeachment and Trial of Andrew Johnson

1. The extent of the president's removal power would be the gravamen of the complaint against President Andrew Johnson.
2. Joseph Gales, ed., *The Debates and Proceedings in the Congress of the United States*, vol. 1 (Washington, DC: Gales and Seaton, 1834) 495.
3. Ibid., 496.
4. Buckner F. Melton, Jr., *The First Impeachment: The Constitution's Framers and the Case of Senator William Blount* (Macon: Mercer UP, 1998) 61–63.
5. Madison's notes of the convention reflect that at the time of the signing of the proposed constitution on September 17, "Mr. Blount said he had declared that he would not sign, so as to pledge himself in support of the plan, but he was relieved by the form proposed and would without committing himself attest the fact that the plan was the unanimous act of the States in convention." Madison, *Notes*, 657.
6. Melton, *The First Impeachment*, 64–66.
7. Ibid., 64–66.
8. Ibid., 74–76.
9. Ibid., 86–95. The Neutrality Act is codified at 18 U.S.C. § 960.
10. Francis Wharton, *State Trials of the United States during the Administration of Washington and Adams* (Philadelphia: Adams, Carey and Heart, 1849) 200.
11. Ibid., 217–218.
12. Ibid., 201. The House had debated the impeachment on July 6. A legal opinion was secured to the effect that Blount's correspondence constituted a crime for which Blount could be impeached. Elenore Bushnell, *Crimes, Follies, and Misfortunes: The Federal Impeachment Trials* (Urbana: Illinois UP, 1992) 27–28; and Melton, *The First Impeachment*, 106.
13. Wharton, *State Trials of the United States*, 251–252.
14. Bushnell, *Crimes, Follies, and Misfortunes*, 29; Melton, *The First Impeachment*, 126–127, 131–132.
15. In essence, the articles of impeachment charged that between February and June 1797, Blount had conspired to invade Florida and Louisiana in order

to capture the territory for Britain, which was then at war with Spain. In furtherance of the conspiracy, the Creek and Cherokee Nations were to be incited to take hostile action against the settlers in the territory in violation of the Neutrality Act. Wharton, *State Trials of the United States*, 253–255.

16. Ibid., 257.
17. United States Senate, *Extracts from the Journal of the United States Senate in all Cases of Impeachment 1798–1904*, *Senate Document No. 876* (Washington, DC: U.S. Government Printing Office, 1912) 9 ("Senate Document no. 876").
18. Wharton, *State Trials of the United States*, 261.
19. In his answer to the articles of impeachment, Blount argued impeachment could only be grounded on charges of treason, bribery, or other high crimes and misdemeanors "alleged to have been committed by the president, vice president, or any civil officer of the United States in the execution of their offices held under the United States." *Senate Document No. 876*, 10. Blount further contended that he had not been "a civil officer of the United States" at the time of the alleged misconduct and that he had not been charged in the articles "with having committed any crime or misdemeanor in the execution of any civil office held under the United States, nor with any malconduct in a civil office or abuse of any public trust in the execution thereof." *Senate Document No. 876*, 10.
20. Wharton, *State Trials of the United States*, 277.
21. Ibid., 290–291.
22. Ibid., 313.
23. *Senate Document No. 876,* 13.
24. Ibid., 14.
25. Ibid., 14. For that reason, the case is viewed as establishing the immunity of members of Congress from impeachment. Walter Ehrlich, *Presidential Impeachment: An American Dilemma* (Saint Charles: Forum Press, 1974) 36; Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis*, 3d ed. (Chicago: Chicago UP, 2000) 48–50; Philip B. Kurland, *Watergate and the Constitution* (Chicago: Chicago UP, 1978) 116.
26. Wharton, *State Trials of the United States*, 315–316; *Senate Document No. 876,* 15.
27. Alfred H. Kelly, Winfred A. Harbison, and Herman Belz, *The American Constitution: Its Origins and Development*, 7th ed., vol. 1 (New York: Norton 1991) 162–163.
28. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).
29. Bushnell, *Crimes, Follies, and Misfortunes*, 43; Hoffer and Hull, *Impeachment in America*, 207. As noted by Lynn W. Turner, Pickering's impeachment "would have seemed less brutal" had Pickering not had such a distinguished career in public service. Lynn W. Turner, "The Impeachment of John Pickering," *American Historical Review* (1949): vol. 54: 487–488.
30. Hoffer and Hull, *Impeachment in America*, 207.
31. Bushnell, *Crimes, Follies, and Misfortunes*, 43. Interestingly, just ten years earlier, in 1794, the Congress had removed jurisdiction from the District Court of New Hampshire to the Circuit Court because the district judge, John

Sullivan, had been similarly incapacitated by drunkenness and dementia. David P. Currie, "The Constitution in Congress: The Most Endangered Branch, 1801–1805," *Wake Forest Law Review,* 33 (1998): 236.

32. Bushnell, *Crimes, Follies, and Misfortunes*, 45; Hoffer and Hull, *Impeachment in America*, 208, Turner, "The Impeachment of John Pickering," 491.
33. Andrew C. McLaughlin, *A Constitutional History of the United States* (New York: D. Appleton-Century, 1935) 320. Jefferson had earlier expressed the view that impeachment was a criminal proceeding. Thomas Jefferson, *Jefferson's Parliamentary Writings*, ed. Wilbur Samuel Howell (Princeton: Princeton UP, 1987) 11. This being so, it is not clear what crime, other than public intoxication, Jefferson thought that Pickering had committed.
34. Hoffer and Hull, *Impeachment in America*, 208.
35. The ship had been seized by the collector of customs, a Republican, in Portsmouth for nonpayment of duties. The ship's owner, a prominent Federalist, was granted release of the ship by Judge Pickering without evidencing payment. The customs collector libeled the ship and its cargo and the owner's suit for their return was heard by Judge Pickering. Turner, "Impeachment of John Pickering," *American Historical Review*, vol. 54: 489. The impeachment articles charged that the ship and contents had been returned without proof of payment and that Pickering had refused to hear testimony on behalf of the United States during trial. Following the trial, Pickering had refused to allow the appeal of the U.S. attorney contrary to the Judiciary Act. Lastly, Pickering was charged with intoxication during the trial and with invoking the name of the "Supreme Being" in a "most profane and indecent manner." All of these actions were "contrary to his trust and duty as a judge in violation of the laws of the United States," and therefore were high crimes and misdemeanors. Emily Field Van Tassell and Paul Finkelman, eds., *Impeachable Offenses: A Documentary History from 1787 to the present*, (Washington, DC: Congressional Quarterly, 1999) 93–95.
36. *Senate Document No. 876*, 19–22.
37. Ibid., 29; Van Tassell and Finkelman, *Impeachable Offenses*, 95–96; Currie, "The Constitution in Congress," *Wake Forest Law Review*, vol. 33: 240.
38. Turner, "The Impeachment of John Pickering," 494.
39. Ibid., 504.
40. Ibid., 499.
41. Rollin M. Perkins, *Criminal Law*, 2d ed. (Mineola: Foundation Press, 1969) 857; Currie, "The Constitution in Congress," 244–245.
42. William Plumer, *William Plumer's Memorandum of Proceedings in the United States Senate 1803–1807*, ed. Everettt Somerville Brown (New York: Macmillan, 1923) 160–161.
43. Turner, "The Impeachment of John Pickering," 504–505. The Republican tactic has been characterized as a "subterfuge." Jerry W. Knudson, "The Jeffersonian Assault on the Federal Judiciary," *American Journal of Legal History* (1970) vol. 14: 61; McLaughlin, *A Constitutional History of the United* States, 320–321. Currie referred to the Senate's verdict as "pretty disreputable." Currie, "The Constitution in Congress," 244–245.

44. *Annals of Congress, Senate, 8th Cong., 1st Sess.*, 365.
45. *Senate Document No. 876*, 33–34.
46. Adams, *History of the United States of America*, vol. 2: 158.
47. Albert J. Beveridge, *The Life of John Marshall*, vol. 3 (Boston: Houghton, 1916) 169.
48. Ibid., 184 n.5.
49. Ibid.; Richard B. Lillich, "The Chase Impeachment," *American Journal of Legal History*, vol. 4 (1960): 52–53; Knudson, "The Jeffersonian Assault," 62–63; Richard Ellis, "The Impeachment of Samuel Chase," Michael Belknap, ed., *American Political Trials* (Westport: Greenwood Press, 1981) 58–59.
50. Fries had opposed the enforcement of federal revenue laws by force. He had been convicted on undisputed facts and condemned to death. A new trial had been granted and assigned to Justice Chase and Judge Peters (who had presided at the earlier trial). On the day of the trial, Justice Chase distributed his opinion. Although Chase later agreed to withdraw the opinion, the counsel for Fries refused to proceed with the case. Fries was again convicted and condemned to death. He was later pardoned by President Adams. R.W. Carrington, "The Impeachment Trial of Samuel Chase," *Virginia Law Review* (1923) vol. 9: 487.
51. Callender had published pamphlets accusing Washington and Adams of corruption. Chase's handling of the trial had been criticized, particularly his belittling of Callender's counsel, his refusal to seat several sympathetic Republicans on the jury, and his statement that he would "punish" Callender. Carrington, "The Impeachment Trial of Samuel Chase," 487.
52. Charles Warren, *The Supreme Court in United States History*, 273, quoted in Lillich, "The Chase Impeachment," 53; Belknap, *American Political Trials*, 61. As was observed in this connection, "It was not by his judicial capacity alone that Samuel Chase had earned his reputation. For years he had been known as a pugnacious lawyer and politician who sought quarrels and delighted in them. Indeed, his entire career had been marked by such intemperance of word and action that he seemed to be perpetually with a mob at his heels, which sometimes pursued but quite often followed him." Frederick T. Hill, *Decisive Battles of the Law*, 6–7, quoted in Lillich, "The Chase Impeachment," 51, n.6. Sean Wilentz wrote that following his confirmation in 1795, Chase "turned into a single-minded enforcer during the Alien and Sedition crisis" and had "presided belligerently over several of the most sensational sedition trials and punished those convicted to the limits the law allowed." Wilentz observed that "Chase was, in 1804, the most powerful conservative Federalist in the federal government, and the Republicans' loathing for him ran deep." Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: Norton, 2005) 126.
53. 5 U.S. (1 Cranch) 137 (1803).
54. Adams, *History of the United States of America*, vol. 2: 148–149. Chase told the grand jurors that passage of the Judiciary Act and the establishment of universal suffrage under the state constitution would "take away all security for property and personal liberty." Chase warned that the Constitution "will

sink into a mobocracy—the worst of all possible governments" and that the "modern doctrines by our late reformers, that all men . . . are entitled to enjoy equal liberty and equal rights," had "brought this mischief upon us." Chase said that he feared "it will rapidly progress until peace and order, freedom and prosperity, shall be destroyed."

55. Adams, *History of the United States of America*, vol. 2: 150.
56. Ibid., 150–51.
57. Beveridge, *The Life of John Marshall*, vol. 3: 171.
58. Adams, *History of the United States of America*, vol. 2: 151. Adams wrote that: "Randolph was no lawyer; but this defect was a trifling objection compared with his greater unfitness in other respects. Ill-balanced, impatient of obstacles, incapable of sustained labor or of a methodical arrangement, illogical to excess, and egotistic to the verge of madness, he was sparkling and formidable in debate or on the hustings, where he could follow the wayward impulse of his fancy running in the accustomed channels of his thought; but the qualities that helped him in debate were fatal to him at the bar." Ibid., 151–152.
59. Chase was charged with a variety of instances of misconduct in the Fries and Callender trials. Chase was also charged with having refused to discharge a grand jury after having harangued them concerning the "seditious" writings of a local newspaper editor. Lastly, Chase was charged with misconduct in regard to his remarks to the Baltimore grand jury that had prompted his impeachment in the first instance. Plumer, *William Plumer's Memorandum*, 216–218.
60. *Senate Document No. 864*, 35–36.
61. Adams, *Writings of John Quincy Adams*, vol. 3: 115. John Quincy Adams further noted that these articles, apparently the fifth and sixth articles, "afford the most unequivocal proofs of a determination to establish the principle that judges are removable by impeachment for any mistake on the point of law" and "contained in themselves a virtual impeachment not only of Mr. Chase, but of all the judges of the Supreme Court from the first establishment of the national judiciary." Ibid.,116.
62. In conversation with Adams, Giles had "treated with the utmost contempt the idea of an *independent* judiciary" and had expressed the view that other than the lone Republican justice, "All other Judges of the Supreme Court . . . must be impeached and removed." With obvious reference to *Marbury v. Madison*, Giles told Adams, "The power of impeachment was given without limitation to the House of Representatives" and "the power of trying impeachments was given equally without measure to the Senate." Accordingly, if the justices of the Supreme Court were to declare a law unconstitutional, "it was the undoubted right of the House of Representatives to remove them for giving such opinions, however honest or sincere they may have been in entertaining them." Giles flatly stated, "*we want your offices*, for the purpose of giving them to men who will fill them better." John Quincy Adams, *Memoirs of John Quincy Adams*, ed. Charles Francis Adams (Philadelphia: Lippincott, 1874) vol. 1: 322 (emphasis original).
63. Ibid. The Federalist position was diametrically opposed. As William Plumer wrote in his journal, "Incapacity in the officer is a misfortune, but no cause for impeachment . . . to impeach, convict and remove a judge from office, for

having formed an erroneous opinion, is a doctrine pregnant with ruin to the Judiciary." Plumer, *William Plumer's Memorandum of Proceedings,* 232.

64. *Senate Document No. 876*, 44.
65. Keith Whittington observed that Chase's insistence that the Senate proceedings mirror a criminal trial, with the attendant legal standards and procedures, ensured that the grounds for impeachment would be construed narrowly. Keith E. Whittington, *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge, MA: Harvard UP, 1999) 27.
66. *Annals of Congress*, Senate, 8th Cong., 2d Sess., 101–150.
67. Belknap, *American Political Trials,* 70.
68. Adams, *History of the United States of America*, vol. 2: 223.
69. Plumer, *William Plumer's Memorandum,* 281–295; Beveridge, *The Life of John Marshall*, vol. 3: 189.
70. *Annals of Congress*, Senate, 8th Cong., 2d Sess., 331–332.
71. Ibid., 562. Beveridge described Nicholson's statement as an "irretrievable blunder" that rendered the Senate "dumbfounded." Beveridge, *The Life of John Marshall*, vol. 3: 207–208.
72. Knudson, "The Jeffersonian Assault," 65.
73. *Annals of Congress*, Senate, 8th Cong., 2d Sess., 359 (emphasis original).
74. Ibid., 433.
75. *Senate Document No. 864,* 55–60; *William Plumer's Memorandum*, 309–310. As to the issue of an impeachable act, Adams observed that "The question whether impeachment could be had for acts not violating any law was discussed and sifted, until the managers themselves were compelled to abandon it, at least in its application to the cause." John Quincy Adams, *The Writings of John Quincy Adams*, ed. Worthington Chauncy Ford (New York: Macmillan, 1914) 112–113.
76. Beveridge, *The Life of John Marshall*, vol. 3: 219.
77. Peck was a U.S. District Judge in Missouri. Following the publication of an article by a lawyer, Luke E. Lawless, in a suit before Peck that was highly critical of Peck's handling of the case, Peck held Lawless in contempt of court and ordered that Peck be jailed for twenty-four hours and be suspended from law practice. Complaint was made to Congress and attempts were made in 1826 and 1828 to impeach Peck. Finally, in 1830, the House Judiciary Committee recommended that Peck be impeached on one charge of high crime and misdemeanor for the imprisonment of Lawless, which the Committee said had been an "abuse of judicial authority" and a "subversion of the liberty of the people." At trial before the Senate, the House Managers argued that Peck could be removed for committing an illegal act with bad intent or an otherwise legal act that was not warranted by the circumstances. Thus, one of the managers argued that "any official act committed or omitted by a judge, which is in violation of the condition upon which he holds his office, is an impeachable offense under the Constitution." Peck's defense argued that both the "illegality of the act" and the "guilt of the intention" were necessary for removal. Peck was acquitted and continued to serve until his death in 1836. Bushnell, *Crimes, Follies, and Misfortunes*, 91–92.

78. West H. Humphreys was a District Judge in Tennessee. In 1862, Judge Humphreys absented from the District Court in order to accept appointment as a judge by Jefferson Davis, president of the Confederacy. However, because Judge Humphreys had not resigned from the federal bench, President Lincoln was not able to appoint a successor. This anomaly could only be resolved by the removal of Judge Humphreys and on May 22, 1862, the House of Representatives adopted seven articles of impeachment regarding Judge Humphreys. Judge Humphreys did not respond to the charges and after a brief evidentiary hearing, he was convicted of high crimes and misdemeanors. The judge was thereafter removed from office by the Senate. Bushnell, *Crimes, Follies, and Misfortunes*, 115–124.
79. Lois Fisher, *Constitutional Conflicts between Congress and the President* (Lawrence: Kansas UP, 1997) 55.
80. Rhenquist, *Grand Inquests*, 257–258.
81. William Rawle, *A View of the Constitution of the United States of America*, 2d ed. (Philadelphia: Phillip H. Nicklin, 1829) 211.
82. Ibid., 215.
83. James Wilson, *The Works of James Wilson*, ed. Robert Green McCloskey, vol. 1 (Cambridge, MA: Harvard UP, 1967) 324
84. Ibid., 426.
85. Story, *Commentaries on the Constitution of the United States*, vol. 2: 167–169.
86. Ibid., 171.
87. Ibid., 217.
88. Ibid., 220.
89. Ibid., 263–264.
90. Ibid., 270–272.
91. Ibid., 264.
92. Ibid., 267.
93. James Kent, *Commentaries on American Law*, 9th ed., vol. 1 (Boston: Little, 1858) 311.
94. George Ticknor Curtis, *History of the Origin, Formation and Adoption of the Constitution of the United States*, vol. 2 (New York: Harper, 1858) 260–261.
95. Theodore W. Dwight, "Trial by Impeachment," *American Law Register*, 15 (1867) vol. 15: 257.
96. Ibid., 268–269.
97. Ibid.
98. William Lawrence, "The Law of Impeachment," *American Law Register*, 15 (1867): 641.
99. Ibid., 647.
100. Ibid., 644 (emphasis original).
101. Ibid., 647.
102. Ibid., 649.
103. Ibid., 645–646.
104. Ibid., 665.
105. Ibid., 666.
106. Ibid., 680.

107. David Miller Dewitt, *The Impeachment and Trial of Andrew Johnson* (New York: Macmillan, 1903) 1; and Michael Les Benedict, *The Impeachment and Trial of Andrew Johnson* (New York: Norton, 1973) 1.
108. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 2. Nevertheless, there were profound differences between Lincoln and the Radical Republicans. Foner noted that to Lincoln, Reconstruction was part of his strategy to win the war and to achieve emancipation through establishing state governments that would include Southerners who took a loyalty oath and who pledged to uphold abolition. The Radical Republicans viewed Reconstruction as a broader plan to reform Southern society. Eric Foner, *Reconstruction: America's Unfinished Revolution 1863–1877* (New York: Harper & Row, 1988) 61–62.
109. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 5. Benedict, *The Impeachment and Trial of Andrew Johnson*, 3; David O. Stewart, *Impeached: The Trial of President Andrew Johnson and the Fight for Lincoln's Legacy* (New York: Simon & Schuster, 2009) 7; Lloyd Paul Stryker, *Andrew Johnson* (New York: Macmillan, 1929) 1–129; Robert W. Winston, *Andrew Johnson: Plebian and Patriot* (New York: Holt, 1928) 3–257. By the time Johnson succeeded Lincoln, the Republican Party was in disarray. William A. Dunning, "More Light on Andrew Johnson," *American Historical Review*, 11 (1906): 574.
110. Whittington, *Constitutional Construction*, 114. Benedict described Johnson as having been "[i]ntent on wrecking the Republican Reconstruction program irrevocably." Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction 1863–1869* (New York: Norton, 1974) 294. Benedict observed that from the beginning of his administration Johnson had worked to vitiate the Reconstruction program of the Radical Republicans. Benedict, *The Impeachment and Trial of Andrew Johnson*, 39–40. Richard M. Valelly suggested a direct political purpose in Johnson's efforts to undo reconstruction, that of building a coalition of Southern conservatives and northern democrats in anticipation of the 1868 election. Richard M. Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: Chicago UP, 2004) 27.
111. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 5–6.
112. Stewart, *Impeached*, 50–51; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 45–48; Stryker, *Andrew Johnson*, 273; Gene Smith, *High Crimes and Misdemeanors: The Impeachment and Trial of Andrew Johnson* (New York: Morrow, 1977) 143–144; William H. Rehnquist, *Grand Inquests: The Historic Trials of Justice Samuel Chase and President Andrew Johnson* (New York: Morrow, 1992) 205. Benedict attributed the vetoes of both the Freedman's Bureau Act and the Civil Rights Act to Johnson's view of limited federalism. Benedict, *The Impeachment and Trial of Andrew Johnson*, 12. Milton Lomask had also suggested that Johnson feared the concentration of power in the Executive. Milton Lomask, *Andrew Johnson: President on Trial* (New York: Farrar, 1960) 142. However, Hans Trefousse found a racial motive for Johnson's veto of the Freedman's Bureau Act. Hans L. Trefousse, *Impeachment of a President* (New York: Fordham UP, 1999) 15. Benedict

similarly observed that Johnson's policies clearly favored Southern whites to the detriment of the black population. Michael Les Benedict, "A New Look at the Impeachment of Andrew Johnson," *Political Science Quarterly*, 113 (1998): 494–495.

113. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 49; Lomask, *Andrew Johnson: President on Trial*, 163–164. Benedict wrote that the Radical Republicans reacted against the veto with "frustrated outrage," the intensity of which had shocked Johnson. Benedict, *The Impeachment and Trial of Andrew Johnson*, 12–13. Sir Frederick Bruce described their reaction as "venom and defeat." Smith, *High Crimes and Misdemeanors*, 144. Sumner Welles, the secretary of the Navy, shared this view as well. Welles wrote: "The effect of this veto will probably be open rupture between the President and a portion of the Republican members of Congress." Stryker, *Andrew Johnson*, 270.
114. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 51–52; Stryker, *Andrew Johnson*, 280–281; Smith, *High Crimes and Misdemeanors*, 158–159; Stewart, *Impeached,* 51–52. In that speech, Johnson referred to the Republican Radicals as being "a common gang of cormorants and blood suckers, who have been fattening upon the country." Benedict, *The Impeachment and Trial of Andrew Johnson*, 13. The president's rhetoric was condemned in the popular press as well as by supporters of the Republican Radicals. An article in *Harper's Weekly* described the president's remarks as being "something so unprecedented and astounding that, while every generous man will allow for the excitement of passion, there is no self-respecting American citizen who will not feel humiliated that the chief citizen of the Republic, in such a place, on such a day, should have been utterly mastered by it." *Harper's Weekly*, March 10, 1866: 147.
115. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 51–54. Dewitt viewed Johnson's speech on Washington's Birthday as being the benchmark date of the movement to impeach Johnson. To Foner, Johnson's Washington's Birthday speech "displayed Johnson at his worst." Foner, *Reconstruction,* 249.
116. Stewart, *Impeached*, 53; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 67–82; Stryker, *Andrew Johnson*, 287–291. Johnson again vetoed the legislation as being an improper invasion of rights reserved to the states. He also objected to the criminal provisions. Lomask, *Andrew Johnson: President on Trial*, 157–160. Trefousse suggested a racial motivation underlying Johnson's veto of the Civil Rights Act. Trefousse wrote that "The entire bill seemed to him a violation of states' rights. Beyond that, it offended his racial sensibilities since it proposed to outlaw all discrimination between the races. Would it not enable Congress to repeal state laws forbidding interracial marriage, he argued. And quoting Chancellor Kent, was not such a prospect 'revolting and . . . offensive against public decorum?'" Trefousse, *Impeachment of a President*, 26.
117. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 87–97; Stryker, *Andrew Johnson*, 299–300. According to Trefousse, Johnson's objection to

the Fourteenth Amendment centered on black suffrage and the "enormous power" that would be conferred upon Congress by the due process clause. Trefousse, *Impeachment of a President*, 36–38. However, as Rehnquist noted, while Johnson had no constitutional authority to block ratification of the Fourteenth Amendment, Johnson nevertheless opposed ratification. Johnson sought the views of his cabinet, and whether due to his ambivalence or duplicity, Stanton indicated that he disapproved of it. Rehnquist, *Grand Inquests*, 207. Bruce Ackerman suggested that Johnson's opposition to the Fourteenth Amendment was a decisive cause of Johnson's impeachment. Bruce Ackerman, *We The People: Foundations*, vol. 1 (Cambridge, MA: Harvard UP, 1991) 83.

118. Stryker, *Andrew Johnson*, 317–319; Trefousse, *Impeachment of a President*, 37–38; Winston, *Andrew Johnson: Plebian and President,* 358–363; Stewart, *Impeached*, 54–55.
119. Johnson's comments to the delegates may have been intended to serve his political aspirations for the 1868 general election as an appeal to the National Union Party. Whittington, *Constitutional Construction*, 125.
120. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 113; and Stryker, *Andrew Johnson*, 324–325.
121. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 113.
122. Ibid., 115–118; and Stryker, *Andrew Johnson*, 353–358; Stewart, *Impeached*, 67.
123. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 119–120; Winston, *Andrew Johnson: Plebian and Patriot*, 363–370.
124. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 120.
125. Ibid., 180.
126. Foner, *Reconstruction,* 333.
127. Valelly observed that the Tenure of Office Act and the Command of the Army Act was Congress's attempt to control both the cabinet and the army. Valelly, *The Two Reconstructions*, 31. The Tenure of Office Act was not repealed until 1887. In *Myers v. United States*, 272 U.S. 52 (1926), the Supreme Court held a similar statute requiring senatorial approval for the removal of certain federal officers to be unconstitutional.
128. Stewart, *Impeached*, 75; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 199–203; Stryker, *Andrew Johnson*, 437–439. Johnson's cabinet unanimously recommended that Johnson veto the Act as being an unconstitutional interference with the president's appointment power. Ironically, Stanton assisted Secretary of State Seward in drafting Johnson's veto message. Rehnquist, *Grand Inquests*, 210. During the cabinet's deliberation on the constitutionality of the Act, Stanton had declared: "No man of a proper sense of honor would remain in the cabinet when invited to resign." Hearing that, Johnson asked Stanton to draft the veto message. Lomask, *Andrew Johnson: President on Trial*, 248. Also at this time, Johnson vetoed the First Reconstruction Act, which declared that there were no legal governments in the South and, accordingly, the reestablishment of military governments was authorized. Civil governments were only to be restored after a constitution was ratified by

universal male suffrage. In his veto message, Johnson again stated his opposition to federal intervention into issues of state governance and his opposition to mandatory black suffrage. Trefousse, *Impeachment of a President*, 47.

129. Stryker, *Andrew Johnson*, 447.
130. Ibid., 477–478.
131. Ibid., 479. Ackerman has argued that the support of the army was crucial to the ratification of the Fourteenth Amendment in the South, as well as to the Republican Party garnering votes for the general election in 1868. For Republicans, time was of the essence. Johnson's interests were served by delay and to the extent that provisional state governments were loyal to him, those states could delay the registration and convention process, thus thwarting ratification. Ackerman, *We The People*, vol. 2: 210–214. To counter such a tactic, Congress enacted the Command of the Army Act, which prevented removal of Ulysses S. Grant as general of the army without express consent of the Senate and which required the president to issue all military orders through General Grant. Charges that Johnson had violated the Tenure Act and the Command of the Army Act comprised the majority of the counts in the bill of impeachment.
132. Stryker, *Andrew Johnson*, 480–481; Benedict, *The Impeachment and Trial of Andrew Johnson*, 22. The response of the Radical Republicans to the veto was to call for Johnson's impeachment. In direct contravention of their caucus, Congressman James Ashley and others brought impeachment resolutions to the floor. The resolutions were referred to the Judiciary Committee where they were subject to "the long and tedious job of collecting evidence and taking testimony." Benedict, *The Impeachment and Trial of Andrew Johnson*, 23. Ashley charged Johnson with usurpation of his constitutional powers and corruption in his use of the appointment, pardon, and veto powers. On November 25, 1867, the Judiciary Committee issued a report by a 5 to 4 vote favoring impeachment. The chairman of the Committee, James Wilson, filed a minority report in which he argued that none of the acts complained of by the majority constituted a basis for impeachment because they were not indictable offenses. After two days of debate in December 1867, the resolution to impeach Johnson failed by a vote of 108 to 57. Rehnquist, *Grand Inquests*, 214.
133. Ibid., 212.
134. Stryker, *Andrew Johnson,* 483–484; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 271–272. Sheridan was finally relieved of command in August after he removed twenty-two New Orleans aldermen, the city treasurer, and the chief of police. Sheridan was reassigned to the Department of Missouri. Stryker, *Andrew Johnson*, 500.
135. Both incidents emerged from the trial in June 1867 of the one remaining assassination conspirator, John H. Surratt. In the course of the trial, an issue was raised concerning Johnson's signing of the death warrant for Surratt's mother, Mary E. Surratt, after five members of the military commission that convicted her had recommended clemency. Johnson believed that he had not been shown the clemency recommendation drawn up by

Judge Advocate Joseph Holt. Johnson directed Stanton to provide him with the original record, which he did on August 5. Examining it, Johnson was convinced that Holt and Stanton had obscured the document and it was on that day that Johnson informed Stanton of his removal. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 272–276. On the same day, a critical prosecution witness against John Surratt, Sanford Conover, informed Johnson that Ashley and William Butler, two leading Radicals in Congress, had contrived to create evidence linking Johnson with Jefferson Davis and John Wilkes Booth in the assassination of Lincoln. This information also had come to light on August 5. Stryker, *Andrew Johnson*, 486–488; *Dewitt*, *The Impeachment and Trial of Andrew Johnson*, 272–276; Trefousse, *Impeachment of a President*, 80–81; Smith, *High Crimes and Misdemeanors*, 210–212.

136. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 276–277, Stryker, *Andrew Johnson*, 488–489.
137. Rehnquist, *Grand Inquests*, 212–213.
138. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 283–284; Stryker, *Andrew Johnson*, 489–490; Smith, *High Crimes and Misdemeanors*, 212–214. Upon receiving Stanton's reply, Johnson remarked that "The turning point has at last come. The Rubicon is crossed." Lomask, *Andrew Johnson: President on Trial*, 250.
139. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 309–314; Stryker, *Andrew Johnson*, 517–518.
140. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 314–316; Stryker, *Andrew Johnson,* 519–520.
141. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 322–324; Stryker, *Andrew Johnson,* 536–537; Lomask, *Andrew Johnson: President on Trial*, 261; Smith, *High Crimes and Misdemeanors*, 221–222.
142. Stryker, *Andrew Johnson,* 559–561; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 343–345; Smith, *High Crimes and Misdemeanors*, 226–227. Stanton was encouraged by the reaction in both the House and the Senate. Among the expressions of support, Senator Sumner transmitted a famously brief one-word message: "Stick." Benedict, *A Compromise of Principle*, 297–298; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 347; Trefousse, *Impeachment of a President*, 134–135; Smith, *High Crimes and Misdemeanors*, 228; Lomask, *Andrew Johnson: President on Trial*, 266.
143. Stryker, *Andrew Johnson*, 565–568; Smith, *High Crimes and Misdemeanors*, 230–233.
144. Stryker, *Andrew Johnson,* 569–570; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 351–357.
145. Whittington observed that Stanton's removal had implications for the Radicals beyond the loss of any ally. In removing Stanton, Johnson had openly defied the will of Congress. Whittington, *Constitutional Construction*, 136–137.
146. Stryker, *Andrew Johnson,* 572–578; Dewitt, *The Impeachment and Trial of Andrew Johnson*, 357–374; Smith, *High Crimes and Misdemeanors*, 234–235;

Trefousse, *Impeachment of a President*, 137; Winston, *Andrew Johnson: Plebian and Patriot*, 419–424; and Lomask, *Andrew Johnson: President on Trial*, 269–274; Rehnquist, *Grand Inquests*, 217–218.

147. Ibid., 219. Nevertheless, as Foner pointed out, taken as a whole, the articles were predicated on the premise that only a clear violation of a statute would warrant Johnson's removal; which was also the central premise of Johnson's defense. Additionally, Foner noted, Chief Justice Chase "steered the proceedings in a narrowly legalistic direction," and as a consequence, the managers were compelled to focus on violations of the Tenure Act and the Command of the Army Act rather than raising the broader policy issues of Johnson's frustration of Congress. Foner, *Reconstruction*, 335.
148. Smith, *High Crimes and Misdemeanors*, 236.
149. Johnson was charged with having violated the Tenure of Office Act by removing Stanton without obtaining the consent of the Senate; by appointing General Thomas as secretary of war ad interim without first having obtained the advice and consent of the Senate; and by appointing General Thomas "without authority," there having been "no vacancy in the said office at the time" (Article 1–3). *Trial of Andrew Johnson on Impeachment*, vol. 1: 8.
150. Johnson was charged with violating the Command of the Army Act by advising the commander of the military forces in Washington on February 22, 1868, that the Act was unconstitutional and therefore was not binding upon him (Article 9). *Trial of Andrew Johnson on Impeachment*, vol. 1: 8.
151. Johnson was charged with various acts of conspiracy with General Thomas to violate the Tenure of Office Act including: preventing Stanton from holding office as secretary of war by "intimidation and threats;" by attempting to prevent Stanton from holding office "by force;" by taking possession of U.S. property at the War Department "by force" through attempts to prevent Stanton from holding office; and by taking possession of U.S. property at the War Department, although not by force (Articles 4–8). These offenses were characterized either as a "high crime" (Articles 4 and 6) or a "high misdemeanor" (Articles 5, 7 and 8). *Trial of Andrew Johnson on Impeachment*, vol. 1: 7–8.
152. Johnson was alleged to have endeavored to bring Congress "into disgrace, ridicule, hatred, contempt and reproach" and to "impair and destroy Congress" in statements made in Washington and during Johnson's "swing around the circle." It was charged that Johnson had made these statements "unmindful of the high duties of his high office and the dignity and proprieties thereof," and as a consequence Johnson had brought the presidency "into contempt, ridicule and disgrace, to the great scandal of all good citizens," a "high misdemeanor in office" (Article 10). Lastly, Johnson was cited for his comment in his August 18 speech at the White House (which also formed part of Article 10) that the Congress was not properly authorized under the Constitution because it was "Congress of only part of the States." The House characterized Johnson's statement as "intending to deny that the legislation of said Congress was valid or obligatory on him" and that the

Congress lacked authority "to propose amendments to the Constitution." It was a charge that as a consequence of his denial of Congress' authority, Johnson had attempted "to contrive means" by which to violate the Tenure of Office Act and to prevent the execution of the Command of the Army Act and the Second Reconstruction Act (Article 11). These actions too were alleged to constitute a "high misdemeanor in office." *Trial of Andrew Johnson on Impeachment*, vol. 1: 10.

153. U.S. Congress, *The Impeachment and Trial of Andrew Johnson, President of the United States* (New York: Dover Publications, 1974) 22.
154. Trefousse, *Impeachment of a President*, 150.
155. With respect to Articles 1–3, grounded on violation of the Tenure of Office Act, Johnson contended that replacing Stanton was a lawful exercise of the removal power and that, in any event, as a hold-over from the Lincoln administration, Stanton was not covered by the Act. Johnson further contended that the appointments of Grant and Thomas had only been ad interim until a permanent appointment could be made. With respect to the conspiracy charged in Articles 4–7, Johnson denied conspiring with anyone to hinder execution of the Tenure Act and specifically denied contemplating the use of force to remove Stanton. Johnson stated that his "sole intent" had been "to vindicate his authority as President" and, "by peaceful means," to bring the question of Stanton's removal before the Supreme Court. With regard to violation of the Command of the Army Act, Johnson noted his objection that the Act "virtually deprives the President of his constitutional functions as Commander-in-Chief of the Army." Johnson contended that he had expressed his opinion on the constitutionality of the Act when he spoke with the Washington commander. With respect to the complaints about Johnson's criticism of Congress, Johnson argued that his statements had been protected by the First Amendment. *Trial of Andrew Johnson on Impeachment*, vol. 1: 37–53; *The Impeachment and Trial of Andrew Johnson*, 36–42.
156. *Trial of Andrew Johnson on Impeachment*, vol. 1: 87–88; *The Impeachment and Trial of Andrew Johnson*, 47.
157. In support of the House position, Butler entered in the record a document entitled *A Brief of the Authorities upon the Law of Impeachable Crimes and Misdemeanors* written by Congressman Lawrence, which substantially paralleled Lawrence's article in the *American Law Register*. Lawrence noted that "misdemeanor" in parliamentary usage was equivalent to "maladministration" or "misconduct." Lawrence also noted that in light of the writings of Rawle, Story, and Curtis, it was "clear that impeachments are not necessarily limited to acts indictable by statute or common law" but that it was not possible "to define in advance by statute the necessary subjects of impeachment." Instead, the Senate was to be the "sole judge" of what constituted "high crimes and misdemeanors." *Trial of Andrew Johnson on Impeachment*, vol. 1: 123–137.
158. *Trial of Andrew Johnson on Impeachment*, vol. 1: 88–89; *The Impeachment and Trial of Andrew Johnson*, 47.

159. *Trial of Andrew Johnson on Impeachment*, vol. 1: 409; *The Impeachment and Trial of Andrew Johnson*, 110.
160. *Trial of Andrew Johnson on Impeachment*, vol. 1: 409; *The Impeachment and Trial of Andrew Johnson*, 110.
161. *Trial of Andrew Johnson on Impeachment*, vol. 1: 410–411; *The Impeachment and Trial of Andrew Johnson*, 110–111.
162. *Trial of Andrew Johnson on Impeachment*, vol. 2: 22–23. Logan noted that a president incapacitated by insanity could be removed not because insanity is a crime but because every act "almost necessarily would be a misdemeanor in office."
163. *Trial of Andrew Johnson on Impeachment*, vol. 2: 219–220; *The Impeachment and Trial of Andrew Johnson*, 214.
164. *Trial of Andrew Johnson on Impeachment*, vol. 2: 220; *The Impeachment and Trial of Andrew Johnson*, 215.
165. *Trial of Andrew Johnson on Impeachment*, vol. 2: 139; *Impeachment and Trial of Andrew Johnson*, 197.
166. *Trial of Andrew Johnson on Impeachment*, vol. 2: 140; *Impeachment and Trial of Andrew Johnson*, 198. Nelson requested that the Chief Justice provide a "judicial exposition of the meaning of the Constitution," but the Chief Justice declined.
167. *Trial of Andrew Johnson on Impeachment*, vol. 2: 286–287; *Impeachment and Trial of Andrew Johnson*, 236–237. Evarts noted that inclusion of "high misdemeanor" in the Tenure of Office Act was an unnecessary qualification since the seriousness of the offense could be ascertained from the attendant punishment.
168. The Senate's vote was not without drama. Johnson's conviction had been in doubt since Senator William P. Fessenden, leader of the conservative Republicans, had signaled his support of acquittal. Benedict, *A Compromise of Principle*, 310. Nevertheless, the issue of Johnson's conviction and removal remained unresolved well into the first call of the roll. Fessenden was the first of Senators considered to be "undecided" to vote for acquittal. Senator Joseph S. Fowler had been subjected to intense lobbying by the Radicals. When he first announced his vote, it was thought that he had said "guilty," but when Sumner asked him to repeat what he had said, Fowler shouted "Not guilty." Senator James W. Grimes had suffered a paralyzing stroke two days earlier. His body covered by blisters and unable to walk, Grimes was helped to stand and informed the Senate of his vote for acquittal. John B. Henderson had been subjected to such pressure from the Radicals that he had offered to resign in order to allow the governor of Missouri to appoint another Senator. The Radicals had sent spies to watch his every movement. Nevertheless, Henderson too voted for acquittal, setting the stage for the climactic vote of Edward G. Ross. There were 35 votes committed to conviction. Only 1 additional vote was needed for conviction and removal of Johnson. His fellow Kansas Senator, Samuel C. Pomeroy, a Radical Republican, showed him purported head-counts assuring conviction and dined with Ross the night before the vote urging conviction.

Stanton sent General Daniel Sickles to Ross' lodgings. General Sickles waited until 4:00 a.m. but was not permitted to see Ross. When Ross rose to announce his decision, he later told friends that he felt as though he was looking into his own grave. Nevertheless, he pronounced his decision, "not guilty," thereby breaking the impeachment effort. Smith, *High Crimes and Misdemeanors*, 285–293. With Senators Peter G. Van Winkle and Lyman Trumbull, Fessenden, Fowler, Grimes, Henderson, and Ross came to be known as the "Recusants." *Impeachment of a President*, 167.

169. *Trial of Andrew Johnson on Impeachment*, vol. 2: 484–487; *Impeachment and Trial of Andrew Johnson*, 288–289.
170. *Trial of Andrew Johnson on Impeachment*, vol. 2: 496–498.
171. *Trial of Andrew Johnson on Impeachment*, vol. 3: 56 (Johnson), 163 (Davis), 203 (Fowler) and 297 (Henderson)
172. *Trial of Andrew Johnson on Impeachment*, vol. 3: 24 (Fessenden), 54 (Johnson), 100 (Hendricks), 118 (Vickers), 149 (Van Winkle), 170 (Davis), 202–203 (Fowler), 226 (Buckalew), 326–327 (Trumbull), and 353 (Grimes).
173. *Trial of Andrew Johnson on Impeachment*, vol. 3: 26 (Fessenden), 57 (Johnson), 96–97 (Hendericks), 119 (Vickers), 150 (Van Winkle), 177–178 (Davis), 205 (Fowler), 227 (Buckalew), 305 (Henderson), and 335 (Grimes).
174. *Trial of Andrew Johnson on Impeachment*, vol. 3: 206 and the views of the individual Senators: 28 (Fessenden), 50 (Johnson), 96 (Hendericks), 119–120 (Vickers), 150 (Van Winkle), 160 (Davis), 227–228 (Buckalew), 244 (Doolittle), 306 (Handerson), 327 (Trumbull), and 339 (Grimes).
175. *Trial of Andrew Johnson on Impeachment*, vol. 3: 307.
176. *Trial of Andrew Johnson on Impeachment*, vol. 3: 29 (Fessenden), 50 (Johnson), 96 (Hendericks), 120 (Vickers), 152 (Van Winkle), 161 (Davis), 206–207 (Fowler), 229 (Buckalew), 246 (Doolittle), 308 (Henderson), and 327 (Trumbull).
177. *Trial of Andrew Johnson on Impeachment*, vol. 3: 340 (Grimes), 175 (Davis).
178. *Trial of Andrew Johnson on Impeachment*, vol. 3: 7 (Sherman), 110 (Yates), 271 (Sumner), 313 (Patterson), 341 (Pomeroy).
179. *Trial of Andrew Johnson on Impeachment*, vol. 3: 15–16 (Sherman), 49–50 (Howard), 80–81 (Howe), 94 (Edmunds), 114 (Yates), 126 (Ferry), 135 (Morrill of Maine), 142–143 (Morrill of Vermont), 193 (Tipton), 217 (Wilson), 279 (Sumner), and 346 (Pomeroy).
180. *Compare*, *Trial of Andrew Johnson on Impeachment*, vol. 3 12 (Sherman), 46–47 (Howard), 92–93 (Edmonds), 121 (Ferry), 140–141 (Morrill), 278 (Sumner).
181. *Compare*, *Trial of Andrew Johnson on Impeachment*, vol. 3: 15 (Sherman), 48 (Howard), 77 (Howe), 93 (Edmunds), 141–142 (Morrill), 192 (Tipton), 212 (Ferry), 278 (Sumner), 345 (Pomeroy).
182. *Trial of Andrew Johnson on Impeachment*, vol. 3: 15 (Sherman), 94 (Edmonds), 122 (Ferry), 142 (Morrill).
183. *Trial of Andrew Johnson on Impeachment*, vol. 3: 49 (Howard), 78–79 (Howe), 193 (Tipton), 278–279 (Sumner), 346 (Pomeroy).
184. *Trial of Andrew Johnson on Impeachment*, vol. 3: 29–30 (Fessenden), 51 (Johnson), 120 (Vickers), 157–159 (Davis), 194 (Fowler), 231 (Buckalew).

185. *Trial of Andrew Johnson on Impeachment*, vol. 3: 3 (Sherman), 144 (Morrill), 250 (Sumner), 352 (Williams).
186. *Trial of Andrew Johnson on Impeachment*, vol. 3: 68 (Howe), 94 (Edmunds), 213 (Frelinghuysen), 215 (Wilson).
187. *Trial of Andrew Johnson on Impeachment*, vol. 3: 3 (Sherman), 113 (Yates), 249–253 (Sumner).
188. Thus, although the impeachment was not successful in removing Johnson, the impeachment may have served Congress' broader Reconstruction objectives of blunting Johnson's resistance. Valelly, *The Two Reconstructions*, 44.
189. Dewitt, *The Impeachment and Trial of Andrew Johnson*, 613–629; Lomask, *Andrew Johnson: President on Trial*, 344–347; Smith, *High Crimes and Misdemeanors*, 300–302; Noel B. Gerson, *The Trial of Andrew Johnson* (Nashville: Thomas Nelson, 1977) 127–147.
190. Rehnquist, *Grand Inquests*, 246; Trefousse, *Impeachment of a President*, 214–215; Benedict, *A Compromise of Principle*, 300 and 307.
191. Ibid., 311; Rehnquist, *Grand Inquest*, 247.
192. Benedict, *The Impeachment and Trial of Andrew Johnson*, 180.
193. Ackerman, *We the People,* vol. 1: 83; Whittington, *Constitutional Construction*, 139.

3 The Proceedings against Richard M. Nixon

1. Belknap resigned his position when he learned that he would be impeached by the House of Representatives. On April 4, 1876, five Articles of Impeachment charging Belknap with high crimes and misdemeanors were presented to the Senate. Interestingly, Belknap was not charged with bribery despite each of the articles being grounded on Belknap's relationship with Marsh. Bushnell, *Crimes, Follies, and Misfortunes*, 167–189. Three years earlier, allegations of bribery and conflict of interest against Vice President Schuyler Colfax arising from his involvement with Credit Moblier while Colfax had been speaker of the House were referred to the Committee on the Judiciary, which, after reviewing the record, concluded that there was no factual basis for impeachment. Committee on the Judiciary, *Impeachment: Selected Materials*, 93d Cong., 1st Sess. (Washington, DC: U.S. Government Printing Office, 1973) 601–615.
2. Charles Swayne was appointed to the U.S. District Court in Florida by President Benjamin Harrison in 1890. Almost immediately, Judge Swayne antagonized the Florida Democratic Party when he presided over cases of election fraud allegedly perpetrated by the Democrats. After the Florida legislature twice requested Judge Swayne's removal by Congress, by a vote of 198 to 61 the House determined that Judge Swayne should be impeached. However, when the articles of impeachment were presented by the Judiciary Committee, a lengthy and heated debate ensued. Ultimately articles of impeachment were adopted by a close majority that followed party lines. The first three articles charged Swayne with having overcharged the

government for expenses in connection with service outside his judicial district. Two articles charged that Swayne had used a private railroad car belonging to a bankrupt railroad without having compensated the company. Two articles charged that Swayne illegally resided outside the judicial district in which he served. The final five articles charged Swayne with having imposed unlawful punishments for contempt of court on three individuals, including the disbarment of two attorneys for a period of two years. Swayne's trial in the Senate lasted from February 10 to February 27, 1905. Swayne was acquitted by a vote that reflected the partisan division of the Senate. Bushnell, *Crimes, Follies, and Misfortunes*, 191–214.

3. On January 13, 1913, Circuit Judge Robert W. Archbald became only the third federal official to be convicted by the Senate following impeachment by the House. Archbald was convicted of five of the thirteen articles lodged against him by the House. Two of the articles charged that Archbald had acquired properties from railroads and other companies that had cases pending in the Commerce Court on which he served. One article charged that Archbald had received $500 from a friend on whose behalf Archbald had attempted, unsuccessfully, to secure a lease of property from a coal company. The fourth article on which he was convicted charged that Archbald had improper ex parte communications with a litigant in a case pending in his court. The fifth article alleged a pattern of self-dealing over the entire course of his eleven-year judicial career. Archbald's acquittal on the other articles appears to have resulted from the view of some senators that Archbald was not subject to impeachment for acts committed while he was a district judge prior his appointment to the Circuit Court. Bushnell, *Crimes, Follies, and Misfortunes*, 217–242.

   One of Archbald's attorneys in the trial before the Senate, Alexander Simpson, published the brief he had prepared for Judge Archbald, which he titled, *A Treatise on Federal Impeachments*. In his treatise, Simpson concluded with respect to high crimes and misdemeanors that "notwithstanding the interesting arguments to the contrary,…the House in prosecuting and the Senate in trying impeachments are not limited to offenses which are indictable." Nevertheless, Simpson argued that "the offence must be one of a serious character" and although not necessarily indictable, impeachable offenses "must be of such a 'high' character as might properly be made criminal, and must be one against the United States." Further, Simpson wrote, "the offense must be one in some way affecting the administration of the office from which it is sought to exclude the offender." Although in Simpson's view, it was not necessary that the offense be committed in the performance of the office, "the character of the offence, or that which flows there from, must tend to bring the office…into ignominy and disgrace." Alexander Simpson, *A Treatise on Federal Impeachments* (Philadelphia: Law Association of Philadelphia, 1916) 49–53.

4. Judge English was impeached on a variety of colorful charges. Article 1 charged English with "tyranny and oppression" as a result of his having summarily disbarred two lawyers appearing before him and having summoned state officials and a mayor to his courtroom and threatening to remove them

from their offices "in a loud angry voice, using improper, profane and indecent language." Judge English was also charged with having threatened newspaper reporters and editors with incarceration if they published articles concerning his court, and having admonished a jury "if he told them a man was guilty and they found him not guilty that he would send them to jail." Article 2 charged that English had colluded with the bankruptcy referee in order to serve "their own interests and profit and that of relatives and friends." Article 4 charged that English and the referee had caused funds to be deposited in a bank of which they were shareholders and had borrowed funds equal to the assets and capital of the bank at low interest with no security. Lastly, Article 5 charged that English had used his position to secure employment for his son. Van Tassel and Finkelman, *Impeachable Offenses*, 144–152.

5. On May 24, 1932, the Bar Association of San Francisco petitioned the House of Representatives to investigate the conduct of District Court Judge Harold Louderback. It was alleged that Judge Louderback had appointed friends and political allies to serve as receivers for companies in distressed circumstances. The House empanelled an investigative committee, which held hearings in San Francisco and Washington, DC. The committee recommended to the Judiciary Committee that Louderback be impeached. The Judiciary Committee rejected the recommendation by a vote of 17 to 5 and recommended instead that Judge Louderback be censured. The House disregarded the Judicial Committee's recommendation and voted to impeach him. The Senate, however, voted to acquit Judge Louderback. Bushnell, *Crimes, Follies, and Misfortunes*, 245–266.
6. Within days of the acquittal by the Senate of Judge Louderback, the House commenced an investigation into allegations of misconduct on the part of Halstead L. Ritter, a district judge in the Southern District of Florida. The allegations against Judge Ritter involved his conduct in connection with the bankruptcy and receivership of a resort hotel; inaccuracies in reporting of the judge's income; and Ritter's having continued to practice law after his appointment to the federal bench. As had occurred in the Louderback proceedings, the Judiciary Committee rejected the investigating subcommittee's recommendation that Ritter be impeached, but then reversed that decision and recommended impeachment by the House.

   The principal charge against Ritter was that he had shared in the fees paid to a former law partner in a lawsuit over which Ritter presided. Ritter was impeached on six articles. The first two articles charged him with offenses arising from his acceptance of money from his former partner. Articles 3 and 4 charged him with having accepted $7500 from a friend to whom Ritter had given legal advice. Articles 5 and 6 charged that Ritter had failed to pay taxes on income in 1928 and 1930. Ritter was acquitted of each of these substantive offenses. However, notwithstanding the Senate's acquittals on these charges, Ritter was convicted, by 1 vote, of the seventh article, which was in essence a restatement of the first six articles. The Senate then unanimously voted against a permanent disqualification from holding office.

   Following the Senate's action, Ritter filed suit in the Court of Claims ostensibly to compel payment of his salary. Ritter argued that the charges

did not constitute the high crimes and misdemeanors contemplated by the Constitution. Ritter also challenged the validity of his conviction on an article that only restated the charges on which he was acquitted. The Court of Claims held, however, that only the Senate had jurisdiction over impeachments, and therefore the court had no jurisdiction over Ritter's claim. Bushnell, *Crimes, Follies, and Misfortunes*, 269–287.

7. After efforts to reach a compromise between steel producers and the United Steel Workers failed in April 1952, President Truman directed the Secretary of Commerce, Charles Sawyer, in effect to nationalize steel production under authority of the president's war powers. In May 1953, the Supreme Court declared that seizure to be unconstitutional. *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 937 (1952); Melvin I. Urofsky, *A March of Liberty: A Constitutional History of the United States* (New York: Knopf: 1988) 760–761. While the action was pending in the courts, on April 22, 1952, Representative Noah M. Mason called for the institution of impeachment proceedings, calling the president's actions "illegal, high-handed, arbitrary and un-necessary," and stating that "such action is extremely drastic and extremely dangerous; and as such, warrants drastic counter-action." Resolutions of impeachment were offered by Mason's Republican colleagues, George H. Bender and Paul W. Schafer. *Congressional Record*, vol. 98, 82nd Cong., 2d Sess. (1942) 4220–4221. Shafer also cited the commitment of troops in Korea without congressional approval; the dismissal of General Douglas MacArthur (which Shafer called a "grave act of mal-administration"); the withholding of information from Congress; and presidential statements that jeopardized "the good name, the peace, and the security" of the country. *Congressional Record*, vol. 98, 4518–4519. No action was taken by Congress.
8. The first attempt to impeach Justice Douglas was in June 1953 after he had granted a stay of the execution of Julius and Ethel Rosenberg, who had been convicted of espionage for procuring information concerning the atomic bomb for the Soviet Union. Despite vacation of the stay by the Supreme Court, Congressman William M. Wheeler pressed for impeachment on the grounds that Douglas' loyalty to "left-wing so-called liberals" had resulted in conduct unbecoming a justice that tended to bring the court into disrepute; moral turpitude (Douglas had been named a correspondent in adultery); conspiracy; and treason. *Congressional Record*, vol. 99, 83rd Cong., 1st Sess. (1953) 7586–7589. No action was taken on Wheeler's proposed resolution. William O. Douglas, *The Court Years 1939–1975* (New York: Random House, 1980) 78–82.

   A second effort at impeachment was led by Congressman Gerald R. Ford in 1970, on grounds of Douglas' extrajudicial employments. Ford charged that Douglas had breached the standard of "good behavior" by failing to recuse himself from ruling on a libel suit against Ralph Ginzburg after accepting payment for two articles published in magazines controlled by Ginzburg. Ford further charged that Douglas had been compensated for service as president of the Parvin Foundation (which Ford contended had ties to organized crime) and for serving as a consultant and executive committee member of the "leftish" Center for the Study of Democratic Institutions (which according to

Ford was also supported by the Parvin Foundation), which had fostered planning for "the violent disruptions" of the 1960's. Ford suggested that Douglas' publication of his book, *Points of Rebellion* (New York: Random House, 1970), although constitutionally protected, "at a critical time in our history when peace and order is what we need —is less than judicial good behavior." Although hearings were held on these charges, no action was taken by Congress. *Congressional Record*, vol. 116, 91st Cong. 2d Sess. (1970) 11912–1197.

9. Ibid., 11913; Walter Ehrlich, *Presidential Impeachment: An American Dilemma* (Saint Charles: Forum Press, 1974) 91–92.
10. Richard Reeves, *President Nixon: Alone in the White House* (New York: Simon & Schuster, 2001) 11–12.
11. Theodore H. White, *Breach of Faith: The Fall of Richard Nixon* (New York: Atheneum, 1975) 62.
12. See Vanmik D. Volkan, Norman Itzkowitz, and Andrew W. Dod, *Richard Nixon: A Psychobiography* (New York: Columbia UP, 1997) 91; Stanley I. Kutler, *The War of Watergate: The Last Crisis of Richard Nixon* (New York: Norton, 1990) 617; Fawn M. Brodie, *Richard Nixon: The Shaping of his Character* (Cambridge: Harvard UP, 1983) 23–25; David Abrahamson, *Nixon v. Nixon: An Emotional Tragedy* (New York: Farrar, 1977) 34; James David Barber, *The Presidential Character: Predicting Performance in the White House* (Englewood Cliffs: Prentice-Hall, 1972) 347.
13. Brodie, *Richard Nixon: The Shaping of His Character*, 37; Stephen E. Ambrose, *Nixon: The Education of Politician* (New York: Simon & Schuster, 1987) 34–84.
14. Brodie, *Richard Nixon: The Shaping of His Character*, 170–184; Ambrose, *Nixon: The Education of a Politician*, 117–140; White, *Breach of* Faith, 63.
15. Ambrose, *Nixon: The Education of a Politician*, 208–224; Brodie, *Richard Nixon: The Shaping of His Character*, 232–245; White, *Breach of Faith*, 63–64.
16. Ambrose, *Nixon: the Education of a Politician*, 258–260.
17. Ibid., 584–607.
18. Ibid., 1597–600, 651; Brodie, *Richard Nixon: The Shaping of His Character*, 435–441. It has been suggested that Nixon's connection to Hughes may have been a motivating factor in the later Watergate burglary. Kutler, *The Wars of Watergate*, 203–204.
19. White, *Breach of Faith*, 71–72.
20. Reeves, *President Nixon: Alone in the White House*, 74–75. Committee on the Judiciary, *Report: Impeachment of Richard M. Nixon President of the United States*, Report No. 93–1305, U.S. House of Representatives, 93rd Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1974) 147 ("Report No. 93–1305").
21. *Report No. 93–1305*, 148–153
22. Ibid., 151–152. In his memorandum, Huston acknowledged that use of "surreptitious entries" would be "clearly illegal."

23. Ibid., 152; Fred Emery, *Watergate: The Corruption of American Politics and the Fall of Richard Nixon* (New York: Simon & Schuster, 1995) 25. Keith W. Olson, *Watergate*, 17. The report of the Senate Select Committee on Presidential Campaign Activities, chaired by Senator Samuel J. Ervin, noted that in a pubic statement issued on May 22, 1973, Nixon had represented that the Huston plan had been rescinded on July 28. However, in a top secret memorandum to Attorney General Mitchell dated September 18, 1970, John Dean stated that steps should be taken "to commence our domestic intelligence operation as quickly as possible." Dean recommended the formation of an interagency domestic intelligence unit, "which had been an integral part of the Huston Plan." Dean suggested that the attorney general monitor the progress closely to ensure that "we are moving this program as quickly as possible." Senate Select Committee on Presidential Campaign Activities, *The Senate Watergate Report: The Final Report of the Senate Select Committee on Presidential Campaign Activities* (New York: Carroll & Graf, 1974) 55–57. ("Senate Select Committee Report").
24. David Rudenstine, *The Day the Presses Stopped* (Berkeley: California UP, 1996) 20–27; Sanford S. Ungar, *The Papers and the Papers: An Account of the Legal and Political Battle over the Pentagon Papers* (New York: Dutton, 1972) 19–31.
25. Rudenstine, *The Day the Papers Stopped*, 46–47; Ungar, *The Papers and the Papers*, 85.
26. Ibid., 150–160. This litigation was eventually resolved in the U.S. Supreme Court, which held that the attempt by the U.S. Government to stop publication of the Pentagon Papers had been an unconstitutional "prior restraint" on the exercise of rights secured by the First Amendment. *New York Times Company v. United States*, 403 U.S. 713 (1971).
27. Kutler, *The Wars of Watergate*, 110, quoting Richard M. Nixon, *Memoirs*, 629–634.
28. Keith W. Olson: *Watergate: The Presidential Scandal that Shook America* (Lawrence: Kansas UP, 2003) 18.
29. Kutler, *The Wars of Watergate*, 112. According to Charles W. Colson, special counsel to the president, creation of the Plumbers was "the pivotal moment…when we crossed the line." Leon Friedman and William F. Levantrosser, eds., *Watergate and Afterward* (Westport: Greenwood Press, 1992) 87–88.
30. *Report No. 93–1305*, 158–161; Kutler, *The Wars of Watergate*, 112; Olson, *Watergate,* 18–19; Emery, *Watergate: The Corruption of American Politics*. At the time of their arrest following the Watergate burglary, Colson described both Hunt and Liddy as "good healthy right wing exuberants." Stanley I. Kutler, ed., *Abuse of Power: The New Nixon Tapes* (New York: Free Press, 1997) 43.
31. *Report No. 93–1305*, 161. Olson, *Watergate*, 19. As an example of this desire to discredit Ellsberg, Nixon told Haldeman and Mitchell on June 30, 1971, "Just get everything out. Try him in the press. Try him in the press. Everything John

[Mitchell], that there is on the investigation get it out, leak it out. We want to destroy him in the press. Press. Is that clear?" Kutler, *Abuse of Power*, 6.

32. *Report No. 93–1305*, 163.
33. *Senate Select Committee Report*, 199; Reeves, *President Nixon Alone in the White House*, 353; Emery, *Watergate: The Corruption of American Politics*, 62.
34. *Senate Select Committee Report*, 200–201; Kutler, *Wars of Watergate*, 115; Emery, *Watergate: The Corruption of American Politics*, 66–67; Olson, *Watergate*, 19.
35. *Report No. 93–1305*, 164–165; Reeves, *President Nixon: Alone in the White House*, 369. On September 8, Ehrlichman alluded to the Fielding burglary in a conversation with Nixon. Ehrlichman told Nixon that "We had one little operation. It's been aborted out in Los Angeles which, I think, is better that you don't know about. But we've got some dirty tricks underway. It may pay off." Kutler, *Abuse of Power*, 28. Another target of the White House's covert operations unit was the Brookings Institution in Washington, DC, and in particular, the files of Leslie Gelb, a former consultant to the National Security Council, who was believed to have been engaged in a Pentagon Papers-like study of the Vietnam War after 1967. After Haldeman told Nixon about the files, Nixon told Haldeman, "Now do you remember Huston's plan? Implement it.... I want it implemented... Goddamn it, get in and get those files. Blow the safe and get it." In another recorded conversation with Haldeman on June 30, Nixon reiterated his order that the Brookings Institution be burglarized. Nixon told Haldeman, "I want Brookings, I want them just to break in and take it. Do you understand?... You talk to Hunt. I want the break in... You're to break into the place, rifle the files, and bring them in." Kutler, *Abuse of Power*, 6.
36. Kutler, *The Wars of Watergate*, 105; Reeves, *President Nixon: Alone in the White House*, 370. In a conversation recorded on September 13, 1971, Nixon told Haldeman "Now here's the point. Bob, *please* get me the names of the Jews, you know, the big Jewish contributors of the Democrats.... All right. Could we please investigate some of the cocksuckers? That's all." Kutler, *Abuse of Power*, 31. In another conversation with Haldeman on September 14, Nixon said to Haldeman, "What about the rich Jews?... You see, IRS is full of Jews, Bob... That's what I think. I think that's the reason they're after Graham, is the rich Jews." Kutler, *Abuse of Power*, 32.
37. Kutler, *Wars of Watergate,* 105.
38. *Report No. 93–1350*, 141–142; Reeves, *President Nixon: Alone in the White House*, 228. Information was obtained from the IRS concerning a journalist investigating a fundraising event and several prominent entertainers. IRS also provided information concerning a candidate for a position with the Committee to Re-Elect the President (CRP). *Report No. 93–1350*, 142; *Senate Select Committee Report*, 220–221.
39. *Report No. 93–1305*, 142–143; Kutler, *The Wars of Watergate*, 204–205.
40. *Senate Select Committee Final Report*, 74–75.
41. Reeves, *President Nixon: Alone in the White House*, 429–430; *Senate Select Committee Report*, 74–75. A predecessor of the Gemstone Project was Operation Sandwedge, a creation of John Caulfield, involving "offensive intelligence and

defensive—security" operations. Caulfield's plan called for covert penetration of the Democratic nominee's organization and headquarters; burglary; surveillance; and publication of derogatory information. Kutler, *Wars of Watergate*, 199.

42. This was the so-called Diamond plan. Emery, *Watergate: The Corruption of American Politics*, 89.
43. The prostitutes on the boat were designated as the "Sapphire" plan, and the communications center, to which compromising conversations would be transmitted, was denominated the "Crystal" plan. Emery, *Watergate: The Corruption of American Politics*, 90.
44. *Senate Select Committee Report*, 75; Reeves, *President Nixon: Alone in the White House*, 430. These were designated as "Opal" plans I–IV. In addition, under the "Topaz" plan, document copying teams were to be sent to the Muskie and McGovern headquarters in Washington and other locations to be determined. Emery, *Watergate: The Corruption of American Politics*, 90. Mitchell told Liddy to come back with a less expensive and more realistic plan.
45. Reeves, *President Nixon: Alone in the White House*, 430–431. At that, Dean interjected that he didn't think that "this kind of conversation should go on in the Attorney General's Office."
46. *Senate Select Committee Report*, 79–80; Kutler, *Wars of Watergate*, 199; Olson, *Watergate*, 38.
47. Kutler, *Wars of Watergate*, 365–366. Mitchell told the Senate Select Committee that the purpose of the cover-up was to conceal the White House Horrors from public disclosure rather than simply concealing the involvement of the White House in the Watergate burglary. Kutler, *Wars of Watergate*, 366; Olson, *Watergate*, 99.
48. *Senate Select Committee Report*, 83–86; Reeves, *President Nixon: Alone in the White House*, 493; Emery, *Watergate: The Corruption of American Politics*, 118–122; Olson, *Watergate*, 38–39. According to Magruder, the objective of the phone taps was to learn what information O'Brien had concerning the Hughes-Nixon relationship. Friedman and Levantrosser, *Watergate and Afterward*, 40–45.
49. *Senate Select Committee Report*, 85–86.
50. Ibid., 51.
51. Reeves, *President Nixon: Alone in the White House*, 449.
52. *Senate Select Committee Report*, 51–52; Reeves, *President Nixon: Alone in the White House*, 449.
53. *Senate Select Committee Report*, 52, 88; Reeves, *President Nixon: Alone in the White House*, 499–500; Emery, *Watergate: the Corruption of American Politics*, 132–135.
54. Kutler, *Wars of Watergate*, 187–188. Caddy had been contacted by Hunt and the wife of one of the Miami burglars.
55. *Senate Select Committee Report*, 88; Kutler, *Wars of Watergate*, 187.
56. Ibid., 188.
57. *Senate Select Committee Report*, 88.
58. Reeves, *President Nixon: Alone in the White House*, 501.
59. *Report No. 93–1305*, 42–43.

60. Dean eventually destroyed Hunt's notebooks that had been in the safe. *Senate Select Committee Report*, 93.
61. *Report No. 93–1305*, 44–45. *Senate Select Committee Report*, 90–91; Reeves, *President Nixon: Alone in the White House*, 501; Kutler, *Wars of Watergate*, 216; Olson, *Watergate*, 48–49.
62. Dean met with Liddy the day before and had been told by Liddy that the burglary had been "a CRP Operation." Dean apprised Echrlichman of his conversation with Liddy.
63. Haldeman's notes indicated that it would be necessary to prevent the FBI from going "beyond what's necessary in developing evidence and we can keep a lid on that." The record of this meeting was subsequently destroyed in what became known as the "18 ½ minute gap." Kutler, *Abuse of Power*, 47. However, in another conversation between Nixon and Haldeman on June 20, Haldeman told Nixon that the investigators did not have a case against Hunt because they could not put him at the scene of the burglary. Nixon replied, "We know where he was, though." Reeves, *President Nixon: Alone in the White House*, 507.
64. *Report No. 93–1305*, 47. The House Judiciary Committee concluded in regard to the president's June 22 statement that "When the President issued this statement, he knew or should have known that Howard Hunt, Gordon Liddy and other CRP personnel were responsible for the burglary, and that some of these persons had previously engaged in covert activities, as members of the Plumbers unit, on the President's behalf." *Report No. 93–1305*, 47.
65. Ibid., 49; Kutler, *Abuse of Power*, 67–70; Kutler, *Wars of Watergate*, 218.
66. Reeves, *President Nixon: Alone in the White House*, 508–509; Emergy, *Watergate: The Corruption of American Politics*, 190–192.
67. *Report No. 93–1305*, 48–54; *Senate Select Committee Report*, 96.
68. *Report No. 93–1305*, 55–57.
69. Ibid., 57–58.
70. Ibid., 67; *Senate Select Committee Report*, 103–106.
71. *Report No. 93–1305*, 59–60; *Senate Select Committee Report*, 107.
72. *Report No. 93–1305*, 60; Kutler, *Wars of Watergate*, 222–223.
73. *Report No. 93–1305*, 60.
74. Ibid. In fact, as the Judiciary Committee noted, "Dean testified that he first heard of his 'complete' investigation in the President's announcement." Ibid., 82.
75. Ibid., 83–84; *Senate Select Committee Report*, 107.
76. *Report No. 93–1305*, 84–85.
77. Ibid., 87; *Senate Select Committee Report*, 159–160.
78. Prior to the burglary, Hunt received $10,000 in cash from Liddy. This money was given to the attorney Caddy within hours of the arrests. *Report No. 93–1305*, 66.
79. Ibid., 50, 66–67; *Senate Select Committee Report*, 112–116; Reeves, *President Nixon: Alone in the White House*, 511; Kutler, *Wars of Watergtate*, 248–250.
80. *Report No. 93–1305*, 67; *Wars of Watergate*, 249.
81. *Report No. 93–1305*, 67–68; *Senate Select Committee Report*, 117–118; Kutler, *Wars of Watergate*, 250.

82. *Report No. 93–1305*, 68–69; Kutler, *Abuse of Power*, 247; Reeves, *President Nixon: Alone in the White House*, 577. Later, prosecutors would advise Nixon to retain criminal counsel after they heard the tape of this conversation that they believed established Nixon's culpability as a coconspirator. Emery, *Watergate: The Corruption of American Politics*, 261–263.
83. Kutler, *Abuse of Power*, 248–252.
84. *Report No. 93–1305*, 69.
85. Kutler, *Abuse of Power*, 253–254; *Senate Select Committee Report*, 120.
86. Kutler, *Abuse of Power,* 254; Reeves, *President Nixon: Alone in the White House,* 578.
87. Kutler, *Abuse of Power*, 254; *Senate Select Committee Report*, 119–120; Reeves, *President Nixon: Alone in the White House*, 578; *Watergate: The Corruption of American Politics*, 263.
88. *Report No. 93–1305*, 69–70; Kutler, *Wars of Watergate*, 274–278.
89. *Report No. 93–1305*, 73.
90. Ibid., 74.
91. *United States v. George Gordon Liddy*, Cr. No. 1872–72 (D.D.C.); Kutler, *Wars of Watergate*, 212.
92. Ibid., 253–254; Emery, *Watergate: The Corruption of American Politics*, 238–239.
93. Kutler, *Wars of Watergate*, 260.
94. Letter dated March 19, 1973, from James W. McCord, Jr. to Judge Sirica.
95. Kutler, *Wars of Watergate*, 261.
96. *Report No. 93–1305*, 91–92.
97. Ibid., 92.
98. Ibid., 100–101; Kutler, *Wars of Watergate*, 264, 286. Kutler, *Watergate: The Corruption of American Politics*, 276–277.
99. Strachan was considered the critical witness in establishing Haldeman's culpability. At this time, Mardian was also preparing witnesses to testify before the grand jury. In a colloquy on April 15, 1973, cited by the Judiciary Committee, Ehrlichman informed Nixon that Mardian had coached the witnesses to give false testimony. Nixon asked Ehrlichman, "Well, is there anything wrong with that?" When Ehrlichman replied that there was a problem, Nixon asked whether the problem was that "He was not their attorney." Ehrlichman replied that the problem was that "He asked them to say things that weren't true." *Report No. 93–1305*, 92.
100. Ibid., 92–93, 103; *Senate Select Committee Report*, 160; Kutler, *Wars of Watergate*, 284.
101. *Report No. 92–1305*, 94–95.
102. Ibid., 96–97.
103. Ibid., 97.
104. *Senate Select Committee Report*, 39–40.
105. *Report No. 93–1305*, 116–117. Kutler, *Wars of Watergate*, 258.
106. *Report No. 93–1305*, 122–123. John Dean later admitted that the White House strategy had been to thwart the Senate's inquiry while adopting a public posture of cooperation. Kutler, *Wars of Watergate*, 258.

107. *Report No. 93–1305*, 121; Reeves, *President Nixon: Alone in the White House*, 602; Emery, *Watergate: The Corruption of American Politics*, 350–357.
108. *Report No. 93–1305*, 121–122; Emery, *Watergate: The Corruption of American Politics*, 355–367.
109. *Report No. 93–1305*, 123, Kutler, *Wars of Watergate*, 389; Emery, *Watergate: The Corruption of American Politics*, 368–369, 371–373.
110. *Nixon v. Sirica*, 487 F.2d 800 (D.C. Cir. 1973); *Report No. 93–1305*, 123; Kutler, *Wars of Watergate*, 389–390.
111. *Report No. 93–1305*, 123–124; Kutler, *Wars of Watergate*, 401–402.
112. *Report No. 93–1305*, 124; Emery, *Watergate: The Corruption of American Politics*, 385–399.
113. Kutler, *Wars of Watergate*, 402–406.
114. *Report No. 93–1305*, 124; Kutler, *Wars of Watergate*, 426–429.
115. *Report No. 93–1305*, 125–126.
116. *United States v. Nixon*, 418 U.S. 683 (1974).
117. *Report No. 93–1305*, 126–127; Emery, *Watergate: The Corruption of American Politics*, 409–418; Olson, *Watergate*, 127. Subsequent analysis of the "18 ½ minute gap" revealed that it had resulted from a series of five to nine manual operations. *Report No. 93–1305*, 127; Kutler, *Wars of Watergate*, 429–431.
118. Kutler, *Wars of Watergate*, 478. David E. Kyvig noted that Congress had been slow to consider impeachment seriously until the Saturday Night Massacre. David E. Kyvig, *The Age of Impeachment: American Constitutional Culture Since 1960* (Lawrence, Kansas UP, 2008) 141–142.
119. *Report No. 93–1305*, 6.
120. Ibid., 187, 234–278.
121. Ibid., 188.
122. Ibid., 9–10; Kutler, *Wars of Watergate*, 490–492; Emery, *Watergate: The Corruption of American Politics*, 425–427; Olson, *Watergate*, 137–138.
123. Impeachment Inquiry Staff, Committee on the Judiciary of the United States House of Representatives, *Constitutional Grounds for Presidential Impeachment* (Washington, DC: Public Affairs Press, 1974) ("Staff Report").
124. *Staff Report*, 29. With respect to whether "other high crimes and misdemeanors" referred to criminal conduct, the staff noted that the Framers could simply have written "or other crimes" as they had in other provisions.
125. Ibid., 29–35.
126. Ibid., 35–37.
127. Ibid., 41–42; John R. Labovitz, *Presidential Impeachment* (New Haven: Yale UP, 1978) 126–131. The staff observed that unlike the criminal law, impeachment is a "remedial process," which is intended "primarily to maintain constitutional government."
128. *Staff Report*, 42–43.
129. Ibid., 47.
130. James D. St. Clair and Charles Alan Wright, *"An Analysis of the Constitutional Standard for Presidential Impeachment"* (Washington, DC: U.S. Government Printing Office, 1974) 32, 34–38.

131. In an apparent reference to the Staff Report, the defense dismissed reliance on the impeachments of federal judges "to support the proposition that impeachment will lie for conduct which does not of itself constitute an indictable offense" as being "mostly appealing to those broad constructionists who favoring a severely weakened Chief Executive argue that certain non-criminal 'political' offenses may justify impeachment." Ibid., 39. The defense also cited a statement by the House of Managers of the Archbald trial in the Senate as establishing the precedential principal that because different standards for removal apply to judges, misbehavior may warrant removal of a federal judge but not other civil officers, including the president. Ibid., 45–47.
132. Ibid., 53–59. The Department of Justice, Office of Legal Counsel submitted a memorandum that offered no conclusive view of the nature of impeachable conduct. United States Department of Justice, Office of Legal Counsel, "Legal Aspects of Impeachment: An Overview" (Washington DC: Office of Legal Counsel, 1974).
133. Committee on the Judiciary, *Debate on Articles of Impeachment: Hearings Before the Committee on the Judiciary of the House of Representatives*, 93d Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1974) 133 (*Debate on Articles of Impeachment*).
134. Ibid., 7.
135. *Report No. 93–1305*, 1–3.
136. *Debate on Articles of Impeachment*, 329–331.
137. *Report No. 93–1305*, 3–4.
138. *Debate on Articles of Impeachment*, 335–336.
139. Ibid., 337.
140. Ibid., 341–342.
141. Ibid., 426.
142. Ibid., 442.
143. Ibid., 445–447.
144. *Report No. 93–1305*, 188.
145. *Debate on Articles of Impeachment*, 470.
146. Ibid., 476.
147. Ibid., 477.
148. Ibid., 487.
149. Ibid., 488–489. Two additional articles were considered by the Committee. The first charged that Nixon had "authorized, ordered, and ratified the concealment from the Congress of the facts and the submissions to the Congress of false and misleading statements concerning the existence, scope and nature of American bombing operations in Cambodia in derogation of the power of the Congress to declare war, to make appropriations and to raise and support armies." These charges arose from the conduct of a secret bombing campaign, including the "Menu Operation," the disclosure of which had resulted in a series of illegal telephone interceptions and eventually in the creation of the Plumbers unit. The Committee declined to report these charges to the House by a vote of 26 to 12. *Report No. 93–1305*, 217–219.

The second article involved allegations that Nixon had received compensation in excess of that permitted under the Constitution and that he had underreported his income in violation of the Internal Revenue Code. In this regard, it was alleged that Nixon had benefited personally from federal expenditures for renovations and improvements to his properties in Key Biscayne, Florida, and San Clemente, California. The Joint Committee on Internal Revenue estimated this personal income to be $92,000 and the Internal Revenue Service calculated the income to be $67,000. The second article also involved allegations that Nixon had improperly and fraudulently claimed deductions from his personal income tax, including a $576,000 deduction for the gift of his personal papers that had allegedly been back dated. The Committee voted 26 to 12 not to refer this Article to the House as well. *Report No. 93–1305*, 220–223.

150. Ibid., 303.
151. Ibid., 362–371.
152. Ibid., 495–496.
153. White, *Breach of Faith*, 28–29; Kutler, *Wars of Watergate*, 538–548; Emery, *Watergate: The Corruption of American Politics and the Fall of Richard Nixon*, 473–477.
154. White, *Breach of Faith*, 349–350; Kutler, *Wars of Watergate*, 548. Twelve days later, on August 20, by a vote of 412 to 3, the full House voted to accept the report of the Judiciary Committee. Kutler, *Wars of Watergate*, 557.
155. Emery, *Watergate: The Corruption of American Politics and the Fall of Richard Nixon,* 482.
156. Brant, *Impeachment: Trials and Errors*, 181–182.
157. Berger, *Impeachment: The Constitutional Problems*, 61–63 (emphasis original).
158. Committee on Federal Legislation, Association of the Bar of the City of New York, *The Law of Presidential Impeachment* (New York: Harper, 1974) 6, 18–19.
159. Charles L. Black, Jr., *Impeachment: A Handbook* (New Haven: Yale UP, 1974) 33–37.
160. Kurland, *Watergate and the Constitution*, 107.
161. Ibid., 111–112.
162. Ibid., 114.
163. Ibid., 119.
164. Friedman and Levantrosser, *Watergate and Afterward*, 202.
165. *Report No. 93–1305*, 217–219; Kutler, *Wars of Watergate*, 136–137.

4 The Impeachment and Trial of William Jefferson Clinton

1. Peter Baker, *The Breach: Inside the Impeachment and Trial of William Jefferson Clinton* (New York: Scribner, 2000) 18; Kyvig, *The Age of Impeachment*, 352.
2. Federalist 65, Hamilton, Madison, and Jay, *The Federalist*, 426.
3. 28 U.S.C. §§ 591–599.
4. Starr was appointed independent counsel by order of the Special Court, a three judge panel of the Court of Appeals for the District of Columbia Circuit, in the case of *In re: Madison Guaranty Savings and Loan Association*, Division No.

94–1. In appointing Starr, the panel of judges rejected the request of the attorney general that Robert B. Fiske, Jr., be reappointed because of a perceived conflict of interest. It has been suggested that the appointment of Starr to replace Fiske was the result of congressional influence. Nicol C. Rae and Colton C. Campbell, *Impeaching Clinton: Partisan Strife on Capital Hill* (Lawrence: Kansas UP, 2004) 21.

5. *Paula Corbin Jones v. William Jefferson Clinton*, Civil Action No. LR-C-094–290 (E.D. Arkansas, 1994), ¶¶ 6–13 ("*Jones* Complaint").
6. Ibid., ¶ 38.
7. Ibid., ¶¶ 58–74.
8. Ibid., ¶¶ 75–79
9. Ibid., ¶¶ a–d. From its inception, the *Jones* suit was as much a vehicle, or a strategem, for political conservatives to attack and embarrass Clinton as it was to vindicate purported violations of Jones' civil rights. Prior to filing her suit, Jones had appeared at a convention of the Conservative Political Action Committee in Washington, DC. Jones' expenses had been paid by another conservative group, the Legal Affairs Council. Following the decision of the U.S. Supreme Court allowing the *Jones* case to proceed against Clinton, an offer was made to Jones to settle the case for $700,000, the amount of damages sought in her complaint. Joe Conason and Gene Lyons, *The Hunting of the President: The Ten Year Campaign to Destroy Bill and Hillary Clinton* (New York: St. Martin's Press, 2000) 120–121, 304; Kyvig, *The Age of Impeachment*, 323–326. Despite what her attorneys considered to be a "complete victory" in view of the weaknesses in her case on the merits (by that point her defamation claim had been dismissed and there was virtually no evidence that Jones had lost either income or status at her job), Jones rejected the president's offer. Conason and Lyons, *The Hunting of the President*, 304–306. Jones' decision was based largely on advice from her media advisor, Susan Carpenter MacMillan, and conservative lawyer and media personality, Ann Coulter. Jones's lawyers, Joseph Cammarata and Gilbert Davis, withdrew from the case and were replaced with lawyers working for another conservative organization, the Rutherford Institute. David Brock, *Blinded by the Right: The Conscience of an Ex-Conservative* (New York: Crown Publishers, 2002) 184; Rae and Campbell, *Impeaching Clinton*, 2.
10. 72 F.3d 1354 (8th Cir. 1996).
11. *Clinton v. Jones*, 500 U.S. 681 (1997).
12. Kenneth W. Starr, *The Starr Report: The Findings of Independent Counsel Kenneth W. Starr on President Clinton and the Lewinsky Affair* (New York: Public Affairs, 1998) 48–74 ("Starr Report"); Baker, *The Breach*, 28–33; William J. Clinton, *My Life*, 773.
13. Starr, *Starr Report*, 62–65; Bob Woodward, *Shadow: Five Presidents and the Legacy of Watergate* (New York: Simon & Schuster, 1999) 424; Conason and Lyons, *The Hunting of the President*, 280–281.
14. Woodward, *Shadow*, 359. Tripp reportedly recorded her conversations with Lewinsky at the suggestion of her literary agent, who had close ties to conservative opponents of Clinton. Conason and Lyons, *The Hunting of a President*, 290, 323–332.

15. Committee on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States: Report of the Committee on the Judiciary of The House of Representatives*, 105th Cong., 2d Sess., Report No: 105–830, (Washington, DC: U.S. Government Printing Office, 1998) 8–9 ("Report No. 105–830").
16. Starr, *Starr Report*, 95–98. Jordan's efforts to assist Lewinsky in finding employment was specified by the House as one of the means by which Clinton had sought to obstruct justice. It had been Linda Tripp who suggested Vernon Jordan to Lewinsky. Woodward, *Shadow*, 359.
17. *Report No. 105–830*, 11; Starr, *Starr Report*, 102–104.
18. Jordan met Clinton on December 19 and told Clinton that Lewinsky had received a subpoena in the *Jones* case. *Report No. 105–830*, 14; Starr, *Starr Report*, 117–120. During his deposition in the *Jones* case, Clinton had been asked "Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?" And Clinton replied, "I don't think so." Later, in his testimony at the grand jury, Clinton was questioned about his testimony at the *Jones* deposition. Clinton stated that he "knows now" that he spoke with Jordan but that his memory was not "clear." The Committee majority considered Clinton's testimony in this regard to be false and misleading. It was the Committee majority's opinion that "When one considers the nature of the conversation between President Clinton and Mr. Jordan, the suggestion that President Clinton forgot it defies common sense." *Report No. 105–830*, 14.

    The subpoena served on Lewinsky also directed her to produce any gifts that she had received from Clinton. When Lewinsky met with Clinton at the White House on December 28, Lewinsky suggested that she return the gifts to him in order to avoid producing them. Clinton replied, "I don't know" or "let me think about that." Several hours later, Betty Currie called Lewinsky and arranged to retrieve the gifts. *Report No. 105–830*, 16; Starr, *Starr Report*, 117, 122–124. The Committee majority called these actions "one of the most blatant efforts to obstruct justice and conceal evidence." The Committee majority said that the fact that Currie and Lewinsky had spoken several hours after Lewinsky had met with Clinton and the fact that Currie had simply taken the items from Lewinsky without questioning her, "strongly suggests that President Clinton directed her to do so." *Report No. 105–830*, 16.
19. Starr, *Starr Report*, 120–121.
20. Ibid., 121.
21. *Report No. 105–830*, 19. Starr, *Starr Report*, 128–130.
22. *Report No. 105–830*, 18; Starr, *Starr Report*, 132–133. The Committee majority characterized the offer of employment by Revlon as Lewinsky's "reward for signing the false affidavit." *Report No. 105–830*, 18.
23. Clinton later testified that he had not "focused" on Bennett's "exact words." The Committee majority considered his statement to be "critical," and noted that "[t]he videotape of the deposition shows clearly that President Clinton was paying close attention and that he followed his lawyer's argument." *Report No. 105–830*, 20.
24. Ibid., 21.

25. Woodward, *Shadow*, 371.
26. Ibid., 372–373.
27. Ibid., 375–376; Conason and Lyons, *The Hunting of the President*, 359–361. While she was being held by the FBI and Starr's staff, Lewinsky had also asked to speak with her mother. One of Starr's lawyers told her "You're old enough. You don't need to call your mommy." Her request was refused. Conason and Lyons, *The Hunting of the President*, 361.
28. *Report No. 105–830*, 20–21; Starr, *Starr Report*, 138–139.
29. Memorandum and Order, *Jones v. Clinton*, Civil Action No. LR-C-94–290 (E.D. Ark., January 29, 1998).
30. Memorandum and Order, *Jones v. Clinton*, Civil Action No. LR-C-94–290 (E.D. Ark., March 9, 1998) (emphasis original); 933 F. Supp. 1217.
31. With respect to the proffered evidence of Clinton's other relationships, Judge Wright stated that "Whether other women may have been subjected to workplace harassment, and whether such evidence has allegedly been suppressed, does not change the fact that Plaintiff has failed to demonstrate that she has a case worthy of submitting to a jury." Memorandum and Order, *Jones v. Clinton*, Civil Action No. LR-C-94–290 (E.D. Ark., April 1, 1998), ("Memorandum Opinion")
32. With respect to this statement, the Committee majority opined that "President Clinton carefully crafted his statements to give the appearance of being candid, when actually he intended the opposite." *Report No. 105–830*, 29. According to the Committee majority, "his reading of the definition was an afterthought conceived while preparing for his grand jury testimony. His explanation to the grand jury then, was also false and misleading." Ibid., 21.
33. Baker, *The Breach*, 433.
34. Ibid., 70.
35. Office of the Independent Counsel, *Communication from Kenneth W. Starr Independent Counsel Transmitting a Referral to the United States House of Representatives in Conformity with the Requirements of Title 28, United States Code, Section 595(c)*, Committee on the Judiciary, U.S. House of Representatives, 105th Cong., 2d Sess., House Document 105–310 (Washington, DC: U.S. Government Printing Office, 1998).
36. Starr, *Starr Report*, 154–155.
37. David E. Kendall, et al., *The Preliminary Memorandum of the President of the United States Concerning the Referral of the Office of the Independent Counsel and the Initial Response of the President of the United States to the Referral of the Office of the Independent Counsel*, Committee on Judiciary of The House of Representatives, 105th Cong., 2d Sess., House Document No. 104–317 (Washington, DC: U.S. Government Printing Office, 1998) 1–6.
38. Committee on the Judiciary, *Authorization of an Inquiry into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States, Meeting of the House Committee on the Judiciary Held October 5, 1998, Presentation by Inquiry Staff, Consideration of Inquiry Resolution, Adoption of Inquiry Procedures*, House of Representatives, 105th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1998) 58.

39. Ibid., 58–81.
40. Ibid., 82–99.
41. Ibid., 120–122.
42. *Report No. 105–830*, 308.
43. Judiciary Committee, *Committee on the Judiciary, Requests for Admissions of the President of the United States Related to House Resolution 581 submitted by the Honorable Henry J. Hyde, Chairman, Committee on the Judiciary, U.S. House of Representatives*, Report No. 105–830, 400–440.
44. It was the majority's conclusion that Clinton's responses had "added obstruction of an inquiry of the Legislative Branch to his obstructions of justice before the Judicial Branch." Ibid., 32.
45. A copy of the letter from the "Historians in Defense of the Constitution" was attached as an exhibit to *Background and History of Impeachment: Hearing Before the Subcommittee on the Constitution of the Committee on the Judiciary*, U.S. House of Representatives, 106th Cong., 1st Sess., House Document No. 106–3 (Washington, DC: U.S. Government Printing Office, 1999) ("Background and History of Impeachment").
46. A copy of the law professors' letter was also attached was an exhibit to *Background and History of Impeachment*, 374–383.
47. The law professors characterized Starr's allegations of obstruction of justice based on Clinton's declining to testify voluntarily and asserting testimonial privileges as being "not remotely impeachable." Ibid., 375.
48. Ibid., 375.
49. Testimony of Professor Sean Wilentz, *Presentation on Behalf of the President;* Committee on the Judiciary, *Hearing Before the Committee on the Judiciary of the House of Representatives*, 105th Cong., 2d Sess. (December 8 and 9, 1998) (Washington, DC: US Government Printing Office, 1998) 20.
50. *Background and History of Impeachment*, 78.
51. Ibid., 95.
52. Jonathan Turley of George Washington University contended that the allegations of misconduct had put into issue Clinton's "political legitimacy to govern" and for that reason, irrespective of whether the House believed that he would be convicted by the Senate, it was incumbent on the House to impeach Clinton and refer the case for trial by the Senate so that Clinton could gain "constitutional redemption." Ibid., 254.
53. Ibid., 118.
54. Ibid., 219. Matthew Holden of the University of Virginia similarly warned that adoption of "sexual morality" as a criterion for impeachment would "convert the impeachment process into a referendum on the Presidency." Ibid., 71.
55. Ibid., 231.
56. Ibid., 203.
57. Ibid., 128.
58. Ibid., 109.
59. Ibid., 228.
60. Ibid., 231.

61. Ibid., 231.
62. In 1984, Judge Harry E. Claiborne of the U.S. District Court for the District of Nevada was convicted of making false statements on his income tax returns for 1979 and 1980. On March 16, 1986, Judge Claiborne began serving a two year sentence in federal prison. Judge Claiborne had not resigned his position as District Judge and continued to receive his annual salary of $78,700. Claiborne stated his intention to return to the bench following his release. Faced with Claiborne's intransigence, the Judiciary Committee reported, and the House immediately adopted, four articles of impeachment charging that: 1) Claiborne had made false statements in failing accurately to report his income for 1979; 2) Claiborne had made false statements in failing accurately to report his income for 1980; 3) Claiborne had been convicted of making false income tax returns for 1979 and 1980 and he was therefore "guilty of misbehavior and was and is guilty of high crimes"; and 4) Claiborne had "betrayed the trust of the people of the United States and reduced confidence in the integrity and impartiality of the Judiciary, thereby bringing disrepute on federal courts and the administration of justice by the courts." The Senate designated a committee to hear evidence and report to the full Senate. After hearing arguments on behalf of the House and of Claiborne, the Senate voted to convict and remove Claiborne from office based on Articles 1, 2, and 4. By a vote of 46 to 17, the Senate rejected the article charging that conviction and imprisonment was a "high crime." Van Tassell and Finkelman, *Impeachable Offenses*, 168–172.
63. In 1983, Judge Alcee L. Hastings, of the United States District Court for the Southern District of Florida, was charged with having conspired with an attorney, William Borders, to solicit bribes totaling $150,000 from the defendants in a criminal case, over which Judge Hastings was presiding, in order to secure sentences that did not include incarceration. At the conclusion of his trial on February 4, 1983, Hastings was acquitted by a jury. However, notwithstanding his acquittal, by a vote of 417 to 3, the House adopted seventeen articles of impeachment. As it had in the Claiborne matter, the Senate referred the Hastings case to a committee to hear evidence and report to the full Senate. When the case came for trial before the full Senate, Articles 10 through 15 were not considered by agreement. Hastings was acquitted by the Senate of Article 6 (alleging that Hastings had testified falsely at his criminal trial concerning a meeting with Borders in Hastings' hotel room); Article 16 (alleging that Hastings had obstructed a criminal investigation by revealing confidential information from a wire tap); and Article 17 (alleging that Hastings had undermined the integrity and impartiality of the Judiciary and had brought disrepute on the federal courts as a result of his corrupt relationship with Borders, his false testimony and fabrication of documentary evidence at this trial, and his disclosure of confidential information). Nevertheless, the Senate voted to convict Hastings of the remaining eight articles (alleging a corrupt conspiracy with Borders and various incidents of false testimony by Hastings at this trial). Although Hastings was removed from his position on the District Court, he was not disqualified from future

public office and three years after his impeachment and conviction, Hastings was elected to Congress. Van Tassel and Finkelman, *Impeachable Offenses*, 172–180.

64. As the Senate was preparing for the trial of Judge Hastings, the House adopted three articles of impeachment charging Judge Walter L. Nixon, of the United States District Court for the Southern District of Mississippi, with having given false testimony to a grand jury investigating the business dealings between Judge Nixon and Willey Fairchild and the judge's involvement in the criminal prosecution of Fairchild's son (Articles 1 and 2); and with having brought the judiciary into disrepute by giving false testimony (Article 3). Although several senators who had served on the evidentiary committee voted to acquit him, Nixon was convicted by the Senate of Articles 1 and 2 and removed from office. Van Tassel and Finkelman, *Impeachable Offenses*, 180–185. Nixon challenged the Senate's procedure, claiming that delegation to a committee of the evidentiary function, under Senate Rule 81, violated the Constitution's directive that the Senate was to "try" all impeachments. The Supreme Court held that his claim was not justiciable by the federal courts. *Nixon v. United States*, 506 U.S. 224 (1993).
65. *Background and History of Impeachment*, 77
66. Ibid., 104.
67. Ibid., 201.
68. Ibid., 82.
69. Ibid., 233.
70. Ibid., 56. Gerhardt illuminated his views on impeachable offenses in his book, *The Federal Impeachment Process: A Constitutional and Historical Analysis*, 2d ed. (Chicago: Chicago UP, 2000) 106.
71. *Background and History of Impeachment*, 83, 90.
72. Ibid., 58.
73. Ibid., 224
74. Ibid., 235.
75. Ibid., 99.
76. Ibid., 244.
77. Ibid., 116.
78. Ibid., 112. In the same vein, Daniel H. Pollit of the University of North Carolina described the impeachment remedy as being "like the atom bomb…a weapon to be used only on very rare and specific occasions." Ibid., 207.
79. Ibid., 90. At best, Arthur Schlesenger said, Starr's charges, even if proven, "would perhaps be defined as low crimes and misdemeanors." Ibid., 100–101.
80. Ibid., 208–209.
81. Ibid., 90.
82. Ibid., 246. Schlesenger too told the Committee that Starr's charges did not rise to the level of impeachable conduct because they did not reflect acts committed by Clinton "in his role as public official," and they did not "involve grave breaches of official duties." Ibid., 100–101.

83. Committee on the Judiciary, *Constitutional Grounds for Presidential Impeachment, Report of the Staff of the Impeachment Inquiry*, U.S. House of Representatives, 105th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1998) ("Majority Staff Report").
84. Committee on the Judiciary, *Constitutional Grounds for Presidential Impeachment, Report of the Staff of the Impeachment Inquiry*, U.S. House of Representatives, 105th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1998) ("Minority Staff Report").
85. *Majority Staff Report*, 2.
86. Ibid., 3.
87. Ibid., 4–14.
88. Ibid., 14–16.
89. Ibid., 16–17.
90. *Minority Staff Report*, 2–3.
91. Ibid., 6–7.
92. Ibid., 16–19. The Minority Staff took exception to the Majority Staff's characterization of the Claiborne, Nixon, and Hastings judicial impeachments and concluded that the impeachments were predicated on misconduct, not abuse of official power. Ibid., 20–23.
93. *Background and History of Impeachment*, 29–30 (Testimony of Gary L. McDowell of the University of London).
94. Ibid., 237–238 (Testimony of William Van Allstyne of Duke University).
95. Committee on the Judiciary, *The Consequences of Perjury and Related Crimes: Hearing Before the Committee on the Judiciary*, House of Representatives, 105th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1998).
96. Ibid., 6–9.
97. Ibid., 76–84.
98. Ibid., 60–74. Two of the panelists, Judge Gerald B. Tjoflat and Charles E. Wiggins, stated that the allegations against Clinton constituted impeachable offenses. The third panelist, Judge A. Leon Higginbotham, agreed with the earlier testimony of professors Drinan, Holden, Schlesenger, and Sunstein that the allegations did not reach "the narrow category of egregious or large scale abuses of authority that comes from the exercise of distinctly presidential power."
99. Ibid., 74–101.
100. Committee on the Judiciary, *Appearance of Independent Counsel: Hearing before the Committee on the Judiciary of The House of Representatives*, 105th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1998) ("Starr Hearing").
101. Committee on the Judiciary, *Impeachment Inquiry: Presentation on Behalf of the President: Hearing before the Committee on the Judiciary of The House of Representatives*, 105th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1998).
102. Ibid., 14–46. A third witness, Bruce Ackerman of Yale University, questioned whether an expiring Congress had authority under the Twentieth Amendment to the Constitution to send an impeachment to a new Senate.

103. Ibid., 118–137.
104. Ibid., 212–227.
105. Ibid., 283–333.
106. Ibid., 406–419.
107. Committee on the Judiciary, *Impeachment Inquiry: Presentations by Investigative Counsel*, Committee on the Judiciary of The House of Representatives, 105th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1999).
108. *Report No. 105–830*, 32–106.
109. Ibid., 128–135. Rae and Campbell commented on the strongly partisan nature of the Judiciary Committee. Rae and Campbell, *Impeaching Clinton*, 53–54.
110. As to Article 1, the House voted 228 in favor and 206 opposed, 5 members of each party voted with the other party. Article 2 was rejected in the House by a vote of 229 opposed and 205 in favor, 28 Republicans having voted in opposition to the article. Article 3 was adopted by a vote of 221 in favor of the article and 212 opposed. Finally, Article 4 was rejected, overwhelmingly, by a vote of 285 opposed and 148 in favor. *Congressional Record*, vol. 144, 12040–12042 (December 19, 1998); Baker, *The Breach*, 251–252. Rae and Campbell similarly viewed the House debate and vote as "an essentially partisan, political proceeding." Rae and Campbell, *Impeaching Clinton*, 118.
111. United States Senate, *Proceedings of the United States Senate in the Impeachment Trail of President William Jefferson Clinton*, Senate, 106th Cong., 1st Sess., vol. 1 (Washington, DC: U.S. Government Printing Office, 2000) 17–20, ("Proceedings of the Senate"), vol. 1, 17–20.
112. Ibid., 445–47.
113. Ibid., 58–70.
114. Ibid., 735–739.
115. Ibid., 1151–1152.
116. *Proceedings of the Senate*, vol. 2: 1162–1163.
117. Ibid., 1171–1176.
118. Ibid., 1188–1192.
119. Ibid., 1195–1204.
120. Ibid., 1205–1206.
121. Ibid., 1210–1225.
122. Ibid., 1237–1274.
123. Ibid., 1274–1290.
124. Ibid., 1292–1324.
125. Ibid., 1324–1335.
126. Ibid., 1356–1358.
127. Ibid., 1358.
128. Ibid., 1402–1403, 1410–1411.
129. Ibid., 1412–1413.
130. Ibid., 1582–1583, 1687–1797; vol. 3: 2027–2533.
131. Ibid., 1800–1873.
132. Ibid., 1882–1954.

133. Ibid., 1970–1971, 1984.
134. Ibid., 1986.
135. *Proceedings of the Senate*, vol. 4: 3051.
136. The senators that considered perjury and obstruction to be high crimes and misdemeanors were Samuel Brownback, Susan Collins, Larry E. Craig, William Frist, John F. Kerry of Massachusetts, Patty Murray, and Charles S. Robb. Senators Collins, Kerry, Murray, and Robb voted to acquit Clinton. Ibid., 2563 (Senator Murray), 2655 (Senator Robb), 2678 (Senator Fitzgerald), 2701 (Senator Frist), 2812 (Senator Collins), 2870 (Senator Craig), 2912 (Senator Brownback), 2943 (Senator Kerry).
137. Ibid., 2987–2989.
138. Ibid., 2971–2972. Other senators who considered Clinton's conduct to have violated his oath were: John McCain, 2656; Senator Peter V. Domenici, 2630; Senator Conrad Burns, Senator Wayne Allard, 2794; Senator Ted Stevens, 2980; Senator Orrin G. Hatch, 3066.
139. Ibid., 2570 (Senator Richard D. Lugar); 2616 (Senator Spencer Abraham); 2701 (Senator William Frist); 2794; (Senator Wayne Allard); 2948 (Senator Michael DeWine).
140. Ibid., 2551 (Senator Kay Bailey Hutchinson); 2561 (Senator Tim Hutchinson); 2683; (Senator William V. Roth); 2977 (Senator Frank H. Murkowski).
141. Ibid., 2718–2719. Senator Frank R. Lautenberg also expressed the view that removal required consideration of the national interest. Ibid., 2643.
142. Ibid., 2650 (Senator Kent Conrad); 2639 (Senator J. Robert Kerry); 2653 (Senator Charles S. Robb); 2689 (Senator Max Cleland); 2789 (Senator Daniel Patrick Moynihan); 2884 (Senator Paul Wellstone); 2891 (Senator Ted Stevens); 2892 (Senator Joseph I. Lieberman); 2916 (Senator Richard H. Bryan); 2939 (Senator Byron L. Dorgan).
143. Ibid., 3106–3107 (Senator John F. Reed).
144. Ibid., 3001.
145. Ibid., 2577. Senator Snowe similarly observed that the high crimes or misdemeanors "must be of such a magnitude that the American people need protection…by the extraordinary act of removal of their duly elected President." Ibid., 3001. Other senators as well were of the view that the misconduct had to affect the nation in order to warrant impeachment and removal. Ibid., 2560 (Senator Kent Conrad); 2567 (Senator Timothy Johnson); 2622 (Senator Barbara Mikulski); 2639 (Senator J. Robert Kerry); 2791 (Senator Daniel Patrick Moynihan); 2794 (Senator Robert Graham); 2884 (Senator Paul Wellstone); 2891 (Senator Ted Stevens); 2897 (Senator Joseph I. Lieberman); 2913 (Senator Richard H. Bryan).

    Finally, a number of senators were critical of the proceedings, particularly in the House. There were concerns expressed for the separation of powers. Ibid., 2558 (Senator Kent Conrad); 2575 (Senator Joseph R. Biden); 2691 (Senator Max Cleland); 2791 (Senator Patrick Moynihan). Other senators derided the politically partisan nature of the proceedings in the House. Ibid., 2560 (Senator Kent Conrad); 2573 (Senator Joseph R. Biden); 2706–2707 (Senator Richard J. Durbin); 2807 (Senator Edward M. Kennedy); 2814

(Senator Thomas Harkin); 2826 (Senator Harry Reid); 2944 (Senator John F. Kerry); 2985 (Senator Robert C. Byrd), 3023 (Senator Jeffrey Bingham). Still other senators concluded that because, as Congressman Graham had said, reasonable people could disagree whether the president's conduct merited impeachment, the president should not be removed in any event. Ibid., 2832 (Senator John Edwards); 2876 (Senator Christopher Dodd); 2916 (Senator Richard H. Bryan); 2962 (Senator Ernest F. Hollings).

146. Ibid., 1994–2000.
147. William C. Berman, *From the Center to the Edge* (Lanham: Rowman & Littlefield, 2000) 87.
148. Indeed, according to Sidney Blumenthal, the party of the incumbent president had gained seats in Congress only during the presidencies of Franklin Roosevelt in 1934 and James Monroe in 1822. Sidney Blumenthal, *The Clinton Wars* (New York: Penguin, 2003) 494.
149. Several commentators have pointed to Congressman Tom Delay, who had succeeded Congressman Newt Gingrich as majority leader, having been the moving force behind the Clinton impeachment. For example, according to Blumenthal, Republican Congressman Peter King told him "coming out of the election, everyone thought impeachment was dead. I didn't hear anyone discuss impeachment. It was over. Then Delay assumed control." Ibid., 539. Peter Baker wrote that, beginning with Clinton's August 18 statement, Delay led to the drive to oust Clinton from office. Baker, *The Breach*, 44. The centrality of Delay's role in moving the impeachment effort forward in the House was also noted by Rae and Campbell. Rae and Campbell, *Impeaching Clinton*, 103–104. On November 9, 1998, Chairman Hyde told the Republican members of the Judiciary Committee that despite the midterm returns, he had been told by the Republican leadership that the articles of impeachment were to go to the House for a vote before the Christmas recess. Blumenthal, *The Clinton Wars*, 502.
150. John J. Janssen, *Constitutional Equilibria: The Partisan Contingency of American Constitutional Law from the Jeffersonian "Revolution" to the Impeachment of Bill Clinton* (Lanham: University Press of America, 2000) 147.
151. Baker, *The Breach*, 77–78; Brock, *Blinded by the Right*, 127.
152. Richard A. Posner, *An Affair of State: The Investigation, Impeachment, and Trial of President Clinton* (Cambridge, MA: Harvard UP, 1999) 204–205. So, for example, Delay told the Congregation of the First Baptist Church of Pearland, Texas that Delay believed he was an instrument of God's will to promote "a biblical world view" and that Clinton had been impeached because he had "the wrong world view." Blumenthal, *The Clinton Wars*, 501.
153. *Proceedings of the Senate*, vol. 4: 2942.
154. For example, a poll conducted by the *Washington Post* and *ABC News* on December 15 revealed that 56 percent of those polled had an "unfavorable impression of Clinton as a person." Baker, *The Breach,* 225.
155. After Clinton's public statement following his grand jury appearance on August 17, a public opinion poll taken by *ABC News* showed that 69

percent of those polled favored an immediate end to the Starr investigation. Blumenthal, *The Clinton Wars*, 465. On September 21, the day that Clinton's grand jury testimony was released to the public, the Pew Research Center found that 70 percent of their sample approved of Clinton's performance in office. Blumenthal, *The Clinton Wars*, 484. The poll conducted by the *Washington Post* and *ABC News* on December 15 revealed that 60 percent of those in the survey opposed impeachment. Baker, *The Breach*, 224.

5 Conclusion

1. Madison, *Notes*, 331.
2. Proponents of the criminal law interpretation of high crimes and misdemeanors cite the text of several provisions of the Constitution in support of their reading of Article II, Section 4. Berger, *Impeachment: The Constitutional Problems*, 78–79. For example, Article II, Section 2, Clause 1, authorizes the president to "grant reprieves and pardons for offenses against the United States, except in cases of impeachment." This provision had its historical origins in the Act of Settlement of 1700. Additionally, when the Framers considered the pardoning power, concerns were expressed that a president could evade discovery and impeachment by pardoning those "coadjutors" who had conspired with the president to engage in impeachable conduct. Mason expressed this view both at the convention, Farrand, *The Records of the Federal Convention*, vol. 2: 639, and in the Virginia ratification debates, *The Founders' Constitution*, vol. 4, Article II, Section 2, Clause 1, Document 6. Randolph had also sought to exclude treason from the pardoning power for that reason, with which both Mason and Morris agreed. Madison, *Notes*, 646. Thus, rather than suggesting that impeachment was a proceeding to adjudicate crimes, the exclusion of impeachment from the president's prerogatives of reprieve and pardon served to ensure that the impeachment power would not be thwarted thereby.

   Proponent's of the criminal law interpretation also cite Article III, Section 2, Clause 3, which provides that "The Trial of All Crimes, Except Cases of Impeachment, Shall be By Jury." However, Article I, Section 3, Clause 7, makes clear that following conviction by the Senate, "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law." Thus, impeachment is a proceeding independent of judicial adjudication, as Iredell explained in his previously cited comments. In any event, there appears to be no dispute that conduct violating the criminal laws may also support impeachment. Indeed, treason and bribery are criminal offenses in addition to being abuses or violations of the public trust, as Hamilton said in Federalist 65. Hamilton, Madison, and Jay, *The Federalist*, 426.
3. This argument was first made in the defense of Andrew Johnson. In 1798, the Supreme Court held, in *Calder v. Bull*, 3 U.S. 386, 393 (1798) that the prohibition against ex post facto laws applied only to penal and criminal statutes. John Dickinson had also cited Blackstone's *Commentaries* during debate

to the effect that ex post facto laws related to criminal cases only. Madison, *Notes*, 547. Impeachment is neither a penal nor criminal proceeding. Indeed, Article I, Section 3, Clause 6 provides that "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States." Accordingly, under the express terms of the Constitution, a conviction by the Senate following impeachment is not an attainder or ex post facto law.

4. U.S. Constitution, Article IV, Section 2, Clause 2.
5. U.S. Constitution, Article I, Section 6, Clause 1.
6. Madison, *Notes*, 605.
7. Hugh Williamson, Madison, *Notes*, 58; Committee of the Whole, Ibid., 150, 331; Referral to the Committee on Detail (July 26), Ibid., 383.
8. Gunning Bedford, Madison, *Notes*, 49.
9. Madison, *Notes*, 332.
10. Randolph, Madison, *Notes*, 334.
11. Hamilton Plan, Madison, *Notes*, 139; Mason, Ibid., 331–332; Morris, Ibid., 332, 355; Report of the Committee of Detail (August 6), Ibid., 393 (treason, bribery or corruption); Report of the Committee of Eleven (September 4), Ibid., 575.
12. One of the mysteries of the constitutional convention was the elimination of references to the United States in conjunction with high crimes and misdemeanors. As proposed by Mason and initially adopted by the delegates, removal of the president was to result from conviction after impeachment for "treason, bribery or other high crimes and misdemeanors against the State." Madison, *Notes*, 605. Almost immediately, United States was substituted for State "in order to remove ambiguity." Ibid., 551–552. However, in the report issued by the Committee on Style and Arrangement on September 19 just four days later, the reference to the United States had been deleted. Ibid., 624. This committee had been constituted "to revise the stile [*sic*] of and arrange the articles which had been agreed to by the House," Ibid., 608, not to make substantive changes. Thus, it has been assumed that it was implicit in the meaning of high crimes and misdemeanors that they were to be offenses against the United States.

    It should be noted that during the debate in the House on the removal power on May 19, 1789, both Congressman Madison and Congressman Livermore of New York referred to high crimes and misdemeanors against "the United States" or against "the Government" as the basis for impeachment. Gales, *The Debates and Proceedings in the Congress of the United States*, vol. 1: 387 (Madison), 393–394 (Lawrence).
13. Rawle, *A View of the Constitution of the United States of America*, 211.
14. Federalist 65, Hamilton, Madison, and Jay, *The Federalist*, 426.
15. Wilson, *The Works of James Wilson*, vol. 1: 426.
16. Story, *Commentaries on the Constitution of the United States*, vol. 2: 217.
17. Ibid., 263.
18. Ibid., 270.
19. Ibid., 272.
20. Selden, *The Table Talk of John Selden*, 99.
21. Black, *Impeachment: A Handbook*, 35–36.

22. Ibid., 33–34; Richard M. Pius, "Impeaching the President: The Intersection of Constitutional and Popular Law," *St. Louis Law Journal*, (1999) vol. 43: 871; Laurence H. Tribe, "Defining 'High Crimes and Misdemeanors': Basic Principles," *George Washington Law Review* (1999) vol. 67: 2.
23. Black, *Impeachment: A Handbook*, 35.
24. Kurland, *Watergate and the Convention*, 111–112; Daniel H. Pollitt, "Sex in the Oval Office and Cover-Up under Oath: Impeachable Offense?" *North Carolina Law Review* (1998) vol. 77: 262; Tribe, "Defining 'High Crimes and Misdemeanors,'" 720.
25. Tribe, "Defining 'High Crimes and Misdemeanors,'" 720.
26. Mason noted that unlike presidents, judicial appointments are not for a limited term, thus it was "necessary…that a forum should be created for trying misbehavior." Madison, *Notes*, 333. In Federalist No. 79, Hamilton argued under the Constitution for "malconduct" by judges and for disqualification by reason of insanity. *The Federalist*, 498–499.
27. Judge Pickering was removed on the basis of his insanity despite his incapacity to form the mens rea required for criminality. Judge Humphreys was removed in 1862 for his support of the armed rebellion against the United States. Judge Swayne was removed for having obtained funds from the United States by false pretense, despite his counsel's argument that only acts "in the actual administration of justice" would support impeachment. David Y. Thomas, "The Law of Impeachment in the United States," *American Political Science Review* (1908) vol. 2: 381–382. Judge Archbald was removed for "misbehavior" and "misdemeanors in office" relating to his dealings with railroads over which his court had jurisdiction. Judge Ritter was found by the Senate to be "unfit to serve as a judge." Judge Claiborne was removed on the basis of his conviction for tax fraud. Judge Nixon was removed on the basis of his conviction for perjury. Judge Hastings was removed for making false statements at his criminal trial, notwithstanding his acquittal.
28. In essence, conviction and removal of a judge is the withdrawal of senatorial consent required for judicial appointment while removal of a president would effectively undo the national election that installed the president in the first instance. Additionally, impeachment proceedings distract the president from the duties of office, encumber the executive and legislative branches, and undermine the foreign relations of the United States.
29. Berger, *Impeachment: The Constitutional Problems*, 295; Rehnquist, *Grand Inquests*, 271; Gerhardt, *The Federal Impeachment Process*, 191.
30. Kurland, *Watergate and the Constitution*, 119; Rehnquist, *Grand Inquests*, 274; Gerhardt, *The Federal Impeachment Process*, 192.
31. Gerhardt, *The Federal Impeachment Process*, 185.
32. Whittington, "Bill Clinton was no Andrew Johnson," 422.
33. Frank O. Browman and Stephen L. Sepinuck, "High Crimes and Misdemeanors": Defining the Constitutional Limits on Presidential Impeachment," *Southern California Law Review*, vol. 72 (1999) 1532.
34. Federalist 65, Hamilton, Madison, and Jay, *The Federalist*, 427.
35. Berger, *Impeachment: The Constitutional Problems*, 298.
36. Sunstein, "Impeaching the President," 315.

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