

The Senate impeachment trial: The legal framework of a right-wing witch-hunt

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The briefs filed by attorneys for Bill Clinton demonstrate that the impeachment charges against the president have no legitimate legal foundation. If the Senate trial were a genuinely fair legal proceeding, rather than a politically motivated witch-hunt, Clinton's right-wing political enemies would not have a leg to stand on.

Hoping for fairness and impartiality from the Senate, however, is as pointless as last month's quixotic search for "moderate" Republicans in the House of Representatives, in the days leading up to the impeachment vote. It has been Clinton's weakness from the beginning—a weakness bound up inseparably with his class position as a bourgeois politician—that he relies on his lawyers' expertise rather than waging an open political struggle against the right-wing destabilization campaign that has unfolded over the past year.

That being said, the legal issues raised in the White House documents deserve examination, since they show the entirely antidemocratic and reactionary character of the case being made by the House prosecutors, and the absurd and self-contradictory legal arguments which they advance.

The White House response to the Senate impeachment trial summons and the 130-page brief filed Wednesday constitute the first searching legal analysis of the two articles of impeachment approved by the House of Representatives on December 19.

The briefs argue convincingly that the charges against Clinton—arising from a private sexual relationship and not his actions in an official capacity—do not constitute "high crimes or misdemeanors," the grounds for removal from office provided by the Constitution. A series of historical examples are given, from Alexander Hamilton's commentaries in the Federalist Papers to

the decision of the House Judiciary Committee, in 1974, to reject an article of impeachment against Nixon based on his lies under oath in filing a fraudulent income tax return. In the latter case, the bipartisan majority of the committee decided that perjury in a private matter could not be grounds for impeachment—a legal precedent rejected by the House Judiciary Committee last month.

Two additional legal arguments are advanced to show that the articles of impeachment are themselves unconstitutional. First, the articles are unconstitutionally vague. The first article, charging perjury, makes a series of assertions without specifying which statements of Clinton before the grand jury were allegedly perjurious. Similarly with the second article, charging obstruction of justice, there are no specific acts described, nor are the witnesses even named whose testimony Clinton supposedly tampered with.

The failure to specify the charges is especially serious in relation to perjury. In any criminal perjury case the prosecution would be required to specify the exact words which allegedly constituted the crime. The failure to do so, according to Clinton's lawyers, means "the President does not have the most basic notice of the charges against him required by due process and fundamental fairness. He is not in a position to defend against anything other than a moving target."

In an ordinary criminal proceeding an indictment so vague would likely be dismissed on the grounds that it was impossible for the defense to prepare adequately when it did not even know the exact nature of the charges.

Secondly, both articles, by combining a grab bag of different charges under a single heading, invite the Senate to violate the constitutional requirement of a two-thirds majority for conviction. Thus the article

charging perjury lists a series of general allegations, any one of which could become the basis for a Senator voting to remove Clinton from office.

According to the brief, “By the express terms of Article I, a Senator may vote for impeachment if he or she finds that there was perjurious, false and misleading testimony in any ‘one or more’ of four topic areas. But that prospect creates the very real possibility that ‘conviction’ could occur even though fewer than two-thirds of the Senators actually agree that any particular false statement was made.”

This prospect is even more likely in Article II, alleging obstruction of justice, which includes a wide range of actions by Clinton over a two-month period, in two separate legal actions-the Paula Jones lawsuit and the Starr investigation. The brief argues, “the combination of such patently different types of alleged wrongdoing in a single article creates the manifest possibility that votes for conviction on this article would not reflect any two-thirds agreement whatsoever.”

Though the White House brief shies away from directly asserting this, there is no doubt that this was the intention of the House Republicans in drafting the impeachment articles-to make them so broad and vague that it would be easy for Senators to find Clinton “guilty of something.” In a criminal proceeding this technique would be considered a “duplicious charge,” i.e., a combined charge concocted by the prosecution to insure an erroneous conviction, with some jurors finding the defendant guilty of one offense, other jurors of another.

The bad faith of the House prosecutors is demonstrated in another legal aspect of the case: the charges against Clinton continue to escalate, even after the impeachment vote. The brief filed by the House of Representatives in support of Clinton’s conviction includes charges not included in Independent Counsel Kenneth Starr’s original report, such as the claim that Clinton’s misleading testimony in the Paula Jones suit constituted obstruction of justice.

It even includes charges specifically rejected by the House itself on December 19, when two of the four articles of impeachment were defeated. Although the House voted down an article of impeachment alleging Clinton perjured himself in his Paula Jones deposition, the latest House brief resurrects the charge indirectly,

claiming that Clinton committed perjury when he told the grand jury that his Paula Jones testimony was truthful.

What emerges from all the legal contortions is the distinct odor of McCarthyism. The right-wing majority in the House of Representatives is riding roughshod over basic principles of due process, not only in relation to Clinton himself, but anyone who stands in the way of the impeachment drive.

How else to interpret the most sinister action of the past week, Starr’s indictment of Julie Hiatt Steele, a relatively minor witness in an area of Starr’s investigation-the alleged encounter between Clinton and Kathleen Willey-which produced so little it proved useless even for the House Judiciary Committee.

Steele was indicted, not so much for her own sake, but as a threat to any of those who might be called as witnesses in the Senate trial, that if they testify contrary to the dictates of Starr, Hyde and the rest of the right-wing cabal, they too could face legal persecution by an unaccountable prosecutor armed with vast resources.



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