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**Impeachment: Trump vs. Clinton**

Dear Crested Butte News:

Discussion of impeaching President Trump started on the day of his Inauguration, if not before, but it seems to be reaching a crescendo, especially since November, when the Democrats won a substantial majority in the House of Representatives. For what it’s worth, here are my two cents on the matter, including on whether what seems to be provable against Mr. Trump is more or less serious than what was alleged in the articles of impeachment of President Clinton.

First, as a constitutional matter, there are few practical limits on what misdeeds a President may be impeached and removed from office for. The Constitution states that “[t]he President, Vice President and all other 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,” but does not further define those terms. It also provides that the House of Representatives “shall have the sole Power of Impeachment” [i.e., stating the charges of impeachment], and that “the Senate shall have sole Power to try all impeachments,” but that “no Person shall be convicted without the Concurrence of two thirds of the [Senators] present.” Since, in my opinion, the Supreme Court would almost certainly decline to review any conviction of impeachment, what misdeeds would justify impeachment and conviction are essentially what a majority of the House and two thirds of the Senators say they are.

Nevertheless, most authorities agree that impeachment and conviction, especially of a President, should not occur except for the most serious offenses. In my view, they should also not occur for political reasons: that is, because of the political party of the accused or because of the policies he or she favors or the lawful actions he or she has taken to further his view of the public interest. The only proper way to reverse such policies and actions is through the ballot box. Nor should one’s views on impeachment be influenced by one’s opinions on those political or policy issues. Impeachment is an extreme measure, and for Congress to use it to remove democratically elected Presidents for political or policy reasons or less than very serious misdeeds would undermine democracy and greatly weaken that office and the careful separation of powers crafted by the Framers.

Nor should anyone’s views favoring or disfavoring impeachment be influenced by one’s like or dislike of the personal characteristics of the accused , such as the accused’s prejudices and general mendacity, or manner of speaking, or his appearance and the way he wears his hair, or the offensive (but not unlawful) manner in which he treats other people. In other words, one should favor impeachment of a person only for clearly proven acts of an unquestionably unlawful character for which one would favor impeachment and removal of one’s favorite President – Obama, Reagan, Kennedy, Eisenhower, take your pick – if they had committed the same acts.

At present, I have no view on whether President Trump should be impeached for acts which, based on what I read in the papers, seem clearly unlawful and reasonably provable, or should be convicted if those acts are proved. But it does seem to me that there are a number of such acts that are significantly more serious than those charged in the articles of impeachment filed against President Clinton. The most serious, in my view, were detailed in a memorandum submitted by federal prosecutors in New York on December 7, 2018 in connection with the sentencing of Michael Cohen, Trump’s former lawyer, who pleaded guilty in August to eight criminal charges related to payments to two women for their silence about alleged affairs with Trump. The charges to which he pleaded guilty -- and was subsequently sentenced to three years in prison for -- included campaign finance law violations, lying to banks to obtain loans and to the government to avoid paying taxes. The December 7 memorandum detailing these charges asserts that the payments to silence the women were made “in coordination with and at the direction of Individual 1 [widely understood to be President Trump]”; that the Trump Organization reimbursed Cohen for these payments; and that these payments were falsely disguised as payments for “legal expenses” under a non-existent retainer agreement “at the instruction of an executive of the Company [the Trump Organization],” which “falsely accounted for them as ‘legal expenses’.”

Almost as serious are separate charges against Cohen, to which he has also pleaded guilty, filed by Mueller’s office and detailed in a separate sentencing memorandum by that office, also on December 7, concerning numerous lies Cohen told to Congress and investigators about an ongoing Trump business project in Russia, which Cohen admitted were lies made to avoid adverse impacts on Trump’s 2016 election campaign and to limit the ongoing Russia investigations. Also very serious are charges by the New York Attorney General in an ongoing investigation that the Donald J. Trump [charitable] Foundation, which has now agreed to dissolve, “function[ed] as little more than a checkbook to serve Mr. Trump’s business and political interests” and engaged in a “shocking pattern of illegality” that included unlawfully coordinating with Trump’s 2016 election campaign.

These charges, which do not include whatever else Mueller may report regarding collusion between Russia and the Trump campaign in 2016, seem to me far more serious than the impeachment charges against Clinton in 1998 of perjury and obstruction of justice as part of Clinton’s efforts to cover up affairs with two women, of which the Senate finally acquitted Clinton in 1999. Whereas Clinton’s alleged misdeeds, if true, clearly arose out of his desire to avoid personal disgrace and embarrassment, the charges against Cohen and the Trump Foundation, if true, indicate a purpose by Trump to subvert the electoral process, hoodwink the American people for political gain and cheat on taxes, all in clear violation of law.

I don’t know whether Clinton should have been impeached or convicted for his alleged misdeeds. My view at the time was, and remains, that the honorable course would have been for him to resign, yield his office to a perfectly qualified and competent Vice President and spare his country the long, tawdry and distracting ordeal he subjected it to. My point here is that if President Trump is impeached for the serious charges I have outlined, no person who favored and advocated the impeachment of President Clinton can have reasonable grounds to object.

Richard Allen

Richard Allen is a lawyer practicing with a Washington D.C. law firm, who lives most of the year in Crested Butte, Colorado, where he is the president of the Crested Butte Public Policy Forum and where he has taught classes on the Supreme Court, the Constitution and other public policy issues.