

Impeachment

What is Impeachment? How Does it Work? (Vaughn Spargur [1-5] and Sam Schultz [6-8])

1. **Definition** - Impeachment is the first of several steps required to remove a government official from office,
Impeachment in the United States is the process by which the lower house of a legislature brings charges against a civil officer of government for crimes alleged to have been committed, analogous to the bringing of an indictment by a grand jury.
2. **Federal Impeachment** - The US constitution allows for and sets the rules for impeachment at the Federal level.
 - a. Article I, Section 2, Clause 5 grants “the power of impeachment” to the House of Representatives.
 - b. Article I, Section 3, Clause 6 grants the Senate the “sole power to try all impeachments”
 - c. Article II, Section 4
 - i. Who can be impeached
 1. the President
 2. Vice President
 3. all Civil Officers)
 - ii. Impeachable actions.
 1. Treason,
 2. Bribery, or
 3. other high Crimes and Misdemeanors.”
3. **The House’s Role**
 - a. Impeachment is similar to a grand jury.
 - i. Impeachment is not a trial, it is a decision that there is enough evidence for a trial.
 - ii. Who can start impeachment proceedings?
 1. Any member of the house.
 2. The Judicial Conference of the United States.

3. A Special Prosecutor
 4. The President
 5. State or territorial legislatures
 6. A grand jury
 7. A petition
- b. The house can then vote on whether or not to impeach the official.
- i. All that is needed for the impeachment to proceed is a simple majority vote in the House.
 - ii. Once the bill or resolution of impeachment has passed the House, the House's role is over.
- c. The House also appoints the “managers” of the impeachment procedures. Basically the prosecutors.
4. **The Senate's Role** - They act as courtroom, jury, and judge (In the case of a presidential impeachment, The Chief Justice of SCOTUS presides as judge)
- a. The “managers” present the case against the accused.
 - b. The accused's lawyers act as the defense and present their case in opposition.
 - c. At the end of the trial, the Senate votes on the guilt of the accused.
 - i. A two-thirds supermajority is required to find the accused guilty.
5. The Result of a Guilty Verdict in Impeachment
- a. Removal from Office.
 - b. Can be barred from holding office in future.
 - c. Impeachment is NOT a criminal trial or procedure
 - i. So there are no other punishments that can be brought against the accused
 - ii. However, the accused can, after the impeachment is over, be tried in the criminal justice system for the same charges.
6. What are “High crimes and misdemeanors”?

- a. The phrase comes from a foundation in English law where impeachment was developed as a means of targeting people that were too highly placed to be amenable to ordinary legal process (ex. King's ministers).
- b. It is a broad category of offenses committed by people in high places
- c. In a similar way that you could not enumerate all the rights of man in the debate over the Bill of Rights, you could not enumerate all of the possible offenses and abuses of power that a highly placed federal official might commit.
- d. Hamilton says in the Federalist Papers, "These are offenses of a political nature and they can never be tied down by such strict rules as commonly governed criminal cases."
- e. George Mason introduces the language of "high crimes and misdemeanors to the Constitutional Convention
 - i. Impeachable offenses originally started as treason and bribery but Mason didn't think this would cover many of the offenses one could commit against the Constitution.
 - ii. This phrase is often interpreted to included cases of maladministration.
- f. Has or could the Supreme Court weigh in on the scope of "high crimes and misdemeanors"?
 - i. The most significant time the court looked at this was with an impeached Federal Judge Walter Nixon (impeached for perjury).
 - 1. The court basically held that the Senate had the sole power to try impeachments and that it was a political question and they weren't going to touch it.
 - ii. You're not going to see the House impeach, the Senate convict and remove a federal official, and the Supreme Court weighing in and saying, that wasn't within the scope of "high crimes and misdemeanors."

- g. So does “high crimes and misdemeanors” mean whatever a majority of the House of Representatives think it means?
 - i. In a sense, it does because it is highly unlikely that there would be an external arbiter like the court to weigh in on the decision and the scope of high crimes and misdemeanors.
 - ii. However, the legal standard and the grounds for impeachment tend to turn out to a matter in practical terms, even if there is no likely scenario in which they can be challenged in the courts (The Andrew Johnson case is a good example of this).
- 7. There were debates about impeachment at the Constitutional Convention.
 - a. Most of the debate centered around presidential impeachment. A minority of the delegates including, Gouverneur Morris and Charles Pinckney, who were against the idea of Presidential impeachment altogether.
 - i. They were fiercely challenged by the likes of Madison and Franklin to the point where Morris completely changed his mind.
- 8. Not having the ability to impeach a president (or other government officials) could be compared to having a Constitution without an amendment clause.
 - a. A counterpoint to this claim would be that we already have regular elections that can be used to get rid of elected officials (this was Gouverneur Morris’s case)
 - i. Madison countered with the point that elections were not a sufficient security.

Who has been impeached?

1. Andrew Johnson (Andrew Bowman)

Early Political Career to President

Andrew Johnson was born in 1809 in North Carolina. He obtained no formal schooling throughout his life but used his own determination to become self-educated. What he lacked in formal education he made up with his natural talent of debate and speaking skills. He worked his way through the political landscape of North Carolina from alderman, to mayor, to state legislator and the US House of Representatives. He gained favor with the working class but often clashed with the wealthy landowners who funded politics, who would eventually gerrymander him out of office. He would overcome these early rivals and be elected governor twice and eventually end up in the US Senate.

Johnson was loyal to the Union during the early part of the Civil War when many southern states succeeded. President Lincoln recognized this loyalty and awarded Johnson the position of Military Governor of Tennessee and would later join President Lincoln as his Vice President. On March 4th, 1865, Andrew Johnson became Vice President and only 42 days later would be sworn in as President after Lincoln's Assassination.

President Johnson

Initially, many were optimistic for the new President. It did not take long for feelings to change as Johnson's views on Reconstruction surfaced. He called for the pardoning of Confederate leaders, opposed political rights for freedmen and lenient reconstruction policies. A group of "Radical Republicans" in Congress would become a common sparring partner. As tensions grew, the president's willingness to compromise dwindled away.

Congress responded to these tensions by passing the fourteenth and fifteenth amendments to the constitution. To further control the power of President Johnson, Congress passed the Tenure of Office Act which "limited the president's ability to shape his cabinet by requiring that not only appointments but also dismissals be approved by the Senate."

President Johnson was gaining more and more enemies in Congress and by mid 1867, it reached a boiling point. Johnson fired Secretary of War Edwin M. Stanton with the hopes of replacing him with Ulysses S. Grant. Because of the new Tenure of Office Act, the Senate opposed Johnson's actions and reinstated Secretary Stanton. President Johnson continued to be defiant and fired Stanton, again, and named Major General Lorenzo Thomas as interim secretary. Stanton had Thomas arrested for illegally seizing his office. Stanton was again reinstated by the Senate and the articles of impeachment were pursued. **Johnson fired Stanton 2 times and the Senate reinstated him 3 times in a political game of musical chairs.**

Impeachment

On February 24th, 1868, the House passed a resolution of impeachment by a vote of 126 to 47. In total, 11 articles of impeachment were brought against President Johnson. Many of the charges centered around the President's violation of the Tenure of Office Act. **Article 10 charged Johnson with making speeches "with a loud voice, certain intemperate, inflammatory, and scandalous harangues."**

The impeachment trial soon became the center of the media and public attention. While the President did not attend the trial in person, he did make several interviews during the process. Leading the President's defense team was the former Attorney General, Henry Stanbery. The main argument for the defense was that Johnson could not be impeached because he simply misunderstood the law. They also claimed that he was "testing the constitutionality of the act before the Supreme Court."

Much of the trial was open to the public. To meet the demand for visitors, the Senate printed 1,000 tickets to distribute during each day. Eventually, the Senate voted on only 3 of the 11 articles of impeachment. On May 16, 1868, just 11 weeks after the trial began, a vote was taken on the first article of impeachment but fell 1 vote short of the two-thirds majority needed to

convict. Ten days later, a vote was taken on the second and third articles of impeachment with the same outcome. Of the votes to acquit, 7 Republicans defied the party to save the President. **Republican Senator James Grimes of Iowa stated, “I cannot agree to destroy the harmonious working of the constitution for the sake of getting rid of an Unacceptable President.”**

Timeline

- Mar 27, 1867 Congress passed the Tenure of Office Act.
- Feb 21, 1868 President Johnson ordered Secretary of War Edwin M. Stanton removed from office.
- Feb 22, 1868 The House Committee on Reconstruction reported resolution of impeachment against Johnson.
- Feb 24, 1868 House voted 126 to 47 to impeach Johnson of high crimes and misdemeanors.
- Feb 25, 1868 House informed Senate of impeachment vote.
- Mar 2, 1868 House approved articles of impeachment. House managers appointed.
- Mar 2, 1868 Senate adopted updated rules of impeachment.
- Mar 4, 1868 House presented articles of impeachment to the Senate.
- May 16, 1868 Senate voted 35 to 19 to acquit on article 11.
- May 26, 1868 Senate voted 35 to 19 to acquit on articles 2 and 3.
- May 26, 1868 Senate acquitted Johnson and adjourned as court of impeachment.

It took 14 months from the time the Tenure of Office Act was passed to the acquittal of Johnson.

Johnson finished out his term as President on March 4, 1869, but would return to Washington as a Senator in 1875. He served just three months before his death on July 31, 1875.

2. Bill Clinton (Hodey Johns)

The impeachment of Bill Clinton starts and ends in very different places. There are entire podcasts, series of novels, and encyclopedia type books dedicated to the subject. Check the show notes for links to some of them, but we'll give you a semi-quick synopsis here:

It begins with the Whitewater Scandal. In 1978, the Clintons purchased a property in conjunction with some business partners and a few banking associates. The stated intent was to build vacation homes, the "Whitewater Estates," or perhaps to hold onto the land until it could be turned for a profit.

Between 1978 and 1986, one model home had been built on the property. Yet hundreds of loans, deposits, and transactions had occurred on behalf of the property. A Resolution Trust Corporation investigator, L. Jean Lewis, found evidence of money laundering.

Money Laundering is "the concealment of the origins of illegally obtained money, typically by means of transfers involving foreign banks or legitimate businesses." For example, if you sell \$400 worth of drugs, go to a car dealership, put that \$400 as a down payment on a car, pull out of the transaction, and then get a check for \$400, you have now have a \$400 legitimate check from a legitimate car dealership instead of \$400 in cash for the illegal selling of drugs.

The laundering happened from a variety of sources and went to an equally various amount of recipients. Eventually, this property that initially cost \$203,000, had loans against it in the millions. After the front was finally exposed, the closure cost the taxpayers \$78 million dollars due to a combination of missing money, phony accounts, and fraudulent loans.

In 1992, Bill Clinton seized the presidency and issued 14 Executive Privilege Orders in relation to the Whitewater scandal. Executive Privilege is "the power of the President of the United States to... resist certain subpoenas and other interventions by the legislative and judicial branches of government in pursuit of information or personnel relating to the executive." This power was established in order to protect the identities of spies and the need for secrecy of military operations, but the Supreme Court, under President Nixon, made a ruling that established a caveat that the president did not have to explain how the information might be

sensitive or who and what it might protect. Simply, the president needs only to say, “Executive Privilege” and, unless the prosecution can demonstrate that there is a zero percent chance that the information is classified for a good reason, he or she can resist any subpoena and suppress any testimony.

By 1992, Before Clinton was able to issue these orders, there was already a good amount of evidence that had come forward. In 1993, Vince Foster, who had the documents that linked the Clintons to Whitewater, killed himself. After his suicide but before paramedics and police arrived on the scene, the documents (and no valuables) were stolen from his office.

In the aftermath of this suicide and due to the suspicions regarding the unprecedented number of Executive Privilege Orders, in 1994, the Clinton Administration ordered an independent investigator to look into the claims. However, Robert B. Fiske was relieved of his duties when it was discovered that Clinton’s own attorney general Janet Reno had selected him. No longer having the trust of the Congress after this, the House took control of the investigation and appointed Kenneth Starr to take over the investigation.

Republicans then began to have their own conflict of interest. Starr frequently turned his discoveries in to the media. The Arkansas Project raised \$2.4 million in offers for information and testimony that would bring Clinton to impeachment. The investigation became so unpopular that Clinton’s approval rating soared to 70%.

Starr’s investigation, however, was not without some success. While he was not allowed to investigate any transactions involving the Clintons, the transactions of his staff, both current and former, yielded results based on information received prior to 1992. Fifteen persons working for the Clintons were not just indicted but convicted of 37 felonies, including bribery, fraud, tax evasion, conspiracy, perjury and embezzlement. Four of them that either refused to testify or perjured themselves on behalf of Clinton were pardoned of their crimes.

Both Bill and Hillary Clinton were found to have committed tax fraud in when they “claimed improper tax deductions for interest payments made by the Whitewater Development Company,” but the statute of limitations had expired (the fraud occurred throughout the 1980s). They claimed it was an

honest mistake and paid the IRS \$4900 in restitutions, though the amount owed was far greater than this. It was seen as a gesture of good faith since they didn't have to pay it at all. In 1995, Starr publicly released a statement that showed both Bill and Hillary Clinton not only knew about the improper deductions, they personally made them.

The Whitewater Investigation was eventually wrapped up in the year 2000, with Robert Ray replacing Kenneth Starr in the very final year. He admitted that the "evidence was insufficient to prove to a jury," but he also argued that the combination of pardons, Executive Privilege Orders, and over \$60 million in buyouts to witnesses from the Clintons and their affiliates made the truth impossible to find.

You might be saying "get to the Lewinsky" stuff by now, but it is important to understand Whitewater. Clinton was impeached on perjury due to Lewinsky, yes, but the other impeachment charge was obstruction of justice, which was carried over from this case. The revelation of the Lewinsky scandal would not have been possible without this investigation. Clinton was meticulous in settling privately with 12 different girls over the course of 48 years, but a recipient popped up when Starr was tracing the money from Whitewater: Paula Jones. And this name led to a few other women that Clinton had either unofficially settled with or not yet settled with. Starr received permission from the House to continue the Whitewater investigations as sexual misconduct investigations, since the money used might have bribed additional women into silence.

Sexual assault and misconduct allegations were nothing new to Clinton. In 1975, local newspapers found it strange that a "womanizer" would choose to get married. In 1978, Gerald Ford urged Clinton to seek help for his sex addiction. In that same year, he faced a rape accusation from Juanita Broaddrick. Some women, like Markie Post and Elizabeth Gracen, openly admitted to having affairs with Clinton but did not seek monetary gain or to damage his reputation by admitting this since his reputation was already that he was that of a sex addict. In 1991, even before names like Jones, Flowers, and Lewinsky emerged, Clinton described the "bimbo eruption" that surrounded her husband.

Jones herself was not a useful witness, since her alleged payments from the Whitewater scandal had subsequently turned into an in-progress

investigation and (eventual) legal settlement through a separate court decision. However, in 1994, a recorded interview with Clinton took place where he was interviewed under oath pertaining to Jones. In it, he denied any other sexual misconduct charges aside from exposing himself to Jones. This included denying any involvement with Monica Lewinsky, even when he was specifically asked about her.

Starr then enlisted the help of Linda Tripp, a staffer for the administration. She secretly recorded her conversations with other young women who went in and out of the office. She recorded many who admitted affairs to Tripp, but who refused to go on to talk to Starr, citing either public embarrassment, the possibility of one his not-so-secret settlements, or simply that it was consensual.

Unbeknownst to the public, Starr's investigation had uncovered something very damning from a previous investigation. The burglarized documents from Foster's suicide were found in Hillary Clinton's office with her fingerprints on them. Though not admissible as part of the sexual misconduct investigation and prevented from use in court under Executive Privilege, the documents would be used later to unsuccessfully turn public opinion against Clinton.

Eventually, Kathleen Willey came forward to Starr, who granted her immunity from any charges. She claimed to him that she had been raped. Unfortunately for Starr, six of her friends and the recording on the tape from Tripp, demonstrated that the sex she had with the president was consensual. Starr could have persisted, since Willey had immunity to perjury, but knew that her claim to have been raped would have invalidated her testimony to the House. So Starr and Tripp continued to secretly interview and search for a witness.

They eventually got their wish with Monica Lewinsky, who was friend to Tripp and eventually confessed to her that she was having sex with Clinton. At first, it was consensual and mostly oral sex, but she had begun to be disgusted with the demeaning direction it had taken. The degrading stories included the detailing of her notorious vaginal penetration with a cigar.

After revealing that Clinton had ejaculated on Lewinsky's blue dress, Tripp and Starr decided this was the evidence they needed. Lewinski was

compliant with the investigation and handed over her blue dress and allowed her recorded interviews to be admitted to the investigation in 1997. She produced three sets of documents: the first encouraging her to file a false affidavit, the second contained “dead drop” locations where she was to pick up secret gifts for her continued compliance, and the third was a job offer in exchange for her silence. All three were traced back to Clinton through either handwriting, fingerprints, or e-mail.

After these allegations were filed, in early 1998, Clinton gave another sworn deposition that he never had a "sexual relationship", "sexual affair" or "sexual relations" with Lewinsky. He also denied that he was ever alone with her.

While Tripp had been outed as the mole assisting in the investigation, the White House failed to properly find her recording device. In a stroke of luck for Starr, the very day after the deposition, Clinton was recorded instructing his secretary, Betty Curie, to lie to investigators about any women ever being alone with him in the Oval Office.

Starr then filed, stating that he had "substantial and credible evidence" that Clinton had committed perjury twice, once for the under oath recording during the Jones questioning and once for this sworn deposition. At the time of him uttering his famous line, “I did not have sexual relations with that woman,” a Gallup poll found that 74% of Americans believed the president.

Knowing what we know now, it seems almost unimaginable that three-quarters of America believed him. Having official settlements on-record, other settlements achieved off-the-record, dozens of additional accusations, others who casually admitted affairs, the abuse of Executive Privilege Orders, the traceable money, the recordings, the dress, the emails, the letters, and more.

But the Clintons had engaged in a media war against these accusers. Starr would go on to show they had drafted plans of action about certain allegations even before the allegations occurred. In an ABC News interview, Hillary Clinton called Flowers “some failed cabaret singer who doesn’t even have much of a résumé to fall back on.” She told Esquire magazine in 1992 that if she had the chance to cross-examine Flowers, “I mean, I would

crucify her.” Bill Clinton hired a private investigator who collected disparaging accounts from ex-boyfriends and others who knew Flowers and then provided these stories to news organizations. Internal campaign memos unearthed by the Times describe the aim of the work of the hard-nosed investigator was to "impugn" Flowers' character, "until she is destroyed beyond all recognition." In a journal obtained from Diane Blair, she wrote "It was a lapse,"... describing Clinton's view of her husband's affair, "but she says to his credit he tried to break it off, tried to pull away, tried to manage someone who was clearly a 'narcissistic loony toon;' but it was beyond control." It then detailed how they were going to discredit Lewinsky, all the while pretending she, Hillary, knew nothing of the affair. Hillary Clinton would later confess under oath she had indeed spoken this to Blair.

And the media bought it. With all major organizations backing the Clinton's account, the New York Times published what would prove to be the landmark piece in covering up for the Clintons. Gloria Steinam, feminist icon, reviewed the evidence and published an op-ed. Within it, she claimed, "Mr. Clinton seems to have made a clumsy sexual pass, then accepted rejection." The Times would eventually retract the piece a long time after the publication, on the basis that Steinam either knowingly lied or neglected to actually look at the evidence in front of her. A journalist from The Atlantic would respond that the campaign, especially Steinam's piece, "slut-shamed, victim-blamed, and age-shamed; it urged compassion for and gratitude to the man the women accused."

One might wonder how the Clintons were so brazen in this campaign knowing the evidence they faced with Lewinsky. The answer is that Clinton was already prepared to file his 15th Executive Privilege Order.

On top of the media war, Republicans sank their own case right into the ground. Pornographer Larry Flynt offered \$1 million for dirt on Republicans and he got more than a couple hits. Representative Bob Barr was discovered to have had an affair. Speaker of the House Newt Gingrich was exposed to having an affair while he was championing impeachment. After stepping down, his replacement, who also recommended impeachment, Bob Livingston, was immediately exposed as to having an affair as well. All three had denied the accusations initially, Barr doing so under oath, only finally succumb to the evidence against them. Dan Burton,

Helen Chenoweth and Henry Hyde, all House Republicans, had admitted infidelities in recent months after being faced with media exposure.

But, for once, it was Starr who had outmaneuvered Clinton. In his investigation, Starr found evidence that Clinton had already drafted the Executive Privilege Order in expectation of her testimony . With this knowledge, Lewinsky had granted the court a full examination into every aspect of her life; a warrant with no limit, which was carried out even before the charges were filed. The court found that Lewinsky could not possibly have information that would expose a spy or put national security at risk. Therefore, when Clinton demanded Executive Privilege, for the first time since Watergate, a sitting president was denied. That is why his confession came only a few months after his denial; he was no longer able to repress Lewinsky's testimony as he had expected to do.

The impeachment trial itself was delayed because Clinton made a surprise attack on Iraq right before the trial was set to commence. After the trial was rescheduled, it was decided that testimony from Lewinsky was unnecessary given the volume of prepared statements and recorded messages she had already produced. Clinton's defense counsel argued that "Clinton's grand jury testimony had too many inconsistencies to be a clear case of perjury, that the investigation and impeachment had been tainted by partisan political bias, that the President's approval rating of more than 70 percent indicated that his ability to govern had not been impaired by the scandal, and that the managers had ultimately presented "an unsubstantiated, circumstantial case that does not meet the constitutional standard to remove the President from office." Democrats voted to dismiss the charges but could not muster up the votes needed, so it went to a final vote.

Clinton was not removed from office, with every single Democrat voting that, on count one, he did not lie under oath or, on count two, obstruct justice. The vote went along party lines. On the second charge, 5 Republicans voted with the Democrats. The Senate got 50 votes to remove him from office, nowhere close to the 67 needed.

Clinton's popularity remained at 70%, even after admitting the lies and having his settlements exposed, predatory sex habits revealed, and, most shockingly, even with the re-discovery of the stolen Whitewater papers from Vince Foster's office. Starr was criticized by Democrats for "spending

\$70 million on an investigation that substantiated only perjury and obstruction of justice.” Even after the trial, Joy Behar referred to the victims as “tramps” on The View, to the tune of applause. According the “The Cut,” Clinton stands by his response to the scandal. “I did the right thing,” Clinton said, adding that he does not owe Lewinsky a personal apology because he publicly apologized “on more than one occasion.” Even after the Me Too Movement, The Pew Research Survey found that 33% of Americans still believe that Clinton was the best president in our lifetime. The smear campaign has been run to perfection.

3. Non - Presidential Impeachments

a. Judges (Sam Schultz)

- i. 14 Federal Judges impeached, 8 of which were removed from office.
- ii. Judge G. Thomas Porteous Jr. - Federal District Court, Eastern District of Louisiana
 1. The last federal judge (and official) impeached (03/11/2010). Removed by the Senate on 12/8/2010
 2. Appointed by Bill Clinton in 1994
 3. Impeached on charges of accepting bribes, making false statements to Congress.
 4. Received cash and favors from lawyers who had dealings in his court, used a false name to elude creditors and intentionally misled the Senate during his confirmation proceedings.
- iii. Judge John Pickering - Federal District Court, District of New Hampshire
 1. The first federal official to be removed from office upon conviction by impeachment. (03/02/1803)
 - a. Impeached on charges of drunkenness on the bench and unlawful rulings
 2. Removed by the Senate on 03/12/1804
 3. Nominated by George Washington in 1795

4. President Thomas Jefferson sent evidence to the House of Representatives against Pickering, accusing him of having made unlawful rulings and being of bad moral character due to intoxication while on the bench.

b. Misc.

4. Worldwide

a. Brazil - Dilma Rousseff (Brian Wohlger)

- i. Elected October 2010
- ii. In Office - 1 January 2011 – 31 August 2016
Suspended: 12 May 2016 – 31 August 2016
- iii. Charged with criminal administrative misconduct and disregard for the federal budget
- iv. Found guilty of breaking Brazil's budget laws
- v. **Auditors found that delays in payments to banks constituted loans. Unable to find willful conduct.**
- vi. Defense was transfers were apparently approved by her, but she had no awareness (she just had to approve them)
- vii. Was removed from office, but not barred from running again. Ran for Brazilian Senate in 2018, came in 4th.
- viii. International reaction for her impeachment (NYT editorial supported, several South American countries recalled ambassadors in protest). **Public support for Rousseff was in single digits before impeachment.**

b. Philippines -

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