

# Symposium - Bidding Adieu to the Clinton Administration: Assessing the Ramifications of the Clinton "Scandals" on the Office of the President and on Executive Branch Investigations

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## Symposium

### **BIDDING ADIEU TO THE CLINTON ADMINISTRATION: ASSESSING THE RAMIFICATIONS OF THE CLINTON “SCANDALS” ON THE OFFICE OF THE PRESIDENT AND ON EXECUTIVE BRANCH INVESTIGATIONS**

FROM THE EDITORS

For eight years, the Clinton administration was riddled with allegations of scandal and impropriety. During this period, the news media, commentators, and legal academicians spent a great deal of time covering, discussing, and analyzing each of these scandals as they arose. The importance of the scandals of the past eight years was demonstrated, and perhaps even overshadowed, by this overwhelming attention.

The *Maryland Law Review* developed this Symposium as an attempt to take a step back from the morass of play-by-play scandal coverage. Our goal was to help determine, in part, how the events that transpired during the Clinton presidency will affect the Office of the President itself, the surrounding political and legal culture, and investigations into executive wrongdoing. Rather than offering a forum to criticize the outgoing administration or debate the merits of the allegations levied against it, we aimed to bring together learned legal scholars who could discuss the likely legal ramifications of the issues that arose or were magnified during President Clinton's two terms. We set out to publish a Symposium that could bring closure to the last eight years and provide a context from which to analyze the future of the presidency and the future of executive branch investigations. In our biased view, we have done just that.

Instead of providing authors with specific topics for discussion, we offered them the discretion to determine which issues were of the

greatest importance to the post-Clinton presidency. Therefore, the topics covered in this Symposium are extremely diverse.

Professor Frank Bowman begins this discussion by looking back at the Clinton impeachment and discussing why it was substantially different from Watergate and other historic acts of presidential misconduct. He illustrates how the Clinton imbroglio was different in both the underlying conduct and in the surrounding political climate. Professor Bowman suggests that the post-Watergate legal culture and the loss of the "American Idea" laid the groundwork for the Clinton impeachment. He concludes by examining the changes in attitude that must occur in order to counteract the short-sighted political atmosphere that persists in the wake of Watergate.

Professors Abraham Dash and Kenneth Gormley both discuss the lapsed independent counsel law. Professor Dash argues that because the independent counsel was a "constitutional enigma," there was no institution that would come to its defense when attacked in the public arena, and argues that this led to the ultimate demise of the statute. He looks to this inherent flaw of the Independent Counsel Act as a means of advocating for continued reliance on the Department of Justice in investigating executive wrongdoing. Professor Gormley, on the other hand, looks to the "wreckage" of the statute to determine what can be done to reinstate some sort of congressional oversight in investigations involving certain high-ranking members of the executive branch. He takes a "minimalist view" and concludes that a two-tiered system should be created, whereby inquiries into the wrongdoings of the president, the vice president, and the attorney general would be conducted under a modified special prosecutor law. In all other cases of executive wrongdoing, Professor Gormley advocates a return to the ad hoc appointment of special prosecutors, whose investigations would be conducted under the authority of the Department of Justice.

Lanny Davis, former special counsel to President Clinton, explains the operation of the "scandal machine" and analyzes five elements that drive the highly charged partisan atmosphere that currently exists in Washington. Mr. Davis looks to these elements to explain why the Clinton scandals erupted with such great force. He uses his practical knowledge of the inner-workings of the scandal machine to explain why the partisan climate in Washington has flourished and could continue to interfere with effective government.

Professor Michael Gerhardt takes a broad look back at the Clinton scandals and the resulting impeachment proceedings. He discusses the probable effects of the many scandal-related Supreme Court decisions and argues that future presidents will not be as im-

paired by these decisions as the conventional wisdom would suggest. Professor Gerhardt similarly rebuts the argument that the Clinton impeachment weakened the presidency as an institution by showing how Congress's recent exercise of the impeachment power likely decreased that power's usefulness. In light of the apparent ineffectiveness of impeachment, Professor Gerhardt considers four alternative methods of discipline that future presidents might face. Finally, he critiques the media's coverage of the Clinton scandals and the increasing trend in academia of law professors involving themselves—as advocates, rather than educators—in highly visible public controversies. Professor Gerhardt provides suggestions for reversing these damaging trends.

Professor Julie O'Sullivan tackles an oft-overlooked topic—the role played by the press in high-profile criminal investigations. Professor O'Sullivan discusses how lawyers increasingly use the press to achieve an advantage in criminal cases and analyzes the potential consequences of an increased use of the media by parties in the criminal justice system. She also considers the press's legal and ethical responsibilities when they become involved in investigations that capture the public's attention. As a vehicle for this analysis, Professor O'Sullivan uses the recent criminal contempt case brought against Charles G. Bakaly, III, former spokesman for Independent Counsel Kenneth Starr, who was accused of leaking sealed grand jury information to a *New York Times* reporter.

Finally, Professor Jonathan Turley discusses the conflicts that the Clinton administration faced in its use of executive privilege. Professor Turley considers how Clinton's misuse and overuse of this privilege could impact future administrations that attempt to withhold information from other branches of government. He compares President Clinton's use of the privilege to assertions made by former presidents and suggests that the next administration would be well-served by reforming the roles of the Secret Service, the first lady, the Office of White House Counsel, and the chief executive himself, vis-à-vis executive privilege. Professor Turley concludes that developing bright-line rules and exercising executive restraint in these areas would serve as a first step toward reclaiming some of the ground lost during the Clinton years.

These seven articles offer unique insights into many of the scandal-related problems that arose during the Clinton administration and offer solutions for how these problems can be remedied. We believe this discussion represents a fitting conclusion to the tumultuous Clinton years. We hope that this Symposium provides academicians, poli-

ticians, and the public with a greater understanding of how the presidency and the political climate has changed during the Clinton presidency, as well as the steps future administrations can take to improve the problems discussed herein.