Did the Senate Trial Satisfy the Constitution and the Demands of Justice?

Asa Hutchinson
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I. INTRODUCTION

What comes to mind when one hears the word “trial”? Is it Gregory Peck questioning a witness in To Kill a Mockingbird before a watchful jury? Is it Perry Mason forcing the truth from a reluctant witness? Is it the Sixth Amendment guarantee of a speedy and public trial by an impartial jury in all criminal prosecutions? All these thoughts plus many more raced through my memory as I came to realize that I would be designated as a House Prosecutor in the impeachment trial of President William Jefferson Clinton.

Then reality set in. The Senate sent word that there might be no witnesses. Ultimately, during twenty-four days of trial, evidence was received but no live witnesses were called, and the Senate trial was concluded with a “not guilty” verdict on February 12, 1999. This Arti-

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3. See Carroll J. Doherty, After Historic Swearing-In, Duty Trumps the Party Line, 57 Cong. Q. Weekly 40, 40 (1999) (“The Senate on Jan. 7 opened the second presidential impeachment trial in the nation’s history.”); Carroll J. Doherty, Senate Acquits Clinton, 57 Cong. Q. Weekly, 361, 361 (1999) (“On Feb. 12, the senators served notice that they were ready . . . [they] stood at their desks and delivered their verdicts.”).

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Article will address the legal and constitutional framework for an impeachment trial, including whether the Founding Fathers envisioned a trial by witnesses, what justice requires, and what this trial means for future Senate proceedings.

II. THE CONSTITUTIONAL AND LEGAL FRAMEWORK

The somewhat skeletal constitutional framework for the impeachment process can be found in a number of provisions. These include Article I, Section 2, Clause 5: "The House of Representatives ... shall have the sole Power of Impeachment," and Article I, Section 3, Clauses 6 and 7 of the Constitution:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

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: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

Further, Article II, Section 2, Clause 1 provides: "The President ... shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." Article II, Section 4 states: "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." Finally, Article III, Section 2, Clause 3 provides: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury . . . ."

The key decisions regarding impeachment trials involved the convictions of Judges Walter L. Nixon, Jr., and Alcee Hastings. Both were federal district court judges who were impeached by the House of Representatives and then convicted and removed from office by the

7. Id. art. I, § 3, cl. 6, 7.
8. Id. art. II, § 2, cl. 1.
10. Id. art. III, § 2, cl. 3.
Senate. After removal, both challenged their convictions in court. In both cases, the plaintiffs challenged the Senate's procedure under Rule XI of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials. The Rule provides:

That in the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

The following discussion of the Nixon and Hastings cases is necessary for two reasons. First, the cases establish clear precedents that the courts defer to the Senate as to the conduct of the trial. Second, the concurring opinion of Justice Souter in the Nixon case provides a compelling argument that the courts might intervene if the Senate trial failed to adhere to fundamental principles of fairness.

17. See Nixon, 506 U.S. at 253-54 (Souter, J., concurring).
III. THE NIXON CASE

In 1989, the United States House of Representatives charged Judge Walter Nixon with three articles of impeachment.18 Two of the articles consisted of perjury charges before a federal grand jury and the third article alleged that Nixon had brought disrepute on the judiciary.19 The Senate rendered a guilty verdict on two of the three articles of impeachment.20 During the trial, Nixon argued that the Senate's failure to give him a full evidentiary hearing before the entire Senate violated its constitutional duty to "try" all impeachments. He sought a declaratory judgment that his conviction by the Senate was void and that his judicial salary and privileges should be reinstated from the date of his conviction. The district court held that his claim was nonjusticiable . . . .21

The U.S. Court of Appeals for the District of Columbia agreed.22 Judge Williams, writing for the court, determined that the constitutional language "granting the Senate 'the sole Power to try all Impeachments' gives it sole discretion to choose its procedures."23 "[T]he textual commitment of impeachment trials to the Senate," coupled with the "need for finality,"24 led the court to apply the political question doctrine in determining that the issue presented by former Judge Nixon was nonjusticiable.

Judge Randolph, in his concurrence, framed the question before the court as "whether the judiciary can pass upon the validity of the Senate's procedural decisions. My conclusion that the courts have no such role to play in the impeachment process ultimately rests on my interpretation of the Constitution."25 His analysis specifically focuses on the constitutional grant to the Senate of the sole power to try impeachments, and on the Framers' intentional exclusion of the Judiciary from a role in the impeachment process, rather than on the political question doctrine.26 Judge Edwards concurred in the court's judgment, but dissented.

18. See id. at 226-27.
19. See id. at 227.
20. See id. at 228 ("The Senate voted by more than the constitutionally required two-thirds majority to convict Nixon on the [perjury] articles.").
22. See id.
23. Id. at 245.
24. Id.
25. Id. at 248 (Randolph, J., concurring).
in part.27 He found "that the Senate’s use of a special committee to hear witnesses and gather evidence did not deprive Nixon of any constitutionally protected right."28

The Nixon case was decided by the Supreme Court on January 13, 1993.29 Chief Justice Rehnquist delivered the opinion of the Court for himself, Justices Stevens, O’Connor, Scalia, Kennedy, and Thomas.30 The Court held that the issue before them was nonjusticiable.31 The Chief Justice based this conclusion upon the fact that the impeachment proceedings were textually committed in the Constitution to the Legislative Branch.32 In addition, the Court found that the "lack of finality and the difficulty of fashioning relief counsel against justiciability."33 To "open[] the door of judicial review to the procedures used by the Senate in trying impeachments would ‘expose the political life of the country to months, or perhaps years, of chaos.’"34 The Court found that the word "try" in the Impeachment Clause did not "provide an identifiable textual limit on the authority which is committed to the Senate."35

Justice Stevens, in his concurring opinion, emphasized the significance of the Framers’ decision “to assign the impeachment power to the Legislative Branch.”36 Justice White, joined by Justice Blackmun, concurred in the judgment, but found nothing in the Constitution to foreclose the Court’s consideration of the constitutional sufficiency of Nixon’s claim against the procedures that had been employed by the Senate under Rule XI.37 Justices White and Blackmun, addressing the merits of the claim before the Court, were of the opinion that the Senate had fulfilled its constitutional obligation to try Judge Nixon.38

Justice Souter wrote a separate opinion and agreed that the case presented a nonjusticiable political question supported by the "‘unusual need for unquestioning adherence to a political decision already made;
or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.” 39 Justice Souter stated:

The Impeachment Trial Clause commits to the Senate “the sole Power to try all Impeachments,” subject to three procedural requirements: the Senate shall be on oath or affirmation; the Chief Justice shall preside when the President is tried; and conviction shall be upon the concurrence of two-thirds of the Members present. It seems fair to conclude that the Clause contemplates that the Senate may determine, within broad boundaries, such subsidiary issues as the procedures for receipt and consideration of evidence necessary to satisfy its duty to “try” impeachments. 40

Even though Justice Souter agreed that the case presented a nonjusticiable political question, he left open the potential of judicial interference if the Senate rules violated fundamental principles of justice by saying:

If the Senate were to act in a manner seriously threatening the integrity of its results, convicting, say, upon a coin toss, or upon a summary determination that an officer of the United States was simply “a bad guy” judicial interference might well be appropriate. In such circumstances, the Senate’s action might be so far beyond the scope of its constitutional authority, and the consequent impact on the Republic so great, as to merit a judicial response despite the prudential concerns that would ordinarily counsel silence. 41

IV. THE HASTINGS CASE

While the Nixon case was pending in the courts, the impeachment trial of Judge Alcee Hastings took place in the Senate. 42 Judge Hastings was impeached by the United States House of Representatives for conspiring to solicit a bribe, 43 lying and fabricating evidence in a criminal trial, 44 leaking confidential wiretap information, 45 and bringing disrepute

39. Id. at 252 (Souter, J., concurring) (quoting Baker v. Carr, 369 U.S. 186, 217 (1962)).
40. Id. at 253 (Souter, J., concurring) (citation omitted).
41. Id. at 253-54 (citation omitted).
43. See Hastings, 802 F. Supp. at 492.
44. See id.
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on the federal courts. The Senate rendered a guilty verdict on a number of the seventeen articles of impeachment approved by the House.47

Prior to the impeachment trial, Judge Hastings raised several procedural arguments about the way the Senate would handle his case.48 Following his conviction and removal by the Senate, Judge Hastings instituted a proceeding in district court against the United States of America, the United States Senate, and certain federal officers.49 Plaintiff Hastings received a favorable ruling in the district court.50 The court framed the question before it as follows:

The key issue in this case is whether a life-tenured Article III judge who has been acquitted of felony charges by a petit jury can thereafter be impeached and tried for essentially the same alleged indiscretion by a committee of the United States Senate consisting of less than the full Senate. This Court determines that the answer is no.51

Judge Sporkin determined that his court was not foreclosed from reaching a decision in the Hastings case by what might have been viewed as a controlling court of appeals decision in Nixon, because the Supreme Court had granted certiorari in Nixon on issues identical to those before him.52 Judge Sporkin concluded that the issue before him was justiciable and further, that the Rule XI procedure did not provide an adequate trial before the full Senate.53 In particular, the court considered the taking of evidence to be a process which required the presence of all the Senators, so that each could judge the credibility of the witnesses with his or her own eyes and ears.54

Judge Sporkin’s decision seems to turn upon his reading of the implications of the constitutional phrase providing the Senate with “the sole Power to try all Impeachments.”55 In light of his analysis, Judge Sporkin entered judgment for Hastings, ordering that the Senate im-

46. See Nixon, 506 U.S. at 227.
47. See Hastings, 802 F. Supp. at 492-93. “On August 3, 1988, the House adopted seventeen articles of impeachment against Judge Hastings. . . . Judge Hastings was convicted [by the Senate] on Articles I, II, III, IV, V, VII, VIII, and IX. He was acquitted on Articles VI, XVI, and XVII. The Senate did not vote on Articles X-XV.” Id. (citing 135 CONG. REc. S13,783-88 (daily ed. Oct. 20, 1989)).
48. See id. at 493 (“Judge Hastings filed a complaint protesting the procedures to be used by the Senate before his impeachment trial.”).
49. See id. at 492.
50. See id. at 505.
51. Id. at 492.
52. See id. at 493.
53. See id. at 495, 501-02.
54. See id. at 503.
peachment conviction and judgment be overturned and that a new trial by the full Senate be afforded the plaintiff.56 The district court stayed its judgment pending appeal.57

After the Supreme Court’s decision in Nixon,58 the United States Court of Appeals for the District of Columbia, on its own motion, vacated and remanded the Hastings decision for reconsideration in light of Nixon.59 On remand, Judge Sporkin dismissed the case.60 In doing so, reluctantly, Judge Sporkin emphasized the factual differences between the two cases, but concluded that the Nixon decision compelled dismissal of the case before him.61

V. DOES TRADITIONAL JURISPRUDENCE SUPPORT A TRIAL BY WITNESSES?

If traditional American and common-law jurisprudence were applied to the Constitutional requirement for a Senate trial in impeachment cases, then the call for witnesses would be granted without hesitation. Under traditional legal concepts, either side in the trial would have the privilege to call witnesses, which would only be restricted by relevancy and competency standards.62 However, as the previous discussion demonstrates, the courts have interpreted the Constitutional provisions as giving the Senate great latitude when conducting the impeachment trial.

Based upon Supreme Court rulings to date, it is clear that the Senate may exercise broad discretion in the manner in which the trial is conducted.63 In the Nixon case, Justice Souter recognized the possibility of a potential challenge to an impeachment conviction if the Senate abused its discretion in a manner that threatened the integrity of the trial itself.64 I suggest that if the President had been denied the privilege of calling a witness in his defense and a conviction resulted, then the Su-

56. See Hastings, 802 F. Supp. at 505.
57. See id.
61. See id.
63. See Nixon, 506 U.S. at 238 ("The word ‘try’ in the Impeachment Trial Clause does not provide an identifiable textual limit on the authority which is committed to the Senate."); id. at 253 (Souter, J., concurring) (noting that the Senate has broad authority to try impeachment cases, subject to three procedural requirements).
64. See id. at 253-54 (Souter, J., concurring).
preme Court would likely determine that such denial was an abuse of discretion and would set the conviction aside. In this case, it was the House Managers who were denied witnesses before the Senate; but as any prosecutor knows, courts rarely set aside acquittals, even if a trial court’s ruling is determined to be an abuse of discretion. 65

A. Did Our Founding Fathers Envision a Trial by Witnesses?

The essence of a trial is the questioning of witnesses before the jury in an adversarial setting in order for the truth to be ascertained and justice achieved. This is my definition of a trial, but it is supported by the history of our legal system and the Constitutional recognition of the adversary procedure found in the Sixth and Seventh Amendments to the Constitution. 66

The Sixth Amendment requires that a jury be available in all criminal cases and that the accused have the right “to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.” 67 These provisions reflect the assumption of our Founding Fathers that when the term “trial” is used in the Constitution, it was meant to be an adversarial proceeding with the examination of live witnesses. 68 The provisions of the Constitution dealing with impeachment trials should be interpreted no differently.

Furthermore, our knowledge of human nature informs us that individuals, whether intentionally or not, are inclined to testify in a manner that benefits themselves, even if that means shading the truth. 69 This reality is not unique to modern experience. Lawgivers and philosophers throughout history, including our own Founding Fathers, recognized this propensity toward self preservation. Plato declared in 360 BC:

65. See generally Thomas M. DiBiagio, Judicial Equity: An Argument for the Post-Acquittal Retrial When the Judicial Process Is Fundamentally Defective, 46 CATH. U. L. REV. 77, 78 (1996) (discussing the judiciary system’s reluctance to set aside an acquittal even if it is the product of plain error).
66. See U.S. CONST. amend. VI; id. amend. VII.
67. Id. amend. VI.
68. See David E. Seidelson, The Confrontation Clause and the Supreme Court: From “Faded Parchment” to Slough, 3 WIDENER J. PUB. L. 477, 477-78 (1993) (stating that the Supreme Court’s analysis of the Sixth Amendment Confrontation Clause in Ohio v. Roberts, 448 U.S. 56 (1980), supports the notion that the Founding Fathers intended a trial to include face to face confrontation and cross examination of witnesses).
"[W]e cannot for a moment doubt that perhaps a half of our citizens are perjurers . . ."\textsuperscript{70}

B. How are We to Overcome this Natural Tendency?

There are two protections against perjury. One is the oath,\textsuperscript{71} the other is the adversarial system.\textsuperscript{72} Unless one assumes that perjury would not exist in an impeachment trial, both of these elements are important safeguards in the truth-seeking process. In a democracy built on respect for individual rights and the rule of law, truth is best ascertained through the process of asking and compelling the answering of questions.\textsuperscript{73}

One might argue that the Senate trial was sufficient because it did include the playing of portions of the videotaped depositions of three witnesses: Vernon Jordan, Sidney Blumenthal, and Monica Lewinsky.\textsuperscript{74} These three witnesses were approved by the Senate for purposes of taking their depositions, but no live witnesses were permitted to be called before the Senate.\textsuperscript{75} As is typical in depositions, the videographer only showed the witness and did not show the exchange between the questioner, in this case the House Manager, and the witness. Further, the playing of excerpts of the depositions, rather than live testimony, prevented the Senators from seeing the spontaneity of answers. In addition, there existed a time lapse between the taking of the deposition, the review of the deposition by interested Senators, and the actual playing of the deposition in open session.\textsuperscript{76} This allowed the other side an opportunity to spin their view of the proceedings in the press and diminish the

\textsuperscript{70} Gustave Glotz, \textit{The Ordeal and the Oath}, in \textit{2 EVOLUTION OF LAW: PRIMITIVE AND ANCIENT LEGAL INSTITUTIONS} 609, 636 (Albert Kocourek & John H. Wigmore eds., 1915).


\textsuperscript{72} See id. at 409-10.

\textsuperscript{73} See \textit{Ohio v. Roberts}, 448 U.S. 56, 64 (1980). In \textit{Ohio v. Roberts}, the Court characterized the examination of witnesses as the "means of testing accuracy." \textit{Id.} "These means . . . are so important that the absence of proper confrontation at trial 'calls into question the ultimate "integrity of the fact-finding process."'" \textit{Id.} (quoting \textit{Chambers v. Mississippi}, 410 U.S. 284, 295 (1973) (quoting Berger v. California, 393 U.S. 314, 315 (1969))).

\textsuperscript{74} See David Rogers, \textit{Clinton Acquittal Looks Certain as Senate Votes Today}, \textit{WALL ST. J.}, Feb. 12, 1999, at A18 (noting that on February 6, 1999, portions of the videotaped depositions of Vernon Jordan, Sidney Blumenthal, and Monica Lewinsky were viewed at the Senate trial).

\textsuperscript{75} See id. On February 4, 1999, although the Senators voted in favor of videotaped testimony, they rejected live testimony during the trial. \textit{See id.}

\textsuperscript{76} See \textit{id.} Vernon Jordan, Sidney Blumenthal, and Monica Lewinsky were deposed between February 1, 1999 and February 3, 1999, and the tapes were played publicly at the Senate trial on February 6, 1999. \textit{See id.}
impact of what they knew might have been damaging in the course of
the deposition.

While the depositions provided a glimpse into the dynamics of the
case, they were not a sufficient basis for judging the credibility of the
witnesses. Without live witnesses, the Senate did not see, as one author-
ity described, the witnesses’

motives, his inclination and prejudices, his means of obtaining a cor-
correct and certain knowledge of the facts to which he bears testimony,
the manner in which he has used those means, his powers of discer-
ment, memory, and description are all fully investigated and ascer-
tained, and submitted to the consideration of the jury, before whom he
has testified, and who have thus had an opportunity of observing his
demeanor, and of determining the just weight and value of his testi-
mony.  

It is worth noting that the Senate's own impeachment rules provide for
the calling and examination of live witnesses. For example, Rule XVII
of the Rules of Procedure and Practice in the Senate When Sitting on
Impeachment Trials, provides that “[w]itnesses shall be examined by
one person on behalf of the party producing them, and then cross-
examined by one person on the other side.”  

Additionally, Rule XIX
stipulates that “[i]f a Senator wishes a question to be put to a witness . . .
it shall be reduced to writing, and put by the Presiding Officer.”  

While
the inclusion of these clauses in the Senate Rules does not dictate the
calling of witnesses, it certainly indicates that the Senate anticipated
that the parties would be permitted to call witnesses and that they would
be examined before the Senators judging the case.

In the only other impeachment trial of a President, that of President
Andrew Johnson, trial witnesses were called, questioned, and cross-
examined before all sitting Senators.  

Following the impeachment of
Johnson by the House of Representatives, the Senate committed ap-
proximately fifty days to the trial.  

Over a two-week period, forty-one
witnesses were called—twenty-five by the House Managers and sixteen

77. SIMON GREENLEAF, I A TREATISE ON THE LAW OF EVIDENCE § 446, at 572 (John Henry
78. RULES OF PROCEDURE, supra note 15, at 8 (quoting Rule XVII).
79. Id. (quoting Rule XIX).
80. See MICHAEL LES BENEDICT, THE IMPEACHMENT AND TRIAL OF ANDREW JOHNSON 140
(1973).
81. See id. at 124 (noting that the trial “lasted five weeks before actual testimony even began
[and that] two and a half months would pass before the Senate even approached a vote on the final
questions”).

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by the President’s defense.82 While several Senators urged the body to adopt expedited proceedings, these motions were routinely rejected.83

C. What Does Justice Require?

Some would argue that the purpose of a Senate impeachment trial is not to do justice, but to avoid pain for the country, or to follow some other vague notion of what is best for the nation.84 This ignores the fact that, at the beginning of an impeachment trial, Senators take a special oath requiring them to do “impartial justice.”85 Therefore, the only true question is: What does justice require?

It is fundamental that the jurors, in this case the Senators who had to decide the guilt or innocence of the President, have the opportunity to hear the testimony upon which they must render their verdict.86 In the Senate trial on the impeachment of President Clinton, the disjointed presentation of video clips was not sufficient to assess the credibility of witnesses and to determine the truth.87

The efficacy of the Senate trial must also be judged not just on the calling of witnesses, but on whether each side had a fair opportunity to present their case in the manner they chose. In the Senate trial, House Managers were not permitted to call foundation witnesses, expert witnesses, or corroborative witnesses.88 Three witnesses were permitted for

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82. See 1 TRIAL OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES, BEFORE THE SENATE OF THE UNITED STATES, ON IMPEACHMENT BY THE HOUSE OF REPRESENTATIVES FOR HIGH CRIMES AND MISDEMEANORS XVIII-XIX (1868) (listing the witnesses called by the House Managers and by President Johnson’s defense).

83. See BENEDICT, supra note 83, at 123-24.

84. See Jonathan Turley, Without Testimony and Trial, Censure is Harmful Precedent, USA TODAY, Dec. 23, 1998, at 13A (noting the existence of the misunderstanding that the only purpose of a Senate trial is to determine the President’s accountability for alleged criminal actions and stating that “the trials also hold individual senators accountable to both their constituents and to history”).


86. See, e.g., Safire, supra note 2, at A31 (“If jurors are sworn to decide impartially whether to believe her story or the President’s, they are obliged to listen to her testimony (and, if he wishes) firsthand . . . .”).

87. See, e.g., Caryn James, Video Shows an Image Sympathetic and Human, N.Y. TIMES, Feb. 7, 1999, at 36 (“On video, Monica S. Lewinsky seemed neither the little lost lamb nor the thong-snapping stalker of some people’s imaginations. What she was depended on who was choosing the video clips.”).

88. See Excerpts, supra note 4, at A30 (“The Senate ha[d] done only ‘partial justice’ [and] . . . unduly restrict[ed the House Managers] in the presentation of their case . . . . [w]hen [it] pro-
depositions. None were permitted for trial. In an adversarial system of justice, each side, consistent with the customary rules of evidence, must be permitted some level of flexibility in the presentation of their case in order to satisfy the fundamental demands of justice.

I have always pictured truth and justice as diamonds that emerge through the process of time and pressure. In a trial, these catalysts come from the intensity of the adversarial system. Our system is not perfect, but it has proven to be the most reliable means for achieving justice. It is the process envisioned by our Founding Fathers and it would have been the best model for the United States Senate.

VI. IMPACT ON FUTURE PROCEEDINGS

We all certainly hope that there will not be future impeachment proceedings involving the President of the United States. Most likely though, there will be impeachment proceedings involving judicial officers or other federal officials. In any future case, the precedents established by the impeachment trial of President William Jefferson Clinton will be used by members of the Senate who are interested in curtailing the evidentiary portion of a trial. They will surely argue: Why have witnesses when it can all be done by deposition, and summaries presented? Why have so many witnesses when we can simply limit the number of witnesses to two or three and shorten the trial? Why do we not limit the trial to the consideration of the transcripts that were made available to the House Judiciary Committee? Rather than have two weeks of testimony from witnesses, why do we not just give the attorneys for the parties additional time to make more lengthy opening statements summarizing evidence?

The United States Senate relies on tradition and precedent. It is a fair question to ask whether the traditions and precedents established through the trial of William Jefferson Clinton point us in the direction of: “let’s get to the truth” or in the direction of “let’s get it over with.”

The United States Senate had a tough job, and made a political decision to compromise the traditional elements of the adversarial system in order to achieve bipartisanship. This was a judgment call that arguably was necessary under the circumstances. Unfortunately, I believe that it will prove detrimental to our system of justice in the long term.

89. See id.
90. See id.