grossly derelict exercise of official power. Nonindictable conduct may rise to this level. For example, a President might be properly impeached if, as a result of drunkenness, he recklessly and repeatedly misused executive authority. The misconduct for which the President is accused does not involve the derelict exercise of executive powers. Most of this conduct does not involve the exercise of executive powers at all. If the President committed perjury regarding his sexual conduct, this perjury involves no exercise of presidential power as such. If he concealed evidence, this misdeed too involved no exercise of executive authority.

□ 1630

By contrast, if he sought wrongfully to place someone in a job at the Pentagon, or lied to subordinates hoping they would repeat his false statements, these acts could have involved a wrongful use of presidential influence, but we cannot believe the President's alleged conduct of this nature amounts to the grossly derelict exercise of executive power sufficient for impeachment.

Perjury and obstructing justice can without doubt be impeachable offenses. A President who corruptly used the Federal Bureau of Investigation to obstruct an investigation would have criminally exercised his presidential powers. Moreover, covering up a crime furthers or aids the underlying crime. Thus a President who committed perjury to cover up his subordinates' criminal exercise of executive authority would also have committed an impeachable offense.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). All Members are reminded to refrain from personal references towards the President of the United States.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Delaware (Mr. CASTLE) is recognized for 5 minutes.

(Mr. CASTLE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Ms. HOOLEY of Oregon. Mr. Speaker, I ask unanimous consent to claim the time allotted to the gentleman from American Samoa (Mr. FALEOMAVAEGA).

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Oregon?

There was no objection.

SHOULD PRESIDENT CLINTON BE IMPEACHED?

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Oregon (Ms. HOOLEY) is recognized for 5 minutes.

Ms. HOOLEY of Oregon. Mr. Speaker, I yield to the gentlewoman from Oregon (Ms. FURSE).

Ms. FURSE. Mr. Speaker, the letter goes on to say:

''It goes without saying that lying under oath is a serious offense. But even if the House of Representatives had the constitutional authority to impeach for any instance of perjury or obstruction of justice, a responsible House would not exercise this awesome power on the facts alleged in this case. The House's power to impeach, like a prosecutor's power to indict, is discretionary. This power must be exercised not for partisan advantage, but only when circumstances genuinely justify the enormous price the nation will pay in governance and stature if its President is put through a long, public, voyeuristic trial. The American people understand this price. They demonstrate the political wisdom that has held the Constitution in place for two centuries when, even after the publication of Mr. Starr's report, with all its extraordinary revelations, they oppose impeachment for the offenses alleged therein.

We do not say that a 'private' crime could never be so heinous as to warrant impeachment. Thus Congress might responsibly determine that a President who had committed murder must be in prison, not in office. An individual who by the law of the land cannot be permitted to remain at large, need not be permitted to remain President. But if certain crimes demand immediate removal of a President from office because of their unspeakable heinousness, the offenses alleged against the President in the Independent Counsel's referral are not among them. Short of heinous criminality, impeachment demands convincing evidence of grossly derelict exercise of official authority. In our judgment, Mr. Starr's report contains no such evidence.

Mr. Speaker, I include the following letter for the record:

OCTOBER 2, 1998.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives.

DEAR MR. SPEAKER: Did President Clinton commit ''high Crimes and Misdemeanors'' for which he may properly be impeached? We, the undersigned professors of law, believe that the misconduct alleged in the Independent Counsel's report does not cross that threshold.

We write neither as Democrats nor as Republicans. Some of us believe that the President has acted disgracefully, some that the Independent Counsel has. This letter has nothing to do with any such judgments. Rather, it expresses the one judgment on which we all agree: that the Independent Counsel's report does not make a case for presidential impeachment.

No existing judicial precedents bind Congress's determination of the meaning of ''high Crimes and Misdemeanors.'' But it is clear that Members of Congress would violate their constitutional responsibilities if they sought to impeach and remove the President merely for conduct of which they disapproved.

The President's independence from Congress is fundamental to the American structure of government. It is essential to the separation of powers. It is essential to the President's ability to discharge such constitutional duties as vetoing legislation that he considers contrary to the nation's interests. And it is essential to governance whenever the White House belongs to a party different from that which controls the Capitol. The lower the threshold for impeachment, the weaker the President. If the President could be removed for any conduct of which Congress disapproved, this fundamental element of our democracy—the President's independence from Congress—would be destroyed.

It is not enough, therefore, that Congress strongly disapprove of the President's conduct. Under the Constitution, the President cannot be impeached unless he has committed ''Treason, Bribery, or other high Crimes and Misdemeanors.''

Some of the charges laid out in the Independent Counsel's report fall so far short of this high standard that they strain good sense: for example, the charge that the President repeatedly declined to testify voluntarily or pressed a debatable privilege claim that was later judicially rejected. These ''offenses'' are not remotely impeachable. With respect, however, to other allegations, the report requires careful consideration of the kind of misconduct that renders a President constitutionally unfit to remain in office.

Neither history nor legal definitions provide a precise list of high crimes and misdemeanors. Reasonable people have differed in interpreting these words. We believe that the proper interpretation of the Impeachment Clause must begin by recognizing treason and bribery as core or paradigmatic instances, from which the meaning of ''other high Crimes and Misdemeanors'' is to be extrapolated. The constitutional standard for impeachment would be very different if, instead of treason and bribery, different offenses had been specified. The clause does not read, ''Arson, Larceny, or other high Crimes and Misdemeanors,'' implying that any significant crime might be an impeachable offense. Nor does it read, ''misleading the People, Breach of Campaign Promises, or other high Crimes and Misdemeanors,'' implying that any serious violation of public confidence might be impeachable. Nor does it read, ''Adultery, Fornication, or other high Crimes and Misdemeanors,'' implying that any conduct deemed to reveal serious moral lapses might be an impeachable offense.

When a President commits treason, he exercises his executive powers, or uses information obtained by virtue of his executive powers, deliberately to aid an enemy. When a President is bribed, he exercises or offers to exercise his executive powers in exchange for corrupt gain. Both acts involve the criminal exercise of presidential powers, converting those awful powers into an instrument either of enemy interests or of purely personal gain. We believe that the critical, distinctive feature of treason and bribery is grossly derelict exercise of official power (or, in the case of bribery to obtain or retain office, gross criminality in the pursuit of official power). Nonindictable conduct might rise to this level. For example, a President might be properly impeached if, as a result of drunkenness, he recklessly and repeatedly misused executive authority.

The misconduct of which the President is accused does not involve the derelict exercise of executive powers. Most of this misconduct does not involve the exercise of executive powers at all. If the President committed perjury regarding his sexual conduct, this perjury involved no exercise of presidential power as such. If he concealed evidence, this misdeed too involved no exercise of executive authority. By contrast, if he sought wrongfully to place someone in a job at the Pentagon, or lied to subordinates hoping they would repeat his false statements, these acts could have involved a wrongful due of presidential influence, but we cannot believe that the President's alleged conduct