

### Part III: Opening Statement to the House Judiciary Committee Regarding the Articles of Impeachment

I want to speak to you about the [Articles of Impeachment](#) Congressman Dennis Kucinich introduced on June 9, 2008. There are, as you know, [thirty-five of them](#) and they allege [violations of just about as many U.S. and international laws](#).

When I first sat down to write this statement, I planned to discuss the evidence and the law that relates to some of those violations, just as I would do if I were presenting a case to a jury at the beginning of a trial. But I've decided not to do that. Instead, I am going to follow the wise counsel Abigail Adams gave to her husband John and just speak plainly.

I believe that most of you know what the evidence would show.

You know that the President has admitted violating the Foreign Intelligence Surveillance Act. You know that the President of the United States has admitted committing a crime, but there has been no consequence.

You know that the President has caused his subordinates and agents to refuse to comply with duly-authorized subpoenas from Congress. It has happened over and over again.

And many of you are lawyers, some former prosecutors and even judges: You know what the law says about criminal responsibility. Under the law of the United States, anyone who "willfully causes an act to be done which if directly performed by him or another" or who "aids, abets, counsels, commands, induces or procures" the commission of an act is just as culpable as the person who commits the act. That is not some strange legal theory -- it's what your professors would have called "black-letter law."

I'm thinking about this elementary rule of criminal law as I write today -- June 26, 2008. Because I'm listening to some of you question the infamous former Office of Legal Counsel Attorney John Yoo and the Vice-President's lawyer David Addington. And even as you ask tough and often heated questions about secret legal opinions memos and definitions of torture, I have no doubt most of *you* know that none of this horrific reign of terror on the part of the United States would have occurred if President Bush had not signed [a memo](#) on February 7, 2002 declaring that Al Qaeda and Taliban prisoners would not be protected by the Geneva Conventions.

I know, in other words, that most of you are well aware that the President is responsible -- factually, legally and as a matter of common sense -- for the torture and abuse of prisoners that has occurred as a result of his authorization.

You also know that the President has himself deceived us and caused others to deceive us about this torture and so many other things: nuclear weapons in Iraq, Iraq and 9/11, the alleged threat from Saddam Hussein, a possible threat from Iran, illegal detentions, nuclear weapons, money, death and injury to our own soldiers, government contracts, the response to Hurricane Katrina, our civil liberties, our voting rights, the cost of Medicare, the firing of U.S. Attorneys, the very air that we breathe.

And throughout nearly eight years of these frauds and machinations, we have heard parsings of White House statements, and arguments about "literal truth" *ad nauseum* --even though, as most of you know, these legal-sounding discussions were almost entirely beside the point and, of themselves, a sham. The law of fraud is very clear and well-established. It makes no difference whatsoever whether the President did or did not make statements that were literally untrue. Literal truth is only a defense to a perjury charge. It is irrelevant to the crime of fraud which -- reflecting our everyday experience -- prohibits *all* kinds of deceit: false pretenses, outright lies, representations that are misleading even if they are literally true, deliberate concealment of material information, half-truths, and statements made with reckless indifference to the truth. These are principles that prosecutors advocate to jurors every day as they try to convict people who have used fraud to steal government funds, take families' homes, or deprive the elderly of their life savings.

I believe that most of you -- from both sides of the aisle -- understand and appreciate all too well what the nature and scope of this President's law-breaking, deceit and abuse of power has been. And it is precisely because you know all of these things that you would like nothing better than to just forget about it and move on.

Please do not do that.

Why do I say this? Because the continued success of government in this country, including, of course, the criminal justice system, depends upon a most fundamental and simple precept: *No person is above the law*. When I first started as a

prosecutor, judges would sometimes phrase it more archaically: *The law is no respecter of persons*. But however it's phrased, this basic premise has never changed. In the United States of America, regardless of a person's station in life or political affiliation, he is entitled to be judged -- and must be judged -- according to the same laws as every one else.

What happens to this fundamental principle if after all these congressional investigations revealing widespread fraud, legal violations and gross misconduct by the President, Congress decides to do nothing?

What happens is that you will have chosen to up-end the bedrock upon which this nation has stood for over two hundred years. You will be telling the world that the 110<sup>th</sup> Congress has decreed that the President of the United States is *not* subject to the same laws as every one else. From now on, this radical, if unspoken, about-face will never be far from the minds of prosecutors, defense attorneys, defendants, victims and jurors when they hear a judge declare that a verdict must be rendered in accordance with the law, and without bias or sympathy towards either side. All of us who depend upon the fairness of the criminal justice system -- and upon whom the fairness of that system depends -- will know, in short, that it's rigged.

Now, am I suggesting that every time anyone introduces Articles of Impeachment against the President, Congress is obligated to proceed forward with them? Absolutely not. But it does fall to you -- if you are to fulfill your oaths as defenders of the Constitution -- to consider them carefully in light of the applicable law, just as any responsible prosecutor would do when deciding whether to proceed with an investigation.

If you fail to do this -- if you put this roiling mess on the back burner and walk away from the stove -- you will have made a staggeringly-radical and consequential decision to undermine the Constitution and the criminal justice system. And you will have made this choice without discussion or debate -- without, in fact, doing anything at all. It would be, I'm sorry to say, a shameful display for this Fourth of July, 2008.