

## PROFESSORS AND POLITICS

CASS R. SUNSTEIN<sup>†</sup>

In the last few years, a number of law professors have been involved in some highly public issues, not least through the circulation of letters with multiple signatories, expressing a view on some issue of national importance.<sup>1</sup> It is not clear that there is anything like a trend in this direction; certainly teachers of law have participated in what some would consider “partisan politics” for many decades. But Neal Devins is right to raise questions about the legitimacy and consequences of political involvement by academics.<sup>2</sup> It is also interesting to consider the relationship between such involvement and academic freedom; if law professors are not concerned with the pursuit of truth, the case for academic freedom is certainly weakened. The Clinton impeachment provides the immediate motivation for Devins’s discussion. I offer a few remarks here on academic involvement in the impeachment debate, with a few references to my own experience,<sup>3</sup> and

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† Karl N. Llewellyn Distinguished Service Professor of Jurisprudence, Law School and Department of Political Science, University of Chicago. Professor Sunstein testified on the constitutional issues relating to the impeachment of President Clinton, *see Testimony Before the United States House of Representatives, Comm. on the Judiciary, Subcomm. on the Constitution* (Nov. 9, 1998) (statement of Cass R. Sunstein, Professor of Law), available in LEXIS, News Library, Transcripts File. I am grateful to Martha Nussbaum and Richard Posner for valuable comments on an earlier draft, and to Brooke May for research assistance.

<sup>1</sup> See, e.g., Constitutional Scholars’ Conference, Joint Statement, *Constitutional Scholars’ Statement on Affirmative Action After City of Richmond v. J.A. Croson Co.*, 98 YALE L.J. 1711, 1712 (1989) (arguing that municipalities should not scrap affirmative action programs in the wake of *City of Richmond v. J.A. Croson*); *An Open Letter to Congressman Gingrich*, 104 YALE L.J. 1539, 1539 (1995) (urging that Congressman Gingrich rescind his proposal to amend the House Rules to require three-fifths vote for enacting laws that increase income taxes); *infra* notes 6-7 (providing text of a one-sentence letter opposing impeachment and a letter opposing Clinton’s possible resignation).

<sup>2</sup> See Neal Devins, *Bearing False Witness: The Clinton Impeachment and the Future of Academic Freedom*, 148 U. PA. L. REV. 165, 166 (1999) (arguing that “when a significant number of law professors and historians hold themselves out as experts when they are not . . . all academics pay a price”).

<sup>3</sup> The editors have asked me to provide a few details for background; readers who dislike this sort of thing are encouraged to skip the footnotes.

with an eye toward drawing some general lessons about professors and politics, including presidential politics.

### I. PARTICULARS

With respect to the President, the United States has now had three serious impeachment inquiries in its entire history. As the nation began discussion of the impeachment of President Clinton in 1998, many constitutional law professors concluded that no legitimate grounds for impeachment had been identified. On their view, the House of Representatives had started to embark on a constitutionally impermissible path, one with potentially significant consequences. This seemed unfortunate not merely because of the potential removal of the President, and hardly because of the nature of President Clinton's particular policies, but because of the constitutional illegitimacy and potentially destabilizing effect of resort to the impeachment mechanism.

Some law professors believed that, as a technical matter, the constitutional question was not even close.<sup>4</sup> They believed that this interpretation was not a "partisan" view, that it had nothing to do with approval of President Clinton in general, and that it was the best reading of the Constitution—a reading that would attract support from a variety of possible approaches to interpretation and that would apply regardless of the political affiliation of the President. Before the hearings, members of the House of Representatives—themselves quite uncertain about the issue—asked, in private meetings with law professors:<sup>5</sup> What do law professors generally think? Where are they? Why

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<sup>4</sup> For a discussion of the Impeachment Clause, see Cass R. Sunstein, *Impeaching the President*, 147 U. PA. L. REV. 279, 280-92 (1998). Devins is wrong to say that "scholars who argued against the appropriateness of originalism at the Bork hearings made use of originalism (and little else) in arguing against the Clinton impeachment." Devins, *supra* note 2, at note 24. Professor Tribe's argument, for example, was largely textual, see *Defining "High Crimes and Misdemeanors": Basic Principles* (visited Oct. 24, 1999) <<http://www.house.gov/judiciary/22398.htm>> (advocating that defining impeachment properly "means taking seriously exactly what the Constitution says"), and while I did not argue against the appropriateness of originalism at the Bork hearings, my argument was typical in stressing a range of interpretive theories. See Sunstein, *supra*.

<sup>5</sup> I draw on personal experience here. There was a series of private, informal meetings with several law professors who met, in small groups, with a large number of representatives, many of whom were unsure about how to think about, or vote on, the impeachment question. A vivid recollection: The representatives listened politely to the constitutional arguments, and were clearly interested in them, but some of their eyes really lit up only during discussion, in which law professors were not involved, of the underlying political dynamics.

aren't they saying anything? An obvious question was whether it might conceivably be useful for members of Congress, and the public, to know that there was widespread professional opinion to the effect that impeachment would be unconstitutional.

These were the circumstances in which a number of professors (including me) were willing to circulate and to sign two letters opposing impeachment. One of the letters, not limited to teachers of constitutional law but circulated to law professors generally, provided an extended analysis of the legal issues; the other, limited to teachers of constitutional law,<sup>6</sup> offered a one-sentence conclusion to the effect that impeachment would not be "appropriate" in light of the charges made by Judge Starr.<sup>7</sup>

Many of those who signed or circulated these letters accepted (as I do) all or most of Devins's general views about the need to separate professional opinion from partisan politics. To say the least, most of those of us who were involved in all this really do not enjoy participat-

It is a considerable overstatement for Devins to say that "members of Congress were actively involved" in any academic anti-impeachment letter. Devins, *supra* note 2, at text accompanying note 66. Certainly the remarks did not lead to the letters. But I agree with Devins about the general importance of a degree of independence on the part of academics involved in these matters. Those of us who agreed with the White House on the inappropriateness of impeachment made very clear—especially in several informal discussions with lawyers there involving the constitutional standard for impeachment—that we were not working "with" or "for" the White House in any way.

<sup>6</sup> Because this letter was limited to teachers of constitutional law, I think Devins is wrong to say that none of the relevant letters "made expertise a prerequisite"—at least if we assume that teachers of constitutional law generally have some expertise on the topic of impeachment. Devins, *supra* note 2, at text accompanying note 45.

I wrote and circulated the one-sentence letter after many discussions with other law professors. Some people did not like this approach, on the ground that it was without reasoning; others, including me, thought that it would be worthwhile and relevant, if only because it would show a widespread judgment on the general constitutional question without committing people to a particular argument about which they might have reservations. Here is its content:

The undersigned professors and teachers of constitutional law\* have diverse political convictions and disagree on many political and legal issues; but we agree that the possible grounds for impeachment recently identified by Kenneth Starr and David Schippers are not an appropriate basis for impeaching a President under Article II, Section 4 of the Constitution.

\*All of the signatories to this letter have taught the general constitutional law course or some aspect of constitutional law as part of their curricular responsibilities.

<sup>7</sup> There was also a subsequent letter, circulated after impeachment, opposing resignation on the ground that it would do damage to the constitutional structure. See Bernard J. Hibbits, *Law Professors Solicit Signatures for Anti-Resignation Letter* (visited Oct. 27, 1999) <<http://jurist.law.pitt.edu/resig.htm>> (containing the full text of the letter, dated Dec. 19, 1998).

ing in petition drives. Most of us thought that the process of sending and responding to emails and collecting signatures was a boring, unpleasant, and tedious business<sup>8</sup>—part of a most unwelcome (even if occasionally hilarious<sup>9</sup>) diversion from our academic jobs. Nothing here seemed glamorous, a source of “fame,”<sup>10</sup> or in anyone’s self-interest. But the relevant law professors believed that this was an exceedingly unusual event, that the House of Representatives was on the verge of acting unconstitutionally, and that it was appropriate, and maybe not inconceivably useful, for the public and elected representatives to be aware of a widespread (though not universal) professional opinion.

I am not entirely sure what, in particular, Devins thinks was wrong with all this, or what lesson he wants to draw from it.<sup>11</sup> He does not argue that the impeachment of President Clinton was constitutionally acceptable (though he may believe this). He does not demonstrate nor even claim that the law professors who signed one or another letter were wrong on the merits. Nor does he argue for the (implausible) proposition that on principle, law professors should never speak publicly about important public issues.

Devins suggests that developments of this kind may endanger academic freedom, an empirical claim that seems to me quite doubtful, even absurd. Is it imaginable that the tenure system for law professors would be eliminated if law professors frequently signed petitions on public issues? In any case, Devins does not discuss what academic freedom is *for*, to wit, the power to speak controversially about the

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<sup>8</sup> A confession: The one-sentence letter was the first such letter I have ever written and circulated, and because the process was so tedious, I hope never to have to do such a thing again.

<sup>9</sup> See *infra* note 31 (discussing *Burden of Proof* and television producers).

<sup>10</sup> But see *infra* note 31 (discussing my dog).

<sup>11</sup> Devins follows the familiar view in stating that “Republican witnesses at the House impeachment hearings testified that the President’s conduct was impeachable whereas Democratic witnesses testified that it was not.” Devins, *supra* note 2, at note 67. In a sense, this statement is accurate; but my hunch is that a majority of witnesses, on both sides, did not consider themselves “Republican witnesses” or “Democratic witnesses.” What a strange way to conduct a hearing on the impeachment question—as if, before the debate even became serious, all Republicans were for impeachment and all Democrats against it.

Perhaps the greatest peculiarity of the hearings was that a majority of the witnesses said that the allegations in question pointed to legitimate grounds for impeachment, thus giving the impression that teachers of constitutional law were evenly divided on the question—when in fact the overwhelming majority of constitutional law teachers believed that impeachment was constitutionally illegitimate or at least inappropriate. The selection of witnesses gave a grossly distorted picture of academic opinion.

truth as one sees it, free of risks of political reprisal. I agree with Devins that the principle of academic freedom is violated if those who enjoy it are not acting in good faith or are not pursuing truth (not a doubtful empirical claim about consequences but a sensible claim about principle, which is what appears to me to underlie Devins's essay). But nothing in this point argues against public statements by professors.

Devins's concerns appear narrower. It seems to me that they fall in two categories. These categories are related but best treated separately.

His first point has to do with the possibly limited expertise of many or some of those who signed the relevant letters. Devins says that "it is doubtful that many had thought seriously about the constitutional standards governing impeachment."<sup>12</sup> He appears to believe that at least by implication, some or many law professors held themselves out as specialists or experts when, in fact, they lacked knowledge about impeachment that would qualify them as such.

For some of the signatories, perhaps this is true. But I think that Devins's judgment is too harsh. Impeachment is hardly an obscure or invisible issue in constitutional law, and in the wake of the Watergate controversy, many law professors developed genuine, if fairly general, views on the appropriate meaning of the phrase "high crimes or misdemeanors." Certainly most teachers of constitutional law know something about the governing legal standards; they know enough to know, for example, that smoking marijuana or speeding would not ordinarily count as a "high crime or misdemeanor." From there they could reason by analogy to the view that, at least as a general rule, a President cannot be impeached unless he has been charged with large-scale abuse of the powers that he has by virtue of being President.

Those law professors who signed the longer letter but who do not teach constitutional law probably believed that they knew enough—from training and from substantive conversations with colleagues—to have a reasonably informed opinion about the threshold question of whether the charges against President Clinton made out an impeachable offense. Law professors who do not teach constitutional law have informed views about many constitutional issues—for example, about whether racial segregation is generally unconstitutional, whether quotas can make for an acceptable affirmative action program, and

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<sup>12</sup> *Id.* at text accompanying note 21.

whether the Constitution protects the right to use contraceptives. Many law professors believe that with respect to the charges against President Clinton, impeachment falls in the same category.<sup>13</sup> The signatories likely thought, in good faith, that they knew enough about the constitutional provision to conclude that an impeachable offense had not been made out. It is hard to see why there is anything untoward here. I agree with Devins that people should not sign petitions when they are unable to defend the relevant position publicly; but I would give the signatories the benefit of the doubt on this point.

Devins's second point has to do with the motivations of those who participated in the relevant events. He says that "[m]any of the law professor and historian signatories were animated by partisanship and self-interest . . ."<sup>14</sup> This is certainly possible—and I know very little about the historians involved—but it is very hard for Devins or anyone else to have access to the motivations of strangers. Nor is it clear what he means by "self-interest" and "partisanship." Academics "who want to see their names in print"<sup>15</sup> surely have much better ways to achieve that goal; it is hard to believe that publication was a significant motivating factor here. And contrary to Devins's suggestion, "celebrity"<sup>16</sup> hardly comes from signing such a letter. A few law professors may care about celebrity, but most law professors care about the law and about ideas.

The allegation of "partisanship"<sup>17</sup> raises many questions. Law professors who signed this letter were offering a judgment about the meaning of the Constitution, a judgment that they believed it to be true. In what sense was their motivation "partisan"?<sup>18</sup> A law professor who testifies that a proposed statute would violate the Constitution

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<sup>13</sup> Judge Posner seems to me unfair in criticizing law professors for not publicly deploring President Clinton's conduct, which, plausibly, included perjury and obstruction of justice. See RICHARD POSNER, *AN AFFAIR OF STATE* 240-45 (1999) (lamenting that "leaders of the legal profession might have been expected to emphasize the importance of the rule of law in general and of telling the truth . . . These expectations would have been disappointed"). I know that many of those who opposed impeachment on constitutional grounds believed that the relevant conduct was deplorable, and certainly many of us emphasized, publicly and privately, the seriousness of perjury and obstruction of justice. In any case, nearly everyone, including President Clinton's closest friends and allies, as well as members of both parties, publicly deplored his conduct, and an outpouring of statements to this effect by law professors would have been largely pointless.

<sup>14</sup> Devins, *supra* note 2, at text accompanying note 31.

<sup>15</sup> *Id.* at text accompanying note 32.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at text accompanying note 31.

<sup>18</sup> *Id.* at text accompanying note 32.

should be taken to be addressing the constitutional issue and need not have a political motivation; what is different about a law professor who signs a public statement about what the Constitution means? Perhaps Devins's claim is that the professors who signed this letter were motivated not by a considered judgment about the Constitution, but by their extra-legal political convictions (in favor, for example, of government regulation and the welfare state, or in favor of President Clinton generally). But I do not know how Devins can be confident of this uncharitable judgment, and in any case, the anti-impeachment conclusion would hold if President Reagan, or a future Republican President, were subject to an impeachment inquiry on the basis of similar allegations.<sup>19</sup> I very much doubt that the signatories would change their view if the accused President had been Republican. Perhaps Devins disagrees, but he offers little basis for any such disagreement.

Devins seems to think that partisanship is established by his claim that the academy is "overwhelmingly left-liberal, overwhelmingly Democratic."<sup>20</sup> But he does not note that many people not normally characterized as "left-liberal" signed one or more of the impeachment letters.<sup>21</sup> For what it is worth, the University of Chicago Law School is

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<sup>19</sup> A possible point in support of Devins: If a group of law professors despised a certain President, they might not go to the effort to circulate and sign a letter against impeachment, even if they believed that the grounds for impeachment were invalid. Perhaps some law professors did not sign the Clinton letters even though they agreed with them, simply because they did not like President Clinton; perhaps some law professors would not sign a similar letter on behalf of, for example, President Reagan, even if they agreed with it.

<sup>20</sup> Devins, *supra* note 2, at text accompanying note 33.

<sup>21</sup> These include Douglas Laycock, Stephen Macedo, and Andrzej Rapaczynski. I am sure that there are many more and am happy to say that I do not know the political views of the vast majority of signatories. Of course Devins is allowed to characterize people as he chooses, but for what it is worth, I would not describe myself as a "left-liberal," *see* Devins, *supra* note 2, at text accompanying notes 33-39, or indeed as a Democrat, *see id.* at note 36 and accompanying text.

Devins is misleading to suggest that Judge Posner described the "law professor anti-impeachment letter as 'a form of herd behavior . . . by the animal that likes to see its name in print.'" Devins, *supra* note 2, at text accompanying note 54 (quoting RICHARD A. POSNER, *AN AFFAIR OF STATE* 242 (1999)). Actually Judge Posner describes this as the possible opinion of an "unkind critic," thus distancing himself from the charge, which is not his own view. RICHARD A. POSNER, *AN AFFAIR OF STATE* 242 (1999). (I owe this correction to Judge Posner.)

I also doubt that "many legal academics see Ken Starr . . . as their nemesis." Devins, *supra* note 2, at text accompanying notes 36-37. I do know that many of those (including me) who opposed Clinton's impeachment believe that Starr was a distinguished judge and a distinguished Solicitor General and have not the slightest doubt that he is an entirely honorable person. A number of us who strongly opposed im-

not usually characterized as “left-liberal,” and while I cannot speak officially or on behalf of the faculty, it seemed to me that at least a solid majority of the faculty, including many strong critics of President Clinton’s policies, were opposed to impeachment on the ground that it would be illegitimate or inappropriate from the constitutional point of view. Indeed, my former colleague Michael McConnell, hardly a left-liberal, went so far as to write a letter to Congressman Hyde, sharply critical of President Clinton and suggesting that impeachment would not be unconstitutional—but pleading with Hyde not to support impeachment of the President in the midst of such partisan divisions.<sup>22</sup> Was McConnell’s letter inappropriate? Unacceptably partisan? Illegitimate because (unlike the two widely distributed letters) it did not directly address a purely legal question?

The impeachment of President Clinton produced, on all sides, more than enough challenges to other people’s motivations.<sup>23</sup> I am not sure why Devins does not, with respect to law professors and historians on all sides, indulge a principle of charity—suggesting that in cases of doubt, we should assume that those with whom we disagree are acting in good faith and on the basis of evidence that they honestly believe to be sufficient.<sup>24</sup>

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peachment, and who were quite critical of some of the decisions of the Office of Independent Counsel, know Judge Starr, like and respect him personally, and believe that the personal attacks on him and his motivations were absurd and baseless.

<sup>22</sup> See Letter from Michael W. McConnell, Presidential Professor, The University of Utah College of Law, to Henry J. Hyde, Jr., Chairman, Committee on the Judiciary Committee of the House of Representatives 1-2 (Dec. 12, 1998) (on file with the *University of Pennsylvania Law Review*) (indicating that while “the Constitution allows for the possibility that an elected President may so abuse the public trust that he can and should be removed,” still “a President should [not] be impeached or removed from office solely on the votes of his political rivals”).

<sup>23</sup> This seems to me to infect RICHARD A. POSNER, *AN AFFAIR OF STATE* (1999) as well, where analysis of the constitutional issue seems to me remarkably casual and off-hand. See *id.* at 94-109 (discussing the history and scope of impeachment through a “structural and pragmatic . . . approach to constitutional meaning”).

<sup>24</sup> I share many of Devins’s concerns about the political campaign against Judge Robert Bork. But I do not think that the law professors who opposed Bork’s confirmation did so because they “saw Bork as a threat to their status and influence.” Devins, *supra* note 2, at text accompanying notes 51-53. I think that they did so on principle, that is, because they believed that Judge Bork’s view about constitutional interpretation would be a threat to constitutional ideals, properly understood. They may have been wrong on the merits, and I agree with Devins that petitions of the sort circulated against Judge Bork should be rare. (In the interest of full disclosure, I should say that I testified quite critically about Judge Bork’s views on separation of powers questions, but signed no petitions and took no public position on the question of whether he should be confirmed.)



## II. GENERALITIES

There are much broader questions in the background. Devins thinks that academic participation in the Clinton impeachment is part of a larger trend and a more general problem, one that threatens academic freedom itself. Thus he writes that “[t]oday, academics seek fame through talk show appearances, op-ed pieces, and trade press books.”<sup>25</sup> Devins also says that “the traditional image of the academic has given way to ‘postmodernism, multiculturalism, and political correctness,’”<sup>26</sup> and hence that “there is good reason to doubt whether academics still think of themselves as truth seekers.”<sup>27</sup> His suggestion appears to be that the involvement of law professors in the Clinton impeachment signals a larger trend toward highly partisan, mostly left-wing activity, in which law professors do not care about truth but instead push some kind of political agenda. Devins suggests that if professors are engaging in partisan politics, academic freedom is at risk. I share many of his concerns, and I agree that the principle of academic freedom is undermined if professors do not care about truth. But there seem to me to be three problems with his claims here.

The first problem is that there is no single way to be a law professor. Most of us, most of the time, are devoted to teaching and research; few of us “seek fame” or anything else through talk shows, op-ed pieces, and trade press books. But some professors sometimes do express their views on talk shows, and a few more write op-ed pieces and publish with trade presses. Why is this so terrible, or indeed terrible at all? (Can anyone really object that Gerald Gunther published his excellent book on *Learned Hand*<sup>28</sup> with Knopf rather than Stanford University Press?) One of the purposes of academic freedom is to permit professors to speak publicly without fear of reprisal, and those who write op-eds or publish with a trade press are doing what academic freedom is designed to permit them to do. My hunch is that when law professors write op-eds or go on television, it is to express the truth as they see it, not to “achieve their fifteen minutes of fame.”<sup>29</sup> Some people spend all of their time on teaching and academic projects; others testify before Congress and write an occasional amicus brief; still others write op-eds and say what they think on radio or tele-

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<sup>25</sup> *Id.* at text accompanying note 55.

<sup>26</sup> *Id.* at text accompanying note 75 (quoting David M. Rabban, *Can Academic Freedom Survive Postmodernism?*, 86 CAL. L. REV. 1377, 1378 (1998)).

<sup>27</sup> *Id.*

<sup>28</sup> GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* (1994).

<sup>29</sup> Devins, *supra* note 2, at text accompanying note 55.

vision shows. Of course some of us may not think so well of colleagues who spend a lot of time on talk shows, especially in light of the (ridiculous, hilarious<sup>30</sup>) restrictions of the format,<sup>31</sup> and above all if this comes at the expense of their scholarship and teaching. But since there are many ways to be a good law professor, and so long as teaching and research are not cheapened or neglected, I do not quite see Devins's objection here.

The second problem with Devins's claims is that they overlook the fact that it is perfectly responsible, maybe even a civic duty, for law professors to participate in public affairs, at least some of the time, by showing how what they know bears on public issues. (I do not believe that Devins disagrees with this point.) If, for example, a teacher of constitutional law thinks that a proposed law is unconstitutional, there should be no taboo on her saying so, even through an op-ed piece. If a teacher of criminal law believes that laws forbidding gang loitering

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<sup>30</sup> For example: In one interview on CNN, I was required to try to stand on a stack of extremely unsteady boxes, not as a scientific experiment or medical test or cruelty of some kind, but so as to ensure a view of the Capitol building on the television screen. Most of the time, it seemed likely that I would fall off. (This interview was live.) And apparently all law professors on television are, by some firmly enforced unwritten rule, required to try to hold a small piece of equipment in one ear, so as to be able to communicate with other people on the show, including the host. (It isn't easy to hold things in your ear.) Most of the time, the small piece of equipment does not fall out; but some of the time, it does. (This is especially troublesome when you are trying to balance yourself on a stack of extremely unsteady boxes.) See *Burden of Proof* (CNN television broadcast, Nov. 9, 1998), available in LEXIS transcript no. 98110900V12 (discussing the meaning of "other High Crimes and Misdemeanors," perjury, and Bills of Attainder).

<sup>31</sup> A personal anecdote: I appeared on several shows to discuss impeachment issues, but the format seemed so confining, and so conducive to ludicrous oversimplification, and driving there and back seemed so time consuming, that after a while I decided not to do it anymore. I told a producer of CNN's *Burden of Proof* that I would no longer discuss impeachment, and would appear on the program if and only if my new dog Perry, a (photogenic) Rhodesian Ridgeback puppy, could appear with me. They called my bluff. The show aired on December 31, 1998, and dealt with legal issues relating to dogs. My dog did become at least somewhat famous; in the middle of the show, the producer broke in to tell me that CNN was being "flooded" with calls and compliments about Perry. Interested readers (can there possibly be any?), those who think I'm joking, and Rhodesian Ridgeback enthusiasts can find the transcript at CNN *Burden of Proof* (CNN television broadcast, Dec. 31, 1998), available in LEXIS, transcript no. 98123100V12. [Ed. Note: Perry's photo is available at <<http://student-www.uchicago.edu/orgs/law-phoenix/2bear.html>>].

A small media notation: The producers who invite people to appear on their shows seem to have the same style and character as that of the on-air hosts of those shows (is this an antecedent job qualification, or does it develop over time?). Thus the most hilarious invitation came from the producer of the show *Hardball*, whose invitation appeared in *exactly* the same staccato voice as that of Chris Matthews, the host of the show: *We want you on Hardball know about it?*

will or will not deter crime, and has reasons for the belief, it is important for the public to know about this. This is an ordinary part of civic discourse, and a nation is better off with it than without it. Indeed, this kind of academic engagement is one of the things that academic freedom is designed to allow.

Of course silence about public issues can be legitimate too. Whether or not professors should speak publicly depends at least partly on the justice or injustice, and on the legality or illegality, of the practices at issue. Since silence is a choice and not a neutral position, professors, like other citizens, are properly criticized for failing to speak out on certain questions, at least if they have relevant expertise. Teachers of constitutional law would have been properly criticized, I believe, if they had remained silent during the unconstitutional impeachment of President Clinton.

If it is legitimate for one professor to speak publicly, it is not illegitimate for a group of them to do so, at least on rare occasions. Surely it is relevant that law professors are by their very profession concerned with highly public issues. They are unlike teachers of French literature, for their daily life is likely to breed expertise on issues that will, at one point or another, have public salience. I emphatically agree with Devins's concluding suggestion—that academics should not sign letters that they could not defend publicly.<sup>32</sup> But this is a test that could, I believe, be easily passed by those who signed the anti-impeachment letters, and indeed I doubt that this test would be flunked by many academics with respect to letters they have signed in the past.

The final problem is that it is unclear what Devins means to claim with his invocation of "postmodernism, multiculturalism, and political correctness."<sup>33</sup> Very few of those involved in the Clinton impeachment letters have any sympathy with postmodernism, a movement that (in my view fortunately) has had only a sporadic influence on the academic study of law—far less of an impact than, for example, that of the economic analysis of law. "Multiculturalism" can be understood in many different ways, and certainly no form of "multiculturalism" now dominates law schools. "Political correctness," if understood as a social taboo on the expression of unpopular opinions, is certainly to be deplored.<sup>34</sup> But so understood, it is hardly limited to left-leaning aca-

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<sup>32</sup> Devins, *supra* note 2, at text accompanying note 109 (advocating this test as a means of ensuring that academics do the necessary work before registering opinions).

<sup>33</sup> *Id.* at text accompanying note 75 (internal quotations omitted).

<sup>34</sup> A qualification: Some unpopular opinions are properly subject to taboo; con-

demics, and here too, I am not sure how the complaint about political correctness bears on the points at hand. Instead of complaining about what he appears to see as left-wing domination of law schools, Devins might defend a substantive position that he believes is unjustly devalued and that deserves a better hearing.

I agree with Devins's concerns about skepticism with respect to truth, as do many others;<sup>35</sup> but as a class, law professors are hardly skeptical of the idea of truth, and I do not see why Devins believes that there is, within the law schools, much "discomfort with truth-seeking."<sup>36</sup> Law professors founded their overwhelming opposition to the Clinton impeachment on a commitment to truth, not on skepticism about truth. Nor is Devins entirely clear about the distinction between "truth" and "political motivation." Suppose that someone really believes that a proposed law is unconstitutional. Suppose someone believes that some proposition about the Constitution is true. Is there any problem with writing, or signing, a letter to that effect? What makes that action inconsistent with academic freedom?

It is time to conclude. Academics have a duty to pursue truth, and for most academics, most of the time, participation in partisan causes can be destructive to that endeavor. But legal academics sometimes know things that are relevant to public life, and when this is so, they are entitled, and sometimes obligated, to say what they know. They may be wrong on the merits, but that is another matter.

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sider the view that slavery was very good, or that the Holocaust should be celebrated as a wonderful event.

<sup>35</sup> See generally DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997); Martha C. Nussbaum, *Skepticism About Practical Reason in Literature and the Law*, 107 HARV. L. REV. 714 (1994); Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 779-80 & n.130 (1993).

<sup>36</sup> Devins, *supra* note 2, at text accompanying note 80. Of course there are exceptions, discussed and addressed in FARBER & SHERRY, *supra* note 35. (Of course I do not mean to endorse, by these brief comments, everything in Farber and Sherry's controversial book.)