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## Something Higher Than Incumbency

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*Former Member of Congress*



**JAMES E. ROGAN** earned a B.A. from the University of California, Berkeley in 1979, and a J.D. from the UCLA School of Law in 1983. He served six years as a Los Angeles County Deputy District Attorney, was appointed judge of the Glendale Municipal Court by California Governor George Deukmejian, and was elected in 1994 to the California State Assembly, where he served as Majority Leader. Two years later he was elected to Congress from the 27th District of California, served on the Commerce and Judiciary committees, and in 1999 was one of the thirteen House Managers to prosecute the impeachment trial of President Clinton. Mr. Rogan was defeated last fall in his bid for re-election.

*The following is an abridged version of Mr. Rogan's speech delivered on March 14, 2001, in Phillips Auditorium on the Hillsdale College campus.*

I'm a conservative Republican who represented a liberal Democratic district where most of the Hollywood studios are located. Impeaching President Clinton was not a popular cause there. During that proceeding, many friends called to encourage me by saying, "It's two years until the next election. Nobody will remember." Larry Arnn, who has since become your president here at Hillsdale, called one day with a far different message. He said, "I know a lot of your friends are telling you that you're going to be alright in the next election. I'm your friend, and I'm telling you that you may not be alright." Then he added, "You know, congressmen lose elections all the time. It's very rare, though, that congressmen have the privilege of losing an election in defense of the Constitution." Those words carried me through that difficult period, and through my recent unsuccessful re-election campaign.

My dream as a kid was to serve in Congress, because I had read biographies of people from humble backgrounds, like mine, who had gone on

to make a difference in their communities through politics and public service. That idea was so appealing to me that in 1994, I gave up a relatively secure job as a judge to run for state assembly. Two years later, I won my congressional seat with a 50.1 percent majority in a county where Bob Dole lost by about twenty points. My childhood dream had come true.

When I got to Congress, Henry Hyde asked me to serve on the Judiciary Committee. I turned him down because I preferred and had a shot at the Commerce Committee. Later he got me interested by pointing out that the sub-committee responsible for protecting intellectual property – the life blood of the high-tech and entertainment industries in my district – is in Judiciary. And when my friend Sonny Bono, who sat on that subcommittee, was killed in a tragic skiing accident in January 1998, Chairman Hyde submitted my name to replace him. I became a member of the Judiciary Committee on January 20, and on the very next day the Monica Lewinsky story broke. Needless to say, I felt the opposite of someone who had just won the lottery.

Over the next year, I concluded that the President's constitutional problem boiled down to the violation of his oath. Of all our federal

officials, only presidents are constitutionally required to vow to “preserve, protect, and defend the Constitution.” Of course they are also charged by the Constitution with “tak[ing] care that the laws [are] faithfully executed.” President Clinton had therefore violated his oath when he committed perjury in a civil rights action, obstructed justice, suborned perjury, and conspired to do the same. For me, as a former judge, the seriousness of this violation was never in question. The presidential oath was not an afterthought of America’s Founders. No matter how popular a president-elect might be, he has to swear to uphold the Constitution before taking office. It is the oath, and not a politician’s poll numbers, that gives legitimacy and continuity to that high office.

During the Judiciary Committee impeachment inquiry, a woman doctor testified. She was one of a host of witnesses, but her testimony was most powerful. She had been a medical doctor and an attorney, and worked at a veterans hospital. While there she had a sexual relationship with the patient of another doctor. Later this man sued the Veterans Administration for medical malpractice, and disclosed this relationship in his list of grievances. Justice Department lawyers descended on the doctor to question her under oath, and she panicked and lied. She lied about sex in a deposition in a civil case — exactly what President Clinton had done. But here the similarity ends, because the Clinton Justice Department prosecuted her. As a result she lost her medical license, she lost her law license, and she was sentenced to jail. When she testified before our committee, she was wearing an electronic monitoring device around her ankle because she was still under an incarceration order. And she was one of some 135 people then in federal prison who had been prosecuted for perjury by the Clinton Justice Department. How could we in Congress, representing the American people, hold that the law applies differently to the powerful? This was not a position that I was prepared to take.

## Profiles In Weakness

**WHEN I** and my twelve colleagues were sent over to present our case to the Senate on behalf of the

House of Representatives, we ran into a wall. Although only one president had previously been impeached, Congress had a history of impeaching federal judges and Cabinet members going back to the 1790s. In our case the Senate ignored all precedent, however, and for the first time in history refused to allow House Managers to call witnesses. Individual senators would often tell us, in effect, that poll numbers trumped precedent. “Americans don’t want the President removed,” they said, “so we’re not going to remove him.” We responded, “The Constitution gives the House the power to impeach, and the Senate the power to remove. If you don’t vote to remove, that’s fine. But let us present the evidence so that you can at least make an informed decision.” I argued to my colleagues that we should decline to proceed unless the Senate followed precedent and allowed us to present evidence. But most felt that the train was too far down the track.

Over 60,000 pages of evidence had been deposited with Congress, and we on the House Judiciary Committee had taken months going through them. Shortly before the final vote in the House, the votes were not there for impeachment. We had Republican members who had announced on nationwide television that they were going to vote against it. But at a late-night caucus, we asked these members at least to go over to the Ford Building and review the evidence. Most of those who did so changed their minds. Jack Quinn, for example, represented a big union district in New York where impeachment was tremendously unpopular. But after looking at the evidence, he was no longer able to oppose it. Very few of the House Democrats ever went over and looked at the evidence. And I am told that not a single member of the United States Senate — not one — went over to do so. The Senators wouldn’t look at the evidence; they wouldn’t let us present the evidence; and then many of them justified their “no” votes by saying there wasn’t enough evidence.

One night near the end of the trial, I walked my little girls to Baskin-Robbins to get ice cream cones. I was sitting there in a baseball cap and old jeans when a general attached to the Pentagon walked over to me and said, “You’re Congressman



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Rogan. You're prosecuting my Commander-in-Chief." At this point I thought I should at least stand up. I didn't know what to expect. Then the general said, "The man you are prosecuting is unfit to command the men and women of the United States Armed Forces." He reached into his pocket, handed me his card and said, "I am General so-and-so. If you wish to report this conversation to the Secretary of Defense tomorrow morning, that will be your right and your privilege, and I will immediately resign my commission. Good evening, sir." And he saluted and walked off. I tore up the card. Here was a man prepared to risk his lifelong career in order to speak up for principle. It was a powerful experience.

## Lessons Drawn

**IN MY** prepared closing argument before the Senate, I had tried to summarize for my children and my grandchildren what the trial was about. But the Chief Justice called a break just before I was up, and while in the back room I heard some remarks on television that called for an immediate response. When I rose to speak, then, I jettisoned most of my prepared text. But I'd like to read a few excerpts from it now:

[T]he idea that no person is above the law ... is not our inheritance automatically. The ghosts of patriots past cannot compel us to preserve this sacred bequest. Each generation of Americans must elect to adopt this standard. Once again, there is a time for choosing. How will the Senate respond? ... The cry has been raised that to remove the President is to create a constitutional crisis by undoing an election. But there is no constitutional crisis when the simple process of the Constitution is called into play. Listen to the words of Dr. Larry

Arrn: "Elections have no higher standing under our Constitution than the impeachment process.

**"The cry has been raised that to remove the President is to create a constitutional crisis by undoing an election. But there is no constitutional crisis when the simple process of the Constitution is called into play."**

Both stem from provisions of the Constitution. The people elect the President to do a constitutional job. They act under the Constitution when they do it. At the same time, they elect a Congress to do a different constitutional job. If the President is guilty of acts justifying impeachment, then he, and not the Congress, will have overturned the election. He will have acted in a way that betrays the purpose of his election. He will have acted, not as a constitutional representative, but as a monarch, above the law. If the great powers given the President are abused, then to impeach him defends not only the results of elections, but that higher thing of

which elections are in service — the preeminence of the Constitution."

When I was a little boy, I used to write to retired legislators and ask their advice about a potential career in politics. A former U.S. Senator from Texas, a Democrat named Ralph Yarborough, wrote me a wonderful response when I was about twelve years old. He said that of all the political advice he could give, the best was to put principle and honor above incumbency. I closed my speech by telling the Senate that I now returned that sentiment to the body from which it came.

My recent race for re-election was the most expensive House race in American history, and it hurt to lose. But I'll never regret my vote for impeachment. It is easy for elected officials to succumb to the illusion that the greater good is served by their self-perpetuation in office. Seniority, of course, often brings promotion and power of a sort. But something larger gets lost. And here I'm not even talking about integrity or

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