



1225 Eye Street, NW, Suite 500
Washington, DC 20005-3914
202.312.2015
Fax: 202.842.2620
E-mail: esterling@igc.org

PERSPECTIVE ON PERJURY

Lying Is the American Way

If an admitted liar testifies to presidential perjury, compare it with drug cases in which admitted dealers go free.

By ERIC E. STERLING

Perhaps you were shocked when you first heard the term "testilying," the term New York police officers used to describe their routine practice of lying on the witness stand in drug cases. Sadly, perjury is routinely practiced in American courts.

Today, perjury is center stage in American political life, as the Senate begins the impeachment trial of President Clinton.

If any witnesses are heard in this unique trial, the star would be Monica Lewinsky, who has admitted she committed perjury. Every aspect of this trial—procedure, judge, prosecutors, jury, punishment—will deviate from criminal trials in American courts, with one critical exception. Routinely in drug cases and other trials, the star witness cuts a deal with the prosecution. The impeachment trial's sole similarity to the typical criminal case is that Lewinsky, a potential defendant, has cooperated with the prosecution in exchange for favorable treatment.

Across America, witnesses and prosecutors engage in an awkward dance—flirting and threatening, hinting and

cajoling, offering and countering. Prosecutors signal what they want to hear; witnesses intimate whom they can finger in their testimony. The juicier the testimony, the better the deal. Witness freedom is purchased with testimony. Testimony is paid for with freedom. As in so many cases, until the prosecutors made a deal with her, Lewinsky, the star witness, wouldn't snitch on the principal target of the prosecution. When a co-defendant testifies for the prosecution, the prosecutor insists they are being truthful, but when the co-defendant testifies on her own behalf, she is necessarily challenged as a liar.

Witnesses facing criminal charges usually can't bargain from strength. Most low-level offenders, in truth, have little to offer prosecutors. The only exception to a federal mandatory minimum drug sentence is reserved for defendants who provide "substantial assistance" in the prosecution of others. The prospect of a mandatory sentence of 10 years or more, however, is often a powerful stimulus to the imagination. In a perversion of justice, the drug kingpins who have the best information cut the best deals by turning in their underlings and providing essential assistance to prosecutors seeking to "smash" a drug ring. The horror of this sordid, little known but common practice will be unveiled in a chilling documentary, "Snitch," this evening on PBS' "Frontline."

In Washington, the House of Representatives hopes to present testimony before the Senate of an admitted liar to establish that the president is a per-

jurer. This is like thousands of drug cases in which an admitted drug dealer testifies for the prosecution that someone else is a drug dealer, and earns his freedom in doing so.

Kenneth Starr has been criticized for setting a "perjury trap," in which he obtained the immunized testimony of Lewinsky before the president testified under oath. But there is an everyday "perjury trap" faced by drug defendants when witnesses against them buy years off their prison sentences by testifying falsely so they can be certain to satisfy prosecutors to whom they are providing "substantial assistance."

Tragically, the confluence of mandatory minimum sentences and the "substantial assistance" exception for informants has led to unbelievably and unconscionably long sentences for minor drug offenders. Many federal judges have condemned these sentences from the bench and in resolutions adopted by every federal judicial council. Judges call these cases "manifestly unjust."

A rationale of the impeachment trial is that to maintain the integrity and respect of our system of justice, no one, not even the president, can be held "above the law." But it must also be true that no one can be held "below" the law by unjust procedures that lead to routine dishonesty and injustice.

Eric E. Sterling, counsel for the House Judiciary Committee from 1979 to 1989, was responsible for drafting the mandatory minimum sentences for drug cases in 1986.

Los Angeles Times, January 12, 1999.

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