

Name & Title:

Kate Shaw
Professor of Law
Benjamin N. Cardozo School of Law

Paper Title: *Impeachable Speech***Paper Abstract:*****Abstract***

President Trump has used the bully pulpit in ways that break, often dramatically, from the rhetorical norms that preceded him. So it is perhaps not surprising that the President's rhetoric has been at the center of a number of recent calls for impeachment, including articles of impeachment that have been introduced in the House Judiciary Committee.

Although President Trump's rhetorical style is in many ways unprecedented, presidential speech has actually played a role in every major presidential impeachment effort in our history. To date, three presidents have faced serious impeachment threats: Andrew Johnson, in 1868; Richard Nixon, in 1974; and Bill Clinton, in 1998 and early 1999. In each of these efforts, the debate around impeachment encompassed, among other things, public presidential rhetoric—lies and misrepresentations; statements that took aim at Congress or undermined the rule of law. In the case of Andrew Johnson, presidential rhetoric actually formed the basis of one of the articles of impeachment approved by the House of Representatives; in the case of Richard Nixon, the first article of impeachment approved by the House Judiciary Committee—though never considered by the full House—made extensive reference to the president's public statements. And one of the possible offenses identified in Independent Counsel Ken Starr's impeachment referral focused on President Clinton's lies to the American people and Congress; an impeachment article tracking that recommendation was initially debated by the House Judiciary Committee, but the language regarding public speech was removed before the committee vote. To my knowledge, these three historical episodes have not been considered together, and they may prove instructive as both Congress and the public debate impeachment in 2019 and beyond.

Bio:

Kate Shaw is a Professor of Law and the Co-Director of the Floersheimer Center for Constitutional Democracy at the Benjamin N. Cardozo School of Law. Before joining Cardozo, she worked in the White House Counsel's Office as a Special Assistant to the President and Associate Counsel to the President. She clerked for Justice John Paul Stevens and Judge Richard Posner.

Professor Shaw teaches and writes about constitutional law, legislation, administrative law, election law, and gender and sexual orientation and the law. Her scholarly work has appeared, among other places, in the *Northwestern University Law Review*, the *Columbia Law Review*, the *Cornell Law Review*, the *Texas Law Review*, and the *Georgetown Law Journal*, and she recently published the book *Reproductive Rights and Justice Stories*, with Melissa Murray and Reva Siegel. She has also written for a number of popular outlets, including the New York Times, and she serves as a Supreme Court contributor with ABC News.