106TH CONGRESS
1st Session

SENATE

S. DOC.
106–4

PROCEEDINGS OF THE UNITED STATES SENATE

IN THE

IMPEACHMENT TRIAL OF PRESIDENT WILLIAM JEFFERSON CLINTON

VOLUME IV: STATEMENTS OF SENATORS REGARDING THE IMPEACHMENT TRIAL OF PRESIDENT WILLIAM JEFFERSON CLINTON

VOLUME IV OF IV

FEBRUARY 12, 1999.—Ordered to be printed

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OFFICE OF THE SECRETARY OF THE SENATE

GARY SISCO, *Secretary*
SHARON A. ZELASKA, *Assistant Secretary*
RONALD KAVULICK and JERALD D. LINNELL, *Chief Reporters of Debates*
BRUCE E. KASOLD, *Chief Counsel*
KEITH SIMMONS, *Counsel*

UNANIMOUS CONSENT AGREEMENT

In the Senate of the United States

February 12, 1999

Mr. LOTT. I ask unanimous consent that the Secretary be authorized to include these statements [of Senators explaining their votes], along with the full record of the Senate's proceedings, the filings by the parties, and the supplemental materials admitted into evidence by the Senate, in a Senate document printed under the supervision of the Secretary of the Senate, that will complete the documentation of the Senate's handling of these impeachment proceedings.

The CHIEF JUSTICE. Without objection, it is so ordered.

To the memory of Raymond Scott Bates,
Legislative Clerk of the Senate,

who, until his untimely and tragic accidental death on February 5, 1999, in the midst of these proceedings, brought to the conduct of this trial the constant dedication, skill, and professionalism that characterized his Senate career. Scott represented the best of the Senate staff who work tirelessly to support the institution and its members.

FOREWORD

This document contains the full record of the United States Senate proceedings in the impeachment trial of President William Jefferson Clinton. Its purpose is to preserve for the future use of the Senate, the American people, and historians the formal record of the only Presidential impeachment trial of the 20th century. Together with the 24-volume Senate Document 106–3, which contains all publicly available materials submitted to or produced by the Judiciary Committee of the House of Representatives, these four volumes represent the entire official record of the impeachment actions against President Clinton.[1]

The present four volumes include the Senate proceedings in open session; filings by the parties; supplemental materials received in evidence that were not part of the House record, such as affidavits and depositions; floor statements of Senators in open session expressing their views regarding the proceedings; and statements delivered in closed deliberations that individual Senators elected to make public.

The document is divided into four sections—

Volume I: Preliminary Proceedings
Volume II: Floor Trial Proceedings
Volume III: Depositions and Affidavits
Volume IV: Statements of Senators Regarding the Impeachment Trial of President William Jefferson Clinton

VOLUME I: PRELIMINARY PROCEEDINGS

This volume contains the portion of the Senate proceedings that occurred before the actual trial commenced. On December 19, 1998, the House of Representatives adopted two articles of impeachment against President Clinton (House Resolution 611, 105th Congress) and a subsequent resolution appointing managers on the part of the House (House Resolution 614, 105th Congress).

Because the Senate of the 105th Congress had already completed its business and adjourned sine die, the House managers, in the late afternoon of December 19, 1998, delivered the articles of impeachment to the Secretary of the Senate. The Senate of the 106th Congress convened and organized on January 6, 1999, and the House notified the Senate that it had reappointed the managers (House Resolution 10, 106th Congress). On January 7, 1999, the House managers exhibited the articles of impeachment to the Senate and the Chief Justice of the United States, as presiding officer

[1] The Senate, by a unanimous-consent agreement of February 12, 1999, authorized the Secretary of the Senate to oversee the printing of the Senate proceedings in order to complete the documentation of the impeachment trial.

during the impeachment trial, took the prescribed oath, as did all Senators.

On January 8, 1999, the Senate unanimously directed that the summons be issued to President Clinton and that his answer to the articles be filed, together with the response of the House of Representatives (Senate Resolution 16, 106th Congress). This resolution admitted into evidence the materials submitted by the House Judiciary Committee and authorized their publication. It also allowed the parties to file preliminary motions (none was filed), established a schedule for the filing of trial briefs by the parties, and established further procedures for the conduct of the trial. Although all these documents were previously printed in Senate Document 106–2—as well as the text of the provisions of the United States Constitution applicable to impeachment and the Rules of Procedure and Practice of the Senate When Sitting in Impeachment Trials—they are reprinted here for ease of reference.

VOLUME II: FLOOR TRIAL PROCEEDINGS

This volume reproduces the full record of the Senate floor proceedings in the impeachment trial as provided under Senate Resolution 16. The resolution first permitted the parties an extended period to make their presentations. The managers presented their case on behalf of the House of Representatives on January 14, 15, and 16, 1999. Counsel for the President presented their case on January 19 and 20, 1999. The Senate then devoted January 22 and 23, 1999, to posing questions to the House managers and counsel.

Senate Resolution 16 also provided that, at the end of the question-and-answer period, the Senate would consider separately a motion to dismiss and a motion to subpoena witnesses and to present additional evidence not in the record. On January 25, 1999, the Senate heard argument on the motion to dismiss and, on January 26, 1999, considered the motion by the House managers to call witnesses and admit additional evidence. The Senate voted to deny the motion to dismiss and to grant the motion to subpoena witnesses.

On January 28, 1999, the Senate established procedures for the taking of depositions (Senate Resolution 30), and three witnesses were deposed on February 1, 2, and 3, 1999. On February 4, 1999, the Senate heard argument and voted on motions to admit the deposition testimony into evidence, to call witnesses to testify on the Senate floor, and to proceed directly to closing arguments. The portions of the deposition transcripts admitted into evidence are reproduced in this volume, while the full transcripts of the three depositions appear in Volume III. Both parties presented evidence to the Senate on February 6, 1999.

On February 8, 1999, the parties presented final arguments to the Senate. The Senate then considered proposals by various Senators to suspend the Senate impeachment rules to permit deliberation in open session, but all deliberations on motions and on the articles of impeachment occurred in closed session. (The proceedings in closed session are not published here, but statements that Senators elected to make public are printed in Volume IV.) Volume II concludes with the record of the February 12, 1999, vote

and judgment of the Senate to acquit President Clinton on both articles of impeachment.

VOLUME III: DEPOSITIONS AND AFFIDAVITS

This volume reproduces the complete transcripts of the depositions taken by the Senate of witnesses Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal. It also contains the affidavits of Christopher Hitchens, Carol Blue, and R. Scott Armstrong, which were admitted into evidence by a unanimous-consent agreement of February 12, 1999.

VOLUME IV: STATEMENTS OF SENATORS REGARDING THE IMPEACHMENT TRIAL OF PRESIDENT WILLIAM JEFFERSON CLINTON

By unanimous consent, the Senate agreed to provide each Senator an opportunity to place in the Congressional Record a statement describing his or her own views on the impeachment. The statement could, if a Senator so chose, be a statement he or she had delivered during closed deliberations. Since not all Senators chose to publish their remarks, the fact that a statement of a particular Senator does not appear in Volume IV does not mean that the Senator did not address the Senate during its closed deliberations.

The publication of these four volumes, supplemented with Senate Document 106–3, contributes to a fuller understanding of the way in which the Senate conducted these important and historic proceedings.

GARY SISCO,
Secretary of the Senate.

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[1] On December 19, 1998, the House of Representatives agreed to H. Res. 611, 105th Cong., the Articles of Impeachment, [144 Cong. Rec. H12040–42 (daily ed. Dec. 19, 1998)] and H. Res.

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[2] The House of Representatives agreed to H. Res. 10, 106th Cong., on January 6, 1999 [145 Cong. Rec. H216–17 (daily ed. Jan. 6, 1999)].

[3] The Appendix to Trial Memorandum of President William Jefferson Clinton, consisting of exhibits, was filed separately on January 20, 1999, but is inserted here for ease of reference.

[4] For ease of reference, the documents contained in S. Doc. 106–2, i.e., the pertinent constitutional provisions, the Senate Impeachment Rules, the Articles of Impeachment, the Answer of President Clinton, and the Replication of the House of Representatives, are reprinted in this publication. Separately, the Senate admitted into evidence and authorized the printing, pursuant to S. Res. 16, 106th Cong., of the publicly available materials submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or mark-ups and any materials printed by the House of Representatives or the House Judiciary Committee pursuant to H. Res. 525 and H. Res. 581, 105th Cong. (1998). That evidentiary record, S. Doc. 106–3 (1999) [24 vols.], is not reproduced here.

[5] The unanimous-consent agreement of February 9, 1999, allowed each Senator to place in the Congressional Record his or her statement delivered during closed deliberations. Not all Senators chose to publish their remarks; the fact that a statement of a particular Senator does not appear here does not mean that Senator did not address the Senate during the closed sessions. Additionally, the unanimous-consent agreement of February 12, 1999, allowed Senators to have statements and opinions explaining their votes printed in the Congressional Record.

[6] Sen. Specter submitted an additional statement on February 12, see p. 2715 below.

[7] Sen. Feingold submitted an additional statement on February 22, see p. 3042 below.

[8] Sen. Bond submitted an additional statement on February 23, see p. 3058 below.

[9] Sen. Inhofe submitted an additional statement on February 12, see p. 2987 below.

[10] Sen. Leahy submitted additional statements on February 12 and February 23, see pp. 2996, 3090, 3102 below.

[11] Sen. Dodd submitted additional statements on February 23, see pp. 3099 and 3100 below.

[12] Sen. Reed submitted an additional statement on February 24, see p. 3103 below.

[13] Sen. Sessions submitted an additional statement on February 23, see p. 3094 below.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR ARLEN SPECTER*

Mr. SPECTER. Mr. Chief Justice, between the time I made my statement in the closed Senate deliberations on February 11 and the time I cast my vote on February 12, I consulted with the Parliamentarian and examined the Senate precedents and found that if I voted simply "not proven," I would be marked on the voting roles as "present." I also found that a response of "present," and inferentially the equivalent of "present," could be challenged and that I could be forced to cast a vote of "yea" or "nay."

I noted the precedent on June 28, 1951, recorded on pages S7403 and S7404 of the CONGRESSIONAL RECORD, when Senator Benton of Connecticut and Senator Lehman of New York voted "present" during a rollcall vote. Senator Hickenlooper of Iowa challenged these votes and argued that a Senator must vote either "yea" or "nay" unless the Senate votes to excuse the Senator from voting. Senator Hickenlooper's challenge was upheld, and the Senate voted against excusing these Senators from voting by a vote of 39 to 35 in the case of Senator Lehman and a vote of 41 to 34 in the case of Senator Benton.

I also noted the precedent on August 3, 1954, on page S13086 of the CONGRESSIONAL RECORD, when Senator Mansfield of Montana voted "present" during a rollcall vote. Senator Cordon of Oregon objected and asked that the Senate vote on whether Senator Mansfield should be excused from voting. By voice vote, the Senate voted against excusing Senator Mansfield from voting.

In order to avoid the possibility that some Senator might challenge my vote, I decided to state on the Senate floor, "not proven, therefore not guilty," when my name was called on the rollcall votes on article I and article II of the articles of impeachment. That avoided the possibility of a challenge and also more accurately recorded my vote as "not guilty" since I did not wish to be recorded as merely "present."

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR SLADE GORTON

Mr. GORTON. Mr. Chief Justice, the statement that I am placing in the RECORD is the statement I would have given had I been permitted to speak longer and in open session. During our closed deliberations, I gave a similar but abridged statement.

For almost 2 years, the President of the United States was engaged in what he has come to describe as an "inappropriate intimate" relationship with a young woman who came to his attention

*Sen. Specter submitted an additional statement on February 12, see p. 2715, below.

as a White House intern. He then lied about their relationship, publicly, privately, formally, informally, to the press, to the country, and under oath, for a period of about a year.

This course of conduct requires us to face four distinct questions.

First, we must determine if the material facts alleged in the articles of impeachment have been established to our satisfaction.

Second, do the established facts constitute either obstruction of justice or perjury, or both?

Third, are obstruction of justice and perjury high crimes and misdemeanors under the Constitution?

Fourth, even if the acts of the President are high crimes and misdemeanors, are they of sufficient gravity to warrant his conviction if it allows for no alternative other than his removal from office?

The first article of impeachment alleges that the President committed perjury while testifying before the Starr grand jury. Although the House managers assert that his testimony is replete with false statements, it is clear, at the least, that his representations about the nature and details of his relationship with Ms. Lewinsky are literally beyond belief.

From November 1995 until March 1997, the President engaged in repeated sexual activities with Monica Lewinsky, who was first a volunteer at, and then an employee of the White House and eventually the Pentagon. Though he denies directly few of her descriptions of those activities, he testified under oath that he did not have "sexual relations" with her. His accommodation of this paradox is based on the incredible claim that he did not touch Ms. Lewinsky with any intent to arouse or gratify anyone sexually, even though she performed oral sex on him.

It seems to me strange that any rational person would conclude that the President's description of his relationship with Ms. Lewinsky did not constitute perjury.

In addition, while we are not required to reach our decision on these charges beyond a reasonable doubt, I have no reasonable doubt that the President committed perjury on a second such charge when he told the grand jury that the purpose of the five statements he made to Ms. Currie after his Jones deposition was to refresh his own memory.

The President knew that each statement was a lie. His goal was to get Ms. Currie to concur in those lies.

The other allegations of perjury are either unproven—particularly those requiring a strict incorporation of the President's Jones deposition testimony into his grand jury testimony—or are more properly considered solely—with those already discussed—as elements of the obstruction of justice charges in article II.

To determine that the President perjured himself at least twice, however, is not to decide the ultimate question of guilt on article I. That I will discuss later.

All the material allegations of article II seem to me to be well founded. Four of them, however, those regarding the President's encouraging Ms. Lewinsky to file a false affidavit and then to give false testimony, those regarding the President's failure to correct his attorney's false statements to the Jones court, and those bearing upon the disposal of his gifts to her are not, in my mind, proven beyond a reasonable doubt. Again, I do not believe this standard

to be required in impeachment trials, but because I believe that the other three factual allegations of article II do meet that standard, I adopt it for the purposes of this discussion.

From the time she was transferred to the Pentagon in April 1996, Ms. Lewinsky had pestered the President about returning to work at the White House, and, other than some vague referrals, until October 1, 1997, the President had done nothing to make this happen and little to help her find another job.

On the first of October 1997, the President was served with interrogatories in the Jones case asking about his sexual relationships with women other than his wife, and during the rest of October the President and his agents stepped up their efforts to find Ms. Lewinsky a job. Three weeks later, on October 21, the U.S. Ambassador to the United Nations, Bill Richardson, called Ms. Lewinsky personally to schedule an interview in her apartment complex, though apparently he interviewed no one else. Shortly after this unusual interview, the Ambassador created a new position in New York and offered it to Ms. Lewinsky.

What is perhaps most striking about the U.N. job is not even how promptly it materialized, nor that the U.S. Ambassador was so personally involved in hiring a young woman with precious little job experience, but that Ambassador Richardson held the specially crafted sinecure open for 2 months while the former intern kept him waiting on her decision.

When Ms. Lewinsky decided that she preferred the private sector, the President enlisted the help of one of his closest personal friends, one of the most influential men in the United States, Vernon Jordan. Ms. Lewinsky met with Mr. Jordan in early November. Mr. Jordan, who was acting at the President's behest, apparently did not fully appreciate how important it was for him to cater to Ms. Lewinsky and took no action for a month.

The President and Mr. Jordan realized, however, on December 5, 1997, the importance of satisfying Ms. Lewinsky's fancy when her name appeared on the Jones witness list. Before that date, the President needed Ms. Lewinsky only to commit a lie of omission—simply to refrain from making their relationship public. Her appearance on the witness list now meant that she would have to lie under oath.

Fully appreciative of the higher stakes, the President redoubled his efforts and those of his agents to find Ms. Lewinsky a job and keep her in his camp. In the weeks after Ms. Lewinsky's name appeared on the witness list, Mr. Jordan kept the President apprised of his efforts to find work for her in the private sector. He called his contacts at American Express, Young and Rubicam, and MacAndrews & Forbes, Revlon's parent corporation. When Ms. Lewinsky was subpoenaed on December 19, 1997, to be deposed in the Jones case, Mr. Jordan oversaw the preparation of the affidavit that the President had suggested she file in lieu of testifying. On January 7, 1997, Ms. Lewinsky signed the affidavit, which she later admitted was false, denying that she had a "sexual relationship" with the President. On January 8, she interviewed with MacAndrews & Forbes. When she told Mr. Jordan that she had done poorly, he called the Chairman of the Board, Ronald Perelman, to recommend Ms. Lewinsky, whom he commended as

"this bright young girl, who I think is terrific." As a result of this conversation, Ms. Lewinsky was called back for another interview with MacAndrews the following day and given an informal offer. On January 9, she reported this to Mr. Jordan, who called Ms. Currie with the message, "mission accomplished" and then called the President himself to share his success.

The President's lawyers arranged for Ms. Lewinsky's affidavit to be filed on January 14, 1998. After this date, although Ms. Lewinsky did not end up with a job in the private sector, neither the President nor Mr. Jordan, who so resolutely pursued their earlier mission, lifted a finger to help the "bright . . . terrific" young woman. Why? Because shortly thereafter the fiction of the President's platonic relationship with Lewinsky had exploded. Monica Lewinsky was the same Monica Lewinsky, but she now could no longer protect the President.

It is impossible to reconcile the President's course of conduct with any purpose other than to preclude Ms. Lewinsky's truthful testimony in the Jones case, or, indeed, to prevent her testifying at all. The case for obstruction of justice is clear. Obstruction was the President's only motive.

Next we have the Currie conversation—a set of statements by the President in the nominal form of questions, addressed by the President to Ms. Currie on the Sunday evening following his Jones deposition when she was called to the White House at an extraordinary time and for apparently a single purpose. We are all familiar now with the questions he posed:

"I was never really alone with Monica, right?"

"You were always there when Monica was there, right?"

"Monica came on to me, and I never touched her, right?"

"You could see and hear everything, right?"

"She wanted to have sex with me, and I cannot do that."

Those five statements have a single common thread: the President knew each and every one of them to have been totally false.

Had Ms. Currie been willing to confirm the President's suggestions, she would have been a devastatingly effective witness for him.

There is no reasonable explanation of this incident other than it is the President's clear attempt to obstruct justice, both in the Jones case and in the subsequent grand jury investigation.

The false self-serving statements by the President to senior members of his staff, to his Cabinet, and to the American people just after his affair became public present a somewhat different face. It is reasonably clear that, at the time at which they were made, the President's goal, at least in part, was to save face with his staff and put a less humiliating spin on the Lewinsky matter. At the same time, coupled with his public statements, the President's assertions to his staff were designed to influence their testimony at some future time and place and to enlist them in disguising his conduct. In fact, they did obstruct the grand jury investigation. The President's manipulation of friendly witnesses to testify falsely, if unknowingly, extended for months until the DNA evidence shattered both his public and private positions.

The President's attempt to derail the independent counsel's inquiry—an inquiry the very purpose of which was to discover wheth-

er the President gave false testimony and tampered with witnesses—by lying to his colleagues, his Cabinet, his confidantes, the media, the American people, and ultimately, the grand jury, is—beyond a reasonable doubt—a wide-ranging and highly public obstruction of justice, deeply damaging to the judicial fabric of the United States.

One final note: to the extent that there are unresolved questions of fact, almost every one of them could be resolved by truthful and complete testimony by the President himself. That is a course of action he spectacularly avoided both in his Jones deposition and before the Starr grand jury. Now, he refuses to answer interrogatories from Senator LOTT and refuses to appear at this trial to testify on his own behalf.

Under the circumstances, is it not appropriate to infer that to tell the truth would be to confirm all of the questionable charges against him? I have not done so for the purposes of this argument, and have considered only those charges proven beyond a reasonable doubt, but the President's silence allows the inference that every one of the factual charges by the House managers is true.

With sufficient material facts alleged in the two articles of impeachment either essentially uncontested or established by overwhelming evidence, and with those facts clearly constituting both perjury and obstruction, we arrive at the third question before the Senate. Are perjury and obstruction of justice high crimes and misdemeanors under the impeachment clause of the Constitution?

This is the easiest of the four questions to answer. Perjury and crimes less serious than obstruction of justice have always and properly been considered high crimes and misdemeanors.

In 1986 Judge Claiborne was convicted by the Senate and removed from office for filing a false income tax return under penalties of perjury. By a vote of 90 to 7, the Senate rejected his argument that he should not be convicted because filing a false return was irrelevant to his performance as a judge. In 1989, Judge Nixon was convicted by the Senate and removed from office for perjury: in fact, for lying under oath to a grand jury. And in that same year, Judge Hastings was convicted of lying under oath and removed by the Senate even though he had already been acquitted in a criminal trial—it is generally recognized that an act need not be criminal in order to be impeachable. As these examples illustrate, perjury is and historically has been a sufficient cause for conviction and removal. Although no person has been convicted and removed for obstruction of justice, the nature and gravity of this crime, punished more harshly under our laws than bribery, clearly is also a sufficient cause for conviction and removal.

Most of the Senate's precedents, of course, are based on the impeachment trials of judges. President Clinton argues that those precedents should not apply; that Presidents, who hold the highest office in the land, should benefit from a lower standard for removal than the judges they appoint and the military officers they command. This President would have Presidents remain in office for acts that have resulted in the dismissal of military officers under his command, in the removal of judges, and for acts that would have resulted in the removal of Senators like Bob Packwood, who, like the President, are popularly elected for a fixed term. As House

Manager CANADY has pointed out, the 1974 report by the staff of the Nixon impeachment inquiry concluded that the constitutional provision stating that judges would hold office during "good Behaviour," does not limit the relevance of judges' impeachments with respect to standards for Presidential impeachments. The President's argument that he should be held to a lower standard than judges, military officers and Senators has no basis in the Constitution, in precedent, in equity, or in common sense.

The fourth and ultimate question, nevertheless, is considerably more difficult to answer. For me, the proof of material facts supporting some of the allegations is overwhelming, the proposition that the established facts of the President's conduct constitute perjury and obstruction of justice almost impossible to deny, and the conclusion that perjury and obstruction of justice are high crimes and misdemeanors a given.

The inevitable result of a guilty verdict in this trial is the President's removal from office, and I believe that reasonable minds can differ on whether or not that consequence is appropriate. So does at least one of the House managers. In answering the question of whether removal is too drastic a remedy for these alleged acts of perjury and obstruction of justice, LINDSEY GRAHAM, one of the most thoughtful managers, stated that great minds may not necessarily agree on the question of whether, for the good of the nation, one should or should not remove this President for these high crimes. Removal, he said, is the equivalent of the political death penalty, and the death penalty is not imposed for every felony. Considerations such as repentance and the impact of removal on society should also be considered. Mr. GRAHAM's view was not , incidentally, that reasonable minds could differ on any of the first three questions that I have outlined, but only on the ultimate question of removal.

While removal upon conviction has not always been considered inevitable, I agree that article II, section 4 of the Constitution requires a mandatory sentence of removal upon conviction of high crimes and misdemeanors. Nevertheless, a number of thoughtful commentators, and at least a few Members of this Senate, have already decided that removal is too drastic a sanction. These commentators and Members—who are convinced, perhaps, that the President committed perjury and obstruction of justice, which, as classes of crime, are high crimes and misdemeanors—may nevertheless vote not to convict because they believe that removal from office is unwarranted for this perjury and this obstruction of justice.

I share that conclusion with respect to article I, but not article II.

On article I, I have decided, with some regret, that the instances of perjury I believe were established beyond a reasonable doubt are offenses insufficient for removing the President from office—based on the gravity of the offenses as against the drastic nature of removal. Equally important is the fact that these instances of perjury are also elements of the obstruction of justice charges in article II. One conviction for the same acts of perjury is enough.

Nevertheless, I am convinced that one other reflection must precede a decision based on the belief that removal is disproportionate

to the gravity of the offenses established here, and that is: what are the consequences of a not guilty finding by the Senate? The consequences are, of course, no sanction whatsoever.

It is precisely because the absence of any sanction is so objectionable to those who choke over removal that there has been such a spirited search for a third way. But, fellow Senators, there is no third way. There is no third way.

Article I, section 3 of the Constitution states: "Judgment in Cases of Impeachment shall extend no further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States. . . ."

The drafters did not intend to allow Congress to choose among a range of punishments analogous to those available to the judiciary, and for this reason they specified that the impeached party was to remain subject to judicial process and specifically limited to two—removal and disqualification—the sanctions that Congress could apply.

We must, I believe, by reason of this harsh choice consciously forced on us at the Constitutional Convention in 1787, weigh seriously the effect on the Republic of either of our two possible courses of action. Will the Republic be strengthened, or will it be weakened, by determining that a President shall remain in its most exalted office after perjuring himself and obstructing the pursuit of justice both of a private citizen and of a federal grand jury, in a case occasioned by the President's sexual activities? Will the Republic be strengthened or weakened by removing the President from office by an impeachment conviction for this perjury and this obstruction?

Early in our history an incident involving one of the authors of the Constitution, Alexander Hamilton, shows clearly the bright line between, on the one hand, a private sexual scandal, and on the other, a public obligation—a line the President has intentionally crossed.

In No. 65 of "The Federalist Papers," Mr. Hamilton described impeachable offenses as "those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself." The President's defenders place great reliance on this explanation.

Within 4 years of the composition of this essay, Mr. Hamilton had an opportunity to reflect on his own words. In the summer of 1791, Hamilton, then the Secretary of the Treasury, had an adulterous affair with a Maria Reynolds. Her husband discovered the affair and demanded a job in the Treasury Department. Though Secretary Hamilton turned him down, he did pay blackmail from his personal funds.

A year later, three Congressmen, all politically opposed to Hamilton, learned of the payments, suspected that they might involve Treasury funds, and confronted Hamilton. Despite the tremendous political advantage the story, which eventually leaked, offered them, he immediately and without hesitation told them the truth and nothing but the truth.

The author of Federalist No. 65 knew very well the distinction between a private scandal and the profound embarrassment arising

out of its publication—and the violation of a public duty in an attempt to avoid that embarrassment. He chose not to use his Treasury position in a way that would justify an impeachment. The personal cost was immense and he assumed it without blinking.

President Clinton could hardly have chosen a more different course of action. He chose to violate both his oath of office and his oath as a witness, using his office, his staff, and his position to try to avoid personal embarrassment. In any event even the personal consequences for him have been far worse than those visited upon Alexander Hamilton. But it is our duty to determine whether he merits a drastic public sanction—or none at all.

Some will say that the President can be charged with crimes related to this affair after his term of office is over.

First, such charges lie outside our jurisdiction or duty.

Second, such charges seem to me to be unlikely if we acquit the President, or in any event.

But third, and most important, let us assume that President Clinton is charged, convicted, and sentenced in 2001. What a devastating judgment on the Senate of the United States that would be! We ourselves would be convicted, by history and forever, of having permitted a felon who abused his office in committing his felonies to remain in office as President of the United States for 2 long years.

I simply cannot imagine any Senator willing to carry that burden of conscience.

No, we must choose between the sanction of removal and no sanction at all. We know how Alexander Hamilton would vote today on our question. We know how James Madison, one of Hamilton's interrogators and the careful author of the impeachment provision, would have voted. And merely to call up the name of George Washington is to answer the question of how he would vote.

The Republic will not be weakened if we convict. The policies of the Presidency will not change. The administration will not change. If we acquit, if we say that some perjuries, some obstructions of justice, some clear and conscious violations of a formal oath are free from our sanction, the Republic and its institutions will be weakened. One exception or excuse will lead to another, the right of the most powerful of our leaders to act outside the law—or in violation of the law—will be established. Our republican institutions will be seriously undermined. They have been undermined already, and the damage accrues to all equally—Republicans, Democrats, liberals, and conservatives.

If there is one thing this President can be relied on to do, it is to put his interests before those of his office and of the Republic. President Clinton has debased the Presidency now and, if he is allowed to remain in office, the low level to which he has brought the presidency will continue, and that is not tolerable.

I cannot will to my children and grandchildren the proposition that a President stands above the law and can systematically obstruct justice simply because both his polls and the Dow Jones index are high.

Our duty in this case is as unpleasant as it was unsought. But our duty is clear. It was imposed on us, by history, without equivocation, 212 years ago. It requires us to convict the President of arti-

cle II of these articles of impeachment. And that is how I vote, with clear conscience and a saddened heart.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR RUSSELL D. FEINGOLD*

Mr. FEINGOLD. Mr. Chief Justice, my colleagues, like many others, the day the President wagged his finger at the American people and indicated he had not been involved with Ms. Lewinsky, I had the sense that he wasn't telling the truth and I felt some genuine regret. The President and I began here in Washington in the same month, in 1993. I had high hopes and actually felt very close to what he was trying to accomplish. So all along in this process, I have had to fight an urge to personalize that regret in a way that would affect my ability to do my job in this impeachment trial. And I will tell you that taking that separate oath helped me get into the mindset necessary to do that task.

I do regret that the President's public conduct—not his private conduct—has brought us to this day.

But we are here, and I want to take a minute to praise my colleagues on the process. I think it would have been unfortunate had we not had any witness testimony—at least in the form of deposition testimony. I think it would have been an unfortunate historical precedent. I found the video testimony helpful. I didn't enjoy it, but I found it helpful in clarifying some of the things that I was thinking about. So I am glad, on balance, that we did not dismiss the case at the time it was first suggested.

As we get to the final stage and get immersed in the law and facts of this case, it is too easy to forget the most salient fact about this entire matter, and that is one simple fact that many others have mentioned: In November 1996, 47 million Americans voted to reelect President Clinton. The people hired him. They are the hiring authority. An impeachment is a radical undoing of that authority. The people hire and somehow, under this process, the Congress can fire. So, I caution against, with all due respect to the excellent arguments made, the attempt to analogize this to an employee-employer relationship, or a military situation, or even the situation of judges—those situations are all clearly different. Along with the choice of the Vice President, in no other case do the American people choose one person, and in no other case can a completely different authority undo that choice.

Having said that, the Presidential conduct in this case, in my view, does come perilously close to justifying that extreme remedy. There really have been three Presidential impeachments in our Nation's history. I see this one as being in the middle. The Andrew Johnson case is usually considered by historians to have been a relatively weak case. President Johnson had a different interpretation of the constitutionality of the statute that he believed allowed him to remove the Secretary of War, Mr. Stanton. He was not convicted, and subsequently the U.S. Supreme Court, I believe, ruled that in

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*Sen. Feingold submitted an additional statement on February 22, see p. 3042, below.

fact that was constitutional. I see that as having been a relatively weak case.

The case of Richard Nixon, in my view, was a pretty strong case, involving a 1972 Presidential election and attempts to get involved with the aspects of that election—frankly—an attempt to cover up what happened during that 1972 election. I think that had more to do with core meaning of "high crimes and misdemeanors."

This is a closer case; this is a close case. In that sense, it may be the most important of the three Presidential impeachments, in terms of the law of impeachment, as we go into the future. I agree neither with the House managers who say their evidence is "overwhelming," nor with the President's counsel who says the evidence against the President is "nonexistent." The fact is, this is a hard case, and sometimes they say that hard cases make bad law. But we cannot afford to have this be bad law for the Nation's sake.

So how do we decide? There have been a lot of helpful suggestions, but one thing that has been important to me is the way the House presented their case. That doesn't bind us, but they did suggest that two Federal statutes had been violated. Mr. Manager MCCOLLUM said that "you must first determine if a Federal crime has occurred." Many others have said that. I will reiterate a point. If that is the approach you want to take, then it is clear, in my view as one Senator, that you must prove that beyond a reasonable doubt. Otherwise, you are using the power and the opprobrium of the Federal criminal law as a sword but refusing to let the President and the defense counsel have the shield of the burden of proof that is required in the criminal law.

I do not have time to discuss the perjury count this afternoon, but will do so in a longer presentation for the RECORD. Suffice it to say, I do not believe the managers have met their burden of proving perjury beyond a reasonable doubt.

As to obstruction of justice, the President did come perilously close. Three quick observations make me conclude that, in fact, he did not commit obstruction of justice beyond a reasonable doubt. First, I am very concerned about the conversations between the President and Betty Currie concerning the specifics of his relationship with Ms. Lewinsky. But the critical question there is intent. Was his intent about avoiding discovery by his family and the political problems involved? Or was the core issue trying to avoid the Jones proceeding and the consequences of that?

I don't think it has been shown beyond a reasonable doubt that the Jones proceeding was the President's concern. Perhaps Ms. Currie could have shed some light on this. That is why I was extremely puzzled when the House managers didn't call Betty Currie. Let me be the first to say that I don't think in this instance the House managers "wanted to win too badly." I don't think they wanted to win badly enough to take the chance of calling Betty Currie, a crucial witness.

I was very concerned about the false affidavit until I saw Ms. Lewinsky's Senate deposition testimony. I am persuaded that you cannot say beyond a reasonable doubt that she was urged by the President to make a false statement in that affidavit.

Finally, I was very concerned about the hiding of the gifts. And maybe everyone will disagree with me on this. But when I watched

her testimony, I thought Ms. Lewinsky was the most indefinite about whether or not she had gotten that call from Ms. Currie than any other part of her testimony. I happen to believe that Ms. Lewinsky was the one who was the most concerned about the gifts. And I believe a showing beyond a reasonable doubt has not been made that the President masterminded the hiding of the gifts.

So I cannot deny what Representative GRAHAM said: If you call somebody up at 2:30 in the morning, you are probably up to no good. But if you call somebody up at 2:30 in the morning, you have not necessarily accomplished the crime of obstruction of justice.

I realize there is a separate question of whether these same acts by the President, apart from the Federal criminal law, constitute high crimes and misdemeanors. I do not. I will discuss that in more detail in a future statement in the RECORD.

But I would like to conclude by just talking a little bit about this impeachment issue in the modern context. When I say that the vote in 1996 is the primary issue, I don't just mean that in terms of the rights of people. I mean it in terms of the goal of the Founding Fathers, and our goal today; that is, political stability in this country. We don't want a parliamentary system. And we don't want an overly partisan system.

I see the 4-year term as a unifying force of our Nation. Yet this is the second time in my adult lifetime that we have had serious impeachment proceedings, and I am only 45 years old. This only occurred once in the entire 200 years prior to this time. Is this a fluke? Is it that we just happened to have had two "bad men" as Presidents? I doubt it. How will we feel if sometime in the next 10 years a third impeachment proceeding occurs in this country so we will have had three within 40 years?

I see a danger in this in an increasingly diverse country. I see a danger in this in an increasingly divided country. And I see a danger in this when the final argument of the House manager is that this is a chapter in an ongoing "culture war" in this Nation. That troubles me. I hope that is not where we are and hope that is not where we are heading.

It is best not to err at all in this case. But if we must err, let us err on the side of avoiding these divisions, and let us err on the side of respecting the will of the people.

Let me conclude by quoting James W. Grimes, one of the seven Republican Senators who voted not to convict Andrew Johnson. I discovered this speech, and found out that the Chief Justice had already discovered and quoted him, and said he was one of the three of the ablest of the seven. Grimes said this in his opinion about why he wouldn't convict President Johnson:

> I cannot agree to destroy the harmonious working of the Constitution for the sake of getting rid of an unacceptable President. Whatever may be my opinion of the incumbent, I cannot consent to trifle with the high office he holds. I can do nothing which, by implication, may be construed as an approval of impeachment as a part of future political machinery.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Mrs. HUTCHISON. Mr. Chief Justice, if a university president, a minister or priest, general or admiral, or a corporate chief executive had engaged in a sexual relationship with an intern under his charge, he would lose his position, with scant attention paid to whether or not such a relationship were "consensual." We place in certain individuals so great a measure of trust that they are seen as acting essentially in loco parentis.

The question before us today is: Should the President of the United States be held to a lower standard?

The answer is: No. To the contrary; we can bestow no higher honor than to select one individual to represent us all as President. In one person we endow the character of our Nation, as the head of state and the head of government.

It is with great disappointment, but firm resolve, that I have concluded the President has not lived up to this high standard and that he should be removed from office. The House managers have demonstrated beyond reasonable doubt that, in addition to indefensible behavior with an intern, which was not illegal, the President engaged in the obstruction of justice and, as an element of that obstruction, committed perjury before a Federal grand jury, which is.

This case began as an alleged civil rights violation of a young woman who came to the bar seeking justice. The Supreme Court unanimously decided to permit her case against the President to go forward. It was that case which led to the revelations regarding the President's relationship with Monica Lewinsky, the White House intern.

Incredibly, an element of the President's defense is that we should take the long view. We are told by the President's defenders that we should not judge his actions toward one individual, in which he schemed to impede her ability to seek redress, because his overall actions on civil rights are so positive. We are asked not to judge his treatment of one woman, or two women, but to evaluate his policies that affect all women.

Would the President's defenders forgive a schoolteacher who molests a student, simply because the teacher's classes are popular and his students all go on to college? Should we ignore the police officer who personally enriches himself by accepting graft, so long as his arrest record is high? Would we look away from the corporate executive who illegally profits from insider information, as long as his shareholders are happy with the return on their investment? We would not sustain civil society for long with such moral relativism as our guide.

The President had it solely within his power to keep the country from the course on which it has been for the past year. First, of course, he could have chosen not to engage in the behavior in question. Having behaved as he did, though, and having been discovered, the President could have acknowledged his own actions and accepted the consequences. This could have been an honorable resignation, or an admission, contrition, and a firm resolve to take responsibility; with a request for resolution in a manner short of impeachment and trial.

Instead, the President chose to deny the allegations, and fight them with a coordinated scheme of manipulation and obstruction. He lied outright to the American people, to his close associates, and to his Cabinet. An enduring image of this whole tale will be his finger-pointing lie to the American people, even after admonishing us to listen closely, because he didn't want to have to say it again.

Even in view of these actions, the President missed numerous opportunities to right this matter and get it behind him and the country. At virtually every opportunity, though, he chose an action that further prolonged the matter and led directly to his impeachment.

The President chose to impede the pursuit of justice by the independent counsel, who was given the authority to investigate this matter by the President's own Attorney General.

The President chose to construct a cover story with Ms. Lewinsky, should their relationship become public.

The President chose to direct his personal staff to retrieve items from Ms. Lewinsky that he knew were under subpoena in a Federal investigation.

The President chose to seek the assistance of friends to find a job for Ms. Lewinsky, and to intensify that job search when it became clear that Ms. Lewinsky had become a target of the civil suit against him.

The President chose to lie to his staff about the nature of his relationship with Ms. Lewinsky herself, with the expectation that these lies would become part of the public perception.

The President chose to lie before a Federal grand jury about his actions with regard to some of the elements of obstruction of justice, including the concealment of the gifts that were likely to become evidence in the civil case against him.

As a result of these choices by the President of the United States, the Senate was left with no choice other than to confront the charges and hear the case pursuant to the President's impeachment in the House of Representatives.

In so doing, the Senate conducted a fair and expeditious trial. We rejected the idea of an early test vote that would have truncated the process. We rejected the motion for an early dismissal. The Senate is fulfilling its constitutional responsibility to hold a trial with a complete evidentiary record and a final vote on each article of impeachment sent to the Senate by the House of Representatives.

Through skillful use of the written record compiled by the independent counsel, videotaped depositions, and hard evidence, the House managers presented a compelling case. The case for perjury was difficult. The President's testimony before the grand jury was guarded. He was fully aware of the evidence the prosecutors had with respect to this case. He chose his words carefully. He admitted his relationship with Ms. Lewinsky before the grand jury, but did so only after confronted with clinical evidence of its existence.

He lied to the grand jury to deny other key facts. He perjured himself as an element of a broader attempt to obstruct justice. There are two false statements that are the most persuasive. First, when asked if he directed Betty Currie to retrieve gifts from Ms. Lewinsky, he stated unequivocally, "No sir, I did not do that."

The facts are contrary to that allegation. Ms. Lewinsky testified that Betty Currie called her to suggest that Ms. Lewinsky give her the gifts. We have cellular telephone records that indicate a call from Ms. Currie to Ms. Lewinsky at about the time the gifts were picked up. It was clear that Ms. Currie initiated a retrieval of the gifts at the direction of the President, for this was the only source of information she had that there were gifts. The evidence is overwhelming that the President directed Betty Currie to retrieve these gifts. Thus, his statement is false. Not only is this perjury, it is obstruction of justice.

The President also lied before the grand jury about his conversations with White House aides regarding Ms. Lewinsky. He testified that "I said to them things that were true about this relationship." We know this to be completely false from the testimony of Sidney Blumenthal, who stated directly and unequivocally that the President had lied to him about the nature of his relationship with Ms. Lewinsky.

The legal standard for perjury is high. Under 18 U.S.C. 1623(a), a person is guilty of perjury if he or she knowingly makes a false, material statement under oath in a Federal court or grand jury. I believe these statements were false, intentional and material in that they attempt to put a false impression on key events in a series of attempts to obstruct justice. In effect, the President knew his relationship with Ms. Lewinsky was shameful, but not necessarily illegal. But he knew his obstruction of justice was illegal—so he lied about it to a grand jury.

In many ways, obstruction of justice is even more corrosive than perjury to the machinery of our legal system. As the target of a grand jury and an independent prosecutor, the President has defended himself against charges of perjury by claiming he was caught off guard, was misinterpreted, was attempting to mislead but not lie.

Obstruction of justice, though, is a quite different matter. It is an affirmative act that occurs at the person's own initiative; in this case, the President. It involves actions taken that were not instigated by anyone else.

It has been said in his defense that the President did not initiate his perjury in that he was led to it by the prosecutor. But there is no similar argument regarding article II, the obstruction of justice. Without the affirmative actions of the President, there would have been no article II.

The President sought out Mr. Blumenthal to tell his misleading story about the nature of his relationship and the character of Ms. Lewinsky.

Separately, the President enlisted his personal secretary to further his obstruction of justice. He asked Ms. Currie to retrieve the gifts. He summoned her to coach her testimony under the guise of "trying to figure out what the facts were." He did so within hours after coming back to the White House on January 17 from his deposition in the civil sexual harassment lawsuit. He required a face-to-face meeting with her the next day, a Sunday. It couldn't be done over the phone, and it couldn't wait until Monday. It was clear he needed her to reaffirm his false testimony. This is obstruction of justice.

The edifice of American jurisprudence rests on the foundation of the due process of law. The mortar in that foundation is the oath. Those who seek to obstruct justice weaken that foundation, and those who violate the oath would tear the whole structure down.

Every day, thousands of citizens in thousands of courtrooms across America are sworn in as jurors, as grand jurors, as witnesses, as defendants. On those oaths rest the due process of law upon which all of our other rights are based.

The oath is how we defend ourselves against those who would subvert our system by breaking our laws. There are Americans in jail today because they violated that oath. Others have prevailed at the bar of justice because of that oath.

What would we be telling Americans—and those worldwide who see in America what they can only hope for in their own countries—if the Senate of the United States were to conclude: The President lied under oath as an element of a scheme to obstruct the due process of law, but we chose to look the other way?

I cannot make that choice. I cannot look away. I vote "guilty" on article I, perjury. I vote "guilty" on article II, obstruction of justice.

I ask unanimous consent that an analysis of the articles of impeachment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ANALYSIS OF THE ARTICLES OF IMPEACHMENT

(By Senator Kay Bailey Hutchison)

"Do you solemnly swear that in all things appertaining to the trial of the impeachment of William Jefferson Clinton, President of the United States, now pending, you will do impartial justice according to the Constitution and laws: So help you God?"

When the Chief Justice of the United States administered this oath and I signed my name to it on January 7, 1999, as one of one hundred triers of fact and law in the Court of Impeachment of the President of the United States, I did so with a heavy heart, but with a clear mind.

That solemn occasion in the well of this Senate, and the weight of the burden imposed on us as "jurors" in only the second such proceeding in the history of our Nation, reminded me with vivid clarity that our Constitution belongs to all of us.

I was reminded as well, however, that the laws of our Country are applicable to us all, including the President, and they must be obeyed. The concept of equal justice under law and the importance of absolute truth in legal proceedings is the foundation of our justice system in the courts.

In this proceeding, I have drawn conclusions about the facts as I see them, and I have applied the law to those facts as I understand that law to be.

UNDERLYING FACTS LEADING TO THIS PROCEEDING

The details of an intimate personal relationship that occurred during the years 1995, 1996, and 1997 between the President of the United States and a 22-year-old female White House Intern who was directly under his command and control have been chronicled throughout the world and are described in thousands of pages of evidence and materials filed with both the House and the Senate in this case and in bookstores across America. They involved intimate sexual relations within the White House, personal gifts, jobs within and outside of government, and "missions accomplished." The underlying details will not be repeated by me here.

While some facts about that relationship and the timing of some events were disputed at the trial in the Senate, their essence has been publicly admitted by the President, by his Counsel, and by the Intern in written or verbal form, including sworn testimony in various forms.

However inappropriate the behavior of the President was, the legal issues in the impeachment trial do not deal with this relationship. All accusations against the President here relate instead to alleged attempts to prevent the disclosure of this relationship in a pending civil rights lawsuit against the President in an Arkansas

Federal court and to the public. That is the critical factor that has brought us to this extraordinary moment in our Nation's history when we are considering whether or not to remove from office the President of the United States.

CORE FACTS LEADING TO THE ARTICLES OF IMPEACHMENT

In May, 1994, a female citizen and employee of the State of Arkansas filed a lawsuit in an Arkansas Federal District Court, alleging, in summary, that, in 1991 while President Clinton was Governor of Arkansas, the Governor committed the civil offense of sexual harassment against her by insisting that she perform sexual acts identical or similar to those later performed by the Intern.

In the course of preparing for the trial of the Arkansas case, the plaintiff, with the consent of the presiding Federal Judge, attempted to develop evidence that defendant Clinton had, before and afterward, engaged in patterns of conduct that were similar to the allegations of the plaintiff in the case.

In December, 1997, the Arkansas Judge ordered defendant Clinton to answer a written interrogatory naming every state and federal employee with whom he had had sexual relations since 1986. President Clinton answered: "none."

In an alleged attempt to avoid giving a personal deposition in the case pursuant to a December, 1997, subpoena, the White House Intern, who had since become employed at the Pentagon, on January 7, 1998, signed an affidavit denying any sexual relationship with President Clinton. Six days later, on January 13, the Intern accepted a job offer at a major corporation in New York City. A friend called the President shortly thereafter with the message: "Mission accomplished."

While the President was giving his own deposition in the Arkansas case, his counsel tendered this affidavit to the Arkansas Federal Court, referred to it, and vouched for its accuracy in the presence of the President. The President, knowing the affidavit to be false, sat by and said nothing. The President's counsel subsequently advised the Court that this affidavit was not reliable and should be ignored.

Defendant Clinton was subpoenaed to give the above-mentioned deposition in the case and did so on January 17, 1998. In a rare event, the Arkansas Judge attended for the purpose of supervising the deposition of the President in a Washington lawyer's offices. While there, the Judge and participating counsel for the parties, either knowingly or unknowingly, formulated a definition of the meaning of the words "sexual relations" to exclude certain forms of human contact that in their commonly accepted meaning would be included. But, allegedly upon the basis of this definition, President Clinton denied, under oath, among other things, that he had sexual relations with the Intern.

On January 21, 1998, the existence of an alleged inappropriate relationship between the President and the White House Intern blazed across the Nation from a story first published in the Washington Post carrying the headline: "Clinton Accused of Urging Aid to Lie; Starr Probes Whether President Told Woman to Deny Alleged Affair to (plaintiff's) Lawyers."

Evidence introduced and debated by the House Managers and the President's Counsel in the Senate painted a picture of frantic activities within and without the White House throughout the month before and during the week following this public disclosure, by the President, by his friends, by White House staff and employees, and others. It was alleged, among other things, that the President coached, manipulated, and influenced false testimony of witnesses, including the Intern, engineered the hiding of gifts and evidence that was subject to subpoena, lied to his staff and friends about the facts in order to assure that they would give false testimony in public and legal proceedings, manipulated the Intern into signing the false affidavit in the Arkansas Federal Court, and, after failures to obtain employment for her elsewhere, rewarded the Intern by obtaining for her an out-of-town job in return for her cooperative falsehoods or silence. The sequence and importance of such activities, much of which is not disputed in the evidence, were debated aggressively by the House Managers and the President's Counsel in the Senate, but the essence of those activities was not seriously denied.

After numerous public denials immediately after the public disclosure, and after several days of alleged "damage control" designed to synchronize false stories to be provided by various parties in response to all inquiries, and event of major, historic, and future national importance occurred.

On January 26, 1998, the President addressed the Nation about this issue at a press conference in Washington, since replayed in television broadcasts thousands of times. On that occasion, the President looked sternly into the camera and pointed his finger directly at the American people and stated:

"I want to say one thing to the American people. I want you to listen to me. I'm going to say this again: I did not have sexual relations with that woman (naming

the Intern). I never told anybody to lie, not a single time. Never. These allegations are false."

During the following months, the gist of this representation filled the news media around the World and in every conceivable form, provided by every conceivable spokesman for the President, including government employees, Cabinet officials, lawyers, public relations specialists, political advisors, friends, Members of Congress, and others.

After an immunity agreement was reached between the Independent Counsel (discussed below) and the Intern on July 28, 1998, the Intern delivered a dress to the Independent Counsel that, according to her testimony, had been worn by her on February 28, 1997, during a sexual encounter with the President in the White House. The dress was tested for the President's DNA. The test was positive.

The President of the United States had lied directly to the American people.

THE PRESIDENT'S APPEARANCE BEFORE THE GRAND JURY

After months of negotiation for an appearance by the President, on July 17, 1998, the President was subpoenaed to appear before a Federal grand jury in Washington by the Independent Counsel assigned to investigate multiple issues concerning the President, including issues involving potential perjury by both the President and the Intern in the Arkansas sexual harassment case, issues relating to the President's relationship with the Intern, and issues relating to alleged actions taken to influence the testimony of witnesses in the Arkansas case and before the grand jury, attempts to discredit the Intern by describing her as a "stalker," as "ignorant," and as "stupid," all done in an alleged effort to cover up and conceal the underlying relationship between the President and the Intern, to obstruct the right of the Arkansas plaintiff to pursue her sexual harassment claims in the Arkansas Federal Court, and to obstruct the proceedings of the grand jury itself.

After various losing motions and court proceedings asserting various executive privileges against a Presidential appearance before the grand jury, the President, on August 17, 1998, gave testimony voluntarily to the grand jury by deposition given in the White House and piped live to the grand jury. The prior subpoena was withdrawn by the Independent Counsel.

During and since this appearance, the President has repeatedly acknowledged publicly that he had an inappropriate relationship with the White House Intern but has insisted that he was misleading but truthful in his depositions in the Arkansas case and before the Federal grand jury and did not commit any act that would constitute an obstruction of any legal proceeding or the rights of any party associated with any portion of this historic tale.

IMPEACHMENT OF THE PRESIDENT

The Ethics in Government Act, 28 U.S.C. § 595(c), directs any Independent Counsel appointed under that law to advise the House of Representatives of any substantial and credible information received during the course of an investigation that may constitute grounds for the impeachment of the President of the United States.

On September 9, 1998, the Office of Independent Counsel submitted its referral to the House of Representatives consisting of thousands of pages of sworn testimony from many parties, recorded telephone conversations, video tapes, interviews, reports, legal briefs, and arguments, including the following partial introduction:

"This Referral presents substantial and credible information that President Clinton criminally obstructed the judicial process, first in a sexual harassment lawsuit in which he was a defendant and then in a grand jury investigation."

The Judiciary Committee of the House, in its report to the full House of Representatives, recommended four Articles of Impeachment of the President. On December 19, 1998, the House of Representatives declined to approve two of the proposed Articles, but did approve the following two Articles, and delivered H. Res. 611 to the Senate for trial in accordance with the provisions of Section 3 of Article I of the Constitution of the United States:

Impeachment Article I, the "perjury" article, accuses the President of violating his constitutional duty to take care that the laws are faithfully executed, of willfully corrupting and manipulating the judicial process, and of impeding the administration of justice for personal gain and exoneration, in that:

While under oath before the Federal grand jury, the President gave perjurious testimony before the grand jury concerning one or more of the following: (i) the nature and details of his relationship with the Intern; (ii) prior perjurious, false, and misleading testimony he gave in the Arkansas case; (iii) prior false and misleading statements he allowed his attorney to make about the Intern's affidavit in the Ar-

kansas case; and (iv) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in the Arkansas case.

Impeachment Article II, the "obstruction of justice" and "witness tampering" article, accuses the President of violating his constitutional duty to take care that the laws are faithfully executed, of preventing, obstructing, and impeding the administration of justice, and, to that end, of engaging personally and through his subordinates and agents in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to the Arkansas Federal sexual harassment case.

In support of the accusation, Article II accuses the President of seven specific acts of obstruction: (i) corruptly encouraging the Intern to execute false affidavit in the Arkansas case, (ii) corruptly encouraging the Intern to give false testimony in the Arkansas case if and when she was called to testify personally in that case, (iii) corruptly engaging in, encouraging, or supporting a scheme to conceal evidence that had been subpoenaed in the Arkansas case, (iv) obtaining a job for the Intern in order to corruptly prevent her truthful testimony in the Arkansas case, (v) corruptly allowing his attorney in the Arkansas case to make false statements to the Federal Judge characterizing the Intern's affidavit in order to prevent questioning deemed relevant by the Judge, (vi) corruptly influencing his personal secretary to give false testimony in the Arkansas case, and (vii) making false and misleading statements to witnesses in the Federal grand jury proceeding, confirmed by the witnesses, in order to corruptly influence the testimony of those witnesses.

THE TRIAL IN THE SENATE

H. Res. 611 was received in the Senate on December 19, 1998. The trial commenced on January 7, 1999. During the trial, we have listened to hours of arguments from the House Managers and Counsel for the President, and have engaged in hours of internal Senate debate, both public and private. We have been provided with access to thousands of pages and other forms of evidence relating to the accusations contained in the two Articles of Impeachment.

Under the Constitution, the power to impeach (or "accuse") a President of an impeachable offense is vested solely in the House of Representatives. As Senators and triers of both the facts and the law, we cannot "accuse," "venture outside the record," or "create and assert new allegations." We are bound to cast our votes of "guilty" or "not guilty" solely on the two Article of Impeachment as presented by the House.

I do not hold to the view of our Constitution that there must be an actual, indictable crime in order for an act of a public officer to be impeachable. It is clear to this Senator that there are, indeed, circumstances, short of a felony criminal offense that would justify the removal of a public officer from office, including the President of the United States. Manifest injury to the Office of the President, to our Nation, and to the American people, and gross abuses of trust and of public office clearly can reach the level of intensity that would justify the impeachment and removal of a leader. One of the Articles of Impeachment presented by the House Judiciary Committee to the full House of Representatives in this case charged the President with precisely such an offense. The House of Representatives did not approve that Article, and such a charge is, therefore, not before us in this proceeding.

The two Articles of Impeachment before the Senate in this proceeding do in fact accuse the President of committing three actual crimes, "perjury before the grand jury," "obstruction of justice," and "witness tampering," that meet the requirements for conviction of an indicted defendant in a criminal case brought under Federal law. The House Managers and Counsel for the President reviewed those laws extensively. Thus, in order to find the President "guilty" under either Article, this Senator must conclude that all of the statutory prerequisites to conviction are present that would be required to convict the President of one or more of those crimes, if this proceeding were, instead, the prosecution of felony criminal indictments in a United States District Court under Federal law.

The President's Counsel did not significantly challenge the underlying facts in the case, but insisted throughout (i) that no crimes have been committed, and (ii) that, even if crimes have been committed, they "do not rise to the level of the high crimes and misdemeanors" contemplated by the Constitution that would permit a conviction in this proceeding, since a finding of "guilty" by 67 Senators under either Article would, under the Constitution, automatically result in the removal of the President from office and prohibit him forever from holding another office of profit or trust under the United States.

PERJURY, OBSTRUCTION OF JUSTICE, AND WITNESS TAMPERING AS IMPEACHABLE OFFENSES

Section 4 of Article II of our Constitution provides:

"The President . . . shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high crimes and misdemeanors."

Because of the uniqueness of this Constitutional process in which "guilt" and "punishment" are combined, each Senator, as a trier of both fact and law, before voting as to the guilt or innocence of the President under either of the Articles must answer the basic question: Do the crimes of perjury, witness tampering, and obstruction of justice as alleged in this proceeding rise to the level of the "high crimes and misdemeanors" included in our Constitution that would justify the automatic removal from office of the President of the United States?

The Supreme Court of the United States has observed that there is an occasional misunderstanding to the effect that the crime of "perjury" is somehow distinct from "obstruction of justice." *United States* v. *Norris,* 300 U.S. 564, 574 (1937). They are not. While different elements make up each crime, each is calculated to prevent a court and the public from discovering the truth and achieving justice in our judicial system. Moreover, it is obvious that "witness tampering" is simply another means employed to obstruct justice.

This Senate on numerous occasions has convicted impeached Federal Judges on allegations of perjury. Moreover, the historical fact is that "high crimes and misdemeanors," as used and applied in English law on which portions of our Constitution were founded, included the crimes of "obstructing the execution of the lawful process" and of "willful and corrupt perjury." Blackstone, Commentaries on the Laws of England, a treatise described by James Madison as "a book which is in every man's hand." See article entitled "The True History of High crimes and misdemeanors," by Gary L. McDowell, Director of the Institute of United States Studies at the University of London, appearing in the Wall Street Journal, January 25, 1999.

Some argue that the precedents of the Senate in cases involving Federal Judges are not applicable because Federal Judges are not elected by the people and the President is. This is a shocking analysis to this Senator. That the President is elected should call for a "higher" standard of conduct, not a lower one. The fact is that the standards are set by the Constitution for all officers of the Federal government. They are precisely the same, and we are obligated to apply them evenly.

It is argued by others that this test leaves Presidents at risk of being impeached and convicted for trivial offenses. The two-thirds vote requirement for conviction imposed by the Constitution, itself, is designed to protect public officers from precisely such a result.

The President's Counsel and a number of Senators advance a "felony-plus" interpretation of the Constitutional terms "high crimes and misdemeanors." They seem to agree that the crimes of perjury and obstruction of justice are "high crimes" under the Constitution, but they argue that, even if guilt is admitted, nevertheless, a Senator should vote "not guilty," on any article of impeachment of a President, if the "economy is good," if the underlying facts in the case are "just about sex," or if the Senator simply feels for whatever personal reason that the President ought to stay in office despite having committed felonies while holding it.

To this Senator, this astounding application of the plain language of our Constitution strikes at the very heart of the rule of law in America. It replaces the stability guaranteed by the Constitution with the chaos of uncertainty. Not only does it obliterate the noble ideal that our highest public officer should set high moral standards for our Nation, it says that the officer is free to commit felonies while doing it if the economy is good, if the crime is just about sex, or if, except for the crime, "things are going pretty well right now," or simply that "they can indict and try the President for the crime after leaving office in a couple of years."

I will not demean our Constitution or the office of the Presidency of the United States by endorsing the felony-plus standard.

ELEMENTS REQUIRED FOR CONVICTION OF PERJURY

Lying is a moral wrong. Perjury is a lie told under oath that is legally wrong. To be illegal, the lie must be willfully told, must be believed to be untrue, and must relate to a material matter. Title 18, Section 1621 and 1623, U.S. Code.

If President Washington, as a child, had cut down a cherry tree and lied about it, he would be guilty of "lying," but would not be guilty of "perjury."

If, on the other hand, President Washington, as an adult, had been warned not to cut down a cherry tree, but he cut it down anyway, with the tree falling on a man and severely injuring or killing him, with President Washington stating later

under oath that it was not he who cut down the tree, that would be "perjury." Because it was a material fact in determining the circumstances of the man's injury or death.

Some would argue that the President in the second example should not be impeached because the whole thing is about a cherry tree, and lies about cherry trees, even under oath, though despicable, do not rise to the level of impeachable offenses under the Constitution. I disagree.

The perjury committed in the second example was an attempt to impede, frustrate, and obstruct the judicial system in determining how the man was injured or killed, when, and by whose hand, in order to escape personal responsibility under the law, either civil or criminal. Such would be an impeachable offense. To say otherwise would be to severely lower the moral and legal standards of accountability that are imposed on ordinary citizens every day. The same standard should be imposed on our leaders.

Nearly every child in America believes that President Washington, as a child himself, did in fact cut down the cherry tree and admitted to his father that he did it, saying simply: "I cannot tell a lie."

I will not compromise this simple but high moral principle in order to avoid serious consequences to a successor President who may choose to ignore it.

ELEMENTS REQUIRED FOR CONVICTION OF WITNESS TAMPERING AND OBSTRUCTION OF JUSTICE

Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engage in misleading conduct toward another person, with intent to—

(i) influence, delay, or prevent the testimony of any person in an official proceeding;

(ii) cause or induce any person to (A) withhold testimony or evidence from an official proceeding, (B) alter or destroy evidence in an official proceeding; (C) evade legal process summoning that person as a witness or produce evidence in an official proceeding to which the person has been summoned;

(iii) harass another person and thereby hinder, delay, prevent, or dissuade any person from attending or testifying in an official proceeding; or

(iv) corruptly influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice;

is guilty of witness tampering and/or obstruction of justice. Title 18, Sections 1512 and 1503, U.S. Code.

The elements of these crimes are evident from the laws themselves and do not need amplification here.

MY VOTES ON THE ARTICLES OF IMPEACHMENT

Based upon my analysis of the facts of this case and my own conclusions of law, I have concluded:

(i) The President of the United States willfully, and with intent to deceive, gave false and misleading testimony under oath with respect to material matters that were pending before the Federal grand jury on August 17, 1998, as alleged in Article I presented to the Senate. I, therefore, vote "Guilty" on Article I of the Articles of Impeachment of the President in this Proceeding.

(ii) The President of the United States engaged in a pattern of conduct, performed acts of willful deception, and told and disseminated massive falsehoods, including lies told directly to the American people, that were designed and corruptly calculated to impede, obstruct, and prevent the plaintiff in the Arkansas Federal sexual harassment case from seeking and obtaining justice in the Federal court system of the United States, and to further prevent the Federal grand jury from performing its functions and responsibilities under law, I, therefore, vote "Guilty" on Article II of the Articles of Impeachment of the President in this proceeding.

ARTICLE I, PERJURY—EXPLANATION OF VOTE

This Article accuses the President, while giving sworn testimony on August 17, 1998, before the Federal grand jury in Washington, D.C., of willfully corrupting and impeding the judicial process and the administration of justice by giving false and perjurious testimony about his relationship with the White House Intern, about his January 17, 1998, deposition testimony in the Arkansas sexual harassment case, about his role in developing and tendering to the Federal Judge in the Arkansas case an affidavit that was knowingly false while giving his deposition in the Arkansas case, and about his attempts to influence the testimony of White House employ-

ees and other witnesses in the Arkansas case who were at the time also subject to the jurisdiction of the grand jury.

In reaching my decision with respect to this Article, I have concluded beyond a reasonable doubt that the President gave false and misleading testimony in the Arkansas sexual harassment case and in his appearance before the Federal grand jury.

At the trial in the Senate, the President's Counsel argued that, even if it were to be admitted that the testimony in both instances were false and misleading, the testimony would, nevertheless, not amount to perjury because it does not reach the level of "materiality" that is required for a lie to rise to the level of a crime under Federal law.

They attempt to trivialize the issues raised by Article I by reference to such questions as "Who touched whom, and where," and to answers to questions by the President such as "It depends on what the meaning of 'is' is."

The false testimony complained of in Article I of the Articles of Impeachment relates to testimony before the grand jury, and only indirectly to the testimony in the Arkansas case. The Federal grand jury was investigating broad issues and many persons at the time the President gave false and misleading testimony before it.

Willful, corrupt, and false sworn testimony before a Federal grand jury is a separate and distinct crime under applicable law and is material and perjurious if it is "capable" of influencing the grand jury in any matter before it, including any collateral matters that it may consider. See, Title 18, Section 1623, U.S. Code, and Federal court cases interpreting that Section.

The President's testimony before the Federal grand jury was fully capable of influencing the grand jury's investigation and was clearly perjurious.

ARTICLE II, OBSTRUCTION OF JUSTICE—EXPLANATION OF VOTE

When, on January 26, 1998, the President of the United States pointed his finger at the American people and represented to them that he was the victim of lies and not their perpetrator, he lied to America. The evidence is overwhelming that he did so because all of his "ducks were in a row."

The White House Intern had executed a false affidavit; subpoenaed gifts had been hidden; his own false deposition had been given; other witnesses had testified falsely based upon his own false representations to them; retribution against the White House Intern had been programmed should she abandon loyalty; and loyalty had been confirmed by the Intern's acceptance of a special new job in New York, that represented, according to a friend of the President, "Mission accomplished."

Then came the dress, the tapes, and the Federal grand jury. The attempt to obstruct and cover-up grew, expanded, and developed a life of its own. It overpowered the underlying offense itself. A new strategy was required, fast: The President was advised: "Admit the sex, but never the lies." Shift the blame; change the subject. Blame it on the plaintiff in the Arkansas case. Blame it on her lawyers. Blame it on the Independent Counsel. Blame it on partisanship. Blame it on the majority members of the House Judiciary Committee. Blame it on the process.

The blame belongs to the President of the United States. This juror has concluded that the President is guilty of obstructing justice beyond a reasonable doubt, as alleged in Article II of the Articles of Impeachment in this proceeding.

CONCLUDING STATEMENT

This has been a case about civil rights. It has been about the right of the weakest and the strongest among us to have equal access to our system of justice in order to pursue legal and Constitutional rights and to fix responsibility for alleged legal wrongs.

During the last half of this passing century, we have managed to maintain the proposition established over 200 years ago that every American is entitled to equal justice under the law.

In the middle of the century, our Country and our courts began to recognize the inherent evil of discrimination based on race and national origin. In the last two decades, we have begun to address issues of gender. We have enacted sexual harassment laws that have become the symbols of the high moral standards of our Country. They permit half of our citizens to work freely among us without fear of harm and sexual abuse.

It has been said by many, in attempts to demean this proceeding, that this case is, simply, "all about sex." In some ways, it is. It is about the right of an employed female American living in the State of Arkansas to hold a job without being forced to engage in it by the Governor of that State. That is not the question before us, and I express no opinion on that subject. But I do know that the President of the

United States willfully and unlawfully obstructed her efforts in the Federal courts of our Land to pursue her cause. We are forced to leave it to history to determine whether her cause was factually just, and to define the message that the conduct of our Country's highest public officer sends into the next century.

If only the President had followed the simple, high moral principle handed to us by our Nation's first leader as a child and had said early in this episode "I cannot tell a lie," we would not be here today. We would not be sitting in judgment of a President. We would not be invoking those provisions of the Constitution that have only been applied once before in our Nation's history.

But we should all be thankful that our Constitution is there, and we should take pride in our right and duty to enforce it. A hundred years from now, when history looks back to this moment, we can hope for a conclusion that our Constitution has been applied fairly and survives, that we have come to principled judgments about matters of national importance, and that the rule of law in American has been sustained.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR KENT CONRAD

Mr. CONRAD. Mr. Chief Justice, I have served 12 years in the U.S. Senate.

I respect this institution and all of you as colleagues. I especially respect the job our leaders have done in this trial. They have performed in the highest tradition of the U.S. Senate. Most of all, I respect our oath of office: to "preserve, protect, and defend the Constitution of the United States." I know all of us take that oath seriously.

At the end of this proceeding, however, we may reach different conclusions about what the Constitution compels us to do. The simple truth is that this case is not black and white. As Mr. Manager GRAHAM said, reasonable people may come to different conclusions.

There is one thing on which we all agree: The President's conduct was wrong. In fact, it was very wrong. But the question before us is not whether the President's conduct was wrong. The question is whether that conduct meets the constitutional standard for removing a President from office.

That requires us to make a profound judgment on whether we should overturn the results of a national election. Sixty-seven Members in this Chamber can nullify the votes of the 47 million Americans who voted for President Clinton. That is an awesome power. It must be used with great restraint.

There are three questions we must answer in the affirmative to remove a President: First, did the President commit the crimes he is charged with? Second, are these crimes properly addressed by impeachment, or would they be better left to the criminal justice system? Third, do the charges rise to the level of high crimes and misdemeanors and justify the removal of the President of the United States?

Let me start with the first question. The charges against the President are perjury and obstruction of justice.

Five experienced Federal prosecutors representing both Republican and Democratic administrations concluded that no responsible Federal prosecutor would bring perjury charges based on the facts in this case.

The President in his grand jury testimony acknowledged an intimate and inappropriate relationship with Monica Lewinsky. The

details of that relationship are in conflict. But I do not believe relatively minor differences in the details of that relationship would result in a perjury conviction.

On the obstruction charges, again the Federal prosecutors told us they would not bring charges based on the facts in this case.

Ms. Lewinsky has testified that no one ever asked her to lie or promised her a job for her silence. Ms. Lewinsky further testified she never discussed the contents of her testimony with the President, ever. Finally, she also testified that she believed she could file a truthful affidavit.

There are two elements of the obstruction of justice charges that do trouble me. One is the transfer of gifts from Ms. Lewinsky to Betty Currie. That could constitute concealment of evidence. But Betty Currie has testified five times that Ms. Lewinsky called her to arrange for the transfer of gifts. And both the President and Betty Currie have denied that the President initiated the transfer.

The second troubling charge is the questioning of Betty Currie by the President after his deposition in the Jones case. I find it hard to believe the President was just refreshing his memory when on two occasions he put the same set of questions to Ms. Currie. That could constitute witness tampering, but at the time of these conversations, Betty Currie was not a witness in any judicial proceeding. And she has testified that she did not feel pressured to agree with the President.

Although I am not certain that there was no wrongdoing, I do conclude that the charges have not been proven beyond a reasonable doubt.

That leads me to the second question: even if these charges were proven, is this a matter for impeachment, or should it be left to the ordinary course of judicial proceeding?

For me, it is a question best answered by the rule of law that governs us all: the Constitution of the United States.

James Madison kept a journal of the Constitutional Convention. In it, he said many of the Founders opposed impeachment altogether. Others believed impeachment was needed to protect against treason, bribery, or other "attempts to subvert the Constitution." So a carefully crafted, very narrow compromise was adopted.

Article II, section 4 originally read: "The President . . . shall be removed from office on impeachment for, and conviction of, Treason, Bribery or other high crimes and misdemeanors against the United States."

James Wilson, a 19th century constitutional scholar has written that impeachment was designed for "great and publick [sic] offences by which the Commonwealth was brought into danger."

These charges against the President just do not measure up to that standard. Hiding presents under a bed, asking a secretary leading questions, these can hardly be the great and public offenses that our Founding Fathers had in mind. These charges, and the facts behind them, simply do not bring our Commonwealth into danger.

So is the President above the law? Most emphatically, no.

William Rawle, a contemporary of the Founders and a distinguished commentator on the Constitution wrote: "In general, those offenses which may be committed equally by a private person as a

public officer, are not the subject of impeachment . . . [A]ll offenses not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceeding."

I do not argue that no private wrongs can rise to the level of impeachable offense, but they must be heinous crimes.

Article I, section 3, of the Constitution says: "Judgment in Cases of Impeachment shall not extend further than to removal from Office . . . but the party convicted shall nevertheless be liable and subject to Indictment, trial, judgment and punishment according to law."

The President is not above the law. He can be prosecuted, indicted, convicted, and sentenced for alleged wrongful acts, just like any other American.

We have our Founding Fathers' own words, distinguishing between public crimes and those that involve the President's conduct as a private individual. We have their deeds to guide us as well. When Vice President Aaron Burr killed Alexander Hamilton in a duel and was indicted for murder, impeachment was not even considered.

Almost 200 years later, the House Judiciary Committee dismissed a tax evasion charge against President Nixon when an overwhelming majority of the committee concluded, in the words of Congressman Ray Thornton, "These charges may be reached in due course in the regular process of law."

In the case before us today, the underlying offense is that the President had an extramarital affair. He is alleged to have lied about that under oath, and to have obstructed justice. These are serious allegations, and we have considered them seriously.

Offensive as they were, the President's actions have nothing to do with his official duties, nor do they constitute the most serious of private crimes. In my judgment, these are matters best left to the criminal justice system.

That brings me to the third and final question: do the charges so fundamentally threaten our democratic system of government that they constitute high crimes and misdemeanors and justify removal of the President from office?

Our Founding Fathers told us two things about impeachment. First, the matter at hand had better be a very significant crime—a "high crime" that threatens our fundamental freedoms. These alleged crimes do not meet that standard. Second, they told us that it better not be partisan. That is why they required a two-thirds vote in the Senate to remove a President.

They feared the passions of what they called a "faction." This is a classic case of just that. This proceeding was partisan in the House. It has become partisan here. I am not casting aspersions here. I am stating a fact.

Impeachment will fail. And it should. It lacks the fundamental legitimacy only a bipartisan consensus can provide.

My colleagues, the Republic still stands. Our safety as a Nation is not in jeopardy. Our Constitution has not been shaken.

Voting to impeach the President under these circumstances would undermine the core principle that lies at the heart of our system of government: the separation of powers. Our Founding Fathers made it difficult to remove a sitting President by design.

They were convinced of the wisdom of having three coequal branches of government. They did not want the President serving at the pleasure—or being removed at the displeasure—of the legislative branch.

Our Founding Fathers were right. Removing a popularly elected President from office would have implications not only for this President, but for every President to follow, and ultimately for the very system of government we hold so dear. Thomas Jefferson once said, "I know of no safe depository of the ultimate powers of the society but the people themselves."

My colleagues, we are a democracy. In a government "of the people, by the people, and for the people," we cannot ignore the will of the people. Removing the President under these circumstances would be the most fundamental violation of the rule of law. It would overturn the rule of the people as expressed in a free election. It would adopt minority rule, overturning the clear wishes of a majority of the American people.

Our freedom and liberty are not threatened by the wrongful acts of this President. But our freedom and liberty might be threatened if a minority can overturn the will of the majority.

There may yet come a time when we have no choice but to substitute our judgment for the will of the people. I pray I never see that time. I know it has not come in this case.

My colleagues, I will vote against the articles of impeachment in the case of William Jefferson Clinton.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR TIM HUTCHINSON

Mr. HUTCHINSON. Mr. Chief Justice, we are nearing one of the most important votes most of us will ever cast.

As an Arkansan, the impeachment process has been long and difficult. President Clinton is a dominating political influence in Arkansas and still immensely popular in my home State, so I am acutely aware of the political implications of this vote for me.

As an Arkansan, I share pride in one of our own having achieved so much and having attained the highest elective office in the land. Arkansas has produced more than its share of political leaders—the Joe T. Robinsons, the Hattie Caraways, the John McClellans, and the J.W. Fulbrights. But never before has an Arkansan reached the Presidency. I, with all of Arkansas, was proud. We knew William Jefferson Clinton's intellect, his grasp of policy issues. We knew his personality, his charisma. We had seen for years his remarkable political skills, his uncanny ability to connect with people. I believe I am like most Arkansans—deeply conflicted—pride mixed with embarrassment, and most of all pain.

This trial is not about private conduct. It is not about the President's personal behavior. We are all sinners. We are all flawed human beings. The President's personal life is his personal life. It is his business, not mine. The facts that are relevant are those relating to law.

This trial is not about process. It seems to me that throughout this long drama, many have sought to put Ken Starr on trial or the

House managers on trial. Was Ken Starr on a vendetta or was he just doing an unpleasant job? Whichever, we have to deal with the facts and the evidence. Did the House managers, as we have heard from the President's counsel so often, "want to win too much?" Frankly, both sides wanted to win, both sides were fervent in their presentations, and I am glad we didn't hear half-hearted arguments. A vigorous prosecution and defense is the basis of a successful adversarial system. What we are doing is important. I am glad they believe in what they are doing, but in the end it is the facts, the evidence, with which we must grapple. The process with all its flaws is secondary. The reality is, we are faced with a body of evidence.

This trial is not about punishment. It is not about getting our pound of flesh from the Democrats. It is not about getting our retribution on the President. It is not political vengeance. It is not about polls. If polls had prevailed, Andrew Johnson would have been removed, and that would have been wrong. To argue that a popular President should not be removed regardless of his actions, merely because he is popular, is to lower our constitutional Republic to a meaningless level.

To say popularity should be a factor in our decision is to say that bad poll numbers and unpopularity is an argument for removal of a President. How contrary to our constitutional system. The popularity of this President should never have been mentioned, in my opinion. Nor should political consequences of our votes be the basis for our decision of whether to remove this President.

What I had to weigh was the evidence. Voting to remove a President—the very thought sobers and humbles me. But the facts are so inescapable, the evidence so powerful.

I am convinced beyond a reasonable doubt that when the President testified before the Federal grand jury and said that he had been truthful to his aides in what he had said about his relationship with Ms. Lewinsky—that he committed perjury and obstructed justice. When he told Sidney Blumenthal that Ms. Lewinsky was a stalker and he was a victim, he was not being truthful. He was trying to destroy her reputation and he would have, had it not been for the dress. He lied, and he lied about his lie to the grand jury.

I am convinced beyond a reasonable doubt that when the President led Betty Currie through a false rendition of his relationship with Ms. Lewinsky that he was tampering with a witness and obstructing justice. He did this not once, but twice. His explanation that he was refreshing his memory offends all common sense. When he denied this coaching before the grand jury, he obstructed justice and committed perjury. Of course, there is much more to this case, but how much do we need?

If this trial was only about one man's actions, it might be easier. But this trial is about so much more—the office of the Presidency, the precedent of lowering the bar on the importance of our Nation's rule of law. It is about the oath Bill Clinton took when he was sworn in as our President, to uphold our Nation's laws. And it is about the oath the President took when he swore to tell the truth, the whole truth and nothing but the truth before the grand jury. The sanctity of the oath is the basis of our judicial system. To less-

en the significance of violating the oath is in fact an attack on our legal system and the rule of law.

There are men and women across America who languish behind bars today because they committed the crime of perjury, lying under oath. How can we tell America that our President, the highest government official in the land, is treated differently?

While I was growing up in Gravette, AR, life seemed much more simple than it is today. It was a simpler time. But then and now, the bedrock of our society is still truth and justice. This hasn't changed. On August 25, 1825, Daniel Webster said, "Whatever government is not a government of laws, is a despotism, let it be called what it may."

Today is a somber day for our country. This trial has been a sad chapter of American history, and I have a heavy heart. As difficult as these votes will be, I know that I could not serve the people of Arkansas with a clear conscience unless I do what I believe is right and uphold the law. I will vote guilty on both articles of impeachment.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR PATTY MURRAY

Mrs. MURRAY. Mr. Chief Justice, this past year certainly has been a difficult time for America. I have to say, as a citizen, as a woman, and as a parent, I cannot begin to describe how deeply disappointed and angry I am with the President.

I came to Washington, DC, in 1992. Over the last 6 years I have worked with Bill Clinton. I trusted him. I thought I knew him. I refused to believe he would demean the Presidency in the way that he has. His behavior was appalling and has hurt us all.

As a Senator, I have an obligation under the Constitution that transcends any sense of personal betrayal I might have. I am sworn to render my judgment based on the evidence presented and the larger question of what the framers of the Constitution meant when they wrote the impeachment clause.

I have listened carefully throughout this debate. I have read and listened to every available article and argument. Like all of you, I have spent more hours on this case than I ever wanted to and have felt the tremendous weight of this decision.

I believe that perjury and obstruction of justice can be considered high crimes. The question is whether the facts in this case support the allegations that the President committed these crimes.

The Republican House managers presented a theory. But after listening carefully to both sides and, most importantly, reviewing the words of the witnesses themselves, they did not prove their theory of perjury and obstruction of justice beyond a reasonable doubt to me. If we are to remove a President for the first time in our Nation's history, none of us should have any doubts.

We must also ask ourselves how it would affect the country to remove this President after such a partisan process. A conversation I had with a constituent not long ago really struck a chord with me. He said to me:

I am old enough to remember President Nixon's resignation. I know how deeply it affected the psyche of an entire generation. I know it made many of us cynical of politics for a long, long time. Please don't put us all through that turmoil again. This country would be punished and hurt by a Presidential removal. This country doesn't deserve to be punished for this President's behavior.

So despite my personal disgust with the President's actions, I intend to vote "not guilty" on both articles of impeachment.

Our founders were wise. They knew the President would be imperfect. They knew he would stumble and fall. While it would be wrong to suggest they approved of such behavior, they were not interested in the individual and his flaws. They sought to protect the Nation.

They set a very high standard for the legislative body to meet before overturning the results of an election—the very basis of our democracy. They declared it would only be for the crimes most threatening to our Nation. They did not establish the impeachment process to punish a wrongdoer; they established it to protect America.

This President's behavior was reprehensible, but it does not threaten our Nation. In the past year, despite the scandal that ran on the front page nearly every day, our country has prospered. Our economy is growing. Our waters and air are cleaner. Our communities are safer. Our education system is stronger. America is not poised on the brink of disaster. Our democracy is safe.

But what of our legacy in this process? What will I tell my daughter, or tell a classroom of young students? Well, it doesn't take a lawyer or a constitutional scholar to tell them that no matter how difficult it is, tell the truth. The lie will hurt you much, much more. It can consume you, your friends, your family, your nation. It can destroy those you love and diminish you forever in their eyes.

This President now knows that. His legacy will be tainted with the anguish he inflicted on the people and country he loves because of his selfish and disgraceful behavior. It is a weight that he alone will bear for the rest of his life.

We have heard a lot of emotions and strong feelings on this floor from both sides. I respect the deep convictions of everyone in this room. I am saddened it has appeared partisan. But it is my hope that we can now turn the page on this sad part of America's history and put an end to the recriminations.

Mr. Chief Justice, a point of personal privilege.

It is hard to stand before you without Scott Bates behind me. I knew him as all of you did as a loyal, excellent Senate employee. But I also knew him as a dad. We stood together as parents on a soccer field cheering on our daughters in victory and hugging them in defeat. He will be missed, but his absence should serve as a reminder that although we have been totally engrossed in this issue for far too long, there is life outside of these doors. There are friends to be hugged, kids to be educated, parents to take care of.

I hope when this day is over, we will set aside our differences and remember there are a lot more important things each of us needs to be concentrating on, both professionally and personally. It is time to move on.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOHN MCCAIN

Mr. MCCAIN. Mr. Chief Justice, I intend to vote to convict the President of the United States on both articles of impeachment. To say I do so with regret will sound trite to some, but I mean it sincerely. I deeply regret that this day has come to pass.

I bear no animosity for the President. I take no partisan satisfaction from this matter. I don't lightly dismiss the public's clear opposition to conviction. And I am genuinely concerned that the institution of the Presidency not be harmed, either by the President's conduct, or by Congress' reaction to his conduct.

Indeed, I take no satisfaction at all from this vote, with one exception—and an important exception it is—that by voting to convict I have been spared reproach by my conscience for shirking my duty.

The Senate faces an awful choice, to be sure. But, to my mind, it is a clear choice. I am persuaded that the President has violated his oath of office by committing perjury and by obstructing justice, and that by so doing he has forfeited his office.

As my colleagues across the aisle have so often reminded me, the country does not want the President removed. And, they ask, are we not, first and foremost, servants of the public will? Even if we believe the President to be guilty of the offenses charged, and even if we believe those offenses rise to the level of impeachment, should we risk the national trauma of forcing his removal against the clearly expressed desire of the vast majority of Americans that he should not be removed even if he is guilty of perjury and obstruction of justice?

I considered that question very carefully, and I arrived at an answer by reversing the proposition. If a clear majority of the American people were to demand the conviction of the President, should I vote for his conviction even if I believed the President to be innocent of the offenses he is charged with? Of course not. Neither, then, should I let public opinion restrain me from voting to convict if I determine the President is guilty.

But are these articles of impeachment of sufficient gravity to warrant removal, or can we seek their redress by some other means short of removing the President from office? Some of those who argue for a lesser sanction, including the President's able counsel, contend that irrespective of the President's guilt or innocence, neither of the articles charge him with high crimes and misdemeanors. Nothing less than an assault on the integrity of our constitutional government rises to that level. The President's offenses were committed to cover up private not public misconduct. Therefore, if he thwarted justice he did so for the perfectly understandable and forgivable purpose of keeping hidden an embarrassing personal shortcoming that, were it discovered, would harm only his family and his reputation, but would not impair our system of government.

This, too, is an appealing rationalization for acquittal. But it is just that, a rationalization. Nowhere in the Constitution or in the expressed views of our founders are crimes intended to conceal the President's character flaws distinguished from crimes intended to

subvert democracy. The President thwarted justice. No matter how unfair he or we may view a process that forces a President to disclose his own failings, we should not excuse or fail to punish in the constitutionally prescribed manner evidence that the President has deliberately thwarted the course of justice.

I do not desire to sit in judgment of the President's private misconduct. It is truly a matter for him and his family to resolve. I sincerely wish circumstances had allowed the President to keep his personal life private. I have done things in my private life that I am not proud of. I suspect many of us have. But we are not asked to judge the President's character flaws. We are asked to judge whether the President, who swore an oath to faithfully execute his office, deliberately subverted—for whatever purpose—the rule of law.

All of my life, I have been instructed never to swear an oath to my country in vain. In my former profession, those who violated their sworn oath were punished severely and considered outcasts from our society. I do not hold the President to the same standard that I hold military officers. I hold him to a higher standard. Although I may admit to failures in my private life, I have at all times, and to the best of my ability, kept faith with every oath I have ever sworn to this country. I have known some men who kept that faith at the cost of their lives.

I cannot—not in deference to public opinion, or for political considerations, or for the sake of comity and friendship—I cannot agree to expect less from the President.

Most officers of my acquaintance would have resigned their commission had they been discovered violating their oath. The President did not choose that course of action. He has left it to the Senate to determine his fate. And the Senate, as we all know, is going to acquit the President. As much as I would like to, I cannot join in his acquittal.

The House managers have made, and I believe some of my colleagues on the other side of the aisle would agree, a persuasive case that the President is guilty of perjury and obstruction. The circumstances that led to these offenses may be tawdry, trivial to some, and usually of a very private nature. But the President broke the law. Not a tawdry law, not a trivial law, not a private law.

The tortured explanations with which the President's attorneys have tried to defend him against both articles fail to raise reasonable doubts about his guilt. It seems clear to me, and to most Americans, that the President deliberately lied under oath, and that he tried to encourage others to lie under oath on his behalf. Presidents may not be excused from such an abuse no matter how intrusive, how unfair, how distasteful are the judicial proceedings they attempt to subvert.

The President's defenders want to know how can I be certain that the offenses, even if true, warrant removal from office. They are not expressly mentioned in the Constitution as impeachable offenses. Nor did the founders identify perjury or obstruction as high crimes or high misdemeanors. Were an ordinary citizen accused of perjury in a civil proceeding, he or she would in all likelihood not be prosecuted or forced out of political necessity into a perjury trap.

No, an ordinary citizen would not be treated as the President has been treated. But ordinary citizens don't enforce the laws for the rest of us. Ordinary citizens don't have the world's mightiest armed forces at their command. Ordinary citizens do not usually have the opportunity to be figures of historical importance.

Presidents are not ordinary citizens. They are extraordinary, in that they are vested with so much more authority and power than the rest of us. We have a right; indeed, we have an obligation, to hold them strictly accountable to the rule of law.

Are perjury and obstruction of justice expressly listed as high crimes and misdemeanors? No. Why? Because they are self-evidently so just as the President is self-evidently the Nation's chief law enforcement officer, despite his attorneys' quibbling to the contrary. It is self-evident to us all, I hope, that we cannot overlook, dismiss or diminish the obstruction of justice by the very person we charge with taking care that the laws are faithfully executed. It is self-evident to me. And accordingly, regretfully, I must vote to convict the President, and urge my colleagues to do the same.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR TIM JOHNSON

Mr. JOHNSON. Mr. Chief Justice, the great question now before the Senate is not whether the rule of law will prevail—it surely will—both by the actions of this body and by possible proceedings within the judicial system.

The question before the Senate is whether we should take action against the President beyond that allowed for in our Nation's courts. We are, I believe, confronted by two threshold questions which must first be resolved before consideration can or need be given to weighing the evidence presented by the House managers. First, is whether the articles of impeachment have been adequately drawn to allow the accused to know with precision the wrongdoing to which he is accused, and to require that a two-thirds majority vote of the Senate be secured upon a single act of wrongdoing in order to convict. As a second threshold matter, if the articles are at least adequately drawn, do they, if true, allege wrongdoing of sufficient import to justify for the very first time in our Nation's long history, the overturning of the people's will as expressed in a free, fair, and democratic national election? I am troubled by the adequacy of the articles, but even accepting them, the second threshold question of impeachability is simply not met.

Only if these threshold questions are adequately met in the mind of an individual Senator, can that Senator proceed to determine whether the weight of the evidence is sufficient to convict. And even if both threshold questions are ignored, it is impossible for me to say that the circumstantial evidence presented reaches a "beyond a reasonable doubt" standard on either article. Reasonable doubt means that if there are multiple reasonable theories as to what occurred—if one of the reasonable theories is consistent with innocence, then an acquittal must follow. Especially relative to article two—I can understand the belief of some that a plausible scenario of obstruction was established. Some may even believe that

the President was more likely than not obstructing justice. But the evidence is clearly not so powerful as to lead anyone to believe that no reasonable and innocent scenario remains.

I am both profoundly honored and humbled to have this historic responsibility to participate with my Senate colleagues, Republican and Democrat, in perhaps the most grave proceeding envisioned by the authors of our national Constitution. I have listened carefully to both sides of this dispute, and I have also carefully reviewed the thoughts of many of our Nation's leading scholars of history and constitutional law. It is clear to me that the results of this trial have ramifications which go far beyond the fortunes of William Jefferson Clinton.

The decision made by the Senate this week will have an utterly profound impact on the relationship between the executive and legislative branches of our government for the rest of time. Accordingly, it is essential that the decisions made in this proceeding not be driven by transitory passions of partisan politics but rather with an eye toward the long-term stability and integrity of our democracy.

My humble reading of history leads me to believe that the never-failing bipartisan honoring of national Presidential elections over these past two centuries has been one of the greatest sources of our national success. While holding a President accountable to all the same civil and criminal laws that apply to the general citizenry is absolutely essential, the writers of our Constitution properly intended for the reversal of fair elections at the hands of Congress to be exceedingly rare and difficult.

The learned opinions of our Nation's leading scholars overwhelmingly support the understanding that Presidents should not be removed from office by Congress short of some horrific personal misconduct or misconduct which arises from executive authority and threatens the Nation—such as treason or bribery. By requiring a two-thirds vote for the overturning of Presidential elections, the founders of our Nation also made it crystal clear that such an extraordinary step should not and cannot be taken unless there is an overwhelming bipartisan outcry against the President's actions.

The American public and most Members of Congress, including myself, have criticized President Clinton's personal conduct in harsh terms. But the American public also seems to understand that at stake is not simply Bill Clinton's future, but the integrity of our election system and the long-term freedom of the executive branch from partisan congressional attack—this understanding about the need for stability, for proportionality, for continuity, is a natural and a deeply conservative inclination on the part of our citizenry.

The writers of our Constitution wanted some degree of proportionality between a President's conduct and the penalties applied—otherwise they would have made impeachment applicable to all crimes and misdemeanors. It is certainly conceivable that the will of the people expressed in an election may someday be rightly overturned by Congress. But it is also certain to me that while this President's personal conduct, involving immaterial testimony to a lawsuit dismissed by a Federal court as having no merit, is deserving of public condemnation, and even possible prosecution within

the judicial system, it simply does not rise to the level of extraordinary danger to the Nation that justifies removal from office.

Some will no doubt say that I have set a high standard for overturning Presidential elections. I would very much agree. Particularly as a recently former member of the House of Representatives, I have witnessed firsthand the depth and the intensity of partisan anger that can occur from time to time in Congress and among portions of the national public. It is a reaction to that open partisanship demonstrated by the House and the independent counsel that surely is at the foundation of the American public's overwhelming contempt for this proceeding and the view that this process is politics as usual, an exercise in raw political power and beneath what should be the dignity of Congress.

I have no certain solutions for that sad and angry state of affairs, other than to attempt to conduct my own political life in as thoughtful and moderate a manner as I am capable, but I believe the Constitution provided our Nation with a strong bulwark against negative and hateful partisanship by creating an executive branch which is largely shielded from congressional partisanship and which is instead disciplined by law and by the electoral will of the people.

I greatly fear that any lesser standard would result, even without an independent counsel law, in a situation whereby civil actions against standing Presidents will be routinely brought as yet another destructive partisan political tactic. These multiple and nefarious actions will then be followed by never-ending legal discovery proceedings, and they in turn followed by impeachment articles or the threat of impeachment each time the House is controlled by a different political party than the Presidency. I fear the wrong decision here will lead our Nation into an ever downward spiral where impeachment proceedings will be routine.

It is critically important, in my view, for this U.S. Senate to say, "Stop! Enough!" We must send an unmistakable message to the House, the Nation and the world, that we will not permit the stability and independence of the executive branch of our government to be jeopardized by anything less than heinous crimes or gross threats to the Nation.

This leaves, of course, other avenues for Congress and the public to express great displeasure with the President's dishonorable conduct. If illegal activity did in fact take place, that activity would be subject to discipline in the courts. While there are divided opinions on its wisdom, it is possible that some sort of collective censure may be agreed upon by the Senate, and certainly individual Senators are free to place their condemnations of the President's personal behavior in the CONGRESSIONAL RECORD. The House impeachment of the President, the public humiliation of Bill Clinton and his family, as well as the great private fortune this dispute will have consumed will also serve as punishment enough. But I think it is also important for this Senate to understand that the writers of our Constitution did not create an impeachment process as one more form of punishment, but exclusively to protect the viability of our Nation.

Given my sacred oaths as a U.S. Senator and as a participant in this impeachment trial, and given my abiding commitment to the

Constitution and the well-being of our Nation, I have no choice but to vote against both articles of impeachment. I do not know nor do I care what the political consequences might be of the decision I make here—I am a Democrat elected six consecutive times Statewide from my largely Republican State, and I have long been proud of the bipartisan support extended to me by the good people of South Dakota. In turn, I have long recognized that neither political party has a monopoly on good ideas or bad, good people or bad. But I know this—the issue before me is too grave for politics. At the end of the day, when my service in this body is done, I want my children, my family and myself to view my decisions here as honorable, as an exercise in responsible judgment, and in a small way, as efforts that strengthened the bulwark of democracy that our Constitution represents.

The President dishonorably lied to the American people, however, the two articles before the Senate fail, first because they do not allege offenses that give rise to removal from office, and secondly, because it cannot be said that the evidence proves guilt of perjury or obstruction of justice beyond all reasonable doubt, to such a degree that no innocent and reasonable explanation exists.

I will vote not guilty on both article I and article II.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR RICHARD G. LUGAR

Mr. LUGAR. Mr. Chief Justice, for the first time in 120 years, and only for the second time in U.S. history, the Senate is about to conclude a Presidential impeachment trial. Our Founding Fathers viewed the power to remove a President as a necessary constitutional safeguard, but they wanted to make certain that the process was sufficiently difficult that the will of the voters would be overturned only for the gravest of reasons. They wrote the words "high crimes and misdemeanors" as a threshold, but left it to us to determine what transgressions met this standard. All of us have endeavored to fulfill this enormous responsibility.

From the beginning of the consideration of impeachment last year, many Members of Congress in both parties have made public statements expressing their opinions that the President lied to a Federal grand jury and that he obstructed justice on numerous occasions. These judgments are apparently shared by large majorities of the American people as illustrated in frequent public opinion polls. The same polls have consistently found that a large majority of Americans do not want the President to suffer the constitutional consequence of these breaches of law, namely, removal from office.

Since the House voted for impeachment, almost all 45 Democrats and some Republicans in the Senate have voiced their skepticism about voting to remove President Clinton from office. Early in the trial, 44 Democrats voted to dismiss the impeachment proceedings outright. Thus, a two-thirds majority vote needed for a guilty verdict has never been a likely outcome of the trial.

In the background, most Senate Democrats and several Republicans have worked on a motion to censure President Clinton. Our distinguished colleague, Senator FEINSTEIN, drafted a censure reso-

lution that attracted substantial bipartisan support and was published in the New York Times of February 6, 1999. It stated:

Whereas William Jefferson Clinton, President of the United States, engaged in an inappropriate relationship with a subordinate employee in the White House, which was shameless, reckless and indefensible;

Whereas William Jefferson Clinton, President of the United States, deliberately misled and deceived the American people and officials in all branches of the United States Government;

Whereas William Jefferson Clinton, President of the United States, gave false or misleading testimony and impeded discovery of evidence in judicial proceedings;

Whereas William Jefferson Clinton's conduct in this matter is unacceptable for a President of the United States, does demean the Office of the President as well as the President himself, and creates disrespect for the laws of the land;

Whereas President Clinton fully deserves censure for engaging in such behavior;

Whereas future generations of Americans must know that such behavior is not only unacceptable but also bears grave consequences, including loss of integrity, trust and respect;

Whereas William Jefferson Clinton remains subject to criminal and civil actions;

Whereas William Jefferson Clinton's conduct in this matter has brought shame and dishonor to himself and to the Office of the President; and

Whereas William Jefferson Clinton, through his conduct in this matter, has violated the trust of the American people: Now, therefore, be it

Resolved, That the United States Senate does hereby censure William Jefferson Clinton, President of the United States, and condemns his conduct in the strongest terms.

Citizens might ask how a Senator could vote for a resolution stating that President Clinton "deliberately misled and deceived the American people and officials in all branches of the United States Government" and "gave false or misleading testimony and impeded discovery of evidence in judicial proceedings" and yet fail to vote "guilty" on articles of impeachment that specifically mention perjury and obstruction of justice. The answer to that question is at the heart of understanding the Senate trial.

With few exceptions, Senators recognize that the Constitution gives only one outcome to a verdict of "guilty," namely, removal from office. At the same time, many Senators are shocked by conduct which they call "shameless, reckless, and indefensible," and they want their constituents to know that they have not been fooled or overwhelmed by Presidential charm. They have taken the initiative to explicitly denounce the bizarre conduct and the extraordinary corruption of this President. Members of both parties have deplored the fact that the President conducted an illicit sustained physical sexual relationship in spaces close to the Oval Office and publicly denied this to his family, his staff, and in televised statements to the world only to see all of the elaborate cover-up collapse after DNA tests on the dress of a young woman, but the impeachment trial of President Clinton is not about adultery. The impeachment trial involves the President's illegal efforts to deny a fair result in the suit brought by Ms. Paula Jones. I have no doubt that the President worked deliberately to deny justice in this suit. In doing so, he lied to a Federal grand jury and worked to induce others to give false testimony, thus obstructing justice.

Ms. Jones has often been described as a small person in our judicial system. In contrast, the President, who at the time of his inaugural takes a solemn oath to preserve and protect equal justice under the law for even the most humble of Americans, is a giant figure. As Senators who also take a solemn oath, we must ask our-

selves the fundamental question: "Is any man or woman above the law?"

The legal defense team for the President does not admit that there is adequate proof of either perjury or obstruction of justice. They contend that Senators must embrace a theory of "immaculate obstruction" in which jobs are found, gifts are concealed, false affidavits are filed, and the character of a witness is publicly impugned, all without the knowledge or direction of the President, who is the sole beneficiary of these actions. The President's lawyers further contend that such crimes are, in any event, insufficient to remove the President. The drafters of the Constitution would have rejected these rationalizations for the indefensible Presidential misconduct at issue. They were political men with a profound reverence for the sanctity of the oath and our entire system of justice. They did not suggest that Senators park their common sense and their stewardship for the security of our country at the Senate door as they entered into an impeachment trial.

In fact, we have discovered in this trial that the Founding Fathers wanted the Senate to act as "triers" of fact and in the roles of both trial court and jury. Most importantly, they wanted us to act as guardians of the Constitution and thus the liberty and the rights under law of each individual American. Liberty itself is directly threatened when a President subverts the very judicial system that secures those rights.

During this trial, I have concluded that the prosecutors made their case. I will vote to remove President Clinton from office not only because he is guilty of both articles of impeachment, but also because I believe the crimes committed here demonstrate that he is capable of lying routinely whenever it is convenient. He is not trustworthy. Simply to be near him in the White House has meant not only tragic heartache for his wife and his daughter but enormous legal bills for staff members and friends who admired him and yearned for his success but who have been caught up in his incessant "war room" strategies to maintain him in office. Senator FEINSTEIN begins her censure resolution with the appropriate word "shameless." The President should have simply resigned and spared his country the ordeal of this impeachment trial and its aftermath.

We have been fortunate that this damaged Presidency has occurred during a time of relative peace and prosperity. In times of war or national emergency, it is often necessary for the President to call upon the Nation to make great economic and personal sacrifices. In these occasions, our President had best be trustworthy—a truth teller whose life of principled leadership and integrity we can count upon. Some commentators have suggested that with the President having less than 2 years left in his term of office, the easiest approach is to let the clock expire while hoping that he is sufficiently careful, if not contrite, to avoid reckless and indefensible conduct. But as Senators, we know that the dangers of the world constantly threaten us. Rarely do 2 years pass without the need for strong Presidential leadership and the exercise of substantial moral authority from the White House.

Of particular concern are the implications of the President's behavior for our national security. As Commander in Chief, President

Clinton fully understood the risks that he was imposing on the country's security with his secret affair in the White House. Even in this post-cold war era, foreign intelligence agents constantly look for opportunities for deception, propaganda, and blackmail. No higher targets exist than the President and the White House. The President even acknowledged in a phone call with Ms. Lewinsky that foreign agents could be monitoring their conversations. Yet this knowledge did not dissuade the President from continuing his affair. With premeditation, he chose his own gratification above the security of his country and the success of his Presidency. Then he chose to compound the damage by systematically lying about it over the span of many months.

I believe that our country will be stronger and better prepared to meet our challenges with a cleansing of the Presidency. The President of the United States is the most powerful person in the world because we are the strongest country economically and militarily, and in the appeal of our idealism for liberty and freedom of conscience. Our President must be strong because a President personifies the rule of law that he is sworn to uphold and protect. We must believe him and trust him if we are to follow him. His influence on domestic and foreign policies comes from that trust, which a lifetime of words, deeds, and achievements has built.

President Clinton has betrayed that trust. His leadership has been diminished because most Americans have come to the cynical conclusion that they must read between the lines of his statements and try to catch a glimmer of truth amidst the spin. His subordinates have demeaned public life by contending that "everybody does it" as a defense of why the President has erred so grievously. But every President does not lie to a Federal grand jury. Every President does not obstruct justice. The last President to do so was President Nixon, and he had sufficient reverence for the office to resign before the House even voted articles of impeachment.

The impeachment trial must come to an end. The Presidency will be strengthened and our ability as Americans to meet important challenges will be strengthened if we begin to restore our faith in the truth and justice that our government must exemplify and preserve. It will not be enough simply to condemn the tragic misdeeds of President Clinton. He must be removed from office as the Constitution prescribes, and we must celebrate the strength of that same Constitution which also provides a path for a new beginning.

Thank you, Mr. Chief Justice. I yield the floor.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Mr. BIDEN. Mr. Chief Justice, let me begin by stating what I believe the American people view as the obvious. There are no good guys in this sordid affair. Rightly or wrongly, the public has concluded that the President is an adulterer and liar; that Ken Starr has abused his authority by unfair tactics born out of vindictiveness; that the House managers have acted in a narrowly partisan way and are now desperately attempting to justify their actions for their own political reputation. Finally, they have concluded that

Monica Lewinsky was both used and a user, while Linda Tripp, Lucianne Goldberg, Paula Jones and her official and unofficial legal team are part of a larger political plot to "get the President."

All of that is beyond our ability to effect. Our job is not to dissect the motives or even the tactics of Ken Starr, the trial lawyers, Linda Tripp, and others. Our only job is to determine whether the President of the United States by his conduct committed the specific acts alleged in the two articles of impeachment. Not generally, but specifically: Did he do what is alleged? And if he did, do these actions rise to the level of high crimes and misdemeanors necessary to justify the most obviously antidemocratic act the Senate can engage in—overturning an election by convicting the President?

It is very important—both for history's sake and for fairness' sake—that we keep our eye on the ball. When I tried cases, I learned from a man named Sid Balick—he used to say at the outset to the jury:

> Keep your eye on the ball. The issue is not whether my client is a man you would want your daughter to date—a man you would invite home to dinner. The issue is did my client kill Cock Robbin—period.

If we listen to the oft-times confusing presentation of the House managers, they would have us think that it is sufficient for us to conclude that we would not trust him with our daughters and not invite him home for dinner in order to convict.

Much more is required. The House set the standard we must repair to in the articles—did he commit a criminal offense? That is what they allege; that is what they must prove.

The managers keep saying that this case is about what standards we want our President to meet. We hear Flanders Fields intoned—the honor of our most decorated heroes. How incredibly self-serving and autocratic such a plea is.

The American people are fully capable—without our guidance or advice—to determine what standards they want our President to meet. That is an appropriate question to ask ourselves when we enter the voting booth to vote—it is not when we rise on this floor to vote.

Spare me from those who would tell the American people what standard they must apply when voting for President. Ours is an impeachment standard and our oath to do justice under that standard.

Impeachment is about what standard to use in deciding whether or not to remove a President duly elected by the people.

These are two very different questions and we must not, we cannot, get them confused. You and I and the American people can apply any standard we want our President to meet when we go to the polls on election day.

Only the Constitution can supply the standards to use in deciding whether or not to remove the President—and—in my view, this case does not meet that standard, for two reasons.

First, the facts do not sustain the House managers' case. According to the House's own theory, we must find that the President has violated Federal criminal statutes—not just that he did bad things. In all good conscience, I just cannot believe that any jury would convict the President of any of the criminal charges on these facts. I also believe that it is our constitutional duty to give the President

the benefit of the doubt on the facts. To me, the allegations that the President violated title 18 were left in a shambles on this floor.

I do not have time to dwell on the facts. So let me turn to the second reason: the President's actions do not rise to the level required by the Constitution for the removal of a sitting President.

We have heard it argued repeatedly that the Constitution does not create different standards for judges and the President. But that argument fails to comprehend the organizing principle of our constitutional system—the separation of powers. The framers divided the power of the Federal Government into three branches in order to safeguard liberty. This innovation—the envy of every Nation on earth—can only serve its fundamental purpose if each branch remains strong and independent of the others.

We needed a President who was independent enough to spearhead and sign the Civil Rights Act. We needed a President who was independent enough to lead the Nation and the world in the Persian gulf war. We still need an independent President.

The constitutional scholarship overwhelmingly recognizes that the fundamental structural commitment to separation of powers requires us to view the President as different than a Federal judge. Consider our power to discipline and even expel an individual Senator. In such a case, we do not remove the head of a separate branch and so do not threaten the constitutional balance of powers. To remove a President is to decapitate another branch and to undermine the independence necessary for it to fulfill its constitutional role.

Only a President is chosen by the people in a national election. No Senator, no Representative can make this claim. To remove a duly elected President clashes with democratic principles in a way that simply has no constitutional parallel. By contrast, there is nothing antidemocratic in the Senate removing a judge who was appointed and not elected by the people.

Another contention we continue to hear is that the framers clearly thought that obstruction of justice of any kind by a President was a high crime and misdemeanor. For this they cite the colloquy between Colonel George Mason and James Madison, who argued that a President who abused his pardon power could be impeached. That colloquy illustrates that it is not any obstruction that would satisfy the Constitution—rather, that the framers were immediately concerned about abuses of official power, such as the pardon power.

The House managers have relied repeatedly on Alexander Hamilton's explanation of impeachment found in Federalist No. 65. But careful reading demonstrates that these articles of impeachment are a constitutionally insufficient ground for removing the President from office. Federalist No. 65 states:

> The subjects of [the impeachment court's] jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

Hamilton had the word "political" typed in all capital letters to emphasize that this is the central, defining element of any impeachable offense. Having emphasized its meaning, he did not

leave its definition to chance. While all crimes by definition harm society, impeachable offenses involve a specific category of offenses. Using Hamilton's terms, these are offenses committed when "public men" who "violat[e] some public trust" cause "injuries done immediately to the society itself." The public trust that resides in, to use Hamilton's hoary phrase, "public men" is what we would call today official power.

What other construction can be given these words? Hamilton did not define an impeachable offense to be any offense committed by public men. He did not define an impeachable offense to be any reprehensible act committed by a bad man. Only those acts that abuse public office and so harm the public directly and politically are impeachable.

While I would like to take credit for this insight into Hamilton's meaning, I actually stand in a line of interpretation that stretches back to the founding era. William Rawle wrote the first distinguished commentary on the Constitution, "A View of the Constitution of the United States of America." In this treatise, he came to precisely the same interpretation I have described. He said, "The causes of impeachment can only have reference to public character and official duty. . . . In general those which may be committed equally by a private person as a public officer are not the subject of impeachment."

Joseph Story was not only a long-serving and important Justice of the Supreme Court of the United States, he was a preeminent constitutional scholar and author of a treatise that remains an important source for understanding the Constitution's meaning. He, too, emphasized that "it is not every offense that by the constitution is . . . impeachable." Which offenses did he regard to be impeachable? "Such kinds of misdeeds . . . as peculiarly injure the commonwealth by the abuse of high offices of trust." Justice Story tied the definition of impeachable offenses to the purpose that underlies the separation of powers—safeguarding the liberty of the people against abusive exercise of governmental power. He observed that impeachment "is not so much designed to punish an offender as to secure the state against gross official misdemeanors."

There is no question that the Constitution sets the bar for impeachment very high—especially where the President is involved. Federalist 65 bears this out, as do numerous other commentaries.

But Federalist 65 also sounds a warning—again, it is a warning that has been invoked over and over again—that impeachments inevitably risk being hijacked by partisan political forces.

Federalist 65 worried that the "animosities, partialities, influence, and interest on one side or the other" would enable partisans to find a way to interpret words such as high crimes and misdemeanors to match the outcome they otherwise wished to reach—not necessarily out of any malevolence, but simply because of the great capacity that we all have to rationalize.

Here the rationalization is pretty easy—the President is a disgrace to the office, I honor and revere the office of the Presidency, so there must be some way to get this man out of that office. Therefore, his actions must rise to the level of high crimes and misdemeanors.

It is tempting to go down that road—but this is precisely the temptation that the framers urged us to avoid.

In Federalist 65, Hamilton defended the U.S. Senate as the only body that could possibly hear a Presidential impeachment. "Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation to preserve, unawed and uninfluenced the necessary impartiality between an individual accused and . . . his accusers?"

Hamilton was placing the responsibility to be impartial squarely upon us—a responsibility that has become embodied in the oath we took when the trial began.

Charles Black, the renowned constitutional law professor from Yale, boiled down the attitude that we as Senators must adopt in order to achieve an impartiality and independence sufficient to the responsibilities of impeachment. He said we must act with a "principled political neutrality."

That is a tough standard to meet. In the Johnson impeachment, for example, James Blaine originally voted for the impeachment of the President in the House. Years later he admitted his mistake, saying that 'the sober reflection of after years has persuaded many who favored Impeachment that it was not justifiable on the charges made, and that its success would have resulted in greater injury to free institutions than Andrew Johnson in his utmost endeavor was able to inflict."

And in our contemporary situation, former President Ford and our distinguished colleague and former majority leader, Robert Dole, have both urged us not to go down the road to impeachment, but to seek other means to express our displeasure.

Charles Black knew that principled political neutrality was hard to achieve, so he suggested one approach. He suggested that prior to voting, a Senator should ask:

> Would I have answered the same question the same way if it came up with respect to a President towards whom I felt oppositely from the way I feel toward the President threatened with removal?

In reaching a final decision, the question I wish to pose to my colleagues is this: Can you legitimately conclude that you would vote to remove a sitting President if he were a person towards whom you felt oppositely than you do toward Bill Clinton?

Given the essentially antidemocratic nature of impeachment and the great dangers inherent in the too ready exercise of that power, impeachment has no place in our system of constitutional democracy except as an extreme measure—reserved for breaches of the public trust by a President who so violates his official duties, misuses his official powers or places our system of government at such risk that our constitutional government is put in immediate danger by his continuing to serve out the term to which the people of the United States elected him.

In my judgment, trying to assume a perspective of principled political neutrality, the case before us falls far, far short on the facts and on the law.

I ask unanimous consent that the text of a more comprehensive statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATOR JOSEPH R. BIDEN'S COMPREHENSIVE STATEMENT ON IMPEACHMENT DELIBERATIONS

There are no good guys in this sordid affair. Rightly or wrongly, the public has concluded that the President is an adulterer and liar. Ken Starr has abused his authority by unfair tactics born out of vindictiveness. The House Managers have acted in a narrowly partisan way and are now desperately attempting to justify their actions for their own political reputation and that Monica Lewinsky was both used and a user, while Linda Tripp, Lucianne Goldberg, Paula Jones and her official and unofficial legal team are part of a larger political plot to "get the President".

At this point, all that occurred before this is beyond my ability to affect. My job as a United States Senator hearing an impeachment trial is not to dissect the motives or even the tactics of Ken Starr, the trial lawyers, Linda Tripp and others. My only job is to determine whether the President of the United States, by his conduct committed the acts alleged in the two Articles of Impeachment before us. Not generally, but specifically, did he do what is alleged—and if he did, do these actions rise to the level of high crimes and misdemeanors necessary to justify the most obviously antidemocratic act the Senate can engage in—overturning an election.

THE ARTICLES OF IMPEACHMENT

When the framers designed our elected branches of Government, they established a system of separate but equal branches. The independence of the President from the Congress, and vice versa, is constitutionally anchored in the fact that each answers directly to the people through the ballot box. The people determine who will serve in either branch.

As I said in a speech last September at Syracuse Law School and in another on the floor of the United State Senate, the independence of the President from the Congress was no minor detail in the constitutional design. The single major goal and idea that best explains how the framers constructed the office of the Presidency was to make the Presidency as politically independent of the Congress as they could. They believed *his* independence vital to the protection of *our* liberties.

It takes a strong and independent President to sign the Emancipation Proclamation in the face of congressional opposition, as Abraham Lincoln did. It takes a strong and independent President to sign the executive order integrating the Armed Services in the face of congressional resistance, as Harry Truman did. It takes a strong and independent President to veto legislation in the face of strong majorities, as Ronald Reagan, George Bush and all of our Presidents have done.

We can, and we do, disagree about the wisdom of any particular Presidential decision, but none of us can doubt that the institution of a strong and independent Presidency has enhanced our freedoms and made us a stronger Nation.

For us to remove a duly elected President will unavoidably harm our constitutional structure.

Accordingly, for this Senator, the starting point in my thinking about the articles of impeachment must begin with giving the President the benefit of the doubt, and to err on the side of sustaining the independence of that office so vital to the framers and to the constitutional system they designed. Impeachment must be used against a President only as an extreme measure, when the President has so breached the public trust that our system of government is put in danger by his continuing to serve out the term to which the people of the United States elected him.

Have the House managers presented a case of sufficient severity, and have they proved it with sufficient clarity, to justify the drastic and awesome, step of convicting a duly elected President?

On January 12, when the House managers walked across the rotunda to the Senate and presented their case against the President, the country moved from the realm of sound bites and political attacks to a serious and sober consideration of the precise nature of the House's allegations against the President, and of the full extent of the record evidence against him.

The House managers have told us that in their judgment two dangers to our system of government justify taking this unprecedented and awesome step.

First, they said that failing to remove the President will undermine the rule of law and the administration of justice. Permitting a serial perjurer and obstructor of justice to escape punishment will bring disgrace on the oath "to tell the truth." It will mean that we can no longer with good conscience punish other people who

have committed perjury or obstructed justice. The ultimate effects would be felt throughout the judicial system. Like a pebble dropped into a pond, they said, it will send out ripples to all corners of our judicial system.

Second, they said that failing to remove the President will also condone his plot or scheme to deny a specific civil rights plaintiff—Paula Jones—of a full opportunity to litigate her civil rights claims against the President. Regardless of the ripple effects of his actions, the acts themselves were violations of law that amounted to a failure of the President to "take care that the laws be faithfully executed," in violation of his oath of office.

MULTIPLE VIOLATIONS OF THE CRIMINAL LAW NECESSARY

As I have said in earlier speeches on the impeachment power, not all crimes are impeachable, and an impeachable offense does not have to be a crime.

In this case, however, the House managers have made it quite clear that their case against the President depends entirely on proving that he has committed crimes, and not just a few crimes, but an elaborate scheme that included "lots and lots of perjury" and "many obstructions of justice," to quote Mr. McCollum. The dangers the President supposedly poses flow not from the President's reprehensible conduct, or from the fact that he misled his family, his aides, his cabinet and the Nation about that conduct. This impeachment is not about sex, they have insisted.

I asked Mr. Barr about this during the trial, and he said "What brings us here . . . is the belief by the House of Representatives in lawful public vote that this President violated, in numerous respects, his oath of office and the Criminal Code of the United States of America—in particular, that he committed perjury and obstruction of justice." Mr. McCollum made the same point in his opening presentation, when he said, "The first thing you have to determine is whether or not the President committed crimes. It's only if you determine he committed the crimes of perjury, obstruction of justice and witness tampering, that you ever move on to the question of whether he is removed from office. . . . None of us would argue to you that the President should be removed from office unless you conclude he committed the crimes that he is alleged to have committed."

THE BURDEN OF PROOF IN ASSESSING THE HOUSE'S CASE

So the question before the Senate is whether the President is a serial perjurer and a massive obstructor of justice.

What standard of proof should a Senator apply in deciding whether the record supports the accusations contained in the articles of impeachment—the accusations that the President violated the Federal criminal law? The House managers quite correctly pointed out that the Senate has never sought to determine for the entire body what the burden of proof should be in an impeachment. In effect, we have left it to the good judgment of each Senator to decide whether or not they are convinced by the evidence presented to us.

For this Senator, fundamental fairness as well as the nature of the House's case dictate that I ought to be convinced beyond a reasonable doubt that the President violated the laws that the House alleges. Proof beyond a reasonable doubt is the same standard applied in criminal cases—it is the standard that would apply if the President were tried in a criminal court for perjury or obstruction of justice.

It seems to me that fundamental fairness counsels that I apply the same standard as a criminal court precisely because the House asserts that what makes his actions impeachable is that he has violated Federal criminal statutes regarding perjury and obstruction of justice. It strikes me as absurd that the Senate would have the arrogance to throw out a duly elected President on these grounds unless it was convinced that he would be convicted of those charges. Otherwise, we would be saying in effect that even though the President would not be convicted on these crimes, we are nevertheless throwing him out of office because he committed those crimes. That would clearly be giving the President less protection than we provide any other citizen when charged with a crime.

Someone else can try to explain the logic of that decision, but not me.

In addition, the standard of proof beyond a reasonable doubt seems to me compelled by the fact that in the House's explanation of the harm to our system of government if the President is not thrown out, their entire explanation rises and falls depending upon whether or not the President would be convicted in a court of law for the crimes alleged. If he could not be convicted in a court of law, then the Senate is not "condoning" perjury or obstruction of justice any more than a criminal court is condoning those crimes when someone is acquitted on such charges. But if the Senate is not condoning those crimes, there is no conceivable basis for concluding that the public will be harmed by the President's remaining in office.

Furthermore, in applying the standard of proof beyond a reasonable doubt, the Senate simply must pay attention to the precise legal definitions of the crimes. What the pundits have condemned as legal hair splitting, and what the public rightly condemns in the President's penchant for evasive answers when responding to questions in a public setting, must now necessarily occupy our attention with regard to the President's answers under oath, such as a deposition or a grand jury proceeding because the claim made by the House is that the President violated specific criminal laws. If your aim is to respect the rule of law, you must also respect the rules of law—the precise legal definitions of the crimes, as found in 18 U.S.C. § 1623, the federal perjury statute, and in 18 U.S.C. §§ 1503 and 1512, the applicable Federal obstruction of justice statutes.

I have now studied the record sent to us by the House, listened to the presentations and arguments of the House Managers and the President's counsel, reviewed the videotape testimony of Monica Lewinsky, Vernon Jordan and Sidney Blumenthal, and listened to the views of my colleagues.

On that basis, I have reached the conclusion that the House has not presented evidence that could persuade a criminal jury beyond a reasonable doubt that the President has violated the applicable federal criminal statutes. There are too many holes, too many conclusions reached only by drawing negative inferences against the President, and too much evidence that apparently contradicts or is inconsistent with the House's case.

Now, let me be frank with you. I do not know for sure what actually occurred. Notwithstanding that, I am forced to make a judgment. In order to preserve the constitutional separation of powers, the independence of the presidency and the sovereignty of democratic elections, the President deserves the benefit of the doubt. This record falls well short of the certainty required to remove a President from office.

THE CONSTITUTIONAL BALANCE THE SENATE MUST STRIKE

While I believe that I must apply a standard of proof beyond a reasonable doubt because of the nature of the charges that the House has brought to us, it is also quite true—and I have said as much on prior occasions—that the Senate does not sit as a court of law when it tries an impeachment. As Alexander Hamilton stated in Federalist 65, impeachment is a political process.

"Political" in Hamilton's usage had two meanings as it relates to impeachments. The first I have mentioned already, and I have spoken about in this chamber before: impeachable offenses are offenses against the body politic. In the words of James Wilson, "in the United States . . . impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments."

The Senate's judgment in an impeachment trial is ultimately political in a second sense, too. It is political in the sense that the Senate has the responsibility to weigh all the consequences to the body politic in making its decision—the consequences that might flow from removing the President as well as the consequences that might flow from failing to remove him.

That is what I mean, and what Hamilton meant, by the ultimate judgment being a political one. As Senator Bumpers reminded us, the consequences of the decision we make will live on long after Bill Clinton has left office and long after each of us has left office. We must hand our constitutional structure on to our children and to future generations with its foundation as solid as it was when it was handed to us. It is our responsibility as Senators to make a judgment as to how best to accomplish that objective.

The obligation to evaluate the competing costs of retention and removal, incidentally, is what clearly distinguishes judicial impeachments and Presidential impeachments—very different institutional and long term consequences weigh in the balance in these two cases.

Removing the President from office without compelling evidence would be historically antidemocratic. Never in our history has the Senate overturned the results of an election and removed a President from office. History could not more plainly demonstrate what a dramatic step removing an elected President would be. The founding of our republic was the most dramatic assertion of the sovereignty of the people that the world had ever known. Abraham Lincoln dedicated the battlefield at Gettysburg to this proposition recalling that our union stands for "government of the people, for the people, and by the people."

The sovereignty of the people is exercised through national elections. All citizens, but particularly those of us who have had the honor to stand for election, have an instinctive respect for the will of the people as expressed through national elections. Thomas Jefferson, in his first inaugural address, aptly called this democratic instinct a "sacred principle." Reversing the people's sovereign decision would be in

radical conflict with the principle on which our Nation is founded as understood and applied throughout our history.

For one branch to remove the head of a co-equal branch unavoidably harms our constitutional structure. The framers intentionally chose not to create a parliamentary system of government. They meant for the President and Congress to be independent of and co-equal with one another. Maintaining each of those branches as strong and independent is fundamental to the Constitution's very structure—a structure they designed to safeguard the liberty of the governed against abuses of power by those who govern.

It is true that impeachment is part of this structure. Removing a President from office for sufficient reasons and upon sufficient proof is therefore consistent with that structure. At the same time, the great dangers inherent in the too ready exercise of that power mean that impeachment should be seen as an extreme measure.

The framers were accomplished, practical statesmen. They recognized that impeachment could be misapplied to undermine the primary structural guarantee of liberty—the separation of powers. They worried that Congress would be tempted to use the impeachment power to make the President "less equal." As Charles Pinckney warned his colleagues at the Philadelphia Convention, Congress could hold impeachment "as a rod over the Executive and by that means effectively destroy his independence."

How are we to keep the impeachment power within its constitutional boundaries, so that it stands ready to be used appropriately but does not become a "rod" in the hands of a partisan Congress, threatening the independence of the Presidency, as Charles Pinckney worried during the Constitutional convention?

The solution to this problem must lie in approaching the Senate's ultimate decision from as much of a position of bipartisanship as we can possibly achieve. This is the only way in which we can possibly focus primarily on the institutional consequences of our actions to see them in terms of their long term consequences instead of their short term partisan ones.

Nonpartisan faithfulness to the Constitution's structure, which protects the liberty of the governed must determine our action today.

This was my view of our role in 1974, when I rose on the floor of the United States Senate and made a "plea . . . for restraint on the part of all parties involved in the affair." That was in the case of the possible impeachment of Richard Nixon. And it was my view last year, when I urged restraint and bipartisanship as the attitude I hoped my colleagues would adopt. And it remains my view.

Viewed from that perspective, it is hard for me to see how the harms flowing from keeping Bill Clinton in office outweigh the harms to our constitutional democracy that would result from removing him.

HARMFUL CONSEQUENCES RECONSIDERED

I have listened attentively to the House managers' case. In all honesty, I can sympathize with their sense of outrage at the President's actions and his unwillingness to be fully accountable for those actions for so many months. Notwithstanding that, from the vantage point of a restrained view, and as nonpartisan a view as I can muster, the dangers they see from keeping President Clinton in office seem less dire than they claim. At the same time the harms to our system of government from removing him seem to me to be quite serious.

The House managers warn that failure to remove the President would destroy or undermine the sound administration of justice and threaten the rule of law. If true, that would be a big deal.

But we need to step back a moment and cool down the rhetoric. Manager Graham suggested as much when he reminded us all of the resiliency of the American system of government. "So when we talk about the consequences of this case," he said, "no matter what you decide, in my opinion, this country will survive. If you acquit the President, we will survive. If you convict him, it will be traumatic, and if you remove him, it will be traumatic, but we will survive."

That same calmer judgment ought to apply to the administration of justice and the rule of law. The House managers presented no evidence whatsoever of the dire consequences they predict. And there is no evidence of such dire consequences that they could present—because their evaluation of the consequences is nothing but speculation.

I would submit to you that the consequences of failing to remove the President will most likely be very different from those described by the House. This is one pebble whose ripples will in all likelihood simply wash up harmlessly on the shores and be forgotten forever. I, frankly, do not see how failing to remove the President will alter the conduct of the next prosecutor having to decide whether to bring a

perjury indictment, nor do I think that juries will be persuaded by a lawyer's argument that because the President "got away with it" the jury should acquit his client. The fact of the matter is, lots of perjury trials result in acquittals without impacting the ability of the criminal justice system to bring such charges where appropriate.

The House managers' cry of alarm ignores the fact that we are in an impeachment trial. This is not a criminal proceeding and thus the manner in which the Senate deals with the question has no implications at all for how a court of law would deal with it.

The Constitution is very clear about this. In article I, §3, cl. 7, the Constitution provides that whether or not a person is removed from office through impeachment that party "shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." If the evidence is as overwhelming as the managers say, the President can be prosecuted for perjury and obstruction after he leaves office.

The American people have a very robust understanding that impeachment is a political process—and a particularly clear understanding that *this* impeachment has been thoroughly politicized until it got to the Senate—I don't think anyone is confusing it with a legal process. No one, therefore, will take any solace from the President's acquittal in terms of their ability to commit perjury or obstruct justice and thereby avoid criminal charges.

Now don't misunderstand me—I am not suggesting that letting a guilty person off from a crime he or she has committed is OK. I am saying, first, that the President has not been charged with a crime in a criminal court, so that failing to acquit him is not at all letting him off from a crime, and second, that our decision will not have the kind of "sky is falling" consequences described by the House in any event. In my judgment, the rule of law and the sound administration of justice in this country will be unaffected by the action we take in the Senate, one way or the other.

The House managers have also warned that failing to remove the President will also condone his plot or scheme to deny a specific civil rights plaintiff—Paula Jones—her day in court, by withholding from her, through acts of perjury and obstruction, full information about the "nature and details" of his relationship with Monica Lewinsky. Just how accurate and complete a description is this one? In order to answer that question, we need a fuller picture of the "nature and details" of the Jones litigation itself.

If you listened just to the House managers, you would think that the Jones lawsuit was just a run-of-the-mill typical sexual harassment civil rights case.

It was not. From the very beginning, that lawsuit had been politically motivated. All the facts we know about this case, even taking Paula Jones at her word that the incident in the Excelsior Hotel actually occurred, demonstrate that the lawsuit was also without merit. She had never been harmed in any way in her job, and the President had never repeated anything remotely resembling an unwanted sexual advance on her again. She had received merit pay raises in her State employment and she had received good job performance reviews. She was unable to prove that she had been damaged in any way by the President's actions.

Actually, what damages she did assert—what caused her to file the lawsuit, according to her testimony—was the result of the publication of a hatchet-job article against President Clinton run in the *American Spectator*. The article was one salvo in an on going right wing probe into Clinton's life in Arkansas, aimed simply at digging up anything that could be politically damaging to the President. When the *American Spectator* ran a story making an unflattering reference to a "Paula," Jones found a lawyer to file suit in order to "reclaim her good name."

The lawyers Paula Jones eventually found were also underwritten by right wing conservative Republican money. In fact, investigative reporters as recently as this past Sunday continue to reveal more and more details of the tightly knit web of conservative lawyers and conservative financial backers who have hounded this President relentlessly since the day he took the office.

Now the President knew that the lawsuit was without merit—he might have behaved obnoxiously with Paula Jones, but he did not commit sexual harassment. He also knew that the real motivation of the lawsuit, the motivation that funded it and kept it going, was a political assault on him, not a legal assault. The law suit and its powers of discovery were being used to engage in a fishing expedition throughout Arkansas in search of political dirt. Leaks from that discovery appeared regularly in the Washington press.

The President knew something else, as well. He knew that his illicit relationship with Monica Lewinsky *had nothing to do* with the merits of the Jones litigation. On this matter, you do not have to rely on the President's assessment or mine, because the court independently concluded the same thing. In the order denying the plain-

tiff's discovery into the Lewinsky facts, Judge Wright said that the Lewinsky facts, even if the allegations concerning them were true, had nothing to do with the essential or core elements of Paula Jones lawsuit.

So keeping Lewinsky out of the politically motivated Jones case did not jeopardize Paula Jones' chances of prevailing, which were nonexistent in any event. What it did do was to prevent the President's political enemies from using the Jones discovery procedures to pry open that secret relationship and expose it, all to the political damage of the President.

In this context, it is understandable that the President wanted to frustrate the Jones litigation. What is more, the President can hardly be said to have prevented Paula Jones from presenting a case, because there was no meritorious case to present.

That doesn't justify perjury or obstruction, of course, but it does provide an accurate context for appraising the House managers' second claim. If they are permitted to convert a meritless and politically motivated lawsuit into a Presidential conviction for impeachable offenses, the Senate will be rewarding behavior that we ought to condemn. We need to think more than once about rewarding this kind of political witch hunt.

All of what I have just said informs this Senator's judgment concerning the harms to the country that would be caused by failing to convict a President who had committed the acts alleged by the House.

In fact, if the rule of law and the fair administration of justice will not be destroyed—contrary to the House managers' assertions—and if the American people understand that the President's actions were in the context of a politically-motivated lawsuit and involved concealing an embarrassing improper relationship that was irrelevant to that lawsuit—then it is very hard for this Senator to see how the President's continuing in office poses the sort of grave danger to our system of government that the framers had in mind when they gave the Congress the awesome power to impeach and remove an elected President.

In weighing the competing consequences of removal and retention in office, we must honor the constitutional obligation we undertook when we swore to do "impartial justice."

To that end, I think we all could benefit from the wisdom on several participants in the impeachment of Andrew Johnson, 131 years ago.

Two of them—Chief Justice Salmon Chase and Congressman James G. Blaine—both of whom historians record as being highly critical of Johnson and initially favoring his removal—were nevertheless able to step back from the partisanship of that moment and weigh the competing harms in the way I have suggested is proper.

Chief Justice Salmon Chase, who himself had political Presidential ambitions, wrote to a friend on the day the trial ended, saying, "What possible harm can result in the country from continuance of Andrew Johnson months longer in the Presidential chair, compared with that which must arise if impeachment becomes a mere mode of getting rid of an obnoxious President?"

And years later, James G. Blaine, who had voted for impeachment in the House, said, "The sober reflection of after years has persuaded many who favored Impeachment that it was not justifiable on the charges made, and that its success would have resulted in greater injury to free institutions that Andrew Johnson in his utmost endeavor was able to inflict."

And in our contemporary situation, former President Ford and our distinguished colleague and former majority leader, Robert Dole, have both urged us not to go down the road to impeachment, but to seek other means to express our displeasure.

We ought to follow these lessons, and to be attentive to the damage that removing a duly elected President on these charges will inflict on our system of government.

A decision to remove Bill Clinton will not destroy our system of government. But it will stand as a precedent—the very first time the U.S. Senate has removed any President from office. If we vote to convict and remove the President after a highly partisan impeachment for conduct that appears to be private and non-official, we will create an opportunity for impeachments to become a tool of partisan politics by other means.

CONCLUSION

Engaging in the balance that the Constitution requires, I cannot vote to convict the President. The evidence of proof beyond a reasonable doubt that the President violated federal criminal statutes has not been presented. Even were the evidence stronger, the Constitution demands that we weigh the competing considerations in a nonpartisan manner.

The President deserves our condemnation. He has brought shame to himself.

But we have not reached this point due to his failings alone. It has taken the volatile combination of his blameworthiness and the unalloyed animosity of others toward him that have brought us to the brink of a profound constitutional moment.

Given the essentially antidemocratic nature of impeachment and the great dangers inherent in the too ready exercise of that power, impeachment has no place in our system of constitutional democracy except as an extreme measure—reserved for breaches of the public trust by a President who so violates his official duties, misuses his official powers or places our system of government at such risk that our constitutional government is put in immediate danger by his continuing to serve out the term to which the people of the United States elected him.

I urge my colleagues to remain faithful to the constitutional design and to our obligation to do impartial justice.

(Below are significant issues of constitutional law, positive law, or Senate procedure that have arisen during the impeachment trial of President Clinton. As the impeachment process moved forward in the House to the point where its arriving in the Senate appeared likely, I began an intensive study of the Constitution, the framers' understanding, and our historical constitutional practices in the Senate to prepare for a possible impeachment trial, which I continued once the Senate assumed jurisdiction over the matter. Over the past several months, I have shared some of my conclusions with my colleagues and the public in speeches and memoranda, portions of which are below. Bracketed comments are additions to the original text, inserted to assist in comprehension.)

BIPARTISANSHIP

Mr. President, during the past twenty-six years as a United States Senator, I have been confronted with some of the most significant issues facing our Nation. Issues ranging from who sits on the highest court in the land to whether we should go to war. These are weighty issues. But none of these decisions has been more awesome, more daunting, more compelling, than the issue confronting us at the present time.

The issue of whether to impeach a sitting President is a monumental responsibility. A responsibility that no Senator will take lightly.

And as imposing as this undertaking is, I am sad to say that I have had to contemplate this issue twice during my service in the Senate; once during President Nixon's term and now.

And while the circumstances surrounding these two events are starkly different, the consequences are starkly the same. The gravity of removing a sitting President from office is the same today as it was twenty-five years ago. Listen to what I said on the floor of the United States Senate on April 10, 1974 during the Watergate crisis:

"In the case of an impeachment trial, the emotions of the American people would be strummed, as a guitar, with every newscast and each edition of the daily paper in communities throughout the country. The incessant demand for news or rumors of news—whatever its basis of legitimacy—would be overwhelming. The consequential impact on the federal institutions of government would be intense—and not necessarily beneficial. This is why my plea today is for restraint on the part of all parties involved in the affair."

I could have said these same words today. It is uncanny how much things stay the same.

Furthermore, in 1974 I urged my colleagues in the United States Senate to learn from the story of *Alice in Wonderland*. Then I cautioned that we remember Alice's plight when the Queen declared "sentence first, verdict afterwards."

But the need for restraint is even greater today than it was in 1974. In 1974, the impeachment question was not as politically charged as it is today. In 1974 we were willing to hear all the evidence before making a decision. Today, I hope, for our Nation's sake, that we do not follow the Queen's directive in *Alice in Wonderland* and that we will make a wise judgment after deliberate consideration.

My legal training combined with more than a quarter century of experience in the United States Senate has taught me several important lessons. Two of these lessons are appropriate now.

First, an ordered society must first care about justice.

Second, all that is constitutionally permissible may not be just or wise.

And it is with these two very important lessons guiding me, that I embark upon a very important decision regarding our country, our Constitution, and our President.

The power to overturn and undo a popular election of the people, for the first time in our Nation's history, must be exercised with great care and sober deliberation.

We should not forget that 47.4 million Americans voted for our President in 1996, 8.2 million more than voted for the President's opponent.—[Speech, 10/2/98]

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Let me now stand back from the issues of substance and procedure, and look at the impeachment mechanism as it has actually functioned in our country's history. The proof of the Framers' design, after all, will be in how the mechanism has worked in practice.

As we have seen, the Framers worried that impeaching a sitting President would most likely be highly charged with partisan politics and pre-existing factions, enlisting all the "animosities, partialities, and influence and interest" that inevitably swirl around a sitting President. History shows that they had a right to be worried.

Prior to the case of President Nixon, Presidential impeachment had only been used for partisan reasons.

History tells us that John Tyler was an enormously unpopular President, facing a hostile Congress dominated by his arch political enemy, Henry Clay. After several years of continual clashes, numerous Presidential vetoes and divisive conflicts with the senate over appointments, a select committee of the House issued a report recommending a formal impeachment inquiry.

President Tyler reached out to his political enemies: he signed an important bill raising tariffs which he had formerly opposed—and he found other means of cooperating with the Congress. In the end, even Henry Clay, speaking from the Senate, urged a slowdown in the impeachment proceedings, suggesting instead the lesser action of a "want of confidence" vote rather than formal impeachment proceedings. In early 1843, the resolution to proceed with an impeachment inquiry was defeated on the House floor, 127 to 83.

In 1868, Andrew Johnson came much closer to conviction on charges of serious misconduct. Although Johnson's impeachment proceedings ostensibly focused on his disregarding the tenure in office act, historians uniformly agree that the true sources of opposition to President Johnson were policy disagreements and personal animosity. [Text note: The conflict this time was between Johnson's moderate post Civil War policies toward the Southern states and the overwhelming Radical Republican majorities in both chambers. One especially volatile division was over whether Southern Senators and Representatives ought to be admitted to Congress prior to the enactment of Constitutional amendments expressly denying the right of state succession. The Republicans feared dilution of their voting strength if the southerners were seated, especially since an effect of President Lincoln's Emancipation Proclamation would be to increase House representation for the Southern states, by virtue of the fact that each freed slave would count as a whole person, instead of the abandoned constitutional formula of three-fifths.

The Tenure in Office Act had been enacted over his veto to restrict his ability to remove the Secretary of War—who was allied with the Radical Republicans—from that office without the Senate's consent. Johnson fired Edwin M. Stanton anyway, claiming that the restriction on his removal authority was unconstitutional.]

The conflict this time was between Johnson's moderate post-Civil War policies toward the southern states and the overwhelming Republican majorities in both chambers. The Republicans feared dilution of their voting strength if the southerners were seated.

Johnson's defenders in the Senate were eventually able to hold on to barely enough votes to prevent his conviction. In professor Raoul Berger's view, "Johnson's trial serves as a frightening reminder that in the hands of a passion-driven congress, the process may bring down the very pillars of our constitutional system."

Yet, if the cases of Tyler and Johnson substantiate the Framers' fears, the Nixon situation vindicates the utility of the impeachment procedures. Notice how different the Nixon proceedings were from Tyler's and Johnson's. As the Nixon impeachment process unfolded, there was broad bipartisan consensus each step of the way.

While it would be foolish to believe that Members of Congress did not worry about the partisan political repercussions of their actions, such factional considerations did not dominate decision making.

Political friends and foes of the President agreed that the charges against the President were serious, that they warranted further inquiry and, once there was definitive evidence of serious complicity and wrongdoing, a consensus emerged that impeachment should be invoked. The President resigned after the House Judiciary Committee voted out articles of impeachment by a 28–10 vote.

For me, several lessons stand out from our constitutional understanding of the impeachment process and our historical experience with it. Furthermore, I believe that a consensus has developed on several important points.

While the founders included impeachment powers in the Constitution, they were concerned by the potential partisan abuse. We should be no less aware of the dangers of partisanship. As we have seen, the process functions best when there is a broad bipartisan consensus behind moving ahead. The country is not well served when either policy disagreements or personal animosities drive the process.

Many scholars who have studied the Constitution have concluded that it should be reserved for offenses that are abuses of the public trust or abuses that relate to the public nature of the President's duties. Remember, what is impeachable is not necessarily criminal and what is criminal is not necessarily impeachable.—[Speech, 10/2/98]

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I am here today to call for bipartisanship in the impeachment process. It is a concept many will say they agree with. But actions speak louder than words.

The Framers of the Constitution knew that the greatest danger associated with impeachment was the presence of partisan factions that could dictate the outcome.

It is clear from the debates and from the commentaries on the Constitutional Convention that the Framers were concerned that anything less than bipartisanship could, and would, do great damage to our form of government. They knew that to contemplate an action as profound as undoing a popular election requires at a minimum that members of both parties find that the alleged wrong is grave enough to overturn the will of the majority of the American people.

The Framers also understood the sentiment expressed nearly 200 years later by Congresswoman Barbara Jordan during the impeachment proceedings of Richard Nixon.

She said, "it is reason, and not passion, which must guide our deliberations, guide our debate, and guide our decision."

But the current debate is guided by faction, not reason. One example: The House Judiciary Committee this month heard a battery of witnesses address the question of what is an impeachable offense. Democrats called legal experts who testified that the President's acts are not impeachable offenses, and Republicans called witnesses who were just as certain they were. By the end of the hearing, anyone listening would have the overwhelming impression that there was no consensus in the legal community on the issue, that it was an open question.

Yet the vast majority of historians and legal scholars have concluded—and stated publicly—that nothing that President Clinton has been accused of rises to the level of an impeachable offense. The hearing was a political charade. We are told that ultimately, this is a political process. Ultimately, it is. The question is whether it is going to be a fair process. I argue that it can, and must be fair.

In his marvelous book on the impeachment process, published while the country was in the throes of President Nixon's Watergate troubles, Professor Charles Black alerted us to the danger of partisanship.

Because the constitution and its history provide us with more questions about impeachment than answers, he said, "it is always tempting to resolve such questions in favor of the immediate political result that is palatable to us, for one can never definitely be proved wrong, and so one is free to allow one's prejudices to assume the guise of reason."

Black was echoing Alexander Hamilton, who warned in Federalist 65 that impeachments:

"will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on the one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of guilt or innocence."

I don't think I am being partisan myself in warning about the risks of partisan excess. As a 32 year-old Senator, I expressed this same concern about the fate of a Republican President. On April 10, 1974, I rose on the floor of the United States Senate and said:

"In the case of an impeachment trial, the emotions of the American people would be strummed, as a guitar, with every newscast and each edition of the daily paper in communities throughout the country.

The incessant demand for news or rumors of news—whatever its basis of legitimacy—would be overwhelming. The consequential impact on the federal institutions of government would be intense—and not necessarily beneficial. This is why my plea today is for restraint on the part of all parties involved in the affair."

I make the same plea for restraint today. And while the circumstances surrounding these two events are starkly different, the consequences for our Nation are the same. The gravity of removing a sitting President from office is the same today as it was twenty-four years ago.

The American people understand that the consequences of impeaching a sitting President are grave and, thus far, they have shown a remarkable restraint—more than some of the pundits and experts. But I believe they have reached two clear conclusions: Congress should resolve the matter expeditiously and resolve the matter in a fair and non-partisan manner.

These conclusions have great significance to the impeachment process. I believe the American people will ultimately make their judgment about the proceedings and the outcome based in part, on whether the House Judiciary Committee votes along strict party lines and whether the House of Representatives acts in a similar manner.

That may not be fair, but I believe that is how they will judge it. Therefore, it seems clear to me that for history's sake, and with the Committee's legacy in mind, Chairman Hyde and the Republican majority in the House must bend over backwards to demonstrate that they have conducted this proceeding based on principle, not politics.

There is yet another issue where public opinion comes into play. That is the question of whether the President's transgressions warrant impeachment. We know from survey after survey that the American people believe the President's actions do not justify impeaching him.

Should that have any bearing on the outcome? Many of my colleagues say they will ignore public opinion. In most cases, this is a sound position for a member of Congress to take. When we are elected to the House and the Senate, we are sent here to exercise judgment, not simply to be weathervanes that shift with the political winds. The fact that this is an impeachment proceeding doesn't change that—it makes it even more important that we exercise our best judgment.

But I believe it is a serious mistake to take the position that public opinion should have no bearing on how we act and what we do. Let me explain. Many people—and many legal scholars—have said that impeachment should be reserved for grave breaches of the public trust. Surely, if we are trying to decide whether an offense is a breach of the public trust, it is important to know what the public thinks. If the American people think the President's actions do not warrant impeachment, we should listen to their views, and take them seriously.

It would be a serious mistake to ignore public opinion for another, more fundamental reason. This is their President we are talking about. The President of the United States doesn't serve at the pleasure of the legislature, as a prime minister does in a parliamentary system. He is elected directly by the people of the United States.

The election of a President is the only nationwide vote that the American people ever cast. That is a big deal. If the American people don't think they have made a mistake in electing Bill Clinton, we in the Congress had better be very careful before we upset their decision.

This was brought home to me several weeks before the elections at a filling station in Wilmington. The woman working the cash register looked up at me with something of a scowl on her face. I assumed—incorrectly, it turned out—that she had voted against me the last time I ran. She said, "You're Joe Biden, aren't you?" I nodded. She said, "What are you going to do to President Clinton on this Lewinsky thing?" I started to give her a noncommittal answer about the process needing to go forward, but she brought me up short. "Don't you or anyone else take my vote away, Joe. He's my President! If you remove him, I will never vote again."

This woman—and the American people—understand the genius of the American system in their bones. They know that the Congress and the President are separate branches of government. They understand that each branch is responsible to them, not to the other branch of government. Just as they know that the Senators from their state are theirs, and the Representative from their district is theirs, they know that the President is theirs, too.

Anyone who wants to impeach Bill Clinton needs to keep in mind what the American people think about it, because he is their President.

Let me be absolutely clear. This does not mean just doing what the opinion polls say. It means proceeding in a manner that the American people understand to be fair. In the case of an impeachment, fair means bipartisan. It means putting aside the disagreements that stem from partisan factions. The time for partisan factions to play a role is in the process of elections, where candidates advance competing policies and platforms and the people vote. Once the election is held, our leaders hold office until the next election. It is simply antithetical to our constitutional de-

mocracy to use impeachment to overturn an election on partisan grounds. It violates the independence of the Presidency and it usurps the people's voice.

The Framers saw this danger when they wrote the impeachment power into the Constitution. Hamilton warned that an impeachment would "connect itself with preexisting factions," just as Black much later saw that impeachment was an occasion for "prejudices to assume the guise of reason."

So those who wish to proceed with impeachment in the face of the public's contrary opinion bear a special obligation and confront a special risk. The obligation they face is that they must proceed in a bipartisan manner, so that we can defend the Congress' actions as fair and consistent with the constitutional framework—so that if impeachment goes forward, those who support it can look my constituent, or their constituent, straight in the eyes and defend the process as fair and just.

Should they fail to do this, the risk they face is the chance that they will inflict more damage on our system of government and induce more cynicism and disgust with politics than anything the President has done so far.

So we must be prudent. Otherwise we will succumb to the danger the Framers warned against. We will subject the President to what amounts to a vote of no confidence. If you disapprove of his presidency and its policies, or if you do not like the man, vote to impeach. If, on the other hand, you support his presidency and his policies, or if you do like the man, vote to acquit. But that is not our system of government.

When Benjamin Netanyahu returned home after signing the Wye accords, he faced a vote of no confidence. If he had lost, he would have been out of office and another government would have to be formed.

That is simply not our system of government. Ours is not a parliamentary system. That is not how impeachment is supposed to operate.

Reflect for just a moment on how different our government is. Here, the President and the Congress are separate branches of government. Each is elected directly by the people. The President and Vice President are the only officials elected by ALL the people. Through the electoral process, they answer to all the people. In such a system, a vote of no confidence, as a means of removing the head of government when the Congress disapproves of his leadership, contradicts the theory of separated powers. It would trample on the choice made by the people through the electoral process.

This is no small matter. It goes to the heart of the constitutional design. As Jack Rakove, the Stanford historian, noted during the recently held House hearings on the standard for impeachment, the prevailing principle that guided the Framers in shaping the institution of the Presidency during the Philadelphia Convention, the one major goal and idea that best explains how that office took shape over the summer of 1787, was their intention on "making the presidency as politically independent of the Congress as they could."

The Framers saw the system of separated powers and checks and balances as a bulwark in support of individual liberty and against government tyranny. The separation of powers prevents government power from being concentrated in any single branch of government. Permit one branch of government to subjugate another to its partisan wishes, and you permit the kind of concentration of power that can lead to tyranny.

So the system the Framers established is utterly incompatible with the idea that sharp partisan divisions could be sufficient to impeach. Preserving our system, with its checks and balances and separation of powers, ought to be part of our consideration as we attempt to resolve the current controversy.

How do we ensure that impeachments do not become the partisan showdowns that the Framers warned about? The answer is both simple and elusive. The only thing that prevents the impeachment power from being abused is the good faith of Members of Congress.

Professor Black proposed a simple test. He said that for the purposes of impeachment, members take off their party's hat—shed their partisan identity—and then try to take on the identity of a member of the other party. In other words, Republicans who favor Clinton's impeachment should try to pretend they are Democrats, and see if they still hold that same conclusion. Democrats who scoff at impeachment in the present instance should try to see it from the Republicans' point of view.

It is very difficult to perform this test, especially in the highly charged partisan atmosphere in which we live, but you get the point. Before we undertake such a solemn act as impeachment, we should examine our reasoning very carefully to be sure we are not simply following partisan instincts.

Impeachment can be legitimate if and only if it emanates from a bipartisan conviction that the President has committed high crimes and misdemeanors—when

people of opposing viewpoints can come together in agreement over the seriousness of the offense and the appropriateness of the sanction.

Partisanship need not disappear entirely—that would be impossible. It simply must be held in check for a time—a few weeks, perhaps a month—and by a relatively small number of people, so that a bipartisan consensus can take shape.

Look back at the Nixon impeachment. It took on legitimacy when a core of Republicans on the House Judiciary Committee were moved by the nature of President Nixon's offenses to break party ranks and vote for articles of impeachment. In the Senate, it was the stark reality of eroding Republican support that prompted President Nixon to resign. There was bipartisan consensus that what Nixon did was impeachable.

Partisanship did not evaporate entirely during the impeachment trial of Andrew Johnson. In fact, the entire episode was riddled with partisanship, and overall it stands as an excellent example of how not to conduct an impeachment.

Still, seven Republican Senators did vote with the Democrats for acquittal, shedding their partisan preferences, to prevent that impeachment from succeeding. It took only that amount of bipartisanship to save the country from an impeachment that most people—in retrospect—have concluded would have been a terrible mistake. The fact that a conviction in the Senate requires a two-thirds majority guarantees a measure of necessary bipartisanship except in all but the most lopsided Senates.

But bipartisanship should not wait until the matter reaches the Senate chamber. In previous impeachments the votes in both the House and the Senate have been by overwhelming majorities. In the past, except for the Johnson impeachment, the only times articles of impeachment reached the floor were in cases of tremendous bipartisan consensus that the offenses satisfy the constitutional standard and that the officer ought to be removed.

As for the Johnson impeachment itself, according to James Blaine, one of the Republican House members who voted for impeachment, he and others came in time to regret the effort. In private correspondence, Blaine wrote that, "the sober reflection of after years has persuaded many who favored impeachment that it was not justifiable on the charges made, and that its success would have resulted in greater injury to free institutions than Andrew Johnson in his utmost endeavor was able to inflict."

The conclusion I reach is this. The burden is, as it always has been, on those who seek to impeach and convict a President. To overturn a popular election, they must convince the American people and at least some in the President's party that the President's actions meet the high standard for impeachment settled upon by our founders in the Constitution.

This is what I mean by bipartisanship.

The standard is "principled political neutrality."

And one measure of whether a member has met that principle is to ask in Professor Black's words: "Would they have answered the same question the same way if it came up with respect to a President towards whom [they] felt oppositely from the way [they] feel toward the President threatened with removal."

The American people will know whether each member met that test. They will not demand unanimity, but they will demand consensus.

Thus far, the House Judiciary Committee has proceeded without dignity, causing the American people to lose respect for the Committee.

As a result, the burden of demonstrating that they are proceeding with a standard of "principled political neutrality" will be politically difficult to meet.

Ken Starr will make his case, the President should be allowed to make his. Then let them decide if the President's conduct meets the test of what the Framers had in mind by "high crimes and misdemeanors."

The choice is not whether the President's self-evidently shameful and possibly criminal conduct must be punished by impeachment or be condoned. The choice is whether the process for dealing with his conduct is removal from office or some other means—censure, or perhaps even a criminal trial after he has left office.

To those who say that failure to bring articles of impeachment against the President would amount to condoning his immoral behavior or overlooking a criminal act, notwithstanding the fact it does not meet the test of an impeachable offense, I say they do not understand our system of government. For the Constitution contemplates and the law provides for such a circumstance—it is called a criminal trial after his term is served. It is a way to punish the President without doing damage to the system of separated powers or overruling the judgment of the American people.

Failure to impeach, even failure to proceed with a criminal action, does not mean that the President has not paid for his immoral behavior—he has already been sen-

tenced to a hundred years of shame in the history books, which is not an insignificant penalty.

So I say to my colleagues in the House, do your duty. Proceed with principled political neutrality. For if you do, history will judge you kindly. And if you do not, it will judge you harshly.

And for those of us who hold high public office and the public trust, history is a judge.—[Speech, 11/18/98]

BURDEN OF PROOF

What is the standard of proof? The Constitution does not set forth an express standard of proof that the evidence must meet in order to allow the Senate to convict the President. Practice has left to each Senator to determine for him or herself what standard to apply.

From the judicial setting there are three major standards from which to choose. Most civil trials require a plaintiff to prove his or her case by a preponderance of the evidence. This means that the plaintiff must prove that it is more likely than not that the plaintiff's assertions are true. Criminal trials require the most exacting degree of proof. The prosecution must prove the defendant's guilt beyond a reasonable doubt. A third, middle course is applied in some cases. This standard, clear and convincing evidence, requires proof that substantially exceeds a mere preponderance but that does not eliminate all reasonable doubt. There must be a very high degree of probability that the evidence proves what the plaintiff asserts, but the proof may fall short of certainty.

Many Senators, analogizing to a criminal trial, have expressed that they would require the House Managers to prove their case "beyond a reasonable doubt." In anticipation of an impeachment trial of President Richard Nixon, Senators Sam Ervin, STROM THURMOND, and John Stennis all declared that they would apply the beyond a reasonable doubt standard. But it is clear that individual Senators may opt for a civil standard.

This issue may not have more than rhetorical significance for the impeachment trial of President Clinton. These standards are meant to guide juries in their fact-finding capacity. Insofar as the trial focuses on the question whether the President's conduct justifies conviction and removal from office, the proceedings will call on the Senate in its judicial character. Resolving that question requires the Senate to exercise its legal and political judgment in order to determine whether the constitutional punishment fits the misconduct. It does not call upon the Senate to make a factual determination about what conduct actually occurred.—[Memorandum, 12/28/98]

THE BURDEN OF PROOF IN ASSESSING THE HOUSE'S CASE

But can the President rightly be charged with having committed the massive number of crimes that the House Managers allege? As Mr. McCollum said, if we cannot conclude that the President has violated the law, even the House Managers would agree that he should not be removed from office. Even if you accept their recitation of the dire consequences of President Clinton remaining in office, if the President cannot be shown to have been a serial perjurer and a massive obstructor of justice, the Senate should acquit.

What standard of proof should a Senator apply in deciding whether the record supports these charges? Both the House Managers and the President's counsel addressed this significant issue. The House Managers quite correctly pointed out that the Senate has never sought to determine for the entire body what that burden of proof should be in an impeachment. In effect, we have left it to the good judgment of each Senator to decide whether or not they are convinced by the evidence presented to us.

For this Senator, fundamental fairness as well as the nature of the House's case indicate that I ought to be convinced beyond a reasonable doubt that the President violated the laws that the House alleges. Proof beyond a reasonable doubt is the same standard applied in criminal cases—it is the standard that would apply if the President were tried in a criminal court for perjury or obstruction of justice.

It seems to me that fundamental fairness counsels that I apply the same standard a criminal court would apply precisely because the House asserts that what makes his actions impeachable is that he has violated the criminal statutes regarding perjury and obstruction of justice. It strikes me as absurd that the Senate would have the arrogance to throw out a duly elected President on these grounds unless it was convinced that he would be convicted of those charges. Otherwise, we would be saying in effect that even though the President would not be convicted on these crimes, we are nevertheless throwing him out of office because he committed those crimes. Someone else can try to explain the logic of that decision to the voters, but not me.

In addition, the standard of proof beyond a reasonable doubt seems to me compelled by the fact that in the House's explanation of the harm to our system of government if the President is not thrown out, their entire argument rises and falls depending upon whether or not the President would be convicted in a court of law for the crimes alleged. If he could not be convicted in a court of law, then the Senate is not "condoning" perjury or obstruction of justice any more than a criminal court is condoning those crimes when someone is acquitted on such charges. The Senate, like a court, is simply saying, "not proven." But if the Senate is not condoning those crimes, there is no conceivable basis for concluding that the public will be harmed by the President's remaining in office.

(There is another way to look at this: In any impeachment, a Senator must simply be convinced to his or her satisfaction that the defendant committed the acts alleged. That standard never changes. However, when the articles of impeachment allege that offenses rise to an impeachable level because these actions violate the law and have harmful consequences to the country because the defendant has violated the law and would not be punished, in that case a Senator must be convinced that a defendant would in fact be punished by a criminal court. In other words, the Senator must simply be convinced that a court would find that there is proof beyond a reasonable doubt.

(In contrast, if the charges were that the President had lied to the American people, the Congress or foreign leaders, and that the harmful consequences flowed from being unable to rely upon his word, then a Senator must simply be convinced that the President lied, relying upon whatever level of proof is sufficient to convince him or her of that fact.)—[Memorandum, 1/21/98]

CENSURE

In recent days, some have suggested that because the Starr report provides prima facie evidence of what are arguably impeachable offenses, the House and the Senate have a constitutional responsibility to see the impeachment process through to its conclusion. In my view, the constitutional history that I have sketched here this evening shows this position to be entirely mistaken. Indeed, if anything, history shows a thoroughly understandable reluctance to have the procedure invoked.

Stopping short of impeachment would not be reaching a solution "outside the Constitution," as some suggest—it would be entirely compatible and consistent with the Constitution.

The 28th Congress [which contemplated but then terminated impeachment proceedings against President Tyler] hardly violated its constitutional duty when the House decided that, all things considered, terminating impeachment proceedings after cooperation between the Congress and the President improved was a better course of action than proceeding with impeachment based on his past actions, even though it apparently did so for reasons no more laudable than those that initiated the process.

Impeachment was and remains an inherently political process, with all the pitfalls and promises that are thus put into play. Nothing in the document precludes the Congress from seeking means to resolve this or any other putative breach of duty short of removing him from office. In fact, the risky and potentially divisive nature of the impeachment process may counsel in favor of utilizing it only as a last resort.

Of course, impeachment ought to be used if the breach of duty is serious enough—what the Congress was prepared to do in the case of Richard Nixon was the correct course of action. However, nothing in the Constitution precludes the congress from resolving this conflict in a manner short of impeachment.

The crucial question—the question with which the country is currently struggling—is whether the President's breaches of conduct—which are now well-known and which have been universally condemned—warrant the ultimate political sanction. Are they serious enough to warrant removal?

In answering that, we need to ask ourselves, what is in the best interest for the country?

And while I have not decided what ultimately should happen, I do want to suggest that it is certainly constitutionally permissible to consider a middle ground as a resolution of this matter. Such an approach might bring together those of the President's detractors who believe there needs to be some sanction, but are willing to stop short of impeachment, as well as those of the President's supporters who reject impeachment, but are willing to concede that some sanction ought to be implemented.

As a country, we have not often faced decisions as stark and potentially momentous as the impeachment of a President. On the other hand, we would be wise not

to overstate such claims—surely we have faced some moments just as stark and serious as this one. We have survived those moments, and we will survive this one.

Whatever the outcome of the present situation, I am confident that our form of government and the strength of our country present us not with any constitutional crisis, but rather with the constitutional framework and flexibility to deal responsibly with the decisions we face in the coming months.—[Speech, 10/2/98]

CRIMES AND MISDEMEANORS, HIGH

Let me say at the outset, that what President Clinton did was reprehensible. It was a horrible lapse in judgment and it has brought shame to him personally and to the office of the President. His actions have hurt his family, his friends, his supporters and the country as a whole. President Clinton has said this himself.

Let me also say that I have not made any decision as to what I think should happen. I have not come to any conclusion as to what consequences the President should face for his shameful behavior. I believe the oath I have taken precludes me and other Senators from prejudging, as I may be required to serve as a judge and juror in the trial of the century.

I can only make an assessment after hearing all of the evidence: evidence against the President, and evidence in support of the President.

No one knows how this will turn out. However, I have given the topic some thought and would like to explore some of the issues that surely will confront responsible Members of Congress and all Americans as we enter this difficult period in our history.

The Framers of the Constitution who met in Philadelphia in the summer 1787 considered offering the country a constitution that did not include the power to impeach the President. After all, any wrongs against the public could be dealt with by turning the President out in the next election.

One delegate to the constitutional convention, Charles Pinckney of South Carolina, worried that the threat of impeachment would place the President under the thumb of a hostile congress, thereby weakening the independence of the office and threatening the separation of powers. According to James Madison's notes, Pinckney called impeachment a "rod" that congress would hold over the President.

In being reluctant to include an impeachment power, the Framers were not trying to create an imperial presidency. In fact, what they were worried about was protecting all American citizens against the tyranny of a select group.

In their view, the separation of powers constituted one of the most powerful means for protecting individual liberty, because it prevented government power from being concentrated in any single branch of government. To make the separation of powers work properly, each branch must be sufficiently strong and independent from the others.

The Framers were concerned that any process whereby the legislative branch could sit in judgment of the President would be vulnerable to abuse by partisan factions. Federalist No. 65 begins its defense of the impeachment process by warning of the dangers of abuse. It argues that impeachments:

"Will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence."

So the Framers were fully aware that impeachment proceedings could become partisan attacks on the President—charged with animosities generated by all manner of prior struggles and disagreements, over executive branch decisions, over policy disputes, over resentment at losing the prior election. Federalist No. 65 expresses the view that the use of impeachment to vindicate these animosities would actually be an abuse of that power.

This sentiment is as true today as it was when the constitution was being written. It was also true when Richard Nixon faced impeachment in 1974. In fact, it would have been wrong for Richard Nixon to have been removed from office based upon a purely partisan vote. No President should be removed from office merely because one party enjoys a commanding lead in either house of the congress.

Yet while the Framers knew that impeachment proceedings could become partisan, they needed to deal with strong anti-federalist factions.

The anti-federalists strenuously argued that the federal government would quickly get out of step with the sentiments of the people and become vulnerable to cor-

ruption and intrigue, arrogance and tyranny. This charge proved close to fatal as the ratifying conventions in the states took up the proposed constitution.

The Framers of the Constitution knew that the Constitution would have been even more vulnerable to charges of establishing a government remote from the people if the President were not subject to removal except at the time of re-election.

James Madison's notes of the Philadelphia constitutional convention record his observations of the debate. He:

"Thought it indispensable that some provision should be made for defending the community against the incapacity, negligence or perfidy of the chief magistrate [that is, the President]. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers."

So in the end, the Framers of the Constitution risked the abuse of power by the congress to gain the advantages of impeachment.

Once the decision to include the power of impeachment had been made, the remainder of debate on the impeachment clauses focused on two issues:

1. What was to constitute an impeachable offense or what were the standards to be?
2. How was impeachment to work or what were the procedures to be?

As we shall see, the Framers proved unable to separate these two issues entirely. Understanding how they are intertwined, however, helps us to understand the full implications of the power.

The Constitution provides that "the House of Representatives shall . . . have the power of impeachment." (Article I, Section 2, Clause 5).

The Framers decision that the House of Representatives would initiate the charges of impeachment follows the pattern of the English Parliament—where the House of Commons initiates charges of impeachment. Beyond this, the choice must have seemed fairly compelled by two related considerations.

The first, already mentioned, was the need to provide the people as a whole with assurances that the government they were being asked to create would be responsive to the interests and concerns of the people themselves.

The second was the Framers' substantive understanding of the impeachment power. It was a power to hold accountable government officers who had, in Hamilton's terms, committed "an abuse or violation of some public trust" thereby committing an injury "done immediately to the society itself."

If the gravamen of an impeachment is the breach of the public's trust, no branch of the federal government could have seemed more appropriate to initiate such a proceeding than the House, which was conceived and defended as the chamber most in tune with the people's sympathies and hence most appropriate to reflect the people's views.

The Constitution further provides that the President shall be "removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." (Article II, Section 4).

This language went through several changes during that summer of 1787. In initial drafts, the grounds for impeachment were restricted to treason and bribery alone. When the matter was brought up on September 8, 1787, George Mason of Virginia inquired as to why the grounds should be restricted to these two provisions.

He argued that "attempts to subvert the constitution may not be treason as above defined." Accordingly, he moved to add "maladministration" as a third ground.

James Madison objected to Mason's motion, contending that to add "so vague a term will be equivalent to a tenure during the pleasure of the senate." Here again, we see the worry that impeachment would be misused by the congress to reduce the independence of the President, allowing partisan factions to interfere at the expense of the larger public good.

The objection apparently proved effective because mason subsequently withdrew the motion and substituted the phrase "or other high crimes and misdemeanors."

What does the phrase mean? It is clear the Framers thought it to be limited in scope. But beyond this, constitutional scholars have been debating the meaning of this phrase from the very early days of the republic.

Yet despite this on-going dialogue, I believe there are two important points of agreement as to the original understanding of the phrase, and a third issue where the weight of history suggests a settled practice.

First, as we have already seen, the Framers did not intend that the President could be impeached for "maladministration" alone.

Second, a great deal of evidence from outside the convention shows that both the Framers and ratifiers saw "high crimes and misdemeanors" as pointing to offenses

that are serious, not petty, and offenses that are public or political, not private or personal.

In 1829, William Rawle authored one of the early commentaries on the Constitution of the United States. In it, Rawle states that "the legitimate causes of impeachment . . . can only have reference to public character and official duty."

He went on to say, "in general, those offences which may be committed equally by a private person as a public officer are not the subjects of impeachment."

In addition, more than one hundred fifty years ago, Joseph Story, in his influential *Commentaries on the Constitution*, stated that impeachment is:

"Ordinarily" a remedy for offenses "of a political character," "growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office."

The public character of the impeachment offense is further reinforced by the limited nature of the remedy for the offense. In the English tradition, impeachments were punishable by fines, imprisonment and even death. In contrast, the American constitution completely separates the issue of criminal sanctions from the issue of removal from office.

The Constitution states that "judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States." (Article I, Section 3, Clause 7).

The remedy for violations of the public's trust in the performance of one's official duties, in other words, is limited to removal from that office and disqualification from holding future offices. Remedies that I might add, correspond nicely to the public nature of the offenses in the first instance.

Additional support comes from yet another commentator, James Wilson, a delegate to the convention from Pennsylvania. In his lectures on the Constitution, Wilson wrote that "in the United States and Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments."

All in all, the evidence is quite strong that impeachment was understood as a remedy for abuse of official power, breaches of public trust, or other derelictions of the duties of office.

The third point to make about the scope of the impeachment power is this: to be impeachable, an offense does not have to be a breach of the criminal law.

The renowned constitutional scholar and personal friend and advisor, the late Phillip Kurland, wrote that "at both the convention that framed the constitution and at the conventions that ratified it, the essence of an impeachable offense was thought to be breach of trust and not violation of the criminal law. And this was in keeping with the primary function of impeachment, removal from office."

If you put the notion that an impeachable offense must be a serious breach of an official trust or duty, together with the point that it does not have to be a criminal violation, you reach the conclusion that not all crimes are impeachable, and not every impeachable offense is a crime.—[Speech, 10/2/98]

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Reference has been made to an exchange between George Mason and James Madison at the Virginia Ratifying Convention. Mason is reported to have worried that a President might "stop [an] inquiry" into wrongdoing involving the President. Madison is reported to have replied that this concern was not substantial because the House of Representatives could impeach the President if he did so. The exchange, it has been argued, proves that the Framers viewed obstruction of justice as clearly an impeachable offense.

A more extended look at the colloquy shows that Mason's precise concern was that the President would use his pardon power to pardon people whose investigations might reveal Presidential involvement in criminal activities. Mason used this concern as the basis for arguing that the pardon power should be placed in the House, and not with the President. To this concern, Madison replied that if the President so abused the pardon power, he could be impeached. So it was an action that abused an official power of the President that Madison thought was impeachable.

Here is a condensed version of the exchange as reported in Eliot's *Debates*.

Mr. GEORGE MASON, animadverting on the magnitude of the powers of the President, was alarmed . . . Now, I conceive that the President ought not to have the power of pardoning, because he may frequently pardon crimes which were advised by himself. It may happen, at some future day, that he will establish a monarchy, and destroy the republic. If he has the power of granting pardons before indictment, or conviction, may he not stop inquiry and prevent detection?

Mr. MADISON, adverting to Mr. Mason's objection to the President's power of pardoning, said it would be extremely improper to vest it in the House of Represent-

atives, and not much less so to place it in the Senate. . . . There is one security in this case to which gentlemen may not have adverted: if the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him. . . . This is a great security."—[Memorandum, 2/9/99]

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II. THE MEANING OF "HIGH CRIMES AND MISDEMEANORS" UNDER THE CONSTITUTION

The Constitution establishes that the President "shall be removed from Office on Impeachment for and Conviction of Treason, Bribery, or other high crimes and misdemeanors." That instrument, by design, does not contain an express definition of the phrase "other high crimes and misdemeanors." The Framers intended the Constitution to endure for centuries and recognized that they could not provide a more specific definition that would justly serve the Nation's interest into an unknowable future. Instead, they wisely entrusted the construction and adaptation of that phrase to the judgment and conscience of the people's chosen representatives in Congress. Thus, the Senate is left to exercise what Alexander Hamilton termed our "awful discretion" to judge whether the President's conduct warrants removing him from office.

While the Constitution calls upon each Senator to bring his or her good faith political judgment to bear on the meaning of the constitutional standard of "other high crimes and misdemeanors," it does not abandon us to an ad hoc or partisan exercise of our discretion. Indeed, the Framers strongly urged in both the Philadelphia convention and the state ratifying conventions that the constitutional standard is not properly understood to allow impeachment to be used as a tool of partisan punishment. The Constitution itself, the history of its framing and ratification, and the construction given through faithful interpretation and practice since its ratification converge to provide powerful guidance for determining what offenses justify impeachment and conviction. These touchstones of constitutional interpretation reveal that high crimes and misdemeanors are great offenses characterized by two elements: (1) grave harm to the constitutional system of government that (2) results from official misconduct.

A. THE HISTORY OF IMPEACHMENT

The Framers met in Philadelphia in 1787 because the government under the Articles of Confederation was so ineffectual as to have brought the fledgling union to "the last stage of national humiliation." They intended to establish a government through which the people could effectively define and pursue the general welfare. To do so, the Framers understood that the government whose charter they were about to write would have to be entrusted with broad coercive powers to act directly upon American citizens. At the same time, the Framers were practical statesmen who understood that the powers necessary to make a government effective could be misused to make it potentially an instrument of oppression. Madison explained the dilemma:

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

To meet this potential threat to liberty, the Framers divided the federal government into three co-equal branches and further divided the legislative branch into two houses in order to require the concurrence of the branches before the government's coercive power could be brought to bear on the people. Thus, while Article 1, Section 1 of the Constitution vests the legislative power in Congress, this power is subject to Presidential veto and judicial review for constitutionality. Executive action generally requires a legislative basis or appropriation or other legislative support and is subject to judicial review.

Finally, the establishment and jurisdiction of the federal courts generally depend upon legislative authorization, subject again to Presidential veto. Within this structure each branch is to be independent and is "armed" to defend itself against encroachments by the others. As Justice Robert Jackson observed, "the Constitution diffuses power the better to secure liberty. . . . It enjoins upon its branches separateness but interdependence, autonomy but reciprocity."

Maintaining the independence of the three branches of government dominated the debates regarding impeachment at the Constitutional Convention. Initially, the Framers considered offering the country a constitution that did not include the

power to impeach the President. After all, any wrongs against the public could be dealt with by turning the President out in the next election. One delegate to the constitutional convention, Charles Pinckney of South Carolina, worried that the threat of impeachment would place the President under the thumb of a hostile congress, thereby weakening the independence of the office and threatening the separation of powers. According to James Madison's notes, Pinckney called impeachment a "rod" that congress would hold over the President.

In being reluctant to include an impeachment power, the Framers were not trying to create an imperial presidency; they were concerned about protecting all American citizens and the Nation as a whole. In their view, the separation of powers constituted one of the most powerful means for protecting individual liberty, because it prevented government power from being concentrated in any single branch of government. To make the separation of powers work properly, each branch must be sufficiently strong and independent from the others.

The Framers' worry was largely animated by the concern that any process whereby the legislative branch could sit in judgment over the President would be vulnerable to abuse by partisan factions. Federalist No. 65 begins its defense of the impeachment process by warning of its potential for abuse. It argues that impeachments:

"Will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence."

The Framers were fully aware that impeachment proceedings could become partisan attacks on the President charged with animosities generated by all manner of prior struggles and disagreements over executive branch decisions, over policy disputes, over resentment at losing the prior election. Federalist No. 65 expresses the view that the use of impeachment to vindicate these animosities would actually be an abuse of that power.

Although the Framers were concerned about impeachment proceedings becoming partisan, they needed to deal with strong anti-federalist factions. They were very aware that the anti-federalists strenuously urged that the federal government would quickly get out of step with the sentiments of the people and would become vulnerable to corruption and intrigue, arrogance and tyranny. This charge proved close to fatal as the ratifying conventions in the states took up the proposed constitution. The Framers of the constitution knew that the constitution would have been even more vulnerable to charges of establishing a government remote from the people if the President were not subject to removal at all except at the time of re-election.

James Madison's notes of the Philadelphia Constitutional Convention record his observations of the debate where he:

"Thought it indispensable that some provision should be made for defending the community against the incapacity, negligence or perfidy of the chief magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers."

So in the end, the Framers of the constitution risked the abuse of power by the Congress to gain the advantages of impeachment.

B. THE CONSTITUTION'S TEXT AND STRUCTURE

The Constitution does not define impeachable offenses, yet its text and structure provide clear manifestation that these words refer to official misconduct causing grave harm to our constitutional system of government. The starting point for any analysis of the Constitution's meaning must be its text, which in relevant part reads, "the President . . . shall be removed from Office on Impeachment for and Conviction of Treason, Bribery, or other high crimes and misdemeanors."

Here, the text sets forth a list that begins with terms that have definite meaning (treason, which is defined in the Constitution itself, and bribery, whose definition was fixed at common law) and proceeds to relatively indefinite terms, high crimes and misdemeanors. In this setting, two rules of construction, *ejusdem generis* and *noscitur a sociis*, instruct that the meaning of the indefinite terms are to be understood as similar in kind to the definite terms. Application of these canons of construction is bolstered here by the text itself. The indefinite element, "high crimes and misdemeanors," is introduced by the term "other." This specifically refers the reader back to the preceding definite terms, treason and bribery, as supplying the

context and parameters for the meaning of the indefinite phrase, "high crimes and misdemeanors."

Every criminal offense, including such trivial infractions as parking offenses, involves public or societal harm. It is for this reason that criminal cases are titled, "The State versus . . ." or "The Government versus. . . ." Each of the definite impeachable offenses, treason and bribery, are distinct in that they cause grave harm to the public not in some undifferentiated sense but in a way that strikes directly at our system of constitutional government. The Constitution defines treason as "levying War against [the United States] or in adhering to their Enemies, giving them Aid and Comfort," which plainly involves the most serious offense against our system of government. Similarly, bribery inescapably involves a serious subversion of the processes of government. In describing the common characteristics of treason and bribery, Professor Charles Black of Yale Law School explained that each offense "so seriously threaten[s] the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator."

Furthermore, Professor Edwin Corwin quoted with approval the statement of Justice Benjamin Curtis who said in defense of President Andrew Johnson that "treason and bribery . . . these are offenses which strike at the existence of [the] government. 'Other high crimes and misdemeanors.' *Noscitur a sociis*. High crimes and misdemeanors; so high that they belong in this company with treason and bribery."

In this constitutional setting, the terms treason and bribery take on a second distinctive aspect. As used in Article II, Section 4, each term involves official misconduct. Bribery, by definition, occurs only where a public official undertakes an official act in return for payment or some other corrupt consideration. Likewise, treason necessarily involves official misconduct in the impeachment context. To be sure, it is possible for a private citizen to commit treason by giving aid and comfort to the enemies of the United States. It must be remembered that impeachment proceedings may be pursued only against civil officers of the United States. By limiting impeachable treason to civil officers, the Constitution expressly contemplates that treason will provide a grounds for impeachment and conviction only where a civil office is used to adhere to or aid the enemies of the United States.

The textual construction expressed above—that high crimes and misdemeanors refer to grave harms to our constitutional system of government that result from official misconduct—comports with and draws significant support from the Constitution's structure. First, the structure reflects the Framers' conscious decision not to adopt a parliamentary system of government, in which the executive power is subordinate to and controlled by the legislature. The structure also reflects the Framers' judgment that the executive branch not be accorded primacy; their experience with the tyranny of the British monarchy was too recent to have permitted them to accept executive supremacy. Instead, the Constitution establishes three branches that are independent, strong, and co-equal. Construing the category of high crimes and misdemeanors too broadly would threaten the independence of the executive and judicial branches. This specific concern animated James Madison in the Philadelphia Convention and moved him to object to vague and potentially expansive formulations of the grounds upon which the President could be impeached and removed from office.

The formulation of high crimes and misdemeanors must be understood as consistent with the Constitution's overall structure. In as much as the Constitution's structure specifically rejects the parliamentary form, the power of impeachment and removal must be construed and exercised in a way that respects this fundamental constitutional judgment. Understanding the grounds for impeachment to be limited to cases of official misconduct that cause serious harm to our system of government allows the Congress to protect the public against oppressive official action without undermining the necessary independence of the President or the judiciary.

The Constitution's structure also supports limiting the category of impeachable offenses to those involving official misconduct. The constitutional separation of powers is designed to safeguard liberty against tyrannical or oppressive exercise of the government's power. In advocating the specific governmental structure erected in the Constitution, Madison repeatedly described the motivating concern to be establishing internal mechanisms, specifically the system of checks and balances, to control the federal government's power and minimize threat to the liberty of the people. This supports limiting the scope of impeachable offenses to official misconduct; that is, to conduct in which the civil officer misuses his or her official power. Other sorts of misbehavior by civil officers are simply beyond the concern of the separation of powers, of which the impeachment powers are a significant component. Indeed, the Constitution specifically provides that civil officers, including the President, remain subject to criminal prosecution and punishment for wrongdoing that does not involve official conduct.

C. HISTORY OF THE DEBATES AND RATIFICATION OF THE CONSTITUTION

Moving beyond the text and structure of the Constitution itself, the debates at the Philadelphia Convention of 1787, where the Constitution was drafted, and those in the subsequent state ratifying conventions provide important insight into the meaning of "high crimes and misdemeanors." Close examination of these proceedings demonstrates that the Framers gave careful consideration to Congress' impeachment powers. This consideration led them to understand the Constitution as setting forth a very narrow category of impeachable offenses.

Through most of the convention, the drafts of the Constitution denominated treason and bribery as the exclusive grounds for impeachment and removal of civil officers. In September 1787, as the convention was drawing to a close, Colonel George Mason and James Madison undertook colloquy that gave this provision its ultimate formulation. Because treason was expressly and narrowly defined in the Constitution itself, Mason was concerned that the impeachment power would not reach "great and dangerous offenses" and that "attempts to subvert the Constitution may not be treason" as defined in Article III of the Constitution. Mason moved to add "maladministration" as a catchall category. Significantly, this offense, which had been an accepted ground for impeachment in British practice, comprises exclusively official misconduct.

Madison objected to this addition, not because it was too restrictive, but because it was too vague and so potentially too expansive. He feared that "so vague a term will be equivalent to a tenure during the pleasure of the Senate." Here again it is clear that the Framers were concerned that impeachment would be misused by the Congress to reduce the independence of the President. In response Mason withdrew his own original motion and moved to add "or other high crimes and misdemeanors." His motion was quickly approved.

The purpose of Mason's motions was to include all offenses that pose a threat to our system of constitutional government similarly to that posed by treason. Madison expressed the important concern that the expansion not be left so far open as to erode the essential independence of the other branches, and particularly of the President. In responding to Madison's concern, Mason must be understood to have intended to narrow a definition that already applied solely to official misconduct. The colloquy between Mason and Madison, then, strongly supports construing the phrase high crimes and misdemeanors to cover only official misconduct that threatens grievous harm to our governmental system.

Madison was not alone in his concern that Congress might use impeachment as a tool for encroachments upon the executive branch. This concern was raised in various state ratifying conventions as well. For example, in supporting the Constitution at the Pennsylvania Convention, James Wilson repeatedly assured the delegates that only "great injuries" could serve as a basis for invoking impeachment. In his lectures on the Constitution, Wilson went on to say that "in the United States and Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments." In the North Carolina Convention, several defenders of the Constitution, including James Iredell who was a delegate to the Philadelphia Convention and later became a Justice of the Supreme Court, argued that impeachment would "arise from acts of great injury to the community." The debates surrounding ratification in New York produced the Federalist Papers. Alexander Hamilton explained that,

"[t]he subjects of [the Senate's impeachment] jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which with peculiar propriety may be denominated POLITICAL, as they relate chiefly to injuries done to the society itself."

Like Hamilton, the founding generation understood impeachment to be a political remedy for political offenses. It is important to bear in mind what they meant by "political." They meant that which relates to government and the pursuit of the general welfare; that which involves the system of government or "society in its political character." They specifically did not mean political in the sense of partisan which the Framers affirmatively feared. Charles Pinckney, James Wilson, and Alexander Hamilton, for example, each decried construing the impeachment powers in ways that would allow these powers to be put to partisan ends. They lodged the power to try impeachments in the Senate precisely because they thought the Senate would have the necessary independence, stature, and impartiality to prevent the impeachment powers from becoming a tool of factionalism and partisanship. The Framers expected that the Senate was, among government institutions, uniquely capable of fidelity to the constitutional limits partisanship that the Framers understood to be implicit in the phrase high crimes and misdemeanors.

Leading constitutional scholarship of the founding era reflects the same view of the intended narrow scope of high crimes and misdemeanors. Justice Joseph Story, in his pathbreaking *Commentaries on the Constitution,* looked to British practice to understand the scope of impeachment in the United States Constitution. Recognizing that the U.S. Constitution intended to confine impeachment to a narrower set of offenses than those permitted under British law, he observed that even in Great Britain, "such kinds of misdeeds . . . as peculiarly injure the commonwealth by the abuse of high offices of trust are the most proper and have been the most usual ground for this kind of prosecution in parliament." Story went on to say that impeachment is a remedy for offenses "of a political character," "growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office."

The public character of the impeachment offense is further reinforced by the limited nature of the remedy for the offense. In the English tradition, impeachments were punishable by fines, imprisonment and even death. In contrast, the American Constitution completely separates the issue of criminal sanctions from the issue of removal from office. The Constitution states that "judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States." The remedy for violations of the public's trust in the performance of one's official duties, in other words, is limited to removal from that office and disqualification from holding future offices.

Therefore, the Constitution contemplates both an impeachment and a criminal action as consequences for Presidents who commit impeachable offenses. This differs from the English model which only provides for criminal punishments after an impeachment conviction. If, however, a President engages in egregious but non-impeachable activity, the Constitution subjects the President to criminal liability. Impeachment therefore, is viewed not as a mechanism to punish a President, but rather a device to protect the populace. As Story said, impeachment proceedings are "not so much designed to punish an offender as to secure the state against gross official misdemeanors."

Impeachment, therefore, is intended to preserve the constitutional form of government by removing from office an official who subverts the Constitution and is not intended to be a remedy for someone who breaks the law in connection with a private matter.

At least one important early treatise writer, William Rawle, concluded that only official misconduct could provide a basis for impeachment. He contended that "the causes of impeachment can only have reference to public character and official duty. . . . In general those which may be committed equally by a private person as a public officer are not the subject of impeachment." Additional support for this proposition comes from the renowned constitutional scholar, Phillip Kurland who wrote that "at both the convention that framed the Constitution and at the conventions that ratified it, the essence of an impeachable offense was thought to be breach of trust and not violation of the criminal law. And this was in keeping with the primary function of impeachment, removal from office." Finally, additional support for this proposition comes from the United States Department of Justice. As a legal memorandum produced by the Justice Department's Office of Legal Counsel during impeachment proceedings against President Nixon observed, "[t]he underlying purpose of impeachment is not to punish the individual, but is to protect the public against gross abuse of power."

D. CONSTITUTIONAL PRACTICE AND PRECEDENT

Another important guide to the meaning of the Constitution is the construction applied throughout our history by those who have been charged with applying its provisions. The significance of constitutional practice is heightened in the absence of applicable judicial interpretation. As Justice Frankfurter stated:

"The Constitution is a framework for government. Therefore the way the framework has consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of a text or supply them. It is an inadmissibly narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them."

In the history of the United States, the Senate has never convicted any President of an impeachable offense. This fact stands out as the sum total of the Senate's practical construction of the Constitution's impeachment provisions as they relate

to the President of the United States. It must serve as a chilling call to self-restraint in construing those provisions.

The Senate has convicted other civil officers of impeachable offenses, including high crimes and misdemeanors. There is reason to doubt whether these cases, mostly involving federal judges, provide directly analogous precedent for cases involving the President. First, the Madison-Mason colloquy and the debates in the state ratifying conventions demonstrate the Framers' primary concern was with the use of impeachment as a vehicle for encroachments on the President's structurally necessary independence from the legislature. Second, federal judges serve life terms and are not elected. The automatic removal of the President upon conviction of high crimes and misdemeanors has the widely remarked upon consequence of artificially altering the expected result of an election and thus is regarded as in tension with democratic principles. Moreover, because the President serves a limited term of four years, the need for an artificial removal mechanism is less urgent than it is in the case of judges who would otherwise serve an illimitable term.

These caveats aside, an examination of congressional practice in the case of the fifteen officers who have been impeached by the House strongly supports construing high crimes and misdemeanors as aimed primarily at official misconduct that results in grave harm to our constitutional system of government. In every case, the misconduct cited as impeachable involved the misuse of office or the power of office. No case involved impeachment for conduct that did not involve the exercise of the impeached person's office or official power. The closest the Congress has come to impeaching and convicting an officer for conduct not involving abuse of office was the case of Judge Harry Claiborne. Judge Claiborne was impeached, convicted, and removed from office for committing tax evasion. Superficially, this conduct did not itself involve his judicial office in any direct way. The income he was convicted of withholding, however, allegedly came from improper payments to him, which were made because of his judicial office. In their essence, then, the charges against him were charges of serious abuse of office involving what amounted to bribery, though the articles of impeachment did not formally recount the source of the income at the heart of the tax evasion case against Judge Claiborne. [Memorandum, 12/22/98]

EVIDENCE, RULES OF

Are the Federal Rules of Evidence Applicable? Neither the Senate nor its presiding officer, the Chief Justice, is required to follow the Federal Rules of Evidence in ruling on evidentiary objections during an impeachment trial. As a matter of practice these decisionmakers have relied upon the Federal Rules in considering evidentiary objections, but have not always excluded evidence that the Federal Rules would exclude or admitted evidence that the Federal Rules would allow. The Senate's approach has been to receive all evidence except where doing so would be unfair to one of the parties. In determining what is fair, the Senate has placed great weight on the Federal Rules.

The refusal to adopt the Federal Rules of Evidence is apparently based on the judgment that the Senate is highly sophisticated as a jury examining political crimes and weighing political remedies. Consequently, the Senate does not need the sort of protections that juries commonly require. The concern raised by not adopting the Federal Rules is that, where the only limit on the discretion of individual Senators is their sense of fairness, party-line voting may emerge and the impeachment process could come to be viewed as lacking the necessary impartiality.

While the Senate has never accepted that it is bound by the Federal Rules, it may vote to require their application in a given case. In fact, the Senate did just that on at least one occasion. During the Rule XI committee deliberations in the impeachment trial of Judge Harry Claiborne, Senator Orrin Hatch argued that the committee should accept the Federal Rules as binding. Then-Senator Albert Gore argued against accepting the Federal Rules.

Is the Starr Report Admissible? Either or both parties may seek to introduce the referral and supporting documentation that independent counsel Kenneth Starr submitted to the House Judiciary Committee. Much of this material would not be admissible in a judicial proceeding. The referral itself is not evidence, but a summation of evidence contained in the attachments. The attachments include grand jury testimony where witnesses were not subject to cross-examination and other material could represent hearsay.

There is some precedent for admitting the record and proceedings from a *judicial proceeding* as substantive evidence in an impeachment trial. In the impeachment trial of Judge Harry Claiborne, one of the House Managers, then-Representative Michael DeWine, argued that the Rule XI committee should accept the record of the criminal trial in which Judge Claiborne was convicted of tax evasion charges. Spe-

cifically, Manager DeWine argued that accepting the evidence would establish an important precedent in favor of economy and efficiency in impeachment proceedings. The committee accepted DeWine's argument and received the trial record as substantive evidence.

In Judge Claiborne's case, the committee agreed to receive evidence that had been subject to cross-examination by Judge Claiborne's attorneys. If the President's counsel objects to the Senate receiving the Starr report and supporting materials, he could distinguish the Claiborne precedent on the ground that the President's lawyers had no opportunity to cross examine grand jury witnesses.

Is Evidence of Prosecutorial Misconduct Admissible? The President's counsel may seek to introduce evidence of prosecutorial misconduct. The House Managers or Senators may object on the grounds that such evidence is irrelevant. Either the President committed high crimes or misdemeanors, or he did not; evidence relating to what the independent counsel may have done to investigate the President is beside the point.

The President, however, would have a powerful contrary argument, particularly if the Starr report and supporting documents are admitted as substantive evidence. The report itself represents the conclusions drawn by the independent counsel. The supporting documents represent evidence and testimony collected by the independent counsel without opportunity for supplementation, challenge or cross-examination by the President. Understanding the independent counsel's bias or impartiality is crucial to assessing the weight and credibility of this type of evidence. For example, the independent counsel's office will have chosen to pursue certain lines of questioning with witnesses before the grand jury. If the independent counsel acted from bias, there is a reasonable inference that the roads the prosecutor chose not to follow would have revealed evidence favorable to the President. If, on the other hand, the independent counsel is impartial, one may reasonably infer that he sought to uncover all relevant information whether favorable or unfavorable to the President.

In addition, if officials in the Office of the Independent Counsel threatened witnesses, that fact is relevant to assessing the credibility of the testimony and evidence given by those witnesses.

In one previous case, the Rule XI committee voted to allow the defense to present evidence of prosecutorial misconduct, although it did not allow the defense to pursue elements of its theory that were purely speculative and highly dubious.—[Memorandum, 12/28/98]

FINDINGS OF FACT

Various proposals to have the Senate vote on "findings of fact" prior to a final vote on the articles of impeachment are circulating. The most onerous of these would ask the Senate to "find" that the President had violated federal laws against perjury and obstruction of justice.

Under one presumed scenario, the findings of fact would pass, while the subsequent vote on the articles would fail. Thus, while the President would remain in office, his legacy would be besmirched by an impeachment trial's finding that he was guilty of crimes.

There are several constitutional arguments against this procedure, each based on the fact that it is either equivalent to, or tantamount to, separating a vote on guilt or innocence from a vote on removal.

Very early in the Senate's history, the Senate did in fact separate these two votes, notably in the case of Judge John Pickering. Pickering was charged with drunkenness, among other things, but not with any crimes. The Senate voted separately on whether he was guilty under the articles and then on whether or not he should be removed from office. (They voted to convict and to remove.)

This procedure might signal that the Senate believed that in an impeachment trial a person could be found guilty by the Senate of offenses that did not rise to the level of "treason, bribery, or other high crimes and misdemeanors." Under that interpretation, the second vote would be necessary to establish whether or not the offenses justified removal from office.

However, this possible interpretation of the trial procedure was repudiated in the 1936 impeachment trial of Judge Halstead Ritter, when the chair ruled that removal followed automatically from a finding of guilty, so that a separate vote on removal was not in order. The ruling was based on the text of Article II, Section 4, of the Constitution which provides that "The President [and other civil officers] shall be removed from Office on Impeachment for, and Conviction of, treason, bribery, or other high crimes and misdemeanors."

The dominant view of constitutional scholars is that the chair's ruling in the Ritter case was correct. Notice that there are two significant components of the Ritter

interpretation: (1) the President, vice President or other civil officers can only be impeached for "treason, bribery, or other high crimes and misdemeanors," and (2) removal then follows by operation of Constitutional law upon conviction.

Against this background, the proposed findings of fact could produce substantial constitutional mischief. Suppose they received a two-thirds vote. If the offenses outlined in the findings of fact are high crimes and misdemeanors, the President would have been removed from office by operation of Constitutional law.

Suppose, further, that the Senate then took the final vote on the articles and on that vote the yeas were less than two-thirds. Looking strictly at this vote, the President has been acquitted, and remains in office.

Who, then, is the President of the United States after these two votes have been cast—Bill Clinton or Al Gore? In other words, who decides whether the first vote convicted the President of high crimes and misdemeanors?

Senators might well argue that the very fact that the Senate took the second vote proves that the first vote was not on offenses that justified removal. That would be an ironic position for many Republican Senators to be in, however, as many of them are on record defending the proposition that perjury and obstruction of justice are clearly impeachable offenses.

One argument against the proposed findings of fact, then, is that it could create enormous uncertainty about who occupies the office of President. The impact of that uncertainty on foreign and domestic policy would potentially be quite great, infecting every official action the President might undertake. (Perhaps Bill Clinton and Al Gore could do everything in tandem—co-sign all official documents, co-attend all foreign negotiations, etc.—thereby eliminating the legal ambiguities by creating a true co-presidency.)

The uncertainty would, in all likelihood, result in litigation. Suit could be brought by someone adversely affected by a law "signed" by Bill Clinton that would otherwise have been pocket vetoed due to the adjournment of Congress, claiming that the bill never became law. Or it could be brought by someone seeking the benefits of a law that Bill Clinton had "vetoed," claiming that the veto had no effect because Bill Clinton was not President.

Even if such litigation would eventually lead to a resolution of the uncertainty, the country would suffer during the interim.

There is a real possibility, however, that the Supreme Court would find the question of what constitutes a "high crime and misdemeanor" to be nonjusticiable. In *United States* v. *Nixon*, the Court held that nearly all questions regarding the Senate's power to try impeachments are nonjusticiable, and it might well so find in this instance, as well.

Even if the findings of fact did not garner two-thirds support, a second argument against the findings of fact can be based on the two-part Ritter interpretation of the impeachment power (i.e., impeachment available only for high crimes and misdemeanors; removal follows automatically from conviction). The contemplated bifurcated vote provides a mechanism for doing exactly what the Ritter interpretation and the prevailing view among scholars say the constitution does not permit: impeaching and convicting a person of lesser offenses than high crimes and misdemeanors.

The consequences of sanctioning impeachment for "low" crimes and misdemeanors in this way are spelled out nicely in a draft op-ed by Jed Rubenfeld. He argues that if the Senate proceeds with the proposed findings of fact,

"[t]he Senate would then have taken another big step toward transforming impeachment into a tool of partisan politics.

"The Clinton Impeachment would then establish the proposition that it is a legitimate senatorial function in an impeachment proceeding to "find" that the President committed crimes or serious misconduct (but not high crimes). In that case, why shouldn't a majority of the House impeach every President who has engaged in conduct worthy of censure? It would no longer matter whether this conduct rose to the level of high crimes and misdemeanors, for after all, one of the Senate's legitimate and proper functions would be to find that the President had committed "low" or "medium" crimes or other serious misconduct not requiring removal from office.

"If the Senate wants to censure the President, let it. But impeachment is not about finding criminal guilt or innocence, and it is not about censure. It is about removal from office. The Senate must vote, up or down, on conviction and removal. Anything less or in-between is more partisan mud."

The idea that the House could routinely start up the Senate impeachment trial apparatus on the basis of offenses insufficient to constitute high crimes and misdemeanors because the bifurcated vote procedure supplied the Senate with a way to cope with such charges would probably have been anathema to the Framers, who

thought that impeachment ought to be rarely used and reserved for the most serious breaches of public trust.

Judge Bork agrees that the bifurcated approach poses serious separation of powers problems. He wrote in the February 1, edition of the Wall Street Journal:

"That course would also create an unconstitutional political weapon in the permanent struggle between the legislative and executive branches. Had the Isenbergh-Kmiec proposition been accepted during Iran-Contra, is there any doubt that the Democratic House and Senate would have impeached Ronald Reagan and, unable to convict him by a two-thirds vote, adopted findings of fact by a majority vote that effectively condemned him as the perpetrator of high crimes and misdemeanors? This is precisely what the separation of powers does not allow and what anyone who thinks ahead should disavow."

(The Isenbergh-Kmiec proposition mentioned by Judge Bork refers to a law review article by Professor Isenbergh of Chicago Law School arguing that the Ritter interpretation is wrong—that in fact people can be impeached under the Constitution for offenses less than high crimes and misdemeanors, in which case lesser sanctions than removal are also available to the Senate.)

These are powerful arguments. There are responses to them, however, which I believe make the ultimate judgment as to whether or not the bifurcated procedure passes constitutional muster open to reasonable disagreement.

As to the complaint that the procedure unconstitutionally bifurcates a unitary vote, the complaint just misconceives what the findings of fact motion is. It is not a vote on guilt or innocence of impeachable offenses at all because it doesn't by its terms convict the President of anything. It is antecedent to any question of conviction for impeachable offenses or of remedy. It leaves Senators free to vote any way they wish on guilt or innocence and thus does not split up the conviction/remedy questions. If necessary, this could be made crystal clear through careful drafting, such as by phrasing the motion as, "Without prejudice to the final question of guilt or innocence on any of the articles of impeachment, the Senate finds . . ."

This interpretation also responds to the complaint urged by Rubenfeld and echoed by Bork. Because the findings of fact are toothless as regards guilt or innocence, passing such a motion is not equivalent to convicting the President of low crimes and misdemeanors. The Rubenfeld-Bork objection would lie if and only if the Senate purported to convict the President of such offenses, and then sought to avoid removing him by rejecting the articles. But it is not doing that when it makes findings of fact. Because such findings lack any conceivable juridical effect, they are no more offensive to the Constitution than a censure resolution.

One could even imagine a findings of fact motion serving a purpose that would be beneficial to the impeachment process. Findings of fact could help provide a clear historical record as to what this United States Senate believed did not rise to the level of impeachable offenses (or did rise to that level, depending upon the outcome of the vote on conviction). Historically, the Senate has left to each individual Senator the responsibility to make an overall unitary determination as to the facts that have been proven, the requisite burden of proof as to those facts, and the ultimate consequences that flow from those facts, taking into account both the costs of retaining the civil officer in office as well as the costs of removing him or her. It could be argued that our constitutional practices would be just as well served if the basis for the final judgment was expressed in more discrete and articulated collective judgments, first as to the facts proven, and then as to their consequences.

This last point runs counter to the Senate's current rules and practices, of course. Rule XXIII of the rules of impeachment provides that "an article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial." This provision was adopted in 1986. Some of its legislative history is pertinent:

"The portion of the amendment effectively enjoining the division of an individual article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by 'one or more of the' enumerated specifications. The general view of the Committee at that time was expressed by Senators Byrd and Allen, both of whom felt that division of the articles in question into potentially 14 separately voted specifications might 'be time consuming and confusing, and a matter which could create great chaos and division, bitterness, and ill will . . .'"

The rule and its history suggest that the Senate currently operates under a norm of maximum individual Senatorial autonomy in reaching an overall unitary judgment as to guilt or innocence, without the interposition of potentially divisive antecedent motions seeking to clarify exactly what acts the Senate as a body has found the accused to have committed.

It is possible to object to the proposed findings of fact as being inconsistent with Rule XXIII. The rejoinder to that objection, of course, is a version of what has already been stated: the findings need not be construed as "dividing" any article of impeachment, but rather as a motion antecedent to an eventual vote on the articles. Still, the findings do seem inconsistent with the spirit of Rule XXIII and with its evident intention to avoid divisive preliminary votes of this kind.

Putting aside constitutional or rule-based objections to the proposed findings of fact, Rubenfeld-Bork make a very powerful *practical* argument that this bifurcation will have pernicious consequences. We are currently living through proof of how all-consuming an impeachment and trial of a President can be. The country loses time and attention that could be devoted to constructive matters of public interest, trust in the ability of elected officials to work together by placing the Nation's business first is eroded, and the Presidency is placed under a cloud of uncertainty during the pendency of the proceedings. Lowering the impeachment bar through the use of this bifurcated procedure would be unwise and, as suggested earlier, would most likely be viewed with alarm by the Framers who drafted the impeachment power into the Constitution.

There is, finally, an argument that such findings would amount to an unconstitutional Bill of Attainder. The risk that such findings would be found to be an unconstitutional "trial by legislature" is enhanced (a) by the fact that under some of the proposals, the finding would be that the President had violated the law; (b) by the fact that the findings would occur in the context of a Senate trial.

Such Senate action could well have an adverse effect on President Clinton's bar membership. Bar rules disqualify individuals who have been convicted of perjury or obstructed justice. If those consequences followed from the Senate action, they could be construed as punishment, thus bringing the findings of fact within the constitutional prohibition on bills of attainder.—[Memorandum, 2/2/99]

IMPEACHMENT RULES, CHANGES TO

The existing Senate Rules establish the basic contours of how an impeachment trial will proceed. Many questions remain open, however—just as in civil cases, the federal rules of civil procedure provide the basic contours, but the actual route traveled by any trial depends upon the particular facts and law of each case, the motions that parties choose to bring, and, in general, the manner in which the parties choose to litigate the matter.

This section highlights the major questions that deserve examination before the trial begins. It also discusses the available mechanisms for resolving outstanding procedural issues.

Should any of the existing rules be modified? The existing Rules were last amended in 1986. Should the Senate wish to revise any of them, motions to do so would be in order on the first day and would be fully debatable. Once the actual trial begins motions are not debatable, and a motion to suspend, modify, or amend the rules would require unanimous consent. Before the trial begins (the period between the exhibition of the articles of impeachment and the presentation of opening statements by the parties), Senate precedent supports allowing debate on preliminary motions that relate to how the Senate will organize itself to conduct the trial. It appears that such motions are subject to the Standing Rules of the Senate, and not the limitations on debate contained in the impeachment Rules. Thus, they could be filibustered during the pre-trial stage. As a motion to suspend, modify, or amend the rules, any such motion would be subject to a heightened cloture requirement. Standing Rule XXII requires a two-thirds vote to invoke cloture and end debate on a motion to suspend, modify, or amend the rules.

The impeachment rules provide for the proceedings to be "double-tracked" (with legislative business conducted in the morning session and the impeachment trial conducted in the afternoon). Even after the trial has commenced, then, a motion to suspend, modify, or amend could be made in a morning legislative session, but would be subject to filibuster with a two-thirds cloture requirement.—[Memorandum, 12/28/98]

OBSTRUCTION OF JUSTICE

The House relies on two different federal obstruction of justice statutes. The first, 18 U.S.C. § 1503, is the general obstruction of justice statute. The second, 18 U.S.C. § 1512(b), addresses witness tampering.

A. Elements of the General Obstruction of Justice Statute

To establish a violation of the general obstruction of justice statute (§ 1503), the government must prove each of the following:

(1) that there was a pending judicial proceeding;

(2) that the defendant knew this proceeding was pending; and

(3) that the defendant corruptly influenced, obstructed, or impeded the due administration of justice or endeavored to corruptly influence, obstruct, or impede the due administration of justice.

The first two elements are straightforward. The third element is more complex. In general:

"Corruptly" means to engage in an act voluntarily and deliberately for the purpose of improperly influencing, obstructing, or interfering with the administration of justice.

"Endeavor" means that the defendant also knowingly and deliberately acted or made an effort which had a reasonable tendency to bring about the desired result of interfering with the administration of justice.

The defendant must engage in misconduct that has the "natural and probable effect" of interfering with the due administration of justice. He need only "endeavor" to obstruct justice; he need not succeed.

B. Elements of the Witness Tampering Statute

To establish a violation of the witness tampering statute (§ 1512(b)), the government must establish that the defendant:

(1) knowingly

(2) corruptly persuaded another person or attempted to do so, or engaged in misleading conduct toward another person

(3) with the intent—

to influence, delay, or prevent a witness's testimony from being presented at official federal proceedings,

to cause or induce any person to withhold testimony or physical evidence from an official federal proceeding; or

to prevent a witness from reporting evidence of a crime to federal authorities.

Unlike the general obstruction of justice statute, the witness tampering statute does not require that the defendant's misconduct be committed during the pendency of federal proceedings. Thus, the defendant need not be aware of any pending or contemplated federal proceedings or investigations at the time he engages in his obstructive conduct. Nonetheless, it must be proved that the defendant intended by his prohibited conduct to obstruct a federal proceeding or the reporting of a federal crime.

There is no judicial consensus as to the meaning of "corrupt persuasion," but several courts have defined the term to mean that the defendant's attempts to persuade "were motivated by an improper purpose."

The term "misleading conduct" is defined in 18 U.S.C. § 1515 to include (A) knowingly making a false statement; (B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement; (C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity.

At least one court has held that a defendant violates the witness tampering statute when he tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it before the grand jury.—[Memorandum, 1/15/99]

PERJURY

Under federal law, a witness commits grand jury perjury if shown, when under oath before a federal grand jury, to have made a: knowingly false declaration that is of a material matter that the grand jury has the power to investigate. Proof only of an intent to mislead is not sufficient for a perjury conviction.

"Knowingly false declarations" can be proved by evidence that the individual did not believe a declaration to be true at the time it was made.

Only unambiguous questions can form the basis of perjury convictions. If a question can reasonably be interpreted in multiple ways, perjury cannot be based only on the questioner's intended meaning and there must be evidence of what the person answering understood when responding.

Grand jury perjury can not be based on an answer that was literally true even if misleading and nonresponsive to the question asked. The burden is on the ques-

tioner to identify evasive answers and press for clarity at the time rather than let it pass and charge perjury later.

Grand jury perjury convictions can be based on the testimony of a single uncorroborated witness. And, even if no single statement can be shown to be knowingly false, perjury can be shown if the individual knowingly made multiple material declarations under oath that are "inconsistent to the degree that one of them is necessarily false."

A "material matter" for perjury convictions under federal law must have had some bearing on the substantive elements of the issues that the grand jury was convened to investigate and would have some bearing on influencing or impeding that investigation, regardless of whether the statement actually was misleading on a particular point.

The Minority Views in the House Report argue that because the judge in the Jones sexual harassment case ruled in January 1998 that evidence relating to Monica Lewinsky was not "essential to the core issues in that case," Jones' lawyers could not have introduced evidence about her relationship with the President in order to attack his credibility in that suit, so that his statements on the subject are not material under perjury law.—[Memorandum, 12/30/98]

PRESIDENT, INDICTMENT OF

The New York Times recently reported that Ken Starr and his staff have recently concluded that the Constitution does not prohibit them from indicting and prosecuting President Clinton while he is still in office. The independent counsel has a legitimate reason for seeking an indictment before the end of President Clinton's term. The grand jury that is currently impaneled and that has heard all the evidence will expire by August. If the Independent Counsel waits until the President leaves office, he will have to impanel a new grand jury and present evidence all over again.

This memorandum reviews the constitutional issues that would be raised if a prosecutor were to attempt to indict and prosecute a sitting President. It concludes that the Constitution permits a prosecutor to indict a sitting President, but does not allow the prosecutor to proceed to prosecute the indictment until the President's term has expired. Although the Constitution does not forbid indictment of a sitting President, there are significant prudential arguments counseling against such a move. Moreover, there may be a statutory impediment to indicting the President.

I. TEXT

Until recently, numerous commentators interpreted the Constitution's text to prohibit criminal prosecution of any officer before the officer was impeached and removed. The only provision on point states, "Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law." Article I, section 3. This interpretation reads the phrase "the party convicted shall nevertheless . . ." to mean that only parties who have been convicted are subject to judicial process. In other words, impeachment and conviction are a prerequisite to judicial process.

The better reading has always been that the Constitution's text is ambiguous. It can just as easily be understood to mean that impeachment and conviction, if that should occur first, are not a bar to judicial process. This interpretation has been vindicated by recent practice. The three judges impeached and convicted in the late 1980s were all indicted and prosecuted criminally first. In addition, Vice President Spiro Agnew was indicted while in office, as was sitting Vice President Aaron Burr in 1804. The provision cited does not distinguish between the President and other officers subject to impeachment. Thus, if the President is to be treated differently than other impeachable officers, it must be on some basis other than the Constitution's text.

II. STRUCTURE

Even the most originalist minded constitutional scholars do not limit their arguments to those based on language alone. They also argue based on the structure of the document taken as a whole. Shifting the focus from text to structure, there is strong reason to conclude that the Constitution does not forbid indictment of a sitting President but that it does prohibit taking the further step of prosecuting him criminally.

The Constitution structures the federal government by dividing it into three branches. In order to safeguard liberty, each of these branches must be fully func-

tioning at all times. Anything that significantly impairs the President's ability to act as a check on the other branches may violate the Constitution's structural safeguards. By contrast, there are hundreds of district court judges. A criminal proceeding against one of them has only remote ramifications for the constitutional role of the judiciary as a collective institution.

The constitutional status of the President is unique, and materially distinguishable from that of other impeachable officers, such as district court judges or even the Vice President. First, the President, of course, is the head of one of the three constitutional branches of government. The other branches have collective heads. The legislative branch is headed by the entire Congress, while the judiciary is headed by the Supreme Court. To indict and prosecute the President is in this sense the constitutional equivalent of indicting and prosecuting the entire Congress or the entire Supreme Court.

Second, the presidency is a uniquely consuming office. Its occupant is perpetually on duty. Nearly every President from George Washington through George Bush has expressed just how consuming the office is. For example, Lyndon Johnson related that "Of the 1,885 nights I was President there were not many when I got to sleep before 1 or 2 a.m. and there were few mornings when I didn't wake up by 6 or 6:30." The Twenty-Fifth Amendment to the Constitution, which provides for Presidential succession in the case of disability, recognizes not only how consuming the office is, but how critical it is that the office be filled at all times.

Third, the President acts as the embodiment of the Nation on the international stage and even in domestic matters. As Justice Robert Jackson reminded us, the Presidential office locates the executive power "in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude and finality his decisions so far overshadow any others that almost alone he fills the public eye and ear."

Against this structural argument stand rule of law considerations. The continuing vitality of the rule of law as a fundamental principle requires that the President be subject to law as are all citizens. This commitment is voiced in the President's constitutional duty to "take care that the laws be faithfully executed." The primary purpose of this provision is to make it clear that the President, unlike the King of England, has no "dispensing power," that is, no power to declare a law inapplicable to himself or anyone else. Similarly, the courts have placed great weight on the integrity of the criminal justice system. In a variety of executive privilege cases, the courts have placed a great premium on according prosecutors access to evidence and on preserving evidence.

Determining whether the Constitution permits either indictment or prosecution of a sitting President requires balancing these considerations.

PUNISHMENTS UPON CONVICTION OF HIGH CRIMES AND MISDEMEANORS

If the Senate convicts the President of high crimes and misdemeanors, the Constitution requires that he be removed from office. "The President—shall be removed from office upon impeachment for and conviction of—high crimes and misdemeanors." The Constitution allows the Senate to impose an additional punishment upon convicting the President; it may disqualify the President from holding any office of honor, trust or profit. Odd as it sounds, this disqualification probably does not apply to membership in the House of Representatives or the Senate. This is because the text of the Constitution, in several clauses, makes it clear that members of Congress are not "officers." The very first impeachment trial proceeded against Senator Blount. Senator Blount was acquitted and many Senators refused to convict on the basis of their constitutional interpretation that a Senator is not an officer and so is not subject to impeachment.—[Memorandum, 12/28/98]

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Very early in the Senate's history, the Senate did in fact separate these two votes, notably in the case of Judge John Pickering. Pickering was charged with drunkenness, among other things, but not with any crimes. The Senate voted separately on whether he was guilty under the articles and then on whether or not he should be removed from office. (They voted to convict and to remove.)

This procedure might signal that the Senate believed that in an impeachment trial a person could be found guilty by the Senate of offenses that did not rise to the level of "treason, bribery, or other high crimes and misdemeanors." Under that interpretation, the second vote would be necessary to establish whether or not the offenses justified removal from office. However, this possible interpretation of the trial procedure was repudiated in the 1936 impeachment trial of Judge Halstead Ritter, when the chair ruled that removal followed automatically from a finding of guilty, so that a separate vote on removal was not in order. The ruling was based

on the text of Article II, Section 4, of the Constitution which provides that "The President [and other civil officers] shall be removed from Office on Impeachment for, and Conviction of, treason, bribery, or other high crimes and misdemeanors."

The dominant view of constitutional scholars is that the chair's ruling in the Ritter case was correct. Notice that there are two significant components of the Ritter interpretation: (1) the President, vice President or other civil officers can only be impeached for "treason, bribery, or other high crimes and misdemeanors," and (2) removal then follows by operation of Constitutional law upon conviction.—[Memorandum, 2/2/99]

ROLE OF CHIEF JUSTICE

The Chief Justice of the United States is the Presiding Officer over the Senate's deliberations when the President has been impeached. His role is loosely analogous to that of a trial judge, but with less ultimate authority. He directs preparations for the trial, as well as the trial proceedings themselves. Under the precedent of the Johnson trial, the Chief Justice can make rulings on all evidentiary and procedural motions and objections, although he can also refer them directly to the Senate for its determination (this was in fact Chief Justice Chase's practice on evidentiary motions made during the Johnson trial). His rulings can be overruled by majority vote of the Senators present and voting.

The Constitution dictates that the Chief Justice acts as the presiding officer during an impeachment trial of the President. The extent and content of his role is subject to determination by the Senate. There could be sentiment to expand his powers, such as by making him the chair of a Rule XI committee, on the theory that the Chief Justice will be non-partisan and impartial. Other powers that might be granted to the Chief Justice could include authority to conduct pre-trial proceedings or to oversee settlement negotiations. If the Chief Justice is perceived as impartial, his rulings on evidence and other motions will carry great weight and place a heavy burden on anyone seeking to overrule them. On the other hand, a determined majority can substantially minimize the effect of the Chief Justice on the proceedings by reversing his rulings and refusing to grant him powers beyond the inherent powers of the presiding officer.—[Memorandum, 12/28/98]

ROLE OF HOUSE MANAGERS

The House of Representatives appoints a delegation of its own members to serve as prosecutors of the impeachment. These managers exhibit the articles of impeachment and perform all functions normally performed by a prosecutor. They make an opening and closing statement on the case, decide what evidence to present and what witnesses to call, subject to the Senate's decision to issue a subpoena to compel attendance of involuntary witnesses. The managers lead examination of witnesses they offer and cross-examine witnesses called by the President's counsel. They may also make procedural, evidentiary, and other motions.—[Memorandum, 12/28/98]

ROLE OF PRESIDENT'S COUNSEL

The President may choose an attorney or agent to present his defense. These attorneys perform the same functions in defense of the President as the House Managers perform in behalf of the impeachment. Neither the President's Counsel nor the House Managers may appeal a ruling of the Chief Justice. Only a member of the Senate may do that.—[Memorandum, 12/28/98]

ROLE OF THE SENATE

[The constitutional text, the Framers' understanding, and our constitutional practices] Provide important anchors for any impeachment inquiry, but they do not resolve all questions of scope that may arise. Much remains to be worked out—and only to be worked out—in the context of particular circumstances and allegations.

As Hamilton explained in the Federalist No. 65, impeachment "can never be tied down by . . . strict rules, either in the delineation of the offence by the prosecutors, or in the construction of it by the judges. . . ."

After all of the legal research, we are still left with the realization that the power to convict for impeachment constitutes an "awful discretion."

This brings us directly to the Senate's role. To state it bluntly: I believe the role of the Senate is to resolve all the remaining questions. Let me elaborate.

The Senate's role as final interpreter of impeachments was recognized from the beginning of the republic. For example, to refer again to Joseph Story, after he devoted almost fifty sections of his commentaries to various disputed questions about the impeachment power, he concluded that the final decision on the unresolved

issues "may be reasonably left to the high tribunal, constituting the court of impeachment."

The court of impeachment he refers to is the United States Senate. Similarly, the Federalist Papers refer to Senators as the judges of impeachment.

Speaking of the Senate as the jury in impeachment trials is perhaps a more common analogy these days, but the judge analogy is more accurate.

In impeachment trials, the Senate certainly does sit as a finder of fact, as would a jury. But it also sits as a definer of the applicable standards, as would a judge.

The Senate, in other words, determines not only whether the accused has performed the acts that form the basis for the House's Articles of Impeachment, but also whether those actions justify removal from office.

Once again we find support for this view from the country's history. In 2 of the first 3 impeachments brought forward from the House to the Senate, the Senate acquitted the accused.

In each of the two acquittals, however, the Senate did not disagree with the House on the facts. One case involved a Senator, William Blount, the other an Associate Justice of the Supreme Court, Samuel Chase. In neither one was there any question that the individuals had done the deeds that formed the basis of the House's Articles of Impeachment.

In each case, however, the Senate concluded that the deeds were not sufficient to constitute valid grounds for impeachment and so they acquitted.

Eventually, then, if the current impeachment proceeds, it will fall to the Senate to decide not only the facts, but the law, and to evaluate whether or not the specific actions of the President are sufficiently serious to warrant impeachment.

The Framers intended that the Senate have as its objective doing that what was best for the country, taking context and circumstance fully into account.

I should try to be as clear as I can be about this point, because the media discussion has come close to missing it. It seems to be widely assumed that if the President committed perjury, then he must be impeached and convicted.

Conversely, you may think that unless it can be proven that the President committed perjury or violated other laws, impeachment cannot occur.

Both statements are wrong. Not all crimes are impeachable, and not every impeachable offense is a crime.

The Senate could decline to convict even if the President has committed perjury, if it concluded that under the circumstances, *this* perjury did not constitute a sufficiently serious breach of duty to warrant removal of this President. On the other hand, the Senate could convict the President of an impeachable offense even if it were not a violation of the criminal law. For instance, if the Senate concluded that the President had committed abuses of power sufficiently grave, it need not find any action to amount to a violation of some criminal statute.—[Speech, 10/2/98]

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The Senators have a multifaceted role that defies a simple label. They act in part as a jury, which considers evidence and makes the ultimate determination of whether to convict or acquit the President. This role explains the limitations that the rules impose on the ability of Senators to debate or discuss motions and evidence in open session.

Senators also act as judges, with authority to decide whether a ruling by the Chief Justice should stand. This law interpreting role is also a component of the ultimate decision on conviction or acquittal. Senators must determine not only whether the factual allegations against the President are true, they must also determine whether the facts alleged, if true, represent a high crime and misdemeanor.

Senators may also take actions that resemble those typically undertaken by counsel for the parties. They may propound questions (though only in writing) of witnesses or of counsel; they may make objections to questions by counsel or to evidence sought to be introduced; and they may make any motion that a party may make.

The Senate has the power to compel the attendance of witnesses by instructing the Chief Justice to issue subpoenas and to enforce obedience to its orders. The Senate also has authority to punish summarily contempts of and disobedience to its orders, although the rules of impeachment do not specify the penalties it may impose. Under the Standing Rules of the Senate, the Senate can also refer a contempt citation to the United States Attorney for the District of Columbia for prosecution pursuant to 2 U.S.C. §§ 191–194 for criminal prosecution.—[Memorandum, 12/28/98]

TRIAL, NATURE OF

The Constitution assigns the Senate the sole power to try all impeachments. This power imposes upon the Senate a duty to adjudicate every case in which the House

of Representatives impeaches a civil officer of the United States. The Framers were deeply concerned that impeachment could become a partisan tool used to gain control and influence over civil officers, and the President in particular. They entrusted to the Senate the role of adjudicating impeachments because the Senate's structurally conferred capacity for deliberation, independence, and impartiality would allow it to act as a check against partisanship. The Constitution fortifies the Senate in this role by providing that conviction requires a vote of two-thirds of the members present.

The Constitution, however, does not define the Senate's power to "try" impeachments and appears to leave broad discretion for the Senate to interpret it as allowing whatever method of inquiry and examination is best suited to a given case. Justice White declared emphatically that "the Senate has very wide discretion in specifying impeachment trial procedures. . . ." The constitutional power, and corresponding duty, to try impeachments does not absolutely require the full Senate or a committee to take live witness testimony subject to cross-examination. The Senate has routinely entertained and voted on motions for summary adjudication. Indeed, it is difficult to imagine that the Senate would be constitutionally required to hold live evidentiary proceedings in every conceivable impeachment case. If, for example, the House were to impeach an official who is not a civil officer, it would be absurd to construe the Constitution to require the Senate to go forward with an evidentiary proceeding. Similarly, if the House were to impeach a civil officer on the grounds of misconduct that is not properly considered a high crime or misdemeanor, no constitutional purpose is served by an evidentiary hearing.

Even if an impeachment meets all of the constitutional criteria to invoke a Senate trial, evidentiary proceedings may be unnecessary. It is well-established that the House Managers charged with prosecuting the impeachment may introduce the record of other proceedings as substantive evidence in the Senate trial. The House Managers have independent discretion over their prosecution of the case, and may decide to rest their case on the documentary record. In addition, the impeached defendant may choose to present no affirmative evidence in his defense. Where the parties have decided that the documentary record is sufficiently encompassing to allow adjudication, the Constitution does not require the Senate to ferret out additional evidence.

Strong support for summary adjudication as a faithful discharge of the Senate's constitutional duty to try impeachments can also be found in the operation of the federal judiciary. The constitution guarantees "the right of trial by jury" in "suits at common law." There is a tension between the right to trial by jury and summary adjudication by the court. Where a federal court grants summary judgment or dismisses a lawsuit, for example because it fails to state a claim, there is no trial at all, let alone a trial by jury. Nevertheless, the Supreme Court has upheld the authority of the federal courts to grant motions to dismiss and motions for summary judgment. There would seem to be even less concern regarding summary adjudication in the context of a Senate impeachment trial. This is because the Senate acts as both judge (finder of law) and juror (finder of fact) so there is no concern about the proper allocation of the adjudicative function between judge and jury.

The Constitution imposes upon the Senate a duty to try impeachments so that the Senate can act as a check against partisan abuse of the impeachment process. Fidelity to the Constitution requires the Senate carefully to interpret the law of impeachment as set forth in the Constitution and to apply that law to the facts and circumstances of every impeachment approved by the House of Representatives. As with the federal judiciary, this adjudicative duty, however, does not require the Senate to discover new evidence or to hold evidentiary proceedings where the record does not warrant.—[Memorandum, 12/22/98]

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I. THE HISTORY OF PRESIDENTIAL IMPEACHMENT TRIALS

We have had exactly one impeachment trial of a President, Andrew Johnson, in 1868. This resulted in his acquittal by a single vote. In 1974, the House Judiciary Committee voted to send articles of impeachment with respect to President Richard Nixon to the House floor, but President Nixon resigned shortly thereafter, and the articles were never voted on by the full House.

However, fourteen other impeachment trials have been held in the Senate over the country's history. In preparation for these trials, almost all of which involved federal judges, the Senate has developed a set of standing Rules of Procedure and Practice for such trials, as well as a body of precedent concerning questions of procedure that have arisen and been answered in previous trials. These rules and precedent provide a good basic outline to how the trial of President Clinton will proceed

in the Senate, unless they are altered or amended prior to the beginning of President Clinton's trial.

II. CURRENT SENATE RULES OF PROCEDURE AND PRACTICE

Senate procedures while hearing an impeachment are strikingly different from those that operate during normal legislative and executive business. Senators are combinations of judges and jurors. Senators take an oath to do "impartial justice." They cannot debate or discuss matters in open session. They are expected to commit questions to writing and send them to the Presiding Officer. The Senate when sitting to consider impeachment is a very different body than the Senate we are used to seeing on C–SPAN.

Major points to bear in mind:

The trial and its rules take precedence over normal business. Once the trial begins, the rules set forth a schedule for continuing the trial until conclusion. The fundamental provisions are Rule III, stating that the Senate shall continue in session from day to day (Sundays excepted) until the trial is concluded, and Rule XIII, stating that the trial proceedings shall begin at 12 noon each day, unless otherwise provided by the Senate.

Majority rules. Motions and objections during the proceedings are governed by majority vote.

There are few opportunities to filibuster. Unlike the normal Senate, almost all trial motions, decisions, and orders are resolved under strict time limits—although these time limits would not prevent a determined effort to prolong the trial through repeated motions, whether by counsel or by a group of Senators. In fact, during the trial itself, motions, objections or challenges to rulings by the chair raised by Senators (which must be submitted in writing to the Presiding Officer) are voted on without debate at all, unless the Senate elects to go into closed session. In that case, each Senator is entitled to speak once for no more than 10 minutes.

Where the impeachment Rules are silent, the Standing Rules of the Senate apply. Precedents extending back at least to the Johnson impeachment support this.

III. HOW MIGHT THE MATTER BE RESOLVED WITHOUT A FORMAL TRIAL?

A. The Senate's duty to try the impeachment. The Constitution provides that "the Senate shall have sole power to try all impeachments." Some consider this provision to impose a duty upon the Senate to try or adjudicate all impeachments. Even if the Constitution imposes such a duty, the Senate has not understood this duty to adjudicate as necessarily requiring a formal trial. There is precedent for the Senate considering dispositive motions that would allow the Senate to render a judgment without holding a trial. (In the impeachment proceedings against Judges Ritter, Claiborne, and Nixon, the Senate entertained motions to strike articles of impeachment or to summarily adjudicate the matter.) Although such a motion is not specifically discussed in the impeachment rules, the Senate has not viewed dispositive motions as seeking to suspend, modify, or amend the rules. As a result, dispositive motions are ordinary trial motions subject to the limits on debate set forth in the impeachment rules and governed by simple majority vote.

An additional method available to resolve the matter is adjournment sine die. In the case of Andrew Johnson, the Senate voted on three articles of impeachment, acquitting on each. Rather than vote on the remaining eight articles, the Senate simply adjourned the impeachment proceedings sine die. The impeachment rules allow for a vote to adjourn sine die. Adjournment sine die does not specifically pass judgment on the articles of impeachment and so may not be satisfactory to those who consider the Senate duty-bound to try the impeachment.

B. Different motions to adjudicate the matter without an evidentiary trial. Several different motions would seem possible, some drawing on analogies to judicial proceedings.

1. A *motion to dismiss* would assert that the articles of impeachment fail as a matter of law to state actions upon which a conviction may constitutionally be based. Such an assertion could be based upon the claim that the articles do not state "high crimes and misdemeanors." Because the articles accuse President Clinton of committing perjury before a grand jury and of obstructing justice (among other things), a "motion to dismiss" would assert that such actions can never support conviction for high crimes or misdemeanors. Additionally, a "motion to dismiss" could be a vehicle for the President to raise the contention that the articles of impeachment lapsed when the 105th Congress adjourned sine die.

While there are no Senate rules governing the timing of motions, analogy to the Federal Rules of Civil Procedure would require a motion to dismiss to be made be-

fore the President submits his answer to the summons, or along with his answer to the summons.

2. In contrast to the motion to dismiss, a *motion for summary judgment* asserts (1) that the parties agree on all material facts and (2) that those facts compel judgment for the moving party. A party submitting a motion for summary judgment is agreeing to have the dispute finally adjudicated on the basis of the facts asserted in his moving papers. The opposing party has the option of filing a cross motion for summary judgment or of objecting that the parties are not in agreement as to all material facts and that a trial is required on the disputed facts. If the opposing party chooses the first course of action (and this could be done by prior agreement between the parties), then the Senate could enter judgment in the case without holding any evidentiary trial.

On a motion for summary judgment, the Senate by majority vote could issue a judgment for the President if it concluded that the undisputed facts fail to establish the existence of a high crime or misdemeanor warranting the President's removal from office. Because this motion rests on a view of the undisputed facts in the specific case, granting the President's motion for summary judgment would mean only that the specific perjury and obstructions charged in these articles of impeachment do not warrant conviction and removal from office (or that the facts failed to establish that these offenses had actually been committed). It would not imply that perjury or obstruction of justice could never serve as grounds adequate to impeach, convict, and remove a President from office.

3. The trial might also be ended by a *motion for a directed verdict.* Such a motion in civil litigation is brought after the plaintiff has concluded his case, and before the defendant mounts a defense. The motion asserts that the plaintiff's evidence is insufficient to sustain the claim, and that no reasonable fact finder would disagree. Were the House Managers to decide to submit the impeachment to the Senate based solely on evidence already gathered by Starr, the President could bring a "motion for a directed verdict" prior to an evidentiary trial involving any live witness testimony.

4. Finally, the Senate's own precedents supply the possibility of a fourth option, a *motion for summary disposition.* Such a motion might be entertained as an alternative to any of the motions just discussed, in order to avoid contending with the technicalities of such motions.

In the impeachment trial of Judge Harry Claiborne, for example, the House Managers introduced a motion for summary disposition. Both sides argued this motion without invoking the federal rules of civil procedure or judicial opinions relating to summary dispositions. The parties disputed only whether the facts warranted further evidentiary proceedings in the Senate or if the matter could be decided solely on the basis of Judge Claiborne's conviction for tax evasion. The Senate considered the motion without reference to judicial standards.

This approach is consistent with the Senate's position that it is not bound by the federal rules of civil procedure. Removing the motion from the technical categories and requirements under those rules allows each Senator the discretion to consider whether additional evidentiary proceedings, including live testimony, will serve the public interest.

C. Should the Senate appoint a committee? If the matter is not resolved on a summary basis, Rule XI provides that the Senate can appoint a committee to "receive evidence and take testimony" rather than having the Senate as a whole do so. This procedure has been employed in the case of trials of federal judges, and has been sustained by the Supreme Court. Such a committee would not and could not decide the case, but it could assemble the evidence submitted, prepare a transcript of all testimony and submit it to the Senate. The committee meetings could be televised so that noncommittee Senators would be able to watch them as they occurred, and videotapes could also be prepared for subsequent review. A number of the early proponents of what is now Senate Rule XI option are on record stating their view that such a committee should *not* be used for a presidential trial.

Composition of a Rule XI committee would be very important. Traditionally, these committees have been composed of twelve members, six from each party with the committee chair chosen from the committee members in the majority party. The Chair exercises the same role within the committee that the Chief Justice fulfills in the full Senate. This is significant because the decisions of the chair may be reversed only by a majority vote. If the votes in committee are on straight party lines, the ruling of the chair will be upheld in every instance. A complicating factor in a presidential impeachment is the requirement that the Chief Justice preside. This may require that the Chief Justice serve as the chair of a rule XI committee if one

is appointed. In this event, the rulings of the Chief Justice would be upheld on any party-line vote.—[Memorandum, 12/28/98]

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House Managers have asserted repeatedly that live witness testimony will resolve discrepancies between the testimony of witnesses, and therefore they ought to be called. There are several points to be made against this point of view.

Demeanor evidence is notoriously unreliable. Recall, for example, Alger Hiss/Whittaker Chambers. Some people were convinced by one side, some people by the other.

Demeanor evidence is not necessarily dispositive, in any event. Both witnesses can come across as reliable, honest and trustworthy. Witnesses often give credible performances while dissembling.

The House Managers are poorly situated to claim the necessity of hearing from live witnesses in order to resolve credibility issues. The House Judiciary Committee heard from no live witnesses, except Ken Starr, and yet the managers have had no difficulty in deciding *all* credibility disputes against the President or anyone giving testimony favorable to his story.

Any gains from live witnesses need to be assessed against the costs. The costs will come when the Senate chamber descends into the facts of the case with the specificity that will come from live testimony.

For example, one prominent disagreement that the House Managers have cited is that between President Clinton and Ms. Lewinsky regarding whether the President ever touched Ms. Lewinsky's breasts or genitalia. If both witnesses are called and reiterate their prior testimony, the Senate will certainly get the opportunity to observe their demeanor. This might shed some additional light on the question, but it probably won't. The possibility of securing the additional credibility data must be weighed against the serious negative ramifications such proceedings would likely have.

A. INDICTMENT

The Supreme Court engaged in a similar balancing exercise in deciding *Clinton* v. *Jones*. In that case, the court held that requiring the President to submit to judicial process in a civil case and go through an entire civil trial would not so damage the presidency as to justify interfering with the ordinary judicial process that vindicates the rule of law. Considering only indictment, as distinct from prosecution of a criminal trial, seems to impose less of a burden on the President. Indictment alone imposes no demands on the President's time.

An attempt to distinguish indictment could proceed on two bases. First, the President is apt to be more concerned about being criminally convicted than found civilly liable. Thus, an indictment could be a greater distraction from the President's duties than is a civil suit. Second, criminal indictment, unlike filing a civil complaint, stigmatizes the President.

Each of these distinctions is subject to dispute. As the Paula Jones suit itself demonstrates, a civil case can be extremely distracting. If a criminal indictment is more distracting, it seems doubtful that it is so much more distracting as to be constitutionally significant. A distinction based on stigma seems particularly weak in this case.

President Clinton has been impeached. Correctly or not, the House of Representatives has construed this impeachment as analogous to a grand jury indictment. It is thus not obvious that an actual criminal indictment would add materially to the stigma the President has already suffered.

Even accepting these grounds of distinction, the independent counsel may seek a sealed indictment. A sealed indictment would not be made known either publicly or to the President. If an indictment remains sealed until the President leaves office, it is difficult to see how it could either distract the President or stigmatize him.

B. PROSECUTION

Prosecution presents a different matter. Unlike an indictment with nothing more, proceeding to an actual prosecution would place significant physical and temporal burdens on the President. Preparing for trial and then actually presenting a defense would consume the President's time and attention over a lengthy period. During the pendency of criminal proceedings, the President would repeatedly face a choice between spending the time necessary to mount a meaningful defense and devoting time to fulfilling his constitutional and statutory duties. Even if the President were to choose to spend no time on his defense, it is difficult to imagine that his mind could be fully focused on his official duties.

To so stigmatize and distract the President would seriously undermine his ability to act as a check on the legislative branch. It would also impose significant costs in terms of the nation's standing internationally.

The Supreme Court's decision in *Clinton* v. *Jones* could be taken to support subjecting the President to criminal prosecution while in office. In that case, the President had argued that the civil lawsuit should be stayed until the President's term in office expired. He based this position on concerns that the demands of defending a civil lawsuit would impermissibly interfere with his ability to discharge his official duties. Admittedly, it is unlikely that defending against a criminal prosecution is any more time consuming than defending a civil lawsuit.

There are, however, several crucial distinctions between a civil and a criminal lawsuit. In the *Jones* case, the Supreme Court emphasized that the burden imposed on the President could be minimized through proper case management by the trial judge. A court does not have the same broad array of options available in a criminal proceedings. Perhaps most significantly, the options for settling the suit without a trial are quite different. President Clinton settled the Paula Jones case by making a cash payment with no admission of wrongdoing. The rough equivalent of settlement in a criminal proceeding is a plea bargain. Such a "settlement," however, requires the defendant to admit to some criminality. As such, there is far greater pressure on the president to proceed to trial in a criminal prosecution as opposed to a civil prosecution. Moreover, the President's attendance at a civil trial is not nearly so crucial as is his attendance at a criminal prosecution. The Sixth Amendment expresses the constitutional commitment to allowing a criminal defendant's presence at trial. Finally, consider what follows a judgment in a criminal trial as opposed to a civil trial.

The Paula Jones suit threatened the President with nothing more than an assessment of monetary compensation. An adverse verdict at a criminal trial threatens imprisonment. It is clear that the Constitution does not allow the judiciary to order the imprisonment of the President. Thus, at the very least, sentencing would have to be stayed until the President leaves office.

Extending the holding in *Clinton* v. *Jones* to cover criminal prosecutions is subject to an additional objection. The course of events since the Court rendered that decision casts significant doubt upon the conclusions the Court drew in that case. In *Clinton* v. *Jones*, the Supreme Court doubted that the civil lawsuit would consume much time or attention of the President. It could not be plainer that this prediction was wrong. While there is no reason to believe that the Court is considering overruling *Clinton* v. *Jones*, there is very powerful reason to apply the practical lessons we have learned since that decision to any claim for extending the *Clinton* v. *Jones* holding to criminal prosecutions. In light of all that has occurred since that ruling, it is wildly implausible to contend that a criminal proceeding against the President would not significantly disrupt his ability to fulfill his constitutional and statutory duties.

Against this significant disruption is concern for the rule of law. As a practical matter, it is critical to recall that sentencing would be stayed until the President leaves office. Given this, it is doubtful that staying the trial as well would add significant concern from the standpoint of the rule of law. It is important to bear in mind what the rule of law requires. It demands that similarly situated citizens be treated similarly. In light of the President's unique constitutional role, it is error to contend that the President must be treated identically to a private citizen. The rule of law must encompass the fundamental law of the Constitution, and account for the peculiar role of the President within the constitutional structure. Accommodating that role by staying criminal proceedings until the President is out of office respects the rule of law as long as the President is subject to criminal prosecution once out of office. Under these circumstances, the President is subject to liability in the same way as any citizen.

The *New York Times* reports that these conclusions accord with the view of most scholars. According to the *Times*, most scholars accept that the President may be indicted while in office, but that he may not be prosecuted. This assessment of the state of scholarship is probably accurate, but there is significant dissent as to each conclusion. In other words, the scholarship does not betray a consensus.

III. PRACTICE

There is very little practical experience dealing with the question of indicting or prosecuting a sitting President. The only precedent is the investigation of President Richard Nixon. The biographer to special counsel Archibald Cox reports that Cox had concluded that the separation of powers forbids indicting a sitting President. Cox' successor, Leon Jaworski, decided against seeking to indict President Nixon,

although his decision was based on prudential considerations and he did not reach a certain constitutional interpretation.

In 1972, Vice President Spiro Agnew argued to the Supreme Court that a sitting Vice President could not be indicted. Then-Solicitor General Robert Bork submitted an amicus brief on behalf of the United States in which he argued that a sitting Vice President could be impeached, but a sitting President could not be. Judge Bork repeated this position yesterday in an op-ed published in the *New York Times.*

IV. HISTORY

A number of framers made statements that appear to assume that the President may not be indicted while in office. In *The Federalist* Alexander Hamilton claimed that the President would be "liable to be impeached, tried, and removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law." In two other numbers of *The Federalist* Hamilton repeated this sequence and that criminal process comes "after" impeachment and conviction. In none of these passages, however, is Hamilton addressing the specific question of whether the President could be subject to criminal process while in office. It may represent no more than Hamilton's assumption as to what the ordinary sequence would in fact be.

Another framer, Gouverneur Morris, explained that the Constitution vests the power to try impeachments in the Senate rather than the judiciary because the judiciary would "try the President after the trial of impeachment." In the First Congress, Vice President John Adams and Senator (later Justice) Oliver Ellsworth expressed the view that "the President personally is not . . . subject to any [judicial] process whatever." But their view was disputed, for example by Senator William Maclay.

The Supreme Court reviewed this historical record in *Clinton* v. *Jones.* They concluded that history provides no answer to this question. These comments reflect the view of only a few, albeit influential, individuals and either were not made in the context of whether a sitting President could be indicted or were disputed.

V. PRUDENTIAL CONSIDERATIONS

Even if the Constitution does not prohibit indictment, that does not mean there are not powerful prudential arguments against indictment. Brett Kavanaugh, who was Associate Independent Counsel in Ken Starr's office for three years, put this argument most succinctly in a recent article he published in the *Georgetown Law Journal:*

The President is not simply another individual. He is unique. He is the embodiment of the federal government and the head of a political party. If he is to be removed, the entire government likely would suffer, [and] the military or economic consequences to the nation could be severe. . . . Those repercussions, if they are to occur, should not result from the judgment of a single prosecutor—whether it be the Attorney General or special counsel—and a single jury. Prosecution or nonprosecution of a President is, in short, inevitably and unavoidably a political act.

Thus, as the Constitution suggests, the decision about the President while he is in office should be made where all great national political judgments in our country should be made—in the Congress of the United States.

There is an additional, closely related, consideration—protecting Congress' constitutional impeachment power. If an independent counsel can indict a sitting President, this act alone tends to force Congress' hand with respect to impeachment. The mere fact of an indictment is an additional factor that generates some pressure to impeach and convict a sitting President. That pressure is even more coercive in the context of a prosecution and verdict than of indictment alone.

VI. DEPARTMENT OF JUSTICE POLICY

Professor David Strauss recently argued that there is no need to address the constitutional issues because the independent counsel is statutorily barred from indicting a sitting President. The United States Code instructs that the independent counsel "shall except where not possible comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws." 28 U.S.C. 594(f). Professor Strauss argues Judge Bork's Supreme Court brief in the Spiro Agnew case established the Department's policy on indicting a sitting President and that this policy is confirmed in the practice of special counsels Cox and Jaworski.

This is a strong argument, but there is a response: the brief in the Agnew case represents not a policy but an interpretation of the Constitution. That interpretation, the response would continue, has been demonstrated to be in error by the sub-

sequent decision in *Clinton* v. *Jones*. An article published by Ken Starr's advisor on constitutional law, Professor Ronald Rotunda, argues that *Clinton* v. *Jones* makes clear what had previously been obscure—namely that a sitting President may be indicted and prosecuted.—[Memorandum, 2/4/99]

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR SPENCER ABRAHAM

Mr. ABRAHAM. Mr. Chief Justice, in light of our time constraints, I would like to focus my remarks today primarily on the one issue—more than any other—that has arisen during our deliberations: namely, whether the President should be convicted if we find he committed the acts alleged in the articles.

I believe this issue is not only central to the case at hand, it is also central to all future evaluations and applications of what we do here.

In arguing for the President, White House lawyers have asserted that the threshold for Presidential removal must be very high—and I agree. At the same time, however, we must remember that there is an inverse relationship between the level at which we set the removal bar and the degree of Presidential misconduct we will accept.

So, then, where do we set the bar?

As we know, the Constitution says: "The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Now it has been suggested by some that a "high Crime" must be a truly heinous crime. But that interpretation is obviously wrong. Treason is certainly among the most heinous crimes. But bribery is not.

Taking a bribe, like treason, is however, a uniquely serious act of misconduct by a public official. That suggests a different meaning for "high Crime," one that is linked somehow to the fact that the person committing it holds public office.

Alexander Hamilton's comment about the impeachment power, quoted by so many of us here, provides the clue. In Federalist 65, Hamilton says: "The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the violation of some public trust."

The President's lawyers invoked this line, but in my view they misread it. They argued that what it means is that a President's conduct must involve misuse of official power if he is to be removed from office, but that is not what the Constitution demands, or what Hamilton's comment, fairly read, suggests. Otherwise, as has been noted, we would have to leave in office a President or a Federal judge who committed murder, so long as they did not use any powers of their office in doing so.

Rather, as Hamilton's language connotes, and our own precedents in the judicial impeachment cases confirm, the connection the Constitution requires between an official's actions and functions is a more practical one: the official's conduct must demonstrate that he or she cannot be trusted with the powers of the office in question.

This rule certainly encompasses official acts demonstrating unfitness for the office in question—but it also reaches beyond such acts.

In my view, we need not determine the outer limits of this principle to decide the question before us today: whether the President's actions, as alleged in these articles, constitute a violation of a "public trust" as Hamilton uses the term.

The answer to that question is plain when we consider the President's conduct in relation to his responsibilities.

The President's role and status in our system of government are unique. The Constitution vests the executive power in the President, and in the President alone. That means he is the officer chiefly charged with carrying out our laws. Therefore, far more than any Federal judge, he holds the scales of justice in his own hands.

In the wrong hands, that power can easily be transformed from the power to carry out the laws, into the power to bend them to one's own ends.

The very nature of the Presidency guarantees that its occupant will face daily temptations to twist the laws for personal gain, for party benefit or for the advantage of friends.

To combat these temptations, the Constitution spells out—in no uncertain terms—that the President shall "take care that the laws be faithfully executed," and the President's oath of office requires him to swear that he will do so.

If he obstructed justice and tampered with witnesses in the Jones case, a Federal civil rights case in which he was the defendant, the President violated his oath and failed to perform the bedrock duty of his office. He did not faithfully execute the laws.

A President who commits these acts thereby makes clear that he cannot be trusted to exercise the executive power lawfully in the future, to handle impartially such specific Presidential responsibilities as serving as the final arbiter on bringing Federal, civil, or criminal cases, or determining the content of Federal regulations—especially if, as will often be the case, he has a personal or a political interest in the outcome.

Surely retaining a President in office under these circumstances constitutes exactly the type of threat to our government and its institutions so many have said must exist for conviction.

That brings the President's alleged conduct squarely within the purview of our impeachment power, whose purpose, as described by Hamilton, is to deal with "the violation of some public trust."

Furthermore, if the articles' allegations are true, how can we leave the executive power in the hands of a President who, through his false grand jury testimony, even attempted to obstruct and subvert the impeachment process itself?

For this particular grand jury before which the President testified was not only conducting a criminal investigation; it was also charged, under congressional statute, with advising the House of Representatives as to whether it had received any substantial and credible information that might constitute grounds for impeachment.

The framers placed the impeachment power in our Constitution as the ultimate safeguard to address misuse of the executive power.

A President who commits perjury, intending to thwart an investigation that might otherwise lead to his impeachment, has, I believe, committed a quintessential "high Crime."

Such conduct of necessity impedes, and could even preclude, Congress from fulfilling its constitutional duty to prevent the President from usurping power and engaging in unlawful conduct.

To permit such behavior would set an unacceptable precedent, because it could, in the future, allow nullification of the impeachment process itself, rendering it meaningless.

Hence, a President who acts to subvert what the framers viewed as the ultimate constitutional check on abuse of executive power, most certainly violates the public trust as defined by Hamilton.

Throughout this discussion I have analyzed this case as though one or more of the underlying counts in each impeachment article were established. I recognize that not everyone has reached this conclusion—and I confess that I have spent countless hours attempting to make this determination of guilt or innocence on each article.

However, after listening to and studying the evidence, I have concluded beyond any reasonable doubt that the President committed one or more of the acts alleged under each article. Time does not permit me to fully explain the basis for my conclusions. But, in my view, that is where the evidence inescapably points.

In my opinion, there is no way that the President could have testified as he did in his Jones deposition concerning his relationship with Monica Lewinsky, unless he believed Ms. Lewinsky would validate his false statements if called as a witness.

The President may not have explicitly told her to lie, but when he called her on December 17, he did say, "You can always say you were coming to see Betty or that you were bringing me letters."

To whom did he intend her to say this? They had already agreed on the use of these cover stories in nonlegal contexts. The only new audience was, clearly, the Jones court, and the President's comments that night were surely aimed at influencing Ms. Lewinsky's potential testimony before that court, if she were to be subpoenaed.

That this was the President's intent, is confirmed by his own testimony in the Jones case. What did he say when asked if Ms. Lewinsky had come to see him? He said that Ms. Lewinsky had come to visit Betty Currie and perhaps deliver him papers.

In my opinion, there is also no way you can refresh your memory by making assertions you know to be false to another person—as the President twice did to Betty Currie after that deposition. No, the purpose of those statements was to cause her to validate the false testimony he had just given, if she were to be subpoenaed.

Finally, if you believe that was the President's intention, then you must conclude he committed material perjury later in his grand jury testimony, when in response to the question: "You are saying that your only interest in speaking with Ms. Currie in the days after your deposition was to refresh your own recollection?" he answered with one word: "Yes."

There is more.

Fellow Senators, none of us asked for this task, but we must live with the consequences of our actions, not just on this administration but on our Nation for generations to come.

That responsibility cannot be shirked. It has led me to a difficult but inexorable decision.

I deeply regret that it is necessary for me to conclude that President William Jefferson Clinton committed obstruction of justice and grand jury perjury as charged in the articles of impeachment brought by the House, that these are "high Crimes and Misdemeanors" under our Constitution, and that therefore I must vote to convict him on these charges.

I ask unanimous consent that a fuller opinion be printed in the RECORD.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

OPINION BY SENATOR SPENCER ABRAHAM

The President has been impeached on the grounds that he obstructed justice and tampered with witnesses in connection with a Federal civil rights suit in which he was the defendant, and that he committed perjury before a grand jury charged with investigating whether his previous conduct warranted prosecution or possible impeachment. It is our duty to determine whether the President did what the articles of impeachment charge and, if so, whether his actions were "high Crimes and Misdemeanors" that under our Constitution should bar him from further service in his office.

In considering these questions, I have done my best to imagine that I was deciding them, not about a President of the opposing political party, with whom I disagree on many issues, but about a President of my own party. I have tried to imagine what I would do if confronted with the same evidence concerning a popular Republican President whose policies I strongly supported. I have tried to decide the case before me just as I would the case of such a President.

Let me start with the facts.

After a great deal of listening, research, and contemplation, I am compelled by the evidence to conclude that the President did engage in the conduct charged in both articles. In reaching this conclusion, I rely exclusively on those elements of the case that I believe have been proven beyond a reasonable doubt. Because I believe these dictate my conclusion, I do not decide whether in an impeachment trial, the Constitution requires application of this highest of evidentiary standards, which governs in ordinary criminal cases, or whether it would also be proper for me to rely on any of the other conduct charged by the House, much of which I might well find proven under either of the lower civil law standards.

Let me briefly outline the basis for my conclusions. I will start with the second article because the conduct giving rise to it actually occurred first.

In my view, the evidence shows beyond a reasonable doubt that, for over 11 months, from December 6, 1997, to November 13, 1998, when the President agreed to pay Paula Jones $850,000 to withdraw her sexual harassment lawsuit, the President engaged in a systematic course of obstructing justice and tampering with witnesses in Ms. Jones' case. There is no room for reasonable doubt that as part of this course of conduct the President made statements to Ms. Monica Lewinsky and Ms. Betty Currie that were intended to cause them to validate, through testimony he thought they could well be called upon to give, the false story he was planning to tell or had already told in his own deposition. These statements to Ms. Lewinsky and Ms. Currie constitute the second and sixth Acts of obstruction and witness tampering charged by the House. There is also no room for reasonable doubt that the President supported efforts to conceal gifts he had given to Ms. Lewinsky after those gifts had been subpoenaed as evidence in that case. That constitutes the third act of obstruction charged by the House.

As to the first article: I am convinced that the House has shown beyond a reasonable doubt that the President perjured himself before the grand jury in two instances. First, he stated that his only purpose in talking to Ms. Currie in the days following his Jones deposition was to refresh his own recollection, thereby falsely claiming to the grand jury that he did not intend to tamper with her potential testimony if she were called as a witness in the Jones case. Second, he reaffirmed the veracity of his Jones deposition denial of "sexual relations" with Ms. Lewinsky, under the definition of that term approved by the court in that case. This was not merely a "lie about sex" to protect his family. By the time of his grand jury appearance, the President had already acknowledged to his family his improper relation-

ship with Ms. Lewinsky. Before the grand jury, the President falsely asserted the truth of his earlier sworn statements for the sole purpose of protecting himself from possible prosecution or impeachment.

In light of these conclusions, the final overriding issue is whether the President's actions constitute "high Crimes and Misdemeanors" requiring his removal from office under article II, section 4 of the Constitution. As has been acknowledged on both sides, reasonable people can differ on this question. And indeed it is only on this issue, whether the President must be removed, that Americans are consequentially divided. A decided majority of Americans agree that the President committed the crimes alleged in at least one of the articles. And in their hearts I believe a significant majority of my colleagues do as well.

The public, like us, is in disagreement over what the consequences should be. A clear majority oppose removal, but for a variety of reasons—ranging from a feeling that the President does not deserve to be removed, to a concern not to endanger current economic conditions, to a preference for the President over the Vice President, to the belief that, because the President has less than 2 years remaining in this term, removing him is not worth the disruption it would cause.

These considerations would legitimately play a role in our decision if we were functioning as a legislative body in a parliamentary system deciding whether to retain the current government. But that is not our role here. The Constitution requires the Senate to sit not in an ordinary legislative capacity on this matter, but as a Court of Impeachment. That is why, at the beginning of a trial on articles of impeachment, article I, section 3 of the Constitution states that Senators must take a special oath to do impartial justice. Accordingly, it is my view that our decision cannot be based on other considerations, but instead must be based on what the Constitution dictates, and taken with a view toward the precedent we will establish regarding what is acceptable Presidential behavior.

In arguing for the President, White House lawyers have asserted that the threshold for Presidential removal must be very high—and I agree. At the same time, however, we must remember that there is an inverse relationship between the level at which we set the removal bar and the degree of Presidential misconduct we will accept.

So, then, where do we set the bar? What does the Constitution dictate? What precedent should we set for the ages?

Let us start with the text of the Constitution, which states simply: "The President, Vice President and all civil Officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

The first interpretation that has been suggested is that a "high Crime" must be a truly heinous crime. But that is obviously wrong. Treason is certainly among the most heinous crimes. But bribery is not.

Taking a bribe, like treason, is however uniquely serious misconduct by a public official. That suggests a different meaning for "high Crime," one that is linked somehow to the fact that the person committing it holds public office.

A comment by Alexander Hamilton in Federalist 65 provides the clue.

In Federalist 65, speaking of impeachment, Hamilton says: "The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the violation of some public trust."

The President's lawyers invoke this line, but they misread it. They argue that what it means is that to require removal, a President's conduct must involve misuse of official power.

That is not what the Constitution demands, or what Hamilton's comment fairly read suggests. Otherwise we would have to leave in office a President or a Federal judge who committed murder, so long as they did not use any powers of their office in doing so. Rather, as Hamilton's language connotes, and our own precedents confirm, the connection the Constitution requires between the official's actions and functions is a more practical one: the official's conduct must demonstrate that he or she cannot be trusted with the powers of the office in question. This rule encompasses official acts demonstrating unfitness for the office in question, but it also reaches beyond such acts.

We need not determine the outer limits of its principle to decide the question before us today: whether the President's actions here constitute a violation of a "public trust" as Hamilton uses the term. The answer to that question is plain when we consider his conduct in relation to his responsibilities.

The President's role and status in our system of government are unique. The Constitution vests the executive power in the President, and in the President alone. That means he is the officer chiefly charged with carrying out our laws. Therefore, far more than any Federal judge, he holds the scales of justice in his own hands.

In the wrong hands, that power can easily be transformed from the power to carry out the laws into the power to bend them to one's own ends. The very nature of the Presidency guarantees that its occupant will face daily temptations to twist the laws for personal gain, for party benefit, or for the advantage of friends in or out of power. To combat these temptations, the Constitution spells out in no uncertain terms that the President shall "take care that the laws be faithfully executed," and his oath of office requires him to swear that he will do so.

By obstructing justice and tampering with witnesses in the Jones case, a Federal civil rights case in which he was the defendant, the President violated his oath and failed to perform the bedrock duty of his office. He did not faithfully execute the laws. He thereby made clear that he cannot be trusted to exercise the executive power lawfully in the future, to handle impartially such specific Presidential responsibilities as serving as the final arbiter on bringing Federal civil or criminal cases, or determining the content of Federal regulations—especially if, as will often be the case, he has a personal or political interest in the outcome.

Surely retaining a President in office under these circumstances constitutes the type of threat to our government and its institutions so many have said must exist for conviction. That brings his conduct squarely within the purview of our impeachment power, whose purpose, as described by Hamilton, is to deal with "the violation of some public trust."

Obstruction of justice, witness tampering, and grand jury perjury are serious Federal crimes. How do we explain to others who commit them, many out of motives surely as understandable as the President's, that while the President stays in the White House, his Department of Justice is trying to send them to prison? How can we expect ordinary citizens to accept that the President can remain in office after lying repeatedly under oath in court proceedings, but that it is still their duty to tell the truth?

Finally, how can we leave the executive power in the hands of a President who, through his false grand jury testimony, has even attempted to obstruct and subvert the impeachment process itself? For the particular grand jury before which the President testified falsely was not only conducting a criminal investigation; it was also charged, under congressional statute, with advising the House of Representatives whether it had received any substantial and credible information that might constitute grounds for impeachment.

The framers placed the impeachment power in our Constitution as the ultimate safeguard to address misuse of the executive power. A President who commits perjury, intending to thwart an investigation that might otherwise lead to his impeachment, has committed a quintessential "high Crime." This crime impeded, and could have even precluded, Congress from fulfilling its duty to prevent the President from usurping power and engaging in unlawful conduct. To permit such behavior could, in effect, allow nullification of the impeachment process itself, rendering it meaningless. Hence, a President who acts to subvert what the framers viewed as the ultimate constitutional check on abuse of executive power, most certainly violates the public trust as defined by Hamilton.

To allow a President to continue in office after committing these acts would place the Presidency above the law and grant the President powers close to those of a monarch. This, in turn, presents a clear and present danger to the rule of law, the birthright of all Americans. Indeed, we Americans take the rule of law so thoroughly for granted that while it has been much invoked in these proceedings, there has been little discussion of what it means or why it matters. Simply put, the rule of law is the guarantee our system makes to all of us that our rights and those of our countrymen will be determined according to rules established in advance. It is the guarantee that there will be no special rules, treatment, and outcomes for some, but that the same rules will be applied, in the same way, to everyone.

If America's most powerful citizen may bend the law in his own favor with impunity, we have come dangerously close to trading in the rule of law for the rule of men. That in turn jeopardizes the freedoms we hold dear, for our equality before the law is central to their protection.

We are a great nation because, in America, no man—no man—is above the law. Americans broke from Great Britain because the mother country claimed it had a right to rule its colonies without restraint, as it saw fit. Our tradition of chartered rights—rights laid down in laws, which no King, Parliament or other official could breach—culminated in our Constitution. That Constitution, which is itself only a higher law, protects us from tyranny. Once the law becomes an object of convenience rather than awe, that Constitution becomes a dead letter, and with it our freedoms and our way of life.

Mr. Chief Justice, my grandparents did not come to this country seeking merely a more convenient, profitable life. They came here seeking the freedoms that were given birth on Bunker Hill and in the Convention at Philadelphia.

I know some people mock as self-righteous or feckless the piety many Americans have toward their heritage and toward the Constitution that guards their freedom. But I will never forget that it is not the powerful or those favored by the powerful who need the law's protection.

If we set a precedent that allows the President—the Chief Magistrate and the most powerful man in the world—to render the judicial process subordinate to his own interests, we tell ordinary citizens, like my grandparents, that Americans are no longer really equal in the eyes of the law. We tell them that they may be denied justice. And we thereby forfeit our own heritage of constitutional freedoms.

None of us asked for this task, but we must live with the consequences of our actions, not just on this administration, but on our Nation for generations to come. That responsibility cannot be shirked. It has led me to a difficult but inexorable decision. I deeply regret that it is necessary for me to conclude that President William Jefferson Clinton committed obstruction of justice and grand jury perjury as charged in the articles of impeachment brought by the House, that these are "high Crimes and Misdemeanors" under our Constitution, and that therefore I must vote to convict him on these charges.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR BARBARA A. MIKULSKI

Ms. MIKULSKI. Mr. Chief Justice, I will vote against the articles of impeachment accusing the President of the United States of perjury before a grand jury and obstruction of justice.

The Republican House managers have asked the Senate to remove the President from office, overturning a free and fair election in which 100 million Americans cast their vote. Short of voting on whether or not to send our sons and daughters to war, I can envision no more profound decision.

I have taken this responsibility as seriously as anything I have done in my life. A little over a month ago, I escorted the Chief Justice into this Chamber and stood with my colleagues when we took a collective oath, as an institution, to render impartial justice in this trial. Then, we individually signed our names and pledged our honor to faithfully fulfill our oath. That was an indelible and profound moment.

I have sought to fulfill both responsibilities—to be impartial and to render justice. I have sought to be impartial, which I view as a test of character and will. And I have sought to pursue justice, which to me includes the responsibility to perform the homework—do the reading, review the evidence and weigh the facts.

I have listened carefully, and with an open mind, to the presentations of the Republican House managers and the President's counsel. I have reviewed the evidence. I have read all of the key witnesses' testimony before the grand jury. I have intensely studied the law pertaining to perjury and obstruction of justice, discussed the issue with respected lawyers, developed an appropriate standard of proof, and reviewed the House testimony of Republican and Democratic former prosecutors for their views on the charges. Finally, I have read what our Nation's founders wrote about impeachment during those months in 1787 when the Constitution was formed, and considered the writings of many of today's finest scholars.

As I reviewed the historical underpinnings of impeachment, I have reflected on the intentions of the Founding Fathers who developed our famed system of "checks and balances"—our Constitution. That system, designed with the precision of Swiss watchmakers and the concern of loving parents, has served our Nation very well over the last 200 years and served as a guidepost for nations around the world as they struggled to establish democracies.

I wondered what the framers of the Constitution would think of this trial—how they would counsel us. In fact, we can use their rationale and their framework to guide us as we reach conclusions about the evidence and as we determine whether that evidence merits removing a President from office.

Using all this as my guide, I have concluded that the evidence presented by the House managers does not meet a sufficient standard of proof that President Clinton engaged in the criminal actions charged by the House. I conclude that the President should not be removed from office.

In coming to that conclusion, I have used the highest legal standard of proof—"beyond a reasonable doubt," which is required in Federal and State criminal trials. I believe that removing a President is so serious, and such an undeniably tumultuous precedent to set in our Nation's history, that we should act only when the evidence meets that highest standard. The U.S. Senate must not make the decision to remove a President based on a hunch that the charges may be true. The strength of our Constitution and the strength of our Nation dictate that we be sure—beyond a reasonable doubt.

The House managers' case is thin and circumstantial. It doesn't meet the standard of "beyond a reasonable doubt."

The first article of impeachment, charging the President perjured himself before the grand jury, has not been proven beyond a reasonable doubt.

For instance, the House managers claim that President Clinton committed perjury when he used the term "on certain occasions" to define the number of times he had inappropriate contact with Ms. Lewinsky. The managers believed the term "on certain occasions" meant fewer than the 11 times that were counted by Federal investigators and they labeled it "a direct lie."

But there is no clear numeric or legal definition of "certain occasions." To disagree about the definition of "certain occasions" is not perjury. And it is not material whether it was 11 times or "on certain occasions." President Clinton admitted the relationship, which was the material point.

The Republican House managers also claimed President Clinton committed perjury by not recalling the exact date, time, or place of events that occurred 2 years before. This was because other witnesses recalled things slightly differently. I do not believe this is or can be perjury because well-established court standards state that "the mere fact that recollections differ does not mean that one party is committing perjury."

Overall, the House managers' assertions rest on Mr. Clinton's vague and unhelpful responses to the independent counsel's questions. While those responses may be frustrating to the independent

counsel, the Republican House managers, and, perhaps the American public, they are not perjurious as defined by law.

Similarly, the case presented by the Republican House managers has not presented sufficient direct evidence to prove beyond a reasonable doubt that the President obstructed justice. Instead, the House managers relied on extensive conjecture about what the President may have been thinking. In fact, there is direct and credible testimony by multiple witnesses that is directly contrary to the House managers' conjecture, leaving ample room for doubt.

The Republican House managers also did not prove beyond a reasonable doubt that there was a causal connection between Ms. Lewinsky's job search and the affidavit she gave in the Jones lawsuit. Ms. Lewinsky testified clearly and repeatedly that she was never promised a job for her silence. That testimony is not challenged by any other witness. In fact, other witnesses support that testimony and her most recent deposition by the House managers confirms it.

From the outset of this trial, I established that I would use a two-tier analysis for my deliberations. First, I would determine whether the evidence proved beyond a reasonable doubt that the President was guilty of the charges. Second, I would then determine whether or not those charges rose to the level of "high Crimes and Misdemeanors"—the standard required by the Constitution for conviction and removal of a president.

Since my analysis of the charges brought by the Republican House managers determined that they had not been proven beyond a reasonable doubt, the question of determining high crimes and misdemeanors is, I believe, moot. I will say, however, that I am again taken by the wisdom and prescience of the Founding Fathers in addressing this point. I, like many, have read and re-read the work of Alexander Hamilton with particular interest. On March 7, 1788, he wrote Federalist 65, outlining the reasons for, and consequences of, an impeachment trial in the Senate. In that writing, Mr. Hamilton asserted that the proper subject of an impeachment trial would be "the abuse or violation of some public trust . . . as they relate to injuries done immediately to the society itself."

I believe it is clear from those words, and the words of others who drafted the Constitution, that impeachment was not intended to be used for an act that did not meet that standard. It was not meant to be used for punishment of the President. I believe that the framers intended the last resort of impeachment to be used when a presidential action was a clear offense against the institutions of government. I do not believe that President Clinton's conduct, as wrong as it was, rises to that level.

I wish to choose my words judiciously for I believe the behavior of the President was wrong, reckless and immoral. President Clinton has acknowledged that his behavior has harmed his family and the Nation, and that his behavior, in the end, is what brought us to this day. Mr. Clinton engaged in an illicit, inappropriate relationship and tried to hide it out of shame and the fear of disgrace. Those actions are clearly deplorable and should be condemned in the most unequivocal terms. But the evidence simply and profoundly does not prove criminal wrongdoing.

Certainly, the impeachment process has been a difficult period in our Nation's history. It has challenged the strength of our institutions and the strength of our Nation. But, Mr. Chief Justice, I still find reason for tremendous hope.

First, I find hope in the unflagging commitment of the U.S. Senate to do the right thing for the right reason. I am proud to be a part of this Senate that was ably led by Mr. LOTT and Mr. DASCHLE and conducted this trial in a serious, bipartisan, reflective, and cooperative spirit.

I am reassured that Alexander Hamilton and other constitutional framers saw fit to charge the Senate with the responsibility to try such a case. I hope and believe that we have fulfilled their expectations to be a sufficiently dignified and independent tribunal, one that could preserve "unawed and uninfluenced, the necessary impartiality" between the parties in this trial. I would like to thank my colleagues on both sides of the aisle for meeting their responsibilities with such commitment, honor, professionalism, and concern for this body and the judgment of history. I will modestly presume that history will say we discharged our duty well.

I will never forget one of our finest hours—when, early in the process, we convened in the old Senate Chamber to deliberate. I had the honor to preside, with my Republican colleague Mr. MACK, over that colloquy in which we established a process that would maintain the dignity of the Senate and provide a framework for conducting the trial. That precedent set an important tone for the proceedings that followed and I believe that the goodwill generated in that historic meeting held throughout our deliberations.

Finally, I also find tremendous hope in the growing national consensus that we must move forward together to address pressing problems in our neighborhoods, communities, and cities. Over the last month, the Nation has cried out for a focus on education, preserving Social Security and Medicare, investing in our economy, and providing global leadership.

We should now heed those calls. I will not say that now we must "return to the Nation's business." In fact, as difficult and time consuming as this process has been, I believe fulfilling our duty to "render impartial justice" has been the Nation's business. I am hopeful that with the conclusion of this trial, we may all return to the work of making our Nation more prosperous, our families stronger, our children better educated, our communities more cohesive, and our world safer at home and abroad. I believe we will move on knowing that we have fulfilled our constitutional responsibilities with diligence and honor.

Thank you.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR ROD GRAMS

Mr. GRAMS. Mr. Chief Justice, despite the handicaps placed upon the House managers, I feel they did an excellent job in presenting their case in support of the articles of impeachment and laying out the facts. I listened to them carefully, as I listened to

the White House counsel and the President's lawyers in their vigorous defense of William Jefferson Clinton.

I have heard some of my colleagues say that it was one particular fact or incident that led them to their conclusion. That was not the case with me. I needed to listen to all the facts throughout the trial, before I truly could decide how I would vote.

But after carefully weighing all the evidence, all of the facts, and all the arguments, I have come to the conclusion—the same conclusion reached by 84 percent of the American public—that President Clinton committed perjury and wove a cloth of obstruction of justice.

Lead Presidential counsel Charles Ruff said in testimony before the House Judiciary Committee, and here during the Senate trial, that fair-minded people could draw different conclusions on the charges.

I disagree in one aspect, but agree in another. I personally feel there is no room to disagree on whether the President is guilty of the charges in both article I and article II; he committed perjury and he clearly obstructed justice. But I agree we will differ on whether these charges rise to the level of high crimes which dictate conviction. Again, I believe they do and have voted yes, on both articles.

The President was invited by letter to come and testify before the Senate. As the central figure in this trial, he alone knows what happened, and if truthful, he could have addressed the compelling evidence against him. He refused.

It has been said that many have risked their political futures during this process. Perhaps—yet I will not hesitate telling constituents in my State how and why I voted the way I did. With a clear conscience, I will stand in their judgment and I will live with and respect whatever their decision on my political future may be.

But remember, those who vote to acquit—that is, to not remove this President—will have the rest of their political lifetimes to explain their votes. They also will be judged.

Collectively, too, we will have to await what history will say about this trial and how it was handled. Will this Senate be judged as having followed the rule of law; that is, deciding this case on the facts, or will we be remembered as the rulemaking body who deferred to public sentiment? The polls say this President is too popular to remove. If we base our decision on his popularity rather than the rule of law, we would be condoning a society where a majority could impose injustice on a minority group, only because it has a larger voice. A rule of law is followed so that justice is done and our Constitution is respected, regardless of popularity polls.

The foundation of our legal system, I believe, is at risk if the Senate ignores these charges. The constitutional language of impeachment for judges is the same as for the President. Judges are removed from the bench for committing perjury, and also face criminal charges, as do ordinary citizens. We must not accept double standards.

The prospect of such a double standard was raised countless times by the House managers. Consider the irony created by a two-tiered standard for perjury. A President commits perjury, yet remains in office. But would a Cabinet member who committed per-

jury be allowed to keep his or her job? Would a military officer who committed perjury be allowed to continue to serve? Would a judge who committed perjury remain on the bench? They would not, and yet our President, the Nation's chief law enforcement officer, is allowed to keep his office after having committed the same offense.

Again, in my view, this is a double standard and is completely unacceptable for a nation that prides itself on a legal system which provides equal justice under the law.

As to our final duty, the final vote, I believe the so-called "so what" defense has controlled the outcome. "He did it, but so what." We have heard it a thousand times from a hundred talking heads. We have heard it from our colleagues, too, in both Chambers. Well, for this Senator, "so what" stops at perjury and obstruction of justice. I will cast my vote with sorrow for the President, his family, and for the toll this trial has taken on the Nation, but with certainty that it is the only choice my conscience and the Constitution permit me to make.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOHN B. BREAUX

Mr. BREAUX. Mr. Chief Justice, thank you very much, as so many people have said before, for serving with your patience and your fairness. If you care to extend your time with us, I would invite you to help preside over my Medicare Commission—if you would like to help out in that regard.

I also want to acknowledge and thank our two leaders for the fairness and the patience that they both have exhibited to all of us and the good job they have done keeping this body together, which I happen to think is extremely important as well.

I think it is always very difficult for us to sit in judgment of another human being, and particularly is that very difficult when it involves moral behavior, or moral misbehavior as this case essentially is all about. I was always taught that there was a higher authority that made those types of decisions, but here we are, and that is part of our task.

I think it is also especially difficult to make those kinds of decisions when they involve someone you know and someone you actually deal with in a relatively close relationship, almost on a day-to-day basis. It is difficult when it is someone that you can in private kid with or that you in private can joke with, as is the case for many of us with this accused whom we now sit in judgment of.

I know this President and he is someone I have admired for his political accomplishments and I have admired for what he has been able to do for this country, but also quite well recognize the human frailties that he has, as all of us have. If this were a normal trial, many of us wouldn't even be here; we would have been excused a long time ago; we would never have been selected to sit in judgment of this President. We would have been excused because of friendship, we would have been excused because we know him, we would have been excused because we campaigned for him and with him, or we would have been excused for the opposite reasons—because he is a political adversary that we have campaigned against,

that we have given speeches against, that we disagree with publicly on just about everything he stands for. None of us would find ourselves sitting in judgment of this individual if it were a normal trial. But, then again, it is not a normal trial, and these certainly are not normal times.

For many of us, this is the first time we have ever had a President who has sort of been a contemporary—certainly for me, and many of my colleagues are in that same category. I was here, as were many of you in my generation, when President Johnson was here, and served throughout the time of President Johnson all the way through President Bush. I have met them all and knew them all to various degrees but never in the same way that I and many of us know this particular President, because he really is in the same generation as we are. I think we have that feeling, when we talk with him. I mean, many times I feel he knows what I am going to say before I say it and he understands what I am trying to convey to him before I even said anything about the subject matter.

I think that many of us have had, with him, the same type of life experiences, and that our lives have been shaped by similar events because we really are of the same generation. So it is very difficult, coming from that position and now sitting in judgment of a person for his moral behavior. So I think we have to be extremely careful, those of us who come from this side with that personal friendship and relationship, as well as those who come from the opposite side, as a political adversary. It is very difficult to set those emotions aside and say I am going to be fair in judging someone I just cannot stand politically, that I don't agree with on anything, and I wish he wasn't my President; in fact, I supported someone else. So it is very difficult for all of us to try to set that aside and come to an honest and fair and decent conclusion.

I think the American people have been able to do that. I think they have had a good understanding of what this case is about from the very beginning. They understood what it was about before the trial ever started. They understood what it was about during the trial, and I think they understand what it is all about after the trial. I think they understand what happened. I think they know when it happened, they know where it happened, and they know what was said about it. I think that they were correct from the very beginning.

What we really have is a middle-aged man, who happens to be President of the United States, who has a sexual affair with someone in his office, and when people started finding out about it, he lied about it, tried to cover it up, tried to mislead people about what happened. I would daresay that this is not the first time in the history of the world that this has ever happened. I daresay it probably will not be the last time that it will happen. It is probably not the first time it has happened in this city.

All of that does not make it right; it does not make it acceptable. It does not make it excusable. It cannot be condoned and it cannot be overlooked. Actions that are wrong have consequences, and now the consequences must be determined by the Senate.

The question here is not really whether anything wrong was done. For heaven's sakes, everybody knows that what was done

was clearly wrong. It was unacceptable. It was embarrassing. It was indefensible and any other adjective you can possibly think of to really describe it. But that is not really the question before us, and we can all agree on that. I think the question is not even whether this was perjury or whether it was obstruction of justice under the terms of the Constitution.

I think the only question before us is whether what happened rises to the highest constitutional standards of high crimes and misdemeanors under the Constitution, justifying automatic removal of this President from the office of President.

I have concluded that the Constitution was designed very carefully to remove the President of the United States for wrongful actions as President of the United States in his capacity as President of the United States and in carrying out his duties as President of the United States. For wrongful acts that are not connected with the official capacity and duties of the President of the United States, there are other ways to handle it. There is the judicial system. There is the court system. There are the U.S. attorneys out there waiting. There may even be the Office of Independent Counsel, which will still be there after all of this is finished.

We here cannot expand the Constitution in this area. I think history supports my position. I will cite you just a quick two examples. Senator SLADE GORTON earlier spoke about the situation with the Secretary of the Treasury, Alexander Hamilton. As Secretary, he was having an affair with a woman here in this city and they found out about it. He was paying off the husband of the wife that he was having an affair with. He was trying to get her to burn the evidence, which were letters that he had sent, to try to cover it up—criminal acts. But the Congress that was investigating him, came to the conclusion that the behavior was private. It was wrong, it was terrible, it was criminal, but it was private behavior and he was not impeached. Not because, I think, as SLADE tried to say, that he wasn't impeached because he admitted it, he only admitted it when he got caught. But he was not impeached because they decided that it was essentially private behavior. That was in 1792, and Adams and the Founding Fathers were here at that time and they came to that conclusion.

More recently, the situation with President Richard Nixon, I think, is a clear example of what we are struggling with here, to find this connection between official duties and what he did. One of the articles that they accused President Nixon with was that he had, not once, but four times filed fraudulent income tax returns under the criminal penalty of perjury—that he deducted things that he should not have deducted and that he didn't report income that should have been reported. By a 26-to-12 vote, the House Judiciary Committee said, among other things, that "the conduct must be seriously incompatible with either the constitutional form and principles of our Government or the proper performance of the constitutional duties of the President's office." They said that it did not demonstrate public misconduct, but rather private misconduct that had become public. I think the situation today is very similar.

These are clear examples both in the beginning of our country's history and very recently about the need for this nexus or connec-

tion between the illegal acts and the duties of the office of the President.

Let me conclude by saying I am voting not to convict and remove. But that is not a vote on the innocence of this President. He is not innocent. And by not voting to convict we can't somehow establish his innocence. If the standard of removal was bad behavior, he would be gone. I mean there would probably be no disagreement about that. But that is not the standard.

I urge a "no" vote on conviction and removal and ask our colleagues to join in a bipartisan, strong, clear censure resolution and spell out what happened and where it happened and when it happened and what was said about what happened so that history will be able to, forever, look at that censure resolution and study it and learn from what we do today. That, my colleagues, I think is an appropriate and a proper remedy.

Thank you.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR PETE V. DOMENICI

Mr. DOMENICI. Mr. Chief Justice, I have listened carefully to the arguments of the House managers and the counterarguments by the White House counsel during this impeachment trial. I have taken seriously my oath to render impartial justice.

While the legal nuances offered by both sides were interesting and essential, I kept thinking as I sat listening that the most obvious and important but unstated question was: What standard of conduct should we insist our President live up to?

Only by taking into account this question do I believe that we in the Senate can properly interpret our Founding Fathers' impeachment criteria comprised of "Treason, Bribery, or other high Crimes and Misdemeanors." Clearly, the Constitution recognizes that a President may be impeached not only for bribery and treason, but also for other actions that destroy the underlying integrity of the Presidency or the "equal justice for all" guarantee of the judiciary.

All reasonable observers admit that the President lied under oath and undertook a substantial and purposeful effort to hide his behavior from others in order to obstruct justice in a legal proceeding. My good friends and Democratic colleagues, Senators JOE LIEBERMAN, DANIEL PATRICK MOYNIHAN, BOB KERREY, DIANNE FEINSTEIN, and ROBERT BYRD, among others, have bluntly acknowledged publically that the President lied, misled, obstructed, and attempted in many ways to thwart justice's impartial course in a civil rights case. The sticking point has been: Does this misbehavior rise to the level of impeachable offenses?

I have concluded that President Clinton's actions do, indeed, rise to the level of impeachable offenses that the Founding Fathers envisioned.

I am not a constitutional scholar, as I have told you before. But more than 200 years ago, Chief Justice of the Supreme Court John Jay summed up my feelings about lying under oath and its subversion of the administration of justice and honest government:

Independent of the abominable insult which Perjury offers to the divine Being, There is no Crime more pernicious to Society. It discolours and poisons the Streams of Justice, and by substituting Falsehood for Truth, saps the Foundations of personal and public rights. . . . Testimony is given under solemn obligations which an appeal to the God of Truth impose; and if oaths should cease to be held sacred, our dearest and most valuable Rights would become insecure.

Lying under oath is an "insult to the divine Being . . . It discolours and poisons the Streams of Justice . . . and . . . saps the Foundations of personal and public Rights."

How can anyone, after conceding that the President lied under oath and obstructed justice, listen to this quotation and not conclude that this President has committed acts which are clearly serious, which corrupt or subvert the political and government process, and which are plainly wrong to any honorable person or to a good citizen?

We must start by saying that this trial has never been about the President's private sex acts, as tawdry as they may have been.

This trial has been about his failure to properly discharge his public responsibility. The President had a choice to make during this entire, lamentable episode. At a number of critical junctures, he had a choice either to tell the truth or to lie, first in the civil rights case, before the grand jury, and on national television. Each time he chose to lie. He made that fateful choice.

Truthfulness is the first pillar of good character in the Character Counts program of which I have been part of establishing in New Mexico. Many of you in this Chamber have joined me in declaring the annual "Character Counts Weeks." This program teaches grade school youngsters throughout America about six pillars of good character. Public and private schools in every corner of my State teach children that character counts; character makes a difference; indeed, character makes all the difference.

Guess which one of these pillars comes first? Trustworthiness. Trustworthiness.

So what do I say to the children in my State when they ask, "Didn't the President lie? Doesn't that mean he isn't trustworthy? Then, Senator, why didn't the Senate punish him?"

Let me quote one of the most critical passages from Charles L. Black, Jr., and his handbook on impeachment, one of the seminal works on the impeachment process. He ponders this question: what kinds of noncriminal acts by a President are clearly impeachable? He concludes that "high Crimes and Misdemeanors" are those kinds of offenses which fall into three categories: "(1) which are extremely serious, (2) which in some way corrupt or subvert the political and governmental process, and (3) which are plainly wrong in themselves to a person of honor, or to a good citizen, regardless of words on the statute books."

Well, there you have it in my judgment. The President lied under oath in a civil rights case, he lied before a grand jury and he lied on national television to the American people.

Regarding article II, obstruction of justice the House managers proved to my satisfaction the following facts:

(1) The President encouraged Monica Lewinsky to prepare and submit a false affidavit; (2) He encouraged her to tell false and misleading cover stories if she were called to testify in a civil rights lawsuit; (3) He engaged in, encouraged or supported a scheme to

conceal his gifts to Monica Lewinsky that had been subpoenaed in the civil rights lawsuit; (4) He intensified and succeeded in an effort to find Monica Lewinsky a job so that she would not testify truthfully in the civil rights lawsuit; (5) He gave a false account of his relationship with Monica Lewinsky to Betty Currie in order to influence Ms. Currie's expected testimony in the civil rights lawsuit; (6) At his deposition in a Federal civil rights action against him, William Jefferson Clinton allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently called to the attention of the judge by his attorney; (7) He lied to John Podesta, Sidney Blumenthal, Erskine Bowles, and other White House aides regarding his relationship with Monica Lewinsky to influence their expected testimony before the Federal grand jury.

In this day and age of public yearning for heroes, we criticize basketball, football, and baseball players, and actors and singers who commit crimes or otherwise fail to be "good role models." One of those celebrities said a few years ago that he was only a basketball player, not a role model. He said in essence: "Want a role model, look to the President."

Do not underestimate, my friends, the corrupting and cynical signal we will send if we fail to enforce the highest standards of conduct on the most powerful man in the Nation.

Finally, I want to address a question that my good friend, Senator BYRD, raised over the weekend in a television show. After declaring that the President had lied and obstructed justice, and after concluding these acts were impeachable offenses, Senator BYRD, for whom I have great respect, noted that it was very hard, in his judgment, to impeach a President who enjoyed the public popularity that this President enjoys.

Let me respond to that. Popularity is not a defense in an impeachment trial. Indeed, one of our Founding Fathers addressed this issue of popularity directly in the oft-quoted "Federalist Papers": "It takes more than talents of low intrigue and the little arts of popularity" to be President. And, popularity isn't a pillar of Character Counts.

What if a President committed the same acts as those alleged in this trial but he was presiding over a weak economy, a stock market at a 3-year low, 12-percent unemployment, 16-percent inflation and a nation worried about their job security and families? I wonder if this would be a straight party line vote. I just wonder.

Conversely, I wonder if you had a President who committed one of the impeachable crimes enumerated in the Constitution—bribery or treason, and the facts were obvious and clear: he gave a job to someone in exchange for a $5,000 bribe and the entire episode was on videotape. In this hypothetical, what if this bribery-perpetrating President was very popular but the House, nonetheless, impeached him. It would be the Senate's responsibility to hold a trial. In this example, economy is strong, the country is at peace, everyone's stock market investments are soaring. Would we then interpret the Constitution to provide a popularity defense? Would we create a "booming economy exception" to the conviction and removal clause

of the Constitution? I doubt it. I doubt it very much. Let me repeat, temporary popularity of a President cannot be a legitimate defense against impeachment.

The President has committed high crimes and misdemeanors, in violation of his oath of office. He lied under oath. He obstructed justice. His behavior was unworthy of the Presidency of the United States.

Thus, I sadly conclude that the President is guilty of the charges made against him by the House of Representatives and I will vote to convict him on both counts before the Senate.

Thank you, Mr. Chief Justice.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR PAUL S. SARBANES

Mr. SARBANES. Mr. Chief Justice and colleagues, in his award-winning book "The Making of the President, 1960," Theodore H. White refers to an American Presidential election as "the most awesome transfer of power in the world."

He notes that:

> No people has succeeded at it better or over a longer period of time than the Americans. Yet as the transfer of this power takes place, there is nothing to be seen except an occasional line outside a church or school or file of people fidgeting in the rain, waiting to enter the voting booths. No bands play on election day, no troops march, no guns are readied, no conspirators gather in secret headquarters.

Later in that opening chapter White observes:

> Good or bad, whatever the decision, America will accept the decision and cut down any man who goes against it, even though for millions the decision runs contrary to their own votes. The general vote is an expression of national will, the only substitute for violence and blood.

I begin with those quotes to underscore the critical significance of a Presidential election in the structure of our national politics. Many learned commentators have observed that one of the original contributions to the art of government made by the Constitutional Convention was to develop a Presidential, as opposed to a parliamentary, system of government, wherein the Executive is chosen by the electorate and is not dependent upon the confidence of the legislature for his office. As former Attorney General Katzenbach observed:

> It is a serious matter for the Congress to remove a President who has been elected in a democratic process for a term of four years, raising fundamental concerns about the separation of powers.

He goes on to note that if the removal power is not limited, as it clearly is, impeachment could be converted into a parliamentary vote of no confidence which, whatever its merits, is not our constitutional system. The separation of powers embraced in our Constitution and the fixed term of the President have been credited by many observers with providing stability to our political system.

It is important therefore to recognize that in considering the matter before us, we do so in the context of a Presidential election, wherein the people have chosen the single leader of the executive branch of our government—the President.

Since the framers put the impeachment remedy in the Constitution, it is obvious they recognized that there may be circumstances which require the Congress to remove a duly elected President. However, in my judgment, as the framers indicated, we need to be very careful, very cautious, very prudent, in undertaking that remedy lest we introduce a dangerous instability in the workings of our political institutions.

Viscount Bryce, whose bust is at the foot of the steps in the hallway below, was a distinguished commentator about the American political system. He wrote in "The American Commonwealth" in discussing the impeachment of a President:

> Impeachment is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy, it is unfit for ordinary use. It is like a 100-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at. Or to vary this simile, impeachment is what physicians call a heroic medicine, an extreme remedy proper to be applied against an official guilty of political crimes.

Let me turn next to the argument which seeks to draw an analogy between the impeachment of a President and the impeachment of judges, an argument that cites three recent cases in which judges have been removed from office. In my view, this analogy misses the mark.

Two of the judges the Senate convicted and thus removed from office had been accused in a criminal case, tried before a jury, found guilty beyond a reasonable doubt, and were in jail. Until we removed them, they were still drawing their salaries. In the third case, the defendant had been acquitted of bribery, but a judicial inquiry found that he had perjured himself to cover up the bribery misdeeds. Difference No. 1: Judges can be criminally prosecuted while in office; the President cannot. At least that has been the theory up to this point.

Secondly, elected versus appointed. Judges are appointed to the bench for life. They can only be removed by impeachment. The President is elected by the people for a 4-year term and can only hold two such terms. As President Ford, when he was a Congressman, stated:

> I think it is fair to come to one conclusion, however, from our history of impeachments. A higher standard is expected of Federal judges than of any other civil officers of the United States. The President and the Vice President and all persons holding office at the pleasure can be thrown out of office by the voters at least every 4 years.

Thirdly, one needs to consider the injury to the branch of government which would result from the removal of the officer. The removal of one judge out of hundreds and hundreds of judges does not significantly affect the operation of the judicial branch of our government. The removal of the President, the single head of the executive branch, obviously is in an entirely different category. The President, under our system, holds the executive power. In the end, executive branch decisions are his decisions.

In the minority report in the House Watergate proceedings, Republican Members stated:

> The removal of a President from office would obviously have a far greater impact upon the equilibrium of our system of Government than removal of a single Federal judge.

The House Judiciary Committee majority report accompanying the article of impeachment against Judge Walter Nixon in 1989 similarly stated as follows:

> Judges must be held to a higher standard of conduct than other officials. As noted by the House Judiciary Committee in 1970, Congress has recognized that Federal judges must be held to a different standard of conduct than other civil officers because of the nature of their position and the tenure of their office.

In putting on their case, the House Republican managers sought to portray a simple logical progression—first that the material which they brought before the Senate showed violations of provisions of the Federal Criminal Code, i.e., perjury and obstruction of justice. Then they argued that if you find such crimes, you have high crimes and misdemeanors and, ergo, removal from office. But let us look at this supposed logical progression which I view as flawed at each step.

First, I do not believe the House managers carried the burden of proof with respect to the commission of crimes. Since they relied on the Federal Criminal Code—charging crimes—in making their case, it is appropriate that they be held to the burden of proof of beyond a reasonable doubt—the standard used in criminal cases.

In the House Judiciary Committee a panel of distinguished former Federal prosecutors testified that a responsible Federal prosecutor would not have brought a criminal prosecution on the basis of the case set out in the Starr Report on which the House Judiciary Committee relied. One of them, Thomas P. Sullivan, a veteran of 40 years of practice in Federal criminal cases, and U.S. Attorney for the Northern District of Illinois from 1977 to 1981, stated the following:

> If the President were not involved, if an ordinary citizen were the subject of the inquiry, no serious consideration would be given to a criminal prosecution arising from alleged misconduct in discovery in the Jones civil case having to do with an alleged coverup of a private sexual affair with another woman or the follow-on testimony before the grand jury. The case simply would not be given serious consideration for prosecution.

Now, let me move beyond this question of proving the case and address the next step in the managers' ostensible logical progression, namely that the crimes that they were trying to prove are high crime and misdemeanors and, therefore, a vote for conviction and removal must follow.

Actually, in considering this issue we must bear in mind the ultimate question: Does the conduct warrant removal from office? The House logic seems to be that any perjury, any obstruction of justice, warrants removal. As serious as those charges are, not all such conduct in all instances may rise to the level of an impeachable offense. In considering this matter, it is important to understand that the House articles included within them not only the charges but also the penalty. In the ordinary criminal case, there is a two-step judgment—guilt and then sentence. In an impeachment case, the finding of guilty carries with it removal from office—the remedy provided by the Constitution.

There is an important precedent for the view that in certain circumstances offenses of the sort alleged here may not rise to the level of a high crime and misdemeanor. That precedent is found in the tax article of impeachment of Richard Nixon which was before

the House Judiciary Committee in 1974. That article charged President Nixon with knowingly filing tax returns which fraudulently claimed that he had donated pre-Presidential papers before the date Congress had set for eliminating such a charitable tax deduction. It was worth $576,000 in deductions. This deduction was claimed in tax returns that contained the following assertion just above the taxpayer's signature:

> Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct and complete.

The House Judiciary Committee voted down that article of impeachment by a vote of 12 for, 26 against. As one of nine Democrats who joined the Republicans in voting against this article of impeachment in the Nixon case, I did not believe that in the circumstances of that case it rose to the level of a high crime and misdemeanor; I did not believe it was conduct against which the Founding Fathers intended the Congress to invoke the impeachment remedy.

Let me turn briefly to the procedure followed in this impeachment matter, since good procedure enhances the chances of good results while bad procedure does the opposite. I am prompted to do so by various comments made by House managers criticizing the Senate for the procedure we have followed. I think the Senate has handled this matter well under very difficult circumstances. Given that the House managers questioned our procedure, let us look at the procedure on the House side.

The House, which brought in no "fact" witnesses, came to the Senate and said to us, "In order to evaluate testimony that is in the record, you must bring witnesses in and look them in the eye in order to assess their credibility." Obviously, one must ask, how did the House managers assess the credibility of witnesses when they brought none before them and yet voted to bring articles of impeachment recommending the President's removal to the Senate?

Secondly, the other day, in response to a reasonable request by the President's lawyers on how the House planned to proceed in using deposition excerpts, a House manager said, "I believe the appropriate legal response to your request is that it is none of your damn business what the other side is going to put on." This same attitude marked the treatment of President Clinton's lawyers before the House Judiciary Committee.

Contrast this with the House Judiciary Committee's conduct in the matter of President Nixon's impeachment when the President's lawyers sat in with the committee in its closed sessions when committee staff presented findings of fact. The President's lawyers were able to challenge material, to ask questions, to supplement all presentations. Fact witnesses were called in and were subjected to questions by all. There was an understanding of the gravity of the matter for the Nation and the absolute imperative of having a fair process.

In this matter, the House Judiciary Committee took only a few weeks to report impeachment articles. In the Nixon case the committee took 6 months. In the Judge Hastings case, the House Judiciary Committee received an 841-page report from the Judicial Conference as to why Hastings should be removed. Nevertheless,

the committee undertook its own examination of the evidence. It heard 12 fact witnesses, deposed or interviewed 60 others, and held 7 days of hearings.

In closing, it is very important to keep in mind the distinction between the person who is President and the office of President of the United States provided for in our Constitution.

President Clinton has engaged in disgraceful and reprehensible conduct which has severely sullied and demeaned his tenure as President. Because of his shameful and reckless behavior he has brought dishonor upon himself, deeply hurt his family, and grievously diminished his reputation and standing now, and in history.

But the diminishing of Bill Clinton must not lead us to diminish the Presidency for his successors as our Nation moves into the new millennium. There is a danger to the Nation in deposing a political leader chosen directly by the people and we must be wary of the instability it would bring to our political system.

In the report of the staff of the impeachment inquiry in 1974 on the constitutional grounds for Presidential impeachment, the conclusion states:

> Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement—substantiality. In deciding whether this further requirement has been met, the facts must be considered as a whole in the context of the office, not in terms of separate or isolated events. Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.

I do not believe the conduct examined here meets this test.

I will vote against removing the President.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL

Mr. CAMPBELL. Mr. Chief Justice and colleagues, my friends, I am not going to try to dazzle you with my knowledge of the law, which is minimal, or the 40 hand-written pages I have taken during these proceedings. But I signed the same oath you did, with a pen that should have had on it "United States Senate," but did not. It said, "Untied States Senate."

We were asked to turn the pens back in. I heard they are going to be valuable collectors' items, and I am not turning mine in. I want to see what it is worth.

There you have it, an imperfect Senator being asked to judge an imperfect President. One of our colleagues noted yesterday that we all come from different backgrounds. It is true, and perhaps the living proof of that great aspect of this Nation is that I could be here at all.

The same body where someone named Daniel Webster, John F. Kennedy, and Harry Truman once served also welcomed a mixed blood kid from the wrong side of the tracks. The offspring of an alcoholic father and a tubercular mother; in and out of orphanages; a lawbreaker and high school dropout who lied, cheated, stole, and did many other shameful things make me a poor judge, indeed, of someone else who used poor judgment.

I would rather take a beating than to judge someone else for their indiscretions. But as one of our colleagues said yesterday, "We didn't ask for this."

Still, with all my own human failings, I, like you, must try to separate them from the rule of law. I wish I had the historical knowledge of Senator BYRD or the legal knowledge of ORRIN HATCH or the government experience of JOHN WARNER. But I don't—I must use common sense.

I want to tell you an anecdote—about a conversation I had with the President right after he made his rather startling confession before this Nation and a group of reverends which I watched from my Denver office as millions of others were also watching at the same time.

I was so moved by his statement that I wrote him a personal note telling him how sorry I was for what his family was going through. I told him I would not be one to pile on; that I would make no statements to the press; nor would I be a party to the impeachment process going on in the other body.

As I look around this room, I see several others who subscribed to that same conduct as this proceeding moved to the Senate and took on soap opera proportions, and Members of both parties ran pell mell to the cameras at each recess.

I sit right there in the back row 15 feet from the Cloakroom. But, at each recess by the time I walk to the Cloakroom and glance at the TV, some of my colleagues are already sprinting somewhere else to be in front of the cameras. As you know, I used to be on the U.S. Olympic Team, and I tell my speedy friends—you could have made the team.

About 3 days after I wrote to the President, he called me to thank me for my note and we spoke for about 15 minutes. I asked him how his family was dealing with it and he told me they were having good days and bad, but it was hardest on his daughter, Chelsea, because she was away at college without the family unit to console her. He told me he would keep my note always. I felt badly then, and I do now.

As I look around this room in which so many great people in our history have spoken and I read their names written in the desk drawers along with those who no one remembers, I tell you that I like this President.

He came through a difficult childhood as I did, and I genuinely like him and feel sorry for both him and his family. But after agonizing as many of my Senate friends have, I remember the first question my then 9-year-old son, Colin, asked me 17 years ago when I told him I was going to run for public office. He asked, "Dad, are you going to lie and stuff?"

I told him, "No." I don't have to learn how to lie—I still remembered how to lie from my delinquent days. I am still trying to forget it.

I told him, human frailties not withstanding, elected officials should not "lie and stuff."

Every one of us knows that when we step into the public arena, we are judged by a different standard. Being honest and truthful becomes more important because we must set the examples.

As a Senator, if I ever forget it, this body will not have to throw me out because I will have brought it on myself, and I will save this body the time and expense and resign.

I would not fear being thrown out. When I was young and not yet house-broken, I was thrown out of a lot of places. I swore a lot of oaths—not when I went in, but when I came out.

There is a difference: one is about anger in private—the other is about honor in public. If we are not going to honor our oath, why don't we get rid of it and have an every-man-for-himself kind of elected official?

Better yet, let's change it. Mr. Chief Justice, you could say: "Senators-elect. Raise your right hand and repeat after me: 'On my honor, I'll do my best, to help myself and lie like the rest."

I took a solemn oath—perhaps it is the only thing in common I share with John F. Kennedy, Harry Truman and Daniel Webster as well as the founders of this Nation—and that is why honoring it is all the more important to me.

Simply speaking, the President did, too. And, so even though I like him personally, I find I can only vote one way. And that is guilty on both articles.

Thank you, Mr. Chief Justice. I yield the floor.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR J. ROBERT KERREY

Mr. KERREY. Mr. Chief Justice, in the impeachment case of President Clinton I have read the depositions, reviewed the massive volume of evidence and carefully followed the detailed presentations of both the House managers and the President's counsel. The instructions for my decision come from two places: the oath I took to do impartial justice and the Constitution of the United States.

Nebraskans, including me, are angry about the President's behavior. We find it deplorable on every level. It has permanently and deservedly marred his place in history. But impeachment is not about punishing an individual; it is about protecting the country. We punish a President who behaves immorally, lies and otherwise lacks the character we demand in public office with our votes. Presidents are also subject to criminal prosecution when they leave office.

Impeachment must be reserved for extreme situations involving crimes against the state. Why? Because the founders of our country and the framers of our Constitution correctly placed stability of the Republic as their paramount concern. They did not want Congress to be able to easily remove a popularly elected President. They made clear they intended a decision to impeach to be used to protect the Nation against only the highest of crimes.

On December 19, 1998, the House of Representatives, on an almost straight party line vote, approved and delivered to the Senate two articles of impeachment. The Constitution permits me to judge and decide upon only these articles, not to wander through all of the President's conduct looking for any reason for removal.

Some Nebraskans have told me the President should be removed from office by the Congress because he is no longer trusted, has lost the respect of many, and has displayed reprehensible behavior. As strong as those feelings are, the Constitution does not provide for overturning an election even if all of these things are true.

Three recent letters to the editor in the Omaha World-Herald help make the point. The first, from a man in Kearney, says that by voting to dismiss the trial, I "voted to support sexual harassment," among other things. A second, from Honey Creek, IA, raises allegations regarding the President and China, says he is "dangerous" and urges Senator HAGEL and I to "oust him now." The third, from Omaha, reminds readers of an often quoted comment I once made about the President's credibility and asks how, in light of that, I could vote to leave him in office.

However, the House did not charge the President with these offenses. Impeachment is not a judgment of a President's character, all his actions, or even his general fitness for office. We make those decisions every 4 years at the ballot box. Our job in contemplating the extraordinary step of overturning an election is to judge only those charges the House actually brought.

Because the premium on constitutional stability is so high, I decided to judge the case against the strictest possible standard: proof beyond a reasonable doubt. In other words, the President can be convicted only if there is no reasonable interpretation of the facts other than an intent to commit perjury and obstruction of justice. The following is a summary of my analysis of this case:

Article I accuses the President of perjury in his August 17, 1998, testimony to a Federal grand jury, during which he waived his rights against self-incrimination. Most important in determining guilt or innocence is the rule of law governing perjury, which makes it clear that a person has not committed perjury just because they misled or even lied. Perjury occurs when a false statement is made under oath with willful intent to mislead in a material matter. Lying is immoral; perjury is illegal. I should not accuse the President of ignoring the rule of law and then ignore it myself in making a judgment.

After reading and watching the President's grand jury testimony, listening to the arguments of the House managers and the President's lawyers, discussing this case with prosecutors and reviewing the impeachment trial of U.S. District Judge Alcee Hastings, I have concluded the President did not commit the crime of perjury beyond a reasonable doubt. I frequently found the President's testimony maddening and misleading, but I did not find it material to a criminal act.

Article II accuses the President of obstructing justice in seven instances. The House managers relied on circumstantial evidence, saying that common sense provides only one conclusion about why the President acted the way he did. However, the direct evidence, including the testimony of Monica Lewinsky herself, rebutted the circumstantial evidence. Second, while the House managers were correct in saying that common sense could lead to a conclusion that the President intended to obstruct justice, common sense could also lead to other reasonable conclusions about the reasons for his actions. Third, with respect to the allegations of obstructing justice

in the civil case, Paula Jones' lawsuit was thrown out, then eventually settled. In the end, justice was done.

As reprehensible as I find the President's behavior to be, I do not believe that high crimes and misdemeanors as defined by the framers have been proved beyond a reasonable doubt. Accordingly, I will vote to acquit on both articles. My vote to acquit is not a vote to exonerate. While there is plenty of blame to go around in this case, the person most responsible for it going this far is the President of the United States. He behaved immorally, recklessly, and reprehensibly. These were his choices. In the final analysis, they do not merit removal, but they do merit condemnation.

While I am confident this vote is the right one—not just for this case, but as a precedent for future Congresses and Presidents too—I understand that reasonable people could reach the opposite conclusion. The bitterness in America on both sides of this debate has saddened me. I hope and pray that with this vote behind us the people's Congress can return without rancor to the important work of our country.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR GEORGE V. VOINOVICH

Mr. VOINOVICH. Mr. Chief Justice, we are not here today because the President had a relationship that he himself has described as inappropriate and wrong. As House Manager JAMES ROGAN appropriately noted, "Had the President's bad choice simply ended with this indiscretion, we would not be here today. Adultery may be a lot of things, but it is not an impeachable offense. Unfortunately, the President's bad choices only grew worse." It is not the President's inappropriate relationship, but his deliberate and willful attempts to conceal and mislead that bring us to this point.

The very foundation of this Nation is the rule of law, not of men. The framers of our Constitution specifically provided article II, section 4 of the Constitution which states, "The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

On January 7, 1999, as one of my first official duties as a U.S. Senator, I took an oath to consider the evidence and arguments in the impeachment case against the President. We answered in the affirmative when the Chief Justice of the Supreme Court administered the following oath:

> Do you solemnly swear that in all things appertaining to the trial of the impeachment of William Jefferson Clinton, President of the United States, now pending, you will do impartial justice according to the Constitution and laws, so help you God?

I understood that the private inappropriate conduct of the President alone did not then and does not now rise to a level necessitating his removal from office. My responsibility is to fulfill the oath I took to determine impartially based on the facts, evidence, and testimony whether the President committed high crimes and misdemeanors as outlined in the Constitution.

During my 33 years in public office, I have had to make some very difficult decisions. As Governor, I had to make determinations

on hundreds of requests for commutations and pardons. To my recollection, in no case have I labored more than I have over the articles of impeachment of our President.

After an exhaustive study, which included reading volumes of transcripts, watching the taped testimony and listening to the able arguments made by the House managers, the White House counsel, and my colleagues in the Senate, I have reached the conclusion that, beyond a reasonable doubt, the President committed both perjury and obstruction of justice as outlined in articles I and II in the articles of impeachment.

I also have concluded that the President's obstruction of justice was premeditated and undertaken over a long period of time beginning when he learned that Monica Lewinsky was placed on the witness list in the Jones case.

It is particularly disturbing that he used his brilliant mind and superb interpersonal skills to sweep other people into his scheme, thereby impairing their credibility, all to extricate himself from taking responsibility for his conduct. But for a conclusive DNA analysis, he may have succeeded in that scheme.

By committing perjury and obstructing justice, the President is guilty of high crimes and misdemeanors. As constitutional scholar Charles Cooper said, "The crimes of perjury and obstruction of justice, like the crimes of treason and bribery, are quintessentially offenses against our system of government, visiting injury immediately on society itself."

He violated his oath of office and failed to fulfill his responsibility under the Constitution, which provides that the President "shall take Care that the Laws be faithfully executed." Judge Griffin Bell has correctly noted, "A president cannot faithfully execute the laws if he himself is breaking them." The President has undermined the fundamental principle that we are a nation ruled by laws and not by men. There is no way in good conscience that we as a nation can have a lawbreaker remain as President of the United States when his conduct in office has included the very same acts that have resulted in the impeachment of Federal judges and have sent hundreds of people to prison. Ours is a nation of equal justice under the law.

I believe the framers of the Constitution had a President like Bill Clinton in mind when they drafted the impeachment provisions in article II, section 4—a very popular, brilliant communicator with extraordinary interpersonal skills who abuses his power, violates his oath of office, and evades responsibility for his actions because he believes he is above the law.

One who has committed high crimes and misdemeanors disqualifies himself from serving as President, Commander in Chief, and chief law enforcement officer. The President also represents much more than these titles and responsibilities. He is a symbol of the greatness of the American people. Presidential scholar Clinton Rossiter observed that the President of the United States is "the one-man distillation of the American people." And, President William Howard Taft described the President as "the personal embodiment and representative of their dignity and majesty."

By virtue of his own conduct, William Jefferson Clinton has forfeited his elected right to hold the office of President. I sincerely

believe that this country can survive the removal of a popular President who has forfeited public trust. But, our country cannot survive the abandonment of trust itself.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Mr. LAUTENBERG. Mr. Chief Justice, the Senate must now fulfill a weighty and solemn duty. For only the second time in the more than 200 years since our Founding Fathers established the Constitution, we must vote on articles of impeachment against a President.

When considering this issue, which goes to our core constitutional responsibilities as Senators, each of us must come to a conclusion based on his or her conscience. Guided by the Constitution, we must bring all of our moral beliefs, our education, our careers, and our experiences as public servants to the question. And we must try to reach a decision that will serve the best interests of the Nation for generations to come.

As I reflect on the impeachment proceedings, I think first of the range of emotions I have felt. From the moment I realized that the President had engaged in this shameful relationship, I have struggled with my thoughts.

I was angry, of course. I was ashamed for the President, a talented man—someone I consider a friend. How could he risk so much with his disgraceful behavior?

I was saddened. I do not know how the President will reconcile himself to his family. I could imagine the embarrassment and the humiliation of the First Lady and his daughter Chelsea. I pitied them as they felt the searing glow of the public spotlight.

I am sure that colleagues, on both sides of the aisle, have empathized with similar emotions.

But now we must put those feelings aside. We have a very specific charge under the Constitution. That hallowed document delineates our duty. Under article II, section 4, we must determine whether the President has committed "high Crimes or Misdemeanors" requiring his removal from office.

In my view, our Founding Fathers meant to set a very high standard for impeachment. Clearly, the phrase "high Crimes or Misdemeanors" does not include all crimes. But what are the crimes that meet that standard? I find the words of George Mason to be compelling. He understood the phrase to mean "great and dangerous offenses" or "attempts to subvert the Constitution."

When applying this standard, we must also consider the national interest. The Founding Fathers vested the impeachment power in the Senate, and not the judiciary, precisely because this body would be accountable to the people.

In the words of Alexander Hamilton, only the Senate would "possess the degree of credit and authority" required to act on the weighty issue of whether to remove a Federal official. In my view, this means that we must look not just at the facts and the law, but we must also try to determine what is in the best interests of the Nation.

But we should not read the polls, or some other temporary gauge of the public temperament. Instead, we must look back through history, and toward the future, to reach a decision that will reflect well on the Senate and the Nation for generations to come.

In my view, this case does not involve efforts to subvert the Constitution, and the national interest will not be served by removing the President from office.

Before turning to the evidence, I want to express my concern with the way in which the articles of impeachment are written.

They do not specify which statements and actions by the President are unlawful. Instead, they make general allegations. With this approach, we cannot fulfill our duty to the American people. The American people must know specifically what Presidential conduct justifies overturning an election.

While the articles could have been more clearly written, there is a more fundamental problem. There is simply insufficient evidence for a vote to convict. Whether you apply the standard of beyond a reasonable doubt, or even the lower standard of clear and convincing evidence, the House managers have not proved their case.

With regard to article I, the evidence does not support a charge of perjury. The President may have been uncooperative and evasive. He certainly was misleading. But he never committed perjury as that term is defined in the law. Consequently, the President should be acquitted on article I.

There is also insufficient evidence to convict the President on article II, which charges him with obstruction of justice. The main problem with this article is that testimony from the principal witnesses do not support the allegations. Monica Lewinsky, Betty Currie, and Vernon Jordan testified that the President did not tamper with witnesses, conceal evidence, or take any other actions that would constitute obstruction of justice. All of the witnesses support the President's version of events.

I realize that some of you may view the evidence differently. But I think we must still consider whether this is an appropriate case for the Senate to use the awesome power of impeachment to overturn a national election.

I further ask you to consider the precedent we would set with a conviction of this President. We risk making the impeachment power another political weapon to be wielded in partisan battles.

Our Founding Fathers warned against this. In "The Federalist Papers" No. 65, Alexander Hamilton noted that the prosecution of impeachable offenses would "connect itself with the pre-existing factions." And that this would create "the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt."

Prior to the present case, the House of Representatives had seriously considered articles of impeachment against only two Presidents—Andrew Johnson and Richard Nixon. In the more than 200 years since the Constitution was established, the House set the impeachment machinery in motion in only two occasions.

Today, no one doubts that the serious abuses of our constitutional system by the Nixon administration warranted impeachment proceedings. And the bipartisan approach of Congress solidified President Nixon's decision to resign.

But history has not been kind to those who pushed the impeachment of President Johnson upon the Nation. Scholars agree that the charges were baseless—a purely partisan campaign. Indeed, Chief Justice Rehnquist, who has presided so effectively in this case, wrote in his book on impeachment that if the Senate had convicted President Johnson "a long shadow would have been cast over the independence" of the Presidency.

So for most of our history, the fears of our Founding Fathers have not been realized. Congress has not resorted to impeachment even when previous administrations faced far-ranging scandals—the Whiskey Ring scandal during the tenure of President Grant; the Teapot Dome scandal in the Harding administration, and more recently allegations that Presidents Reagan and Bush were not truthful regarding the Iran-Contra scandal.

Historically, Congress has held its hand when circumstances might have warranted a pull of the impeachment lever. But contrast that history with the circumstances surrounding this case.

President Clinton was a defendant in a civil lawsuit. In determining whether that lawsuit should be allowed to go forward while the President was in office, the Supreme Court of the United States noted that the case involved "unofficial conduct." That case was eventually dismissed, and the plaintiff reached a settlement with the President.

But with that lawsuit in place, the plaintiff's attorneys had license to probe into the President's personal life. The private lives of many people were paraded through the press.

Then the independent counsel joined the hunt. Although he was originally appointed to investigate a real estate transaction in Arkansas, and even though he eventually cleared the President of any wrongdoing in that matter and other reckless accusations, the independent counsel turned his attention to a private affair.

I think this background cautions against the use of the awesome and irrevocable power of impeachment. Think for a minute about how future partisans might proceed. We have a readily accessible legal system. Anyone with the filing fee can bring a lawsuit. And our laws provide great leeway in the discovery process.

If we take the wrong path now, we can expect to see future Presidents hauled into court. They will be questioned repeatedly, and it will not be hard for skilled attorneys to hurl charges of perjury and obstruction of justice. We cannot allow the Presidency to be weakened in this way.

Once again, we find the wisdom of our Founding Fathers providing guidance.

James Wilson, who participated in the Philadelphia Convention at which the Constitution was drafted, observed that the President is "amenable to [the law] in his private character as a citizen, and in his public character by impeachment."

In other words, the legal system, our civil and criminal laws provide the proper venue for a President who has failed in his private character, and in this case, the legal system can and will continue to address the President's personal transgressions.

The Paula Jones lawsuit has been settled. When he leaves office, the President could be subject to further prosecution. But there is simply no injury to our constitutional system, no aspect of what

James Wilson called the President's public character, which must be remedied through a Senate conviction under the impeachment power. Of course, I understand the great pain inflicted by the President's private character. As I said earlier, his behavior was reprehensible. He has shamed himself, his family, and the Nation.

I understand the desire to punish the President for his conduct. But we must remember the many ways in which the President has already been punished. He has suffered enormous embarrassment and humiliation. Beyond that personal pain, he has also been subject to public condemnation. Every Member of Congress is on the record rebuking his behavior.

Of course, this may not satisfy some. They may want more punishment. But please remember—the purpose of the impeachment power is not to punish. Instead, impeachment serves to protect the Nation from corrupt officials.

So, to render a proper verdict, we must put aside the powerful desire to punish. And I submit that to impeach the President in this case would be a terrible use of the impeachment power, lacking proportionality and perspective.

We must step back from the partisan precipice. We must not weaken the Presidency for future generations. We must reject these articles of impeachment and help restore the balance of power between the branches of the government.

Let us put this matter behind, heal the wounds inflicted by partisanship, and rededicate ourselves to the challenges facing our Nation.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CHRISTOPHER S. BOND*

Mr. BOND. Mr. Chief Justice, on Friday, February 12, 1999, I voted to convict President William Jefferson Clinton on both counts of the impeachment articles brought by the U.S. House of Representatives charging that he committed perjury and obstruction of justice. My reasons follow.

On January 16, 1998, at the request of the U.S. Attorney General Janet Reno, the three judges of the U.S. Court of Appeals for the District of Columbia Circuit expanded the previously entered order authorizing the Office of Independent Counsel Kenneth W. Starr to look into certain matters relating to a lawsuit brought against President William Jefferson Clinton by former Arkansas State employee Paula Jones alleging sexual harassment. Pursuant to that order, Ms. Jones' attorneys issued subpoenas for evidence and deposed Mr. Clinton and others seeking information on a pattern of conduct that might be relevant to the issues in the Jones case.

The President denied in a deposition in the Jones case and in a forceful statement to the American public that he had sexual relations with "that woman," referring to Monica Lewinsky. Subsequently, however, Ms. Lewinsky turned over a stained blue dress that she had worn in an encounter with the President; a scientific

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*Sen. Bond submitted an additional statement on February 23, see p. 3058 below.

examination revealed that the DNA on the dress was President Clinton's DNA.

The Office of Independent Counsel convened a Federal grand jury to look into the matter and deposed Mr. Clinton in the White House on August 17, 1998, about his participation in the Jones lawsuit.

The Office of Independent Counsel then referred the matters developed in the investigation to the U.S. House of Representatives, which on December 19, 1998, voted two articles of impeachment against Mr. Clinton alleging that he committed perjury before the Federal grand jury in four instances and that on seven occasions he had obstructed justice by tampering with witnesses and evidence in the Jones case proceedings.

For the sake of brevity, I shall only cover several of the allegations and evaluate the evidence supporting them.

Counsel for the President has admitted that there was an inappropriate relationship between the President and Ms. Lewinsky and that they had concocted a cover story to conceal their relationship and activities. On December 17, 1997, at approximately 2 a.m., Mr. Clinton telephoned Ms. Lewinsky after he learned that she had been summoned for a deposition in the Jones case. According to this testimony he called to tell her of the death of the brother of Mr. Clinton's secretary. Ms. Lewinsky states that he told her about the death of the brother, but that he also reminded her of their cover story and notified her that she was included on the witness list in the Jones case.

According to Ms. Lewinsky's testimony, Mr. Clinton further stated that they might be able to avoid her testimony if she executed an affidavit. Although Mr. Clinton had also reminded Ms. Lewinsky of her cover story, the White House counsel made much of the fact that Ms. Lewinsky said that the President did not tell her to file a false affidavit and did not link the cover story to the need to file an affidavit.

I do not believe it is at all inconsistent with a scheme or out of the ordinary to note that the President would not make such a connection. As an experienced attorney, the President would know he would be in grave danger if he ever explicitly asked anyone to file a false affidavit or to lie under oath. To paraphrase a statement made during the trial by Vernon Jordan, "He is no fool." He would have known that such a statement could be revealed by subsequent judicial inquiry.

Mr. Clinton did not have to tell Ms. Lewinsky expressly to execute a false affidavit. She knew that in the absence of contrary instructions she was to continue to follow their story. She was referred by the President's best friend, Vernon Jordan, to an attorney who drafted the affidavit for her. The President, through Mr. Jordan, was kept advised of the progress of the affidavit.

During the time that Mr. Jordan was serving as liaison between the attorney and the President in the procuring of the affidavit, he was also pursuing a job search for Ms. Lewinsky, which he admitted was under his control.

The President's lawyer was presented the affidavit and offered it into the evidence when the President was summoned before federal judge Susan Webber Wright to participate in the deposition on Jan-

uary 17, 1998, by the Jones attorneys. The President's attorney, Mr. Bennett, referred to the deposition in evidence and stated that it showed that there "is absolutely no sex of any kind in any manner, shape or form" with Mr. Clinton. Mr. Bennett further stated, "In preparation of the witness for this deposition, the witness (Mr. Clinton) is fully aware of Ms. Lewinsky's affidavit, for I have not told him a single thing he doesn't know. . . ." (Evidentiary Record, S. Doc. 106–3, Vol. XIV, p. 23.) Although the videotape of the deposition showed the President looking in the direction of the attorney when the affidavit was presented, Mr. Clinton subsequently stated that he was not paying attention and had no knowledge of the representations made by his attorney about the affidavit.

I believe that to be totally incredible.

The President had known that Ms. Lewinsky would be a prime subject of the deposition and he had asked Ms. Lewinsky to file an affidavit and took steps to be kept advised of the progress of that affidavit. Subsequent events showed that his attorney, Mr. Bennett, did not at the time know the falsity of the affidavit and that Mr. Clinton was apparently the only one at the deposition who was fully aware of the fraud that was being perpetrated on the court.

When Mr. Bennett later learned the falsity of the affidavit, he did what any attorney hates to do and that is to advise the court that he provided false information. He asked that the affidavit and his characterization of it be disregarded.

I believe Mr. Clinton encouraged the execution of a false affidavit, secured job assistance to help prevent truthful testimony, and allowed his attorney to make false statements as alleged in article II, paragraphs 1, 4, and 5.

When Mr. Clinton testified before the Federal grand jury on August 17, 1998, he was asked:

> A. If he misled Judge Wright in some way then you would have corrected the record and said, excuse me Mr. Bennett, I think the judge is getting a mis-impression by what you are saying?
>
> A. . . . I wasn't even paying much attention to this conversation.
>
> Q. Do you believe, Mr. President, that you have an obligation to make sure that the presiding federal judge was on board and had the correct facts?
>
> A. I don't believe I ever even focused on what Mr. Bennett said in the exact words he did until I started reading this transcript carefully for this deposition.—(Deposition of President Clinton, page 30, lines 2–5.)

I therefore believe he provided perjurious, false, and misleading testimony to the Federal grand jury concerning statements he allowed his attorney to make to a Federal judge as alleged in article I, paragraph 3.

On December 28, 1997, the President met in his White House office with Ms. Lewinsky and exchanged gifts. During the course of the conversation Ms. Lewinsky raised the question of what to do with other gifts he had provided her and which had been subpoenaed by the attorneys for Paula Jones. According to Ms. Lewinsky, he made no definitive statement about the gifts.

Very shortly thereafter, according to Ms. Lewinsky's testimony, Mr. Clinton's personal secretary, Bettie Currie, initiated a series of telephone conversations, in which in effect Ms. Currie communicated to Ms. Lewinsky that she understood from the President that Ms. Lewinsky had something for her. Pursuant to those telephone calls Ms. Currie picked up gifts from Ms. Lewinsky and took

them back to Ms. Currie's apartment where she stored them under her bed.

During the course of proceedings in the Senate, Ms. Lewinsky was asked in a deposition about these telephone calls and expanded upon her testimony about them. A prior statement by Ms. Currie that Ms. Lewinsky had actually initiated the call was recanted by Ms. Currie, and I believe the testimony of Ms. Lewinsky is credible. By hiding the gifts rather than presenting them to the Jones attorneys pursuant to the subpoena, Ms. Lewinsky committed a felonious act and, if Ms. Currie had knowledge of the subpoena, she also committed a felonious act of concealing materials covered by a valid subpoena. Mr. Clinton, by orchestrating, facilitating, and encouraging the suppression of evidence under subpoena, also committed a felonious act. I, therefore, believe that the charge in article II, paragraph 3, of the impeachment articles is proven.

During the course of his deposition by the Jones attorneys, President Clinton continued to rely on his cover story and on the perjurious affidavit submitted by Ms. Lewinsky. During that deposition he referred repeatedly to Ms. Currie as one who would corroborate the cover story which he and Ms. Lewinsky had devised. Immediately after his testimony on Saturday, January 17, 1998, he called Ms. Currie and summoned her to come into his office on a Sunday, January 18, 1998. There he stated five rhetorical questions to Ms. Currie: (1) "I was never really alone with her . . . right?"; (2) "You were always there when Monica was there . . . right?"; (3) Monica came to see me and I never touched her right . . . right?"; (4) "She wanted to have sex with me and I can't do that . . . ?"; (5) "You could see and hear everything . . . right?"

Each of these statements supported the position taken by the President in the Jones deposition, but each one of these statements was false. The President was transmitting to Ms. Currie what he wanted her to say should she be called as a witness in this case. For good measure, he even went back to her a couple of days later and walked her through the statements again. It is uncontroverted that he made those statements, but he attempted to justify them on the basis that he was trying to refresh his memory.

His statements to Ms. Currie on January 18, 1998, and several days later constituted relating a false and misleading account of relevant events to influence corruptly the testimony of a witness in a Federal civil rights action as alleged in article II, paragraph 6, of the impeachment proceedings.

Subsequently, he also made statements to his subordinates including Sidney Blumenthal, John Podesta, and Erskine Bowles. The statements he made to them were also known by him to be false and were designed to provide misleading information through them which could be and subsequently was transmitted under oath in the judicial proceedings by the subordinates.

His statements to his subordinates on January 21, 23, and 26, 1998, were false and misleading statements to potential witnesses in a Federal grand jury proceeding to influence corruptly the testimony of those witnesses as alleged in article II, section 7, of the articles of impeachment.

At his Federal grand jury testimony on August 17, 1998, Mr. Clinton falsely and corruptly denied he had attempted to influence the testimony of witnesses and impede the discovery of evidence in civil rights actions as set out in the analysis above. Thus, he committed the acts as charged in article I, paragraph 4, the count charging perjury. (Evidentiary Record, S. Doc. 106–3, Vol. III, pp. 559–60.)

I believe that the evidence presented on the above charges was clear and convincing that the President engaged in a continuing scheme to fabricate and establish in Federal court proceedings a false story about his relationship with Ms. Lewinsky and that through circumstantial evidence, the direct testimony of Ms. Lewinsky, Ms. Currie, Mr. Blumenthal, and others, plus the corroborating evidence, he was shown to have committed the acts charged.

The totality of his actions can be judged in the success with which he maintained his cover story. Had it not been for the DNA on the stained dress, there is little likelihood that the false cover story would have been exposed for the lie that it was. In perpetrating that false and misleading story Mr. Clinton tampered with witnesses, obstructing justice in the civil rights lawsuit brought against him by Paula Jones. He also falsely misrepresented these acts in testimony before the grand jury August 17, 1998.

Having resolved in my mind the question that clear and convincing evidence shows that William Jefferson Clinton obstructed justice and committed perjury before a grand jury, the next issue is whether these activities rise to the level of offenses for which removal from office is the appropriate remedy. Defenders of the President have said that no one would press charges in a case like this, that it was not grave enough to merit a criminal proceeding, and that it certainly was not sufficient to warrant removing the President from office.

With respect to the seriousness of the offense, it is worthy of note that during the year 1997, 182 people were sentenced by Federal judges for perjury and another 144 were sentenced for obstruction and witness tampering. These prosecutions were brought by Clinton administration appointees and in many instances in front of Clinton-appointed judges.

The case of Dr. Barbara Battaglia is particularly compelling. In a lawsuit brought by a patient of a Veterans' Administration hospital alleging sexual harassment, Dr. Battaglia was asked in a deposition if she had had consensual sex with the plaintiff. Her answer to that question was a simple, "No." When that denial was shown to be a lie, she was convicted of a felony and sentenced to house arrest with an electronic monitoring device. She has lost her ability to practice medicine and also her ability to utilize her law degree to practice law.

The serious nature of these offenses is particularly clear when considered in the context of the proceedings. The U.S. Supreme Court had ruled unanimously that Mr. Clinton, as President, had to answer the lawsuit filed by Paula Jones. A Federal judge was assigned to the suit and presided over the deposition in which Mr. Clinton testified and at which time he and his lawyer presented the false affidavit.

It is totally inconsistent within the context of this case and the sound functioning of the judicial system to say that the Supreme Court meant that Mr. Clinton should respond to these charges but he was not bound to respond truthfully. His actions in procuring and using false affidavits, causing the hiding of subpoenaed evidence, and tampering with a potential witness by giving false information to use in any testimony effectively denied the plaintiff the civil rights the Supreme Court ruled she had. To say that the acts are not grave, not high crimes, and not a threat to the judicial system, is untenable. No lawyer could make such a statement in open court and not be subjected to the loss of a license to practice law.

Likewise, his lies to a grand jury from his White House office were a serious challenge to the administration of justice.

Moreover, the debates of the authors of the Constitution showed that they considered obstructing justice would warrant the President's impeachment and conviction. George Mason asked if the President could advise someone to commit a crime and then before an indictment or conviction use the power of a pardon to stop inquiry and prevent detection. James Madison responded that, "If the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him." (Elliott, "Debates on the Adoption of the Federal Constitution," Vol. III, p. 498 (1836 ed.).)

Another argument has also been made by the White House counsel and supporters of the President that to remove the President from office on impeachment would be to nullify the election. This argument suggests that impeachment is never an appropriate remedy, provided the President is popular and the country is enjoying good times. The office of the Presidency is not so brittle that it would be gravely damaged by removing the current President or any other President. The Founding Fathers certainly did not envision that impeachment could only apply to an unpopular President or one who was leading the country in hard times.

At the height of a cold war with United States forces engaged in Vietnam, impeachment proceedings against President Richard M. Nixon forced him to leave office. The country was not wounded, it did not lose its way; Vice President Gerald Ford assumed the Presidency and continued the course of government. In this case, Vice President AL GORE would assume office and would be expected to continue the policies of the Clinton administration.

The U.S. Senate in recent years did not shirk from driving from office a colleague accused of obstructing justice in a sexual harassment case. No one objected that we had "nullified" the votes of the citizens of his State.

Some of my colleagues have argued that the President has been so strong and forceful in foreign policy and conducted such wise relations with other nations that we could not afford to lose him. That argument, too, smacks of a referendum on the President's conduct of office, not a judgment on his wrongful acts. If we were to judge impeachment on the basis of the policies of the President, then impeachment could always be expected to be purely a partisan matter turning on the approval or disapproval of formulation or implementation of policy by the President. The framers rightfully dismissed any option that the proper or improper administration of

the regular powers of the President would be involved in a decision on impeachment, either positively or negatively.

In addition, we have the precedents set by the removal by the Senate of judges who have been found to have committed perjury. During my tenure in the Senate we have twice removed judges for committing perjury because of the serious adverse impact perjury has on our judicial system. If a judge is removable for committing the significant act of perjury, can the one who appoints the judge be held to a lower standard?

The President not only appoints the judges, he appoints the Attorney General, the U.S. attorneys, and the Supreme Court Justices. Certainly we should impose no lower standard on the person with the ultimate responsibility for the proper administration of justice than on those he appoints.

It is precisely in good times, with the President high in the polls, that it is incumbent upon the Senate to exercise very thoroughly and carefully the responsibility under the Constitution to make the difficult decision on whether the President has committed high crimes and misdemeanors warranting his removal from office. If we are to have a government of laws and not of men and not of public opinion polls, then we must judge the President on the evidence presented to us. I believe that the acts that he committed constitute high crimes and misdemeanors warranting his conviction.

I should note that the Senate made a serious mistake in beginning the proceedings by limiting the ability of the House managers to call witnesses. The absence of witnesses to testify to the acts alleged as the basis of impeachment charges significantly impeded the progress toward resolving the allegations against the President. I trust that the Senate will not make the same mistake in future impeachment proceedings.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CHARLES S. ROBB

Mr. ROBB. Mr. Chief Justice, colleagues, sitting in judgment of the President of the United States is not easy for any of us. It is particularly difficult for me because of the personal and political relationship I have had with this President over the last 20 years. We served together as Governors in the early eighties, as several of you did. We traveled together on foreign trade missions. We shared similar priorities for our States. At my urging, he joined the fledgling Democratic Leadership Council, which would later become an intellectual and organizational resource for his Presidential campaign.

From our earliest meetings, I recognized in him, as many of you have recognized, gifts of head and heart and a truly extraordinary range of political and communication skills that marked him with a potential for greatness. It was not as a friend, however, but as a U.S. Senator that I took an oath to render impartial justice under the Constitution in this impeachment trial. I was fully prepared to convict and remove the President from office if I concluded that the articles charged met the test of high crimes and misdemeanors as envisioned by the framers of our Constitution, and if the evidence

convinced me of his guilt beyond any reasonable doubt. That is the standard I would require to remove this President or any President from office.

As we wrestle with the decisions before us today, I believe that it is incumbent upon us to reflect on the consequence of these decisions tomorrow; for while this trial is about this President, it is also about the future of this Republic. We simply cannot escape the fact that what we do today will affect the strength and stability of our Nation because the actions we take, the precedent we set, directly affects the separation of powers and the independence of the Presidency as an institution.

The writings of the framers and the overwhelming consensus of the scholarship that has followed demonstrate that the mechanism for removing a President was central to maintaining the delicate balance of power among the three branches of government. The Founding Fathers struggled to resolve the tension between making it too difficult to remove a President, thereby creating a king, and making it too easy, thereby creating a weak Chief Executive who would serve at the pleasure of the legislature. As more than 400 scholars concluded last November, the lower the threshold for impeachment, the weaker the President.

The resolution of this dilemma—where to set the standard for removal—occupied the brilliant minds of several Virginians who took part in our constitutional debates two centuries ago. When George Mason offered specific language to define an impeachment standard, James Madison worried about making the standard too low. In worrying, he replied that so vague a term would be equivalent to a tenure at the pleasure of the Senate. After much deliberation, our founders finally agreed that the President should be removed only for committing treason, bribery, or other high crimes and misdemeanors against the United States. Thereafter, as we all know, a Committee on Style, which had no authority to make substantive changes, dropped the last four words, considering them redundant.

Alexander Hamilton defined impeachable activities as those that relate chiefly to the injuries done immediately to society itself. During the debate, Edmund Randolph, a Virginia Governor, reflected concerns. He stated that the Executive will have great opportunities of abusing his power, particularly in time of war when the military force and, in some respects, the public's money will be in his hands. Clearly, our founders created impeachment not to punish the President, but to protect the Republic. They had lived under a king and they didn't want another.

History and common sense tell us, therefore, that the threshold for impeachment should be high—very high. It should be difficult, not easy, to impeach a President of the United States because impeachment is the ultimate sanction for protecting the Republic. It is a weapon to be respected and feared, but wielded only under the most compelling circumstances. Similarly, history and common sense tell us that removing a President is not the same as removing a Federal judge. In James Madison's records of the debate at the Federal Constitutional Convention, he wrote, "The judiciary hold their places not for a limited time, but during good behavior." The Executive was to hold his place for a limited term, like the members of the legislature.

Like them—particularly the Senate, whose Members would continue in appointment in the same term of 6 years—he would periodically be tried for his behavior by his electors, who would continue or discontinue him in trust, according to the manner in which he had discharged it. Likewise, removing a President is not the same as removing a member of the Armed Forces for violating the military code of conduct. The Uniform Code of Military Justice is required to maintain the good order and discipline for waging war and securing peace. And all of us who have served in the Armed Forces understood that we swore an oath to obey a code not required of any civilian, even those with the power to send us into harm's way—a civilian Commander in Chief, our Secretary of Defense, and Members of Congress.

Finally, removing a President is not the same as punishing a citizen in a court of law. Like any citizen, a President can be fully punished in court after he leaves office, and the failure to convict him in an impeachment trial in no way precludes a subsequent criminal prosecution.

If a President is subject to the law, then he is clearly not above it, as some have claimed.

Some also argued that since the President's oath requires him to faithfully execute the laws, any violation of those laws should thereby warrant his removal from office. While that argument may be appealing, it simply was not the standard adopted by the framers. Their standard was narrowly confined to treason, bribery, or other high crimes or misdemeanors. And it is against this standard that we are called upon to judge the conduct of this President.

I believe the President lied. When he came before the television cameras and addressed the American people, wagging his finger and denying that he had sexual relations with a subordinate employee, he lied. This offensive public conduct, which has caused me the greatest personal anguish, is an act that will be forever seared into our Nation's memory. His deception was calculated, politically motivated, and directed at each and every one of us.

Though clearly reprehensible, this lie did not violate any law and was not the subject of any article of impeachment. So, while I am convinced that the President lied to us, I am not convinced beyond a reasonable doubt that he lied to the grand jury, which is the sole basis for the first of the two impeachment articles.

Despite the apparent strength of the evidence, the House of Representatives defeated an article alleging perjury in the President's civil deposition. They voted to impeach the President for perjury based solely on his testimony before the grand jury. Article I alleges that the President willfully provided perjurious, false, and misleading testimony to the grand jury.

I listened intently to the arguments presented by both sides, and I have read the President's grand jury testimony carefully. In my judgment, the President's grand jury testimony ultimately boiled down to a few irreconcilable discrepancies, and while often slippery, hairsplitting, legalistic, and, in the words of the President's counsel, "maddening," was not perjurious beyond a reasonable doubt.

On article I, therefore, I will vote not guilty.

Article II alleges obstruction of justice, a crime difficult to prove because it requires a determination beyond a reasonable doubt about what a person intended by his words or deeds.

In this case, it is extremely difficult to determine whether the President's intentions were to obstruct justice in a civil or a criminal proceeding, or whether his intention was to mislead his family and the Nation about an embarrassing personal relationship. While his intent is difficult to prove, the unconstitutional bundling of charges contained in article II is clear to me.

Article I, section 3, of the Constitution clearly requires that in an impeachment trial no person shall be convicted without the concurrence of two-thirds of the Members present. The rule of law requires concurrence by two-thirds.

While article I, in my judgment, violates this constitutional requirement, at least it focuses on a single event. Article II is flagrantly worse. Drafted in the disjunctive and containing 7 subparts each alleging a separate act of obstruction of justice, the bundling of these allegations would allow removal of the President if only 10 Senators agreed on each of the 7 separate subparts. If, for example, 10 Senators voted to convict based solely on subpart 1 and a different group of 10 Senators voted to convict based on subpart 2, and so on, it would be possible to reach a total of 70 votes for conviction. But that total would not have been reached with a two-thirds concurrence on any individual subpart.

Such a pleading is not allowed under the Federal Rules of Criminal Procedure and would be thrown out by every Federal court in the land. Surely the founders did not envision removing a President from office if no more than 10 Senators could agree on a given allegation.

Trying to justify this unconstitutional bundling by citing a similar approach in the Richard Nixon case is weak because the Nixon charges were not presented to the Senate. Trying to justify this unconstitutional bundling by citing the Senate impeachment rules is no more compelling since our rules cannot conflict with the Constitution. We simply cannot remove a President from office with an article of impeachment that so clearly violates constitutional standards that we are required by law to follow.

On article II, therefore, I will vote not guilty.

Thus, I will vote not to convict on both articles because the factual, legal, and constitutional standard for removal was not met.

I am not prepared to say, however, that perjury and obstruction of justice are not impeachable offenses, because I believe it would be a mistake to attempt to do that which the founders chose not to do—to define what is impeachable with specificity.

For impeachment to remain what our forefathers intended it to be—a deterrent to misconduct and a means to protect the Republic—future generations should be free in each case to examine the facts, apply the law, and follow the Constitution and to render impartial justice. That is the impeachment process we have inherited from those who came before us, and that is the precedent we bequeath to the ongoing chronicles of American history.

The legacy of this trial, I believe, is not what becomes of one man. This trial is larger than one man. The legacy of this trial is

that the Senate, sitting as a Court of Impeachment, proved worthy of the faith of our founders to render justice.

No matter what judgment is rendered, however, this trial cannot exonerate the President. A vote against conviction is not a vote to condone his lying to the American people, nor does it suggest that any Member of the U.S. Senate believes that perjury or obstruction of justice charges are anything but serious. They are very serious charges.

Sadly, the vote we are poised to take on these charges has divided our Nation. In the eyes of too many of our citizens, this vote will represent either a nonmilitary coup attempt against a duly elected President or a victory for those bent on accelerating the moral decline of the Nation. In truth, this vote represents neither. A vote for acquittal indicates nothing more and nothing less than what it says. The case to remove the President from office was not proven.

We sit in judgment today not because we are free from human failings—I certainly have my share—but because our forefathers bestowed upon the Senate the responsibility of protecting the Republic by judging the President when articles of impeachment are exhibited by the House of Representatives. In doing so, they carefully and deliberately limited the scope of our judgment.

We are judging the President in his capacity as President, and we are called upon to decide only one issue—whether he should be removed from office. The Senate does not have the duty nor the capacity to rule on the broader character of the President. In our limited role, we are not called upon to judge him as husband and father, for that is the province of his family. We are not called upon to judge him as accused citizen, for that is the province of the courts. We are not called upon to judge him as sinner, for that is the province of God. And we are not called upon to judge his legacy, for that is the province of history.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR BARBARA BOXER

Mrs. BOXER. Mr. Chief Justice, thank you for your dignity. And to both our leaders, thank you for your patience.

Colleagues, I will vote to acquit the President, and it is not because his poll numbers are high or because the economy is good. And it is not because Bill Clinton is a Democrat.

When I was in the House of Representatives, an impeachment resolution was filed against Republican President Ronald Reagan—an impeachment resolution because of Iran-contra, which involved selling arms to a terrorist nation with the proceeds going to the Nicaraguan contras. This was against the law of the United States of America—against the law—against the rule of law.

I voted for that law, but I never went on that impeachment resolution against Ronald Reagan because I felt it would have hurt the country and because there was no bipartisan support for it.

I think the same should be said of this impeachment. There is no bipartisan support for it and the President's removal would hurt the country.

One more preface: It has been said that what the President did in this case was worse than what Senator Packwood did.

In this case, we have a consensual affair, wanted by both parties. It was irresponsible and indefensible: a young woman, a relationship wrong in every way, a President trying desperately to hide the affair.

The young woman was secretly tape-recorded and forced to testify. Her mother was forced to testify.

The more than 20 women who complained about Senator Packwood alleged forced sexual misconduct against them. One victim was 17 years old. They wanted to tell their stories.

So each of us can decide for himself or herself the relationship of one case to the other. But surely that is not the issue before us.

Neither is the Paula Jones case, which was thrown out of court by a Republican female judge who ruled that there was no sexual harassment by the President. Testimony about a consensual sexual affair was immaterial.

Yes, the case was later settled, but that doesn't change its history: no sexual harassment, determined by a Republican female judge.

So Senator Packwood is not before us, nor is Paula Jones. What is before us is the sanctity of the Constitution.

Let me now offer an apology to my constituents for voting in favor of the independent counsel law in its current form—a law that has given one person an unlimited budget, unlimited scope, unlimited time and an unlimited ability to hurt people, and to hurt them badly.

The Senate is now sitting as a Court of Impeachment, primarily because, for over 4 years, we had an independent counsel spending more than $42 million searching for an impeachable offense.

And while I condemn the President's behavior, it was no excuse for the Ken Starr witchhunt, which went from a real estate deal, to several other fruitless investigations, to a sex deal built around illegally recorded phone conversations with someone named Linda Tripp. Linda Tripp, who says she's like all of us. Heaven help us if all of us act like Linda Tripp, secretly recording our dear friends. What a country this would be!

I also want to comment on one other matter which is personal to me, and that is my daughter's family connection to the First Lady.

While none of my Senate colleagues questioned the propriety of my participation in the impeachment matter—for which I thank you all—I was the target of a barrage of questions by the media and others outside this body.

I just want to say that yes, my daughter is married to the First Lady's brother, a brother who loves and admires his sister and doesn't want to see her hurt. So I am far from being a defender of the President's behavior.

I am a fierce defender of our Constitution. That is why I have joined a small number of Senators, led by the distinguished senator from West Virginia, in fighting amendments to that precious document.

Believe me, being against the line-item veto and the balanced budget amendment were not popular positions in my State; my po-

sitions made my reelection tougher. But I have never doubted that defending the Constitution is worth risking my Senate seat, which I cherish so much, and it is because of my deep reverence for the Constitution that I believe we must reject the articles of impeachment before us today.

Why? Because the high crimes and misdemeanors constitutional requirement for removal has not been met—not even close.

The Constitution does not say remove the President if he fails to be a role model for our children. It does not say remove the President if he violates the military code of conduct, or the Senate Ethics Code. It does not say remove the President if he brings pain to his family.

It says very clearly that the President shall be impeached and removed from office only for committing treason, bribery or other high crimes and misdemeanors.

In his "Commentaries on the Constitution," Justice Joseph Story endorsed the view that "those offenses which may be committed equally by a private person as a public officer are not the subject of impeachment." This means that Presidential impeachable offenses are, generally, acts which could not be done by anyone other than the President.

Impeachment and removal from office was not meant to be a punishment of the President, but rather a protection of the country from a tyrant who would use his or her power against the people and the Constitution.

This President is not a tyrant who is threatening our democracy and freedom or the delicate balance of powers set up by our Constitution. So the "high crimes and misdemeanors" standard established by the Constitution has not been met in my view.

We must also reject these articles because there is every reason to doubt the House managers' case on perjury and obstruction of justice. They have presented not one shred of direct evidence for their claims, and the details of their circumstantial case have been decimated in many respects. As one manager said on national television, he couldn't win the case in a court of law as it was presented in the House.

I don't see how the case was strengthened in the Senate. In fact, I believe that it was weakened in the Senate.

When you have clear statements by Monica Lewinsky that the President never, ever told her to hide gifts and never discussed the contents of her affidavit—when you have Betty Currie saying she never felt intimidated by the President and Vernon Jordan saying the job search was never connected to anything else—it seems to me there is substantial doubt on both counts.

That leads to another point. Rejecting these articles of impeachment does not place this President above the law. As the Constitution clearly says, he remains subject to the laws of the land just like any other citizen of the United States.

As article I, section 3 of the Constitution says, the President "shall . . . be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." So it should be a comfort to those who believe the President committed crimes surrounding his affair that the President, indeed, is subject to the rule of law—our founders made that certain.

At this point, I want to thank Senator TOM HARKIN for his challenge to the House managers that the Senate is not a jury. In so ruling, Chief Justice Rehnquist, in my view, gave us the charge to look at the big picture, and that is very important.

Part of that picture is how the House of Representatives acted in this matter. I served in the House for 10 years, and I never saw the minority party denied a vote on an alternative of their choosing in an important matter. Yet Democrats and moderate Republicans were denied a vote on censure, and I believe this was a disaster for democracy in that body.

Listen to what a Republican House Member who voted against impeachment wrote to a constituent:

> I regret that congressional Republicans were so blinded by their opposition to President Clinton that they voted to impeach him rather than stand by the traditional principles of their party. I also regret that threats were made against me by the Republican leadership in an attempt to keep me from voting my conscience.

Those are the words of one of the five brave Republicans who voted against impeachment in the House. To me that speaks volumes about the kind of illegitimate process that got us here, and I believe in my heart that history will judge the House proceedings very harshly.

I believe the Senate, if it rejects the articles in a bipartisan way, will be viewed in a better light, and history will say that in 1999 the Senate decided that impeachment should not be used by one party to overturn the results of a Presidential election that it did not like.

As Chief Justice Rehnquist wrote of the Senate acquittal of President Andrew Johnson in 1868:

> The importance of the acquittal can hardly be overstated. With respect to the Chief Executive, it has meant that as to the policies he sought to pursue, he would be answerable only to the country as a whole in the quadrennial Presidential elections, and not to Congress through the process of impeachment.

If I may, Mr. Chief Justice, I understand from your wise words that the President does not and should not serve at the pleasure of the House and Senate.

The Senate did the right thing in 1868—and by its decision not to remove the President, it brought stability to our Nation. We should do no less now.

Voting against the articles of impeachment is the right thing to do to keep faith with our Constitution and to keep faith with our democracy for generations to come.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CONNIE MACK

Mr. MACK. Mr. Chief Justice, today the Senate finds itself at an unlikely crossroads in American history. We have assembled as a Court of Impeachment to sit in judgment of our President, William Jefferson Clinton, on the charges of perjury and obstruction of justice. We have worked our will in this matter according to a process rooted in English common law, written by our founders into the Constitution, and exercised against the Chief Executive only once before in American history.

This is not a task to be taken lightly, and we have not arrived easily at our decision. The Senate today is engaged in weighty struggles that go to the very heart of our private and public lives. We are at an unlikely juncture between principle and public opinion, repentance and the rule of law, perception and punishment, forgiveness and findings of fact. These are difficult issues, Mr. Chief Justice. We approach our task fully aware that our decisions today will reverberate across this great land and throughout the length and breadth of history.

There has been much discussion about how we got here. And while the answer to that question may be varied in all its permutations, then amplified in the echo chamber that is our modern public debate, it can be said with assurance that this whole unseemly business began when the President, caught in an improper private act, took deliberate steps to conceal it. And for all the other parties blamed for our presence here today—the media, the independent counsel, the political factions opposed to the President, the House of Representatives—it must be clearly understood that this process began with the deliberate and willful acts of the President of the United States to lie in a Supreme Court sanctioned civil rights inquiry and obstruct the due course of justice. It all started with the high-handed disregard for the law exhibited by the Nation's Chief Executive. It ends today.

Mr. Chief Justice, when the sound and fury of the moment has passed, and this episode can be observed with the objectivity that comes with the passage of time, I believe it will be self-evident that we have followed the Constitution to the best of our abilities. In a free, democratic society such as ours, the foundation of freedom is an independent judiciary, the rule of law, and most importantly the Constitution. Our Constitution is the framework for American society, and I have been constantly reminded throughout these proceedings of the importance of our duty to honor the dignity of this document.

The magnitude of this undertaking deserves no less than a sincerity of purpose and an absolute confidence in the wisdom of our founders. The American people should not be swayed by those who argue the prominence of this case—in all its tawdry and unseemly detail—has made unnecessary a thorough process of determining the truth. We stand in judgment of the President. Our decisions will be remembered throughout history. Our precedent may be followed by future Senates. Yet still we have heard throughout this exercise the unfortunate call to end these proceedings, save a few weeks, and inject the politics of expediency into a monumental Constitutional undertaking. I find these arguments display a remarkable lack of confidence in the sound and just system outlined by our founders to address very serious charges levied against the President of the United States.

I am grateful the Senate rejected those calls and put in place a responsible mechanism for the thorough airing of fact and argument. I am confident our process during this trial, though far from perfect, was appropriate. We allowed time for detailed presentations on the part of the House of Representatives and the President. We held an extensive question-and-answer session to review and clarify matters presented by both sides. And we have allowed

for the appropriate and necessary deposition of key witnesses. Unfortunately, the simple fact is that the outcome of this matter was, in many minds, predetermined. In spite of this, the integrity of the process was, time and again, fought for and protected. Now—today—it only remains for us to cast our votes.

I wish to address my remarks not so much to the people listening in this room today, but rather to those future generations who will look back at the record and transcripts for guidance, direction, and a more thorough understanding of the process that played out in this Chamber during the first 2 months of 1999. I mentioned earlier the significance of the Constitution. I cannot stress enough the essential role that this historical document has played in the trial of William Jefferson Clinton. This document laid the framework for what has taken place. Be it understood, the Senate tried the President because the Constitution requires that we do so. There is no exception for popular Presidents, such as William Jefferson Clinton. The Constitution provides for this process to be applied to everyone evenhandedly.

Although the trial of this President was not a trial in the traditional sense, it is important to note that if the impeachment of a President presents itself again, there is nothing restricting a more traditional trial from occurring. In fact, I would encourage future Senates to utilize a judicial proceeding more closely aligned to a typical courtroom trial. Every impeachment trial will have its own dynamic environment, determined by the political and social context in which it occurs. The trial of William Jefferson Clinton occurred in a prosperous time. The citizens of this Nation are largely satisfied, the President enjoys consistently high approval ratings, and the economy is outstanding. Impeaching and then trying the President has not engendered popular public support. I make these observations for future generations who reflect on this process simply to explain the mood of our Nation and the political environment in which this proceeding occurred. As a result, we should not deceive ourselves into believing that public opinion did not impact this process. I would like to believe, however, that the competing demands of expediting the process versus honoring our constitutional duties created a struggle that produced the most fair trial possible under the circumstances. Accordingly, the process we followed and the rules complied with may not be appropriate for the next trial. The decisions made in this environment should not be considered to set a precedent that is inflexible. In fact, the precedent we set deserves thoughtful consideration and reasoned critique when reflected upon in the years and decades to come.

In that light, our official duties in this matter began on December 19, 1998, when the U.S. House of Representatives impeached the President, William Jefferson Clinton. After listening to the evidence, reading the trial memorandums and the record, and carefully considering the arguments presented by both the House managers and White House counsel, I believe the President is guilty of both articles.

Before I address the merits of the case against the President, I think it is necessary to discuss whether the crimes of perjury and obstruction of justice constitute high crimes and misdemeanors as

contemplated by the framers of our Constitution. This topic has been the subject of much controversy in the past months.

It is true that private acts are the genesis of the matter before us. Had the acts stayed private, we would not be here today. The President, however, brought these private acts under our public purview and created a matter of public concern when he used his position and his power to deny and obstruct the civil rights of Paula Jones.

Contrary to what has been asserted, this is not just a case about a sexual encounter between the President and a young White House intern. This instead is a case about depriving Paula Jones, an individual who sought and was granted the right to file a civil rights action against the President, of her constitutional right to a day in court, a right which nine Justices of the Supreme Court unanimously decided that she deserved. And—almost unbelievably—on the heels of this Supreme Court mandate, the President seemed to strengthen his efforts to deny Paula Jones' civil rights. Once these acts moved into the public arena, forming the basis for charges as serious as perjury and obstruction of justice, it is my opinion these acts became high crimes and misdemeanors as envisioned by our founders. While our only precedent involves the impeachments of Federal judges, I am satisfied the standards used in these cases also apply to the charges levied against the President.

The President of the United States is the head of the executive branch and the chief law enforcement officer of this Nation. When the Founding Fathers established our tripartite system of government, it was decided that the three branches of government would operate as checks and balances on one another. As a result, no branch would be more powerful than the other. This structure is at the very core of our success as a Republic.

By obstructing justice and lying under oath, William Jefferson Clinton violated his duty as chief law enforcement officer, disrespected the judicial branch of the government, and undermined the foundations of our judicial system's truth-seeking process. If I were to determine that the President's actions did not constitute high crimes and misdemeanors, I would be asserting that the executive branch and the Office of the Presidency are more important than the judicial branch, and that the President of the United States is not obligated to abide by the rule of law. As a citizen and as a Senator, I cannot, in good faith, ignore the separation of powers argument. In my view, the President's conduct was in violation of the rule of law and his actions have betrayed the trust of the people of the United States. It is my firm belief that the serious offenses committed by William Jefferson Clinton are high crimes and misdemeanors and warrant impeachment, conviction, and removal from office.

Amazingly, we continue to hear the argument that although the President's actions rise to the level of high crimes and misdemeanors, he should not be removed from office. The Constitution provides if a President is found guilty of high crimes, then he is automatically removed from office. Our Constitution does not allow for finding the President guilty of high crimes and misdemeanors, and then permitting him to stay in office. Only an amendment to the Constitution would make such a step permissible.

There were several points during the trial of the President when I had a visceral reaction to certain charges raised by the House managers. This reaction occurred, each time, at precisely the point when the managers discussed the President's strategy to attack the character of Monica Lewinsky, Kathleen Willey and others. The callous disregard for the soul of another human being and the unsympathetic wounding of the character of another carried out by the President using the apparatus of the Presidency is chilling and deserves condemnation by those who cherish freedom.

Before I proceed to my view of the specific articles, it may help to explain that I approach this process unencumbered by a law degree. While that in no way gives me license to disregard the legal aspects of the matter before me, it does permit me to translate legal concepts into layman's terms. As I worked my way through the voluminous record and sat through days of the trial, I found it easiest to understand this case if I approached it in chronological order. Given that, I will discuss the obstruction of justice count first, because in the course of this tragic series of events, I believe the President started down this slippery slope by the actions he took, as opposed to the words he spoke. Sadly, the words, uttered under an oath to tell the truth, came later.

I view obstruction of justice, in its most simple terms, as actions that somehow interfere with the fact-finding or truth-seeking mission of a lawsuit. The record before us is replete with examples which, in my opinion, prove that the President of the United States intended to, and did in fact, obstruct justice. Specifically, I believe the President obstructed justice by corruptly engaging in, encouraging, and supporting a scheme to conceal evidence that had been subpoenaed in the Jones case; by encouraging Ms. Lewinsky to file a false affidavit in the Jones case; by allowing his attorney to make false and misleading statements to a Federal court judge; by relating false and misleading statements to Ms. Currie and Presidential aides in order to influence their testimony; and by intensifying and succeeding in an effort to secure job assistance for Ms. Lewinsky in order to encourage her to testify favorably toward the President in the Jones case.

I believe the first example of obstruction occurred when the President was issued a subpoena in the Paula Jones case. This case was a Federal civil rights action in which the President was sued for sexual harassment, hostile work environment harassment, and intentional infliction of emotional distress. As part of the discovery process in the Jones case, subpoenas were issued to several former State and Federal employees suspected of having sexual relations with the President. Included in these was a subpoena which requested the President to produce the gifts he had received from Monica Lewinsky. This request was denied by the President on five different occasions, as ultimately five separate subpoenas were issued. As a last resort, Judge Wright granted Paula Jones' motion to compel the President to produce gifts. The President, however, still did not turn over the gifts and instead replied that he had none. The President's unwillingness to comply is ironic given that later—in his grand jury testimony—he stated that he receives and gives hundreds of gifts a year, and that the whole gift-giving con-

cept is inconsequential to him. The President's behavior belies his testimony.

The gift concealment continued beyond the President refusing to turn over the presents Ms. Lewinsky gave him. Ms. Lewinsky was also subpoenaed in the Jones case and was asked to turn over gifts the President had given to her. According to Ms. Lewinsky, when she suggested to the President that the gifts be hidden, he responded that he would have to "think about it." I am aware that the record does not reflect a specific directive by the President to Ms. Lewinsky to hide the gifts. My reading of the record and my interpretation of the evidence, however, leads me to the inescapable conclusion that the chief law enforcement officer of the country, and a well-educated lawyer to boot, did not fulfill his duty to turn gifts over himself and did not abide by his duty again when Ms. Lewinsky asked him what she should do with her gifts.

There is some confusion over exactly how the President's secretary, Ms. Currie, came to be in possession of the gifts that the President gave Ms. Lewinsky. I find it compelling, however, that when the President and Ms. Lewinsky met on the morning of December 28, Ms. Lewinsky suggested that the gifts the President had given to her should be hidden. A few hours later phone calls were made from Ms. Currie to Ms. Lewinsky. On that same afternoon, Ms. Currie arrived at Ms. Lewinsky's residence to pick up the gifts, and ultimately, the gifts were found under Ms. Currie's bed. In my view, this is sufficient evidence to connect the President's involvement with the gift concealment. I find it hard to believe that Ms. Currie would on her own, without influence from the President, decide to hide Ms. Lewinsky's gifts.

As an aside, I feel compelled to point out a pattern that seems to have evolved during this administration. The hiding of evidence in a personal residence harks back to the mysterious reappearance of the Whitewater billing records in the White House residence several years ago. There seems, in my mind, a proclivity on the part of the President to cause the disappearance of key evidence whenever wrongdoing is alleged. Hence, gifts under the bed equate to billing records in the White House residence.

In view of the President's actions up to this point, I am convinced the President was involved in Ms. Currie's receipt of the gifts. The simple truth is that, in spite of repeated requests, the gifts the President received were never produced and only some of the gifts given to Ms. Lewinsky were produced. In my view, it was no accident that gifts which were not handed over were instead hidden beneath the President's secretary's bed.

As the Jones case progressed, so did the President's determination to obstruct justice. As fate would have it, Monica Lewinsky was named as a witness in the civil rights action. Upset and scared, the President suggested to Ms. Lewinsky that if she were subpoenaed she could file an affidavit in an effort to avoid testifying in a deposition. Ms. Lewinsky did in fact file an affidavit. The affidavit was claimed by the President to be truthful because of what Ms. Lewinsky understood "sexual relations" to mean at that time.

While the President maintains the truth of the affidavit even until this day, Ms. Lewinsky testified before the grand jury that,

in fact, it was not a truthful affidavit. Specifically, she testified before the grand jury that she was willing to submit a false affidavit under the penalty of perjury because she did not think that her affair with the President was anyone's business. I assume that we would still not have Ms. Lewinsky's admission that the affidavit was false, but for the fact that she was in fear of being prosecuted for perjury herself.

I think the President's behavior in regard to the affidavit of Ms. Lewinsky fits squarely in the definition of obstruction of justice. I am not impressed with the President's argument that this conduct became "irrelevant" when Judge Wright later determined that the Lewinsky matter was not essential to the Jones lawsuit.

On the contrary, I am compelled by the fact that when the President was weaving this contorted web, it was his clear intent to conceal his relationship with Ms. Lewinsky. At the time the Lewinsky affidavit was prepared, the President could not have known Judge Wright would later determine that the Lewinsky matter was unrelated to the Jones lawsuit due to the consensual nature of the President and Ms. Lewinsky's relationship. Rather, the President was making every effort to see that nothing about his relationship with Ms. Lewinsky was disclosed.

The next crucial event arrived on the day of the President's deposition in the Jones case. At the deposition, the President's attorney, Bob Bennett, stated that Ms. Lewinsky's affidavit was true. Specifically, Mr. Bennett stated that "there is no sex of any kind, shape, or form." The President claims, not surprisingly, that he was not paying attention when his attorney made these statements, and in addition, that the Lewinsky affidavit was technically true because the word "is" means "at this time."

My review of the President's videotaped testimony leads me to believe the President was paying attention to Mr. Bennett. When watching the videotape, it is apparent to me the President's attention is riveted on every person who speaks. He is attentive and his eyes track the speakers as they engage in dialog. I believe the President purposely allowed Mr. Bennett to mislead the court. Part of the record before us includes a letter from Mr. Bennett asking the trial court not to rely on the affidavit or his comments regarding the document. Thus, it appears Mr. Bennett also believed that the President allowed him to mislead the court.

Moreover, I am not persuaded by the President's argument that the affidavit was technically true because "is" means "at this time." I am offended by the President's lack of respect for the truth-seeking process our justice system is designed to foster and protect. Indeed, I am disturbed that the President would attempt to manipulate each and every word. To take the President's interpretation of "is" to its logical conclusion that nothing was occurring at that very minute is ridiculous.

Clearly, things did not go well at the Jones deposition. In fact, the President admitted later in his grand jury testimony that he was surprised by the depth of the inquiry regarding Monica Lewinsky. This probing questioning made the President increasingly desperate. On Saturday, after the President's deposition, he called his secretary, Ms. Currie, and asked her to come to the White House the following day. Both the President and Ms. Currie

testified that such a Sunday meeting was out of the ordinary. When Ms. Currie arrived, the President called her into the Oval Office and made several statements, which he later described as questions, regarding Monica Lewinsky. Ms. Currie testified before the grand jury, that the President said the following to her:

> I was never really alone with Monica, right?
> You were always there when Monica was there, right?
> Monica came on to me, and I never touched her, right?
> You could see and hear everything, right?
> She wanted to have sex with me, and I cannot do that.

This conversation was repeated between the President and Ms. Currie again 2 days later. Though Ms. Currie testified that on both occasions she felt "no real pressure" to agree with the President, she did nonetheless think he wanted her to agree with him. And, agree she did.

Lawyers for the President have defended his actions by stating that the President was refreshing his memory with Betty Currie because he was aware that the media frenzy regarding Monica Lewinsky was about to break loose. I find this explanation unconvincing for numerous reasons. The first, and perhaps most obvious reason is that a person does not typically refresh his recollection with statements he knows to be false. It is beyond belief that the President could assert such a defense. He knew he was alone with Ms. Lewinsky, and even he testified he would have been an "exhibitionist" if he had conducted these acts in public view. In fact, when asked during the grand jury proceedings if Ms. Currie was nearby when he and Ms. Lewinsky had intimate contact, the President responded: "I never—I didn't try to involve Betty in that in any way." Further, the President's statements to Ms. Currie implying that she was always present, and that she could see and hear everything, defy logic by indicating that Ms. Currie was always with the President and Ms. Lewinsky. The President clearly knew that was not the case.

The sum of this evidence convinces me the President was not only obstructing justice by tampering with a potential future witness, but also violating the gag order that had been put into effect by Judge Wright in the Jones case. The irony here is that one reason Ms. Currie became a potential witness was due to the President's own urging. Throughout the Jones deposition the President repeatedly offered "you should ask Betty." Then, on the very next day following these remarks, he summoned Ms. Currie to the White House and asked and answered his own leading questions. Importantly, the following week, Ms. Currie was subpoenaed to testify in the Jones matter.

I have also concluded the President's conversations with his aides concerning his relationship with Ms. Lewinsky constitute witness tampering. The President told his aides, John Podesta, Sidney Blumenthal, and Erskine Bowles, misleading and untrue statements about his relationship with Monica Lewinsky. In fact, Mr. Podesta testified in the grand jury proceedings that the President was extremely explicit in his comments about denying any physical relationship and any sexual contact with Ms. Lewinsky.

Although the President's approach to this group of potential witnesses differed from his approach to Ms. Currie in that he did not

ask this group to agree with his statements, I find these conversations equally disturbing. To mislead his key aides, who he admitted might be called to testify before the grand jury, demonstrates that there are no bounds on the President's attempts to protect himself. He was willing to mislead any person who might have blocked his intricate obstruction plan.

In addition, I believe that the President obstructed justice by intensifying and succeeding in an effort to secure job assistance for Ms. Lewinsky in order corruptly to prevent her from truthfully testifying in the Jones case. Although the President promised Ms. Lewinsky assistance with her New York job search prior to her name appearing on a witness list in the Jones case, it seems odd and much too coincidental that the President's assistance intensified after he learned that Ms. Lewinsky was on the witness list.

In October, Ms. Lewinsky expressed her interest to the President in moving to New York and finding a job. In early November, Ms. Lewinsky had a meeting with Vernon Jordan to discuss potential jobs in New York City. Ms. Lewinsky testified before the grand jury that this meeting resulted in no activity taking place. However, unbeknownst to Ms. Lewinsky, her job search would take a 360 degree turn in December. Possibly the most important day was December 6, 1997, when the President learned that Ms. Lewinsky's name had appeared on a list of potential witnesses in the Jones case. A little over a month later, Ms. Lewinsky was offered and accepted a job with Revlon in New York City.

Because I believe the sequence of events that took place in December is extremely telling, I will lay out these events. On December 6, the President learned Ms. Lewinsky was a potential witness in the Jones case. On December 7, the President and Mr. Jordan met at the White House. According to both parties, however, Ms. Lewinsky was never discussed. On December 8, Mr. Jordan received Ms. Lewinsky's resume by courier. On December 11, Mr. Jordan met with Ms. Lewinsky and made phone calls to various New York companies on her behalf. On December 17, after a job in New York seemed like a much more likely prospect for Ms. Lewinsky, the President telephoned Ms. Lewinsky at 2 a.m. to inform her that her name was on a witness list in the Jones case. On December 19, Ms. Lewinsky was served a subpoena in the Jones case. On December 31, Ms. Lewinsky and Mr. Jordan ate breakfast together at the Park Hyatt Hotel. On January 7, Ms. Lewinsky signed an affidavit to be filed in the Jones case in which she denied having sexual relations with the President. On January 8, Ms. Lewinsky interviewed in New York with MacAndrews & Forbes, a company recommended by Mr. Jordan. On that same day, Ms. Lewinsky informed Mr. Jordan that the interview did not go well. Mr. Jordan made a call to the chairman of the board and chief executive officer at MacAndrews & Forbes. On the morning of January 9, Ms. Lewinsky was given a second interview. On that same morning, Ms. Lewinsky was given an informal job offer, which she accepted. On January 13, 1998, Ms. Lewinsky received a formalized job offer.

It is apparent from the above time line that the President's efforts in finding Ms. Lewinsky a job in New York intensified at an excessive rate once it was discovered that Ms. Lewinsky was going

to be a witness in the Jones case. The President was well aware of the fact that Ms. Lewinsky's testimony could be harmful to him, and thus, it was in his best interest to get Ms. Lewinsky a job in New York as soon as possible. It seems to be no coincidence that the President did not tell Ms. Lewinsky that she was a potential witness until 11 days after he learned of this news. Rather, it appears the President was using these 11 days to ensure that Ms. Lewinsky understood the President was her friend and was trying to assist her in her New York job hunt. Interestingly, Ms. Lewinsky was not informed of her witness status until after interviews in New York had been scheduled for her by Vernon Jordan.

The President is also charged with making perjurious, false, and misleading testimony to a Federal grand jury concerning his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in the Jones civil rights action. My review of this charge, and the evidence offered, leads me to conclude that the President engaged in several separate acts of perjury. Specifically, the President lied under oath regarding the nature and details of his relationship with Ms. Lewinsky; lied regarding his conversation with Ms. Currie on the day following his Jones deposition; lied regarding his knowledge of Ms. Lewinsky's affidavit in the Jones case; lied regarding statements made to aides about his relationship with Ms. Lewinsky; lied regarding prior false and misleading statements he allowed his attorney Bob Bennett to make to a Federal judge in the Jones case; and lied when he denied engaging in a plan to hide gifts that had been subpoenaed in the Jones case.

After the Jones deposition, on January 26, 1998, the President went on national television and declared: "I did not have sexual relations with that woman, Miss Lewinsky." In addition, he denied that he urged her to lie about the affair. Over the next 7 months, the President continued to deny the relationship. In the face of mounting evidence to the contrary, the Office of the Independent Counsel sought and received permission from the Attorney General to expand its investigation to include whether the President lied under oath in his Jones deposition.

Seven months later, on August 17, 1998, the President appeared before a grand jury to answer questions regarding his Jones deposition and his alleged affair with Ms. Lewinsky. Prior to his testimony, the President took a solemn oath to tell the truth. Specifically, when asked during the grand jury proceedings what this oath meant to him, the President stated: "I have sworn on an oath to tell the grand jury the truth, and that's what I intend to do." Moreover, the President stated: "I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the term 'sexual relations,' as I understood it to be defined at my January 17, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses."

In my opinion, however, the President violated his stated intention to answer questions honestly and to the best of his ability. Perjury is defined by the United States Code as "whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material dec-

laration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false declaration." (18 U.S.C. 1623.) I believe that the President's statements fall within the above definition because his statements were both false and material to the proper inquiry of the grand jury.

First, the President gave false and misleading testimony during the grand jury proceedings concerning the nature and details of his relationship with Monica Lewinsky. On August 17, 1998, the President read a prepared statement to the grand jury as a response to the question of whether he was physically intimate with Monica Lewinsky. The prepared statement said:

> When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17, 1998, deposition. But they did involve inappropriate intimate contact.
>
> These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.
>
> I regret that what began as a friendship came to include this conduct, and I will take full responsibility for my actions.

During Ms. Lewinsky's grand jury testimony, she stated that the President had contact with various parts of her body. Even under the limited interpretation that the President has given the Jones definition of "sexual relations," the contact between the President and Ms. Lewinsky, as testified to by Ms. Lewinsky, constituted sexual relations on the part of both parties.

Before the grand jury, the President referred to his prepared response 19 times in order to avoid providing honest and complete answers to the questions posed. By referring to his prepared statement, the President asserted that his encounters with Ms. Lewinsky did not constitute "sexual relations." The fact is that the evidence overwhelmingly affirms that the President had sexual contact with Ms. Lewinsky and his attempts at legal hairsplitting to maneuver around the truth failed.

To address part of the perjury charge creates the need to resolve the credibility conflict between the President and Ms. Lewinsky. By finding that the President committed perjury in regard to testimony concerning the nature and details of his relationship with Ms. Lewinsky, it is clear that I find the testimony of Ms. Lewinsky to be more honest and forthright. Some may question why I believe the testimony of Ms. Lewinsky over the testimony of the President. First and foremost, I believe Ms. Lewinsky had no motive to lie, whereas the President had every motive to conceal the details of this intimate relationship. Not only was his Presidency on the line, but his credibility with his staff would be destroyed if the truth were exposed. Even more importantly, the President's credibility is questionable because he had to fear that discovery of the truth would cause his family immense devastation.

Furthermore, I believe Ms. Lewinsky is more credible because her statement is corroborated. Ms. Lewinsky told the intimate details of her relationship to her therapists, her friends, Linda Tripp, her mother, and her aunt. Thus, it is not difficult to find that Ms. Lewinsky is a more credible witness than the President.

I further believe the President made perjurious and misleading statements before the grand jury when he disclosed his version of his conversations with Betty Currie. As stated earlier, I believe that the rhetorical questions the President asked Ms. Currie on two separate occasions were an effort to coach a potential witness in the Jones case. During his grand jury testimony, the President testified that he questioned Ms. Currie because he thought the story would break in the press, he needed to get the facts down, and he was trying to refresh his memory. The reality is the President was never trying to refresh his memory. Ms. Currie even acknowledged in the grand jury proceedings that based on the way the President stated the questions and his demeanor, she believed he wished for her to agree with his statements.

In addition, according to the President's own grand jury testimony, he told no one of his relationship with Monica Lewinsky. Specifically, during grand jury questioning, the President was asked with regard to his relationship with Ms. Lewinsky: "Had you told anyone?" The President answered: "Absolutely not." Question: "Had you tried, in fact, not to let anyone else know about this relationship?" Answer: "Well, of course." Question: "What did you do?" Answer: "Well I never said anything about it, for one thing. And I did what people do when they do the wrong thing. I tried to do it where nobody else was looking at it."

Thus, if the President was hiding his intimate encounters with Ms. Lewinsky, how would Ms. Currie have been capable of refreshing his memory on details of his secret relationship? The truth is that the President was fully aware of the fact he touched Ms. Lewinsky. Likewise, the President was fully aware that there had been instances when he was alone with Ms. Lewinsky. The only reason the President asked Ms. Currie those five infamous rhetorical questions was to provide a false and misleading account of the events to Ms. Currie in the hope Ms. Currie would substantiate the false testimony he gave in his deposition. The President's grand jury testimony that he was trying to refresh his memory was simply a story concocted to cover up the fact that he obstructed justice. Thus, his grand jury testimony was perjurious.

In addition to making false statements with regard to the potential testimony of Betty Currie, the President also made false statements with regard to tampering with the potential testimony of his aides. The President testified to the grand jury that he said to his aides things that were true about his relationship with Ms. Lewinsky. "I said, I have not had sex with her as I defined it." This statement is, however, patently untrue, as White House deputy chief of staff John Podesta's testimony indicates. Mr. Podesta testified that the President was explicit in stating that no sexual contact of any kind occurred between the two parties.

Furthermore, during the grand jury proceedings, the President testified that when he was asking Ms. Currie about the times he was alone with Ms. Lewinsky, he was referring to 1997. The President stated: "Keep in mind, sir, I just want to make it—I was talking about 1997. I was never, ever trying to get Betty Currie to claim that on the occasions when Monica Lewinsky was there when she wasn't anywhere around, that she was. I would never have done that to her, and I don't think she thought about that. I don't

think she thought I was referring to that." The President was then asked: "Did you put a date restriction? Did you make it clear to Ms. Currie that you were only asking her whether you were never alone with her after 1997?" The President responded: "Well, I don't recall whether I did or not, but I assumed—if I didn't, I assumed she knew what I was talking about, because it was the point at which Ms. Lewinsky was out of the White House and had to have someone wave her in, in order to get in the White House." In my view, this is just one more example of the President creating a false story to cover up the fact that his conversation with Betty Currie constituted witness tampering.

The President also provided perjurious, false, and misleading testimony to a Federal grand jury regarding his knowledge that the contents of an affidavit executed by Ms. Lewinsky were untrue. Attorneys for Paula Jones were seeking evidence of sexual relationships the President may have had with other State or Federal employees. In this process, Ms. Lewinsky was subpoenaed as a witness. The President suggested that Ms. Lewinsky should file an affidavit to avoid having to testify. If the truth had been told in this affidavit, and if Ms. Lewinsky had been honest about the nature of her relationship with the President, Ms. Lewinsky indisputably would have been an important witness.

The President stated before the grand jury, when asked about the Lewinsky affidavit: "Did I hope [Monica Lewinsky would] be able to get out of testifying on an affidavit? Absolutely. . . . Did I want her to execute a false affidavit? No, I did not." The President's testimony is not credible and is misleading in light of the fact that it was virtually impossible for Ms. Lewinsky to file a truthful affidavit that would have permitted the President to achieve his objective of not having Ms. Lewinsky testify. This is just one more instance were the President lied, misled, and violated his solemn oath to tell the truth.

In addition, the President gave perjurious testimony in regard to false and misleading statements he allowed his attorney Bob Bennett to make to a Federal judge in the Jones case. When asked during his grand jury testimony how he could have lawfully sat silent while his attorney made a false statement, the President explained that he was not paying "a great deal of attention." As I stated earlier, from reviewing the President's videotaped deposition numerous times, I believe that it is apparent that the President was indeed paying attention when his attorney made these false statements.

Finally, in his grand jury testimony, the President stated he told Ms. Lewinsky that if the attorneys for Paula Jones asked for the gifts, she had to provide them. In light of the fact that all of the gifts the President gave Ms. Lewinsky were never produced and some of the gifts were found under Ms. Currie's bed, I do not believe that the President's grand jury testimony regarding his conversation with Ms. Lewinsky was truthful.

Accordingly, after considering all of the evidence, I believe that the President is guilty on both article I and article II.

Mr. Chief Justice, the President of the United States has put the Senate in a difficult position. His actions have caused all of us to examine the uncomfortable details surrounding his reckless affair

with a young White House intern. But it was not his unfortunate actions with the White House intern that brought us to this moment. Rather, it was his willful and deliberate attempt to cover it up in a judicial proceeding and then lie under oath to a Federal grand jury. We are not here because we disagree with the President's politics. In fact, I happen to consider the President a very capable man, who has, by his own actions, destroyed his place in history. For me to watch someone strategically dismantle all they have worked for is disturbing, to say the least. However, in spite of the human side of this tragedy, there is no escaping that we are here simply because of the President's intentionally deceptive behavior and his unwillingness to abide by the law.

We were handed very serious charges against the President by the House of Representatives. In disposing of this matter, we have followed the only template we have: the Constitution and the precedent of previous Senates. We have followed the founders to the best of our abilities. Despite cries all around to end the trial and ignore our constitutional mandate, the Senate allowed for a process rooted in the search for truth. All sides had an opportunity to make their case, question witnesses, and answer inquiries posed by individual Senators.

Although this journey was less than perfect, we did not fail in this endeavor. We did not fail our founders, we did not fail the House of Representatives or the President, and we did not fail the American people. I attended the meetings of the Senate, reviewed the material in the record, asked questions of the House managers and White House counsel, and reviewed the depositions of witnesses. I am satisfied that our proceedings over the past month allowed me sufficient information to arrive at my decision.

I am convinced beyond a reasonable doubt that William Jefferson Clinton is guilty of the charges levied by the House of Representatives and should be removed from office. By employing that standard I do not wish to influence others who find a different standard to be more appropriate.

I am proud of the U.S. Senate and how it conducted itself during this process. Despite extraordinary difficulty, we did our job according to the Constitution and to the best of our ability. I am hopeful that through this process we have provided future generations with enough information to make an informed judgment of this President's actions. In the end, however, history will be the final arbiter.

Thank you, Mr. Chief Justice. I yield the floor.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR PETER G. FITZGERALD

Mr. FITZGERALD. Mr. Chief Justice, as a freshman Senator, I am saddened that the first issue I confront in my service to the people of Illinois is the impeachment of a President of the United States. It is difficult to imagine a task less welcome and more awesome to me. As a newly elected Senator, I have barely begun to know the Senate, my colleagues, our rules and procedures, our precedents, or, finally, even our duty. I have watched you all so

carefully—looking for examples, and guidance—and wondering at the gravity of these days.

On a personal note, before I begin, I want to thank those on both sides of the aisle—Senators who, in difficult days, have been so gracious to a newcomer. Thank you for taking the time, and making the effort, to welcome the newest among you. Through these hours, I have developed a deep respect for my new colleagues, for the Senate as an institution, and for the Constitution that has anchored our Republic for over 200 years. I thank God for the wisdom of the framers and their ability to construct enduring institutions that allow us to confront, peacefully, the question of whether our President should be removed from office. We now come to the conclusion of this constitutional process, itself an extraordinary example of the rule of law that makes our Nation the envy of the world.

The people of Illinois have entrusted me with the duty to uphold the Constitution, a duty I share with all of you. In addition, we share the responsibility of abiding by the separate oath which we took in this proceeding to "do impartial justice according to the Constitution and the laws."

As a trier of fact and law, I find that the President has committed perjury and obstruction of justice as charged in the two articles of impeachment, and that those offenses constitute "high crimes and misdemeanors." I will vote for conviction on both counts.

I reach this decision after detailed examination of the evidence presented, the arguments of counsel, Senate precedents, and the impeachment clause of the Constitution.

The initial decision I made was to determine the appropriate burden of proof. Failure to impose a burden of proof on the House managers would severely weaken the Presidency, a result the founders feared and sought to avoid. The precedents of the Senate make it clear that there is no single standard that each of us must apply.

The President has argued that we should apply the criminal standard of "proof beyond a reasonable doubt." In recent impeachment trials of Federal judges, a number of Senators also argued that conviction was only appropriate if the proof met this standard. Some commentators have suggested that Senators could use the preponderance-of-the-evidence standard typically applied in civil cases, or some standard in between.

I have concluded that, to support a conviction, allegations must be proven by "clear and convincing" evidence. The criminal standard is not warranted, because the relief in this instance, i.e., the removal of the President, is not punitive, but remedial. In contrast, the civil standard would place the Presidency at too great a risk. The "clear and convincing" evidence standard strikes a prudent balance, providing sufficient protection for the authority of the Presidency and the expression of popular will represented by the President's election, while avoiding the risk of a President remaining in office despite clear and convincing evidence of impeachable offenses.

On Article I, the House has presented clear and convincing evidence that the President committed perjury when he testified before a Federal grand jury on August 17, 1998.

On January 17, 1998, President Clinton testified in a civil deposition in the Jones v. Clinton lawsuit, after the Supreme Court had ruled unanimously that a civil suit against a sitting President could proceed. After the deposition, the independent counsel secured the approval of the Attorney General, and the three-judge Federal court which superintends the independent counsel law, to expand his jurisdiction to inquire into whether the President testified truthfully in his deposition. On August 17, 1998, the President, as the target of the investigation testified by video to a Federal grand jury in Washington, DC.

The President's deposition testimony in the Jones case was false in numerous respects, and his grand jury statements that he had sought to be completely truthful in his deposition testimony cannot be accurate. (Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, pp. 458–59.) The falsehoods are of such a quantity and kind that a reasonable reading of the evidence suggests the President had to know at the time he gave his deposition in the Jones case that he was not being truthful. His testimony to the grand jury that he intended to be truthful at his deposition is false.

Example: the President had testified in his deposition that he believed that, in the preceding 2 weeks, no one had reported to him any conversations with Ms. Lewinsky about the Jones suit. (Jones Deposition of President Clinton, 1/17/98, Evidentiary Record, S. Doc. 106–3, Vol. XXII, p. 22.) In testifying to the grand jury that he was truthful in his deposition, the President reaffirmed this portion of his deposition testimony. (Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 458.) We know, however, that Vernon Jordan had, within the 2 weeks prior to the President's deposition, told the President that Ms. Lewinsky had signed her affidavit. (Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONG. REC. S1241 (daily ed. Feb. 4, 1999).) The President's grand jury testimony was material to the issue of whether the President had sought to influence the content of Ms. Lewinsky's affidavit and thereby obstruct justice.

The President again committed perjury before the Federal grand jury when he tried to explain why he made a series of false statements to his secretary, Betty Currie, on two separate occasions. At his deposition, the President was questioned about Ms. Lewinsky. The President attempted to employ Ms. Currie as an alibi witness. In the wake of the deposition, the President asked Ms. Currie to come to the office on a Sunday. Once there, the President asked Ms. Currie a series of leading questions concerning her recollection of events regarding Ms. Lewinsky. (Grand Jury Testimony of Betty Currie, 1/7/98, H. Doc. 105–316, pp. 559–60.) A few days later, the President again queried Ms. Currie with leading questions. (Id. at p. 561.)

When questioned during his grand jury testimony about the series of leading questions he had directed to Ms. Currie, the President responded: "I was trying to figure out what the facts were. I was trying to remember." (Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105–311, p. 591.) He also claimed that he was only trying to "ascertain what the facts were, trying to ascertain what Betty's perception was." (Id. at p. 593.)

While Ms. Currie would not say she felt pressured by the President, she did testify that she believed that the President was seeking her agreement with those statements. (Grand Jury Testimony of Betty Currie, 1/7/98, H. Doc. 105–316, p. 559.) It is unreasonable to conclude that the President was trying to refresh his recollection by making patently false statements to Ms. Currie, in the days immediately following his deposition for the Jones case. Ms. Curry could not possibly have known the answers to some of the President's "questions," and the President clearly already knew the answers to others.

We took an oath to do impartial justice. We did not take an oath to check our common sense at the door of this Chamber. The President's proffered explanation of the questions he directed to Ms. Currie defies common sense. I believe he sought, instead, to influence Ms. Currie's anticipated testimony by imparting to Ms. Currie his preferred version of the events. His false explanation was material to the grand jury's inquiry and constitutes perjury.

The President also committed perjury when he testified and then reiterated before the Federal grand jury, in answer to a question about false accounts he gave to his aides regarding Ms. Lewinsky, that "I said to them things that were true." (Grand Jury Testimony of President Clinton, 8/17/98, p. 106, H. Doc. 105–311, pp. 557–58.)

In fact, the President said to his aides things that were false. Presidential aide Sidney Blumenthal testified in his Senate deposition that the President had told him that Ms. Lewinsky had threatened him, and that she was called "the stalker." (Deposition Testimony of Sidney Blumenthal, 2/3/99, 145 CONG. REC. S1301 (daily ed. Feb. 6, 1999).) Mr. Blumenthal testified he now knows that the President lied to him. (Id. at S1302.) The President knew what he said to Mr. Blumenthal was false because the President knew the facts. The one fact the President did not know was that Ms. Lewinsky would produce DNA evidence that would provide incontrovertible physical evidence to contradict him.

The President's statements before a Federal grand jury regarding accounts he gave to his aides of Ms. Lewinsky were false, and the falsehoods were material to the grand jury's investigation into whether the President had testified falsely in the Jones deposition.

On Article II, the House has presented clear and convincing evidence that President Clinton obstructed justice by engaging in a course of conduct designed to impede, cover up, and conceal evidence and testimony related to the Federal civil rights action brought against him.

The evidence shows that the President improperly influenced Ms. Lewinsky to file a false affidavit in the Jones suit. I believe that the only version of the evidence that makes sense is that offered by the House. Thus, I conclude that the President influenced the entire process that led to the filing of the false affidavit, from its inception to its conclusion. He did so through direct conversations with Ms. Lewinsky, and through his close friend, Mr. Jordan, who was able to monitor the process through an attorney that he, Mr. Jordan, procured for Ms. Lewinsky.

Ms. Lewinsky admitted that on December 17, 1997, the President informed her by telephone at 2 a.m. that she was on the witness list in the Jones case, and suggested that she might avoid tes-

tifying by filing an affidavit. (Deposition Testimony of Monica Lewinsky, 2/1/99, 145 CONG. REC. S1218 (daily ed. Feb. 4, 1999).) And the President told Ms. Lewinsky to call Betty Currie if she was subpoenaed. (Id.)

The President's assertion that he thought Ms. Lewinsky could have avoided testifying by filing a truthful affidavit is unbelievable. I believe that the President knew that a truthful affidavit by Ms. Lewinsky would have ensured that she would have been called as a deposition witness, and that her subsequent truthful testimony would have been legally damaging to the President. In fact, in the very conversation in which the President suggested that Ms. Lewinsky file an affidavit, they discussed the cover stories they could use to avoid public knowledge of the truth. (Id. at S1219.)

Vernon Jordan testified in his Senate deposition that he "was acting on behalf of the President to get Ms. Lewinsky a job." (Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONG. REC. S1293 (daily ed. Feb. 6, 1999).) Mr. Jordan confirmed in the deposition that "[t]he President was obviously interested in her job search." (Id. at S1314.) It was Mr. Jordan—one of the President's closest friends—whom Ms. Lewinsky called when she was subpoenaed. Mr. Jordan met with Ms. Lewinsky and arranged a lawyer for her. (Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONG. REC. S1234–36 (daily ed. Feb. 4, 1999).) Mr. Jordan delivered Ms. Lewinsky to her lawyer's office. (Id. at S1238.) Mr. Jordan monitored the drafting and content of Ms. Lewinsky's affidavit. (Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105–311, p. 920.) Ms. Lewinsky herself delivered a copy of her first signed affidavit to Mr. Jordan's office. Ms. Lewinsky testified that she and Mr. Jordan conferred about the contents of the affidavit and agreed to delete one portion inserted by her lawyer and make other changes. (Id. at pp. 921–22, 1229–30 (Exhibit 3).)

Mr. Jordan kept the President informed throughout the affidavit-drafting process. He personally notified the President that Ms. Lewinsky had signed the false affidavit. (Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONG. REC. S1241 (daily ed. Feb. 4, 1999).)

The evidence also clearly and convincingly demonstrates that after Ms. Lewinsky's name appeared on the witness list in the *Jones* case, the President, through Mr. Jordan, provided intensified assistance to Ms. Lewinsky in finding a job in order to encourage her to file the false affidavit. Mr. Jordan accepted responsibility for the job search and has admitted that he and Ms. Lewinsky discussed both the job search and her affidavit in most conversations. (Id.) Mr. Jordan attempted to separate each aspect of his work with Ms. Lewinsky. He testified that "[t]he affidavit was over here. The job was over here." (Id.) Whatever Mr. Jordan's belief, it cannot have been lost on Ms. Lewinsky that she had a very prominent and powerful lawyer soliciting job offers for her at the same time she was being asked to help that lawyer's friend, the President, who had first suggested that she file an affidavit.

On the day after Ms. Lewinsky signed the false affidavit, Mr. Jordan personally called the CEO of a Fortune 500 company to secure a job for her, a job she was offered on the subsequent day. (Id. at S1241–42.) On the day that Ms. Lewinsky received the job offer,

Mr. Jordan called the President, through Ms. Currie, and left the message "mission accomplished." (Grand Jury Testimony of Vernon Jordan, 5/28/98, Evidentiary Record, S. Doc. 106–3, Vol. IV, p. 1898.) The President's own testimony in his deposition for the Jones case followed exactly the false claims of Ms. Lewinsky's false affidavit. While the President's lawyers encouraged the perception that this convergence was a coincidence, I do not buy it.

The evidence is clear and convincing that the President continued to involve Ms. Currie in his lies and obfuscation. Ms. Lewinsky testified that on December 28, 1997, she met with President Clinton and informed him that she had been subpoenaed, and that the subpoena required her to produce all gifts she had received from the President. She testified that the subpoena specifically requested a hat pin, which alarmed her. (Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105–311, p. 852.) The President responded that the subpoena "concerned" him. (Id. at p. 872.) When Ms. Lewinsky asked him what she should do in response to the subpoena for the gifts, the President answered, "I don't know," or "Let me think about that." (Id.) He never gave the only appropriate answer, which was to comply.

Ms. Lewinsky testified that later that same day, Ms. Currie telephoned her, saying, "I understand that you have something for me," or "the President said that you have something to give me." (Id. at pp. 874–75.) Ms. Currie had an unclear memory about this incident, but said that "the best [she] remembered," Ms. Lewinsky called her. (Grand Jury Testimony of Betty Currie, 5/6/98, H. Doc. 105–316, p. 581.)

Ms. Lewinsky's testimony that Ms. Currie instigated the retrieval of the gifts is credible and convincing. In contrast, Ms. Currie's testimony that Ms. Lewinsky instigated the retrieval is not persuasive. I do not believe that the President's personal secretary would have acted upon a request from Ms. Lewinsky to retrieve the gifts without asking the reason for such an exchange or informing the President of the request. It is too bizarre that she would simply pick up a box of gifts and deposit them under her bed. It defies a commonsense reading of the evidence and the evidentiary narrative.

The evidence is also clear and convincing that the President obstructed justice by coaching Ms. Currie, a potential witness in the Jones case, to provide false testimony in the Jones case, and by arranging for the concealment of gifts subpoenaed by the Jones lawyers.

On Saturday, January 17, 1998, a few hours after completing his own deposition in the Jones case, the President called Ms. Currie and asked her to come to the White House on Sunday, January 18, 1998. (Id. at p. 558.) The President's assertions and leading questions to Ms. Currie on January 18 and January 20 or 21, 1998, were indisputably false. The President knew that Ms. Currie was a potential witness when he made these false statements to her. In his deposition in the Jones case, the President brought Ms. Currie's name up, without prompting, in at least 16 different answers to questions, clearly anticipating and inviting the Jones attorneys to subpoena her to back up his account.

I am unable to conclude that the President was attempting to "refresh his recollections" by calling Ms. Currie and requesting her to come to the White House on a weekend and making false statements to her. Simple common sense tells us that he was letting her know what he had said in his deposition and that he was hoping that she would later corroborate his false account.

Although I have determined that the House has proven the acts alleged in both articles of impeachment by clear and convincing evidence, the inquiry does not end here. I must also consider whether the acts constitute "high crimes and misdemeanors," as required by the Constitution. This has been a singularly difficult question for this body, but I conclude that the President's offenses rise to the level of "high crimes and misdemeanors" within the meaning of the Constitution.

The framers of our Constitution provide that the Senate can only convict a President for "treason, bribery, or other high crimes and misdemeanors." The framers relied, in part, on William Blackstone for their understanding of the common law they inherited from England. In the fourth book of his "Commentaries on the Laws of England," Blackstone addressed the criminal law. He distinguished between crimes that "more directly infringe the rights of the public or commonwealth, taken in its collective capacity," and "those which in a more peculiar manner injure individuals or private subjects." (William Blackstone, "Commentaries on the Laws of England," Book IV, pp. 74, 176 (special ed., 1983).)

Within the latter category, Blackstone included crimes such as murder, burglary, and arson. The former category of "public" crimes included offenses that were counted as "offenses against the public justice." Blackstone included within this category the crimes of perjury and bribery side by side. (Id. at pp. 127, 136–39.) Blackstone's formulation equating perjury and bribery as "public" offenses suggests that, within the definition of the Constitution, perjury may also be a high crime and misdemeanor.

Because perjury, at its core, involves an effort to obstruct justice, other acts that obstruct justice may very well be considered "public" offenses as the framers would have understood them. Indeed, Blackstone writes that "impediments of justice" are "high misprisions" and "contempts" of the King's courts. (Id. at pp. 126–28.)

The intent of the framers and subsequent interpretation of this clause show that impeachment and conviction of the President is a constitutional remedy for serious offenses against our system of government. Alexander Hamilton, in Federalist No. 65, explained that impeachable offenses "relate chiefly to injuries done immediately to the society itself" and arise "from the abuse or violation of some public trust."

Certainly, perjury before a grand jury and obstruction of justice are offenses against the American system of government, as they strike at the rule of law itself. These acts subvert the truth-seeking process that is the very essence and foundation of the judicial branch. These acts, when committed by a President, are a repudiation of our judicial system by the Chief Executive of the country, undermining the checks and balances and disturbing the delicate

balance between the branches of the Federal Government that is at the heart of our constitutional form of government.

The President's counsel attempted to diminish the severity of the crimes of perjury before a Federal grand jury and obstruction of justice. But the Founding Fathers understood that these crimes are offenses against the public trust. Perjury was among the few offenses outlawed by statute by the First Congress, in 1790. And today, perjury is punishable by up to 5 years imprisonment in a Federal penitentiary. (18 U.S.C. 1621–23.) The Supreme Court, in a 1976 plurality opinion, wrote, "[p]erjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings." (*United States* v. *Mandujano*, 425 U.S. 564, 576.)

We do not need to decide whether the President's perjury before the grand jury would have risen to the level of a "high crime and misdemeanor" had the target of the grand jury been someone other than the President, nor do we need to decide whether a President's perjury in a civil trial in and of itself rises to the level of an impeachable offense. I have reservations about considering such acts "high crimes" or "high misdemeanors." But where, as here, the President committed perjury in a Federal grand jury investigation of which he was the target, I am convinced that his acts fall into the category that warrants removal from office.

Further support for this conclusion comes from Senate precedent in the impeachment, conviction, and removal from office of two Federal judges in the 1980s—Walter Nixon and Alcee Hastings. Judge Nixon was impeached and convicted for lying to a grand jury that was investigating him, and Judge Hastings was impeached and convicted for making numerous false statements under oath in testimony in his own criminal trial.

Obstruction of justice is particularly serious. Two Federal criminal statutes, sections 1503 and 1512 of title 18 of the United States Code, specifically prohibit corruptly influencing or obstructing the due administration of justice or the testimony of a person in an official proceeding.

Federal appellate courts have applied these statutes to individuals who provide misleading stories to a potential witness without explicitly asking the witness to lie. For example, in 1988, a Federal appellate court upheld the conviction of an individual for attempting to influence a witness even though that witness was not scheduled to testify before the grand jury nor ever appeared before a grand jury. The court held that a conviction under section 1503 is appropriate so long as there is a possibility that the target of the defendant's activities will be called upon to testify in an official proceeding. (*United States* v. *Shannon*, 836 F. 2d 1125, 1127 (8th Cir. 1988).)

The Supreme Court has called the President's responsibility to enforce the laws "the Chief Executive's most important Constitutional duty." (*Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 577 (1992).) A President who obstructs the very laws he is called upon to enforce has committed high crimes and misdemeanors as set out in the impeachment clause of the U.S. Constitution.

Some argue that the Senate, sitting as a Court of Impeachment, should allow public opinion polls to influence its judgment, claiming that these proceedings are not judicial, but political in nature.

I believe the Constitution, the intent of the framers, and the Senate's own impeachment procedures show that when the Senate convenes to fulfill its obligation to "try all impeachments," as article I of the Constitution prescribes, it takes on a judicial role quite distinct from its normal legislative proceedings. The Constitution also states, in article III, that "the trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . .," implying that an impeachment trial is a trial similar to all others. When a President stands accused, the Constitution requires the Chief Justice of the Supreme Court to preside, explicitly introducing the judicial branch into the trial by the Senate. And Alexander Hamilton, in Federalist No. 65, discusses "the judicial character of the Senate" when it meets as "a court for the trial of impeachments."

We are required to take a special oath for impeachments, above and beyond our oath of office, to "do impartial justice according to the Constitution and the laws." What can this oath mean if it does not place on us a special, judicial burden, unique among our senatorial duties, to apply rules of impartiality and independence in pursuit of a verdict that is just? If an innocent President can be convicted, or a guilty President can be acquitted, even in part because of the polls that purport to reflect the will of the moment, then we violate our constitutional duty and assault the very foundations of our system of justice.

Carved into the West Pediment of the U.S. Supreme Court Building in Washington are four simple words: "Equal Justice Under Law." Standing watch in front of that building is a statue of Justice, blindfolded because justice must be blind. Even the President must respect the laws of the land. To the extent that we allow the popularity or unpopularity of a particular President to inform our votes for either conviction or acquittal, we undermine the principle of "Equal Justice Under Law," and we chip away at the blindfold that covers the eyes of Justice.

As a trier of fact and law, I find that the President has committed perjury and obstructed justice as charged in the two articles of impeachment, and that those offenses constitute "high crimes and misdemeanors." I will vote to convict on both counts.

For me, this is not an easy verdict to reach, and comes after great deliberation. I am 38 years old. Today is my 38th day as a Senator. Those 38 days feel like they have lasted my entire life. As a freshman, I have had to confront, very suddenly, difficult truths that at the very least have challenged the idealism that propelled me here in the first place. But through the din of argument and counterargument, it has occurred to me that the President's acts, however serious, are not nearly as consequential as our response. I have listened to those who assert that perjury before a grand jury and obstruction of justice are not removable offenses—or that if they are, removal of a President, in this time, is too disruptive to contemplate.

And truly, the call to do nothing is seductive. I hear it, too. We are so comfortable—so prosperous—that it is difficult to be bothered with unpleasantness. But as the youngest Member of this body, I believe we must hold firm to the oldest truths. The material blessings of peace and prosperity are but the fruit of liberty that does not come without a price—a liberty sustained, only and fi-

nally, by the rule of law, and those willing to defend it. Our commitment to impartial justice, now and forever, is an abstraction more profound and precious than a soaring Dow and a plummeting deficit. I vote as I do because I will not stand for the proposition that a President can, with premeditation and deliberation, obstruct justice and commit perjury before a grand jury. It cannot be.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR WILLIAM V. ROTH, JR.

Mr. ROTH. Mr. Chief Justice, the House of Representatives presented to the Senate two articles of impeachment alleging that the President of the United States committed "high crimes and misdemeanors" in the form of perjury and obstruction of justice. These are serious offenses, not unlike those which in the past have been sufficient to remove other Federal officials from office.

In deciding how to vote on the articles of impeachment, each Senator had to undertake a two-step analysis: first, to determine the facts—the conduct in which the accused engaged; and second, to determine whether that conduct constituted "treason, bribery, or other high crimes and misdemeanors," which, under the Constitution, require removal from office. This second step calls for the Senate to determine the facts and evaluate the effect of the conduct on the office and on the operations of government.

Having listened to the presentations made to the Senate by the House managers and by counsel for the President, it is my opinion that the President committed perjury and obstructed justice, and that this misconduct—based on constitutional definitions and historical precedents—meets the standard for convicting an official of an impeachable offense.

As the impeachment process is not a criminal proceeding, it is not necessary that the evidence shows that the accused is guilty of a criminal offense under the United States Code. The framers wrote the Constitution before Congress wrote, and then amended, the criminal code. Nor is it required that relevant facts be established to the same standard as in a criminal trial, as Congress cannot punish the President, other than to remove him from office. Simply put, the framers' objective was to provide a remedy to protect the American people and their institutions of government from an unfit officeholder. In view of this, I believe that such remedy is to be available if there is clear and convincing evidence to establish the underlying facts which demonstrate that an officeholder is unfit to serve.

In determining whether alleged conduct is a "high crime and misdemeanor," Senators must examine each case individually. They must consider the officeholder's position in government and look at the effect of the officeholder's conduct in light of the particular position he or she holds. The fact that the Senate has convicted and removed Federal judges for committing perjury does not necessarily mean that it should automatically remove a President who commits perjury. The precedents regarding Federal judges are instructive, but they are not conclusive.

The 1974 House Judiciary Committee Staff Report during the Nixon Impeachment Inquiry, drawing on two centuries of precedents, explains this concept in connection with a Presidential impeachment. The report states that the impeachment of the President should be "predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office." In other words, Congress must determine whether the particular misconduct in which President Clinton engaged is serious enough to warrant removal from that particular office. This is what I call the "incompatibility" test.

The "incompatibility" test requires Senators to exercise their expertise in, and knowledge of, government and to use their best judgment, focusing on the offenses committed and the effect of those offenses on the office and on the operation of government. It is this kind of threat to the Republic which we must evaluate in applying the "incompatibility" test. Accordingly, under this test we should focus on the unique nature of the Presidency and the offenses the President committed.

The Constitution created three separate branches of government in order to limit the powers of government and to enhance the liberty of the American people. Each branch is supreme in its own area but must respect and defer to the others, when they are operating in their assigned areas. Reduced to the simplest characterization, the legislature makes the laws, the executive executes the laws, and the judiciary interprets the laws and dispenses justice. As the head of the executive branch, the President stands alone as the official responsible for executing the laws of our country.

The duty of a branch to respect the other branches is a duty that can only be carried out by Federal officeholders. It cannot be borne by private citizens. And it is fundamental to the operations of the Federal Government. Our government could not function if the branches did not respect one another. I believe President Clinton violated this fundamental duty to respect the judicial branch by subverting its function.

When a private citizen sued President Clinton under our civil rights statutes, the President took the position that he was unique in our system of law and could not be sued while President. When the Supreme Court ruled 9–0 that the President could be sued, the President decided to frustrate the judicial process while appearing outwardly to comply with the requirement of our constitutional plan. As a practical matter, he sought to veto this Supreme Court decision.

The evidence shows that he undertook a deliberate and multifaceted plan to thwart the Supreme Court ruling. That plan included the commission of perjury and obstruction of justice, which are very serious and fundamental wrongs. Even worse is that his conduct was conscious and calculated. It was not a mistake of the moment. Rather he deliberated and chose to commit perjury. He deliberated and chose to obstruct justice. In making these conscious and calculated choices, he placed his personal and political interests above his Presidential duty to respect the judicial branch.

This is what concerns me greatly. If the President is willing to place his personal and political interests above his duties as President, he is not fit for the office he holds.

The President has, as one branch of the Federal Government, a duty to respect the requirements of the judicial branch and its proceedings. The President has, as the Chief Executive, an express duty to take care that the laws be faithfully executed. In committing perjury and in obstructing justice, he exhibited an attitude dangerous to the operation of government—an attitude where he viewed himself as more important than the rule of law, where his personal and political interests took precedence over the public interest in administering equal justice under law.

Ours is a nation ruled by law, not by men, and not by personalities. The judgment that we render here will set a precedent for the ages. If Congress concludes that the Office of the Presidency should remain occupied by one who has sullied it with premeditated criminal conduct in violation of constitutional and legal duty, then it will have diminished America's right of self-defense against unfit officeholders, something that the framers specifically provided for in the Constitution.

A President who commits perjury before a Federal grand jury and obstructs justice poisons the well from which justice is administered. As far as I know, this President has the dubious distinction of being the first and only President in the history of the United States to lie directly to a Federal grand jury. After taking an oath to tell the truth, the whole truth, and nothing but the truth, he deliberately violated that oath. The first Chief Justice of the United States, John Jay, accurately stated that there is no crime more extensively pernicious to society than perjury. If the President commits perjury and we conclude that nevertheless he may remain in office, by what authority does any judge ask any litigant to swear under oath?

As far as I am concerned, this is not just an empty question that has no relevance in today's society. Every day, in courtrooms and grand jury rooms across the country, witnesses are asked to hold up their right hand and take an oath to tell the truth. The judicial process in the United States depends on the sanctity of that oath. The prosecutorial function of the United States depends on the sanctity of that oath. It is the cornerstone of our system of justice. We simply cannot allow people across the country to look at the conduct of our President and raise legitimate questions about whether they need to comply with their solemn oaths.

Moreover, how can judges refer violations of perjury or obstruction of justice to the executive branch for prosecution, when the Chief Executive himself has committed these offenses? On prior occasions, the Senate has removed judges for perjury because it was "incompatible" to ask litigants not to commit perjury in a courtroom presided over by someone who had himself committed perjury. A similar "incompatibility" exists where the sanction for perjury or obstruction of justice must be applied by the executive branch presided over by someone who has likewise committed these violations.

The President must be removed before the corrosive effect of his conduct eats away at the rule of law and undermines the legal sys-

tem. To imagine this President remaining in office brings to mind Alexander Pope's troubling question: "If gold should rust, what will iron do?" If our President commits perjury and obstruction of justice, what can we expect of our citizens?

The Senate should seek to protect the legal system from that threat. And that is why I voted to convict and remove William Jefferson Clinton from office.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CONRAD BURNS

Mr. BURNS. Mr. Chief Justice and my Senate colleagues, we now close one of the most serious chapters in the history of this Senate. While some may not agree with the outcome, and others may not like the way I voted, I'm satisfied the Constitution has been followed. We must now accept this verdict and try to work together without talk of revenge or gloating.

In reaching my conclusions, I asked myself two questions: Were the articles of impeachment proven, and if so, should the President be removed from office?

I believe the President perjured himself before a grand jury. He put the protection of his Presidency ahead of the protection of the institution of the Presidency. He gave false testimony about his efforts to keep other witnesses from telling the truth. We have already learned in our history that lies lead to more lies, and the pattern in this case led to perjury.

I also feel strongly that a case for obstruction of justice was proven conclusively. The Senate heard the many actions and motives of the President, and it was easy to connect the dots. Those dots reveal a clear and convincing case against the President.

I believe the President tampered with the testimony of witnesses against him; that he allowed his lawyers to present false evidence on his behalf; that he directed a job search for a witness in exchange for false testimony; and that he directed the recovery and hiding of evidence under subpoena.

Does this warrant the President's removal from office? I agree with my respected colleague, Senator BYRD, that this reaches the level of high crimes and misdemeanors, for a number of reasons: The President's actions crossed the line between private and public behavior when those actions legally became the subject of a civil rights lawsuit against him, and when he tried to undermine that lawsuit. His actions were an attack on the separation of powers between the executive and judicial branches when he abused his power in an effort to obstruct justice. Remember, he impeded a lawsuit the highest court in our land allowed to proceed on a 9–0 vote.

It's clear even to some of the President's supporters that he committed many of the offenses he has been charged with. But given this outcome, I hope for our system of justice and for our character as a nation that these votes are never seen as treating actions such as perjury and obstruction of justice lightly, whether by a President or by any citizen.

Our new world of communications has made more information available to us than ever before. But it also contributed to the media overkill that jaded the American people to this process long ago. When the Lewinsky story became public, the President conducted a poll in which he learned that Americans would tolerate a private affair, but not perjury or obstruction of justice. His goal from that point on to was to poison the well of public opinion. Once the focus shifted away from the facts and toward opinion, once the clatter and clutter echoed on 24-hour talk television, the President's goal was reached. But the facts remain, and they are not in dispute.

Montanans didn't send me to the Senate to be a weathervane, shifting in the wind, but to be a compass. It may be common to say the President's offenses don't "rise to the level of high crimes and misdemeanors," but I believe that would ignore our history and what we stand for as a nation.

That's why I also oppose censuring the President. The Constitution gives us one way to deal with impeachable offenses: a yes or no vote on guilt. Anything else would be like amending the Constitution on the fly and infringing on the separation of powers between the branches of government.

As we accept this outcome and move forward, we have plenty of time left ahead to help out Montana's farm and ranch communities, which is my top priority. We have time to save Social Security in a way that fixes the program without raising taxes. We have time to give control of education back to parents and teachers, and to give Federal funds to classrooms, not bureaucrats. We have time to cut the record burden of taxation on Montanans, many of whom are forced to take more than one job to make ends meet.

We should all roll up our sleeves and get to work.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JAMES M. INHOFE*

Mr. INHOFE. Mr. Chief Justice, in the absence of hearing something that I haven't heard or seeing something that is unforeseen up to now, it is my plan to vote for conviction on the two articles of impeachment.

I think this is probably the most important vote I will cast during the course of my lifetime. I say it very sincerely. I believe we are going to rise to the occasion.

I had an experience back in 1975, 24 years ago. I was a member of the State senate in Oklahoma. I can remember being called for jury duty, and I was very happy to find myself assigned to a murder case about which I had already expressed a definite opinion. I said I believed this defendant was surely guilty, and besides, I was the author of the capital punishment bill in the State legislature. So I thought for sure I wasn't going to be qualified as a juror.

Well, I went through the qualification procedure and somehow they qualified me. Five days later, I was the foreman of the jury

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*Sen. Inhofe submitted an additional statement on February 12, see p. 2987 below.

that acquitted that accused murderer. This can happen. It is an experience that taught me a lot about our judicial system.

I sometimes say one of the few qualifications I have for the U.S. Senate is I am not a lawyer. So that when I read the Constitution, I know what it says; when I read the oath of office, I know what it says; when I read the law, I know what it says. I don't have to clutter up my mind with what the definition of "is" is. So it makes it a little easier for me.

From a nonlawyer perspective, let me share a couple of observations.

First, insofar as perjury is concerned—lying under oath—I might be wrong, but I don't think there is a Senator in this Chamber who doesn't believe the President lied under oath.

I quote from the White House counsel, Charles Ruff, himself who said: "Reasonable people can believe the President lied under oath."

I quote from Senator CHUCK SCHUMER who said: "He lied under oath both in the Paula Jones deposition and what he said in the grand jury."

I quote from Representative ROBERT WEXLER, a strong supporter of the President, who serves on the House Judiciary Committee, who said: "The President did not tell the truth. He lied under oath."

I quote from former U.S. Senator Paul Simon, one of my favorite Democrat colleagues, who appeared with me on a television program before the trial, who said: "You have to be an extreme Clinton zealot to believe perjury was not committed."

Second, as a nonattorney, I have a hard time reconciling the idea that there might be certain permissible exceptions to telling the truth under oath. Maybe you who are attorneys, and have a different background than mine, see it differently. But how can you reconcile this idea that under some conditions—if the subject matter is sex or something else—you can lie under oath? I really have a hard time with this.

I know that morality is not supposed to be the issue here. We are supposed to concentrate on the two specific articles of impeachment. However, I don't think anyone can completely compartmentalize himself and totally disregard other things going on.

All of us get many, many letters from young children, parents, teachers, and others who are deeply distressed about the President's behavior and its impact on the moral health of the Nation. I think I am very fortunate because my kids are all in their upper thirties and my eight grandchildren, make that nine—I count them when they are conceived—are all under six, so I don't get those embarrassing questions. But I know many parents are struggling with this.

The other thing that concerns me is the reprehensible, consistent attitude this President has displayed over the years against women. Take Paula Jones as just one example. She may not win a popularity poll, but her civil rights have just as much standing as anyone else's, do they not? Is not our country based on the principle that even the least among us is entitled to equal treatment under the law?

It amazes me how these feminist organizations continue to hold this President in such high regard—groups such as the National

Organization for Women. I went back and read their bylaws. They claim to want to protect women with regard to "equal rights and responsibilities in all aspects of citizenship, public service, employment . . . including freedom from discrimination."

And here we have a President who not only misused his power to seduce a college-age intern, but who has also engaged in extensive similar misconduct outside of his marriage. It is not just Monica Lewinsky. There is Gennifer Flowers, Elizabeth Ward Gracen, Paula Jones, Kathleen Willey, Dolly Kyle Browning, Beth Coulson, Susan McDougal, Cristy Zercher—the list goes on and on.

This President has a consistent pattern of using and abusing women. You know that. I imagine most of you watched the Monica Lewinsky tapes as I did. I don't know why the House managers didn't pick this up—somehow they let it slip through—about when she told this story concerning the two security badges. She came here to Washington, this wide-eyed kid, and there is a blue badge that lets you get into the White House proper and a pink badge that lets you only into the Old Executive Office Building. And she wanted to be in there—in the West Wing—where she could see what was going on.

She had the pink badge so she had to be escorted to the West Wing by someone else. So the very first day she meets and talks to the President in person, he begins the relationship we're talking about. He didn't even know her name. And then he reached across and grabbed her pink badge, yanked it down, and said, "This is going to be a problem." I don't think there is anyone in the room who doesn't know what he was referring to. He was preparing to use this girl and abuse her and discard her like an old shirt. But I know that these are not things the lawyers expect us to consider.

I do want to give another observation, though. I thought the playing field would be very uneven when this trial started. The members of the Judiciary Committee who are the House managers are all lawyers. But mostly, they are Congressmen first. Many of these Congressmen-lawyers had not been in a courtroom for literally years. And here they were taking on the most prestigious, the most prominent, the most skilled, the most experienced, the highest priced lawyers anywhere in America. And yet when they finished with their opening statements, there was no doubt the House managers had risen superbly to the occasion, and I believe they have done a great job throughout.

The White House lawyers are very skilled, very persuasive people. I would make this observation—again, a nonlawyer observation: I felt that three or four of them should have quit their opening remarks about 5 minutes sooner than they did. They had a tendency to close their presentations with arguments that undermined their credibility.

Cheryl Mills, for example, was really doing well, and she was very persuasive until she started at the very last talking about the President's record on civil rights, as if the civil rights of a person his associates had dubbed as "trailer park trash" were not significant, or the dignity of the intern he had branded "a stalker" was not significant. I really think she destroyed her otherwise very persuasive presentation.

I think the same thing was true with Gregory Craig. He ended by talking about how conviction in this case would somehow "destroy a fundamental underpinning of democracy" by overturning the results of an election, as if Bob Dole would come in if that were to happen.

Even our good friend, Dale Bumpers—I knew Dale Bumpers long before I came here to the U.S. Senate—did a great job. But I think he should have quit early, too, because at the very last it sounded like he was predicating the innocence of this President on his foreign policy. And as I just look at Iraq and what is going on over there, I think if that had been the test for this, I could have made up my mind a lot earlier.

Another perspective I bring to this is as chairman of the Armed Services Subcommittee on Readiness. Having been in the service myself, and knowing how important discipline is, I am very disturbed that we have so many cases where severe punishment is dealt to individuals who have engaged in conduct far less serious than that of the President. Consider:

Capt. Derrick Robinson, an Army officer, was caught up in the Aberdeen sex misconduct case and is serving time in Leavenworth for admitting to consensual sex with an enlisted person who was not his wife.

Delmar Simpson is serving 25 years in a military prison because a court-martial found that, even though his relationship with a female recruit was consensual, the power granted him by his rank made such consensual sex with a subordinate unacceptable. Think of the power granted this President by his rank.

Remember Kelly Flinn. She is not flying B–52s anymore. She was forced out the Air Force for lying about an adulterous affair.

Sgt. Maj. Gene McKinney, the Army's top enlisted man, was tried for perjury, adultery, and obstruction of justice—all concerning sexual misconduct. He was convicted of obstruction, but not before his attorney asserted at the trial how people in uniform rightly ask: "How can you hold an enlisted man to a higher standard than the President of the United States, the Commander in Chief?"

So I have looked at this and studied it. I think anyone who votes to acquit has to say that we are going to hold this President to a lower standard of conduct and behavior than we hold other people. I do not understand how they can come to any other conclusion.

My wife and I have been married 40 years. I have a thing called the wife test. You go home and when you want to get an opinion that is totally apolitical, you ask your wife. So I went home and I presented the case—as explained so eloquently by the White House lawyers and others—on why we could have a lower standard of conduct for a President than we have for a judge. And I know the argument. And I expressed the argument to my wife in the kitchen. I said, there are a thousand judges, only one President. I went through the whole thing. Then she looked up and said, "I thought the President appointed the judges." You know, my wife is so dumb, she is always asking me questions I can't answer.

I really believe that in this case we are getting at the truth. I really believe that the President of the United States should be held to the very highest of standards.

Winston Churchill said: "Truth is incontrovertible. Ignorance may deride it, panic may resent it, malice may destroy it, but there it is."

I think we have seen the truth. And I think the final truth is that this President should be held to the very highest of standards.

Sometimes when I am not really sure I am right, I consult my best friend. His name is Jesus. And I asked that question. Now I will quote to you the response that is found in Luke: "From one who has been entrusted with more, much more will be asked."

Mr. Chief Justice, I think Jesus is right.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR MAX CLELAND

Mr. CLELAND. Mr. Chief Justice, inasmuch as the impeachment trial of the President has focused on the importance of oaths, I have begun to reflect on the oaths I have taken in my life. In terms of affirming my allegiance to this nation and the U.S. Constitution, I have taken an oath four times. I have followed up each oath with my signature.

The first such oath I took was when I was 21 years old. I was sworn in to the U.S. Army as a young Second Lieutenant. Later I followed my flag and my Commander in Chief in being a part of the armed military forces in the Vietnam war.

After the war, I took another oath. This time I was sworn in as head of the Veterans' Administration under President Carter. I still remember that turbulent time after the Vietnam war when so many of my fellow veterans were returning from that conflict. The words from Abraham Lincoln's second inaugural address seemed to constantly echo in my mind: ". . . to care for him who has borne the battle and for his widow and his orphan." Having been wounded in Vietnam myself, I felt a grave responsibility to carry out my oath on behalf of my fellow veterans.

The next time I took an oath it was January 1997. It was on the occasion of being sworn into the U.S. Senate. As Vice President AL GORE swore the new Senators in, I placed my right elbow on my Bible and raised my left hand in an oath to defend the Constitution against "all enemies, foreign and domestic." Once in the Senate, I was fortunate to have been selected to follow distinguished former Georgia Senators Richard B. Russell and Sam Nunn in service on the Senate Armed Services Committee. I fully expected that any threat to our Constitution, our electoral process, or our delicately-honed system of checks and balances would come from outside our country, not from within.

I was wrong.

This leads me to my most recent oath to do "impartial justice" in the Senate in the impeachment trial of the President of the United States. In my personal view, this final oath, sealed with my signature in a book which will become part of the archives of American history, is a culmination of the other three oaths I have taken.

I have sworn to defend this country.

I have sworn to take care of its defenders.

I have sworn to uphold the Constitution for which my fellow defenders have suffered and died.

How can I now turn my back and ignore the challenge to that Constitution posed by this precedent-setting, first-time ever impeachment of an elected President of the United States?

I cannot.

When my name is called in regular order for my vote on the articles of impeachment, I will vote not guilty.

I have reached my decision after much effort. I have tried to keep an open mind and an open heart. I have attempted to search the depths of American history and the lore of our English forebearers for insight and guidance. I have counseled privately with experts on American history and constitutional law. I have met with knowledgeable sources inside and outside the government. I have personally listened to constituents in my State and throughout the Nation. I have talked to them on the phone, read their letters and scanned their e-mail. I have tried to weave an appropriate course through the barrage of media talk and the system of political reporters doing their duty.

I have given it my best shot.

I understand now what Alexander Hamilton meant when he predicted 212 years ago that individual Senators faced with an impeachment trial had the "awful discretion" of removing a President. Yet I believe Hamilton was correct when long ago he advocated placing his faith in the Senators, where he hoped to find "dignity and independence." I believe that under the circumstances the Senate has conducted itself appropriately, and has complied with Hamilton's standards of conducting an impeachment trial with "dignity and independence." I also believe the Senate should continue to follow the standards set by our Founding Fathers regarding the use of impeachment power. According to the founders as articulated in the Constitution, the impeachment clearly should be reserved for "bribery, treason or other high crimes and misdemeanors." This language did not just turn up in the Constitution overnight. The language grew and evolved over a period of months in Philadelphia in 1787.

One of the Founding Fathers who especially impressed me is George Mason. Mason had an interesting background. Like many of our country's early statesmen, he was from Virginia. For me, Mason is a bridge of insight into what the impeachment clause in the Constitution is all about.

Mason was a soldier. Indeed, he was an officer, a colonel. He, too, understood the grave responsibility of military leadership, of leading men in combat and in caring for them afterwards. He certainly knew about the gravity of his own personal oath. It was Mason, then, who articulated during the Constitutional Convention that the phrase in the Constitution regarding impeachment must be more fully fleshed out and should more appropriately read ". . . and other high Crimes and Misdemeanors against the state."

Here was a soldier of the American Revolution. Here was an officer in that Revolution working with his fellow statesmen charting out a course for the Nation's future. Here was a brother of the bond from Northern Virginia who wanted to make sure the actual constitutional language was clear that any impeachment must rise to

a high level. According to the thrust of Mason's argument, for an impeachment of the President to be legitimate, the impeachable offenses must pose a threat to the Nation itself. The committee which reviewed the language believed that the phrase "against the state" was redundant, and, in effect, assumed.

President Clinton has committed serious offenses. His personal conduct in this matter was, as I have said before, wrongful, reprehensible and indefensible. He has admitted to personal offenses, and will be appropriately judged for his misconduct elsewhere. In my judgement, under all the others I have taken under the U.S. Constitution, his offenses do not rise to the required level for impeachable offenses under the U.S. Constitution.

I will be voting against conviction and removal from office of the President on both articles because I do not believe that these particular charges reach the high standard for impeachment which I believe George Mason and the other founders intended: that such an offense must be conduct which threatens grievous harm to our entire system.

As the Senate concludes this trial, I am reminded of other words from Abraham Lincoln's second inaugural address: "with malice toward none, with clarity for all, let us bind up the Nation's wounds . . ." If Lincoln can say that as the Nation was concluding the most divisive time in our history, which ultimately resulted in the first impeachment trial of an American President, surely we can say that to each other and to our nation as we conclude this historical second impeachment trial.

It is time to end this trial.

It is time to let the President conclude the term he was elected to by the American people.

It is time to put an end to partisan bickering about the motives and conduct of all of those who have become involved in this sad episode.

It is time for us all to bind up the Nation's wounds.

It is time to get on with the business of the American people we were elected to conduct.

I ask that a supplement of my statement be printed in the RECORD.

Thank you.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE IMPEACHMENT OF PRESIDENT WILLIAM JEFFERSON CLINTON BY SENATOR MAX CLELAND

Mr. Chief Justice, let me begin by saying that the reason we are here today, the reason the U.S. Senate is being asked to exercise what Alexander Hamilton termed the "awful discretion" of impeachment, is because of the wrongful, reprehensible, indefensible conduct of one person, the President of the United States, William Jefferson Clinton. Indeed, I believe it is conduct deserving of the censure of the Senate, and I will support such a resolution when it comes before us.

The question before the Senate, however, is not whether the President's conduct was wrong, or immoral, or even censurable. We must decide solely as to whether or not he should be convicted of the allegations contained in the articles of impeachment and thus removed from office. In my opinion, the case for removal, presented in great detail in the massive 60,000-page report submitted by the House, in many hours of very capable but often repetitive presentations to the Senate by the House managers and the President's defense team, and in many additional hours of Senators' questioning of the two sides, fails to meet the very high standards which we

must demand with respect to Presidential impeachments. Therefore, I will vote to dismiss the impeachment case against William Jefferson Clinton, and to vote for the Senate resuming other necessary work for the American people.

To this very point, I have reserved my judgment on this question because of my constitutional responsibility and oath to "render impartial justice" in this case. Most of the same record presented in great detail to Senators in the course of the last several weeks has long been before the public, and indeed most of that public, including editorial boards, talk show hosts, and so forth, long ago reached their own conclusions as to the impeachment of President Clinton. But I have now heard enough to make my decision. With respect to the witnesses the House managers apparently now wish to depose and call before the Senate, the existing record represents multiple interrogations by the Office of the Independent Counsel and its grand jury, with not only no cross-examinations by the President's counsel but, with the exception of the President's testimony, without even the presence of the witnesses' own counsel. It is difficult for me to see how that record would possibly be improved from the prosecution's standpoint. Thus, I will not support motions to depose or call witnesses.

In reaching my decision on impeachment, there are a number of factors which have been discussed or speculated about in the news media which were not a part of my calculations.

First of all, while as political creatures neither the Senate nor the House can or should be immune from public opinion, we have a very precise constitutionally prescribed responsibility in this matter, and popular opinion must not be controlling consideration. I believe Republican Senator William Pitt Fessenden of Maine said it best during the only previous Presidential impeachment trial in 1868:

"To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not now on trial before the people, but before the Senate. . . . The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to 'do impartial justice according to the Constitution and the laws.' I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment if I violate my own. And I should consider myself undeserving of the confidence of that just and intelligent people who imposed upon me this great responsibility, and unworthy of a place among honorable men, if for any fear of public reprobation, and for the sake of securing popular favor, I should disregard the convictions of my judgment and my conscience."

Nor was my decision premised on the notion, suggested by some, that the stability of our Government would be severely jeopardized by the impeachment of President Clinton. I have full faith in the strength of our Government and its leaders and, more importantly, faith in the American people to cope successfully with whatever the Senate decides. There can be no doubt that the impeachment of a President would not be easy for the country but just in this century, about to end, we have endured great depressions and world wars. Today, the U.S. economy is strong, the will of the people to move beyond this national nightmare is great, and we have an experienced and able Vice President who is more than capable of stepping up and assuming the role of the President.

Third, although we have heard much argument that the precedents of judicial impeachments should be controlling in this case, I have not been convinced and did not rely on such testimony in making my decision. After review of the record, historical precedents, and consideration of the different roles of Presidents and Federal judges, I have concluded that there is indeed a different legal standard for impeachment of Presidents and Federal judges. Article II, section 4 of the Constitution provides that "the President, Vice President, and all civil officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Article III, section I of the Constitution indicates that judges "shall hold their Offices during good Behavior." Presidents are elected by the people and serve for a fixed term of years, while Federal judges are appointed without public approval to serve a life tenure without any accountability to the public. Therefore, under our system, impeachment is the only way to remove a Federal judge from office while Presidents serve for a specified term and face accountability to the pubic through elections. With respect to the differing impeachment standards themselves, Chief Justice Rehnquist once wrote, "the terms 'treason, bribery and other high crimes and misdemeanors' are narrower than the malfeasance in office and failure to perform the duties of the office, which may be grounds for forfeiture of office held during good behavior."

And my conclusions with respect to impeachment were not based upon consideration of the proper punishment of President Clinton for his misdeeds. During the impeachment of President Nixon, the report by the staff of the impeachment inquiry

concluded that "impeachment is the first step in a remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government." Regardless of the outcome of the Senate impeachment trial, President Clinton remains subject to censure by the House and Senate, and criminal prosecution for any crimes he may have committed. Whatever punishment President Clinton deserves for his misdeeds will be provided elsewhere.

Finally, I do not believe that perjury or obstruction of justice could never rise to the level of threatening grievous harm to the Republic, and thus represent adequate grounds for removal of a President. However, we must approach such a determination with the greatest of care. Impeachment of a President is, perhaps with the power to declare war, the gravest of constitutional responsibilities bestowed upon the Congress. During the history of the United States, the Senate has only held impeachment trials for two Presidents, the 1868 trial of President Johnson, who had not been elected to that office, and now President Clinton. Although the Senate can look to impeachment trials of other public officials, primarily judicial, as I have already said, I do not believe that those precedents are or should be controlling in impeachment trials of Presidents, or indeed of other elected officials.

My decision was based on one overriding concern: the impact of this precedent-setting case on the future of the Presidency, and indeed of the Congress itself. It is not Bill Clinton who should occupy our only attention. He already stands rebuked by the House impeachment votes, and by the words of virtually every Member of Congress of both political parties. And even if we do not remove him from office, he still stands liable to future criminal prosecution for his actions, as well as to the verdict of history. No, it is Mr. Clinton's successors, Republican, Democrat or any other party, who should be our concern.

The Republican Senator, Edmund G. Ross of Kansas, who "looked down into my open grave" of political oblivion when he cast one of the decisive votes in acquitting Andrew Johnson in spite of his personal dislike of the President, explained his motivation this way:

"In a large sense, the independence of the executive office as a coordinate branch of the government was on trial. . . . If . . . the President must step down . . . upon insufficient proofs and from partisan considerations, the office of President would be degraded, cease to be a coordinate branch of government, and ever after subordinated to the legislative will. It would practically have revolutionized our splendid political fabric into a partisan Congressional autocracy."

While our government is certainly on a stronger foundation now than in the aftermath of the Civil War, the basic point remains valid. If anything, in today's world of rapidly emerging events and threats, we need an effective, independent Presidency even more than did mid-19th century Americans.

While in the history of the United States the U.S. Senate has never before considered impeachment articles against a sitting elected official, we do have numerous cases of each House exercising its constitutional right to "punish its Members for disorderly behavior, and, with the concurrence of two-thirds expel a Member." However, since the Civil War, while a variety of cases involving personal and private misconduct have been considered, the Senate has never voted to expel a Member, choosing to censure instead on seven occasions, and the House has rarely chosen the ultimate sanction. Should the removal of a President be subject to greater punishment with lesser standards of evidence than the Congress has applied to itself when the Constitution appears to call for the reverse in limiting impeachment to cases of "treason, bribery and other high crimes or misdemeanors?" In my view, the answer must be no.

Thus, for me, as one U.S. Senator, the bar for impeachment and removal from office of a President must be a high one, and I want the record to reflect that my vote to dismiss is based upon a standard of evidence equivalent to that used in criminal proceedings—that is, that guilt must be proven "beyond a reasonable doubt"—and a standard of impeachable offense which, in my view, conforms to the founders' intentions that such an offense must be one which represents official misconduct threatening grievous harm to our whole system of government. To quote Federalist No. 65, Hamilton defined as impeachable "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself." As I have said before, I can conceive of instances in which both perjury and obstruction of justice would meet this test, and I certainly believe that most, if not all, capital crimes, including murder, would qualify for impeachment and removal from office. However, in my judgment, the current case does not reach the necessary high standard.

In the words of John F. Kennedy, "with a good conscience our only sure reward, with history the final judge of our deeds," I believe that dismissal of the impeachment case against William Jefferson Clinton is the appropriate action for the U.S. Senate. It is the action which will best preserve the system of government which has served us so well for over 200 years, a system of checks and balances, with a strong and independent Chief Executive.

In closing, I wish to address those in the Senate and House, and among the American public, who have reached a different conclusion than have I in this case. I do not question the sincerity or legitimacy of your viewpoint. The process itself pushes us to make absolute judgments—yes or no to conviction and removal from office—and the nature of debate yields portraits of complex issues in stark black-and-white terms, but I believe it is possible for reasonable people to reach different conclusions on this matter. Indeed, I recognize that, while my decision seeks to avoid the dangers of setting the impeachment bar too low, setting that bar too high is not without risks. I believe the House managers spoke eloquently about the need to preserve respect for the rule of law, including the critical principle that no one, not even the President of the United States, is above that rule. However, I have concluded that the threat to our system of a weakened Presidency, made in some ways subordinate to the will of the legislative branch, outweighs the potential harm to the rule of law, because that latter risk is mitigated by: an intact, independent criminal justice system, which indeed will retain the ability to render final, legal judgment on the President's conduct; a vigorous, independent press corps which remains perfectly capable of exposing such conduct, and of extracting a personal, professional and political price; and an independent Congress which will presumably continue to have the will and means to oppose Presidents who threaten our system of government.

By the very nature of this situation, where I sit in judgment of a Democratic President as a Democratic Senator, I realize that my decision cannot convey the nonpartisanship which is essential to achieve closure on this matter, one way or the other. Indeed, in words which could have been written today, the chief proponent among the Founding Fathers of a vigorous Chief Executive, Alexander Hamilton, wrote in 1788, in No. 65 of The Federalist Papers, that impeachments "will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by real demonstration of guilt or innocence."

I have, however, in making my decision laid out for you the standards which I believe to be appropriate whenever the Congress considers the removal from office of an elected official, whether executive branch or legislative branch. I will do my best to stand by those standards in all such cases to come before me while I have the privilege of representing the people of Georgia in the U.S. Senate, regardless of the party affiliation of the accused. I only hope and pray that no future President, of either party, will ever again engage in conduct which provides any basis, including the basis of the current case, for the Congress to consider the grave question of impeachment.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR BILL FRIST

Mr. FRIST. Mr. Chief Justice, I rise to explain my decision to convict President William Jefferson Clinton on two articles of impeachment charging him with high crimes and misdemeanors. I have heard from thousands of fellow Tennesseans during this trial, and their opinions were deeply split. While I looked to the people of Tennessee for guidance, responsibility for my final vote ultimately turned on my own conscience. I am sure that this will be one of the most important votes I cast as a U.S. Senator, and I am honored to explain fully my vote.

I sought throughout President Clinton's trial to be true to my oath to do "impartial justice according to the Constitution and laws of the United States." When I raised my right hand and swore that oath on January 7, I accepted a solemn responsibility. I did not ap-

proach this trial with some preordained outcome in mind; I carefully listened during the 5 weeks of this trial to the evidence and the arguments, and sought to do justice.

In considering the allegations against President Clinton, I believed that I should apply a "beyond a reasonable doubt" burden of proof—even though the Constitution does not specify a particular burden of proof in impeachment trials. The Constitution entrusts the decision to convict an impeached officer to the individual judgment of each Senator; however, I wanted to give the President the benefit of the same high standard of proof applied in criminal trials. I would remove a President from office only if the House managers met this rigorous burden of proof.

The jury instructions used in Federal courts explain what must be established to meet this burden of proof:

> Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is based on reason and common sense. It may arise from evidence, the lack of evidence, or the nature of the evidence.
>
> Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives.

In the end, I concluded beyond a reasonable doubt that President Clinton repeatedly lied under oath before a Federal grand jury. I also concluded beyond a reasonable doubt that he engaged in a calculated, premeditated campaign to obstruct justice. I now wish to address each of those articles of impeachment in turn.

The circumstantial and direct evidence demonstrates beyond a reasonable doubt that President Clinton committed perjury during his grand jury appearance. The criminal law of the United States forbids perjury before a grand jury. To prove a case of grand jury perjury, a prosecutor must demonstrate: (1) that the defendant testified under oath before a grand jury; (2) that the testimony so given was false in one or more respects; (3) the false testimony concerned material matters; and (4) the false testimony was knowingly given. There are three instances during the President's August 17, 1998, grand jury testimony in which these four elements were established.

First, he lied when he denied that he had "sexual relations" with Ms. Lewinsky, even under his own interpretation of the definition of that term. Quite simply, Ms. Lewinsky offered a detailed account of numerous times when they did engage in such relations, even under President Clinton's interpretation of that term. Her testimony is corroborated by contemporaneous accounts she offered to a number of friends and professional counselors. President Clinton conjured up a tortured definition of the term "sexual relations" to explain the blue dress, and its physical evidence corroborating sexual relations, to the grand jury—while still asserting the truthfulness of his earlier denial of "sexual relations" in his deposition in the Paula Jones sexual harassment suit. This attempt to have it both ways, in turn, forced him to lie before the grand jury about the details and nature of his relationship with Ms. Lewinsky. There is no doubt in my mind that President Clinton lied about this matter. Moreover, this lie was material; that is, it had the tendency to affect the grand jury's investigation. That investigation focused on President Clinton's possible perjury and obstruction of

justice in the Jones case. Lying to the grand jury to attempt to deny the earlier perjury in the Jones deposition was clearly material to that investigation.

Second, President Clinton lied to the grand jury about his attempt to coach Ms. Currie immediately following the deposition. This coaching, which I will discuss in more detail later, was explicitly denied by the President before the grand jury. His testimony that he made a series of false statements to Ms. Currie and sought her agreement with them merely in an attempt "to refresh [his] memory about what the facts were" and that he was "trying to get as much information as quickly as [he] could" is false. He did not ask her what she recalled; he made false declarations and sought her agreement with them. One cannot refresh one's recollection by making knowingly false statements to another. This is a classic example of why courts instruct juries to use their common sense in resolving factual disputes. Moreover, President Clinton coached her twice in the exact same manner: Once on January 18, 1998, and again on January 20 or January 21. He had just finished lying in his civil deposition on January 17, and he wanted to enlist her support for his lies if she was called by Paula Jones' lawyers—as she was on January 22. Again, this issue was plainly material to an investigation into President Clinton's possible obstruction of justice.

Third, President Clinton lied to the grand jury about attempting to influence the testimony of his aides whom he knew would be called before the grand jury. These allegations are discussed later. For now, it is only important to note that he testified that he "said to them things that were true about this relationship. . . . So, I said things that were true. They may have been misleading. . . ." In fact, he lied to his aides, as even Sidney Blumenthal stated in his videotaped deposition testimony. It is understandable that President Clinton would not admit to the grand jury that he lied to these aides, because to do so would admit that he obstructed justice. He could have asserted his fifth amendment right against self-incrimination; however, he chose to lie. He denied that he had lied to these aides. The Supreme Court has addressed just this sort of a lie, stating: "A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood."

The evidence establishes beyond a reasonable doubt that President Clinton obstructed justice. He suggested that Ms. Lewinsky submit a false affidavit in a civil case. He coached a potential witness, Ms. Currie, in the civil case and the grand jury investigation by repeating a series of assertions to her that he knew to be false in the hope that she would adopt those assertions as her own. Last, he made false statements to his top advisors, knowing that they would then repeat those statements to a Federal grand jury.

The United States Criminal Code makes it illegal for one to obstruct justice. The precise wording of the general obstruction of justice statute—title 18, section 1503 of the United States Code—provides: "Whoever . . . corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished. . . ." Courts have interpreted the word "corruptly" to mean that the defendant had an intent to obstruct, impair, or impede the due administration of jus-

tice. In other words, one need not use threats of force or intimidation to obstruct justice. Thus, one who merely proposes to a potential witness that the witness lie in a judicial proceeding is guilty of obstructing justice.

Also, an additional Federal statute, section 1512 of title 18, deals specifically with witness tampering. It provides: "Whoever . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person with intent to . . . influence, delay, or prevent the testimony of any person in an official proceeding . . . shall be fined under this title or imprisoned. . . ." Unlike section 1503, section 1512 has been interpreted as applying to more than just "pending" judicial proceedings; courts have found it adequate that a defendant "feared" that such a proceeding might begin and sought to influence the testimony of those who may be witnesses in such a proceeding.

With this statutory backdrop in mind, I turn first to the allegation that President Clinton urged Ms. Lewinsky to submit a false affidavit and deny their sexual relationship. The evidence establishes that he telephoned her between 2 and 2:30 a.m. on December 17, 1997. According to Ms. Lewinsky, President Clinton informed her that she was on the witness list in the Paula Jones sexual harassment lawsuit. He then suggested that, if she were subpoenaed to give a deposition, "she could sign an affidavit to try to satisfy [Ms. Jones's] inquiry and not be deposed." As has been pointed out, a truthful affidavit about their relationship would not have prevented her deposition; in fact, a truthful affidavit would have encouraged the deposition. Notwithstanding this obvious fact, President Clinton's lawyers vigorously asserted at trial that a "limited but truthful" affidavit could have misled the Jones lawyers sufficiently to avoid her being deposed.

The problem with this defense is that President Clinton on December 17, in the very same telephone conversation in which he suggested the affidavit, also encouraged Ms. Lewinsky to continue with the "cover stories" they had used to hide their relationship. According to Ms. Lewinsky, he told her that she "should say she visited [the White House] to see Ms. Currie and, on occasion when working at [the White House] she brought him letters when no one else was around." Of course, Ms. Lewinsky was going to the White House to see President Clinton, and the only time she "brought him letters" was to cover their illicit rendezvous. These cover stories, hatched as explanations to prevent coworkers from discovering their sexual relationship, amounted to obstruction of justice when the President suggested their use in judicial proceedings. These cover stories ultimately found their way into drafts of Ms. Lewinsky's affidavit. The evidence establishes beyond a reasonable doubt that President Clinton was urging Ms. Lewinsky to file a false and misleading affidavit in the Jones case.

As one court has observed, conduct amounting to less than an explicit command to lie can nonetheless form the basis for an obstruction conviction: "The statute prohibits elliptical suggestions as much as it does direct commands." There is no reasonable doubt that President Clinton was suggesting that Ms. Lewinsky file an affidavit consistent with their previously-agreed upon cover stories.

Ms. Lewinsky testified that she understood after that conversation that she would deny their relationship to Paula Jones' lawyers.

The evidence also establishes beyond a reasonable doubt that President Clinton sought to tamper with the testimony of his secretary, Ms. Currie. Within a few hours of completing his deposition in the Jones case on Saturday, January 17, 1998, President Clinton called Betty Currie and made an unusual request: She should come to work to meet with him the following day, Sunday. Sunday afternoon, she met with him at her desk outside the Oval Office. Ms. Currie testified that he seemed "concerned." He told her that he had been asked questions the previous day about Ms. Lewinsky. According to Ms. Currie, he then said, "'There are several things you may want to know.'" After that, he made a series of statements: You were always there when she was there, right? We were never really alone. Monica came on to me, and I never touched her, right? You can see and hear everything, right? Monica wanted to have sex with me, but I told her I couldn't do that.

Ms. Currie further testified that, although President Clinton did not "pressure" her, she observed from his demeanor and the way he said these statements that he wanted her to agree with those statements. She did agree with each statement, though she knew them to be false or beyond her knowledge.

There is no reasonable doubt that this meeting was an attempt by President Clinton to coach Ms. Currie's probable testimony. In fact, during the previous day's deposition, President Clinton invoked Ms. Currie's name in relation to Ms. Lewinsky on at least six different occasions, even going so far as to tell Ms. Jones' lawyers that they would have to "ask Betty" whether he was ever alone with Ms. Lewinsky between midnight and 6 a.m. Simply put, he made her a potential witness in the Jones case. One who attempts to corruptly influence the testimony of a prospective witness has obstructed justice. In fact, the Jones lawyers issued a subpoena for Ms. Currie a few days after President Clinton's deposition.

President Clinton's assertion that he posed these statements to Ms. Currie merely to refresh his recollection and test her own memory of the events is undercut by his repetition of the coaching exercise a few days later. According to Ms. Currie, either 2 or 3 days later he called her in again, presented the same statements, with which she again agreed, and had the same "tone and demeanor" as he had during the Sunday coaching session. This amounted to egregious witness tampering.

Last, the unrefuted evidence establishes beyond a reasonable doubt that President Clinton obstructed justice by giving a false account of his relationship with Ms. Lewinsky to aides that, by his own admission, he knew might be called by the grand jury. John Podesta, then-deputy chief of staff to President Clinton, testified before the grand jury about a conversation with President Clinton on January 23, 1998:

> [H]e said to me he had never had sex with her [Ms. Lewinsky], and that—and that he never asked—you know, he repeated the denial, but he was extremely explicit in saying he never had sex with her. . . .
>
> Well, I think he said—he said that—there was some spate of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever—that they had not had oral sex.

This, as we now know, was false. Yet, according to Mr. Podesta, President Clinton "was very forceful. I believed what he was saying."

More important, on January 21, 1998, President Clinton told aide Sidney Blumenthal the following utterly false story:

> He said, "Monica Lewinsky came at me and made a sexual demand on me." He rebuffed her. He said, "I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again."
>
> She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be a stalker anymore.

This story is eerily reminiscent of President Clinton's coaching of Betty Currie. "Monica wanted to have sex with me, but I told her I couldn't do that." President Clinton sought to portray himself as a victim of Ms. Lewinsky. At the time, Mr. Blumenthal "certainly believed his story. It was a very heartfelt story, he was pouring out his heart, and I believed him." Mr. Blumenthal admitted to the Senate that he now knows the President's story was a lie.

President Clinton does not deny the testimony of either Mr. Podesta or Mr. Blumenthal. Their testimony establishes a clear-cut case of obstruction. The President admitted knowing that both were likely to be called to testify before the grand jury. According to their testimony, he provided them with a false account of his relationship with Ms. Lewinsky—and President Clinton does not deny their version of events. The unrefuted evidence establishes obstruction of justice. As the Second Circuit Court of Appeals has stated: "The most obvious example of a section 1512 [witness tampering] violation may be the situation where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it before the grand jury."

I did not vote to convict President Clinton on every ground presented by the House managers. For example, though I was concerned that the intensification of efforts to secure Ms. Lewinsky a private sector job were undertaken to influence her testimony, and secure a false affidavit from her, I had reasonable doubt that there was a sufficiently direct nexus between the two to justify finding against President Clinton on that basis. The videotaped testimony of Vernon Jordan nearly made the case, but fell just short. Accordingly, I did not consider that element of the obstruction of justice case to be grounds for removing President Clinton.

Another serious allegation of obstruction of justice concerned the mysterious fact that subpoenaed gifts from President Clinton to Ms. Lewinsky were found underneath Ms. Currie's bed. The evidence tends to establish that President Clinton directed Ms. Currie to get gifts from Ms. Lewinsky; however, I cannot say that the proof establishes beyond a reasonable doubt that this occurred. In the absence of hearing directly from Ms. Currie as a witness on this issue and having the chance to look her in the eye and gauge her credibility, I cannot resolve beyond a reasonable doubt the testimonial conflict between Ms. Lewinsky and Ms. Currie on who initiated the return of the gifts. The weight of the evidence suggests that Ms. Currie initiated the return on instructions from President

Clinton; however, without Ms. Currie's testimony, I cannot say that case has been proven "beyond a reasonable doubt."

For this reason, I am disappointed that the Senate chose to cut itself off from hearing from whatever fact witnesses either side wished to call. I voted to allow live testimony, but the motion was unsuccessful. Although there was ample evidence upon which to convict for many allegations, some allegations remain in doubt. Rather than have a traditional trial, we listened to lawyers argue, then argue some more, and then a bit more. The only time we actually had a chance to see witnesses was when we were allowed to see the videotapes of Ms. Lewinsky, Mr. Jordan, and Mr. Blumenthal. I learned from those tapes. The presence of live witnesses in accord with Senate precedent would have been helpful. I regret that the Senate chose not to allow live witnesses and that we did not see their cross-examination. We did not use the most powerful weapons in our truth-seeking arsenal. This truncated "trial" may have been politically expedient, but I doubt history will judge it kindly.

Having found that President Clinton committed the crimes of perjury and obstruction of justice, my duty to uphold the Constitution of the United States made it clear that these offenses were high crimes and misdemeanors requiring his removal from office. There is no serious question that perjury and obstruction of justice are high crimes and misdemeanors. Blackstone's famous Commentaries—widely read by the framers of the Constitution—put perjury on equal footing with bribery as a crime against the state. Perjury was understood to be as serious as bribery, which is specifically mentioned in the Constitution as a ground for impeachment. Today, we punish perjury and obstruction of justice at least as severely as we punish bribery. Apparently, the seriousness of perjury and obstruction of justice has not diminished over time.

Indeed, our own Senate precedent establishes that perjury is a high crime and misdemeanor. The Senate has removed seven Federal judges from office. During the 1980s, three judges were convicted for the high crime and misdemeanor of perjury. Federal judges are removed under the exact same constitutional provision—article II, section 4—upon which we remove Presidents. To not remove President Clinton for grand jury perjury lowers uniquely the Constitution's removal standard, and thus requires less of the man who appoints all federal judges than we require of those judges themselves.

I will have no part in the creation of a constitutional double-standard to benefit the President. He is not above the law. If an ordinary citizen committed these crimes, he would go to jail. Many Senators have voted to remove Federal judges guilty of perjury, and I have no doubt that the Senate would do so again. Those who by their votes today confer immunity on the President for the same crimes do violence to the core principle that we are all entitled to equal justice under law.

Moreover, I agree with the view of Judge Griffin Bell, President Jimmy Carter's Attorney General and a former judge of the United States Court of Appeals, Fifth Circuit. Judge Bell has stated: "A President cannot faithfully execute the laws if he himself is breaking them." These offenses—perjury and obstruction of justice—are

not trivial; they represent an assault on the judicial process. Again, Judge Bell's words are instructive:

> Truth and fairness are the two essential elements in a judicial system, and all of these statutes I mentioned, perjury, tampering with a witness, obstruction of justice, all [are] in the interest of truth. If we don't have truth in the judicial process and in the court system in our country, we don't have anything. So, this is serious business.

I agree. The crimes of perjury and obstruction of justice are public crimes threatening the administration of justice. They therefore fit Alexander Hamilton's famous description of impeachable offenses in Federalist No. 65: "[O]ffences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust." The electorate entrusted President Clinton to enforce the laws, yet he chose to engage in a pattern of public crime against our system of justice. We must not countenance the commission of such serious crimes by the Chief Executive of our Nation.

The President broke his oath to tell the truth, the whole truth, and nothing but the truth, so help him God. He likewise broke his oaths to take care that the laws be faithfully executed.

Just how important are oaths? We take oaths to substantiate the sanctity of some of our highest callings. Years ago, I took the Hippocratic Oath to become a physician. In January 1995, I took an oath of office as a U.S. Senator to preserve, protect, and defend the Constitution of the United States. Then, just last month, I had to take a special oath of impartial justice for this impeachment trial. Raising your right hand and swearing before God is meant to be serious business. Swearing falsely is equally serious. I recall the conclusion of the Hippocratic Oath:

> If I fulfill this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.

President Clinton broke his oaths; the opposite of honor and fame should be his lot.

Many of my colleagues have publicly expressed their belief that President Clinton broke his oaths and committed the crimes of perjury and obstruction of justice. Some have gone further and said that these are high crimes and misdemeanors. Yet they flinched from removing President Clinton from office, hoping that we could just move on, put this behind us, and "heal" the Nation.

Although our acquittal of President Clinton may bring initial relief at the end of this ordeal, it will also leave unfortunate, lasting lessons for the American people: Integrity is a second-class value; the hard job of being truthful is to be left to others; and virtue is for the credulous. Though we do not know how these lessons will manifest themselves over time in our society, they will not be lost. Thus, I do not believe the acquittal of President Clinton will heal the wounds of this ordeal; rather, acquittal regrettably will inject a slow-acting moral poison into the American consciousness.

There is one aspect of the case that made me uncomfortable: The perjury and obstruction of justice arose out of an illicit sexual relationship between President Clinton and a young White House intern. President Clinton no doubt sought to shield the knowledge of that relationship from his family and staff, and that impulse is un-

derstandable. However reprehensible his affair might be, both it and his efforts to hide it were originally of no concern to the public or the Senate. None of us can claim to be free from sin.

What began as an attempt to keep an affair secret from family and coworkers, however, escalated into illegal activity when keeping that affair secret trumped the civil rights of Paula Jones to seek redress in court, and, in turn, thwarted the investigation of a Federal grand jury. President Clinton chose to cheat. Cheating the judicial process, whether to keep an ordinary citizen from having her day in court or to avoid criminal indictment, is wrong.

Dr. William Osler was a late 19th century physician and is regarded as the father of modern surgery. In a lecture to his medical students about the pursuit of truth, he said:

> Start with the conviction that absolute truth is hard to reach in matters relating to our fellow creatures, healthy or diseased, that slips in observation are inevitable even with the best trained faculties, that errors in judgment must occur in the practice of an art which consists largely in balancing probabilities.
>
> Start, I say, with this attitude of mind, and mistakes will be acknowledged and regretted; but instead of a slow process of self-deception, with ever-increasing inability to recognize truth, you will draw from your errors the very lessons which may enable you to avoid their repetition.

President Clinton's repetition of wrong, often illegal choices most disturbs me. He faced a series of choices about his affair once our system of justice became concerned with it. He could have come clean in the civil deposition and urged Ms. Lewinsky to do the same. He did not. When the story became public, he could have then come clean to the American public and revised his deposition testimony. Instead, he took a poll. Having learned that the American people would forgive him for adultery, but not for perjury or obstruction of justice, he declared that he would just have to "win." He then wagged his finger at us on national TV and chided us for believing what has since proven true. He embarked on a quiet smear campaign against Ms. Lewinsky, calling her a "stalker" and sending aides into the grand jury to repeat that mean-spirited falsehood. Above all else, he could have come clean when he went before the grand jury. Indeed, the discovery of the infamous blue dress served as a powerful reminder to tell the truth. But he continued to lie.

The pattern of behavior is disturbing. That pattern is driven by President Clinton's choice, on every occasion in this saga, to put his self-interest above the the public interest. Indeed, President Clinton is well down the dangerous road Dr. Osler described to his students: "A slow process of self-deception."

To me, his perjury before the grand jury was defining. Some of my fellow Senators urged him not to lie in that grand jury, lest he be impeached. He had a chance to try to set matters right by the American people and by our system of justice. Instead, he lied. It has been said, "Character is what we know about ourselves. Reputation is what others know about us." What we now know about President Clinton's conduct before the bar of justice illuminates his integrity: We learned that he always cheated and put himself above the law. We can pray that God will forgive President Clinton for his sins, but we cannot ignore the consequences of his behavior to our society.

We in the Senate faced the difficult choice of deciding whether to remove President Clinton. To find him not guilty of perjury and obstruction of justice and leave him in office would corrode the respect we all have for the office of President. More troubling, the example to our youth would be destructive. I have three sons, 15, 13, and 11 years old. As anyone with children knows, President Clinton's conduct has undermined all our efforts to instill in our children two essential virtues: truthfulness and responsibility. If we allow a known perjurer and obstructor of justice to continue in the office of President and lead us into the 21st century, we set a sad example for future generations.

In a recent sermon on the topic, "What Do I Tell My Children about the Crisis in Washington?" a minister quoted from Michael Novak's book "The Experience of Nothingness":

> The young have a right to learn a way of discriminating right from wrong, the posed from the authentic, the excellent from the mediocre, the brilliant from the philistine, the shoddy from the workmanlike. When no one with experience bothers to insist—to insist—on such discrimination, they rightly get the idea that discernment is not important, that no one cares either about such things—or about them.

President Clinton committed perjury and obstructed justice. In so doing, he broke his oath of office and his oath to tell the truth. He broke the public trust. I took an oath to do impartial justice by the Constitution and laws of our country. I had a duty to the Constitution and laws of this Nation to convict President Clinton, so I voted to remove him from office and restore the trust of the American people in the high office of President. Prosperity is never an excuse to keep a President who has committed high crimes and misdemeanors.

Though many of my colleagues agreed with these conclusions, two-thirds of the Senate did not. I am concerned about the message this acquittal will send to our youth. So I am convinced that you and I now have a shared duty: Rather than give in to easy cynicism, we should work toward integrity and responsibility in all that we do. We must remind our children that telling the truth and accepting responsibility for wrongdoing are virtues with currency. Our Nation's future depends on how earnestly we fulfill that shared duty.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JIM BUNNING

Mr. BUNNING. Mr. Chief Justice, this is my first speech on the floor of the U.S. Senate. I had hoped my opening speech would be about Social Security. This year, in my opinion, we have a golden window of opportunity to reform and strengthen this vital program and I had hoped to use my first comments on the Senate floor to help open the debate on real Social Security reform.

Unfortunately, it didn't turn out that way. Of necessity, my opening speech in this body is about the articles of impeachment against President Clinton. It was not my choice!

In fact, none of us have much choice in this matter. Here in the U.S. Senate, we have been charged with the responsibility of look-

ing at the facts as presented by the managers from the House of Representatives. Each of us took an oath to do impartial justice.

And the Constitution doesn't give us much wiggle room when it comes to choices. The framers were pretty explicit about our options. If we determine that the President is guilty of the charges as outlined in the two articles of impeachment, the penalty is removal from office. We have no other choice.

Because we are all political animals, I think it is natural that the legitimacy of this process and the outcome of this debate will be clouded to some degree by the perception that it is a partisan exercise.

Many of the President's defenders and many of our friends in the media, in fact, have insisted all along that the whole process has been driven by partisan Republicans who are intent to removing a Democratic President they do not like from office.

The difficulty you run into when you start throwing around the term "partisan" politics is that it is seldom a one-way street.

Is it any more "partisan" to blindly support the impeachment of a President of the other party than it is to blindly support a President of your own regardless of the facts? Of course not. Just as each of us, in keeping with our oath to do impartial justice, must strive to avoid a partisan, knee-jerk solution to the process, we must also not let ourselves be deterred from doing what we feel is right simply to avoid charges of partisanship.

So, hiding behind the charge that the process has been tainted by political partisanship gives us no relief from our responsibility to look at the facts nor does it expand our choices.

So, it is the facts that matter. And each of us must weigh them individually. We are not talking about public opinion polls. They should have no bearing on the case at this point. It is a question of facts pure and simple.

Each of us must weigh those facts individually. We might reach different conclusions. But if I determine that the President is guilty, and if you determine that the President is guilty, based on those facts we don't have any options. We must vote to convict and to remove the President from office.

I am personally convinced that the President is guilty under both of the articles of impeachment presented to us by the House managers.

The managers from the House have presented a strong case that President Clinton committed perjury. The circumstantial and supporting evidence is overwhelming that Bill Clinton did lie under oath to the grand jury when he testified about his attorney's use of a false affidavit at his deposition. He lied under oath to the grand jury when he testified about the nature of his relationship with Ms. Lewinsky. He lied under oath about what he told his aides about his relationship with Ms. Lewinsky. He lied under oath to the grand jury about his conversations with Betty Currie.

That is perjury. That is a felony. We cannot uphold our reverence for the rule of law and ignore it.

The circumstantial and supporting evidence is also overwhelming that the President did willfully obstruct justice when he encouraged Ms. Lewinsky to file an affidavit in the Jones case; when he

coached Betty Currie on how to respond to questions about his relationship with Ms. Lewinsky.

When he lied to aides whom he knew would be called as grand jury witnesses, when he promoted a job search for Ms. Lewinsky, and when he encouraged Ms. Lewinsky to return the gifts he had given her, he was attempting to obstruct justice.

After listening to the facts and the evidence, and after listening to the President's defense team try to refute the charges, I have determined that he is guilty as charged.

I have tried to the best of my ability to reach this determination impartially without being biased by my political affiliation. Have I been successful? I believe so.

I am encouraged in the belief that I have reached the proper conclusion for the proper reasons by the harsh wording of the resolution being circulated by some of the defenders of the President, Senators who oppose impeachment but support a censure resolution.

The most recent version of a censure resolution that I have seen admits that the President engaged in shameless, reckless and indefensible conduct. It goes on to say that the President of the United States deliberately misled and deceived the American people and officials of the U.S. Government.

It also says that the President gave false or misleading testimony, and impeded discovery of evidence in judicial proceedings and that, as a result, he deserves censure.

These are the people who are opposed to the articles of impeachment.

The Constitution doesn't really give us that kind of choice. If the President is guilty of these charges, he must be convicted and he must be removed from office. Censure is not an option.

I would rather be speaking about Social Security but I wasn't given a choice in the matter.

I would prefer not to vote to convict any President of articles of impeachment. But I don't have a choice in that matter either.

If he is guilty, he must be convicted. And I believe he is guilty as charged.

There is one central, elemental ingredient that is necessary to the success of our ability, as a nation, to govern ourselves. That is trust.

Before a President takes office, he swears a solemn oath to "preserve, protect, and defend the Constitution of the United States."

We accept his word on that.

When the Vice President, U.S. Senators and Members of the House of Representatives take office, they are required to take an oath "to support and defend the Constitution of the United States against all enemies, foreign and domestic."

We trust that they will live up to that oath.

We administer these oaths and we accept them as binding because government, at least in this Nation, is, above all else, a matter of trust. Trust is the glue that holds it all together. If that trust is destroyed or tarnished, it seriously undermines the basic foundations of our government.

The President's defenders try to excuse him by saying that if he did lie under oath and obstructed justice, he did it to protect him-

self and his family from personal embarrassment about sexual indiscretions, and somehow this makes the lies all right.

It doesn't. When he lied and when he tried to hide his lies from the grand jury, he broke trust with the Nation's justice system. He broke faith with the American people.

Not only did he break the law, he also violated the sacred trust of the office of the President, and in so doing, he violated his oath of office. And that raises the two articles of impeachment to a level that definitely justifies his removal from office.

It is a matter of trust. It leaves us no choice but to vote for conviction.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR RICHARD J. DURBIN

Mr. DURBIN. Mr. Chief Justice, from the opening statement to the closing argument, Chairman HENRY HYDE and the House managers stated repeatedly that what is at stake in this trial is the rule of law.

In a compelling reference to the life of Sir Thomas More, Mr. HYDE quoted from "A Man for All Seasons" by Robert Bolt to remind us that More was prepared to die rather than swear a false oath of loyalty to the King and his church. But Mr. HYDE did not read my favorite passage from that work. Let me share it with you and tell you why I think it is important to us in this deliberation.

MORE. The law, Roper, the law. I know what's legal not what's right. And I'll stick to what's legal.

ROPER. Then you set Man's law above God's!

MORE. No far below; but let me draw your attention to a fact—I'm not God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate, I'm no voyager. But in the thickets of the law, oh there I'm a forester. I doubt if there's a man alive who could follow me there, thank God.

ALICE. While you talk, he's gone!

MORE. And go he should if he was the devil himself until he broke the law!

ROPER. So now you'd give the Devil benefit of law!

MORE. Yes. What would you do? Cut a great road through the law to get after the Devil?

ROPER. I'd cut down every law in England to do that!

MORE. Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—Man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.

Sir Thomas More's words remind us the law must be followed not only by the accused but also by the accusers.

Every day in America many who are accused of crimes are released because this government has violated their constitutional rights—denied them due process—forsaken the rule of law.

How American of us. We are prepared to release an accused because the accuser has not played by the rules, the rules of law.

The House managers built their case on one key question: Did the President respect the rule of law?

But the same managers who exalted the rule of law from their opening words would have us ignore the process which brought us to this moment:

An independent counsel in name only whose conduct before the House Judiciary Committee led Sam Dash, former Watergate counsel and Mr. Starr's ethics advisor, to resign in protest.

Listen to Dash's words to Kenneth Starr in his letter of resignation concerning Starr's appearance and testimony:

> In doing this you have violated your obligation under the Independent Counsel Statute and have unlawfully intruded on the power of impeachment, which the Constitution gives solely to the House. . . . By your willingness to serve in this improper role (advocating for impeachment) you have seriously harmed the public confidence in the independence and objectivity of your office.

Much has been made about the so-called pep rally which some House Democrats held for President Clinton at the White House after the impeachment vote. If you wonder how those Members could act in such an apparently partisan manner after the historic vote on December 19, 1998, I hope you will recall that the Republican Members of the House Judiciary Committee gave Mr. Starr nothing less than a standing ovation when he completed testimony which Mr. Dash characterized as "unlawful" and "improper."

Is it any wonder why the American people think this whole impeachment process reeks of partisanship and the excesses of the independent counsel have created a bipartisan sentiment to amend if not abolish that statute?

Did Mr. Starr respect the rule of law?

And the House Judiciary Committee—so anxious to complete its work in a lame-duck session that it would vote for impeachment without calling a single material witness. Then those same managers came to the Senate and argued justice cannot be served without live witnesses on the Senate floor.

When I listen to PAUL SARBANES recount the painstaking efforts to avoid partisanship during the impeachment hearing on President Nixon, it is a stark contrast to the committee process which voted these articles of impeachment against President Clinton.

Did the House Judiciary Committee respect the rule of law?

And the House of Representatives, an institution which I was proud to serve in for 14 years, was so hellbent on impeachment that it bent the rules, denied the regular order of business and refused the House a vote to censure this President so the majority would have a better chance to visit the disgrace of impeachment on his record.

Did the House of Representatives respect the rule of law?

But it would be too facile to dismiss this case simply because the process which brought us to this point is so suspect—too easy to discard the fruit of this poisoned tree.

Justice and history will not give us this easy exit. We must ignore the birthing of this impeachment and judge it on its merits.

First, let me stipulate the obvious. The personal conduct of this President has been disgraceful and dishonorable. He has brought shame on himself and his Presidency. No one—not any Senator in this Chamber nor any person in this country—will look at this President in the same way again.

I have known Bill Clinton for 35 years. I remember him as a popular student when we both attended Georgetown. And I know despite all of the talk about "compartmentalization" that this man

has suffered the greatest humiliation of any President in our history. I hope his marriage and his family can survive it.

But our job is not to judge Bill Clinton as a person, a husband, a father. Our responsibility under the Constitution is to judge Bill Clinton as a President, not whether he should be an object of scorn but whether he should be removed from office.

Did William Jefferson Clinton commit perjury or obstruct justice, and for these acts should he be removed from office?

When this trial began I believed that President Clinton's only refuge was in a strict reading of "high crimes and misdemeanors"—that James Madison, George Mason and Alexander Hamilton would have to serve as his defense team and save this President from removal.

The managers' case was compelling, but as the defense team rebutted their evidence I saw the charges of perjury crack, obstruction of justice crumble and impeachment collapse.

The managers failed in article I on perjury to meet the most basic requirement of the law: specificity. In the Andrew Johnson impeachment trial, Senator William Fessenden of Maine pointed out the unfairness of failing to name specific charges:

> It would be contrary to every principle of justice to the clearest dictates of right, to try and condemn any man, however guilty he may be thought, for an offense not charged, of which no notice has been given to him, and against which he has had no opportunity to defend himself.

Senator Fessenden understood the rule of law.

And by what standard should the President be judged?

When the House managers discussed the gravity of the case for impeachment, they said repeatedly: "These are crimes." But when asked why they failed to meet the most basic criminal procedural requirements of pleading and proof, Mr. Canady said: "This proceeding is not a criminal trial."

What is the difference between charging a crime and proving something less than a crime? The difference is known as the rule of law—a rule which requires fair notice and due process whether the accused is President or penniless.

How many times have we seen the House managers run into the brick wall of sworn testimony contradicting their charges? On gifts—Monica Lewinsky said hiding them was Betty Currie's idea—Betty Currie claimed it was Lewinsky's idea—neither of them claimed it was the President's idea. On the affidavit issue—the House managers could not produce one witness—not Lewinsky, not Jordan and not the President to support their charge of obstruction.

Time and again the House managers failed to prove their case—failed to produce testimony or evidence and at best played to a draw. I don't need to remind my colleagues in the Senate that playing to a draw on this field comes down in favor of the President.

The House managers failed to meet their burden of proof.

Let me say a word about witnesses. We have spent a lot of time on this issue. I do not know who came up with the limitation of three witnesses for the managers. But is there anyone in this Chamber who believes that Sidney Blumenthal was a more valuable witness to this case than Betty Currie?

Surely my colleagues in the Senate remember that the House managers spent 3 solid days building their obstruction of justice case on concealing gifts and tampering with witnesses. And Betty Currie was critical to the most credible charges against the President.

Then when the House managers were given a chance to call this key witness, they refused.

What can we conclude from this tactical decision? Let me read rule 14.15 from Instructions for Federal Criminal Cases.

> If it is peculiarly within the power of either the government or the defense to produce a witness who could give relevant testimony on an issue in the case, failure to call that witness may give rise to an inference that this testimony would have been unfavorable to that party. No such conclusion should be drawn by you, however, with regard to a witness who is equally available to both parties or where the testimony of that witness would be merely cumulative.
>
> The jury must always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Betty Currie was no help to the House managers in her deposition and they clearly concluded she was more likely to hurt than help their case if called as a witness. The key witness in the obstruction of justice charge never materialized and neither did the proof the House managers needed.

How will history judge this chapter in our history?

The House managers and many of my colleagues believe an acquittal will violate the basic American principle of equal justice under the law—they argue that acquitting the President will cheapen the Presidency—and imperil our Nation and its values.

I have heard my colleagues stand in disbelief that the American people could still want a man they find so lacking in character to continue as their President. William Bennett and his pharisaical followers have profited from books and lectures decrying the lack of moral outrage in our Nation against Bill Clinton.

I hope my colleagues will pause and reflect on this conclusion that the American people have somehow lost their moral compass—that the polls demonstrate our people have lost their soul—and that we, their elected leaders, have to impeach this President to remind the American people of the values—the integrity—the honor which is so important to our Nation.

May I respectfully suggest that those who appoint themselves as the guardians of moral order in America risk the vices of pride and arrogance themselves. Before we don the armor and choose our side in what Manager HYDE calls a "cultural war," let us not give up on the wisdom and judgment of the people we represent.

Like Abraham Lincoln, I am a firm believer in the American people. If given the truth they can be depended upon to meet any national crisis.

And the American people have this right. The President's personal conduct was clearly wrong. He has endured embarrassment and will spend the rest of his natural life and forever in the annals of history branded by this experience. The American people clearly believe that the process which brings him before us in this trial was too partisan, too unfair, too suspect.

What has occurred here is a personal and family tragedy—it is not a national tragedy which should result in the removal of this President from office.

In 1798, Thomas Jefferson wrote to James Madison: "History shows that in England, impeachment has been an engine more of passion than justice."

Jefferson feared that even our process for impeachment could be a formidable partisan weapon. He feared that a determined faction in Congress would use it ". . . for getting rid of any man whom they consider as dangerous to their views, and I do not know that we could count on one-third in an emergency."

In 1868, with the suffering and death of our Civil War still fresh in everyone's mind, this Senate came within one vote of impeaching a President who was viewed as too sympathetic to the vanquished South.

In 1999, after 6 years and millions of tax dollars spent in investigation of this President, I believe the Senate will once again cool the political passions, preserve the Presidency, protect the Constitution, and prove to Thomas Jefferson that his trust in this body and that great document was not misplaced.

I will vote to acquit William Jefferson Clinton on both articles of impeachment and support a strong resolution of censure to bring this sad chapter in American politics to a close.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JON KYL

Mr. KYL. Mr. Chief Justice, this case is about the rule of law—specifically, whether actions and statements of President Clinton in Federal court proceedings have done such harm to the rule of law that he should be removed from office. I conclude in the affirmative, and reluctantly vote to convict on both articles of impeachment.

Chairman HENRY HYDE observed that the House of Representatives had come to the Senate "as advocates for the rule of law, for equal justice under law, and for the sanctity of the oath." (145 CONG. REC. S221 (January 14, 1999).)

These are not just grand words.

The rule of law refers to our judicial process, which is governed by uniform standards and procedures that we say will always be guaranteed and applied fairly and equally. We are willing to submit ourselves to this process because we have worked hard for 210 years to ensure that it produces impartial justice for all.

Equal justice means that each of us, including the least among us, has rights that the state is bound to protect; and it surely includes the requirement that those who make the laws, including the President, must live under them like anybody else.

Oaths are essential to the rule of law because the judicial process is about seeking the truth; and that requires that we be able to trust what is said. The oath formalizes the commitment to tell the truth, and the whole truth—a commitment so important that its violation is itself a crime.

I believe there are two questions to be answered.

The first is whether the President impermissibly took the law into his own hands in a Federal civil rights case and 7 months later before a Federal grand jury in order to suppress the truth. The second question is whether, if the President did engage in the impeachable conduct, it is a breach serious enough to warrant removal from office.

The Constitution permits only one vote: to acquit or convict. This leaves some in the anomalous position of determining guilt on an impeachable offense, but having to vote to acquit because they deem the offense insufficiently serious to warrant removal. While the fact that the offense is impeachable should itself resolve the issue of "proportionality," I would not consider it impermissible to reach a contrary conclusion, as some will do in this case.

For my part, I answer both questions in the affirmative. The President "willfully provided perjurious, false, and misleading testimony" under oath to a grand jury and he "prevented, obstructed, and impeded the administration of justice." (H. Res. 611.)

While the House of Representatives asserted that the President's actions were criminal, violations of specific criminal statutes are not essential for wrongful conduct to constitute the "high crimes and misdemeanors" that demonstrate unfitness to continue as Chief Executive. Most authorities agree a President cannot be prosecuted while in office for crimes allegedly committed during his term. So, for example, whether a lie under oath would necessarily later result in a criminal perjury conviction cannot be known with certainty, and an impeachment trial is not an effective forum for establishing criminal guilt. It is conduct, not a proven crime, that is the basis for impeachment.

This is one of the reasons why it is clear that each Senator may apply his or her standard of proof—it need not be the criminal standard "beyond a reasonable doubt." (Senate Proceedings in the Impeachment Trial of Judge Claiborne, S. Doc. 99–48, p. 150.) Moreover, because the Senate constrained the House of Representatives as it did—by limiting the number of witnesses that could be deposed, by effectively foreclosing other discovery, and by precluding "live" testimony—it would be unfair to impose a "beyond reasonable doubt" standard.

The President's counsel argued that the Senate should not consider article I because the House of Representatives defeated a perjury count relating to the Jones civil action. But article I also included allegations of "perjurious, false, and misleading" statements in the Jones case; so the argument is meritless. Moreover, the President's falsehoods in the Jones civil suit also formed part of his strategy to obstruct justice.

What is striking about this case is the President's persistent, sustained, carefully calculated, deliberate, and callous manipulation of the judicial process for over a year.

Without attempting to summarize all of the evidence, I conclude that the President lied before the Federal grand jury about: (1) the nature of details of his relationship with Ms. Lewinsky; (2) his assertion that he told the truth in the Jones deposition; (3) the false and misleading statements that he allowed his lawyer to make to a Federal judge in the Paula Jones civil case; and (4) his corrupt

efforts to influence the testimony of his aides who were potential grand jury witnesses.

It seems clear to me that the President obstructed justice—that he corruptly: (1) encouraged Ms. Lewinsky to execute a false affidavit; (2) encouraged Ms. Lewinsky to lie if called as a witness; (3) encouraged Ms. Lewinsky to conceal gifts; (4) encouraged cooperation of Ms. Lewinsky through job assistance; (5) allowed his attorney to make false and misleading statements about the affidavit; (6) attempted to influence the testimony of his secretary, Ms. Currie; and (7) attempted to influence the testimony of other aides.

The final question is whether the President should be removed for his actions.

As a preliminary matter, there can be no doubt that perjurious, false, and misleading statements made under oath in Federal court proceedings are indeed impeachable offenses. The fact that the House of Representatives reached this conclusion, of course, establishes the precedent as to the kind of conduct in this case. But, it is also confirmed by the impeachment and conviction of Federal judges—of Judge Harry Claiborne, removed in 1986 for filing a false income tax return under penalty of perjury, of Judge Walter Nixon, removed in 1989 for perjury before a grand jury, and of Judge Alcee Hastings, removed in 1989 for perjury related to financial misconduct. I cannot agree with those colleagues who assert that there is a different standard for a President—that it would require a more egregious kind of perjury to remove a President than a judge. Nothing in the Constitution suggests such a double standard.

John Jay, the first Chief Justice of the United States, said "there is no crime more extensively pernicious to society" than perjury, precisely because it "discolors and poisons the streams of justice." (John Jay's charge to the Grand Jury of the Circuit Court for the District of New York, Apr. 5, 1792, in Marcus, ed., "The Documentary History of the Supreme Court of the United States, 1789–1800," Vol. 2, pp. 253, 255 (1988).)

As to obstruction of justice, on which there is no other direct precedent, Chief Justice Rehnquist, our Presiding Officer, in his history of impeachment, "Grand Inquests," wrote that "the counts relating to the obstruction of justice and to the unlawful use of executive power [by President Nixon] were of the kind that would surely have justified removal from office."

The House managers pointed out, accurately, that even though perjury and obstruction of justice are not specifically listed as impeachable offenses in the Constitution, the Federal Sentencing Guidelines treat these offenses more seriously than they do the crime of bribery—one of two specifically enumerated impeachable offenses. Significantly, where bribery is committed in connection with a judicial proceeding, such as bribing a witness in a case, its seriousness under the guidelines rises to that of perjury and obstruction. When misdeeds, in other words, take place in connection with a judicial process, to try to affect or control that process, they get extra attention in our legal system. They are not simply brushed aside. Far from it. Perjury and obstruction are like bribery; they are "other high crimes" by any reasonable construction.

The President's counsel argued that the President's conduct could not be impeachable because he did not abuse the power of his office in conducting "matters of state," and did not violate the public trust. But impeachable offenses are not limited to the President's conduct of "matters of state." If this were so, Richard Nixon could never have been impeached. If this were so, a twenty dollar bribe for a Senator to vote for a bill would be impeachable, while a million dollar bribe to cover up political dirty tricks would not be.

It simply cannot be, as some have argued, that the only impeachable offenses are those that can only be committed by the President. If a President commits murder, can he not be removed? Must we wait until his term is over to deal with his crime? It is clear that seriously wrongful official conduct is impeachable. But it is just as clear that impeachment cannot be limited to that.

It is not only the exercise of Presidential power but also the violation of a public duty that can constitute impeachable conduct. As the head of the executive branch, the President has the duty under article II of the Constitution to "take Care that the Laws be faithfully executed." The 1974 House Judiciary report on the "Constitutional Grounds for Presidential Impeachment" summarized that impeachment of a President can "be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office." (Staff of House Comm. on the Judiciary, 93d Cong., 2d Sess. (Comm. Print 1974), Constitutional Grounds for Presidential Impeachment, p. 27.) Surely the violation of constitutional obligations can constitute high crimes or misdemeanors for which the President may be impeached. And surely, such violation would constitute an abuse of trust by the Chief Executive.

By his oath of office and article II responsibilities, President Clinton is supposed to see that the sexual discrimination laws are faithfully executed. But he thought the Jones case was illegitimate, so he took the law into his own hands. His conduct in this case clearly violated his public duties, his oath, and the public trust. And it interfered with the proper functioning of another branch of the government.

The same is true for his deliberate efforts to impede legitimate discovery efforts in Federal court proceedings. Such action "is incompatible with . . . the constitutional form and principles of our government," as the 1974 House Judiciary report said. It simply cannot be that a President who wrongfully interferes with the proper functioning of another branch of our government by attempting to subvert justice in Federal court proceedings cannot be impeached because he did not do it as President, but, rather, as a citizen.

That the underlying conduct covered up is sexual, is, if anything, an aggravating not a mitigating factor. In sex-discrimination litigation, where there is frequently no corroboration for the plaintiff, a defendant who lies can easily subvert justice. Had the blue dress not been found, with its incontrovertible tangible evidence, I doubt Paula Jones would have gotten a dime in settlement.

Judgements about the severity of the impeachable conduct in this case will lead different Senators to reach different conclusions.

That is why some of us are willing to say reasonable people can differ. For those who fear the long-term consequences to the rule of law, however, I believe there can be only one result. Anyone who so willfully, callously, and persistently connived to deny the Federal court and grand jury the truth, and who used and abused the highest office in the land to advance his personal coverup is not only no longer worthy of trust—which all agree is essential to the conduct of his office—but also must be removed to avoid the perpetuation of a legal double standard. If Federal judges, such as Judges Claiborne, Nixon, and Hastings, are removed for similar conduct; if average Americans are imprisoned for it, can the rule of law long survive "special exceptions" for powerful people we like, or who are doing a good job, or who hold elective office? None of these rationalizations are defenses to illegal or impeachable conduct.

As I said, sexual harassment cases are precisely the kind of judicial proceedings that demand the maximum cooperation of and truth-telling by the defendant because of the lack of third-party witnesses or corroborating evidence. In these cases, justice is denied if obstruction, witness tampering, or perjury prevent the truth from coming out. Can anyone say this is not serious? To what standard of seriousness does it not rise? How many plaintiffs will have to lose their sexual harassment, domestic violence, or sexual assault cases because defendants lie and obstruct justice, and there is no blue dress to keep them honest, before it becomes serious?

An acquittal in this case will make it harder to deal properly with similar conduct in the future. We will be hard pressed to perpetuate a double standard, so the lowest common denominator of conduct will be established as the permissible norm. And this cannot help but weaken the ability of courts to enforce truth-telling and prevent obstruction of justice.

The precedent set by this case may not change the law overnight, but this unforgettable episode is now part of the institutional life of our country. The chief magistrate perverted justice and remained in power. The lesson is corrosive. Like water dripping on a rock, it eventually makes a deep hollow in the American justice system.

It is true the President could be sent to jail later. How does that validate his right to appoint judges and be head of U.S. law enforcement now? How does that square with his leadership of the armed forces right now, as our Commander in Chief? Should the standard for the President not be at least as high as for those he appoints and leads?

In the end, my colleagues who would censure rather than convict the President are right about one thing: the President's conduct is "unacceptable." But, if conduct is unacceptable, we cannot accept it—meaning, we have to do something about it that does not leave it stand. And under our Constitution that means removal of the President through conviction on the articles of impeachment.

HENRY HYDE closed the House case by warning that public cynicism is the greatest threat we face. Our failure to remove the President will only fuel the cynicism of Americans such as Louie Valenzuela of Glendale, AZ. He was quoted recently in a man-on-the-street interview about this case. "They talk about justice," he told the Arizona Republic. "They talk about doing the right thing," said Mr. Valenzuela. "But they always look the other way when

someone rich, famous or powerful does something wrong. Look at O.J. Simpson. Clinton will be next. Asi es. (That's just the way it is.)"

That is not the way it has to be. But how it is is up to us.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR ARLEN SPECTER

Mr. SPECTER. Mr. Chief Justice, colleagues, a great deal has been spoken in the Chamber about separation of powers and tomes have been written on it. And in reading the Constitution, article I, creating the Congress; and article II, the executive branch; and article III, the judiciary, we have seen the wisdom of limiting power through the separation of powers among the three branches of the Federal Government.

The one provision of the Constitution—the impeachment provision—reaches across that divide. It is my thinking that before the Congress can exercise the power of removal, especially of an American President, there has to be a very, very heavy burden of proof.

I had occasion, fairly recently, to go very deeply into the issue of separation of powers when I argued the Base Closing Commission case regarding the Philadelphia Navy Yard, which was unfairly closed—a subject that I will not amplify on—and I had an opportunity to appear before the Supreme Court.

In my two earlier speeches during the closed session on the motion to dismiss and the issue of depositions, I did end within the allotted time. But I will say that the Chief Justice is a good deal more tolerant here than in the Supreme Court. In the Supreme Court, when I argued the base closing case, I was cut off in mid-syllable. I didn't know that was possible. But with the forcefulness of the Presiding Officer, he was able to limit the speakers to the precise time allotted. I did not do well in the outcome of that case in the Supreme Court. I had done better on my previous appearances in the Supreme Court when I was representing the district attorney's office on law and order.

That sojourn into that case brought me into 200 years of reflection and analysis on case law on separation of powers, something that is not often done by practicing lawyers, and certainly not Senators. It instilled in me a very, very deep appreciation of separation of power.

So when I approached this case—and it has been the toughest case I have ever seen, and I think it has been a very, very intense drain on this body and all of us individually—the focus I had was: what is the burden that you ought to have to show if the Senate is going to remove a President? As I reviewed the evidence, I am not satisfied at all that that burden was met.

Perjury is a very tough offense to prove under the standards established by the Supreme Court of the United States in the famous Bronston case. Bronston was giving testimony in a bankruptcy proceeding in New York and was asked about bank accounts in Zurich, and said, "My company had a bank account for about 6 months," leading to the implication that he did not have a personal bank account when in fact he did. His conviction in the district court was

upheld by the Second Circuit, but reversed by a unanimous Supreme Court because the interrogator, the prosecutor, has to go further. You have to ask the last questions to prove perjury.

The President was very artful, very careful and full of guile as he wound his way through the grand jury proceedings. We heard the testimony again and again. The President said he told his aides, things that were true. Well, he didn't comment about the things that he told them that were false. But nobody said, "Did you tell them things that were false as well?" to set the stage for a perjury prosecution.

When asked about Monica Lewinsky—was he alone with her?—on a series of rambling answers he said he wasn't alone with her in the hallway. But that is not the end of the question. He wasn't alone with her in the hallway. But nobody followed up, and said, "Were you alone with her somewhere else?" which he was not asked. Had he been asked whether he was alone with her somewhere else and denied that, there may have been a record to establish perjury. On this record, he did not commit perjury under the Bronston case.

The testimony of Betty Currie we heard again and again and again. In late January 1998, Betty Currie testified that when the President gave her that series of questions, she thought the President was trying to lead her, to mold her testimony. Then when she came back to testify in July, she said, well, it was different on that occasion. She testified that the President gave her the option of either agreeing or disagreeing.

Betty Currie was not a witness in this proceeding. Her deposition was not even taken because of very, very restrictive rules which the U.S. Senate established for what the House managers could do. The House managers were on very, very sharp notice that if they asked for too many depositions, they might get none at all. They made their selection of witnesses and they left off Betty Currie.

Had House managers been able to present their case in the normal course of events, I daresay the proceeding would have been even faster. We heard some 12 days of speeches, 6 days of opening speeches; 3 and 3 on each side. We could have done that in 2 hours. We then spent 2 days propounding questions through the Chief Justice where we learned very, very little. We heard arguments on the motion to dismiss, and on depositions, and arguments on what to do about the witnesses on those videotapes. Again and again, we heard legal arguments, but we did not hear from witnesses.

We are bound by this record. It is my view that, on this record, the burden of proof has not been met, the kind of a burden that would have to be sustained, in my judgment, for the Senate to remove an American President.

One comment about mindset. The Senate really approached this matter as if it were a waste of time from the outset. There was an early effort to structure a vote to show that more than one-third of the Senators would not be for conviction and, therefore, to end it. Then when we had the vote on the motion to dismiss and 44 Senators voted to dismiss. It confirmed what we all knew; and that is that there would not be a two-thirds vote. I think that put a mindset in this body really not to conduct a trial.

The Constitution calls for a trial. The proceeding we had does not measure up in any way, shape or form to a trial. It is true that there are some few cases submitted on a record where judges are going to decide it. But a trial customarily requires witnesses. Had witnesses appeared on the floor of the U.S. Senate with examination and cross-examination, you would have gotten a feel for what happened here. If Betty Currie had appeared on the floor of the U.S. Senate, or even if her deposition had been taken, there could have been a clarification of inconsistencies in her two lines of questioning.

A word for the future: It would be my hope that if, as, and when the Senate has to revisit impeachment that it would be done differently. Senator LIEBERMAN made a suggestion on a December 20 television show that there ought not to be party caucuses, that there only ought to be joint caucuses. I have passed that recommendation on. I realized that given the history of the Senate and our party caucuses, that would be a very, very abrupt change.

But I came out of some of our party caucuses and walked over and talked to my friends on the other side of the aisle, the people who I had agreed with on many, many, many issues. We were just irreconcilably opposed, just totally opposed. My only conclusion was that it was the kind of argument and the kind of discussion on what happened in the caucuses—really choosing sides and having teams—as opposed to trying to make an analytical, judicial decision as to what was involved here.

So it is my hope that if we ever have to undertake this again we will do it differently.

My position in the matter is that the case has not been proved. I have gone back to Scottish law where there are three verdicts: guilty, not guilty, and not proved. I am not prepared to say on this record that President Clinton is not guilty. But I am certainly not prepared to say that he is guilty. There are precedents for a Senator voting present. I hope that I will be accorded the opportunity to vote "not proved" in this case.

We really end up, colleagues, very much, in my judgment, where at least I started on the matter. I had thought at the outset that this was not an appropriate case for impeachment because the requisite two-thirds would not be present, and had hoped that impeachment would be bypassed, but instead we would allow the President to finish his term of office, which I thought an inevitability, just as it has worked out that way, and that the criminal process would do whatever was appropriate after his term was finished; if indicted, if convicted, whatever a judge would have to say as to sentencing. I am still hopeful that the rule of law will be vindicated in that process.

We obviously have learned much from this proceeding. It is my hope that we will leave a mark to guide future Senates if we ever have to repeat this very, very trying sort of an experience.

The removal of an American President through impeachment carries a high burden of proof and persuasion. For conviction in the criminal courts on charges of perjury and obstruction of justice, the proof must be beyond a reasonable doubt. An extra measure of certainty is necessary to persuade the Senate that the national inter-

est mandates invoking the extraordinary remedy of removing the President.

The starting point is article II, section 4 of the Constitution:

> The President . . . shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.

From that language, there is reason to interpret "other High Crimes and Misdemeanors" as relating back to specific categories of offenses earlier enumerated, such as "Treason and Bribery"; but I think that is too limited. Nor do I agree with the simplistic definition that perjury and obstruction of justice, being felonies and therefore more serious than misdemeanors in the criminal law, are automatically impeachable offenses.

The framers did not foresee the circumstances before us. The omission of "perjury" and "obstruction of justice" from the enumerated offenses probably reflected the framers' thought that it would be unlikely that a President would be testifying under oath or be a participant in a judicial proceeding. Yet it is equally clear that perjury and obstruction of justice are serious crimes. For the President to commit either, he would be placing his own interest above his public duty and the people's interest in due process.

In 1970, then-Congressman Gerald R. Ford offered this definition:

> . . . an impeachable offense is whatever a majority of the House of Representatives considers to be at a given moment in history . . .

While that may state the raw power of Congress, it is too subjective to provide any real guidance. Instead, I look to the framers at the Constitutional Convention, "The Federalist Papers," and the English and U.S. impeachment cases.

Commenting on impeachment at the Constitutional Convention, James Wilson said:

> . . . far from being above the laws, he (the President) is amenable to them in his private character as a citizen, and in his public character by impeachment.

The President's attorneys have argued that the charges arise from private conduct unrelated to his official duties. The issue then arises whether his conduct is "in his public character" by virtue of his constitutional duty:

> . . . he (the President) shall take care that the Laws be faithfully executed . . . Article II, Section 3—

Such a public duty may be insufficient for impeachment under Alexander Hamilton's definition of impeachment in Federalist No. 65:

> . . . those offences (sic) which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

From Hamilton's statement, the conventional wisdom has evolved that impeachment is essentially a political question. The framers, cases and commentaries have not articulated a handy definition of "high crimes and misdemeanors."

Whether to impeach and convict transcends the facts and law to what is in the national interest at a specific time in the Nation's history on the totality of the circumstances.

Consideration of the national interest may include whether there is a clear and present danger to the integrity or stability of the national government; or whether the conduct is so vile or reprehensible as to establish unfitness for office; or whether the electorate has lost confidence in the President to the extent that he cannot govern.

The precedents and commentaries leave substantial latitude for Senators to establish their own standards. The ultimate definition may be analogous to Supreme Court Justice Potter Stewart's struggle to define obscenity when he concluded: ". . . perhaps I could never succeed in intelligibly doing so. But I know it when I see it."

The extreme partisanship of the impeachment proceeding in the House prejudiced the matter before it came to the Senate. While it takes two to tango or be partisan, somehow the House Republicans bore the brunt of the public disdain on the partisan charge. It was more than the party-line votes. The whole process was filled with rancor, acrimony and bitterness which contributed significantly to the public view that it was all politics without real substances.

It has been widely noted that there must be significant bipartisan support to remove a President. President Nixon's forced resignation occurred only when Republican elders like Senators Goldwater and Scott joined Democrats in urging his resignation.

In an early Sunday TV talk show on December 20, 1998, the day after the House sent the articles to the Senate, Senator JOSEPH LIEBERMAN and I appeared together on "Face the Nation" where he urged that there be no party caucuses but only joint caucuses. I recommended that to Senator LOTT in my memorandum of December 29 and urged that policy to colleagues on both sides of the aisle. Perhaps, it was too much to expect or even hope that would be done given the Senate's history and practice of party caucuses.

As noted in this floor statement, the Senate struggled to achieve bipartisanship, mostly without success, but we did avoid the rancor and bitterness which prevailed on the House side.

From the outset, the conventional wisdom was there would not be two-thirds of the Senate in favor of conviction. That pervasive view has cast a long shadow over the impeachment proceedings. When the Senate convened on January 6, there was immediate informal consideration on taking a test vote to determine if there were 34 Senators opposed to conviction which would end the matter. There appeared to be even more than that number so opposed who based their judgments on news media accounts. That trial balloon was abandoned when many Senators objected on the ground that the Constitution called for a trial and the Senate owed the House the constitutional deference to give the House managers a chance to prove their case.

In mid-November, I wrote in a New York Times op-ed article that impeachment should be bypassed and the President should be held accountable through the criminal process after his term ended. When the House of Representatives returned articles of impeachment in mid-December, I felt at that stage the Senate had a constitutional duty to proceed to a trial.

The Constitution explicitly provides for a trial: "The Senate shall have the sole Power to try all Impeachments," article I, section 3, clause 6.

The same clause refers to being convicted and the next clause refers to judgment, so the constitutional mandate for a trial is plain. Senate impeachment rules VI and XVII deal with witnesses.

The Senate was schizophrenic in wanting to avoid what many considered to be a pointless trial. Others considered it to be our constitutional duty to hold a trial and give appropriate deference to the House's action on the articles. In a series of halting half-steps, the Senate stumbled through a "pseudotrial," a "sham trial"—really no trial at all. In the end, it would have taken less time to let the House managers put on their case with a full White House defense than the helter-skelter procedures adopted by the Senate.

From the time the Senate reconvened on January 6, 1999, the public pressure to conclude the trial promptly was palpable. The improbability of a two-thirds vote for conviction was only one factor although the totality of the other factors contributed to that improbability.

The adverse public reaction was reflected in consistent polling data and the feel on the streets in our various States. Notwithstanding the serious charges of perjury and obstruction of justice, Democratic Senators argued and many people agreed that a private sexual liaison should not have caused a multiyear, multimillion-dollar investigation. If the independent counsel, they argued, could establish no wrongdoing in Whitewater, Travelgate and Filegate, why elevate a charge based on sex to an impeachable offense?

I think it is a significant distinction that President Clinton, unlike President Nixon, was not charged with covering up an underlying crime. President Clinton had the option of not answering deposition questions and/or simply not defending the Paula Jones lawsuit. At worst that would have resulted in a default judgment being entered against him with an assessment of damages. As it worked out, a nondefense might still have led to dismissal of the case as a matter of law and on the eventual settlement. In any event, the President would have avoided his present predicament by not responding.

Once the President undertook his course of action, then he must answer to the serious charges of perjury and obstruction of justice even though he was not covering up criminal activity.

Attorney General Reno made a major mistake in acting to expand Judge Kenneth Starr's jurisdiction to include the Lewinsky matter. In mid-January 1998, contemporaneously with the Attorney General's action, I commented that the public would suspect a vendetta on the part of Judge Starr because there had been so many apparently unproductive investigations going on for so long. This was not a criticism of Judge Starr, but an inevitable public reaction. The public's suspicion of Judge Starr carried over to impeachment.

When I challenged Attorney General Reno in the Judiciary Committee oversight hearing on July 15, 1998, about why she acted to expand Judge Starr's authority, she refused to answer the question, saying only: "The application speaks for itself, Senator."

The failure of the House to call witnesses during their hearings injected a Trojan horse into the articles. The House had good reason not to call witnesses because of its concern to finish its work before the 106th Congress convened to take up the Nation's important pending business. But, that set the stage for the witness issue to haunt the Senate from the outset.

Early in January, there was a strenuous effort for bipartisanship on witnesses and procedures. At a joint caucus on January 8, by almost spontaneous combustion, agreement was reached 100–0 on preliminary procedures, leaving depositions and witnesses until later.

Immediately thereafter, bipartisanship broke down. While this may seem self-serving from the Republican point of view, Republicans had more to gain from bipartisanship than Democrats to avoid the rancor of the House proceedings and give legitimacy to impeachment. Many Democrats openly said the President would be helped by party-line votes making the Senate look like the House.

The Democrats then lined up solidly behind the President with a number of Republicans, sometimes more than six, teetering on joining the Democrats. There are obviously limits to what elected officials will do to vote a straight party line if it puts their seats in jeopardy. The Senate Democrats had the effective cover of a popular President and their party-line votes followed while a significant number of Republicans faced constituents opposed to impeachment in their election cycles.

The sequence of partisan maneuvering on witnesses is important to understanding how the House managers were precluded from presenting their case in a fair way. Appendix A describes those events in some detail. The ultimate result was a sharply limited number of deposition witnesses, three, with videotaped depositions only and no live witnesses at trial.

In my Senate tenure, I have not seen a more contentious issue than the calling of witnesses, either live or videotaped. It goes beyond the public pressure to terminate or at least abbreviate the Senate proceeding. The argument that the well of the Senate should not be the stage for lewd and lascivious testimony was answered by the commitment of the House managers to avoid such testimony. The argument that Monica Lewinsky should not appear on the Senate floor once occupied by Daniel Webster and John F. Kennedy has to give way to the Senate's duty to try this President. The Senate did not choose the President's consorts and potential witnesses, but the Senate is duty bound to "try" the case as mandated by the Constitution and do "impartial justice" as the Senators' oath specified.

I was one of three Senator presiders/observers designated by Senator LOTT, the majority leader, for the depositions of Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. Observing these live witnesses confirmed my thinking that the full Senate should have seen and heard their testimony in the tradition of trial practice. While a videotape is very informative, there is no substitute for the more precise evaluation of demeanor and its many nuances which comes across fully only through live testimony.

When the videotapes were played in the Senate Chamber, the contrast was stark with the same live testimony I saw and heard.

On a number of occasions, the sound was inaudible and the tape could not be rewound. There was a far superior opportunity in person to observe the witnesses' facial responses, their reactions and their general demeanor. In addition, only a portion of their videos was played. Although Senators had a chance for full private viewings, it is inevitable that many Senator-jurors did not utilize that opportunity to observe all the videos.

Ms. Monica Lewinsky was a very impressive witness: poised, articulate, well-prepared. Seeing her testify in person, I understand why the President's counsel had fought so strenuously to keep her away from the well of the Senate. Had she told her whole story in the well of the Senate, a rapt national TV audience would have been watching and the dynamics of the proceeding might have been dramatically changed.

Instead of hearing testimony from live witnesses, the Senate listened to 12 days of lawyer's arguments. Six days were consumed with opening statements which should have taken a few hours. For 2 days, Senators submitted questions through the Chief Justice for responses from attorneys which added little illumination to what was already on the record. Two more days were spent arguing the motion to dismiss and the resolution on depositions where the lawyers essentially repeated earlier arguments with an additional day for votes on those issues.

Finally, limited evidence was presented with three videotaped depositions—Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. Another day was consumed on votes rejecting live witnesses and permitting use of the videotapes. On the day designated for presentation of those depositions, only snippets were shown with most of the time consumed by lawyers' arguments. A final day for closing arguments was held with lawyers again presenting arguments which had been repeated on 11 prior days.

So in place of a traditional trial with live witnesses such as Monica Lewinsky, Betty Currie, Vernon Jordan, Erskine Bowles, John Podesta, Sidney Blumenthal, possibly Kathleen Willey or whomever the House managers chose to call, the Senate heard days of repetitious lawyers' argument from a grand jury record.

The President's version was limited to his deposition in the Paula Jones case on January 17, 1998 and his grand jury testimony on August 17, 1998. In their totality, those two cameo appearances raised more questions by far than they answered. As expected, the President was exceptionally well prepared on the law and exceptionally adroit and manipulative on the facts or, more accurately, on evading the facts.

The law on perjury is set forth in the case of *Bronston* v. *United States*, 409 U.S. 342 (1973), where the Supreme Court of the United States established a rigorous standard for proving perjury. Bronston, under oath in a 1966 bankruptcy hearing, was asked whether he ever had bank accounts in Swiss banks and he replied: "the company had an account there for about 6 months, in Zurich."

His answer that the company had an account there for about 6 months was accurate. It was not accurate that it was the only account the company had. The Supreme Court exonerated Bronston on the charge of perjury because the questioner did not press fur-

ther to get a specific answer on whether the company had an account in addition to the one responded to by Bronston.

Utilizing the holding in Bronston to the utmost, the President couched his answers with great care relying on the questioner not to pursue the unanswered issues. For example, the President did not deny lying to his aides, but rather evaded the question and there was no followup. John Podesta, President Clinton's deputy chief of staff at the time, testified that on January 23, 1998:

> He [President Clinton] said to me he had never had sex with her [Monica Lewinsky], and that—and that he never asked—you know, he repeated that denial, but he was extremely explicit in saying he never had sex with her—[H]e [President Clinton] said that he never had sex with her [Monica Lewinsky] in any way whatsoever—that they had not had oral sex.

In a Senate deposition, Sidney Blumenthal, an assistant to the President, testified that the President lied to him. In testimony before the grand jury, Mr. Blumenthal testified that the President told him that he had "rebuffed" Ms. Lewinsky's advances. Mr. Blumenthal further testified that the President told him the following:

> She [Monica Lewinsky] threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more.
>
> He [President Clinton] told me that she [Monica Lewinsky] came on to him and that he had told her he couldn't have sexual relations with her and that she threatened him. That is what he told me.

In his testimony before the grand jury, President Clinton stated,

> I told them [his aides] things that were true about this relationship. They [things the President said to his aides] may have been misleading, and if they were I have to take responsibility for it, and I'm sorry.

Note that the President does not deny lying but only that:

> I told them things that were true about this relationship.

The President did say some things which were true. The questioner did not then pursue the line of interrogation by asking if, in addition to saying some things which were true, the President told his aides other things which were lies. On that clever, ambiguous record, the President escapes the perjury net.

Similarly, President Clinton dodged the perjury charges on his testimony on being alone with Monica Lewinsky. She testified they were alone when they had 11 sexual encounters either in the President's personal office or the adjacent hallway. In his January 17 deposition, the President was asked if he was ever alone with Monica Lewinsky in any room of the White House. The President responded,

> I have no specific recollection, but it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend.

Further, when the President was asked if he was ever alone with Ms. Lewinsky in the hallway between the Oval Office and the kitchen area, the President responded,

> I don't believe so, unless we were walking back to the back dining room with the pizza. I just, I don't remember. I don't believe we were alone in the hallway, no.

The President again gets away with vague, unresponsive replies. When the President says, "I don't believe we were alone in the hallway, no", there is then no pursuit as to whether they were alone in other places. He succeeds in avoiding and misleading, but does not make the unequivocal false statement required by Bronston to constitute perjury.

The President was treated differently than other witnesses before a grand jury when he was permitted to read from a prepared statement:

> I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.

The President then declined to respond to Monica Lewinsky's specific charges and was not pressed for answers. He made a blanket denial of having sex with Monica Lewinsky relying on a tortured interpretation of Judge Wright's definition of sexual relations:

> I thought the definition included any activity by the person being deposed, where the person was the actor and came in contact with those parts of the bodies with the purpose or intent of gratification, and excluded any other activity. For example, kissing is not covered by that, I don't think.

He further stated that:

> My understanding was, what I was giving to you, was that what was covered in those first two lines was any direct contact by the person being deposed with those body parts of another person's body, if the contact was done with an intent to arouse or gratify. That's what I believe it means today.

The question was not pursued whether there was a sexual relationship where Ms. Lewinsky was the actor who made contact with the President's body with an intent to arouse or gratify. When asked specifically about oral sex, the President responded,

> . . . [Y]ou asked me did I believe that oral sex performed on the person being deposed was covered by that definition, and I said no. I don't believe it's covered by the definition.

And there is the curious contention by the President on what the meaning of the word "is" is. A videotape of his deposition shows the President sitting quietly and listening to his attorney Robert Bennett's arguments to Judge Wright based on Ms. Lewinsky's affidavit which the President knew to be perjurious.

In his grand jury testimony, the President defended his silence during this statement:

> I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

The President also told the grand jury that Mr. Bennett's statement that there "is" no sex of any kind was not necessarily false, but rather:

> It depends on what the meaning of the word "is" is. If the—if he—if "is" means is and never has been, that is not—that is one thing. If it means there is none, that was a completely true statement.

On this state of the record, the Senate should have pressed the President for responses to so many important unanswered questions. Since the President was, in effect, asking the Senate to leave him in office, why was the Senate not justified in, at least, insisting

on answers to key questions. When Senators submitted interrogatories to the Chief Justice for responses from the attorneys, I submitted the following question:

> Would the President honor a request by the Senate to testify? If not, why not? If he declined to testify either on his own initiative or a Senate invitation, would the Senate be justified in drawing an adverse inference from his failure to testify?

With so many other questions submitted, this one was not asked. During the trial, White House counsel said the President would respond to written questions, but that offer was rescinded. On January 25, the President refused to answer 10 written questions submitted by Republican Senators.

On February 3, 26 Republican Senators sent the President a letter requesting a deposition. As expected, he declined. In a context where the Senate voted against live witnesses and permitted only three deposition witnesses, it was not surprising that there was no political will to press the President for his testimony. I believe that was a serious mistake. In the context where the Senate could not even consider exercising the political will to ask, let alone compel, the President to leave the Oval Office for a day or a few days to testify at his impeachment trial or even to give a deposition, how could the Senate be expected to exercise the much greater political will to remove the President from office?

In her civil lawsuit, Paula Jones had been able to compel the President to give a deposition. In the grand jury proceeding, the independent counsel, in effect, compelled the President to testify. Why, then, shouldn't the Senate exercise the commensurate power in an impeachment proceeding to obtain the President's testimony when there were so many open questions?

In my legal judgment, the Senate has the power to subpoena the President. My memorandum to Senator LOTT dated December 10, 1998, attached as appendix B, discusses the Senate's legal authority to subpoena the President. My memorandum to Senator LOTT dated December 29, 1998, attached as appendix C, discusses possible testimony by the President. Senate Impeachment Rule VI gives the Senate the subpoena power. The Supreme Court of the United States held President Nixon was subject to subpoena to turn over the famous tapes under the established principle "That the public . . . has a right to every man's evidence." President Nixon's case, although not dealing with impeachment, is further instructive in the Supreme Court's sweeping language on the need for all the facts even where the President is subject to subpoena:

> The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rule of evidence. To ensure that justice is done, it is imperative to the function of the courts that compulsory process be available for the production of evidence needed either by the prosecution or the defense.

Following President Clinton's deposition in the Paula Jones case on January 17, 1998, the President called his personal secretary, Betty Currie, at home and asked her to come into the office on the following day. On Sunday, January 18, President Clinton met with Ms. Currie and, according to Ms. Currie, made the following statements to her, one right after the other:

> You were always there when she was, right?
> We were never really alone.
> Monica came on to me, and I never touched her, right?
> You can see and hear everything, right?

Ms. Currie testified at first, on January 27, 1998, that, based on his demeanor and the way he made the statements, the President wanted her to agree with them.

Six months later, on July 22, 1998, when she testified for the second time, Ms. Currie said that although the President stated "right?" at the end of the statements, she understood that she could agree or disagree with them.

I find the testimony of Betty Currie on January 27, 1998, most troubling. Why would the President ask a series of questions when he knew the answers unless he sought to influence her testimony? But then, Ms. Currie undercut her January 27 testimony when she testified on July 22, 1998, that she understood from the President that she could disagree with him on those questions.

In order to make a finding on an important issue like this which could lead to the removal of the President, the Senate should have heard Ms. Currie in person to clarify her testimony. In the absence of such clarification on this state of the record, there is at least a reasonable doubt on this issue.

Monica Lewinsky testified that she met with the President in the Oval Office on December 28, 1997, and that the President gave her several Christmas presents at this meeting. Ms. Lewinsky further testified that at some point in the conversation she said to the President, "Maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty." Ms. Lewinsky recalled that the President responded either "I don't know" or "Let me think about that."

The President testified that he has no distinct recollection of discussing the gifts with Ms. Lewinsky on December 28. He told the grand jury that:

> My memory is that on some day in December, and I'm sorry I don't remember when it was, she said, well, what if they ask me about the gifts you have given me. And I said, well, if you get a request to produce them, you have to give them whatever you have.

In the afternoon of December 28, 1997, Betty Currie drove to Ms. Lewinsky's Watergate apartment and collected a box containing most of the President's gifts. Ms. Currie then drove home and placed this box under her bed. According to Ms. Lewinsky, the transfer originated in a phone call from Ms. Currie in which Ms. Currie stated, "I understand you have something to give me," or, "The President said you have something to give me."

Betty Currie testified that it was Ms. Lewinsky who first raised the idea of the gift transfer, either in person or over the telephone. Ms. Currie testified that she did not remember the President ever telling her to call Ms. Lewinsky or to pick something up from Ms. Lewinsky.

Monica Lewinsky testified that Ms. Currie came over to pick up the gifts at "around 2 p.m. or so." Cellular phone records reveal that Ms. Currie phoned Monica Lewinsky's home at 3:32 on December 28, and had a conversation of 1 minute or less.

The evidence against the President on the gifts issue is equivocal where the idea returning the gifts in the conversation between the President and Monica Lewinsky originates with Ms. Lewinsky; Ms. Currie says she does not remember the President telling her to call or pick up something from Ms. Lewinsky; the time of the call as shown on the cell phone records, 3:32 p.m., conflicts with Ms. Lewinsky's version of the sequence of events and the President gave Monica Lewinsky more gifts on December 28, 1997, the same day that efforts were made for the return of some of the gifts.

In December 1997 and January 1998, the President's close friend, Washington attorney Vernon Jordan, helped find Monica Lewinsky a job in New York City. On Friday, December 5, 1997, the President's attorneys received a witness list for the Paula Jones case. Monica Lewinsky was included on this list.

On December 11, 1997, Judge Susan Webber Wright issued an order which stated that Paula Jones was entitled to "information regarding any individuals with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant time frame State or Federal employees." This order made it clear that Ms. Jones would be able to subpoena Monica Lewinsky.

On December 11, 1997, Mr. Jordan and Ms. Lewinsky met and Mr. Jordan took concrete actions to help Ms. Lewinsky find a job. Mr. Jordan placed calls on her behalf to three business contacts. Mr. Jordan also told her to send letters to three additional business contacts that he provided to her. This meeting and the phone calls took place prior to the issuance of Judge Wright's order of the same day.

On January 7, Ms. Lewinsky signed an affidavit denying a sexual relationship with the President. On January 8, Ms. Lewinsky had an interview with MacAndrews & Forbes in New York. Afterwards, she phoned Vernon Jordan to report that the interview had gone poorly. Vernon Jordan immediately phoned Mr. Ron Perelman, the CEO of MacAndrews & Forbes, and asked for his help. The next day, Ms. Lewinsky was given another interview and was extended an offer to work for Revlon, a subsidiary of MacAndrews & Forbes.

Vernon Jordan defended his efforts to help Monica Lewinsky get a job as a payback for help he secured as a young lawyer in getting a job when he was a victim of racial discrimination. Jordan testified that he told no one at Revlon that Monica Lewinsky was a witness in a case involving the President and that Revlon offered Monica Lewinsky a job because she was qualified.

If the Revlon job offer was part of a plan or conspiracy to obstruct justice, then Vernon Jordan would have had to be part of that. The House managers raise no such contention.

An important piece of evidence on this issue was the uncontradicted testimony of Monica Lewinsky that she intended to deny her relationship with the President from the outset before she was subpoenaed or the President coached her or Vernon Jordan helped her get a job.

The signals to the House managers from the Senate were unmistakable that the Senate was unlikely to approve depositions if the list was too long. Responding to that advance notice, the House

managers submitted only three names for depositions necessarily leaving off potentially important witnesses like Ms. Currie. Given the absence of live witnesses and limitations on depositions, the House managers have been compelled to rely on transcripts from questioning by the independent counsel in grand jury proceedings. Those transcripts have left many key issues unresolved.

The Senate proceeding posed a curious dichotomy with 100 sitting silent Senators in the Chamber and nonstop Senators' interviews in the corridors and media galleries. The case was really not being tried in the Senate Chamber, but in a sense was being tried in the Senate corridors, on the evening TV interview shows and on the Sunday talk shows.

I declined TV interviews after the day the trial began on the ground that my oath to do "impartial justice" was in jeopardy by interviews on the day's proceedings which might conflict with my juror's functions. Again, oddly, on the occasions when Senators were permitted to speak on the Senate floor on the motion to dismiss and the resolution on depositions, the sessions were closed so the public could not hear our debate.

Efforts to open the Senate proceeding during final deliberations also failed to get the two-thirds vote to overturn the Senate rule closing the Chamber. I thought the public and posterity should know the reasons for our votes as a guide for today and the future. The informal, seat-of-the pants, corridor comments may be found in the CNN or MSNBC files, but there will be no Senate videotape to record what could be important Senators' views.

Each Senator individually and the Senate collectively took an oath to do "impartial justice."

The Senate has done only "partial justice," a double entendre, both: (1) in the sense of not doing "impartial justice" to the House managers by unduly restricting them in the presentation of their case; and, (2) "partial justice" in the sense of hearing only part of the evidence.

When the Senate prohibited live witnesses and permitted only three videotaped depositions, the House managers had one hand tied behind their back. There has been no "trial" but only a "pseudotrial" or a "sham trial." The best the House managers could do was to cut, paste and glue together transcripts from the independent counsel's grand jury proceedings. Ms. Lewinsky testified briefly on videotape and the President gave two vague, evasive depositions.

The House managers could not meet the heavy burden of proof beyond a reasonable doubt. That is the only appropriate statement where the underlying charges are the crimes of perjury and obstruction of justice.

Had the House managers sustained that burden under these articles, there was a further burden of persuasion, as I see it, to establish that the national interest warranted removal from office.

Perjury and obstruction of justice are serious offenses which must not be tolerated by anyone in our society. However, I remain unconvinced that impeachment is the best course to vindicate the rule of law on this offensive conduct. President Clinton may still be prosecuted in the Federal criminal courts when his term ends.

His lawyers have, in effect, invited that prosecution by citing it as the preferable remedy to impeachment.

A criminal trial for the President after his term ends may yet be the best vindicator for the rule of law.

If the full weight of the evidence with live witnesses had been presented to the Senate instead of bits and pieces of cold transcript, it is possible that the Senate and the American people would have demanded the President's appearance in the well of the Senate. Under firm examination, the President might have displayed the egregious character described harshly by his defenders in their proposed censure petitions. That sequence might have led to his removal.

On this record, the proofs are not present. Juries in criminal cases under the laws of Scotland have three possible verdicts: guilty, not guilty, not proven. Given the option in this trial, I suspect that many Senators would choose "not proven" instead of "not guilty."

That is my verdict: not proven. The President has dodged perjury by calculated evasion and poor interrogation. Obstruction of justice fails by gaps in the proofs.

Many Senators have sought to express their gross displeasure by findings of fact or censure. I reject both. The Constitution says judgment in cases of impeachment shall not extend beyond removal and disqualification from future office. Under the crucial doctrine of separation of powers, the Congress is not and should not be in the business of censuring any President. We are properly in the business of examining our own conduct as Senators. On that score, on the record of this "pseudotrial," it is my view that the Senate failed to fulfill the constitutional mandate to "try" this case.

I ask unanimous consent that Appendices A, B and C be printed in the RECORD.

There being no objection, the appendices were ordered to be printed in the RECORD, as follows:

APPENDIX A

When the Republican and Democratic caucuses could not agree on the preliminary procedures and witness issue, including depositions, a vote was set for late afternoon on January 7th. That vote was canceled in an effort to achieve a bi-partisan compromise. A joint caucus was then held in the Old Senate chamber at 9:30 am on January 8th where the outline of a procedural agreement was reached for the first stage without resolving the witness or deposition issues, but deferring them until we knew more about the opposing parties' cases.

While a resolution of agreement was being drafted in the early afternoon fleshing out the compromise, Senator LOTT asked Senator KYL, Senator SESSIONS and me to explore the case to determine what witnesses, if any, the Senate should hear to make its decision. In mid afternoon, Senators KYL and SESSIONS and I met with Chairman HENRY HYDE and some of the House Managers to inform them of the joint discussions, to get a preliminary idea of their thinking on witnesses and to set up a meeting for the afternoon of January 11 to get their specification on what witnesses they believed necessary for the Senate trial. Later on the afternoon of January 8th, Resolution 16 was agreed to 100 to 0.

In an effort to carry out a bi-partisan approach, I called Senator LIEBERMAN on the morning of January 11th to invite him and/or other Senate Democrats to an afternoon meeting with House Managers. He said he would check with Senator DASCHLE and then called back to decline. Senators KYL, SESSIONS and I met with the House Managers that afternoon to review their witness list. We advised them that the Democrats were opposed to witnesses and there was opposition among Republican Senators to a lengthy trial with many witnesses. We said their best opportunity for witnesses would be to show conflicts in the record testimony which could

establish the need for seeing and hearing the witnesses to evaluate their demeanor. They responded they needed witnesses beyond conflicts to show the tone and tenor of their case. We said they might consider using their 24 hours of opening statements to develop the need, as they saw it, for specific witnesses.

I called White House Counsel Charles Ruff on January 12th advising him of the meeting with House Managers stating that Senators KYL, SESSIONS and I were interested in meeting with the President's attorneys. Mr. Ruff called back on January 13th declining the invitation.

On January 25th, in advance of consideration of Senator BYRD's motion to dismiss and Senator LOTT's resolution on taking depositions, Senator LOTT requested Senator KYL and me to talk again to House Managers to determine how many witnesses they would need and for what purpose. Senator LOTT had extended an invitation to join in those discussions to Senator DASCHLE who declined. Before that meeting was held on January 25th, I advised Senator LIEBERMAN of the scheduled meeting and told him Senator DASCHLE declined Senator LOTT's invitation.

Between our January 11 and January 25th meetings with House Managers, there had been numerous public comment by Republican Senators opposing many witnesses even for depositions with some expressing possible opposition to any deposition witnesses. When Senator KYL and I met with House Managers on January 25th, we said it was problematic whether there would be 51 or more votes for a lengthy witness list.

In arguments before the full Senate, House Managers complained about the limitations on deposition witnesses and expressed their interest in calling live witnesses with latitude to develop their cases as they saw fit in accordance with regular trial practice.

Late in the evening on January 26th after closed door Senate debate on calling witnesses for depositions, Senator CARL LEVIN and I discussed a bi-partisan compromise. We continued that discussion early the next morning and presented our views to our respective caucuses on January 27th. While Senator LEVIN and I did not agree on all points, we were closer together than our caucuses. At mid-day on January 27th on an almost straight party line vote, the Senate decided to take depositions of only three witnesses.

For the balance of the afternoon of January 27th and all day on the 28th, there were strenuous efforts to agree on deposition procedures. Democrats were adamant that the depositions should not be videotaped; or, if videotaped, on the commitment that they could be viewed only by Senators and limited staff. Republicans insisted that the depositions should be videotaped deferring the decision on whether they would be used as a substitute for live witnesses. Late in the afternoon Senator LOTT's resolution was adopted to videotape the depositions without specifying their use after defeating Senator DASCHLE's amendment to limit the depositions to a typed transcript without videotapes.

After those depositions were taken, on February 4, 1999, the Senate voted to exclude live witnesses and to see the videotapes of the three deposed witnesses after the defeat of Senator DASCHLE's amendment to limit the depositions to the typed transcript only without videotapes.

APPENDIX B

DECEMBER 10, 1998.

To: Senator TRENT LOTT, Majority Leader.
From: Senator ARLEN SPECTER.

As a follow up to our recent meeting, this memorandum sets forth my thinking on how to handle the impeachment proceeding if it reaches the Senate and my analysis on some of the legal issues as follows:

1. May the Senate consider in the next Congress articles of impeachment passed by the House in this Congress?
2. Must the Senate trial begin the day following the House presentment?
3. Is censure authorized in an impeachment proceeding?
4. Must/should the Senate hear testimony from live witnesses?
5. How long will the Senate impeachment trial take?
6. Possibility of conviction
7. Concluding observations

MAY THE SENATE IN THE 106TH CONGRESS CONSIDER ARTICLES OF IMPEACHMENT PASSED BY THE HOUSE OF REPRESENTATIVES IN THE 105TH CONGRESS?

Yes. Precedents hold that the Senate may carry an impeachment over into a subsequent Congress. As noted in the addenda to the Rules on Senate Impeachment Proceedings:

"Articles of impeachment against Harold Louderback, a United States district judge for the northern district of California were exhibited on March 3, 1933, at the end of the second session of the 72d Congress, and the trial occurred during the first session of the 73d Congress, . . .

"At the end of the 100th Congress, the Senate adopted a resolution to continue into the 101st Congress the proceedings in the impeachment of Alcee L. Hastings, a United State judge for the southern district of Florida".

Notwithstanding a contrary opinion given at the House proceeding, it is my judgment that these practical precedents would virtually certainly be upheld if any judicial challenge was attempted because of the decision of the United States Supreme Court in the case involving Judge Nixon where the Court held the Senate had the authority to establish procedures under the impeachment clause.

MUST RULE III ON SENATE IMPEACHMENT PROCEDURE BE READ LITERALLY TO REQUIRE CONTINUOUS CONSIDERATION BY THE SENATE THE DAY FOLLOWING HOUSE PRESENTATION OF ARTICLES OF IMPEACHMENT?

No. While Rule III appears to impose such a rigid requirement on its face, the Rules taken on the whole and prior practice show the Senate may establish a more flexible schedule.

The specific language of Rule III provides: "Upon such articles of impeachment being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles, and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered."

Other Rules provide for intervening action between the time the articles are presented by the House to the Senate and subsequent proceedings before the Senate. For example, Rule 8 provides for a writ of summons to be issued to the person impeached with a date to appear before the Senate.

The impeached party is given a date to answer the Articles and the House is then given a date to reply.

For example, in the trial of President Andrew Johnson, the President was given 17 days to prepare his answer (his counsel had requested 47 days to prepare). The House managers took one day to file their brief reply to the President's answer. In the 1989 trial of Judge Walter Nixon, the Judge was given 29 days to prepare his answer, and the House was given 12 days to file its response.

These rules and that prior practice demonstrate that there is a necessary time lapse between the presentation of the Articles to the Senate and the commencement of further Senate hearings or proceedings.

IS CENSURE AN AUTHORIZED CONSEQUENCE OR REMEDY IN AN IMPEACHMENT PROCEEDING?

No. The specific language in the Constitution Article 1, Section 3, Clause 7 contains the clear implication that judgment in an impeachment proceeding shall not include censure or any consequence or remedy other than that specified in the Constitution: "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States." The language "shall not extend further" than the enumerated consequences or remedies precludes any judgment beyond "removal from office" and "disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States".

Further support for the conclusion that impeachment does not contemplate penalties like censure is contained in the historical references. Of the fifteen individuals impeached by the House of Representatives, all seven convicted by trial in the Senate were removed from office.

Contrasted to censure, impeachment and removal from office are not intended to be a punishment. In his "Commentaries on the Constitution of the United States," Justice Joseph Story notes that impeachment "is not so much designed to punish an offender as to secure the state against gross political misdemeanors. It touches neither his person nor property but simply divests him of his political capacity."

Consequently, the impeachment process does not contemplate Congress imposing any penalty, including censure, as part of an impeachment proceeding. Once the impeachment proceeding is concluded, it is a different issue as to whether Congress can pass a resolution of censure in the same manner Congress enacts resolutions generally.

WOULD THE CONSTITUTIONAL REQUIREMENTS OF THE SENATE IMPEACHMENT PROCEEDING BE SATISFIED BY THE FACTUAL RECITATIONS IN THE STARR REPORT OR IS THE SENATE OBLIGATED TO HEAR TESTIMONY FROM LIVE WITNESSES?

While the Constitution provides no explicit answer, inferences from the Constitution, the Senate Rules on Impeachment and the prior practice strongly suggest that live witnesses were contemplated by the framers instead of merely a hearsay report.

The Constitution explicitly provides for a trial in the provision of Article 1, Section 3, Clause 6: "The Senate shall have the sole Power to *try* all impeachments" (Emphasis added). The seriousness and magnitude of removal of a Federal official, especially the President, suggests that the jury (senators) should have the best evidence and that would require something more than a hearsay document no matter how extensive and explicit the Starr Report may be.

That clause further provides: "and no person shall be *convicted* without the concurrence of two-thirds of the Members present" (Emphasis added). The use of the word "convicted" again refers to a phase or the consequence of trial and the analogy to a criminal proceeding. While the Senate is not bound by traditional rules of evidence so that we might consider matters not admissible in a court of law, it would seem questionable or appear unseemly to base our judgment exclusively on hearsay in such an important proceeding.

The provisions of Article 1, Section 3, Clause 7 carry forward the analogy of trial referring to the ultimate "judgment": "*Judgment* in cases of impeachment shall not extend further . . ." (Emphasis added).

The Senate Rules on Impeachment further contemplate, although do not necessarily mandate, a proceeding with live witnesses and opportunities for the examination and cross-examination of such witnesses. For instance, Rule 6 provides that: "The Senate shall have power to compel the attendance of witnesses. . . ." Rule 17 provides that: "Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side."

Although the Rules never explicitly give the parties the right to call witnesses, the language "on behalf of the party producing them" in Rule 17 implies that the parties do have such a right. The practice of the Senate confirms this implication that the parties have the right to call witnesses. For example, in the trial of Andrew Johnson, witnesses for the President were called and heard over a period of one week. In the trial of Alcee Hastings, both sides were allowed to call a total of 55 witnesses.

The foregoing analysis does not conclusively rule out the propriety of proceeding on the Starr Report.

The House of Representatives relied upon the Starr Report for the facts even though the practice of the House in prior impeachment hearings has been to take testimony from witnesses. "Hinds' Precedents of the House of Representatives" notes that witnesses were called during the House impeachment hearings on Senator Blount and Judge Perry. More recently, during the House deliberations on the impeachments of President Nixon, Judge Claiborne, Judge Hastings and Judge Nixon, numerous witnesses were called to lay a factual basis for the impeachment charges. In the case of Judge Nixon alone, witnesses provided testimony to the House committee for over a month.

As a practical matter, it is obvious the House did not take the time to hear witnesses because the House proceedings were structured to finish in the abbreviated time frame between the election of November 3rd and the end of the year. Starting in mid-November and seeking to finish shortly after mid-December, that time frame was even further constricted.

HOW LONG WILL THE SENATE IMPEACHMENT TRIAL TAKE?

It depends entirely on what the Senate seeks to do and what parameters are established.

If the Senate peremptorily chooses to dismiss the House articles without consideration, there is authority that could be accomplished at the outset by a majority vote on a motion to adjourn. Since there is no specific Rule relating to the adjournment of an impeachment trial, the general rules of the Senate would apply. A motion to adjourn the Senate requires only a majority vote and is not subject to debate. The Senate impeachment proceeding could be concluded by adjournment with, in effect,

a dismissal which would be the equivalent of a nol pros in a criminal case. That is the equivalent of a judgment of acquittal. The Senate would then resume its normal business.

There is historical precedent to concluding the Senate impeachment proceeding by passing a motion to adjourn. In the impeachment trial of Andrew Johnson, the Senate voted on three of the eleven articles of impeachment. After failing to secure a conviction on these three articles, Senator Williams moved that the Senate sitting as a court of implement adjourn sine die. The motion carried and the trial of Andrew Johnson ended prior to a vote on the remaining eight articles.

If the Senate chose to accept the facts of the Starr Report, the entire trial could be relatively brief if the President did not put on a factual defense.

An adequate Senate trial need not necessarily be long. The key witnesses would be Monica Lewinsky, Betty Currie and Vernon Jordan and possibly Kathleen Willey. There may be a few other peripheral witnesses such as Judge Susan Webber Wright. It is hard to calculate but it will probably be a matter of weeks, not months. That estimate would be expanded if President Clinton testifies and/or if he puts on a factual defense.

POSSIBILITY OF CONVICTION

This matter has had unprecedented and unpredictable turns of events. The President's August 17th short speech was a bomb. The House's release of the President's grand jury deposition reversed the tide. The President's answers to the House questions reversed the reversal.

It is entirely conceivable that a Senate trial could defy conventional wisdom and find the two-third votes for conviction if the evidence is properly presented focusing on abuse of power and obstruction of justice instead of lying about sex. While impossible to quantify with precision, it may be that there are now about fifty votes for conviction, perhaps a half dozen open minds and maybe another dozen senators might be persuadable if they think there is insufficient political cover to acquit.

Monica Lewinsky has the potential to be a strong witness because her recollection is so extraordinary. She was able to pinpoint with precision the two dates when, as she put it, the President received telephone calls from a congressman with a nickname and a sugar grower in Florida with a name something like "Fanuli". It was later confirmed that the President had talked on those two dates to Congressman Sonny Montgomery and a Florida sugar grower named Alfonso Fanjul.

Although Betty Currie's testimony was watered down as the investigation proceeded, questioning her from her first statement might provide highly incriminating testimony on the obstruction charge. Vernon Jordan's testimony has substantial potential on the abuse of power issue. Jordan testified he reported to the President "mission accomplished" after Monica Lewinsky's perjurious affidavit was obtained and Jordan secured a job for Ms. Lewinsky with Revlon. When her initial interview went badly, Jordan called Ronald Perelman, head of Revlon's holding company, and Ms. Lewinsky was recalled the next day for another interview and given a job on the spot.

The case is also reportedly strong on the perjury charge against the President on the incident involving Kathleen Willey. Judge Susan Webber Wright's testimony, in observing the President's attentiveness at this deposition in the Jones' case, could undercut the President's contention that he wasn't paying attention when his lawyer strenuously argued for the President's innocence at his deposition based on the Lewinsky affidavit. At that time, the President conclusively knew it was perjurious.

CONCLUDING OBSERVATIONS

As you know, my own initial preference was for both Houses to abandon impeachment proceedings and to then hold the President accountable through the judicial criminal process once his term was over leaving the Congress free to attend to the nation's other business: social security, health, education, etc.

My view on waiting to hold the President accountable after he leaves office was based on the blunt proposition that it was more trouble to get rid of him than to keep him. It may well be that the public opposition to impeachment had the same basis. Once we get to the Senate trial, my view may change if it is no more trouble to get rid of him than to keep him. Perhaps the public will have a similar change of heart.

If the House returns Articles of Impeachment, the Senate should proceed with a dignified trial with the calling of witnesses because the seriousness of the issue and the historical impact call for an unhurried, deliberative trial. To the maximum extent possible, we should make the proceeding non-partisan. Concessions to the minority on some procedural matter would be worthwhile. As the majority party in

charge, we should take the lead on non-partisanship. We should avoid the House bickering at all reasonable costs.

The Senate prides itself on being the world's greatest deliberative body. This trial will be by far the highest visibility for the Senate in its history to date and for the foreseeable future. While the President will be on trial, the Senate will also be on trial.

APPENDIX C

DECEMBER 29, 1998.

To: Senator TRENT LOTT, Majority Leader.
From: Senator ARLEN SPECTER.

Supplementing my memorandum of December 10 and our telephone conversation of December 22, this memo suggests procedures to deal with the Senate trial in light of the public dissatisfaction with the House proceedings, public impatience with impeachment generally and ways to achieve a judicious, non-partisan Senate trial. Since this memorandum was written while I have been traveling, the rules and case citations could be checked only by long-distance telephone.

CAN PROCEDURES BE STRUCTURED TO SHORTEN THE LENGTH OF THE TRIAL?

Yes. While it is impossible to say with certainty the duration of any trial, procedures can be put into place to abbreviate the trial with a reasonable likelihood of reaching a verdict within a few weeks (perhaps even three weeks as earlier predicted by you—Senator Lott) as contrasted with some assessments that the trial would take months or the better part of a year.

The Senate already is under pressure and will probably be under greater pressure to finish at an early date which accounts for the call for short-circuiting the trial through a plea-bargained censure. It is obviously in the national interest to end the trial as soon as possible without rushing to judgment and it would doubtless meet with public approval to announce at the outset a plan to accomplish that.

Several steps could be taken to abbreviate the trial time:

(1) Require submission of pre-trial memoranda by the parties followed by a pre-trial conference with the Chief Justice to establish the parameters of the trial;

(2) Organize the House Managers' case, with input from the Senate, to focus on only the key witnesses and indispensable lines of questions; and

(3) Establish long trial days and Saturday sessions.

Without management and limitations, the lawyers could take a long, indeterminate time. By analogy to Federal court litigation, this trial could be managed by having the parties submit pre-trial memoranda which would identify any pre-trial motions, list prospective witnesses and lines of questions, etc., and approximate the time involved at each stage.

The Chief Justice would then meet with the parties and issue a pre-trial order establishing the trial parameters just as the presiding judge does in Federal court trials.

AN ACTIVIST, BIPARTISAN SENATE

In an impeachment trial, Senators function in a very unusual way in that we are both jurors and judges. A majority of Senators may overrule the Chief Justice's rulings. We decide individually for ourselves what is the burden of proof and what evidence on what conduct is sufficient for a guilty verdict.

The Senate will be proceeding without precedent on most issues. The Senate has broad latitude as noted by the Supreme Court of the United States in the case of Judge Nixon where the Court held the Senate had authority to establish its procedures under the Impeachment Clause.

This case and these times call for a more activist approach by the Senate than prior impeachment trials. While it was not inconvenient or problemsome to allow the House managers to set the pace for the Hastings, Nixon or Claiborne trials, this is obviously a very different matter. The impeachment trials of President Johnson and those which occurred earlier offer little guidance on how the Senate should proceed today.

The existing Senate rules on impeachment are a starting point. They can be changed by a majority vote unless there is disagreement in which case proposed changes are debatable and subject to a two-thirds vote.

It is only through bipartisanship that the Senate can succeed in having a judicious, non-partisan trial which can gain public acceptance. So, all significant procedures must have the concurrence of most Senators from both parties.

In my judgment, it would be appropriate and practical to structure the presentation of the evidence by having a small bipartisan Senate committee work with the House managers and President's lawyers on what the Senate wants presented in a tightly focused case, taking into consideration any differences with the House managers which could then be worked out.

Arguments in appellate courts customarily take the form of the appeals judges focusing on the questions they want addressed by counsel as opposed to having the lawyers decide how to use their allotted time. It would be analogous to such appellate proceedings to have the Senate direct, or work out collaboratively with the House the evidence the Senate wants to hear.

I suggest that a small committee, perhaps five Senators with three Republicans and two Democrats, work up a trial format and trial brief. It will be helpful for the Senators to have prosecution or criminal defense experience. This Senate committee, or perhaps one Republican and one Democrat, should participate in preparation of the pre-trial memorandum and pre-trial conference.

LONG TRIAL SESSIONS

Substantial evidence could be presented with trial days from 9:30 am to 5 pm or even 9 am to 6 pm with Saturday sessions. The Philadelphia criminal courts had the minimum trial day established from 9:30 am to 5 pm. Senate Impeachment Rule 3 provides for Saturday sessions in impeachment trials.

I recommend against the so-called double track with the Senate sitting half days on the trial and half on other Senate business. There is too much legitimate public concern to have the trial proceed expeditiously and end as soon as possible. Even with the trial ending at 5 pm or 6 pm, some Senate business could be conducted in the evenings on confirmations or other business which can be handled by unanimous consent.

We might consider canceling our February and March recesses for the trial, which would likely produce significant public approval.

THE IMPORTANCE OF LIVE WITNESSES

I strongly recommend live witnesses on the key issues although there is no prohibition against use of hearsay such as the Starr Report. Prior impeachment cases establish the precedent for live witnesses and the Senate rules provide procedures for live witnesses. Live witnesses have customarily testified in House impeachment proceedings. In the Senate, for example, live witnesses testified in cases involving President Johnson and in the most recent impeachment case on Judge Alcee Hastings. Senate Rules 6 and 17 establish procedures for dealing with witnesses.

The dignity, tenor and stature of the Senate Trial call for live witnesses on an impeachment of this magnitude. Everything the Senate does will be subjected to a microscope both contemporaneously and historically. While it is a sweeping generalization, I think it is fair and accurate to say that no trial in history to date has been or will be so closely watched.

We have some gauge as to how closely this trial will be scrutinized from the work of the Warren Commission which has been the most closely dissected investigation in history. Notwithstanding constant pressure from Chief Justice Warren, who wanted the inquiry concluded at an early date, the staff lawyers insisted on extended tests and extensive interrogation knowing the record would be closely examined. At that time, we couldn't conceive of the extent of the scrutiny, but we had some inkling of what was coming. At this time, the Senate should be on notice to cross every "t" and dot every "i" twice.

It may be sufficient to use the Starr Report to establish some of the lesser proofs for the record.

Without attempting to be dispositive on who are all the key witnesses and what are all the indispensable lines of questioning, a suggested focused strategy would be to call:

(1) Monica Lewinsky to testify on the perjury issue by covering the numerous times she and the President were alone (he claimed they were never alone) and the specifics of their conduct on the issue as to whether they had sex.

It may be wise to have her testify in a closed session on the details of their sexual relationship. In retrospect, the Judiciary Committee might have been wise to hear some of the testimony by Professor Hill and Justice Thomas in a closed session. In the confirmation hearing of Justice Breyer, testimony was taken in a closed session on his finances.

Even though most, if not all, of Ms. Lewinsky's testimony has already been made public, it would be less offensive to public taste and arguably less prejudicial or more considerate of the President to avoid the spectacle of television on the specifics

of their sex. Any objection to the closed or secret hearing could be largely answered by releasing a transcript to the public at the end of each daily session.

If the President testifies, consideration should also be given to a closed session on the specifics of their sexual activities. It is arguably, and perhaps realistically, different to have a closed session with the President, but these questions will have to be thrashed out at the time depending on the feel of the case if, as and when they arise.

In order to have a closed session, there would have to be a modification of Rule 20 which requires the Senate doors to be open except during deliberation.

(2) Vernon Jordan to testify about contacts with the President including his telephone call where he reported "mission accomplished" after arranging with another lawyer to get Ms. Lewinsky's perjurious affidavit and getting her a job with Revlon.

(3) Betty Currie to testify on the President's efforts to alter and mold her version of what happened. Even though Ms. Currie gave several statements, the essential elements of her testimony could be put on the record at trial by going through her first statement to the FBI.

The President's possible testimony is considered later in this memorandum.

SHOULD THE SENATE TRIAL BE TERMINATED BY AN ARRANGED DISPOSITION FOR CENSURE?

No, for several reasons:

(1) The Constitution specifies the two remedies or consequences in cases of impeachment which necessarily excludes censure: "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States"—Article 1, Section 3, Clause 7. The language "shall not extend further" specifically precludes censure or any other remedy not enumerated in the Constitution.

The argument is now being strenuously advanced by many, including some Senators, that the impeachment trial should be ended at an early stage by a motion to adjourn the Senate and then, by pre-arrangement, taking up a Resolution of Censure to be approved by the Senate and House. In my judgment, that would be a perversion of and at variance with the Constitution or, simply stated, unconstitutional.

(2) Censure would be meaningless for this President—not worth a "tinker's dam."

(3) Censure would be a bad precedent which could be used whenever the Congress of one party wanted to express displeasure or embarrass the President of the other party. Simply stated, the Congress is not in the business of censuring the President under our Constitutional separation of powers.

(4) Censure would prejudice a possible later criminal prosecution of the President after he leaves office. There will be an inevitable sense that censure will constitute a form of punishment or final judgment, although not technically double jeopardy, which would preclude a later prosecution, as a practical matter.

The prospects for censure have been dampened by Vice President Gore's statement that the President would not accept censure conditioned on the President's admitting to lying under oath even if that admission could not to be used against him in any criminal proceeding. Even if the President would admit to lying under oath, he would most certainly object to the procedures necessary to rule out use of that admission in a criminal prosecution.

Only a court, not the Senate or Congress, can grant immunity from future criminal prosecution. The Senate can take steps to have immunity granted by the Court. But that action can be taken only after the President or any witness asserts the privilege against self-incrimination under the Fifth Amendment. The Court then grants immunity and the testimony cannot be later used against that person in a criminal prosecution.

Since the President has announced his unwillingness to admit to lying under oath, it is fruitless to suggest the Fifth Amendment course.

PRESIDENT CLINTON'S POSSIBLE TESTIMONY

For the Senate to have all the facts—or all versions of the facts from which Senator-jurors must determine what the facts are, the Senate should hear from the President. It may be that the President will choose to testify; and as a matter of comity, the Senate should await the President's decision.

If the President elects not to testify, the Senate will be faced with a difficult legal question and perhaps an even more difficult political question. On its face, Impeachment Rule 6 gives the Senate the authority to compel the President to testify:

"The Senate shall have the power to compel the attendance of witnesses" and "to enforce obedience to its orders, mandates, writs, precepts and judgments."

Notwithstanding that express language, some doubt has arisen as to whether the President is subject to compulsory process (subpoena) because of Rule 8 which provides:

"A writ of summons shall issue to the person impeached reciting said articles and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate . . . and file his answer to said articles of impeachment . . .

"If the person impeached, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefore as aforesaid, or appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty."

Some have cited President Johnson's refusal to appear at the Senate trial as authority for the proposition that the President cannot be compelled to attend and testify. That inference is unsound because Rule 8 refers to responding to the summons and filing an answer "either in person or by attorney." So the attorney's action satisfies the rule without the appearance or other action by the President. Accordingly, the impeached party complied with the Senate rules in President Johnson's case which did not raise the issue of the Senate's power to compel the President to testify.

There is no precedent for a case where the impeached official declined to testify and the Senate attempted to compel his testimony. The other impeachment cases offer no close analogy where, as here, critical facts are known to only two people, one of whom is the impeached official.

Analogies from other, although dissimilar, trials suggest the President would be subject to being subpoenaed. The Supreme Court of the United States held President Nixon was subject to compulsory process to turn over the famous tapes under the established principle: "That the public . . . has a right to every man's evidence."

President Nixon's case, although not dealing with impeachment, is further instructive in the Supreme Court's sweeping language on the need for all the facts:

"The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of the courts that compulsory process be available for the production of evidence needed either by the prosecutions or the defense."

Since this is not a criminal trial, there would be no rule that a defendant has the right not to testify. Although not a controlling analogy, a party in a civil case may be called involuntarily to the witness stand by his/her opponent "as on cross" which means he/she may be cross-examined.

In my legal judgment, President Clinton could be compelled to testify based on Senate Rule 6, analogies to compulsory process in President Nixon's case and civil litigation and the fact that President Clinton was subject to compulsory process in the Paula Jones case and Starr grand jury. Consideration of enforcing such a subpoena can be left to a later day if, as and when the issue arises.

If the President did testify, it could have a profound effect on the public's view of the case and on the Senator-jurors. The President's lawyers could not shield him from cross-examination and he could not avoid the specifics on his contacts with Ms. Lewinsky as he did in his abbreviated grand jury testimony.

If the President sticks to his story that he did not have sex with Ms. Lewinsky and did not lie under oath at his deposition in the Paula Jones case, his credibility could be severely impugned by pointed cross-examination and he could be viewed very negatively by the public and the Senator-jurors. Or, it may be that the public and many Senator-jurors would not be any more adversely affected by his Senate trial testimony than they were by the videotapes of his grand jury testimony.

At this moment, it is impossible to judge what the feel or tenor of the trial would be on subpoenaing the President if, as and when he declined to testify after serious incriminating evidence was presented against him. If subpoena sentiments formed along party lines, it would be the most severe test of acting only with a bipartisan consensus.

Over several centuries, litigation experience has demonstrated the unpredictability of trials. That is why they are called trials. A two-thirds majority may not appear out of thin air, as noted by Congressman DELAY, but it could appear from forceful presentation of the key evidence including cross-examination of the President. If the trial turned heavily against the President, it is conceivable, although highly unlikely at this point, that a plea bargain could be structured with the Independent Counsel's concurrence that the President would resign with his pension, his law license and immunity from prosecution.

Once a trial starts, the genie is out of the bottle and anything can happen. Emotions in all directions are at an all-time high with Republicans, the President, Democrats or anybody else in the line of fire at risk for the ultimate public scorn. And the public's other business would not be attended to forever how long the trial took.

That is why I continue personally to favor putting off holding the President accountable until after his term ends through the criminal process. That accommodates the public's short-term desires for the Congress, the President and the Supreme Court to focus on the nation's business and the long-term national interest to later hold the President accountable for the serious charges through indictment if the grand jury so decides, and to sentencing by a judge if a jury convicts.

THE PUBLIC REACTION

Prospects are reasonably good that the public would not react unfavorably to a non-partisan, judicious, focused, relatively brief Senate trial. In addition, the public would likely understand the Senate has an explicit Constitutional duty to hold a trial after Articles of Impeachment are passed by the House. There has already been a bipartisan recognition of this duty by Senators who are Democrats.

Public reaction, as gauged by the polls, was adverse to the House proceedings, at least in part, because of their highly partisan, strident tenor; and because the House never zeroed in or highlighted the highly incriminating evidence. There may even be some grudging public approval that Congress is willing to take action on a significant matter contrary to the polls.

A favorable public reaction will depend largely if not exclusively on the public's feeling that the proceedings are bipartisan, so the Senate must take extreme care to make the trial bipartisan. As the majority party, we Republicans should bend over backwards to avoid even the appearance of seeking partisan advantage which marred the House proceedings.

I strongly support the suggestion that there should be no separate party caucuses on impeachment issues. It would be useful to convene all Senators at an early date, such as January 8, 1999, when we will all be in town, to discuss ideas on how to proceed. I recollect one such meeting of all Senators from both parties a couple of years ago on appropriations or budget issues near the end of the session.

CONCLUSION

History will cast a long shadow on what the Senate does in this impeachment proceeding.

The Senate should not, in effect, sweep the matter under the rug by relying on the hearsay Starr Report for the key facts. Some say the Starr Report is a sufficient factual basis for Senate action because the facts are not in dispute. That is not true. A close reading of the President's grand jury testimony and his famous 82 answers to interrogatories demonstrate that he has not conceded the accuracy of the key incriminating evidence.

As detailed above, the Senate can leave it to the criminal courts to put the facts on the historical record and have the indicting grand jury, trial jury and presiding judge hold the President accountable to whatever extent warranted after his term ends.

A rush-to-judgment censure plea bargain would complete the trifecta of inappropriate action by the Senate as well as the House and President.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CARL LEVIN

Mr. LEVIN. Mr. Chief Justice, colleagues, first a personal note to our leaders: How proud I am of them, and we all are of you, for holding us together during this very, very difficult time. We will all be closer for having come through this, regardless of what this vote is or how we individually vote.

The burden of proof on the House that the President has committed high crimes and misdemeanors and should be removed from office is a heavy burden, because the effect is so dire in a democracy that depends upon the election of the President. In my judgment, the House of Representatives has not carried that burden of

proof as to the specific allegations against the President. The House repeatedly relies on inferences while ignoring direct testimony to the contrary. There is nothing unusual about the reliance on inferences. It happens in trials all the time. What is unusual here is that the House's case relies on inferences from the testimony of people whose direct testimony contradicts the inference. Let me just cite some examples in the obstruction of justice article.

First, the House managers in their report, in their brief, made the following statements: "As evidenced by the testimony of Monica Lewinsky, the President encouraged her to lie." That is the words of the House brief. Second, "The testimony of Monica Lewinsky leads to the conclusion that it was the President who initiated the retrieval of the gifts and the concealment of the evidence." Third, "The President needed the signature of Monica Lewinsky on the false affidavit and that was assured by the efforts to secure her a job."

Those are all direct quotes. Each one of those relies on inferences. Each one of them is contradicted by the explicit testimony of people from whom those inferences are drawn.

Let's just take them one by one. The House managers' inference that the President "encouraged"—that is their word—Monica Lewinsky to lie was contradicted by Monica Lewinsky's proffer, which was then incorporated into her grand jury testimony, that the President "never" encouraged her to lie. That is her word. They say by inference the President encouraged her to lie. She says, "The President never encouraged me to lie."

The House managers' inference that it was, "President Clinton who initiated the retrieval of the gifts and the concealment of the evidence on December the 28th," was contradicted by Monica Lewinsky's direct testimony that she initiated the concealment of the gifts. It is uncontested that on December 22 she took some of the gifts and concealed the rest—some of the gifts to her lawyer's office. She decided on her own that she would not turn over the gifts in response to that subpoena because they would embarrass her, or they would, in her words, disclose that there was a special relationship. So on the 22nd she decided on her own to withhold some of the gifts. And yet we are told by the managers by inference that somehow or other it is the President who initiated the withholding and the concealment of the gifts.

And then on the 28th, when they met at the White House, it was Monica Lewinsky who said, "Maybe I should get some of the gifts to Betty." She initiated the issue. And then the President said either nothing or, "Let me think about it." And then the question came up: Well, who then made the phone call relative to the pickup of the gifts? Was it Monica Lewinsky calling Betty Currie or was it Betty Currie calling Monica Lewinsky?

Here is where another inference is drawn, that if in fact it was Betty Currie who initiated the call, then the inference is that the President told Betty Currie to call Monica Lewinsky. There is a conflict there between Betty Currie and Monica Lewinsky.

One of the most intriguing issues in this whole matter, one that I have really given a lot of thought to, is the question: Why would the President give Monica Lewinsky gifts on December 28 if he was concerned about it and wanted to withhold and hide the gifts? It

is one of the questions that didn't get a lot of focus up here, by the way.

The President gave Monica Lewinsky at least three things that day: a bear carving that Dale Bumpers referred to that came from Vancouver, a small blanket, and a stuffed animal.

Here is the way the House addressed that issue. They asked themselves in their brief the question: Why would the President give Ms. Lewinsky gifts at the same time he was asking her to conceal others that he had already given her? Answer from the House in their brief: The only logical inference—only logical inference—is that the gifts, including the bear, symbolizing strength, were a tacit reminder to Ms. Lewinsky that they would deny the relationship even in the face of a Federal subpoena. That is the inference that they say is the only logical inference from giving three gifts to Monica Lewinsky, including a bear.

There is a real problem with that. First of all, that bear was obtained by the President in Vancouver weeks before there was a witness list. We are not even offered speculation as to how the President could foresee that Monica Lewinsky would be on a witness list and pick up a symbol of strength while in Vancouver so that he could give it to her as a reminder to deny their relationship in the face of some future, unforeseen Federal subpoena.

Even more to the point, Monica Lewinsky was asked directly at the grand jury—directly—this question as to whether or not she interpreted the gift of that bear as a signal to her to "be strong in your decision to conceal the relationship." Her direct, one-word answer was "no." And yet the managers come here saying the only logical inference that can be drawn from three gifts being given from the President on the 28th is that the President was signaling to her to be strong in the face of a Federal subpoena. That is the kind of inference we are asked to draw.

I was raised on the burden of proof, both as a prosecutor in civil rights cases and as a defense lawyer. The House cannot carry the burden of proof on the critical allegations of criminal misconduct that they have made when they depend on those kinds of inferences, a pile of inferences that run directly contrary to direct testimony on critical points. Impeachment and removal should be based on sturdier foundations than that kind of a heap of inferences. They would have us overlook the forest of direct testimony while getting lost in the trees of their multiple inferences.

The December 11 issue has been discussed here. It was extraordinary to me, listening here as both factfinder and judge, that it could be represented to us that on December 11, the first activity calculated to actually help Monica Lewinsky get a job occurred. That is what they alleged on the floor of the Senate. The first activity—these are their words—calculated to help Ms. Lewinsky actually get a job took place on December 11, and that something happened on that day to trigger Vernon Jordan's meeting and real activity. Something happened that day. What was it? Judge Wright's order.

In their House brief, it is said that that order came in the morning, which was wrong, and in the presentation here in the opening arguments Manager HUTCHINSON said the following: "The witness list came in, the judge's order came in. That triggered the Presi-

dent to action. And the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along."

Wrong. It disintegrated here. Vernon Jordan's meeting was before the judge's order. And yet that is what we are asked to base the removal of a President on. And then the thinking shifts to another theory. Removal of an elected President from office has got to be made of sturdier stuff than those kinds of inferences.

Finally, on the double standard issue—and I think we all must be concerned about that—a former prosecutor who appeared in front of the House said the following. And Senator SARBANES quoted one line of this, and I want to repeat that, because it is so important, and then add one other thing that they said. "In conversations with many current and former Federal prosecutors in whose judgment I have great faith, virtually all concur that if the President were not involved, if an ordinary citizen were the subject of the inquiry, no serious consideration would be given to a criminal prosecution arising from alleged misconduct in discovery in the Jones civil case having to do with an alleged coverup of a private sexual affair with another woman or the follow-on testimony before the grand jury. I believe the President should be treated in the criminal justice system in the same way as any other U.S. citizen.

"If that were the case here," these former prosecutors said, "it is my view that the alleged obstruction of justice and perjury would not be prosecuted by a responsible U.S. attorney."

I know this is not a criminal case, this is an impeachment trial, but I would think that our standards should be at least as high as they would be in a criminal case, and that if this President would not be prosecuted, much less convicted for these specific charges—and these were criminal charges that were very specifically made by the managers against the President—if that prosecution and conviction would not take place in a criminal case, we should be loathe, I believe, and very, very cautious and careful before we remove an elected President from office.

I learned about the burden of proof and presumption of innocence as a young boy, long before law school, when my father, who was a lawyer, taught me that American justice is dependent on these principles. As I grew up and became a lawyer myself, I experienced firsthand the significance of these bedrock principles and learned that it applies to all Americans accused of crimes, including the President. These principles of the burden of proof and the presumption of innocence help guide me now as we exercise our constitutional duty to judge the specific accusations of criminal behavior lodged against the President of the United States.

The burden of proof on the House of Representatives that the President has committed serious crimes and should be removed from office is a heavy one, because overturning an election in a democracy is a drastic and dire action. The House has not carried that burden of proof as to the specific accusations against the President.

The arguments of the House managers in support of the articles suffer from fundamental weaknesses. They repeatedly rely on inferences while ignoring direct testimony to the contrary; they omit key materials which contradict their charges; and they contain serious misstatements of key facts. In a matter of such consequence as

the removal of an elected President from office, such a case should not lead to conviction.

Let me cite some key examples from article II, the allegation of obstruction of justice. First, the House managers in their report, brief, and arguments to the Senate repeatedly rely on inferences to prove key points and ignore direct testimony to the contrary. In opening arguments, House Manager HUTCHINSON made the following claims:

> As evidenced by the testimony of Monica Lewinsky, [the President] encouraged her to lie.
>
> . . . [T]he testimony of Monica Lewinsky . . . leads to the conclusion that it was the President who initiated the retrieval of the gifts and the concealment of the evidence.
>
> . . . The President needed the signature of Monica Lewinsky on the false affidavit, and that was assured by the efforts to secure her a job.

Mr. HUTCHINSON's arguments rely on inferences. Relying on inferences is not unique to proving a case. What is unique is that in this case, the House managers use inferences primarily from bits and pieces of testimony of people who explicitly deny those inferences in their direct testimony. The House managers' inference that the President encouraged Monica Lewinsky to lie was contradicted by Monica Lewinsky's direct testimony that the President never "encouraged" her to lie.

The House managers' inference that "it was President Clinton who initiated the retrieval of the gifts and the concealment of the evidence on December 28, 1997," was contradicted by Monica Lewinsky's direct testimony that she initiated the concealment of gifts. Not only is it an uncontested fact based on direct testimony that it was Monica Lewinsky who on December 22, 1997, following the receipt of a subpoena for gifts and having decided on her own to withhold gifts which would "give away any kind of special relationship," brought to her attorney only those gifts that were "innocuous" and typical of the kind of gifts an intern might receive. It is also an uncontested fact based on direct testimony that it was Monica Lewinsky who, on December 28, 1997, expressed her interest in wanting to hide the gifts when she said to the President that maybe she should transfer the gifts to Betty Currie. Ms. Lewinsky testified that the President either didn't respond to her comment or said he'd think about it.

But what makes the managers' inference even more speculative is the fact that at the December 28 visit, the President gave Ms. Lewinsky even more gifts, including a bear carving from Vancouver, a small blanket and a stuffed animal. Why would the President give Ms. Lewinsky gifts at the same time he is asking her to conceal others he had already given her? I was struck by the House's answer. "The only logical inference," according to the House managers, "is that the gifts—including the bear symbolizing strength—were a tacit reminder to Ms. Lewinsky that they would deny the relationship—even in the face of a federal subpoena."

That inference, called "the only logical inference," is not only the rankest form of speculation, it is also contrary to the direct evidence.

The undisputed grand jury testimony was that the bear carving was brought back by the President from Vancouver, a trip which occurred weeks before Monica Lewinsky's name appeared on any

witness list. We're not even offered speculation as to how the President could foresee that Monica Lewinsky would be on a witness list, and pick up a symbol of strength while in Vancouver so that he could give it to her as a reminder to deny their relationship in the face of some future, unforseen federal subpoena. But even more to the point, when Ms. Lewinsky was asked the direct question at the grand jury whether she interpreted the gift of the Vancouver bear carving as a signal to her to "be strong in your decision to continue to conceal the relationship," her direct, one-word answer was "no."

The managers' reliance on inferences from testimony of persons whose direct testimony contradicts the inferences was a recurring pattern during this trial. The managers alleged that the signing of the affidavit and the obtaining of the job for Ms. Lewinsky were linked, based on inference from bits and pieces of testimony of Monica Lewinsky and Vernon Jordan. But Vernon Jordan and Monica Lewinsky explicitly denied any such linkage. Ms. Lewinsky said, "There was no agreement with the President, Jordan, or anyone else that [I] had to sign the Jones affidavit before getting a job in New York." Mr. Jordan told the grand jury in answer to the question whether the job search and affidavit signing were linked, "unequivocally, indubitably, no."

Impeachment and removal should be based on sturdier foundations than the heap of inferences that have been placed before us, when those inferences are pieced together from bits of testimony of witnesses whose direct, explicit testimony contradicts the inferences. The House managers would have us overlook the forest of direct testimony while getting lost in the trees of their multiple inferences.

The House managers' case also omitted directly relevant, contradictory material and misstated key facts. For instance, the House managers argued in their brief that relative to the job search assistance for Ms. Lewinsky, "nothing happened in November of 1997." But, in fact, our Ambassador to the United Nations, at the request of the Deputy Chief of Staff of the White House, offered Ms. Lewinsky a U.N. job on November 3.

The House managers' report explicitly represented that "[t]he first activity calculated to help Ms. Lewinsky actually get a job took place on December 11," and that "[s]omething happened that changed the priority assigned to the job search." What happened, the managers argued, was a court order "on the morning of December 11" by Judge Wright requiring President Clinton to provide information about prior relationships involving state and federal employees. The Senate was told by the House managers that "[s]uddenly, Mr. Jordan and President Clinton were now very interested in helping Ms. Lewinsky find a good job in New York" and that Vernon Jordan got active on the afternoon of December 11 when he and Ms. Lewinsky met.

Manager HUTCHINSON said in his argument to the Senate:

> The witness list came in. The judge's order came in. That triggered the President to action. And the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along.

But that key argument disintegrated before our eyes when it turned out that Judge Wright's December 11 order came late in the

day, well after the meeting between Vernon Jordan and Monica Lewinsky, and in addition, the meeting had been scheduled many days before.

With respect to the perjury article, the House managers failed to meet their burden as well. The President admitted to the grand jury that he did have "inappropriate intimate contact" with Monica Lewinsky when he was alone with her, and the House managers failed to identify specific statements that would meet the requirements of a perjury charge.

The lack of substantive evidence supporting the charges explains why a panel of five highly regarded former Democratic and Republican federal prosecutors, who appeared before the House Judiciary Committee, testified that this case against the President would not have been pursued by a responsible federal prosecutor. Thomas Sullivan, who served for 4 years as U.S. Attorney for the Northern District of Illinois, and whom Chairman HYDE described as having "extraordinarily high" qualifications had this to say:

> . . . [I]n conversations with many current and former Federal prosecutors in whose judgment I have great faith, virtually all concur that if the President were not involved—if an ordinary citizen were the subject of the inquiry—no serious consideration would be given to a criminal prosecution arising from alleged misconduct in discovery in the Jones civil case, having to do with an alleged coverup of a private sexual affair with another woman or the follow-on testimony before the grand jury . . . I believe the President should be treated in the criminal justice system in the same way as any other United States citizen. If that were the case here, it is my view that the alleged obstruction of justice and perjury would not be prosecuted by a responsible United States Attorney.

Finally, I have had a deep concern about the impeachment process which formed the basis of this trial. While my decision to reject the articles is based on the inadequate proof of the crimes alleged, the process which brought this matter to trial was deeply flawed.

The articles of impeachment before us are based on materials, the so-called Starr Report, compiled by an outside prosecutor, not by the legislative branch itself, which has under the Constitution the "sole" responsibility for impeachment. Instead of doing an independent investigation, the House of Representatives unwisely delegated, in my judgment, the critically important investigative function to an outside prosecutorial foe of the President and an actual advocate of his impeachment. The House took that prosecutor's record and his testimony and made them the basis of articles of impeachment presented to us.

The contrast to the Watergate investigation and the impeachment of President Nixon is stark. In the Watergate investigation, the Senate convened a select committee in February 1973 to investigate the Watergate break-in and other campaign irregularities in the 1972 election. That committee took testimony for a year. In February 1974, the House voted to direct the House Judiciary Committee to conduct an inquiry into impeachment. The committee conducted its own investigation, including subpoenaing the White House tapes and calling numerous fact witnesses. The committee also obtained the report of the grand jury meeting under the authority of Leon Jaworski, the Watergate prosecutor. In deciding to allow the grand jury report to be forwarded to the House Judiciary Committee, Judge Sirica found that the report:

"draws no accusatory conclusions . . . contains no recommendations, advice or statements that infringe on the prerogatives of other branches of government . . . (and) renders no moral or social judgments. The Report is a simple and straightforward compilation of information gathered by the Grand Jury, and no more . . ." (In re Report and Recommendation of June 5, 1972, Grand Jury Concerning Transmission of Evidence to the House of Representatives, U.S. District Court, District of Columbia, March 18, 1974.)

The report sent to the House of Representatives in the matter before us violated almost every standard followed by Judge Sirica. The Starr Report didn't present the evidence in an impartial manner as contemplated in the independent counsel law. It drew a host of "accusatory conclusions" and rendered judgments. The report contained a large volume of needlessly salacious detail and omitted or dismissed important exculpatory evidence. The impeachment process has suffered as a result.

Moreover, the House made a significant and irreparable mistake in the actual drafting of the articles. Each article alleges multiple acts of wrongdoing. Thus, it would be impossible to determine after a vote on the articles whether a two-thirds majority of the Senate actually agreed on a particular allegation. Article I, for example, charges that President Clinton committed one or more of the four possible acts of perjury; article II charges that President Clinton committed one or more of seven possible acts of obstruction. Without separate votes on each of the alleged acts, it would be impossible to determine whether two-thirds of the Senate agreed that the President had committed any of the actions alleged. Since the Constitution requires conviction upon a vote of two-thirds of the Senate, the articles as drafted do not allow us to guarantee to the American people that we are complying with the requirements of the U.S. Constitution. This is a flaw that cannot be fixed, because the Senate does not have authority to amend the articles.

Alexander Hamilton, in "The Federalist Papers," asked this question: "Where else than in the Senate could have been found a tribunal . . . [which] . . . would be likely to feel confidence enough in its own situation to preserve, unawed and uninfluenced, the necessary impartiality between an individual accused and . . . his accusers?"

Each of us, however we vote, will soon answer that question, as we stand between the accuser and the accused, weighing the evidence. The issue before us is not whether the President's conduct was reprehensible; that is clear beyond any reasonable doubt. The issue is whether the President committed the alleged crimes for which he should be removed from office, a proposition which places on his accusers a heavy burden of proof. It is a burden the House managers have not met, and I will, therefore, vote against the articles of impeachment.

I would like to add my thoughts on censure as well, since this may be the only appropriate opportunity to do so. I support the censure resolution authored by Senator FEINSTEIN, and I commend her for her openness, diligence and hard work in bringing to fruitition a bipartisan product. The President should know, the American people should know, and history should know that by voting to acquit on impeachment, we did not vote to acquit the President for his egregious conduct. I know of no Senator who is not deeply troubled by the President's conduct. While I do not be-

lieve the President's conduct in his private, consensual sexual relationship should have become the business of the American public, it did in fact become so, and when it did the President had the duty to tell the truth. And no matter how wrong or improper that disclosure of the President's private life was, it does not justify the lies the President told to the American people, his family and his staff.

I hope that our votes today on impeachment will conclude this unfortunate chapter in our political history and that the President, through a forthright acknowledgment of the wrongfulness of his behavior, will lead the nation toward healing the wounds these events have opened. I believe the American people want an end to this matter more than anything, and that any further criminal investigation of the President with respect to the matters under Mr. Starr's jurisdiction should be immediately concluded. While Senator FEINSTEIN's censure resolution states that President Clinton remains subject to criminal indictment, that is in the resolution as a statement of fact and not as a statement of encouragement. Indictment after this impeachment trial would not be appropriate nor would it be in the public interest. Today's votes should bring this tragic episode to an end.

Mr. Chief Justice, as we close this chapter in the Senate's life and prepare our records for the annals of history, there are several points which I wish to highlight in a series of appendices.

I ask unanimous consent that the appendices be printed in the RECORD.

There being no objection, the appendices were ordered to be printed in the RECORD, as follows:

APPENDIX A

The indisputable, underlying reality of the impeachment case was that Monica Lewinsky's denial of a sexual relationship with the President was part of a long-term understanding and pattern, long before the subpoena in the Paula Jones case.

"Q. Had you talked with him earlier about these false explanations about what you were doing visiting him on several occasions?

"A. Several occasions throughout the relationship. Yes. It was a pattern of the relationship to sort of conceal it."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 844.

"A Juror: Did you ever discuss with the President whether you should deny the relationship if you were asked about it?

"A. I think I always offered that."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 1077.

"A. And she [Linda Tripp] told me that I should put it in a safe deposit box because it could be evidence one day. And I said that was ludicrous because I would never—I would never disclose that I had a relationship with the President. I would never need it."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 1107.

"A Juror: And what about the next sentence also? Something to the effect that if two people who are involved say it didn't happen, it didn't happen. Do you recall him saying that to you?

"A. Sitting here today, very vaguely . . . And this was—I mean, this was early—obviously not something we discussed too often, I think, because it was—it's a somewhat unpleasant thought of having to deny it, having it even come to that point.

"A Juror: Is it possible that you also had these discussions after you learned that you were a witness in the Paula Jones case?

"A. I don't believe so. No.

"A Juror: Can you exclude the possibility?

"A. I pretty much can."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 1119.

APPENDIX B

Did Ms. Lewinsky think her affidavit in the Paula Jones case was false when she signed it?

"Ms. L had a physically intimate relationship with the President. Neither the Pres. nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L to lie. Ms. L was comfortable signing the affidavit with regard to the 'sexual relationship' because she could justify to herself that she and the Pres. did not have sexual intercourse."—Proffer of Monica Lewinsky to the Independent Counsel.

"Q. When he said that you might sign an affidavit, what did you understand it to mean at that time?

"A. I thought that signing an affidavit could range from anywhere between maybe just somehow mentioning, you know, innocuous things or going as far as maybe having to deny any kind of relationship."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 844.

"Q. You were trying to be truthful throughout [the proffer]?

"A. Exactly."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 1142.

"A. But I did some justifying in signing the affidavit, so—

"Q. Justifying—does the word 'rationalizing' apply as well?

"A. Rationalize, yes."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 925.

APPENDIX C

House Managers implied that when the President allegedly told John Podesta Ms. Lewinsky threatened him, the President was lying. But Monica Lewinsky did write a threatening letter to President Clinton.

"If you believe the aides testified truthfully to the grand jury about what the President told them about his relationship, the President told them many falsehoods, absolute falsehoods. So when the President described them under oath to the grand jury as truths, he lied and committed the crime of perjury. One example of this comes from Deputy Chief John Podesta . . . [a]nother is Sidney Blumenthal. His testimony was that on January 23 the President told him that . . . Lewinsky threatened him and said that she would tell people that they had had an affair . . ."—House Manager McCollum, Congressional Record, January 15, 1999, Page S266.

"Q. You mentioned that in that July 3rd letter that you sent to the President through Betty you made a reference to the fact that you might have to explain things to your parents. What did you mean by that? . . . Were you meaning to threaten the President that you were going to tell, for example, your father about the sexual relationship with the President?

"A. Yes and no."—Grand Jury Testimony of Monica Lewinsky, Part One; Independent Counsel Appendices, Page 807.

APPENDIX D

There was much debate about the consequences of calling live witnesses. The President's lawyers argued that calling witnesses would require them to engage in extensive discovery and would significantly stretch out the trial. It is relevant in evaluating that claim to look at the impeachments of Judge Nixon and Judge Alcee Hastings. In both of those cases, the Judges' attorneys were given extensive discovery, including Justice Department files, to prepare their defense. See letter of Senator Wyche Fowler, Chairman of the Senate Impeachment Trial Committee, and letter of Professor Terence Anderson, University of Miami School of Law, below:

U.S. SENATE,
Washington, DC, July 18, 1989.

JOHN C. KEENEY,
Deputy Assistant Attorney General, Criminal Division, Department of Justice, Washington, DC.

DEAR MR. KEENEY: As Chairman of the Senate Impeachment Trial Committee on the Articles of Impeachment against Judge Nixon, I write to request the Department's assistance in the Committee's efforts to assure that Judge Nixon receives a fair trial in the Senate. The Committee has determined that it would make a useful contribution to the trial process if the Department were willing to permit the Committee, through its staff, to review the documents (excluding grand jury materials

governed by Rule 6(e)) in the possession of the Department, including those possessed by the Federal Bureau of Investigation, that were requested by Judge Nixon in his June 1, 1989 letter to the Attorney General, which was the subject of your response on June 21, 1989.

The review would be consistent with that conducted in the case of the Hastings impeachment matter. That is, the focus of the review would be to determine if there is evidence that the investigations were conducted in a manner intended to mislead a court or trier of fact as to Judge Nixon's guilt or innocence. In the event that it is determined that particular documents should properly be made part of the pending impeachment proceedings, and accordingly made available to the parties for use at trial, the committee would hear from the Department prior to disclosing any documents that you believe contain particularly sensitive matters, so that we may address any continuing concerns that you have. No documents or portions of documents would be made available to the parties without the consent of the Department.

Your expeditious response to this request would be most helpful to the committee in attempting to complete discovery by July 31st.

Sincerely,

WYCHE FOWLER, Jr.

THE UNIVERSITY OF MIAMI SCHOOL OF LAW,
Coral Gables, FL, January 28, 1999.

Hon. CARL LEVIN,
U.S. Senate.

DISCOVERY PRECEDENTS FROM HASTINGS

DEAR SENATOR LEVIN: Ms. Linda Gustitus asked that I describe the process by which and the materials to which I was given access as counsel for then Judge Hastings during the impeachment trial proceedings before the United States Senate. After the matter was referred to an Impeachment Trial Committee, I submitted requests for production of documents to the House, to the Investigating Committee of the Judicial Council of the Eleventh Circuit, to the Federal Bureau of Investigation, and the Justice Department. Over the initial objections of the House Managers, at the "request" of the Impeachment Trial Committee I received documents from all but the Justice Department. In lieu of direct production, the Impeachment Trial Committee examined the sensitive Justice Department materials to determine what should be supplied. I was also permitted to take at least three discovery depositions. The proceedings that resulted in this production are reported in Report of the Senate Impeachment Trial Committee on the Articles of Impeachment Against Judge Alcee L. Hastings, S. Hrg. 101–194, Pt. I (Pretrial Matters).

By way of illustrations I enclose an appendix to a memorandum that I submitted to the Impeachment Trial Committee. That appendix describes in some detail the materials that I received from the FBI and my estimate that in the aggregate the production amounted to about 16,000. The enclosed copy was reproduced from S. Hrg. 101–194, Pt. I at 433–436. Please let me know if I can be of further assistance.

Sincerely,

TERENCE J. ANDERSON.
Professor of Law.

APPENDIX E

Many of us in the Senate thought the House of Representatives failed to meet its responsibilities by not calling witnesses before the House Judiciary Committee. A review of impeachments shows that in every impeachment but the one (where the subject of the impeachment was mentally incompetent and the House relied on the record of his decisions as a judge), the House called fact witnesses. According to information obtained by my staff from the Congressional Research Service, there have been 16 impeachments by the House. Fourteen of those impeachments have resulted in trials in the Senate; two did not because the impeached officials resigned.

Fifteen of those impeachments had fact witnesses in the House; one didn't. That was the case of Judge Pickering. He was impeached for being mentally incapacitated. There were charges of drunkenness and "ungentlemanly language" in the courtroom. The articles against him, however, all dealt with his rulings and decisions that "proved" he was mentally incompetent. During the House inquiry, a number of affidavits were presented.

APPENDIX F

Independent counsel Kenneth Starr intervened in the Senate impeachment trial by obtaining a court order addressed to Monica Lewinsky requiring her to meet privately with House Managers, based on a motion and ex parte hearing with no notice to the Senate counsel or White House counsel. The independent counsel then mischaracterized his own action in seeking that order, describing it as seeking an "interpretation" rather than an "order".

See the letters to Kenneth Starr, Robert Bittman, Jacob Stein, & Robert Bittman; the Emergency Motion on Immunity Agreement; the letter to Congressman Henry Hyde; the letter to Sen. Daschle; Congressman Hyde's press release; the order of Judge Norma Holloway Johnson and the transcript of Mr. Starr's remarks as follow:

WASHINGTON, DC,
January 21, 1999.

Hon. KENNETH W. STARR,
Office of Independent Counsel,
Washington, DC.

Re Interview of Monica Lewinsky

DEAR INDEPENDENT COUNSEL STARR: I am writing to you as the Lead Manager of the Managers of the Impeachment Trial of William Jefferson Clinton, currently underway in the United States Senate. We are in the process of selecting witnesses for testimony in these proceedings. The attorneys for Monica Lewinsky have declined to make her available for an interview.

We have reviewed a copy of Ms. Lewinsky's Immunity Agreement. Pursuant to paragraph 1(c) of that Agreement, it would appear that she is required to submit to interviews and debriefings if so requested by the Office of Independent Counsel.

We would like to arrange an interview with Ms. Lewinsky prior to any such testimony. We would be happy to accommodate her wishes as to the precise time and location of that interview. However, it is important that this interview be scheduled to take place on the earliest possible date, specifically Friday, Saturday, or Sunday. Your assistance with this interview will be appreciated.

Thank you for your prompt attention.

Sincerely,

HENRY H. HYDE,
On Behalf of the Managers
on the Part of the House.

LAW OFFICES OF PLATO CACHERIS,
Washington, DC, January 21, 1999.

ROBERT J. BITTMAN, Esquire,
Deputy Independent Counsel, Office of the Independent Counsel, Washington, DC.

DEAR BOB: In your call today you mentioned that the managers requested Ms. Lewinsky's cooperation by way of an interview. As I told you, we believe it is inappropriate for Ms. Lewinsky to be placed in the position of a partisan—meeting with one side and not the other—in this unique proceeding. Therefore, we have recommended against interviews with either side.

Sincerely,

JACOB A. STEIN.
PLATO CACHERIS.

INDEPENDENT COUNSEL,
Washington, DC, January 21, 1999.

JACOB A. STEIN, Esq.,
Stein, Mitchell & Mezines,
Washington, DC.

PLATO CACHERIS, Esq.,
Law Offices of Plato Cacheris,
Washington, DC.

DEAR JAKE AND PLATO: Pursuant to her Immunity Agreement with this Office, we hereby request that Monica Lewinsky meet for an interview with the House of Representatives' Impeachment Managers this Friday, Saturday, or Sunday, January 22, 23, or 24, 1999.

As you will recall, both parties contemplated congressional proceedings at the time we entered into the Immunity Agreement. The Agreement specifically requires

Ms. Lewinsky to "testify truthfully . . . in any . . . congressional proceedings." It further requires Ms. Lewinsky to "make herself available for any interviews upon reasonable request," and stipulates that these interviews may include "representatives of any other institutions as the OIC may require."

While I understand Ms. Lewinsky's misgivings, I must disagree with one statement in your letter to me today: your assertion that submitting to an interview would make Ms. Lewinsky into a partisan. The Managers are acting on behalf of the House of Representatives as a whole, not on behalf of a political party. Their task is constitutional in nature.

Please feel free to call me if you have any questions.

Sincerely,

ROBERT J. BITTMAN,
Deputy Independent Counsel.

STEIN, MITCHELL & MEZINES,
Washington, DC, January 22, 1999.

ROBERT J. BITTMAN, Esquire,
Office of the Independent Counsel,
Washington, DC.

DEAR BOB:

1. We have your January 21, 1999 letter.

2. The Agreement does not require Ms. Lewinsky to be interviewed by the House Managers or any Congressional body.

3. Paragraph 1.C. of the Agreement states: "Ms. Lewinsky will be fully debriefed concerning her knowledge of and participation in any activities within the OIC's jurisdiction. This debriefing will be conducted by the OIC, including attorneys, law enforcement agents, and representatives of any other institutions as the OIC may require. Ms. Lewinsky will make herself available for any interviews upon reasonable requests."

4. This paragraph deals with OIC debriefings, not OIC's acting as an agent for others.

5. The Senate itself has provided its own rules for witness interviews. As we understand them, there first must be a deposition with equal access. As of now the Senate has not voted for depositions.

6. Ms. Lewinsky will, of course, respond to a subpoena to appear and testify before the Senate. Yesterday, we raised with you the issue of immunity for any proposed congressional testimony. You opined that your office could grant such immunity in conformance with Title 18 U.S.C. §§ 6002, 6005. It is our understanding that only the Senate by majority vote can do that. We would appreciate your supplying your legal authority for your position.

Sincerely,

JABOB A. STEIN.
PLATO CACHERIS.

[In the United States District Court for the District of Columbia, Misc. No. 99–(NHJ)]

IN RE GRAND JURY PROCEEDINGS

EMERGENCY MOTION OF THE UNITED STATES OF AMERICA FOR ENFORCEMENT OF IMMUNITY AGREEMENT

The United States of America, by Kenneth W. Starr, Independent Counsel, respectfully submits this motion for an order requiring Ms. Lewinsky to comply with the terms of her Immunity Agreement (the "Agreement") with the Office of the Independent Counsel ("OIC"). Ms. Lewinsky has refused an OIC request that she be debriefed by the House of Representatives, as required by the Agreement. The United States respectfully requests that this Court orders Ms. Lewinsky to comply with the Agreement by allowing herself to be debriefed.

I. Factual background

As this Court is no doubt aware, the United States Senate is currently conducting an Impeachment Trial of the President of the United States. According to public reports, it is expected that the House will be required to submit to the Senate its motion to call witnesses as early as Monday, January 25. Again according to public reports, some potential witnesses have spoken with the House Managers as the

Managers attempt to determine which witnesses should be mentioned in their motion to the Senate.

On January 21, 1999, House Judiciary Committee Chairman Henry J. Hyde, on behalf of the House of Representatives, as represented by its duly-appointed Managers, asked for the OIC's assistance in having Ms. Lewinsky debriefed by the House. See letter from Henry J. Hyde to Kenneth W. Starr (Jan. 21, 1999) (Attachment A). The House stressed that it needs this debriefing to occur no later than Sunday, January 24.

That same day, the OIC sent a letter to Ms. Lewinsky's counsel requesting that Ms. Lewinsky allow herself to be debriefed by the House Managers. See letter from Robert J. Bittman, Deputy Independent Counsel, to Jacob A. Stein, Esq. and Plato Cacheris, Esq. (Jan. 21, 1999) (Attachment C). At approximately 1:20 p.m. this afternoon, Ms. Lewinsky informed the OIC that she does not intend to comply with this request. See letter from Jacob A. Stein and Plato Cacheris to Robert J. Bittman (Jan. 22, 1999) (Attachment D).

II. The immunity agreement plainly requires Ms. Lewinsky to be debriefed by any institution that the OIC specifies

Ordinary contract law principles govern immunity agreements. See *In re Federal Grand Jury Proceedings,* Misc. No. 98–59 (NHJ), slip op. at 12 (D.D.C. May 1, 1998) (under seal) ("Courts generally interpret immunity and proffer agreements, like plea agreements, under principles of contract law."), appeal dismissed sub nom. *In re Sealed Case,* 144 F.3d 74 (D.C. Cir. 1998) (per curiam); accord *United States* v. *Black,* 776 F.2d 1321, 1326 (6th Cir. 1985) ("Like a plea agreement, an immunity agreement is contractual in nature and may be interpreted according to contract law principles."); *United States* v. *Irvine,* 756 F.2d 708, 710 (9th Cir. 1985) (per curiam) ("Generally speaking, a cooperation-immunity agreement is contractual) in nature and subject to contract law standards."); *United States* v. *Hembree,* 754 F.2d 314, 317 (10th Cir. 1985) (characterizing an immunity agreement as "simply a contract").

Under contract law, an agreement is interpreted according to its plain terms. See *Nicholson* v. *United States,* 29 Fed. Cl. 180, 191 (1993). The operative portion of the Immunity Agreement states: "C. Ms. Lewinsky will be fully debriefed concerning her knowledge of and participation in any activities within the OIC's jurisdiction. This debriefing will be conducted by the OIC, including attorneys, law enforcement agents, and *representatives of any other institutions as the OIC may require*. Ms. Lewinsky will make herself available for any interviews upon reasonable request." Immunity Agreement ¶ 1.C (emphasis added) (Attachment E). This provision follows paragraph 1.B, which expressly requires Ms. Lewinsky to "testify truthfully . . . in . . . congressional proceedings."

By the plain terms of the Agreement, Ms. Lewinsky has agreed to be debriefed by representatives of any institution, when so required by the OIC. She is also required to "make herself available for any interviews upon reasonable request." The duly-appointed House Managers represent the House of Representatives, which plainly is an institution. The OIC has unambiguously requested that Ms. Lewinsky submit to each debriefing. Accordingly, Ms. Lewinsky must allow herself to be debriefed by the House Managers or she will have violated the Agreement.

To be sure, Ms. Lewinsky has the right to have her "debriefing . . . conducted by the OIC." The OIC, of course, is fully willing to conduct these debriefings, if Ms. Lewinsky so desires. The suggestion in her counsel's letter that this provision is void if the OIC is "acting as an agent for other," Attachment D at ¶ 4, is contrary to the Agreement, as there is no such limitation on Ms. Lewinsky's duties. A party to an agreement may not invent clauses to a contract that are not contained therein.

In any event, the OIC is not acting as an agent for the House Managers. The OIC has its own continuing duty to provide the House with information relating to impeachment. See 28 U.S.C. § 595(c).

Ms. Lewinsky's counsel's other suggestion—that a debriefing would be contrary to Senate Rules, see Attachment D at ¶ 5—is equally without merit. Senate Resolution 16 (106th Cong.) states, in relevant part: "If the Senate agrees to allow either the House or the President to call witnesses, the witnesses shall first be deposed and the Senate shall decide after deposition which witnesses shall testify, pursuant to the impeachment rules." Although it is plain that depositions may not be conducted absent a vote of the Senate, nothing in this resolution restricts the ability of the House to debrief witnesses in a nondeposition setting. Indeed, it would be strange for the Senate to prohibit the House and the President from doing the investigation necessary to determine whether they wish to call witnesses and which witnesses to list in their motions.

III. This court should grant an order requiring Ms. Lewinsky to comply with the immunity agreement or forfeit its protection

Under the Agreement, this Court has the authority to determine whether Ms. Lewinsky has "violated any provision of this Agreement." Immunity Agreement ¶ 30. "[A] declaratory judgment will ordinarily be granted only when it will either serve a useful purpose in clarifying the legal relations in issue or terminate and afford relief from the uncertainty, insecurity, and controversy giving right to the proceeding." *Tierney* v. *Schweiker*, 718 F.2d 456 (D.C. Cir. 1983) (internal quotation marks omitted). In this case, a declaratory judgment will resolve the uncertainty arising from this controversy between the OIC and Ms. Lewinsky by settling whether she has the right to refuse to be debriefed without forfeiting the protections of the Agreement.

Indeed, declaratory judgment is a common remedy when a party to a contract intends conduct that may be a breach: "'(A) party to a contract is not compelled to wait until he has committed an act which the other party asserts will constitute a breach, but may seek relief by declaratory judgment and have the controversy adjudicated in order that he may avoid the risk of damages or other untoward consequence.'" (*Application of President & Directors of Georgetown College, Inc.*) 331 F.2d 1000, 1002 n.6 (D.C. Cir. 1964) (quoting *Keener Oil & Gas* v. *Consolidated Gas Utilities Corp.,* 190 F.2d 985, 989 (10th Cir. 1951)); see *Gilbert, Segall & Young* v. *Bank of Montreal,* 785 F. Supp. 453. 462 (S.D.N.Y. 1992); *Fine* v. *Property Damage Appraisers, Inc.*, 393 F. Supp. 1304, 1309–10 (E.D. La. 1975). Accordingly, this Court has the power to issue a declaratory judgment before Ms. Lewinsky's actions become irreversible.

IV. Conclusion

The Immunity Agreement plainly requires that Ms. Lewinsky allow herself to be debriefed by any institution at the request of the OIC. Ms. Lewinsky has the right to insist that the OIC conduct the debriefing, but she must comply with the plain terms of the Immunity Agreement. Accordingly, the United States respectfully requests that this Court enter an order requiring Ms. Lewinsky to submit to debriefing by the House.

The Senate's schedule requires the House to submit its motion to call witnesses as early as Monday, and the House has stressed its need to debrief Ms. Lewinsky this weekend. Accordingly, the United States respectfully requests that this Court act on this motion as an emergency matter. Specifically, we request a hearing on this matter today.

Respectfully submitted,

KENNETH W. STARR,
Independent Counsel.
ROBERT J. BITTMAN,
Deputy Independent Counsel.
JOSEPH M. DITKOFF,
Associate Independent Counsel.
RICHARD C. KILLOUGH,
Assistant Independent Counsel.

WASHINGTON, DC,
January 23, 1999.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
Washington, DC.

DEAR MR. MANAGER HYDE: We understand that the Office of Independent Counsel, on behalf of the House Managers, sought a court order to compel Ms. Lewinsky to submit to an interview with the Managers in preparation for her possible testimony. We further understand that Chief Judge Norma Holloway Johnson has granted the order sought by the Independent Counsel.

As you know, Senate Resolution 16, which was passed by a 100–0 vote just over two weeks ago, expressly deferred any consideration or action related to additional witness testimony until after opening presentations, a question-and-answer period and an affirmative vote to compel such testimony. These actions by the Managers, undertaken without notice to the Senate or the President's Counsel, raise profound questions of fundamental fairness and undermine the ability of this body to control the discovery procedures that will take place under the imprimatur of its authority.

In light of these concerns, we ask that you withdraw any and all requests to Mr. Starr that he assist your efforts to interview Ms. Lewinsky. The Senate, in a matter of days, will have an opportunity to formally address this issue pursuant to the pro-

cedures established by Senate Resolution 16. Moreover, we insist that you take no action related to the proposed interview of any witness until such time as the Senate has given you the authority to do so.

Sincerely,

HARRY REID.

[Also signed by 43 Senators.]

WASHINGTON, DC,
January 23, 1999.

Hon. TOM DASCHLE,
Democratic Leader, U.S. Senate,
Washington, DC.

DEAR MR. DEMOCRATIC LEADER: I am in receipt of your letter of today expressing your concern with the House of Representatives' request to interview Monica Lewinsky.

It has always been the position of the House Managers that a full trial with the benefit of relevant witnesses is in the best interest of the Senate and the American people. Representatives of President Clinton and many Senators have publicly stated that they want the Senate to preclude the testimony of witnesses. Many other Senators have made it clear that they prefer the witness lists for both sides to be sharply focused and limited to only the most relevant witnesses. The Managers have been mindful of these Senators' concerns.

It is clear that the two most important witnesses in this trial are President Clinton and Ms. Lewinsky. Yesterday, I wrote to Majority Leader Lott and you to express the Managers' willingness to participate in the fair examination of the President if the Senate chooses to invite him to testify. The presentation of the President's counsel ended just two days ago. We are in the process of evaluating that presentation and determining what witnesses we will request the Senate to call. We believe that interviewing Ms. Lewinsky will help us make this determination. Counsel for the President may have already interviewed witnesses or may wish to interview witnesses they will propose to the Senate. That is their prerogative. The Senate has required us to submit a proffer of anticipated testimony of any proposed witnesses. Interviews of potential witnesses will assist the parties in providing the Senate with informative proffers.

The House of Representatives has not violated S. Res. 16. When the House passed H. Res. 10 appointing the Mangers, it authorized that the Managers may "in connection with the preparation and the conduct of the trial, exhibit the articles of impeachment to the Senate and take all other actions necessary, which may include . . . sending for persons and papers . . ." Implicit in this authority is the ability to conduct interviews and gather additional information relevant to the articles of impeachment.

The Managers, who represent the House of Representatives, retain powers separate and apart from the Senate. The Managers are not, just as the President's Counsel are not, an office or subset of the Senate. The Managers, like the President's Counsel, may conduct activities, such as further investigation and legal research, that are not specifically authorized by the Senate.

Senate Resolution 16 does not prohibit the Managers from conducting further investigation or interviews of witnesses. If the resolution was intended to restrict the Managers in this way, we believe that it would violate principles of bicameralism, the ability of each House to establish its own rules of procedure, and would therefore be an unconstitutional infringement on the prerogatives of the House.

Implicit in the right of the Managers to report to the House amendments to articles of impeachment, is the right of the Managers to receive and evaluate additional information. For example, if the Managers received additional exculpatory or inculpatory information, they could file amendments to the articles of impeachment in the House.

Senate Resolution 16 set a schedule for deciding whether to depose witnesses. The decision to depose witnesses is subject to a request from the House Managers. The House Managers have decided that they need to talk with Ms. Lewinsky before making a recommendation to the Senate to depose her. The action of the House Managers is not unusual. It is not unfair, and it is not contrary to the rules of the Senate.

With all due respect to the Senate, the rules and the constitutional principles of bicameralism do not require that the House obtain the permission of the Senate merely to conduct an interview of a potential witness. A decision to merely interview

a witness as opposed to conducting a deposition, does not interfere with the Senate's ability to control the procedures set forth under S. Res. 16.

Sincerely,

HENRY J. HYDE,
On behalf of the Managers on the Part of the House of Representatives.

[From the U.S. House of Representatives, Committee on the Judiciary, Henry J. Hyde, Chairman]

MANAGERS' RESPONSE TO JUDGE'S RULING

(Washington, D.C.)—Paul McNulty, chief spokesman for the House Managers, made the following statement today following Judge Johnson's ruling that Monica Lewinsky must cooperate with the managers' request for an interview, in keeping with her immunity agreement:

"Monica Lewinsky received extraordinary protection in exchange for her truthful testimony. Judge Johnson ruled that she has an obligation to cooperate in the search for truth.

"Ms. Lewinsky's testimony has never been more important than it is now. In the last four days, the White House has challenged the reliability of her testimony in a number of key instances relating to her conversations with the President and Ms. Currie.

"Ms. Lewinsky can resolve some of these crucial conflicts, and House Managers have a responsibility to interview her before deciding to call her as a witness. This is Lawyering 101—any good lawyer would talk to a witness before deciding to put her on the witness stand. When the House of Representatives appointed the Managers, it also granted them the investigative authority necessary to find the truth.

"The White House's protests are psuedo-objections designed to divert attention from the President's behavior."

[In the United States District Court for the District of Columbia, Misc. No. 99–32 (NHJ)]

IN RE GRAND JURY PROCEEDINGS

ORDER

Upon consideration of the Emergency Motion of the United States of America for Enforcement of Immunity Agreement, it is hereby ordered that the Motion is granted. It is further ordered that Monica S. Lewinsky allow herself to be debriefed by the House Managers, to be conducted by the Office of the Independent Counsel if she so requests, or forfeit her protections under the Immunity Agreement between Ms. Lewinsky and the OIC.

January 23, 1999.

NORMA HOLLOWAY JOHNSON,
Chief Judge.

EXCERPT FROM CBS RADIO TRANSCRIPT, JANUARY 24, 1999

KENNETH STARR DELIVERS REMARKS CONCERNING THE UPCOMING INTERVIEW WITH MONICA LEWINSKY; WASHINGTON, D.C.

QUESTION: Sir, people are saying on Capitol Hill that you're trying to influence the trial by bringing back Monica, before they had a chance to vote.

What do you say about that?

STARR: Well, as I indicated, we had a request from the Lead Manager, Chairman Hyde, it was a formal request. And we responded as I felt that we were obligated to do to that request. And we then took what I felt was the appropriate action and we went to court.

I want to make it very clear that Chief Judge Johnson has only interpreted the agreement between Ms. Lewinsky, who's advised by her very able lawyers, and our office. She did not direct an order in any sense other than to interpret the meaning of the agreement, which we asked her to interpret. So, I want it to be very, very clear that the judge was simply acting at our request to interpret the terms of the agreement, which we believe are quite clear.

QUESTION: Senator Harkin said yesterday that Judge Johnson may not have acted, you know, constitutionally. Do you have any comment on that?

STARR: Well we think that we have taken the appropriate action in going to the court and the court acted appropriately in interpreting the agreement, which is all that she did. So if there is an issue, the issue has to be one that's entrusted to the wisdom of the Senate. And their relationship with the House managers.

But from our standpoint, the agreement we felt was clear, we asked the judge to determine whether our interpretation of the agreement was clear. And she has issued her ruling.

APPENDIX G

Although the House Managers argued strenuously about the need to call witnesses in the Senate trial, their position in the House of Representatives on the same subject was the opposite.

"Well, they've already testified . . . I don't think we need to reinvent the wheel. To keep calling people to reiterate what they've already said under oath."—Rep. Henry Hyde, CNN, October 10, 1998.

"I don't really believe that we need more live testimony from those type of witnesses. We have sworn testimony from Monica Lewinsky, from Betty Currie, from all the principal players. We also have sworn testimony from corroborating witnesses to their testimony . . . And—and . . . I don't think we need any former witnesses. I don't think we need to bring any in."—Rep. Bill McCollum, NBC "Saturday Today", November 28, 1998.

"Bringing in witnesses to rehash testimony that's already concretely in the record would be a waste of time and serve no purpose at all."—Rep. George Gekas, New York Times, November 6, 1998.

APPENDIX H

Although the House Managers argued strenuously about the need to call witnesses in the Senate trial, they also claimed that the record conclusively proved the President's guilt.

"A reasonable and impartial review of the record as it presently exists demands nothing less than a guilty verdict."—House Manager Bryant, Congressional Record, January 14, 1999, Page S232.

"Finally, before turning to that merger of the law and the facts, which I believe will illustrate conclusively that this President has committed and ought to be convicted on perjury and obstruction of justice . . ."—House Manager Barr, Congressional Record, January 15, 1999, Page S274.

"[L]adies and gentlemen of the Senate, there are conclusive facts here that support a conviction."—House Manager Bryant, Congressional Record, February 8, 1999, Page S1358.

APPENDIX I

At times, the House Managers took different and oft-time conflicting positions on the need to call witnesses in the Senate trial.

"I submit that the state of the evidence is such that unless and until the President has the opportunity to confront and cross-examine witnesses like Ms. Lewinsky, and himself, to testify if he desires, there could not be any doubt of his guilt on the facts."—House Manager Bryant, Congressional Record, January 14, 1999, Page S232.

"[I]f we had Mr. Jordan on the witness stand—which I hope to be able to call Mr. Jordan—you would need to probe where his loyalties lie, listen to the tone of his voice, look into his eyes and determine the truthfulness of his statements. You must decide whether he is telling the truth or withholding information."—House Manager Hutchinson, Congressional Record, January 14, 1999, Page S234.

"The case against the President rests to a great extent on whether or not you believe Monica Lewinsky. But it is also based on the sworn testimony of Vernon Jordan, Betty Currie, Sidney Blumenthal, John Podesta and corroborating witnesses. Time and again, the President says one thing and they say something entirely different. . . . But if you have serious doubts about the truthfulness of any of these witnesses, I, again, as all my colleagues do, encourage you to bring them in here."—House Manager McCollum, Congressional Record, January 15, 1999, Page S266.

"[O]n the record, the weight of the evidence, taken from what we have given you today, what you can read in all these books back here . . . I don't know what the witnesses will say, but, I assume if they are consistent, they'll say the same that's in here."—House Manager McCollum, Congressional Record, January 15, 1999, Page S266–S267.

"[N]o one in this Chamber at this juncture does not know all the facts that are pertinent to this case. That is a magnificent accomplishment on the part of the managers."—House Manager Gekas, Congressional Record, January 15, 1999, Page S267.

APPENDIX J

The House of Representatives articles were intended to charge President Clinton with specific crimes.

"[T]his honorable Senate must do the right thing. It must listen to the evidence; it must determine whether William Jefferson Clinton repeatedly broke our criminal laws and thus broke his trust with the people."—House Manager Sensenbrenner, Congressional Record, January 14, 1999, Page S227.

"Moreover, in engaging in this course of conduct, referring here to the words of the obstruction statute found at section 1503 of the Criminal Code, the President's actions constituted an endeavor to influence or impede the due administration of justice in that he was attempting to prevent the plaintiff in the Jones case from having a 'free and fair opportunity to learn what she may learn concerning the material facts surrounding her claim'. These acts by the President also constituted an endeavor to 'corruptly persuade another person with the intent to influence the testimony they might give in an official proceeding'. Such are the elements of tampering with witnesses found at section 1512 of the Federal Criminal Code."—House Manager Barr, Congressional Record, January 15, 1999, Page S274–S275.

"Under both sections of the Federal Criminal Code, that is, 1503, obstruction, and 1512, obstruction in the form of witness tampering, the President's conduct constituted a Federal crime and satisfies the elements of those statutes."—House Manager Barr, Congressional Record, January 15, 1999, Page S275.

"The evidence, however, clearly establishes that the President's statement constitutes perjury, in violation of section 1623 of the U.S. Federal Criminal Code for the simple reason the only realistic way Ms. Lewinsky could get out of having to testify based on her affidavit. There was no other way it could have happened. The President knew this. Ms. Lewinsky knew this. And the President's testimony on this point is perjury within the clear meaning of the Federal perjury statute. It was willful, it was knowing, it was material, and it was false."—House Manager Barr, Congressional Record, January 15, 1999, Page S275.

"Please keep in mind also, it is not required that the target of the defendant's actions actually testify falsely. In fact, the witness tampering statute can be violated even when there is no proceeding pending at the time the defendant acted in suggesting testimony. As the cases discussed by Manager Cannon demonstrate, for a conviction under either section 1503, obstruction, or 1512, obstruction by witness tampering, it is necessary only to show it was possible the target of the defendant's actions might be called as a witness. That element has been more than met under the facts of this case."—House Manager Barr, Congressional Record, January 15, 1999, Page S276.

"In my opening statement before this body, I outlined the four elements of perjury: An oath, intent, falsity, materiality. In this case, all those elements have been met."—House Manager Chabot, Congressional Record, February 8, 1999, Page S1341.

"In the past month, you have heard much about the Constitution; and about the law. Probably more than you'd prefer; in a dizzying recitation of the U.S. Criminal Code: 18 U.S.C. 1503. 18 U.S.C. 1505. 18 U.S.C. 1512. 18 U.S.C. 1621. 18 U.S.C. 1623. Tampering. Perjury. Obstruction. That is a lot to digest, but these are real laws and they are applicable to these proceedings and to this President."—House Manager Barr, Congressional Record, February 8, 1999, Page S1342.

APPENDIX K

Though written in his diary almost 200 hundred years ago, John Quincy Adams' thoughts on the impeachment of Justice Samuel P. Chase, who was acquitted, are relevant to the impeachment of President Clinton.

On the day that Justice Chase was acquitted in 1805, John Quincy Adams wrote the following:

". . . This was a party prosecution, and is issued in the unexpected and total disappointment of those by whom it was brought forward. It has exhibited the Senate of the United States fulfilling the most important purpose of its institution . . . It has proved that a sense of justice is yet strong enough to overpower the furies of factions; but it has, at the same time, shown the wisdom and necessity of that provision in the Constitution which requires the concurrence of two-thirds for conviction upon impeachments."

APPENDIX L

ADDITIONAL STATEMENT OF SENATOR CARL LEVIN REGARDING THE INDEPENDENT COUNSEL

Mr. President, four and one half years ago, the Special Court under the independent counsel law appointed Kenneth Starr to investigate certain specific and credible allegations concerning President Clinton's involvement in the Madison Guaranty Savings and Loan Association of Little Rock, Arkansas. Three and half years later—and after what appears to be the most thorough criminal investigation of a sitting President, Mr. Starr was unable to find any criminal wrongdoing on the part of the President in what came to be known as "Whitewater." A similar conclusion was reached by Mr. Starr with respect to additional investigations assigned to Mr. Starr along the way—namely, allegations with respect to the White House use of FBI files and the discharge of White House employees from the White House Travel Office.

A year ago Mr. Starr's investigation was coming to an end. That's when Linda Tripp walked through Mr. Starr's door with promises of taped phone conversations between Ms. Tripp and Monica Lewinsky about Ms. Lewinsky's sexual relationship with President Clinton. And what was the alleged crime? That President Clinton and Ms. Lewinsky were about to lie about their relationship—if they were asked about it by the attorneys for Paula Jones in her sexual harassment case against President Clinton. Mr. Starr had to know that the relationship between President Clinton and Monica Lewinsky had been a consensual one. Mr. Starr had to know that, because Ms. Tripp was informed by Ms. Lewinsky of every aspect of her relationship with President Clinton. And at this point—January 12, 1998—neither Monica Lewinsky nor President Clinton had been deposed.

I am convinced that no ordinary federal prosecutor, if confronted with the same situation involving a private citizen, would have pursued this case. But Mr. Starr was no ordinary federal prosecutor. Without jurisdiction with respect to these matters, he immediately gave Ms. Tripp immunity in exchange for access to her tapes, and he wired her to tape a private luncheon conversation with Ms. Lewinsky. Shortly after Mr. Starr wired Ms. Tripp, he confronted Ms. Lewinsky and, according to her, threatened her with 27 years in prison and the prosecution of her mother in order to get her cooperation and to tape Betty Currie, the President, and/or Vernon Jordan. Mr. Starr brought his enormous criminal investigative resources to bear on testimony yet to be given in a civil lawsuit involving a consensual, sexual relationship.

At the time Ms. Lewinsky was threatened by Mr. Starr, her affidavit in the Jones case had not been filed. She was still in a position to retrieve it or amend it. Also, President Clinton had not been deposed. He had not given his testimony in the Paula Jones suit. In effect, Mr. Starr and his agents lay in wait—waiting for the President to be surprised at the Jones deposition with information about Monica Lewinsky. And how did that information about Monica Lewinsky get in the hands of the Jones attorneys? Ms. Tripp gave them the information. And she was able to do that even though she was under an immunity arrangement with Mr. Starr, because—as Mr. Starr acknowledged to the House Judiciary Committee under questioning—Mr. Starr's agents never directed Ms. Tripp to keep her information confidential, even though Mr. Starr had a major concern that the Lewinsky matter would leak to the press. Mr. Starr's agents did not tell Ms. Tripp not to talk to the Jones attorneys or anyone else in order to ensure that the story would not leak to the press.

So the enormous criminal investigative resources of the federal government were brought to bear on the President of the United States to catch him by surprise in a future deposition in a civil proceeding on a matter peripheral to the lawsuit, prior to any of the suspected unlawful conduct.

Once the President testified in that civil suit, Mr. Starr convened a grand jury to investigate the truthfulness of Mr. Clinton's testimony. Again, using the virtually unlimited resources of the federal government with respect to a criminal investiga-

tion, Mr. Starr called countless witnesses before the grand jury—recalling numerous witnesses multiple times. Betty Currie testified on 5 different occasions; so did Vernon Jordan. Monica Lewinsky testified 3 times and was interviewed over 20 separate times. I don't believe any regular prosecutor would have invested the time and money and resources in the kind of investigation that Kenneth Starr did.

At the end, Mr. Starr wrote a report arguing for impeachment to the House of Representatives. He didn't just impartially forward evidence he thought may demonstrate possible impeachable offenses.

The Starr report spared nothing. Lacking good judgment and balance, the Starr report contained a large amount of salacious detail, and skipped over or dismissed important exculpatory evidence, such as Monica Lewinsky's statement that no one asked her to lie and no one promised her a job for her silence. Mr. Starr violated the standards enunciated by Judge Sirica when he addressed the status of the grand jury report in the Watergate matter. In that case, Judge Sirica wrote in granting Leon Jaworski, the Watergate prosecutor, the right to forward grand jury information to the House of Representatives:

"It draws no accusatory conclusions. . . . It contains no recommendations, advice or statements that infringe on the prerogatives of other branches of government. . . . It renders no moral or social judgments. The Report is a simple and straightforward compilation of information gathered by the Grand Jury, and no more. . . . The Grand Jury has obviously taken care to assure that its Report contains no objectionable features, and has throughout acted in the interests of fairness. The Grand Jury having thus respected its own limitations and the rights of others, the Court ought to respect the Jury's exercise of its prerogatives." (*In re Report and Recommendation of June 5, 1972, Grand Jury Concerning Transmission of Evidence to the House of Representatives*, U.S. District Court, District of Columbia, March 18, 1974.)

What a far cry the Watergate grand jury report was from Mr. Starr's. The Starr Report violates almost every one of the standards laid out by Judge Sirica in the Watergate case.

The House of Representatives the Judiciary Committee then almost immediately released the Starr report and the thousands of pages of evidence to the public.

Because of that release—enormous damage had been done to the public's sense of decorum and to appropriate limits between public and private life.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR HERB KOHL

Mr. KOHL. Mr. Chief Justice, throughout this process my colleagues from both sides of the aisle have conducted themselves with decency and dignity, exactly the qualities President Clinton's conduct lacked. But we risk opening the floodgates to more party-line impeachments if we oust a President from office for behavior that—while truly deplorable—isn't truly removable. Lowering the standard would do as great a disservice to the Constitution as the President's behavior has done to the Oval Office. So I am voting to acquit on both articles.

I state these conclusions with a certainty I do not feel. We have heard many say these votes are the most difficult they will ever cast, and I agree. This case is made up of many small questions, matters of opinion and fact: Did the President lie? Did he commit perjury? Did he obstruct justice? Did he weaken the judicial system? Did he undermine the Constitution? Are these "high" crimes? Is this what the founders envisioned when they talked about removal of a President?

Most of us have answers for each of these questions. Most of us will lay them out in well-worded, well-argued statements. But the sum of the answers is not the sum of this case. The sum of our opinions, our findings of fact, and our legal briefs cannot sum up the deep disquiet I feel about the failings, lies, and weakness dis-

played by the President. Under the cold body of evidence before us runs the bad blood of bad character, and that deeply disturbs me.

The evidence does not prove high crimes, but it does prove low character in our highest office—and that matters, it is relevant, it is material. This Nation is not defined merely by demographics, boundaries, geological features, and government regulations; it is also about families and individuals who struggle to be larger, braver, and stronger than their circumstances. It is a nation that has a history of putting lives, faith, and hope in causes bigger than any one person: justice, democracy, freedom. Similarly, the Office of the Presidency is not just a set of protocols, formalities, and policies. It is the human face we put on our country, and that face ought to be as honest, just, strong and brave as we all aspire to be—and as our history demands that we be.

That's why character matters. I cannot find a way to fit my concern for that spirit into these very formal, legal proceedings, but I also cannot, in good conscience, let go of my deep concern for the harm and the loss this President has caused. I will not vote for either article of impeachment, but I also will not let go of my firm belief that this President has done real damage to the Office of the Presidency. And I will not let go of a commitment to do everything I can to restore and protect the idea that good character is essential in those who ask to serve and represent this country.

Let me explain in more detail why I am voting against both articles. First, removing a President is a drastic measure, called for in only the most extraordinary circumstances. And our Founding Fathers clearly wanted it to be used sparingly: that's why they limited impeachment to only "high crimes and misdemeanors" involving abuse of power, incapacity to hold office, or a serious threat to our Constitution or system of government.

But the President's conduct, however reprehensible, related to purely personal matters. He lied to the American people. He lied to his family, his friends and his staff. He lied under oath and evidence suggests that he may have obstructed justice. Simply put, his conduct was disgraceful and, possibly, illegal.

However, his actions did not relate to abuse of power. They had nothing to do with his official acts or his capacity to hold office. They did not threaten our Constitution or system of government. Though serious offenses to our American values and decency, they do not rise to the level of constitutional "high" crimes.

Some of my colleagues have a different view, and I respect their position. But even the House prosecutors respect mine. In response to one of my questions, House Manager GRAHAM acknowledged that "reasonable people can disagree" about whether the President should be removed. In fact, he went on to say:

> "[I]f I was sitting where you're at, I would probably get down on my knees before I made that decision, because the impact on society is going to be real either way. And if you find the President guilty in your mind from the facts, that's he a perjurer and he obstructed justice, you've got to somehow reconcile continued service in light of that event. And I think it's important for this body not to have a disposition plan that doesn't take in consideration the good of this Nation. . . . [Y]ou've got to consider what's best for this Nation."

Representative GRAHAM deserves credit for putting candor above partisanship, and inviting us to decide "what's best for this Nation." To do that, it makes sense to consider the views of the Amer-

ican people. Most of them know what this case is about and most of them oppose this impeachment. Nothing we've heard clearly justifies rejecting the overwhelming weight of their opinion and removing a twice-elected President.

Indeed, if "reasonable people can disagree," as the House prosecutors concede, have we really met the high threshold established for removal?

To ask that question is to answer it.

It is true, of course, that we have removed judges for lying under oath; for example, 10 years ago the Senate removed Judge Nixon on that basis. But impeaching the President, our highest elected official, is far different. Judge Nixon was appointed. He held office during "good Behaviour." At the time of his Senate trial, he was already convicted and sitting in jail. He lied about bribery, not sex. And most importantly, the only way a judge can be removed is by impeachment. A President, on the other hand, can be removed every 4 years through an election, and is automatically removed after 8 years by the 22d amendment.

Second, in addition to the constitutional problems, the prosecution has not proved its allegations by clear and convincing evidence. This is especially true on the "obstruction of justice" charge, which is by far the more serious allegation. The House managers argue that more witnesses would have made a difference in bolstering their case, and they may be right. But why then did the House choose not to call witnesses in its own proceedings, even though it had called "fact" witnesses in nearly every other impeachment?

Third, as many of us told the House in the Judge Nixon impeachment trial, lumping together a series of charges in each article—at least four perjury charges and seven obstruction of justice charges here—isn't fair or responsible. Alarmingly, the President could be found guilty without a two-thirds majority believing any single charge. For example, in theory, even if each obstruction charge were rejected by a 90 to 10 margin, the President could be convicted—because ten different Senators convicting on each of seven separate charges adds up to 70—more than a two-thirds majority.

Mr. Chief Justice, this kind of "one from column A and two from column B" approach may work for a Chinese restaurant, but not for removing a President—or a judge. And this lack of specificity shortchanges the American people, who may never understand which charges were believed and which ones weren't.

Still, President Clinton is not "above the law." His conduct should not be excused, nor will it. The President can be criminally prosecuted, especially once he leaves office. In other words, his acts may not be "removable" wrongs, but they could be "convictable" crimes. Moreover, the House vote of impeachment—and the President's misconduct with Monica Lewinsky—will forever scar this President's legacy. Finally, the Senate can and should censure the President, and we ought make our condemnation of his conduct as strong as possible.

In sum, Mr. Chief Justice, President Clinton's conduct was wrong, reckless and indefensible. Under the Constitution it does not justify removal. But for those who love this country, it demands

outrage and disappointment. It demands a commitment from this President and future Presidents, this Congress and future Congresses—not now, and not ever again, to let personal weakness and personal failing stain or shake our democracy. Thank you.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR FRED THOMPSON

Mr. THOMPSON. Mr. Chief Justice, in 1994, Paula Corbin Jones sued President Clinton for sexual harassment which she alleged he committed against her in 1991, when he was Governor of Arkansas. The Supreme Court of the United States permitted the lawsuit to proceed in 1997.

Monica Lewinsky began work as a White House intern on July 10, 1995. At the time, she was 21 years old. She later worked in the Office of Legislative Affairs at the White House. In 1996, she left the White House for a job at the Department of Defense.

The first day that Ms. Lewinsky spoke with President Clinton, November 15, 1995, she and the President engaged in sexual relations. Their sexual relationship lasted until 1997. The two also engaged in telephone sex at least 17 times, and they exchanged numerous gifts. The two agreed to keep their relationship secret through the use of cover stories. Ms. Lewinsky, if discovered in the Oval Office, was to say that she was delivering papers, although her job duties never included delivering papers. Once she left the White House, her visits to the President were disguised as visits to Presidential secretary Betty Currie.

The President told Ms. Lewinsky that she could return to the White House after the 1996 election had concluded. Although Ms. Lewinsky tried numerous times to regain employment at the White House, she was never able to do so. After being informed by a friend, Linda Tripp, that she would never be permitted to return to the White House, Ms. Lewinsky decided to seek employment in New York, initially receiving and rejecting a job offer with the United States Ambassador to the United Nations. She then decided to seek employment in New York in the private sector. On November 5, 1997, she met with Vernon Jordan, a prominent Washington lawyer and friend of President Clinton, to seek his assistance in securing such a position. This meeting was arranged by Ms. Currie. Mr. Jordan took no action to help her in November, and does not remember meeting her at this time.

On December 5, 1997, attorneys for Ms. Jones notified the President's attorneys of their list of witnesses. That list included Ms. Lewinsky. Although she was unaware at the time that her name was on the Jones litigation witness list, Lewinsky coincidentally decided to terminate her relationship with the President the following day, but was unable to see him at the White House. President Clinton and Ms. Lewinsky initially exchanged angry words that day over the telephone, but later that day, she came to the White House at his invitation. During this meeting, Ms. Lewinsky told the President that Mr. Jordan had not appeared to have done anything to help her in her job search. In a conversation Ms. Lewinsky described as "sweet" and "very affectionate," he told her

that he would speak to Mr. Jordan about her job situation. The President did not at that time inform Ms. Lewinsky that her name was on the witness list.

Ms. Currie again called Mr. Jordan, and on December 8, 1997, Ms. Lewinsky called to set another appointment with Mr. Jordan for December 11. Although Ms. Lewinsky provided Mr. Jordan with a list of corporations in which she was interested in obtaining employment, Mr. Jordan determined based on his own contacts which companies he would pursue on Ms. Lewinsky's behalf. Following his meeting with Ms. Lewinsky, acting by his own admission at the behest of the President, Jordan called three corporate executives in New York. He also called the President to report on his efforts on behalf of Ms. Lewinsky.

December 11, 1997, was also the date on which Judge Susan Webber Wright, the presiding judge in the Jones litigation, issued an order permitting Jones' attorneys to pursue discovery concerning the names of any state or federal employees with whom the President had had sexual relations, proposed sexual relations, or sought to have sexual relations.

On December 17, 1997, between 2 and 2:30 a.m., the President telephoned Ms. Lewinsky. He informed her that Ms. Currie's brother had been killed, as well as that her name was on the Jones witness list. The President indicated that if Ms. Lewinsky were subpoenaed, she should let Ms. Currie know. He also told her that she might be able to sign an affidavit in that event to avoid testifying. In addition, he suggested that she could say that she was coming to see Betty or was bringing him papers. Ms. Lewinsky says that she understood implicitly that she was to continue to deny their relationship.

Ms. Lewinsky was subpoenaed to testify in the Jones litigation on December 19, 1997. The subpoena also required Ms. Lewinsky to produce all gifts that she had received from the President, and enumerated one specific gift that the President had given Ms. Lewinsky, a hatpin. Because Ms. Currie was in mourning, Lewinsky called Jordan, who invited her to his office. She was in a highly emotional state, and that fact, combined with her statements in the conversation that demonstrated her personal fascination with the President, prompted Jordan to ask whether she, a person for whom he was providing job assistance, had had sexual relations with the President. He says she denied such relations. Jordan took a telephone call from the President during that meeting, and made plans to see him that night. Jordan later called Frank Carter, a Washington lawyer, to arrange a meeting at which he would refer Ms. Lewinsky to Mr. Carter as a client.

Notwithstanding Ms. Lewinsky's denial of sexual relations with the President, Jordan asked President Clinton that same evening the same question. The President also denied having had sexual relations with Ms. Lewinsky. Jordan also conveyed a number of Lewinsky's statements to the President, and informed Clinton that Lewinsky had received a subpoena to testify in the Jones case. Following a discussion in which Lewinsky informed Jordan of the nature of the telephone calls she had had with the President, Jordan drove Lewinsky to a meeting at Mr. Carter's office on December 22.

The President met with Ms. Lewinsky on December 28, 1997, at which time they again exchanged gifts. They discussed the subpoena, and she expressed concern, which the President shared, about the specific enumeration of the hatpin, since that suggested that someone knew details of their relationship. Ms. Lewinsky then suggested taking the gifts out of her apartment or giving them to Ms. Currie. The President responded, "I don't know" or "Let me think about that." Later that same day, Ms. Lewinsky's consistent recollection is that Ms. Currie called her and stated, "I understand you have something to give me" or "the President said you have something to give me." Ms. Currie later drove to Ms. Lewinsky's apartment, picked up a box containing gifts the President had given Ms. Lewinsky, and hid that box under her bed without asking any questions.

On December 31, 1997, Jordan and Lewinsky had breakfast. Lewinsky, fearing that her relationship with the President would become known and wanting to ensure that she not appear responsible for its becoming known, told Jordan that she possessed notes she had addressed to the President that suggested the nature of their relationship. According to Lewinsky, Jordan told her to dispose of those notes. Jordan initially denied that he ever had breakfast with Lewinsky, but later recalled having done so when shown the receipt. But he denied ever telling Lewinsky to destroy any notes.

Ms. Lewinsky pursued filing an affidavit to obviate the need for her to testify in the Jones case. On January 6, 1998, she communicated to Mr. Jordan concerns she had about the affidavit that Mr. Carter had drafted for her. Jordan telephoned Carter with her suggestions. Although Mr. Jordan denies the allegations, Ms. Lewinsky contends that she informed Jordan about the details of Carter's proposed affidavit, and that she and Jordan made changes to it prior to her signing it. Lewinsky also spoke with the President about Carter's questions to her about how she obtained her Pentagon job. The President told her that she "could always say that the people in Legislative Affairs got it for you or helped you get it."

On January 7, 1998, Lewinsky signed an affidavit denying sexual relations with the President. She later testified that the affidavit was false. She showed Jordan the affidavit, and Jordan spoke with the President after conferring with Ms. Lewinsky about the changes. Lewinsky testified that she believed that the President would be satisfied with any affidavit that Jordan approved.

The following day, Lewinsky was interviewed at a company that Jordan had called on her behalf. Believing that the interview had proceeded poorly, she called Jordan, who then called the head of the holding company of the firm with which she had interviewed. Jordan asked that a second interview be granted Lewinsky. She interviewed again the next day, and was made an informal job offer. Jordan testified that his "magic" was responsible for that offer. Lewinsky informed Jordan of her success, and he telephoned Ms. Currie to notify her: "Mission accomplished." He later informed the President.

The President was scheduled to be deposed in the Jones litigation on January 17, 1998. The President knew that one of the issues was his relationship with Ms. Lewinsky. For the affidavit to

successfully deflect questions to the President concerning that relationship, the affidavit would have had to have been filed in time for the court to consider it and for the President's lawyers to see it before the deposition. The President's lawyers called Ms. Lewinsky's attorney once on January 14, twice on January 15, and once on January 16. On the 15th, Lewinsky's lawyer, Mr. Carter, sent President Clinton's counsel a copy of the affidavit. Mr. Carter also called the court twice on that day to ensure that the affidavit could be filed on January 17.

During his deposition, President Clinton made numerous false statements while under oath. These included the sexual nature of his relationship with Ms. Lewinsky, and whether they had exchanged gifts. He relied on the same cover stories as he had discussed with Ms. Lewinsky. The President's lawyer used Ms. Lewinsky's affidavit in an attempt to deflect questions about the President's relationship with her, specifically stating that the President had already seen that affidavit. As the President appeared to be paying close attention, he did not contradict his attorney when he represented to the court that "there is absolutely no sex of any kind in any manner, shape or form with President Clinton. . . ." And he testified, when asked by his attorney, that Ms. Lewinsky's affidavit was absolutely true. However, the judge insisted that President Clinton answer additional questions about his relationship with Ms. Lewinsky. These questions were asked based on the judge's peculiar ruling that used only one-third of a standard courtroom definition of "sexual relations" and the plaintiff's attorneys' insistence in using that truncated definition as a reference for questions they posed to the President about the nature of his relationship with Ms. Lewinsky, rather than asking specific questions concerning what had occurred. In six instances, the President answered questions by referencing Betty Currie, such as in using the cover story that Ms. Lewinsky had come to the White House to visit Ms. Currie, and on one occasion, expressly stated that his questioners should "ask Betty." Indeed, Ms. Jones' attorneys later placed Ms. Currie's name on their witness list.

After the deposition, at 7 p.m. that evening, the President called his secretary, Betty Currie, at home. She later testified that she could not remember the President ever calling her at home so late on a Saturday. In that conversation, he asked Ms. Currie to see him in the Oval Office the following day, a Sunday. This was also an unusual occurrence. While in the Oval Office, and contrary to the admonition from the Jones case judge not to discuss his deposition testimony with anyone, the President made the following statements to Ms. Currie: (1) "I was never really alone with Monica, right?" (2) "You were always there when Monica was there, right?" (3) "Monica came on to me, and I never touched her, right?" (4) "You could see and hear everything, right?" (5) "She wanted to have sex with me, and I could not do that."

Once the President met with Ms. Currie on January 18, Ms. Currie began to seek Ms. Lewinsky. She paged Ms. Lewinsky four times that night. Later than 11 p.m. that evening, the President called Ms. Currie at home to determine if she had yet reached Ms. Lewinsky. She had not. In a period of less than 2 hours on the morning of the 19th, Ms. Currie paged Ms. Lewinsky an additional

eight times. The President then called Mr. Jordan, who called the White House three times, paged Ms. Lewinsky, and called Mr. Carter, all within 24 minutes of receiving the President's call. Mr. Jordan called Mr. Carter again that afternoon and learned that Mr. Carter had been replaced as Ms. Lewinsky's attorney. Mr. Jordan then called the White House six times in the next 24 minutes trying to relay this information. Mr. Jordan called Mr. Carter again, and then called the White House again.

On January 20, the White House learned that a story about the President's relationship with Ms. Lewinsky would appear in the next day's edition of The Washington Post. On January 21, the President told his chief of staff and two deputies that he did not have sexual relations with Ms. Lewinsky. He later told one of those deputies, John Podesta, that he had not had oral sex with Ms. Lewinsky.

Later on January 21, the President told his aide, Sidney Blumenthal, that Lewinsky had made a sexual demand on him, and that he rebuffed her. The President told Blumenthal that Lewinsky had threatened him. President Clinton also indicated that Lewinsky said that she was known among her peers as the stalker, that she hated it, and that she would say that she had an affair with the President whether it was true or not, so that she would not be known as the stalker any more. He also told Blumenthal that he felt like a victim who could not get out the truth. Blumenthal later testified that he believes the President lied to him. The President testified that he was aware at the time that he made his statements that his aides might be summoned before the grand jury.

The President also met with his political consultant, Dick Morris, on January 21. The President authorized that Morris conduct an overnight poll measuring potential public reaction to the affair. The poll concluded that the American people would forgive the President for adultery, but not for perjury or obstruction of justice. The President then indicated that "we just have to win, then." The President's lawyers could not answer Senators' questions why such a poll had been undertaken if the President had not committed any of these acts.

Shortly after the President met with Mr. Blumenthal, press reports began to appear that, quoting White House sources, characterized Ms. Lewinsky as a stalker, and as an "untrustworthy climber obsessed with the President." Although Mr. Blumenthal in his Senate deposition denied any knowledge of how White House sources were attributed to these stories, one journalist by the time of this writing has sworn to an affidavit stating that Mr. Blumenthal made such characterizations to him. A second similar affidavit has also been filed, corroborating the first one.

Ultimately, Ms. Lewinsky was granted immunity from prosecution by the independent counsel. The independent counsel received from Ms. Lewinsky a dress that according to DNA testing was stained by the President's semen.

On August 17, 1998, the President testified before the grand jury convened by the independent counsel. In a prepared statement, the President made a number of false statements. He stated that he engaged in inappropriate conduct with Ms. Lewinsky in 1996 and

1997, whereas the conduct actually began in 1995, when she was an intern. Based on Ms. Lewinsky's testimony and the dress, he appears to have testified untruthfully about whether he engaged in sexual relations even as that term had been defined at his deposition in the Jones case. And he also testified that he was not paying attention to his attorney when the attorney described the affidavit; that his relationship with Ms. Lewinsky had originally begun as a "friendship;" that he made the statements to Ms. Currie after his deposition in an effort to refresh his recollection; and that he told his aides statements that were true about his relationship with Ms. Lewinsky. Nonetheless, when testifying before the grand jury, the President no longer made a number of the assertions that he had made in the deposition, including denying that he was ever alone with Ms. Lewinsky. With respect to his deposition testimony, the President told the grand jury that his "goal in this deposition was to be truthful, but not particularly helpful . . . I was determined to walk through the mine field of this deposition without violating the law, and I believe I did."

The independent counsel filed a report with the House of Representatives that referred allegations of possible impeachable offenses. The House of Representatives voted to pass two articles of impeachment against President Clinton, for perjury before the grand jury and for obstruction of justice. Two other articles of impeachment, which had been based on perjury in his deposition in the Jones case and misstatements to the House in response to questions propounded to the President by the House of Representatives, failed to pass the House.

The most fundamental question, against which the President's actions must be measured, is, "What constitutes an impeachable offense?" The Constitution makes impeachable "treason, bribery and other high crimes or misdemeanors." The Constitution also says that upon conviction in the Senate the President "shall be removed." Therefore, the question becomes, in effect, "What actions constitute grounds for removal?"

It should be noted at the outset that what we have in effect is a "mandatory sentence" wherein if there is a finding of guilt then one particular sentence must be imposed—in this case removal from office. However, unlike judges in a criminal case, the Senate may take into consideration the "punishment" in determining guilt. Some have contended that the President may be guilty of high crimes and misdemeanors, but his actions may not be sufficient for removal. I believe the better analysis is that the Senate may conclude that the President's conduct is not sufficient for removal and that that determination, by definition, means that the President is not guilty of high crimes and misdemeanors. I believe that this analysis is important in understanding the scope of our discretion and helps us get away from the notion that there is an objective standard for high crimes and misdemeanors if we could only find it. Historical analysis covering over 600 years reveals that there is no "secret list" of high crimes and misdemeanors, but rather our forefathers perpetuated a framework that allows for a certain amount of subjectivity which may encompass changing times and differing circumstances.

Such a conclusion emerges from an examination of English law, original State constitutions, our Federal Constitutional Convention, the ratification debates, American impeachment precedents and scholarly commentary.

The phrase "high crimes and misdemeanors" can be traced back to the thirteen hundreds in England. It was clear from the outset that the phrase covered serious misconduct in office whether or not the conduct constituted a crime. Commentators say that the English impeachment tradition covered political crimes against the state and injuries to the state. Beyond that, it is difficult to glean covered conduct from the English tradition.

Apparently there was only one discussion during the Constitutional Convention that dealt with the phrase "high crimes and misdemeanors," and that occurred on September 8, 1787. As reported out of committee, impeachable offenses included only "treason and bribery." Mason wanted to add "maladministration," which was also contained in many state constitutions. Madison was under the impression that such language would leave the President at the mercy of the Senate. Madison relented and we wound up with the phrase as we have it today. The founding fathers quite clearly rejected impeachment for congressional disapproval of policy. Impeachable offenses were "political" offenses and, as under English law, not necessarily criminal. Other guidance that can be derived from the Convention is the fact that the founders were acutely aware of their rejection of bills of attainder as existed in the English system and, therefore, they thought that impeachable offenses should be something that any reasonable man could anticipate. He should not be punished for some crime made up after the fact. Also, there was to be a requirement for "substantiality." This mechanism was not designed for trivial offenses.

We cannot determine the precise intent of the framers because their deliberations were in secret and nothing was printed from their deliberations. They intended for the ratifiers at the State Conventions to be the more authoritative voice for interpretation of the provisions in the Constitution. It is fair to conclude that the attitude of the ratifiers was reflected to a certain extent in "The Federalist Papers." The most definitive comments concerning impeachment were by Hamilton in Federalist No. 65 wherein he stated:

> The subjects of [impeachment] are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may be with peculiar propriety denominated political, as they relate chiefly to injuries done immediately to the society itself.

The ratifiers at the North Carolina convention spoke in terms of serious injuries to the Federal Government. James Iredell, later to become an Associate Justice on the Supreme Court, stated that impeachment was "calculated to bring [great offenders] to punishment for crimes which it is not easy to describe but which everyone must be convinced as a high crime and misdemeanor against governments . . . the occasion for its exercise will arise from acts of great injury to the community." He gave as an example of an impeachable offense the giving of false information to the Senate. Impeachment was not for "want of judgment" but rather to hold him responsible for "willfully abusing his trust." Iredell also called attention to the complexity if not impossibility of defining the scope of

impeachable offenses with any more precision than the above. And the ratifiers at the Virginia Convention clearly agreed that a President could be impeached for nonindictable offenses.

There was continued discussion and debate after ratification concerning the impeachment process. James Madison contended that the wanton removal of meritorious officers would subject a President to impeachment and removal from office. Forty years later, Justice Story, in his "Commentaries" insisted that "not every offence" is a high crime and misdemeanor, that "many offences, purely political . . . have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute book," that "the only safe guide" in determining "high crimes and misdemeanors" "must be the common law," and left open the possibility that actions a civil officer took that were unconnected to his office might be properly the subject of impeachment.

Therefore, it seems that despite the framers' and ratifiers' incomplete discussion, our inability to put our hands on documentation reflecting some of their thoughts, and the fact that perhaps they simply did not think of some of the problems that might arise in the future, we see a certain framework develop—certain perimeters within which our decision should be made.

The Senate's own precedents do not change this evaluation because they are not terribly instructive either. In impeachment cases, the Senate has convicted on seven occasions, acquitted on five, dismissed two cases on jurisdictional grounds and one case was withdrawn because of resignation. An acquittal serves very little value as precedent beyond the facts of the case since an acquittal can be based on any number of grounds—jurisdictional, failure to prove the factual allegations, offenses not rising to the level of impeachable conduct, etc.—and the motivation for the vote is not reflected when the verdict is rendered "not guilty." There is little more help derived from convictions, in terms of precedential value. There has only been one impeachment trial for a President, that of Andrew Johnson, and that, of course, resulted in an acquittal. A large majority of the remainder of the cases have been those of Federal judges.

The question has arisen whether judicial impeachments are to be considered by the same standards as presidential impeachments. It seems to me that certainly the application of the standard of "high crimes and misdemeanors" for a President must differ from that of a judge. Removing the President removes the elected head of the Nation. Removing a single judge does not carry the same implications for the country. And while a President should act according to the highest standards of probity, it is quite easy to imagine circumstances that would warrant judicial impeachment that would not justify presidential impeachment, such as making official decisions based purely on political considerations. It is also possible that certain crimes would be impeachable if a judge committed them, because of the specific nature of the judicial office in our system of government, but would not be impeachable for a President.

It has been argued that the standard should be different for Presidents than judges because the former serves for a fixed term and the latter serve "during good behavior." I do not share that

view. The standard itself is the same for each category: treason, bribery, and other high crimes and misdemeanors. But the difference in tenure is relevant in a way. Because impeachment is not punishment and is political, the framers vested the process in the legislative branch. Prosecution for crimes was lodged in the judiciary. Thus, a President, who cannot be prosecuted while in office, can be impeached and removed from office before he faces criminal prosecution. While a judge can also be impeached and removed before being convicted of a crime, it is also the case that criminal punishment can be, and has been, imposed on sitting judges. But since courts were expressly not given the power to remove civil officers, Federal judges who have been criminally convicted and have refused to resign have continued to draw their salary "during good behavior," i.e., until they were impeached. That is the only significance with respect to impeachment of judges and of Presidents based on their differing terms of service.

Scholars have looked to the purposes to be served by the impeachment process as well as history in making their own analysis as to the meaning "high crimes and misdemeanors." For Charles Black they would include offenses: (1) which are extremely serious, (2) which in some way corrupt or subvert the political and governmental process, and (3) which are plainly wrong in themselves to a person of honor or to a good citizen regardless of words on the statute books.

Also qualifying according to Professor Black would be "serious offense against the Nation or its governmental or political processes." Furthermore, he would include purely personal actions that would make a President unviable as a national leader. Murder, of course, would be the prime example here. He would also include a totally different category of offenses which seriously threaten the order of political society as to make dangerous the continuation in power of the President. Finally, he would include actions that would "undermine government and confidence in government" such as serious tax fraud.

Professor Michael J. Gerhardt on the issue of purely personal conduct of the President states:

> Even if such a crime were unrelated to the President's Constitutional duties, his criminal act considerably cheapens the Presidency, destroys his credibility with the other branches (and other nations, for that matter), and shows such lack of respect for human life and disdain for the law (which he has sworn to enforce faithfully) that Congress could reasonably conclude that he had seriously breached his trust and no longer deserves to hold office.

Again, murder was the easy example.

However, he contends further that an official may be impeached for conduct in office that does not relate to his or her former responsibilities if an office holder violates his public trust and loses the confidence of the people. Then he must forfeit the privilege of holding at least his or her present office. "In this context, conduct that may plainly be unrelated to the responsibilities of a particular office may still relate to an official's capacity to fulfill the functions of that office and to hold the people's trust." He gives the example of income tax fraud.

Gerhardt points out that not all statutory crimes demonstrate unfitness for office, but that on the other hand, there are some in-

dictable offenses for which certain high level government officials may be impeached. Among them are offenses which "demonstrate serious lack of judgment or disdain for the law and the commission lowers respect for the office." In other words, there are certain statutory crimes, that, if committed by public officials, reflect, in Congress' estimation such lapses of judgment, breaches of the public trust and disregard for the public welfare, the law, and the integrity or reputation of the office held, that the occupant may be impeached.

What I derive from this is that there is no "holy grail" of impeachable offenses. The framers provided the Senate with a framework within which to operate and history provides us with a map, but not a destination. Our conclusions must depend upon the particular circumstances of the case, the nature of the act or acts involved, and their effects on society or integral parts of our political structure.

Today we are faced with an unprecedented situation. The President engaged in inappropriate personal conduct. It had nothing to do with his official duties, but it did involve a federal employee under his supervision, government time and government facilities. In an attempt to conceal and cover up that activity, he lied, misled and helped conceal evidence both physical and testimonial in a court proceeding. In doing so he elicited the help of other government employees. Therefore, the subject matter was essentially private, but the forum, a United States court, became public. One side says that he "only lied about sex," and it had nothing to do with his official duties, therefore, it "clearly does not rise to the level of an impeachable offense." The other side says that any perjury and any obstruction of justice "clearly does rise to the level of an impeachable offense." I do not think that either position is consistent with history or proper analysis.

For example, I agree with Professor Black that not every imaginable act that might technically constitute obstruction of justice would necessarily be impeachable.

On the other hand, opponents of conviction in the present case, have raised the bar for impeachment to unreasonable heights. Usually they concede that an impeachable offense does not have to be a crime, but often it is maintained that the abuse of power has to come from his public position such as Nixon's abuse of the CIA or FBI. Of course, this immediately runs headlong into the murder hypothetical and many other hypotheticals of serious, although totally personal, conduct as well.

They then make the further argument that the violation has to be "an offense against the state." While I agree that an offense against the state is one of the categories of offenses that impeachment was primarily designed to cover, offenses against the state's governmental and political processes, including the court system, as well as attempts to subvert them, are also impeachable. Besides, it would seem to me, that subversion or serious damage to our governmental institutions constitute offenses against the state.

They also point out that one of the purposes of impeachment is to protect the Nation from the offender President. I agree again that this may be one of the purposes of impeachment. However, it is not the only purpose, and protection of the public is not always

a requirement. If an offense has been laid bare and totally exposed, and the President is completely incapable of continuing his conduct, this lack of imminent threat to the Nation does not necessarily mean that he should not and cannot be impeached. President Nixon probably would not have been forced from office if that were the only criteria.

Opponents of conviction also overlook the fact that we may look to the effects of the President's conduct. Actions, even private actions, that serve to undermine the government or the people's confidence in the government or the President, may also be impeachable. In other words, opponents of impeachment rightly point out some of the categories that are applicable in impeachment cases, but they set them forth as exclusive when, in fact, they are not.

The impeachment bar has been raised even higher most recently by respected commentators in the media. The New York Times editorial page, for example, takes a position that the President's action must "threaten the welfare or stability of the state." On another occasion, they stated that the President's actions must "show some fundamental harm to the security interest or stability of the state or some attempt to undermine the Constitution." The problem with this is that there is absolutely no authority to support such a contention. Such a theory relies exclusively upon the "protect the Nation" theory of impeachment. The founders certainly did not mean that the President had to be on the verge of throwing the Nation into chaos or endangering national security in order to be impeached.

It is extremely important that we refrain from latching onto a definition of "high crimes and misdemeanors" simply because it leads us inexorably to a conclusion which we may desire. Clearly, a President's offense or offenses must be serious and/or have serious consequences. Also, while they do not have to be crimes, my own opinion is that in most cases they will be crimes. They must be crimes against the state, but we cannot adopt an unreasonable restriction of that term. The President does not have to order tanks to move on the J. Edgar Hoover Building. Offenses against the state can include activity which will undermine our governmental institutions. How can we say that bribing a judge to effect an outcome in a law suit involving a President's purely personal conduct constitutes an impeachable offense, but say that insinuating perjury into that same law suit to effect the same outcome is clearly not impeachable? And while it is true that the founders meant to cover "public" behavior, I believe they also meant to cover behavior that has a negative effect on the public if it is of sufficient gravity. Furthermore, if the President's conduct poses a threat and danger to a country, that certainly is a legitimate, though not exclusive, consideration. If that same conduct serves to undermine the President's credibility and moral authority, that could also pose a danger to the country and is similarly a legitimate consideration. And, again his conduct does not necessarily have to deal with his office. In the Constitution, a named offense is bribery—treason, bribery or other high crimes and misdemeanors—and bribery itself does not necessarily have to do with the President's official capacity, if the President is making the bribe.

I believe that the founders did not intend to make our job easy. They provided no list of offenses. They refused to spare us from the difficult analysis that we must now go through. We must take into consideration the offense or offenses, the capacity in which they were committed, the effect on our public institutions, the effect on our people and our people's attitude toward the Presidency and our other institutions, whether the President's conduct was one or more isolated events, or a pattern of conduct, the period of time over which the conduct was carried out and ultimately decide whether in view of all of these circumstances, it is in the best interest of the country to remove this President.

The significance of a "pattern of conduct" is recognized by John R. Labovitz in his book "Presidential Impeachment." Labovitz concluded that focusing on whether the President has committed "an impeachable offense" is of limited usefulness, since few individual crimes warrant removal, such as a single act of treason or a single act of bribery. Even in the case of President Nixon, "[i]t was necessary to combine distinct actions into a pattern or course of conduct to establish grounds for removal from office." As he also wrote:

> The concept of an impeachable offense guts an impeachment case of the very factors—repetition, pattern, coherence—that tend to establish the requisite degree of seriousness warranting the removal of a president from office. Just as a recidivist deserves a more stringent sentence than a first offender, so presumably a repeated offender is more likely to deserve removal from an office of public trust, and especially the highest trust in the land. . . . [I]t is necessary to take a less divided view of the charges. Because the remedy is not additive, the offenses must be considered cumulatively in deciding whether or not it should be imposed. The House must decide whether or not to prosecute an impeachment on the basis of the charges taken as a whole. And, unless the Senate is to take the determination of the House without question, it too must judge the combined seriousness of the wrongdoing that is proved.

I believe that this statement is very relevant to the obstruction of justice charge, which I will discuss later.

Article I, after alleging generally that President Clinton violated his oath of office and failed to take care that the laws be faithfully executed by manipulating the judicial process for his personal gain, alleges that on August 17, 1998, following taking an oath to tell the truth, he

> willfully provided perjurious, false, and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false, and misleading testimony that he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.
>
> In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.
>
> Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Never has the Senate convicted on an article worded such as this. Several crimes or categories of crimes—the exact number cannot be determined from reading the article—are charged in this one article. The perjurious statements are not described, nor are their dates. In large part, this article charges that the President committed perjury because he denied prior perjury.

At the outset, it is clear that a count such as this in an indictment would not survive court challenge. However, it is equally clear that the Senate is not bound to follow normal legal rules. Impeachment, Hamilton wrote in Federalist No. 65, "can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases serve to limit discretion of courts in favor of personal security." Nevertheless, we should examine the basis for such rules and determine the extent, if any, we should apply them to our deliberations.

The reason for rules against charging several offenses in one article is clear. A group of Senators, as few as 17, could conclude that the President was guilty of one offense in the article, and a group of other Senators could conclude that the President was guilty of another offense in the article and so on. This could result in the President being found guilty on one article without two-thirds of the Senators ever agreeing upon a single offense that the President committed.

Compounding this problem, the individual items alleged in the article are vague because they could reach different instances of objectionable conduct within a general heading. The problem with failing to specifically identify the offenses charged is that it does not give the person charged fair notice. Although I believe that the President had actual notice for the most part, what is actually being charged in this article has not been without dispute.

The articles pending against President Clinton are unique. Never has the Senate considered articles that are simultaneously omnibus, vague, and based upon "one or more" of the charges being proved.

Again, we have substantial leeway in considering these matters, but we must be fair. We are creating precedent, and this is not good practice. The rule of law must apply to the President when it inures to his benefit just as when it inures to his detriment.

The House relies on rule XXIII of the Senate's impeachment rules as granting this body's tacit approval for the drafting of impeachment articles in the form of those from President Nixon's impeachment proceedings. The House also argues that its committee report provided adequate notice of charges, occupying 20 pages just to list "the most glaring instances of the President's perjurious, false, and misleading testimony before a Federal grand jury and requir[ing] 13 pages just to list the most glaring incidents in the President's course of conduct designed to prevent, obstruct, and impede the administration of justice." But this argument underlines the problem. These allegations were not made in the articles themselves, and even now, can it truly be said that these were the entirety of the charges that could have been raised at trial, or even in a later impeachment?

Articles of impeachment henceforth should not permit conviction based upon "one or more" findings of guilt. They should list specific conduct, preferably in separate articles. Removal of elected or appointed government officials, especially a President, should occur only when the public can be sure that the process has been appropriate. Articles such as those before the Senate in this case do not further that goal. The Senate should amend rule XXIII to permit

impeachment articles to be divided, so as to eliminate any incentive for the House to adopt duplicitous articles of impeachment.

In prior impeachments charging false statements, the House has always delineated the date and substance of the false statement. Indeed, in every impeachment proceeding since Judge Pickering in 1803, articles of impeachment exhibited by the House have included allegations of specific misconduct. Although the Senate has at times voted in favor of articles containing multiple or cumulative allegations, it has only done so where specific allegations were made in other separate articles and where the omnibus article was written in the conjunctive. Never has the Senate voted for conviction on an article that charged an individual with "one or more" improper actions.

Unfortunately, instead of following precedent, the House in the case before us deviated from previous practice. In prior cases, the House avoided lumping together several amorphous charges into one article, with conviction permitted if "one or more" alleged offenses had been proved—in all cases but one: Richard Nixon. Here, the House explicitly followed the Watergate example, probably thinking that they would be on safe ground. Unfortunately, the articles drafted against President Nixon were deficient in the extreme.

The first article of impeachment against President Nixon charged that the President had "engaged in a course of conduct or plan designed to delay, impede and obstruct investigations of [the] unlawful entry [of the headquarters of the Democratic National Committee]; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful activities. The means used to implement this course of conduct or plan have included one or more of the following." The article of impeachment then listed nine separate charges, each extremely broad. The second Nixon article charged dozens of indeterminate criminal offenses within several wide-ranging categories.

The charges contained in the Nixon articles are alarmingly vague and duplicitous. The articles before us are not that deficient, but they represent a second step down a road we should not take. While these problems with article I in isolation may not be sufficient to defeat this article, they are more than technicalities, and pose potentially serious consequences for the future.

The Senate, of course, did not have occasion to consider the impeachment articles against President Nixon. Only once in its history has the Senate actually considered an article of impeachment charging violations of "one or more" alleged acts. Among the articles of impeachment against Judge Walter Nixon in 1989 was an article alleging that Judge Nixon made "one or more" false statements. Unlike the articles against Presidents Nixon or Clinton, however, the article in question in the case of Judge Nixon specifically enumerated the alleged material false statements, including the date and nature of the statement made. The Senate, though defeating a motion to dismiss the article, nevertheless acquitted Judge Nixon on this article. Several Senators explained their votes to acquit on this article due to the multiplicitous—actually, duplicitous—and disjunctive "one or more" form of the article.

I agree with those Senators who criticized the form of the omnibus article of impeachment that was brought against Judge Nixon. An article of impeachment charging a defendant with "one or more" acts is not only unfair to the defendant, but it does not permit Senators to perform adequately their constitutional duty and the American people to understand their actions. If the Senate were to convict on a "one or more" acts count of an article of impeachment, the votes to convict would obscure the real basis for each Senator's vote. Ultimately, the American people would be deprived of knowing the basis on which the President they duly elected was removed from office.

The Senate also has never been asked to convict someone for conduct that formed the basis for an article of impeachment that was rejected by the House. Although in a literal sense, no such article is before the Senate, in a practical sense that is the situation. The House failed to pass an article of impeachment against President Clinton that accused him of, on January 17, 1998, "willfully provid[ing] perjurious, false, and misleading testimony in response to questions deemed relevant by a Federal judge concerning the nature and details of his relationship with a subordinate Government employee, his knowledge of that employee's involvement and participation in the civil rights action brought against him, and his corrupt efforts to influence the testimony of that employee." Yet, in article I, the Senate is asked to convict the President based on "one or more" sets of actions, one of which is the President's "prior perjurious, false, and misleading testimony he gave in a Federal civil rights action brought against him." That portion of article I has resulted in the House recharging all the allegations of perjury made by the President in his civil deposition that were dismissed when the House rejected an article of impeachment that was based on that deposition. The House does so explicitly: "In addition to his lie about not recalling being alone with Ms. Lewinsky, the President told numerous other lies at his deposition. All of those lies are incorporated in Article I, Item 2." (House Trial Memo., p. 61.) The House claims that the President's statement in his grand jury testimony that he intended to be unhelpful but truthful in his deposition, and that he did not violate the law in his deposition, amount to perjury in the grand jury if a single statement in his deposition was perjurious. However, the President did not broadly reaffirm the truth of all his deposition testimony. Indeed, before the grand jury, the President revised many statements he had made in the Jones deposition.

Two perjury statutes have been enacted as part of the federal criminal code, 18 U.S.C. 1623 and 1621. The elements of section 1623 are that the defendant: (1) knowingly make a (2) false (3) material declaration (4) under oath in a proceeding before or ancillary to any court or grand jury of the United States. Statements which are misleading but literally true cannot form the basis for a perjury conviction. *Bronston* v. *United States,* 409 U.S. 352 (1973). The most difficult element of the offense is materiality. A statement is said to be material "if it has a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to whom it is addressed." *United States* v. *Durham,* 139 F.3d 1325, 1329 (10th Cir. 1998); *Kungys* v. *United States,* 485 U.S. 759

(1988). The Supreme Court has characterized the conduct prohibited by section 1621 as follows: "A witness testifying under oath or affirmation violates this section if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *United States* v. *Dunnigan,* 507 U.S. 87, 94 (1993). As with section 1621, testimony that is misleading but literally true does not fall within the ambit of section 1623.

A preliminary matter before consideration of these charges concerns the burden of proof of the charges in the articles of impeachment which I believe should apply. It is well established that Senators are free to weigh the evidence in particular cases under a standard they consider appropriate. My own view is that different cases will be considered under different standards, depending on the nature of the particular charge. Impeachment is neither a civil nor a criminal proceeding, but a hybrid. It is therefore inappropriate to always apply one or the other of the criminal or civil burdens of proof. When the consequences to the nation of the alleged conduct are most serious, such as treason, then the Senate should consider the case under a clear and convincing standard, for fear of leaving a likely traitor in office simply because his guilt has not been established beyond a reasonable doubt. By contrast, when the charges allege harms that are not imminently serious to the national well-being, it becomes more appropriate to apply the criminal burden of proof: beyond a reasonable doubt. I concede that the charges alleged here, while serious, do not fall within the former category, and I will therefore review the facts under the beyond a reasonable doubt standard.

With that background, I now consider the facts relating to the three perjury specifications concerning the President's grand jury testimony that are properly before the Senate. The first is his testimony concerning "the details and nature of his relationship with a subordinate Government employee." The President admitted in the grand jury that he had an inappropriate relationship with Ms. Lewinsky.

To be sure, President Clinton contended that the relationship began in 1996, rather than 1995. The House managers note that this is significant because Ms. Lewinsky was an intern in 1995. The House also points out that the President admitted inappropriate conduct "on certain occasions," when, in reality, there were eleven such occasions, and that he had "occasional" telephone encounters with Ms. Lewinsky when there were at least seventeen that contained sexual banter. I do think that these statements constitute perjury. They were false, were made willfully, and were material. Something that happens 17 times in a year does not occur "occasionally." Given the sensitivity of Ms. Lewinsky's status as an intern, I believe that the President deliberately told the grand jury that his relationship with her began in 1996, when she no longer had that status. Finally, the statement is material because it concerns a matter that the grand jury was investigating as part of its work: the nature of the President's relationship with Ms. Lewinsky. For these reasons, the statement was perjurious.

The President's statement to the grand jury that he regretted that what began as a friendship changed into an inappropriate sex-

ual relationship was also knowingly false, since the two engaged in sexual relations twice on the same day that they first spoke. Thus, the statement was made to deceive, and given that it related to a subject of the grand jury's inquiry, it was material. Therefore, I agree that this statement also constitutes perjury, so that the first item of article I has been proved. The second item charged in article I addresses statements the President made in the grand jury regarding the truth of his deposition testimony. For the reasons above stated, I consider finding perjury based on an article of impeachment that the House rejected to be questionable.

The third item charged in article I concerns grand jury testimony involving "false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action." Before the grand jury, President Clinton testified that he was "not even sure I paid attention to what he [Mr. Bennett] was saying" when his attorney represented to the court that Ms. Lewinsky's affidavit stated that there was no sex of any kind between her and the President. As a factual matter, given the videotape that shows the President concentrating very carefully on his attorney's words and the great importance that he placed on that affidavit and its filing in time, this statement's characterization of the President's attention was certainly false. However, the President said that he "was not even sure" that he was paying attention. It is possible, although unlikely, that he was not sure in August that he was paying attention to that specific statement in January. That would make the statement literally true and thus, by definition, not perjurious. And in any event, I cannot determine beyond a reasonable doubt that his statement was perjurious. Indeed, the real issue is whether President Clinton used the affidavit to obstruct justice: whether he actually was paying attention to his unsuspecting attorney when the affidavit was actually used to obstruct justice is of questionable materiality.

The fourth item of the perjury allegations in article I concerns "his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action." The first set of facts under this category evidently concerns President Clinton's statements to Ms. Currie on January 18, 1998, which he described as having been made to refresh his recollection. The President's stated reason for making these statements to Ms. Currie was false. He knew that they were not true, and the President knew that Ms. Currie could not testify to their truthfulness. Thus, his statement of purported purpose for making them, as communicated to the grand jury, was made willfully, with the intent to deceive the grand jury. They were material as well, since they went to the issue of whether he had committed a Federal crime. They thus constitute perjury.

The second set of facts at issue in item 4 of article I apparently concerns whether the President truthfully told the grand jury that when the subject of the subpoenaed gifts arose at his December 28, 1997, meeting with Ms. Lewinsky, he told her "if they asked her for the gifts, she'd have to give them whatever she had, that that's what the law was." Although Ms. Lewinsky never testified that the President said this to her, she once indicated that it sounded famil-

iar. Thus, I am not convinced beyond a reasonable doubt that the President lied when he testified that he made this statement.

The third set of facts in item 4 of article I addresses alleged lies that he made to the grand jury concerning the truth of statements that he made to White House aides. Before the grand jury, the President stated that he had told his aides that he did not have sex with Ms. Lewinsky as he defined it, and that he told them "things that were true about this relationship." In reality, the President told them false statements, such as a broader denial of sexual activity than that defined as even he had defined it, and that Ms. Lewinsky was a stalker who came on to him, but whom he rebuffed. The President's statements to the grand jury in this regard were false, and were intended to deceive the grand jury about a Federal crime of obstruction of justice through the telling of false statements to persons he knew might become witnesses before that grand jury, and therefore committed perjury.

As noted above, not all impeachable offenses are crimes, and not all crimes are impeachable offenses. While I conclude that one of the three sets of facts at issue in item 4 of article I does not constitute perjury, I conclude that the statements concerning Betty Currie, and the statements concerning what he told his aides do constitute perjury. I also find that the President committed perjury with respect to item 1 of article I with respect to his statements that he and Ms. Lewinsky's relationship began as a friendship, that it started in 1996, and that he had "occasional" encounters with her. These are the only examples of grand jury perjury that I believe have been proved in the entirety of article I. The question then is whether these examples of perjury warrant removal of the President for the commission of high crimes and misdemeanors.

Make no mistake, perjury is a felony, and its commission by a President may sometimes constitute high crimes and misdemeanors. But is removal appropriate when the President lied about whether he was refreshing his recollection or coaching a witness about the nature of a sexual relationship? Is removal appropriate when the President lied to the grand jury that he denied to his aides that he had engaged in sex only as he had defined it, when in fact he had denied engaging in oral sex? Is removal warranted because the President stated that his relationship began as a friendship in the wrong year and actually encompassed more telephone encounters than could truthfully be described as "occasional"? To ask the question is to answer it. In my opinion, these statements, while wrong and perhaps indictable after the President leaves office, do not justify removal of the President from office.

In no way does my conclusion ratify the White House lawyers' view that private conduct never rises to impeachable offenses, or that only acts that will jeopardize the future of the nation warrant removal of the President. It simply recognizes how the principles the Founding Fathers established apply to these facts.

I therefore vote to acquit the President of the charges alleged against him in article I.

Article II charges that President William Jefferson Clinton, in violation of his oath of office, and in violation of his constitutional obligation to take care that the laws be faithfully executed:

has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

The means used to implement this course of conduct or scheme included one or more of the following acts:

(1) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false, and misleading.

(2) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony if and when called to testify personally in that proceeding.

(3) On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

(6) On or about January 18 and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Section 1503(a) of title 18 of the United States Code states:

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties . . . shall be punished as provided in subsection (b).

Courts have interpreted this provision to require the Government to prove: "(1) that there was a pending judicial proceeding, (2) that the defendant knew this proceeding was pending, and (3) that the defendant then corruptly endeavored to influence, obstruct, or impede the due administration of justice." *United States* v. *Monus,* 128 F.3d 376, 387 (6th Cir. 1998).

Here, there is no doubt that a judicial proceeding was pending and that President Clinton knew that the proceeding was pending. The question is whether he corruptly intended to influence, obstruct, or impede the due administration of justice. Courts have held that to act corruptly means to act with the intent to influence, obstruct, or impede the proceeding in question. *United States* v. *Mullins,* 22 F.3d 1365, 1369 (6th Cir. 1994); *United States* v. *Littleton,* 76 F.3d 614, 619 (4th Cir. 1996); *United States* v. *Russo,* 104 F.3d 431, 435 (D.C. Cir. 1997). Because the prohibited intent is so closely related to the prohibited act, courts have required a nexus between the obstructing conduct and the target proceedings. Thus, the defendant's acts must have the "natural and probable effect" of interfering with the due administration of justice. *United States* v. *Aguilar,* 515 U.S. 593, 599 (1995). But the defendant need only endeavor to obstruct justice to commit this offense. There is no requirement that he actually succeed in obstructing justice. (Id. at 599, 600.)

Among the acts that courts have concluded violate section 1503(a) include the creation of false documents to be presented in evidence, *United States* v. *Chihak,* 137 F.3d 252 (5th Cir. 1998); and instructing a subordinate to conceal evidence, *United States* v. *Lefkowitz,* 125 F.3d 608 (8th Cir. 1997). These actions are alleged to have occurred in article II.

Section 1512(b) of title 18 prohibits witness tampering. Specifically, it prohibits knowingly using one or more of the prohibited forms of persuasion with the intent to prevent a witness's testimony from being presented at official Federal proceedings or with the intent to prevent a witness from reporting evidence of a crime to Federal authorities. *United States* v. *Thompson,* 76 F.3d 442, 452–53 (2d Cir. 1996). Unlike section 1503, section 1512(b) does not require that the defendant be aware of the pendency of Federal proceedings. *United States* v. *Romero,* 54 F.3d 56, 62 (2d Cir. 1995). Courts differ about the standard of corrupt persuasion, but even the more stringent courts agree that it is sufficient if the defendant attempts to persuade a witness "to violate her legal duty to testify truthfully in court." *United States* v. *Morrison,* 98 F.3d 619, 630 (D.C. Cir. 1996). Contrary to the representations of White House counsel at the impeachment trial, it is not necessary that the defendant threaten or cause physical harm to a witness to fall within subsection (b). When the defendant's misconduct takes the form of deceiving a potential witness with the intent that the witness later repeat the deception in federal proceedings, the crime does not require that the potential witness was in fact deceived, nor that there was any particular likelihood that that potential witness would in fact ever be called upon to testify. *United States* v. *Gabriel,* 125 F.3d 89, 102–03 (2d Cir. 1997). The prohibited intent of this subsection is intent to obstruct a federal proceeding.

There are seven specifications of obstruction of justice in article II. The first two charge that on or about December 17, 1997, President Clinton corruptly urged a witness in a Federal civil rights action to execute a false affidavit and to give false testimony if called to testify. That is the day he informed Ms. Lewinsky that she was on the Jones witness list, that she should contact Ms. Currie if she were subpoenaed, and that she could file an affidavit in the case

to avoid testifying. In this conversation, the President told Ms. Lewinsky that she could "always say you were coming to see Betty or that you were bringing me letters."

The President conducted an improper relationship with an employee of the Federal Government, Monica Lewinsky. He carried on that relationship off the Oval Office. He engaged in sexual banter over unsecured telephone lines to Ms. Lewinsky's residence, compromising himself and making himself susceptible to blackmail.

And on December 17, 1997, the President raised to Ms. Lewinsky both the cover stories and filing an affidavit to prevent these facts from being disclosed. While Ms. Lewinsky testified that he did not expressly tell her to raise the cover stories in the affidavit, his intent was unmistakable: to corruptly endeavor to influence Ms. Lewinsky to file an affidavit that would prevent Paula Jones's attorneys from learning of the President's relationship with Ms. Lewinsky, a relationship of the type that the judge in her case had ruled to be relevant. And even if not directly linked to the affidavit, there is no question from Ms. Lewinsky's consistent testimony that the President was asking her to use those cover stories if she were ultimately asked to testify, since that was the context of the conversation. The White House's repeated retort that the relationship with Ms. Lewinsky was consensual, while the allegations by Ms. Jones were of nonconsensual sex, is therefore irrelevant. President Clinton did not tell Ms. Lewinsky to lie, but neither did he need to, as she understood that she was to raise the cover stories. Ms. Lewinsky admitted that the affidavit was indeed false. And since Lewinsky's truthful testimony would have definitely led to her being called as a witness, the President clearly understood that Ms. Lewinsky would file an affidavit he had strong reason to believe would be false. That is obstruction of justice, as shown by the cases that have held creation of false documents to be presented in evidence to fit within the statutory prohibition. Moreover, this charge must be considered in connection with the President's discussions with Ms. Lewinsky as her affidavit was being prepared, his conversation with Mr. Jordan after he spoke with her, and his lawyer's deep involvement in ensuring that the affidavit was filed and that the President had an opportunity to see it before that occurred, all of which shed light on what the President intended Ms. Lewinsky to do in that affidavit and if she testified.

The third item of article II charges that President Clinton, on or about December 28, 1997, corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action against him. That is the day the President discussed the subpoenaed gifts with Ms. Lewinsky, and there is no doubt that the President indicated that he was "bothered" by the specific gift, a hatpin, that the subpoena requested. In none of the many times that Ms. Lewinsky testified did she ever say that the President told her to turn over the gifts, although once she said that the remark seemed familiar, and a number of times she testified that he asked to think about her suggestion that she give the gifts to Ms. Currie. The gifts, of course, ultimately were secreted under Ms. Currie's bed, and there is no doubt in Ms. Lewinsky's mind that Ms. Currie initiated the call that led to that exchange of the gifts. Since only the President and Ms. Lewinsky

were present when the subject of giving the gifts to Ms. Currie was raised, and since Ms. Lewinsky did not call Ms. Currie, the only way that Ms. Currie could have called Ms. Lewinsky and not be surprised to obtain the gifts was if the President had told her to contact Ms. Lewinsky to retrieve them. This is also consistent with the President's course of conduct in this matter.

The President thus corruptly acted to obstruct the Jones case by asking Ms. Currie to retrieve and secret the gifts. That constitutes obstruction of justice, as demonstrated by the cases that have convicted defendants of that charge for having instructed subordinates to conceal evidence.

The White House's arguments to the contrary are unpersuasive. It is irrelevant that the President did not initiate the subject of the gifts in his conversation with Ms. Lewinsky. It is also irrelevant that he did not tell her to conceal the gifts. What is relevant is that the President, after thinking about the gifts, instructed Ms. Currie to retrieve the gifts from Ms. Lewinsky. The President's and Ms. Currie's denials simply cannot be squared with the evidence.

Also irrelevant is the fact that Ms. Currie's cell phone call to Ms. Lewinsky occurred at 3:30 p.m., whereas Ms. Lewinsky testified that the gift pickup occurred at 2 p.m. Notwithstanding the White House's willingness to excuse the President's error by two or more months concerning when his improper relationship with Ms. Lewinsky began, while insisting that the cell phone call's 90-minute mistiming is fatal to the theory that Ms. Currie instituted the gift exchange, the cell phone call at 3:30 does not prove that Ms. Lewinsky instituted the gift exchange. First, Ms. Lewinsky testified that she might have been mistaken about the time that Ms. Currie picked up the gifts. Second, there is no evidence that the cell phone call was the one in which Ms. Currie's gift pickup was proposed. Ms. Lewinsky testified that she received other telephone calls from Ms. Currie that day to learn when Ms. Currie was coming to her apartment and also to know when she should actually come outside to meet Ms. Currie.

The White House also maintains that the President would not have given Ms. Lewinsky additional gifts on December 28, if he planned to hide the gifts. The facts do not support that theory. The President gave Ms. Lewinsky those gifts before, pondering Ms. Lewinsky's idea, he determined that he would ask Ms. Currie to retrieve them. Since he had no intent to retrieve the gifts at the time he gave her the gifts on December 28, there is no inconsistency with his later direction to Ms. Currie to pick them up.

The fourth item of article II alleges that the President, beginning on December 7, 1997, and continuing through January 14, 1998, intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him to corruptly prevent the truthful testimony of that witness. Following a meeting with Ms. Lewinsky in November in which she sought his assistance, Mr. Jordan took no action and provided no help. He does not even remember this meeting. Thus, he made no serious effort to find her a job until after December 7, once the President, not Ms. Lewinsky, asked him to conduct a job search for Ms. Lewinsky. That followed Ms. Lewinsky's appearance on the Jones lawyers' witness list, and followed the President's promise to Ms.

Lewinsky that he would ask Mr. Jordan to do more to help her find a job.

Although Ms. Currie, not the President, called Mr. Jordan, he was aware that the request came from the President and that he acted at the behest of the President. Jordan did not call the companies Ms. Lewinsky suggested, but rather, the companies where he was likely to produce a job for her. After December 19, Jordan obviously became aware that the President may have been asking him to assist Ms. Lewinsky obtain a job because he may have had a sexual affair with Ms. Lewinsky. That prompted him to ask both Ms. Lewinsky and the President whether such a relationship had occurred. Jordan continued to help find Ms. Lewinsky employment once they both denied that this was the case. However, he took no additional action until the day after Ms. Lewinsky signed the affidavit, when he called the CEO of MacAndrews & Forbes to successfully obtain a second interview for her at Revlon after she told him that the first had proceeded badly. Thus, it is true that Mr. Jordan intensified his job assistance to Ms. Lewinsky at the President's request, following the President's, but not Mr. Jordan's knowledge, that she appeared on the Jones witness list. Jordan took no further action on her behalf until satisfying himself that each had denied that there had been any sexual relationship. He then obtained a job for Ms. Lewinsky by calling the CEO of the holding company of the company that offered Ms. Lewinsky a job. That call was made the day after Ms. Lewinsky signed her affidavit. Because President Clinton did ask Mr. Jordan to intensify his job efforts to assist Ms. Lewinsky to obtain a job after he knew she was on the Jones witness list, the President corruptly obstructed justice by attempting to influence the testimony of a witness in a case against him.

The White House responses to this charge miss the mark. That Ms. Lewinsky had begun her job search in July, and after a few months had not landed a job of her liking is irrelevant to whether, not having obtained a job, the President took steps to make sure she did obtain one once her name appeared on the witness list. That Ms. Lewinsky testified that no one ever promised her a job in return for her silence does not change the fact that these efforts were undertaken. That Linda Tripp suggested that Ms. Lewinsky originally speak with Mr. Jordan means nothing because he took no action following that meeting; only after the President requested that Mr. Jordan assist Ms. Lewinsky once her name appeared on the witness list did he do so. That Mr. Jordan testified that he acted with no sense of urgency is also of no import: it was the President who acted with a sense of urgency, using Mr. Jordan as his agent. Nor is it of consequence that Mr. Jordan placed no undue pressure on the persons he contacted in support of Ms. Lewinsky. The corrupt influence in obstruction of justice that matters is directed to the witness, not to the prospective employer of the witness. President Clinton knew, and Mr. Jordan knew, that the "Jordan magic" in finding people employment did not depend in any way on undue pressure being applied. Thus, the White House's contention that there was no connection between Ms. Lewinsky obtaining her Revlon offer and Mr. Jordan's call to Mr. Perelman is denied by Mr. Jordan himself. President Clinton could

be sure that Mr. Jordan would find Ms. Lewinsky a job when her testimonial support of his denials was critical without his own need to do anything. It is also irrelevant that she did not obtain a job offer in each company Mr. Jordan called. Nothing in the record shows that the President ever requested Mr. Jordan to find employment for any White House intern who was not on a witness list in a federal case pending against him. The President obstructed justice through using Mr. Jordan to find Ms. Lewinsky a job once her name appeared on the Jones witness list.

The fifth item of article II claims that the President obstructed justice by corruptly allowing his attorney to make false and misleading statements to a Federal judge. In the President's presence, his attorney represented to the court, based on Ms. Lewinsky's affidavit, that the President had seen the affidavit, and that it showed that "there is absolutely no sex of any kind in any manner, shape or form with President Clinton," a statement his lawyer later retracted out of professional ethics obligations. The affidavit stated, *inter alia*, that "I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship . . ." and "the occasions that I saw the President after I left my employment at the White House in April 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions." The President testified that the affidavit was "absolutely true." The President knew that Ms. Lewinsky's affidavit would be used to perpetrate a fraud on the court, and because he was briefed on its contents by his attorney in advance, he knew that his attorney misunderstood the affidavit, and would inadvertently present the affidavit to the court in a false light. Yet, he took no action to either change his lawyer's understanding or to prevent the use of the affidavit under those conditions. Moreover, with knowledge that the affidavit used the cover stories that he had reminded Ms. Lewinsky to continue on December 17, he testified to those same cover stories. Regardless of whether he was paying attention at the moment that this happened, the President clearly knew at the time the deposition commenced that the affidavit would be used in a way that perpetrated a fraud on the court and on Ms. Jones's proceedings. He corruptly impeded Ms. Jones's efforts to prove the fact relevant to her case that Mr. Clinton had had a sexual relationship with another government employee. He did so intentionally by allowing that affidavit to be portrayed by an officer of the court as proof that there was in fact no sexual relationship between the President and another government employee. That is obstruction of justice. The White House has addressed these facts only with respect to whether the President's statement denying that he was in fact paying attention to his attorney as opposed to looking at him constituted perjury, but has never refuted the President's knowledge that a false affidavit would be used in the deposition to obstruct the proceeding.

The sixth item of article II concerns the President's obstruction of justice by relating false and misleading statements to Betty Currie in order to corruptly influence her testimony. The President's conversation with Ms. Currie followed his telephone call to

her, a call that she testified was made later on a Saturday than any call she had ever received from the President at home. The conversation occurred on a Sunday, when it was rare for Ms. Currie to come to the White House. The conversation occurred in the Oval Office, where the President would exercise the full powers and trappings of his office in the presence of a subordinate. The conversation addressed issues from the President's testimony in the Jones case, despite the fact that at the end of his deposition, the presiding judge ordered him not to discuss his testimony with anyone. In that conversation, the President told Ms. Currie statements that he knew to be false about his relationship with Ms. Lewinsky, and that she also knew were false. Two or three days later, that is, the day the President learned that the court had permitted Independent Counsel Starr to expand his inquiry into the Lewinsky matter or the day after, the President repeated these same statements to Ms. Currie.

The President's call to Ms. Currie followed rapidly upon his deposition in the Jones case, its questions concerning Ms. Lewinsky, and his repeated answers to such questions by invoking Ms. Currie's name, one of which invited the Jones attorneys to "ask Betty." In fact, Ms. Jones' lawyers placed Ms. Currie's name on their witness list. The "questions" that he asked were leading, and even according to Ms. Currie, were more like statements than questions. He asked her to agree that he was never really alone with Ms. Lewinsky, even though they both knew that he had been alone with her. He asked her to agree that she was always there when Ms. Lewinsky was there, even though she could not logically know whether Ms. Lewinsky had ever been there when Ms. Currie was absent. He asked her to agree that Ms. Lewinsky came on to him and that he never touched her, even though Ms. Currie would have had no ability to know those "facts." He asked her to agree that she had seen and heard everything, when that was also not the case. And he suggested to her that Ms. Lewinsky wanted to have sex with him and that he could not do that.

These statements constitute witness tampering. The President engaged in misleading conduct, through the use of false statements and omissions to mislead, toward Ms. Currie, with intent to influence her testimony in a federal court proceeding. He acted corruptly, because he acted with the improper purpose of obtaining false testimony from a witness who would corroborate the lies he issued in the Jones deposition to obstruct that case. As stated above, witness tampering convictions need not rest on the defendant's actually having deceived the potential witness or any particular likelihood that the potential witness would in fact ever be called upon to testify. *United States* v. *Gabriel*, 125 F.3d 89, 102–03 (2d Cir. 1997).

The White House arguments in response to these facts are inadequate. It is inadequate as a matter of law for the White House to contend that the President did not know that Ms. Currie was an "actual or contemplated witness," and is difficult to accept that proposition factually. Nor as a matter of law is it "critical," as the White House contends, that Ms. Currie testified that she felt no pressure to agree with the President. Witness tampering under section 1512 can be accomplished through "misleading conduct," which

includes the making of false statements or intentional omissions that make statements misleading. The White House counsel repeatedly argued that threats are necessary for witness tampering, even after senatorial questions demonstrated the White House's misstatements of the law. The White House also misstated the law of witness tampering by claiming that there "must be a known proceeding." In fact, the defendant need not know that there is any pending federal proceeding to constitute witness tampering. *United States* v. *Kelley*, 36 F.3d 1118, 1128 (D.C. Cir. 1994). The White House contends that the President could not have tampered with Ms. Currie in the proceeding in which she was ultimately a witness, the independent counsel's investigation, since the President could not have known that it existed, at least as of January 18. But the statute does not require that the defendant know of any pending or even contemplated proceedings so long as he engages in misleading conduct with respect to a potential witness. *United States* v. *Romero*, 54 F.3d 56, 62 (2d Cir. 1995).

The White House's factual defense to this charge is also insufficient. The President could not have made these false statements to Ms. Currie for the purpose of refreshing his recollection. Nor could he have spoken with her for the purpose of seeking information for the same reason. These claims also do not explain why he simply did not ask her the questions over the telephone on the night of the seventeenth, if that was his intention, or explain why he spoke with her a second time.

The seventh item of article II alleges that the President obstructed justice by relaying false and misleading statements to his aides. On January 21, the President told his chief of staff and two deputies that he had not had sexual relations with Ms. Lewinsky. On January 23, he told one of those deputy chiefs of staff, John Podesta, that he did not engage in oral sex with Ms. Lewinsky. The President on January 21 told his aide, Sidney Blumenthal, that Ms. Lewinsky had threatened him. President Clinton also indicated that Lewinsky was known among her peers as the stalker, and that she would say that she had an affair with the President whether it was true or not, so that she would not be known as the stalker any more. Blumenthal later testified that he believes the President lied to him. The President testified that he was aware at the time that he made his statements that his aides might be summoned before the grand jury. These facts constitute paradigmatic witness tampering. The President knowingly engaged in misleading conduct, as defined in the statute, towards his aides, with intent to influence the testimony of those aides in an official proceeding.

Once again, the White House's arguments to the contrary are unavailing. The charge is not that the President lied to his friends, as the White House maintains, but that he lied to potential witnesses about his conduct that the grand jury was investigating. It is not relevant, as the White House contends, that the President did not attempt to influence his aides' own personal knowledge, only their knowledge of the President's views, nor, as stated above, is it relevant as a matter of law that the President did not know that any of these individuals would ultimately become witnesses. Most surprising was the claim that White House Counsel Mr. Ruff raised for the first time in closing argument that the President

could not be convicted of obstructing justice with respect to his conversations with Mr. Blumenthal because the fact that the President claimed executive privilege with respect to his conversation with Mr. Blumenthal meant that he never expected the grand jury to hear about it. The President's conversation with Mr. Blumenthal was not subject to a legitimate claim of executive privilege for two independent reasons. First, it was not a discussion that related to the President's official duties. Second, it constituted evidence of crime in and of itself. There was no possibility that any court would have ever upheld such a personally self-serving and frivolous misuse of executive privilege, and the President, as a former constitutional law professor during the time of Watergate fully understood that, as does Mr. Ruff. Indeed, Mr. Blumenthal was required to testify to the grand jury about this conversation notwithstanding the fact that the President did invoke an unwarranted executive privilege claim in an attempt to prevent its disclosure. Nor is there evidence that the President intended to claim executive privilege at the time that he had his conversation with Blumenthal. In any case, there was no reason for the President to tell this tale to Mr. Blumenthal except to disseminate it to his press contacts and on any occasion when he might appear before the grand jury.

Each and every allegation of obstruction of justice and witness tampering has thus been proven. The question then arises whether the conclusion that the President has broken the law in this respect warrants his removal from office. Since all have been proven, I am far less concerned that the "one or more" language appears in this article. It is appropriate to charge an omnibus article in which a series of specific charges are leveled, a finding of guilt on each of which is required for conviction.

President Clinton has committed a pattern of acts of obstruction of justice. The record demonstrates that the President, when his misconduct became relevant to a civil court proceeding in which he was a defendant, used all the methods at his disposal, including his status as President, to obstruct these proceedings and to keep the truth from emerging, including:

Coaching and encouraging a witness, another Federal employee, Betty Currie, to give false testimony;

Facilitating and encouraging Monica Lewinsky to submit an affidavit that he had reason to believe would be false;

Through Vernon Jordan, securing employment for Monica Lewinsky in order to keep her from divulging to the court the true nature of their relationship;

Using Government employees to transfer false information to the grand jury;

Allowing a false affidavit to be used to perpetrate a fraud on a Federal court;

After lying in a civil deposition, authorized a poll and made a cold, calculated decision based on those poll results to continue his obstruction;

Attempting to speak to Monica Lewinsky before she might testify truthfully to the independent counsel about their relationship;

Following his inability to contact Monica Lewinsky, telling defamatory lies about her in order to discredit her with his aides and with the public;

Facilitating the hiding of evidence in a civil lawsuit;

Providing false and misleading testimony in both a civil deposition and before a grand jury in order to protect his personal interests;

Lying to the American people in order to cover up his own personal misconduct;

Still failing to acknowledge that he committed the above actions, while admitting only as little as he has been forced to by the discovery of definitive physical evidence.

For at least 9 months and in some respects up until today, the President has done everything within his power to bring about a miscarriage of justice in both a civil court proceeding and a criminal court proceeding. He took these actions for the sole purpose of protecting himself personally, politically and legally. For those who emphasize the private nature of his original misconduct, I would ask if he should be protected because he obstructed justice for such a low purpose? Time and again, and with premeditation, he was willing to use government personnel to assist in his coverup and his lies, acknowledging part of the truth only when confronted with physical evidence. And he carried his lies and cover up right on into legal proceedings with the grace and ease of someone who regarded a court of law as deserving of no more respect than if he were dealing with a stranger on the street. It is this persistent relentless, remorseless pattern of conduct that requires a verdict of guilty. He was willing to lie, defame, hide evidence and enlist anyone necessary, including government employees over and over again. At every juncture when he had the opportunity to stop, relent or come clean with a forgiving public, he chose instead to go forward. And even today he refuses to acknowledge the damage he has done to the Presidency and the judiciary, choosing instead to rely upon his high job approval rating and acknowledging only what he is forced to after the production of physical evidence.

Consider what those who oppose impeachment say about his actions:

Senator Bumpers, one of the counsel for the President during his trial, described the President's conduct as "indefensible, outrageous, unforgivable, shameless." The New York Times editorialized that "President Clinton behaved reprehensibly, [and] betrayed his constitutional duty to uphold the rule of law. . . ." A censure resolution offered by Members of his own party in the House, including one of the strongest opponents of impeachment in the Judiciary Committee, concluded that President Clinton "egregiously failed in [his] obligation" "to set an example of high moral standards and conduct himself in a manner that fosters respect for the truth;" "violated the trust of the American people, lessened their esteem for the office of President, and dishonored the office which they have entrusted to him;" "made false statements concerning his reprehensible conduct with a subordinate;" and "wrongly took steps to delay discovery of the truth." Respected members of the President's party in this body expressed or shared the expression of the view that his actions were "disgraceful," that it was "dismay[ing]" to consider "the impact of his actions on our democracy and its moral foundations," that it was "immoral" and "harmful" since "the President's private conduct can and often does have profound pub-

lic consequences" and "compromised his moral authority," and they described his deception as "intentional and premeditated."

So we castigate the President in the most bitter terms; decry his disgraceful conduct and his damage to the institutions we hold most dear; disgrace him with the most condemnatory language at our command and yet refuse to even consider his removal from office? By such action we treat the loss of public office as the worst fate imaginable, reserved for only the most treasonous of villains. Has public office become so precious in the United States that we treat it as a divine right? Actually, by such treatment we cheapen it.

At a time when all of our institutions are under assault, when the Presidency has been diminished and the Congress is viewed with scepticism, our judiciary and our court system have remarkably maintained the public's confidence. Now the President's actions are known to every schoolchild in America. And in the midst of these partisan battles, many people still think this matter is just "lying about sex." But little by little, there will be a growing appreciation that it is about much more than that. And in years to come, in every court house in every town in America, juries, judges, and litigants will have the President's actions as a bench mark against which to measure any attempted subversion of the judicial process. The notion that anyone, no matter how powerless, can get equal justice will be seen by some as a farce. And our rule of law—the principle that many other countries still dream about—the principle that sets us apart, will have been severely damaged. If this does not constitute damage to our government and our society, I cannot imagine what does. And for that he should be convicted.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Mr. MOYNIHAN. Mr. Chief Justice, Senators, I speak to the matter of prudence. Charles L. Black, Jr. begins his masterful account "Impeachment: A Handbook" with a warning: "Everyone must shrink from this most drastic of measures. . . . [t]his awful step."

For it is just that. The drafters of the American Constitution had, from England and from Colonial government, fully formed models of what a legislature should be, what a judiciary should do. But nowhere on earth was there a nation with an elected head of an executive branch of government.

Here they turned to an understanding of governance which marks the American Constitution as a signal event in human history—what the framers called "the new science of politics." What we might term the intellectual revolution of 1787. The victors in the Revolution could agree that no one, or not many, wanted another monarchy in line with the long melancholy succession since Rome. Yet given what Madison termed "the fugitive and turbulent existence of . . . ancient republics," who could dare to suggest that a modern republic could hope for anything better?

Madison could. And why? Because study had produced new knowledge, which could now be put to use. This great new claim

rested upon a new and aggressively more "realistic" idea of human nature. Ancient and medieval thought and practice were said to have failed disastrously by clinging to illusions regarding how men ought to be. Instead, the new science would take man as he actually is, would accept as primary in his nature the self-interestedness and passion displayed by all men everywhere and, precisely on that basis, would work out decent political solutions.

This was a declaration of intellectual independence equal to anything asserted in 1776. Until then, with but few exceptions, the whole of political thought had turned on ways to inculcate virtue in a small class that would govern. But, wrote Madison, "If men were angels, no government would be necessary." We would have to work with the material at hand. Not pretty, but something more important: predictable. Thus, men could be relied upon to be selfish; nay, rapacious. Very well: "Ambition must be made to counteract ambition." Whereupon we derive the central principle of the Constitution, the various devices which in Madison's formulation offset "by opposite and rival interests, the defect of better motives."

Impeachment was to be the device whereby the Congress might counteract the "defect of better motives" in a President. But any such behavior needed to be massive and immediately threatening to the state for impeachment ever to go forward. Otherwise a quadrennial election would serve to restitute wrongs.

Further, they had a model for this process in the impeachment of Warren Hastings which had begun in April of 1786 with Edmund Burke presenting 22 "Articles of Charge of High Crimes and Misdemeanors." The debate in the House of Commons continued into 1787 and was reported in the Pennsylvania Gazette.

Burke was hardly a stranger to the Americans at Philadelphia. He had championed the cause of the American colonies during the Revolution, and was now doing much the same as regards the governance of British India. He accused the Governor General of the highest crimes possible against, inter alia, the peoples of India.

At Philadelphia, the standard for impeachment was discussed only once—on Saturday, September 8, 1787. At that point in the convention, the draft of the clause in the Constitution pertaining to impeachment referred only to "treason and bribery."

Here are Madison's notes of the debate that day:

> The clause referring to the Senate, the trial of impeachments against the President, for Treason & bribery, was taken up.
>
> Col. MASON. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined. As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He mov.d to add after "bribery" "or maladministration." Mr. GERRY seconded him.
>
> Mr. MADISON. So vague a term will be equivalent to a tenure during pleasure of the Senate.
>
> Mr. GOV. MORRIS. It will not be put in force & can do no harm. An election of every four years will prevent maladministration.
>
> Col. MASON withdrew "maladministration" & substitutes "other high crimes & misdemeanors ag.st the State."

The convention later replaced the word "State" with "United States." And on September 12, 1787, the Committee of Style—

which had no authority to alter the substantive meaning of the text—deleted the words "against the United States."

Thus the framers clearly intended that a President should be removed only for offenses "against the United States." It may also be concluded that the addition of the words "high Crimes and Misdemeanors" was intended to extend the impeachment power of Congress so as to reach "great and dangerous offences," in Mason's phrase.

The question now before the Senate is whether the acts that form the basis for the articles of impeachment against President Clinton rise to the level of "high crimes and misdemeanors," which is to say "great and dangerous offences" against the United States.

Over the course of 1998, as we proceeded through various revelations, thence to impeachment and so on to this trial at the outset of 1999, I found myself asking whether the assorted charges, even if proven, would rise to the standard of "great and dangerous offences" against the United States. More than one commentator observed that we were dealing with "low crimes," matters that can be tried in criminal courts after the President's term expires. Early in his address to the Senate our distinguished former colleague Dale Bumpers made this point:

> Colleagues, you have such an awesome responsibility. My good friend, the senior Senator from New York, has said it well. He says a decision to convict holds the potential for destabilizing the Office of the Presidency.

The former Senator from Arkansas was referring to an article in The New York Times on December 25 in which I said this:

> We are an indispensable nation and we have to protect the Presidency as an institution. You could very readily destabilize the Presidency, move to a randomness. That's an institution that has to be stable, not in dispute. Absent that, do not doubt that you could degrade the Republic quickly.

This could happen if the President were removed from office for less than the "great and dangerous offences" contemplated by the framers.

In "Grand Inquests," his splendid and definitive history of the impeachments of Justice Samuel Chase in 1804, and of President Andrew Johnson in 1868, Mr. Chief Justice Rehnquist records how narrowly we twice escaped from a precedent that would indeed have given us a Presidency, and a Court, subject to "tenure during the pleasure of the Senate."

It is startling how seductive this view can be. In 1804 it was the Jeffersonians, including Jefferson himself, who saw impeachment as a convenient device for getting rid of a Justice of the Supreme Court with whose opinions they disagreed. Not many years later radical Republicans sought the same approach to removing a President with whom they disagreed over policy matters.

It could happen again. Impeachment is a power singularly lacking any of the checks and balances on which the framers depended. It is solely a power of the Congress. Do not doubt that it could bring radical instability to American Government.

We are a blessed Nation. But our blessings could be our ruin if we do not see how rare they are. There are two nations on earth, the United States and Britain, that both existed in 1800 and have not had their form of government changed by force since then. There are eight—I repeat eight—nations which both existed in

1914 and have not had their form of government changed by violence since then: the United States, the United Kingdom, Australia, Canada, New Zealand, South Africa, Sweden, and Switzerland.

Senators, do not take the imprudent risk that removing William Jefferson Clinton for low crimes will not in the end jeopardize the Constitution itself. Censure him by all means. He will be gone in less than 2 years. But do not let his misdeeds put in jeopardy the Constitution we are sworn to uphold and defend.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR BOB GRAHAM

Mr. GRAHAM. Mr. Chief Justice: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Those words were a radical declaration when spoken in 1776. Never before had it been asserted that the purpose of government was to secure the individual freedoms and liberties of its citizens. To the contrary, previous governments existed for the opposite purpose, to control the people and suppress their aspirations.

Eleven years after the Continental Congress approved these revolutionary sentiments—and after a violent war which severed the colonies' tie to King George III—many of the same individuals who had declared independence gathered again in Philadelphia to secure those rights so recently and tenuously won.

The governmental structure they constructed during those weeks in the oppressive summer heat was far from simple. But its complexity wasn't an accident, or simply a result of the diverse geographical and economic interests represented at the Constitutional Convention. As our colleague Senator PATRICK MOYNIHAN has so aptly observed, our Government was the first to insert conflict as a conscious element, to achieve inefficiency by design.

Our Nation's founders had personal knowledge of and experience with English history, in which both kings and parliaments had at times exerted excessive power over the people. They realized that liberty would be enhanced if political power was divided instead of centralized.

Unlike other forms of democracy, where a no confidence vote of the national legislature can bring down a government at any time, the framers took great pains to establish a delicate balance of powers—and a careful system of checks and balances—between the Nation and the States and among the executive, legislative, and judicial branches of the Federal Government. They created a structure in which every branch would have the strength needed to keep excessive power from flowing into the hands of any other branch and thus threatening the liberties of the people.

This determination to achieve balance is reflected in the discussion of impeachment and removal from office in article I, section 3 of the Constitution. By requiring action from both houses of Con-

gress, and mandating a two-thirds Senate majority for removal, the framers purposely made it difficult for Congress to undo the results of a properly constituted Presidential election—one of the most disruptive acts imaginable in a democracy—and relieve a President of his or her constitutional duties. The framers wisely recognized that impeachment, when improvidently used, could create an overbearing Congress from the ruins of a destabilized and delegitimized Presidency.

But the framers' attention to balance was not limited to the procedures of impeachment. They also made clear their belief that impeachment and removal from office should only be an option in situations in which a President becomes a threat to the Government and the people it serves. We see this in their small number of enumerated offenses—"Treason, Bribery, other High Crimes and Misdemeanors"—and in their commentary.

For example, at the Constitutional Convention in 1787, George Mason said that the term "high crimes and misdemeanors" referred to "great and dangerous offenses" and "attempts to subvert the Constitution."

Mr. Chief Justice, the President's self-indulgent actions were immoral, disgraceful, reprehensible. History should—and, I suspect, will—judge that William Jefferson Clinton dishonored himself and the highest office in our American democracy.

But despite their disreputable nature, President Clinton's actions should not result in his conviction and removal from office. After careful objective study of each article presented by the House of Representatives, I have concluded that the charges against the President do not meet the high constitutional standards established by the framers. Removal of this President on the grounds established by the House managers would upset the delicate balance of powers so meticulously established 212 years ago.

Mr. Chief Justice, the framers set high standards for removal because they understood that the office of the Presidency would be held by imperfect human beings. They assembled a Government that could withstand personal failings.

We should be outraged that William Jefferson Clinton's personal failings debased himself and his office. But they did not cause permanent injury to the proper functioning of our Government. He did not upset the constitutional balance of powers.

I hope that the Chief Justice, my colleagues, and the American people will not misinterpret my comments. While it has not been proven that President William Jefferson Clinton committed the high crimes and misdemeanors required for removal from office, he is not above the law. His acquittal in this impeachment trial is not exoneration.

The framers made this clear in Article I of the Constitution. They established that an impeached President, even if convicted and removed from office, would still "be liable and subject to Indictment, Trial, Judgment, and Punishment, according to law." When this President leaves office, he could face sanction or conviction for his actions.

Mr. Chief Justice, during the questioning phase of this trial, I sought assurances from the President, through White House Counsel, Mr. Charles Ruff, that he would not attempt to circumvent this

judicial process by seeking a pardon for his actions. Counsel Ruff responded as follows:

> I have stated formally on behalf of the President in response to a very specific question by the House Judiciary Committee that he would not, and, indeed, we have said in this Chamber, and we have said in other places, that the President is subject to the rule of law like any other citizen and would continue to be on January 21, 2001, and that he would submit himself to whatever law and whatever prosecution the law would impose on him. He is prepared to defend himself in that forum at any time following the end of his tenure. And I committed on his behalf, and I have no doubt that he would so state himself, that he would not seek or accept a pardon.

I take Counsel Mr. Charles Ruff at his words. Once the President leaves office, he will be subject to the same prosecutorial and judicial review that all Americans face.

Mr. Chief Justice, now that we are at the end of this divisive and unpleasant experience, what have we learned?

We have learned that the Constitution works. The framers made it clear that the President should only be impeached and removed from office in cases where he becomes a threat to the government and the governed. The President's acquittal will uphold the sanctity of the office and prevent a weakening of the balance of powers that protects our individual rights and liberties.

We have reaffirmed the principle that no man is above the law. While I believe that the President is not guilty of high crimes and misdemeanors in this court of impeachment, he will be subject to legal sanction in other forums when he becomes a private citizen.

Mr. Chief Justice, the President's misdeeds will affect his standing in history. But they do not justify the first removal of a President of the United States from the office to which he was elected by the American people. When my name is called on the roll, I will vote "not guilty" on both articles of impeachment.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR WAYNE ALLARD

Mr. ALLARD. Mr. Chief Justice, as we all know, this impeachment trial has been a difficult process for the Senate and for our nation.

As this trial draws to a close each of us has the solemn duty of voting our conscience according to the dictates of the Constitution. I do not take this responsibility lightly.

For me, the vote in this trial will be the second most important of my congressional career. The only other vote to rank higher was my vote to authorize the Gulf War and thereby send American soldiers into combat.

My ultimate goal as we moved into this process was to maintain precedent and not shatter a very thoughtful process laid out in the Constitution and within Senate rules.

At the start of this Senate impeachment trial I took an oath to do impartial justice according to the Constitution and laws. I worked hard to adhere to that oath, and I pray that I have kept that oath.

This is particularly important to me since much of my thinking in this case centers on my conclusion that the President has violated his oath of office.

I have determined to base my decision on the facts of the case, not the polls, the performance of the economy, the President's popularity or where he is in his term of office.

Finally, I have felt that if any of the parts of an article constitute grounds for impeachment, then an affirmative vote on the article is warranted.

While the Senate is clearly divided on conviction and removal, one thing we have all learned is the importance of the Constitution.

We may be separated by political party or ideology, but we are united in our belief in the Constitution as the governing charter of our Republic.

Presidents come and go, and Senators come and go. The Constitution remains. It is the foundation of our political system.

The Constitution is what preserves the rule of law, and guarantees that we remain a nation of laws, not of men.

And, as we have all learned, in the impeachment and trial of a President, the Constitution is the document that directs how we shall proceed as members of the Congress.

Some have argued that this trial has divided America. In the short run, yes. But in the long run, it has united us and made us stronger.

We are stronger because we have once again demonstrated that we determine who shall lead this nation by democratic means, not by force of arms.

During the past month, I have listened to the evidence and I have weighed it carefully. It is now time for me to cast my vote and to explain my reasoning to my colleagues and to my constituents.

We have before us two articles of impeachment. The first deals with perjury, the second with obstruction of justice.

The first article alleges that the President violated his Constitutional oath and his August 17, 1998 sworn oath to tell the truth before a Federal grand jury.

He did so by willfully providing perjurious, false and misleading testimony in one or more of the following: (1) the nature and details of his relationship with a subordinate government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In my view the House managers demonstrated that at least three of the four provisions are true. The physical evidence is there, and the testimony supports that position.

I realize that with enough lawyers, one can certainly cloud things, and confuse and distract, but I believe the facts speak for themselves.

To me, once you cut through all the legal details and hours and hours of argument, this case is very clear. The President lied under oath. He lied not once, but repeatedly.

On this article, the only question for me is whether it rises to the level of an impeachable offense. I believe that it does. And this has certainly been the prior view of the Senate since it has on several occasions convicted and removed Federal judges for perjury.

Most recently in 1989, when Federal District Judge Nixon was convicted and removed from office for "knowingly and contrary to his oath mak[ing] a material false or misleading statement to a grand jury."

Here the judge's violation of the oath "to tell the truth, the whole truth, and nothing but the truth" was deemed an impeachable offense. I simply cannot justify a different standard for the President.

Some have argued that the standard for him should be lower because he is elected by the people, while Federal judges are appointed by the President and confirmed by the U.S. Senate to serve for life. While I respect those who hold this view, I cannot agree with it.

I hold the President to a higher standard because he is the chief law enforcement official of the Nation. If he is above the law, then we have a double standard; one for the powerful, and one for the rest.

Now let me address the second article. The charge is that the President violated his Constitutional oath in that he prevented, obstructed, and impeded the administration of justice.

Obstruction of justice is clearly an impeachable offense. History and prior practice support this view, and it seems that many members of this body agree that obstruction does warrant removal from office.

The question then is whether the House managers have demonstrated obstruction of justice. I believe that they have.

When we review the witness depositions of Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal, we compare those with the depositions of the President, and when we review all the evidence gathered and presented by the House managers, and by the independent counsel and the grand jury, there are at least four areas of obstruction by the President.

These relate to the encouraging of a false affidavit, the concealment of gifts, the assistance in employment, and the attempt to refresh the memory of his secretary Betty Currie which done a second time several days later is pure and simple trying to influence her testimony.

While we may never know with absolute certainty what occurred, the evidence is overwhelming that the President took numerous actions designed to impede the administration of justice.

I am also of the view that if the President committed perjury, then he obstructed justice. Perjury is a form of obstruction of justice.

I will therefore vote for conviction on both articles. I don't believe I will be voting to undo an election. We have a process of succession to the Presidency which maintains control in the Vice President of the same party with the same agenda.

Let me now explain why I feel conviction is so important in this case. It has to do with the role of the oath in our society. This is why the President's removal is necessary to protect the republic.

When I was sworn in as a United States Senator I took the following oath to uphold the Constitution as did each one of you:

I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reserva-

tion or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

I took the same oath on three occasions when I served in the U.S. House of Representatives. The President takes a similar oath when he enters office:

I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

Both of these oaths are required by the Constitution.

Article VI of the Constitution requires that all Senators, Representatives, members of the State legislatures, and all executive and judicial officers of the United States and the States shall be bound by oath or affirmation to support the Constitution. The oath of office lies at the center of this impeachment debate.

As George Washington stated in his Second Inaugural Address on March 4, 1793:

Previous to the execution of any official act of the President the Constitution requires an oath of office. This oath I am now about to take, and in your presence: That if it shall be found during my administration of the Government I have in any instance violated willingly or knowingly the injunctions thereof, I may (besides incurring constitutional punishment) be subject to the upbraidings of all who are now witnesses of the present solemn ceremony.

The sworn oath is central not only to our Constitution, but also to the administration of justice. Our legal system would not function without it.

Witnesses in trials swear under oath to "tell the truth, the whole truth, and nothing but the truth."

Similarly, parties in civil lawsuits answer written questions or "interrogatories" put to them by their opponents. All answers are given under penalty of perjury. The answering party must sign a statement attesting to the truthfulness of the answers.

Testimony before a Federal grand jury is given under oath, with the witness swearing to "tell the truth, the whole truth, and nothing but the truth." And the citizens who sit on a grand jury take an oath to seek the truth.

The Federal Rules of Evidence make reference to the importance of the oath in our judicial system.

Rule 603 states that the oath is "calculated to awaken the witness' conscience and impress the witness' mind with the duty" to tell the truth.

The Supreme Court has commented in a number of cases on the question of perjury. In the 1975 case of United States v. Mandujano, the Court opinion noted:

In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are therefore imperative.

In the much earlier 1937 case of United States v. Norris, the Court observed:

There is occasional misunderstanding to the effect that perjury is somehow distinct from "obstruction of justice." While the crimes are distinct, they are in fact variations on a single theme: preventing a court, the parties, and the public from discovering the truth. Perjury, subornation of perjury, concealment of subpoenaed documents, and witness tampering are all forms of obstruction of justice.

As the House prosecutors have argued, the principle of "Equal Justice Under Law" is at the very heart of our legal system.

In order to survive it requires not only an impartial judiciary and an ethical bar, but also a sacred oath. Without the sanctity of the oath, "Equal Justice Under Law" cannot be guaranteed.

In addition to our legal system, other sectors of our society rely on oaths to ensure truthfulness and uphold values.

At a very early age we frequently ask our young people to take an oath. The Boy Scout Oath is as follows:

On my honor I will do my best
To do my duty to God and my country
and to obey the Scout Law;
To help other people at all times;
To keep myself physically strong,
mentally awake, and morally straight.

And the Girl Scout Promise:

On my honor, I will try:
To serve God and my country,
To help people at all times,
And to live by the Girl Scout Law.

Members of our armed forces take the following oath of enlistment:

I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Code of Military Justice. So help me God.

Police officers, local officials and members of many civic organizations take an oath.

What is the purpose of an oath, and why do we rely on an oath in so many sectors of our society?

The oath in legal proceedings is designed to ensure truthfulness.

The oath taken by public officials and the military is designed to uphold the Constitution and preserve the rule of law.

The oath taken by scouts and members of civic organizations is designed to encourage values and good citizenship.

A violation of these oaths is taken seriously, and is often punished under the law. Why? To protect the organization, to protect the government, to protect the republic.

The President's oath is the most important oath any person takes in our Constitutional system. If that oath can be ignored it will set a very damaging precedent for our society.

Throughout this impeachment process there have been many proposals concerning the best means of resolution.

At each turn however, Members of the Congress have ultimately recognized that the appropriate path to take is the path laid out in the Constitution. That path was a full trial in the U.S. Senate.

I am proud to have been among those who argued for a trial.

Whatever the outcome, I will leave this process confident that the system has worked. While I may disagree with the final vote, I will respect that vote and I will urge that we move forward united and determined to do the people's business.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR MITCH MCCONNELL

Mr. MCCONNELL. Mr. Chief Justice, as the senior Senator from Kentucky, it is my distinct privilege today to rise and speak at the desk formerly occupied by one of the greatest Senators in the history of our country and the greatest Senator from the Commonwealth of Kentucky: Henry Clay.

Henry Clay is best remembered for two things: (1) the Compromise of 1850, and (2) a famous statement he made after being told that advocating the Compromise of 1850 would doom his chances for the presidency. At that critical moment Clay replied: "I had rather be right than be President."

In many respects, William Jefferson Clinton had a similar choice over the past several months. He could do the right thing. Or he could cling to his Presidency—regardless of the costs and regardless of the consequences. Consequences to his family, to his friends, to his aides, to his Cabinet, and, most importantly, to his country.

Time after time, the President came to a fork in the road. Time after time, he had the opportunity to choose the noble and honorable path. Time after time, he chose the path of lies and lawlessness—for the simple reason that he did not want to endanger his hold on public office.

Nowhere is the President's cold, calculated choice more clear than in the private conversation he had with his confidant and long-time advisor, Dick Morris, just after he raised his right hand to God and testified under oath in a civil rights lawsuit that he had not had any sexual relations with a young intern named Monica Lewinsky.

After that critical denial, the President did what he does best: he put his finger to the wind to determine which path he should take. He asked Mr. Morris to conduct a poll to determine whether the American people would forgive him for adultery, for perjury, and for obstruction of justice. Morris came back with bad news.

The public, in Morris's words was "just not ready for it." They would forgive him for adultery, but not for perjury and obstruction of justice.

The President then faced a fundamental choice. He could tell the truth—and admit that he perjured himself in the Jones suit. Or he could cling to public office—and deny, delay and obstruct.

The choice for President Clinton was clear. He told Morris: "Well, we just have to win."

And, thus the course was charted. The President would seek to win at any cost. If it meant lying to the American people. If it meant lying to his Cabinet. If it meant lying to a Federal grand jury. If it meant tampering with witnesses and obstructing justice. If it meant falsely branding a young woman with the scarlet labels of liar and "stalker." The name of the game was winning. Winning at any cost.

Based on the evidence before the Senate, I want to walk you down the road that Bill Clinton has traveled these past several months. That twisted, tortured road that he has forced the American people and their government to plod along—for what seems to many of us like an eternity.

The first fork in the President's road came on November 15, 1995, when he met a young, White House intern named Monica Lewinsky. He could be her President. He could be her boss. He could even be her friend. Or, he could choose to be in a relationship with her that was clearly inappropriate.

The President chose the wrong path. As we heard Ms. Lewinsky testify, on the day of their first meeting, which also happened to be the day of their first sexual encounter, President Clinton looked at Ms. Lewinsky's intern pass, tugged on it and said, "This is going to be a problem."

But the President persisted down that problematic path. He had approximately 10 more sexual encounters with Ms. Lewinsky over the next 21 months.

It is important, however, to note that had the President stopped there, we would not be here. At that point, the President's defenders could have credibly argued, "it's a private matter; it's just about sex."

But, Bill Clinton didn't stop there.

In December of 1997, the President came to another fork. At that time, he learned the following critical facts:

One: Ms. Lewinsky had been placed on the witness list in the Jones case;

Two: Judge Susan Webber Wright had ordered the President to provide information concerning any government employee with whom he had engaged in sexual activity; and

Three: Ms. Lewinsky had been served with a subpoena and ordered to produce any gifts she had received from the President.

At this point, the President had a choice. He could tell Ms. Lewinsky to obey the law, tell the truth, and turn over the gifts. Or, he could not.

Again, President Clinton chose the path of lies and deceit. Let's, again, hear this account from Ms. Lewinsky:

> "[I]t wasn't as if the President called me and said, 'You know, Monica, you're on the witness list, this is going to be really hard for us, we're going to have to tell the truth. . . .' And by him not calling me and saying that, you know, I knew what that meant. . . .
>
> [A]s we had on every other occasion and every other instance of this relationship, we would deny it."

The evidence indicates that the President was not interested in the truth, but rather, was only interested in getting Ms. Lewinsky to sign a false affidavit and getting her a job in New York where, from the President's way of thinking, she was less apt to be contacted by the Jones lawyers.

I must say that I am baffled at how the President of the United States—the leader of the free world—was intimately involved in both of these efforts. The evidence indisputably establishes that the President worked with his close friend Vernon Jordan to secure: (1) a job offer for Ms. Lewinsky in New York, and (2) a lawyer for Ms. Lewinsky to prepare and file her false affidavit. As Mr. Jordan's testimony made clear, his efforts on behalf of Ms. Lewinsky were at the behest of the President.

The evidence also indicates that during this same time period the President participated in a scheme to conceal gifts in the Jones civil rights suit. Ms. Lewinsky's testimony is clear that she met

with the President on December 28, and suggested to him that she could "put away or maybe give to Betty or give to someone the gifts[.]" Ms. Lewinsky further testified that later that same day the President's loyal secretary, Betty Currie, initiated a call to her to pick up the gifts. I find Ms. Lewinsky's testimony to be credible. Moreover, it is corroborated by Ms. Currie's cell phone record.

And, of course, the President didn't stop there.

The President came to another fork in the road where he had to decide whether to testify truthfully under oath regarding his relationship with Ms. Lewinsky. And, again, the President chose the path of lies and deceit.

He walked into the deposition room, raised his right hand, swore to tell the truth, the whole truth, and nothing but the truth, and then proceeded to give false statements. In a civil case about alleged sexual misconduct with a subordinate government employee, the President testified under oath that he never had a "sexual relationship", a "sexual affair" or "sexual relations" with a subordinate government employee named Monica Lewinsky.

But, again, as egregious as those actions were, had the President stopped there, we still might not be here.

The stakes for President Clinton continued to go higher and higher. Following his deposition, the President had to decide what to do with his loyal secretary, Ms. Betty Currie. And, again, the undisputed evidence shows that the President took the path of lies and deceit.

Contrary to Federal obstruction of justice laws and contrary to Judge Wright's protective order instructing President Clinton "not to say anything whatsoever about the questions . . . asked, the substance of the deposition, . . . , [or] any details. . . ," President Clinton left the deposition, went back to the White House, and called Ms. Currie at home to ask her to come to the White House the next day—which, I might add, was a Sunday.

At that somewhat surreal Sunday afternoon meeting, the President—in violation of Judge Wright's protective order—told Ms. Currie that he had been asked several questions about Monica Lewinsky at his deposition. Then the President—in violation of the Federal obstruction of justice law—fired off a string of fundamentally declarative statements to his secretary.

> "You were always there when she was there, right? We were never really alone.
> "You could see and hear everything.
> "Monica came on to me, and I never touched her, right?
> "She wanted to have sex with me and I couldn't do that."

And, of course, the President didn't stop there. According to Ms. Currie, the President again called her into the Oval Office a few days later, and again, repeated the same false statements to her that he had made under oath in his civil deposition.

The winding road continued its perilous twists and turns. The President next came to a point where he had to decide whether to tell the truth to his Cabinet, his top aides, and, most importantly, to the American people.

Again, the President rejected the right path, telling his Cabinet and staff that the allegations were untrue. He claimed to his then-Deputy Chief of Staff, John Podesta, for example, that he "never had sex with [Ms. Lewinsky] in any way whatsoever." Specifically,

he told Podesta that "they had not had oral sex." And, the President admits in his grand jury testimony that he knew that his aides could be called to testify before the grand jury. Ultimately, his top aides were called to testify, and they repeated his lies.

And, as everyone in America knows, the President lied to the Nation. I do not need to recite the defiant, indignant, finger-wagging denial that the President gave to 270 million Americans who had placed their trust in him as the chief law enforcement officer of this land.

But, it didn't have to go any further. I think that there's still a chance that had the President stopped there at that awful, disgraceful moment, we would not be here, today.

On August 17, 1998, the President came to the most important crossroads. He stood before a Federal criminal grand jury—a Federal criminal grand jury that was trying to determine whether he had committed perjury and obstructed justice. He had one last chance to do the right thing. He could tell the truth, the whole truth, and nothing but the truth to the grand jury. Or, he could commit perjury.

Again, President Clinton chose the wrong path. During that criminal probe, the President admitted to an "inappropriate" relationship with Ms. Lewinsky, but continued to falsely deny ever having sexual relations with her, in the face of corroborating evidence that included an undisputed DNA test and the testimony of Ms. Lewinsky and two of her therapists.

The President's strained, persistent, and—in the words of his own lawyer—"maddening" denials of the obvious were blatantly and patently false.

The President also declared under oath to the grand jury that his post-deposition coaching of Betty Currie about his relationship with Monica Lewinsky was a mere attempt to refresh his "memory about what the facts were." This statement is also blatantly and patently false.

In fact, there is no reasonable interpretation that would make the President's statements about coaching Ms. Currie to be true. Ms. Currie was not always there. She could not always see and hear everything. She could not know whether the President ever touched Ms. Lewinsky. And, she did not know whether Ms. Lewinsky ever had sex with the President. It is difficult to comprehend how the President could be refreshing his own memory through the act of making false statements to a potential witness.

Moreover, it is my opinion that these false statements by the President under oath were clearly material. A false and misleading denial of a sexual relationship with a subordinate government employee and a false and misleading denial of tampering with a potential witness goes to the very heart of whether the President obstructed justice or committed perjury.

Based on the evidence in the record, I am firmly convinced that the President has committed both perjury and obstruction of justice. He lied to the grand jury about the nature of his relationship with Ms. Lewinsky. He lied to the grand jury about coaching his loyal secretary, Betty Currie. He obstructed justice by encouraging Ms. Lewinsky to give false testimony, by participating in a scheme to conceal gifts that were subpoenaed, by tampering with his sec-

retary on two occasions, and by lying to top aides that he knew could be called to testify before the grand jury.

The Senate's inquiry, however, does not end there. We must decide whether perjury and obstruction of justice are high crimes and misdemeanors. Based on the Constitution, the law, and the clear Senate precedent, I conclude that these offenses are high crimes and misdemeanors.

First, Senate precedent establishes that false statements under oath by a public official are high crimes and misdemeanors. In 1986, I sat on the impeachment committee that heard the evidence against Judge Harry Claiborne. After hearing the evidence, I, along with an overwhelming number of my colleagues, concluded that Judge Claiborne had made false statements under the pains and penalties of perjury by failing to disclose certain amounts of income on his tax forms. The Senate—understanding the gravity of a public official making false statements under oath—voted to remove Judge Claiborne from office.

In 1989, the Senate held impeachment trials against Judge Hastings and Judge Nixon—both of whom had been accused of making false statements under oath. In Judge Nixon's case, the false statements were made directly to a criminal grand jury. The Senate—again understanding the gravity of a public official, who has sworn to uphold the laws, violating those very laws by lying under oath—voted to remove Judge Hastings and Judge Nixon from office.

My colleagues on both sides of the aisle had no hesitation about removing these Federal officials for making false statements under oath. As Senator HERB KOHL explained:

> "One might argue, as Judge Nixon does, that his false statements were not material. . . . But Judge Nixon took an oath to tell the truth and the whole truth. As a grand jury witness, it was not for him to decide what would be material. That was for the grand jury to decide. . . .
>
> So I am going to vote 'guilty' on articles I and II. Judge Nixon lied to the grand jury. He misled the grand jury. These acts are criminal and warrant impeachment."

I think Senator KOHL's statements accurately reflect the sentiment of the 89 Senators who voted to convict Judge Nixon for lying to a Federal grand jury. And, I might add, one of those Senators voting to remove Judge Nixon for perjury was then-Senator, now-Vice President AL GORE.

Of those 89 Senators, 48 of us are still here in this distinguished body. Will we send the same message about the corrosive impact of perjury on our legal system or will we simply lower our standards for the Nation's chief law enforcement officer?

Second, article II, section 4 of the Constitution plainly sets forth that bribery is a high crime and misdemeanor, and our Federal laws tell us clearly that perjury and obstruction of justice are equivalent offenses to bribery. In fact, the Federal Sentencing Guidelines actually mandate a harsher punishment for perjury than for bribery and a harsher punishment for obstruction of justice than for bribery. So, I am completely and utterly perplexed by those who argue that perjury and obstruction of justice are not high crimes and misdemeanors.

If Federal law mandates a harsher penalty for perjury and obstruction of justice, how can this Senate—who drafted, debated,

and passed those Federal laws—now argue that perjury and obstruction of justice are lesser offenses than bribery?

Listen to the Supreme Court's declaration: "[f]alse testimony in a formal proceeding is intolerable." *ABF Freight System* v. *NLRB,* 510 U.S. 317, 323 (1994). Moreover, the high Court has labeled perjury as an "egregious offense," *United States* v. *Mandujano,* 425 U.S. 564, 576 (1976), calling it "an obvious and flagrant affront to the basic concepts of judicial proceedings." (Id.)

Even the President's own Justice Department understands that our Nation of laws cannot tolerate perjury and obstruction of justice. President Clinton and his Justice Department have prosecuted approximately 600 cases of perjury since he came to office. And today—as we debate whether perjury is a serious offense—over 100 people are locked behind bars in Federal prison for committing the criminal act of perjury.

Perjury and obstruction hammer away at the twin pillars of our legal system: truth and justice. Every witness in every deposition is required to raise his or her right hand and swear to tell the truth, the whole truth, and nothing but the truth, so help them God. Every witness in every grand jury proceeding and in every trial is required to raise his or her right hand and swear to tell the truth. Every official declaration filed with the court is stamped with the express affirmation that the declaration is true. In the words of our nation's first Supreme Court Chief Justice, John Jay: "if oaths should cease to be held sacred, our dearest and most valuable rights would become insecure."

The facts clearly show that the President did not value the sacred oath. He was interested in saving his hide, not truth and justice. I submit to my colleagues that if we have no truth and we have no justice, then we have no nation of laws. No public official, no President, no man or no woman is important enough to sacrifice the founding principles of our legal system.

On this point, I am proud to quote Justice Louis Brandeis—a native of my hometown of Louisville and the man for whom the University of Louisville Law School is named:

> "In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker; it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

William Jefferson Clinton is not and should not be a law unto himself.

President Clinton's decisions have led the United States Senate to its own critical crossroads. And, now we must choose our path.

We can do the right thing. Or we can lower our standards and allow Bill Clinton to cling to public office—regardless of the consequences to our Nation, to our system of justice, and to our future generations.

More than 150 years ago, Alexis de Tocqueville wisely observed that "man rarely retains his customary level in very critical circumstances; he rises above or sinks below his usual condition, and the same thing is true of nations."

So what will we do this day? Will we rise above or will we sink below? Will we condone this President's conduct or will we con-

demn it? Will we change our standards or will we change our President?

As most of you will recall, the Senate faced a similar choice just a few short years ago. It was one of our own who had clearly crossed the line. It was one of our own who had engaged in sexual misconduct and obstruction of justice.

He, like President Clinton, was an intelligent and accomplished man. Senator Carol Moseley-Braun called him "brilliant" and said he was a man who "ha[d] certainly been fair." But, that brilliant and fair man had crossed the line.

At that critical moment in Senate history, we could have taken the wrong path and called it a private matter, saying "it's just about sex." But my friend, Senator DIANNE FEINSTEIN, was right when she said: "This is not private, personal conduct. This is conduct that took place in public service, and many of the people involved are themselves Federal employees."

At that moment, the Senate could have said, "He lied about his conduct to everybody, so lying in an official proceeding is OK." Or, we could have said, "He was covering it up before the investigation, so it's irrelevant and immaterial that he's covering it up during the investigation."

The Senate could have said, "We can't overturn a Federal election. After all, he'll be out of office in a few years." Or: "He may be prosecuted in the courts, so there's no reason for us to act."

And, finally, the United States Senate could have defended its own Member by arguing that, "A United States Senator should be held to a lower standard than others, not a higher standard. After all, there are only 100 U.S. Senators in the country. Any one of them is just too precious to lose."

But, we didn't say any of those things. Those doubletalking defenses were reserved exclusively for President Clinton.

During the Packwood debate, we made the tough choice. And, I have to say, that decision was one of the most difficult things I have ever had to do in my career in public service. To recommend expelling from the United States Senate a colleague, a member of my own party, and most importantly, a friend with whom I had served in the Senate for over a decade.

We sent a clear message to the Nation that no man is above the law. That no man is so important to the well-being of our strong and prosperous Nation that we have to compromise the fundamental, founding principles of truth and justice. We chose to rise above, not sink below. Rather than change our standards, we changed our Senator.

Let me also make a political point, here. We Republicans were aware during the Packwood debate that we would likely lose that Senate seat if Senator Packwood was removed from office. So, we had a choice: Retain the Senate seat or retain our honor. We chose honor, and never looked back.

I think that the United States Senate has a clear choice today. Do we want to retain President Clinton in office, or do we want to retain our honor, our principle, and our moral authority?

For me, and for many members in my impeachment-fatigued party, I choose honor.

I want to close my remarks today with an insightful and fascinating statement from Richard Nixon. A few years after his tragic downfall, President Nixon explained:

> It's a piece of cake until you get to the top. You find you can't stop playing the game the way you've always played it. So you are lean and mean and resourceful, and you continue to walk on the edge of the precipice, because over the years, you have become fascinated by how closely you can walk without losing your balance.

Ladies and gentleman of this fine and distinguished body, I submit to you that William Jefferson Clinton has lost his balance. He has lost his sense of right and wrong, of truth and justice. And, by doing so, he has—to paraphrase Alexander Hamilton in Federalist No. 65—abused and violated the trust of the American people.

Again, let me quote my esteemed colleague, Senator DIANNE FEINSTEIN, who said just a few months ago: "My trust in his credibility has been badly shattered."

Senator FEINSTEIN is not an island on this issue of shattered trust. There are many others who have expressed similar sentiments. A recent poll confirms what we all know, that is, the American people do not trust their Commander in Chief. A majority of Americans believe that President Clinton has lied to the country and that he will lie to the country again.

The New York Times, which I rarely ever quote, had this to say about the President's violation of the public trust:

> "The American President is a person who sometimes must ask people in the ranks to die for the country. The President is a person who asks people close around him to serve the government for less money than their talents would bring elsewhere. The President sometimes requires that people out in the country sacrifice their dollars or their convenience for national goals. All he is asked to provide in return is trustworthiness, loyalty and judgment. . . . President Clinton has failed that simple test abjectly, not merely with undignified private behavior in a revered place, but with his cavalier response to public concern."

In 1829, at his home in Lexington, Kentucky, Henry Clay opined that "[g]overnment is a trust, and the officers of the government are trustees[.]" I believe that fundamental principle to be true, and I believe that William Jefferson Clinton has abused and violated that public trust.

His cold, calculated actions betrayed the trust vested in him by the American people and the high office of the presidency. The President of the United States looked 270 million Americans in the eye, and lied—deliberately and methodically. He took an oath to faithfully execute the laws of this Nation, and he violated that oath. He pledged to be the Nation's chief law enforcement officer, and he violated that pledge. He took an oath to tell the truth, the whole truth, and nothing but the truth, and he willfully and repeatedly violated that oath.

I firmly believe that the evidence establishes beyond a reasonable doubt that William Jefferson Clinton made statements to the Federal grand jury regarding the nature of his relationship with a subordinate government employee and the purpose of his post-deposition conversation with a loyal secretary that were false, misleading, and perjurious, and warrant removal from office. Thus, I find the President guilty under article I.

I believe with equal conviction that the evidence establishes beyond a reasonable doubt that William Jefferson Clinton willfully engaged in a deliberate course of conduct designed to delay, im-

pede, cover up, and conceal the existence of evidence and testimony relating to a Federal civil rights action against him, and that this conduct warrants removal from office. Thus, I find the President guilty under article II.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR EDWARD M. KENNEDY

Mr. KENNEDY. Mr. Chief Justice, every 4 years, citizens of our country exercise one of the most important rights of our democracy—the right to vote for the President of the United States. This constitutional privilege is valued by all Americans and envied by millions around the world. It proves that the will of the majority will prevail, and that power will be transferred peacefully through the election process from one President to the next, time and again.

The essence of our democracy is the power of the right to vote. Many of our greatest battles in the Senate and the country in recent decades have been waged to extend and protect that right.

I think especially of the Voting Rights Acts, which have been at the heart of our civil rights debates. I think of our success in 1970 in lowering the voting age to 18, so that young Americans who were old enough to fight in the Vietnam War would be old enough to vote about that war, which America never should have fought. I think of the Supreme Court's great decision on one person, one vote, and our efforts in Congress to protect it.

I also think of the success of democracy in other lands—in Chile and Argentina and other nations in our hemisphere—and in Greece, in South Africa, and in many other countries.

The framers of the Constitution clearly understood the fundamental place of the right to vote in the new democracy they were creating. They clearly did not intend the Impeachment Clause to nullify the vote of the people, except in the most extraordinary cases of great danger to the nation.

The entire history of the debates at the Constitutional Convention demonstrates their clear intent to limit impeachment as narrowly as possible, to prevent a willful partisan majority in Congress from undermining the right to vote and the power of the President the people had elected.

The framers of the Constitution also made clear that the President was not to be subordinate to the Senate or the House of Representatives. The new government they created was based on another fundamental principle as well—the principle of separation of powers among the three coequal branches of government—the executive branch, the legislative branch, and the judicial branch. They specifically did not create a parliamentary system of government, in which the President would serve at the pleasure of Congress.

In their wisdom, the framers recognized that in certain extreme cases, a narrow exception to the orderly transfer of Presidential power through national elections every 4 years was necessary to protect the nation from an abusive President. And so they created the impeachment process, by which the President could be removed from office by the Senate and the House of Representatives in ex-

treme cases where the President had committed "Treason, Bribery, or other high Crimes and Misdemeanors".

The framers of the Constitution made clear that the orderly transfer of presidential power through national elections was to be scrupulously followed. They took great care to guarantee that this transfer would rarely, if ever, be undermined by the impeachment of the President. Removal of the President would come only after the House of Representatives—with the sole power to impeach—and the Senate—with the sole power to conduct a trial—found that the President had committed "Treason, Bribery, or other high Crimes and Misdemeanors," a term borrowed from the English impeachment experience.

Clearly, the framers intended the House and the Senate to use the impeachment power cautiously, and not wield it promiscuously for partisan political purposes. Sadly, in this case, Republicans in the House of Representatives, in their partisan vendetta against the President, have wielded the impeachment power in precisely the way the framers rejected—recklessly and without regard for the Constitution or the will of the American people.

First, Republicans on the House Judiciary Committee essentially swallowed the referral of independent counsel Kenneth Starr whole, without seriously questioning it or calling any witnesses. They used the referral as the foundation for articles of impeachment which were released to the public before the White House counsel had an opportunity to complete their testimony before the Committee.

Why were the House Judiciary Committee and the House of Representatives on the fast track to impeachment? Because, as House Manager HYDE told the Senate, "we were operating under time constraints which were self-imposed but I promised my colleagues to finish it before the end of the year. I didn't want to drag it out." In the battle between speed and fairness, should speed have prevailed over fairness? Clearly not. But the lame duck Republican House of Representatives was bent on acting before the last Congress ended, fearful that their slimmer majority in the current Congress would not approve any articles of impeachment at all.

In their most blatant attempt of all to stack the deck against the President, the House Republican leadership refused to allow a fair vote on censure as an alternative to impeachment, an alternative that would have ended this unseemly charade two months ago. Instead, Members of the House were given a single choice—a vote to impeach the President or do nothing.

After their partisan victory in the House of Representatives, the House managers brought their vendetta against the President to the Senate. They brought thousands of pages of evidence, containing 22 statements by Monica Lewinsky, 6 statements by Vernon Jordan, 3 statements by Sidney Blumenthal, the videotaped deposition of President Clinton in the Jones case, and the videotaped record of his appearance before the grand jury. Their opening statements attempted to shed the most favorable light on the evidence, but it was quickly apparent that they had not and could not persuade two-thirds of the Senate to remove the President.

While trying to persuade Senators to convict President Clinton, the House managers argued relentlessly for the opportunity to examine witnesses during the trial. The hypocrisy in the position of the House managers on witnesses was obvious. They did not think it was necessary to call witnesses in the House proceedings. They demeaned the House by their partisan excesses. But they were shameless in their attempt to force the Senate to wallow in witnesses.

Our Republican friends have desperately been trying to produce a two-thirds majority to remove the President from office. But their efforts have succeeded only in turning a serious constitutional process into a partisan process that demeaned both the House and the Senate and became a painful ordeal for the entire country.

In pursuing the allegations of perjury and obstruction of justice, the House managers presented an ever changing, constantly shifting list of charges to the Senate. Veteran prosecutors testified before the House Judiciary Committee that they would never prosecute such a case, and that it would be irresponsible for the Senate to attempt to use these allegations as a basis to remove the President from office.

Some of the allegations of perjury by the House managers were laughable. Clearly, it was not perjury for the President to use the phrase "certain occasions" to describe the frequency of his contacts with Miss Lewinsky, or to use the word "occasional" to describe the frequency of his telephone conversations with her.

Even the few allegations of perjury and obstruction of justice that are arguably more serious are far from proven beyond a reasonable doubt, which is the standard that I believe should be applied by the Senate in considering the facts of this case. Indeed, I do not believe they were proved by clear and convincing evidence. But even if any such allegations were true, they still fall far short of the constitutional standard required for impeaching a President and removing him from office.

President Clinton's behavior was wrong. All of us condemn it. None of us condones it. He failed to tell the truth about it, and he misled the country for many months. But nothing he did rises to the high constitutional standard required for impeachment and removal of a President from office.

I believe that conclusion is required by the Constitution. At the time of the Constitutional Convention in 1787, the framers engaged in a vigorous debate about the role of the President, the new chief executive they were creating. In addition to determining the basic powers of the office, many of those at the convention debated whether or not impeachment should apply at all to the President. As University of Chicago Law School Professor Cass Sunstein told the House Judiciary Subcommittee on the Constitution, "Many of the framers wanted no impeachment power whatsoever . . . [t]hey suggested that in a world of separation of powers and election of the President, there was no place for impeachment. . . . That position was defeated by reference to egregious hypotheticals in which the President betrayed the country during war or got his office through bribery. Those are the cases that persuaded the swing votes that there should be impeachment power." In the end, the framers reluctantly agreed that there might be limited cir-

cumstances in which a President should be removed from office by Congress in order to protect the country from great harm, without waiting for the next election.

Once the framers concluded that the President could be removed by the legislature in such cases, they debated the standard for impeachment. Nine days before the final Constitution was signed, the impeachment provision was limited only to treason and bribery. George Mason then argued that the provision was too restrictive, and should be amended to include the phrase, "or maladministration." But, vigorous opposition came from others who believed that such a vague phrase would give Congress too much power to undermine the President. Mason withdrew his original proposal and substituted the phrase, "other high Crimes and Misdemeanors against the State"—a phrase well-known from English law.

The Constitutional Convention adopted the modification by a vote of eight States to three—confident that only serious offenses against the Nation would provide the basis for impeachment. Later, the Committee of Style removed the words, "against the State," but because the committee had been instructed not to change the meaning of any provision, the impeachment clause should be interpreted as it was originally drafted.

The debate surrounding the impeachment clause was significant. By first expanding and then narrowing the clause, the framers clearly intended that the President could be removed from office for "crimes" beyond treason and bribery, but that he could not be removed for inefficient administration or administration inconsistent with the dominant view in Congress. Impeachment was not to be the illegitimate twin of the English vote of "no confidence" under a parliamentary system of government. The doctrine of separation of powers was paramount. The President was to serve at the pleasure of the people, not the pleasure of the Congress, and certainly not at the pleasure of a willful partisan majority in the House of Representatives.

As Charles Black stated in his highly regarded work on impeachment, the two specific impeachable offenses—treason and bribery—can help identify both the "ordinary crimes which ought also to be looked upon as impeachable offenses, and those serious misdeeds, not ordinary crimes, which ought to be looked on as impeachable offenses . . ." Using treason and bribery as "the miners' canaries," Professor Black states that "high crimes and misdemeanors, in the constitutional sense, ought to be held to be those offenses which are rather obviously wrong, whether or not 'criminal,' and which so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator."

The distinguished historian, Professor Arthur Schlesinger, told the House Judiciary Subcommittee on the Constitution, the "[e]vidence seems to me conclusive that the Founding Fathers saw impeachment as a remedy for grave and momentous offenses against the Constitution; George Mason said, great crimes, great and dangerous offenses, attempts to subvert the Constitution."

In addition to Professor Schlesinger, over 430 law professors and over 400 historians and constitutional scholars have stated emphatically that the allegations against President Clinton do not meet the standard set by the Constitution for impeachment. The

scholarly support for the argument that the charges against President Clinton do not rise to the level of impeachable offenses—even if they are true—is overwhelming, and it cannot be ignored.

The law professors wrote, "[i]t goes without saying that lying under oath is a very serious offense. But even if the House of Representatives had the constitutional authority to impeach for any instance of perjury or obstruction of justice, a responsible House would not exercise this awesome power on the facts alleged in this case."

The historians wrote, "[t]he framers explicitly reserved [impeachment] for high crimes and misdemeanors in the exercise of executive power. Impeachment for anything else would, according to James Madison, leave the President to serve 'during the pleasure of the Senate,' thereby mangling the system of checks and balances that is our chief safeguard against abuses of power . . . Although we do not condone President Clinton's private behavior or his subsequent attempts to deceive, the current charges against him depart from what the framers saw as grounds for impeachment."

The House managers apparently made no attempt to obtain scholarly support for their opposition. It is a fair inference that they did not do so because they knew they could not obtain it.

The House managers argue that because the Senate convicted and removed three federal judges for making perjurious statements, we must now convict and remove the President. But, to determine whether or not President Clinton should be removed from office requires the Senate to do more than make simplistic analogies to federal judges.

Removal of the President of the United States and removal of a Federal judge are vastly different. The President is unique, and his role is in no way comparable to the role of the over 900 Federal judges we have today. The impact on the country of removing one of 900 Federal judges is infinitesimal, compared to the impact of removing the only President we have. And the people elect the President for a specific 4-year term, while Federal judges are appointed for life, subject to good behavior. These distinctions are obvious, and they make all the difference.

Other precedents also undermine the House managers' insistence that the Senate is bound to remove President Clinton from office. The House Judiciary Committee refused on a bipartisan basis to impeach President Nixon for deliberately lying under oath to the Internal Revenue Service, although he underreported his taxable income by at least $796,000. During the 1974 Judiciary Committee debates, many Republican and Democratic members of the Committee agreed that tax fraud was not the kind of abuse of power that impeachment was designed to remedy.

Finally, the House managers argue that President Clinton must be removed to protect the rule of law and cleanse the office. It is not enough, they say, that he can be prosecuted once he leaves office. But protecting the rule of law under the Constitution is not the proper standard for removal of the President. Before impeaching and convicting the President, the Senate must find that he committed "Treason, Bribery, or other high Crimes and Misdemeanors." As Professor Laurence Tribe testified before the House Judiciary Subcommittee on the Constitution, "[i]f the proposition is

that when the President is a law breaker, has committed any crime, then the rule of law and the take care clause requires that one impeach him, then we have rewritten the [impeachment] clause."

The Constitution has guided our country well for two centuries. The decision we make now goes far beyond this President. As we decide whether President Clinton will be removed from office, the future of the Presidency and the well-being of our democracy itself are at stake.

How will history remember this Congress? The Radical Republicans in the middle of the 19th century were condemned in the eyes of history for using impeachment as a partisan vendetta against President Andrew Johnson. And I believe the Radical Republicans at the end of the 20th century will be condemned even more severely by history for their partisan vendetta against President Clinton.

The impeachment process was never intended to become a weapon for a partisan majority in Congress to attack the President. To do so is a violation of the fundamental separation of powers doctrine at the heart of the Constitution. It is an invitation to future partisan majorities in future Congresses to use the impeachment power to undermine the President. It could weaken Republican and Democratic Presidents alike for years to come.

This case is a constitutional travesty. We deplore the conduct of President Clinton that led to this year-long distraction for the Nation. But we should deplore even more the partisan attempt to abuse the Constitution by misusing the impeachment power.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR SUSAN M. COLLINS

Ms. COLLINS. Mr. Chief Justice, my colleagues, the issue now before the Senate may well be the most significant of our public careers. Other than declaring war, it is difficult to imagine a weightier decision that could come before us than whether to remove the President of the United States from office.

Our founders designed impeachment to protect our system of government against officials who lose their moorings in the law or who endanger our most basic institutions. They designed it neither as a popular referendum nor as a mechanism by which—as in parliamentary systems—the legislature can remove the head of government based on nothing more than a policy difference. Instead, this process is a check upon rogue chief executives, designed equally to remove the politically popular malefactor and to protect the innocent, but unpopular, official. It is a vital, but extraordinary, remedy that should neither be shunned out of political expediency nor invoked for political gain.

The question before us is not whether President Clinton's conduct was contemptible or utterly unworthy of the great office he holds. It was. The question before us is whether the President has committed an impeachable offense for which he should be removed from that office.

The framers thought carefully about where to vest the ultimate power to remove a President. They chose the United States Senate. This was not an obvious choice. The power to convict and remove could as easily have been assigned to a court of law, where a jury would apply the law to the facts in the ordinary way.

But the framers gave the power to try impeachments to the Senate. They did so because they recognized that an impeachment trial should not be an ordinary trial, requiring an ordinary application of law to fact. The framers wanted the Senate to make not only a determination of guilt, but also a judgment about what is best for our nation and its institutions.

Throughout this impeachment trial, in order to lessen the ambiguity in this process, I have sought to find a way to allow the Senate to express its view of the facts we have so carefully considered for the past month. The vote we now approach is to convict or acquit. It is a blunt instrument that does not allow me to express clearly my belief that President Clinton willfully lied to a Federal grand jury, and that he wrongfully tried to influence testimony and to conceal evidence related to Paula Jones' lawsuit.

As this case has been argued in this chamber, I have become convinced that the perjury charges of article I are not fully substantiated by the record. The President's grand jury testimony is replete with lies, half-truths, and evasions. But significantly, not all evasion is lying, and not all lying is perjury. Even blatantly misleading testimony that all fair-minded people would consider dishonest may not actually constitute perjury, as the law defines it.

Time and time again, the attorneys questioning President Clinton before the grand jury—perhaps out of a misguided sense of deference—neglected to pin him down as he gave nonresponsive, evasive, confusing, or simply absurd responses. The only remedy for imprecise answers is more precise questioning. Unfortunately, this did not occur, and consequently, the record is too murky to require the President's removal based on article I.

The evidence supporting article II is more convincing. Indeed, the case presented by the House managers proves to my satisfaction that the President did, in fact, obstruct justice in Paula Jones' civil rights case. While the circumstances surrounding Monica Lewinsky's filing of a false affidavit are unclear, there is no doubt in my mind that the frantic efforts to find Ms. Lewinsky a job, the retrieval and concealment of gifts under the bed of the President's secretary, and, most egregious, the President's blatant coaching of Betty Currie—not once, but twice—were clear attempts to tamper with witnesses and obstruct justice. Indeed, if I were a juror in an ordinary criminal case, I might very well vote to convict faced with these facts.

Nevertheless, I do not think that the President's actions constitute a "high crime" or "misdemeanor" as contemplated by article II, section 4 of the Constitution. This is, I readily acknowledge, a judgment that can neither be made nor explained with anything approaching scientific precision. But I can point to two factors that influence my conclusion.

First, obstruction of justice is generally more serious in a criminal case, as opposed to a civil case, as it interferes with the effective enforcement of our Nation's laws and not solely with the adju-

dication of private disputes. Consistent with this conclusion, the vast majority of obstruction prosecutions involve underlying criminal actions, and the statutory penalties are more severe in the context of criminal trials. This is not to suggest for a moment that we should tolerate obstruction of justice in civil cases, but only to observe that our legal system treats it as a less serious offense.

Second, I believe that for impeachment purposes, obstruction of justice has more ominous implications when the conduct concealed, or the method used to conceal it, poses a threat to our governmental institutions. Neither occurred in this case.

Therefore, I will cast my vote not for the current President, but for the presidency. I believe that in order to convict, we must conclude from the evidence presented to us with no room for doubt that our Constitution will be injured and our democracy suffer should the President remain in office one moment more.

In this instance, the claims against the President fail to reach this very high standard. Therefore, albeit reluctantly, I will vote to acquit William Jefferson Clinton on both counts.

In voting to acquit the President, I do so with grave misgivings for I do not mean in any way to exonerate this man. He lied under oath; he sought to interfere with the evidence; he tried to influence the testimony of key witnesses. And, while it may not be a crime, he exploited a very young, star-struck employee whom he then proceeded to smear in an attempt to destroy her credibility, her reputation, her life. The President's actions were chillingly similar to the White House's campaign to discredit Kathleen Willey.

As much as it troubles me to acquit this President, I cannot do otherwise and remain true to my role as a Senator. To remove a popularly elected President for the first time in our Nation's history is an extraordinary action that should be undertaken only when the President's misconduct so injures the fabric of democracy that the Senate is left with no option but to oust the offender from the office the people have entrusted to him.

President Clinton has written a shameful and permanent chapter of American history. He alone is responsible for this year of agony that the American people have endured. I do not, however, take solace in the prospect of a censure, nor do I take comfort in the possibility that the President may be prosecuted for his wrongdoing after he leaves office. Rather, I look to the verdict of history to provide the ultimate punishment for this president, a verdict that no public relations gloss or smear campaign can obscure. As Maine's great poet, Henry Wadsworth Longfellow, wrote in 1874, "Whatever hath been written shall remain, nor be erased, nor written o'er again." When the history of the Clinton presidency is written, every book will begin with the fact that William Jefferson Clinton was impeached, and that will be not only the ultimate censure but also the final verdict on this sad chapter in our Nation's history.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR TOM HARKIN

Mr. HARKIN. Mr. Chief Justice, a few weeks ago, I used a barnyard term that is quite known in Iowa to describe what I thought

of this case. The longer this case has gone on, the more I am convinced this characterization is correct.

This case should never have been brought before the Senate. I think it is one of the most blatant partisan actions taken by the House of Representatives since Andrew Johnson's case was pushed through by the radical Republicans of his time.

I think it is important for us to take a look at how this case got here. One might ask why is it important how it got here?

Well, if you believe that the end justifies the means, it is probably not very important. But if you believe the end doesn't justify the means, that those who are charged with enforcing the law cannot break the law in order to bring someone to the bar of justice, and if you believe the rule of law applies not only to the defendant, the President in this case, but also to the prosecutors and those sworn to uphold that rule of law, then it is important to look at how the case got here.

First, we have a statute, the independent counsel statute which at best I believe is flawed and at worst unworkable which allows someone to be targeted without regard to money or time. In fact, it has essentially created a fourth branch of Government with no checks or balances.

Again, the conduct, I want to point out, of Ken Starr does not excuse the behavior of the President but has everything to do with our perspective on the case and how we approach it, how we weigh our decision. We are not jurors, we are judges and the supreme court of impeachment, which has some of the elements of a court of equity. If somebody approaches this court, they better do it with clean hands.

Where the political motivation is so blatant, as it has been in this case, I think we in the Senate should have our guard up, not only on what the case is about, but how it got here. This is the sort of political impeachment case that Madison and Hamilton wanted to avoid, and I refer you to Federalist No. 65, and Hamilton warned the greatest danger would be "that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt." That is why he argued for it to come to the Senate and have a two-thirds requirement in order to convict and remove.

So in the beginning, Ken Starr is picked by a three-judge panel to investigate Whitewater. Whitewater turns into Travelgate. Travelgate turns into Filegate, and then one wonders, how did Monica Lewinsky ever drop in on this?

If we look back, when Ken Starr was a private attorney, in 1994, he had dealings with Paula Jones' attorneys in terms of her then-pending lawsuit. So he had prior involvement himself with the Paula Jones case.

So the Paula Jones case proceeds forward. And in October of 1997, an entity called the Rutherford Institute, funded by conservative forces in the United States, found some new attorneys for Paula Jones and became heavily involved in the case.

Now some time around that time, Linda Tripp, with whom Monica Lewinsky had shared her most intimate details of her involvement with the President, begins talking with these attorneys. That is sort of the status of the case as of December 1997.

And here I ask unanimous consent to have printed an article from the New York Times, dated January 24, which more or less documents this.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 24, 1999]

QUIETLY, TEAM OF LAWYERS WHO DISLIKED CLINTON KEPT JONES CASE ALIVE

(By Don Van Natta Jr. and Jill Abramson)

WASHINGTON, Jan. 23.—This time last year, Hillary Rodham Clinton described, in a now-famous appearance on the NBC News program "Today," how a "vast right-wing conspiracy" was trying to destroy her husband's Presidency.

As it turns out, some of the most serious damage to Bill Clinton's Presidency came not from his high-profile political enemies but from a small secret clique of lawyers in their 30's who share a deep antipathy toward the President, according to nearly two dozen interviews and recently filed court documents.

While cloaking their roles, the lawyers were deeply involved—to an extent not previously known—for nearly five years in the Paula Jones sexual misconduct lawsuit. They then helped push the case into the criminal arena and into the office of the independent counsel, Kenneth W. Starr.

The group's leader was Jerome M. Marcus, a 39-year-old associate at the Philadelphia law firm of Berger & Montague, whose partners are major contributors to the Democratic Party.

Although Ms. Jones never met him or knew he had worked on her behalf, Marcus drafted legal documents and was involved in many of the important strategic decisions in her lawsuit, according to billing records and interviews with other lawyers who worked on the case. As much as any of Ms. Jones's attorneys of record, Marcus helped keep Ms. Jones's case alive in the courts.

Marcus recruited others to assist his efforts, including several friends from the University of Chicago Law School. One of those who was approached, Paul Rosenzweig, briefly considered doing work for Ms. Jones in 1994, according to billing records and interviews, but decided not to. In November 1997, Rosenzweig joined Starr's office, where he and Marcus had several telephone conversations about the Jones case.

It was Rosenzweig who fielded a "heads-up" phone call from Marcus on Jan. 8, 1998, that first tipped off Starr's office about Monica S. Lewinsky and Linda R. Tripp. The tip was not mentioned in the 445-page Starr report, even though the information revived a moribund Whitewater investigation that would not have produced, it now seems, an impeachment referral to Congress.

Marcus did make his views known publicly last month when he wrote an impassioned commentary in The Washington Times urging the impeachment of Clinton. "The cancer is deadly," Marcus wrote. "It, and its cause, must be removed." He identified himself in the newspaper simply as "a lawyer in Philadelphia."

In his long efforts to promote Ms. Jones's lawsuit, and helping Mrs. Tripp find her way to Starr, Marcus found other allies, including another Chicago law classmate, Richard W. Porter. Porter had worked as an aide to former Vice President Dan Quayle and was a partner of Starr's at the law firm of Kirkland & Ellis, based in Chicago.

George T. Conway 3d, a New York lawyer educated at Yale, shared Marcus's low view of President Clinton. When the Jones case led to Ms. Lewinsky, Marcus and Conway searched for a new lawyer for Mrs. Tripp. Marcus and Porter helped arrange for Mrs. Tripp to take her explosive allegations to Starr.

Their efforts are only now coming into focus, as a few of their associates have begun to discuss their activities and their names appear repeatedly in the final legal bills submitted by the original Jones legal team. Messrs. Marcus, Porter and Conway did not respond to numerous requests for comment.

In their arguments before the Senate this week, the President's lawyers said that there was collusion between Starr's office, Mrs. Tripp and the lawyers for Ms. Jones in the weeks leading up to the President's deposition last January. If witnesses are called in the Senate impeachment trial, the President's lawyers may explore the issue further, several Clinton legal advisers said.

Charles G. Bakaly 3d, the spokesman for Starr, denied there was collusion between the independent counsel's office and the Jones team, including Marcus. "There was absolutely no conspiracy between the Jones lawyers and our office,"

Bakaly said. "Judge Starr has testified to the circumstances as to how this matter came to our attention, and the actions that we took thereafter."

Clinton said in his grand jury testimony in August that his political enemies "just thought they would take a wrecking ball to me and see if they could do some damage." That wrecking ball was wielded by Marcus and his colleagues, who managed to drive Paula Corbin Jones's allegation of sexual misconduct into the courtroom and beyond.

Marcus, Porter and Rosenzweig were classmates at the University of Chicago Law School, graduating in 1986. Conway met the others through the Jones case. Some of the lawyers were also involved with the Federalist Society, a legal group that includes conservative and libertarian luminaries like Starr, Robert H. Bork and Richard Epstein, a University of Chicago law professor.

Porter was the most overtly political member of the group, having worked on the staff of Vice President Quayle and on the Bush-Quayle campaign, where he did opposition research.

Porter was also an associate of Peter W. Smith, 62, a Chicago financier who was once the chairman of College Young Republicans and a major donor to Gopac, a conservative political group affiliated with former Speaker Newt Gingrich. Beginning in 1992, Smith spent more than $80,000 to finance anti-Clinton research in an effort to persuade the mainstream press to cover Clinton's sex life. Among others, his efforts involved David Brock, the journalist who first mentioned the name "Paula" in an article on Clinton.

Smith declined an interview request.

In 1993, Brock said, Smith helped introduce him to the Arkansas state troopers who accused Clinton of using them to procure women when he was Governor of Arkansas. Brock wrote an article based on the troopers' account of Clinton's sexual escapades that was published in the January 1994 issue of The American Spectator, a conservative magazine. According to Brock, Smith wanted to establish a fund for the troopers, in case they suffered retribution. Brock said he opposed payments because they would undermine the troopers' credibility.

To allay his concerns, Brock said, Smith urged him to speak to Porter, who was then working at Kirkland & Ellis, the Chicago law firm that employed Starr in its Washington office. Brock said he had hoped his talk with Porter would put an end to any planned payments to the troopers, but Smith did pay them and their lawyers $22,600.

In 1992, Smith also paid Brock $5,000 to research another bit of Arkansas sex lore regarding Clinton, a rumor that has since proved to be baseless.

Brock did not pursue the article.

Brock's trooper article in The American Spectator mentioned a woman identified as "Paula," and in May 1994, Ms. Jones filed her lawsuit against President Clinton. Ms. Jones's lawyers of record were from the Washington area, Gilbert K. Davis and Joseph Cammarata, whom Marcus had helped recruit.

The Davis and Cammarata billing records show that from their earliest involvement in the case, they were consulting with Marcus and Porter. Conway also helped draft briefs, Cammarata said.

"Marcus was involved," Cammarata said, "but he insisted that he not be identified. But that was fine with me. We were just two guys involved in the middle of a world war. We welcomed his help."

No one was more important to the Jones case than Marcus. Besides helping to write several important briefs, Marcus spoke numerous times at the most critical moments in the case with Cammarata and Davis, offering legal advice that Cammarata said was "vital."

According to the billing records, Porter also offered "legal strategy" and once wrote a memo on "investigative leads" that might embarrass the President.

"Porter was a cheerleader," Cammarata said. "He used to call up and say, 'Maybe we can find you some money.'"

One of President Clinton's legal advisers said he noticed a marked difference in quality between the routine legal pleadings filed by the Cammarata and Davis team, and the polished, scholarly briefs written by the shadow legal team headed by Marcus and Conway.

Marcus, meanwhile, was so successful at keeping the extent of his role a secret that even Cammarata only found out recently that Marcus had trouble finding lawyers to agree to represent Ms. Jones. "No one wanted to touch this case," Cammarata said. "No one wanted to take on the President of the United States."

Another friend of Marcus also briefly considered assisting the Jones lawyers.

In June 1994, Rosenzweig, a lawyer at a small law firm in Washington, with experience working in the Justice Department, expressed interest in doing legal work on behalf of Ms. Jones, but he did none, lawyers involved in the case said.

Conway wanted his role kept hidden as well, because his New York law firm, Wachtell, Lipton, Rosen & Katz, included influential Democrats like Bernard W. Nussbaum, a former White House counsel. Conway's name does not appear on any billing records.

Although the billing records show communication between Porter and the Jones lawyers from 1994 to 1997, he denied in a written statement last fall doing legal work for Ms. Jones.

Because Porter is a partner at the firm where Starr worked until he took a leave of absence last August, any role played by Porter in the Jones case could have posed a conflict of interest for Starr once he became independent counsel. Starr has said he did not discuss the Jones case with Porter.

Starr has acknowledged contacts with Davis, specifically six telephone discussions the two had in 1994, before Starr became independent counsel. In fact, Starr has been criticized for not disclosing the phone conversations to Attorney General Janet Reno when he was seeking to expand his investigation to the Lewinsky matter. Starr has said it did not occur to him to mention the conversations because he did not do work on the Jones case and simply offered his publicly stated position on a point of constitutional law that Presidents are not immune from civil lawsuits.

Before the Jones lawyers argued before the Supreme Court in May 1996, paving the way to the fateful 9–0 decision that the President was not immune from civil lawsuits, Conway went to Washington for a practice argument. He joined Davis, Cammarata, Judge Robert Bork and Theodore Olson, a Washington lawyer and friend of Starr, at the Army-Navy Club here.

When Cammarata and Davis quit as Ms. Jones' lawyers after she failed to reach a settlement with President Clinton's lawyers in 1997, Marcus and his colleagues established ties to her new lawyers at the Dallas law firm of Rader, Campbell, Fisher & Pyke and the Rutherford Institute of Charlottesville, Va., which helped pay her legal expenses.

In November 1997, Rosenzweig went to work as a prosecutor in Starr's office. And from November to January, Rosenzweig spoke several times by telephone with Marcus and discussed the Jones case, a lawyer with knowledge of the conversations said. But Bakaly, a spokesman for Starr, said that Rosenzweig did not tell any of his colleagues about what he learned about developments in the Jones case.

By this time, Mrs. Tripp was cooperating with the Jones lawyers. She was also taping her conversations with Ms. Lewinsky, which her friend, Lucianne Goldberg, a Manhattan literary agent, had incorrectly assured her was legal. In December, Mrs. Tripp became frantic that she might be prosecuted because such taping is illegal in Maryland, where Mrs. Tripp lives. Mrs. Tripp and Ms. Goldberg thought of a possible solution: perhaps she could receive immunity from prosecution from Starr.

Ms. Goldberg called Smith, the Chicago financier, and Porter for advice on how Mrs. Tripp might approach Starr. In a teleconference during the first week of January 1998, Ms. Goldberg talked to Porter and Marcus. Meanwhile, Marcus sought new lawyers for Mrs. Tripp. Conway suggested an old friend, James Moody, a Washington lawyer and fellow Federalist Society member, whom Mrs. Tripp retained.

Because he was Starr's former law partner, Porter did not want to be the first one to call the independent counsel's office on behalf of Mrs. Tripp. So Marcus made the call to Rosenzweig.

Mr. HARKIN. So now we have the involvement of Linda Tripp giving information to Paula Jones' attorneys. From about late October, early November until January 1998, a lawyer by the name of Jerome Marcus in Philadelphia, who has done extensive work for the Jones legal team, had been talking to a friend of his, Paul Rosenzweig, a prosecutor in Mr. Starr's office, about the Lewinsky matter. We didn't know the exact nature of these discussions, but we do know they talked a number of times. But we do know that on January 8 Marcus contacted Rosenzweig and told him about the relationship of Monica Lewinsky and the President.

Right after this, Linda Tripp contacts the Office of Independent Counsel to talk about Lewinsky and tells them about the tapes she has made, the telephone tapes, the tapes of her telephone conversations with Monica Lewinsky. The day after that, Tripp is wired by FBI agents working with Starr, meets with Lewinsky, and records

their conversation without Lewinsky's knowledge—and doing this without any authorization to do it. They didn't get it until 4 days later.

Now, all this is done prior to President Clinton ever giving a deposition or testifying before a grand jury. And so Clinton has done nothing yet in terms of testifying. So one might ask, What was Starr and his team after? If, in fact, this was a consensual sexual relationship between Clinton and a young woman who was an adult, what did it have to do with Whitewater or anything else they were investigating?

Well, here is why it had something to do with it. Let me quote from an article written by Joseph Isenburgh, a professor of law at the University of Chicago. I happen to have read it because he was supporting this findings of fact procedure, and I wanted to see what his thoughts were. But later on in his treatise he said this:

> What is perverse about the impeachment of President Clinton is the idiotic premise on which it rests. The President wasn't forced to respond to judicial process in the Paula Jones sexual harassment suit because he committed a crime of paramount public concern. That case, remember, was dismissed as meritless.

I am continuing to quote him:

> The misconduct at issue here had no independent significance. It is, itself, merely a byproduct of a judicial process directed at the President, essentially of a "sting" set-up in the courts.

"A 'sting' set-up in the courts." That is what Ken Starr and the Jones attorneys, working in tandem, were doing, setting him up. And you can see this clearly when you watch Clinton on videotape in the deposition before the Paula Jones attorneys. They present him with this definition of "sexual relations" that even the judge herself said was confusing. They knew what they were going after. But President Clinton did not know that they had all this information about his involvement with Monica Lewinsky—a classic sting operation.

Also, keep in mind that Linda Tripp briefed the Paula Jones attorneys the night before that deposition and gave them the tapes of her telephone conversations. In light of this, it is interesting to note that in today's New York Times, February 10, the conduct of the independent counsel is so suspect and potentially violative of Justice Department policy and law that he now is under investigation for a number of reasons which I won't read. But I ask unanimous consent that it be printed in the RECORD. And you can read it in today's New York Times.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, February 10, 1999]

INQUIRY TO ASK WHETHER RENO WAS MISLED BY STARR'S OFFICE

(By David Johnston and Don Van Natta, Jr.)

WASHINGTON, Feb. 9.—The Justice Department has decided to begin an inquiry to determine whether Kenneth W. Starr's prosecutors misled Attorney General Janet Reno about possible conflicts of interest when they obtained permission to investigate the Lewinsky matter in January 1998, Government officials said today.

Among other concerns, the inquiry will focus on whether the prosecutors should have disclosed the contacts between Mr. Starr's office and the Paula Jones legal team in the weeks leading up to Mr. Starr's decision to ask Ms. Reno to expand

his inquiry beyond the Whitewater matter, said the officials, who spoke on the condition of anonymity.

In recent months, documentation has emerged indicating that there were conversations between a prosecutor in Mr. Starr's office and a lawyer working behind the scenes with the Jones legal team from November 1997 to January 1998.

But a series of newly disclosed notes taken at the initial meetings on Jan. 15 and Jan. 16, 1998, between Mr. Starr's prosecutors and Justice Department officials, shows that the prosecutors flatly asserted that there had been no contacts with the Jones team.

For example, Eric H. Holder, Jr., the Deputy Attorney General, wrote in this three pages of notes of a Jan. 15, 1998, meeting with Mr. Starr's prosecutors: "They've had no contact with plaintiff's attys."

Handwritten notes by two other Justice Department officials, Monty Wilkinson and Josh Hochberg, corroborate the statements attributed to Mr. Starr's prosecutors.

Moreover, notes taken by another participant in the meeting, Steven Bates, a prosecutor in Mr. Starr's office, indicate that Jackie M. Bennett, one of Mr. Starr's deputies, told the Justice Department officials: "We've had no contact with the plaintiffs' attorneys. We're concerned about appearances."

The notes have become crucial evidence in the Justice Department inquiry, which will be conducted by the Office of Professional Responsibility, which investigates prosecutorial misconduct. The lawyers' notes became public just last month as part of the Senate record of documents related to the impeachment trial of the President.

The truthfulness of Mr. Starr's prosecutors is one of several issues that the department wants to examine, the Government officials said. Lawyers in the ethics office also intend to investigate whether Mr. Starr abused his authority to convene grand juries, or improperly pressed witnesses like Ms. Lewinsky, and disclosed secret grand jury information to reporters, the officials said.

Mr. Clinton's lawyers and supporters have long contended that there was collusion between Mr. Starr's office and the conservative Jones lawyers, noting that Linda R. Tripp found her way to the Office of Independent Counsel through a group of private lawyers who performed legal work on the Jones case. Mr. Starr has insisted that his office sought permission from Ms. Reno to expand his jurisdiction when he learned of allegations that President Clinton's close friend Vernon E. Jordan, Jr. was helping Monica S. Lewinsky find a job in exchange for her silence as a possible witness in the Jones lawsuit.

Charles G. Bakaly 3d, a spokesman for Mr. Starr's office, would not comment on the Justice Department's plans to start an investigation. But Mr. Bakaly said the notes showed that prosecutors had supplied the Justice Department with a thorough status report on the then-nascent inquiry.

"I don't know how else to put it," Mr. Bakaly said. "There was no misleading of Justice. This was a very fluid evolving situation. Unlike most public corruption cases, this one was ongoing; felonies were still possibly being committed."

This latest inquiry has exacerbated tensions that have existed between the Justice Department and the Office of Independent Counsel almost since the beginning of the Lewinsky scandal.

At one point last spring, Ms. Reno asked her senior aides to research whether she had the authority to discipline Mr. Starr in some way that stopped short of removing him, said a former Justice Department official who spoke on condition of anonymity.

Some aides told her that it would be a mistake, comparing it to the "Saturday Night Massacre" when President Nixon ordered the firing of the Watergate special prosecutor Archibald Cox in October 1973.

But, the official said, Ms. Reno shot back: "I'm not asking you to make a political judgment. I'm asking you to make a legal judgment."

Deepening hostilities between the Justice Department and Mr. Starr's office delayed the start of the new ethics inquiry. The ethics investigators recently wrote to Mr. Starr outlining the scope and authority for the investigation, the officials said. Mr. Starr's prosecutors are challenging the inquiry, asserting that the Attorney General does not have the authority to delve into highly sensitive grand jury material or investigative decisions that led Ms. Reno to refer the case to Mr. Starr.

Ms. Reno's aides have said that investigative authority is implied by language in the independent counsel statute, which gives the Attorney General the sole responsibility to remove an independent prosecutor.

Over time, Justice Department officials, including Ms. Reno, have become troubled by what they view as possible violations of Justice Department guidelines. From issues like calling the Secret Service before the grand jury to the crossfire over

leaks to reporters, Mr. Starr's prosecutors and Justice Department officials have feuded privately.

"As time went on, people became more and more frustrated with him," the Justice Department official said of Mr. Starr. "He seemed less concerned with Department of Justice policies."

The ethics lawyers are trying to determine whether prosecutors in Mr. Starr's office had a vested interest in the outcome of the Jones case, an interest that would have undercut their ability to impartially investigate allegations related to the lawsuit. If that conflict existed, the officials said, it would have been an important factor as Ms. Reno weighed whether to recommend to a three-judge panel that Mr. Starr take on the Lewinsky matter.

At this point, the ethics unit of the Justice Department must determine whether Mr. Starr and his prosecutors violated departmental rules and prosecutorial guidelines. Their findings could lead to recommendations for disciplinary action, like reprimands or suspension of employment.

The relationship between Ms. Reno and Mr. Starr began as a wary but cordial one that a Government official compared to "Thatcher and Gorbachev."

At times, Ms. Reno has expressed exasperation over Mr. Starr's conduct, fuming over letters sent by Mr. Starr's prosecutors accusing the Justice Department of trying to undercut the inquiry.

Mr. Starr's prosecutors had also grown angry and suspicious about Ms. Reno's aides, suggesting that the Justice Department was under the control of the White House and had quietly tried to squelch Mr. Starr's effort, the officials said.

Since October, several news organizations have reported how Mr. Starr's office first learned about the Lewinsky matter. On Jan. 8, 1998—four days before Linda R. Tripp contacted Mr. Starr's office—Jerome M. Marcus, a Philadelphia lawyer who did extensive work for the Jones legal team, informed Paul Rosenzweig, a prosecutor in Mr. Starr's office, about the Lewinsky accusations.

The early tip was not disclosed in Mr. Starr's 445-page referral to Congress. Nor was it disclosed to the Justice Department. And The New York Times reported last month that there were several conversations between Mr. Marcus and Mr. Rosenzweig from November 1997 to January 1998.

David E. Kendall, one of the President's personal lawyers, complained to Ms. Reno in October that "very serious questions" were raised about those contacts.

The allegations of collusion prompted lawyers at the Justice Department to turn their attention to their own recollections and their own handwritten notes, of statements made by Mr. Starr's representatives on Jan. 15, 1998, officials said today.

One former Justice Department lawyer said in an interview that Ms. Reno was especially disappointed in the fact that the early phone call was not shared with her senior aides in January 1998.

Last month, The New York Times reported that Mr. Marcus was the leader of a small secret group of lawyers working behind the scenes on the Jones case. Mr. Marcus drafted legal documents and was involved in many of the most important strategic decisions in the Jones lawsuit, according to billing records in the Jones case and interviews with other lawyers who worked with him.

Mr. Marcus recruited other conservative lawyers to assist with his efforts, approaching among others, Paul Rosenzweig, who briefly considered doing work for Ms. Jones in 1994, the billing records show, but decided not to.

In November 1997, Mr. Rosenzweig joined Mr. Starr's office, where he and Mr. Marcus had several conversations about the Jones case, said a lawyer familiar with their discussions.

Mr. Bakaly, the spokesman for Mr. Starr, has adamantly denied any suggestion of collusion. When Mr. Starr testified before the House Judiciary Committee on Nov. 19 of last year, he was asked by the chief counsel for the minority, Abbe D. Lowell, about the "substantial contacts" that Mr. Starr had had with Jones lawyers.

In a series of questions, Mr. Lowell tried to suggest that Mr. Starr should have revealed the contacts to the Justice Department in January 1998, and that Richard W. Porter, a partner of Mr. Starr's at the law firm, Kirkland & Ellis, had declined a request to represent Ms. Jones.

"I know Richard Porter; I've had communications with him from time to time," Mr. Starr testified. "But in terms of a specific discussion with respect to what the law firm may be doing or may not be doing, I'm not recalling that specifically, no."

[From the New York Times, Feb. 9, 1998]

TRACING THE PAST: HOW LEGAL PATHS OF JONES AND LEWINSKY JOINED

(By Tim Weiner with Neil A. Lewis)

WASHINGTON, Feb. 8.—Shortly after 10 a.m. on Jan. 17, a Saturday, the president of the United States stepped out of the White House into the back of a black limousine and rode a block to his lawyer's office to undergo a six-hour grilling in the case of Paula Jones vs. William Jefferson Clinton.

For six weeks, the president's lawyers had known that he might be asked a startling question: Did you have a sexual relationship with Monica Lewinsky? When the question came, the president's body tensed and his jaw tightened, said a lawyer involved in the case, and, under oath, he denied it.

The questions continued: Had the president been alone with Lewinsky? Had he given her gifts? He said he might have been alone with her briefly while she performed some clerical task, and he might have given her some presidential souvenirs, the lawyer recalled.

The deposition ended, President Clinton returned to the White House, canceled dinner plans with his wife and called his personal secretary, Betty Currie, asking her to meet him at the White House the next morning.

When they met, the president asserted that he had never been alone with Lewinsky at the White House, said lawyers familiar with Mrs. Currie's account. But that assertion did not square with Mrs. Currie's recollection.

In addition, Mrs. Currie had turned over to investigators a hat pin, a brooch and a dress she retrieved from Lewinsky, the lawyers said, items that are believed to have been given to her by the president but which do not fit his description of have been given to her by the president but which do not fit his description of White House souvenirs. It is not clear who, if anyone, instructed Mrs. Currie to retrieve the gifts.

Was Clinton less than truthful about his relationship with Lewinsky, the 24-year-old former White House intern? Was he using his trusted secretary to hide evidence from Mrs. Jones, the former Arkansas state employee suing him over what she says was a crude sexual advance nearly seven years ago?

The president's battle with the Whitewater independent counsel, Kenneth Starr—and, perhaps, Clinton's place in history—may depend on the answers. If he lied, or if he urged others to lie or conceal evidence, he could face the threat of impeachment.

How did Clinton become the first president forced to testify under oath about his private life? How did the Jones case—once demeaned by the president's lawyers as third-rate "tabloid trash"—come to threaten Clinton's presidency? The answers lie in a detailed look at the recent past.

When Mrs. Jones' lawyers learned of Lewinsky's existence, it was as if two live wires had met in an incendiary tangle.

The lawyers' hunt for information about Lewinsky, which they sought to buttress Mrs. Jones' charge of sexual misconduct by Clinton, led directly to Starr's investigation into the possibility of perjury and obstruction of justice at the highest levels. Now Starr is demanding that Mrs. Jones' lawyers turn over everything they have learned in their search for women who contend they have had sexual encounters with Clinton.

The two cases merged that Saturday morning. As the president testified, with Mrs. Jones staring him in the face during the deposition, Lewinsky was at home at the Watergate, recovering from the shock of her life.

Twelve hours earlier, she ended an intense encounter with federal investigators pursuing the president on Starr's behalf. The investigators confronted Lewinsky with the devastating news that her colleague and confidante Linda Tripp had been taping their intimate telephone conversations for months.

Tripp had told Starr's investigators that Lewinsky lied in her affidavit in the Jones case by denying that she had ever had sex with Clinton. While Tripp was working undercover for Starr, she was preparing to file an affidavit in Jones vs. Clinton, swearing that Lewinsky "had a sexual relationship with President Clinton."

The tapes presented the threat of prison for Lewinsky unless she disavowed her affidavit and cooperated with Starr. The tapes recorded Lewinsky saying that the president "won't settle" the Jones case because "he's in denial," according to published excerpts of the tapes. If so, refusal had turned that private lawsuit into a potential personal and political disaster.

The miasma enveloping the White House began rising four months ago.

On Oct. 1, the Rutherford Institute, a conservative legal center in Virginia, publicly offered to help Mrs. Jones. The institute found Mrs. Jones new lawyers from the Dallas firm of Rader, Campbell, Fisher & Pyke and offered to pay her legal expenses.

In the first week of October, a woman telephoned the Rutherford Institute with an anonymous tip: a woman named Monica had had sex with the president in the White House. The same tipster, described by the man who took the call as "a nervous young woman," called back in late October, providing a surname: Lewinsky.

Days after the first tip, the Dallas lawyers telephoned Tripp. Newsweek quoted her in its Aug. 11 issue as a witness to a supposed sexual encounter between the president and Kathleen Willey, a White House volunteer. A lawyer involved in the chain of events said Tripp later gave the lawyers Lewinsky's name. Tripp's lawyer, James Moody, denies that. The question is unresolved.

On Oct. 7, Lewinsky sent the first of nine packages from her office at the Pentagon to the White House and to the office of Vernon Jordan, Clinton's friend and confidant. The packages contained, among other things, letters and documents relating to her search for a new job. A key question for Starr is whether the White House and Jordan helped her find a job for reasons beyond altruism.

Two weeks later, Lewinsky secured a job interview with Bill Richardson, the chief U.S. delegate to the United Nations, arranged by a White House deputy chief of staff, John Podesta, at Mrs. Currie's request.

On Oct. 22, Richardson had a 40-minute interview with Lewinsky in Richardson's living room at the Watergate apartment and hotel complex, where she lives and where he maintains an apartment. In November, Lewinsky was offered a job on Richardson's public relations staff.

But Lewinsky eventually declined the offer. She wanted a better-paying position in the private sector in New York.

In early December, Jordan talked to Lewinsky about helping her find that job. The go-between for their discussions was again Mrs. Currie. Jordan set up interviews for Lewinsky at three companies where he had personal and corporate connections: Revlon, American Express and Young & Rubicam, the advertising agency.

Dec. 5 was the deadline for submitting witness lists in the Jones case. And on that list, on that day, the president's lawyers saw Lewinsky's name for the first time.

From that moment on, the paths of two people from two different worlds—Paula Jones from Lonoke, Ark., and Monica Lewinsky from Beverly Hills, Calif.—were on course to collide at the White House.

Dec. 19, a Friday, Mrs. Jones' lawyers served Lewinsky with a subpoena requesting information, including any gifts from the president. She called a Washington lawyer, Francis Carter, on Jordan's recommendation.

Christmas Eve was Lewinsky's last day of work at the Pentagon. She still did not have a new job.

On or about Dec. 28, a Sunday, she had a private talk with Clinton at the White House, said lawyers in the case. The president told her not to worry about being drawn into a lawsuit and advised her to describe her earlier White House visits as meetings with Mrs. Currie, the lawyers said.

As for the subpoenaed gifts, the president said Lewinsky could not produce them if she no longer had them, according to the lawyers' account. Mrs. Currie has told investigators that she retrieved a box of gifts from Lewinsky—including the dress, the brooch and the hat pin—and subsequently turned the items over to Starr.

On Jan. 7, a Wednesday, Lewinsky completed an affidavit saying she never had sex with the president, said her lawyer William Ginsburg. The affidavit was not immediately filed with Mrs. Jones' lawyers.

The judge in the case had suggested that testimony be limited to accounts of sexual favors received by Clinton in exchange for government jobs. Lewinsky contended she knew nothing of the sort, Ginsburg said; her affidavit was intended to keep her out of the Jones trial.

Tripp has suggested to lawyers in the case that Lewinsky did not intend to file the affidavit until she had secured a job. That suggestion has not been independently corroborated by Lewinsky or anyone else.

On Jan. 8, Lewinsky had a final job interview at Revlon, and Jordan made telephone calls on her behalf to the company, where he serves as a director. One of those calls went to Revlon's chairman, Ronald O. Perelman. A few days later, Revlon offered Lewinsky a job.

Now events approached critical mass.

On Jan. 12, Tripp made contact with Starr's office, saying that Lewinsky had had an affair with the president and that she, Tripp, had secret tapes to prove it. The

same day, Carter told Mrs. Jones' lawyers that Lewinsky had denied any sexual relationship with the president in her affidavit.

On Jan. 13, Tripp, with a tiny tape recorder provided by Starr's office, met Lewinsky for a long lunch, during which Lewinsky is said to have described her conversations about her affidavit with Jordan.

On Jan. 14 or Jan. 15, Lewinsky handled Tripp three pages of "talking points," aimed at persuading Tripp to deny any knowledge of sexual impropriety by Clinton in the Jones lawsuit. It is unclear who wrote the document.

On Jan. 15, Starr's office told the Justice Department about Tripp's accusations. A panel of federal judges authorized Starr to investigate whether Clinton and Jordan had encouraged Lewinsky to lie under oath in her affidavit.

On Jan. 16, a Friday, the case reached an explosive state. The Federal Bureau of Investigation confronted Lewinsky. That day and the next, reporters began asking White House officials pointed questions, including whether the president had tried to influence other people's testimony in Jones vs. Clinton, a former White House official said. News of Starr's expanded investigation had already leaked.

Clinton knew none of this. Nor did he know, as he confronted Mrs. Jones on Jan. 17, that he would be so extensively questioned about Lewinsky. Mrs. Jones lawyers appeared to know more details about Lewinsky than the president's lawyers had anticipated.

The next morning, Clinton summoned Mrs. Currie to the White House and reviewed with her some of the questions and answers he had given the previous day about Lewinsky, said lawyers familiar with Mrs. Currie's account. The president told her he had never been alone with Lewinsky and that he had resisted her sexual advances, these lawyers said.

If this was an effort at damage control, it failed. The story of Tripp's tapes was already leaking out, and Starr was already aiming this investigation directly at the White House, preparing to summon a parade of aides, including Mrs. Currie, to a grand jury.

On Jan. 21, a Wednesday, the inquiry was national news. That day, Tripp signed an affivadit for Mrs. Jones' lawyers. It said Lewinsky had "revealed to me in detailed conversations that she had a sexual relationship with President Clinton since November 15, 1995."

If that is so, the president "committed perjury" in his sworn deposition, and "embarked on a very aggressive cover-up campaign" afterward, one of Mrs. Jones' lawyers, Donovan Campbell, said in court papers filed last Thursday.

Those charges are now at the heart of one of the strangest investigations ever carried out against a president of the United States.

Mr. HARKIN. So I just want to end this part of my discussion by saying we have heard a lot about the rule of law recently, about how it applies. Now, how about how it applies to those who are supposed to enforce the law, how it applies to Ken Starr and the Office of Independent Counsel?

Mr. HYDE went on many times in his opening and closing arguments about what this teaches our kids about honesty and truthfulness, that the rule of law means something. Well, yes, it means something. It means something to our kids and future generations that honesty and truthfulness and the rule of law also applies to those who are cloaked with the authority to enforce that law. We must teach our kids that the ends do not justify the means, that law enforcement officials cannot break the law in order to bring someone to the bar of justice.

So now, in this long process, the case is before the House Judiciary Committee. And only Ken Starr testifies on the facts. He gives them all these documents. But it is interesting to note, he does that before the election. He waits until after the election to give them all the Whitewater, Filegate, and Travelgate charges, which he drops. That happens after the election. They hear Ken Starr. And it is interesting to note that at the end of his long testimony, every Republican on the House Judiciary Committee gives him a standing ovation. What kind of political statement does that make? This

was nothing like the kind of balanced evidentiary material given the Judiciary Committee in the House by Leon Jaworski in the Watergate case concerning then-President Nixon.

So in summary, what we have here is an out-of-control independent counsel with his own political agenda and vendetta, a blank check to spend millions to look into every nook and cranny of President Clinton's public as well as personal life. You add this to a zealous group of House Republican Judiciary Committee members who fanned the flames, and some Members who already, prior to this, filed a resolution to impeach the President. What you have here is a blatant, vindictive political case.

The American people figured it out a long time ago. They know the truth of what happened. And the truth is very simple. The President had a consensual, illicit affair with a young woman. He tried to cover it up. He misled others to cover it up. That is the truth. All this other stuff we are delving into is the details of about who touched who where, how many times they met, who exchanged gifts. The truth is simple and straightforward, and the American people figured it out, and they have a judgment about this.

They said it is wrong, but it's personal. And he violated his marriage oath, not his oath of office. It is a sin, but not a crime. It is between him and his wife and his family and his God. And it is not an impeachable offense. I have said many times the American people can abide sin but not hypocrisy.

Throughout this entire case, hypocrisy abounds. Much has been said about the rule of law and the truthfulness and honesty regarding President Clinton. How about as it applies to Starr? How about truthfulness, when he doesn't include, in his presentation, that very important statement that Monica Lewinsky said: "No one ever asked me to lie"? How about honesty when it comes to him not providing exculpatory material?

Having failed to get Bill Clinton on the stated reasons for the independent counsel—on Whitewater, Travelgate and Filegate—they shift to illicit sex and a classic sting operation.

So we are left with two charges: perjury. This falls far short, and there is no evidence to support the fact that he perjured himself before the jury. Evasive? Yes. Dodging? Yes. But not knowingly making a false statement under oath material to the case. Doesn't fit.

Second article: obstruction of justice. The House managers built their case on what they called the seven pillars of obstruction, which we have seen turned out to be seven sand castles of speculation. I think the most telling point was Monica Lewinsky, on her own tape last Saturday, when Mr. BRYANT asked her, "You didn't have a personal reason to file a false affidavit?" And she said, "Yes, I did." He said, "Why?" She said, "Because I didn't want to get involved with the Jones case. I didn't think it was any of their business." End of story on obstruction because everything else rests on that.

That is why I have said, the more we look at this case, the more it is a counterfeit case. Like a counterfeit dollar bill, even to a trained eye, you look and it may look real, but you put it under a microscope and you see it's counterfeit. That's what happened in this case.

The House managers' case was based on inferences and conjecture. The White House's case was based on direct facts in evidence, and that is the difference.

In closing, two wrongs don't make a right. President Clinton did have an illicit affair. It was wrong and demeaning. Ken Starr abused justice, set up a sting operation, the wiring of Linda Tripp, the leaks, the salacious material.

Clinton's wrong, I submit, was more of a sin. Ken Starr's wrong is more of a crime. The damage to the rule of law is done more by Ken Starr than by Bill Clinton. At the beginning, I said the House had a heavy burden, given the history and partisanship of this case, to prove articles I and II and that they rise to an impeachable level. They never met that burden. Accordingly, I will vote not guilty on both charges.

Finally, as you know, there has been much talk of a censure resolution. As I said before, I said I believe the appropriate form is for each Senator to express his or her opinion on this matter. I personally see no need to join 99 others, and in doing so, set a dangerous precedent that could be easily abused in the future. So here is my censure of the President.

I want to state emphatically, I do not condone his behavior that has been so thoroughly exposed and seared in the American conscious ad nauseam. It is the sordid affair of all sordid affairs. The President brought dishonor to himself. He brought tremendous pain and embarrassment to his family, friends and colleagues. And rather than ennobling the Presidency, his behavior has been the butt of jokes and ridicule.

This behavior was totally at odds with his many achievements and conduct in his official capacity as President. The President has stated clearly he has sinned and that he has misled his family, his friends, his staff, and the American people. He has said that he is sorry and he has asked for forgiveness.

I do so now and say it is time to put this sad chapter behind us; move on to the important work of this Nation.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR HARRY REID

Mr. REID. Mr. Chief Justice, I extend to you my personal appreciation for the dignity that you have extended to each of us during these proceedings. I also say that I have been disappointed. It appears the vote is going to be very comparable to the vote in the House, down partisan lines, even though during the break I understand two of my colleagues from the other side of the aisle announced that they would not vote for conviction on the articles of impeachment.

But in spite of this, I want to extend my appreciation to the Republican leaders. Senator NICKLES has been available any time that there is a problem that has arisen during this proceeding. And you, Senator LOTT, have 10 more votes than we have and you on many occasions during this proceeding could have steamrolled us. You chose not to do that. I think that is the reason we have had this feeling of harmony, even though we have had some disagree-

ment on what is going to transpire. So I, again, on behalf of all Democratic Senators, express our appreciation to you for the work you have done.

Often as I stand before this body, I am reminded of the lessons of great books. Today, though, the beginning of a novel keeps running through my mind—Charles Dickens' "A Tale of Two Cities":

It was the best of times, it was the worst of times.

I have often felt, these last weeks, as if I were trapped in a work of fiction. Like all really interesting fiction, the story now before us reduces itself to an examination of the human soul—or, to be more accurate, to an examination of human souls. I use the plural because this trial has been about the flaws of two people, each with the gifts to make them great, and of the contrast between them—one who has failed to rise above his flaws and the other who has embraced them. Much of what we call great literature is about the petty failings which destroy great men. It is about how common sins, of which we are all to some degree guilty, bring low the mighty and turn to ashes the fruits of victory in the mouths of monarchs.

We have heard much in this historic Senate Chamber about the judgment of history, but I daresay that, even more than by historians, the truest judgment of these events will be written as novels and plays. On the one level, these works will deal with some or all of the seven deadly sins: Pride, anger, greed, gluttony, sloth, envy, and, yes, especially lust.

But on another level, those plays and novels will deal with the theme of all literature. They will be written about conflicts between great men, great men who are flawed; great men, each with their own public and private failings. We are here to sit in judgment of the President of the United States, a very public man, for his very private failings. Bill Clinton fell from grace. Driven by the private sin of lust, he violated his marriage vows and when his sins were uncovered by his enemies, he tried to conceal them by lying to his wife, his friends, and ultimately to all of us. It is a common story, the sin of lying. It begins in the Old Testament with many examples—Cain, of course, is a good example, who asked, "Am I my brother's keeper?"—and with the lie, the kiss of Jesus by Judas Iscariot in the New Testament.

It may be the beginning of a great work of art, it may be the first chapter in a summer day's light reading, but it is not a good reason, it is not the beginning of a good reason, for removing an elected President of the United States.

The core issue is one which has apparently eluded many in this Capitol, but which is obvious to the American people. Great dreams are dreamed by people with human flaws. Great policies and actions are sometimes set in motion by those with broken souls. Great deeds are not always done by good men. Recent history gives us many examples. Winston Churchill, one of my heroes, a man who initially stood alone in leading the defense of Western civilization, was by most standards an alcoholic—at least modern standards. Franklin Roosevelt, Churchill's stalwart comrade and the author of policies which saved the very lives of families of many in this Chamber today, died in the arms of his lover. Each of us, each

one of us in this Chamber, every human being, is flawed. Each of us needs all the forgiveness and forbearing we can be granted by the charity of others.

Bill Clinton has been a friend of the State of Nevada. He has been a friend to me. But he has committed grievous wrongs against his family and his friends. He has dishonored his high office and lowered the standard of public behavior. I have no doubt that he has strayed from the path of goodness. But I do have very real doubts as to whether he perjured himself or suborned perjury. But I have no doubt whatsoever that, under the circumstances of this case, the crimes alleged do not rise to the level of an impeachable offense. Because of what the President did in public and in violation of the public trust, if I have the opportunity I will vote to censure. I will not vote to impeach.

I said a few moments ago that great men are not always good men. But there is an obvious corollary: Good men are not always capable of doing great deeds and they are not even always capable of doing good. I began today by saying this trial was about the flaws of two people. Both are men with God-given gifts. Both are extraordinary in their intellect, perseverance, and dedication to certain core values. Both are capable of great goodness and even good greatness. Both have sinned. One is the President of the United States. His sins are of the flesh and of the spirit. About these I have already spoken. The other is the special prosecutor, Ken Starr, who has pursued the President beyond all bounds of reason and decency. His are the sins of unremitting, undiluted, unrepentant McCarthyism. They are the sins of pride, the sins of anger—they are damning sins indeed.

I don't use lightly McCarthy's name or accuse others of his tactics. I am old enough to remember how he misused and abused this sacred Chamber. My friend and my client, the late newspaper publisher, Hank Greenspun, was a victim of his lies, a victim who had the courage to stand up and fight back. Others fought, but many also suffered irreparable harm because of Senator McCarthy.

I know McCarthy's tactics were the back room stab, the whispered smear, the half-truth, the leaked calumny. I know that he subpoenaed witnesses and forced them to choose between betraying their friends or committing perjury. I know he destroyed the careers of innocent men and women, drove some to suicide and sent others to jail. But at least McCarthy had an excuse, of sorts. For all his lies, leaks and libels, there really was a Communist threat. There really were Communist spies. Some of the people he accused really did commit treason. They were guilty of treason. At least, Mr. Chief Justice, McCarthy and his cohorts had that excuse. Kenneth Starr doesn't have an excuse.

Before I came to the national legislature 17 years ago, I was a trial lawyer. At various times, I prosecuted and defended people charged with crimes. Long before that, I served as a police officer. I never argued a case in the U.S. Supreme Court, but I tried more than 100 jury trials, hundreds of other cases before various courts, and argued before different appellate courts. I tried criminal cases, lots of them, and I know something about when a case should be pursued and when it should be dismissed. I know something about the impact that a criminal charge has on any man or woman, about

how they agonize over telling their children, how they struggle to face the community. I know something about prosecutorial misconduct, and I know something about prosecutorial discretion.

Every American is entitled to equal justice, no matter their rank in society; equal justice but not equally unfair justice.

The independent counsel's argument throughout his tenure seems to be that any U.S. attorney, any criminal prosecutor would treat any defendant in the same unredeemedly savage and unfair fashion in which Mr. Starr and his office have treated the witnesses, the defendants in peripheral cases and the President of the United States. Almost $60 million has been spent—Whitewater, Filegate, Travelgate and now this. I think not.

No prosecutor of integrity, of principle, of fairness would have tried to bootstrap a sexual affair into something criminal. A truly independent prosecutor would not make deals time after time with organizations established to embarrass the President, cavort with attorneys for Paula Jones, do business with Linda Tripp and others to entrap the President. A fairminded prosecutor would not have leaked salacious details to the press in an effort to force the target to resign from office. And, most fervently, a principled prosecutor would have the common sense and the common decency not to misuse their office to go all out, no holds barred, to "get" that targeted individual out of pride, anger and envy.

I invite each of you to look at Justice Scalia's brilliant dissent in the Morrison versus Olson case where he talks about the constitutionality of the independent prosecutor. He predicted what we are now witnessing. Justice Scalia was visionary. Here is one of the things he said:

> The context of this statute is acrid with the smell of threatened impeachment.

He was right. What else did he say? His opinion was 8 or 9 years ago. He said then:

> . . . Congress appropriates approximately $50 million annually for general legal activities, salaries, and expenses of the Criminal Division of the Department of Justice.

Fifty million dollars the whole year covers everything for the whole civil division of the Department of Justice. We are spending more than that to go after one man. Scalia could see that coming.

He also said, and my friend, the Senator from Vermont, earlier today talked about what Justice Jackson had said, but he also quoted Scalia. Scalia said:

> If the prosecutor is obliged to choose his case, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than cases that need to be prosecuted. . . . [I]t is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him.

Justice Scalia could see this coming, and we got just what he said we would get.

This is a bad situation. When you have someone of the brilliance of Ken Starr and the viciousness of Ken Starr, you get what we have here today.

I want to use this occasion to say something to the American people, to the people of the State of Nevada, to leave them with the

hope that those in high office have not been bereft of all reason, sense and sensibility. What the President did was wrong. It was immoral. I don't believe it constitutes a crime justifying his removal from office. What Mr. Starr did, and continues to do, is also wrong, and it is also immoral.

But their conduct is not the standard to which we must hold ourselves. We, all of us in Government, can do better. We must do better. The American people have the right to expect that or it doesn't matter how great we are, how great our ideas or how powerful our values. Set the standard high and judge by that standard. That is how the system is supposed to work, and in the long run it is how our constitutional form of government, with a legacy of more than 200 years, has worked and, with the help of a Power greater than any of us, will continue to work.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOHN EDWARDS

Mr. EDWARDS. I add my praise, Mr. Chief Justice, for the work you have done, but I would add one other thing. The last time I saw you before this impeachment trial you were leading a sing-along at the Fourth Circuit Judicial Conference. I thought it might be a good idea for this group.

The CHIEF JUSTICE. A healing device. [Laughter.]

Mr. EDWARDS. Thank you, Mr. Chief Justice. I have prepared remarks. But I am not going to use them. I made that decision about 20 minutes ago.

I have been sitting, listening to my fellow Senators speak, and I want to speak to you from the heart. I want to speak to you about a struggle, because I have been through a struggle. It is a real struggle. And I suspect that there are an awful lot of you who have been through the same struggle—both before we voted on the motion to dismiss and, for me, since we voted on the motion to dismiss.

For me, the law is a sacred thing. And that is part of my life. I have seen what the law can do. It is a powerful, powerful thing. It can do extraordinary things for ordinary people. And I believe we have been given a sacred responsibility. I will tell you what that sacred responsibility means to me personally. It means that when I walked in here the first day of this impeachment trial I was 100 percent completely open to voting to remove this President.

And I have to tell you all something, my friends on this side of the aisle, that wasn't a hard thing for me to do. I think this President has shown a remarkable disrespect for his office, for the moral dimensions of leadership, for his friends, for his wife, for his precious daughter. It is breathtaking to me the level to which that disrespect has risen.

So I said to myself, what is the right and fair thing to do? And this is what I have done. I have looked—many times until 3 a.m. in the morning—at the evidence in this case. Because I think that is the way we need to make this decision.

The perjury charge, I believe, is just not there. The evidence is not there to support it. I know many of you believe it is there. I

respect your view on that. I don't believe it is there. The obstruction charge is a totally different matter. And this is the way I have thought about the obstruction charge.

I view, in my mind's eye, the scales of justice. And on one side, where the prosecution makes an allegation, I put their evidence. On the other side I put the defense evidence. And I do believe that for a charge this serious that the proper standard is beyond a reasonable doubt.

So after that evidence is put on both sides of the scale of justice, what happens? I want to just very briefly go through what I think are the four main charges for obstruction.

First, the false affidavit. The prosecution side: There is, in my judgment, clearly a false affidavit. The President had a conversation with Monica Lewinsky about filing an affidavit where he said to her, "You can file an affidavit; that might be a way for you to avoid testifying." That is on the prosecution side.

I want to make a really important point for me personally here. I think there is an enormous difference between what has been proven and what we suspect, because I have to tell you all, I suspect a lot that has not been proven.

What is on the defense side? On the defense side: what has been proven in this case is that President Clinton never saw the affidavit, never had a discussion with anyone about the contents of that affidavit. He didn't know what was in it. He never told, according to her, Monica Lewinsky or anyone what should be in the affidavit.

So that is the evidence on the scales of justice: One for the prosecution; that evidence for the defense. For me it is a very clear thing. The scales tilt in favor of the defense, and they certainly don't tilt strongly enough to be beyond a reasonable doubt.

The second charge—and the one that bothers me the most—coaching Betty Currie. The evidence on the side of the prosecution: President Clinton has a conversation with Betty Currie just after he has been questioned in his deposition where he makes very declarative statements to her—it happens twice—very declarative statements to her about what he remembers, many of which we now know to be false. And his explanation for that conversation lacks credibility, to say the least, that he was trying to refresh his memory. I doubt if anybody buys that. That is on one side, that is on the prosecution side.

What is on the other side? On the other side we have Betty Currie saying it had no influence on her. But that is not the most troublesome thing for me. The troublesome thing is this: For that conversation to be obstruction of justice, it must have been proven that it was President Clinton's intent to affect her sworn testimony.

Now, what are the other possibilities? We have a man who has just been confronted with this problem, who is political by nature. And do we really believe that the first thing he thought about is, "I'm going to go protect myself legally"? I suspect the first thing he thought about is, "I'm going to protect myself politically." He was worried about his family finding out. He was worried about the rest of the staff finding out. He was worried about the press finding out. Do I know which of these things are true? Absolutely not. I don't

know which of them are true. Doesn't that answer the question? If we don't know which of those things are true, have they been proven? If we don't know what was in his head at that moment, how can we find that the prosecution has proven intent beyond a reasonable doubt?

The third charge, the job search. On the prosecution side of the scales of justice, we have an intensified effort to find a job for Monica Lewinsky. I think that has been proven. I think that has been proven clearly. On the other side, we have testimony from Monica Lewinsky that she was never promised a job for her silence. We have evidence that the job search, although not as intense, was going on before anyone knew she would be a witness. We have Vernon Jordan testifying under oath—I sat there and watched it and looked him in the eye—that there was never a quid pro quo, that the affidavit was over here and the job search was over here.

The reality is, when you put all that evidence on the scale—prosecution evidence on one side, defense evidence on the other—at worst the scale stays even. And the prosecution has got to prove this case in order to remove the President of the United States beyond a reasonable doubt. They just have not proven it no matter what we suspect. No matter what we suspect. So that is the false affidavit which we have talked about, coaching Betty Currie, the job search.

Now to the gifts. Let's see what the proof is. What is the proof—not the suspicion. On the prosecution side, we know that the President's secretary went to Monica Lewinsky's house, got the gifts, took them home and hid them under her bed. I have to tell you, on its face, that is awful suspicious, and it is strong, heavy evidence. The problem is, there is evidence on the other side. That evidence doesn't stand alone.

First, we have the testimony of Betty Currie that Monica Lewinsky called her. Second, we have the fact that President Clinton gave her other gifts on that Sunday, which makes no sense to me. I heard the House managers try to explain it away. I have been a lawyer for 20 years, and I have been in that place of trying to explain away something that makes no sense. It doesn't make sense. Monica Lewinsky, herself, testified that she brought up the issue of gifts—not President Clinton—and that the most President Clinton ever said was something to the effect of "I'm not sure. Let me think about that."

Now when that evidence goes on the defense side and the only evidence on the prosecution side is the fact that those gifts are sitting under the bed of Betty Currie, what happens to the scale? At best, the scale stays even. In my judgment, it actually tilts for the defense. There is no way it rises to the level of "beyond a reasonable doubt."

Every trial I have ever been in has had one moment, one quintessential moment when the entirety of the trial was described, and in this case we have such a moment. There was a question that had my name on it. The reality is, Senator KOHL wrote it—I tagged on—but it was a great question. The question was, "Is this a matter about which reasonable people can differ?" I will never forget Manager LINDSEY GRAHAM coming to this microphone and his answer was "Absolutely." Now if the prosecution concedes that rea-

sonable people can differ about this, how can we not have reasonable doubt?

These things all lead me to the conclusion that however reprehensible the President's conduct is, I have to vote to acquit on both articles of impeachment.

I have one last thing I want to say to you all, and it is actually most important. If you don't remember anything else I said, and you weren't listening to anything else I have said, please listen to what I am about to say because it is so important to me.

I have learned so much during the 30 days that I have been here. I have had a mentor in Senator BYRD, who has probably been a mentor to many others before me. I have formed friendships with people on both sides. Senators LEAHY and DODD, who I worked with on these depositions—wonderful, wonderful Senators. I have learned what leadership is about from these two men sitting right here—Senators LOTT and DASCHLE. I have loved working with Senators DEWINE and THOMPSON. And Senator SPECTER and I worked together on a deposition. He showed me great deference and respect. I have no idea why, but he did; and I appreciate it. I have deep respect and admiration for my senior Senator from North Carolina, who has been extraordinarily kind and gracious to me since I arrived here.

Let me tell you what I will be thinking about when my name is called and I cast my vote, hopefully tomorrow. I will be thinking about juries all over this country who are sitting in deliberation in rooms that are not nearly as grand as this but who are struggling, just as you all have and I have, to do the right thing. I have to say, I have a boundless faith in the American people sitting on those juries. They want to do what is right. They want to do what is right in the worst kind of way.

An extraordinary thing has happened to me in the last 30 days. I have watched you struggle, every one of you. I have watched you come to this podium. I have listened to what you have had to say. I talked to you informally; I watched you suffer. I believe in my heart that every single one of you wants to do the right thing. The result of that for me is a gift. And that gift is that I now have a boundless faith in you.

Thank you, Mr. Chief Justice.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR DANIEL K. AKAKA

Mr. AKAKA. Mr. Chief Justice and esteemed colleagues, I rise to offer my thoughts on the momentous decision we will render shortly. At the start, I deeply regret that the American people have been denied the opportunity to hear the Senate's final deliberations on the impeachment charges against President Clinton. I say this because I have been thoroughly impressed with the thought, tenor, and passion brought to this deliberation by my colleagues on both sides of the aisle. I wish the American people could have the opportunity to observe what I have had the privilege of witnessing for the past two days. Whether seated in the gallery, watching on television, listening on radio, or following on-line, the public would

have benefitted tremendously from the opportunity to hear, in real time and full context each of our remarks. The opportunity to read a transcript later this week in the RECORD will not come close to viewing these proceedings. It lacks the power of the moment.

When I took the oath to do impartial justice on January 7, 1999, I knew, as one of 100 Senators, that I was assuming the unique role of judge and juror in the Senate impeachment trial of William Jefferson Clinton. Over these weeks, I have listened to the presentations by the House managers, the White House counsel, and the President's defense team without prejudice. I have analyzed the video testimony of Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal, and read numerous grand jury transcripts, the referral from the independent counsel, and the House report and related documents.

The House of Representatives approved two articles of impeachment by straight party line votes after bitter and divisive partisan debate, forwarding to the Senate the impeachment articles to remove the President of the United States as authorized by the Constitution. At the same time, the partisan nature of the House action invites challenge to its legitimacy. And, although we have more often than not voted along party lines during the impeachment trial, I am proud of this body and its genuine effort to pursue a bipartisan course during our trial of the President. We have disagreed without being disagreeable.

The body has not strayed too far from the comity and tone that marked our first bipartisan caucus to set the framework for this proceeding.

We have taken the admonition of the senior Senator from West Virginia to heart and avoided descending into the pit of caustic partisanship and recrimination.

After reviewing volumes of evidence and weighing weeks of presentations before the Senate, I have concluded that a case has not been made on either of the articles of impeachment against President Clinton. Conviction and removal from office, as charged by the House managers, is simply not warranted.

The record does not sustain the level of proof necessary to convict and remove the President. Certain facts are indisputable: the President lied to the American people and to his wife and daughter about an extramarital affair; he lied to his staff; and he was misleading in his deposition in the Jones v. Clinton civil suit and his grand jury testimony.

However, impeachment is not a Constitutional means to punish a President "when he gets out of bounds," as proposed by the House managers. The constitutional standard is whether high crimes and misdemeanors were committed, and that test has not been met.

In 1974, the House Judiciary Committee rejected an article of impeachment against President Nixon based on the filing of a false tax return. It was reasoned that the President's misleading tax return was unrelated to his duties as President, although a minority believed the count was unsupported by the evidence. Thus we see that all crimes that may be punishable by the courts are not punishable by impeachment.

Rather, impeachment is narrowly limited by the Constitution to offenses of treason, bribery, or other high crimes and misdemeanors. After listening to many presentations on this issue, I am convinced that impeachment and removal from office should only be used for crimes against the country or threats to our national security.

Our Founding Fathers carefully defined the terms of impeachment in a manner that establishes a high threshold and requires the charges to be of an egregious nature. That is why the Senate has only once before held an impeachment trial for a President.

The House managers recommend impeachment because it is the only way in which the President's misconduct can be punished. Yet, I remind my colleagues that the President remains subject to criminal and civil penalties after he leaves office in 2 years.

As I will point out, the facts and other evidence accumulated and presented to the Senate do not meet the constitutional standard for impeachment and removal that our founding fathers established.

Article I charges the President with perjury before the grand jury in August 1998, for willfully giving false testimony under oath in a judicial proceeding. Yet to prove this charge the House Managers introduced material from the Jones suit during their Senate presentation even though the House rejected an article of impeachment dealing with the Paula Jones suit. Nonetheless, despite this blurring of the lines between criminal and civil matters, a perjury conviction requires that the testimony be material to the case at hand. Judge Susan Webber Wright's rulings in the Jones case specifically excluded evidence concerning Monica Lewinsky because it was immaterial.

Furthermore, Thomas Sullivan, former U.S. Attorney for the Northern District of Illinois, testified before the House Judiciary Committee that perjury "can be particularly arcane, including the requirements that the government prove beyond a reasonable doubt that the defendant knew his testimony to be false at the time he or she testified, that the alleged false testimony was material, and that any ambiguity or uncertainty about what the question or answer meant must be construed in favor of the defendant." Mr. Sullivan also noted that generally, "federal prosecutors do not use the criminal process in connection with civil litigation involving private parties," because, "there are well established remedies available to civil litigants who believe perjury or obstruction has occurred."

Article II charges the President with seven different instances of obstruction of justice. The House managers insist that the evidence shows that these separate acts constitute a deliberate attempt by the President to obstruct justice. The White House argues that the President did not seek to influence witnesses nor impede discovery. Legal scholars have argued that the lumping together of these seven charges would cause most courts to throw out the charges, and witness testimony undermines the House charges. After the smoke cleared from the charges and countercharges, it was evident to me that the connections between the actions of the President and the actions by the witnesses were circumstantial, at best.

Moreover, I agree with White House Counsel Charles F. Ruff, who in his closing arguments said of the House managers, "I be-

lieve their vision to be too dark, a vision too little attuned to the needs of the people, too little sensitive to the needs of our democracy."

In the obstruction of justice count, the managers charge the President with asking Monica Lewinsky to lie, a charge that she denies in two dozen depositions, and testimony given under the protection of immunity. There is no evidence that the President ever asked her to provide a false affidavit in the Jones case or to testify falsely. Vernon Jordan, the President's close friend and advisor, testified that although he met with Ms. Lewinsky and was given a draft of the affidavit, he refused to review the document and referred the young woman to her attorney for advice and counsel.

The House managers say the President is guilty of obstructing justice when he ordered his secretary, Betty Currie, to retrieve gifts given by the President to Monica Lewinsky. However, Ms. Lewinsky's testimony, on a number of occasions, indicates that it was she who asked Ms. Currie to keep the gifts, not the President.

The House states that the President asked Vernon Jordan to intensify an on-going job search in Ms. Lewinsky's behalf after Judge Webber Wright ruled that Paula Jones's attorney could investigate the President's sexual relations with State or Federal employees.

Mr. Jordan and Ms. Lewinsky first met in November 1997, a month before Ms. Lewinsky was listed as a witness in the Jones case. Sinister motives do not appear to be involved in the inquiries by Mr. Jordan on her behalf that led to two job rejections and one job offer. Efforts by the House managers to link the job search and the affidavit unravel when the dates on which Mr. Jordan and Ms. Lewinsky first met, when Ms. Lewinsky's name first appeared on the Paula Jones case witness list, and the drafting of the affidavit are analyzed.

The President, Ms. Lewinsky, and Mr. Jordan have testified that no one was seeking Ms. Lewinsky's silence, and Ms. Lewinsky further testified that she realized in October 1997 that she would not be returning to the White House for employment and she renewed her job search in New York City.

The additional testimonies of Ms. Lewinsky, Mr. Jordan, and Mr. Blumenthal added no new information to the case against the President. I voted against deposing these witnesses since they already had been deposed many times.

Moreover, we each received thousands of pages of testimony from the grand jury, various depositions, statements given under oath, and documents relating to the impeachment charges. We know that Ms. Lewinsky had been questioned on at least 23 separate occasions, including after the President's grand jury testimony and as recently as January 22, 1999, by the House prosecutors before testifying February 1, 1999, on video. During arguments in favor of deposing Ms. Lewinsky, House Manager BRYANT urged the deposition because he believed the Senate should observe her demeanor, her tone, and her tenor in responding to questions.

I respectfully disagreed with Mr. BRYANT then, as I do now. My decision was bolstered when I viewed Ms. Lewinsky's videotaped testimony in which she reaffirmed her grand jury testimony. I saw no purpose in bringing her to the witness table again, nor Mr. Jor-

dan, who had been questioned five times, nor Mr. Blumenthal, who has answered questions under oath four times. These witnesses did not change their testimonies, nor did they provide information that was omitted in previous testimony.

The witnesses' statements are a matter of record, and they comprise thousands of pages encompassed in the volumes of testimony and sworn affidavits that are the basis of the House articles of impeachment. I concur with House majority counsel David Schippers who said during the House Judiciary impeachment proceedings, "As it stands, all of the factual witnesses are uncontradicted and amply corroborated."

In conclusion, I cannot overstate my disappointment with the actions of the President. He deliberately misled the American people and greatly diminished the public's trust in the office of the Presidency. However, I have concluded that the two articles of impeachment, as drafted and presented by the House, fail to meet the level of high crimes and misdemeanors, and I will vote to acquit the President.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR PATRICK J. LEAHY*

Mr. LEAHY. Thank you, Mr. Chief Justice.

I ask unanimous consent that a fairly lengthy brief on this issue be printed in the RECORD at the conclusion of my remarks.

The CHIEF JUSTICE. Without objection, it is so ordered.

(See Appendix.)

Mr. LEAHY. Mr. Chief Justice, like others, I want to thank you for your professionalism and good humor in these proceedings even though I suspect there are days that both you and I wish we were back at our homes in Vermont rather than here.

But I want to tell the Senators also of an extraordinary day that my good friend, Senator STEVENS of Alaska, and I spent. We left Sunday afternoon from Washington for the funeral of King Hussein of Jordan. We came back at about 2 o'clock yesterday morning. The delegation was an extraordinary one: Two other Members of Congress, senior members of the President's staff; even the parents of the King's widow, Queen Noor of Jordan, were with us.

And the airplane, Air Force One, that is so recognizable around the world as a symbol of America, underscored our country's presence even as it landed. And TED will recall the TV was on in the plane. We could see they interrupted national television in Jordan to show our plane landing. What was most remarkable to the people assembled from around the world for the funeral was the dramatic appearance not only of the President of the United States, William Jefferson Clinton, but three former U.S. Presidents—Gerald Ford, Jimmy Carter and George Bush—they joined with President Clinton as an extraordinary demonstration not only of bipartisanship but of a united American commitment to the peace policies of King Hussein, and the U.S. role in a continuing peace process.

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*Sen. Leahy submitted additional statements on February 12 and February 23, see pp. 2996, 3090, and 3102, below.

The symbol of American presence and the American continuity could not have been stronger with these four Presidents. It was a privilege to be there, a privilege I will always cherish.

In the frenetic hours on the ground, I observed the leaders from the Middle East and around the world.

I saw leader after leader making a strong effort to come to President Clinton and to speak with him. I listened to his conversation. It was clear to me he had a very good understanding of the issues that faced not only our country, but their country, and an understanding about how America's interest affect all of us.

Probably the greatest contrast was in President Clinton's brief meeting with Boris Yeltsin, the President of Russia, a country that long symbolized our polar opposite during the cold war. We saw an aging President Yeltsin, unable to stand without two men helping him, a man who had to leave very shortly thereafter—well before the funeral was over—because his strength had faded. What a contrast.

We saw a dynamic Tony Blair, the Prime Minister of England. We saw the leaders of Israel, Japan, Syria, Kuwait, Saudi Arabia, Libya, Pakistan, India, Germany, France, Ireland, Egypt, and others coming together, brought together by their respect for King Hussein. Much of their attention was focused on the leader of the United States.

The questions raised by this trial came back to me. I thought, do we abandon our elected leader because of concern about his personal conduct? Now, if this question was in my mind, it was in the minds of a lot of people there. I have been privileged to know many of them, and many asked me the question, Are we really serious about impeachment and removal? They asked that because they said the United States is not a parliamentary system of government, and the one thing that they can rely on is when we elect a President, even if it is not the President they wished we had elected, there are 4 years to deal with him and they can determine their foreign policy with the most powerful Nation on Earth accordingly.

They said they have great respect for our strength and leadership, and they asked if it is really possible that partisanship in the Congress could destroy that heritage overnight.

In my notes, as I flew back throughout the dark night, I asked myself, Are we going to spend our heritage of continuity and strength this way? Are we going to convict the President on these charges in this record? Are we going to destroy a heritage and continuity we earned, from our own Revolution, through a Civil War, through World Wars, through deaths and assassinations of Presidents, through great economic prosperity and devastating recession and depression. I completed my notes by writing, "It is no longer a question of whether we do this to Bill Clinton, but whether we do it to ourselves."

The record of this impeachment trial is a time capsule. We leave it for succeeding generations. As the trial began, we reopened the records of 1868. I looked at those records. I thought, someday someone will review ours in the same way. We leave behind a trail of precedents. Our successors will try to understand them. If we act wisely, they will try to emulate it. Our actions can stir a chord that will vibrate throughout the history of our Republic.

So in explaining my decisions in this trial, I know that I am addressing myself to fellow Vermonters and fellow Senators, but also to future generations. In that future generation is my own grandson and perhaps even his grandchildren.

The conclusion I have reached on the articles of impeachment is imbued with this solemn knowledge and sense of duty. My conclusion is we must not avenge the faults of William Jefferson Clinton upon our Nation, our children and our Constitution.

Extreme partisanship and prosecutorial zealotry have strained this process in its critical early junctures. Partisan impeachments are lacking in credibility. The framers knew this. We all know this.

Socrates said: "The greatest flood has soonest ebb; the sorest tempest, the most sudden calm."

In many ways, I say to my friends, especially our two distinguished leaders who worked so hard on this, in many ways the Senate's work has been the calm after the storm. We began the 106th Congress, the last of the 20th century, facing a challenge no Senate has been called upon to address since the aftermath of the Civil War. We took a special oath administered to Senators who must determine whether to override the election by the people of the United States of their President and remove him from office.

The Constitution purposely restrains the Congress, and carefully circumscribes our powers to remove the head of the executive branch of the Federal Government. The Constitution intentionally makes it difficult to override the electoral judgment of the American people. I will cast my vote wary of the dangers posed by the House managers' seductive invitation to vote to remove the President for symbolic purposes.

We all agree the President's conduct was inexcusable. It was deeply disappointing, especially to those who know the President and who support the many good things he has done for this country and the world. His conduct in trying to keep this relationship secret from his wife and family, his friends and associates, from the public glare of a politically charged lawsuit, may be understandable on the human level, but it has had serious consequences for him personally and for the legacy of his Presidency.

The President has admitted before a Federal grand jury terribly embarrassing personal conduct and has seen a videotape of that grand jury testimony broadcast to the entire Nation, with excerpts replayed over and over again. This modern day version of the public stockade has been difficult to witness for those who know this man and his family and care about them.

The Jones lawsuit has now been settled and $850,000 has been paid on a case that the District Court judge had dismissed for failing to state a claim.

The Clinton Presidency has been permanently tarnished. The Senate trial provided a forum to replay the embarrassing and humiliating facts of the President's improper relationship. No one can say the Presidency has emerged unscathed.

For me, the most regrettable action is the nationally televised statement to the American people, where he shook his finger defiantly and said the allegations were untrue. That was not charged in the articles of impeachment, but it was intended to mislead the American people. That statement was wrong. And even though he

later apologized for his action, I feel strongly that no President should so intentionally deceive the American people.

But condemning the President is not the purpose of the impeachment trial. Impeachment cannot be about punishing the officeholder. One predecessor of mine and of Senator JEFFORDS, Senator George Edmunds of Vermont, explained in 1868, that:

> [p]unishment by impeachment does not exist under our Constitution. . . . [The accused] can only be removed from the office he fills and prevented from holding office, not as punishment, but as a means merely of protection to the community. . . .

So our focus has to be on whether conduct which the House has charged has been proven and warrants President Clinton's removal from office to protect the public.

The President's indiscretions alone did not bring us to this point. Raising this matter to the level of a constitutional impeachment only began with the referral from the special prosecutor, Kenneth Starr. Justice Robert Jackson, when he was attorney general, observed that the most dangerous power of prosecutors is the power to "pick people that he thinks he should get rather than cases that need to be prosecuted." I am concerned that is what has happened in the case of President Clinton.

Does anyone recall after the fruitless years of investigation of this President, the past year of upheaval, that it was the talking points given to Ms. Tripp by Ms. Lewinsky which were supposed to be the smoking gun that proved a vast conspiracy to suborning perjury? I don't think anybody doubts Ms. Lewinsky's account that she wrote the talking points based on her discussions with Ms. Linda Tripp, and she never discussed them with the President.

Monica Lewinsky consistently maintained that no one ever asked or encouraged her to lie; she was never promised a job for her silence. Indeed, in her 24th interview, the Senate videotaped deposition demanded by the House managers, she testified to her own purposes in keeping her relationship secret. She acted in what she thought was her own best interests. She sought to conceal this relationship because she did not want to be humiliated in front of the whole world. And the record establishes it was Linda Tripp rather than President Clinton who acted in the conflicting roles as Ms. Lewinsky's intimate confidante and ultimate betrayer.

As a former prosecutor, one of the questions I asked is whether these criminal charges of perjury and obstruction would have been brought against Bill Jones rather than Bill Clinton. Experienced prosecutors, Republican and Democrat, testified before the House Judiciary Committee that no prosecutor would have proceeded based on the record compiled by Mr. Starr, and prosecutors I have talked to have said they wouldn't even get to a jury with it. As a former prosecutor, I agree and note that during the course of the Senate proceeding, the case has gotten weaker.

The testimony in the record shows that Ms. Lewinsky had no intention of revealing her relationship with the President. She is the person who originated and carried out the plan to hide certain gifts from the Jones lawyers. The only crimes shown to possibly have occurred are not high crimes but those for which Ms. Lewinsky and Ms. Tripp have already received immunity from prosecution from Ken Starr. To influence our judgment, the managers have argued

that the consequences of the President's acquittal of their unproven charges would be dire for our children, I have been married for 37 years to a woman I love; my wife and I have raised three wonderful children. I don't need the House of Representatives to tell me how to raise my children. I trust the parents of America to raise their children, to explain what the President did was wrong, to point out the humiliation and other consequences brought on himself and his Presidency. That is not our the Congress' job. That is the job for parents in this country.

I don't believe the Constitution calls upon us to remove a duly elected President for symbolic purposes. Rather, I believe the precedent set by conviction without proof and removal without constitutional justification would be far more dangerous for our Republic than his actions.

The House managers have warned that should the President be acquitted, it would damage the "rule of law." I strongly disagree, because the supreme rule of law in this country is the Constitution; that is what we have to uphold.

Partisan impeachment drives are doomed to fail. The Senate must restore sanity to this impeachment process. We must exercise judgment and do justice. We have to act in the interest of the Nation. History will judge us based on whether this case was resolved in a way that serves the good of the country, not the political ends of any party or the fortunes of any person.

We have all talked about President Andrew Johnson's impeachment. Few people will recall that after the unsuccessful effort to remove him from office, former President Johnson returned to serve this country as a U.S. Senator. I look forward to the day when the Senate can close our work as an impeachment court and that we can all return to our work—our important work we face as U.S. Senators representing our States.

I have served here with 259 Senators, including the 100 here now. I have respected all of you. I have had great affection for many of you on both sides of the aisle. I count among my best friends many Senators on both sides of the aisle. This is a difficult time. I will not question any Senator's vote on this. But the Senator from Vermont cannot vote to convict and I will not.

Thank you.

APPENDIX

PROCEDURAL AND FACTUAL INSUFFICIENCIES IN THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON—ANALYSIS BY SENATOR PATRICK LEAHY, RANKING MEMBER, SENATE JUDICIARY COMMITTEE

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I. OATH OF OFFICE

On the first day of this Congress, the Vice President of the United States administered the oath of office to the most recently elected Members of the Senate. I was honored by the people of Vermont to be among those Members and to take the oath of office to serve here as a representative of Vermont. With this oath I have again sworn to protect and defend the Constitution of the United States.

We were reminded by the Majority Leader at the beginning of the last Congress that the oath we take was formulated in 1868 to help bring the country back together. As Senator Lott has noted, following the Civil War, some urged continued use of an ironclad test oath that barred those who had served the Confederacy from serving in the Federal Government. It took "nearly a quarter of a century of confusion and acrimony" for the Senate to settle upon the oath that we take today.[1]

The same year in which our oath was developed, our country experienced its first, and until now, its only presidential impeachment trial. History has judged harshly the "Radical Republicans" who pursued that impeachment against President Andrew Johnson. A notable exception is William Maxwell Evarts, a Vermonter who was criticized by many Republican party leaders for defending a President of the opposite political party.

I have been proud of another Vermonter, Gregory Craig, who has played a critical role in the defense of President Clinton.

This Senate is the last of the 20th century. We began this first session of the 106th Congress facing a challenge that no other Senate in over 100 years has been called upon to address. To deal with that challenge, we all took another oath, an oath to do "impartial justice according to the Constitution and laws." That is the oath administered to Senators who must determine whether to override the election of the President of the United States and remove him from office. That oath calls upon Senators to rise above partisan politics and our personal feelings about President Clinton.

I focus first on the oaths we take to be Members of the Senate and to serve in this impeachment trial since the House Managers opened and closed their presentation to the Senate pointing to the oaths the President swore to uphold when he assumed on two occasions the office of the President.

The Managers have emphasized that the President's inaugural oath of office imposes a constitutional duty to "take Care that the Laws be faithfully executed." Their argument is that the presidential oath spelled out in Article II, section 1 of the Constitution establishes a special standard of conduct for the President, and when the President violates a law which he has sworn faithfully to execute, he should be removed.

Frustrated by the restrictions placed on Congress's impeachment power, which limits the grounds for removal to "Treason, Bribery or other high Crimes and Misdemeanors," the Managers seek to find alternative constitutional footing to remove this President. But, the Constitution simply does not say that a President shall be removed for "Treason, Bribery, or other conduct inconsistent with his presidential oath and duties." Nor does it say that a President shall be removed for "Treason, Felony, or other Crime," which is the formulation used in the Constitution's Extradition Clause.[2]

The Framers purposely restrained the Congress and carefully circumscribed our power to remove the head of the co-equal Executive Branch of the Federal Government. As Professor Laurence Tribe pointed out last November, during a House subcommittee hearing on the history of impeachment, the presidential oath and Take Care clause cannot properly be invoked so as to make the President of the United States more vulnerable to impeachment and removal from office than other federal officials. "[I]t simply cannot be the case under our Constitution that removing a sit-

Footnotes at end of analysis.

ting president should be easier, not harder, than removing a vice president, a cabinet officer, or a sitting federal judge."[3]

The Managers have invited the Senate to lower the bar for impeachment and removal of a President by distorting the constitutional text and using the presidential oath in a manner never contemplated by the Framers. I cast my vote mindful of the dangers this seductive invitation poses not only for this President but, more importantly, for the future of the Presidency and our constitutional framework.

As my oaths demand, I will work to protect and defend the Constitution. I will continue to defend our constitutional democracy against encroachments from all sides.

Over the last few years, we have seen scores of constitutional amendments introduced each Congress and several voted upon each year. I have spoken about the assault by amendment being made against the Constitution and defended the Constitution against these "bumper sticker" proposals for constitutional edits. The impeachment of the President is a matter of similar importance. What we do, in terms of the standards we apply and the judgments we make, will either follow the Constitution or alter the intent of the Framers and lower those standards for all time. I have heard more than one Senator acknowledge that in this sense it is not just the President but also the Senate on trial in this matter.

In considering what to do we cannot and must not ignore how we arrived at this point lest our actions countenance repetition in the future. We are now in a position to write the lessons we want heeded by future Members who have the privilege to serve America in Congresses into the next century and millennium.

II. HOW DID WE GET HERE?

When former Senator Dale Bumpers spoke to us about the task before us, he posed a question that many Senators have asked themselves over the course of these impeachment proceedings. He asked, "How do we come to be here?"[4] I raised virtually the same question in an opinion editorial published on December 13, 1998, in the Los Angeles Times. I noted Barbara Tuchman's gripping account in The Guns of August of how the world teetered into the catastrophe of World War I. She recalled a former German chancellor's question to his successor: "How did it all happen?" "Ah, if only we knew," was the reply.

Future generations may ask the same question of us as they ponder not only how but also why this sorry episode of admitted presidential misconduct led this great country to the brink of paralysis over the possibility of removing a popular President, whose leadership has given this country not just a balanced budget but a surplus two years running, the lowest unemployment in decades and the strongest economy in the world. Our economy is in the best shape in a generation in no small part because of the President's economic policies. We should be working with the President to make the hard choices and develop the bipartisan cooperation that are needed to move the country forward into the 21st Century with a secure Social Security, strong Medicare and needed investments in education.

Instead, we find ourselves facing the first impeachment trial of a duly-elected President and only the second impeachment trial of a sitting President in the history of this country. We find ourselves in this situation due to the poor judgment of the President, whose personal conduct was inexcusable; the antics of a Special Prosecutor run amok; and the political posturing of partisan House Republican leaders, who misconstrued the constitutional role of the House and advanced a take-it-or-leave it strategy of impeachment or nothing. Each step of this unfortunate process has notably lacked one important element: the exercise of sound judgment.

That is why the country has looked to the Senate to restore political sanity to this process. The demand on us is not simply to uphold the "rule of law," about which the Managers have repeatedly lectured us. Our oath requires far more than the ministerial act of applying the law to the facts or accepting blindly the facts and conclusions presented by either side in this trial. We are required to evaluate the facts, not in isolation, but in the context of our precedent and the history of impeachments, and with our focus always on what is good for the country. In short, we are required to do what has been missing up to now: exercise judgment, and do so in an impartial fashion. The beginning point in this process must start with the President.

A. The President's Conduct

We can all agree that the President's conduct with a young woman who was working in the White House was wrong. It was also deeply disappointing, especially to those who know the President and who support the many good things he has done for this country and the world. His conduct in trying to keep his inexcusable relationship secret from his wife and family, his friends and associates, and from the

public glare of a politically-charged lawsuit, though understandable on a human level, has had terrible consequences for him personally and for the legacy of his Presidency.

For me, one of the President's most regrettable actions was his nationally-televised statement to the American people in which he shook his finger and defiantly told us that the allegations were untrue. Although not charged in the Articles of Impeachment, that statement was intended to mislead the American people with respect to the nature of his relationship with Ms. Lewinsky. While I understand the pressures that he was under at the time, that statement was wrong. Although the President later apologized for his actions, I feel very strongly that no President should intentionally deceive the American people and I condemn him for having done so.

Senator Bumpers reminded us of the human costs that have been paid by this President and his family. The President has admitted before a Federal grand jury terribly embarrassing personal conduct and has seen a videotape of that grand jury testimony broadcast to the entire nation, with excerpts replayed over and over again. This modern day version of the public stockade has been difficult to witness for those who know this man and his family. His punishment has also taken its financial toll. The underlying lawsuit has now been settled and $850,000 paid on a case that initially sought only $75,000 in compensatory damages—a case that the District Court judge had dismissed for failing to state a claim.

His Presidency has been permanently tarnished by impeachment. The Senate trial has provided a forum to replay the embarrassing and humiliating facts of the President's improper relationship. No one can say this President or his Presidency has emerged unscathed.

B. Special Prosecutor Starr

But the President's indiscretions and conduct did not alone bring us to this point. Raising this matter to the level of a constitutional impeachment only began with an investigation and referral from Special Prosecutor Kenneth Starr.

Justice Robert Jackson, when he was Attorney General in 1940, observed that the most dangerous power of the prosecutor is the power to "pick people that he thinks he should get, rather than cases that need to be prosecuted." When this happens, he said, "it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then . . . putting investigators to work, to pin some offense on him." "It is here," he concluded, "that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself."[5]

In the case of President Clinton, things became personal a long time ago. When Whitewater failed to produce, the President's detractors began searching for a scandal. "Travelgate" went nowhere. "Filegate" was another dead end. Vincent Foster's tragic death was a suicide. Last summer, it was reported that the Special Prosecutor had his investigators scouring the countryside looking for women who may have been intimate with Bill Clinton at some point over the last several years. I spoke out then, noting my concern and trying to sound a cautionary note that the permanent investigation of the President was taking yet another wrong turn.[6]

Finally, after four years of fruitless investigations, Special Prosecutor Starr renewed his acquaintance with Linda Tripp and began the Monica Lewinsky phase of his investigation. According to Mr. Starr, that contact with Linda Tripp began on January 8, 1998, days before Ms. Lewinsky had filed her affidavit in the Jones case and before the President's deposition in that matter.[7] As an officer of the court, he could have immediately referred Ms. Tripp's information to others with authority over such matters. But he did not.

Most law enforcement authorities strive to prevent crimes from occurring. Not so with Special Prosecutor Starr. He engaged all the influence, power and authority he could muster to get the President. He adopted Ms. Tripp as his agent, arranged to provide her with immunity from prosecution, and had her wear a wire and lunch with Monica Lewinsky while surreptitiously recording her. He then tried over an extended period of many hours to convince Ms. Lewinsky to agree likewise surreptitiously to record conversations and help him make a case against the President.

Does anyone recall after the past year of upheaval the crimes the Special Prosecutor was seeking to find last January? Recall that the "talking points" given to Ms. Tripp by Ms. Lewinsky were supposed to be the "smoking gun" showing that the President was involved in a vast conspiracy and cover-up to suborn perjury from Ms. Tripp. No one now doubts Ms. Lewinsky's account that she, and she alone, wrote the talking points based on her discussions with Ms. Tripp. Moreover, no one

now doubts that Ms. Lewinsky never even discussed those talking points with the President, the President's attorneys, the President's friend Vernon Jordan, or anyone associated with the White House.

Also recall that Mr. Starr justified his pursuit of this investigation based on Vernon Jordan helping Ms. Lewinsky find a job in New York. His theory, as described in his referral, was that Ms. Lewinsky was influenced to lie about her relationship with the President through the assistance of Mr. Jordan in finding her a job.[8] Yet it was not the President but Linda Tripp who, in early October 1997, first suggested that Ms. Lewinsky move to New York and first discussed with Ms. Lewinsky that she enlist Mr. Jordan's help with her New York job search.[9] Indeed, Linda Tripp's role in this scandal is a pivotal one.

Fresh from conferring with Mr. Starr's investigators, armed with promises of immunity from prosecution, Linda Tripp met with the Jones lawyers on the eve of the President's deposition and briefed them on the President's relationship with Ms. Lewinsky. Even Mr. Starr eventually admitted that his office could—and should—have kept "better control" of Ms. Tripp.[10]

A number of concerns have been raised about how this investigation was initiated and conducted by the Special Prosecutor, including whether Mr. Starr withheld material information from the Attorney General when seeking to extend his jurisdiction over the Lewinsky matter, whether he concealed his prior consultations with the attorneys in the Jones case, threatened a potential witness with the loss of the custody of her child, and subpoenaed a minor at school. I have also expressed my concern over the aggressiveness and lack of prosecutorial discretion of his investigation in requiring the testimony of mother against daughter, attorney against client, and Secret Service protectors against protectee—the latter raising serious security issues that could jeopardize the future safety of presidents—and requiring bookstores to disclose their customers" choice of reading material.[11]

Finally, the persistent and politically damaging leaks of secret grand jury proceedings have tarnished Mr. Starr's investigation and fueled concern over his partisanship. Indeed, soon after he had been appointed as special prosecutor, leaks from "law enforcement sources" about the Whitewater investigation under his supervision prompted Mr. Starr to confirm publicly his understanding of the grand jury secrecy rules. He issued a press release on October 20, 1994, pledging that the Office of Independent Counsel ("OIC") would "abide by all of the obligations imposed upon us to protect the integrity of the grand jury process and our ethical obligations as professionals, including those requiring the secrecy of our proceedings."

Despite this pledge by Mr. Starr, a federal judge determined in June 1998 that the evidence established a prima facie case that Mr. Starr's office had violated federal secrecy rules prohibiting attorneys for the government from disclosing confidential grand jury material. A final adjudication of the matter has not been made.

Then we come to the matter of the referral from Mr. Starr's office. The Independent Counsel statute authorizes an independent counsel to "advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment."[12] This provision should not be construed to make an independent counsel the House's Grand Inquisitor, nor to require an independent counsel to become an advocate for impeachment. Rather, a simple, straightforward delivery of the facts collected by the independent counsel, unadorned by surmise, conjecture and conspiracy theories is all that is authorized.

Nevertheless, Mr. Starr used this statutory authorization as a springboard to advocate impeachment. His conduct stands in stark contrast to that of the Special Prosecutor in Watergate. As Georgetown University Law Professor Robert Drinan, who served with distinction on the House Judiciary Committee, observed last November in testimony before the House Judiciary Subcommittee on the Constitution:

"It is noteworthy that in 1974, the Special Prosecutor gave information and facts to the House Judiciary Committee. He did not, however, recommend impeachment. He knew that the power to recommend impeachment was committed solely to the House of Representatives by the Constitution itself."[13]

I am not alone in questioning Mr. Starr's conduct and his misinterpretation of his role. His own ethics advisor felt compelled to resign his position after Mr. Starr appeared before the House Judiciary Committee as the chief cheerleader for impeachment.

Thereafter, Mr. Starr went from chief cheerleader to chief "talking head," making a lengthy television appearance on the news show 20/20. This was only days after he told the House Judiciary Committee, "We [the OIC] go to court and not on the talk-show circuit."[14] In this regard, it bears mention that Mr. Starr's public relations advisor and his highly touted "career prosecutors" have also appeared on countless talk shows over the past year.

Even during the Senate impeachment trial, Mr. Starr has overstepped his proper role and intruded into the Senate's prerogatives on how these proceedings should be conducted. In effect, he became the chief prosecutor for impeachment. In contravention of a unanimously adopted consent resolution on how the trial would proceed, the Managers enlisted Mr. Starr's help to force Monica Lewinsky to meet with them as part of her immunity agreement. If she did not say the right things, she subjected herself and her mother and father to prosecution.

Press accounts make clear that while Mr. Starr's representatives were allowed to attend the interview of Ms. Lewinsky on January 24, 1999, neither the Senate nor the President's counsel were extended such courtesy. This collusive move between the Managers and Mr. Starr was unfair to the President's counsel and contemptuous of the Senate, which had resolved to defer the issue of witnesses until later in the trial.

Mr. Starr's continued meddling during the Senate impeachment trial has been roundly criticized by both Democrats and Republicans. With his appetite whetted by one weekend's interference with the Senate impeachment trial, the very next weekend, on Sunday, January 31, 1999, Mr. Starr's office leaked word to the New York Times that he had determined he could indict a sitting President. Even the House Managers balked at this interference, saying Mr. Starr's latest leak was "not helpful at all."[15]

C. The House Judiciary Committee

The next protagonist in this constitutional saga was the House Judiciary Committee. In addition to the serious substantive concerns raised by the way the Committee drafted the Articles of Impeachment—which I will discuss later—the Committee also made at least four critical procedural errors.

First, the Republicans on the House Judiciary Committee used the muscle of the majority to force its partisan will. History tells us that, to be successful, impeachments must be handled in a bipartisan manner. Chairman Henry Hyde himself has observed on more than one occasion that bipartisanship is crucial to any impeachment proceeding because a political, partisan impeachment will not be trusted.

The Framers anticipated that impeachments might be driven by partisanship rather than real demonstrations of guilt. The distinguished historian Arthur M. Schlessinger, Jr., stressed the need for bipartisanship in impeachment proceedings in his testimony before the House Judiciary Subcommittee on the Constitution on November 9, 1998, stating:

"The Framers further believed that, if the impeachment process is to acquire popular legitimacy, the bill of particulars must be seen as impeachable by broad sections of the electorate. The charges must be so grave and the evidence for them so weighty that they persuade members of both parties that removal must be considered. The Framers were deeply fearful of partisan manipulation of the impeachment process. . . . The domination of the impeachment process by 'faction' would in the view of the Framers deny the process legitimacy."[16]

In the 24 years that I have had the honor of serving as a United States Senator, there have been three impeachments, all of Federal judges. Questions have been raised about how our actions as a body and as individual Members in those prior judicial impeachments should serve as precedent for this impeachment trial. I will address the significant and dispositive factual differences between these trials later, but want to stress another significant difference: Those three judicial impeachments were, from beginning to end, handled in a bipartisan fashion. In each case, the House of Representatives was unanimous, or nearly so, in voting to impeach and there was strong bipartisan support in the Senate to convict. Unfortunately, this was not the model followed in the impeachment proceedings against President Clinton.

Second, the Committee skirted the important threshold question whether, as a matter of constitutional interpretation, the accusations set out in Mr. Starr's referral stated a sufficient basis to justify the President's impeachment and removal. Despite the concurrence of over 800 historians and constitutional scholars that no impeachable offenses had been alleged,[17] the majority on the House Judiciary Committee never questioned Mr. Starr's initial judgment that the President had committed impeachable offenses. Had the Committee addressed itself to this issue at the start, a factual inquiry may have been unnecessary.

Third, having avoided this threshold issue, the Committee then failed to conduct an independent fact-finding inquiry, as it was instructed to do by House Resolution 581. This resolution, adopted on October 8, 1998, directed the Committee "to investigate fully and completely whether sufficient grounds exist for the House of Representatives" to impeach the President. For making such investigation, the resolution authorized the Committee to issue subpoenas for the attendance and testimony

of any person, to take depositions of potential witnesses, to require the production of documents and other things, and to issue interrogatories.

House Resolution 581 was patterned from the resolution adopted by the House in February 1974, directing the Judiciary Committee to investigate President Nixon. That Committee spent almost five months gathering its own evidence and hearing testimony from multiple witnesses before debating and voting to adopt articles of impeachment.[18]

By contrast, the House Judiciary Committee in 1998 relied entirely on the referral of Special Prosecutor Starr. The Committee called not a single witness with first-hand knowledge of the facts to testify about the matters contained in Mr. Starr's referral. The Committee instead relied on the one-sided testimony procured by Mr. Starr's lieutenants in the grand jury. Though this testimony was under oath, it certainly was not tested by cross-examination nor was the Special Prosecutor's office interested in any information that might have been exculpatory to the President.

The most probative testimony by Ms. Lewinsky before the grand jury, for example, about no one asking her to lie or promising her a job, was elicited by a diligent grand juror. Yet another startling omission of exculpatory information from Mr. Starr's referral was only discovered during the Senate deposition of Ms. Lewinsky. She testified in response to Manager Bryant's inquiry about whether the President told her she should turn the gifts over to the Jones lawyers that she had previously told Mr. Starr's agents that the President saying, "Well, you have to turn over whatever you have," sounded familiar to her.[19]

Nevertheless, the House Judiciary Committee gave a standing ovation to this Special Prosecutor, who misconstrued his statutory role on advising the House and who failed the most basic of a prosecutor's duties to be fair and to disclose exculpatory information in his possession.

Fourth and finally, the House Judiciary Committee minimized the constitutional role of the House in the impeachment process. The Committee erroneously relegated the House to the role of mere "accuser", leaving to the Senate the heavier responsibility of determining whether the conduct at issue warranted removal of the President. Chairman Hyde said, on September 11, 1998, at the beginning of the House impeachment process, "We are acting as a grand jury . . . we are operating as a grand jury."[20] This view persisted during the House floor debate on the Articles of Impeachment against President Clinton. Manager Buyer told his colleagues that the House served "the grand jury function."[21] Yet another House Member said, "the role of the House and our duty to the American people is to act simply as a grand jury in reference to the impeachment charges presented."[22] This erroneous view of the role of the House of Representatives in the impeachment process has persisted even in this trial, with one Manager telling us that the House of Representatives "operates much more like a grand jury than a petit jury."[23]

Having incorrectly analogized its role to that of a grand jury, the House then applied a grand jury "probable cause" standard in reviewing the evidence. Manager Barr confirmed this mistake, stating, "the House performed admirably in essentially reaching the conclusion that there is probable cause to convict the President of perjury and obstruction of justice."[24] Manager Hyde likewise described the House as having "a lower threshold . . . which is to seek a trial in the Senate."[25]

Harvard Law Professor Laurence Tribe warned House Republicans against misinterpreting and minimizing their constitutional impeachment role. He testified before the House Judiciary Subcommittee on the Constitution that, "the fallacy is that this is not, despite the loose analogies that some invoke, not like a grand jury."[26] His warning went unheeded.

Minimizing the House's role has had serious consequences. It explains why the majority in the House Judiciary Committee forfeited the opportunity and shirked its responsibility to conduct any independent examination of the facts. The House's constitutional responsibility for charging the President should not be misinterpreted to justify applying only a grand jury's "probable cause" standard of proof.

It also amounted to giving the House a "free vote" since they could duck any responsibility for actually removing the President. On the contrary, House Members who vote to impeach should also be convinced this President has so abused the public trust and so threatens the public that he should be removed. Sending impeachment articles to the Senate means exactly what the articles say: That based on the evidence reviewed by the House, the President has committed acts warranting his conviction and removal.

Even some Republican Members of the House who voted for impeachment admitted, belatedly, in a letter to the Senate Majority Leader that they did not mean it. They said they actually did not want this President removed and urged the Senate to consider censure.[27]

In spite of what the House Managers believe, the impeachment process is not a "cause." It should not be about partisan political pique or about sending a message. Rather, along with the power to declare war, it is one of the gravest constitutional responsibility of the Congress. This impeachment asks the question whether the conduct charged in the Articles of Impeachment passed by the House require the Senate to override the judgment of the American people and remove from office the person they elected to serve as President.

That is what the impeachment process is all about—removal from office. It is the Constitution's fail-safe device. It is not to be undertaken lightly or without justification for it has serious consequences.

We suffered a lengthy Senate impeachment trial because House Republicans misinterpreted their constitutional role. House Republican leaders mistakenly relegated the House to a limited role, depreciated the function of impeachment and expressly left to the Senate responsibility for reviewing the charges and determining whether the charges warrant the President's removal from office. Articles of Impeachment are simply not an appropriate vehicle for the expression of political disapproval to be punted by a partisan vote in the House to the Senate for some face-saving compromise verdict.

Not surprisingly, given their misinterpretation of their own role, the first ruling that the Chief Justice was called upon to make in this trial was to correct the Managers' mischaracterization of the role of the Senate. The Chief Justice sustained Senator Harkin's objection and corrected the Managers, stating, "the Senate is not simply a jury; it is a court in this case. Therefore counsel should refrain from referring to the Senators as jurors."[28]

D. Vote by the House of Representatives

Proceedings in the full House were themselves a sorry spectacle. On December 19, 1998, a lame duck session of the House of Representatives approved two Articles of Impeachment against President Clinton on the slimmest of partisan margins.

1. Lame Duck House

The two Articles of Impeachment now before the Senate were decided by the votes of a handful of Members who were defeated in the November election or are no longer serving. Article I passed with an 11-vote margin, which is the number of House Republicans replaced by Democrats in the new Congress due to election defeats and retirements. Article III (now Article II in the Senate) passed with only a 5-vote margin, which is the number of House Republicans who lost their reelections in November and were replaced by Democrats. There is no record of any prior impeachment reaching the Senate on so slim a margin.

The House Republican leadership pressed an extreme, all-or-nothing action through a lame duck House without allowing an opportunity to vote on a censure or other alternative.

Those who claim that censure is unconstitutional are just plain wrong. There is ample historical precedent for censure. Both the House and the Senate have adopted resolutions expressing disapproval of various individuals, including sitting Presidents. The Senate censured Andrew Jackson in 1834; the House censured James Buchanan in 1860. As early as 1800, with "Founding Fathers" then serving in Congress, the House debated a resolution to censure John Adams, though this resolution was ultimately rejected.

Perhaps it should not be surprising that the final votes in the divisive speakership of Newt Gingrich set the Congress and the nation on this course. Mr. Starr's investigation has dragged on for five years, with no end in sight. The entire House impeachment inquiry lasted a short three months. Why the sudden push to bring this matter to the floor? There were at least five good reasons—the five seats that the Republicans had lost in the election—which might have altered the outcome on at least one Article of Impeachment. The sixth reason is also clear: Speaker Gingrich had said he was resigning from the House, and his seat would be vacant when the new House convened.

An impeachment resolution supported by only one political party against a twice-elected incumbent of the opposing party is divisive and damaging for the country. During Watergate, constitutional scholar Charles L. Black, Jr., wrote that a close vote along party lines "would go to the Senate tainted, or at least suspicious, and would be unlikely to satisfy the country, because party motives would be suspected."[29] The impeachment of a President must be bipartisan. A partisan impeachment cannot command the respect of the American people. It is no more valid than a stolen election.

House Republicans have permanently marked this President as impeached, but I do not believe that history will judge them kindly either. Instead, the manner in

which these impeachment proceedings were conducted in the House Committee on the Judiciary and in the full House of Representatives will serve as a model of mistakes that should be avoided in the future.

2. Rejected Charges

In the end, the House did not approve the 11 articles recommended by Special Prosecutor Starr or the 15 articles of impeachment recommended by the Republican Committee staff. The House rejected outright two of the four articles reported along party lines by the House Judiciary Committee, and authorized Managers to exhibit only two Articles of Impeachment in the Senate. In considering these two Articles, the Senate has been forced to sort through what is left of the allegations against the President in light of the matters rejected by the House.

III. SECRET EVIDENCE

Before the vote, press reports indicated that wavering House Members were escorted by Republican House Judiciary Members to review certain "secret evidence" that the President's counsel had never been allowed to review or given an opportunity to rebut.

That action was fundamentally unfair. A bedrock principle of our system of justice is that the prosecutor, not the accused, has the burden of proof. The accused is presumed innocent unless and until adequate proof of guilt is presented. Such proof may take many forms—direct or circumstantial, testamentary or physical. But whatever form it takes, it must be introduced, admitted into evidence, and subject to examination and inspection before it may be considered by the fact finders.

I note that in 1974, the House Judiciary Committee made available to President Nixon and his counsel all the documents and other material considered by the Committee, whether in executive or open session.[30] In short, during the House Judiciary Committee's investigation of Watergate, there was no secret evidence and President Nixon and his counsel were allowed to see—fully and completely—every item of evidence in the possession of the House Judiciary Committee.

As both a judge and juror in the Senate, I take seriously my responsibility to ensure that the Senate's consideration of these Articles of Impeachment is fair. Part of that fairness requires that the only evidence we consider relates to the Articles actually approved by the House—not what the House refused to charge and not matters that are not charged by the Articles of Impeachment. During the depositions authorized by the majority in the Senate, I and the other Presiding Officers from both parties stood firm on this principle and insisted that the Managers' questions remain focused on the subject matters already in the Senate record and on the Articles before us.

Certain House Republicans suggested before this trial began that Senators should review the "secret evidence" as part of their deliberative processes. This suggestion was first advanced at about the time that the "secret evidence" began leaking to the press. From what I have read about it, it seems as flimsy as it is inflammatory, and completely irrelevant to any issue now before the Senate. Clearly, Senators should not allow themselves to be influenced by shady accusations and innuendo that would be excluded from any judicial proceeding in the land. Consideration of the Articles must be based on only one record—the trial record—and evidence that is not admitted at trial must play no part in our deliberations.

I should note that the House Managers have selectively tried to keep secret certain unfavorable evidence elicited during the Senate trial. For example, they argued strenuously and successfully to subpoena witnesses for depositions and for permission to introduce parts of those depositions into evidence. The parts they introduced do not, as the Legal Times pointed out "tell the whole story."[31]

As one of the Presiding Officers at those depositions, I am well aware of the parts of those depositions intentionally omitted by the Managers. In fact, following their presentation of the evidence obtained from the depositions, I asked unanimous consent that the record be made complete and include Vernon Jordan's brief remarks at the end of his deposition, "defending his own integrity."[32] There is no question but that the Managers attacked and impugned Mr. Jordan's word and his integrity. Senator Boxer echoed this unanimous consent request at the conclusion of the Managers' rebuttal presentation.[33] Due to Republican objections, however, neither request was accepted and, unfortunately, the Senate trial record does not contain that moving and important part of Mr. Jordan's deposition.

IV. THE ARTICLES ARE UNFAIRLY DRAFTED

Close examination of the Articles exhibited by the Managers reflects the underlying unfairness in the impeachment proceedings in the House.

A. Article I is Defectively Vague

Article I is drafted with such vague accusations, a significant question arises whether Senators can responsibly and constitutionally pass judgment on it.

The notion that William Jefferson Clinton committed perjury before the Starr grand jury has been a legal conclusion in search of a basis for some time. In his referral to the House of Representatives, Special Prosecutor Starr urged only three allegations of possible perjury before the grand jury as grounds for seeking to remove the President. Article I merges those three allegations into one generalized allegation that President Clinton gave false testimony "as to the nature and details of his relationship with Ms. Lewinsky." In addition, the House Judiciary Committee has joined three additional categories of allegedly false testimony, without specifying the allegedly perjurious statements. Those additional categories cover statements that the President made or allowed his attorney to make during the Jones case, in spite of the fact that a majority of the House of Representatives rejected such statements as a basis for a separate article of impeachment.

Since the outset of the Senate trial, the charges of grand jury perjury have continued to be a moving target. In their initial Trial Brief, the Managers alluded to 26 instances of grand jury perjury. Manager Rogan spoke of 34 instances. In their Reply Brief, the Managers tallied up 48 instances of grand jury perjury.

Yet, Article I does not identify a single statement before the grand jury that the House of Representatives alleges to have been perjurious, false and misleading. All the Senate is told in Article I is that the allegedly perjurious statements fall into "one or more" of four broad categories. This is wholly inconsistent with criminal law and Senate standards for identifying perjury.

First, requiring the President to defend himself against such an unspecified charge is fundamentally unfair. Vague, generalized charges of perjury, such as the charge now before the Senate, would never hold up in a court of law. Under federal law, a perjury indictment must set forth the precise falsehood alleged and the factual basis of its falsity with sufficient clarity to permit a jury to determine its veracity.[34] The Justice Department's manual for Federal prosecutors acknowledges this basic principle of law.[35]

This is not just a technical matter of proper, lawyerly pleading. It is a matter of fundamental fairness and due process. As the respondent in this proceeding, the President has been denied the basic fairness of having clear notice of the specific charges against him and of knowing in advance of the trial precisely what the House of Representatives accuses him of having done that merits removing him from the office to which the people of the United States have twice elected him.

Providing specificity in perjury articles has been the practice in past impeachments. Two prior impeachments before the Senate, both of Federal judges, involved perjury charges. In both instances, the House of Representatives identified each alleged falsehood in a separate Article of Impeachment. In the case of Judge Alcee Hastings, 14 of the Articles alleged that he had committed perjury with respect to a different specific statement. In the case of Judge Walter Nixon, two of the Articles alleged perjury, again, each with respect to a single discrete statement.

This time, however, the House of Representatives chose to be unacceptably vague. Republicans on the House Judiciary Committee flatly refused to pin themselves down to specific statements in the resolution they drafted or in their Committee debate. In fact, the only change the House Judiciary Committee made to Article I had the effect of making it even more ambiguous and obscure: They amended it to allege that the President testified falsely as to "one or more" of the four categories, rather than all of them. By so doing, they have undermined the basic fairness of these proceedings.

Second, the lack of specificity in Article I makes it impossible to know whether the requisite majority of the House of Representatives agreed that any specific statement was perjurious. To impeach President Clinton under Article I, House Members had only to find that he made one or more of an unspecified number of unspecified false statements, broadly categorized. Accordingly, it is impossible to know whether the House properly exercised its exclusive, constitutional power of impeachment.

If there are 3, 4, 7, 34 or possibly 48 allegations of perjury, but only one vote by the House, how can the Senate be sure, how can the President be sure, and, most importantly, how can the American people be sure that a majority of the House agreed on any single allegation of perjury? Only a narrow majority of 228 members of the prior House of Representatives voted in favor of Article I. If as few as 11 members of that slim majority did not agree on which of the 3 to 48 perjury allegations were to be forwarded to the Senate, that Article did not have the support of a majority of the House and should not be considered by the Senate.

Third, the lack of specificity makes any Senate vote for conviction on Article I similarly constitutionally suspect. If, as the Managers' Reply Brief indicates, there are 48 separate allegations of perjurious statements by the President before the grand jury, then as few as two Senators could believe any particular allegation of perjury had been established and the Senate as a whole could nonetheless convict and remove the President—so long as enough other pairs of Senators thought alternative allegations were established. This falls far short of the two-thirds of the Senate required to concur before a President is removed from office.

The Managers ignore the grave constitutional questions raised by the vagueness of Article I presented to the House and now to the Senate for a vote. Instead they defend the fairness of this Article by asserting that if President Clinton had suffered from any lack of specificity, he could have filed a motion in the Senate for a bill of particulars.[36] Just as the Managers had to be corrected by the Chief Justice about the role of the Senate, they also overestimate their power to detail the particulars of the conduct underlying Article I.

The Constitution vests the sole power of impeachment in the House of Representatives, not in a handful of managers appointed by that body. Just as prosecutors may not save a defective indictment without usurping the constitutional role of the grand jury, these Managers may not save a defective bill of impeachment without usurping the constitutional role of the full House. Put another way, 13 Members may not take it upon themselves to guess what was in the minds of over 200 Members of the 105th Congress when they voted to impeach the President. The full House must pass on any amendments to the Articles.

That is how it has always been done. In 1933, for example, impeached judge Harold Louderback moved the Senate to require the House to make one of its articles "more definite and certain." In that instance, the Managers wisely consented to the motion. An amendment to the articles was then approved by the full House and presented to the Senate.[37]

Similarly, in the case of Judge Nixon, it was the House of Representatives that amended its articles in light of evidence presented during the Senate proceedings. That amendment was made to correct the text of one of the statements that the House alleged to be false.

The Managers do not have the power to make the Article more specific, nor have they tried. Instead, they have exploited the vagueness in Article I by continuing to add to the litany of alleged falsehoods by the President. Any advantage gained by the House Managers by purposely crafting Article I in this vague fashion diminishes the fairness of the entire proceeding.

B. Both Articles Charge Multiple Offenses

Both of the Articles before us allege that the President committed "one or more" of a laundry list of misdeeds. In fact, as I already mentioned, Article I was specifically amended in Committee to use this "one or more" formulation. Manager Rogan tried to spin this as "a technical amendment only,"[38] but it was obviously much more.

With this amendment, Article I not only fails to identify a single allegedly perjurious statement, it fails even to identify a single broad category of statements. It lists four broad categories that could allude to virtually every word the President said before the grand jury and says, in effect, take your pick. If you think he said something, anything, that was not true, then vote to convict. Article II, which lumps together seven alleged acts of obstruction, does the same.

Manager McCollum treated the decision Senators must make on Article I like a choice diners would make from a Chinese take-out menu: choose some from column A and, if you like, some from column B. He explained that Senators could vote to remove the President if "you conclude he committed the crimes that he is alleged to have committed—not every one of them necessarily, but certainly a good quantity, and there are a whole bunch of them that have been charged."[39]

The Senate has made clear that it expects precision in articles of impeachment. In the last two impeachments, of Judges Hastings and Nixon, the House tacked on an omnibus or "catchall" charge that included all the others. I and other Senators expressed concern with this blunderbuss approach. During the Hastings proceedings, I specifically asked whether the catchall Article could be interpreted as requiring a finding of guilt as to all the allegations in order to convict. By asking the question, I hoped to avoid the constitutional problem that I just described, of conviction based on less than a two-thirds vote. The Presiding Officer ruled that a Senator would be within his right to interpret the Article as I proposed, but expressed the view that a Senator could vote guilty based on any one of the alleged acts of misconduct.[40] Ultimately, the Senate rejected the omnibus Articles against Judges Hastings and Nixon, while convicting them of more specific charges of perjury.

Articles of impeachment that contain multiple allegations are troubling in several respects. First, they make it virtually impossible for the impeached person to prepare an adequate defense. Second, they permit the House to impeach, and the Senate to convict, based on less than the majority or super majority vote required by the Constitution. Third, they allow individual Members to avoid accountability to the American people, who may never know exactly which charges their representatives regarded as proven and warranting removal from office.

President Kennedy, in Profiles in Courage, described the omnibus Article against President Andrew Johnson as a "deliberately obscure conglomeration of all the charges in the preceding Articles, which had been designed . . . to furnish a common ground for those who favored conviction but were unwilling to identify themselves on the basic issues."[41] The House Managers in the Johnson case called for the first vote to be on that deliberately obscure Article because it was thought to be the easiest way to get a conviction. Today's Managers are hoping that this tactic works better in 1999 than it did in 1868, when President Johnson was acquitted.

But impeachment is not a shell game. Deliberate obfuscation trivializes what should be a grave and solemn process.

In 1989, after the Senate rejected the omnibus Article against Judge Nixon, then Minority Leader Bob Dole and others urged the House to stop bunching up its allegations and, from there on out, to charge each act of wrongdoing in a separate article.[42] The House has unfortunately chosen to ignore this plea in this matter of historic importance, contrary to fundamental notions of fairness, proper notice, and justice.

V. THE SENATE'S DUTY

The Senate does not sit as an impeachment court in a vacuum. The fairness of the process by which the Articles reached the Senate, and the specificity and care with which the Articles are drafted to identify the charges fairly to the respondent, are significant considerations in deciding whether to vote for conviction or acquittal. Senators are not merely serving as petit jurors who will be instructed on the law by a judge and are asked to find facts. Senators have a greater role and a greater responsibility in this trial. The Senate is the court in this case, as the Chief Justice properly observed. Our job is to do justice and be fair in this matter and to protect the Constitution.

In casting our final votes on the Articles the Senate should be clear about the questions that our votes answer and equally clear about the questions not before us. The question is not whether Bill Clinton has suffered, for surely he has as a result of his conduct, nor whether he has suffered enough. The question is not even whether Bill Clinton should be punished and sent to jail on a criminal charge, for the Constitution does not confer that authority on this court of impeachment.

This vote only and necessarily requires addressing the following questions: has the conduct charged in each Article been proven to my satisfaction; and, if so, does the charged conduct amount to a high crime or high misdemeanor warranting the President's conviction and removal from the office to which he was elected by the American people in 1996. I will address each of these questions in turn.

A. Standard of Proof

In this impeachment trial, the President starts out with fewer rights than any criminal defendant in any court in this country. He starts out with no clear rules of evidence, conviction based on a mere two-thirds vote, rather than a unanimous verdict required for any criminal conviction, and no higher court of appeal. This makes the obligation imposed by our oath to make this process fair and impartial that much more important.

Fulfilling our duty in the impeachment trial involves evaluating the evidence presented by the Managers and the President to determine whether the allegations have been proven. Juries in legal cases are asked to evaluate evidence presented according to a specific "standard of proof." The Constitution is silent on the standard of proof to be applied in impeachment trials, and the Senate has refused to bind itself to a single standard for all impeachments. As a result, each Senator may follow the burden of proof he or she believes is appropriate to determine whether the House's charges have been adequately proven.

The fact that each Senator may evaluate the evidence under any standard of proof of their choice presents a remarkable challenge to the Managers and to the President's counsel. One commentator has noted that, "this practice can often work . . . to the disadvantage of all the participants in an impeachment trial by precluding them from knowing in advance what standard the Senate will actually apply."[43]

The standard of proof in criminal proceedings is "beyond a reasonable doubt" and in civil proceedings is generally "a preponderance of the evidence." An impeachment

trial is neither a civil or criminal proceeding, leading some commentators to suggest that "a hybrid of the criminal and civil burdens of proof may be desirable. . . . Too lenient a proof standard would allow the Senate to impose the serious punishments for impeachment "even though substantial doubt of guilt remained." Too rigid a standard might allow an official to remain in office even though the entire Senate was convinced he or she had committed an impeachable offense."[44]

The fact that the Senate has adopted no uniform standard of proof for each Member to follow is not for lack of attention. The Senate considered the standard of proof question when impeachment proceedings against President Nixon were contemplated, but adopted none. Thereafter, a member of the Watergate impeachment inquiry staff, now a professor of law, concluded that the standard of proof in impeachment trials will vary with the seriousness of the charges:

"If a president were charged with conduct amounting to treason, for example, it seems highly unlikely that a senator would insist on proof of treason beyond a reasonable doubt before he would vote for the president's removal from office. . . . On the other hand, a greater quantum of proof might be required for less flagrant wrongdoing."[45]

More recently, in 1986, Judge Harry Claiborne moved to establish "beyond a reasonable doubt" as the standard of proof at his impeachment trial. The Senate rejected that motion by a 17 to 75 vote. I joined those Members voting against adoption of a uniform standard of proof because I believe, as the Presiding Officer made clear at the time, that in fulfilling his or her oath each Senator is free to apply any standard of proof, including reasonable doubt.

The charges here stem from alleged efforts by the President to conceal a personal inappropriate relationship. While the relationship itself may be fair game for public rebuke and censure, only when questions were raised about whether his conduct crossed the line into criminal activity did this matter become the subject of an impeachment inquiry. Indeed, Manager McCollum argued that the President must not be convicted and removed from office except upon a finding that he committed a crime.[46] Fairness dictates that we use the exacting standard of proof that is used—and that is constitutionally mandated—in criminal trials.

I note that Majority Leader Trent Lott reached the same conclusion 25 years ago, as a young Member of the House Judiciary Committee considering articles of impeachment against President Nixon. He joined other Republican Members in writing:

"Because of the fundamental similarity between an impeachment trial and an ordinary criminal trial . . . the standard of proof beyond a reasonable doubt is appropriate in both proceedings. Moreover, the gravity of an impeachment trial and its potentially drastic consequences are additional reasons for requiring a rigorous standard of proof. This is especially true in the case of a presidential impeachment. . . . The removal of a President by impeachment in mid-term . . . should not be too easy of accomplishment, for it contravenes the will of the electorate. In providing for a fixed four-year term, not subject to interim votes of No Confidence, the Framers indicated their preference for stability in the executive. That stability should not be jeopardized except on the strongest possible proof of presidential wrongdoing."[47]

Were the President accused of treason or serious public corruption, the best interests of the Nation might well demand a somewhat lower standard. He is not, however, accused of such crimes. We hundred Senators are stand-ins for over a quarter billion Americans. President Clinton has been twice elected to his office, and we should only undo that choice based on the charges before us on proof tested against the highest standard. Under the circumstances, in evaluating the evidence that could result in the impeachment and removal of the President of the United States, I will use the highest standard of proof used in any court of law in this country, that is, proof beyond a reasonable doubt.

B. The Charges Have Not Been Proven

I do not believe that the Managers proved their case beyond a reasonable doubt. To reach their conclusions, they had to tease inculpatory inferences from exculpatory evidence and generally view the record in the most sinister light possible. Having taken an oath to do impartial justice, my vote must be based on the evidence in the record, not on speculation and surmise.

1. Article I

The record does not come close to supporting the allegations in Article I. Perjury is a complex charge, requiring more than just lying or even lying under oath. To constitute perjury, a lie must be both material and willful. Lying under oath about trivial or inconsequential matters, even if willful, is not a crime. Lying under oath

as a result of confusion, mistake or faulty memory, even if about material matters, is also not a crime. In addition, there is no crime of perjury where a witness's answers are literally true, even if unresponsive, misleading or false by negative implication.

The American people saw President Clinton's grand jury testimony when the videotape was made public by the House Judiciary Committee. We saw him admit that:

He had engaged in wrongful conduct;

He had been alone with Ms. Lewinsky on numerous occasions;

His inappropriate relationship with Ms. Lewinsky lasted over a two-year period;

Many of their encounters involved inappropriate intimate contact; and

He had given her a number of gifts.

Given these admissions, the Managers had a heavy burden to prove that the President testified falsely about any material matter.

Perhaps for this reason, the Managers repackaged the three alleged falsehoods identified by the Special Prosecutor in their Senate presentation. In their Reply Brief, the Managers claimed that the President perjured himself no less than 48 times during his grand jury appearance. They hoped that the sheer number of allegations would overcome the essential triviality of each individual charge. It does not.

In this regard, the most remarkable charge leveled by the Managers is that the President's prepared statement, in which he made his many admissions, was itself perjurious. The President said that his relationship with Ms. Lewinsky "began as a friendship"; Ms. Lewinsky disagreed, although she allowed for the possibility that the President had a different perception of how the relationship had evolved.[48] The President said that the inappropriate intimate contacts occurred in early 1996 and 1997; Ms. Lewinsky claimed the contacts began on November 15, 1995. The President described being alone with Ms. Lewinsky only on "certain occasions," and described their telephone conversations as "occasional"; there is nothing in the record to the contrary. Indeed, Ms. Lewinsky used the same term to describe these events, since a few dozen meetings or telephone conversations over a two-year period may appropriately be described as "occasional".

Such allegations trivialize the serious business in which we are now engaged. Can anyone really believe that the President should be removed from office because of a six-week discrepancy as to when his admittedly inappropriate affair began? Or because of general statements that are allegedly contrary to specific numbers? Or because he did not inform the grand jury that the relationship began with a crude sexual overture by Ms. Lewinsky, as she herself was compelled to describe in humiliating detail, at the whim of the Special Prosecutor's inquisitors and for no legitimate investigatory purpose?

Another set of statements that the Managers consider perjurious relate to the President's state of mind. The Managers claim, without support, that the President did not genuinely believe, for example, that Ms. Lewinsky could file a truthful affidavit that might relieve her of having to testify in the Jones case. Such unsupported speculation about what was in the President's mind is not, as the President's counsel stated, "the stuff or fuel of a perjury prosecution."[49]

Asked to identify which of the President's statements were of particular importance to the perjury charge, Manager Rogan pointed to the President's explanations for his attorney Robert Bennett's statement, during the Jones deposition, that Ms. Lewinsky's affidavit showed there "is" no sex of any kind. Never mind that, in general, a person cannot be held criminally liable for false statements or representations by the person's counsel to a judge or magistrate.[50]

Manager Rogan first took issue with the President's argument that the statement at issue was technically accurate because his intimate contact with Ms. Lewinsky had been over for many months. While the President has been derided for legal hairsplitting over "what the meaning of 'is' is," no amount of derision can transform this sort of argumentative testimony into a perjurious statement.

The President also testified that he had not paid much attention to what his attorney was saying and, indeed, did not focus on it until months after the deposition, when he read the transcript in preparation for his grand jury appearance. The Managers assert that the President was paying attention, and they base this on the President's blank stare at the time in question. How can we possibly know, from that, what was going on in his mind?

Appreciating the weakness of their assertion, the Managers obtained an affidavit from Barry W. Ward, law clerk to the presiding judge in the Jones suit, and submitted it with their motion to expand the record. Mr. Ward's affidavit states that when he attended the deposition of President Clinton in that case, he "observed President Clinton looking directly at Mr. Bennett while this statement was being made." The Managers used this statement to argue in their motion brief, at p. 21,

that "Mr. Ward's declaration proves that Mr. Ward saw President Clinton listening attentively while the exchange between Mr. Bennett and the presiding Judge occurred." According to a Legal Times report on February 1, 1999, Mr. Ward "vigorously disputes that interpretation." Contrary to the Managers' assertion, Mr. Ward stated in a subsequent interview that, "I have no idea if he was paying attention. He could have been thinking about policy initiatives, for all I know." [51]

The only explanation for the misleading characterization of Mr. Ward's affidavit in the Managers' motion brief is the same one offered by Senator Bumpers to explain yet another unsupported inference asserted by the Managers. He said, "I am a trial lawyer and I will tell you what it is: it is wanting to win too badly." [52]

As a former prosecutor, one of the questions I have asked myself is whether, based on these facts, criminal charges of perjury or obstruction of justice would have been brought against any person other than the President of the United States. If William Jefferson Clinton were Billy Blythe or Bill Jones, would any prosecutor in the country have successfully brought such charges? Experienced prosecutors, Republican and Democratic, testified before the House Judiciary Committee that no prosecutor would have proceeded based on the record compiled by Mr. Starr. I agree and note that during the course of these Senate proceedings, the case has only gotten weaker.

2. Article II

The same is true of Article II, which charges the President with obstruction of justice. The Managers repeatedly urged Senators to look at "the big picture," view the evidence as a whole, and not to get "hung up" on the details. This is lawyer-speak for, "my case does withstand scrutiny."

To begin with, the principal witnesses to the President's alleged scheme to obstruct justice testified that there was no such scheme. Monica Lewinsky has clearly and consistently maintained that no one ever asked or encouraged her to lie, and that she was never promised a job for her silence. Betty Currie, the President's secretary, and Vernon Jordan, a distinguished attorney, also exonerated the President of any wrongdoing or any conspiracy with them to obstruct justice. For example, Ms. Currie testified that the President did not ask her on December 28, 1997, or at any time, to obtain and hide gifts he had given Ms. Lewinsky, and Mr. Jordan testified that his involvement in Ms. Lewinsky's job search was unrelated to any participation by Ms. Lewinsky in the now-settled Jones case. The Managers argue that such exculpatory testimony "may well take on a sinister, or even criminal connotation when observed in the context of the whole plot," [53] but I fail to see why exculpatory testimony cannot be viewed for what it is: exculpatory.

The Managers do their best to transmogrify other exculpatory testimony into evidence of criminality. For example, Ms. Lewinsky testified that the President declined to review her affidavit before she signed it and did not discuss the content of the affidavit with her "at all, ever." [54] Manager Rogan cited this as evidence of obstruction on the theory that the President would have reviewed the affidavit if he really believed it could be truthful. In case we rejected this theory, Manager McCollum speculated that the President had reviewed 15 prior drafts of the affidavit—speculation at odds with Ms. Lewinsky's testimony that she did not show the President her affidavit in final or draft form. But neither Mr. Rogan's theory nor Mr. McCollum's speculation can overcome or obscure the fundamentally exculpatory nature of Ms. Lewinsky's testimony on this point. Indeed, if the President had reviewed or discussed Ms. Lewinsky's affidavit, the Managers would doubtless have trumpeted the incident as proof positive of obstruction.

Unable to conjure inculpatory evidence out of the President's refusal to review Ms. Lewinsky's affidavit, the Managers invited the Senate to infer guilt from the "fact" that it was the President, not Ms. Lewinsky, who benefitted from the filing of her affidavit. Manager Bryant went further, arguing that Ms. Lewinsky "had no motivation, no reason whatsoever" to want to avoid testifying in the Jones case.[55] But when Manager Bryant questioned Ms. Lewinsky on this point, she corrected him:

"Q. [Y]ou didn't file the affidavit for your best interest, did you?

A. Uh, actually, I did.

Q. To avoid testifying.

A. Yes." [56]

This testimony should have come as no surprise, since most people would want to avoid the time, expense, and embarrassment of being dragged into a civil lawsuit to testify about their private affairs. Moreover, Ms. Lewinsky had already made clear that she had sought to conceal her relationship with the President in a vain attempt to avoid being "humiliated in front of the entire world." [57] On her own initiative, she devised code names for use when communicating with the President's secretary [58]; deleted correspondence from her computer and urged Linda Tripp to do

the same[59]; and composed false and misleading "talking points" for Ms. Tripp to use in the Jones case. In fact, Ms. Lewinsky was admittedly "so desperate" for Linda Tripp not to reveal anything about the relationship that she "used anything and anybody that [she] could think of as leverage with her."[60]

Equally unavailing was the Managers' insistence that the President must have known Ms. Lewinsky's affidavit would be false because no truthful affidavit could have saved her from having to testify. Both the President and Ms. Lewinsky testified that, in their view, it was possible to craft a truthful affidavit that might have accomplished this objective. The Managers have never explained why we should not credit this unrebutted testimony.

The Managers have stretched the facts in other ways as well, most notably with respect to the timing of Ms. Lewinsky's job search. In their Trial Brief, in their opening presentations, and in their charts, the Managers posited that Mr. Jordan intensified his efforts to find Ms. Lewinsky a job on December 11, 1997, only after, and because, the judge in the Jones case ordered the President to answer far-ranging questions about other women. The same theory appeared at page 11 of the Majority Report prepared for the House of Representatives.

The President's counsel, in their opening presentations to the Senate, made clear beyond any doubt that Mr. Jordan met with Ms. Lewinsky before the judge issued her ruling, and that the meeting had been scheduled several days before that. Without acknowledging their error, the Managers retreated to the argument that Mr. Jordan's assistance on December 11 was triggered not by Judge Wright's order, but rather by the appearance of Ms. Lewinsky's name on the witness list six days earlier. But the Managers themselves refuted this argument in their Trial Brief, which states that there was "still no urgency to help Ms. Lewinsky" after the witness list arrived on December 5.[61] Moreover, although Manager Hutchinson later insinuated that Mr. Jordan and the President discussed Ms. Lewinsky's job search during their meeting on December 7,[62] the Managers' Trial Brief acknowledges that the December 7 meeting was "unrelated" to Ms. Lewinsky.[63]

More generally, the Managers failed to show any connection between Ms. Lewinsky's status as an affiant and possible deponent in the Jones case and her New York job search. Every witness to testify on this point, including the President, Ms. Lewinsky, and Mr. Jordan, agreed that those events were unrelated. Beyond this, the record is clear that Ms. Lewinsky first mentioned the possibility of moving to New York in early July 1997; that people other than Mr. Jordan tried to help Ms. Lewinsky get a job at the United Nations in early October 1997; and that Ms. Lewinsky notified her employer that she would be leaving her job and moving to New York in November 1997—all well before her name surfaced on the Jones witness list.

The Managers have also stretched and distorted the evidence regarding the box of gifts that Ms. Currie retrieved from Ms. Lewinsky on or about December 28, 1997. The Managers have argued that the Senate "may reasonably presume" that Ms. Currie retrieved the gifts, which had been subpoenaed by the Jones attorneys, at the behest of the President.[64] In making this argument, the Managers ask us to disregard Ms. Lewinsky's testimony that it was her idea to give the gifts to Ms. Currie; the President's testimony that he never told Ms. Currie to retrieve the gifts; Ms. Currie's testimony that it was Ms. Lewinsky, not the President, who asked her to retrieve the gifts; and the fact that the President gave Ms. Lewinsky additional gifts on the very morning that he is alleged to have asked for them back. They also ask us to ignore Ms. Lewinsky's testimony that she decided on her own to protect her own privacy by turning over only "innocuous" gifts to the Jones lawyers.[65] Finally, they ask us to ignore exculpatory information concealed by Mr. Starr and revealed to the Senate for the first time in Ms. Lewinsky's deposition that the President's statement, "Well, you have to turn over whatever you have," sounded familiar to her.

The Managers have made much of a conversation between Ms. Lewinsky and Mr. Jordan on December 31, 1997, that touched upon certain notes, or possibly drafts of notes, Ms. Lewinsky wrote to the President. According to Ms. Lewinsky, Mr. Jordan suggested "something th[e] effect" of, "check to make sure they are not there," which Ms. Lewinsky interpreted to mean, "get rid of whatever is there."[66] Mr. Jordan recalled having discussed the notes with Ms. Lewinsky, but denied having told her to destroy them. Did Ms. Lewinsky misunderstand Mr. Jordan, or is one witness lying? The Senate need not decide, since by either account, the President was not a party to any conversation about notes and, indeed, neither the notes nor the December 31 conversation between Ms. Lewinsky and Mr. Jordan are mentioned in the two Articles of Impeachment approved by the House.

Perhaps the longest stretch by the Managers is their theory regarding presidential aides Sidney Blumenthal, John Podesta, and Bruce Lindsey. It simply can-

not be that the target of a grand jury investigation obstructs justice by making false or misleading denials of wrongdoing in personal conversations with friends and colleagues, even if he knows that they may be compelled to testify about those conversations. Indeed, until recently, most federal courts held that false denials of wrongdoing—even when made under oath or to a federal agent—could not be a basis for criminal liability.

The Managers have focused particular attention on the President's conversation with Sidney Blumenthal on January 21, 1998, the day the Lewinsky scandal erupted. According to Mr. Blumenthal, the President said that Ms. Lewinsky had told him that she was called "the stalker" by her peers, and that she would claim they had an affair because then she would not be known as "the stalker" any more. Curiously, Ms. Lewinsky herself, in the now-famous "talking points" she prepared before her relationship with the President became public, encouraged Ms. Tripp to defuse questions about Ms. Lewinsky by saying, "[S]he turned out to be this huge liar. I found out she left the W[hite] H[ouse] because she was stalking the P[resident] or something like that."[67] Ms. Lewinsky acknowledged in her original proffer to Mr. Starr that she was well aware of her reputation at the White House and sought a detail from the Pentagon "so people could see Ms. L[ewinsky]'s good work and stop referring to her as 'The Stalker.'"[68] Regardless, we can all agree that if the President tried to conceal his own misconduct by maligning Ms. Lewinsky, he acted shamefully. But this is a far cry from acting criminally.

The Managers asked us to look at the "big picture". The "big picture" with respect to Ms. Lewinsky is that she had no intention of revealing her relationship with the President, regardless of whether he helped her find a new job; she acted independently and in her own best interests in filing her affidavit in the Jones case; she originated and carried out her plan to hide evidence from the Jones lawyers; and Linda Tripp rather than Bill Clinton was her principal advisor and ultimate betrayer. In fact, the only crimes shown to have possibly occurred are not high crimes but those for which Ms. Lewinsky and Ms. Tripp have received immunity from prosecution from Mr. Starr.

What remains when you sweep aside the cobwebs of unsupported speculation and conspiracy theory? To my mind, the case on obstruction boils down to the charge that the President, in the wake of his deposition in the Jones case, "coached" his secretary about what to say if asked about Ms. Lewinsky. The President has argued that Ms. Currie was not then a witness in the Jones case and was not likely to be one given the approaching deadline for completing discovery. Moreover, he did not know that Mr. Starr had initiated an investigation. In fact, once he learned that Mr. Starr was investigating and that Ms. Currie might be a witness, the President told Ms. Currie, "Don't worry about me. Just relax, go in there and tell the truth."[69]

I was seriously troubled by the President's counsel's initial suggestion that Ms. Currie was never subpoenaed in the Jones case. Still, Mr. Ruff's candid correction and apology to the Senate stands in stark contrast to the Managers' refusal to correct their own misleading representations.

In the end, reasonable minds may differ over why the President spoke to Ms. Currie as he did in mid-January 1998. His explanation—that he was "trying to think of the best defense we could construct in the face of what I thought was going to be a media onslaught"[70]—is not implausible. Using a trusted employee as a sounding board to test responses that might later be made public is also not implausible nor criminal. The President also had a legitimate interest in determining whether Ms. Currie was the source of the Jones lawyers' apparent knowledge regarding Ms. Lewinsky. In the end, in light of the plausible and innocent explanations for these conversations, I do not accept as proven beyond a reasonable doubt the Managers' conclusion that they were criminal "coaching" sessions. I cannot vote to overturn a national election based on the ambiguous record of this discrete episode.

Back on March 8th of last year, one of my Republican colleagues on the Judiciary Committee stated his view that no impeachment proceeding should be brought unless there was "an open-and-shut case" because "Americans cannot stand the trauma of an impeachment matter unless it is cut-and-dried."[71] Even more clearly, the country cannot tolerate a President's being removed from office based on the shifting patchwork of circumstantial evidence and surmise that the Managers have concocted.

C. There Was No Need to Call Witnesses

Witnesses would not fill the holes in the Managers' case.

The Managers only became interested in hearing from witnesses once they faced trouble obtaining a conviction in the Senate. They had an opportunity to interview witnesses when this matter was still before the House. But the House Judiciary

Committee called no fact witnesses. The House of Representatives called no witnesses at all. Rather, the House Republicans voted out these Articles based on what they were told by Special Prosecutor Starr.

They took the position that witnesses were not necessary. For example, in November 1998, Manager Gekas stated that "[b]ringing in witnesses to rehash testimony that's already concretely in the record would be a waste of time and serve no purpose at all."[72] Similarly, on December 19, 1998, during the floor debate on the articles, Manager Hyde stated:

"No fact witnesses, I have heard that repeated again and again. Look, we had 60,000 pages of testimony from the grand jury, from depositions, from statements under oath. That is testimony that we can believe and accept. We chose to believe it and accept it. Why reinterview Betty Currie to take another statement when we already had her statement? Why interview Monica Lewinsky when we had her statement under oath, and with a grant of immunity that if she lied she would forfeit?"[73]

Having chosen to proceed in the House without witnesses, the Managers were in no position to demand that the Senate hear witnesses. A Senate impeachment trial is not a make-up exam for an incomplete inquiry by the House.

In attempting to explain his inconsistent positions on witnesses, Manager Hyde said, "we were operating under time constraints which were self-imposed but I promised my colleagues to finish it before the end of the year. I didn't want it to drag out."[74] But self-imposed time constraints do not begin to explain why Mr. Hyde's Committee declined to call a single fact witness. The Committee did hold two day-long hearings. It heard from a panel of convicted felons who testified, to nobody's surprise, that perjury is a crime. And it heard from the prosecutor, Kenneth Starr, who had no first-hand knowledge of any facts in the case, and had not even spoken with anyone who had. Those two days could have been spent hearing fact witnesses and surely they would have been, if the Committee majority thought for one moment that fact witnesses would have any new and incriminating evidence to share.

Mr. Hyde's second justification for failing to call witnesses in the House was grounded in his mistaken view of that body's role in the impeachment process. According to Mr. Hyde, "[t]he threshold in the House was for impeachment, which is to seek a trial in the Senate. . . . All we could do was present evidence sufficient to convince our colleagues that there ought to be a trial over here in the Senate."[75] I have already explained the fallacy of this position. When these Articles of Impeachment fail, as I believe they must, I hope it will send a clear message to the House of Representatives not to do a slapdash, partisan job on something as momentous and wrenching for the nation as a presidential impeachment.

Contrary to the suggestions of some Managers, there is no authority for the notion that the Senate must hear witnesses. It is true, as one Manager noted, that the Senate heard witnesses during the impeachment trial of President Johnson, notwithstanding the House's failure to do so. As most historians agree, however, the Johnson impeachment was an illegitimate attempt by the Reconstruction Republicans to unseat a President whose policies they disliked. It was hardly a model of procedural correctness.

More recently, in the 1980's, the Senate removed three impeached federal judges without hearing any witnesses on the Senate floor. Indeed, in the impeachment trial of Judge Claiborne in 1986, a majority of the Senate approved a motion by then-Majority Leader Dole not to hear any live testimony. Instead, in each case, the Senate reviewed a written record of testimony prepared by a special committee of Senators. The Senate did this over the objections of the judges being removed.

If the President is willing to forego the opportunity to cross-examine the witnesses being relied upon by the Managers, that eliminates the most pressing need for further discovery in this matter. After all, Ms. Lewinsky, Ms. Currie and other witness were interviewed multiple times by the Special Prosecutor's lawyers and investigators and then testified repeatedly before the grand jury. That is about as one sided as it gets—no cross examination, no opportunity to compare early statements with the way things are reconfigured and re-expressed after numerous preparation sessions with Mr. Starr's office.

These witnesses testified under threat of prosecution by Mr. Starr. Ms. Lewinsky is still under a very clear threat of prosecution, even though she has a limited grant of immunity. This Special Prosecutor has shown every willingness to threaten and prosecute even those who have played minor, tangential roles in his investigations of the President, such as Julie Hiatt Steele, and those who have already been relentlessly pursued in serial prosecutions, such as Webster Hubbell and Susan McDougal.

Thus, if the President has not initiated efforts to obtain more discovery and witnesses and is willing to have the matter decided on the current Senate record, the Managers carried a heavy burden to justify extending these proceedings further and requiring the reexamination of people who have already testified.

During his opening remarks, Manager McCollum said, "I don't know what the witnesses will say, but I assume if they are consistent, they'll say the same that's in here,"[76] referring to the voluminous record before the Senate. Nevertheless, the majority in the Senate acceded to the Managers' request to conduct depositions, which only confirmed that subjecting the witnesses to further examination would not provide any new revelations.

In fact, during the deposition of Ms. Lewinsky, Manager Bryant conceded, "Obviously, you testified extensively in the grand jury, so you're going to obviously repeat things today. We're doing the depositions for the Senators to view."[77] Likewise, during Mr. Jordan's deposition, Manager Hutchinson acknowledged the witness's five prior grand jury appearances and conceded, "I know that probably about every question that could be asked has been asked, but there are a number of reasons I want to go over additional questions with you, and some of them will be repetitious of what's been asked before."[78]

There was no reason to protract this process further merely to hear more redundant testimony live on the floor of the Senate, in light of the President's agreement to forfeit this opportunity to examine the witnesses.

D. Removal Is Not Warranted

The question each Senator must address is whether the conduct charged in the Articles meets the constitutional standard of high crime and misdemeanor warranting conviction and removal. The Managers, the President's counsel and, in particular, former Senator Dale Bumpers have provided us with erudite history lessons on the misconduct the Framers meant to cover by this standard.

We have heard debate whether this standard covers only conduct performed in the President's public capacity or also covers private conduct. A strong case can be made that the Framers never intended that a President be subject to impeachment and removal for private conduct—no matter how egregious. Instead, they purposely limited the ground for impeachment to offenses against the state or grave abuses of official power.

But this argument presents the proverbial "slippery slope." Does this mean that a President may not be removed for murder? The Framers may very well have responded "no." In fact, during the impeachment trial of Chief Justice Samuel Chase, the presiding officer was then Vice-President Aaron Burr, who at the same time was under indictment in both New Jersey and New York for the murder of Alexander Hamilton in a duel in 1804. As Chief Justice Rehnquist notes in Grand Inquests, "This fact caused one contemporary wag to remark that whereas in most courts the murderer was arraigned before the judge, in this court the judge was arraigned before the murderer!"[79] Nonetheless, Burr was not the subject of the impeachment trial, Chief Justice Chase was.

No matter how the Framers would treat serious private misconduct, I do not hesitate to conclude that heinous crimes, such as murder, would warrant the remedy of removal. As Professor Charles Black explained:

"Many common crimes—willful murder, for example—though not subversive of government or political order, might be so serious as to make a president simply unviable as a national leader; I cannot think that a president who had committed murder could not be removed by impeachment. But the underlying reason remains much the same; such crimes would so stain a president as to make his continuance in office dangerous to public order."[80]

The House Judiciary Committee in 1974 summed up the thorny issue of how to evaluate the constitutional standard for impeachable and removable conduct as follows: "Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement—substantiality."[81]

Professor Black also addressed the "substantiality" of the misconduct necessary to meet the constitutional standard for impeachment and removal, with the following illustration:

"Suppose a president transported a woman across a state line or even (so the Mann Act reads) from one point to another within the District of Columbia, for what is quaintly called an 'immoral purpose.' Or suppose a president did not immediately report to the nearest policeman that he had discovered that one of his aides was a practicing homosexual—thereby committing 'misprision of a felony.' Or suppose the president actively assisted a young White House intern in concealing the latter's possession of three ounces of marijuana—thus himself becoming guilty of 'obstruction of justice.' . . . Would it not be preposterous to think that any of this is what

the Framers meant when they referred to 'Treason, Bribery, and other high Crimes and Misdemeanors,' or that any sensible constitutional plan would make a president removable on such grounds?"[82]

In my view, the charges that the President committed perjury and obstructed justice to conceal an illicit relationship with Monica Lewinsky not only fail as a matter of proof, but to the extent they raise legitimate questions about his conduct they fail the test of substantiality. As one Vermonter recently wrote to the editor of the Burlington Free Press, "If there ever was a situation in which the phrase making a mountain out of a mole hill is apt, it is the impeachment trial to date."[83]

The Managers tried to address the criticism that the conduct underlying the Articles is so insubstantial as to leave the American public scratching their heads. Manager Canady conceded that no President "should be impeached and removed from office for trivial or insubstantial offenses. . . . A President should not be impeached and removed from office for a mistake of judgment. He should not be impeached and removed from office for a momentary lapse."[84] Similarly, Manager Graham acknowledged "absolutely" that reasonable people could disagree about whether the President should be removed, even were the charges proven.[85] Manager Graham further opined during questioning by Senators that:

"I would not want my President removed for any criminal wrongdoing. I would want my President removed only when there was a clear case that points to the right decision for the future of the country. . . . I would not want my President removed for trivial offenses, and that is the heart of the matter here."[86]

My decision on this matter should not be misinterpreted to mean that I countenance perjury or obstruction of justice, or that I do not appreciate the need for enforcement of our laws prohibiting such conduct for the functioning of our judicial system. If committed, these are serious crimes. Nevertheless, as Manager Graham recognized, reasonable people can and do disagree on the ultimate questions in this trial.

I do not agree with the Managers that they have proven these crimes were committed or that the conduct at issue here is sufficiently heinous to warrant impeachment and removal of the President. Chairman Henry Hyde recognized that "one hardly exhausts moral imagination by labeling every untruth and every deception an outrage."[87]

The American people understand this point instinctively. In my home State of Vermont, for instance, the majority of people are overwhelmingly opposed to the removal of this President from office. They were against it in August 1998, when the House posted Mr. Starr's salacious referral on the Internet. They were against it in November 1998, when Mr. Starr appeared before the House Judiciary Committee to try to breath some life back into his case for impeachment. They were against it in December 1998, when the House Republicans made even shriller pitches for impeachment to the American people. And judging from the calls and mail I have received, Vermonters are more certain than ever that they want Bill Clinton to serve out his term.

Of course, we must not be led by the polls. The Framers wanted impeachments to be tried in the Senate, not in the court of public opinion. This is not a referendum. Still, whether the evidence is sufficient to warrant the President's removal turns at least in part on whether it makes him unfit to govern, and on that question, the voice of the governed should be heard.

The Managers have eloquently expressed their concern about the "kind of message" it would send to America should the Senate refuse to convict and remove the President on the Articles. Chairman Hyde expressed his view that the message would be that "charges of perjury, obstruction of justice are summarily dismissed—disregarded, ignored, brushed off" and that there is a double standard for the President.[88]

With all due respect for the Managers' belief on this score, I disagree. First, our assessment of whether the President's personal misconduct meets the constitutional standard for impeachment, conviction and removal should not be misconstrued to reflect our views on the seriousness of perjury or obstruction of justice. Professor Tribe, in his testimony last November before a House Judiciary subcommittee confronted this issue directly, stating:

"It is always possible to argue, when confronted by serious crime, that the system would crumble if everyone followed the wrongdoer's example. If everyone took President Richard Nixon's allegedly false filing of tax returns under oath, including backdating documents, as a model to emulate, the nation's tax system, and thus its defenses, would crumble. Yet there was no realistic basis to suppose that the Nixon example would start any such stampede, and the simple proposition that, if all did as Nixon had done, the consequences would be catastrophic did not mislead the House Judiciary Committee into treating the President's alleged tax evasion as an

impeachable offense: By a vote of 26–12, the Committee soundly declined to treat it as such."[89]

Second, the Managers are also wrong that Senate acquittal of the President would essentially set-up a "double-standard" and put the President above the law. The Managers ignore the fact that the Constitution itself establishes a purposely high and difficult standard for the Senate to remove a duly elected head of a co-equal branch of government. In a court of law, not a Senate court of impeachment, the President, in his personal capacity, stands subject to the same standard as any American.

VI. PRIOR JUDICIAL IMPEACHMENTS FOR PERJURY

Just ten years ago, the Senate voted to convict two Federal judges on charges of perjury. The Managers read those precedents to mean that perjury, if proved, is always an impeachable offense—that Presidents ought not be held to a lower standard of impeachability than judges. While the failure of proof in this case obviates the need to resolve the precedential effect, if any, that judicial impeachments may have on the impeachment of a President, the Managers' simplistic, "one-size-fits-all" approach is unsound.

Perjury is not included in the impeachment section of Article II of the Constitution, even though, as Manager Buyer noted, the Framers were familiar with the crime.[90] Treason is the defining crime in the Constitution—it is a crime against and undermining the very existence of the Government. Bribery is also expressly included—no officer of the United States can continue if he is corrupted by accepting a bribe to do something other than faithfully execute his public duties. Perjury may, if proved, provide a basis for impeachment, but only if it is determined to be within "other high Crimes or Misdemeanors."

In the recent judicial impeachments, the lies at issue were aimed at concealing gross abuses of official power. Judge Alcee Hastings lied to conceal his participation in a conspiracy to fix cases in his own court. Judge Walter Nixon lied to conceal his corrupt efforts to influence a state prosecutor to drop a case. Significantly, Judge Nixon had been convicted by a Federal jury and was serving a 5-year prison sentence at the time he was impeached and removed; he simply could not continue to function as a Federal judge and perform his duties.

House Managers have also referred to the impeachment of a third judge, Judge Harry Claiborne, but he was impeached for filing a false tax return and not perjury per se. In any event, as with Judge Nixon, Judge Claiborne had been convicted after a jury trial and was serving a federal prison term when he was impeached.

By contrast, President Clinton is not accused of lying to conceal public misconduct. He is accused of lying to conceal the "nature and details" of an extramarital affair—an affair that he admitted had occurred.

Beyond this, there are very basic differences in terms and functions between Federal judges and the President. Judges are appointed for life. Presidents are elected for fixed terms and accountable in political terms. A President can be subject to review by the people if he runs for reelection. Moreover, removing an appointed Federal judge, while extremely serious, implicates none of the momentous, anti-democratic consequences of removing an elected President.

Another difference between Federal judges and the President is that, under the Constitution, only the former "hold their Offices during good Behaviour."[91] The proposition, however, that this clause creates a different constitutional standard for removal of judges than for removal of the President or other civil officers is dangerous. Such an interpretation would invite attacks on the independence of the federal judiciary and undermine the balance among the three co-equal branches of our federal government. Indeed, Alexander Hamilton opined in Federalist No. 79 that impeachment was the only provision for removal "which we find in our own Constitution in respect to our own judges."

The past few years have seen unprecedented attacks on controversial decisions by Federal judges. Should such decisions be deemed malfeasance by the party in control of Congress, then impeachment proceedings against judges who render unpopular decisions could provide a platform for endless political posturing. More importantly, this would chill the independent operation of our Federal judiciary.

As Professor Michael Gerhardt has explained, the good behavior clause does not mean that Federal judges may be impeached on the basis of a lower standard than the President, but it does suggest that they may be impeached "on a basis that takes account of their special duties or functions."[92] A judge who lies under oath is uniquely unfit to continue in an office that requires him to administer oaths and sit in judgment. It is perfectly appropriate for the Senate when sitting as a court of impeachment to take into account the type of duties that the impeached official is called upon to perform and whether the charges, if proved, clearly impair the offi-

cial's ability to perform those duties. The outcome of this analysis may very well differ depending on the job of the impeached official.

VII. "FINDINGS OF FACT" FALLACIES

As the impeachment trial wore on, without any prospect of a conviction and removal, a popular Republican exit strategy was to force a preliminary vote on so-called "findings of fact" that the President committed perjury and obstructed justice, to be followed by a second vote on removal. I opposed this initiative because, in my view, it reflected a basic misunderstanding of the Senate's constitutional function when sitting as a court of impeachment.

The Senate's constitutional role is to determine whether to convict the President of an impeachable offense and remove him from office. This is a unitary question, requiring a unitary answer. In recognition thereof, the Senate has rules prohibiting dividing articles of impeachment.

A presidential impeachment trial is not an appropriate forum for "finding" that a public official has committed a crime. Crime and punishment are issues expressly reserved by the Constitution to our criminal courts, where an accused is entitled to due process rights far in excess of the minimal procedural protections being accorded the President in the Senate trial. In the current case there are also additional complicating factors since the Senate made up its procedures as it went along and the specific charges against the President have constantly shifted.

Impeachment is not about punishing the officeholder but about protecting the public. Senator George Edmunds of Vermont explained in 1868 that "[p]unishment by impeachment does not exist under our Constitution. . . . [The accused] can only be removed from the office he fills and prevented from holding office, not as punishment, but as a means merely of protection to the community. . . ."[93] Our focus must be on whether the conduct with which the House has charged President Clinton has been proven and warrants his removal from office to protect the public.

Branding the President is not the function of impeachment. On the contrary, a congressional finding of guilt for criminal conduct would be an illegitimate exercise in shaming the President and an abuse of the impeachment process in support of a future criminal prosecution, which recent leaks from prosecutor Starr's office confirm he is considering.

A preliminary vote on guilt in the form of "findings of fact" would set the dangerous precedent that a Senate impeachment trial could be used for the purpose of criticizing conduct that the constitutionally-required number of Senators did not believe was impeachable. The last protection against impeachment by an opposing party with majority control of Congress would be eviscerated. This would trivialize the constitutional impeachment process and invite future illegitimate impeachments.

"Findings of fact" that the President committed the acts charged in the Articles would be tantamount to conviction on the impeachment Articles themselves and more accurately described as "findings of guilt" without the remedy prescribed by the Constitution. As a matter of constitutional law and Senate practice, such "findings" cannot and should not be separated from the vote on removal. Article II, section 4 of the Constitution provides that, upon conviction by the Senate, the President "shall be removed from Office." By making removal mandatory upon conviction, the Constitution precludes the Senate from taking the politically-expedient, oxymoronic route of convicting without removing.

Proponents of the Republican proposals pointed to eighteenth century precedents long ago repudiated. In the first three judicial impeachment trials that ended in conviction, the Senate, having voted to convict, took a separate vote on removal from office. But in each case, the first vote required a two-thirds supermajority, as specified by the Constitution, not a simple majority as is now proposed. Moreover, the Senate rejected this early precedent in 1936; since then, it has been the understanding of the Senate that removal follows automatically from conviction. The lack of solid precedent for "findings of fact" speaks volumes.

This unprecedented exit strategy was opposed by Republicans and Democrats who did not want to circumvent the Constitution merely to find a convenient end to this impeachment trial. Former Judge Robert Bork termed these proposals "preposterous readings of the Constitution as well as utterly impractical."[94] Former Reagan Attorney General Edwin Meese cautioned that the Senate "should not flirt with unconstitutional action, especially where conviction and removal of the President are at stake."[95]

Robert Frost said that the best way out is always through. In the end, the Senate's best way out was to fulfill its proper role in the impeachment process by voting on the Articles.

VIII. EFFECT ON CHILDREN AND NATIONAL SECURITY

My consideration of the Articles would be incomplete without addressing one final point raised by the House Managers about the effect of our decision. They have cautioned that should this President be acquitted, the consequences would be dire for our children, military morale, and the functioning of our judicial system. I reject these doomsday scenarios and believe that the precedent set by conviction without proof and removal without constitutional justification would be far more dangerous for our Republic.

For example, when he was asked whether acquitting the President would endanger the stability of our government, Manager Hyde responded that it would, because it would set a bad example for our children.[96] I was surprised by this answer. This is hardly the sort of danger that the Framers of the Constitution were concerned with when they met in Philadelphia in 1787. They had just paid a great price to liberate themselves from a tyrant. They wanted to ensure that their new Chief Executive could not become a tyrant. They wanted to ensure that he could be removed if he posed a threat to the democratic system of government that they had fought so hard to establish. They were not trying to ensure that the President would be a good role model for the nation's children.

More importantly, as a father and grandfather, I work hard to be a role model for my children and grandchild. They do not need the President to serve that role. They do not have to look to the Congress to impeach and remove this President to know the difference between right and wrong.

I trust the parents of America to raise their children, to explain what the President did was wrong, and to point out the humiliation and other consequences he has brought on himself and his Presidency for an entire year and for as long as history books are written. I do not believe that the Constitution calls upon us to remove a duly elected President for symbolic purposes.

The Managers have also struggled to raise the specter that a vote of acquittal on the Articles would risk our national security by undermining the morale of our military, who would appear to be held to a double standard. I have more faith in our military. If the Managers' position were correct then we would have seen ill-effects from President Bush's pardon of former Defense Secretary Caspar Weinberger, who had been indicted on several counts, including for lying before a grand jury. But we did not.

In fact, at that time, Manager Hyde applauded the decision to pardon Mr. Weinberger, saying, "I'm glad the president had the chutzpah to do it." Far from censuring this accused perjurer or deploring the bad example he had set, Mr. Hyde denounced the Independent Counsel who had brought this "political" prosecution and stated: "I just wish [us] out of this mess, this six years and this $30–40 million that has been spent [by independent counsel Lawrence E. Walsh]. It's endless and it is a bottomless pit for money, with no accountability."[97]

The fact that the Constitution sets a high standard for removal of a President has no bearing on the standard of conduct applicable to military service. In addition, it does not place the President above the law. Indeed, all of us in Congress have special immunity under the speech and debate clause. That has never been argued to place us above the law nor undermine military morale.

IX. DELIBERATIONS ON DISPOSITIVE TRIAL MOTIONS SHOULD BE OPEN

Accustomed as we and the American people are to having our proceedings in the Senate open to the public and subject to press coverage, the most striking prescription in the "Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials" has been the closed deliberations required on any preliminary question or motion, and now on the final question whether the Articles of Impeachment should be sustained or rejected.

The requirement of closed deliberation, more than any other rule, reflects the age in which the rules were originally adopted in 1868. Even in 1868, not everyone favored secrecy. During the trial of President Johnson, the senior Senator from Vermont, George F. Edmunds, moved to have the closed deliberations on the Articles transcribed and officially reported "in order that the world might know, without diminution or exaggeration, the reasons and views upon which we proceed to our judgment."[98] The motion was tabled.

In the 130 years that have passed since that time, the Senate has seen the advent of television in the Senate Chamber, instant communication, distribution of Senate documents over the Internet, the addition of 46 Senators representing 23 additional States, and the direct election of Senators by the people in our States.

Opening deliberations would help further the dual purposes of our rules to promote fairness and political accountability in the impeachment process. I supported

the motion by Senators Harkin, Wellstone and others to suspend this rule requiring closed deliberations and to open our deliberations on Senator Byrd's motion to dismiss and at other points earlier in this trial. We were unsuccessful. Now that the Senate has approached final deliberations on the Articles of Impeachment, I had hoped that this secrecy rule would be suspended so that the Senate's deliberations would be open and the American people could see them. In a matter of this historic importance, the American people should be able to witness their Senators' deliberations.

Some have indicated objection to opening the Senate's final deliberations because petit juries in courts of law conduct their deliberations in secret. Analogies to juries in courts of law are misplaced. I was privileged to serve as a prosecutor for eight years before I was elected to the Senate. As a prosecutor, I represented the people of Vermont in court and before juries on numerous occasions. I fully appreciate the traditions and importance of allowing jurors to deliberate and make their decisions privately, without intrusion or pressure from the parties, the judge or the public. The sanctity of the jury deliberation room ensures the integrity and fairness of our judicial system.

The Senate sitting as an impeachment court is unlike any jury in any civil or criminal case. A jury in a court of law is chosen specifically because the jurors have no connection or relation to the parties or their lawyers and no familiarity with the allegations. Keeping the deliberations of regular juries secret ensures that as they reach their final decision, they are free from outside influences or pressure.

As the Chief Justice made clear on the third day of the impeachment trial, the Senate is more than a jury; it is a court. Courts are called upon to explain the reasons for decisions. Furthermore, to the extent the Senate is called upon to evaluate the evidence as is a jury, we stand in different shoes than any juror in a court of law. We all know many of the people who have been witnesses in this matter; we all know the Managers—indeed, one Senator is a brother of one of the Managers—and we were familiar with the underlying allegations in this case before the Managers ever began their presentation.

Because we are a different sort of jury, we shoulder a heavier burden in explaining the reasons for the decisions we make here. I appreciate why Senators would want to have some aspects of our deliberations in closed session: to avoid embarrassment to and protect the privacy of persons who may be discussed. Yet, on the critical decisions we are now being called upon to make on our votes on the Articles themselves, allowing our deliberations to be open to the public helps assure the American people that the decisions we make are for the right reasons.

In 1974, when the Senate was preparing itself for the anticipated impeachment trial of former President Richard Nixon, the Committee on Rules and Administration discussed the issue of allowing television coverage of the Senate trial. Such coverage did not become routine in the Senate until later in 1986. In urging such coverage of the possible impeachment trial of President Nixon, Senator Metcalf (D–MT), explained:

"Given the fact that the party not in control of the White House is the majority party in the Senate, the need for broadcast media access is even more compelling. Charges of a 'kangaroo court,' or a 'lynch mob proceeding' must not be given an opportunity to gain any credence whatsoever. Americans must be able to see for themselves what is occurring. An impeachment trial must not be perceived by the public as a mysterious process, filtered through the perceptions of third parties. The procedure whereby the individual elected to the most powerful office in the world can be lawfully removed must command the highest possible level of acceptance from the electorate."[99]

Opening deliberation would ensure complete and accurate public understanding of the proceedings and the reasons for the decisions we make here. Opening our deliberations on our votes on the Articles would tell the American people why each of us voted the way we did.

The last time this issue was actually taken up and voted on by the Senate was more than a century ago in 1876, during the impeachment trial of Secretary of War William Belknap. Without debate or deliberation, the Senate refused then to open the deliberations of the Senate to the public. That was before Senators were elected directly by the people of their State, that was before the Freedom of Information Act confirmed the right of the people to see how government decisions are made. Keeping closed our deliberations is wholly inconsistent with the progress we have made over the last century to make our government more accountable to the people.

Constitutional scholar Michael Gerhardt noted that "the Senate is ideally suited for balancing the tasks of making policy and finding facts (as required in impeachment trials) with political accountability."[100] Public access to the reasons each Sen-

ator gives for his vote on the Articles is vital for the political accountability that is the hallmark of our role.

I likewise have urged the Senate to adjust these 130-year-old rules to allow the Senate's votes on the Articles of Impeachment to be recorded for history by news photographers. This is a momentous official and public event in the annals of the Senate and in the history of the nation. This is a moment of history that should be documented for both its contemporary and its lasting significance.

Open deliberation ensures complete accountability to the American people. Charles Black wrote that presidential impeachment "unseats the person the people have deliberately chosen for the office." [101] The American people must be able to judge if their elected representatives have chosen for or against conviction for reasons they understand, even if they disagree. To bar the American people from observing the deliberations that result in these important decisions is unfair and undemocratic.

The Senate should have suspended the rules so that our deliberations on the final question of whether to convict the President of these Articles of Impeachment were held in open session. After this impeachment trial is over, I urge the Senate to reexamine the rule on closed deliberations in impeachment trials and revise the rule to reflect the open and accountable government that is now the pride and hallmark of our democracy.

X. CONCLUSION

The House Managers have warned that should the President be acquitted we will set a dangerous precedent and damage the "rule of law." I strongly disagree. Instead, we will have set the following important precedent for the future: that partisan impeachment drives are doomed to failure.

It is up to the Senate, now, to restore sanity to this process, exercise judgment, do justice and act in the interests of the nation. We all knew before the trial began that history will judge us on whether this case was resolved in a way that serves the good of the country, not the political ends of any party. I commend my colleagues in the Senate and in particular Majority Leader Lott and Minority Leader Daschle for working hard to maintain bipartisanship and fairness in our proceedings.

In all the references to the first presidential impeachment trial, a little-known historical fact has been overlooked. After the unsuccessful effort to remove him from office, former President Johnson returned to serve this country as a United States Senator. I look forward to the day when the Senate has concluded the impeachment of President Clinton and the Senate can close its work as an impeachment court and turn to the other important work we face as Senators.

FOOTNOTES

1. Cong. Rec., Jan. 7, 1997, p. S5.
2. U.S. Constitution, Art. IV, sec. 2.
3. House Comm. on the Judiciary, Hearing before the Subcomm. on the Constitution, Background and History of Impeachment, 105th Cong., 2d Sess., Ser. No. 63, Nov. 9, 1998, p. 228 [hereinafter "Hearing of Nov. 9, 1998"].
4. Cong. Rec., Jan. 21, 1999, p. S845.
5. Robert Jackson, "The Federal Prosecutor," Address Delivered at the Second Annual Conference of United States Attorneys, Apr. 1, 1940, quoted in *Morrison* v. *Olson*, 487 U.S. 654, 728 (1988) (Scalia, J., dissenting).
6. See Michael Frisby, "Starr is Assailed for Reportedly Probing Alleged Extramarital Affairs by Clinton," The Wall Street Journal, June 26, 1997, sec. B, p. 2 (quoting Sen. Patrick Leahy).
7. House Comm. on the Judiciary, Hearing on Impeachment Inquiry: William Jefferson Clinton, President of the United States, Appearance of Independent Counsel, 105th Cong., 2d Sess., Ser. No. 66, Nov. 19, 1998, p. 28 [hereinafter "Hearing of Nov. 19, 1998"].
8. Referral of Independent Counsel Kenneth W. Starr, 105th Cong., 2d Sess., House Doc. 105–310, Sept. 11, 1998, p. 145 [hereinafter "Starr Referral"].
9. Appendices to Starr Referral, Part 1, House Doc. 105–311, Sept. 18, 1998, p. 710 (2/1/98 handwritten proffer by Monica Lewinsky: "Ms. Linda Tripp informed Ms. L that a friend of Ms. Tripp's in the NSC . . . suggested to Ms. Tripp that Ms. L leave Washington, DC."); id., p. 824 (8/6/98 grand jury testimony of Ms. Lewinsky: "I know I had discussed with Linda and either I had the thought or she had suggested that Vernon Jordan would be a good person who is a close friend of the President and who has a lot of contacts in New York, so that might be someone who might be able to help me secure a position in New York, if I didn't want to go to the U.N."); id., p. 1393 (7/27/98 FBI interview of Ms. Lewinsky: "LINDA TRIPP suggested to LEWINSKY that the President should be asked to ask VERNON for assistance").
10. Interview of Kenneth W. Starr by Diane Sawyer on ABC 20/20, Nov. 25, 1998, 10:00 p.m. ET.
11. Statements by Sen. Patrick Leahy, Cong. Rec., Feb. 23, 1998, p. S803; Cong. Rec., Mar. 27, 1998, p. S2696; Cong. Rec., Sept. 24, 1998, p. S10873.
12. 28 U.S.C. § 595(c).

13. Hearing of Nov. 9, 1998, p. 113.
14. Hearing of Nov. 19, 1998, p. 32.
15. Lynn Sweet, "Starr draws bipartisan fire," Chicago Sun-Times, Feb. 1, 1999, p. 13.
16. Hearing of Nov. 9, 1998, p. 101.
17. "Historians in Defense of the Constitution," reprinted in Hearing of Nov. 9, 1998, pp. 334–339; Letter from Law Professors to House of Representatives, reprinted in Hearing of Nov. 9, 1998, pp. 374–385.
18. House Comm. on the Judiciary, Report on Impeachment of Richard M. Nixon, President of the United States, 93rd Cong., 2d Sess., Report No. 93-1305, Aug. 20, 1974 [hereinafter "Rodino Report"], pp. 8–9, reprinted in House Comm. on the Judiciary, Impeachment: Selected Materials, 105th Cong., 2d Sess., Ser. No. 10, Nov. 1998, pp. 28–29.
19. Cong. Rec., Feb. 4, 1999, p. S1228.
20. Cong. Rec., Sept. 11, 1998, H7594.
21. Cong. Rec., Dec. 19, 1998, p. H12036.
22. Cong. Rec., Oct. 8, 1998, p. H10087 (statement by Rep. Cliff Stearns).
23. Cong. Rec., Jan. 15, 1999, p. S273.
24. Cong. Rec., Jan. 15, 1999, p. S273.
25. Cong. Rec., Jan. 22, 1999, p. S887.
26. Hearing of Nov. 9, 1998, p. 282.
27. Letter from Reps. Sherwood Boehlert, Michael N. Castle, Benjamin A. Gilman, and James C. Greenwood to Sen. Trent Lott, reprinted in The New York Times, Dec. 22, 1998, sec. A, p. 28 ("We write as Republicans who voted to impeach President Clinton. . . . We are not convinced, and do not want our votes interpreted to mean that we view removal from office as the only reasonable conclusion of this case").
28. Cong. Rec., Jan. 15, 1999, p. S279.
29. Charles L. Black Jr., Impeachment: A Handbook 8–9 (1974).
30. See Rodino Report, pp. 8–9.
31. T.R. Goldman, "Outtakes From the Final Frame: Transcripts Don't Tell the Whole Story," Legal Times, vol. XXI, No. 37, Feb. 8, 1999, p. 10.
32. Cong. Rec., Feb. 6, 1999, p. S1315.
33. Cong. Rec., Feb. 6, 1999, p. S1318.
34. E.g., *United States* v. *Reilly*, 33 F.3d 1396, 1416 (3d Cir. 1994).
35. Criminal Resource Manual § 1746.
36. E.g., Cong. Rec., Jan. 22, 1999, p. S872.
37. Journal of the Senate, Apr. 18, 1933, pp. 317–318.
38. House Comm. on the Judiciary, Impeachment Inquiry: William Jefferson Clinton, President of the United States—Consideration of Articles of Impeachment, 105th Cong., 2d Sess., Ser. No. 18, Dec. 10–12, 1998, p. 279.
39. Cong. Rec., Jan. 15, 1999, p. S260.
40. Cong. Rec., Oct. 20, 1989, p. S13787.
41. John F. Kennedy, Profiles in Courage 138 (1956).
42. See Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr., 101st Cong., 1st Sess., S. Doc. 101–22, Nov. 13, 1989, pp. 457–458 (statement of Sen. Bob Dole); see also Cong. Rec., Nov. 7, 1989, p. S27700 (statement of Sen. Herb Kohl); Cong. Rec., Nov. 15, 1989, p. S29239 (statement of Sen. Joseph Biden); Cong. Rec., Nov. 21, 1989, p. S31652 (statement of Sen. Frank Murkowski).
43. Michael Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis 113 (1996).
44. Black, supra, p. 17.
45. John R. Labovitz, Presidential Impeachment 196 (1978).
46. Cong. Rec., Jan. 15, 1999, p. S260.
47. Rodino Report (Minority Views), pp. 379–380.
48. Cong. Rec., Feb. 4, 1999, p. S1213.
49. Cong. Rec., Jan. 20, 1999, p. S817.
50. See, e.g., 18 U.S.C. § 1001(b).
51. T.R. Goldman, "'The Blank Stare' and Other Strange Evidentiary Tales from the Senate Trial," Legal Times, vol. XXI, No. 36, Feb. 1, 1999, pp. 1, 18.
52. Cong. Rec., Jan. 21, 1999, p. S846.
53. Cong. Rec., Jan. 14, 1999, p. S64.
54. Cong. Rec., Feb. 2, 1999, p. S1226.
55. Cong. Rec., Jan. 14, 1999, p. S231.
56. Cong. Rec., Feb. 4, 1999, p. S1219.
57. Appendices to Starr Referral, Part 1, p. 954 (8/6/98 grand jury testimony of Monica Lewinsky).
58. Supplemental Materials to Starr Referral, Part 1, p. 555 (1/27/98 grand jury testimony of Betty Currie).
59. Appendices to Starr Referral, Part 1, p. 1187 (8/20/98 grand jury testimony of Monica Lewinky).
60. Appendices to Starr Referral, Part 1, p. 901 (8/6/98 grand jury testimony of Monica Lewinsky).
61. Cong. Rec., Jan. 14, 1999, p. S65.
62. Cong. Rec., Feb. 6, 1999, p. S1293.
63. Cong. Rec., Jan. 14, 1999, p. S65.
64. Cong. Rec., Jan. 15, 1999, p. S277.
65. Cong. Rec., Feb. 4, 1999, p. S1222.
66. Appendices to Starr Referral, Part 1, p. 716.
67. Appendices to Starr Referral, Part 1, p. 1243.
68. Appendices to Starr Referral, Part 1, p. 710.

69. Appendices to Starr Referral, Part 1, p. 591.
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74. Cong. Rec., Jan. 22, 1999, p. S887.
75. Cong. Rec., Jan. 22, 1999, p. S887.
76. Cong. Rec., Jan. 15, 1999, p. S267.
77. Cong. Rec., Feb. 4, 1999, p. S1212.
78. Cong. Rec., Feb. 4, 1999, p. S1229.
79. William H. Rehnquist, Grand Inquests 18 (1992).
80. Black, supra, p. 39.
81. House Comm. on the Judiciary, Constitutional Grounds for Presidential Impeachment: Report by the Staff of the Impeachment Inquiry, 93rd Cong., 2d Sess., Feb. 1974, p. 27.
82. Black, supra, pp. 35–36.
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88. Cong. Rec., Jan. 25, 1999, p. S973.
89. Hearing of Nov. 9, 1998, p. 227.
90. Cong. Rec., Jan. 16, 1999, p. S283.
91. U.S. Constitution, Art. III, sec. 1.
92. Gerhardt, supra, pp. 106–107.
93. Cong. Globe Supp'l, Impeachment Trial of President Andrew Johnson, 40th Cong., 2d Sess., vol. 4, p. 426.
94. Robert H. Bork, "Read the Constitution: It's Removal or Nothing," The Wall Street Journal, Feb. 1, 1999, sec. A, p. 21.
95. Edwin Meese III & Todd Gaziano, "Two Impeachment Votes Could Cause Long-Term Harm," Roll Call, vol. 44, No. 53, Feb. 4, 1999, p. 6.
96. Cong. Rec., Jan. 23, 1999, p. S948.
97. "Hyde View on Lying is Back Haunting Him," supra.
98. Cong. Globe Supp'l, Impeachment Trial of President Andrew Johnson, 40th Cong., 2d Sess., vol. 4, p. 424.
99. Comm. On Rules and Administration and its Subcomm. On Standing Rules of the Senate, Hearings on Senate Rules and Precedents Applicable to Impeachment Trials, 93rd Cong., 2d Sess., Aug. 5 and 6, 1974, p. 37.
100. Gerhardt, supra, p. 174 .
101. Black, supra, p. 17.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. GRASSLEY. Mr. Chief Justice, my fellow Senators, as this trial nears the end, we have to ask the question how we got here with a tragedy like this. There are many losers. There are no winners. There are surely no heroes. There are lots of lessons to be learned, and I think all of our prayers ought to go out to those who were ensnared in the web of controversy.

In reflecting on this case and my role in it under the Constitution, the word "sad" comes to mind. I have not relished sitting in judgment of a twice-elected, popular President. I would prefer to make history in other ways. I also regret the nature of the subject of this case. It is not easy having our entire society suddenly thrust into an open, nonstop debate about things that ought to make all of us blush.

Some say this impeachment effort is part of a right-wing conspiracy, it is a Republican plot to get a Democratic President. Let's look at how we got here and see if that argument holds up.

We are here because the President did wrongful acts and he admits to that. We are here because of the independent counsel law. The President himself led the charge to reauthorize the Inde-

pendent Counsel Act. Thirty-three of my colleagues on this side of the aisle were in the Senate at that particular time. All but one of you voted for reauthorization.

On June 30, 1994, the President signed that reauthorization bill. He issued a statement and here is what he said:

> This law, originally passed in 1978, is a foundation stone for the trust between Government and our citizens . . .

He says,

> Opponents called it a tool of partisan attack against Republican Presidents and a waste of taxpayer funds. It was neither. In fact, the independent counsel statute has been in the past and is today a force for Government integrity and public confidence.

Those were the words of President Clinton, June 30, 1994.

Before reauthorization, it was the President himself who advocated the appointment of a special prosecutor. That appointment was made by the President's own Attorney General. After reauthorization, the Attorney General supported the appointment of an independent counsel. The independent counsel was then appointed by a special three-judge panel, as required by law.

Also under the law, the Attorney General can initiate the dismissal of an independent counsel if he oversteps his bounds or acts improperly. Not only was this never done by the President's Attorney General but, in contrast, she even agreed several times to expand his jurisdiction, including to cover the Monica Lewinsky matter.

Also under the law, the independent counsel is obliged to send to the House any evidences of crimes that might be impeachable.

In short, this case came about through a legitimate, legal process. It is a process that historically was vigorously defended by this side of the aisle. There are various checks and balances built into the process. They are designed to prevent abuse by the independent counsel, but they were never triggered, even though the President's own Attorney General could move for dismissal.

No, this President is in this predicament because of his own private wrongdoing and because of public policy he pursued. There is no conspiracy.

The President's actions are having a profound impact, of course, upon our society. His misdeeds have caused many to mistrust elected officials. Cynicism is swelling among the grassroots. His breach of trust has eroded the public's faith in the Office of the Presidency. The President's wrongdoing has painted all of us in Washington with a very broad brush.

In the past 12 months, thousands of Iowans have registered their opinions with me. One letter from a middle school principal speaks volumes.

At an assembly to mark the new school year, a video entitled "Attitude is Everything" was presented to the student body. The video was all about American heroes—college athletes, Olympic medalists, astronauts and world leaders.

Logically, the video also included President Clinton. The school principal wrote to me the following. He said, when the President's picture appeared, the entire student body—ages 11 to 14—snickered. He said their spontaneous reaction struck a chord. He wrote:

> Although they may not fully understand the adult connotations and political ramifications . . . they do know that if you want to be trusted and [if you want to be] respected, you must tell the truth. . . . [A]s an educator in Iowa's public schools for the past 16 years . . . our students' reaction to President Clinton's picture is one of the saddest moments I can recall. In that instant, I realized how deeply his conduct has affected our country.

Mr. Chief Justice, there is that word "sad" again. It seems to come to the fore in people's minds over this case, over this President's conduct, and over the impact it has had on our country.

The true tragedy in this case is the collapse of the President's moral authority. He undermined himself when he wagged his finger and lied to our people on national television, denying that relationship with Ms. Lewinsky. That did more damage to his credibility than any other single act.

There was no better reason than that for the resignation of the President. I did not personally call for his resignation in August. That is something the President should decide on his own. But once you lose your moral authority to lead, you are a failure as a leader. FDR once spoke of the Presidency in this way:

> The Presidency is not merely an administrative office. . . . It is preeminently a place of moral leadership.

Mr. Clinton should take note.

Next, there is the issue of the abuse of power and authority. The President used his position to enter into an improper relationship with a subordinate—not just a subordinate, a young intern. He later used his power to find her a job.

Another abuse of power: The full powers of the White House were on lease to stonewall the process and to attack the credibility of those who investigated him.

This White House has perfected the art of stonewalling around the truth. I fear that future White Houses will learn much from these experts and will refine and improve their own truth-fighting arsenals. Truth and openness will be casualties.

Last, there is the issue of the poor example the President's actions serve for the Nation, especially for our youth. Is it now OK to lie because the President does it? And in the same manner, by wordsmithing, by trying to figure out what the meaning is of the word "is"?

I received a call recently from a mother of a teenage son in Des Moines. All last year, she thought the investigation of the President was a wasteful, partisan witch-hunt. She was totally against the investigation and impeachment.

And then her son got into some serious trouble, and it involved lying. She confronted him with the wrong. Her son responded: "What I told you is the truth as I understood it at the time."

The mother grew furious, and she said at that moment she knew that we couldn't have a President like Bill Clinton. She knew firsthand the damage that his conduct had done to her family and to our country. At that point, she said she changed her position in favor of impeachment.

These are all questions and issues that emerge from the broader contours of this case, outside the narrow charges in the articles.

With respect to the impeachment charges, many of the President's arguments are based on contorted interpretations of the

facts. These interpretations aren't credible. They represent lawyering at its best or, as some would say, at its worst.

It is clear to me that the President committed serious crimes when he coached his secretary, Betty Currie, and when he misled his aides, Sidney Blumenthal and John Podesta. Each of these aides ended up being a witness in official court proceedings. I believe, based on the evidence before the Senate, that the President lied to these witnesses so they would repeat those lies before official court proceedings. That is obstruction of justice.

In addition, I find it very interesting that a power lawyer like Vernon Jordan would be so active in the job hunt for Ms. Lewinsky. Regardless of what she felt or thought, I believe the President was arranging to get her a job. That way she wouldn't provide harmful testimony in the Paula Jones sexual harassment lawsuit. Again, obstruction of justice.

Mr. Chief Justice, these actions weren't just outrageous, and, more important, morally wrong, but they were also illegal. They were a direct assault on the integrity of the judicial process. The President is guilty of the offenses charged under article II.

The first article charges that the President committed perjury on several occasions. While I am not convinced he committed perjury on each occasion charged, I believe he did commit perjury when he lied about his efforts to obstruct justice. That is the fourth count.

I don't believe the President's statement that he was merely trying to refresh his memory when he spoke with Betty Currie about his relationship with Ms. Lewinsky, and I don't believe the President's statement that he was only trying to protect himself from embarrassment when he concocted elaborate lies about Ms. Lewinsky and then conveyed those lies to his aides.

The President was not forthright when he testified before the grand jury. Time and time again, he gave answers that were misleading and sometimes deliberately false. The American people have a right to expect their President to be completely truthful, as they can expect you and me to be completely truthful. And the American people have a right to expect their President to be truthful, especially when placed under oath. I will vote guilty on article I as well.

Mr. Chief Justice, these were not easy decisions. They are the product of soul-searching, as it is for all of you. So they leave me with a good conscience. I believe my votes reflect the truth of what happened in this case.

The Senate is about to close this chapter in American history. It may or may not be the final chapter in this story. Nonetheless, our decision in this impeachment trial will stand against the test of time. You only truly understand the present when it is past. In that respect, future generations will serve as our jury and, in the end, history will serve as the final judge. Thank you.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR LARRY E. CRAIG

Mr. CRAIG. Mr. Chief Justice, I promised to share with the people of Idaho and the Nation what comments I made in the closed

session of the Senate deliberating on the impeachment of President Clinton.

What I told my colleagues as we deliberated was this:

If we were in a church, the minister would admonish us from the pulpit to hate the sin and forgive the sinner. But we're not in a church.

If we were in a court of law, the judge would tell us to hate the crime and punish the criminal. But we're not in a court of law.

We're part of a constitutionally directed impeachment tribunal, and our job is to love the Constitution and protect the Office of the President. Our decision should not be about saving or rejecting William Jefferson Clinton, but about protecting the Office of the President and keeping our Constitution strong.

I believe he committed the crimes and acts charged in the articles of impeachment, and I will vote to convict and remove him from office.

That was my statement to the Senators in closed deliberations, and I stand by it today.

But this statement was not the full explanation of my vote and my reasoning that I believe is owed to the people of Idaho and the Nation. Therefore, let me take a few moments now to clarify why I voted to convict President Clinton on the articles of impeachment.

First, I believe the House made its case on the facts. I was persuaded by what I saw, read, and heard that the President deliberately lied under oath in the case brought by Paula Jones to enforce her civil rights. I was also persuaded that he encouraged others to lie under oath and committed other acts designed to obstruct justice. In reaching these conclusions, it was important to me that the Senate is not bound to a specific constitutional or statutory standard in judging the evidence; instead, each Senator is left to his or her own experience and conscience. That is both the political and judicial nature of the impeachment process prescribed by the Constitution.

However, reaching this conclusion about the facts does not trigger automatic conviction and removal of the President. A Senator must still resolve two questions: whether the acts committed were the kind of "high crimes and misdemeanors" warranting removal from office, and whether the interests of the Nation are served by removal. Impeachment by the House expresses that Chamber's opinion on those two questions, but it is up to the Senate to render final judgment.

And it is these two questions that have caused the most perplexity in this impeachment process—not to mention the most furious debate, handwringing, and logical contortions.

For example, we have heard much during these proceedings about proportionality—in other words, about ensuring that the punishment or sanction fits the crime. Some of our colleagues have suggested that while the crimes of perjury and obstruction of justice may rise to the level of impeachable offenses, that conclusion is not inevitable on every set of facts. More to the point, they argue there is something in this particular case that diminishes the seriousness of the offense or renders it a private, as opposed to public, crime: perhaps the context of the misdeeds, or the subject matter of the perjury, or the motive behind the obstruction of justice.

Yet considerations such as these have not prevented the Government from prosecuting citizens who committed such crimes. Furthermore, while we are not bound by statutory definitions of crimes here, these arguments frustrate the very goal our founders had in mind when they established the extraordinary remedy of impeachment: to protect the executive office and the Nation from a lawless President. The framers of the Constitution believed that governments are established in the first place to protect the rights of the governed. It follows that the most serious breach of duty in public office—the most serious threat to the order of society itself—is for the enforcers of the law to break the law. How much more grave that breach becomes when it is committed by the one individual in the Nation who personifies the Federal Government: the President. How much more abhorrent it is when, in covering up his crimes, that President exploited the very public trust he betrayed.

There is no question in my mind that perjury and obstruction of justice are the kind of public crimes that the Founders had in mind, and the House managers have demonstrated these crimes were committed by the President. As for the excuses being desperately sought by some to allow President Clinton to escape accountability, it seems to me that creating such loopholes would require tearing holes in the Constitution—something that cannot be justified to protect this President, or any President.

This brings me to the final question: whether the public interest will be served by the President's removal from office. Let me say there are those in my State who have been seeking this result ever since the President was elected, because they simply don't agree with him. I, too, generally disagree—sometimes loudly—with President Clinton's approach to public policy.

However, political and policy differences are emphatically not the focus of this question. Instead, the founders intended us to focus on the safety of the Nation. That is a very high threshold, appropriate to the serious impact of the vote we must case. In this case, many are arguing that our Nation is not at risk; we're prosperous; the Government is not collapsing; there is no immediate or external threat to the country.

But I would submit that if a generation of young people are taught by our actions in this case that a lie carries no consequences, then the Nation is at risk. If our citizens conclude that lawlessness in the highest office is acceptable, that their elected representatives are complicit in that corruption, and that nothing can be done to stop it, then the Nation is at risk. If future Presidents think they can go further in lying or obstruction of justice when they apply the "Clinton Indicator," then the Nation is at risk. If the Executive Office of the President is occupied by an individual who is generally believed to have lied and betrayed the public trust—if the symbol, the icon of the Presidency is compromised, the Nation is at risk.

Some have suggested that removing this President from office would put the Nation at risk. That is false argument and something no one should fear. Instead, we should place our faith in the Constitution and the wisdom of its framers, who provided a roadmap for a peaceful, swift, and orderly transition of power to the Vice President. That transition poses no threat to the Nation.

On the other hand, I believe exonerating President Clinton with a vote for acquittal does create a threat to our Nation. In short, I am convinced that the Nation is at risk today—not because of the possibility of the President's removal through the impeachment process, but because of the damage he has caused to the Executive Office of the President, and the damage that continues to be done by his remaining in office.

For all these reasons, I believe my vote to convict and remove this President from office is an appropriate response, a necessary response, a constitutionally compelled response.

I said at the beginning of this process that it would be my goal to ensure that we proceeded in a fair and constitutional manner. I believe we have done so—and managed along the way to generally rise above partisanship and the politics of the day. While I fundamentally disagree with many of my colleagues in the final result, I salute them for their sincerity and the seriousness of their purpose. No matter what the result, the Senate discharged its constitutional duty well.

However, reluctant as I am to say it, I do not believe this sorry chapter in our history is closed. On the first day of this trial, as I watched the Chief Justice take the chair, I was angry—profoundly angry that this President had brought this Nation to this point because of his own self-gratification, setting what was good for himself above what was good for the Nation. It is unconscionable what the President has put the country through, continues to put the country through, and will continue to put the country through for his own personal and political ends. My differences with the President on this point transcend party or policy; I am saddened that this sorry chapter will continue, that the book will be open and the pages of this chapter will be turning as long as this President remains in office. Our young people, our citizens, our Constitution deserve a better end to a better story.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CHRISTOPHER J. DODD*

Mr. DODD. Mr. Chief Justice, 33 days ago, at about this hour, we gathered in the Old Senate Chamber in a closed session to begin the journey that has brought us to where we are today.

We are only hours away from casting what ROBERT C. BYRD has appropriately described as the most important vote any of us have cast or are likely to cast in our service as U.S. Senators.

For only the second time in our Nation's glorious history, we, as temporary custodians of these 100 seats, will decide whether to take the most extraordinary and grave action that could ever be asked of us as Senators. The decision to declare war or amend our Constitution pales in comparison to trying the impeachment of a popularly elected President of the United States.

Unlike the House of Representatives, we did not decide to initiate this impeachment action. We did not seek this burden. It has

*Sen. Dodd submitted additional statements on February 23, see pp. 3099 and 3100, below.

been thrust upon us. Our responsibilities were limited to how to proceed in this trial and what verdict to render.

Despite our procedural differences along the way, the Senate has fulfilled Alexander Hamilton's vision as a "tribunal sufficiently dignified." The credit for that result belongs primarily to TOM DASCHLE, the Democratic leader, and TRENT LOTT, the majority leader.

Let history record that these two leaders, saddled with different challenges, led us with patience, fairness, good humor and dignity.

I have listened intently to those of you who have spoken on this matter, and I would urge all Senators to add the reasoning for your vote to this record. For in many respects, it will be our words, our thinking, our rationale that will be revisited in the coming millennium when and if those who succeed us in this Chamber are ever asked to confront the judgment that is upon us.

The contemporary press will record what decisions we have reached. But the cold, dispassionate eye of history will also scrutinize why collectively and individually we reached our conclusion, and what impact this ordeal has had on the Constitution, the Congress, the courts, the Presidency and the maintenance of our tripartite federal system of government.

I agree heartily with those who say we should not decide this matter only on the polls and the popularity of this President. But nor should we totally disregard the voices of those who elected this President or who have sent us here to represent them—including the voices of those who voted against us.

It is not entirely insignificant that of the 13 House Republican managers who have presented their case, 7 were unopposed in the last election, and 3 were reelected with such significant majorities they were virtually unopposed. I find it disquieting that the passion for conviction of 10 of the 13 House Republican managers may not have been tempered by the voices of dissent within their congressional districts.

I sincerely hope that as we consider the facts of this case, the law in this case, and the impact of removing this President, we will give equal consideration to the impact on the Office of the Presidency.

It is clear from "The Federalist Papers" that the framers wanted a strong, independent, "energetic executive," and in the words of Alexander Hamilton, one free from "the propensity of the legislative department to intrude upon the rights, and to absorb the powers of the other departments. . . ."

As our presiding Chief Justice properly noted in his book "Grand Inquests":

> The constitutional convention that met in Philadelphia in 1787 borrowed many of its ideas from existing governments and from political philosophers. But it did make two original contributions to the art of government. The first was the idea of a Presidential, as opposed to a parliamentary system of government. . . .

In the introduction to his treatise on impeachment, the noted constitutional scholar Charles Black reminds us that "the Presidency is a prime symbol of our National unity. The election of the President is the only political act that we perform together as a Nation: voting in the Presidential election is certainly the political choice most significant to the American people, and most closely at-

tended to by them. No matter, then, can be of higher political importance than our considering whether, in any given instance, this act of choice is to be undone, and the chosen President dismissed from office in disgrace." Professor Black adds forebodingly, "everyone must shrink from this most drastic of measures."

In all candor, I must say I saw little evidence of the House majority shrinking from the drastic measure of impeachment.

I revere the Presidency and I wish all future occupants of the Oval Office to inherit a strong, independent and "energetic" office.

I fear the precedent of this impeachment case will come to haunt us.

Now to the specifics of this case.

This scandal has seriously bruised every institution that has come in contact with it. But none has been battered more than the executive branch itself.

The culpability for this damage lies first and foremost with President Clinton. His illicit affair with a young woman, a subordinate, in the West Wing of the White House has properly been greeted with universal condemnation. President Clinton's subsequent misleading and false statements to his staff, his Cabinet, the country and others is abhorrent. History will judge his actions and significant lapses of judgment harshly, as it should.

If he is acquitted by this Senate, he will not as some have suggested "get off scot-free." To stand as the only popularly elected President to be impeached will relegate him as the Hester Prynne in the pantheon of our chief executives. Do not allow your decision to convict this President to be influenced by the false and ludicrous notion that he will emerge from this national nightmare unscathed if we vote to acquit.

President Ford is often quoted as having said "the grounds for impeachment are whatever the House of Representatives says they are by a majority vote." I do not take issue with that statement except to say that it strikes me as being somewhat cavalier. In the Senate, the grounds for conviction and removal of a President must not be so loosely fashioned; the grounds for conviction must be restricted to the articles of impeachment as passed by the House. I am dismayed by the argument of some that conviction can be based on reasons totally beyond the scope of the articles before us.

Whether we like it or not, we have a constitutional duty to confine our judgment to the specific accusations.

The standard of proof we use to arrive at our decision is properly up to each Senator. But we do not have a similar luxury to decide what grounds we may use to convict. Those grounds are set by the House and must be proven by them.

By very narrow margins, on nearly party-line votes, the House Republican managers have presented us with two articles of impeachment accusing the President of perjury and obstruction of justice.

The House managers have very specifically charged the President with violation of the criminal code, insisting that the facts prove each and every element of the criminal charges.

While it is certainly true that no person, including the President, is above the law, it is equally true that no President is below the law, either. By insisting that this President is in violation of spe-

cific crimes in the criminal code, have not the House managers deprived somewhat the Members of the Senate of the individual judgment when exercising a standard of proof? The standard of proof in all criminal cases is "beyond a reasonable doubt." If those who vote to convict on either count use a lesser standard than would be used in the case of any other citizen, then a vote to take the "drastic measure" of conviction and removal of the President from office would be based on an unequal standard of justice.

I found it unsettling that while the House Republican managers were passionately asking the Senate to convict this President of the criminal charges, two of the most active managers were simultaneously expressing their own reservations. First, House manager LINDSEY GRAHAM candidly told the Senate in response to a question that reasonable people could reasonably conclude to acquit this President. It appeared to me that Manager GRAHAM was less than convinced this President was guilty beyond a reasonable doubt.

Secondly, House manager ASA HUTCHINSON, in a moment of candor on a National television news program, conceded he would not be confident of a conviction in a case such as the one he now asks us to reach judgment of conviction beyond a reasonable doubt.

Does it not also strike us as strange that when given the opportunity to call any of three or four witnesses, the House managers chose not to invite Betty Currie to testify? Other than the President and Monica Lewinsky, no other person was as involved in the allegations brought by the House managers, and yet they made the calculated decision not to take her deposition. Why?

For these reasons and the careful, detailed distinction drawn between the inferences made by the House managers and the direct testimony of deposed witnesses, as outlined by Senator CARL LEVIN, I cannot conclude beyond a reasonable doubt that this President is guilty of the criminal charges enumerated in either article of impeachment.

Thus, not only do I "shrink from this most drastic of measures"—I positively affirm we must not remove this President from office.

Some final thoughts.

The criminalization of our political process must stop before irreparable damage is done to the institutions of our federal system.

It is right to condemn in harsh words the behavior of the President. It should be equally appropriate to condemn the damage done by an independent counsel statute that has spawned runaway, brakeless prosecutors who storm the country trampling on our system of justice, completely unchecked by any branch of government.

The damage this President has caused his office can and will be repaired.

The damage done by the Office of Independent Counsel and by court decisions that allow unlimited discovery in civil lawsuits may be far more difficult to repair.

That fragile balance between our three coequal branches of government is being subjected to unprecedented strains as a result of events that have occurred over the past several years.

I would urge our leaders to include an examination of these issues as part of our agenda in the 106th Congress.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JAMES M. JEFFORDS

Mr. JEFFORDS. Mr. Chief Justice, on January 7, 1999, the House of Representatives presented the Senate with two articles of impeachment against President William Jefferson Clinton. The articles charged the President with lying under oath before a Federal grand jury and with obstruction of justice. In the days following the House's presentation of the articles, many have criticized the Senate for continuing on where the House left off. They argue that if there are not enough votes in the Senate to remove the President, then the Senate should not have bothered proceeding with the trial. While this may seem like a reasonable way of disposing of an unpopular process, the Senate has a constitutional duty to hold an impeachment trial. Although the Constitution provides little guidance, one thing was clear: In order to fulfill this duty, we had to come together as a body and proceed in a manner that was judicious, deliberative and fair. That meant that before the Senate could make any decision on the articles of impeachment, each side had to be given the opportunity to present its case.

Now that we have heard from the House managers, the President's counsel and viewed the deposition testimony of three key witnesses, it is the appropriate time to render judgment on the articles of impeachment. I must state at the outset that this has been one of the most difficult experiences that I have endured in my 23 years in Congress.

This process has been distressing on a personal level because I came into it with a great deal of respect and admiration for President Clinton. Over the past 6 years, we have enjoyed a good working relationship. While we do not share the same party and we often approach issues from different points of view, the President and I have worked together on a number of important projects. Given my esteem for the President, I have been saddened and gravely disappointed by much of what I have learned over the last few weeks. Whatever the final outcome, I will leave this trial with the knowledge that the President has indeed committed shameful acts, misled the American people and brought disrepute on the Office of the Presidency. By his own actions, he has ensured himself a place in history alongside President Andrew Johnson.

This process has been trying on a professional level because I recognize the enormous historical significance of my decisions. This trial will establish precedents to examine and judge the conduct of all future Presidents. While our Founding Fathers clearly intended impeachment for only the gravest offenses, confronted with a series of tawdry acts, the facts and circumstances do not neatly fit into the definition of "other high crimes and misdemeanors." I am gravely concerned that a vote to convict the President on these articles may establish a low threshold that would make every President subject to removal for the slightest indiscretion or imperil every President who faces a Congress controlled by the opposing party. Yet, at the same time, I am concerned that a vote of acquittal could be mistaken by future generations to mean that perjury and obstruction of justice are not impeachable offenses.

The Constitution provides very little guidance to the Senate for its trying of the impeachment of the President. There is absolutely no reference at all to the standard of proof that Senators shall use when evaluating the articles of impeachment. I believe the fact that the framers gave this body the duty to try an impeachment, but no guidance as to what standard of proof to use in the trial, gives each Senator the discretion to select the standard he or she deems appropriate.

In making my decision, I have focused on the nature of the proceeding. The impeachment trial is a unique process; it is neither criminal nor civil. I also focused on the purpose of the proceeding. The Senate holds an impeachment trial to determine whether there is proof that the President's misconduct rises to the level which demonstrates that he or she is no longer fit to hold office.

Given the nature and purpose of an impeachment trial, I have decided that the preponderance of the evidence standard would not be appropriate as being too low a standard. On the other hand, I believe that proof beyond a reasonable doubt would raise too high a standard. The question we must ask ourselves is, Do the President's actions demonstrate that he is unfit to serve, thus warranting his removal in order to protect the public? Since we are concerned with the public's protection, I would suggest that the clear and convincing standard, which lies somewhere in between, would be more appropriate to make the very fateful decision of removing the President from office.

Accordingly, I have used the clear and convincing evidence standard to judge the impeachment charges against President Clinton. I understand that this standard is little used, however, I feel that in impeachment trials it is most appropriate to use a standard that is somewhere in between the extremes.

Article I alleges that the President provided perjurious false and misleading testimony before the Federal grand jury. The House managers applied the Federal perjury statute found at 18 U.S.C. 1623 to the President's testimony. The elements of perjury are met when: (1) while under oath (2) one knowingly (3) makes a false statement as to (4) material facts. While I agree that some of the President's statements before the Federal grand jury were false and misleading, I have concluded that some of the allegations simply do not rise to the level of perjury and that the House managers have not proven the remaining perjury charges by clear and convincing evidence.

The first allegation is that the President committed perjury before the grand jury when he testified about the nature of his relationship with Monica Lewinsky. In his testimony before the grand jury, the President admitted that his relationship with Ms. Lewinsky was ongoing and that it involved inappropriate intimate contact. Based on the House managers' presentation, there is no doubt in my mind that the President's prepared statement to the grand jury was inaccurate in part. While I disagree with the House managers' conclusion that the President's use of the terms "on certain occasions" and "occasional" were intentionally misleading, I agree with the House managers that the President lied about when and how his relationship with Ms. Lewinsky began. However, given that the President admitted to the key issue before the grand jury,

I am not persuaded that lies about these immaterial details justify a charge of perjury. I also reject the related allegations pertaining to the President's testimony regarding the definition of sexual relations used in the Jones case.

The second allegation of this article is that the President committed perjury in his grand jury testimony by repeating the perjurious answers he had given in his civil deposition. The House managers have certainly proven that the President lied about a number of issues in his civil deposition. However, article I concerns the President's grand jury testimony, not his deposition testimony, and the House managers seem to rely upon the President's reaffirmation of his deposition testimony as proof that he committed perjury. Since I do not find that the President reaffirmed his deposition testimony before the grand jury, I reject this allegation of perjury.

The third allegation is essentially that the President committed perjury when he testified before the grand jury that he was not paying attention to Mr. Bennett's misstatement that the Lewinsky affidavit meant that "there was no sex of any kind in any manner, shape or form." Although the video tape of the President's civil deposition does show the President staring in Mr. Bennett's direction, we cannot know what the President was actually thinking at that time. We have all had moments where we appear to be paying attention to a speaker, when we are actually lost in our own thoughts. Because the House managers could not possibly prove whether or not the President was actually paying attention to the exchange, they have not met the burden of proving that the President's testimony was false.

The final allegation in article I is that the President testified falsely about his attempts to obstruct justice in the Jones case. I reject this perjury allegation outright because I believe it was improper for the House managers to include a restatement of the obstruction of justice allegations within article I. I have considered the obstruction of justice allegations in article II.

The second article of impeachment charges the President with obstruction of justice. Article II charges that the President prevented, obstructed and impeded the administration of justice, both personally and through his subordinates and agents, in a Federal civil rights action. To prove a case of obstruction of justice under the Federal statute found at 18 U.S.C. 1503, the House managers must prove that the President acted with intent and that he "endeavored to influence, obstruct or impede the due administration of justice." After considering these allegations, I have concluded that the House managers failed to prove all but one of the obstruction of justice charges. My basis for this conclusion is the following:

The first allegation in article II is that the President obstructed justice by having his friend Vernon Jordan assist Ms. Lewinsky in her New York job search in exchange for her silence in the Jones case. To prove this allegation, the House managers presented compelling circumstantial evidence that Mr. Jordan assisted Ms. Lewinsky with both her job search and with her affidavit. The House managers also pointed to the fact that Ms. Lewinsky received her job offer just 2 days after she signed a false affidavit. However, there are also circumstantial facts that belie the quid pro

quo claim. First, there is evidence that the President enlisted Mr. Jordan's help well before Ms. Lewinsky's name appeared on the Jones witness list. Second, Mr. Jordan testified in his Senate deposition that he had "stepped up" the job search before he learned that Ms. Lewinsky was involved. On a final note, a conspiracy takes two willing actors. I would have a hard time convicting the President of this charge when both Mr. Jordan and Ms. Lewinsky have denied that there was any connection between the job search and the false affidavit.

Another allegation is that the President obstructed justice by encouraging Ms. Lewinsky to file a false affidavit in the Jones case. The House managers have shown that when the President informed Ms. Lewinsky that her name had appeared on the Jones witness list, he suggested that she might file an affidavit to avoid being deposed. To find that the President obstructed justice, however, I must infer from the evidence that the President was encouraging Ms. Lewinsky to file a false affidavit. I cannot make this leap when Ms. Lewinsky herself testified that President Clinton made no connection between their false cover stories and the contents of the affidavit. Indeed, Ms. Lewinsky testified repeatedly that the President never discussed the contents of the affidavit with her and that, at the time of their conversation, she did not think that the affidavit necessarily had to be false.

Article II also alleges that the President obstructed justice by encouraging Ms. Lewinsky to hide his gifts. The thrust of the House managers' claim is that the President instructed Ms. Currie to pick up the gifts from Monica Lewinsky on December 28, 1997, so Ms. Lewinsky would not have to turn the gifts over to Paula Jones' attorneys. I would agree that the circumstances of the President's secretary, Ms. Currie, picking up the gifts several hours after Ms. Lewinsky suggested to the President that Ms. Currie might hold onto them for safekeeping are certainly suspect. If the House managers could prove that Ms. Currie initiated the gift pickup, there would be clear and convincing evidence that the President was in fact encouraging Ms. Lewinsky to hide the gifts. Because there is conflicting evidence on this critical issue, the House managers did not meet their burden.

In addition, article II alleges that the President obstructed justice by making false and misleading statement to his aides about Ms. Lewinsky. Given that the President had an ongoing relationship with Ms. Lewinsky, it was spurious, mean spirited, defamatory and morally wrong for the President to refer to Ms. Lewinsky as a stalker or to in any way impugn her reputation. The House managers and all of us have every reason to be incensed by the President's actions. That being said, it is clear that the President made these remarks in his continuing effort to conceal the true nature of his relationship with Ms. Lewinsky. There is no evidence that the President knew these aides would be called to testify. Therefore, I believe that this allegation has no merit.

While I found the other charges alleged in article II to be either legally or factually deficient, there is one allegation of obstruction of justice which I believe that the House managers have proven by clear and convincing evidence; the President's postdeposition statements to Bettie Currie. Ms. Currie testified that on two occasions

in the days following the President's deposition in the Jones case, the President called her into his office and made a series of remarks to her: "You were always there when she was there, right? We were never alone. You could see and hear everything. Monica came on to me and I never touched her, right? She wanted to have sex with me and I couldn't do that."

I simply do not believe the President's explanation that he was questioning Ms. Currie in an "effort to get as much information as quickly as I could" or that he was "trying to ascertain what the facts were" or "what Ms. Currie's perception was." I am also not persuaded by the fact that Ms. Currie testified that she did not feel pressured to agree with the President. Rather, I agree with the House managers that if the President was actually seeking information he would not have been asking rhetorical questions. I also believe that the President's explanation would be more plausible if his statements to Ms. Currie were not false.

The fact is that the President gave false testimony in the Jones deposition, that during his deposition he repeatedly referred to Ms. Currie as someone who could back up his testimony, and that immediately following the deposition he summoned Ms. Currie into work on a Sunday and cleverly spoon-fed his cover stories to her. Despite the President's counsel's protestation, there was still a possibility that Ms. Currie could be called to testify in the Jones case. Accordingly, I believe that when the President called Ms. Currie to his office and repeatedly recounted these false statements he "endeavored to influence, obstruct or impede the due administration of justice" in violation of the Federal obstruction statute.

The House managers have left us with the impression that once we conclude that the President has committed either perjury or obstruction of justice, we have a constitutional duty to vote to remove the President from office. They maintain that perjury and obstruction of justice must be considered high crimes per se because they carry the same penalties as bribery. I reject this premise. In fact, the severity of a bribery sentence is dependent on subject matter and the amount of the bribe. Similarly, a conclusion that the President committed obstruction of justice should not automatically warrant his removal. It is incumbent upon each of us to examine the underlying facts and circumstances to determine whether or not the President has committed a high crime.

Now, having found that the President is guilty of obstructing justice in the Paula Jones case, I had to determine whether the violation is a "high crime" warranting removal from office. This led me to think about what justice was actually being obstructed and to consider the underlying circumstances that brought us here today.

In the narrow legal sense, this entire impeachment trial rests on the independent counsel statute and the Paula Jones case.

As many of my colleagues remember, Congress enacted the independent counsel statute in the wake of the Watergate scandal, after President Nixon ordered the dismissal of special Watergate prosecutor Archibald Cox over his refusal to drop a subpoena for Nixon's incriminating White House tapes. Congress designed the independent counsel statute to insulate and protect investigations of alleged criminal conduct by the President and other high-level Federal officials. Unfortunately, the statute has not worked as Con-

gress envisioned it would. This well-intended statute has resulted in a proliferation of interminable, expensive investigations against public officials. It has cost our taxpayers more than $130 million, and considering all the time, effort and expense, there have been very few successful prosecutions resulting from the statute.

One such investigation under the statute originated in August 1994, when Judge Kenneth Starr was appointed as an independent counsel to investigate alleged wrongful acts in the so-called Whitewater land deal. During the course of the next 4 years, the Office of independent counsel ("OIC") expanded its investigation of President Clinton a number of times. At the same time, the President was defending a civil rights action by Paula Jones, a former Arkansas State employee who alleged that President Clinton sexually harassed her during the time he served as Governor. Last January, the OIC was able to expand its investigation and redirect its D.C.-based Whitewater grand jury panel to investigate the President's concealment of his extramarital affair with White House employee Monica Lewinsky.

We must not forget the reason that the President's relationship with Ms. Lewinsky was even an issue in the Jones suit was because Paula Jones was trying to show that the President's treatment of Ms. Jones was part of a pattern and practice of sexual harassment. Judge Wright initially ruled that Paula Jones was entitled to information on the so-called Jane Does, because that evidence might help establish the President's pattern of sexually harassing conduct. However, Judge Wright ultimately ruled that evidence about the President's harassment of other women would not change her decision to dismiss the case because Paula Jones failed to establish that she herself was harassed. I quote from the judge's April 1, 1998, decision:

> One final matter concerns alleged suppression of pattern and practice evidence. Whatever relevance such evidence may have to prove other elements of plaintiff's case, it does not have anything to do with the issues presented by the President's motion for summary judgment, i.e., whether plaintiff herself was the victim of alleged quid pro quo or hostile work environment sexual harassment. . . . *Whether other woman may have been subjected to workplace harassment, and whether such evidence has allegedly been suppressed, does not change the fact that plaintiff has failed to demonstrate that she has a case worthy of submitting to a jury.* [emphasis added]

Why is this ruling so important in my decision? Well, we are essentially here today because the Whitewater investigation was expanded to determine whether President Clinton's efforts to conceal his consensual relationship with Ms. Lewinsky obstructed Paula Jones' right to justice. The plain fact is that the Jones case was thrown out because Judge Wright ruled that Paula Jones had no case and that even if the President had revealed the true nature of his consensual relationship with Ms. Lewinsky, it would not have changed the outcome of the Paula Jones case. While President's relationship with Ms. Lewinsky was morally wrong, there is absolutely no evidence that the President was sexually harassing Ms. Lewinsky.

Although I have concluded that the President obstructed justice by trying to influence the testimony of Bettie Currie, the fact is that the President's actions did not actually hinder Paula Jones. Indeed, in the midst of the OIC investigation, Paula Jones ap-

pealed Judge Wright's ruling and the President agreed to pay her $850,000 in an out-of-court settlement. Some might even argue that as a perverse result of the President's obstruction of justice, Paula Jones ended up with greater monetary relief than she would have otherwise received. Therefore, while the articles of impeachment came about as a direct result of President Clinton's actions in the Jones case, it is clear that in the end the President's actions did not negatively affect Paula Jones' justice. In other words, there was no justice to obstruct in the Jones case.

Most of us now believe the President lied about his relationship with Ms. Lewinsky when he testified under oath and that he also lied about the nature of his relationship to his staff, his family and the American people. I have concluded the President not only lied about the affair but that he took at least one illegal action in an attempt to conceal the truth from Paula Jones. However, I believe that President Clinton took these steps to avoid deep personal embarrassment, not to seize, maintain or subvert the power of the state.

Let us not forget that the ultimate question we must each answer is whether on these facts arising out of these circumstances this President poses such a danger to the state that we can no longer permit him to remain in office. The ultimate issue here is a determination of whether the President is fit to serve.

Consider our constitutional guidance: The President of the United States "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." The framers intentionally set this standard at an extremely high level to ensure that only the most serious offenses would justify overturning a popular election. The concept of "maladministration" was considered and rejected.

I believe that whether the President's misconduct occurred in the private sphere or in his public or official capacity is also an important distinction to make when deciding his fitness to serve. Clearly, there are those private acts which in no way reflect on a President's fitness for office. On the other hand, there are public or official acts which I think no reasonable person would doubt reflect poorly on a President's fitness for office and would warrant impeachment and removal. I think we can all see the difference in gravity between the offenses of which President Clinton stands accused and a hypothetical accusation that he took a bribe. While the former reflects poorly on his character and discretion, the latter reflects on his fitness to serve and describes a classic case of abuse of office.

For the President to do what he did was reprehensible and morally wrong. I believe that the President lied to avoid embarrassment. However, the framers did not envision such behavior as being encompassed by the phrase "other high crimes and misdemeanors."

The bottom line is that old maxim that bad facts lead to bad law. Such a low threshold for removal of a President from office would be dangerous. After careful consideration, I have concluded that President Clinton has not committed an offense that indicates the President is not fit to serve. Therefore, I will not vote to convict President Clinton.

I do not want the President to come away from this trial thinking that he is forgiven, or that what he has done is not serious, because I think it was most serious. I do not want the people of this Nation to think that a vote of acquittal means that the President's conduct is acceptable because it is not acceptable. Lying and obstruction are wrong. I also hope that my vote does not lend any credence to the notion that sexual harassment is not that important, because it is important. A determination to let the President serve out his term should not be taken as an exoneration of his actions. At the same time, I think it is extremely important that we leave this chapter behind us and move on to the Nation's business.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR PAUL WELLSTONE

Mr. WELLSTONE. Mr. Chief Justice, I want to explain my views publicly on the impeachment articles sent to us by a partisan vote of the House of Representatives, and on the removal of the President from office which they would prompt.

First, I am shocked and saddened that our Republican colleagues persistently have blocked our efforts to have open and public debates and discussion in our deliberations in this matter, and most especially in our deliberations on the final votes on whether to remove the President. Whatever their motives, this is not what a free, representative, accountable democracy is all about. Simply publishing partial transcripts of our proceedings, which include only some formal statements made by Senators and not the deliberations themselves—and doing so only at the end of the trial—is, in my view, a great leap sideways.

I also want to describe what I think—and frankly have thought for months—is a more appropriate mechanism to express our disapproval of the President's behavior: a tough, bipartisan censure resolution which makes clear our contempt for what he's done in lying to his family, his friends, his staff, and the American people about his relationship with Monica Lewinsky, and the disgrace which those lies have placed upon his Presidency for all time.

In recent months, hundreds of constitutional scholars—including many respected conservatives—have argued that, in their view, the Constitution does allow this censure vote; the Senate's precedents allow it; we have done it before. It is true that the Constitution is silent on the question of what else we can do in addition to removal; it is also true that the Constitution in no way prevents us from moving forward on censure. The argument that we are somehow blocked constitutionally from censuring the President is contrived and fraught with partisan pleading.

Even so, if we are ultimately blocked by a filibuster from a vote on censure, the President will not have escaped the judgment of Congress or the American people. Any Senator, in any venue they choose, can offer their own forceful, public censure of the President, repeatedly if they like. I certainly have. A corporate expression of the Senate's condemnation of the President's actions, while of course preferable, is not essential, for all of us already have made known our views.

We all condemn the President's behavior. It has been said so many times, it hardly bears repeating, were it not for the willful, partisan attempts to mischaracterize a vote against removal as a vote to condone what the President has done. That is, of course, preposterous; the President has been impeached by the House. That has only happened once before in our history. The trial has gone forward, and every Member of this body has condemned the President's behavior as unacceptable, meriting only scorn and rebuke.

It is clear that the President already has paid a terrible price in the eyes of history, not least in the shame and humiliation that this permanent mark on his Presidency has caused him, his family, his friends and supporters, and his administration. The message is clear, including to our young people: When one fails to tell the truth, there are real, sometimes even awful, consequences and costs. The President's behavior was shameful, despicable, unworthy, a disgrace to his office. And in this long, sordid, painful process, I believe he has been held accountable for what he has done.

Pursued overzealously by Kenneth Starr and by House Judiciary Committee Republicans, the articles were then approved by the full House in a grossly unfair and partisan proceeding that was destructive both of our polity and our politics. All of us should be deeply troubled by it, and all should work together to put it behind us. In my view, these allegations should never have reached the Senate. But they have, and the trial has now been held. It has changed few, if any, minds on the basic facts, on how the law should be applied to those facts, or on the high bar for removal set by the Constitution.

Finally we bring to a close this long, sad year of investigations, hearings, and speeches. It has been a painful year. In many ways, it has been a lost year. Think of what we might have done this past year, had we not done this. Think of the news we could have made, had not all seen this. Think of the good laws that we could have written, had not this stood in the way. Think of the opportunities lost, the hopes staved off. We must ask with Langston Hughes, "What happens to a dream deferred?"

Sadly, so many opportunities for better, more prudent and proportionate judgment fell by the wayside. First, and most important, the President should have avoided this sorry relationship. Then, a little over a year ago, the President could have been more forthcoming and told the whole truth, instead of misleading us all. The American people could have handled it. Then the independent counsel could have shown greater discretion in judging whether to bring this case forward. The leadership of the House of Representatives could have allowed a vote on censuring the President, instead of pushing the case forward to impeachment. They were wrong to thwart the will of what I expect would have been a House majority in so doing. And the Senate could have voted to dismiss the case and promptly and resolutely censured the President.

Instead, against better judgment, against all indications of the people's will, and against any shred of charity, an ardent and zealous minority pressed on. They had the right. They had the power. But they were wrong, and I believe history will so judge them. It is a supreme irony that the most conservative forces in our politics

today have for months wielded the most radical option made available in the Constitution against this President: impeachment and removal. Aware of its dangers, our founders designed constitutional protections against its abuse. This process has shown that those protections are not perfect; they require reasoned judgment in their application; judgment that has been missing in this process from day one.

Let us resolve to learn the lessons of this long, sad year. Let us learn now, having come this far, the wisdom of the founders that impeachment is and must be a high barricade, not to be mounted lightly. Let us learn that because it requires the overwhelming support of the Senate to succeed, it cannot and should not proceed on a merely partisan basis. Let us learn that the desire to impeach and remove must be shared broadly, or it is illegitimate.

Let us learn that the subject matter of impeachment must be a matter of great gravity, calling into question the President's very ability to lead, and endangering the Nation's liberty, freedom, security. Let us learn that the case against the President must be a strong and unambiguous one in fact and in law, for even a President deserves the benefit of our reasonable doubts.

The charges brought against President Clinton do not rise to those levels. And even if they did, the case against him is neither strong nor unambiguous. As the White House defense team has made clear, there are ample grounds for doubt about both the facts and law surrounding each of the two articles before us.

It is true that the impeachment process has further alienated millions of Americans from their government, and that is a tragic harm for which the President bears considerable responsibility. It is also true, as we were told by Chairman HYDE yesterday, that the nobility and fragility of a self-governing people requires hard work, every day, to get it right, to fight the good fight, to discern the common good. But I believe, unlike him, that it is the impeachment process itself, both here and in the other body—its partisanship, its meanness and unfairness, its leadership by those who want to win too badly—which has increased people's cynicism; not the prospect of the President's "getting away" with something.

Our Nation was founded on the Jeffersonian principle "that government is the strongest of which every man feels himself a part." What Jefferson and the other founders feared was the warning of their counterpart Rousseau: "As soon as any man says of the affairs of state 'What does it matter to me?' the state may be given up as lost." But while the many signs of disaffection among our people are growing, I do not think we have reached the point of no return; there is time in this Congress to recover from this episode, and to move on.

Despite the claims of pundits that Americans have simply tuned out, I think a deeper reality is present in their reactions, and in the polls. In fact, most Americans, in their wisdom, have reached a subtle, sophisticated judgment in this case, and have already moved beyond it. As is so often the case, they're way ahead of Washington. It is true that they abhor the President's behavior but don't believe it merits his removal. In addition, they believe there are larger issues facing the Nation than the misdeeds that nearly all now concede the President committed: peace in the Middle East;

the hunger of children; the health of Americans; saving our Social Security safety net; debating whether hundreds of billions of dollars of surplus should go to bolster Medicare, or to some combination of universal savings accounts or tax cuts. These are the things the people sent us here to work on. These are the things that I hear about when I return to my State.

So let us now bring to a close, with our votes, this long, sad year of investigation and impeachment. And let us resolve that there shall be many a year before we have another one like it. It is time for our country to pull together to seek an end to the fractious partisanship that has defined this period, and to re-engage a full-throated, genuine debate about our Nation's future that can help us find again that common ground that unites us as Americans and that can serve as a firm foundation for resolving the many serious problems that still face our country—impeachment or not—today and tomorrow.

We should, as White House attorney Charles Ruff said, listen to the voices not merely of the advocates who have been before us, but of Madison, Hamilton, and the others who met in Philadelphia 212 years ago; of the generations of Americans since then; of the American people now, and of future generations of Americans. And if we do, we will do the right thing.

Congressman JOHN LEWIS observed in his final impeachment speech, in the end, we are "one house, one family, one people; the American house, the American family, the American people." We are called together to come to judgment on this President, and then to return promptly to the pressing issues that lay before us and that require our urgent attention. That judgment is by now clear: Bill Clinton should remain President; the censure of this body, and the historic impeachment that will ever attach to his name, will leave a permanent mark on his Presidency.

I thank you, Mr. Chief Justice, for the fine work you have done, and I thank both the majority leader and the minority leader for their leadership. I said to Senator LOTT, I think yesterday, I am still furious that we are in closed session and will say that, but I appreciate the way in which you have kept us together. I thank the two of you.

I was thinking I might do something a little different, because even if I were to give a great speech to the best of my ability, I don't know that there are any more arguments that can be made. I was thinking like, I might agree—actually I have a printed statement—I might agree to just have my statement included in the RECORD and not speak any further, if I can get some support for some legislation. (Laughter.)

Just on some children's legislation. Does it look like we are at that point? It does? Well, I like that show of support, and I think, Mr. Chief Justice, what I will do is give to you in a moment a full statement and just simply say to everybody here about three things in 2 minutes.

One, I wish we had done this in open session, and I cover that more in my full statement.

Second of all, I think that a decision to acquit is certainly not a decision to condone the President's behavior which I think merits scorn and rebuke.

Third of all, I think that the standard, and I want to say this to Senator DOMENICI, talking about children, to me the standard is guilty beyond a reasonable doubt. I think the evidence has to be unambiguous and strong. I don't think it was. Senator LEVIN said that very well, so I don't need to repeat any of those arguments.

Fourth of all, TIM HUTCHINSON, Senator HUTCHINSON, I like what you said about the polls. I actually make a different argument. I raised the question earlier when we were raising questions about popular will and does it matter. I actually meant about the last election, it seems to me if it ever does, it is on such a decision. I think before you overturn an election, you really have to meet a very high threshold. I don't think the House managers have done so.

Finally, I think a lesson that I have learned as a political scientist, when I teach class again, is I do not think the articles work and this process works when it is clearly not bipartisan. I think it becomes illegitimate. It just doesn't work.

You did not have broad support coming from the House, and you do not have it here. That is why I think it was doomed from the start.

Finally, it has been a long, sad year, and I wish—I just wish—that those who could have really rendered decisions with judgment had done so, starting with the President and his sorry affair. He could have told the truth to the people in the country. The people would have appreciated that. I could also talk about Starr, and I could also talk about the House, and I could also talk about us. But I do not think I need to do so.

Let's get on with the work of democracy. We have had some strong views here, but I am looking forward to working with you.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR TED STEVENS

Mr. STEVENS. Mr. Chief Justice, I thank our majority leader. Throughout this ordeal, no one has tried to poll me on any substantive matter or influence my vote. That, to me, means a great deal. I view this process as the most serious task I have faced as a Senator over the past 30 years, and I appreciate the recognition by the leadership of the solemnity of our duties under these circumstances and the fact that we each must reach our own conclusions based on the evidence.

As Senators, each of us joined in this oath:

> I . . . do solemnly swear that I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge my duties of the office on which I am about to enter. So help me God.

And now, we took an additional oath:

> [I] solemnly swear that in all things appertaining to the trial of the impeachment of William Jefferson Clinton, President of the United States, now pending, [I] will do impartial justice according to the Constitution and laws, so help [me] God.

As free citizens of the world's most successful democracy, we are inexorably tied to the pledges and commitments we make. These

obligations, and the unlimited benefits they bestow on us, depend on our willingness to be truthful with one another. The President took the two most serious oaths any American ever encounters: the oath to faithfully execute our laws, administered by the Chief Justice, our Presiding Officer, on the steps of this building, and the oath to tell the truth, the whole truth, and nothing but the truth to a jury of his peers.

I am most concerned that the action we take here today not denigrate the role of oaths and truth in our society. To be fair to the President, I feel he believed that he admitted to the grand jury that he had not testified truthfully under oath in his deposition. In fact he did not, and he did not tell the truth to the grand jury either.

Both the House managers and the President's lawyers have seized on apparent conflicts in the evidence and recorded testimony before this Court of Impeachment. Nonetheless, the evidentiary record and the presentations of both sides, as supplemented by their responses to our questions, leave no doubt in my mind that if I were sitting as a juror in a criminal case I would find that the accused is guilty of perjury as charged in article I. Following the jury's verdict, it would then fall to the judge to determine appropriate punishment within the bounds of the Federal Sentencing Guidelines provided by Congress.

But an impeachment trial is no ordinary proceeding. We sit as judge and jury—rulers on law and triers of fact. The Constitution charges us with a great responsibility. Section 4 of article II of the Constitution requires that the President be removed from office upon conviction of high crimes and misdemeanors. No President has ever been removed under these circumstances. To me, that history alone should make each of us seriously consider whether the facts presented to us require that the Senate exercise this awesome power.

The process by which our Founding Fathers determined that this power should be vested in the Congress is adequately briefed in the record. I found particularly helpful the testimony and scholarly papers from the hearings before the House Judiciary Committee on November 9, 1998.

Remember in the House committee deliberations, the minority submitted a joint resolution of censure for consideration in lieu of the articles finally voted upon. It restated:

Expressing the sense of Congress with respect to the censure of William Jefferson Clinton. Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that—

(1) on January 20, 1993, William Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President; implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William Jefferson Clinton, has egregiously failed in this obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and dishonored the office which they have entrusted to him;

(2)(A) William Jefferson Clinton made false statements concerning this reprehensible conduct with a subordinate;

(B) William Jefferson Clinton wrongly took steps to delay discovery of the truth; and

(C) in as much as no person is above the law, William Jefferson Clinton remains subject to criminal and civil penalties; and

(3) William Jefferson Clinton, President of the United States, by his conduct has brought upon himself, and fully deserves, the censure and condemnation of the American people and the Congress; and by his signature on this Joint Resolution, acknowledges this censure and condemnation.

On December 19, 1998, the House minority in the full House offered this resolution on the House floor which stated:

That it is the sense of the House that—

(1) on January 20, 1993, William Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President; implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William Jefferson Clinton, has egregiously failed in this obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and dishonored the office which they have entrusted to him:

(2)(A) William Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate;

(B) William Jefferson Clinton wrongfully took steps to delay discovery of the truth; and

(C) in as much as no person is above the law, William Jefferson Clinton remains subject to criminal and civil penalties; and

(3) William Jefferson Clinton, President of the United States, by his conduct has brought upon himself and fully deserves the censure and condemnation of the American people and this House.

As a former U.S. attorney, Solicitor of the Department of the Interior, and defense attorney, I believe I understand the rule of law. The conduct which the President engaged in was clearly wrong, and his actions clearly warrant his impeachment, which the House of Representatives has done. But with regard to the allegations in article I, I do not believe his criminal activity rises to the level of "high Crimes and Misdemeanors" which require his removal from office by this Senate.

Article II, charging obstruction of justice, to me, involves a very different matter than the perjury charge in article I. Article II involves the use of Presidential powers to impede or imperil the impartial administration of justice in a civil as well as before the grand jury. We have pledged to "Support and Defend the Constitution," and I suggest that in our present roles we must do so by fulfilling and reaffirming the freedoms and obligations of all Americans under that document. By micromanaging the briefing of witnesses and the concealment of evidence and by testifying before the grand jury to what he knew was not the whole truth, the President has obstructed justice. His oath as President requires him to faithfully execute laws, and by his actions he has violated this oath.

In his 1992 book "Grand Inquests," the Presiding Officer of this court (and the Chief Justice of the United States) wrote:

The framers [of the United States Constitution] and the authors of the Federalist Papers had not envisioned political parties as we now know them . . . Would the dominant role played by political parties make the Senate a partisan tribunal which would be willing to undermine the fundamental principles of the Constitution in order to remove a political enemy from office?

I also wonder whether the framers anticipated that in 85 of the 106 Congresses, the minority party has held more than the necessary one-third strength to prevent the removal of a President?

The action of the House of Representatives was not partisan. But, it is obvious from the final vote that future generations could reach such a conclusion. In fact, it is obvious that many of our Democratic Senators have done so. In this Senate, a final vote

strictly on party lines should not occur. The fundamental principles referenced by the Chief Justice—particularly the balance of power between the legislative and executive branches of our Federal Government—should not be undermined. The most basic principle at issue is the obligation of each branch to dedicate itself to protect the separation of powers of our three branches of Government.

In my judgment, the power of the Senate to reach across to the executive branch and remove a President of the United States may be exercised only when the President's actions seriously threaten our Nation's security, when he violates his oath to "faithfully execute the law of the United States," or does such violence to the rule of law that removal from office is clearly the only way to protect our Nation from the possibility that he might do great harm to our people.

While I believe the President violated his oath, it does not necessarily follow that he must be removed. For myself, if I knew my vote would be the deciding vote here, I would not vote to remove this President, despite his unlawful acts. He has not brought that level of danger to the Nation which, in my judgment, is necessary to justify such an action.

The President remains answerable, as all Americans should be, to the criminal processes of our justice system. We do not have the power to convict him of a crime; the Constitution forbids it. Instead, the Constitution provides that the Senate, by a two-thirds majority of those voting, may remove him from office. For me, that makes this more than a factual issue, so I do not vote as I would were I a juror in a criminal case.

As I prepared my decision, it was apparent to me that there was no alternative that will dispose of this matter consistent with the sanctity of oaths and the importance of truth other than to adopt findings of fact. Not to do so and to not remove the President undermines the great success of a Nation based upon observance and loyalty to our oaths.

Having no other alternative, I shall vote guilty on article II. As I previously pointed out, I would not do so if I knew such action would remove the President from office. I do so to demonstrate my firm conviction not only that the President has obstructed justice, but also that we should have followed the procedure which would establish the facts clearly and then determine if the President should be removed from office.

When we had our first meetings on this issue, I told my colleagues we had forces in Kuwait on high alert, forces in Bosnia, an alarming situation in North Korea, and Asian flu plaguing the economies of emerging Nations, and Pakistan and India drawing closer and closer to conflict. President Yeltsin, when I saw him yesterday, was a very ill leader, a leader of a Nation that has the ability to threaten our freedom. NATO could well order an assault in Kosovo if negotiations there break down.

The world has one stable superpower—the United States of America. Removal of the President by the Senate for the first time in history could destabilize our Nation—leaving him in office will not.

The long National ordeal our country has undergone over the past year has been agonizing for all of us. Since the Senate con-

vened as a Court of Impeachment, I have received thousands of e-mails and letters from every reach of my State, from the most remote Eskimo village to our largest urban center.

I have received letters from literally every walk of life: from doctors, lawyers, and Indian chiefs. Many are filled with advice on how I should cast my vote, the most important vote I will ever cast as a Senator. But whether they believe the President should be removed from office or not, all express deep concerns about the future of our country and the example we set for future generations. I have laid awake many nights pondering those very questions, and I share the anguish that many have felt.

When I was appointed to the Senate 30 years ago Christmas Eve, I had a motto that I have tried to live by. "To hell with the politics. Just do what's right for Alaska." Today, as one of 100 men and women who have been chosen to exercise this mighty power that our Founding Fathers conveyed on us over 200 years ago, I modify my creed: "To hell with the politics. Just do what's right for the Nation."

There are many who will disagree with the votes I cast in this historic trial. But I hope all will know that I have done my best to live by the oaths that I took, and to do what I think is right for the Nation.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOSEPH I. LIEBERMAN

Mr. LIEBERMAN. Mr. Chief Justice, throughout the history of this great country, we have endured trials that have strained the sinews of our democracy and sometimes even threatened to tear apart our unparalleled experiment in self-government. Each time the Nation has returned to the Constitution as our common lodestar, trusting in its vision, its values and its ultimate verity. Each time we have emerged from these tests stronger, more resilient, more certain of Daniel Webster's claim of "one country, one constitution, one destiny." (Speech to a Whig Party rally in New York City, March 15, 1837.) And each time our awe of the Founders' genius has been renewed, as has our reverence for the brilliantly-calibrated instrument they crafted to guide their political progeny in the unending challenge of governing as a free people.

At this moment, we face a test that, although not as grave or perilous as some before, is nevertheless unlike anything this Nation has ever experienced. As my colleagues well know, the impeachment trial of William Jefferson Clinton marks the first time in our history that the United States Senate has convened as a court of impeachment to consider removing an elected President from office. But what also makes this trial unprecedented are the underlying charges against President Clinton, which stem directly from his private sexual behavior. The facts of this case are complicated, embarrassing, demoralizing, and infuriating. They raise questions that Madison, Hamilton, and their brethren could never have anticipated that the Senate would have to address in the solemn context of impeachment.

The public examination of these difficult questions—about private and public morality, about the role of the independent counsel, and about our expectations of Presidential conduct—has been a wrenching, dispiriting and at times unseemly process for the Nation. It has divided us as parties and as a people, reaching its nadir in the partisan bickering and badgering that unfortunately defined the impeachment vote in the House of Representatives and compromised the legitimacy of this process in the eyes of many Americans. It has set off a frenzy in the news media that has degraded and devalued our public discourse and badly eroded the traditional boundaries between public and private life, leaving a pornographer to assume the role of arbiter of our political mores. And it has so alienated the American people that many of them are hardly paying attention to a trial that could result in the most radical disruption of the Presidency—excepting assassination—in our Nation's history.

Yet despite the significant pain this trauma has caused for the country, I take heart from the fact that we have once again reaffirmed our commitment to the Constitution and the fundamental principles underpinning it. The conduct of the trial here in the Senate has been passionate at times, but never uncivil, and while some votes have broken along party lines, they have never broken the spirit of common purpose we share. Indeed, throughout the past several weeks we as a body have grown closer as we have continually measured our actions with the same constitutional yardstick, and each of us has sought to remain faithful to the founders' vision as we understand it in fulfilling our responsibilities as triers of the President. This, I believe, is in the end a remarkable testament to the foresight of our forefathers, that even in this most unusual of crises, we could and would rely on the Constitution as our compass to find a peaceable and just resolution.

We are about to achieve that resolution and complete our constitutional responsibilities by rendering a judgment, a profound judgment, about the conduct of President Clinton and the call of the House of Representatives to remove him from office. This is the duty we accepted when we swore to do "impartial justice," and it is a duty that I, as each of you, have pondered night and day since this trial began.

As I have stated previously on this Senate floor, I have been deeply disappointed and angered by this President's conduct—that which is covered in the articles, and the more personal misbehavior that is not—and like all of us here, I have struggled uncomfortably for more than a year with how to respond to it. President Clinton engaged in an extramarital sexual relationship with a young White House employee in the Oval Office, which, though consensual, was irresponsible and immoral, and thus raised serious questions about his judgment and his respect for the high office he holds. He then made false or misleading statements about that relationship to the American people, to a Federal district court judge in a civil deposition, and to a Federal grand jury; in so doing, he betrayed not only his family but the public's trust, and undermined his moral authority and public credibility.

But the judgment we must now make is not about the rightness or wrongness of the President's relationship with Monica Lewinsky

and his efforts to conceal it. Nor is that judgment about whether the President is guilty of committing a specific crime. That may be determined by a criminal court, which the Senate clearly is not, after he leaves office.

No, the question before us now is whether the President's conduct—as alleged in the two articles of impeachment—makes his continuance in office a threat to our government, our people, and the National interest. That, I conclude, is the extraordinarily high bar the framers set for removal of a duly-elected President, and it is that standard we must apply to the facts to determine whether the President is guilty of "high Crimes and Misdemeanors."

Each side has had ample opportunity to present its case, illuminating the voluminous record from the House, and we Senators have been able to ask wide-ranging questions of both parties. The House was also authorized to conduct depositions of the three witnesses it deemed most important to its case. I have listened intently throughout, watched the videotaped depositions, and been very impressed by both the House managers and the counsel for the President. The House managers, for their part, have presented the facts and argued the Constitution so effectively that they impelled me more than once to seriously consider voting for removal.

But after much reflection and review of the extensive evidence before us, of the meaning of the term "high Crimes and Misdemeanors," and, most importantly, of the best interests of the Nation, I have concluded that the facts do not meet the high standard the founders established for conviction and removal. No matter how deeply disappointed I am that our President, who has worked so successfully to lift up the lives of so many people, so lowered himself and his office, I conclude that his wrongdoing in this sordid saga does not justify making him the first President to be ousted from office in our history. I will therefore vote against both articles of impeachment.

In reaching the judgment that President Clinton is not guilty of high crimes or misdemeanors, I started from the same premise that the founders did—the right of the people to choose their leaders is paramount in America, derived directly, as Thomas Jefferson wrote in the Declaration of Independence, from the equality of rights endowed to the people by our Creator. The supremacy of this first democratic principle was well described by Alexis De Tocqueville in "Democracy in America": "The people reign in the American political world as the Deity does in the universe. They are the cause and the aim of all things; everything comes from them, and everything is absorbed in them." (Heffner ed., 1956, p. 58.)

In debating the President's fate, we must remember that what we are deciding is whether to supersede the people's decision about who should lead them—to substitute our judgment for theirs. On this point, the framers of the Constitution were clear. They had boldly rejected the autocratic rule of a monarch and put in his place a President elected by, and accountable to, the people. Their deliberations show that they did not want even the legislature to exercise too much control over the popularly-chosen President. The framers provided impeachment to serve as the narrowest of escape valves in the most extreme of cases. As a result, they set an extraordinarily high bar—both procedurally and substantively—for

Congress to overcome before we, rather than the voters, could remove a President from office.

Specifically, they required a majority of the House of Representatives to impeach and permitted removal only upon the concurrence of two-thirds of the Senate—which the framers surely knew, and the current proceedings have demonstrated, is exceedingly difficult to obtain. They also established a very strict substantive standard, authorizing the Congress to remove a President from office only upon "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." (U.S. Constitution, Art. II, sec. 4.)

The first time I read that clause, "high Crimes and Misdemeanors," I assumed it included any criminal offense—and only criminal offenses—and I thought that it gave Congress broad latitude to impeach and remove from office a President who had committed any violation of the criminal code. But the more I studied the history, the less clear that interpretation became. The phrase "high Crimes and Misdemeanors" was a term of art to the framers, and it meant something very different from ordinary crimes, the response to which must be left to the criminal justice system. The framers chose the term "high crimes" to connote a very specific type of offense, like treason or bribery, which has a direct impact on the Government and undermines the chief executive's ability or will to continue serving without corruption and in the National interest. As Alexander Hamilton explained in "The Federalist Papers," high crimes and misdemeanors are "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated *political,* as they relate chiefly to injuries done immediately to the society itself." ("The Federalist Papers" No. 65, Rossiter ed. 1961, p. 396 (emphasis in original).)

It is not necessary here to offer a lengthy dissertation on the Constitutional Convention's impeachment debates. But I would like to share a statement of James Madison that illuminates the reasons why the framers wanted to authorize impeachment and removal, as well as the intended scope of that power. In response to the suggestion that it was dangerous to authorize the legislature to remove the President, Madison argued that it was:

> indispensable that some provision should be made by defending the Community against the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers . . . In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic. ("Records of the Federal Convention of 1787," Vol. II, pp. 65–66 (Farrand ed. 1888).)

"Loss of capacity or corruption"—that is the evil at which the Constitution's impeachment clauses were directed, in Madison's view.

Although neither the words of the Constitution nor the writings of Hamilton, Madison or any of the other framers of the Constitution provide a precise list of those offenses that prove "the abuse or violation of some public trust," or the "loss of capacity or corrup-

tion" that would constitute "high Crimes and Misdemeanors," their words and our history offer some help in supplying a more detailed meaning to those terms.

First, the framers saw impeachment as an extreme remedy meant to respond to only a limited universe of offenses. They took great care to ensure that their chosen substantive standard did not have the effect of providing Congress so much discretion over the President's fate that it could use its power to infringe on the President's independence. It was for this precise reason that Madison successfully argued against allowing for removal for "maladministration," for fear that "[s]o vague a term will be equivalent to a tenure during pleasure of the Senate." ("Records of the Federal Convention of 1787," Vol. II, p. 550 (Farrand ed. 1888).)

Second, pervading the framers' discussions—and the constitutional language they ultimately adopted—was the view that impeachment was intended to protect the Nation and the National interest and not to provide the legislature an alternative to the criminal justice system for holding accountable the President or any other violator of the Nation's criminal laws. In crafting our Constitution's impeachment clauses, the framers specifically and consciously departed from the English practice, in which Parliament could use its impeachment power to impose criminal sanctions. Emphasizing that the legislative branch has no constitutional role whatsoever in meting out punishment, whether for the chief executive or any other citizen, was so important to the framers that they declared it not once, but twice in the Constitution—first when they outlawed bills of attainder (Art. I, sec. 9, cl. 3), and again when they emphasized that "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law" (Art. I, sec. 3, cl. 7).

It is this linguistically-driven irony—that the Constitution's impeachment clauses employ the language of criminal law to authorize a process entirely outside of and distinct from the criminal justice system—that has created so much confusion over our precise task here. The House managers often appear to suggest that if they show that the President committed a crime, then they have met their burden, because it is our responsibility to hold accountable a President who violates the law and to send a message that the President is not above the law.

But as Professor Charles Black so well explained in "Impeachment: A Handbook," criminality in and of itself is neither a necessary nor a sufficient basis for concluding that a President has committed a high crime or misdemeanor, because our goal is to protect the Nation's interests, not to punish a President for violating the criminal law. He states: "I think we can say that 'high Crimes or Misdemeanors,' in the constitutional sense, ought to be held to be those offenses which are rather obviously wrong, whether or not 'criminal,' and which so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator. The fact that such an act is also criminal helps, even if it is not essential, because a general societal

view of wrongness, and sometimes of seriousness, is, in such a case, publicly and authoritatively recorded." (1998 ed., pp. 39–40.)

If the purpose of impeachment was to ensure that the President is held accountable for violating the law, then the framers would have authorized Congress to impeach and remove, not just for high crimes but for any crimes. They did not do that. They gave us the power of impeachment and removal for one reason and one reason only: to protect the Republic from a chief executive who, by his acts, has demonstrated that he can no longer be trusted to govern in the National interest. Responses to all other forms of malfeasance were left to the other branches.

That is why I conclude that the appropriate question for each of us to ask is not whether the President committed perjury or obstruction of justice, but whether he committed a high crime or misdemeanor—a term I understand from the history to encompass two categories of offenses. The first includes those that are like treason or bribery in that they represent a gross misuse of official power to directly injure the State or its people. Those guilty of such offenses must be removed from office because they have explicitly demonstrated, by their conduct, that they will place their personal interests above the National interest.

The President's counsel and others suggest that we should stop here, arguing that Congress has no authority to remove a President for any offense not committed through the use of official power. (Trial Memorandum of President Clinton, pp. 19–20.) I cannot agree. Instead, Madison's argument that we must have an escape valve that allows the legislature to remove a President when the need arises to defend "the Community against the incapacity, negligence, or perfidy of the chief Magistrate," coupled with Hamilton's definition of "high Crimes and Misdemeanors" as an "abuse or violation of some public trust," convince me that it is more than just misuse of official power that can require the Senate to remove an office holder. Acts that, although in their immediate nature and effect differ from treason or bribery because they do not stem from a misuse of official power, may nevertheless undermine the offender's ability to discharge his duties in the interests of the American people. In other words, the second category of offenses that equal "high Crimes and Misdemeanors" are non-official acts that unequivocally demonstrate the same threat posed by treason or bribery: that the President can no longer be trusted to use his power in the best interests of the Nation.

It is for this reason that I reject the contention that a President's giving false or misleading statements under oath or his impeding the discovery of evidence in a lawsuit arising out of his personal conduct may never constitute a high crime or misdemeanor. I have no doubt that under certain circumstances such offenses could demonstrate such a level of depravity, deceit and disregard for the administration of justice that we would have no choice but to conclude that the President could no longer be trusted to use the authority of his office and make the decisions entrusted to him as chief executive in the best interest of the Nation. It is because I hold this position that I found reaching a decision in this case such a difficult matter.

Before evaluating the charges against the President, and determining whether his misconduct in fact meets the high threshold the Constitution establishes for removal, each of us had to resolve the important question of what standard of proof should be used for judging the evidence against the President. It is widely agreed that the House managers have the burden of convincing Members of the Senate that the President has committed a high crime or misdemeanor, but there are differences of opinion on the level of certainty each of us in the Senate must reach before we can conclude that the House has met its burden.

During the impeachment trial of Judge Alcee Hastings, I gave a great deal of thought to this question, and after weighing the competing interests of preserving the integrity of the judiciary, maintaining the independence of the judiciary, and protecting the personal interests of the office holder, I concluded that the House had to prove its case by "clear and convincing evidence." (135 CONG. REC. S14359–61 (Oct. 27, 1989).) Clear and convincing evidence is evidence that, in one formulation, produces in the mind "a firm belief or conviction as to the matter at issue" (U.S. Fifth Circuit District Judges Association, Pattern Jury Instructions § 2.14 (1998 ed.)) or, put another way, persuades the finder of fact that the claim "is highly probable" (Committee on Model Jury Instructions, Ninth Circuit Manual of Model Jury Instructions § 1.12.2 (1997 ed.)).

There are valid arguments for adopting the higher standard of "beyond a reasonable doubt" in this case, most importantly that the National trauma caused by the removal of a President so far surpasses the damage imposed by the removal of a single judge, that the Senate must remove a President only if it has a very high degree of certainty in the facts underlying its decision. On the other hand, just as the trauma of removing a President is greater than that flowing from removing a judge, the danger an errant President poses to the Republic far exceeds the threat presented by a misbehaving judge. This need to protect the integrity of the Republic and the welfare of its people argues against setting the standard of proof so high that it would result in leaving in power an individual whose fitness to continue serving in the national interest is seriously in doubt, remembering that no matter what the standard, removal still requires two-thirds of the Senators' support.

In 1974, then Senate Majority Leader Mike Mansfield recommended that the standard of "clear and convincing evidence" was "a logical middle ground between the burden of proof requirement in criminal proceedings ('beyond a reasonable doubt') and the burden of proof requirement in civil proceedings ('by a preponderance of the evidence')." He added these words of insight and reason:

An impeachment proceeding is not a criminal proceeding since the Court of Impeachment is barred by the Constitution from imposing any of the usual criminal law sanctions in the event of conviction, and it is not a civil proceeding because the extraordinary formality and complexity of the process and the serious consequences of a conviction and removal (in at least the case of an impeachment of the President of the United States) militate against accepting as adequate the low threshold requirement of a civil action. The burden of proof, like the terminology and various other requirements, must be unique because impeachment itself is unique. It is unique in that it is a hybrid of the legislative and the judicial, the political and the legal. (Senate Committee on Rules and Administration Executive Session Hearings

on Senate Rules and Precedents Applicable to Impeachment Trials, Aug. 5-6, 1974, p. 193.)

For similar reasons, Professor Charles Black in his "Impeachment: A Handbook" (p. 17), offers the standard of "overwhelming preponderance of the evidence" as appropriate for impeachment trials.

Taken together, those arguments persuaded me to adopt as the appropriate standard of proof the same one I chose in Judge Hastings' impeachment trial: clear and convincing evidence. In other words, to vote for either of the articles before us, I must conclude that there is clear and convincing evidence that President William Jefferson Clinton has committed a high crime or misdemeanor.

This brings me to the crux of this case, where it is necessary to apply the standard of proof I have adopted to the evidence the managers have presented, in order to reach judgment on the articles before us.

A number of specific allegations contained in the articles lack sufficient legal or evidentiary support. For example, it strikes me as highly doubtful that an obstruction case can be made from the President's statements to aides who later testified to the grand jury. The House asserts that these statements constituted obstruction because the President knew his aides would repeat those statements to the grand jury, thereby providing misleading information to the grand jury. But the House has not adequately explained how the President saying privately to his aides the same thing he was saying to the public could constitute obstruction, particularly when we have been presented no evidence showing that the President made those statements for the purpose of having them repeated to the grand jury.

Similarly, the managers have not offered a convincing legal theory showing how the President obstructed justice simply by failing to dispute his attorney's statements about his relationship with Ms. Lewinsky during the President's deposition. And, the managers have failed to substantiate their allegation that the President committed perjury by misstating the date of his initial sexual encounter with Ms. Lewinsky when he told the grand jury "When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong" (Aug. 17, 1998 Grand Jury Testimony of President Clinton, pp. 8–9). The managers have not offered evidence that the President's error was intentional, nor did they provide a convincing explanation how such a misstatement was material to the grand jury's investigation.

Although the managers offered slightly more weighty evidence concerning the involvement of the President and his friend, Vernon Jordan, in Ms. Lewinsky's job search at the same time she was filing a false affidavit in the Jones case, their case on this point leaves me suspicious but unconvinced. The evidence is highly circumstantial, amounting largely to an overlap in the timing between Ms. Lewinsky's appearance on the Jones' witness list and Mr. Jordan's efforts to find Ms. Lewinsky a job at the President's request. Both Ms. Lewinsky and Mr. Jordan testified that there was no connection between the two events. Although the fact that Ms. Lewinsky's job search and the drafting of her affidavit occurred simultaneously and that Mr. Jordan was involved with both raises

questions, nevertheless the ultimate lack of any direct evidentiary connection prevents me from reaching any settled conclusion on the matter.

The House has provided more persuasive evidence to support a number of its other allegations. For example, I am troubled by the President's grand jury testimony that he did not have sexual relations with Ms. Lewinsky within the meaning of the definition offered him in his Jones deposition. (Aug. 17, 1998 Grand Jury Testimony of President Clinton, pp. 9, 109.) Ms. Lewinsky testified that they had several such encounters. (Aug. 26, 1998 Grand Jury Testimony of Monica Lewinsky, pp. 6–40.) The President's counsel responded to this allegation by saying: "This claim comes down to an oath against an oath about immaterial details concerning an acknowledged wrongful relationship." (Trial Memorandum of President Clinton, p. 44.)

I disagree. The President's statement almost certainly was material to the grand jury's investigation. The grand jury was not investigating whether or not Ms. Lewinsky and the President had a relationship per se, but rather whether the President perjured himself in his Jones deposition and obstructed justice. Given that in his Jones deposition, the President specifically denied having sexual relations with Ms. Lewinsky, it seems not only material, but central to the grand jury's investigation to determine whether the President told the truth when he said he did not have sexual relations with her.

The fact that Ms. Lewinsky was testifying under an immunity agreement and would therefore be subject to prosecution if she lied, and that most of her other testimony is uncontroverted, so much that the President's counsel relies on it at several key points, leads me to view her testimony about the details of her sexual relationship with the President as credible. The same is true of her consistent testimony that it was Betty Currie who called her and told Ms. Lewinsky she understood she had something for her—the gifts from the President. (Feb. 1, 1999 Deposition of Monica Lewinsky, 145 CONG. REC. S1225 (Feb. 4, 1999).)

Although it is a less central matter, I am puzzled by the President's including in his prepared grand jury testimony the statement that "I regret that what began as a friendship came to include this [inappropriate] conduct." (Grand Jury Testimony of President Clinton, p. 9.) As the House managers pointed out, according to Ms. Lewinsky, she and the President engaged in "this conduct" on the first day they met.

The series of questions which Betty Currie, a friendly witness to the President, testified that the President asked her on the day after his deposition in January 1998 and again a few days later are most troubling—both as to the credibility of the President's testimony to the grand jury regarding those statements and as to whether his intent in making those statements was to wrongly influence Ms. Currie's potential testimony. The President testified that he asked Ms. Currie those questions "to refresh my memory about what the facts were." (Grand Jury Testimony of President Clinton, p. 131.) In their trial memorandum (pp. 52–53), the President's counsel assert that his statement is consistent with Ms. Currie's testimony that the President seemed to be trying to gather in-

formation. But the President did not testify that he was trying to gather information generally. He stated that he was trying to refresh his own memory. And this, unfortunately, seems to me to be an implausible explanation of what he was doing. In his testimony before the grand jury on August 17, 1998, the President admitted that he had "inappropriate intimate contact" with Ms. Lewinsky and that the relationship occurred "when I was alone with Ms. Lewinsky." (Grand Jury Testimony of President Clinton, pp. 8–9.) He therefore must have known in January 1998, when he asked Ms. Currie the series of questions, that the statements they contained, for example, that "I was never alone with Monica Lewinsky," that Ms. Currie "could see and hear everything," and that "Monica came on to me, and I never touched her, right?" either were not true or were beyond Ms. Currie's knowledge and that Ms. Currie could not possibly help refresh his memory.

The President called Ms. Currie in on January 18, 1998 to ask her those questions after the surprise questions he was asked the day before in the Jones deposition about his relationship with Ms. Lewinsky, and after he repeatedly invoked Ms. Currie's name in connection with Ms. Lewinsky in response to those questions. (Jan. 17, 1998 Deposition of President Clinton, reprinted in Evidentiary Record, S. Doc. 106–3, Vol. XXII, pp. 17, 20, 21, 22, 23, 24, 25, 26, 27.) Certainly, if the Jones lawyers wanted to further investigate the President's relationship with Ms. Lewinsky, the President's own statements would have led them directly to Ms. Currie.

In summary, although the House managers have left me thoroughly unconvinced of some of their allegations, the evidence presented on others does lead me to believe that it is likely that there were occasions on which the President made false or misleading statements and took actions which could have had the effect of impeding the discovery of evidence in judicial proceedings. Whether any of his conduct constitutes a criminal offense such as perjury or obstruction of justice is not for me to decide. That, appropriately, should and must be left to the criminal justice system, which will uphold the rule of law in President Clinton's case as it would for any other American. What I must do is uphold the Constitution and decide whether the House managers have presented clear and convincing evidence that the President has committed a high crime or misdemeanor, which is to say whether they have demonstrated that his misconduct has so compromised his capacity to govern in the national interest that he must be removed.

I conclude that the House managers have not met that high burden. I am, of course, profoundly unsettled by President Clinton's irresponsibility in carrying on a sexual relationship with an intern in the Oval Office and by the disregard for the truth he showed in trying to conceal it from his family, his staff, the courts and the American people. But the managers have failed to convince me with the evidence they have presented that his misbehavior, as charged in the articles of impeachment, makes him a threat to the national interest, and that we can no longer expect the President to govern free of corruption in the Nation's best interests.

Indeed, the managers have barely addressed this point of consequences at all, providing almost no evidence or argument that the republic needs protecting from this President. Rather, they

have presented their case largely as if the Senate were a criminal court, as if our sole responsibility were to determine whether the President is guilty of the crimes of perjury and obstruction of justice, as if those specific crimes were the indisputable equivalent of high crimes or misdemeanors automatically warranting the President's removal. And in doing do, I believe, they have failed to cross the higher constitutional threshold of proving that the President has forfeited his right to fill out the term for which the people elected him.

The voice of the American people, in fact, indicates that just the opposite is true. According to every public poll we have seen, a clear majority of the American people have continued to support the President throughout this ordeal. Nearly two-thirds of them say repeatedly that they approve of the job that President Clinton is doing in running the country, and that they oppose his removal. In my State of Connecticut, a survey done by The Hartford Courant just last week showed that 68 percent of my constituents rate the President's job performance as excellent or good, and a full three-quarters of them believe he deserves to stay in office.

In noting this, I recognize that it would be a dereliction of my duty to substitute public opinion polls for reasoned judgment about our national interest in resolving this constitutional crisis. But it would also be a serious error to ignore the people's voice, because in exercising our authority as a court of impeachment we are standing in the place of the voters who re-elected the President two years ago. In this case, the prevailing public opposition to impeachment has particular relevance, for it provides substantial evidence that the President's misconduct has not been so harmful as to shatter the public's faith in his ability to fulfill his Presidential duties and act in their interest.

It is possible, of course, that a popular President could nevertheless be corrupt and pose a threat to the Nation, which is to say that public opinion is not the only barometer of fitness for office. But in this democracy it is an indispensable measure, and in light of the ultimately unconvincing evidence the managers have presented to demonstrate the President's loss of capacity or corruption, the public's opposition to removal carries weight in my deliberations. It carries particular weight given the overwhelming amount of information the news media has provided us about the details of the President's behavior, which strongly suggests that the American people have not reached their conclusions in ignorance of the President's flaws or faults.

The public opinion polls tell us more than that the majority of people support his continuance in office. Those two-thirds who consistently give him high ratings for his job performance have also strongly expressed their disapproval of his sexual behavior and his deliberate lies to the Nation. Indeed, surveys have routinely shown that, as a consequence of this scandal, less than one-fifth of the American people claim that they share the President's moral and ethical values, a result I find stunning and which may be unparalleled in our history.

How can so many Americans simultaneously hold the views that the President has demeaned his office and yet should not be evicted from it? We will be trying to answer that question and to weigh

the consequences of those seemingly conflicting opinions for a long time to come. But I believe the explanation must have something to do with the context of the President's actions. As the record makes abundantly clear, the President's false or misleading statements under oath and his broader deception and coverup stemmed directly from his private sexual behavior, something that no other sitting American President to my knowledge has ever been questioned about in a legal setting. The President neither lied about nor was trying to conceal Presidential malfeasance or a heinous crime, such as murder or rape, but instead sought to hide a sexual relationship with an intern that was deeply embarrassing, shameful, even indefensible, yet not illegal.

Indeed, troubled as I am by much of the evidence the managers presented and the arguments they made, on each occasion I considered voting for removal I invariably came back to this question of context, and I asked myself: Are these the kinds of offenses the founders envisioned when they entrusted us with the awesome power of invoking our democracy's ultimate sanction? Does this tawdry, tragic episode justify, for the first time in our proud history, ejecting from office the individual the American people chose to lead the country? And each time I had to answer no.

To reach this conclusion, that the context matters in judging the President's misconduct, is in the eyes of the House managers and many of the President's critics an abdication of duty and honor. It is, they contend, to wink at any immorality, any transgression that is connected to sexual behavior, to sacrifice our most precious principles at the altar of moral relativism. And worse, by choosing to acquit the President, they argue, we are setting an awful precedent for Presidents to come.

I understand and share the frustrations that lead to these criticisms. As I stated in the speech I made on this floor on September 3 of last year, I was deeply angered by the President's recklessness and his purposeful deceit. The conduct he had acknowledged at that point in his grand jury testimony was not only immoral but harmful. The President is, as eminent historian Clinton Rossiter noted, the American people's "one authentic trumpet" (Rossiter, "The American Presidency," 1955, p. 23), and when the notes he sounds falter in the expression of our common values, it has an effect, one that cannot be ignored. That was made clear to me in talking with many parents and children about this matter over the last several months, hearing the dismay and distrust in their voices, which was powerful evidence to me that the President had undercut his moral authority and undermined public confidence in his word.

My disappointment and anger with the President's actions were reawakened as I listened to the evidence the managers have presented. And like many of my colleagues, I am left dissatisfied with the all-or-nothing nature of the choice we have been asked to make in this proceeding, between removing this President from office on the one hand, or not removing him on the other, which could imply exoneration or even vindication.

But as unsatisfying as that choice is, it is the only one that the founders empowered the Senate to make in this impeachment proceeding. Our responsibility is not to pass judgment on the morality

of the President's behavior, or to find whether he committed a specific crime. Impeachment is not an instrument of protest, or of prosecution, but one of protection, of our country, its people, and our democratic ideals. When the roll is called on each article and I answer "not guilty," I want it understood that I am saying "not guilty of a high crime or misdemeanor," and that is all I can say.

With that understood, I do believe the Constitution allows for one recourse that would provide a means for us as the people's representatives to register our and their disapproval, and would, I believe, help us to bring appropriate closure to this terrible chapter in our Nation's history. It is well within the Senate's constitutional prerogatives to adopt a resolution of censure expressing our contempt for the President's misconduct, both that which is charged in the articles and that which is not. Such a censure would not amount to a punishment, nor would it be intended to do so. What it would do, particularly if it united Senators across party lines and positions on removal, is fulfill our responsibility to our children and our posterity to speak to the common values the President has violated, and make clear what our expectations are for future holders of that highest office.

And what it could do, I believe, is to help us to begin healing the wounds the President's misconduct and the impeachment process's partisanship have done to the American body politic, and to the soul of the Nation. I have observed that roughly two-thirds of the public consistently expresses its opposition to the President's removal. But I do not think we can leave this proceeding, especially those of us who have voted against the articles, without also noting that roughly one-third of the American people have consistently expressed their belief that this President is unfit to lead this Nation. That is a startlingly large percentage of our people who have totally lost confidence in our Nation's leader.

This extraordinary divergence of opinion tells us that there is a rift in our public life that extends far beyond the specific circumstances of this case, a rift that the President's misconduct has only exacerbated. A statement of censure is not an antidote that will magically eliminate this division, but I believe it will help by demonstrating that we can find common moral ground and articulate our common values even though we Senators and our constituents have disagreed about impeachment. For that reason, I hope that once this trial is concluded, we will put aside our partisan loyalties and our political hesitations and overcome parliamentary obstacles to join together in passing a resolution that affirms our belief that the Presidency is and must continue to be, in the words of Clinton Rossiter, "the one-man distillation of the American people" ("The American Presidency," p. 11), the steward of our freedom and our values.

In closing, Mr. Chief Justice, I would like to quote from a wise and compelling insight that Manager HYDE put forward in his final argument. The most formidable obstacle the managers faced in making their case, he said, was public cynicism, "the widespread conviction that all politics and all politicians are by definition corrupt and venal." He went on to say, "That cynicism is an acid eating away at the vital organs of American public life. It is a clear

and present danger because it blinds us to the nobility and the fragility of being a self-governing people."

While I disagree with Manager HYDE's ultimate conclusion in this case, I could not agree more with his eloquent assessment of this threat to our democracy. It is a problem I addressed at the end of the campaign finance investigation that the Governmental Affairs Committee conducted in 1997, when I argued that the mad chase for money that dominates and distorts our political system gives the American people, already deeply skeptical of the motives of politicians, good reason to doubt whether they have a true and equal voice in their government. And it is a problem that I fear has grown significantly worse in the wake of this unseemly saga and the damage it has done to the public's esteem for and expectations of their leaders.

The long and painful process of impeachment is about to come to an end, and thankfully so, but the enormous challenge we face in restoring the public's faith in our public institutions and those who serve in them is just beginning. This is the next great test for the President and for each of us, the fight against cynicism's corrosive influence and the loss of public trust. If we once again seek the help of our common creator and the counsel of our shared Constitution, and through our actions express their ideals and fulfill their expectations, I am confident we can in time renew a sense of common purpose and reassure the citizenry we serve that America is indeed, as Webster proclaimed, one country with one destiny. Thank you.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR SAM BROWNBACK

Mr. BROWNBACK. Mr. Chief Justice, I find that William Jefferson Clinton did commit perjury and obstruct justice; that these offenses rise to the level of "high Crimes and Misdemeanors;" that William Jefferson Clinton should be convicted under the articles of impeachment; and that he must be removed as President of the United States.

This is a sad chapter in our Nation's long and illustrious history. A man of extraordinary talent took a mistake and turned it into a tragedy. William Jefferson Clinton is no ordinary man. Gifted and charismatic, brilliant and refined, he took raw ability and focus and turned it into a Presidency. Such is the stuff of story books and heroes. Sadly for this tale, the hero had a habit he would not break, and, when it called him back to darkness, he sought to hide it at all cost. And there the tragedy occurred.

President Clinton repeatedly chose to lie and obstruct justice rather than tell the truth and comply with court orders throughout this ordeal. By his words and deeds he chose to place himself above the law. By his words and deeds he has undermined the rule of law in America to the great harm of this Nation. By his own words and deeds, he has undermined the truth-finding function of the judiciary, at great harm to that branch of our government. By his words and deeds, he had done great harm to the notions of honesty and integrity that form the underpinnings of this great republic.

The following represents the specific facts upon which I find William Jefferson Clinton is guilty of perjury before a Federal grand jury and obstruction of justice, and must be removed as the President of the United States.

ARTICLE I

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the Office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning . . . the nature and details of his relationship with a subordinate Government employee[.]

Ms. Lewinsky testified as to the extent of her sexual relationship with President Clinton, and her statements were corroborated by numerous individuals with whom she contemporaneously shared the details of her encounters with the President, including two professionals. Her testimony indicated direct contact by the President with certain areas of her body. The conduct described by Ms. Lewinsky clearly falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case and during his grand jury testimony.

In his prepared statement to the grand jury, President Clinton stated that the sexual encounters between he and Ms. Lewinsky "did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition." President Clinton acknowledged that the type of activity described by Ms. Lewinsky constituted sexual relations as he understood the term to be defined during the Paula Jones' deposition: "I understood the definition to be limited to, to physical contact with those areas of the bodies with the specific intent to arouse or gratify." However, during questioning under oath, President Clinton repeatedly denied engaging in the activities described by Ms. Lewinsky.

President Clinton was even asked by a grand juror whether "if Monica Lewinsky says that while you were in the Oval Office area you touched [certain area of her body that falls within the definition of sexual relations as understood by the President in the Paula Jones case], would she be lying." President Clinton responded: "That is not my recollection. My recollection is that I did not have sexual relations with Ms. Lewinsky and I'm staying on my former statement about that."

If Ms. Lewinsky's testimony is true, President Clinton committed perjury during his grand jury testimony. I have had the opportunity to read the portions of grand jury testimony provided by both President Clinton and Ms. Lewinsky concerning their characterizations of their sexual relations. I also had the opportunity to watch Ms. Lewinsky's videotaped deposition in which she reaffirmed her previous grand jury testimony concerning the extent of their sexual relations. Based upon: (1) the corroboration of Ms. Lewinsky's testimony by numerous witnesses with whom she had spoken contemporaneously, (2) the detailed nature of Ms.

Lewinsky's testimony, (3) the evasiveness of President Clinton's testimony, (4) the apparent sincerity of Ms. Lewinsky in her videotaped deposition before the Senate, and (5) the President's refusal to be deposed by the Senate, I find that the President provided false and misleading testimony before a Federal grand jury that constitutes perjury.

On January 18, 1998, President Clinton met with Ms. Currie at the White House and told her "there are several things you may want to know" about the President's relationship with Monica Lewinsky. During his grand jury testimony, President Clinton stated that "I was not trying to get Betty Currie to say something that was untruthful." However, as discussed further in the obstruction of justice charges, President Clinton said to Ms. Currie "Monica came on to me, and I never touched her, right?" Based upon both Ms. Lewinsky and President Clinton's testimony concerning their intimate contact, and upon Ms. Lewinsky's Senate deposition, I must conclude that Ms. Lewinsky's account of their intimate activity is accurate. As a result, I must further conclude that President Clinton was lying when he told Ms. Currie that he had not touched Ms. Lewinsky, and that the President committed perjury when he testified before the grand jury that he had not asked Ms. Currie "to say something that was untruthful."

Mr. Clinton further testified that his only interest in speaking to Ms. Currie that day after the President was deposed in the Paula Jones case was to "refresh [his] own recollection" and "not to impart instructions on how she was to recall things in the future." As will be discussed further below, I conclude that President Clinton made a series of statements to Betty Currie in an attempt to improperly persuade her to provide false testimony. As a result, based upon the evidence presented in the record, I believe that President Clinton's interest in talking to Ms. Currie the day after he was deposed by Paula Jones' attorneys was to impart instructions on how Ms. Currie was to recall events concerning the President's illicit affair and not to refresh the President's memory. The President's statements before the grand jury concerning his interest in talking to Ms. Currie would thus constitute perjury.

In his grand jury testimony, President Clinton asserted in his conversations with Mr. Blumenthal and Mr. Podesta, that "I said things that were true. They may have been misleading." President Clinton further states that "what I was trying to do was give them something they could—that would be true, even if misleading in the context of this deposition." Mr. Clinton told Sidney Blumenthal that "Monica Lewinsky came at me and made a sexual demand on me" and that the President had rebuffed her. Mr. Blumenthal also testified that the President claimed that Ms. Lewinsky threatened the President, saying "that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more." When Mr. Blumenthal asked the President whether Mr. Clinton had been alone with Ms. Lewinsky, the President replied "I was within eyesight or earshot of someone."

Even President Clinton acknowledges that he was alone with Monica Lewinsky, and, therefore not within eyesight or earshot of

anybody, on numerous occasions. Mr. Clinton also acknowledges that he and Ms. Lewinsky engaged in "inappropriate intimate contact" which, if Ms. Lewinsky's testimony is true, amounted to sexual relations as President Clinton understood the term to be defined in the Paula Jones case. As a result, the President lied, not simply misled Mr. Blumenthal, when Mr. Clinton stated that he had "rebuffed her."

John Podesta testified that President Clinton had told Mr. Podesta that the President "had never had sex with her [Ms. Lewinsky] in any way whatsoever." Mr. Podesta further testified that President Clinton elaborated that the President and Ms. Lewinsky "had not engaged in [sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case]."

During Mr. Clinton's grand jury testimony, he refused to directly contradict Mr. Podesta's characterization of their conversation: "I'm not saying that anybody who had a contrary memory is wrong." President Clinton was asked "[i]f [the White House aides] testified that you denied sexual relations or relationship with Monica Lewinsky, or if they told us that you denied that, do you have any reason to doubt them?" The President responded "no."

Based on the evidence concerning the extent of the sexual relationship between President Clinton and Ms. Lewinsky, and based on the President's own admission concerning the accuracy of statements made by his aides, I conclude that President Clinton committed perjury when he characterized the manner in which he conveyed false statements to Mr. Podesta and Mr. Blumenthal. President Clinton did not simply mislead his aides, he lied to them about his relationship with Ms. Lewinsky.

ARTICLE II

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the Office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

The means used to implement this course of conduct or scheme included:

(1) On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

Ms. Lewinsky testified that on December 28, 1997 she told President Clinton that she had been subpoenaed and that the subpoena required her to produce gifts given her by the President. According to Ms. Lewinsky, she asked the President "should I—maybe I should put the gifts away outside my house somewhere or give them to someone maybe Betty." Ms. Lewinsky testified that President Clinton responded "I don't know" or "Let me think about that."

Later that day, December 28, Ms. Lewinsky testified that she received a phone call from Ms. Currie, who stated "I understand you have something to give me" or "the President said you have some-

thing to give me." Ms. Currie then retrieved the gifts that President Clinton had given to Ms. Lewinsky and hid them under her bed. Based upon the fact that Ms. Currie was clearly acting under instructions from President Clinton, I find that President Clinton obstructed justice by attempting to hide evidence requested in a subpoena in a Federal civil rights case.

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

At President Clinton's request, Vernon Jordan met with Monica Lewinsky in November of 1997 to discuss assistance that Mr. Jordan could provide Ms. Lewinsky in securing a job in New York. However, Mr. Jordan took no action until December 11, 1997, five days after President Clinton learned that Monica Lewinsky was on the witness list in the Paula Jones case and that Mr. Jordan had not yet provided Ms. Lewinsky with any assistance in securing a job in New York. On the day that Mr. Clinton learned that Ms. Lewinsky was on the witness list, the President assured her that he would talk to Mr. Jordan to ensure that Mr. Jordan stepped up his efforts to secure her a job in New York.

Mr. Jordan stepped up his activities on December 11, 1998, because, on that date, Judge Susan Webber Wright ordered that Paula Jones was entitled to information concerning any government employee with whom the President had sexual relations. On January 7, 1998, Ms. Lewinsky signed a false affidavit, stating that she had not engaged in a sexual relationship with the President. On January 8, 1998, after Ms. Lewinsky believed that her interview with MacAndrews and Forbes in New York had gone poorly, Mr. Jordan called the company's CEO, Ron Perelman, to ask his assistance with securing employment for Ms. Lewinsky within Mr. Perelman's company. All of this activity was done in order to ensure that Ms. Lewinsky did not provide damaging testimony against President Clinton and thus constituted an effort to obstruct justice in the Paula Jones case.

(6) On or about January 18 and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

Ms. Currie was summoned to the White House on Sunday, January 18, 1998 for a private meeting with President Clinton. The President was under court order not to talk about the case to anyone. Nonetheless, after telling Ms. Currie that he had been deposed in the Paula Jones case and that Ms. Jones' attorneys had asked the President several questions about Ms. Lewinsky, President Clinton then made a series of statements to Ms. Currie:

I was never really alone with Monica, right?
You were always there when Monica was there, right?
Monica came on to me, and I never touched her, right?
You could see and hear everything, right?

The testimony of Ms. Currie and President Clinton demonstrate that these statements were an attempt to influence the future tes-

timony of Ms. Currie regarding the President's relationship with Monica Lewinsky. President Clinton admitted being alone with Ms. Lewinsky. Ms. Currie also testified that the President and Ms. Lewinsky had been alone. Given the fact that President Clinton and Ms. Lewinsky had been alone on a number of occasions, a fact that President Clinton would be unlikely to forget considering the intimate nature of their encounters, the President was not refreshing his memory when he stated to Ms. Currie that he and Ms. Lewinsky had never been alone. President Clinton was attempting to improperly persuade Ms. Currie to testify that he and Ms. Lewinsky were never alone.

Ms. Currie testified that President Clinton and Ms. Lewinsky were alone a number of times. Despite the legal hairsplitting engaged in by the White House, I interpret the statement "You were always there when Monica was there, right?" to mean that President Clinton was attempting to improperly persuade Ms. Currie to testify that Ms. Lewinsky was always within Ms. Currie's sight during her visits to the President.

Based upon Ms. Lewinsky's testimony, President Clinton's statement that "Monica came on to me, and I never touched her, right?" would clearly be false. In addition, because even President Clinton admitted to "inappropriate intimate contact," I assume that President Clinton is at least admitting to having touched Ms. Lewinsky. As a result, I must conclude that President Clinton did touch Ms. Lewinsky. I must then further conclude that, because Mr. Clinton was making a statement to Ms. Currie that the President knew to be false, he could only have made such a claim in order to improperly persuade Ms. Currie to testify that President Clinton had never touched Ms. Lewinsky.

In his grand jury testimony, President Clinton admitted that he did not allow Ms. Currie to "watch whatever intimate activity [the President] did with Ms. Lewinsky." In addition, when asked whether he would "not have engaged in those physically intimate acts if [the President] knew that Ms. Currie could see or hear that," President Clinton responded "[t]hat's correct." However, on the Sunday after he was deposed in the Paula Jones case, Mr. Clinton told Ms. Currie "You could see and hear everything, right?" I find these two concepts to be inherently contradictory. President Clinton could not, on the one hand, shield Ms. Currie from seeing or hearing any intimate activity, while, on the other hand, be sincerely stating that Ms. Currie could see and hear everything. I must then conclude that President Clinton made this statement in an attempt to improperly persuade Ms. Currie to testify that President Clinton and Ms. Lewinsky engaged in no activity that Ms. Currie could neither see nor hear.

(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

On January 21, 1998, President Clinton met with Sidney Blumenthal, a senior White House aide. During the course of their conversation, Mr. Blumenthal asked President Clinton what the

President had done wrong. According to Mr. Blumenthal, the President responded "[n]othing" and "I haven't done anything wrong."

Mr. Blumenthal asked the President why, if he had done nothing wrong, would the President want to appear on television and admit wrongdoing, which is what the President implied he wanted to do. At that point, according to Mr. Blumenthal, the President stated that "Monica Lewinsky came at me and made a sexual demand on me" and that the President had rebuffed her. Mr. Blumenthal also testified that the President claimed that Ms. Lewinsky threatened the President, telling him "that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more."

According to Mr. Blumenthal, President Clinton also stated that "I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out." When Mr. Blumenthal asked the President whether Mr. Clinton had been alone with Ms. Lewinsky, the President replied "I was within eyesight or earshot of someone."

Based upon the grand jury testimony presented by Ms. Lewinsky and President Clinton, and upon the deposition provided to the Senate by Ms. Lewinsky as well as the President's failure to provide the Senate with a deposition, I have concluded that the statements made by President Clinton to Mr. Blumenthal are false. If the President had agreed to be deposed by the Senate, his testimony might have strengthened the credibility of the statements that he had made to Mr. Blumenthal. However, the credibility of such statements have no foundation in the evidence presented to the Senate. As a result, I must conclude that President Clinton had a motive other than an interest in conveying the truth when he made these statements to Mr. Blumenthal.

President Clinton has tried to argue that the President made these statements to Mr. Blumenthal, not to obstruct justice, but merely to mislead him. However, when asked whether he knew that Sidney Blumenthal and John Podesta might be called into a grand jury, President Clinton responded "That's right." Therefore, I must conclude that President Clinton lied to Sidney Blumenthal in order to plant false testimony on a potential grand jury witness, a witness the President himself admits he knew might be called.

John Podesta testified that President Clinton had told Mr. Podesta that the President "had never had sex with her [Ms. Lewinsky] in any way whatsoever." Mr. Podesta further testified that President Clinton elaborated that the President and Ms. Lewinsky "had not engaged in [sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case]." As stated above, Mr. Clinton acknowledges that he knew that Mr. Podesta might be called as a witness by the grand jury. As also discussed above, it is my opinion, based on the evidence, that President Clinton and Ms. Lewinsky did engage in sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case. As a result, Mr. Clinton lied to Mr. Podesta. In addition, because President Clinton knew that Mr. Podesta might be called as a witness by the grand jury, I must

conclude that the President lied to Mr. Podesta, not simply to mislead him and his White House colleagues, but in order to plant false testimony on a potential grand jury witness.

Perjury before a Federal grand jury and obstruction of justice do rise to the level of being a "high crime or misdemeanor" that is the standard set forth in the Constitution for impeachment. Indeed in recent years the United States Senate has impeached two federal judges for perjury. Were we not to remove the President for the same offense we would be breaking established precedent.

Furthermore, would it be right to set a lower standard for the President than the judges he appoints? I think not. The President must be held to the same standard, if not a higher one.

Perjury and obstruction of justice are crimes against the state. Perjury goes directly against the truth-finding function of the judicial branch of government. If the President can lie under oath, others will plead the same defense, sacrificing the truth.

The President is the chief law enforcement officer in the land. He or she should be the ultimate example of a law-abiding citizen, not one who willfully and repeatedly violates the law when it serves his or her narrow interest. The unlawful actions by the President will have the long term effect of reducing compliance with the law by others if the President can get away with it.

The Constitution states that impeachment and removal is to occur when "the President, Vice President and all civil officers" commit "treason, bribery, or other high crimes and misdemeanors."

I find bribery and perjury to be offenses of the same nature. Both seek to thwart well established legal processes. Bribery seeks to produce an outcome different from justice by obscuring our priorities. Perjury seeks to produce an outcome different from justice by obscuring the truth.

Obstruction of justice committed by the President undermines the entire judicial system and is thus a crime against the nation falling clearly in the category of a "high crime."

Whether or not the vote taken today is considered a victory for President Clinton, it will be, in many ways, a loss for America. We have lost many things over the past few months: trust in public officials, respect for the rule of law, confidence in the truth of the White House's public statements. But perhaps the most tragic loss has been the steady erosion of our societal standards.

It is hard to imagine that a generation or two ago, a majority of Americans would have greeted news of Presidential crimes and cover-ups with a shrug. We did not expect our leaders to be perfect, but we did expect them to provide moral leadership, and to obey the laws they were charged with upholding and executing. We expected Presidents to commit sins; but we would not allow them to commit crimes. We held the Office of the Presidency, and the honor of the Nation, in the highest esteem.

We looked to the leaders of our Nation as examples to admire, rather than avoid. Parents would point to the President of the United States and tell their son or daughter that if they worked hard and did right, they might one day hold that office. That is not so today. Perhaps in the future the admiration of that office can be restored.

Our loss is compounded by the manner of our response. In many quarters, the news of Presidential perjury and obstruction of justice has been greeted with a shrug, if not a wink. We are no longer outraged by the outrageous. We have grown comfortable with presidential misconduct, even as we prosecute, convict, and imprison the less powerful for the same crimes.

If we are to believe the media, much of our reluctance to enforce the laws of our land springs from our material concerns. We have heard, from many quarters, the assertion that things are good in America, we are at peace, the stock market is doing well, so why rock the boat? Why shake things up?

We seem to have forgotten that all of our prosperity would be impossible without the rule of law, and without a cultural predisposition to honor and uphold the law. Reducing the administration of justice to opinion polls debases our country. Putting pocketbook concerns over standards of right and wrong impoverishes our culture. If we do not sustain the moral and legal foundation on which our system of government and our prosperity is based, both will surely and steadily diminish.

The great southern writer Walker Percy once stated that his greatest fear for our future was that of "seeing America, with all of her great strength and beauty and freedom . . . gradually subside into decay through default and be defeated . . . from within by weariness, boredom, cynicism, greed, and in the end, helplessness before its great problems."

I am optimistic about our future, but this point is an important one. America is at a place in history where our great enemies have been defeated. Our economy is strong, our incomes up, our expectations high. We are the only remaining world superpower.

Our future looks bright. But our continued success is not a historical certainty. It will be determined by the character of our Nation—by the condition of our culture, as much as our economy. The standards we hold—for ourselves, and for our leaders—are a good indicator of what we soon shall be.

For all of the reasons described above, I have chosen, with great sadness but firm resolve to vote for the conviction and removal of William Jefferson Clinton as President of the United States of America.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR RICHARD H. BRYAN

Mr. BRYAN. Mr. Chief Justice, we are about to embark upon a rollcall vote that only one other Senate in the history of our Republic has been called upon to cast. It is a weighty decision. We have taken an oath that requires us to render "impartial justice according to the Constitution and the laws." By so doing each of us has undertaken a solemn obligation to be fair to the President, fair to the American people, and faithful to our constitutional responsibility.

One hundred thirty-one years ago, the 40th Congress faced a similar decision. Then, as now, the Nation was divided. Then, as now, the passions of the day raged across the land. Then, as now,

the critics of the President were in the majority in the Senate. Confounding the cynics of that day, the Senate rose above itself by the slenderest of margins, a single vote, and acquitted President Andrew Johnson. More than a century later, that decision has stood the test of time.

The Senate's acquittal reaffirmed a basic constitutional doctrine that the executive branch and the legislative branch shall be separate and co-equal; and that the executive branch should not be subservient to the prevailing views of a congressional majority.

How different the course of our constitutional history might have been had President Andrew Johnson been convicted. Our system of government today might be more like a parliamentary system undermining the independence of the chief executive.

Future Presidents may have been forced to operate within the omnipresent shadow of impeachment whenever a legislative majority was hostile to their views or policies. I think it is fair to conclude the Office of the Presidency would be a profoundly different one had Andrew Johnson been convicted. It is in that historical context we meet.

In this century, there have been five judicial impeachments that have reached the Senate. In each of those proceedings, the actions of the House and Senate were decided by a bipartisan vote, and all five judges were convicted, and removed from office.

In the history of the Republic, there have been but two Presidential impeachments, that of Andrew Johnson and William Jefferson Clinton. Each Presidential impeachment, however, has come to the Senate under an ominous cloud of partisanship.

The Constitution wisely imposes a heavy burden of proof upon the House of Representatives to convict and remove a duly elected President. And when that constitutional process is tainted by partisan actions, the articles of impeachment must be subjected to an additional measure of scrutiny.

The Constitution provides in article II, section 4 that "The President . . . shall be removed from office on Impeachment for the Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

What constitutes impeachable conduct, as contemplated by the Constitution, is the central issue of this trial.

The framers of the Constitution labored at some length to fashion an impeachment article. As their guide, they looked to the English experience in their parliamentary system. They followed that history in deciding to involve both the House of Representatives and the Senate giving them different roles—the former to charge and impeach, and the latter to convict or acquit.

Unlike the British parliamentary system with its monarch, the framers decided impeachment would apply against its highest officeholders, expressly including the President. Further, the framers determined that impeachment would in and of itself be limited. Rather than including capital punishment and other criminal penalties as a part of impeachment as Britain did, the framers limited impeachment to the removal of the individual from office upon conviction.

As the drafting of the Constitution's impeachment clause proceeded, the drafters struggled with how to characterize the offenses

for which a President could be impeached, convicted, and removed from office. Initially, offenses such as "malpractice", "neglect of duty", and "corruption" were considered. As the Constitutional Convention drew to a close, the Convention's Committee of Eleven proposed "treason or bribery" as the appropriate standard.

George Mason suggested the addition of "maladministration" due to his concern that limiting the offenses to only treason or bribery would still allow a president to commit "many great and dangerous offences" which would not be subject to impeachment. ("The Records of the Federal Convention of 1787.")

However, James Madison believed "maladministration" was ". . . [s]o vague a term [it] will be equivalent to a tenure during [the] pleasure of the Senate." George Mason then proposed the addition of "high crimes and misdemeanors against the State," which the Committee on Style modified by deleting "against the State" believing that language unnecessary.

Alexander Hamilton in Federalist No. 65 argues that the Senate could convict and remove a President only for "those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself."

Nearly two centuries later, Charles Black explained in his "Impeachment: A Handbook," the purpose of impeachment is to protect the Nation, rather than to punish the individual holding the Office of President. Thus, the behavior at issue must reach a level of endangering the state.

The House voted to impeach President Clinton on two articles; perjury before the grand jury and obstruction of justice. Two other articles accusing the President of perjury in a deposition in a civil case, and of abusing his power by not responding to the 81 requests for admission made on November 5, 1998, in a manner the House desired, were not approved.

Article I, charging perjury, is poorly and rather vaguely worded. Nevertheless, it appears to contain 11 separate allegations. The House managers in their presentation in article II allege seven acts of Presidential misconduct constituting obstruction of justice.

The Office of Independent Counsel was authorized by the Attorney General of the United States to conduct an investigation of the President's relationship with Ms. Lewinsky. Mr. Starr has 25 attorneys and 5 non-FBI investigators on his personal staff, and access to the virtually unlimited resources of the FBI. The investigation continued for 8 months, culminating in a record of over 60,000 pages of materials including sworn testimony from grand jury appearances, depositions, and sworn statements.

That the relationship between the President and the Office of Independent Counsel was a contentious one is beyond dispute. Mr. Starr has been an aggressive special prosecutor. Many believe that his prosecutorial zeal violated any reasonable standard of fairness. He has been no shrinking violet in his pursuit of the President.

Yet even Mr. Starr and his staff, after careful analysis, concluded that 8 of the 11 allegations of perjury before the grand jury, and one of the allegations of obstruction of justice lacked sufficient

prosecutorial merit to be submitted to the House. Certainly, it cannot be contended that these allegations can sustain the burden of proof to establish the President's guilt, or to rise to the level of impeachable conduct necessary to remove a duly elected President.

The Constitution's impeachment process was not created to mete out punishment against the individual serving as President. Rather, the impeachment process is to protect the Nation from a President who has brought grave harm to the office and to the country. These are distinctly different goals.

As is so often the case, the American people have a clear understanding of the circumstances that bring us together.

The President had an improper relationship in the White House with a 22-year-old intern.

The President lied to his family, his staff and the American people in denying the existence of the relationship.

The President pursued a course of conduct to conceal his improper relationship with the White House intern.

The President's conduct was wrong and it was immoral. It remains for us to determine the constitutional consequences, if any, to be attached to this conduct.

The House managers rely heavily upon circumstantial evidence and draw from that evidence a series of inferences which lead them to conclude that the President is guilty of perjury and obstruction of justice.

The President's counsel artfully attack the weaknesses in the managers' case and assert that exculpatory direct evidence raises sufficient doubt under the law, and therefore, the President is entitled to be acquitted.

On this record, as one of the House prosecutors pointed out, reasonable people can differ as to the conclusions they reach.

It is acknowledged that the House managers have the burden of proof in establishing the President's guilt under legal definitions. Open to question is the standard of proof to be applied, a mere preponderance of the evidence as in a civil trial, clear and convincing evidence as in alleging fraudulent behavior, or beyond a reasonable doubt as in a criminal case.

The House alleges that specific crimes have been committed, to wit perjury and obstruction of justice as defined in law. Under these circumstances, I believe the appropriate standard is the criminal standard—proof beyond a reasonable doubt.

But is it impeachable conduct? Does it rise to the constitutionally required standard of bribery, treason or other high crimes and misdemeanors. I think not.

The President's conduct is boorish, indefensible, even reprehensible. It does not threaten the Republic. It does not impact our national security. It does not undermine or compromise our position of unchallenged leadership in international affairs.

Although I conclude that the evidence presented in this case does not reach the standard commanded by the Constitution to convict and remove a President, it does not follow that we are precluded from registering our strong disapproval of the President's personal conduct.

There is a way. After our vote on these articles of impeachment, and assuming, as most believe, there are not the votes to convict

the President—the Senate should proceed immediately to adopt a bipartisan resolution of censure.

It is important for us to do this. There are two reasons. First, the American people need to hear from us in strong and unambiguous language that the President's personal conduct is unacceptable and unworthy of the President of the United States.

The record of these proceedings must also reflect that the acquittal of the President can in no way be construed as an exoneration of his conduct. A censure resolution should not be embarked upon lightly or for political reasons, but it should be used in this case.

And finally, a response to the injunction that we have frequently heard over the past several weeks: that no man is above the law. That is a core value. It goes to the very essence of our beliefs as Americans. No violence is done to this sacred principle by pursuing the course of action I have chosen.

For those who believe that the President is guilty of perjury and obstruction of justice—criminal offenses—there is a forum available for that determination. It is our criminal justice system and William Jefferson Clinton may be called to the bar of justice to respond to these criminal charges—armed with no greater legal protection than that accorded the most humble among us. And that is how it should be.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOHN ASHCROFT

Mr. ASHCROFT. Mr. Chief Justice, when the impeachment trial began on January 7, I took an oath to render "impartial justice according to the Constitution and laws: So help me God." This oath distinguishes impeachment from all my other responsibilities in the Senate. Although the Constitution requires Senators to take an oath of office and gives the Senate numerous powers and responsibilities, only the obligation to try impeachments demands the swearing of a special, separate oath. While many commentators have sought to mark this trial as a political event, the oath leaves room only for impartial justice. I interpret this oath as requiring that I decide this case based on the evidence in the record, the arguments of the parties, and the applicable law—and on no other basis.

If I were to look beyond the evidence in the case, to public opinion polls, then a path to a decision would be clear. A large majority of Americans, for example, believe that the President committed perjury, but do not think that he should be removed from office. I am sure that those surveyed considered a variety of factors and did not limit themselves to the Senate record. More than anything else, these poll results reflect the American people's capacity for forgiveness. I share this desire to forgive the President for his admitted mistakes. However, the forgiveness we grant in our capacity as individuals must be distinguished from the Government's responsibility to remedy wrongdoing. We routinely ask jurors to sentence defendants in accordance with the law, even though they may forgive the defendant. That is the same responsibility that the Constitution and my oath impose on me in this proceeding.

On the other hand, if I were simply to vote my conscience as to whether I believe the President's continued service is good for our country and our culture, that is a clear path as well. From the very outset, I have stated consistently that if the allegations were true concerning the President's relationship with Ms. Lewinsky, then the President has disgraced himself and his office, and should resign. In my view, the confessed facts of the President's conduct in the Oval Office make his continued presence an obstacle to the healing our culture. The honorable course would be for the President to resign, to allow the Nation to heal from the wounds he has inflicted.

My oath, however, forecloses either of these paths, and instead forces me to undertake the far more difficult task of sifting through the record, weighing evidence, determining credibility and reaching a final, impartial judgment on the articles of impeachment. As a result, I cannot explain my judgment by resort to any grand principles or by broad statements about my opinion of the President as a leader. I can only explain my vote through a detailed examination of the articles of impeachment, the evidence presented and the relevant law.

The first article of impeachment charges President Clinton with committing perjury before the grand jury when he testified on four subjects. Attorneys for the President complain that the House managers failed to specify the particular grand jury statements of the President that constituted perjury. I agree that the President deserves sufficient specificity to provide him the basis for a defense. However, during the course of the House managers' presentation it became clear that the perjury allegations focused on a handful of specific statements the President made to the grand jury.

Perhaps the single most obvious instance of a false statement by the President stems from his explanation of his conversations with Ms. Betty Currie in the days immediately following his deposition testimony in Jones v. Clinton. Ms. Currie told the grand jury that on the evening of his deposition the President called her and requested that she make a rare Sunday appearance at the White House. When she arrived, the President called her in and confronted her with an unusual series of statements and questions, including: "Monica came on to me, and I never touched her, right?"; "You were always there when Monica was there, right?"; and "I was never really alone with Monica, right?" (Evidentiary Record, S. Doc. 106–3, Vol. IV, pp. 559–60.) When the President was asked to explain this conversation to the grand jury, he stated that he was "trying to refresh [his] memory about what the facts were." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 651.) He was also asked, "[Y]ou are saying that your only interest in speaking with Ms. Currie in the days after your deposition was to refresh your own recollection?" and answered, "Yes." (Evidentiary Record, S. Doc. 106–3, Vol. III, pp. 593–94.

These statements are demonstrably false. A person cannot refresh his or her memory by repeating lies. The President's leading questions were falsehoods. The President knew that he had been alone with Ms. Lewinsky, knew that they had been together outside of Ms. Currie's presence, and knew that he had touched Ms.

Lewinsky. Repeating these falsehoods to Ms. Currie could not have refreshed the President's memory "about what the facts were."

What is more, Ms. Currie testified that the President reviewed these same statements and questions with her again 2 or 3 days later. (Evidentiary Record, S. Doc. 106–3, Vol. IV, pp. 560–61.) The President does not have specific memory of this second conversation, but does not dispute Ms. Currie's recollection. If the President were trying to refresh his memory, he would not go through the same questions again two or three days later. However, if the President were trying to coach Ms. Currie's testimony and ensure that her version of events was consistent with his false deposition testimony, then rehearsing these questions and answers a second time would be helpful. Based on all the evidence, I have concluded beyond a reasonable doubt that the President's testimony concerning these conversations with Ms. Currie was false. The evidence clearly shows that the President gave false testimony to the grand jury in order to cover up his illegal effort to influence Ms. Currie's testimony.

Another clear example of a false statement by the President in his grand jury testimony is his claim that he was truthful with his aides in discussing his relationship with Ms. Lewinsky. The exact nature of what the President said to his aides in the immediate aftermath of his deposition was of interest to the grand jury as part of its investigation of whether the President obstructed justice. When asked about these conversations, the President told the grand jury that "I said to them things that were true about this relationship." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 558.)

The testimony of the President's own aides, however, makes it clear that the President was not truthful with his aides. He did not mislead them, he lied to them. For example, one presidential aide, John Podesta, testified that the President told him that he did not have sex with Ms. Lewinsky "in any way whatsoever" and provided additional, more detailed denials concerning the relationship. (Evidentiary Record, S. Doc. 106–3, Vol. IV, p. 3311.) Sidney Blumenthal, another presidential aide, testified that the President told him that "Ms. Lewinsky came at me and made a sexual demand on me," that he "rebuffed her," and that Ms. Lewinsky "was known as the stalker." (Evidentiary Record, S. Doc. 106–3, Vol. IV, p. 185.) In his Senate deposition Mr. Blumenthal unequivocally stated that he now believes the President lied to him. (Deposition testimony of Sidney Blumenthal, Feb. 3, 1999, 145 CONGRESSIONAL RECORD S1249.) As the President's closest aides have conceded, the President was not truthful with them. In reviewing all the evidence, it is clear beyond a reasonable doubt that the President was not truthful with his aides and that his grand jury testimony concerning these discussions was false.

The first example included in the grand jury perjury article approved by the House focuses on the President's grand jury testimony concerning "the nature and details of his relationship with" Ms. Lewinsky. His testimony on this matter also appears to be false.

Although some of the detailed testimony underlying this example of perjury is nothing short of sordid, the President's lack of credibility on this matter is straightforward. For a number of months

last year, Ms. Lewinsky was on record as having told Federal investigators that she and the President had engaged in a sexual relationship. The President publicly and repeatedly denied the truth of these allegations. It was a classic "he said, she said" situation. Then physical evidence of a sexual relationship between the President and Ms. Lewinsky was discovered. After this physical evidence came to light, it ceased to be a "he said, she said" situation. He changed his story and admitted an "inappropriate intimate relationship" to a federal grand jury, while she was vindicated.

However, the President declined to follow his oath to tell the grand jury the whole truth and admit the true nature of the relationship. Instead, the President attempted to walk an impossibly fine line, admitting to a relationship which involved sufficient contact to explain the physical evidence but insufficient contact to make the President's earlier deposition statements about the relationship perjurious. The President's testimony on this matter, therefore, was at the heart of the grand jury's investigation into whether the President committed perjury in the Jones case. The physical evidence strongly suggested that the President had committed perjury in his deposition, and this grand jury testimony was the basis for his defense. The President's testimony flatly contradicts Ms. Lewinsky's testimony concerning the nature and details of their relationship. Ms. Lewinsky's testimony provides a much more plausible explanation of the physical evidence, and makes clear that the President perjured himself in his sworn deposition testimony.

With respect to the nature and details of their relationship we are once again presented with a "he said, she said" situation. But now there are two differences. First, the President's implausibly contorted version of events appears to be tailored precisely to avoid admitting a prior perjury. Second, we have the benefit of a prior "he said, she said" dispute between the same two people, in which subsequent evidence conclusively proved that she was telling the truth and he was lying. Under these circumstances, I am convinced beyond a reasonable doubt that the President lied about "the nature and details of his relationship" with Ms. Lewinsky.

The House included two other examples of grand jury perjury in the first article of impeachment. The article alleges that the President lied to the grand jury concerning both his prior, perjurious deposition testimony and whether he was paying attention to his lawyer's statements during that same deposition. While there is considerable evidence that supports the notion that the President did lie to the grand jury regarding these two matters, I am not convinced beyond a reasonable doubt that the President's statements on these matters constitute perjury.

The President began his grand jury testimony with the assertion that he was truthful in his deposition testimony. However, later in his grand jury testimony, the President clarified and corrected much of his false and misleading deposition testimony. As a result, it is clear that the President's claim that his deposition testimony was truthful was itself a false statement. However, it is equally clear that this false statement cannot form the basis for a perjury conviction for two reasons. First, when viewed in its entirety, the President's grand jury testimony makes this one statement imma-

terial. It is the equivalent of the statement of a murderer who begins his confession with the statement that "I didn't do anything wrong." Second, in light of the House's decision to reject a separate article focusing on deposition perjury, I am uncomfortable allowing this one line to be used as a means to "backdoor" allegations that the President lied in that forum.

The allegation that the President lied to the grand jury when he testified that he was not paying attention to his lawyer when he used Ms. Lewinsky's affidavit to deny that there was any sexual relationship between the President and Ms. Lewinsky is a closer matter. During the President's deposition in the Jones case, the President's lawyer, Mr. Bennett, argued to the court that Ms. Lewinsky's affidavit demonstrated "there is absolutely no sex of any kind in any manner, shape or form" between the President and Ms. Lewinsky. (Evidentiary Record, S. Doc. 106–3, Vol. XIV, p. 23.)

The President allowed his lawyer to make this representation to the court, even though the President knew that representation and the underlying affidavit were both false. When confronted with these facts before the grand jury, the President attempted to excuse his behavior with the claim that he was not paying attention and this "whole argument just passed me by." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 481.) The available evidence and common sense suggest that the President was paying attention. I have reviewed the videotape of the President's deposition, and he appears to be paying attention to his lawyer before, during and after his lawyer's representation. Common sense suggests the President was paying attention because his lawyer made this statement in an effort to keep the President from answering a question the Jones lawyer had just directed to him. The President would have needed to pay attention to the question in order to answer it, and it is hard to believe he would have tuned out his lawyer's objection to the question.

What is more, in light of the President's admitted fears about the true nature of his relationship with Ms. Lewinsky becoming public, it is implausible that he would have not paid attention to his lawyer's efforts to use the Lewinsky affidavit to prevent questioning about their relationship. The President does not dispute that he suggested that Ms. Lewinsky file an affidavit in a December 17, 1997, telephone call. The President's stated objective in suggesting the filing of an affidavit was to keep Ms. Lewinsky from becoming an issue in the Jones litigation. The notion that the President would not pay attention to his lawyer's efforts to have that suggestion bear fruit strains credulity. Finally, it is worth noting that immediately following Mr. Bennett's representation, the presiding judge cautioned Mr. Bennett against coaching the witness. That caution would not have been necessary had the witness, Mr. Clinton, not been paying attention to his lawyer's words.

If I were applying a preponderance of the evidence or a clear and convincing evidence standard, I certainly would reject the President's claim that the "whole argument just passed me by." However, applying a beyond a reasonable doubt standard, I have reached a different conclusion. The problem for me is that the President's statement concerns his own mental state. Although the evidence and common sense suggest the President was paying at-

tention to Mr. Bennett, I have not been able to remove all doubts from my mind on this score.

On the other hand, I am convinced beyond a reasonable doubt that the President made false statements to the grand jury concerning his conversation with Ms. Currie, his statements to other aides, and the nature and details of his relationship with Ms. Lewinsky. Moreover, in light of the legal standards for grand jury perjury, I am convinced the President's conduct satisfies every element of felony perjury under section 1623 of the Federal criminal code, title 18. There are five elements to the crime of grand jury perjury. To constitute perjury a statement must be made under oath, before a grand jury, with intent, and the statement must be both false and material.

I have already discussed why I have concluded that these statements were false, and there is no question that they were made under oath to a grand jury. The only two remaining elements are intent and materiality. Neither of these standards is difficult to satisfy in the context of grand jury perjury. Congress passed a special statute, section 1623, to make it easier to prosecute grand jury perjury out of a recognition that grand jury perjury is a more serious threat to the administration of justice than other perjuries. As a result, the intent requirement is not demanding—the defendant need only make the statement with knowledge of its falsity. As the well-respected American Criminal Law Review, published by Georgetown University, concludes: "Section 1623, unlike 1621 [the general perjury statute], does not require proof that the allegedly false testimony was submitted willfully. Rather, it requires that such testimony was knowingly stated or subscribed. This requirement is ordinarily satisfied by proof that the defendant knew his testimony was false at the time he provided it."

The one thing that emerges from the presentations made by both the White House and the House managers is that the President made his grand jury statements with a great deal of forethought and precision. The President's false statements did not result from inadvertence or confusion. The President knew these statements were false. For example, he knew full well that his conversation with Ms. Currie was not designed to refresh his memory.

Likewise, the materiality standard is easily satisfied in this case. Courts are generally quick to find grand jury perjury to be material in deference to the broad investigatory authority of a Federal grand jury. As the Second Circuit observed in *United States* v. *Kross,* 14 F.3d 751, 754 (2d Cir.), *cert. denied,* 513 U.S. 828 (1994): "Because the grand jury's function is investigative, materiality in that context is broadly construed." The grand jury in this case was investigating whether the President committed perjury in his Jones deposition or obstructed justice in the Jones lawsuit. Specifically, the grand jury was concerned that the President may have lied in denying a sexual relationship with Ms. Lewinsky and obstructed justice by coaching Ms. Currie and his other aides. Therefore, the President's grand jury testimony concerning what he said to his aides and the nature of his relationship with Ms. Lewinsky was directly relevant to the grand jury's investigation. The President's statements were not just material—they were at the heart of the grand jury's inquiry.

Lawyers for the President raised a number of legal smoke screens in his defense that do not change the ultimate conclusion that the President committed perjury. For example, they emphasize the so-called Bronston defense, in which a misleading statement does not constitute perjury if it is technically true. However, the Bronston defense provides no defense to a statement that is literally false. As United States Supreme Court Justice Breyer, while still on the First Circuit, observed: "The Bronston Court held only that a defendant cannot be convicted of perjury for true but misleading statements, not that a defendant is immune from prosecution for perjury whenever some ambiguity can be found by an implausibly strained reading of the questions he is asked." *United States* v. *Doherty,* 867 F.2d 47,69 (1st Cir.), *cert. denied,* 492 U.S. 918 (1989).

Likewise, the White House has attempted to rely on the two-witness rule—i.e., the notion that a perjury prosecution cannot rest on an oath versus an oath. That rule of law would not apply here if it were a correct statement of the law because there is ample corroborating evidence. But the truth of the matter is that section 1623 expressly rejects the two-witness rule, stating that: "it shall not be necessary that such proof be made by any particular number of witnesses." As the American Criminal Law Review puts it: "the obvious purpose of this language [is] to prevent the application of the two-witness rule in section 1623 prosecutions." That view is supported by the Supreme Court's analysis of the purpose of section 1623 in *Dunn* v. *United States,* 442 U.S. 100, 108 & n.6 (1979).

In the end, the White House's legal arguments cannot obscure the fact that the President committed perjury in his grand jury testimony. The House managers successfully carried their burden. They proved the facts underlying the first article of impeachment beyond a reasonable doubt, and the evidence satisfied every element of proof for grand jury perjury.

The second article of impeachment approved by the House alleges that the President obstructed justice and provides seven examples of specific conduct that obstructed justice either in the Jones litigation or in the Federal grand jury's investigation. I have examined each of these examples in detail and will share my analysis. As with perjury, perhaps the clearest example of obstruction of justice stems from the President's conversation with Ms. Currie the day after his sworn deposition testimony in the Jones case.

As noted in the discussion of perjury, the President called in Ms. Currie the day after his sworn deposition testimony and confronted her with a series of questions and answers, such as "Monica came on to me, and I never touched her, right?"; "You were always there when Monica was there, right?" and "I was never really alone with Monica, right?" (Evidentiary Record, S. Doc. 106–3, Vol. IV, pp. 559–60.) According to Ms. Currie, the President repeated this rehearsal of questions and answers 2 or 3 days later. As discussed earlier, the President's explanation for this conversation—that he was trying to refresh his memory—is simply not credible. The true purpose of these conversations becomes clear in light of the President's sworn deposition testimony. On several occasions during his deposition, the President invoked Ms. Currie's name in answering questions concerning his relationship with Ms. Lewinsky. Indeed,

at one point, the President specifically directed the Jones lawyers to "ask Betty whether Ms. Lewinsky was alone with him or with Ms. Currie between the hours of midnight and 6 a.m. (Evidentiary Record, S. Doc. 106–3, Vol. XIV, p. 35.)

In other words, during his deposition, the President attempted to use Ms. Currie as an alibi witness to deny that he had been alone with Ms. Lewinsky. It is telling in this regard that in his conversation with Ms. Currie the President sought Ms. Currie's agreement that "he was never alone with her, right?" This was the exact point as to which the President directed the Jones lawyers to "ask Betty." In short, having invoked Ms. Currie as an alibi in his deposition, the President wasted no time in contacting Ms. Currie and making sure her story would square with the President's sworn testimony. Indeed, the President contacted Ms. Currie and explained that Ms. Lewinsky's name had come up during the deposition despite Judge Wright's admonition not to discuss the deposition with anyone other than his lawyers.

There is simply no innocent explanation for this conversation with Ms. Currie. It was a violation of Judge Wright's order. It was not an attempt to refresh the President's memory. Instead, the evidence shows beyond a reasonable doubt that this was an unlawful attempt to obstruct justice by altering Ms. Currie's testimony in the Jones case.

This coaching of Ms. Currie is not the only example of obstruction of justice by the President. For instance, the first example cited in the obstruction of justice article alleges that the President corruptly encouraged Ms. Lewinsky to file a false affidavit in the Jones litigation. The President does not dispute that he called Ms. Lewinsky at 2:30 in the morning on December 17, 1997, to inform her that she was on the witness list in the Jones case. The President likewise does not dispute that he hoped Ms. Lewinsky would not have to testify and suggested to her that she could file an affidavit to reduce her chances of being deposed or called to testify in the Jones proceeding. (Evidentiary Record, S. Doc. 106–3, Vol. III, pp. 567–73.) The President's defense is that although he wanted Ms. Lewinsky to file an affidavit to avoid testifying, he did not want her to file a false affidavit. As the President put in his grand jury testimony, "Did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 571.) This claim that an affidavit could be both truthful and result in a reduced chance of Ms. Lewinsky testifying is critical to the President's defense because it is a crime to corruptly persuade a potential witness to delay or prevent their testimony.

The fundamental problem with the President's defense is that a truthful affidavit that disclosed the nature of his relationship with Ms. Lewinsky would have been inconsistent with the President's stated goal of reducing her chances of being called to testify. A truthful affidavit would have guaranteed that Ms. Lewinsky would have been called as a witness. It is folly to suggest that an affidavit that admitted the relationship but emphasized its consensual nature could have prevented Ms. Lewinsky from being called. Judge Wright had already approved discovery of government employees

involved in relationships with the President without regard to whether they were consensual.

Additional evidence that the President encouraged Ms. Lewinsky to file a false affidavit comes from the President's revival of previously developed cover stories in this same 2:30 a.m. telephone conversation. Specifically, according to Ms. Lewinsky, the President reminded her that "you can always say you were going to see Betty or that you were bringing me letters?" (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 843.) To be sure, Ms. Lewinsky has testified that the ideas of filing an affidavit and using the cover stories were not explicitly linked in her mind. However, there must have been some implicit link, in fact, because Ms. Lewinsky's draft affidavit featured one of the cover stories. Although it was dropped in the editing process to eliminate any suggestion that the President and Ms. Lewinsky were alone, the draft affidavit suggested that Ms. Lewinsky had brought the President papers.

In addition, the notions that the President wanted Ms. Lewinsky to file a false affidavit and that only a false affidavit would have the desired effect of keeping Ms. Lewinsky from being called as a witness are supported by the fact that the filed affidavit was false. The affidavit Ms. Lewinsky filed was false, in the following particulars: (1) it stated that Ms. Lewinsky did not "possess any information that could possibly be relevant to the allegations made by Paula Jones . . .", (2) it stated that on the occasions on which Ms. Lewinsky saw the President after she left employment at the White House in April 1996 were official receptions and formal functions related to her job, and that "there were other people present on those occasions," and (3) it stated that—contrary to the President's admission before the grand jury that he and Ms. Lewinsky had an inappropriate intimate relationship—"the President . . . always behaved appropriately in my presence." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 1235.) Moreover, any doubt about the falsity of Ms. Lewinsky's affidavit is removed by her decision to enter into an immunity agreement to prevent her prosecution for perjury with respect to the affidavit.

Finally, the President's claim that he did not want Ms. Lewinsky to file a false affidavit is belied by the fact that the President allowed his attorney to use the false affidavit in an effort to keep the Jones lawyers from questioning him about his relationship with Ms. Lewinsky. The President's attorney, Mr. Bennett, relying on the Lewinsky affidavit, represented to the Court that "there is absolutely no sex of any kind in any manner, shape or form, with President Clinton." (Evidentiary Record, S. Doc. 106–3, Vol. XIV, p. 23.) Mr. Bennett expressly told the court that the President was "fully aware of Ms. Lewinsky's affidavit." (Id.) It is difficult to credit the President's claim that he did not want Ms. Lewinsky to file a false affidavit when he allowed his lawyer to use a false affidavit—of which he was "fully aware"—to keep him from being questioned about Ms. Lewinsky.

The House has alleged that the President's decision to allow Mr. Bennett to use this affidavit—knowing it to be false—was an additional example of obstruction of justice. I am not convinced that the President's failure to correct his attorney's representation to the Court amounts to an obstruction of justice. However, the Presi-

dent's actions in allowing his attorney to use a false affidavit to his litigation advantage undermines his claim that he never wanted Ms. Lewinsky to file a false affidavit. When all the evidence is considered, it is clear beyond a reasonable doubt that the President wanted Ms. Lewinsky to file a false affidavit.

The second example cited by the House in its obstruction of justice article was the President's suggestion that Ms. Lewinsky could use cover stories to disguise the true nature of their relationship from the Jones lawyers. These cover stories, of course, were used by the President and Ms. Lewinsky long before her name appeared on the witness list in the Jones litigation. As a result, the cover stories—that she was visiting Ms. Currie or bringing the President papers—were instantly familiar to Ms. Lewinsky. But even though these cover stories were not criminal—only deceptive—in their origins, the President's revival of these cover stories after Ms. Lewinsky became a witness in a civil suit against the President stands on a very different footing.

The President's reiteration of the cover stories in the same conversation that he told her she was on the witness list is evidence of an effort to alter her testimony. As demonstrated above, Ms. Lewinsky included one of the cover stories in her false draft affidavit. Although the President emphasizes that the cover stories had an element of truth to them, that claim is not a defense to a witness tampering or obstruction of justice charge. For the Federal witness tampering statute it is enough that the President attempted to influence Ms. Lewinsky's testimony through corrupt or misleading conduct—see 18 U.S.C. 1512—and for obstruction of justice it is enough that the President endeavored to influence the due administration of justice—see 18 U.S.C. 1503. As a result, the President's revival of the cover stories constituted obstruction of justice. His actions obstructed the true course of justice and denied an American citizen a fair hearing of her claim.

The third example of obstruction of justice cited in the House article concerns the efforts to conceal the President's gifts to Ms. Lewinsky from the Jones lawyers. The House alleges that the President orchestrated a scheme by which Ms. Lewinsky concealed the gifts from the Jones lawyers by conveying them to Ms. Currie. In defending against this charge, the President must overcome the undisputed fact that the gifts sought by the Jones lawyers ended up beneath the President's personal secretary's bed.

These gifts clearly were relevant evidence in the Jones litigation. The subpoena served on Ms. Lewinsky required the production of "each and every gift including but not limited to, any and all dresses, accessories, and jewelry, and/or hat pins given to you by, or on behalf of, Defendant Clinton." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 2704.) Ms. Lewinsky discussed this subpoena with the President on December 28, 1997, and both expressed their concern that the subpoena covered the hat pin. Ms. Lewinsky testified that when the subject of what to do with the gifts came up the President responded: "I don't know" or "let me think about it." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 872.) The President, by contrast, told the grand jury that he instructed Ms. Lewinsky that if the Jones lawyers "asked for the gifts, [Ms. Lewinsky would]

have to give them whatever she had, that that's what the law was." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 495.)

Ms. Lewinsky left the White House and returned home only to receive a call in which Ms. Currie told her, "I understand that you have something to give me" or "the President said you have something to give me." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 874.) Ms. Currie does not recall making this call, and instead suggests that Ms. Lewinsky initiated the gift exchange. It is uncontroverted, however, that Ms. Currie went to Ms. Lewinsky's apartment to pick up the gifts and that those gifts were stored under Ms. Currie's bed. The net result of these events is that the gifts that evidenced a relationship the President was trying to conceal in litigation against him were kept from the Jones lawyers. This net result makes the President's sworn testimony that he directed Ms. Lewinsky to turn over the gifts difficult to credit. It is difficult to believe that Ms. Lewinsky would disregard the President's advice on this issue.

This evidence makes it more likely than not that the President obstructed justice by orchestrating the concealment of the gifts. However, to prove obstruction of justice, the House must show that the President directed Ms. Currie to pick up the gifts. That is the missing link in the House's case. Although that is the most likely explanation for the concealment of the gifts, both parties to that conversation—Ms. Currie and the President—deny that such a discussion took place. As a result, there is a reasonable doubt in my mind as to whether the President obstructed justice by concealing the gifts, and I find this issue in his favor.

The next example of obstruction cited by the House is the job search. The evidence is clear that the President asked Vernon Jordan to help Ms. Lewinsky find a job in New York City. Mr. Jordan was unequivocal that he, not Ms. Lewinsky, was running the job search, and that he was finding Ms. Lewinsky a job at the "behest" of the President. (Deposition testimony of Vernon Jordan, Feb. 2, 1999, 145 CONG. REC. S1245.) This word choice is telling. The dictionary defines "behest" as "an authoritative order," or secondarily as "an urgent prompting," and suggests "command" as a synonym. (Merriam-Webster's Collegiate Dictionary (Tenth Ed. 1993), p. 103.)

The only remaining question is whether the President directed Mr. Jordan to find Ms. Lewinsky a job in order to get Ms. Lewinsky to "withhold testimony, or withhold a record, document or other object, from an official proceeding," or for some other purpose. In evaluating this issue, the President's past failure to provide job assistance to Ms. Lewinsky is relevant. Since Ms. Lewinsky left the White House in April 1996, she was anxious to get back and enlisted the President's support. He never helped her return to the White House. Eventually, Ms. Lewinsky despaired of ever receiving any job assistance from the President to help her return to the White House and turned her sights to a job in New York. Once again, the President's level of job assistance was underwhelming until Ms. Lewinsky's name appeared on the witness list in the Jones case. At that point, Mr. Jordan, at the "behest" of the President, put the job search into full gear.

However, Mr. Jordan's involvement with Ms. Lewinsky was not limited to finding her a job. He also found her a lawyer, a lawyer

who oversaw the filing of an affidavit that turned out to be false. The same affidavit the President suggested Ms. Lewinsky could file in their late night telephone call. The same affidavit that the President's lawyer attempted to use to keep the Jones lawyers from questioning the President about Ms. Lewinsky.

Mr. Jordan also shared a breakfast with Ms. Lewinsky in which they discussed draft notes between Ms. Lewinsky and the President. Mr. Jordan initially denied that this breakfast meeting had taken place. However, when confronted with a receipt for breakfast, Mr. Jordan conceded the meeting took place and that the subject of the notes came up. Ms. Lewinsky testified that Mr. Jordan told her to make sure that those incriminating notes were destroyed. Mr. Jordan denies that he gave her that advice. Ms. Lewinsky's testimony on this subject is certainly entitled to great weight because she has consistently remembered the breakfast and what transpired, while Mr. Jordan previously denied that the breakfast had occurred. But this conflict in the testimony need not be resolved. Mr. Jordan is not on trial. The President is, and the fact that the person he designated to get Ms. Lewinsky a job was also discussing incriminating notes relevant to the Jones litigation and finding her a lawyer to file an affidavit in that case undermine the President's claim that the job search and the Jones litigation were unrelated.

Although Ms. Lewinsky has testified that the President never expressly conditioned her job assistance on her continued cooperation in the Jones litigation, her conduct shows an implicit connection between the job search and the Jones litigation. When she received a subpoena from the Jones lawyers she went to her job counselor. When she had concerns about what to do with incriminating notes, she discussed the matter with her job counselor.

The evidence demonstrates that the motivation for the job search was not to enhance Ms. Lewinsky's career or to find her a "dream job." The President had the opportunity to give her a "dream job" at the White House and declined. Instead, the evidence shows beyond a reasonable doubt that the job search was intimately tied to the Jones litigation and designed to ensure Ms. Lewinsky's continuing cooperation.

The next example of obstruction of justice is the President's decision to stand mute while his attorney used an affidavit the President knew to be false to make representations to a Federal judge that the President knew to be false. As I have noted, I do not think the President's act of omission constitutes a separate act of obstruction. However, I do think the President's failure to object to the use of this false affidavit sheds light on many of the President's acts of commission that do constitute obstruction of justice and witness tampering, such as his suggestion that Ms. Lewinsky file an affidavit to avoid testifying in the Jones case.

The final example of obstruction cited by the House involves the President's false statements to aides who were potential grand jury witnesses. Most of the evidence on this point is not in dispute. The President insisted before the grand jury that he was truthful with his aides. However, the President's own aides now admit that he lied to them. There is no dispute that those lies were repeated to the grand jury. The only remaining question is whether the Presi-

dent told these lies to his aides with the expectation that they would resurface in the grand jury.

The White House's principal defense on this point is that the President's lies to his aides were no different than the lies he had told the entire American people. This is a strange defense. Essentially, it attempts to make a virtue out of the fact that the President lied to every American, without respect to whether they were potential witnesses. The legal point appears to be that the President's aides could not obstruct the due administration of justice because the grand jurors already were exposed to the President's false denials.

There are several problems with this argument, not the least of which is that it is based on a false premise. The President did not merely repeat the same denials he made to the public at large. The President's denials to his aides were embellished and substantially more detailed. The President did not tell the American people that Ms. Lewinsky was a stalker or categorically state that there was no sex "in any way whatsoever," though he labored hard to leave that false misimpression. He did share these details with his aides, and they repeated them to the grand jury. These details, moreover, were not immaterial to the grand jury's investigation. These details, such as the characterization of Ms. Lewinsky as a stalker, directly attack the credibility of the principal witness against the President in the grand jury proceeding. As a result, I am convinced beyond a reasonable doubt that the President obstructed justice when he lied to his aides.

The President's conduct clearly violates the Federal criminal statutes against obstruction of justice and witness tampering. The Federal obstruction of justice statute requires the government to prove three elements: "(1) there was a pending Federal judicial proceeding; (2) the defendant knew of the proceeding; and (3) the defendant acted corruptly with the specific intent to obstruct or interfere with the proceeding or due administration of justice." (American Criminal Law Review, Vol. 35, pp. 989, 992 (1998).) There is no real dispute in this case that the President knew that the Jones suit was pending when he engaged in the conduct covered by the obstruction of justice article. The only relevant legal question is whether he intended to obstruct justice in the Jones case.

There is ample evidence in the record to suggest that obstructing justice in the Jones case was the President's precise intent. Indeed, the President's own testimony makes clear that he viewed the Jones litigation as illegitimate. He stated that he "deplored" the Jones lawsuit and felt it was only going forward "because of the funding they had from my political enemies." (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 532.) As a result, the President concedes that, in his words, he was "not trying to be particularly helpful" to the Jones lawyers. (Evidentiary Record, S. Doc. 106–3, Vol. III, p. 480.) Moreover, the discussion of the specific examples of obstruction of justice make clear that the President's advice that Ms. Lewinsky file a false affidavit, the President's coaching of witnesses, and the job search were all done with the object of obstructing justice in the Jones litigation.

The Victim and Witness Protection Act of 1982 criminalized a particular form of obstruction of justice, witness tampering. Part of

that act, section 1512(b) of the Federal criminal code, sets out the four elements of witness tampering. "Under section 1512(b), the government must prove that the defendant: (1) knowingly (2) engaged in intimidation, physical force, threats, misleading conduct or corrupt persuasion, (3) with intent to influence, delay or prevent testimony or cause any person to withhold a record, object or document (4) from an official proceeding." (American Criminal Law Review, Vol. 35, pp. 989, 1004 (1998).) Each of these elements is satisfied in this case.

The President's attorneys have emphasized that the President never physically threatened any potential witness. In particular, they point to Ms. Currie's testimony that she never felt threatened or intimidated in her conversations with the President. However, that is simply not relevant under the Federal witness tampering statute, which criminalizes not just physical intimidation, but corrupt persuasion and misleading conduct as well. What is more, the statute makes clear that it applies to any witness in any official proceeding, and the statute specifies in subsection (e) that "an official proceeding need not be pending or about to be instituted at the time of the offense." As with the perjury counts, the President's legal defenses misstate the applicable law. Just as Federal law does not require two witnesses to support a conviction for grand jury perjury, the assertion that witness tampering requires actual intimidation simply misstates the law.

My careful examination of the evidence, legal precedent and arguments made by both sides convinces me that the President committed perjury, obstructed justice and violated the Federal witness tampering statutes. Having reached this conclusion, the remaining step in my analysis of the cases to examine whether these criminal acts require the President's removal from office. In other words, do perjury and obstruction of justice constitute high crimes and misdemeanors? The precedents of the Senate provide an unequivocal answer: the Senate has repeatedly treated perjury as a high crime and misdemeanor that justifies—indeed, necessitates—removal.

Three times in the last 15 years the House has impeached and the Senate has removed a Federal judge for perjury or related crimes. In two of the three cases, moreover, the judge was removed for lies that had nothing to do with his official duties. Judge Harry Claiborne was removed for filing false tax returns under penalty of perjury. Judge Walter Nixon was removed for lying to a Federal grand jury about his efforts to influence a state judicial proceeding. The Senate's precedents on perjury as an impeachable offense are clear. Moreover, there is simply no basis in the Constitution to apply a less demanding standard of the President than has been traditionally applied to Federal judges. A single provision of the Constitution creates a single standard of impeachment for all "Officers of the United States," judges and the President alike. To be sure, the Constitution specifies that Federal judges "shall hold their offices during good behavior." (Art. III, sec. 1.) However, this clause has always been understood as establishing life tenure, as opposed to a relaxed standard for impeachment, and no judge has ever been impeached or removed for "bad behavior." In sum, the notion that the President—with his infinitely greater effect on the culture, for good or ill—would be held to a lesser standard than one

of 800 Federal judges has as little basis in common sense as it has in the Constitution's text.

Of course, even if we did not have the benefit of the Senate's precedents treating perjury as a high crime, and had to consider this issue as an original matter, I would have little difficulty concluding that perjury and obstruction of justice qualify as high crimes and misdemeanors. The Constitution's use of the adjective "high" to modify the phrase "crimes and misdemeanors" suggests that there may be some crimes and misdemeanors that do not form the basis for impeachment. However, those crimes, such as perjury and obstruction of justice, that undermine public confidence in government and strike at the integrity of our systems of government and justice surely must be covered by the phrase "high crimes and misdemeanors."

In addition, the scope of "high crimes and misdemeanors" is informed by the two crimes specifically enumerated in the Constitution as a basis for impeachment, treason and bribery. Both these crimes, in common with perjury and obstruction of justice, threaten the proper functioning of government—either directly in the case of treason, or indirectly, by undermining the government's integrity, in the case of bribery. Perjury is bribery's twin. Perhaps the clearest illustration of this point is that the President could have accomplished the same result in this case—interfering with the Jones litigation—by bribing a witness or the Judge. Perjury, like bribery, has been grouped among the most serious crimes at least since the founding of our Nation.

John Jay, one of the three authors of "The Federalist Papers" and our Nation's first Chief Justice, provides a glimpse of the framers' views on the seriousness of perjury. When riding circuit in Bennington, Vermont in the summer of 1792, Chief Justice Jay instructed the grand jury in a perjury persecution. His instruction is worth quoting at length:

> Independent of the abominable insult which perjury offers to the divine Being, there is no crime more extensively pernicious to Society. It discolours and poisons the streams of justice, and by substituting falsehood for truth, saps the Foundation of personal and public rights. Controversies of various kinds exist at all times, and in all communities. To decide them, Courts of justice are instituted. Their decisions must be regulated by evidence, and the greater part of the evidence will always consist of the testimony of witnesses. This testimony is given under those solemn obligations which an appeal to the God of Truth impose; and if oaths should cease to be held sacred, our dearest and most valuable rights would become insecure.

There is ample evidence to support Chief Justice Jay's view that, of all crimes, perjury is among the most pernicious to society, and one that has always been thought to rise to the level of "high crimes and misdemeanors." It is not surprising then, that the Kentucky Constitution of 1792 directed that: "Laws shall be made to exclude from office and from suffrage those who thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors." (Art. VIII, cl. 2.) Moreover, the belief that perjury is an impeachable high crime is not limited to the framers. Less than a decade ago in a law review article, Chief Justice Rehnquist, the presiding officer in this impeachment trial, summed up our national experience with impeachment by noting that "impeachment has been confined to flagrant abuse of office—perjury, bribery, and the like." (William Rehnquist, "The Impeachment Clause: A Wild

Card in the Constitution," Northwestern University Law Review, Vol. 85, pp. 903, 910 (1991).)

The point has also been raised that the President's conduct does not rise to the same levels as President Nixon's conduct in Watergate. That may well be true, but it is also irrelevant. Not every high crime and misdemeanor is created equal, but all require removal under the express terms of the Constitution. However, whatever differences exist between President Clinton's conduct and Watergate, the reaction of Watergate Special Prosecutor Leon Jaworski to President Nixon's misconduct is telling. Of all the misconduct portrayed on the famous Nixon tapes, Jaworski found one strip of dialogue "the most repulsive on the tape. In that strip the President—a lawyer—coached [his aide] to testify untruthfully and yet not commit perjury. It amounted to subornation of perjury. For the number-one law enforcement officer of the country it was, in my opinion, as demeaning an act as could be imagined." (Leon Jaworski, "The Right and the Power—The Prosecution of Watergate," p. 47 (1976).)

That is perjury. The Nation's first Chief Justice stated that "there is no crime more extensively pernicious to Society." Our current Chief Justice described it as a "flagrant abuse of office." And the Watergate special prosecutor thought subornation of perjury by the President "as demeaning an act as could be imagined." There is no doubt in my mind that perjury and the closely related crime of obstruction of justice are high crimes and misdemeanors. Moreover, having concluded that the President committed these high crimes, the Constitution leaves me with no further discretion—it states that the President "shall be removed from office for impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

Some have argued that the Senate retains some discretion not to remove a President even if the evidence shows that he committed acts that constitute high crimes or misdemeanors. This simply misreads the Constitution. The Constitution is unequivocal that the President shall be removed upon conviction of a high crime. As Justice Story observed in his Commentaries on the Constitution, "the Senate, on the conviction, [is] bound, in all cases, to enter a judgment of removal from office." The Senate recognized this constitutional imperative in the trial of Judge Halsted Ritter in 1936, when it expressly rejected the need for a second vote on the question of removal, after the Senate had convicted him of high crimes. Conviction without removal would be a direct affront to the Constitution. It is no less an affront to refuse to convict despite facts that support conviction for a high crime because of an unwillingness to trigger the consequences demanded by the Constitution. Such an action subverts both the Constitution and the rule of law. It abrogates to Senators the authority to second guess the Constitution and conclude that although the President has committed crimes for which others should be removed, in this case the President should be permitted to remain in office. It is a brazen act of jury nullification.

The Constitution empowers the Senate to conclude that the facts do not support the crimes alleged in the articles of impeachment. Likewise, the Senate may conclude that the crimes alleged in the

articles do not rise to the level of high crimes and misdemeanors. But nothing in the Constitution allows the Senate to refuse to convict if it finds that the facts support the articles, and the articles allege high crimes. There has been much talk in this case about the rule of law. A power to refuse to convict in the face of evidence of a high crime is the antithesis of the rule of law. It is the rule of whim. Such an action would go beyond repudiating the value of the Senate precedents that perjury is an impeachable offense, it would destroy the value of all Senate precedents. As Justice Story warned while riding circuit over 160 years ago, if jury nullification were permitted, "it would be almost impracticable to ascertain, what the law . . . actually is." *United States* v. *Battiste,* 24 F. Cas. 1042 (Cir. Ct. D. Mass. 1835).

Any discretion that exists in the constitutional framework to refuse to act in the face of impeachable offenses lies in the House of Representatives. The law has long recognized the legitimacy of prosecutorial discretion. But the law has also long criticized jury nullification. Unlike a normal jury, the Senate has the power to determine both law and facts. What it lacks is the raw power to refuse to convict in the face of law and facts that both support conviction.

I cannot leave this discussion of perjury and obstruction of justice as high crimes and misdemeanors without a comment on the consequences of failing to remedy perjury and obstruction of justice by the number-one law enforcement officer in the nation. Chief Justice Jay warned of the dangers of diluting the importance of oaths: "[I]f oaths should cease to be held sacred, our dearest and most valuable rights would become insecure." If the President of the United States—our Nation's leader and the man surveys still identify as the most admired in America even after all this—can commit perjury and obstruct justice without any immediate consequence, it is difficult to see how oaths will continue to be held sacred. We can either abandon all perjury prosecutions or acknowledge that the President is above the law. Those are the choices: lawlessness or hypocrisy. Either option carries grave risks that oaths will "cease to be held sacred."

Removing the President, by contrast, will not only reinforce the importance of oaths; it will demonstrate the importance of personal responsibility and accountability. Rather than signaling that some in society are too talented or important for the normal rules to apply, removing the President will teach that actions have consequences, no matter who you are. We have an opportunity either to set a good example for our children or to enshrine the "Clinton defense" and the "Clinton exception" to the importance of telling the truth. We need to send a message that the grand words that grace the Supreme Court—equal justice under law—mean what they say.

After sifting through the evidence presented by both sides, all relevant legal precedents, and all the arguments by counsel, it is plain that the President committed perjury and obstructed justice. The prosecutors have done more than show that the President lied and tampered with witnesses. They have proven the elements of these crimes beyond a reasonable doubt. These Federal crimes are not technical violations of an obscure law. They are crimes as old

as the Nation. They strike at the heart of the integrity of our government. Not surprisingly, Congress always has treated them as high crimes and misdemeanors that require the removal of a guilty party. In light of the President's criminal misconduct, I will vote to convict the President on both articles of impeachment.

This is the only conclusion consistent with my oath to do impartial justice. In large measure, this case is all about the importance of oaths. The President's failure to honor his oath has necessitated this entire proceeding. Although some might see a vote to acquit as expedient, I will not further damage the sacredness and vitality of oaths by disregarding my own.

I have not relished the responsibility of serving as a finder of fact and determiner of law in an impeachment trial. I am eager to return to a legislative agenda to provide Americans and Missourians with tax cuts, retirement security, educational opportunity and greater safety from drugs and crime. It is regrettable that the President's misconduct forced Congress to consider this matter. I hope the unprecedented time that Senators have spent together in this work will enable us to make strong progress on the people's business when we return to the Senate.

Finally, while I have not relished this duty, and sincerely wish the President would have spared the Nation this ordeal, this responsibility is among the most important assigned to the Senate under our Constitution. It has been my goal to do my very best to do my duty as prescribed by the Constitution. While the Constitution calls upon the Senate to remove an unfit President, it does not charge the Senate with punishing the President. Indeed, the Constitution specifically limits the Senate's remedies and leaves the President "subject to . . . punishment, according to law" through the courts. The Constitution requires a clear choice: acquit the President and leave him in office, or convict him and remove him. The framers deemed it wise not to allow the Senate to leave a President in place, but wound him with punishments short of removal. Thus, once we discharge our impeachment responsibilities, the Senate should move energetically to its legislative agenda. To accomplish legislative goals for the nation, it will be necessary for Congress and the President to work together. If Senators wish to condemn the President's conduct, they should do so on their own, and should not tie up the Senate and divert energy from doing the people's work.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR STROM THURMOND

Mr. THURMOND. Mr. Chief Justice, the vote I cast on the articles of impeachment was one of the hardest votes that I have had to make in all my years in the United States Senate—not that I do not think I made the correct decision. While I am saddened that we had to make the judgment we made in this impeachment trial, each of us had a duty to undertake this task, and I do not shirk from duties.

The House managers performed their duty admirably, making a comprehensive, coherent, and eloquent presentation. The White

House attorneys presented a spirited defense. Similarly, due in part to the outstanding leadership of the Senate majority leader, I am confident that history will record that we in the Senate exercised our duty to conduct the trial appropriately and fairly. I believe the Founding Fathers would be pleased with the process and procedure.

The purpose of impeachment is not to punish a man. It is not a way to express displeasure or disagreement with a President or his policies. Impeachment is a mechanism designed to preserve, protect, and defend the Constitution, the country, and Office of the Presidency. My primary concern, from the first day of this scandal, was the impact it would have on the Office of the Presidency.

This case is not about illicit conduct or even about not telling the truth about illicit conduct. Instead, the case is about two activities. The first is whether the President intentionally made false statements under oath to a Federal grand jury, to the judiciary of the United States. The second is whether the President obstructed justice before a United States district court and a Federal grand jury, again to the judiciary of the United States.

A Senator's role in an impeachment trial is a mix of roles from our judicial system, including being part judge and part jury. At least in reviewing the evidence, we do act as jurors, and we should view evidence the way the courts expect jurors to view it. We use our common sense and our knowledge of human behavior based on our everyday experiences in life. In this case, the defense has attempted to take each act, separate it out, and artificially place it in isolation. I cannot view the evidence in this fashion. I cannot ignore common sense.

As to perjury, I have no doubt that the evidence presented to the Senate proves that the President did not tell the truth to the Federal grand jury. He made numerous false statements to make his illicit conduct seem more benign; to make his efforts at witness tampering with his secretary seem innocuous; and to make his testimony in the Paula Jones case appear truthful.

As to obstruction of justice, in my mind there can be no dispute but that the President intentionally interfered with the judiciary. When the President spoke to Monica Lewinsky about her being a witness in the Paula Jones case, he did not discuss the contents of her affidavit because he did not have to. Based on their previous conversations and the pattern of their relationship, she knew exactly what he meant; he meant for her to file a false and misleading affidavit with the Federal court. When the President spoke to his secretary and suggested to her an explanation for his relationship with Monica Lewinsky that he knew was not true, he was engaged in classic witness tampering. There can be no other acceptable explanation. When the President failed to reveal to the Federal judge during his Paula Jones deposition that the Monica Lewinsky affidavit was false, he was obstructing the fact-finding process of the district court. I can accept no other explanation.

The President has violated his sacred oath to faithfully execute the laws of the United States. Regardless of the bounds of private conduct and of the importance of allowing people to keep their private lives private, those bounds are broken when someone violates an oath to tell the truth in a court of law. Those bounds are also

broken when someone interferes with a court of law in its efforts to find the facts and find the truth.

The President's conduct in this matter was an egregious affront to the judicial system. We have a Chief Executive who has intentionally decided not to take care that the laws be faithfully executed. Indeed, he intentionally interfered with the lawful duties of a co-equal branch of Government. This should not be tolerated.

No one is above the law. I cannot accept the argument that a different legal standard applies to judges than to the President. The Congress has never accepted that argument before. There is no support for it in the words of the Constitution, which establishes one standard of impeachment for "the President, Vice President and all civil Officers of the United States." There is no support for it in the debates at the Constitutional Convention or in "The Federalist Papers." Is it reasonable to conclude that our standards for removal from office for criminal conduct is less for the chief law enforcement officer than it is for civil officers who are appointed to apply the law?

Because the President is the Commander in Chief, I must think about our men and women in uniform. I do not suggest that the President should be strictly subject to the Uniform Code of Military Justice during his term in office. However, if we vote not guilty on the articles on these facts, what message do we send to our soldiers about duty, honor, and country? Given that the President is the chief law enforcement officer, if we vote not guilty, what message do we send American citizens about respect for the rule of law? For that matter, what message do we send our children and grandchildren for generations to come about the consequences of not telling the truth?

We have been told that we should not remove the President from office because doing so would "overturn the results of an election." The Senate does not have this power. Our power extends no further than removal of the President, and the law provides that his running mate, the Vice President, takes the oath of office. If the President is removed, the Administration does not change from one party to another. The Constitution wisely provides for continuity. The impeachment process only provides for the removal of the current occupant.

Indeed, we are not engaged in a constitutional crisis. The Constitution provides the roadmap for what we are doing. We are simply following our constitutional duty. We did not ask for this burden. It was thrust upon us by the misconduct of the current occupant of the Office of the Presidency.

Before today, perjury and obstruction of justice were clearly high crimes and misdemeanors under the Constitution, My vote is consistent with this. The President is not above the law. The constitutional standard is no different for him than for anyone else. It is for these reasons that I voted guilty on both articles of impeachment.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR MIKE CRAPO

Mr. CRAPO. Mr. Chief Justice, very soon we will all cast what is clearly among the most serious votes any Members of Congress could ever be asked to make. I will vote to convict President William Jefferson Clinton on both of the two articles of impeachment before the U.S. Senate—perjury before a grand jury and obstruction of justice. To me, the evidence presented over the previous 4 weeks is not reasonably subject to any conclusion other than that the President did commit the crimes alleged against him.

From the very beginning of this matter, I have been circumspect about commenting on President Clinton's conduct. As a newly elected Senator, I was inundated with interview requests from national media. I chose not to appear on these programs and restricted my comments to a discussion of the process. I felt it was incumbent upon me as a member of the impeachment court to avoid commenting on the evidence until the trial has concluded.

At the outset, each Senator was administered a separate oath by the Chief Justice of the Supreme Court. This special oath was separate and distinct from the oath of office that each Senator takes when sworn into office. To my knowledge, this is the only other occasion in which our Founding Fathers required a separate and distinct oath of U.S. Senators to perform a constitutional responsibility.

Once again, the incredible wisdom of our Founding Fathers was evident. As each Senator took the oath to provide impartial justice, a realization fell over us that we had just embarked on a very solemn duty. No longer was the Senate a legislative body, it was a court of impeachment. A unique court, to be sure, not identical to traditional civil and criminal courts, but a court nonetheless.

This oath to render "impartial justice" was a promise to God under our Constitution. It also represented a duty to all Idahoans to represent them impartially. I committed that I would conduct myself in a fashion so that at any time I could affirm that I fully honored this commitment. I was present at all the Senate proceedings, and fully reviewed the evidence presented before the Senate. I was ready to vote either to acquit or to convict, depending on the evidence, argument, and law presented to the Senate.

In approaching this decision, several questions must be answered. Did the President commit the crimes alleged? And if so, are these crimes "high crimes and misdemeanors" requiring the removal of the President from office under the impeachment provisions of the U.S. Constitution? After carefully weighing the evidence and the law presented to the Senate, I have concluded after many sleepless nights and troubling days that the evidence shows that President Clinton committed the crimes alleged in the articles of impeachment. These crimes involve perjury and obstruction of justice in Federal criminal grand jury proceedings and in a Federal civil rights action. Although the "beyond a reasonable doubt" standard of traditional criminal trials is not applicable in impeachment proceedings, I am convinced the evidence presented in this case meets even this high standard.

Notwithstanding the impression created by some of the media and talk shows, there seems to be general consensus that the President committed the acts alleged against him. The core debate is whether these acts rise to the level of high crimes and misdemeanors as required to impeach and remove the President from office under the Constitution.

Some argue that this entire matter is just an effort to impeach the President for "private" conduct and that impeachment is proper only for "public" conduct that violates the public trust. But it is important to clarify that these proceedings are not about sex or even lying about sex. Both the President's counsel and the House managers correctly made the point that private conduct by the President is a matter properly left between the President and his wife and family. The allegations in this case, however, relate to public acts that go to the heart of the rule of law in America—perjury and obstruction of justice in a civil rights case and before criminal grand jury proceedings. I am deeply concerned that we will do great damage to our system of law and the freedom it defends if we diminish the seriousness of these crimes and thereby suggest to future offenders that they can commit these crimes with little to fear.

It is telling that on three separate occasions the U.S. Senate has removed Federal judges from office for perjury. Judges are tried under the same Constitutional provision requiring proof of treason, bribery or high crimes and misdemeanors as are presidents. Judge Claiborne was removed from office for lying on his income tax returns. Judge Hastings was removed for lying under oath in a trial. Judge Nixon was removed for making false statements to a grand jury. Clearly, under prior Senate precedent, perjury is a "high crime and misdemeanor."

In America, our freedom is assured by the rule of law. Our law seeks to provide equal and impartial justice to all. All Americans—the poor, the rich, the weak, the powerful—are entitled to the same protection under the law. And even, the most powerful among us must be subject to those laws. Tampering with the truth-seeking functions of the law undermines our justice system and the foundations on which our freedoms lie. All Americans must abide by the rule of law, including the President of the United States, who is the highest official in the land and who has the additional duty to ensure that the laws are faithfully executed.

The primacy of the rule of law over the rule of individuals is one of the most important safeguards of freedom in our Constitution. Our entire legal system is dependent on our ability to find the truth. That is why perjury and obstruction of justice are crimes. Federal sentencing guidelines place perjury, witness tampering, and obstruction of justice in the same realm of seriousness as bribery. Commission of these crimes is a direct effort to prevent our legal system from performing one of its core functions—finding the truth.

The offenses are even worse when committed against the poor or powerless by the wealthy or powerful. Our Constitution guarantees, fortunately, that the most ordinary person has the right to her day in court even if she is not well liked by the public or has

become characterized in a bad light by her opponents. And even if the person from whom she seeks justice is the President.

In 1792, Chief Justice John Jay gave one of the best historical explanations of the reason crimes against the truth-seeking process in our system of justice are so dangerous to our freedom:

> Independent of the abominable Insult which Perjury offers to the divine Being, there is no Crime more Pernicious to Society. It discolors and poisons the Streams of Justice, and by substituting Falsehood for Truth, saps the Foundations of personal and public Right. . . . Testimony is given under those solemn obligations which an appeal to the God of Truth impose; and if oaths should cease to be held sacred, our dearest and most valuable Rights would become insecure.—Chief Justice John Jay, Charge to a Grand Jury of the Circuit Court of the District of Vermont, June 25, 1792.

Perjury and obstruction of justice are public crimes that strike at the heart of the rule of law—and therefore our freedom—in America. I conclude that these acts do constitute high crimes and misdemeanors under the impeachment provisions of the U.S. Constitution. Therefore, I will vote to convict President Clinton on both of the impeachment articles.

Fortunately, this trial is over and I now can direct my full attention to fulfilling the other oath I took when I was sworn in as a United States Senator. Many challenges and opportunities face Idahoans and all Americans. I will, as I always have, give all my energy to working on a bipartisan basis to solve problems, strengthen America and protect our future.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR BYRON L. DORGAN

Mr. DORGAN. Mr. Chief Justice. Thank you, Senator LOTT, Senator DASCHLE, and the Chief Justice for the skill and dignity you have given these proceedings.

I wish every American could see and hear the Senate in these deliberations.

There is a kind of majesty to see the Senate Chamber filled with Senators listening to each other in debate and deliberation.

We are different people, coming from different regions with different philosophies, and that is what creates the unique character of this wonderful institution.

I want to tell you briefly today about Teddy Roosevelt.

Over a century ago, Teddy Roosevelt was consumed with grief following the death of his wife and mother who died on the same day. He decided to change his life and move out west. When he stepped off the train in the Badlands of North Dakota, he was wearing a cowboy suit hand-tailored from Brooks Brothers, rimless glasses, a Bowie knife with "Tiffanys" engraved on the handle, and Sterling silver spurs with his initials on each rowel.

The local cowboys thought he was a joke. One unlucky cowboy picked a fight with Teddy in a Badlands saloon in Medora. In minutes, the cowboy was punched senseless by this funny looking easterner.

And then Teddy Roosevelt was accepted. Being different, looking different didn't much matter to the folks in the Badlands after that.

Here in the Senate we're very different people, too. No saloon fights here, though. We engage in verbal battles. And the Senate works because we accept each other, and we share a common purpose.

The discussion we are having today reminds me again of the unique skills and passion for our country possessed by each and every Member of the Senate.

How do we apply these skills and that passion here and now?

Mark Twain once said, with tongue in cheek, that "the next best thing to a lie, is a true story no one will believe."

Well, this sorry chapter in our rich history embraces both. Lies, yes! And truth that is almost unbelievable.

We meet here as Senators to consider whether to remove from office a President elected by the American people. In the entire history of our country, the Senate has never voted to remove a President. In fact, it has been tried only once. The framers of our Constitution made it very hard to do; and they made it, with a two-thirds vote required in the Senate, impossible to do on a "partisan" basis.

The matter that calls us to this duty is a sordid one.

It is truly a scandal and a drama without heroes and without winners.

It is about a President who should be, and I'm sure is, ashamed of his behavior. Is there anyone here in the Senate who had a sexual relationship with one of their interns? Of course not! The President did. He had a sexual relationship with an intern, and he lied about it, to the country, to all of us, to try to conceal it.

This President has betrayed our trust and I have expressed to him personally how profoundly disappointed I am with his actions.

This matter is also about an independent counsel who you and I know has leaked confidential information from secret proceedings of a grand jury, and whose actions in detaining Monica Lewinsky should be troubling to every Senator. And an independent counsel who came to Congress with such prosecutorial passion that his ethics advisor resigned in protest.

And it is about many others as well. Major figures and bit players, some who conspired in disgraceful ways, and others who were innocently swept into the maelstrom of a sensational scandal.

But, for all of the intrigue, the matter here is less complicated than some would have us believe.

Here is a short chronology.

Several years after the day she claims that then-Governor Bill Clinton made unwanted sexual advances toward her, Paula Jones appeared at a conservative political gathering to announce she was filing suit against the President.

Some while later, following the Supreme Court ruling that the case could go forward, the President was called to a deposition in the Jones case.

In that deposition, which the Judge later determined to be immaterial, and in a case that was later dismissed, Bill Clinton denied having a sexual relationship with Monica Lewinsky. That was a lie. Oh, I know about the convoluted definition of sex that was used, but I think he lied. But that's not a matter before us. The impeachment article about that deposition was defeated in the U.S. House.

Following the President's testimony in the Jones case, the independent counsel, appointed 3 years earlier to investigate a Whitewater land deal, and controversies called Travelgate and Filegate, swung into action to investigate this sex scandal. Linda Tripp was wired, Monica Lewinsky was detained by the Independent Counsel and the FBI, and they told her she shouldn't call her lawyer. A grand jury began hearing witnesses and after many months the President appeared before that grand jury to answer questions.

Then, one-and-a-half months before the 1998 general election, the U.S. House, with cooperation from the independent counsel, released to the American public all of their investigative material and the secret proceedings of the grand jury.

Following the election, the U.S. House Judiciary Committee began their impeachment hearings. The independent counsel, in a virtual footnote to his presentation before the House on the sex scandal, admitted he had not been able to implicate the President on Whitewater, Travelgate or Filegate—but he got him on the sex matter. And so the House managers and the independent counsel used the President's bad behavior to weave their charges of perjury and obstruction of justice.

And finally the U.S. House on a partisan vote sent to the Senate the two articles of impeachment.

That's the chronology as I see it.

And so we gather—conducting a trial of this sordid mess.

What are we to do? What is our duty? What is, as Lincoln said, "our last full measure of devotion" to this country.

I am deeply troubled by this President's behavior. But I am also troubled by the constitutional gravity of removing a President. Some, with a mere wave of the hand seem to say that "it's not such a big deal." But they are wrong. This decision affects the very roots of our democracy.

The selection of the head of government by the governed in a free election is rare. It is still the case in too many countries that power shifts through the barrel of a gun—through raw, naked power and violence.

In our country, the American people choose their President by the simple, elegant act of voting. It is through voting—not fighting—that power shifts. Our governments change without an army marching. With no shots being fired. What a remarkable thing to behold.

The Constitution does contain a very special provision allowing for the removal of a President "for treason, bribery, and other high crimes and misdemeanors." It does that because the framers wanted to provide a method to remove a President who was acting in a manner that threatens the country.

But the framers worried that a partisan majority could try to remove a President for political gain.

Hamilton, in Federalist No. 65 said, "the greatest danger . . . that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of innocence or guilt."

Mason said that the President should be removed for "great and dangerous offenses" that amount to "attempts to subvert the Constitution." Hamilton wrote that impeachable offenses result from a

"violation of public trust" and "relate chiefly to injuries done to society itself."

It is also clear that the impeachment process was not meant to punish a transgressor. In fact, the Constitution provides that any such "crimes" would still be punishable in the criminal justice system.

In short, impeachment is a device to prevent grave danger to the Nation.

I believe that the framers of the Constitution would be startled by this impeachment effort.

That this impeachment process was passionately partisan in its birth in the U.S. House is not in question. In fact, two of the House managers who brought these articles of impeachment to us called for the impeachment of President Clinton long before they had ever heard of Monica Lewinsky. Seventeen Republican Congressmen had called for impeachment hearings long ago. Theirs was a cause searching for a reason.

Nearly 2 years ago, before Linda Tripp, before Monica Lewinsky, before Betty Currie, before knowledge of sex with an intern, before a stained dress, before the deposition in the Jones case, before the testimony to the grand jury, two of the House managers who argued for these impeachment articles had introduced an impeachment inquiry resolution. Representative BOB BARR and Representative LINDSEY GRAHAM said then that it was about "the rule of law." They were asking for the nullification of an election before they knew the existence of a Monica Lewinsky and before the action that led to the two articles of impeachment now before us.

Isn't there room to wonder then, that maybe this is exactly the partisan passion that persuaded our framers to place the impeachment bar just above the vertical leap of those Members of Congress who would carry "fill in the blank" impeachment papers for every reason and every season.

Take the partisan flavor away. I don't think the case has been made that the President's behavior, while reprehensible, poses a grave danger to the Nation. Therefore I cannot vote to nullify the results of the last election. The people chose Bill Clinton and I do not believe the case made against the President meets the constitutional threshold for removing a President.

I respect those here who differ. I do not allege that your guilty vote is partisan. You have reached a different conclusion charge than I did, and I respect you for that.

But I cannot vote for these articles of impeachment. This is not a case of high crimes and misdemeanors. It's a case of bad behavior by a President who has shamed himself.

But let us not respond to his bad behavior by hurting our country.

Let us not aim at Bill Clinton and hit the Constitution.

I do not vote to support our President. I vote against these articles of impeachment to support our Constitution.

In the final analysis, however, the President should take no solace in this vote. I and others in the Senate have joined in a censure resolution that expresses a harsh judgement about the President's actions.

Now, it is time for the country to move on.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOHN F. KERRY

Mr. KERRY. Mr. Chief Justice, my colleagues, I want to thank the Chief Justice for his important stewardship of these proceedings. And I thank Senator LOTT and Senator DASCHLE for their patient leadership in helping to bridge the divide of partisan votes so that these are not partisan deliberations.

There is a special spirit in this Chamber. No matter all the easy criticisms directed our way, this is a great institution and in our own way we are witnessing—living out—the remarkable judgment of the Founding Fathers.

Let me turn to the question of removing President William Jefferson Clinton.

Many times the House managers have argued to us that if you find the facts as you argue them, you must vote to convict and thereby remove. But of course, that, like a number of things that they said, is really not true. You can, of course, find the facts and still acquit, because you don't want to remove on a constitutional basis or, frankly, on any other balance that a Senator decides to make in the interest of the Nation.

Now, I agree that perjury and obstruction of justice can be grounds for removal or grounds for impeachment. The question is: Are they in this case? I will not dissect the facts any further because I don't have the time but also because I believe there are issues of greater significance than the facts of this case.

Let's assume you take the facts as the House managers want you to do. I would like to talk about some of the things in the arena outside of the mere recitation of facts—critical considerations in this matter.

I have listened to all of the arguments for removal, and I must say that even as I understand what many have said, there seems to be a gap between the words and the reality of what is happening in this country.

Some have said it sets a double standard for judges, despite the fact that the vast majority of scholars say there is a difference between impeachment of judges and the President, despite a difference clearly spelled out in the Constitution, and despite all of the distinguishing facts of each one of those cases involving judges.

Some have said we will have a negative impact on kids, on the military, and on the fabric of our country.

And while I agree that this is absolutely not about polls and popularity, some are making a judgment that clearly the country itself does not agree with. The country does not believe the fiber of our Nation is unraveling over the President's egregious behavior, because most people have a sense of proportion about this case that seems totally lacking in the House managers' presentation.

No parent or school in America is teaching kids that lying or abusing the justice system is now OK. In fact, the President's predicament, I argue, does not make it harder to do so. If anything, there may now be a greater appreciation for the trouble you can get into for certain behavior. More parents are teaching their children about lying, about humiliation, about family hurt, about pub-

lic responsibility, than before we ever heard the name of Monica Lewinsky.

The clear answer to children who write letters about the President is that since being discovered he has been in a lot of trouble, may even be criminally liable, has suffered public humiliation, and all of history will not erase the fact of this impeachment, this trial, or the lessons of this case.

But the bottom line for us is our constitutional duty, our responsibility to balance based on common sense and sense of honor.

There is a simple question but a question of enormous consequence: Do we really want to remove a President of the United States because he tried to avoid discovery in a civil case of a private, consensual affair with a woman who was subsequently determined to be irrelevant to the case, which case itself was thrown out as wholly without merit under the law? That is the question.

Let me be clear about the President's behavior so no one misinterprets. I am as deeply disturbed by it as all of us are here in the Senate. But I am not sure we need additional moralizing about something that the whole Nation has already condemned and digested. The President lied to his countrymen, to family, friends, to all of us. And if one is not enormously concerned by gifts not surrendered, conversations which can't refresh recollection, jobs produced with uncommon referral and speed, certainly one must be unsettled by the mere lack of easy compliance with judicial inquiry by a President. That is of grave concern to all. It deserves our censure.

But let me say as directly as I can that no amount of inflated rhetoric, or ideological or moral hyperextension can lift the personal, venial aspects of the President's actions to the kind of threat to the fabric of the country contemplated by the Founding Fathers. I must say that I am truly somewhat surprised to see so many strict constructionists of the Constitution giving such new and free interpretation to the clear intent of the framers.

And I have, frankly, been stunned by the overreach, the moral righteousness, even the zealotry of arguments presented by the House managers.

No matter the words about not hating Bill Clinton, no matter the disclaimers about partisanship, I truly sensed at times not just a scorn but a snarling, trembling venom that told us the President is a criminal and that "we need to know who our President is."

Well, the President is certainly a sinner. We all are. And he may even have committed a crime. But just plain and simply measured against the test of history so eloquently articulated by the Senator from New York this morning and by the Senator from Delaware yesterday, just plain and simply, this is not in any measure on the order of a high crime and misdemeanor so clearly contemplated by the Founding Fathers.

Unlike President Nixon's impeachment case, no government power or agency was unleashed or abused for a goal directly affecting public policy. No election was interfered with. No FBI or IRS power was wrongfully employed. At worst, this President lied about his private, consensual affair and tried wrongfully, but on a human level—understandable to most Americans, at least as to the Paula Jones case—to cover it up. I think, in fact, that most Americans in

this country understood there was in that inquiry a violation of a zone of privacy that is as precious to Americans as the Constitution itself.

The fact that the House dropped the Paula Jones deposition count underscores the underlying weakness on which all of this is based. So I ask my colleagues, are we really incapable of at least measuring the real human dimensions of what took place here and contrasting it properly with the constitutional standards we are presented by precedent and history?

We have heard some discussion of proportionality. It is an important principle within our justice system and in life itself. The consequences of a crime should not be out of proportion to the crime itself. As the dictionary tells us, it should correspond in size, degree or intensity.

I must say that no one yet who will vote to remove has fully addressed that proportionality issue.

If you want to find perjury because you believe Monica about where the President touched her, and you believe that adopting the definition given to him by a judge and by Paula Jones' own lawyers, and you can reach into the President's mind to determine his intent, then that is your right. But having done that, if you think a President of the United States should be removed, an election reversed, because of such a thin evidentiary thread, I think you give new meaning to the concept of proportionality. If you do that, you turn away from the central fact that the President opened his grand jury testimony by acknowledging "inappropriate, intimate contact" with Monica Lewinsky.

Enough said, you would think. But no, not enough for this independent prosecutor. While not one more question really needed to be asked, a torrent of questions followed. Every question thereafter calculated to either elicit an admission of a lie in a case found to be without merit, or to create a new lie which could bring us here.

With the President's acknowledgment of intimate contact, everyone in this Chamber understood what had happened. Everyone in America understood what had happened. For what reason did we need 80 percent of the questions asked about sexual relations? For the simple reason that the Presidential jugular instinct of the so-called independent counsel was primed by what all of us have come to know—he had colluded with Paula Jones' attorneys and Linda Tripp to set the Monica trap in the January deposition, and now he was going to set the perjury trap in the grand jury. Mr. Bennett's own comments in the deposition underscore this:

> "I mean, this is not what a deposition is for, Your Honor. He can ask the President, What did he do? He can ask him specifically in certain instances what he did, and isn't that what this deposition is for? It is not to sort of lay a trap for him."

I wonder if there is no former district attorney, now Senator; no former attorney general, now Senator; no former U.S. attorney, now Senator; former officer of the court, now Senator, who is not deeply disturbed by a so-called independent counsel grilling a sitting President of the United States of America about his personal sex life, based on information from illegal phone recordings?

Is there no one finding a countervailing proportionality in this case when confronted by our own congressionally created Javert

who is not just pursuing a crime but who is at the center of creating the crime which we are deliberating on now?

Think about it. When Mr. Starr was appointed, when we authorized an independent counsel, when the grand jury was convened, the crime on trial before us now had not even been committed, let alone contemplated.

I wonder also if there is no one even concerned about Linda Tripp—who now gives definition to the meaning of friendship—working with Paula Jones' attorneys even as she was in the guidance and control of Mr. Starr as a Federal witness. Some of you may want to turn away from these facts. Secondly, the House managers never even acknowledged them in their presentations. I raise them, my colleagues, not for ideological or political purposes, but fundamental fairness demands that we balance all of the forces at play in this case.

Now, much has also been made in this trial of the rights of Paula Jones and her civil rights case—that we must protect Paula Jones' rights against the President of the United States.

My fellow colleagues—please let us have the decency to call this case what it was. This was no ordinary civil rights case. It was an assault on the Presidency and on the President personally, and the average American's understanding of that is one of the principal reasons our fellow citizens figured this case out long ago.

But there is more to it than that:

Mr. Starr became involved in the Paula Jones suit before he became independent counsel.

He had contacts with Paula Jones' attorneys before his jurisdiction was expanded.

He wired Linda Tripp before his jurisdiction was expanded.

Many sources documented that without any expansion of jurisdiction, in 1997, he had FBI agents interrogating Arkansas State troopers, asking about Governor Clinton's private life—especially inquiring into Paula Jones.

After Paula Jones filed her suit in 1994, announcing it at a conservative political convention, and with new counsel affiliated with the Rutherford Institute, her spokesperson said, "I will never deny that when I first heard about this case, I said, 'OK, good. We're gonna get that little slime ball.'"

She later said, "Unless Clinton wants to be terribly embarrassed, he'd better cough up what Paula needs. Anybody that comes out and testifies against Paula better have the past of a Mother Teresa, because our investigators will investigate their morality."

Even Steve Jones, Paula Jones' husband, was part of an operation to poison the President's public reputation by divulging the secrets of his personal life—threatening even to employ subpoena power to depose, under oath, every State trooper in Arkansas who may have worked for the Governor. Steve Jones pledged that: "We're going to get names; we're going to get dates; we're going to do the job that the press wouldn't do. We're going to go after Clinton's medical records, the raw documents, not just opinions from doctors . . . we're going to find out everything."

Into all of this came Ken Starr, and the police power of our Nation.

This was not a civil rights suit in the context most of us would recognize. Indeed, there existed an extended and secret Jones legal team of outside lawyers—including George Conway and Jerome Marcus, experts on sexual harassment and Presidential immunity, who ghostwrote almost every substantive argument leveled by Paula Jones' lawyers; Ken Starr's friend Theodore Olson, and Robert Bork, the former Supreme Court nominee, who together advised the Jones team; Richard Porter, a law partner of Ken Starr and former Bush-Quayle opposition research guru, who also wrote briefs for the Jones team; and the conservative pundit and longtime Clinton opponent Ann Coulter, who worked on Paula Jones' response to President Clinton's motion for a dismissal. The connections between this crack—and covert—legal team, and Ken Starr's staff and his witnesses—including Paul Rosenzweig, Jackie Bennett, and Linda Tripp—as well as familiar figures including Lucianne Goldberg, add up to something far more than a twisted and disturbing game of six degrees of separation.

I do not suggest that this was the right wing conspiracy bandied about on the talk shows. But I ask you—are we not able to acknowledge that this was a legal and political war of personal destruction—not just a civil rights case?

And we cannot simply dismiss the fact that all of this turmoil—these entire proceedings—arise out of this deeply conflicted, highly partisan, ideologically driven, political civil rights case with incredible tentacles into and out of the Office of the Independent Counsel.

Moreover, I remind my colleagues, Mr. Starr is supposed to be independent counsel—not independent prosecutor. He was and is supposed to represent all of the Congress and nowhere do I remember voting for him to make a referral of impeachment—a report of facts, yes—a referral of impeachment, no.

Now there is a rejoinder to all of this. Nothing wipes away what the President did or failed to do.

So, some of you may say, So what? The President lied. The President obstructed justice. No one made him behave as he did. And yes, you're right. The President behaved without common sense, without courage, and without honor, but we are required to measure the totality of this case. We must measure how political this may have been; whether process was absurd; whether the totality of what the President did meets the constitutional threshold set by the Founding Fathers.

We must decide whether the removal of the President is proportional to the offense and we must remember that proportionality, fairness, rule of law—they must be applied not just to convict, but also to defend—to balance the equities.

I was here during Iran-contra and I remember the extraordinary care Senator Rudman, Senator INOUYE, and Senator SARBANES exerted to avoid partisanship and maintain proportionality. I wish I did not conclude that their example frankly is in stark contrast to the experience we are now living.

The House managers often spoke to us of principle and duty. And equally frequently we were challenged to stand up for the rule of law.

Well, we all believe in rule of law. But we also believe in the law being applied fairly, evenly—that the rule of law is not something

to cite when it serves your purposes, only to be shunted aside when it encumbers.

But where was the managers' duty to their colleagues in the House—in the committee—on the floor; where was the same self-conscious sense of pain for what they were going through, when they denied a bipartisan process for impeachment; where was their commitment to rule of law in denying the President's attorneys access to the exculpatory evidence which due process affords any citizen?

Rule of law is a process in a democratic institution, and there is a duty to honor process.

I believe the Senate has distinguished itself in that effort and I want to express my deep respect for the strongly held views of all my colleagues. Reasonable people can differ and we do, but we can still come together in an affirmation of the strength of our Constitution.

Chairman HYDE says "let it be done"—I hope it will be. Right requires we be proportional as to all aspects of this case. I hope what we do here will apply the law in a way that gives confidence to all our citizens, that everyone can look at the final result of our deliberations and say justice was done. And we have called an end to the process by which we savage each other, and are beginning to heal our country.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR MIKE DEWINE

Mr. DEWINE. Mr. Chief Justice, my friends in the Senate, each of the articles before us contains numerous examples of conduct, any of which as alleged would constitute grounds for the President's removal from office. I have determined that most of these allegations have not been proven by clear and convincing evidence.

Let me now turn to the three, at least for me, remaining allegations. First is the allegation that the President obstructed justice. When? After his Paula Jones deposition, he had his two, by now very famous, conversations with Betty Currie. The facts are familiar, but they are telling. On January 17, 1998, the President gave his deposition in the Paula Jones case. The Jones lawyers zeroed in on the relationship between Monica Lewinsky and the President. It was clear that the Jones lawyers had specific knowledge of the details of this relationship. In the President's answers, he referred repeatedly to Betty Currie. Further, counsel for Ms. Jones questioned the President in detail about Betty Currie, about her job, her hours at work, et cetera.

I submit that any first year law school student who attended that deposition would know that Paula Jones was a prospective witness or would know that Betty Currie was a prospective witness. In fact, 5 days after the deposition Betty Currie was subpoenaed by the Jones lawyers. When the President returned to the White House after the deposition, he knew Betty Currie was a prospective witness.

Sure enough, within 3 hours of the conclusion of the deposition, the President called Betty Currie at home on a Saturday night and

asked her to come to the White House the next afternoon, Sunday. During the course of that Sunday afternoon meeting, the President informed Betty Currie that Monica's name came up during the deposition. According to Betty Currie's testimony, the President said to her—and we are all, of course, familiar with this—"You were always there when Monica was there, right?" "We were never really alone, right?" "Monica came on to me and I never touched her, right?" "You could see and hear everything, right?" "She wanted to have sex with me and I couldn't do that."

We are all familiar with that, but I think most significantly, and to me the most telling thing, is that 2 or 3 days later the President again spoke to Betty Currie and again made the same statements and used the same demeanor.

The President does not dispute that he made these statements to Betty Currie. He explained he was just trying to refresh his memory about what the facts were. The President's explanation is simply not credible. It defies logic. Why would the President make five declarative statements to Betty Currie to "refresh his memory" when he knew that Betty Currie could not possibly know whether most of these statements were true? In fact, we know and the President knew that the statements were false.

Betty Currie was a key potential witness who could contradict the President's sworn testimony in the Paula Jones deposition. She was also the President's subordinate. On two separate occasions the President made blatantly false statements to her to try to corrupt the due process of justice and with the intent to corruptly persuade her with the intention to influence her testimony. This charge of obstruction of justice, I believe, has been proven by clear and convincing evidence, and I might add it has been proven beyond a reasonable doubt.

Let me now turn to the second allegation, the allegation that the President committed perjury on August 17, 1998, when he testified about these two postdeposition meetings with Betty Currie. I know there may be some who are still struggling with the perjury charge. I simply say this: If you believe, as I do, that the obstruction of justice charge is made based on the statements made to Betty Currie, then any fair reading of the grand jury testimony will indicate to you that you also have to find he committed perjury.

Here is what he said:

> What I was trying to determine is whether my recollection was right and she [Betty Currie] was always in the office complex when Monica was there and whether they thought she could hear any conversation we had, or did she hear any. I thought what would happen is it would break in the press, and I was trying to get the facts down. I was trying to understand what the facts were.

He also says, the President:

> I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could.

I submit if the President is guilty of obstruction of justice in his statements to Betty Currie, then clearly, clearly, he also must be guilty of perjury in his account of these events to the grand jury. The two findings are inextricably connected. One cannot reach the first conclusion without reaching the second. I believe it has been proven by clear and convincing evidence that the President committed perjury. And I might also add, I believe it has been proven

beyond a reasonable doubt. The evidence clearly shows that the President obstructed justice and then lied under oath about this obstruction in his grand jury testimony.

Now, on the third charge, I believe the evidence shows that the President further perjured himself in the grand jury to avoid a perjury charge in his prior deposition. This perjury had to do with the nature and details of his relationship with Monica Lewinsky.

I know many people have come to the well and have expressed concern about how we got here, what brings us here today. I share some of those concerns. Congresses, beginning with this one, will have to deal with the aftermath of this sorry affair: court cases that have weakened the Presidency, a discredited independent counsel law.

You will forgive me if I point out that I was one of the 80-some Members of the House who voted against the independent counsel law when it came up—please forgive me for that aside. I voted against it because I share some of the same concerns we have heard expressed here today and yesterday. We also will have to deal with the Secret Service that is now vulnerable to subpoenas and Presidents who are vulnerable to civil rights suits while in office.

These are important issues, but I submit they are issues not for today but rather for another day. None of us wanted to be here, but we are where we are, the facts are what they are, and we know what we know. What we know is that the President obstructed justice and committed perjury. What must we do with this President who has obstructed justice and then committed perjury?

Obstruction of justice and perjury strike at the very heart of our system of justice. By obstructing justice and committing perjury, the President has directly, illegally, and corruptly attacked a coequal branch of Government, the judiciary. It has been proven by clear and convincing evidence that the President of the United States has committed serious crimes.

But while I have found specific violations of law, it is not insignificant, in my final decision, that these specific criminal acts were committed within a larger context, a larger context of a documented pattern of indefensible behavior—behavior that shows a reckless disregard for the law and for the rights of others.

I have concluded that the President is guilty of behaving in a manner grossly incompatible with the proper function and purpose of his office. In 1974, the House Judiciary Committee used those precise words to define an impeachable offense.

I have also concluded that the President is guilty of the abuse or violation of a public trust. Alexander Hamilton, in Federalist No. 65, used those precise words to define an impeachable offense. What the President did is a serious offense against our system of government. It undermines the integrity of his office and it undermines the rule of law.

Here is what Thomas Paine said about the rule of law:

> Let a crown be placed on the law by which the world may know that, so far as we approve of monarchy, in America the law is king.

The law is indeed king in America. There isn't one law for the powerful and one for the meek. That is what we mean when we say we are a "nation of laws." We elect a President to enforce these

laws. In fact, the Constitution commands that the President "take care that the laws be faithfully executed."

How can we allow a man who has obstructed justice and committed perjury to remain as the chief law enforcement officer of our country? How can we call ourselves a nation of laws and leave a man in office who has flouted those laws? We define ourselves as a people not just by what we hold up, not just by what we revere, but we also define ourselves by what we tolerate. I submit that this is something we simply, as a people, cannot tolerate.

Mr. Chief Justice, I will vote to convict the President on both counts and to remove him from office.

I ask unanimous consent that my full statement be included in the RECORD immediately following these remarks.

The CHIEF JUSTICE. Without objection, it is so ordered.

SUPPLEMENTAL STATEMENT OF SENATOR MIKE DEWINE

Mr. Chief Justice, Members of the Senate, the President has been impeached on two separate articles by the House of Representatives.

Article I charges that the President willfully provided perjurious, false and misleading testimony to the grand jury.

Article II charges that the President obstructed justice (1).

Each article contains numerous examples of conduct, any of which, it is alleged, would constitute grounds for the President's removal from office.

I have examined each of these separate grounds or allegations.

I have determined that most of these allegations have not been proven by clear and convincing evidence (2).

I now turn to the three allegations that I believe have the most merit.

I. I examine first the allegation that the President obstructed justice when on January 18 and January 20 or 21, 1998, he related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in the proceeding—Betty Currie—in order to corruptly influence her testimony.

These are the essential facts: On January 17, 1998, the President gave his deposition in the Paula Jones case. Jones' lawyers zeroed in on the relationship between Monica Lewinsky and the President. It was clear that the Jones lawyers had specific knowledge of the details of this relationship. In the President's answers, he referred—repeatedly—to Betty Currie. For example, when asked whether he walked with Ms. Lewinsky down the hallway from the Oval Office to his private kitchen in the White House, the President said Ms. Lewinsky was not there alone or that Betty was there (3); when asked about the last time he spoke with Monica Lewinsky, he falsely testified that he only recalled that she was only there to see Betty (4); when asked whether he prompted Vernon Jordan to speak to Monica Lewinsky, he stated that he thought Betty asked Vernon Jordan to meet with Monica (5); and he said that Monica asked Betty to ask someone to talk to Ambassador Richardson about a job at the United Nations (6). Further, counsel for Ms. Jones questioned the President in detail about Betty Currie, her job, and her hours of work (7).

Anyone reading the transcript would have to expect that Jones was the President's subordinate. On two separate occasions, the President made blatantly false statements to her to try to corruptly influence the due administration of justice and to attempt to corruptly persuade her with the intent to influence her testimony (8).

This charge of obstruction of justice has been proven by clear and convincing evidence. (Let me state for the record it has also been proven beyond a reasonable doubt.)

II. Let me now turn to the second allegation—that the President committed perjury on August 17, 1998, when he testified about these two postdeposition meetings with Betty Currie.

Here is what the President said to the grand jury about these meetings. He first testified that "what I was trying to determine was whether my recollection was right and that she [Betty Currie] was always in the office complex when Monica was there, and whether she thought she could hear any conversations we had, or did she hear any. . . . I thought what would happen is that it would break in the press, and I was trying to get the facts down. I was trying to understand what the facts were" (9).

The President also testified that "I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could" (10).

When asked again about these statements, the President said: "I was trying to refresh my memory about what the facts were. . . . And I believe that this was part of a series of questions I asked her to try to quickly refresh my memory. So, I wasn't trying to get her to say something that wasn't so" (11).

He was asked this specific question: "If I understand your current line of testimony, you are saying that your only interest in speaking with Ms. Currie in the days after you deposition was to refresh your own recollection?" The President responded: "Yes" (12).

If the President is guilty of obstruction of justice in his statements to Betty Currie, then clearly, he must also be guilty of perjury in his account of these events to the grand jury. The two findings are inextricably connected—one cannot reach the first conclusion without also reaching the second.

It has been proven by clear and convincing evidence that the President committed perjury (13). (Let me state for the record that it has also been proven beyond a reasonable doubt.)

III. The last allegation I would like to discuss is the charge that the President committed perjury on August 17, 1998, before a Federal grand jury when he testified concerning the nature and the details of his relationship with Monica Lewinsky. Specifically, it is alleged that the President committed perjury when he denied kissing or touching certain body parts of Ms. Lewinsky. The President's denials were quite specific on this point (14).

Monica Lewinsky's testimony is just as unequivocal. She describes, in graphic detail, 10 separate encounters where such intimate activities occurred (15). Ms. Lewinsky's story is corroborated by numerous consistent contemporaneous statements she made to her friends and counselors. Her testimony is further corroborated by phone logs and White House exit and entry logs.

Counsel for the President have failed to show any motive for Monica Lewinsky to lie about these details.

Conversely, the President clearly had a motive to lie. He could not, in his grand jury testimony, admit such sexual activity without directly contradicting his deposition testimony in the Paula Jones case. Such a contradiction would have subjected him to a perjury charge in that case. To avoid a perjury charge concerning the Jones deposition, the President had to carefully craft an explanation so it was clear he did not touch Monica Lewinsky. He had to do this to avoid falling within the definition of "sexual relations" that had been given him in the Jones deposition.

The President's story defies common sense and human experience. This is particularly true if you consider the number of times the President and Monica Lewinsky were alone and, in the President's words, engaged in "inappropriate behavior." It is also probative that the President's DNA was found on Monica Lewinsky's dress.

The charge of perjury has been proven by clear and convincing evidence. (Let me state for the record that it has also been proven beyond a reasonable doubt.)

That concludes my findings of fact. The evidence clearly shows that the President obstructed justice and then lied under oath about this obstruction in his grand jury testimony. He further perjured himself in the grand jury to avoid a perjury charge in his prior deposition.

I wish this were not true. When I began my examination of this case, I assumed that I would vote not guilty. I assumed that the evidence simply would not be sufficient to convict.

Unfortunately, the facts are otherwise.

Many people, including myself, are deeply concerned about how we got here. Congresses—beginning with this one—will have to deal with the aftermath of this sorry affair: court cases that have weakened the Presidency; a discredited independent counsel law; a Secret Service vulnerable to subpoenas; and Presidents who are subjects to civil suits while in office.

These are important issues. But they are issues for another day.

None of us wanted to be here. But we are where we are. The facts of the President's misconduct are what they are. We know what we know. And although each of us may find some of the acts more offensive than others, all of them are disturbing, all are very serious, and all lead to the same conclusion: The President obstructed justice and committed perjury.

What must we do with this President who has obstructed justice, and then committed perjury about that obstruction?

Obstruction of justice and perjury strike at the very heart of our system of justice. By obstructing justice and committing perjury, the President has directly, illegally, and corruptly attacked a coequal branch of Government, the judiciary.

The requirement to obey the law applies to us all, in all cases. To say a President can obstruct justice is to put the President above the law, and above the Constitution.

Perjury is also a very serious crime. The Constitution gives every defendant a choice: Testify truthfully, or remain silent. No one can be forced to testify in a manner that involves self-incrimination. But a decision to place one's hand on the Bible and invoke God's witness—and then lie—threatens the judiciary. The judiciary is designed to be a mechanism for finding the truth—so that justice can be done. Perjury perverts the judiciary, turning it into a mechanism that accepts lies—so that *in*justice may prevail.

It has been proven by clear and convincing evidence that the President of the United States has committed serious crimes. But although I have found specific violations of law, it is not insignificant in my final decision that these specific criminal acts were committed within a larger context of a documented pattern of indefensible behavior—behavior that shows a reckless disregard for the law and for the rights of others.

I have concluded that the President is guilty of "behaving in a manner grossly incompatible with the proper function and purpose of (his) office." In 1974, the House Judiciary Committee used those precise words to define an impeachable offense (16).

I have also concluded that the President is guilty of "the abuse or violation of (a) public trust." Alexander Hamilton, in the *Federalist* No. 65, used those precise words to define an impeachable offense.

What the President did is a serious offense against the system of government. It undermines the integrity of his office. And it undermines the rule of law.

Here's what Thomas Paine said about the rule of law: "Let a crown be placed (on the law), by which the world may know, that so far as we approve of monarchy, that in America the law is king" (17).

The law is indeed king in America. There isn't one law for the powerful and one for the meek. That's what we mean when we say we are a nation of laws. We elect a President to enforce these laws. The Constitution commands that he "take care that the laws be faithfully executed."

How can we allow a man who has obstructed justice and committed perjury to remain as the chief law enforcement officer of our country?

How can we call ourselves a nation of laws and tolerate a man in office who has flouted those laws?

We define ourselves as a people not just by what we revere, but by what we tolerate. This, in my view, is simply not tolerable. I will vote to convict the President on both counts and to remove him from office.

I wish to acknowledge the assistance of many talented individuals who have helped me address these difficult questions of fact, law, and policy. I have been given able counsel by Karla Carpenter, Helen Rhee, Louis DuPart, Robert Hoffman, Laurel Pressler, and Michael Potemra on my Senate staff; my good friends William F. Schenck, Curt Hartman, Nicholas Wise, and Charles Wise; and my son and valued adviser Patrick DeWine. All deserve my sincere thanks; of course, the responsibility for the conclusions remains mine alone.

NOTES

1. Specifically, the article charges that "the President has prevented, obstructed, and impeded the administration of justice and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, coverup, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding."

2. Each Senator must determine the standard of proof to be applied in judging an impeachment case. In weighing the facts of this impeachment, I have used the standard of proof of "clear and convincing evidence." The Modern Federal Jury Instruction describes clear and convincing evidence as "proof (that) leaves no substantial doubt in your kind . . . that establishes in your mind, not only the proposition at issue is probable, but also that it is highly probable. It is enough if the party with the burden of proof establishes his claim beyond any 'substantial doubt he does not have to dispel every 'reasonable doubt'." Modern Federal Jury Instructions, section 73.01 (1998). I have rejected the standard of proof "beyond a reasonable doubt," which applies to criminal cases. This standard is not applicable to a case in which the defendant is threatened not with loss of liberty but with loss of office. I have also rejected the standard of "preponderance of the evidence." This standard, which would provide for conviction if the scales of evidence were tipped ever so slightly

against the President, would not treat removal from office with the seriousness and gravity it deserves.

3. Question: Do you recall ever walking with Jane Doe 6 Lewinsky down the hallway from the Oval Office to your private kitchen there in the White House?

Answer: . . . Now, to go back to your question, my recollection is that, that at some point during the government shutdown, when Ms. Lewinsky was still an intern but was working the chief of staff's office because all the employees had to go home, that she was back there with a pizza that she brought to me and to others. I do not believe she was there alone, however. I don't think she was. And my recollection is that on a couple of occasions after that she was there but my secretary Berry Currie was there with her. She and Betty are friends. That's my, that's my recollection. And I have no other recollection of that.

4. Question: When was the last time you spoke with Monica Lewinsky?

Answer: I'm trying to remember. Probably sometime before Christmas. She came by to see Betty sometime before Christmas. And she was there talking to her, and I stuck my head out, said hello to her.

Question: Stuck your head out of the Oval Office?

Answer: Uh-huh, Betty said she was coming by and talked to her, and I said hello to her.

Question: I believe I was starting to ask you a question a moment ago and we got sidetracked. Have you ever talked to Monica Lewinsky about the possibility that she might be asked to testify in this lawsuit?

Answer. I'm not sure, and let me tell you why I'm not sure. It seems to me the, the—I want to be as accurate as I can here. Seems to me the last time she was there to see Betty before Christmas we were joking about how you-all, with the help of the Rutherford Institute, were going to call every woman I'd ever talked to, and I said, you know——

Mr. Bennett: We can't hear you, Mr. President.

Answer: and I said that you-all might call every woman I ever talked to and ask them that, and so I said you would qualify, or something like that . . .

Question: Was anyone else present when you said something like that?

Answer: Betty, Betty was present, for sure. Somebody else might have been there, too, but I said that to a lot of people. I mean that was just something I said.

5. Question: You know a man named Vernon Jordan?

Answer: I know him well.

Question: You've known him for a long time.

Answer: A long time.

Question: Has it ever been reported to you that he met with Monica Lewinsky and talked about this case?

Answer: I knew that he met with her. I think Betty suggested that he meet with her. Anyway, he met with her. I, I thought that he talked to her about something else. I didn't know that—I thought he had given her some advice about her move to New York. Seems like that's what Betty said.

Question: So Betty, Betty Currie suggested that Vernon Jordan meet with Monica Lewinsky?

Answer: I don't know that.

Question: I thought you just said that. I'm sorry.

Answer: No, I think, I think, I think Betty told me that Vernon talked to her, but I, but my impression was that Vernon was talking to her about her moving to New York. I think that's what Betty said to me.

Question: Did you do anything, sir, to prompt this conversation to take place between Vernon Jordan and Monica Lewinsky?

Answer: I can tell you what my memory is. My memory is that Vernon said something to me about her coming in, Betty had called and asked if he would see her and he said he would, he said he would, and then she called him and then he said something to me about it . . .

Question: My question, though, is focused on the time before the conversation occurred, and the question is whether you did anything to cause the conversation to occur.

Answer: I think in the mean—I'm not sure how you mean the question. I think the way you mean the question, the answer to that is no, I've already testified. What my memory of this is, if you're asking did I set the meeting up, I do not believe that I did. I believe that Betty did that, and she may have mentioned, asked me if I thought it was all right if she did it, and if she did ask me I would have said yes, and so if that happened, then I did something to cause the conversation to occur. If that's what you mean, yes. I didn't think there was anything wrong with it. It seemed like a natural thing to do to me, But I don't believe that I actually

was the precipitating force. I think that she and Betty were close, and I think Betty did it. That's my memory of it.

6. Question: Have you ever asked anyone to talk to Bill Richardson about Monica Lewinsky?

Answer: I believe that, I believe that Monica, what I know about that is I believe Monica asked Betty Currie to ask someone to talk to him, and she, and she talked to him and went to an interview with him. That's what I believe happened.

Question: And the source of that information is who?

Answer: Betty. I think that's what Betty—I think Betty did that. I think Monica talked to Betty about moving to New York, and I, my recollection is that that was the chain of events.

Question: Did you say or do anything whatsoever to create a possibility of Monica Lewinsky getting a job at the U.N.?

Answer: To my knowledge, no, although I must say I wouldn't have thought there was anything wrong with it. You know, she was a—she had worked in the White House, she had worked in the Defense Department, and she was moving to New York. She was a friend of Betty. I certainly wouldn't have been opposed to it, based on anything I knew, anyway.

7. Question: How long has Betty Currie been your secretary?

Answer: Since I've been president.

Question: How is her work schedule arranged? Does she have a certain shift that she works, or do you ask her to work certain hours the following day? Please explain how her schedule is determined.

Answer: She works, she comes to work early in the morning and normally stays there until I leave at night. She works very long hours, and then when I come in on the weekend, or on Saturday, if I work on Saturday, she's there, and normally if I'm, if I'm working on Sunday and I'm having a schedule of meetings, either she or Nancy Hernreich will be there. One of them is always there on the weekend. Sometimes if I come over just with paperwork and work for a couple of hours, she's not there, but otherwise she's always there when I'm there.

Question: Have you ever met with Monica Lewinsky in the White House between the hours of midnight and six a.m.?

Answer: I certainly don't think so.

Question: Have you ever met——

Answer: Now, let me just say, when she was working here, during, there may have been a time when we were all—we were up working late. There are lots of, on any given night, when the Congress is in session, there are always several people around until later in the night, but I don't have any memory of that. I just can't say that there could have been a time when that occurred, I just—but I don't remember it.

Question: Certainly if it happened, nothing remarkable would have occurred?

Answer: No, nothing remarkable. I don't remember it.

Question: It would be extraordinary, wouldn't it, for Betty Currie to be in the White House between midnight and six a.m., wouldn't it?

Answer: I don't know what the facts were. I meant I don't know. She's an extraordinary woman.

Question: Does that happen all the time, sir, or rarely?

Answer: Well, I don't know, because normally I'm not there between midnight and six, so I wouldn't know how many times she's there. Those are questions you'd have to ask her. I just can't say.

8. There are two statutes regarding obstruction of justice that are relevant to the facts of this case: 18 U.S.C. 1503 which provides "Whoever corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice . . ." shall be guilty of the crime of obstruction of justice and 18 U.S.C. 1512 which provides "Whoever knowingly . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—(1) influence, delay or prevent the testimony of any person in an official proceeding . . ." shall be guilty of the crime of witness tampering.

9. President's Grand Jury testimony, August 17, 1998, pp. 55–56.

10. Ibid., p. 56.

11. Ibid., pp. 131–2.

12. There are two federal perjury statutes relevant to the facts of this case: 18 U.S.C. 1621 which provides that "Whoever—having taken an oath before a competent tribunal, . . . or person, in any case, in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, . . . willfully and contrary to such oath states or subscribes any *material* matter which he does not believe to be true . . ." shall be guilty of an offense against the United States; and 18 U.S.C. 1623 which provides that "Whoever under oath

. . . in any proceeding before . . . any . . . court or grand jury of the United States knowingly makes any false *material* declaration . . .'' shall be guilty of an offense against the United States. A statement is material ''if it has a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to whom it is addressed.'' A statement is no less material because it did not or could not confuse or distract the decision maker. In this case, the President made false statements to a grand jury investigating ''whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses or otherwise violated federal law other than a Class B or C misdemeanor or infraction in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case *Jones v. Clinton*.'' [January 16, 1998 Order of the Special Division of the United States Court of Appeals for the District of Columbia Circuit to expand the jurisdiction of independent counsel Kenneth W. Starr.] The President's false statements strike at the very heart of what the grand jury was investigating—perjury and obstruction of justice—and are material.

13. Grand Jury Testimony, President Clinton, 8/17/98, pp. 593–94.

14. Question: So, touching, in your view then and now—the person being deposed touching or kissing the breast of another person would fall within the definition?

Answer: That's correct sir.

Question: And you testified that you didn't have sexual relations with Monica Lewinsky in the Jones deposition, under that definition, correct?

Answer: That's correct, sir.

Question: If the person being deposed touched the genitalia of another person, would that be and with the intent to arouse the sexual desire, arouse or gratify, as defined in definition (1), would that be, under your understanding then and now——

Answer: Yes, sir.

Question: —Sexual relations?

Answer: Yes, sir.

Question: Yes, it would?

Answer: Yes, it would. If you had direct contact with any of these places in the body, if you had direct contact with intent to arouse or gratify, that would fall within the definition.

Question: So, you didn't do any of those three things——

Answer: You——

Question: —With Monica Lewinsky?

Answer: You are free to infer that my testimony is that I did not have sexual relations, as I understood this term to be defined.

Question: Including touching her breast, kissing her breast, or touching her genitalia?

Answer: That's correct.

Grand Jury Testimony, President Clinton, 8/17/98, p. 94–95.

15. These incidents occurred on November 15th, 1995 (Deposition Testimony, Monica Lewinsky, 8/26/98, p. 6, lines 22–25; p. 7, 11.1–21); November 17th, 1995 (Ibid., p. 10, 11.20–25; p. 11, 11.1–25); December 31st, 1995 (Ibid., p. 16, 11.2–10); January 7th, 1996 (Ibid., p. 18, 11.15–19); January 21st, 1996 (Ibid., p. 24, 11.11–23); February 4th, 1996 (Ibid., p. 28, 11.23–25; p. 29, 11.1–20); March 31st, 1996 (Ibid., p. 36, 11.2–24); April 7th, 1996 (Ibid., p. 39, 11.19–25; p. 40, 11.1–6); February 28th, 1997 (Ibid., p. 45, 11.23–25; p. 46, 11.1–15); and March 29th, 1997 (Ibid., p. 49, 11.5–14).

16. See House Comm. on the Judiciary, 93rd Cong., Constitutional Grounds for Presidential Impeachment 18 (Comm. Print 1974).

17. Quoted in Maxwell Taylor Kennedy, ed., *Make Gentle the Life of This World: The Vision of Robert F. Kennedy*. p. 106.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR BLANCHE L. LINCOLN

Mrs. LINCOLN. Mr. Chief Justice, I thank you for your thoughtfulness and patience in these proceedings. I apologize that my back is to you.

I would also like to thank the majority leader and the minority leader. I have been awed by their patience—just as Job had the patience—to deal with all of us on our particulars that we have want-

ed to express here and the time constraints we have all felt. They have done a wonderful job in accommodating all of us and certainly giving these proceedings the dignity that I think all Americans have expected. I do appreciate that.

As the youngest female Senator in the history of our country, as a farmer's daughter raised by the salt of the earth with basic Christian values, and as a young mother whose first priority in life is my family and the well-being of the world they live in, I regret that my first opportunity to speak on the floor of this historic Chamber is under these circumstances. And I am reluctant to speak here today. I had intended to wait until I had more experience under my belt before I addressed my esteemed colleagues here. You will find that I am not quite as eloquent, or as lengthy, as my predecessor; but I will work on that. But because of the historical aspects of this proceeding, I feel it is important that my thoughts and my judgments are expressed here today.

I, like President Clinton and my colleague, Senator HUTCHINSON, grew up in a small town in Arkansas, the oldest city in Arkansas. My colleague expressed regret that the black and white of right and wrong is not as easy as it was growing up in that small rural community. I am reminded of the wisdom that my grandmother shared with me as a younger woman returning home from college. I sat on our back porch and I expressed to her my agony over what difficult times I was growing up in, and that she could not possibly know or understand because right and wrong were so much easier in her day. She quickly corrected me. Right and wrong becomes more difficult for each of us as we grow older, because the older we get the more we know personally about our own human frailties.

I will not discuss the historical or the legal aspects about what we are doing here today and what we have been doing in these past weeks. I am not a lawyer; neither am I a historian. But I do want to thank each of you for your legal and your historical aspects, and the heartfelt wisdom and guidance that you have shared with me and with all of us as colleagues.

I want desperately to cast the right vote for the people that I represent in Arkansas and for all the people of this great country. My heart has been heavy and I have deliberated within my own conscience, knowing that my decision should not come out of my initial emotion of anger toward the President for such reckless behavior, but should be based on the facts. I have approached this both as a parent and as a public servant, with the ultimate goal of doing what is right for our country. Since hearing of the President's misconduct, I have in no way tried to make excuses for the President or to defend such dishonorable behavior. I have tried to determine how we should communicate to our children and our Nation that this very visible misconduct is unacceptable.

I have sought to reconcile in my mind what is appropriate condemnation of such action and what is the best course of action for the future of the Presidency and for this country. In my efforts to reach a fair conclusion, I have listened to the presentation of evidence from both sides. I have examined the historical intent of our Founding Fathers with regard to impeachment and my constitutional responsibility as a Senator—however young I may be. I have

sought the counsel of colleagues, family, friends and constituents; and, of course, I have prayed for guidance for myself and for our country.

My home State of Arkansas has been under the scrutiny of a powerful microscope these past 6 years and, yes, regardless of how closely we may be viewed, any of us, character does count in each and every one of us. But who of us in this Chamber does not have a chapter in our individual books of life that we might be ashamed of or might regret—a chapter that might be revealed under such a powerful microscope, something we might be so ashamed of that we might mislead others to spare our families, our very children, the pain and sorrow?

Many have referenced what they would do if another President of their own party were in this situation, and they have indicated that they would still vote the same.

But the true test, I say, is what each of us would want done if we were in this President's position. How would we want to be treated? And who of us would not go to great lengths to protect our children and our families from the pain and embarrassment that we have seen over the course of these years?

I have also heard many people say that the President should be removed from office because he set a poor example for our children. It is all of our responsibility to set an example for our children. It is not just the President's. Ultimately, my husband and I have the responsibility to teach our children. And we will teach our children that misconduct is unacceptable. The President's conduct, however troubling, does not take away my responsibility to teach what is right to my children. Future generations depend on each of us—not just the President—to teach and to lead.

Many are amazed that the general public, although they believe that the President's behavior was wrong, does not want him removed from office. I am not so amazed by this as I find it reassuring. This expression of humanity and forgiveness from the real-life people of this Nation who we represent reassures us that in our highly technical, fast-paced and somewhat impersonal society, we as a country but, more importantly, we as human beings, are still equipped to handle this or any other situation.

It is striking to me that we are at a crossroads in our Nation at this entrance into the 21st century. We are being tested—not by war or by pestilence—but by conflict that is our own trouble from within. This requires us to reflect on not only the lessons we have learned but, more importantly, those that we want to leave. These lessons should not only demonstrate how we as a country prosper, or how our people advance, but how we treat and relate to one another as individuals.

So today, after much careful thought and deliberation, I have come to the conclusion that the President's actions, while dishonorable, do not rise to the level of an impeachable offense warranting his removal from office. Impeachment was never intended to be a vehicle or a means of punishment. And the standard to prove high crimes and misdemeanors has not been met by the disjointed facts strung together by a thread of inferences and assumptions that were presented here.

I have and will support a strong bipartisan censure resolution that tells the President and this Nation that the President's misconduct with a subordinate White House employee was deplorable, and that future generations must know that such conduct will lead to a profound loss of trust, integrity and respect. I believe there has to be consequences here not only to demonstrate that something wrong has been done but to finally bring closure to this ordeal, not just for us but also for the American people.

Above all else, I believe we have been entrusted not only to be judges and jurors in this trial, but we have also been entrusted with the last word. Senator KERREY from Nebraska spoke strongly to this—that the last word from this body's collective voice should be a chorus, loud and clear, of how great this land and our people are.

The President, actually in his own words from his 1993 inaugural address, aptly replied. He said, "There is nothing wrong with this country that cannot be fixed by what is right with this country."

The most important thing we can do in the last days of this trial is to present the good in the U.S. Senate, in our Government, and in our Nation for the sake of our children and future generations. I hope and pray that in the following weeks this body will grasp the leadership role and to begin the process of healing our Nation, restoring pride in our Government, and inspiring faith in our leaders once again.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JESSE HELMS

Mr. HELMS. Mr. Chief Justice, 26 years ago this past November, I was first elected to serve as a U.S. Senator from North Carolina. I had not believed it possible that I would be the first Republican directly elected to the U.S. Senate by the people of North Carolina.

I have often told many of the thousands of young people with whom I have visited during the past 26 years that one of three commitments I made to myself on that election night in November 1972 was that I would never fail to see a young person, or a group of young people, who want to see me.

That was one of the most meaningful decisions I ever made. I am told that I have met with something in the neighborhood of almost 70,000 young people according to our records for the past 26 years.

These are wonderful young Americans and I am persuaded that they are by all odds the most valuable treasure held by our country.

For the better part of the past year, these young people have almost without fail asked me about what they described as "the problems" of President Clinton. The vast majority of the time, the young people have talked about the moral and spiritual principles so deeply etched in the hearts of those patriots whom we today call our Founding Fathers—or the framers of our Constitution—or both—when America was created.

So in the first few weeks of this new year, 1999, I have begun my remarks to the young visitors with the recitation of two state-

ments that I sincerely believe have much to do with whether—and how—this blessed Nation can and will survive.

The first statement: "A President cannot faithfully execute the laws if he himself is breaking them."

The second statement: "The foundations of this country were not laid by politicians running for something—but by statesmen standing for something."

The first statement was voiced by a former distinguished Democratic U.S. Attorney General of the United States, the Honorable Griffin Bell.

The second was sent to me at Christmastime by a friend whose name and voice I suspect is familiar to most if not all Senators, my dear friend, George Beverly Shea, who for so many years has thrilled and inspired millions as he stood beside Billy Graham and singing, with that remarkably deep voice, "How Great Thou Art."

Our trouble today is that the American people every day must choose between what is popular and what is right. There is a constant deluge of public opinion polls telling us which way to go, almost without fail showing the popular way.

But I must put it to you that we will, at our own peril, look to opinion polls to decide how we vote, when the real need is to look to our hearts, to our consciences and to our soul. So many decisions are made in the Senate—be it on the fate of treaties, or legislation, or even Presidents—decisions having implications, not merely for today, but for generations to come, reminding that if we don't stand for something, the very foundations of our Republic will crumble.

Perjury and obstruction of justice are serious charges, as nobody knows better than you, Mr. Chief Justice, charges that have been proved during the course of this trial. Therefore, the outcome of this trial may determine whether America is becoming a fundamentally unprincipled nation, bereft of the mandates by the Creator who blessed America 210 years ago with more abundance, more freedom than any other nation in history has ever known.

There is certainly evidence fearfully suggesting that the Senate may this week fail to convict the President of charges of which he is obviously guilty. What else can be made of the behavior of many in the news media whose eyes are constantly on ratings instead of the survival of America?

This trial has been dramatized as if it were a Hollywood movie trivializing what should be respected as our solemn duty.

The new media technology is creating an explosion of media outlets and 24-hour news channels—and a brand new set of challenges.

A friend back home called me after an impressive presentation by one of the House managers and said, "You know, Jesse, I found ASA HUTCHINSON persuasive. But I had to tune into CNN to see whether it was effective—because I knew without the media's immediate stamp of approval, it wouldn't make a damn bit of difference."

He had a valid point. Mr. Chief Justice, the awesome power of the media with its instant analysis is frightening. A political event occurs. The TV commentators immediately offer their lofty opinions; overnight surveys are taken and many politicians are all too often cowed into submission by poll results.

In these proceedings, the House managers of course provided a forest of evidence clearly indicating that the President of the United States perjured himself before a Federal grand jury and obstructed justice. The imaginative White House attorneys of course chopped down a few trees here and there—and then proclaimed that the whole forest had burned down. The press gallery bought that whole concept.

Some years ago, there was a western movie starring Jimmy Stewart and John Wayne called "The Man Who Shot Liberty Valance." Jimmy Stewart portrayed a tender-footed young lawyer who ran afoul of the local outlaw, Liberty Valance.

Through a twist of fate, the character played by Jimmy Stewart received credit for ridding the county of the outlaw, even though it was John Wayne's gun that brought Liberty Valance down. Yet it was Stewart who rode public acclaim into a political career in the U.S. Senate, while Wayne's character faded into obscurity.

Late in life, Stewart's character, still a Senator, returned from Washington to attend John Wayne's funeral. Stewart felt guilty, of course, that the truth of Wayne's heroism remained untold. He related the entire story to the local newspaper, only to find the editor totally disinterested.

"When the legend becomes fact," the editor said, "print the legend."

With its vote on articles of impeachment, the U.S. Senate is preparing to add to the legend of this whole sordid episode, Mr. Chief Justice. We have the facts before us and we should heed those facts because truth must become the legend.

We must not permit a lie to become the truth.

A couple of weeks ago, a Falls Church Episcopal minister, the Reverend John Yates, delivered a remarkable sermon to his parishioners. The Reverend Dr. Yates had this to say about lying—and liars:

> . . . if a person will lie, and develops a pattern of lying as a way of life, that person will do anything. Someone who becomes good at lying loses his fear of being discovered and will move on to any number of evil actions. He becomes arrogant and self-assured. He comes to believe he is above the law. You should fear people like this. If such a person is caught red-handed in a lie and confronted with the evidence, that sort of man or woman will be forced to admit it, but he won't like it. It will make him angry and vengeful. He will do all he can to move and leave it behind. It's what the Bible calls evidence of a seared conscience, not a sensitive conscience, but a seared conscience.

If we allow the lies of the President of the United States of America to stand, Mr. Chief Justice, then I genuinely fear for America's survival.

Shortly before his death, Senator Hubert Humphrey visited this Chamber for the last time. He knew it was the last time; we knew it was the last time. Hubert's frail body was wracked with cancer, his steps were halting, his voice feeble. But as he walked down the aisle, Hubert saw me standing at my desk over there. He walked over to me, arms outstretched. Tears welled up in my eyes as Hubert hugged me softly saying, "I love you."

I loved Hubert Humphrey too, Mr. Chief Justice, and I told him so.

Hubert and I disagreed on almost all policy matters, large and small. Often Hubert got the better of me in debates, a few times

I did it to him. But I loved Hubert Humphrey because we agreed on so much more—duty, honor, patriotism, faith and justice, the very essence of America.

But we are obliged to ponder: What is the essence of America now? Public life once was about honest debate on the merits, but it is now often a debate on the merits of honesty. And it was the President of the United States who brought us where we are today.

In November of 1955, a young editor named William F. Buckley undertook an ambitious mission, now completed. Bill had decided to start a conservative journal of ideas that would fuel an entire political movement.

In his "Publisher's Statement," printed in the very first edition of National Review, he declared that his magazine "stands athwart history yelling 'Stop!' "

Mr. Chief Justice, I plead with Senators to look around and see what Bill Clinton's scandal has wrought. National debate is now a national joke. Children tell their parents and teachers that it's OK to lie, because the President does it. Our citizens tune out in droves, preferring the daily distractions of everyday life to an honest appraisal of the depths to which the Presidency of the United States has sunk.

If this is progress and if this is the path history is taking, the Senate does have an acceptable alternative.

We simply must summon our courage and yell, "Stop tampering with the soul of America."

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR ERNEST F. HOLLINGS

Mr. HOLLINGS. Mr. Chief Justice, I shall vote with a clear conscience not to convict; rather, to acquit. I have no better authority, of course, than my own Congressman, the manager, LINDSEY GRAHAM, when asked—and I will never forget it—by the Senators from North Carolina and Wisconsin: "Under the law and the facts as then submitted at the end of the presentation, could reasonable people find differently with respect to guilt?" and Congressman GRAHAM said, "Why, of course," that reasonable people could differ. And when the manager says there is reasonable doubt, that ends the case.

But let's remember that the impeachment clause is not intended to punish the President, but to protect the Republic. And the mistake in this entire presentation on both sides, in my judgment, has been that they have been trying a criminal case rather than a political case. What is really for the good of the country? I go to the understanding of the impeachment clause with respect to the author himself, George Mason, who said, "must be guilty of high crimes and misdemeanors against the State." And Justice Story, in the midcentury, said that you could only impeach a President for conduct that only the President could engage in."

I will never forget, when they gave us the booklet, in the Nixon impeachment, by the eminent professor of constitutional law, Charles Black, he said that "an impeachable offense must constitute a deep wrong to the country, an abuse of Presidential

power." Everybody is talking about the polls and I think they are significant. When 80 percent of the people believe the President lied, and I believe he did—not on the perjury charge, and not on the obstruction of justice, of course, but I believe he lied—and 80 percent of the people believe he lied, but 70 percent of the people said keep him there. Why? Because there wasn't a deep wrong to the country.

Let's get to it. Fooling around—that was what Monica Lewinsky called it—seen as sex or not, is not a crime. In fact, actual intercourse constitutes adultery, a crime with which the managers, I would say, are very familiar.

We must remember that the fooling around was between consenting adults, both of them sexually experienced. Incidentally, in private both of them are admitted liars. The President said he lied. Monica said that she grew up lying, was taught to lie.

But the managers said, "Oh, this isn't about sex, this is about crime." Really? I have been at the law too long. A sues B for the crime of adultery, sexual misconduct. A and B both swear under oath and through their pleadings and their testimony and not before a halfway grand jury. I always wondered, what if prosecutors went under oath before a grand jury? We would have to build new courthouses. But be that as it may, they swear under oath in testimony before the judge who is trying the case on its merits, and A or B loses—whoever the loser—are they taken over to criminal court and charged for lying under oath and obstruction of justice?

I called a prosecutor in Congressman GRAHAM's district, an 18-year experienced prosecutor, a Republican, George Duckworth. I said, "George, have you ever taken lying under oath and obstruction of justice for sexual misconduct—have you ever taken that to criminal court?" He said, "It's never happened."

I then went to the chief of all the State prosecutors, John Justice, who happens to be from my State, and he said he had never heard of it.

So we are beginning to get to really what is going on, and that is not to say, whoopee, everybody lies about sex and we can go ahead and do that. We are not saying that at all, because the President can be charged with it, as anybody can. It might be a rare case, but we ought to remember, rather than that one witness that they found—and I guess they will find another one—but the Republican district attorneys who testified on the House side, the deputy attorney general in charge of the Criminal Division, William Weld, they said they would never bring the case.

This case never should have been brought. Any respectable prosecutor would have been embarrassed actually to so charge.

I will never forget when this commenced, David Pryor, the Senator from Arkansas almost 4 years ago, said: Wait a minute, 41 TDY FBI agents coming from one side of Arkansas to the other, 81 support personnel, asking, Did you ever sleep with Bill Clinton? Do you know anybody who slept with him? I heard you know. We're going to take you before the grand jury. Locking up witnesses who did not testify to what they wanted attested to, paying off others and securing them and hiding the witnesses, and on and on; and thereafter subpoenaing the mother in tears; the Secret Service, the White House steward, the bookstore; some 4½, 5 years and $50

million. And they come up with private sexual misconduct, in privacy. I know it is a public office. It is a public office, but we operate in private in our own offices. To make this thing public after all of that expense and effort, I would be embarrassed as a prosecutor to bring it.

But not Kenneth Starr. He wasn't embarrassed. He should never have taken it. A member of the Kirkland & Ellis law firm that had an interest in the case, the Jones case, was participating at the time. Instead of recusing himself, he immediately started pursuing that case with the official hand of government.

Three years ago, seven former independent prosecutors expressed dismay at Starr's ethics. He was representing private clients inimical to the defendant, our President. The New York Times and other newspapers editorialized that he ought to step aside. But instead of removing himself, he continued to talk to political groups, all the time leaking information and, yes, holding up his findings after 4½ years until after the election and saying he found nothing with respect to Filegate, Travelgate, Whitewater, or any of the other cases for which he was commissioned—no embarrassment at all.

He injected himself so in the House proceedings to where finally his ethics advisor, Sam Dash—who, of course, had been the principal participant in Watergate—had to resign. Then he injected himself over here on the Senate side, and last weekend, during a key moment, of course, he said he was going to bring a criminal indictment. He leaked that information.

So now we have the Justice Department investigating the independent prosecutor for his misconduct in the way he treated the main witness with respect to her access to counsel. And you have an 8-1 vote in the American Bar Association, which has been inserted; they say let this independent prosecutor thing die.

Yes, we have, like Bryant said, broad overreaching of power. Not by Clinton. He got into an elicit affair, and he tried like everybody else to cover it up. They sought to characterize it as lying, lying, lying, lying under oath. We had the chief of the managers; he lied not just from January until August, but 30 years—and others over there. The hypocrisy of that crowd.

Yes, we had broad overreaching of powers, mindful, of course, of the reason that we declared our independence 223 years ago—"sending hither swarms of officers to harass our people and seek out their substance." We have it now, and we have a chance to try it. We have an impeachment case, but we are trying to impeach the wrong person. That is why the American people are as concerned as they are. That is what you find in the polls that we keep talking about.

Let's understand, of course, that President Clinton debased the Office of the Presidency, but let's say once and for all that we are not going to have the political hijacking of the Office of the Presidency. Let's be certain when we vote this week that we don't debase the Constitution.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR RON WYDEN

Mr. WYDEN. Mr. Chief Justice, our leaders, Senators LOTT and DASCHLE, my colleagues, my friends, I doubt that I will ever know what the President of the United States was up to when he lied to Betty Currie about the nature of his relationship with Monica Lewinsky. Did the President lie to Ms. Currie because he didn't want her to know the truth about the affair? Did the President lie because he wanted her to defend him to the White House staff? Did the President lie because he wanted her to repeat those lies under oath? I doubt that I am ever going to get the real answer to those questions.

But I believe I do know why it has been excruciatingly difficult for the U.S. Senate to get to the bottom of the Currie controversy and several others that we have been wrestling with for weeks now. If I might paraphrase a legal doctrine, this impeachment has become the fruit of a poisonous tree. This impeachment is a deadly plant that has flowered in the toxic soil of partisanship.

Given the highly contentious nature of the charges against the President, there is no question in my mind that the congressional leadership should have first established a bipartisan process for investigating the serious allegations.

It is my view that had the Founding Fathers decided that the first step in the impeachment process would be taken by the U.S. Senate, Senator LOTT and Senator DASCHLE would have produced a truly bipartisan inquiry, and we would have been able to find common ground on several of the key issues. I don't think it would have produced a string of 100–0 votes, but I believe that we would have had a more bipartisan result than what we are going to see at the end of these deliberations. But this process began elsewhere. And I only want to make one comment about the House.

In my view, the House didn't even try to locate the common ground. And I use that word "try" specifically because it is one thing to work your head off and not be able to bring people together. We have all been there. But that is not what went on in the House. They didn't even try to come together. It has been well documented, for example, that the Speaker of the House and the House minority leader went for months at a time without even talking to each other. I am not going to assign fault to one or the other, but the fact is that by the end of last year, our two major political parties were at war with each other over the allegations against the President.

This toxic partisanship is not, in my view, what public service is all about. I am a Democrat, for good reasons; and there are sincere, important differences of philosophy on issues between Senators on the respective sides. But I have always felt doing what is right is more important than adhering to party dogma, and that is what I wanted to do in this matter.

The framers of the Constitution tried to give us a heads-up, a warning about how the impeachment process could become unduly partisan.

Alexander Hamilton, in Federalist No. 65, said that the types of crimes for which impeachment is the appropriate remedy are "po-

litical." And he added, "the prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly, or inimical, to the accused."

Thomas Jefferson, after almost having been kept from office in a partisan maneuver to replace him with Aaron Burr, set a deeply moving tone for looking beyond partisan confrontation in his first inaugural address.

My colleagues and friends, it doesn't have to be all partisan all the time. There is an alternative to slash-and-burn government. And it is a topic, I regret to say, about which I know a fair amount.

I won a very, very bitter Senate campaign against a man I am proud to call my friend, my colleague, Senator GORDON SMITH. Our part of the country had never seen a campaign so relentlessly negative. The whole country was watching the race to succeed Bob Packwood, but our campaign didn't enlighten very many people. It brought out the worst in us. I was so disgusted with it and what I had become, that with only a few short weeks to go in the campaign I got rid of all my ads and basically started over.

Shortly after Senator SMITH won his election, we got together and talked about how we regretted the bitter nature of the campaign and what we had become. We decided from that point on we would put the greater good, that of the people of Oregon, before any differences we might have. The New York Times has started to call us the "odd couple"—a Jew from the city, a Mormon from the country. What kind of odds would you have given for that kind of relationship? But it works.

The votes that we are going to cast now are in little doubt. So I wish to express my concern that as the Senate completes its work on impeachment that we have the ability to come back and tackle our other constitutional responsibilities in a bipartisan fashion.

The public is tired of us being at each other's throats. They are tired of beltway politics that places toxic partisanship over the public interest. GORDON SMITH and I found out the hard way, and they are right.

Perhaps even at this late hour we can find our way to a little miracle and wrap up this impeachment debate through a bipartisan statement that makes it clear that each of us finds the President's conduct repugnant. If we miss that chance, let's keep looking for every possible opportunity to come together.

Senator FRIST and I have a bipartisan education bill. No speeches about that now, but every Governor in the country is for it. My point is that this impeachment process has brought us to a critical moment in our history. We can either rise to the occasion by forging new and healthier ways to deal with our differences, or we can sink from the collective weight of a partisan mess that we have all helped to create.

In arriving at my decision in this case, I kept coming back to the reality that Congress has not once removed a President, not once in 211 years. The Constitution places the burden for such a grave step very high. Such a showing is not only to protect our Nation from partisan prosecution, but also to impose safeguards that are necessary, given the severity of the potential punishment—a political death penalty, as House Manager LINDSEY GRAHAM said.

When I say "punishment," I am not only referring to the punishment imposed on the President, but in particular to the destructive impact of such an action to our Nation as a whole. The House managers did not, in my view, prove their case beyond a reasonable doubt. In my opinion, they didn't get particularly close.

As stated earlier, I do find the President's lying to Betty Currie about his relationship with Monica Lewinsky to be very, very disturbing. The House managers have a hunch that the President's intent was criminal. To borrow from House Manager GRAHAM, they think it is likely he was up to no good. My friends, hunches are not impeachable, nor should they be. If the evidence required to convict a President of the United States in an impeachment trial is allowed to be less than that required in a shoplifting trial, the constitutional foundation for the Presidency will disintegrate before our very eyes. That is something that a few future Presidents in this body ought to consider for just a moment.

Today I am going to vote to acquit on both counts. But I don't want that to be my final contribution today.

I had a lot of farfetched dreams as a boy, but never once did I dream that I could serve with all of you on the floor of the U.S. Senate. My parents fled Nazi Germany, and not all of my family got out. We lost family in Hitler's brutal Kristallnacht. So you might understand how I grew up revering the greatness of America and the institutions of our democracy.

I will tell you, I never, ever believed that some skinny fellow with modest oratorical skills and a face for radio—[laughter]—could have a chance to serve in the U.S. Senate.

What I want to be able to tell my grandchildren is that this was the point in American history where we drew a line in the sand and said "no more" to the excessive partisanship. A time when we said "no more" to a brand of politics that each of us knows is bringing out the worst in good people. We have good leaders in the U.S. Senate—in TRENT LOTT, in TOM DASCHLE—who have shown, in the last month, just how hard they are willing to work to bring us together.

My friends, let the toxic partisanship end. Let it end here, and let it end now.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR GORDON SMITH

Mr. SMITH of Oregon. Mr. Chief Justice, colleagues, first let me thank the Chief Justice for the dignity he has lent to this trial. I have so appreciated the keenness of his intellect and the fairness of his spirit.

I also join the Senator from Mississippi in thanking these two magnificent men who lead this Chamber. I express to you, my colleagues, the genuine affection that I feel for each of you. I am often asked the question, who do you like and who do you dislike? The ones I especially like are very easy to name; and then when it comes to those I dislike, I cannot name one. I genuinely thank you for allowing me to participate with you in this difficult and historic time.

I want to also thank my colleague, RON WYDEN, for his comments about me yesterday. When RON and I ran for the Packwood seat, I think America—and certainly Oregon—saw one of the most difficult and mean elections in the history of our State. Yet since that time, when I won the Hatfield seat, RON and I have become friends. It was a remarkable thing to both of us that by doing something as simple as having a joint town hall meeting, Republican and a Democrat from the same State, it led to a full-page story in the New York Times. That is a sad commentary.

The truth is that if RON WYDEN and I can become friends and do things to the credit and benefit of our State, so can you all. I actually believe this trial will bring us closer together over time, and I hope will lay a foundation for some very good work in the 106th Congress.

Today, as Oregon's other Senator, I will cast two votes to convict and remove the President of the United States. Reaching this verdict has been a very difficult ordeal for me, and I would like to tell you why. This Mr. SMITH did not come to Washington, DC, to oppose President Clinton. Indeed, over the last 2 years there have been many issues, ranging from the expansion of NATO to the promotion of free trade and the fight against big tobacco, in which I have supported him and worked closely with him. As I have met with President Clinton in his office, traveled with him aboard Air Force One, he has consistently treated me with great civility and has often inspired me with his eloquence.

To be in his presence is to experience the magic of his enormous personal and political talents. It is the magnitude of his talents that makes the magnitude of his misdeeds so disappointing. There can be no doubt that President Clinton's conduct has made a mockery of most of his words, or that his example has been corrosive beyond calculation to our culture and to our children. These personal conclusions, however, do not provide a constitutional basis for his removal. Only his high crimes could justify such a vote.

As you know, the House of Representatives argued two articles of impeachment to us. Article I alleged four instances of perjury before a grand jury; article II alleged seven instances of obstruction of justice.

The House managers presented us with volumes of direct and circumstantial evidence, and the White House lawyers worked skillfully to plant the seeds of reasonable doubt. But as the trial progressed, I found that these seeds of doubt could only grow in proportion to my ability to suspend common sense. I struggled throughout the trial to find a way to acquit the President, if possible, on both or at least one of the articles. But in the end, the facts kept getting in my way: the stained blue dress; the Dick Morris poll asking whether the President could get away with perjury; Monica in tears in the Oval Office being told she could not come back to the White House; and then being threatened that it is a crime to pressure the President in that way.

These facts and so many, many more led me to the logical, inescapable conclusion that what began as private indiscretions became public felonies. It is even more ironic to me that I had not made up my mind on article I until Mr. Ruff was in his closing arguments. We had just seen a videotape of Mr. Blumenthal saying that

what he had been told was a lie, and we saw Mr. Ruff play the videotape of Mr. Clinton's grand jury testimony in which he said, "What I told him was truthful but misleading." That was a lie. And it was to a grand jury. It revealed the calculations of his mind to obstruct justice. So common sense caught up with this juror.

Having concluded that the President did, indeed, commit perjury and attempt to obstruct justice, I had to ask if these offenses were high crimes and misdemeanors as contemplated by the founders of this Nation. Like many of you, I found answers and comfort in the Federalist No. 65 written by Alexander Hamilton speaking directly to the ultimate power of impeachment. You remember his words; I won't repeat them. They will be in the RECORD many times.

When Senator MOYNIHAN speaks, he is kind of like E.F. Hutton to me—I listen. He had a wonderful statement yesterday about the kinds of impeachable offenses. He cited the example of Justice Chase and President Johnson.

Senator MOYNIHAN said that they were nearly impeached for their opinions, and to have done so would have been wrong. But it is not Bill Clinton's opinions that affect my vote, it is his conduct.

Now, what is his conduct here? Last night, I think we all saw a brilliant statement by Senator EDWARDS. I think we saw firsthand why he has made so much money talking to jurors. We are seeing right now why I had to make my money selling frozen peas. I went through the same calculations as Senator EDWARDS, but I want to point out to you some very different reasoning that led me to come down on the other side. See, Senator EDWARDS is talking about what you do when you talk to a jury about taking someone's life or their liberty. That is not what we are doing here. We are talking about protecting the public trust, protecting the Constitution. So the arguments that he made ultimately aren't the ones that we ought to be using to decide whether to remove President Clinton from office.

Now, what was so bad about President Clinton's conduct? The scales that Senator EDWARDS spoke to us about, the fulcrum of justice, won't work if President Clinton's conduct is sanctioned by this body or by any court. What President Clinton did was an attack on the Government, and specifically on the judicial branch of Government. You see, the courts aren't supposed to write law, though, Mr. Chief Justice; they do too much of that. The courts don't have any power to raise taxes or appropriate money, and they can't raise an army or send a navy. They can find the truth and act upon the truth. And if what Bill Clinton did is OK, then we have weakened the weakest of the branches of our Government, and that is a high crime under the Constitution.

I mentioned Mr. Hamilton. I think it is worth noting again that after the publication of Federalist No. 65, he became the Secretary of the Treasury for President George Washington. He also became involved in an adulterous relationship with a woman named Maria Reynolds. Her husband, upon learning of the affair, demanded of Mr. Hamilton a job at the Treasury Department in exchange for keeping his silence and keeping Mr. Hamilton from personal humiliation and political scandal. Hamilton refused Mr. Reynolds a position on the public payroll, but he agreed to pay him blackmail from

his personal funds. News of this arrangement soon found its way to Mr. Hamilton's opponents. When confronted, without being under oath, Hamilton confessed the truth and the whole truth. He knew and respected the boundaries between the public and the private. He wrote them down for our country, and he lived his life within those boundaries, never veering recklessly over the line of impeachability.

Consider the painful contrast this creates when measured against the public life of President Clinton. When his scandalous conduct with a subordinate female became entwined with another woman's civil rights action against him, which a unanimous Supreme Court ruled that she had the right to bring, President Clinton set about to cover himself by lying to his staff, to his Cabinet, to the Congress, and to the country. And then, as the evidence so clearly shows, it demonstrates that when brought to court—the weakest of our branches of Government—and placed under oath, he lied again and again and again.

In the end I suspect this place is going to divide pretty much down the middle. I simply sound a warning note to raise your awareness to the fact that, ultimately, history and biographies and accounts yet to be revealed, facts yet to be uncovered, shoes yet to drop, will determine which of us voted right. But we have to decide on the evidence today, and the evidence to me is clear. Soldiers and sailors are discharged and punished for far less than what the President did. And judges are impeached by the House and removed by the Senate for far less than this. Indeed, we have to ask, is the President to be held to a lower standard than those he sends to war or those he appoints to dispense justice? I cannot and I never will agree to such a low standard for the Presidency of the United States.

Pollsters tell me how strongly Americans and Oregonians feel about this case and how conflicted their feelings. Large majorities have concluded that the President is guilty of the felonies charged. Yet large majorities have also concluded that they do not want him to be removed from office. These numbers remind me that the demands of justice are sometimes hard. I hope, however, that we remember obedience to the law will protect our liberties as nothing else can.

You see, political prisoners around the world look to the United States for hope, not because we have a popular President, but because we have laws to protect us from a popular President. If the President of the United States is allowed to break our laws when they prove embarrassing to him or conflict with his political interests, then truly some public trust has been violated, a trust which, as Hamilton says, "relates chiefly to injuries done immediately to society itself."

These felonies are impeachable offenses, and the Constitution makes our duty clear, even though it appears harsh and difficult. When the Chief Justice calls my name, "Senator, how say ye?" I will say "guilty" twice because I refuse to say that high political polls and soaring Wall Street indexes give license to those in high places to act in low and illegal ways. Perjury and obstruction of justice are high crimes, and they are utterly inconsistent with any

Federal office—ours as well, but especially with the office of the President of the United States.

I harbor no illusions that two-thirds of the Senate will vote as I will. Therefore, I hope the President will spend the balance of his office repairing the damage done to his family, our democratic institutions, and our country. I will continue to support his proposals when I believe they are right, and I will oppose them when I believe them to be wrong.

The other man in this Chamber that I deeply regard—and because I am so junior I do it from a distance—is Senator ROBERT BYRD. I have appreciated his public struggle with this issue because it has validated my own struggle. When he said this last week on "This Week with Sam Donaldson and Cokie Roberts," he could have been speaking my words: "We have to live with the Constitution. We have to live with our consciences." And so do I.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR CHUCK HAGEL

Mr. HAGEL. Mr. Chief Justice, I write this statement at my desk on the floor of the U.S. Senate. After weeks of listening, reading, reviewing, reflection, analysis and contemplation, I have come to the conclusion that I will vote to convict the President on both articles of impeachment.

The Constitution is very clear. It requires Members of the U.S. Senate to vote for or against each article of impeachment. No improvising. No substitutions. No censures. No findings of fact. The completeness of the charges against the President is powerful. The issue is abuse of power. Did the President abuse his power and therefore violate the Nation's trust in him? We must remember that trust is the only true currency elected officials have.

Perjury and obstruction of justice are not just Federal crimes. When committed by an elected official they are abuses of power. When committed by a President, they constitute an abuse of the highest power. The standards and expectations for America's elected officials cannot be calibrated. When elected officials bring down those standards and expectations and violate the people's trust . . . they rip the very fabric of our Nation. There is then a dishonoring of the spirit that is the guardian of American justice.

There can be no shading of right and wrong. The complicated currents that have coursed through this impeachment process are many. But after stripping away the underbrush of legal technicalities and nuance, I find that the President abused his sacred power by lying and obstructing justice. How can parents instill values and morality in their children? How can educators teach our children? How can the rule of law for every American be applied equally if we have two standards of justice in America—one for the powerful and the other for the rest of us?

What holds this Nation, this society, this culture, together? Yes, laws are part of it. But it is really the strong moral foundation anchored by values and standards—the individual sense of right and wrong, personal responsibility, accountability for one's actions. This is what holds a free people together. Respect for each other—not

because a law dictates that action—but rather because it's the right thing to do.

The President violated his constitutional oath and he broke the law. His crimes do rise to the level of high crimes and misdemeanors prescribed in the Constitution. The President's actions cannot be defended by dancing on the pinhead of legal technicality. Every American must know actions have consequences. Even for Presidents. All Americans must have faith in our laws and know that there is equal justice for all. The core of our judicial process is the rule of law.

Americans deserve to always expect the highest standard of conduct from their elected officials. If that expectation is defined down over time, it will erode the very base of our democracy and put our Republic in peril. That is the point of the impeachment clause of our Constitution . . . to protect the Republic. The impeachment clause of our Constitution is there to ensure the fitness of an individual to hold high office. President Clinton's conduct has debased his office and violated the soul of justice—truth. He has thereby debased and violated the American people. I have no other course to follow than to vote to convict President William Jefferson Clinton on both articles of impeachment.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JOHN D. ROCKEFELLER IV

Mr. ROCKEFELLER. Mr. Chief Justice, I rise today to announce, or simply declare, that I will vote not guilty on both articles of impeachment and to urge my colleagues to spare the country the injustice of removing a President who has been twice elected to his office by the American people, and whom they continue to trust to lead them.

As a Senator, I have taken my trial oath very, very seriously. For my part, I have listened intently to the presentations, carefully considered the evidence, read everything that I could get my hands on, and thought about those matters carefully. I have read, and reread, the key language of our Constitution, and thought long and hard about the words of our Founding Fathers. In fact, the Constitution, in many ways, came alive for me for the first time.

I am humbled by the wisdom and foresight of our founders as I struggle through some of the most profound questions that our democracy can present to us. What is the balance of power between the three branches of Government? How do we measure public trust, and under what circumstances may the Senate exercise its most devastating power—the power to overturn a popular election, and a power, therefore, to remove a President from office?

As I confront these questions, I am acutely conscious of the terrible disappointment of our Nation in the personal and public behavior of our President. No one of us would defend his actions. No one of us would say that he is free of serious fault.

I have condemned in the strongest possible terms that I know how to do—and I have done it to him directly—the conduct of the President in the Lewinsky matter. And I share the sense of outrage

that so many of my constituents from West Virginia have shared with me.

When first confronted with this shameful affair, the President deliberately misled his family, his friends, and his staff. He went on national television, and, as far as I am concerned, lied to the American people, and he walked a troubling line between truth and deception in his sworn testimony, all in an effort to keep this scandal out of the humiliating glare of public scrutiny.

It is without question a very serious moral matter. But the ultimate power of the U.S. Senate—the power to convict and remove the President for high crimes and misdemeanors—is not a power to pass moral judgment or render moral punishment. It is not even a power to render a judicial conviction or judicial punishment. The power of the Senate is drawn carefully and narrowly by the Constitution of the United States, and it is a power to sit in judgment of a President only as a means of protecting our Nation from great harm. It is a power to remove a President only if he has committed treason, bribery or other high crimes and misdemeanors against the state.

As U.S. Senators, the Constitution must be our predominant guidepost. It must be the compass we come back to at every point of hesitation or ambiguity or doubt. "Treason, bribery, or other high crimes and misdemeanors"—these words are powerful, extraordinary, and carefully crafted. We know how very grave treason and bribery are, and we know that they involve a fundamental corruption of public office. But what about high crimes and misdemeanors? The words "or other high crimes and misdemeanors" on its face means high crimes and high misdemeanors.

Borrowing from my good friend, Senator BIDEN, the word "treason" was defined in the Constitution itself. The word "bribery" was not. It was a definition fixed at common law. These are both relatively definite terms. But "high crimes and misdemeanors" are indefinite.

In this setting, two rules of construction led us to add the words—Madison and Mason to add the words—"or other" in their famous colloquy. The word "other" is, to me, fascinating, because what it does is essentially return us to the previous clause, which is "treason and bribery." It says that "high crimes and misdemeanors" must necessarily be interpreted at the same level of, even though less definite than, "bribery and treason."

I think that is clear. I think that is uncontested.

As U.S. Senators, the Constitution must be, as I said, our guidepost. We know from the statements of our founders that the phrase was intended in a very careful way—"high crimes and misdemeanors"—to cover only very grave and threatening abuses of Presidential duty and public office.

The House managers contend, as did Independent Counsel Ken Starr before them, that in the course of hiding his illicit affair from the world, the President committed perjury, obstruction of justice, and those crimes are so serious that they constitute, by definition, high crimes and misdemeanors, demanding conviction and immediate removal from office, something that has never happened before in the history of our Nation.

Most of this body are lawyers. And I think that most would agree—all of us would agree—the questions that must be answered by all of us in this Senate are:

First, did the President commit perjury or obstruction of justice as charged by the articles of impeachment?

Second, did the President's conduct rise to the level of high crimes and misdemeanors requiring removal?

The answer to both of these questions must be yes in order for the President to be removed from office. If either one of these questions fails, then by definition the Constitution demands that the President be acquitted.

On the basis of the case presented over the last several weeks, on the basis of the evidence and the deposition testimony, which I reviewed carefully and in full, and on the basis of the constitutional arguments made by each side, I have concluded unequivocally that the answer to both questions is no, and that the articles of impeachment are not well founded and must be rejected.

First and foremost, the House managers have utterly failed to prove beyond a reasonable doubt that the President committed perjury or obstructed justice. Their case is speculative, circumstantial, and contradicted by facts.

Admittedly, the burden of proof on the House managers is a very heavy one.

We have a presumption in this country of innocence until proven guilty. And we have a presumption that national elections should be upheld.

With the fate of a twice-elected President before us in this Senate, I believe that the evidence must be the universally accepted standard of proof that is applied to other criminal cases. It must be proven beyond a reasonable doubt.

What does that mean, to prove a case beyond reasonable doubt? It means that it is proven to a moral certainty, that the case is clear, that the case is concise. It means if there are doubts about the evidence, about the case, then he must be acquitted.

In the case presented by the House managers in the managers' version of the Clinton-Lewinsky story, there are many, many reasonable doubts.

There are the doubts about the articles themselves, which are ambiguous, and what conduct actually purported to be criminal. There are serious doubts about the perjury charge in which the President openly acknowledges his inappropriate behavior—and his effort to keep it secret from the Nation. There are doubts about the obstruction charges in which the President is accused of a vast conspiratorial scheme to influence witnesses and testimony, even though everyone involved has denied that any such effort occurred. No person, regardless of the stature or position, could, or should be, convicted on evidence that is so ambiguous and so questionable, and to my way of thinking ultimately, weak.

Second, and equally important, no matter how deplorable the President's conduct, the charges clearly do not meet the constitutional test for conviction. They simply do not rise to the level of treason, bribery or other high crimes and high misdemeanors, as I would put it. Any other conduct, any other charges, are left to the

judgment of the people in the casting of their votes, and to the judgment of the courts once the President has left office.

Despite the anger that we feel at the President, despite misgivings that we have about his honesty, despite his lies to the American people, we cannot allow emotions—or, I might say, homilies—or partisanship to interfere with our judgment. The Constitution alone puts us in the box from which we dare not venture.

On impeachment, our constitutional history is well established. And we in the Senate and across the Nation must abide by it, and abide by it strictly. We may remove a President only for using his great office to commit high crimes against the Nation, against the state, and against the people. There is no question in my mind that the President has not done this. We would be derelict in our duties as Senators if we removed him for anything less.

So given the weakness of the evidence supporting the charges made by the House, given the serious doubt in the Senate that the charges rise to the level of demanding removal from office, how do we find ourselves so far down this dangerous constitutional path?

How do we in the Senate find ourselves so close to the brink of removing a President from office without clear and compelling evidence that crimes against the state were committed?

How was an independent counsel investigation allowed to turn into a 5-year, $50 million crusade against the President?

And why have we not been able to debate the real issues for the future of our Nation—strengthening Medicare, reforming Social Security, ending the steel import crisis so West Virginia steelworkers can get their jobs back?

It is clear, in the end, justice will be done, and the Constitution will have protected the Nation. I have been dismayed by growing partisanship, but the bottom line is that the President should not be removed from office, and he will not be removed from office.

With the greatest respect for each of my colleagues, I must say there is something very wrong with the fact that we have been forced to take this so far, and that the Senate has been rendered impotent for so long. Even in the face of unceasing calls to end this investigation—from people in every State, from every background and political party—it has marched on relentlessly.

I do not believe that it was ever the will of the House of Representatives or the Senate to pursue these charges against the President to such great and absurd lengths. Yet we have—and in the process, a growing crack in the civil and moral foundation of our government has been revealed.

It has become clear to me that a destructive momentum has taken hold, and supplanted the better judgement of some in this Congress and in this country.

From the start, there has been a core of political interests that has sought every opportunity and pursued every tactic to attack this Presidency. Every President faces critics who will go to great lengths to fight his policies. But this President has faced unprecedented and unyielding attempts by a small group of determined activists to destroy him, his family, and his work.

Unfortunately, these efforts at destruction have been aided by a media inside the beltway that has accepted nearly every rumor—proven or unproven—and splashed it across the front page or put

it at the top of the evening newscast. Ratings and revenues too often have taken priority over sound and judicious coverage of the news. Far from serving the public interest, this has only fueled the efforts of those who have sought to undermine the reasoned pursuit of truth and justice.

As I made clear earlier, none of this diminishes my belief that the President's actions were wrong and indefensible. His personal failures in this matter deserve our condemnation.

But his failures do not deserve—and have never deserved—the relentless attempts at political and personal destruction to which he has been subjected. His failures do not deserve—and have never deserved—the triggering of a constitutional process that our Founding Fathers reserved for the most serious crimes against the Nation.

I do not say this to fan the flames of partisan division. After all, each of us—Republican or Democrat—has and will make mistakes, and each of us must be held accountable for our mistakes. But no Member of the Senate, no Member of the House, no elected official who serves this country to his or her best ability deserves the sort of insidious venom that has become such a common part of our political discourse.

Let me also be clear that I say this not solely in defense of President Clinton—but principally in defense of civility and fairness in our political society. I say this with sincere hope that we can bring to an end the destructive momentum that has gripped this Nation and this city. Because, as disturbing as the President's actions are, I am far more concerned by the fanaticism of those who have driven our great Nation so close to the precipice.

For our system of democracy to be successful for another two centuries, it must be driven by people's best instincts—not their worst. It must be founded in moral strength and guided by civil discourse. We must, as Minority Leader GEPHARDT has so eloquently stated, end the politics of personal destruction.

I have great hope that we can do this, because as I look around, I see a vast majority of Americans who are tired of good leaders being destroyed by a vindictive minority. I see a majority of Americans who understand clearly that President Clinton should not be removed from office for his deep personal failings. I see a majority of Americans who know better than to believe everything and anything they hear in the media.

The American people want us to seek the truth—they, in fact, demand it. But with equal vigor, they demand that we cast fair judgement; and they demand that in seeking the truth, we do not seek to destroy lives and careers.

I believe that this Senate is prepared to cast a fair judgment on the President. We have been through a trying time in our Nation's history—a time from which not one of us has relished or gained the least bit of satisfaction. We have all done our best to seek impartial justice, and I am certain that history will judge us well in this pursuit.

But history will cast a very severe judgement if we do not go forward with the purpose of healing the wounds that this episode has caused, and restoring the moral and civil foundation of our political society.

I leave my colleagues with the wisdom of James Madison in Federalist No. 62 when he addressed the important role of the Senate in tempering the actions of the House. ". . . [A] senate," he wrote, "as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government."

By dismissing these charges against the President, we will have done our duty to provide that salutary check, and we will have taken the first step in restoring the trust and faith of the people of this Nation. It is time to do as the American people have asked: end this sad episode and get back to work.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR FRANK H. MURKOWSKI

Mr. MURKOWSKI. Mr. Chief Justice, it seems to be a prerequisite to speak today for Senators to indicate the number of grandchildren each has. I am proud to say Nancy and I have 11, but I won't indulge you with naming each of them.

I, along with all of you, will soon cast our votes on the articles of impeachment that have been presented against President Clinton. With the exception of voting on a declaration of war, I can think of no more serious vote that a Senator will cast in his or her lifetime than on removing a President from office. History may or may not tell which vote is correct.

We have deliberated more than 67 hours. Five weeks ago, we met in the Old Senate Chamber and on a 100–0 vote departed on a course of action to resolve this matter. The House managers presented the case against the President. White House counsel presented their defense and then Senators spent 2 days submitting questions to both sides. We then resolved the question of witnesses by allowing the use of videotapes, and heard final arguments from both sides on Monday. For the past 2 days, Senators have offered their statements on this matter and we are on target to reach a final vote on the two articles in less than 48 hours. That's our constitutional duty. I am proud and honored to have participated in this historical deliberation and respect each of you and your words.

There are several recollections about the facts in this case that trouble me. Perhaps it is because I am not a lawyer.

In Ms. Lewinsky's testimony, she indicated that on the first day she met the President, she was wearing a pink identification tag which provides limited access to the White House. The President reached out and held it and said: "Well, this could be a problem," or words to that effect. That tells us something about the President's character.

Furthermore, after the Lewinsky story broke in the press, the President had Dick Morris conduct a poll and when Morris told the President that the public would forgive him for adultery but not for perjury or obstruction of justice, the President responded: "We will just have to win then." That tells me something else about the President.

It should also be noted that we would not be here if Ms. Lewinsky had not kept the blue dress which contained the DNA

evidence implicating the President beyond a doubt. Without that dress, it would be an old story of "He said/She said." Think about that.

Finally, we are all held accountable for our actions. But the President refuses to be held accountable. And I have a problem with the repeated reference from the First Lady that the President ministers to troubled people, suggesting that Monica Lewinsky was such a person.

What has been happening, not just here in Washington, but all around the country, is something far more disturbing than the trial of a President. What we have been witnessing is a contest for the very moral soul of the United States of America—and that the great casualty so far of the national scandal is the notion of truth.

Truth has been shown to us as an elastic commodity.

It has been said that this trial is not about the partisan political gamesmanship between the President's Democratic supporters and the Republican forces on the other side, as the media would have you think.

Indeed, one pundit said that more Americans get their ideas and reactions of the impeachment process from Jay Leno than they do from CNN.

The polls show Americans favoring leaving the President in office while they say Republicans appear bent on political suicide.

It has been said that Republicans see accountability, discipline and punishment as fundamental to the very structure of American society and that the President ought to be the "stern father" image and a figure of moral authority.

Clinton's liberal supporters model American society on the "nurturing parent" concept. To them, the Presidency is less a figure of moral authority than a helpful and powerful friend capable of doing good.

Where were you when former President Nixon resigned? I wondered at the time whether the Republic would survive Watergate. We did survive and many believe we are a stronger Nation because of that process.

In reaching a judgment in this case, I have reviewed the evidence presented by the House managers and the able defense offered by the President's counsel. I have concluded that the President is guilty on both articles and that the two articles more than satisfy the constitutional standard of high crimes and misdemeanors.

I believe the President should be removed from office not because he engaged in irresponsible, reckless, and reprehensible conduct in the Oval Office with a White House intern. He should be removed from office because he engaged in conduct designed to undermine the foundation, the very bedrock, of the concept of due process of law and, by extension, the very notion of the rule of law.

There is no question in my mind that President Clinton intentionally provided false and misleading testimony and committed perjury before the grand jury when he told the grand jury he was "trying to figure out what the facts were" when he made the following statements to his secretary, Betty Currie, the day after his civil deposition testimony:

"I was never really alone with Monica, right?"

"You were always there when Monica was there, right?"

"Monica came on to me, and I never touched her, right?"

"She wanted to have sex with me, and I cannot do that."

Mr. Chief Justice, it is just not credible to believe that these statements were designed to help the President elicit facts since he, and not Betty Currie, knew precisely the type of indiscreet activities he and Monica Lewinsky had engaged in. To believe his testimony, one would have to assume the unbelievable—that the President engaged in these acts with Ms. Lewinsky in the full expectation that Ms. Currie witnessed them.

It is only reasonable to assume that the President's statements to Ms. Currie, made on more than one occasion—twice—were designed for one, and only one, simple purpose: to coach and influence her future testimony. He was clearly seeking to undermine judicial proceedings by encouraging her to lie under oath for the single purpose of protecting him. His conduct not only amounts to false testimony, but provides a clear basis to conclude that the President sought to obstruct justice.

Moreover, it is undisputed that gifts the President gave to Monica Lewinsky, gifts that were subpoenaed in the civil suit against the President, were removed from Ms. Lewinsky's possession and hidden under Betty Currie's bed. There is no rational reason that Ms. Currie, on her own, decided to seek the return of the gifts. The only inference that a reasonable person could conclude is that the President asked Ms. Currie to retrieve the gifts in an effort to conceal evidence from the court; evidence that was clearly relevant in the civil case.

The House managers have presented a credible case showing that the President increased the pressure on his friend, Vernon Jordan, to obtain a private sector job for Ms. Lewinsky when she was named as a potential witness in the civil case brought against the President. It was not a coincidence of events, but rather a concerted effort by the President to secure employment for Ms. Lewinsky to ensure an affidavit that did not harm his interests. Mr. Jordan is not at fault; he was merely a pawn in the President's strategy to obstruct justice by encouraging the submission of a false affidavit from Ms. Lewinsky.

The charges against the President concern perjury, witness tampering, and concealing of evidence. These offenses clearly rise to the level of obstructing justice in the same sense that bribing a witness to testify falsely or destroying evidence amount to obstruction of justice.

Today, there are 115 people incarcerated in Federal prisons because they were convicted of perjury. On Saturday, we heard the videotape testimony of Dr. Barbara Battalino who had been an attorney and a VA doctor. Her crime? She lied about sex under oath in a civil proceeding. Her penalty? She lost her medical license. She lost her right to practice law. She was fired from her job. The Clinton Justice Department prosecuted her for perjury and she was sentenced to 6 months of imprisonment under electronic monitoring and paid a $3,500 fine.

Should not the standard applied to Dr. Battalino apply to the President of the United States who swore an oath to "preserve, protect and defend the Constitution," when he entered office and who

swore an oath to tell the truth when he testified before the grand jury? Or should we condone the standard the President suggested in his grand jury testimony, when he testified that he "said things that were true, that may have been misleading?" Think about that statement.

The foundation of our Republic is that we are a nation governed by laws, not by men. For the rule of law to be maintained, there must be a credible system of justice. Any effort to undermine the integrity of the judicial system subverts the principle of a nation of laws. And that system of justice depends for its very survival on maintaining the integrity of the oath that a person swears to tell the truth. Otherwise, if we turn a blind eye and allow people to lie under oath, destroy or hide evidence, or conspire to present false and misleading testimony, the entire notion of justice and truth become meaningless.

The President's counsel on Monday asked the question: "Would it put at risk the liberty of the people to retain the President in office?" Unfortunately, I believe the answer is yes. The right of an individual to a fair trial is endangered when the President of the United States remains in office having undermined the rule of law by obstructing justice and committing perjury.

Why should a citizen tell the truth in a courtroom when it does not serve his interest if the President is allowed to perjure himself because it does not serve his interest?

Why should an individual not try to influence the testimony of a witness when the President suffers no adverse consequences when he seeks to influence the testimony of a witness?

Does anyone in this Chamber believe that obstruction of justice is not a high crime and misdemeanor? Does anyone in this Chamber believe that President Clinton did not attempt to obstruct justice? If your answer to those questions is in the affirmative, I believe you must, I repeat, you must vote to convict and remove the President. That is the mandate of the Constitution.

Article II, section 4 of the Constitution provides that "the President . . . shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

There is nothing in the Constitution that says that a President with a high popularity rating shall not be removed if convicted. The framers believed that it was so important to rid the Government of officials convicted for such offenses that the framers gave us no latitude on the question of removal from office.

Mr. Chief Justice, the Nation has endured more than a year of what started as a scandal and turned into an obstruction of justice and an impeachment. Again, had there been no DNA evidence, Ms. Lewinsky would have been smeared in the press as a stalker and this case would be closed.

I hope my colleagues in good conscience can put party aside and uphold the oath we took a month ago to be impartial in our judgment of President Clinton. This is a sad day for our contemporary country but a magnificent day for the founders who recognized that no man is above the law and gave us the tools to remove those who violate the public trust.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR ROBERT C. BYRD

Mr. BYRD. Mr. Chief Justice:

I think my country sinks beneath the yoke,
It weeps, it bleeds,
And each new day,
A gash is added to her wounds.

I am the only remaining Member of Congress who was here in 1954 when we added the words "under God" to the Pledge of Allegiance. That was on June 7, 1954. One year from that day we added the words "In God We Trust" to the currency and coin of this country. Those words were already on some of the coins. But I shall always be proud to have voted to add those words, "under God" and "In God We Trust." They mean much to us today as we meet here.

This is my 47th year in Congress. I never dreamed that this day would ever come. And, until 6 months ago I couldn't place myself in this position. I couldn't imagine that, really, an American President was about to be impeached.

A few years ago, when my youngest grandson, who now is a Ph.D. in physics, was just a little tot, he came up to my den and looked around and said, "Papa, who made this mess?"

Now, Senators, who made this mess? The mess was created at the other end of Pennsylvania Avenue. The House of Representatives didn't make it. The U.S. Senate didn't make it. But, nevertheless, we sit here today in judgment of a President.

Mr. Chief Justice, I thank you for presiding over this gathering with such grace and dignity. But the Chief Justice is not here because he wanted to be. He is not here because we asked him to come. He is here because the Constitution commanded that he be here. Senators are not here because you wanted to be here today. We are here because the Constitution said that the Senate shall have the sole power to try all impeachments.

Soon we will vote and, hopefully, end this nightmarish time for the Nation. Like so many Americans, I have been deeply torn on the matter of impeachment. I have been angry at the President, sickened that his behavior has hurt us all and led to this spectacle. I am sad for all of the actors in this national tragedy. His family and even the loyal people around him whom he betrayed—all have been hurt. All of the institutions of government—the Presidency, the House of Representatives, the Senate, the system of justice and law, yes, even the media—all have been damaged by this unhappy and sorry chapter in our Nation's history.

The events of this last year have engendered so much disillusionment, distrust, bitter division and discord among the people of the United States. There can be, I fear, no happy ending, no final act that leads to a curtain call in which all the actors link hands and bow together amid great applause from the audience. No matter what happens here, many, many people will be left tasting only the bitter dregs of discontent.

I was proud of this Senate when, early last month, we gathered in the Old Senate Chamber to choose a path on which to proceed. We agreed on a constitutional roadmap to follow during the early days of this trial. We followed that roadmap to the letter, consid-

ering a motion to dismiss the proceedings as well as one to provide for the deposition of witnesses. When there was a question or conflict, we decided the answer together. I commend Senator DASCHLE and Senator LOTT for their untiring efforts to maintain bipartisanship.

Hamilton observed that impeachable offenses "are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust . . . to injuries done immediately to the society itself." Hamilton also observed that the impeachment court could not be "tied down" by strict rules, "either in the delineation of the offense by the prosecutors [the House of Representatives] or in the construction of it by the judges [the Senate]."

Supreme Court Justice Joseph Story said: "The jurisdiction is to be exercised over offenses, which are committed by public men in violation of their public trust and duties . . . injuries to the society in its political character," . . . "such kind of misdeeds . . . as peculiarly injure the commonwealth by the abuse of high offices of trust."

Story observed that "no previous statute is necessary to authorize an impeachment for any official misconduct," . . . because "political offenses are so various and complex . . . so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it."

There are those—without my repeating the sordid details of what we have all heard over and over and over again—there are those who say that the President lied to protect his family. We all understand that. I have a feeling for that. But I can never forget his standing before the television cameras and saying to the American people, what he said: "Now I want you to listen to me. . . ." Don't you Senators think that that was a bit overdone if the purpose was to protect his family?

"O, what a tangled web we weave when first we practice to deceive."

Impeachment is a sword of Damocles that hangs over the heads of Presidents, Vice Presidents, and all civil officers, always ready to drop should it become necessary. But, the impeachment of a President is uniquely and especially grave. We must recognize the gravity and awesomeness of it, and act in accordance with the oath we took to do "impartial justice." We are the wielders of this weapon, responsible for using it sparingly and with prudence and wisdom.

This is only the second time that this Nation has ever impeached a President. President Nixon resigned when it was made clear to him that, if impeached and tried, he would be convicted and removed from office. In that instance, both the country and the Congress were of the same mind that the President's offenses merited his removal. It was not a partisan political impeachment; it was a bipartisan act. But where political partisanship becomes such an overwhelming factor as to put the country and the Congress at odds, as it has with this impeachment, something draws us back. We must be careful of the precedent we set. One political party, alone, should not be enough to bring Goliath's great sword out of the Temple.

Regrettably, this process has become so partisan on both sides of the aisle and particularly in the House and was so tainted from the outset, that the American people have rebelled against it. The President lied to the American people, and, while a great majority of the people believe, as I do, that the President made false and misleading statements under oath, still, some two-thirds of the American people do not want the President removed from office. I do not think that this is just a reflection of the American people's traditional bias for the underdog, but rather, of the much more basic American dislike of unfairness. Many people, perhaps even most people, do not believe that this process has been a fair process. They are further supported in their viewpoint by the polarization and partisanship so regrettably displayed in Congress.

Indeed, the atmosphere in Washington has become poisoned by politics and even by personal vendettas. As a result, perspective and a clear sense of proportion and balance have been lost by all too many people. As a byproduct of the venom, a process intended to be serious and sober has, instead, devolved into a virulent, off-color soap opera event, watched by an incredulous people grown weary of its content.

We have known for weeks that the votes were not here to convict this President. And yet some wanted to press on, in a desperate attempt to bring witnesses onto the Senate floor. What a dreadful national spectacle that would have been. That is one reason why I offered a motion to dismiss the proceedings. Both the House managers and the White House defense team had presented their case and had presented it well. We had gotten into the 16 hours of questioning by Senators, while all went along swimmingly for a while, the proceedings began to degenerate into a dueling press conference on both sides of the aisle. Moreover, the House managers had already taken steps to begin the deposition of Monica Lewinsky, and the fact that they were doing this before the Senate had even voted to depose witnesses, led me to believe that it was time to call the whole thing off before the Senate slipped into the snake pit of bitter partisanship like the House of Representatives had done. Always with a weather eye open concerning the image of the Senate and its place in history, I made the motion to dismiss which had been provided for in the original agreement by 100 Senators on January 8, following the great bipartisan meeting we had all attended in the Old Senate Chamber. Many people all around the country, as well as here within the beltway, misunderstood my reasons for moving to dismiss. I didn't do that to protect Mr. Clinton, as some people have so mistakenly surmised. I knew that the votes were not here then to convict him, and we all know they are not here now. I just didn't want the Senate to sink further into the mire. I did not want this body to damage its own quotient of public trust the way the House and the White House have diminished theirs.

I called for these proceedings to be dismissed, out of genuine concern for the divisive effect that an ultimately futile trial would have on the Senate and on the Nation.

The House articles charged the President with having committed perjury. This word "perjury"—lawyers can dance all around the head of a pin on that word. I won't attempt to dance all around

on the head of the pin on the word "perjury." The President plainly lied to the American people. Of course, that is not impeachable, but he also lied under oath in judicial proceedings.

Mr. Clinton's offenses do, in my judgment, constitute an "abuse or violation of some public trust." Reasonable men and women can, of course, differ with my viewpoint. Even though the House of Representatives rejected the second article that came out of the Judiciary Committee, the evidence against Mr. Clinton shows that he willfully and knowingly and repeatedly gave false testimony under oath in judicial proceedings.

When the President of the United States, who has sworn to protect and defend the Constitution of the United States, and to see to it that the laws be faithfully executed, breaks the law himself by lying under oath, he undermines the system of justice and law on which this Republic—not this "democracy"—this Republic has its foundation.

In so doing, has the President not committed an offense in violation of the public trust? Does not this misconduct constitute an injury to the society and its political character? Does not such injury to the institutions of government constitute an impeachable offense, a political high crime or high misdemeanor against the state? How would Washington vote? How would Hamilton vote? How would Madison or Mason or Gerry vote? My head and my heart tell me that their answer to these questions would be, "Yes."

The matter does not end there. The Constitution states, without equivocation, that the President, Vice President or any civil officer, when impeached and convicted, shall be removed from office. Hence, one cannot convict the President without removing him from office.

Should Mr. Clinton be removed from office for these impeachable offenses? This question gives me great pause. The answer is, as it was intended to be by the framers, a difficult calculus. This is without question the most difficult, wrenching and soul-searching vote that I have ever, ever cast in my 46 years in Congress. A vote to convict carries with it an automatic removal of the President from office. It is not a two-step process. Senators can't vote maybe. The only vote that the Senator can cast, under the rules, as written, is a vote either to convict and remove or a vote to acquit.

So should I vote "Guilty" when my name is called, believing that President Clinton's offenses constitute high misdemeanors? Should I vote guilty and vote to remove him from office? Some critics may say—some of my colleagues may say—they may ask, if you believe he is guilty, how can you not vote to remove him from office?

There is some logic to the question, but simple logic can point one way while wisdom may be in quite a different direction. It is not a popularity contest, of course. But remember our English forbears, who, on June 20, 1604, submitted to King James I the Apology of the Commons, in which they declared that their rights were not derived from kings, and that, "The voice of the people in things of their knowledge is [as] the voice of God." "Vox populi, vox Dei."

The American people deeply believe in fairness, and they have come to view the President as having "been put upon" for politically partisan reasons. They think that the House proceedings were unfair. History, too, will see it that way. The people believe that

the independent counsel, Mr. Starr, had motivations which went beyond the duties strictly assigned to him.

In the end, the people's perception of this entire matter as being driven by political agendas all around, and the resulting lack of support for the President's removal, tip the scales for allowing this President to serve out the remaining 22 months of his term, as he was elected to do. When the people believe that we who have been entrusted with their proxies, have been motivated mostly or solely by political partisanship on a matter of such momentous import as the removal from office of a twice-elected President, wisdom dictates that we turn away from that dramatic step. To drop the sword of Damocles now, given the bitter political partisanship surrounding this entire matter, would only serve to further undermine a public trust that is too much damaged already. Therefore, I will reluctantly vote to acquit.

In 399 B.C., Socrates was convicted and sentenced by the Athenian jury to die. If only 30 votes on that Athenian jury had switched, Socrates would not have been convicted. If only 20 Senators—or less—on my side of the aisle who are expected to acquit, were to switch their votes, President Clinton would be convicted, and before this coming Sabbath day, he would be removed from the Oval Office. President Clinton will be acquitted by the Senate; yet he will not be vindicated.

The crowds will still cheer the President of the United States, but the American people have been deeply hurt and, while they may forgive, they will not forget. The pages of history will not be expunged—ever.

Be assured that there will be no winners on this vote. The vote cast by every Senator will be criticized harshly by various individuals and sundry interest groups. Yet it is well for the critics to remember that each Senator has not only taken a solemn oath to support and defend the Constitution, but also to do "impartial justice" to Mr. Clinton and to the Nation, "So help me, God." The critics and the cynics have not taken that oath; only Senators have done so. Carrying out that oath has not been easy. That oath does not say anything about political party; politics should have nothing to do with it.

The frenzy of pro-and-con opinions on every aspect of this case emanating from every conceivable source in the land has made coming to any sort of "impartial" conclusion akin to performing brain surgery in a noisy, rowdy football stadium. It will be easy for the cynics and the critics who do not have to vote, to stand on the sidelines and berate us. But only those of us who have to cast the votes will bear the judgment of history.

None of us knows whether the attitudes of the American people will take a different turn after this trial is over and this drab chapter is closed. "Fame is a vapor; popularity an accident; riches take wings; those who cheer today may curse tomorrow; only one thing endures—character!" It is the character of the Senate that will count. And while the politics of destruction may be satisfying to some, the rubble of political ruin provides a dangerous and unstable foundation for the Nation.

And yet we must move ahead. The Nation is faced with potential dangers abroad. No one can foresee what will happen in Russia or

in North Korea or in Kosovo or in Iraq. To remove Mr. Clinton at this time could create an unstable condition for our Nation in the face of unforeseen and potentially dangerous happenings overseas.

Preceding Senators have sounded the clarion note of separation of powers. I have sounded that same trumpet many times when the line item veto was before the Senate, but to no avail. Some of the voices that have rung throughout this Chamber in these deliberations, were curiously still on that occasion. The Supreme Court of the United States saved the Constitution and struck that law down. But the Supreme Court has no voice in the decision that confronts the Senate at this hour. It is for the Senate alone to make. When these Senate doors are flung open, we must hope that the vote that follows will strengthen, not weaken, our Nation.

Let there be no preening and posturing and gloating on the White House lawn this time when the voting is over and done. The House of Representatives has already inflicted upon the President the greatest censure, the greatest condemnation, that the House can inflict upon any President. And it is called impeachment. That was an indelible judgment which can never be withdrawn. It will run throughout the pages of history and its deep stain can never be eradicated from the eyes and memories of man. God can forgive us all, but history may not.

Within a few hours, the mechanics of this matter will finally be concluded. But it will not yet be over. For the Nation must still digest the unpleasant residue of these events. Mr. Chief Justice, hatred is an ugly thing. It can seize the psyche and twist sound reasoning. I have seen it unleashed in all its mindless fury too many times in my own life. In a charged political atmosphere, it can destroy all in its path with the blind fury of a whirlwind. I hear its ominous rumble and see its destructive funnel on the horizon in our land today. I fear for our Nation if its turbulent winds are not calmed and its storm clouds somehow dispersed. In the days to come, we must do all that we can to stop the feeding of its vengeful fires. Let us heap no more coals to fan the flames. Public passion has been aroused to a fever pitch, and we as leaders must come together to heal the open wounds, bind up the damaged trust, and, by our example, again unite our people. We would all be wise to cool the rhetoric.

For the common good, we must now put aside the bitterness that has infected our Nation, and take up a new mantle. We have to work with this President and with each other, and with the Members of the House of Representatives in dealing with the many pressing issues which face the Nation. We must, each of us, resolve through our efforts to rebuild the lost confidence in our government institutions. We can begin by putting behind us the distrust and bitterness caused by this sorry episode, and search for common ground instead of shoring up the divisions that have eroded decency and good will and dimmed our collective vision. We must seek out our better natures and aspire to higher things. I hope that with the end of these proceedings, we can, together, crush the seeds of ugliness and enmity which have taken root in the sacred soil of our Republic, and, instead, sow new respect for honestly differing views, bipartisanship, and simple kindness towards each

other. We have much important work to do. And, in truth, it is long past time for us to move on.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR JAMES M. INHOFE

Mr. INHOFE. Mr. Chief Justice, now that the vote to impeach William Jefferson Clinton has been taken, and before I discuss my vote, let me say first that this whole thing could have been avoided had President Clinton resigned months ago. I say this because I called for his resignation last September. Rather than explain my reasoning for calling for President Clinton's resignation, I believe it is better explained by an eighth grade school teacher from Tulsa, OK, Mr. Terrence Hogan. I ask unanimous consent that Mr. Hogan's letter to the President dated September 26, 1998, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 26, 1998.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: It is in the early morning hours. The infamous Starr report has been made public for less than twenty-four hours and I am unable to sleep. I don't imagine you've had much of a restful night either. As you no doubt are troubled, so am I.

As the forty-eight year old father of five and a teacher of eighth grade Civics these past twenty-two years I am greatly concerned about the moral direction of our nation. It is as if we have lost our compass and know not what we as a nation wish to be. I am fearful, for I do not wish us to become a nation that is only concerned about the economy and has lost the will to be a nation of admirable principles. I do not want us to dissolve into a people who are more influenced by the spin of the facts than the facts themselves. I am concerned about the effects the next six months of a legal nit picking debate over whether or not you committed an impeachable offense will have on our nation. I am also concerned that the debate will not ask what I believe to be the two paramount questions. First, are you capable of leading this nation for the next 30 months in the directions that we want and need to go? And secondly, do you deserve to be allowed to lead this country?

There is no question in my mind that you have the will to lead. The sad conclusion I have drawn is that you no longer have the moral authority to lead for you have violated the main foundation upon which all relationships are built, that being the existence of mutual trust. In the elections of 1992 and 1996 the American voters forgave you for your one admitted transgression with Ms. Flowers. Then, however, you chose to repeat that transgression in the confines of the Oval office. After which, when confronted with your choices you chose to repeatedly lie to your wife, daughter, supporters and the American people. You chose to continually lie about your choices rather than to frame the debate around the issue that this was a private matter between you and your wife and therefore no business of the American public. It is my heartfelt belief that your choice to lie was designed not so much to save your wife and daughter certain pain but to save yourself and your presidency, an understandable choice but not an acceptable one. Your willful and repeated lying has given the people of this country an insight into the character and integrity of their leader.

With this in mind I am asking you to resign your position as President of these United States for if we are even to pretend to be a nation of principles we cannot tolerate from our president actions and choices that we would not tolerate from the principal of our neighborhood school.

In the last few days you have begun to ask the forgiveness of the American people. If your contrition is heartfelt you deserve the forgiveness of all those individuals whose trust you have violated. I for one forgive you. But as a member of the body politic I must also hold you accountable for your public choices and demand that certain natural consequences be allowed to occur. You no longer possess the trust

of the majority of the American people and can therefore no longer lead that people and must therefore give up your position of leadership.

No doubt you share my belief that God our creator calls each of us to be all we can be and that we are also called to sacrifice ourselves for what is in the ultimate best interest of our neighbors, I am asking you now, Mr. President, to do both of those things. Please set aside your personal pride and ambitions, take full responsibility for the choices you have made, accept the natural consequences of those choices and step down as our president and save this nation from the turmoil that the debate over your choices will undoubtedly cause. Let this nation heal and get on with those issues you believe need to be dealt with. Please remember that in making this personal sacrifice that your true legacy will not be determined by what kind of president you were but by what kind of man you became.

Please know that my prayers are with you and your family in this time of trial for you, your family and this country.

With sincerity,

TERRENCE HOGAN.

Mr. INHOFE. Today I voted to convict William Jefferson Clinton on each of the two articles of impeachment presented by the House of Representatives.

I find the President guilty, as charged, of high crimes and misdemeanors: lying under oath and obstructing justice. The President engaged in a deliberate and selfish pattern of conduct designed to thwart the civil rights of a fellow citizen. This conduct represents a serious breach of faith and trust. This conduct is incompatible with the solemn duties and moral responsibilities of the high office of President of the United States.

Similar conduct by others results in consequences: perjurers, witness tamperers and obstructors of justice go to jail; supervisors lose their jobs; military officers are court-martialed, imprisoned or forced out of the Armed Forces; judges are impeached and removed from office. Shall we embrace a lower standard for this President under these circumstances? I think not. I believe that the President of the United States should be held to the very highest of standards.

I believe that conviction and removal from office is justified in order: (1) to preserve the integrity, honor and trust of the Presidency; (2) to protect the sanctity of the witness oath in judicial proceedings; and (3) to uphold the fundamental principle of "equal justice under law."

In accord with my sworn oath to do "impartial justice according to the Constitution and the laws," I have approached the trial of William Jefferson Clinton as a solemn constitutional duty. Voting on the articles of impeachment may be the most historically significant thing I will do in my entire career in public service. I have taken this obligation seriously, without concern for public opinion polls or for any partisan political advantage of consequence. This is a moment when one must put the longer-term interests of the country first.

As a political opponent of this President, I have made an extra effort to weigh the evidence and the arguments on both sides with a sense of detachment and fairness. Having served on a jury in a criminal trial some 24 years ago, I learned how important it is to listen and to exercise impartial judgment. During jury selection in a local murder trial, I found myself assigned to a murder case about which I had expressed a definite opinion. From press reports, I was already convinced the defendant was guilty. With that and since I was the author of the capital punishment bill in the legisla-

ture, I thought for sure they would never qualify me for the jury, but somehow they did. Five days later, I surprised even myself when I became the foreman of the jury that acquitted that very defendant.

I have approached the trial of the President with that experience in mind. I have also considered whether in good conscience, I would apply the same judgment I made here equally to a similar set of facts and circumstances if they applied to a Republican—and not a Democratic—President.

In 1990, I did not hesitate to publicly condemn a Republican President, George Bush, when he violated his "read my lips" campaign pledge. Politicians who deliberately violate public trust undermine good government and increase the level of cynicism in society.

Today, I have a clear conscience in rendering the judgment I believe is just and in the best interests of the future of the country.

I have concluded that the President engaged in a deliberate and premeditated pattern of conduct which was corruptly designed to undermine the rights of a fellow citizen. That citizen was entitled under the law to obtain truth and justice in a duly constituted legal proceeding.

The President had a legal obligation, as a citizen, to comply with ordinary and proper legal procedure and to faithfully abide by the standard oath to "tell the truth, the whole truth, and nothing but the truth."

I believe the President also had a moral obligation, as President, to refrain from engaging in any conduct which would, by example, undermine respect for the rule of law, the witness oath, or the dignity, honor, or public trust embodied in the Presidency.

The President failed to fulfill these obligations. He lied under oath, obstructed justice and tampered with witnesses. He sought to undermine the judicial system for his own personal gain. In so doing, he set a perverse example for every schoolchild, parent, teacher, employer, supervisor and citizen in America. He brought dishonor upon himself and his office.

White House lawyers went to great lengths to try to deny the specific charges, but common sense and the weight of the evidence leave no reasonable doubt in my mind that the charges are true. I believe there are few, if any, Members of the Senate who do not believe the President lied under oath and obstructed justice. Even many of the President's most ardent supporters in and out of the Senate have openly stated their belief that the essential facts of the case are not in dispute.

Senator ROBERT BYRD pretty well summed it up in a recent TV appearance. He said of the President: "I have no doubt that he has given false testimony under oath and . . . there are indications that he did indeed obstruct justice. . . . It undermined the system of justice when he gave false testimony under oath. He lied under oath."

I have often said that one of the qualifications I have for the U.S. Senate is that I am not an attorney. So, when I read the Constitution, I know what it says. When I read the law, I know what it says. When I look at the evidence and apply common sense from

a nonlawyer perspective, I know what it says. In this case, it says—without question—the President is guilty as charged.

The President's attorneys kept arguing that the President's conduct does not amount to the technical crimes of perjury or obstruction of justice, but that even if it does, it should not warrant his removal from office.

I have concluded the President's conduct does amount to the crimes of perjury and obstruction, but that even if it does not, it still warrants his removal from office because it is unacceptable behavior, incompatible with his duties and responsibilities as President.

I was not persuaded by the hairsplitting argument that the President did not lie under oath. The President's lawyers claim he did not lie or commit perjury before the grand jury and they imply that his conduct there should be deemed acceptable. As a nonlawyer, I find their arguments preposterous and an insult to the intelligence and moral sensibilities of the Members of the Senate of both parties, not to mention the American people.

The President was afforded every opportunity to treat the grand jury with the respect it deserved. He was not blindsided, tricked or trapped. He could anticipate all the key questions in advance. He had plenty of time to prepare. He was warned on numerous occasion by Members of both parties in the Congress of the serious consequences of untruthful testimony. Yet he deliberately sought to continue weaving a self-serving and misleading web of deception and falsehood.

Similarly, I reject the argument that the President did not commit obstruction of justice in an improper and illegal effort to undermine the legitimate search for truth in the Paula Jones civil suit. To believe the President's defense is to stand common sense on its head.

Does anyone seriously believe the Lewinsky job search would have proceeded to a successful conclusion in early January 1998—a critical moment in the Jones case—had her name not appeared on the Jones case witness list?

Does anyone seriously believe the President was suggesting to Ms. Lewinsky that she file a truthful affidavit?

Does anyone seriously believe that the decision to conceal the gifts—evidence—was not blessed and ordered by the President?

Does anyone seriously believe the President was seeking to "refresh his memory" while planting false stories with Ms. Currie when his conversations took place after he had testified that the Jones lawyers should talk to Ms. Currie?

Does anyone seriously believe the President did not want and expect Mr. Blumenthal and other aides to repeat false stories to the grand jury?

I do not believe any of these things. I believe—and I suspect most Senators believe—the President is guilty as charged of obstruction of justice.

The President's efforts to cover up his relationship with Ms. Lewinsky, however understandable in a nonlegal context, became textbook examples of obstruction of justice once her name appeared on a witness list and in a duly constituted legal proceeding.

The President, after all, is himself a lawyer. He was well aware that—orchestrating a job search to silence a potential hostile witness, suggesting the filing of a false affidavit, concealing relevant evidence, and coaching potential witnesses to give false testimony—all are improper and illegal.

Yet he chose to take these actions, not in some contorted belief that they were proper, but in the calculation that if successful, he could thwart the legal search for truth and justice in the Jones case.

To accept this behavior by the President without constitutional consequence is to permit the setting of a precedent which will reverberate negatively for years throughout our legal justice system and beyond.

I am amazed that there is any debate whatsoever over whether lying under oath before a grand jury is an impeachable offense. The precedent is clear: Judge Walter Nixon and others have been rightly convicted and removed from office for lying under oath. Is there to be a different standard for a President, or for this particular President, or for this particular set of circumstances? Are we to make exceptions for lying under oath so long as it is lying about some things but not others? If so, what precedent will that set?

Our legal system depends of the sanctity of the witness oath. There can be no exceptions to the obligation every citizen incurs when he solemnly swears "to tell the truth, the whole truth and nothing but the truth." Setting any other precedent would totally disrupt our system of jurisprudence by breeding disrespect for the rule of law.

The White House lawyers argued that since the President is elected and judges are appointed a different standard should apply. The only conceivable way they might be right is if the President is held to a higher—not a lower—standard.

Important as each of a thousand judges is to our legal system, it is the President alone who stands at the pinnacle of our system of law and justice. He alone is constitutionally charged to "take care that the laws be faithfully executed." He appointed the judges. He embodies the public trust to a degree far and above anyone else. He sets the example for the entire Nation. His public conduct in abiding by the oath must be above reproach.

In speaking about President Richard Nixon in 1974, a young Arkansas congressional candidate spoke to the need for high standards:

> Yes, the President should resign. He has lied to the American people, time and time again, and betrayed their trust. Since he has admitted guilt, there is no reason to put the American people through an impeachment. He will serve absolutely no purpose in finishing out his term; the only possible solution is for the president to save some dignity and resign.

The candidate, Bill Clinton, set his own perfectly understandable standard: "If a President of the United States ever lied to the American people, he should resign." (Arkansas Democrat Gazette, Aug. 6, 1974.)

Recently, one of my Democrat colleagues, in a television interview, explained his standard for perjury as an impeachable offense: "Perjury could be an impeachable offense," he said. "If he lied about the national security interest of the United States, or if he

did something else that had serious consequence for the country, or performing improperly in his official capacity, that's impeachable." But if he's "not acting in his official capacity" and only "as an individual," that's different. That's not impeachable, he says.

I believe this kind of making exceptions for lies about certain subjects, and not others, is a dangerous and slippery slope. I believe any lying before a grand jury by a sitting President will have "serious consequences for the country" if it is deemed to be in some way acceptable.

Indeed, part of the reason this is so important is that if the President is capable of lying under oath about one thing, it reveals a predisposition and capability to lie about other more important things, while not under oath. For example, we already know this President has lied about the national security interest of the United States on numerous occasions. He lied to Congress in 1995 in pledging U.S. troops would not remain in Bosnia beyond 1 year. He lied or misled audiences over 130 times in 1995 and 1996 in asserting that no nuclear missiles were aimed at American children. People know he has lied on numerous other public occasions. Such behavior eats away the public trust and the moral authority of the Presidency, which are so vital to the national security.

In addition, it should not go unremarked that the President's underlying conduct in this matter showed astonishingly bad judgment and disregard for the national security implications of his own behavior. In the modern world, the President is always a potential target of foreign intrigue, blackmail and salacious propaganda.

Ms. Lewinsky testified before the grand jury that the President himself speculated that his phone calls to her may have been monitored by a foreign embassy. In essence, he was admitting that he had exposed himself to potential blackmail. Such behavior by any President is not merely inappropriate. It is clearly dangerous and unacceptable.

Economic-driven "popularity" polls are masking an unprecedented erosion of public trust in this President which has already caused serious damage to his ability to rally the country in time of national threat or crisis. His consistent and long-term pattern of untruthful and deceptive behavior, as exemplified in the articles of impeachment, has undermined his credibility to such an extent that he can no longer be afforded the benefit of any public doubt about virtually any topic.

When the President took military action against overseas terrorist targets in August and when he ordered airstrikes against Iraq in December, popular majorities—in the polls—questioned his timing and motives—and rightly so. Suspicions about both of these actions linger to this day, draining the small reserves of trust the President may have left.

What happens if and when there is a much more serious international or domestic crisis, requiring timely public sacrifice mobilized through Presidential leadership? Will the President be believed—even if he is telling the truth? In a world of many lurking dangers of which much of the public is only vaguely aware—from information warfare to weapons of mass destruction—such questions raise very serious concerns.

If we do not hold the President accountable in this case, what do we say to the over 100 people who are serving time in Federal prison for committing perjury in legal proceedings? What do we say to Ms. Barbara Battalino, who was convicted of perjury, sentenced, and lost her right to practice her profession because she lied under oath about sex in a civil case that was eventually dismissed by the judge? What do we say to others in similar situations? I was waiting for the President's lawyers to address these issues. But they never did in any remotely satisfactory way.

What do we say to the military officers whose careers and lives have been ruined over misconduct similar to the President's, including sexual misconduct, lying and obstructing justice?

Capt. Derrick Robinson, an Army officer caught up in the Aberdeen sex misconduct case, is serving time in Leavenworth prison for admitting to consensual sex with an enlisted person who was not his wife.

Drill Sgt. Delmar Simpson is serving 25 years in a military prison because a court-martial found that, even though his relationship with a female recruit was consensual, the power granted him by his rank made such consensual sex with a subordinate unacceptable and—in the military—illegal.

Lt. Kelly Flinn was forced out of the Air Force for lying about an adulterous affair.

Sgt. Maj. Gene McKinney, the Army's top enlisted man, was tried for perjury, adultery and obstruction of justice concerning sexual misconduct. He was convicted of obstruction of justice, but not before his attorney asserted at trial how people in uniform rightly ask: How can you hold an enlisted man to a higher standard than the President of the United States, the Commander in Chief?

When we establish a glaring double standard in the law, we diminish respect for all law. This is why we must uphold the highest of standards for officials in public office.

I will oppose any censure resolution that may be offered after the trial, as I opposed any so-called finding of fact during the trial because it is little more than a thinly veiled effort to give people political cover. I believe some who might otherwise vote to convict look to censure as a way to justify or politically cover a vote to acquit. There is no precedent for censure in the Constitution or in an impeachment context. It would be dangerous and wrong to set such a precedent now. I believe it could threaten the separation of powers between the branches of Government as Congresses start censuring Supreme Courts and Presidents for all manner of perceived misconduct.

Senators should vote on the articles of impeachment, explain their reasons, and live with the consequences.

I am struck that some of my colleagues who agree that the President did commit the serious offenses charged in the articles of impeachment still believe Congress can render some effective consequence short of removal such as censure, which will uphold the Presidency, the rule of law, and the sanctity of the oath. I believe they are wrong.

I fear that they are not properly considering the precedent they would establish. Never mind what we think of this particular President. A thoroughly corrupt President in the future will not be

inhibited by the empty words of a nonbinding sense-of-the-Senate resolution. However, such a corrupt President will think twice about certain conduct, if he knows without doubt, by precedent, that such conduct is removable.

If perjury, obstruction of justice, and witness tampering are deemed—as a result of this trial—to be nonremoval offenses in certain circumstances, then a corrupt future President may calculate them to be acceptable. We should not set that precedent.

From the beginning, I strongly supported efforts to allow both the House managers and the White House lawyers to call whatever live witnesses they deemed necessary to make their case. I favored a full and complete trial, believing that it was more important to ensure fairness to both sides than it was to get the trial over by some arbitrary date. This was in keeping with normal procedures in all previous impeachment trials. It also seemed to me to be essential to fundamental fairness and a full airing of the facts and issues in dispute. A hundred years from now no one will care whether the trial lasted 2 weeks or 6 months. They will care, we must hope, about the extent to which justice was done. Overall, I was disappointed in the unnecessarily tight procedural restrictions imposed on this trial, including the limits on witnesses. I fear that a bad precedent has been unnecessarily set for the future.

Throughout the trial, I opposed efforts to waive the time-honored rules of procedure which require that deliberations among Senators be closed to the public. I am convinced this was the right decision. The closed meetings allowed for a more colleagial atmosphere among Senators, limiting much of the posturing and grandstanding that often goes on before the cameras. The closed sessions also helped enhance a greater spirit of duty and cooperation concerning the tasks at hand. As with all jury trials going back for more than 2,000 years in history, closed deliberations constitute proper procedure, and I believe this tradition should be maintained.

This need not, and does not, diminish the accountability of Senators to their constituents and the public at large. All rollcall votes remain open and I believe every Member maintains an obligation to inform his constituents of the reason for his votes.

I received a letter from Mr. Terrence Hogan of Owasso, OK, an eighth-grade civics teacher at the Cascia Hall Middle School in Tulsa for the past 22 years. He wrote last September saying he "was greatly concerned about the moral direction of our Nation" in light of the President's "willful and repeated lying." He said the Nation "cannot tolerate from our President actions and choices that we would not tolerate from the principal of our neighborhood school."

And this is exactly the point that people across America are asking: Is the President subject to the same moral accountability as every other responsible citizen in the workplace, or in any other position of public trust? And what do we say to the kids about truth and justice, about honesty and integrity, about the political and governmental heritage they should admire and emulate?

These acts, which were committed willfully and premeditatedly by the President, are serious offenses which I believe clearly rise to the level of impeachable offenses.

I reject the White House lawyers' argument that the President's conduct does not amount to the technical "crimes" of perjury and obstruction, but I'm content to allow a regular court of law to settle the issue. I also reject their argument that the President's conduct does not rise to the level of impeachable offenses.

I believe the President's conduct, however it is ultimately labeled, constitutes absolutely unacceptable behavior on the part of the President of the United States, the Nation's chief law enforcement officer who is constitutionally charged to "faithfully execute the laws," and who, by word and deed, sets an example for every citizen.

In finding the President guilty on both articles of impeachment, I believe the constitutional consequence of removal from office is warranted in order to uphold for future generations:

The integrity, honor, and trust which are indispensable to the moral authority of the Presidency;

The sanctity of the oath which every citizen must take in any legal proceeding to tell "the truth, the whole truth, and nothing but the truth;" and

The viability of our judicial system, the rule of law, and the principle of "equal justice under law."

Holding public office is a special privilege and I am continually grateful to the people of Oklahoma for the opportunity to serve in the U.S. Senate.

During the past weeks and months, I have received thousands of letters, e-mails, faxes, phone calls and other communications relative to the impeachment trial and all of the subject matters surrounding it. Many have expressed strongly held views on one side or the other, often urging me to vote in accord with their wishes and thinking. My overworked staff and I have done our best to digest and respond to these inquiries and comments as best we could. To those who may have not yet received a personal response, I wish to express my appreciation for sharing your thoughts, your ideas, and your concerns.

Whether you agree or disagree, I want you to know that my votes for conviction on the two articles of impeachment represent my best judgment, based on my analysis of the facts, the law, the Constitution and what I believe is best for our country. They do not represent the results of any poll or political calculation about what may be popular, either in Oklahoma or elsewhere.

I have viewed the trial as a serious constitutional duty and have listened and deliberated with profound sense of history and patriotism. I have sought to respect the process and preserve for future generations those wise procedural precedents, including the rule of law, that have served this Nation so well for over 200 years.

I have stated my views and I accept the result of the trial. I harbor no personal bitterness or hatred toward the President. It is time to look to the future. I hope all of us on all sides of these issues can unite in a prayer for the future of our country and for the ideals of freedom and justice it stands for in the world. God Bless America.

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. LEAHY. Mr. Chief Justice, no matter how each of us viewed the evidence in this case and no matter how each of us voted, we all share common relief that the impeachment trial of William Jefferson Clinton is concluding. In many respects, this was uncharted territory for us. We all felt the weight of history and precedent as we made our decisions on how to proceed.

With this in mind, the procedures developed and followed for the three depositions taken during the course of this trial should be made a part of the record of this impeachment trial. Unfortunately, the complete depositions were not introduced into evidence and made a part of the Senate trial record until after the vote on the articles themselves. Instead, at the request of the House managers, the only parts introduced into evidence before then were those "from the point that each witness is sworn to testify under oath to the end of any direct response to the last question posed by a party." (CONGRESSIONAL RECORD S1209, Jan. 4, 1999.)

I served as one of the six presiding officers at the depositions and attended all of them. In particular, I wish to thank Senators DODD and EDWARDS for serving with me, and Senator DEWINE with whom I jointly presided.

The decisions made during those depositions may provide guidance in the future should any other Senate be confronted with challenges similar to those that we have confronted. For that reason, I have described below the manner in which we reached our decisions and summarize the issues we resolved both before and during the depositions of Monica S. Lewinsky, Vernon Jordan, and Sidney Blumenthal.

I thank Thomas Griffith, Morgan Frankel and Chris Bryant in the Senate legal counsel's office for their assistance during the depositions and in preparing this summary of the rules and procedures.

I ask unanimous consent that this summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF RULINGS AND PROCEDURES OF THE PRESIDING OFFICERS DURING DEPOSITIONS IN SENATE IMPEACHMENT TRIAL

A. THE PROCEDURES

Selection. An equal number of Presiding Officers from each party were selected by the Minority and Majority Leaders.

Presiding. One Presiding Officer from each party presided jointly over each deposition at all times. The Presiding Officers rotated from deposition to deposition and the Democratic Presiding Officers chose to rotate during the deposition of Ms. Lewinsky, with Senator Leahy presiding over the first part and Senator Edwards presiding over the latter part of that deposition.

Attendance. All Presiding Officers were permitted to attend each deposition in order to provide continuity in the proceedings and ensure familiarity with both substantive and procedural decisions made in each deposition.

Consultation. All Presiding Officers present, whether or not actually presiding over a specific deposition, were invited to and did participate in discussions among Presiding Officers about certain rulings.

Opening Script. The first Presiding Officer to speak was from the majority party. He used an opening script that summarized Senate Resolution 30 authorizing the

depositions and set forth the ground rules for the timing of lunch and other breaks, the overall time allotted for the deposition, the scope of the examination, basic guidelines for objections, an explanation of the confidentiality requirements, and the oath required to be administered to the witness. (Lewinsky Depo. Tr., pp. 5–8). Senator DeWine reiterated the confidentiality requirement at the close of the Lewinsky deposition. (Id., p. 174, ln. 10—p. 175, ln. 7).

Senator Leahy made an opening statement at the Lewinsky deposition to advise the witness of her rights, including that she could correct the transcript, was free to consult with her attorneys, and notified her of the criminal liability she risked if she failed to tell the truth. (Lewinsky Depo. Tr., pp. 9–11).

Senator Dodd stressed the confidentiality requirement before the Jordan deposition (Jordan Depo. Tr., p. 9, lns. 6–13).

Senator Edwards stressed the confidentiality requirement again before the Blumenthal deposition (Blumenthal Depo. Tr., p. 8, lns. 8–10).

Oath. The Presiding Officer from the majority party administered the oath to the witness.

Advise of Rights. Senator Leahy in his opening remarks at the Lewinsky deposition informed the witness that should she fail to tell the truth, she would risk violating a federal law (18 U.S.C. Section 1001), prohibiting a person from making any materially false statement in any investigation or review by Congress (Lewinsky Depo. Tr., p. 9, Ins. 4–13).

Breaks. Senator DeWine called for 5-minute breaks on the hour, and Senator Leahy made clear that the witness should just ask should she want a break. At the conclusion of each break, Senator DeWine informed counsel of the time remaining for questioning. (See, e.g., 145 Cong. Rec. S1218, S1222 (Lewinsky)). Senator Thompson did likewise. (Id. at S1233, S1238 (Jordan)). Senator Specter also called for 5-minute breaks on the hour. (Id. at S1249, S1253; Blumenthal Depo. Tr., p. 86, Ins. 6–7, 15). Senators Thompson and Dodd called for a lunch break, even though Mr. Jordan asked to proceed through lunch. (145 Cong. Rec. S1243). Brief breaks were also taken when required to change the tapes, see, e.g., id. at S1227, and during a power outage in the Jordan deposition. (Id. at S1234).

Reserving Time for Re-direct and Re-Cross Examinations. The parties were allowed to reserve time out of their four hours for re-direct and re-cross examination, with the understanding, however, that should the President's counsel fail to cross-examine, the Managers would have no opportunity to re-direct. Likewise, should the Managers fail to re-direct following cross-examination, the President's counsel would have no opportunity to re-cross.

During the Lewinsky deposition, the President's counsel chose to ask no questions, which meant that the Managers could ask no further questions. (Lewinsky Depo. Tr., p. 173, Ins. 16–17). The President's counsel made a short apology to the witness on behalf of the President, to which no objection was made. (Id., p. 173, Ins. 18–20).

During the Jordan deposition, the President's counsel asked very few questions on cross-examination, and the Managers asked no questions on re-direct examination. (145 Cong. Rec. S1245).

During the Blumethal deposition, the President's counsel asked no questions on cross-examination, but the House Managers were allowed to ask questions on a limited scope of inquiry that had been the subject of an earlier objection raised by the President's counsel. (Id. at S1253). Senators Specter and Edwards had ruled that the Managers could develop this line of inquiry at the conclusion of the deposition so that should the objection be sustained, that portion of the deposition could be easily excised (145 Cong. Rec. S1253). Following the Managers' last line of inquiry, the President's counsel was given the opportunity to ask, but had no questions for Mr. Blumenthal. (Blumenthal Depo. Tr., p. 86, Ins. 15–18).

Recalling the Witness. At the completion of the Managers' direct examination of Ms. Lewinsky, Senator Edwards asked Manager Bryant whether he had concluded his direct examination. Manager Bryant said he had. When the President's counsel determined not to ask any questions, Senators DeWine and Edwards ruled that the deposition was completed, meaning that the deponent could not be compelled to testify again unless the Senate voted to issue another subpoena. (Lewinsky Depo. Tr., p. 173, In. 24). In so doing, they expressly rejected a request from Managers Bryant and Rogan to retain jurisdiction over the witness should she be called as a witness before the Senate. (*Id.,* p. 176, lns. 4–8).

Off the Record. The Presiding Officers determined when to go off the record. For example, Senator DeWine asked to go off the record when conferring on a ruling with Senator Leahy. (145 Cong. Rec. S1219 (Lewinsky)). Senator Edwards also asked to go off the record to confer with Senator Specter on a ruling. (*Id.* at S1250 (Blumenthal)). The parties were also permitted to request that discussion take place

off the record. For example, upon Manager Bryant's request, Senators DeWine and Leahy allowed discussion to take place off the record. (*Id.* at S1229 (Lewinsky)). Similarly, upon President's Counsel's request, Senators Specter and Edwards allowed discussion to take place off the record. (*Id.* at S1253 (Blumenthal)).

Videotape. Senator Leahy advised Ms. Lewinsky at the outset for her deposition of how the videotape of the deposition might be used, including admitted into evidence in the impeachment trial and used in a way that it becomes public. (Lewinsky Depo. Tr., p. 10, lns. 10–12). Her attorney noted for the record that the witness objected to the videotaping of the deposition, and to any subsequent public release of the videotape of Ms. Lewinsky's testimony (*Id.* p. 12; lns. 19–22).

B. THE WITNESS

Counsel May Not Coach the Witness. Senator DeWine instructed Ms. Lewinsky's counsel not to coach or prompt the witness in her answers. He stated that she was free to ask for a break to confer with her counsel, but they should not whisper responses to her while a question was pending. (145 Cong. Rec. S1215).

Relying on Prior Grand Jury Testimony. Ms. Lewinsky objected to certain questions, answers to which were already in the record. After conferring, Senators DeWine and Leahy instructed Ms. Lewinsky to answer a Manager's question even though the question might have been covered in her grand jury testimony, though she "certainly can reference previous testimony if she wishes to do that." Senator Leahy particularly noted that there may be "some nuances different," and that she could "correct her testimony." (145 Cong. Rec. S1213).

Transcript Corrections. Senator Leahy made clear when he presided at the Lewinsky deposition that the witness would be given an opportunity to examine the transcript to make any necessary corrections. By letter dated February 2, 1999, her attorney provided a list of corrections to the deposition (145 Cong. Res. S1229).

C. OBJECTIONS TO QUESTIONS AND STATEMENTS

Procedures for Resolving Scope Objections. Section 204 of S. Res. 30 limited the examination of the witness to "the subject matters reflected in the Senate record." Prior to the Lewinsky deposition, Senators DeWine and Leahy determined that if objection was made to a question on the ground that it exceeded the scope of the Senate record, the proponent of the question would be allowed to identify where in the Senate record the subject matter of the question was reflected. If the proponent could satisfy the Presiding Officers that the subject matter of the question was reflected in the Senate record, the witness would be instructed to answer the question.

In the Blumenthal deposition, a scope objection arose about questions regarding White House strategy discussions of Kathleen Willey. (145 Cong. Rec. S1249). Senators Specter and Edwards decided to reserve that line of questioning until the end of the deposition. When the issue arose again, after consultation off the record, Senators Specter and Edwards decided that questions regarding Kathleen Willey were within the scope, but not questions regarding strategy sessions on any other women. (*Id.* at S1253). Senators Specter and Edwards also overruled Mr. Blumenthal's attorney's scope objection to another area of questions after Manager Graham had offered proof to support the scope of the question, and the attorney had withdrawn his objection. (*Id.* at S1251).

Limitation on Scope. While S. Res. 30 broadly defined the permissible scope of the deposition to cover subject matter reflected in the Senate record, the Managers were reminded of their representations to the Senate limiting the areas about which they would examine the witnesses. For example, Senator Leahy reminded Manager Bryant of his promise to the Senate that he would not ask Ms. Lewinsky about her explicit sexual relationship with the President. (145 Cong. Rec. 1213).

Objections by Counsel for the Witness. Senators DeWine and Leahy ruled that counsel for the witness were allowed to interpose objections to a question. (*Id.* at S1219 (Lewinsky)).

Answering the Question Subject to an Objection. Section 203 of S. Res. 30 required that "the witness shall answer" all questions unless asserting a "legally-recognized privilege, or constitutional right." Senators DeWine and Leahy noted all non-privilege objections and instructed the witness to answer questions subject to the objection. (*See, e.g.*, 145 Cong. Rec. S1221 (Lewinsky)). The attorney-client privilege was asserted by Ms. Lewinsky's counsel in response to one line of questioning. Senators DeWine and Leahy instructed Manager Bryant to postpone that line of questioning until after Ms. Lewinsky's counsel could determine whether prior grand jury testimony had waived the privilege for that subject matter. (*Id.* at S1223). Her counsel later withdrew the objection, and Manager Bryant resumed his line of questioning. (*Id.* at S1224).

When Manager Graham asked about Mr. Blumenthal's prior use of executive privilege, his attorney, Mr. McDaniel, objected that the question was misleading because Mr. Blumenthal had not raised the privilege, but the White House had. Senators Specter and Edwards overruled the objection, and asked Mr. Blumenthal to answer the question, which was rephrased. (*Id*. at S1249).

Compound or Ambiguous Questions. During the depositions, there were numerous objections that the questions were compound and/or ambiguous. In each instance, the Presiding Officers invited the manager to rephrase the question and allowed the questioning to proceed. (*See, e.g.*, *id.* at S1214–15 (Lewinsky), S1228 (Lewinsky), S1252 (Blumenthal)). At one point in the Blumenthal deposition, Senators Specter and Edwards ruled that Mr. Blumenthal could answer a question to which Mr. McDaniel objected as confusing, if the witness understood it. (*Id.* at S1250).

Open-ended Question. On cross-examination, Mr. Kendall asked Mr. Jordan if he had anything to add to the testimony he had given during his direct examination. That question drew an objection from Manager Hutchinson that it was too broad. Senator Thompson asked Mr. Kendall to rephrase the question, which he did. (*Id.* at S1245).

Witness Statement. At the conclusion of his examination, Mr. Jordan asked the Presiding Officers if he could make a statement. (Jordan Depo. Tr., p. 157, lnc. 6–7). Manager Hutchinson reserved the right to object if the statement exceeded the scope of the inquiry. (*Id.* at ln. 18). Mr. Jordan then offered a statement defending his integrity, which the Presiding Officers allowed. (*Id.* at ln. 24—p. 158, ln. 23). Manager Hutchinson did not assert an objection following the statement.

Leading Questions. Senator Thompson allowed Manager Hutchinson to ask a leading question of Mr. Jordan, since according to S. Res. 30 these witnesses were to be treated as adverse to the Managers. (145 Cong. Rec. S1238).

Questions Assuming Facts Not in Evidence. Senator Edwards, with Senator Specter's concurrence, sustained an objection to a Manager's question that contained premises and characterized events not in the record, and Manager Graham rephrased the question. (*Id.* S1252).

Speculation. Senators DeWine and Leahy asked Manager Bryant to rephrase questions after objection was made that the questions called for speculation about another person's state of mind. (*Id.* at S1219, S1221 (Lewinsky)). Senators Specter and Edwards asked Manager Graham to rephrase questions calling for Mr. Blumenthal's speculation about other's thoughts. (*Id.* at S1250, S1254).

D. USE OF EXHIBITS

Prior Production of Exhibits. Section 204 of S. Res. 30 requires "[t]he party taking a deposition . . . [to] present to the other party, at least 18 hours in advance of the deposition, copies of all exhibits which the deposing party intends to enter into the deposition." Following objection from the President's counsel that the Managers had failed to comply with this requirement and had largely supplied only general descriptions of exhibits without copies of specific documents, Senators DeWine and Leahy ruled that this provision required production to the witness, the other party, and the Presiding Officers of a copy of any document that would be used during the deposition. A general description of the exhibit document did not comply with the resolution. (Lewinsky Depo. Tr., p. 14, ln. 16—p. 19, ln. 5). The President's counsel lodged an objection to the tardy production of deposition exhibits by the Managers prior to the Lewinsky deposition and again prior to the Jordan deposition, but agreed to proceed after the Presiding Officers assured them they would have an adequate opportunity to review any documents used in the deposition. (Jordan Depo. Tr., p. 13, lns. 22–25). Senators Thompson and Dodd put the Managers on notice that failure to comply with the Presiding Officers' ruling would preclude the use of documents not provided in a timely fashion at the Blumenthal deposition scheduled for the next day. (*Id.* at p. 13, ln. 22–p. 14, lns. 6, 16–23).

Referring to Exhibits. Senators DeWine and Leahy ruled that exhibits should be referred to according to their location in the Senate record. (145 Cong. Rec. S1214, S1226 (Lewinsky)). Senator Thompson reiterated that ruling in the Jordan deposition. (*Id.* at S1236). Senator Thompson also ruled that grand jury exhibits in the Senate record used as deposition exhibits should not be referred to by their grand jury exhibit number, but rather by an exhibit number for this impeachment trial deposition. (*Id.*) Senators Thompson and Dodd numbered the exhibits as they were presented, rather than as they were admitted into evidence. (*Id.* at S1245).

Admitting Exhibits into Evidence. S. Res. 16, the agreement which emerged from the Senate's January 8, 1999 bipartisan caucus in the Old Senate Chamber, provides that the material the House filed with the Senate on January 13, 1999 "will be admitted into evidence." Those materials were printed, bound, and distributed to

Senators. (*See* S. Doc. No. 106–3, vols. I–XXIV (1999)). Thus, any documents in that Senate record were already admitted into evidence by the time the depositions were taken. S. Res. 30, which governs the conduct of these depositions, provides that "[n]o exhibits outside of the Senate record shall be employed, except for articles and materials in the press, including electronic media." When a party used a document during a deposition that was in the Senate record, there was no need to seek admission of that document into evidence. The only non-record documents that could be used in these depositions were "articles and materials in the press, including electronic media." A party needed to seek the admission of those documents into evidence before they could become part of the record.

During the Jordan deposition, Manager Hutchinson attempted to use as an exhibit a summary of telephone records, a redacted form of which was in the Senate record. Mr. Kendall objected to the use of the exhibit because it had not been properly authenticated. Senators Thompson and Dodd sustained the objection. (145 Cong. Rec. S1241).

After the Manager's examination of Mr. Blumenthal, the President's counsel, Lanny Breuer, presented various news articles that were admitted into evidence. (Blumenthal Depo. Tr., p. 81, ln. 8–p. 82, ln. 2). Manager Graham also submitted articles into evidence, including those not referred to by Mr. Blumenthal, and they were admitted after Mr. Breuer withdrew his objection that no reference had been made to the articles during the examination. (*Id.* at p. 82, lns. 16–25, p. 83, ln. 15–p. 85, ln. 25).

[From the Congressional Record—Senate, February 12, 1999]

STATEMENT OF SENATOR OLYMPIA J. SNOWE

Ms. SNOWE. Mr. Chief Justice, distinguished colleagues, let me begin by expressing my appreciation to the Chief Justice for his wisdom, for his infinite patience, and for conferring upon this body the judicial temperament envisioned by the framers.

I would also like to commend both the Senate majority and minority leaders for upholding the dignity of this body, by preserving judiciousness and fairness, and maintaining bipartisanship and civility.

Colleagues, we have arrived at a juncture in our public lives that will largely define our place before the judgment of history, and I think it will be said that justice and the Constitution were well served.

Indeed, the consequences of our decision are manifest in the words of Alexander Hamilton, who wrote of "the awful discretion which a court of impeachment must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community."

Those words should weigh heavily upon us. But while the gravity of our task is humbling, the genius of our Constitution is ennobling; for we deliberate not under the imposing shadow cast by the exceptional men who framed this Nation, but in the illuminating light of their wisdom.

Impeachment was designed by the framers to be a circuit breaker to protect the Republic when "checks and balances" would not contain the darker vagaries of human nature. Impeachment empowers the Senate—under the most extraordinary of circumstances—to step outside its legislative role, reach into the executive branch, and remove a popularly elected President.

Impeachment was not, however, devised as an adjunct or independent arm of prosecution. It is not for the U.S. Senate to find solely whether the President committed statutory violations. Rather, we have a larger question—whether there is evidence that per-

suades us, in my view beyond a reasonable doubt, that the President's offenses constitute high crimes and misdemeanors that require his removal.

Here is the precise point of our challenge—to give particular meaning to the elusive phrase, "high crimes and misdemeanors." This task is critical, because impeachment is not so much a definition, as it is a judgment in a particular case—a judgment based not upon an exact or universal moral standard—but upon a contemporary and historical assessment of interest and need.

"High crimes and misdemeanors" speak to offenses that go to the heart of matters of governance, social authority, and institutional power—offenses that, in Hamilton's words, "relate chiefly to injuries done immediately to the society itself."

These crimes must be of such magnitude that the American people need protection, not by the traditional means of civil or criminal law—but by the extraordinary act of removing their duly elected President.

For removal is not intended simply to be a remedy; it is intended to be the remedy. The only remedy by which the people—whose core interests are meaningfully threatened by the President's conduct—can be effectively protected.

This, to me, is what President Woodrow Wilson meant when he referred to "nothing short of the grossest offenses against the plain law of the land." This, to me, is what framer George Mason meant when he emphasized "great and dangerous offenses."

So in determining whether this President has committed a "great and dangerous offense" requiring removal, we must first weigh all of the credible evidence to identify which acts were actually committed. Then, we must assess the gravity or degree of the misconduct. This process requires that we review the acts from their origin and the circumstances in their totality.

The allegations in article I do not paint a pretty picture. Indeed, we are all struggling with having to reconcile the President's lowly conduct with the Constitution's high standards. We should all be concerned with the minimal threshold that he has set and the poor example he has created for leadership in this country.

The President himself admits he gave evasive and incomplete testimony. He admits he worked hard to evade the truth. He admits he misled advisers, Congress, and the Nation. And he looked all of America in the eye—wagging his finger in mock moral indignation when he did it.

The fact is, the truth is not our servant. The truth does not exist to be summoned only when expedient. I find his attempts to contort the truth profoundly disturbing. A President should inspire our most noble aspirations. Unfortunately, he has fueled our darkest cynicisms.

I resent the ordeal he has put this country through—and we should make no mistake about it—whatever else may be said, we are here today because of the President's actions. I resent the shadow he has cast on what should be—and I feel still is—an honorable profession: public service. And I think all of us who take our oaths to heart should resent it.

Finally, as a woman who has fought long and hard for sexual harassment laws, I resent that the President has undermined our

progress. No matter how consensual this relationship was, it involved a man in a position of tremendous power, with authority over a 21-year-old female subordinate, in the workplace—and not just any workplace. He has shaken the principles of these laws to their core and it saddens me deeply.

But as I work my way through my distaste, my dismay, and my disappointment, I return to the discipline that the Constitution imposes upon us as triers of fact. My job here is to review the evidence, and to measure that evidence against my standard of proof, and the constitutional standard of high crimes and misdemeanors.

So let's look at the evidence. Article I does not go to perjury about the underlying relationship—that charge was dismissed by the House. Instead, the article before us alleges perjury based on statements about statements about conduct. Unfortunately, what this comes down to is a case of "perjury once removed"—an inherently tenuous charge.

As triers of fact, we are asked under article I not to find whether the President lied, but whether he committed the specifically defined act of perjury. Here, the law is clear that there must be proof that an untruth was told; that it was told willfully; and that it was told about a subject matter material to the case. These are the hard rules of the statute.

In this instance, article I alleges perjury in statements the President made explaining the nature and details of the relationship. Significantly, the underlying subject matter of most of these statements was ruled irrelevant and inadmissable in the underlying civil case that was itself dismissed and settled. To me, these facts undermine the materiality of these statements.

Article I also alleges perjury in the President's statements explaining his concealment of that relationship. Here, I find insufficient evidence of the requisite untruth and the requisite intent. Given, again, that we are talking here about "perjury once removed," I cannot conclude that the President is guilty on article I.

As I look at article II, I have similar concerns and conflicts. Are there any among us who can look at the disturbing pattern that has been laid out for us and not be deeply troubled?

Just look at the allegations. The President may have influenced the filing of an affidavit. The President may have initiated the concealment of potential evidence. And the President may have accelerated a job search, in hopes of influencing a witness. But for all of this, there is only circumstantial evidence. Despite a 64,000-page record and countless hours of argument and testimony, there is no direct evidence supporting any of these allegations.

To the contrary, where there is direct evidence, the testimony is against the allegations. Indeed, not one witness with firsthand knowledge has come forward since the beginning of this matter to corroborate the charges. So while I can draw inferences from the evidence, I cannot draw conclusions beyond a reasonable doubt.

The framers clearly prescribed caution when measuring high crimes, and such caution is all the more important when a case rests on purely circumstantial evidence. Mindful of this caution, I still find that one allegation stands out from the rest; the President's attempt to influence the potential testimony of his personal assistant.

Let's look at the facts. In the President's civil deposition, the President suggested, at least three times, that the attorneys should ask questions of his personal assistant. At the end of the deposition, the judge reminded him of the confidentiality order not to discuss the testimony with others.

Within 2½ hours, the President called his personal assistant to arrange a rare Sunday meeting. At that meeting, the President disclosed to her the contents of his deposition. In a manner that all but reveals the President's motives, he included in his discussion with her false statements about the circumstances of his relationship. Indeed, she would later testify that she believed the President sought her agreement with those statements he was posing.

Consider this critical exchange in the testimony of the President's assistant:

She was asked, "Would it be fair to say then—based on the way he stated it and the demeanor he was using at the time he stated it to you—that he wished you to agree to that statement?" The President's assistant nodded. She was then asked, "And you're nodding your head yes, is that correct?" And she answered, "That's correct."

And he again violated the gag order when he revisited these statements with her several days later.

As an experienced lawyer, the President knew that, by the force of his own testimony, he made his assistant a potential witness.

As a former State attorney general, the President knew he was violating the confidentiality order when he spoke with her.

As a defendant who repeatedly named his assistant, the President knew that his assistant would be subpoenaed.

And she was subpoenaed just 3 days later. But even if she hadn't, the President did not need absolute or direct knowledge that his assistant would testify. Under the law of obstruction, which, unlike perjury, does not expressly require materiality, he only had to know that she could offer relevant facts.

Make no mistake about it, I find the President's behavior deplorable and indefensible.

If I were a supporter, I would abandon him. If I were a newspaper editor, I would denounce him. If I were a historian, I would condemn him. If I were a criminal prosecutor, I would charge him. If I were a grand juror, I would indict him. And if I were a juror in a standard criminal case, I would convict him of attempting to unlawfully influence a potential witness under title 18 of the United States Code.

However, I stand here today as a U.S. Senator, in an impeachment trial, with but one decision—does the President's misconduct, even if deplorable, represent such an egregious and immediate threat to the very structure of our government that the Constitution requires his removal?

To answer this broad question, we need to ask several finer questions:

Do the people believe their liberties are so threatened that he should not serve his remaining 23 months? Is the President's violation on par with treason and bribery? What are the inescapable and unprecedented effects of removing a duly elected President? And can the President's wrongdoing be more effectively remedied

by criminal prosecution, in a standard court of law, after he leaves office?

These are the questions which drive our consideration of the "gravity" and "degree" of the President's conduct. To this end, I return to the words of another Maine Senator, William Pitt Fessenden, who during the Andrew Johnson trial said that removal must "be exercised with extreme caution" and in "extreme cases." It must, he said, "address itself to the country and the civilized world as a measure justly called for by the gravity of the crime. . . ."

In this case, I understand how reasonable minds could differ, for I have struggled long and hard with my own decision.

But the Constitution tempers our passion and measures our judgment. The Constitution requires each of us to determine not just whether the President violated a statute. For had the framers intended the offenses charged in this case to require removal in any and all circumstances, they would have specifically included them in the impeachment provisions of the Constitution.

Because they did not, we are compelled to ask ourselves whether the nature and circumstances of his conduct are such that we have no choice but to inflict upon him what one of the House managers called "the political equivalent of the death penalty."

If I could conclude that this President's conduct is of that nature, I would vote to remove him. Because if there is one thing I've learned throughout my 25 years in elective office, it is that the really tough decisions leave us with but one choice—doing what we know to be right and true.

In this instance, among the seven allegations charged in article II, I have only been persuaded beyond a reasonable doubt that the President committed one of them. After due consideration of all the factual circumstances relating to this one finding, and the constitutional dictates and implications of this matter as a whole, I am persuaded that the President's wrongdoing can and should be effectively addressed by the additional remedy expressly provided by the framers in the Constitution—namely, trial before a standard criminal court. And I am further persuaded that future Presidents, and future generations can be effectively deterred from such wrongdoing by this impeachment and a potential prosecution.

The President's behavior has damaged the Office of the Presidency, the Nation, and everyone involved in this matter. There are only two potential victims left—the Senate and the Constitution—and I am firmly resolved to allow neither to join the ranks of the aggrieved.

From the day I swore my oath of impartiality, I determined that the only way I could approach this case was to ask myself one question, "If I were the deciding vote in this case, could I remove this President under these circumstances?" The answer, I have concluded, is no—and therefore, I will vote against both articles of impeachment.

Mr. Chief Justice, I came to this process with an open notebook and an open mind, determined to honor my oath to do impartial justice and serve the best interests of the Presidency, the American people, and the Nation. I stand confident that in doing so, my manner has been impartial and my judgment has been measured.

Therefore, in my mind and in my heart, I believe to a moral certainty that my verdict is just.

As men and women of honor, that is the highest expectation to which we can aspire. For we are writing history with indelible ink, but imperfect pens.

In the end, when future generations dust off the record of what we have done here, may they say we validated the framers' faith in the Senate. May they say we reached within ourselves to discover our most noble intentions. And may they say we achieved a conclusion worthy not just of our time, but of all time.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR DON NICKLES

Mr. NICKLES. Mr. Chief Justice, the U.S. Senate has nearly concluded only the second impeachment trial of a President in history. We fulfilled our promise to conclude the process in an expeditious and responsible manner in accordance to the Constitution.

Americans understand there is really only one person to blame for this ordeal: Bill Clinton. He could have prevented the entire impeachment process if he had chosen the truth instead of lies and obstruction and the well-being of the Nation instead of his own personal and political needs. He squandered his opportunity to provide trustworthy leadership on the important issues facing America.

The President's actions left the Attorney General with no choice but to ask the independent counsel to investigate. They left the independent counsel with no choice but to refer charges to the House of Representatives. They left the House with no choice but to impeach him.

The day Senators took that impeachment oath was one of the most serious, solemn times that I have experienced during my 18 years in the Senate. Our oath was to do impartial justice, and that oath was in my mind as I weighed the facts, the law, and the Constitution.

The President took an oath, too. He took an oath to tell the truth, the whole truth, and nothing but the truth.

I believe that clear and convincing evidence presented to the Senate demonstrates that President Clinton did indeed commit multiple acts of perjury, as alleged in article I, and multiple acts of obstruction of justice, as alleged in article II, and deserves to be found guilty on both articles of impeachment.

The President made a serious, serious mistake when he went to his Paula Jones deposition, raised his right hand and swore to tell the truth, the whole truth, and nothing but the truth, and then lied repeatedly. Following that, he committed more acts of obstruction and more lies, culminating in his testimony before the grand jury where he lied time and time again. He had obstructed justice and he had perjured himself in the Jones case, and he wanted to be consistent, so he perjured himself again.

One of many specifics, concerning his "conversations" with Betty Currie: "I was trying to get the facts down. I was trying to understand what the facts were." He wasn't trying to understand the facts. He knew what the facts were. He was trying to mislead a

witness, and then he lied under oath after being begged, "Don't do it again, Mr. President."

I believe the public deserves, and the Constitution permits, that the Senate demand a high standard of conduct in its President. Rather than find a loophole to excuse the President's behavior, the Senate ought to find him guilty.

The President's counsel have attempted to frame the question before the Senate as "[a]re we at that horrific moment in our history when our Union could be preserved only by taking the step that the framers saw as the last resort?"[1] His lawyers are asking the wrong question. In fact, as Manager CANADY pointed out, under this standard even the deeds of Richard Nixon may not have been worthy of impeachment.[2] The proper question is not whether America would survive President Clinton remaining in office: that answer is yes. The proper question before the Senate is whether, knowing what we now know about his conduct, America should have to do so.

Another of the President's lawyers argued that "[i]f you convict and remove President Clinton on the basis of these allegations, no President will ever be safe from impeachment again[.]"[3] I, for one, have a little more confidence that our future leaders will not commit felonies, but if a future President commits the same crimes as President Clinton, I hope that President will face the same constitutional response.

In fact, one familiar lawyer recognized that there is "no question that an admission of making false statements to government officials and interfering with the FBI is an impeachable offense."[4] That lawyer was William Clinton, speaking in 1974.

The President's defenders have argued that his errors were "private acts" which are irrelevant to the constitutional standards of public behavior. But this was not about adultery. These charges would be just as valid even if he were never married. Let's also consider a few other facts.

The President utilized his secretary to conceal evidence;

The President went out of his way to lie to his most senior aides, knowing they would repeat those lies to the grand jury;

The President supervised a massive and coordinated effort to have his staff, on government time, repeatedly lie to the public on his behalf;

The President asserted one of his most precious powers, that of executive privilege, to keep government employees from cooperating with a Federal grand jury; and

There is evidence that official White House personnel attempted to smear Ms. Lewinsky and other witnesses to bolster his bogus defense.

If this conduct is so private, why has the President dragged so many public servants into his web of deceit and lies?

If the Senate were going to pass a censure resolution, perhaps it should include language rebuking his private behavior which even his staunchest defenders have recognized as reprehensible,

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[1] 145 Cong. Rec. S495 (January 19, 1999) (statement of counsel Ruff).
[2] 145 Cong. Rec. S963 (January 20, 1999) (statement of Manager Canady).
[3] 145 Cong. Rec. S823 (January 20, 1999) (statement of counsel Craig).
[4] Arkansas Democrat, August 6, 1974.

reckless, and indefensible. However, we are sitting not as a court of morality, but as a Court of Impeachment which must decide whether the rule of law, as Manager HYDE so eloquently explained, is a value so worthy of protection that it requires removal of a twice-elected President.[5]

Even more importantly, the President's conduct was not simply a personal matter, but rather an attack on our system of government. Our system of justice, both civil and criminal, would collapse if lying under oath was tolerated, tampering with witness' testimony was permitted or hiding of evidence was customary. Think of all of the plaintiffs, defendants, and witnesses who are involved in difficult or embarrassing situations involving bad investments, physical altercations, substance abuse, or adultery. How can we expect all of them to tell the truth, produce the evidence, and abide by society's legal standards about these matters when our President refused to do so?

Recognizing that the President still may face the criminal justice system, I believe it is entirely appropriate for the Senate to consider how our judicial system reacts to perjury. Remember the 1998 quote from a Federal judge which Manager BUYER recounted:

> [Congress does not] want people lying to grand juries. They particularly don't want people lying to grand juries about criminal offenses. They particularly don't want people lying to grand juries about criminal offenses that are being investigated. They don't like that. And Congress has said we as a people are going to tell you if you do that, you're going to jail and you're going to jail for a long time. And if you don't get the message, we'll send you to jail again. Maybe others will. But we're not going to have people coming to grand juries and telling lies because of their children or their mothers or fathers or themselves. It's just not acceptable. The system can't work that way.[6]

Of all of the powers trusted to the President, possibly the most important is his role as Commander in Chief. His ability to lead the military in times of war, and during every day of preparation, training, and planning which precedes violent conflict, depends in large part in the trust and confidence he can inspire in the approximately 1.2 million men and women he commands. These men and women are subject to the Uniform Code of Military Justice: the President should be grateful he is not, for he likely would be facing court-martial for his actions. At a minimum, he likely would be found guilty of the following offenses:

False official statements—article 107;
Perjury—article 131;
Conduct unbecoming an officer and gentleman—article 133;
False swearing—article 134;
Obstruction of justice—article 134; and
Subornation of perjury—article 134.

As Manager BUYER reminded us:

> In every warship, every squadbay, and every headquarters building throughout the U.S. military, those of you who have traveled to military bases have seen the picture of the Commander in Chief that hangs in the apex of the pyramid that is the military chain of command. You should also know that all over the world military personnel look at the current picture and know that, if accused of the same

[5] *See* Cong. Rec. S299 (January 16, 1999) (statement of Manager Hyde).
[6] 145 Cong. Rec. S283 (January 16, 1999) (statement of Manager Buyer).

offenses as their Commander in Chief, they would no longer be deserving of the privilege of serving in the military.[7]

We all remember the publicity surrounding the case of Kelly Flynn, forced to resign from the Air Force for adultery and false statements. But there are many others, including the pending case of Air Force Captain Joseph Belli. Captain Belli is currently awaiting trial, and faces up to 27 years in military prison, for having an adulterous affair with a female airman on the base at Diego Garcia, then asking both his wife and his lover to lie about it. Although Captain Belli asked to resign and although his wife asked that the charges, which she first raised, be dropped, the prosecution goes on. What do you think Captain Belli would think of an acquittal of President Clinton?

One of the bedrock principles of our system of justice is stare decisis, that is following precedent. One question before us is whether making false statements under oath merits conviction and removal. The Senate has clear and recent precedent that answers this exact question. In 1986, Judge Harry Claiborne was convicted by votes of 90–7 and 89–8 for making false statements under oath on his tax returns. In 1989, Judge Walter Nixon was convicted by votes of 89–8 and 78–19 for making false statements to a Federal grand jury. Also in 1989, Judge Alcee Hastings was convicted by a votes of 68–27, 69–26, 67–28, 67–28, 69–26, 68–27, and 70–25 for making false statements under oath. The Senate has spoken decisively, repeatedly, and recently on this question: making false statements under oath is an offense worthy of impeachment and conviction.

As Manager HYDE noted, "This country can survive with a few bad judges, a few corrupt judges; we can make it; but a corrupt President, survival is a little tougher there."[8] Legal commentator Stuart Taylor phrased it well: "While removing him would be uniquely traumatic, his alleged crimes . . . are uniquely visible, and thus uniquely menacing to the rule of law, to trust in government, and to the national culture."[9]

Moreover, we know what the founders thought of perjury: the very first Congress enacted "An Act for the Punishment of Certain Crimes Against the United States" which made perjury a Federal crime. Rather than creating a lower standard of conduct for the President, I believe the Senate should hold the President to the same or even a higher standard.

We should ask the President, if he discovered that a person he was considering for a judicial nomination had committed the acts which have been proven in this case, would he still nominate that individual? I think we know the answer.

I believe the evidence shows a pattern of perjury which deserves conviction. In describing how the lies were not few in number or in importance, Manager MCCOLLUM captured the essence of the President's grand jury testimony: "This is about a pattern. This is about a lot of lies."[10]

In the weeks leading up to the President's grand jury testimony, Americans of all political persuasions offered unsolicited advice to

[7] 145 Cong. Rec. S286 (January 16, 1999) (statement of Manager Buyer).
[8] 145 Cong. Rec. S887 (January 22, 1999) (statement of Manager Hyde).
[9] Legal Times, January 18, 1999, at 26.
[10] 145 Cong. Rec. S266 (January 15, 1999) (statement of Manager McCollum).

the President to "come clean" before the grand jury, to admit any embarrassing conduct, and, above all, to tell the truth. They advised him that testimony which was "evasive, incomplete, misleading—even maddening," as the President's own lawyer described his deposition testimony, would not suffice before the grand jury.[11] Rather than heed this advice, however, the President decided to ignore his oath "to tell the truth, the whole truth, and nothing but the truth," and instead, to paraphrase Manager ROGAN, decided to tell the evasive truth, the incomplete truth, and nothing but the misleading truth.[12]

It is true, as counsel for the President argued, that the President did make many admissions during his appearance which no doubt were painful: that he had had an affair with a subordinate employee not even half his age, and that he had misled the American people, his family, and aides. Sprinkled amidst these admissions, however, were numerous lies and half-truths. These statements were obviously under oath, they were material to the grand jury's investigation, and they were intentional. Thus, they constitute perjury. The claim by the President's counsel that "he told the truth, the whole truth, and nothing but the truth for 4 long hours" is complete nonsense.[13]

Simply put, the President decided that his personal and political needs were more important than the rights of the grand jury to receive truthful testimony or his obligation to comply with Federal law. For these statements, which deceived a legitimately constituted Federal grand jury investigating criminal conduct not only of the President, but of others, the President deserves to be convicted on article I.

For instance, I believe the President lied when he claimed his goal during the deposition "was to be truthful" and again when he said "I was determined to work through the minefield of this deposition without violating the law, and I believe I did."[14] No person who has read or seen the President's deposition can really believe that he was trying to be truthful.

For example, when asked during the deposition, "At any time have you and Monica Lewinsky ever been alone together in any room in the White House?" the President replied ". . . it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend."[15] No reasonable person could believe that his goal in responding this question was to be truthful. The President, a lawyer, a former law professor, and a former attorney general of his State, could not have believed that he had not violated the law when he answered questions in this manner.

I need to address briefly the defense argument that the Senate is forbidden from considering the Jones deposition because the specific article alleging perjury was defeated on the House floor—remember Ms. Seligman's claim that the deposition "answers are not

[11] House Serial 68, at 11.
[12] *See* 145 Cong. Rec. S879 (January 22, 1999) (statement of Manager Rogan).
[13] 145 Cong. Rec. S812 (January 20, 1999) (statement of counsel Craig).
[14] House Doc. 105–311, at 532.
[15] Clinton *Jones* deposition at 58.

before you and the managers' sleight of hand cannot now put them back into article I."[16]

On December 11, 1998, when the House Judiciary Committee considered the articles of impeachment against the President, subsection (2) of article I read exactly as it does today alleging perjury in the grand jury about the "prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him." No member of the committee offered a motion to strike or amend this provision. The subarticle remained unchanged when it was debated on the House floor. All 435 Members of the House were on notice that this section of article I clearly charged the President with lying before the grand jury about his Jones deposition testimony. The fact that a separate article of impeachment dealing solely with the deposition was defeated on the House floor has absolutely no impact on the contents of article I.

Moving to the remainder of article I, I believe the evidence tends to show that the President was lying when he stated to the grand jury that "I was not paying a great deal of attention to this exchange" when his attorney, Robert Bennett, argued for a lengthy period of time that the President should not have to answer questions about Monica Lewinsky because of her affidavit, known by the President to be false.[17] The videotape of the deposition clearly shows President Clinton staring directly at his attorney when these misrepresentations were made, and then closely following the back-and-forth between Bennett, Judge Wright, and Jones' counsel.

I also believe the evidence demonstrates clearly that the President perjured himself during his testimony concerning his relationship with Ms. Lewinsky.

Subsection (4) of article I concerns the President's grand jury testimony concerning the various allegations of obstruction of justice contained in article II. I discuss my views on the substantive obstruction counts below, but I also conclude that the President committed multiple acts of perjury in discussing and denying his role in these events. For those who argue that the allegations of perjury only deal with sex, I invite you to read the President's answers to the questions about the alleged obstruction: some defy common sense, most conflict with more credible accounts provided by other witnesses, and many are perjurious, false, and misleading.

The evidence concerning certain of the allegations of obstruction is strong and would meet the legal requirements of title 18 were this a criminal trial. While the White House defense would urge us to consider the President's "record on civil rights, on women's rights[,]"[18] I would urge all Senators to remember that it is easy to talk a good game, but when another American citizen sought to exercise her rights, the President played a different one. To use a phrase, the President wanted to win too badly.

For instance, the evidence that the President tampered with a potential witness, Betty Currie, is convincing. As Manager MCCOLLUM pointed out, Ms. Currie's testimony in this matter is undisputed.[19] Just hours after he fed the Jones lawyers numerous lies,

[16] 145 Cong. Rec. S969 (January 25, 1999) (statement of counsel Seligman).
[17] House Doc. 105–311, at 511.
[18] 145 Cong. Rec. S830 (January 20, 1999) (statement of counsel Mills).
[19] *See* 145 Cong. Rec. S994 (January 26, 1999) (statement of Manager McCollum).

the President called Currie and demanded that she come to the Oval Office on a Sunday. He then accosted her with a list of falsehoods, such as: "You were always there when she was there, right?"[20] The President clearly knew Currie was a potential witness in the Jones case, not only because he had mentioned her repeatedly during the deposition, but also because he knew that the Jones lawyers obviously knew there was some relationship between he and Lewinsky and that they would continue to follow that lead.

Even worse, according to Currie's testimony and evidence in the record, when it was known that the Office of Independent Counsel was investigating, the President saw Currie again and repeated his coaching. By this time, Currie was clearly a witness to a grand jury investigating Federal crimes. Both of these conversations constituted witness tampering under title 18 and warrant conviction.

Moreover, in attempting to explain away his crime during his appearance before the grand jury, the President clearly perjured himself. His answers, which included the hilarious claims that he was trying to "refresh my memory" and "I was trying to get the facts down. I was trying to understand what the facts were" are perjury.[21] The fact that Ms. Currie was willing to recount these encounters to the grand jury does not diminish in the slightest the fact that the President illegally tried to coach her.

But this episode of obstruction was only part of a continuing pattern. Clear circumstantial evidence proves that the President participated in a scheme to hide evidence under subpoena by Paula Jones. The evidence shows that Lewinsky suggested that she make sure that the many gifts the President had given her were not at her residence, specifically suggesting to the President that Betty Currie could hide them from the Jones attorneys. Lo and behold, hours later, Currie, having no idea that Lewinsky was under subpoena to turn over gifts, called Lewinsky after having seen the President at the White House and said something to the effect of "I know you have something for me or the President said you have something for me."[22] The two arranged to meet, Lewinsky sealed the gifts in a taped box, handed the box over to Currie, who hid it under her bed.

There are two explanations for how this obstruction happened. One, Betty Currie suddenly had a vision that she should call Lewinsky to see if she needed help in her plans to obstruct justice. Or two, the President communicated, explicitly or obliquely, that Currie should call Lewinsky to execute her scheme. Deciding which of these scenarios is more plausible is not difficult. Moreover, the idea, advanced by the President's defense, that he did not care if Lewinsky produced to the Jones attorneys all 24 gifts he had given her, is ridiculous. Can anybody really think that the Jones attorneys would have taken a look at the pile of gifts and said, Well, there are only 24 gifts—I guess there was nothing going on there?

I also believe Ms. Lewinsky's testimony that the President suggested to her that she could supply the Jones attorneys their longstanding "cover stories"—that she was delivering papers or visiting Currie when in fact she was coming to visit the President. The

[20] House Doc. 105–316, at 559.
[21] House Doc. 105–310 at 507–508, 583.
[22] 145 Cong. Doc. S1225 (February 4, 1999) (deposition of Monica Lewinsky).

President's counsel have done their best to confuse this issue by linking it with the events surrounding Ms. Lewinsky's affidavit. But her deposition testimony is clear that the President reminded her during a 2 a.m. phone call, after she was on the Jones witness list, that if she ended up testifying—that is, if the affidavit was unsuccessful—that she should use the cover stories they had developed:

Q: . . . did you talk about cover story that night (December 17, 1997)?
A: Yes, sir.
Q: And what was said?
A: Uh, I believe that, uh, the President said something—you can always say you were coming to see Betty (Currie) or bringing me papers.
Q: . . . You are sure he said that that night?
A: Yes.[23]

As the managers pointed out, this scheme, which was "not illegal in its inception—simply trying to keep the relationship private—did in fact deteriorate into illegality once it left the realm of private life and entered that of public obstruction."[24]

On the issue of making false statements to top aides, knowing these lies would be repeated to the grand jury, the President is guilty both of obstruction and perjury. The fact that the President was also lying to the American people is irrelevant to this charge. The facts are that the President was denying this workplace relationship, that he knew the independent counsel was attempting to prove it was true, and he knew his top aides working in his close proximity would be called before the grand jury to find out whether they had seen or heard of the relationship. The false information he passed to them, including much more than just false denials, clearly obstructed the grand jury's investigation.

I also believe the evidence concerning unusual job assistance provided to Monica Lewinsky through the President's close friend, Vernon Jordan, and the President's blatant failure to interrupt his attorney's unknowing attempt to utilize Ms. Lewinsky's false affidavit bolsters the managers' charges of obstruction.

The Senate has never faced the question whether obstruction of justice is an offense worthy of conviction and removal from office. Luckily, this is not a difficult question. No less than perjury, obstruction of justice and witness tampering interfere with the gathering of truthful evidence and testimony that is the lifeblood of our civil and criminal courts. Our Federal Sentencing Guidelines recognize the detrimental effects of these acts, providing for tougher sentences for obstruction than for general acts of bribery.

In conclusion, consider whether instead of lying and obstructing in the Jones case, the President had paid bribes to Lewinsky and Judge Wright. Would the President's defenders still claim that this was private conduct? No, they could not, and the effect of the perjury and obstruction is the same.

Throughout these proceedings, the President's counsel and defenders have cited his popularity as a new type of legal defense to the charges. Senator Bumpers said, "The people are saying 'Please don't protect us from this man.'"[25] In fact, I believe his popularity,

[23] 145 Cong. Rec. S1219 (February 4, 1999) (deposition of Monica Lewinsky).
[24] 145 Cong. Rec. S275 (January 15, 1999) (statement of Manager Barr).
[25] 145 Cong. Rec. S846 (January 21, 1999) (statement of counsel Bumpers).

largely a result of economic factors not of his making means the Senate should give even closer scrutiny to the charges. I would argue, as did Manager CANADY, that a President able to get away with crimes because of his popularity is the greatest danger to our system of government, exactly the type of danger that the framers envisioned when trusting the Senate with the power of removal.[26] Remember how Alexander Hamilton spoke of the Senate's role:

> Where else, than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation, to preserve unawed and uninfluenced the necessary impartiality between an individual accused, and the representatives of the people, his accusers?[27]

As Manager GRAHAM pointed out, a Senator voting to convict the President for his actions is placing a "burden on every future occupant" of the Office of the President to avoid this type of conduct.[28] Asking our Presidents to obey the law and to respect the judicial process are burdens that I am willing to place on future Presidents.

President Clinton is guilty of perjury. He is guilty of obstruction of justice. He must be removed from office.

The House and its managers admirably fulfilled their constitutional and moral responsibilities. I can say confidently that Senate Republicans kept their promises to conduct a fair and expeditious trial and to protect the Constitution. The just cause of impeachment is nearly over.

Congress will then be able to focus on its full-time job: securing a better quality of life for all Americans. During the coming months, Congress will move forward with an aggressive agenda to provide an across-the-board tax cut, improve educational opportunities for our children, strengthen our national security, and ensure a sound Social Security and retirement system that provides Americans with the best possible return on their investments.

I am anxious to roll up my sleeves, get to work, and make the most of the opportunities ahead in the 106th Congress.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR MARY L. LANDRIEU

Ms. LANDRIEU. Mr. Chief Justice, as I begin, as so many of my colleagues have, I would like to thank our leaders for their tremendous patience—TOM DASCHLE, for your steady hand, and TRENT LOTT, for your good sense of humor.

Before I get into the core of my remarks, I would like to say that this ordeal has been, indeed, trying for all of us, but I believe it has strengthened us individually and as a body. We have come to know each other far better. We have gained a deeper appreciation of our individual strengths and gifts. I am more than satisfied, particularly in listening to my colleague, OLYMPIA SNOWE, that this country is in good hands with the men and women here in this Chamber.

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[26] *See* 145 Cong. Rec. S295 (January 16, 1999) (statement of Manager Canady).

[27] 145 Cong. Rec. S296 (January 16, 1999) (statement of Manager Canady) (quoting The Federalist No. 65).

[28] 145 Cong. Rec. S289 (January 16, 1999) (statement of Manager Graham).

Besides gaining a deeper appreciation for each other and for the Senate itself, we have also shared a great history lesson. For some of us, it has been our first in-depth study of these portions of our history; for others, it has been a timely refresher course; and to one among us, Senator ROBERT C. BYRD, I trust a rewarding experience as your words and writings on this important constitutional question have brought calm and clarity to our deliberations.

So many excellent points have been made in these last days. I don't want you all to repeat this outside—and I know you can't—because people would say I am crazy, but I have enjoyed every single moment of these last 3 days. There has been a lot of talk about our Constitution and the framers' intent regarding the impeachment clause. Many have been mentioned. I will only venture to offer one that has to my knowledge not been mentioned yet because it strikes me as particularly timely, important and ironic. That is the argument of the anti-Federalist faction who fought vigorously for an impeachment provision because they believed according to Madison ". . . that the limitations of the period of service"—and they were speaking about an Executive—"was not sufficient security."

They believed that in creating a Federal Government it would quickly get out of control and out of step with the sentiments of the American people. Their fears were palpable. According to some scholars, as outlined in Senator BIDEN's brief, this charge of possible "corruption, intrigue, tyranny and arrogance" between elections by the Chief Executive was so strong that it was almost fatal to the ratification of the Constitution by the States.

It is, indeed, ironic that we are in the process of conducting an impeachment against a President that seems by all impartial and objective analysis—despite his personal failings—to be in step with the American people, in step with their wishes and their hopes for this country, in step with their ideas for a domestic and an international agenda.

The latest independent analysis by the New York Times and CNN published today shows that 70 percent of the American people—a clear majority—believe the President should not be removed from office. I know that people have rejected talk of analysis and polling. When I was writing this, I felt some hesitation of even bringing it up because I come from a family that wears as a badge of honor the ability to stand alone against great odds. In the 1950s, 1960s, and 1970s, as one of nine siblings born to parents who were civil rights leaders, it is the only way I knew. I grew up listening to my father tell stories about his lone vote against the Jim Crow laws in the Louisiana Legislature. I grew up thinking that was the right thing to do. I believe at this time it still is.

But as the Bible would imply, there is a time to lead and there is a time to listen. For those who are still struggling at this last hour with your decision, regardless of how strongly you might feel about what the President did, I respectfully suggest that you can find comfort in the wisdom of the people.

Should we make all of our decisions based on polls and public opinion surveys? Absolutely not. However, this particular situation is different. Let me point out two important distinctions.

One, this is not a regular issue. The people know a lot about this case. They have a clear high-tech, 20th century view of the currents and events shaping it. All of them: the good, the bad, and the ugly. It has been the most publicized and analyzed political/legal case of this century and perhaps all of history.

Two, this is the greatest and most admired democracy on the face of the Earth. As PATRICK MOYNIHAN so eloquently pointed out: One so rare and precious, it is truly a treasure. In such a democracy, the people's voices should count.

Thomas Jefferson said, "Democracy is cumbersome, slow and inefficient." Over the last 12 months, we can certainly attest to that. "But," he said, "in due time, the voice of the people will be heard and their latent wisdom will prevail."

As for me, I voted to dismiss both articles at the first appropriate opportunity. I did so after careful review of the facts, the evidence and a reading of the relevant parts of the Constitution and the other appropriate historical documentation. My colleague, OLYMPIA SNOWE, and others have eloquently gone through many of the details of the case, and I will not take time to repeat them now.

I concluded that the charges of perjury and obstruction of justice, while serious indeed, overlaid an immoral but not a criminal act against the state, one that is essentially private and not a public act. Therefore, in my judgment the charges did not rise to the level of high crimes and misdemeanors, a high constitutional bar which has served us exceedingly well over the last 223 years.

So today for those same reasons, and in respect for the people of this democracy, I will vote to acquit the President on both charges.

As I said in an earlier statement, which at this time I ask unanimous consent to have printed in the RECORD, this vote should not be interpreted as approval of the President's actions which were reckless, irresponsible and showed a serious lack of judgment. A sexual dalliance with a White House intern and the subsequent breach of the public trust will cast a deep shadow over his other notable accomplishments and will forever tarnish his Presidential legacy.

I cast this vote and find my comfort in a clear conscience, in the Constitution, and in the will of the people.

In closing, let me make one last appeal. Let us put forth a strong censure resolution. One that doesn't attempt to provide cover for either political party or to make us feel better or worse about our votes. We can all defend our votes, and certainly we will be called on to do so. Let us, rather, craft a resolution which could receive a majority support of both parties. The wording should condemn the President's actions in the strongest terms and call for a national reconciliation.

There being no objection, the statement was ordered printed in the RECORD, as follows:

UPHOLDING THE CONSTITUTION, BY SENATOR MARY L. LANDRIEU

Several weeks ago the Senate took up the somber constitutional task of sitting in judgment of a President in an impeachment trial. Throughout the trial, I have limited public comment to underscore the impartiality I have brought to this process. Both sides have now spoken and I have reviewed all of the evidence as required by the Constitution. My decision has been made: the actions of President Clinton, while wrong, indefensible and reckless, do not meet the constitutional standards for

removal from office. Therefore I have voted to dismiss the articles of impeachment against the President.

From the start, I have tried to focus on what the framers of the Constitution had in mind when they carefully crafted the impeachment clause. It is important to remember that for more than 100 years the colonies suffered under the thumb of the tyrannical kings of the English monarchy. A principal goal of the framers was to have a mechanism to protect the populace from corrupt and oppressive leaders.

In the Federalist Papers, Alexander Hamilton and James Madison argued that impeachment be used only for "distinctly political offenses against the state." Our founders were trying to guard against tyranny and oppression, and not personal actions no matter how reprehensible. More than 700 noted legal and historical scholars, both conservative and liberal, agree with this constitutional interpretation of the impeachment clause.

The founders were also rightly concerned that impeachment might be employed as a partisan tool to undermine, even destroy, high ranking government officials—especially the President. They worried a "powerful partisan majority" might misuse it for public gain. The House impeachment vote, which essentially fell along party lines, is troubling. Such partisanship was absent during the Watergate proceedings. At that time Republicans and Democrats on the House Judiciary Committee joined together to vote for impeachment because the evidence showed crimes were committed against the government.

I also voted against calling witnesses because it is clear that a complete and fair trial can and should be conducted on this voluminous and well-publicized record. Our Nation deserves to be spared this protracted spectacle, particularly at a time when public disillusionment of government is at an all-time high and issues like Social Security, education and international crises demand our immediate attention.

Critics of this position will somehow believe that President Clinton has avoided punishment. On that issue, let me make two points. First, the power of impeachment was never meant to punish the President, but to protect the Nation. Second, the President has already suffered by his reckless behavior and, unfortunately, so has his family. In addition, criminal charges could be brought against him once he leaves office, and he is still subject to civil charges. Worst of all, his inappropriate and reckless behavior and the subsequent breach of public trust will cast a permanent shadow over his other notable accomplishments and will forever tarnish his Presidential legacy.

In 1868, James G. Blaine voted to convict and remove Andrew Johnson, the only other President to be impeached. Twenty years later he said he had made a "bad mistake" and recanted. Upon further reflection he realized that the charges did not warrant the "chaos and confusion" of removing President Johnson from office. Likewise, these charges do not warrant the "chaos and confusion" that could occur should our last Presidential election be overturned.

At the conclusion of this trial, I plan to cosponsor a strong censure resolution of President Clinton concluding that his conduct in this matter has brought shame and dishonor to himself and the Office of the President. In my opinion, it would bring a sensible end to this regrettable chapter in American political history. Finally, the ultimate political judgments will be made by the people in future elections. And the lasting judgment will be made by the only One who can.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR BOB SMITH

Mr. SMITH of New Hampshire. Mr. Chief Justice, thank you very much. I would certainly give more than a penny for your thoughts on this matter. But I am afraid we will probably never know.

Mr. Chief Justice, I have been proud to be a U.S. Senator ever since that day over 8 years ago when I took the oath of office and my colleague, Senator BYRD, told me that I was the 1,794th person to serve in the U.S. Senate.

During my tenure in the Senate, I have learned to respect my colleagues even when I strongly disagree with them on the issues of the day. I have challenged colleagues on issues and maybe at times even criticized their votes. But I have never challenged a col-

league's motives and I never will. I respect each and every one of you and the high office you hold.

I consider it a great honor to serve in this body, and serve with some giants here—Senator HELMS, Senator THURMOND, Senator BYRD, to name a few.

I remember when I came to the floor of the Senate and signed that book as No. 1,794. Senator BYRD reminded me of the significance of that. I have never forgotten it.

I also sit at the desk of Daniel Webster. It is a constant reminder that I am just a temporary steward occupying this seat in the U.S. Senate. It is also a reminder that we will move on. But the Constitution will not move on. The Constitution will endure forever. Our role here in this proceeding is to preserve the Constitution and the Presidency. Yes—even if it means we have to remove the President.

Mr. Chief Justice, when the rollcall is called tomorrow, I will be voting guilty on both of the articles that are now before the Senate. It is clear that the Senate will not be finding President Clinton guilty on either article. But I just want to say regarding censure that my vote is my censure. I think anyone who votes to find him guilty does not need to be concerned about censure.

As I contemplate my vote, I am reminded of a prayer offered in 1947 by a former Chaplain of the Senate, Rev. Peter Marshall. Reverend Marshall prayed: "Our Father in Heaven . . . help us to see that it is better to fail in the cause that will ultimately succeed than to succeed in a cause that will ultimately fail."

I have faith that the cause in which I believe will ultimately prevail, because I believe that history will judge that President Clinton is, in fact, guilty of high crimes and misdemeanors that warrant his removal from office. I know others respectfully disagree. And believe me, I respect that disagreement.

Many of my colleagues have spoken on the instability a guilty verdict would cause for the Nation. We should never remove a President unless there is clear and present danger to the Nation, they say. With respect, colleagues, I submit to you that the double standard that we have set for our leader will ignite a cynicism directed against all of us. A cynicism is a clear and present danger to society.

With a not guilty verdict, you will tell the American people that perjury and obstruction of justice for the President are acceptable; that those who put their lives on the line for our Nation every day in our Armed Forces have a higher standard than the Commander in Chief; and that for everyone else in America who lose their jobs because of perjury and obstruction, that is not acceptable.

We reap what we sow. In my view, respectfully, history will judge us harshly for this. And I say that in great humbleness. It is my view. A not guilty verdict is a short-term victory for the President. It is a long-term defeat for truth, for honor, for integrity, for the Presidency, and, in my view, for the Constitution.

As Peter Marshall intimated in his prayer, with a not guilty verdict we have succeeded in a cause which I believe will ultimately fail.

My colleagues, we are all elected officials. I want to comment about this partisanship. I say it in the spirit of bipartisanship. We

have all been through the same ordeal together here. The nasty fundraising, the ad wars, dirty campaign tactics, thousands of miles of travel, neglecting our families, hours and hours away from home, much to the detriment of our own health and financial well-being. We do it all the time. And for anyone inside or outside this institution to suggest that my vote, or your vote, or anyone's vote in here is based on partisanship not only makes me sick, it makes me bristle with anger.

What are my colleagues really saying when they invoke the word "partisanship"? Do you really believe that the impeachment of the President of the United States by a majority of the Members of the House of Representatives, the body that is elected every 2 years, gives closure to the people, and the body elected by the same voters who elect one-third of us every 2 years would impeach the President of the United States because he is a Democrat? Even to imply that is unworthy, it is arrogant, and it is below the dignity of this very seat that you now hold. Have you forgotten the "war" that James Carville declared on Ken Starr a year or so ago, and on the Republicans, to protect the innocent Bill Clinton?

Was that partisan? Was the President totally innocent? Partisanship has no place in this Senate, especially when it sits as a Court of Impeachment. We are here to do impartial justice, to be unbiased triers of fact. Yet we have allowed that runaway partisan train of White House apologists, I might say, to rumble into the Senate with no brakes.

One of my colleagues mentioned the courage of Republicans who voted against impeachment in the House. How about the Democrats who voted to impeach? Are they, by implication, cowards?

Alexander Hamilton would be appalled at the notion of partisanship in an impeachment trial. Indeed, writing in the Federalist Papers, Hamilton said that the impeachment of the President "will seldom fail to agitate the passion of the whole community, and to divide it into parties more or less friendly to the accused."

"There will always be the greatest danger," Hamilton warned, "that the decision will be regulated more by the comparative strength of the parties, than by the real demonstrations of innocence or guilt."

Mr. Chief Justice, there was a hero of the Revolutionary War era, Dr. Joseph Warren. He was a doctor. He didn't have to serve; he was 34 years old. His colleagues begged him not to go. But he picked up arms at Bunker Hill at 34 years old and he said, "Our country is in danger. On you depend the fortunes of America. You are to decide the important questions upon which rest the happiness and the liberty of millions yet unborn. Act worthy of yourselves." He was killed at the Battle of Bunker Hill.

We don't act worthy of ourselves when we let partisanship enter into this trial, or even accuse one another of it. Why is it, when Democrats march in lockstep on a vote, that we Republicans are the only ones being accused of partisanship?

Why are the House Republicans partisan because they vote out the articles, yet the Democrats who vote to block them are not partisan?

I have served with HENRY HYDE in the U.S. House of Representatives, and so have many of you. There is not even a remote

chance—and every single one of you knows it—not even a remote chance that HENRY HYDE would bring articles of impeachment against the President of the United States of any party if he didn't believe they were justified.

Honorable men and women can disagree on these articles, but leave your politics at the door. Act worthy of yourselves.

If the articles were so outrageous, so political, so partisan, so vindictive, and it is nothing more than a private sexual matter, then why do those of you who say those things want to censure this President using such terms to describe his actions as "shameful," "disgraceful," "reprehensible," "false" and "misleading," and so forth?

Before I leave the matter of partisanship, let me say a few words about the case of our former colleague, Senator Packwood. My colleagues know I was a member of the Ethics Committee, and I supported the expulsion of Senator Packwood. I lost a colleague, and I lost a friend over that.

That case, too, was "about sex." My colleagues and I didn't shrink from doing our duty in the Packwood case because this outrageous behavior was about sex.

In addition, those organizations advocating that the Senate take strong action against Senator Packwood were, by and large, liberal feminist groups, which I disagree with on nearly every issue.

That, however, did not matter. Instead of being partisan or being deterred because the case was about sex, those of us on the Ethics Committee painstakingly investigated that case in all of its sordid and unpleasant detail. We considered the shameful behavior in which Packwood engaged. We considered how his behavior reflected on his fitness to serve. We considered his obstruction of the investigation with respect to his diaries.

In the end, the committee, Republicans and Democrats alike, voted to recommend to the full Senate that he be expelled. In doing our duty as we saw fit, we were not deterred by the argument that we were "overturning an election," nor were the Republican Members of the Ethics Committee—at the time, Senators MCCONNELL, CRAIG and myself—deterred by the fact that Senator Packwood was a Member of our own party, nor were we deterred because liberal feminist groups were aggressively supporting many of the women accusers of Senator Packwood. The heart of the issue is not who Paula Jones' lawyers are, my colleagues, but, rather, did Bill Clinton expose himself in the presence of Paula Jones against her wishes? That is at best sexual misconduct, and at worst it is sexual harassment. Right wing groups did not find Paula Jones. Bill Clinton did. He says he didn't do it. Do you really believe him? The women accusers of Senator Packwood received justice in spite of those who promoted their cause. Paula Jones deserves the same treatment. The Supreme Court agreed 9 to 0. It is outrageous to say, as some have on this floor, that it is acceptable to expel Senator Packwood and acquit the President. That kind of debate should not take place on the floor of the Senate. How can you say that Senator Packwood is equal under the law, and yet the President is above the law?

Today, I ask my colleagues in the Senate to do in the impeachment case of President Clinton what we did in the ethics case of Senator Packwood. Put aside your political affiliation. Put aside

your friendship or your personal disdain for President Clinton. Put all of that aside and do the right thing.

The House managers have established, I believe, beyond a reasonable doubt that President Clinton perjured himself and obstructed justice. As such, I don't believe we have any option other than to remove him from office and replace him with the Vice President—a fine, decent man, as many of his predecessors who have assumed the Office of the Presidency during difficult times, and the Nation has persevered.

As I have listened to my colleagues in these final deliberations, I have heard time and again that the House managers did not prove their obstruction of justice charge because of conflicts in testimony. We heard about all these conflicts—conflicts in testimony about the hiding of the gifts, conflicts in testimony about the job search, conflicts in testimony about the President's coaching of Betty Currie.

Well, let me ask you, colleagues, if you believed that these conflicts needed to be resolved, then why didn't you join some of us who signed a letter to call for the President of the United States to come here to the Senate and tell the truth? What were you afraid of?

We could have called President Clinton here to a closed session of the Senate. It need not have been a media spectacle. It can and should have been a closed session—just the Senate and the President.

Time and again, I have heard my colleagues say that there should be a higher standard for removing a President of the United States than for removing a Federal judge or expelling a Senator Packwood. If there is such a higher standard for the law, then why not insist on a higher standard for the man?

One of my colleagues mentioned the Iran-contra matter. At an earlier time, not too many years ago, when impeachment talk was in the air, President Ronald Reagan walked to the microphone, and he said, "I take full responsibility for my own actions and for those of my administration. As angry as I may be about activities undertaken without my knowledge, I am still accountable for those activities. As disappointed as I may be in some who served me, I'm still the one who must answer to the American people for this behavior. And as personally distasteful as I find secret bank accounts and diverted funds—well, well, as the Navy would say, this happened on my watch."

Oh, what a little honesty and candor can do for the soul of the Nation. Why didn't we call the President? Why didn't every Member of this Senate sign that letter? What would be wrong with having him come, either in deposition or in person? I will always regret that we failed to do so. We will never know whether the President's own testimony here before us could have better enabled us to do our constitutional duty. We will never know. The President testified before the grand jury. He testified before the Paula Jones case. He should have testified at his own impeachment trial so we could get the truth, so those of you who want to know whether or not he obstructed justice or committed perjury could have heard from him, not his lawyers. It is a permanent black mark on this trial, and I believe historians will ask for a long, long time: Why

didn't the President testify? It could have changed the outcome of the trial.

Speaking of constitutional duty, I am reminded of the President's oath. Article II, section 1, clause 7, of the Constitution provides that:

> Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

The Constitution considers the oath so important that it requires the man or woman who is elected President to take it. So given the importance of an oath—it is so important that no one elected can serve unless they take it—how can we say that willful violation of that oath, being perjury and obstruction, doesn't rise to the level of impeachment?

President Clinton has discredited the oath that the chief law enforcement officer of the Nation must take. We have compounded that discredit by not holding him accountable.

Manager LINDSEY GRAHAM said that "we could leap boldly into the 21st century by ignoring the rule of law." Unfortunately, the Senate opted to crawl.

My colleagues, we all in politics know what a user is. With all due respect, Bill Clinton is a user. He used Monica Lewinsky; he used his friends; he used his Cabinet; he used the American people; and now he is using the Senate.

The President has never been held accountable. He wasn't held accountable for not telling the truth about the draft; he was not held accountable for not telling the truth about marijuana; he was not held accountable for lying about his relationship with Gennifer Flowers; he was not held accountable for his actions towards Paula Jones; he was not held accountable for lying about Monica Lewinsky. He will walk away from this trial with an acquittal, and yet again he will avoid accountability for his actions. He will avoid being held accountable for the actions that every American citizen, every teacher, every CEO, every military man and woman, would have lost his or her job over, and we let it happen. We did. With the greatest respect, that is not a profile in courage.

After the acquittal, I hope we will not be a party to the party. The champagne corks will pop; cigars will be lit; maybe even the bongo drums will be played. I implore you, colleagues, don't go to the party. There is nothing to celebrate. Act worthy of yourselves.

In 1880, when Dostoevsky, the great Russian author, wrote "The Brothers Karamazov," he could not even have dreamed that there would ever be a Bill Clinton, but here is what he says, and it goes right to the heart of this entire case:

> The important thing is to stop lying to yourself. A man who lies to himself and believes his own lies becomes unable to recognize the truth, either in himself or anyone else, and he ends up losing respect for himself as well as for others.
>
> When he has no respect for anyone, he can no longer love. And in order to divert himself, having no love in him, he yields to his impulses, indulges in the lowest form of pleasure, and behaves in the end like an animal in satisfying his vices. And it all comes from lying, lying to others and to yourself.

The rule of law and the President's constitutional oath must pass the test of truth. President Clinton, regrettably, failed that test.

Mr. Chief Justice, I am satisfied beyond a reasonable doubt that William Jefferson Clinton is guilty of perjury, is guilty of obstruction of justice, and must be removed from office. I have only to answer to my conscience, to the Constitution, and the judgment of history, and I stand ready for that judgment.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR JEFF BINGAMAN

Mr. BINGAMAN. Mr. Chief Justice, colleagues, I will vote to acquit the President on the two articles of impeachment. I will vote no for two reasons. First, the House has failed to allege acts by this President which in the context of this case constitute high crimes and misdemeanors. And, second, the House managers allege that the President committed crimes, but they have failed to establish the elements of those crimes.

The illicit sexual affair which the President engaged in, and the President's efforts to conceal that affair, are permanent black marks on his Presidency. His actions were deplorable, indefensible, and immoral.

But however reprehensible these acts were, they are not impeachable offenses. They did not endanger the government. They were not the "stuff" which the writers of the Constitution had in mind when they used the phrase "high crimes and misdemeanors."

I think we should act accordingly. Our duty, as I see it, is to look at the record, look at the arguments, judge our own authority as it has been given to us in the Constitution, and then vote either to remove the President or to acquit the President.

I want to spend just a minute on this issue of our own authority. As I hear some of the discussion, it seems to me we have lost sight of our own authority. Some have argued that if a university president were to have engaged in these acts, clearly the board of regents of the university would fire that president. Some have said if a chief executive officer of a corporation were to engage in a course of conduct such as this, the board of directors of the corporation would fire the chief executive officer.

I was visiting the United Parcel Service facility in Albuquerque right before Christmas, and I was talking to various people there. One of the men said, "I hope you throw the President out of office because if I did what he has done my boss would sure fire me." That is the way a lot of us tend to think about this issue. And the discussion here this afternoon has been consistent with that. So I think it is worth focusing on what is wrong with that argument.

What is wrong with that argument is that we are not the President's boss. We did not hire the President. The American people hired the President, just like the American people hired each one of us. We have very limited authority under the Constitution to step in and interfere with the decision of the American people in that regard. I do not believe the Constitution intended that we would set ourselves up as the judge of the President's character, or to determine whether we believe this President is trustworthy enough to remain in office. That issue is not for us to decide. That

was decided by the American people. They have not delegated that decision to us.

I am reminded of a story from New Mexico politics. We had a mayor in Albuquerque many years ago named Clyde Tingley. He was very proud of the city zoo, which he had built with city funds. He was showing the zoo to a high official in the Catholic Church one day. The official at one point said, "Well, Mr. Mayor, this is an amazing project here. The people of Albuquerque ought to canonize you for this." The mayor shot back, "A bunch of them tried during the last election. But they didn't get away with it."

I think a bunch of people tried to throw this President out of the White House in the last election because of questions about his character, but they didn't get away with it. These are not new questions about this President. These are questions which have been raised and raised and raised about whether this President is trustworthy, whether this President has demonstrated the character necessary to serve as President. And we really did already have a vote. Every one of us has already voted on whether to remove this President from the White House. Each one of us voted on that issue in November of 1996. I would assume a majority of us in this Chamber voted to remove him from the White House. But the American people chose to keep him there. The American people judged him to be worthy of the job and chose him to be their President for another 4 years. And they did not authorize us to second-guess that decision.

So we need to look at our own job here, and say to ourselves, "Are we here to pass judgment on the President's character, are we here to pass judgment on the President's trustworthiness, are we here to determine whether he is a proper example for young people, or instead are we here to decide whether he has committed high crimes and misdemeanors that would justify removing him from office?"

Senator JOE BIDEN put it very well by saying that this branch of Government—the House and Senate—should be very reluctant to reach across and remove the head of another branch of Government. That is an extraordinary act. It has never occurred in the history of this country. For good reason it has never occurred. It would be a major mistake for us to take that action at this time.

The framers of the Constitution did not intend Congress to remove a duly elected President on the basis of facts such as these, and they were right to deny the Senate that authority. The stability of the executive branch must not be put at risk by Congress, contrary to the "electoral will," absent a clear showing of "high crimes and misdemeanors" by the President. There is no such clear showing here. The proper remedy for this kind of improper conduct is in the voting booth, not here on the floor of the United States Senate.

In my view, the House misused the power of impeachment when it voted these articles of impeachment against the President. It would compound the misuse of power if the Senate were to vote to convict and remove. My vote will be to acquit.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR ROBERT F. BENNETT

Mr. BENNETT. Mr. Chief Justice, as I have sat through this trial, I have not spent much time on questions of reasonable doubt or where the preponderance of evidence lies. Whatever the importance of those concepts in a typical court, the constitutional implications of what we are considering are much more serious than the issues decided in a normal trial. I will not vote to remove a sitting President on the turning of a legal issue.

Accordingly, early in the trial I decided that I would not vote to convict under the first article of impeachment. It struck me as overly legalistic. I listened to the lawyers argue about the proper form of the article, and I heard about questions of materiality—not a term I use in everyday conversation—and I decided that while the case was there, it was shaky. In order to be sure I would render impartial justice, I asked myself if I would remove Ronald Reagan in a similar circumstance. When I realized I would not, I decided that I could not vote to remove Bill Clinton.

Once I had made that decision, I more or less tuned out further discussions on article I, from either side, and concentrated on article II.

Here the issues seemed more disturbing. The Constitution guarantees that the most ordinary of citizens has the right to her day in court, regardless of her hair or her nose or her choice of attorneys. The man she sues, even if he is the most powerful man in the country, does not have the right to lie while testifying under oath in her case, to deny her truthful discovery just because it would embarrass him. He does not have the right to encourage others who are beholden to him, either for their jobs or for favors he has done for them, to do the same, even by interference. He does not have the right to coach and mislead potential witnesses. He does not have the right to use the awesome power of the White House public relations apparatus to spread false and malicious rumors about people—calling them "stalkers," "trailer park trash" and "liars"—just because he thinks they might embarrass him if they tell the truth.

It has been said that it was understandable for President Clinton to do all these things because he was just trying to cover up a sexual affair, and, after all, everyone lies about sex. Well, not everyone. We have had other Presidents whose sexual improprieties have been made public at awkward times—Grover Cleveland, while a candidate for President, was exposed as having fathered a child out of wedlock. Asked by his panicked political allies what to do he said, "Tell the truth, of course," and won the election. Bill Clinton should take such notes.

What finally convinced me to vote for article II was the statement of my good friend, Dale Bumpers. I thought he was magnificent. He told us that the fundamental purpose of the Constitution was to "keep bullies from running over weak people."

I was struck by that. I wrote it down. Then I asked myself, "In this case, who is the bully, and who are the weak people?"

While publicly posing as a helpless victim of a relentless prosecutor, it was President Clinton and the people in his famous "war

room" who were the bullies, using Presidential powers and Presidential lies to run over the rights of Paula Jones and, if necessary, Monica Lewinsky.

Any President who is willing to lie and smear and stonewall, whether under oath in a courtroom or before a TV camera, speaking confidentially to his aides or privately to his family—any President who is so ruthless, disdainful of the truth and callous of the rights of others that he is willing to do anything to "just win, then"; any President who readily uses the power of his office for his personal ends regardless of who is hurt—that President is a bully and, as such, a threat to the constitutional liberties of us all.

Dale Bumpers said that the Constitution was written to keep bullies from running over weak people. That's called justice. William Jefferson Clinton tried to obstruct that justice. And I decided to vote to remove him from office.

So there I was—ready to vote not guilty on article I, guilty on article II. I sat down and wrote a fancy speech outlining these conclusions, showed it to a few friends, notified my staff and sat back to let things play out.

As the trial proceeded, however, something was gnawing at me. The perjury charge kept creeping back into my mind. That something, as I confronted it, was my experience with the Clinton political apparatus and its modus operandi. At the heart of everything that apparatus and its operatives do, whatever the situation, is the process of lying.

Some of their lies have been whoppers, some trivial. Most have been dismissed as mere "spin," relatively few have been under oath, but the continuing pattern of distorting, avoiding and, when necessary, simply denying the truth goes back to the 1992 campaign. It has carried through the three Senate investigations in which I have participated. On a parochial note, it defined the process of creating a stealth national monument in my State. It has permeated the entire PR campaign connected with the Lewinsky affair. The New York Times calls it "habitual mendacity."

If this were a standard trial, as juror I would not know any of that. I would have to make up my mind solely on the basis of the evidence presented here. Some would say I still should.

I believe that the framers of the Constitution dictated otherwise. They chose the Senate as the trial Court of Impeachment deliberately, giving us extensive powers as both judge and jury, and they were not naive enough to think that we would check our understanding of the history of the accused President at the door as we took up this burden. They intended for this to be different than a typical trial court.

When I realized that, I began to rethink my earlier decision. With such a pattern of "habitual mendacity" running through his entire public career, could I really say that Bill Clinton's perjurious testimony before the grand jury didn't warrant removal?

I made my decision to change my vote to guilty on article I during the closing arguments when Charles Ruff, the President's attorney, asked us a question with respect to an alleged high crime or misdemeanor. He asked, "Would it put at risk the liberties of the people?"

As I watched a replay of the President's testimony repeating obvious lies while under oath, I realized that the answer is yes. A President who has demonstrated a capacity to lie about anything, great or small, whether or not under oath, does threaten our liberties. We cannot be sure of anything he says; we cannot trust his word, whatever the issue. We will always be fearful of where that trait of his could take us, and we should be.

So now I will vote guilty on both articles, with a clear conscience that I have done my duty. And I would vote the same if the President's name were Ronald Wilson Reagan.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR JACK REED*

Mr. REED. Mr. Chief Justice, for the past 6 weeks, the Senate has been engaged as a Court of Impeachment to try President William Jefferson Clinton—the first trial of an elected President in the history of the United States. Our deliberations will bring to a close more than a year of controversy which has left the American people both frustrated and dismayed. Hopefully, our decision will serve as a means of rededicating the energies of our Government to the service of the American people.

In this endeavor, our solemn duty to the Constitution is paramount.

Conscious of these responsibilities and based on the evidence in the record, the arguments of the House managers and the counsels for the President, I conclude as follows. The President has disgraced himself and dishonored his office. He has offended the justified expectations of the American people that the Presidency be above the sordid episodes revealed in the record before us. However, the House managers failed to establish that the President's conduct amounts to "high Crimes and Misdemeanors" requiring his removal from office in accordance with the Constitution. Moreover, the House managers also failed to prove, beyond a reasonable doubt, that the allegations in the articles would constitute the crimes of perjury or obstruction of justice.

The constitutional grounds for impeachment, "Treason, Bribery, or other high Crimes and Misdemeanors," indicate both the severity of the offenses necessary for removal and the essential political character of these offenses. The clarity of "Treason" and "Bribery" is without doubt. No more heinous example of an offense against the constitutional order exists than betrayal of the Nation to an enemy or betrayal of duty for personal enrichment. With these offenses as predicate, it follows that "other high Crimes and Misdemeanors" must likewise be restricted to serious offenses that strike at the heart of the constitutional order.

Certainly, this is the view of Alexander Hamilton; one of the trio of authors of "The Federalist Papers," which is the most respected and authoritative interpretation of the Constitution. In Federalist No. 65, Hamilton describes impeachable offenses as "those offenses which proceed from the misconduct of public men, or, in other

*Sen. Reed submitted an additional statement on February 24, see p. 3103, below.

words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself."[1]

This view is sustained with remarkable consistency by other contemporaries of Hamilton. George Mason, a delegate to the Federal Constitutional Convention, declared that "high Crimes and Misdemeanors" refer to "great and dangerous offenses" or "attempts to subvert the Constitution."[2] James Iredell, a delegate to the North Carolina Convention which ratified the Constitution and later a justice of the U.S. Supreme Court, stated during the Convention debates:

> The power of impeachment is given by this Constitution, to bring great offenders to punishment. . . . This power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from *acts of great injury to the community,* and the objects of it may be such as cannot be easily reached by an ordinary tribunal.[3]

Iredell sustains the view that an impeachable offense must cause "great injury to the community." These interpretations strongly indicate that private wrongdoing, without a significant, adverse effect upon the nation, does not constitute an impeachable offense.

Later commentators expressed similar views. In 1833, Justice Story quoted favorably from the scholarship of William Rawle in which Rawle concluded that the "legitimate causes of impeachment . . . can have reference only to public character, and official duty. . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subject of impeachment."[4]

This line of reasoning was manifest in the careful and thoughtful work of the House of Representatives during the Watergate proceedings in 1974. The Democratic staff of the House Judiciary Committee concluded that:

> [b]ecause impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of [the President's] office.[5]

This view was echoed by many of the Republican Members of the Judiciary Committee when they declared:

> . . . the Framers . . . were concerned with preserving the government from being overthrown by the treachery or corruption of one man . . . [I]t is our judgment, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government.[6]

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[1] *The Federalist Papers, No. 65* (Hamilton) at 396 (Clinton Rossiter, ed., 1961) (emphasis in original).

[2] Max Farrand, ed., *The Record of the Federal Convention of 1787,* at 550 (1966).

[3] Jonathan Elliot, *Debates on the Adoption of the Federal Constitution,* at 113 (emphasis added).

[4] Joseph Story, *Commentaries on the Constitution* § 799 at 269–270 *quoting* William Rawle, *A View of the Constitution of the United States* at 213 (2d ed. 1829).

[5] *Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry,* House Comm. On Judiciary, 93rd Cong., 2d Sess. at 26 (1974).

[6] *Impeachment of Richard M. Nixon, President of the United States,* Report of the House Comm. on the Judiciary, 93rd Cong., 2d Sess., H. Rep. 93–1305 at 364–365 (Aug. 20, 1974) (Minority Views of Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorhead, Maraziti, and Latta).

This authoritative commentary on the meaning of "high Crimes and Misdemeanors" is supported by the structure of the Constitution which makes impeachment independent from the operation of the criminal justice system. Regardless of the outcome of an impeachment trial, the accused "shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."[7] The independence of the impeachment process from the prosecution of crimes underscores the function of impeachment as a means to remove a President from office, not because of criminal behavior, but because the President poses a threat to the constitutional order. Criminal behavior is not irrelevant to an Impeachment, but it only becomes decisive if that behavior imperils the balance of power established in the Constitution.

The House managers argue that we should apply the same reasoning to the removal of the President that we have applied to the trial of Federal judges. They make their argument with particular urgency in regard to article I and its allegations of perjury since several judges have been removed for perjury.[8]

This reasoning disregards the unique position of the President. The President is elected and popular elections are a compelling check on Presidential conduct. No such "popular check" was imposed on the judiciary. They are deliberately insulated from the public pressures of the moment to ensure their independence to follow the law and not a changeable public mood. As such, impeachment is the only means of removing a judge. And, the removal of one of the 839 Federal judges can never have the traumatic effect of the removal of the President. To suggest that a Presidential impeachment and a judicial impeachment should be treated identically strains credibility.

Moreover, the Constitution requires that judicial service be conditioned on "good Behavior." This adds a further dimension to the consideration of the removal of a judge from office. Although "good Behavior" is not a separate grounds for impeachment, this constitutional standard thoroughly permeates any evaluation of judicial conduct. Judges are subject to the most exacting code of conduct in both their public life and their private life.[9] Without diminishing the expectations of Presidential conduct, it is fair to say that we expect and demand a more scrupulous standard of conduct, particularly personal conduct, from judges.

The House managers' argument is ultimately unpersuasive. Rather than reflexively importing prior decisions dealing with judicial impeachments, we are obliged to consider the President's behavior in the context of his unique constitutional duties and without the condition to his tenure of "good Behavior."

Authoritative commentary on the Constitution, together with the structure of the Constitution allowing independent consideration of

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[7] U.S. Const. Art. I § 3. Cl. 7.

[8] For example, both Judge Walter L. Nixon, Jr. and Judge Alcee L. Hastings were convicted based on charges of perjury.

[9] The Judicial Conference of the United States publishes a Code of Conduct for United States Judges, as prepared by the Administrative Office of the United States Courts. Cannon 2 of the Code requires federal judges to "avoid impropriety and the appearance of impropriety in all activities." (March, 1997.) This Cannon requires a Judge to at all times act in "a manner that promotes public confidence in the integrity and impartiality of the judiciary." Perceived violations of the Code could result in a complaint to the Judicial Conference, which can make referrals to the House Judiciary Committee.

criminal charges, makes it clear that the term "high Crimes and Misdemeanors" encompasses conduct which involves the President in the impermissible exercise of the powers of his office to upset the constitutional order. Moreover, since the essence of impeachment is removal from office rather than punishment for offenses, there is a strong inference that the improper conduct must represent a continuing threat to the people and the Constitution, and not simply an episode that either can be dealt with in the courts or raises no generalized concerns about the continued service of the President.

Measured against this constitutional standard, the allegations against the President do not constitute "high Crimes and Misdemeanors." The uncontradicted facts of the case paint a sordid picture of the President's involvement in a clandestine, consensual affair with a young woman. His attempts to disguise this affair collided with the Jones lawsuit; a lawsuit filed against him in his capacity as a private citizen, and not in anyway directed at his conduct as President. Over many months, he misled and he dissembled about his relationship with Monica Lewinsky. He lied to his family, he lied to his colleagues, and, on January 26, 1998, he lied to the American people. All of these lies were designed to disguise his illicit but consensual relationship with Ms. Lewinsky. Only after being compelled to testify before a Federal grand jury in August of 1998, did the President finally admit his relationship with Ms. Lewinsky.

The House managers take this tale of deception and betrayal, more soap opera than high drama of state, and urge that it rises to behavior evidencing an impermissible exercise of his powers as President or an impermissible failure to discharge his duties as President which threatens the constitutional balance of government and can only be remedied by the removal of the President. They urge too much. The allegations, even construed in the most favorable light to the House managers, do not constitute "high Crimes and Misdemeanors" as that term has been consistently interpreted over the course of American history.[10]

One could confidently stop at this point and reach a judgment to acquit the President. Such a judgment does not forgive the disreputable behavior of the President. Rather, it does, as it must, keep faith with the Constitution.

However, to stop at this juncture and ignore the allegations of criminal conduct could leave several misperceptions. First, such an approach could be criticized as failing to afford the House of Representatives appropriate recognition as the proponent of articles of impeachment. The House of Representatives acted in the discharge of its exclusive constitutional prerogative to impeach the President. They cast these articles as criminal violations, and due deference must be given to the decision of the House. Second, failing to examine the allegations of criminal conduct may leave the erroneous impression that criminal activity by the President can never rise to

[10] These allegations are a far cry from the most relevant historical precedent, the Watergate affair of President Richard M. Nixon. For example, President Nixon attempted to cover up a burglary of the Democratic National Committee by enlisting the authority and the assistance of the Central Intelligence Agency. The precipitating event of this crisis was a direct attack on a fundamental Constitutional tenet, the right to free and fair elections unimpeded by the criminal attempts to steal information and wiretap telephones. Moreover, President Nixon liberally exercised the formal powers of his office to impede the investigation.

the level of "high Crimes and Misdemeanors." And, finally, failing to examine these allegations leaves in doubt charges of criminal misconduct against the President. Although the Senate does not sit as a criminal court, a condemnation or exoneration "by silence" would be unfair to both the President and to the American people.

The House managers argue in article I that the President committed the crime of perjury while testifying before the Federal grand jury on August 17, 1998. They argue in article II that the President committed the crime of obstruction of justice in the Jones case. After considering the evidence and the arguments of the House managers and the White House counsels, I believe that the House managers have not shown, beyond a reasonable doubt, that the President is guilty of the alleged crimes.

It is without dispute that the House managers have the burden of proof. It is also without dispute that each Senator has the right individually to determine what constitutes the appropriate burden of proof. Because of the gravity of this impeachment process, but, more significantly, because of the urging of the House managers,[11] I believe that a standard of beyond a reasonable doubt should be used.[12] This is the standard used in the prosecution of criminal cases.

Article I alleges that the President committed perjury before the grand jury by knowingly making false, material statements. The first great hurdle that the House managers must overcome is the fact that the House refused to adopt an article of impeachment regarding the President's testimony at the Jones deposition. However one characterizes these two statements under oath, no one can argue that the President was more truthful at the Jones deposition. Most, if not all, would argue that he was considerably less truthful at the Jones deposition. This discrepancy fatally undercuts the contention that this article constitutes "high Crimes and Misdemeanors," and it seriously erodes the claim that the President committed the crime of perjury before the grand jury. Unlike the Jones deposition, the President admitted up front in his grand jury testimony that he had engaged in "inappropriate intimate behavior" with Ms. Lewinsky while they were "alone."

Confronted with this preemptive statement by the President, the article generally alleges perjury without citing specific statements from the grand jury testimony and leaves the House managers with the task of sifting through the record to suggest examples of the President's alleged perjury. They suggest four general areas.

First, they point to discrepancies between the testimony of the President and Monica Lewinsky about intimate details of their relationship. This is a difficult proposition to prove without corroborating evidence, and the House managers offer none. Moreover,

[11] Mr. Manager McCollum stated, "none of us, would argue . . . that the President should be removed from the office unless you conclude he committed the crimes that he is alleged to have committed." 145 Cong. Rec. S260 (daily ed. Jan. 5, 1999) (Statement of Mr. Manager McCollum). The House managers invited the Senate to arrive at a conclusion beyond a reasonable doubt before voting to convict the President. I take them at their word.

[12] The adoption of a standard of "beyond a reasonable doubt" in this matter should not be construed as implying that the same standard must be utilized in each and every Impeachment proceeding. Conduct of "civil officers" in the performance of their official duties might pose such an immediate threat to the Constitution that a less exacting standard could properly be used. Any choice of a standard of proof must, at a minimum, consider the nature of the allegations and the impact of the alleged behavior on the operation of the government.

some of these details, such as the number of times they engaged in sexual banter on the phone, are just not material.

Second, the House managers attempt to ignore the President's preliminary statement and argue that he adopted the "perjurious" testimony of his Jones deposition. This is simply not true. To make this assertion, the House managers use the President's grand jury testimony that "I was determined to walk through the mine field of this deposition without violating the law, and I believe I did." [13] But, the President's peremptory statement clearly indicated that he was not vouching for the facts of his Jones deposition. The President's statement expresses his state of mind. It is not an affirmation of the Jones testimony. Not even Independent Counsel Starr alleged that the President committed perjury in this way.

Third, the House managers allege that the President's silence, while his counsel made representations about the Lewinsky affidavit, constitutes perjury. This novel theory of "unspoken perjury" fails from the lack of any conclusive evidence concerning the President's state of mind at this time. Such evidence is necessary to prove the specific intent to establish the crime.

Fourth, the House managers alleged that the President committed perjury when he denied his involvement in the obstruction of justice, particularly his alleged involvement in the exchange of gifts between Monica Lewinsky and Betty Currie. This topic will be discussed in more detail with respect to article II. At this juncture, it is sufficient to note that the House managers have not presented evidence to indicate beyond a reasonable doubt that the President committed perjury.

Fifth, the House managers allege that the President committed perjury when he denied "coaching" Betty Currie. Again, this issue will be addressed in more detail with respect to article II. But, this allegation also fails from the absence of persuasive evidence establishing the President's specific intent in conducting this conversation with Ms. Currie.

Finally, the House managers allege that the President committed perjury when he gave false information to his aides about his relationship with Ms. Lewinsky. This too raises the issue of the President's state of mind. His grand jury testimony expressed his belief that he tried to say things that were true. He acknowledged that he misled, but he asserted that he tried not to lie. To prove that these statements are perjurious, the House managers had to prove that the President had the necessary specific intent. They have not done so.

Article II alleges that the President obstructed justice. The article sets forth seven "acts" which the House managers argue the President used to implement this "scheme."

Three of these alleged "acts," encouraging Monica Lewinsky to file a false affidavit, urging her to give false testimony, and finding her a job to obtain her silence, crash on an immovable evidentiary rock: Monica Lewinsky's uncontradicted and often repeated statement, "no one ever asked me to lie and I was never promised a job

[13] Grand Jury Testimony of President Clinton on 8/17/98 as cited in the House Managers' Trial Brief, p. 60.

for my silence."[14] The House managers offered other circumstantial evidence, but this too failed to be persuasive.

The fourth "act" involves the transfer of gifts between Ms. Lewinsky and Ms. Currie. Although Ms. Lewinsky's testimony strongly suggests that the President directed Ms. Currie to retrieve gifts, the two parties to this suggested transaction, the President and Ms. Currie, flatly deny any such conversation. Certainly, there is more than a reasonable doubt based on this conflicting testimony; particularly, since no one has ever impeached Ms. Currie's credibility.

The fifth "act" recharacterizes the President's silence, while his attorney made representations about Ms. Lewinsky's affidavit, as obstruction of justice. This allegation fails based on the lack of any conclusive evidence of the President's state of mind.

The sixth "act" involved the purported coaching of Betty Currie by the President after his Jones deposition. This allegation too turns on the President's state of mind. The House managers argue that the President's intent was to influence the testimony of Ms. Currie as a potential witness. White House counsels argue that the President had no reasonable anticipation that she would be a witness. But, more decisively, they argue that his intent was to confirm his story in anticipation of a media onslaught. The lack of persuasive evidence about his state of mind also undercuts this allegation.

Finally, the last allegation involves the President's purported attempt to influence the testimony of his aides. Again, the House managers have not shown beyond a reasonable doubt that the President intended to make his statement to influence their testimony. There is an equally plausible inference that the President was simply continuing his public campaign to deny his relationship with Ms. Lewinsky. This campaign led him to lie to the American public and no one suggests he was then tampering with witnesses. Indeed, as a result of these public statements, it seems unlikely that he would tell his aides anything else.

The House managers have not sustained their burden of proof in regard to article II.

It is clearly evident that the facts of the case require acquittal. As such, serious questions can and should be raised about the unwarranted extension of the trial. Given the significant doubts surrounding the case of the House managers, a motion to dismiss, followed by a debate on censure should have been utilized to properly put an end to these proceedings. Instead, a majority of the Senate accommodated the desire of the House managers to excessively pursue allegations that were politically damaging to the President. Indeed, had Members of the House of Representatives been allowed to consider censure this matter may never have reached the Senate.

We, as a Nation and as the Senate, have come to the end of a long and wearisome road. It has wandered through scandal and deception. Many of those who have trod this road, both individuals

[14] *Part I, Appendices to the Referral to the U.S. House of Reps.,* Communication from the Office of the Independent Counsel, Kenneth W. Starr, 105th Cong. 2d Sess., H. Doc. 105–311 (September 18, 1998) at 1161. (Ms. Lewinsky responding to a question from a juror.) *See also* Counsel to the President's Trial Brief, p. 57.

and institutions, have seen their reputations besmirched. The journey emanated from the reckless conduct of William Jefferson Clinton. But, the passage has also exposed vicious political partisanship and the reckless and relentless exploitation of the powers of the independent counsel. In the midst of this dishonor, deception, and rancor, we could have easily lost our way. But we reached this moment because we have been guided by the Constitution and inspired by the common sense and common decency of the American people, and with such a guide and such inspiration, we will do justice with our votes, whether they be to convict or acquit.

For my part, the Constitution and the evidence compels me to vote to acquit the President on both articles of impeachment.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR MIKE ENZI

Mr. ENZI. Mr. Chief Justice and colleagues of the Senate, this has been a month-long ethics and Constitution class—with mandatory attendance. That should have value for each of us.

I'm getting more mail each day than I normally get in a month—and most of it is from your constituents. That's right. Out of every 1,000 letters I get, only 30 are from Wyoming. I have some ideas what your constituents are saying. I'm not a lawyer. I'm not going to present any legal arguments. Most of my constituents aren't lawyers. I notice that most of your constituents aren't either.

I've only served on one jury before and we didn't even get to render a verdict. A boy was being tried for poaching deer out of season—shot with a .22. He was caught redhanded in the barn with the .22 and two of the six deer hanging to be butchered. The boy's argument began claiming he hadn't been properly read his rights. His dad, supporting from the audience, stopped the trial by asking the judge if he could speak with his son. They went into the hall a couple minutes. A boy freshly chastised said, "I want to plead guilty. In our family we don't believe in getting off on technicalities." A successful trial. I watched a boy become a man.

I thought about propounding a unanimous consent that anything already said couldn't be repeated as testimony even though it could be submitted. I thought that would speed up the proceedings. I will not propound it but will attempt to follow it. Instead of the smooth transitions and brilliant arguments, you will only hear what is left. I trust you will rush to get a copy of my whole statement. Here goes.

The President was so thorough in denying any relationship with Monica Lewinsky that Janet Reno believed him. Janet Reno is the person who expanded the investigation into the Monica Lewinsky matter. The President told all of us he had done nothing wrong. His own Attorney General believed him. Janet Reno was helping to clear the air on these ludicrous charges when she gave Ken Starr the approval, direction and budget.

When our country was founded oaths meant everything. A man's word was his bond. Their oath was honor and duels were fought to defend honor. When this trial started, you and I had to take an

oath. It struck me that I might be taking an oath to determine if oaths still mean anything.

The White House argues that the President's actions will not have an effect on anyone. I am hearing from judges who say people before their court are asking for the same treatment given the President. They do not feel their situation is as blatant as the President and they are more repentant and remorseful. Some have even taken action to correct their wrong. All feel they should get a suspended sentence.

I was disappointed with the White House failure to explain all of the charges. Their rebuttal was focused on those charges for which they felt they could answer or, more accurately, use to create the most confusion. Skipping the tough issues is not an answer. This is not an issue of spin or even polls.

Impeachment is the most serious indictment a President or judge can get. The President was impeached by the House of Representatives. His reaction was to celebrate in the Rose Garden of the White House—spin again—more spin than a kid's top. Truth was needed. Dizzy deception is what we've gotten.

The President's counsel admit he lied, was evasive, misleading. The words and adjectives used by the White House counsel during the trial should be enough to condemn the President. But they still expect us to trust the President with the country? Do you think he will only lie about sex? This man sends our children into war. He has to be held to the highest standard. I would feel more comfortable if even one person would have said, "He didn't do this." Only the President said that, and we all know he wasn't truthful.

Last year an Air Force pilot, an officer, was forced to resign. She was having a consensual sexual affair. It was adultery. She didn't lie about it. She was forced to resign—removed from office—because we couldn't trust her with deadly weapons. The President pushes the button on the whole world—not just on one plane. Oh, that's right, this isn't about personal sex. No one would ever be removed from office for that.

But the President is doing a great job. Job performance cannot be the defense for perjury or obstruction of justice or sexual harassment or any other crime. If a bank president embezzled even a little money from his bank would we leave him alone? Would we say, "That's OK because the bank was doing well"?

We had a hypothetical situation posed to us—an employee who controlled the whole computer system and he did what the President did. If there is any parallel, you'd fire him. You'd fire him because you have been cross-training a vice president of computer systems. I've listened to the arguments about world peace and I've got to say that's a terrible indictment of the capabilities of the vice president.

When the video evidence was countered, White House counsel had one presentation on Ms. Lewinsky's testimony. A second presentation was made on Vernon Jordan's testimony. Why didn't White House counsel counter Sidney Blumenthal's testimony at all? Charges made, charges unanswered. If you have enough votes, I guess you only need to look credible.

Presidents have power. Power draws loyalty. Are we a country with one set of standards for the rich, famous, or powerful? Is that

the way we want our country to be? This isn't even a popularity contest. Popularity cannot be a defense in an impeachment trial.

House Manager ROGAN said he would risk his political future for the Constitution. He said, "Dreams come and dreams go, but conscience is forever." We are supposed to be the collective conscience of our Nation. Are we trying instead to salve our conscience?

We talk of censure? Isn't that just another way to salve our conscience? When this trial is over we better come together as a nation—undivided and behind whoever is the President—not debating again to what degree he is bad.

Some have been wrestling with whether the offenses "rise to the level of impeachment." The founders may have been a lot tougher than we are. We've talked about a guilty vote by a two-thirds majority removing from office. The founders provided for a second vote—a vote that takes away more rights and honor—the right to hold public office ever again. Should we suggest the offenses, especially in the cumulative, rise to the level of impeachment and then wrestle with the question and vote on "forever"? Judges are appointed for life. Presidents have the title for life.

I heard a suggestion that we can't remove the President for sexual harassment because we are not his boss or because he has such a critical position. The founders recognized both those circumstances. We are not the President's boss—but we have been given that responsibility through impeachment. He holds a critical position, that's why the founders established the succession. Remember, that was when impeachment could put another party into the Presidency. And that was when the Senate was appointed, not elected.

"The Rise and Fall of the Roman Empire" was a book we were introduced to in high school. Rome went through this phase too. Free lunches for the masses, an emphasis on entertainment, and no accountability for the powerful. We have seen the rise of America. Will we be listed in history as the start of the fall? Our society is eroding. Our values are disappearing. If you watch the news, many nights the main lead even during this trial is about the multiple murders right around us.

We've been talking about "an impeachable standard." We've talked about the "Reagan Test." I'm going to suggest two more tests. The "Mom Test" and the "Spouse Test." When you were growing up, did your mom need proof "beyond a reasonable doubt" before punishment? Did she ever say, "Don't put yourself in a position where it even looks like you did something wrong?" Circumstantial evidence was enough. Did your mom ever say,"Watch out who you hang out with; it reflects on you?" Did your mom say, "Watch your actions—they reflect on you and your family?" Did your mom ever say, "Act so I won't be embarrassed tomorrow reading the front page of the paper about what you did today?" The President has complained that others are out to get him. That he is the most investigated President in history. Perhaps he ought to apply the "Mom Test."

What about the "Spouse Test"? My wife has applied that test. She said, "If this were a Republican President, I would have already chained myself to the White House fence until he resigned." She is absolutely stymied that women's groups haven't done that.

For years she and I fought the accusations that women's groups were only about allowing abortion—but their silence on the President has changed my mind. I will not defend them as they have not defended any woman defamed by the actions and the words of the President. And a final "Spouse Test"—when you are playing games with sex definitions ask, "What would my spouse think I was doing?"

While we may have a country doing well economically, we are headed toward moral bankruptcy if the trend is not reversed. We are becoming "de-moralized."

With this case we are all in a "no-win" situation. We have heard the media and the Democrats note that the Republicans are committing political suicide. But just as many mention the Democrats are filing moral bankruptcy. History will be the judge of us all. Our constituents just expect us to do what is right. They will expect us to do what is right based even on what comes out in the future. Yes, what is right based on the books and future disclosures of the participants. They will judge us even based on the future actions of this President. Our words will be forgotten; our verdict won't.

This isn't about politics. It's about our country. It's not about Bill Clinton. It's about the future of the Presidency. The process is on trial. The Senate is on trial. No, truthfully, truth is on trial.

As we enter into our final deliberations on whether or not to convict President Clinton on the two articles of impeachment presented to us by the House of Representatives, I think it is imperative that we remember the oath each of us took at the outset of this historic process. Each one of us took an oath before God to do "impartial justice according to the Constitution and the laws." That oath should guide our thoughts and actions for it reminds us of the gravity of this process and the weighty responsibility we assumed by our own free will. We must finally remember that we answer not only to future generations who will judge whether we did right by the Constitution we swore to uphold, but also to that eternal witness of our most solemn oath.

I will be the first to admit that striving to be impartial has been very difficult. To be a good juror is a heavy burden. That duty is heightened when one is also called to wear a judge's robe when sitting as a silent juror weighing the evidence, probing the credibility and motives of the various witnesses, and ascertaining the appropriate law which applies to the facts before you. There are few duties we will face in our life as grave as this one: to decide the political fate of the President of the United States.

Before the trial started I read everything I could find that dealt with impeachment history. As the trial progressed, I read volumes of published evidence, including the prior testimony of the witnesses in this proceeding. I have attended all of the proceedings in the Senate from start to finish. I have carefully watched all of the videotaped depositions. I have read all of the transcripts of these depositions. I watched many parts of the depositions several times to be sure I understood exactly what each witness was saying and how that testimony fit with that witnesses' prior testimony and with the testimony of other witnesses who testified under oath. These depositions were very helpful in focusing the key points of this trial and deciding who was testifying truthfully and who was

lying in instances where the testimony is in conflict. In short, I believe I have taken into account nearly all of the pertinent information in this case in coming to my final decision.

This case challenges us to consider whether, in light of all the evidence, President Clinton's actions indicate that he has, in the words of Alexander Hamilton, "abused or violated some public trust." In making this determination, we must first decide whether allegations presented by the House managers do in fact constitute "high Crimes and Misdemeanors" as contemplated in article II, section 4 of the Constitution. I have come to the conclusion that they do.

I believe that perjury and obstruction of justice demonstrate intentional, premeditated violations of an indispensable public trust. In taking the oath of office, President Clinton twice raised his right hand and placed his hand on the Bible swearing to uphold and defend the Constitution and to faithfully execute the laws of the United States. By this oath, he took upon himself the duty to be the chief law enforcement officer of the United States. Actions which undermine this high duty, whether they involved committing perjury in a judicial proceeding or obstructing justice, strike at the very heart of the rule of law.

There is no contradiction that perjury and obstruction of justice are serious crimes for the average citizen in the United States. Both of these offenses presented by the House managers are felonies under the Federal criminal code, and both carry equivalent or even higher minimum sentences than bribery under the Federal Sentencing Guidelines. Nor is the seriousness of these crimes simply a matter of abstract speculation. We heard video testimony of a real, live citizen who has paid a very heavy price indeed for the crime of perjury. In July of 1995, Dr. Barbara Battalino, a physician who worked for the Veterans' Administration, lied under oath about an encounter she had had with one of her patients. As a result of this perjury, Dr. Battalino was fired from the Veterans' Administration, she lost her license to practice medicine, she was prohibited from ever practicing law—she also had a law degree—and she was required to wear an electronic ankle bracelet for 3 years. Those who argue that perjury about sexual matters is not serious owe Dr. Battalino a heartfelt apology. Dr. Battalino lied one time about one consensual act of oral sex.

Moreover, both perjury and obstruction of justice were counted among the list of "public wrongs" as opposed to private wrongs under common law at the time of the American founding. These are the very kind of crimes the founders contemplated when they included the impeachment and removal mechanism in the Constitution. These crimes were not considered to be private offenses by the common law, nor by the Founding Fathers. The preeminent commentator on the English common law at the time of the American founding, William Blackstone, described perjury, or false swearing in a judicial proceeding, as an "offense against public justice." As with perjury, obstruction of justice was considered a "high misprision" or "high misdemeanor" at the time of the drafting of our own Constitution.

It should be remembered that this Senate has convicted and removed Federal judges for perjury. In the 1980s alone, this body re-

moved three Federal judges for lying under oath. Many in this Chamber had occasion to vote in those cases and voted to remove these judges because they saw that the act of perjury, even if it involved lying about one's taxes, was incompatible with a judge's duty to uphold the Constitution and laws of the United States.

When confronted with these very recent precedents, the White House lawyers have argued that this Senate should apply a lesser standard to the President than to Federal judges. They argue that Federal judges should be held to a higher standard because they are given life tenure under article III of the Constitution. I must admit, that this is an argument that I cannot square either with the plain language of the Constitution or with common sense. Do we really want to hold our President to a lower standard than the Federal judges he appoints? It is our President, after all, who appoints all the U.S. attorneys and the Federal marshals, who names all the Cabinet officials, who has the authority to send American troops into battle, and who can sign treaties with foreign nations. A corrupt Federal district court judge can work injustice on the litigants who enter his courtroom. A corrupt President, by contrast, has the power to wreak havoc on the entire political order.

The President's oath forbids him to selectively decide whether to follow the laws of the land based on a calculation of political expediency or determination of personal gain or loss. He is bound to follow the Constitution and the laws of our country in and out of season. By intentionally violating this duty, the President's actions display the tendencies of an unbridled monarch rather than a constitutional executive who must bow before the law he swore to faithfully execute.

On the specific article of perjury, there is abundant evidence that President Clinton violated his oath to "tell the truth, the whole truth, and nothing but the truth" on several occasions. As the chief law enforcement officer of the United States, the President was bound to "tell the whole truth" and act in a manner becoming of the dignity of his office. President Clinton did not do this. When asked before the Federal grand jury on August 17, 1998, whether he understood that he had an obligation to tell the truth, the whole truth, and nothing but the truth in his prior deposition of January 17, 1999, in a Federal civil rights suit, the President testified that "his goal was to be truthful, but not particularly helpful." He later admitted that his testimony had been "misleading." For any plain-speaking American, to be misleading is the same as lying. In short, the President violated his oath to "tell the whole truth" when he misled the court.

The facts indicate that the President was not attempting to be truthful and was not truthful in his deposition in the Jones Federal civil rights case. Moreover, he lied about the nature of his relationship with a subordinate employee before the Federal grand jury. The President also allowed his attorney, Robert Bennett, to file a false affidavit on his behalf denying his relationship with Monica Lewinsky. The President continued this pattern of deception by lying to his top aides with the knowledge that they were likely to be called as witnesses before the Federal grand jury. He then attempted to cover up these lies by claiming he had possibly "misled" his aides, but he did not lie to them since he knew they were likely

to be called as witnesses before the Federal grand jury. These were lies. They were lies under oath. They were lies that adversely impacted the rights of a U.S. citizen to obtain relief in a civil rights case in Federal court. They were lies under oath in a Federal grand jury after he had been begged by his aides, his friends, and some in this Chamber to finally tell the truth. They were lies of a public character and they were unbefitting the chief law enforcement officer of our country.

What is perhaps most disturbing about these lies is that the President's actions indicate he had no intention of ever telling the truth of his relationship. He had already lied under oath in a Federal civil rights action. He lied to his top aides and Cabinet officers, he lied to his friends and political allies, and he lied with perfect calculation to the American public, including myself. I remain convinced that the only reason the President admitted his relationship at all was the discovery of the now famous "blue dress." Only when it became clear that he could no longer continue his pattern of judicial and public deception did the President admit that he had in fact had an "improper relationship" with Monica Lewinsky. Unfortunately, the President's deception did not end with the revelation of the DNA. Rather, it graduated to legal hairsplitting, attempts to torture plain English language, and statements which degraded the judicial process and insulted the intelligence of the American public. The President has not carried out the public trust the American public entrusted to him when he was twice elected President.

When the President's actions became public, the President even turned his sword of deception against his partner in perjury. Once the Washington Post broke the story on the President's extramarital affair and his possible perjury and obstruction of justice, the President called in his top aides to deny the story and destroy the character of Monica Lewinsky. We have seen and heard the video testimony of one of President Clinton's top aides, Sidney Blumenthal. Immediately after the story broke, President Clinton called Sidney Blumenthal into the Oval Office and denied the entire story. He went on to say that Monica Lewinsky was a troubled young woman who was called the "stalker" by her peers. He said that she came on to him and made a sexual demand of him, but he rebuffed her. The President went so far as to claim that Ms. Lewinsky had threatened to tell people that she had had an affair with him, even though it was not true. In the words of Mr. Blumenthal, the President "lied to him." As expected, Mr. Sidney Blumenthal repeated these lies before the Federal grand jury. There is also growing evidence that Mr. Blumenthal, or other key White House aides, circulated these lies to the popular media. Such conduct further establishes that the President was willing to go to all lengths to prevent anyone from discovering the truth about his illegal conduct in a Federal civil rights case.

The President's lawyers argued that the President could not have intended to corruptly influence the grand jury proceeding since the lies the President told his top aides were no different than the lie the President told the American people when he adamantly denied having "sexual affairs, with that woman, Miss Lewinsky." If this is the best defense the White House lawyers can wage for their client, it speaks volumes about the President's character. Unfortunately,

it is also false. The President never told the American people that Monica Lewinsky was a stalker, or that she wore her skirts too tight, or that she came on to him and made sexual demands on him. This is exactly what the President told his aide, Sidney Blumenthal. The President never enumerated the sexual acts he "did not commit" with Monica Lewinsky. He did deny with great specificity these acts when questioned by his assistant chief of staff, John Podesta. The President did lie to the American public. However, he also told other lies to his top aides, knowing that they were likely to be called as witnesses before the criminal grand jury.

There is also substantial evidence that the President attempted to obstruct justice in both the civil rights case brought against him and the Federal criminal investigation conducted by Judge Starr. It should be noted that Judge Kenneth Starr's investigation was not the creature of President Clinton's political enemies, as some have asserted. President Clinton's own Attorney General, Janet Reno, directed Judge Starr to expand his investigation to include the allegations in this case. If Janet Reno is a member of the vast right wing conspiracy, then that operation is very vast indeed.

We now know that Monica Lewinsky filed a false affidavit in the Jones civil action. We also know that the President called Ms. Lewinsky at home at 2:30 in the morning to inform her that she had been named on the witness list in the Jones civil rights case. We also know that in this conversation the President also suggested Ms. Lewinsky could file an affidavit to avoid testifying. Finally, we know that the President reminded Ms. Lewinsky of their agreed-upon "cover stories" to conceal their relationship. While the President's lawyers have made much over Ms. Lewinsky's statement that "the President never asked me to lie," they are unable to put a positive spin on the cover stories and the President's attempts to encourage Monica Lewinsky to file an affidavit in the first place.

It stretches the bounds of credulity beyond recognition to believe that the President intended Ms. Lewinsky to tell the truth when: (1) he himself lied under oath about their relationship, (2) he reminded Ms. Lewinsky of their cover stories in the same conversation in which he suggested that she file an affidavit, and (3) he relied on Ms. Lewinsky's false affidavit in his own testimony denying their relationship. Finally, when Ms. Lewinsky asked President Clinton if he wanted to see her signed affidavit, he said he didn't need to see it because he had "seen 15 others like it." This response remains one of the more puzzling in this case and leaves open the possibility that the President tampered with other witnesses in the Jones civil rights case.

We also now know that the President's personal secretary, Betty Currie, hid presents under her bed that had been subpoenaed in the Jones case. These are the gifts the President had given to Monica Lewinsky during their relationship. Ms. Lewinsky has testified that Betty Currie definitely called her about the gifts, and the only way Ms. Currie could have known about the gifts is if the President instructed her to pick them up. While the President's lawyers deny this explanation, the only phone record we know about is a phone call made from Betty Currie to Ms. Lewinsky on the day she picked up the gifts. The President's lawyers have failed

to produce any concrete evidence to contradict this explanation. Concealing gifts that are under subpoena in a legal proceeding is illegal and it obstructs the administration of justice.

Moreover, the conclusion that it was in fact President Clinton who directed Betty Currie to conceal the presents is bolstered by the fact that the President corruptly attempted to influence Ms. Currie's testimony in a Federal civil rights suit. President Clinton made several false statements to Betty Currie on Sunday, January 18, 1997, the day after he testified in the Jones lawsuit. Ms. Currie, who explained that it was very unusual for the President to ask her to come in to work on a Sunday, testified that President Clinton made a series of false statements to her as if asking for her consent. Specifically, the President stated to Ms. Currie: (1) You were always there when she [Monica Lewinsky] was there, right? We were never really alone. (2) You could see and hear everything. (3) Monica came on to me, and I never touched her, right? (4) She wanted to have sex with me and I couldn't do that. All of these statements were false, and all of them occurred the day after Judge Wright had expressly forbidden any of the parties deposed or their attorneys from discussing the deposition with anyone.

The President's lawyers have argued that the President made these statements to refresh his recollection or to find out what Ms. Currie knew in the event of a press avalanche. Neither of these explanations is plausible. It is impossible to refresh one's recollection with false, leading questions. It is also impossible to find out what someone else knew if you tell them what they are supposed to believe. The plausibility of either of these explanations is entirely discounted when you consider that the President called Betty Currie in a second time, on January 20 to "remind" her of these statements. The most likely explanation for these statements is far more sinister; that the President was intending to influence the testimony of a likely witness in a Federal civil rights proceeding. President Clinton was, in fact, trying to get Betty Currie to join him in his web of deception and obstruction of justice.

The inescapable conclusion I have come to is that the President of the United States set upon a deliberate, premeditated plan to deceive the court in two separate legal proceedings and to encourage others to deceive the court as well. The President first defended himself by claiming to be the unfortunate victim of a vast right wing conspiracy. Only after the physical evidence uncovered the truth about his affair did the President claim he was only trying to protect his family from these embarrassing revelations. Neither of these excuses justifies the President's actions. A defendant in a legal proceeding does not have the right to perjure himself because he questions the motives of the plaintiff. There are proper legal procedures and remedies available to any defendant who believes he has been the victim of a lawsuit predicated on frivolous legal theories or springing from personal malice. It is, however, never legitimate to respond to even a frivolous lawsuit by lying under oath.

There has been a great debate on how the President's actions will impact our Nation, especially if those actions go unpunished. Last year I read of a town in Midwestern America that had experienced a number of killings in the first 2 months of the year. A consultant was hired to find the cause of these brutal acts. I believe

the findings in his report should cause all of us to take pause. He explained that first a window is broken and nobody fixes it. That leads to a lawn that isn't mowed. Through a series of similar instances, the kids think nobody cares about them. If we let the President off for intentionally violating the rule of law, what do we tell our children when they are caught breaking the law? That we have one law for the rulers and another for the ruled? Do we tell them they have to follow the law until they become powerful enough, or clever enough, or rich enough to violate the law with impunity? What do we tell the Federal judges who have lost their robes and gavels for committing perjury? What do we tell military officers who have lost their livelihood for violating their oaths and rules of their office? What do we tell average citizens who have lost their jobs, their freedom, and their fortunes for violating their oaths to tell the truth in a court of law? If the legacy we leave to our children is one of cynical duplicity, I fear that even an ever-increasing Dow Jones average will be incapable of salvaging our next generation, or even, I fear, our civilization.

I must conclude that while the power of impeachment and removal is a strong measure and one that should never be taken gently, it is an indispensable remedy in our government for those public officers who have so violated their public trust as to be unworthy to continue holding offices of public trust. The great Supreme Court Justice and constitutional scholar Joseph Story perhaps best summarized the impeachment mechanism as one which "holds out a deep and immediate responsibility, as a check upon arbitrary power; and compels the chief magistrate, as well as the humblest citizen, to bend to the majesty of the laws." Those who would disregard this rule of law for their own personal or political ends must not be allowed to remain in offices of public trust. For this reason, I will vote to convict President Clinton on both articles of impeachment.

I thank the Chief Justice and yield the floor.

[From the Congressional Record—Senate, February 22, 1999]

STATEMENT OF SENATOR RUSSELL D. FEINGOLD

Mr. FEINGOLD. Mr. Chief Justice, I ask unanimous consent that my opinion in the recently concluded impeachment trial of President William Jefferson Clinton be printed in the RECORD.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

OPINION OF SENATOR RUSSELL D. FEINGOLD

I. Introduction
II. Analysis of Alleged Federal Crimes
A. Standard of Proof
B. Perjury
C. Obstruction of Justice
III. High Crimes and Misdemeanors
IV. Conclusion

Only 154 Senators have ever been sworn to sit in a Court of Impeachment for the trial of an American president. For this senator, to sit in judgment of this President was a sorrowful experience. The President and I began our careers in Washington

together in January 1993. On the crisp, winter day of his first inauguration, I was moved by the poetry of Maya Angelou, which celebrated the "pulse of . . . [a] new day" in American politics and culture. All along in this process, I have regretted that his presidency has come to this, but have sought not to personalize that regret in a way that would affect my judgment. Taking the oath of impartiality on January 7 helped me to do that, but let me say, I very much regret that the President's conduct brought us to this day.

This somber experience requires a senator to blend three different considerations: (1) the historical purposes of impeachment and the record of past impeachments; (2) the current legal and political merits and implications of these impeachment proceedings; and (3) the potential impact of the current impeachment proceedings on future impeachments and the stability of the American constitutional system.

In attempting to reconcile these considerations, a senator has only the Andrew Johnson impeachment trial to look to for precise precedents for a presidential impeachment trial. Each senator is expected to render independently his or her judgment about the applicable law and then to apply that law to his or her own individual understanding of the facts of the case. This Opinion is an explanation of my attempt to meet that challenge.

I. INTRODUCTION

Strive as they may to minimize its import, the House Managers and those advocating removal of the President must recognize that the single most salient fact in this entire case is that on November 5, 1996, 47,402,357 Americans voted to reelect William Jefferson Clinton. That decision was the right and the responsibility of the American people.

By contrast, impeachment and removal from office prior to the expiration of a president's four-year term of office must be viewed as an extreme and radical remedy, given that it overrides the solemn, quadrennial decision of the American people. For us to remove a duly elected president could well be the most momentous constitutional event in the history of our country, save the Civil War. The people choose their leaders in America, and we must not lightly reverse their will. To overrule the voters, the offense must be grave and the case must be very strong.

Too much of the rhetoric in this impeachment debate has focused on whether the President should be permitted to keep "his" job, in light of his unacceptable behavior. The question is better phrased as whether the President's conduct is sufficiently egregious to require the Congress to undo the decision of more than 47 million Americans to give him that job in the first place. Nor is it a valid argument or palliative to suggest that the same number of Americans also voted for Vice President Albert Gore Jr., and that he would become president upon President Clinton's removal. This argument is far too dependent on the particular nature of the unusual positive connection between this President, this Vice President, and the American people. It flies in the face of the few actual examples of past presidents who faced the prospect of impeachment.

In 1868, President Johnson, an unpopular president who had been President Lincoln's vice-president, himself had no vice president. A member of the Senate would have succeeded him had he been convicted. In the case of President Nixon, whose resignation merely substituted for a nearly certain removal from office in an impeachment trial, Gerald R. Ford was elevated to the presidency. He had never been elected popularly to an office higher than the House of Representatives. In any event, the political similarity of a vice-president to a president cannot be taken seriously as an argument that conviction will be less wrenching for the country or damaging to the institution of the presidency. The crucial fact in this case remains that on November 5, 1996, the American people hired one man and one man alone to be their president, and they have a right to expect that their decision will be honored and preserved, except in the most dire circumstances.

This principle does not apply in the same way to the impeachment of judges. Elected presidents and appointed judges are chosen differently and their removal must be considered differently. They are starkly different in the nature and scope of their duties and in the sources of their constitutional legitimacy.

In the American constitutional system, it cannot soundly be argued that every precedent from past impeachments of judges must control in the impeachment of an elected president. I do not suggest here a lower standard of behavior for presidents. Rather, I believe that our system requires a higher standard for removal of an elected president than for an appointed judge. Judges serve for life "during good behavior." That is a long time, with no means of removing a judge except impeachment. Presidents are chosen by the people in a sacred democratic process. If the people become displeased with the president they have chosen, they need only wait for the next election or the end of his term.

Thus, the analogy of an elected president to an appointed judge is weak. Weaker still are the arguments that the President must be removed because a corporate manager or military officer would be removed under similar circumstances. Corporate life is an arena of private behavior and corporate positions do not proceed from popular elections. Personnel decisions in the boardroom are of no broad constitutional consequence. Military officers likewise are not chosen by the voters. The corporate and military analogies cannot justify overturning a presidential election.

Yet, while overturning an election is the most severe constitutional sanction in our democracy, this President has chosen to conduct himself in such a manner as to run the risk that the U.S. Senate reasonably could conclude that he has committed "high Crimes and Misdemeanors." That is not the conclusion I ultimately reach. But at least with regard to one of the charges in Article II, the President came perilously close to committing an impeachable offense. Even without his removal, this is a tragic occurrence in our nation's history and a personal disappointment to me as one who holds the abilities and many of the accomplishments of this President in high esteem.

This impeachment process has led members of the Senate to consult the relatively scant history of American impeachments. Much of the history relates to the impeachment of federal judges, and this was of some limited relevance to these proceedings. Of the greatest relevance, however, are the histories of the impeachment and acquittal of Andrew Johnson in 1868, and the virtual impeachment and conviction of President Nixon, who resigned in the face of near certain removal in 1974.

Based on my reading and study, the actions of President Clinton lie somewhere between the conduct of the presidents in the Johnson and Nixon episodes. The general historical view appears to be that the case against President Johnson lacked a credible basis for removal, the primary accusation being that President Johnson removed a cabinet secretary from office in circumvention of the law. President Johnson disputed the constitutionality of the statute he was alleged to have violated, and apparently had a good basis for that view. The United States Supreme Court ultimately struck down a similar statute as unconstitutional. *Myers* v. *United States,* 272 U.S. 52 (1926). Johnson argued that he was the victim of a partisan Congress, determined to punish him for his policies. History has adopted that view. The President's defenders point to the Johnson case and they argue that the impeachment of President Clinton is the same sort of partisan exercise, unfounded in fact or law.

The President's accusers point to the case of President Nixon. In contrast to the relatively weak case against President Johnson, most regard President Nixon's actions in covering up his and others' efforts to interfere with the 1972 presidential election to be a classic example of the type of conduct that the framers sought to discourage with the "high Crimes and Misdemeanors" provision. President Nixon's misdeeds almost certainly would have led to his impeachment and conviction if he had not resigned. His alleged crimes were clearly committed in the course of his public duties, subverting the Constitution, compromising the integrity of the processes of government, and using agents of the government for illegal political purposes. The President's accusers argue that the same is true of President Clinton.

With all due respect to historians and constitutional scholars who may know more or feel differently, it is my sense that the case against President Clinton is the first close or "hard" case of presidential impeachment in our nation's long history. This case lies in the middle. It is a hard case and senators may see it either way.

In the ordinary practice of law, there is a saying that "hard cases make bad law." Some people may invoke that phrase when they complain that the President has "gotten away with it." Others may invoke it with concern that we have somehow made it easier to impeach, if not convict, a president. I have tried to remember that adage as we have made our procedural and evidentiary decisions along the way. Our actions in this trial and our decision today may hold even greater significance for our nation's constitutional structure than the past two presidential impeachments, as wrenching and important as each of those was in our nation's history and in its time. I hope, in the end, that this hard case has made good law.

II. ANALYSIS OF ALLEGED FEDERAL CRIMES

A. Standard of proof

In drafting the two Articles of Impeachment against President Clinton, the House of Representatives sought to portray certain conduct by the President as meeting the constitutional standard of "High Crimes and Misdemeanors." In the specific language employed by the House in the Articles, and in the forceful arguments advanced by the House Managers on the Senate floor, a strategic choice was made. A particular approach was adopted that the House Managers clearly believe puts their case in its strongest light. They could simply have recited and attempted to

prove certain conduct by the President and then argued, independent of the strictures of modern criminal law, that the President had committed "High Crimes and Misdemeanors" as that term has been understood throughout this nation's constitutional history.

Perhaps to make the facts of the case more easily understandable, or perhaps because the conduct alone may lack the gravity to justify the removal from office of the President of the United States, the House Managers chose another course, laden with the opprobrium of the modern statutory federal criminal law. Rather than simply alleging a course of general presidential misconduct, they placed enormous reliance on their assertion that the President committed the serious federal crimes of perjury and obstruction of justice. Indeed, in his opening statement on January 15, House Manager McCollum stated quite directly:

"The first thing you have to determine is whether or not the President committed crimes. It is only if you determine he committed the crimes of perjury, obstruction of justice, and witness tampering that you will move to the question of whether he is removed from office. In fact, no one, none of us, would argue to you that the President should be removed from office unless you conclude that he committed the crimes that he is alleged to have committed."

The very names of these crimes connote in modern America the type of conduct that is hard to reconcile with the continuation in office of the chief law enforcement officer of this nation. The House Managers' strategy was clever. It had an emotional power deeply rooted in the nation's abhorrence of disrespect for the law. It also placed the triers of fact and law in the position of potentially having to justify a decision that the President committed these federal crimes, but that these particular instances of alleged perjury and obstruction of justice did not constitute "High Crimes and Misdemeanors" as intended by the Framers.

I see nothing inappropriate in this approach and, in some ways, it assisted me in organizing my thoughts about this case. An obligation, however, does attend the House Managers' decision to rely on proving that the President committed actual federal statutory crimes. That obligation relates to the standard of proof.

I cannot justify concluding that the President should be removed from office for committing these federal crimes unless the case is proved by the same standard of proof that any federal prosecutor would be required to meet in a federal criminal case. This standard requires that the President be shown to have committed one of the two crimes alleged "beyond a reasonable doubt," as that standard of proof is understood in our criminal justice system. The "beyond a reasonable doubt" standard is guaranteed to defendants in criminal cases by the due process clause of the Constitution. *Victor* v. *Nebraska,* 511 U.S. 1 (1994). To apply any lesser standard in this trial would be unfair not only to the President, but also to the tens of millions of Americans whose right to have the President finish his term could be overridden by a mere likelihood or possibility that he actually committed such serious crimes.

In other words, the House Managers are free to use the "sword" of the language of the federal criminal law but cannot simultaneously deprive the president of the "shield" that same criminal law provides any defendant by requiring the prosecution to prove its case by the highest standard of proof in our legal system.

B. Perjury

Article I charges the President with committing numerous acts of perjury in his Grand Jury testimony of August 17, 1998. To convict an individual of perjury under 18 U.S.C. § 1621 or § 1623, the prosecution in a criminal case must prove beyond a reasonable doubt that the defendant: (1) knowingly or willfully made a (2) false, (3) material declaration (4) under oath (5) in a proceeding before or ancillary to any court or grand jury of the United States. To be perjurious, the false statements must be knowingly or willfully false and material to the proceeding in which they are given. Literally true statements, even if misleading, are not perjurious. And if a witness honestly believes that his or her testimony is true at the time the testimony is given, it is not perjurious, even if it is later shown to have been false.

Before turning to the allegations of perjury in Article I, I must comment on the failure of the House to specify the perjurious statements on which it based its charge. The President's counsel made a convincing argument that if Article I were offered as an indictment in a criminal case, it would be dismissed out of hand for this failure. And despite being alerted to this deficiency in the President's answer and his opening trial memorandum, the House Managers steadfastly refused to be specific and complete in their discussion of the perjury charges, constantly referring to alleged acts of perjury as mere examples.

As a Senator who has tried to apply a thorough and impartial legal analysis to these charges, I have found this refusal to specify the alleged perjurious statements somewhat frustrating. Unfortunately, even at the conclusion of this trial, it is still

very difficult to be sure of what the full list of alleged perjuries includes. Indeed, it is even difficult to be sure if the House Managers continue to rely on all of the charges they raised in their trial memorandum and opening presentation.

The House listed four "categories" of perjury before the Grand Jury. With respect to the first category, "the nature and details of his relationship with a subordinate Government employee," I find that some of the examples that the House Managers raised in their trial memorandum and in presenting their case in the trial are truly frivolous. The Grand Jury was investigating perjury and obstruction of justice in the civil case pursued by Paula Jones. Once the President admitted that his relationship with Monica Lewinsky included inappropriate sexual conduct, of what possible materiality to the Grand Jury's inquiry was the question of how many times such conduct occurred?

The testimony of the President concerning whether he engaged in conduct with Ms. Lewinsky that would have been considered "sexual relations" as that term was defined in the Jones case is the one instance of testimony in this category cited by the House Managers that was clearly material to the Grand Jury's investigation of possible perjury in the deposition. As to the specific facts at issue, we still have only the conflicting testimony of the two witnesses, Ms. Lewinsky and the President. While there are good common sense reasons to doubt the President's version of a wholly non-reciprocal sexual relationship, perjury has not been proven beyond a reasonable doubt. Even if we accept Ms. Lewinsky's version of what kind of touching occurred, the ultimate question of whether President Clinton's statements on this issue in the Grand Jury were actually false, turns on the question of what his intent was in engaging in those particular acts with Ms. Lewinsky. I simply cannot say that there is no reasonable doubt on this point. Even Ms. Lewinsky stated in her deposition that the President's intent was something on which she did not feel comfortable commenting.

A second category of alleged perjury consists of statements by the President before the Grand Jury concerning his earlier testimony in the deposition in the Jones case. This is "bootstrapping." It is particularly troubling because the House of Representatives, and even one of the House Managers, rejected an Article of Impeachment that alleged that the President committed perjury in the Jones deposition. I reject the House Managers' argument that the President reaffirmed his entire Jones deposition before the Grand Jury and therefore should be found guilty of perjury in the Grand Jury if any of his deposition testimony was false. The basis for this breathtaking position, as laid out by House Manager Rogan in response to Senator Nickles' question, is the statement made by the President in response to a question from the Independent Counsel concerning what the oath he swore to tell the truth in the Jones deposition meant to him. He said, "I believed then that I had to answer the questions truthfully, that's correct." In my mind, that was not a reaffirmation of his entire Jones deposition testimony sufficient to make any perjury in that deposition perjury "by reference" before the Grand Jury.

The President did state a few times in the Grand Jury that he intended to answer the Jones' lawyers questions in the deposition in a misleading but technically true manner, and House Manager McCollum highlighted a few of those statements in his closing argument concerning this category of perjury. For purposes of the charge of perjury before the Grand Jury in these statements, the key issue is not whether the President succeeded in negotiating the line between perjury and misleading but true testimony, but whether he intended to negotiate that line. Frankly, my reading of his testimony in the Jones deposition is that it was, in fact, his intent to tell the truth. In the Jones deposition, he was cagey and evasive, but he appeared to be trying mightily not to tell an out and out lie. Even though he may very well have crossed the line on a number of occasions, I have to find that there is reasonable doubt that the President was committing perjury in the Grand Jury when he said that his intent was to testify truthfully in the Jones deposition.

The third part of Article I deserves only brief mention. It boils down to the charge that the President lied when he said he wasn't paying attention when his lawyer offered Monica Lewinsky's affidavit in the Jones deposition and argued that it meant that "there is absolutely no sex of any kind, in any manner, shape, or form, with President Clinton." The only evidence that the House Managers offered to support their charge of perjury is the videotape of the deposition in which President Clinton is seen looking, we are told, in the direction of his lawyer when this conversation occurred. The House Managers tried to bolster this shockingly thin reed on which to base a perjury charge with a similarly inconclusive affidavit from a law clerk to Judge Susan Webber Wright. This is perhaps the weakest of the many inferences about the President's state of mind that the House Managers urge us to accept in order to convict. I am virtually certain that a perjury charge based on this kind of evidence would not be pursued by a federal prosecutor, and absolutely cer-

tain that a jury would not find guilt on such a charge beyond a reasonable doubt. I certainly cannot.

The fourth and final part of Article I alleges that the President committed perjury when he testified in the Grand Jury concerning "his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence" in the Jones case. This presumably refers to the President's statements to the Grand Jury concerning the gift exchange and his conversations with Betty Currie and other aides after his Jones deposition. With respect to the President's testimony about the gifts, I find it significant that Monica Lewinsky revealed for the first time in her Senate deposition that she had told the FBI shortly after the President's deposition that one of his statements about the gifts "sounded familiar." Her Senate deposition was the first time that anyone learned about that FBI interview. Surely this was "exculpatory information" that the Independent Counsel and the House Managers had the responsibility to disclose to the President's counsel and bring to our attention.

The President denied that he instructed Betty Currie to pick up the gifts from Monica Lewinsky. By charging the President with perjury for that statement, the House Managers have essentially tried to convert their obstruction charge into a perjury charge. But there is an unresolved conflict of testimony on the issue of who initiated the hiding of the gifts. As I will explain later, that conflict raises reasonable doubt in my mind about that portion of the obstruction charge. It is similarly dispositive of the perjury charge, which essentially amounts to a claim that the President lied when he said he did not obstruct justice by urging Betty Currie to pick up the gifts.

The President stated in the Grand Jury that in his conversations with aides after his deposition in the Jones case he attempted to be literally truthful, but misleading, in order to conceal his affair with Ms. Lewinsky. The questioning here by the Independent Counsel was far too general to support a perjury conviction for his statement in the Grand Jury that he "said things that were true" to his aides. He certainly said many things that were true to his aides, and he told some lies. The clear import of his testimony was that he was trying to conceal his relationship with Ms. Lewinsky from his aides while being generally truthful to them. I do not believe that the President willfully or knowingly lied when he said this to the Grand Jury, nor do I believe that these statements were material to the Grand Jury's inquiry, since he was never asked about and he never denied making specific statements to his aides that were not true.

As I will discuss later with respect to Article II, the President's conversations with Betty Currie give me the most pause and cause me the most concern in this whole matter. While it may be hard to believe the President's explanation in the Grand Jury that he was "trying to figure out what the facts were," his intent in having the oblique and tortured conversation with Ms. Currie is not clear enough to find beyond a reasonable doubt that he committed perjury in the Grand Jury when he discussed that conversation.

In sum, I do not believe that the House Managers have proved the elements of perjury beyond a reasonable doubt. But I also must say that even if one or two of these charges did meet that test, I would have some skepticism about Article I. It was a highly unusual situation that led to the President's appearance before the Grand Jury. Targets of criminal investigations are almost never subpoenaed to testify in the Grand Jury, and when they are subpoenaed, they invariably invoke their Fifth Amendment rights. Here, of course, the President did not invoke his right against self-incrimination but instead answered questions about the charges against him. And now he faces charges that he committed perjury when he denied committing the crimes of perjury in the deposition and obstruction of justice that the Grand Jury was investigating. I am uncomfortable with these prosecutorial tactics, which come very close, it seems to me, to using the Grand Jury not only to investigate potential crimes but to trap the President into committing them.

C. Obstruction of justice

In Article II, the House charged President Clinton with obstruction of justice and witness tampering. Once again, to successfully convict defendants in criminal cases of these charges, prosecutors must prove each of the elements of the crime beyond a reasonable doubt. And that is the standard I believe is most appropriate here.

In the case of obstruction, the elements of a violation of 18 U.S.C. § 1503 are that: (1) a judicial proceeding was pending; (2) the defendant knew it was pending; and (3) the defendant corruptly endeavored to influence, obstruct, or impede the due administration of justice in the proceeding. The courts have indicated that the requirement that the defendant "corruptly endeavored to influence" provides the element of intent in this crime. To "corruptly endeavor to influence" is to act voluntarily and

deliberately with the purpose of improperly influencing or obstructing the administration of justice.

Witness tampering under 18 U.S.C. § 1512 requires proof that the defendant (1) corruptly persuaded or attempted to do so or engaged in misleading conduct toward another person (2) with intent (a) to influence or prevent that person's testimony in an official proceeding; or (b) to cause or induce any person to withhold testimony or physical evidence from an official proceeding.

The charges against the President in Article II have been referred to by the House Managers as the "seven pillars of obstruction." Some of these charges are more easily interpreted as allegations that the federal witness tampering statute has been violated. In any event, the crucial disputed element in all the charges against the President is intent to influence or obstruct the proceeding. The House Managers made little effort to distinguish between the two criminal statutes, which both include that element. Indeed, if the intent element of these crimes were proven, some of the alleged improper conduct of the President could fall under both statutes, which is one reason I have referred to the case against the President as a close one, with regard to Article II.

The House Managers have regularly urged the Senate to look at the entirety of the charges against the President and not to pick apart the individual allegations. I think the more appropriate analysis, however, is to look at each allegation and determine if the elements of obstruction are proven beyond a reasonable doubt. In many cases, the House Managers seem to take the position that the intent to obstruct or influence can be inferred from a pattern of behavior. But each allegation cannot be considered part of a "pattern of obstruction" unless it meets the elements of obstruction (or witness tampering) on its own. Otherwise, Article II become a series of "bootstraps," which are alleged to add up to obstruction of justice without any specific action actually constituting a violation of federal law.

Nonetheless, there is no question in my mind that Article II is the more serious of the two articles of impeachment, because the factual allegations are more troubling and because it charges conduct that involved a number of individuals, in and out of government, other than the President. If the allegations are true, this conduct would undermine respect for the rule of law and injure our system of justice even more deeply than perjury, which, of course, is a serious violation as well. Because I took these charges very seriously, I wanted to give the House Managers every reasonable opportunity to prove them. I supported the issuance of subpoenas to witnesses for depositions and the presentation of the witnesses' testimony to the Senate because I wanted to be very clear in my own mind about what had taken place before deciding whether to acquit or convict on this particular article.

The first two obstruction charges against the President arise out of his late night telephone conversation with Monica Lewinsky on December 17, 1997. The House Managers charge that during that call the President encouraged Ms. Lewinsky to file a false affidavit and to lie if called upon to testify in the Jones case. While I may agree with House Manager Graham that a telephone call at the hour of 2:30 a.m. is not likely to be a casual call, the burden on the House Managers is to prove that the President committed a crime during the call, not merely to invite an inference that he was "up to no good." And the direct evidence—testimony from Ms. Lewinsky—does not support the Managers' theory. She testified repeatedly that she never, "ever" discussed the contents of her affidavit with the President. In addition, according to Ms. Lewinsky, the discussion of "cover stories" in the December 17 phone call was not in connection with her possible affidavit or testimony in the Jones case.

There simply is not enough evidence that the President intended to influence Ms. Lewinsky's affidavit or testimony to find that the law was broken. According to Ms. Lewinsky, they discussed the possibility of her filing an affidavit in order to avoid testifying, but did not discuss the details of that affidavit. She testified that she thought the contents of affidavit could include a "range of things," running from the innocuous to the deceitful. Indeed, the main evidence offered by the House Managers seems to be that the President and Ms. Lewinksy over the period of the relationship developed "cover stories" and planned to conceal their affair. The House Managers suggest that we must infer from the mention of these cover stories during the December 17 conversation a signal to Ms. Lewinsky that they should be employed in the affidavit or in Ms. Lewinsky's testimony if she were called.

The "cover stories" had been developed over a year earlier. The House Managers argue that they were transformed into obstruction of justice and witness tampering when Ms. Lewinsky became a witness in the Jones case by their mere mention in the telephone conversation of December 17. That is an interesting theory, but evidence of the President's intent to obstruct justice in that conversation is simply lacking. I do not believe a federal criminal prosecution would ever be brought with such

a slim factual foundation, notwithstanding the earnest statements to the contrary by a number of the House Managers who are former prosecutors.

Another allegation refuted by the depositions taken by the House Managers was the charge based on the efforts of Vernon Jordan to secure Monica Lewinsky a job. Jordan admitted that he sought a job for Ms. Lewinsky at the request of the President. However disturbing the conduct and whatever innuendo it invites, it was not against the law for the President to seek to aid a woman with whom he had carried on an illicit relationship. It only amounts to obstruction of justice or witness tampering if it is proven that the job assistance was offered with the intent of preventing her from testifying or influencing her testimony in the Jones case. Numerous facts cut against this allegation: (1) the President's efforts to help Ms. Lewinsky find a job started long before she was a witness in the Jones case; (2) Vernon Jordan's intensified efforts predated by at least a week his knowledge that she had been subpoenaed; (3) both Ms. Lewinsky and Mr. Jordan testified that they thought that the job search and the submission of Ms. Lewinsky's affidavit were not connected.

Vernon Jordan's role in this whole story is nonetheless troubling. It is clear he made extraordinary efforts to help Ms. Lewinsky obtain employment, and he kept the President informed of his progress. But I cannot conclude beyond a reasonable doubt that his efforts must be attributed to a plan on the part of the President to prevent Ms. Lewinsky from testifying truthfully in the Jones case. Just as plausible is that the President's motive to help Ms. Lewinsky was loyalty or guilt, or to make it less likely that she would reveal the relationship, which had long since ceased to be sexual, to one of her friends or the press.

Another charge in Article II deals with the President's failure to prevent his lawyer from relying on Ms. Lewinsky's misleading affidavit during the Jones deposition. But evidence of the President's intent to obstruct justice is completely lacking here. As a witness in a deposition, the President did not have a duty to monitor his lawyer's statements. One can only imagine what the President was thinking about as he listened to the lawyers and Judge Wright debate whether he was going to have to answer questions about his relationship with Ms. Lewinsky.

Before turning to the most serious allegations of obstruction and witness tampering, let me comment on the final charge in Article II, which concerns the President's statements to aides who later were called before the Grand Jury to testify. This charge has been a sideshow and a distraction from the beginning. While the charge is listed in Article II as one of the "means used to implement" the "course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony" in the Jones case, it actually alleges an effort to obstruct the Grand Jury investigation. Furthermore, it assumes that in the days when the Lewinsky story was breaking, the President's conversations with his aides were aimed at influencing their eventual testimony in the Grand Jury, rather than dealing with the public firestorm that was enveloping the White House and the enormous personal embarrassment and humiliation that the President faced as his affair became public.

There is much for the Congress and the nation to criticize about the President's behavior in this matter. Concealing the truth and the intimate details of this relationship from his close aides ranks well down on the list for me. I am much more outraged by his very public, very forceful denial of the affair to the American people on national television. Yet that denial does not appear to be part of a scheme to obstruct the Grand Jury. And the fact that the President's more elaborate lie about the nature of his relationship with Ms. Lewinsky in his conversation with Sidney Blumenthal found its way into press accounts is essentially irrelevant to the question of whether the President committed a crime. Yet the House Managers spent hours and hours trying to substantiate their claim that there was a White House effort, masterminded by the President, to discredit and attack Ms. Lewinsky. They even called Sidney Blumenthal as a witness and explored this issue in depth with him. Then, on the day our deliberations started, they sought to introduce new evidence and take new depositions because they believe that Mr. Blumenthal was untruthful in his deposition.

After all this, the House Managers still have not explained what crime is lurking in the conspiracy they think they have found. The President cannot be impeached and removed from office for being a "bully," or being "mean," or because his Administration has a muscular spin operation. On this charge, not only is there a reasonable doubt that the President intended to obstruct justice when he misled his aides about his relationship with Ms. Lewinsky, there is no evidence at all that he did.

Let me turn to the two charges of Article II that I view as the most serious and substantial—the concealment of gifts given by the President to Ms. Lewinsky and

the President's two conversations with his personal secretary, Betty Currie, after he was deposed in the Jones case.

It is significant that both of these allegations involve Ms. Currie. And the gift concealment allegation raises what is probably the most serious factual dispute in this case—the question of whether it was Ms. Lewinsky or Ms. Currie who suggested hiding the gifts. Yet even when given the opportunity to call a limited number of witnesses for depositions, the House Managers chose not to call Betty Currie. I was troubled by this at the time, particularly since the testimony of Sidney Blumenthal seemed so tangential to the case. Other than Monica Lewinsky, Betty Currie was the most important witness in this case, and the House Managers chose not to depose her.

While I was inclined to give the House Managers the benefit of the doubt on their witness selection, I am prohibited from giving them the benefit of the doubt on whose testimony to believe on key disputes of fact. Without seeing Ms. Currie testify, I have no basis on which to compare her credibility to that of Ms. Lewinsky on the issue of who initiated the hiding of the gifts. Furthermore, Ms. Lewinsky testified that she was concerned about the Jones lawyers' request for the gifts long before her December 28 meeting with the President and her delivery of the gifts to Ms. Currie later that day.

I was struck by Ms. Lewinsky's testimony on this point in her Senate deposition. She seemed indefinite when she reaffirmed her earlier testimony that Betty Currie had called her about the gifts, rather than vice versa. In this instance, I appreciated the opportunity to view Ms. Lewinsky's demeanor when she testified. She seemed significantly less certain about who raised the idea of hiding the gifts. I certainly do not conclude that she was lying, but her memory of the sequence of events did not seem as clear on this point as it was on many of the issues discussed in the deposition. The fact that the President gave Ms. Lewinsky even more gifts on December 28 lends additional weight to the theory that it was Ms. Lewinsky who wanted to hide the gifts, not the President.

With an unresolved direct conflict between the testimony of the two primary witnesses on this allegation, I simply cannot find beyond a reasonable doubt that the President masterminded the gift exchange to obstruct the Jones case.

Finally, we come to what for me has been the most difficult charge of Article II—the President's alleged "coaching" of Betty Currie. Neither the President's testimony in the Grand Jury concerning these conversations nor his lawyers' valiant efforts to explain them were wholly convincing. For the President to call his secretary into the Oval Office on a Sunday—the day after his deposition in the Jones case—and feed her a number of falsehoods about his relationship with Ms. Lewinsky is very alarming.

The central issue, however, is the President's intent. Knowing that the secret of his relationship with Lewinsky was out, but not yet knowing who had told the Jones lawyers about it, the President could very well have been concerned mostly about public exposure and what his wife would soon learn. He knew that Betty Currie was aware of his friendship with Ms. Lewinsky, but he did not know how much she knew or had surmised about what went on behind closed doors. Since all of that activity had ended quite a long time before, it is not inconceivable that the President was trying to find out what Ms. Currie knew or even influence what Ms. Currie would say to other White House staff, without being specifically concerned with her being a witness in the Jones case.

It is worth noting here that I am unconvinced by the argument frequently made by the House Managers that Monica Lewinsky was a crucial witness in the Jones case whose testimony might have changed the course of that litigation. Despite the fact that Monica Lewinsky was at one time a White House intern and later a White House employee, there is no allegation of sexual harassment in the relationship, and Ms. Lewinsky consistently characterized her interaction with the President as affectionate and consensual.

The Jones case later was dismissed on legal grounds that were wholly unrelated to any issue on which Ms. Lewinsky could have shed light. Thus, it is my view that the President hoped that Ms. Lewinsky would not have to testify in the Jones case because he did not want their affair to become public, not because he was concerned about the impact of her testimony on Paula Jones' claims. When he called Ms. Currie into his office on January 18, he knew that someone had told the Jones lawyers about Monica Lewinsky. In that context, it is at least plausible that he was concerned about the imminent explosion of press attention and the political damage that would result from it, rather than his legal situation.

Whatever our suspicions about the President's intentions in his conversations with Ms. Currie, the available evidence does not entitle us to a convincing inference about his state of mind that would support a finding of guilt. Therefore, although

I still have concerns about this allegation of witness tampering, and I believe it was a serious charge to which the President's defense was weak, I do not believe that the House Managers have carried their burden to show beyond a reasonable doubt that the President's intent was to obstruct justice in the Jones case. I cannot reach this conclusion, however, without expressing my deepest concern and sadness that I am able to say only that the President apparently just barely avoided committing the crime of obstruction of justice in his conversations with Betty Currie.

III. HIGH CRIMES AND MISDEMEANORS

Many Senators chose to reach the issue of the "impeachability" of the offenses charged against the President as a threshold question of law prior to hearing the House Managers' full case. Many voted for Senator BYRD's motion to dismiss on this basis. For two reasons, I believed it was appropriate to allow the facts of the case to be more fully presented and put into evidence before making a legal judgment.

First, I believed that as a matter of deference and respect for the constitutional role of the House of Representatives, the case, including evidence, should be presented before the Senate reached a judgment. The Constitution gives the House the sole power of impeachment, and a determination of whether certain offenses constitute "Treason, Bribery, or other high Crimes and Misdemeanors" is necessarily a part of the House's decision to impeach a president. While the Senate's exclusive power to try, convict, and remove a president makes it the final arbiter of whether the conduct alleged is "impeachable," I believe it is incumbent on the Senate to permit the House Managers a reasonable opportunity to set out their case against the President before making a decision on that question. Whatever misgivings I may have about the way the House exercised its constitutional power to impeach in this instance, I felt compelled to permit the House Managers a reasonable opportunity to make their case before I would exercise my role as both a trier of fact and a judge of law.

Second, the historical and legal authorities on the question of what constitutes "other high Crimes and Misdemeanors" are varied and not wholly consistent. I believed that I could apply those authorities with more certainty to a clear and complete set of facts, after hearing the evidence, than to a set of allegations that might never be proved. I recognize that when courts entertain motions to dismiss in civil cases, they assume that all facts alleged in a complaint are true and determine the scope and impact of the particular statute or legal doctrine on which the claim for relief is based. But in this case, I felt more comfortable reaching the legal question of "impeachability" after hearing the evidence. I was comfortable allowing this limited deference to the prerogatives of the House Managers in the interest of a thorough and constitutional process.

Having decided that the House Managers failed to prove that the President committed the federal crimes they alleged, the question remains whether the underlying acts themselves, whether criminal or not, constitute conduct that under the Constitution constitute "high Crimes and Misdemeanors" that should result in the President's removal from office. On the issue of what constitutes "high Crimes and Misdemeanors," as in many other issues in this impeachment and trial, there has been heated and polarizing rhetoric. The House Managers and their supporters argued vigorously that the criminal acts they charged were, on their face, high crimes. White House counsel and many historians and legal scholars argued the contrary, that these acts could in no way be considered high crimes.

Other than bribery and treason, the Constitution itself gives no exhaustive or exclusive list of those offenses for which presidents should be removed from office. We are given only the phrase "other high Crimes and Misdemeanors" for guidance. The key to understanding the meaning of this phrase in my view are the words "other" and "high."

As University of Chicago Law School Professor Joseph Isenbergh has written:

". . . without the word 'high' attached to it, the expression 'crimes and misdemeanors' is nothing more than a description of public wrongs, offenses that are cognizable in some court of criminal jurisdiction."

Isenbergh notes that in the 18th Century, the word "high" when attached to the word "crime" or "misdemeanor," described a crime aiming at the state or the sovereign rather than a private person, and thus a "high Crime or Misdemeanor" was not simply a serious crime, but one aimed at the highest powers of the state. This concept had been asserted by William Blackstone and others, and was well understood by the Framers of the Constitution.

Indeed, Alexander Hamilton wrote in Federalist No. 65 that the crimes to be considered in a court of impeachment are:

"[T]hose offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with particular propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself."

Writing at the time of the Nixon impeachment, Yale University Law Professor Charles Black commented that the crimes enumerated in the Constitution, treason and bribery, are crimes that "so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator." In my view, "other high Crimes and Misdemeanors" must be interpreted as crimes or acts of a similar gravity and impact on society as those enumerated crimes.

To determine whether the conduct that led to impeachment for these crimes meets the definition of a high crime, the underlying circumstances must govern and a determination must be made if the offense, in Black's words, "threatens the order of political society." While it is certainly true that an act need not be criminal in a technical sense to constitute a threat to the well-being of the State, the acts in this case were not assaults on the State or the liberties of the people that threaten the order of political society, as contemplated by the Framers. This conduct does not justify overturning the will of the people as expressed in the 1996 election.

IV. CONCLUSION

As I listened carefully to the trial proceedings over the past month, I was impressed with the efforts of counsel for both sides in making their cases. Even understanding the role of counsel as advocates, however, I was troubled by the exaggerated claims with regard to the strength of each side of the case.

The House Managers referred to the evidence in support of removal as "overwhelming," while the President's counsel described the House Managers' evidence as "nonexistent." I find neither statement to be true and maybe a little reminiscent of the heated words of the Senator Charles Sumner of Massachusetts in his Opinion following the impeachment trial of President Andrew Johnson:

"In the judgment which I now deliver I cannot hesitate. To my vision the path is clear as day. Never in history was there a great case more free from all just doubt. If Andrew Johnson is not guilty, then never was a political offender guilty before; and, if his acquittal is taken as a precedent, never can a political offender be found guilty again. The proofs are mountainous. Therefore, you are now determining whether impeachment shall continue a beneficent remedy in the Constitution, or be blotted out forever, and the country handed over to the terrible process of revolution as its sole protection."

I cannot view the Clinton impeachment case from either extreme. This, unfortunately, was a close case that raised the very real specter of the nullification of an American presidential election. It is, however, at such a moment, when the high standard for impeachment and conviction becomes especially important.

The reason I describe the decision of the American people to elect a president as the most salient fact in this case is not simply because it is the right of the American people to choose their president. It is also because of the constitutional goal of our Founding Fathers to create a system of political stability. Just as the Framers wished to avoid the uncertainty of a parliamentary system, we today in this last year of the twentieth century should be concerned about political instability and the threat that excessive partisanship poses to our constitutional order.

I see the four year elected term of our president as a unifying force in our country. Yet this is the second time in my adult life that a President of the United States has undergone a serious impeachment process. And I am only 45 years old. In the nearly two hundred years prior to the case of President Nixon, this happened only once.

Are these two recent impeachments a fluke? Is it coincidence that two of our recent presidents were thought by some to be sufficiently unfit to be president to warrant this procedure? I wonder how we will feel about the stability of our system if another presidential impeachment occurs sometime in the next ten or twenty years.

I see a danger in this. I see a danger in this in an increasingly diverse country. I see a danger in this in an increasingly divided country. I see a danger when national elections seem never to be over. I see a danger when the lead House Manager in his concluding remarks in this trial asserts that we are engaged in a "culture war" in this country. I hope that is not where we are, and I hope that is not where we are heading.

In making a decision of this magnitude, it is best not to err at all. If we must err, however, we should err on the side of avoiding such divisions, and of respecting the will of the people. Senator James W. Grimes of Iowa, one of the seven Repub-

licans who voted to acquit President Andrew Johnson in 1868, said in his Opinion at the conclusion of the trial:

"I cannot agree to destroy the harmonious working of the Constitution for the sake of getting rid of an unacceptable President. Whatever may be my opinion of the incumbent, I cannot consent to trifle with the high office he holds. I can do nothing which, by implication, may be construed into an approval of impeachment as a part of future political machinery."

Spoken almost 131 years ago, these words express nearly perfectly my sentiments on the grave constitutional questions I was required to address in this case.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR THOMAS A. DASCHLE

Mr. DASCHLE. Mr. Chief Justice, my colleagues, in just a few moments each of us will be called upon to do something that no one has done in American history. We will be voting on two articles of impeachment against an elected President of the United States.

Having listened carefully to nearly 50 of our colleagues who share my point of view, it is both difficult and unnecessary to attempt to reiterate the powerful logic and the extraordinary eloquence of many of their presentations.

I share the view expressed by so many that this body must be guided by two fundamental principles. I recognize that we are not all guided by these principles, but I and others have been guided, first, by this question: Has the prosecution provided evidence beyond a reasonable doubt; and, second, if so, do the President's offenses rise to the level of gravity laid out by our founders in the Constitution?

After listening to both sides of these arguments now for the past 5 weeks, I believe—I believe strongly—that the record shows that on both principles the answer is no—no, the case has not been proven beyond a reasonable doubt, and, no, even if it had been it would not reach the impeachable level.

I also share the view expressed by many of my colleagues on the process which brought us here: an investigation by an independent counsel which exceeded the bounds of propriety; a decision by the Supreme Court subjecting sitting Presidents to civil suits—it is my prediction that every future President will be faced with legal trauma as a result—a deeply flawed proceeding in the House Judiciary Committee, which in an unprecedented fashion effectively relinquished its obligation to independently weigh the case for impeachment; the disappointing decision to deny Members of the Senate and the House the opportunity to vote on a censure resolution, even though I believe it would be supported by a majority in both Houses; and finally, the bitterly partisan nature of all the actions taken by the House of Representatives in handling this case.

But as deeply disappointed as I am with the process, it pales in comparison to the disappointment I feel toward this President. Maybe it is because I had such high expectations. Maybe it is because he holds so many dreams and aspirations that I hold about our country. Maybe it is because he is my friend. I have never been, nor ever expect to be, so bitterly disappointed again.

Abraham Lincoln may have been right when he said, "I would rather have a full term in the Senate, a place in which I would feel

more consciously able to discharge the duties required, and where there is more chance to make a reputation and less danger of losing it, than 4 years of the Presidency."

Maybe it is because of my disappointment that I was all the more determined to help give the Senate its chance to make a reputation, as Lincoln put it, at this time in our Nation's history.

The Senate has served our country well these past 2 months. And I now have no doubt that history will so record. There are clear reasons why the Senate has succeeded in this historic challenge.

First is the manner in which the Chief Justice has presided over these hearings. We owe him a big, big debt of gratitude. He has presented his rulings with clarity and logic. He has tempered the long hours and temporary confusion with a fine wit. In an exemplary fashion, he has done his constitutional duty and has made it possible for us to do ours.

The second reason is our majority leader. Perhaps more than anyone in the Chamber, I can attest to his steadfast commitment to a trial conducted with dignity and in the national interest. He has demonstrated that differences—honest differences—on difficult issues need not result in dissent, and in the end the Senate can transcend those differences and conclude a constitutional process that the country will respect, and I do.

Third is our extraordinary staff—the Chaplain, my staff in particular, Senator LOTT's staff, the floor staff, the Parliamentarians, the Sergeant at Arms, the Secretary of the Senate. They have served us proudly. Their professionalism and the quality that they have demonstrated each and every hour ought to make us all proud.

Finally, if we have been successful, it has been because of each of you—your diligence, your deportment, your thoughtful arguments on either side of these complex, vexing questions. This experience and each of you—each of you—have made me deeply proud to be a Member of the U.S. Senate.

Growing up in South Dakota, I learned so much, as many of us have, from relatives and from the people in my hometown, and my parents especially. Something my father admonished me to do so many, many times in growing up is something I still remember so vividly today. He said, "Never do anything that you wouldn't put your signature on." I thought of that twice during these proceedings—once when we signed the oath right here, and again last night when I signed the resolution for Scott Bates.

I will hear Scott Bates' voice when I hear my name called this morning. My father passed away 2 years ago. He and Scott are watching now. And I believe they will say that we have a right to put our signature on this work, on what we have done in these past 5 weeks, for with our votes today we can now turn our attention to the challenges confronting our country tomorrow. And, as we do, I hope for one thing: That we will soon see a new day in politics and political life, one filled with the same comity and spirit that I feel in the room today, one where good governance is truly good politics, one which encourages renewed participation in our political system. It is a hope based upon a fundamental belief which is now 210 years old, a belief that here in this country with

this Republic we have created something very, very special, a belief so ably articulated by Thomas Paine as he wrote "Common Sense."

> The sun will never shine on a cause of greater worth. This is not the affair of a city, a county, a province, or a kingdom, but of a continent. This is not the concern of the day, a year, or an age.
>
> Posterity is are virtually involved in the contest, and will be more or less affected even to the end of time by the proceedings now.

So it is as we cast our votes today and begin a new tomorrow.

Each of us understands that the decision we must make is the most demanding assigned to us, as Senators, by the Constitution. The framers did not believe it a simple matter to remove a President. They did not intend that it occur easily.

Only a certain class of offenses—treason, bribery and other high crimes and misdemeanors—could justify the President's removal. Only a supermajority—two-thirds of the Senate—could authorize it.

The framers made as plain as they could that each Senator must judge, on all the circumstances of the case, whether the facts support this extraordinary remedy.

As I look at this case, I am compelled to consider it from beginning to end—from the circumstances under which the House fashioned and approved the articles, to the trial here in the Senate when the House pressed its arguments for conviction. And I find a case troubled from beginning to end—one marked by constitutional defects, inconsistencies in presentation, surprising concessions by the managers against their own position, and even damage done to that position by their own witnesses.

In short, the case I have seen is one that I do not believe can bear the weight of the profound constitutional consequences it is meant to carry.

Its constitutional defects began in the House.

Rather than initiating its own investigation, and making its own findings, the House rested on the referral from Independent Counsel Kenneth Starr.

Never before has the House effectively relinquished its obligation to independently weigh the case for impeachment.

But this time it did, relinquishing that obligation to Mr. Starr.

Mr. Starr's 454-page referral became the factual record in the House. The arguments he made in that referral served almost exclusively as the basis for the articles prepared and voted by the House.

The House called no independent fact witness. The only witness was Mr. Starr. And it is telling that Mr. Starr's own ethics adviser, Professor Sam Dash, resigned his position with the Office of Independent Counsel to protest the improper role played by Mr. Starr in the impeachment process.

The House proceedings set a dangerous constitutional precedent, and the decision to follow this course has reverberated throughout the trial here in the Senate.

Because Mr. Starr carried the case in the House, the House did not develop or explain its own case until the time came to prepare for trial in the Senate. Those explanations, when they came, were replete with inconsistencies—not technical or minor inconsistencies, but rather inconsistencies that struck at the heart of their position.

On the one hand, the managers charged the President with serious crimes. Yet they also argued that they should not be required to prove "beyond a reasonable doubt" that the President committed those crimes—that they need not meet the standard that applies throughout our criminal justice system.

On the one hand, the managers acknowledged that the House rejected an article based on President Clinton's deposition in the Jones case. Yet throughout their presentations, including their videotaped presentation on February 6, they repeatedly relied on the President's statements in that civil deposition.

On the one hand, the managers insisted that the record received from the House provided clear and irrefutable evidence of the President's guilt. Yet one manager declared that reasonable people could differ on the strength of the case, and another stated that he could not win a conviction in court based on that record.

On the one hand, the managers originally claimed a record so clear that the House was not required to call a single fact witness—other than Mr. Starr. Yet in the Senate they insisted that their case depended vitally on witnesses.

In the end, the Senate authorized the deposition of witnesses, two of whom—Ms. Lewinsky and Mr. Jordan—were central to the core allegations of perjury and obstruction of justice. These were witnesses identified by the House—witnesses the managers expected to help support their case.

This is not, however, how it turned out.

In the final blow to the case for removal brought by the managers, those very witnesses provided the Senate with clear and compelling testimony—in the President's defense.

It cannot have escaped many of us that the defense showed more and longer segments of this testimony than the managers who sought these witnesses in the first place.

What did Ms. Lewinsky say about the false affidavit she filed in the Jones case? That she never discussed the contents with the President. That she thought she might be able to file a truthful, but limited affidavit and still avoid testifying. That she had reasons completely independent from the President's for wanting to avoid testimony. That the President did not ask her to lie or promise her a job for her silence.

What did Ms. Lewinsky say about the return of the gifts given to her by the President? That she raised with the President whether she should turn the gifts over to Ms. Currie. That she recalls that the President may have advised her to turn them all over to the Jones lawyers. That she told an FBI agent of this advice, but it somehow was omitted from the independent counsel's investigative report. That 6 days before her White House meeting with the President, she had already made an independent decision to withhold gifts from her own lawyer.

What did Ms. Lewinsky and Mr. Jordan say about the job search for Ms. Lewinsky? That it was never connected to the preparation of her affidavit, much less conditioned on her making any false statements to a court.

What did Mr. Jordan say about any pressure placed on the companies he contacted to hire Ms. Lewinsky? That he only recommended her. That two companies he contacted would not hire

her. That the third company, which did hire her, did so on the strength of an interview in which she made a strong personal impression—much like the one she made to the managers in their first meeting with her.

These witnesses—the House's witnesses—made it impossible, I believe, for the managers to sustain a case already weakened by a defective House process, serious inconsistencies in their arguments, and doubts about its merits that even some of the managers themselves candidly expressed.

Surely a case for removal of the President must be stronger.

Surely a case for conviction must be strong enough to unite the Senate and the public behind the most momentous of constitutional decisions.

Surely a case to remove the President from office must be strong enough to meet the high standards established with such care by the Constitution's framers.

In requiring that the Senate remove only for "high" crimes and misdemeanors, the framers acted with care. As the House Judiciary Committee stated in its Watergate report 25 years ago, "[I]mpeachment is a constitutional remedy addressed to serious offenses against the system of government." Its purpose is to protect our constitutional form of government, not to punish a President.

It is for this reason that the framers made clear that not all offenses by a Chief Executive are "high" crimes—and that even a President who may have violated the law, but not the Constitution, remains subject to criminal and civil legal process after he or she leaves office.

Whatever legal consequences may follow from this President's actions, the case made by the House managers does not satisfy the exacting standard for removal.

For all of these reasons, I will vote to acquit on both articles. This is my constitutional judgment about whether the Senate should remove the President from office. My personal judgment of the President's actions is something altogether different, reflecting my values and those of South Dakotans and millions of Americans.

Like them, I am extraordinarily disappointed, and angered, by the President's behavior. Since I have long considered the President a friend, my own sense of betrayal could not run more deeply.

There is no question that the President's deplorable actions should be condemned by the Senate.

I fervently hope that the Senate will do what the House would not—permit the people's elected representatives to express themselves and reflect their constituents' views on the President's conduct, for the benefit of our generation and those still to come.

So let us proceed now to a vote and resolve this constitutional task after these long and arduous months. Then the time will have come to return to the urgent work of the country.

When we do, I believe that all of us—members of the majority and members of the minority, however we choose to cast our votes—will be able to agree on this:

That in 1999, 100 Senators acted as the Constitution required, honoring their oath to do impartial justice and acting in the best interests of this country they so dearly love.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR CHRISTOPHER S. BOND

Mr. BOND. Mr. Chief Justice, my colleagues, I do not intend to give a comprehensive statement, nor do I intend to use all of the time allotted. But I feel it is very important to answer some of the points that have been raised. Let me deal with just a few of those.

When I spoke to you in a previous session, I mentioned the cover story and said that while the cover story was not impeachable—the cover story which was admitted by counsel for the White House—it is a framework and a context in which we judge other actions.

Objection has been made by my friends primarily on this side of the aisle that on occasion we have cited evidence where the President may not have been truthful, and we may have raised other arguments that go beyond the boundaries of the articles of impeachment as grounds for impeachment. Let me hasten to add I hope that no one would vote for a conviction on anything other than the items set forth in article I and the items set forth in article II. If there are other activities that may bear upon or indicate a pattern of conduct, that is one thing. But we must make our decision on the basis of that which has been presented to us by the House.

On the other side, we have heard some very spirited and enthusiastic attacks on the independent counsel and on the House managers and even on the Paula Jones case itself. Let me make just a few points.

No. 1, we threw Judge Alcee Hastings out of office as a judge for lying in a grand jury proceeding where he was not convicted. The objective is not to say that you can only commit perjury when a case is won or someone is convicted.

No. 2, the independent counsel got into this because the attorney general felt that there were grounds to pursue the potential violations of law by the President in the Monica Lewinsky case. A three-judge court agreed, and the independent counsel was assigned to pursue this.

Whatever you may think about what the House did, or what the Paula Jones attorneys did, or what the independent counsel did, that is not the question before us. That can be addressed, as some of my colleagues said, if there are investigations by the Department of Justice on improper activities by the OIC. Let that proceed in its own realm. We are here to judge on the evidence before us.

As I said, we have a cover story. We have a cover story that was utilized regularly throughout by this President and by Monica Lewinsky.

Objection has been made that, while we have the clear testimony that William Jefferson Clinton never said you should lie, he never said expressly you should file a false affidavit. Well, of course, he didn't. Of course, he didn't. He is a very sophisticated, very able lawyer. If you are concocting a scheme to obstruct justice, you don't tell somebody who is to be part of that scheme with you that you should lie under oath, that you should file a false affidavit because those people might just get called to testify under oath at some point, as they were in this case. But Mr. Clinton didn't have to do that because Monica Lewinsky understood very clearly that she

was to stay with the cover story until she was told not to. She filed the false affidavit that he sought. He and his counsel used it in the deposition.

Why was it filed? To keep him from having to testify truthfully in the deposition. Was he surprised by it? I do not believe it has one iota of credibility to say that after he went out and procured that false affidavit, he didn't know that his attorney was going to use it, and he was not going to rely on it. He got her to do the felonious deed of filing a false affidavit so he could avoid the danger of having to lie himself in a deposition.

Mr. Clinton didn't engage in a conspiracy with his lawyer, Mr. Bennett. We hear about the one-man conspiracy. No. He foisted that on his attorney, Mr. Bennett, when he found out about the falsity of that affidavit, had to do what no attorney ever wants to do—he had to write a letter to the judge, and say, "Disregard it. Disregard it. I was part, inadvertently, of a scheme to defraud the court." You notice he is not in the case any longer. He could not be part of that.

We know that Mr. Clinton enlisted his loyal secretary to violate the law to go pick up gifts, and she and Monica Lewinsky, once again, committed felonies to continue the story to protect the President. And the gifts wound up under Betty Currie's bed.

Mr. Clinton went to Betty Currie on a Sunday and 2 days later and told her things that he hoped she would say before the grand jury. He told his other subordinates things that he hoped they would say. He even trashed her when it appeared that she might be a hostile witness.

Ladies and gentlemen of the Senate, I suggest to you that when you have this clear-cut evidence of a scheme carried out with direct evidence, testimony of Monica Lewinsky and others, Betty Currie and his subordinates, an Audrain County jury would not have any trouble finding him guilty of tampering with a witness or obstructing justice.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR JEFF SESSIONS*

Mr. SESSIONS. Mr. Chief Justice and fellow Senators, I appreciate this proceeding. I appreciate the process we have gone through. I hope my remarks will be in the spirit of deliberation, and that some of what I say will be of value to you.

If there was a mistake made in this case, it is that we have treated this more like a piece of legislation than a trial. It probably would have been better to have just allowed the House to have a week or 8 days to present evidence and the other side present their evidence and then vote and we would have been out of here. As it is, we have been involved in the managing of it. I have been impressed that together we have somehow gotten through it in a way that I think I can defend. It is marginal, but I think we have conducted a trial that I feel we can defend.

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*Sen. Sessions submitted an additional statement on February 23, see p. 3094, below.

The impeachment came from the House so we have to have a trial and a vote, in my opinion. Judging on matters like this is not easy, but we all have had to do it. Juries make decisions like this every day. The President has to grant pardons and make appointments and remove appointments. Senators have to vote on nominations and so forth. I have had the adventure of appearing before Senators judging me on a previous occasion. Now I am in this body and the other day the Chief Justice declared that we were all a court, and I thought, "My goodness, I am a Federal judge and a Senator, how much better can life get than that?"

Someone suggested that this is a political trial. But the more we make it like a real trial, the better off we are going to be and the better the people are going to like it and the more they will respect it. Our responsibility is to find the facts, apply the Constitution, the law, and the Senate precedent to those facts. Precedent is important. We should follow it unless we clearly articulate a reason to change. Unless we do so we are failing in our duty. If we want to change our precedent, we obviously have that power. But we don't come at this with a blank slate since the 1700s and Federalist No. 65. We have had a lot of impeachments since then, and this Senate has established some precedent during that time. I think the dialog between Madison and Mason suggests a somewhat different view of things than Federalist No. 65 in the minds of many. But I would just say to you we have had impeachment trials of Judges Claiborne, Nixon and Hastings since then. That is our precedent, in recent years, about what we believe are our laws and how they should be interpreted.

I would say this about the case. Others may see it differently. But with regard to the obstruction article, I might have a bit of a quibble with the way the case was presented. I think there was a lot of time and effort spent on trees and not enough on the plain forest. Let me just say to you why I believe the proof of obstruction of justice is so compelling, beyond a reasonable doubt, to a moral certainty. That is because the President received interrogatories, he got a subpoena to a deposition, and he knew his day was coming. He knew he was going to have to tell the truth or he was going to have to tell a lie, and it wasn't going away.

He tried to avoid the day. He went all the way to the Supreme Court to try to stop that case from going forward, and the U.S. Supreme Court unanimously ruled "No, you don't get special privileges. You have to go forward with the case." So here he is having to do something. If he states he did not have a sexual relationship with Monica Lewinsky, if he files an answer to an interrogatory, which he did in December, in which he flatout stated that he had never had sex with a State or Federal employee in the last decade, that would be false. He filed such a false answer to a lawful interrogatory.

Then he is at a deposition, and what happens at the deposition? His attorney tries to keep him from being asked about Monica Lewinsky. They produce her affidavit and the attorney says that the President has seen that affidavit and had the opportunity to study it. The President testifies later in that deposition: It is "absolutely true." That is when it all occurred, right there, and talking with Monica beforehand was critical because if she didn't confirm

the lie he was going to tell he couldn't tell it. She wanted a job and the President got it for her. If they didn't submit the Lewinsky affidavit, the President was going to be asked those questions. If they talked about the gifts, the cat was going to be out of the bag. It is just that simple. The wrong occurred right there.

Then, when he left that deposition, he was worried. He called Betty Currie that night, right after that deposition, the same day, because he knew he had used her name and she was either going to have to back him up or he was in big trouble. So he coached her. That is what it is all about. You can talk about the facts being anything you want to, but that is the core of this case and it is plain and it is simple for anybody to see who has eyes to see with, in my view. So I think that is a strong case. The question is whether or not, if you believe that happened, you want to remove him from office, and I would like to share a few thoughts on that.

Having been a professional prosecutor for 12 years as a U.S. attorney, and I tried a lot of cases myself, I really have felt pain for Ken Starr. I had occasion to briefly get to know him. I knew that his reputation within the Department of Justice as Solicitor General was unsurpassed. He was given a responsibility by the Attorney General of the United States and a court panel to find out what the truth was. The President lied, resisted, attacked him, attacked anybody Mr. Starr dealt with, virtually, in seeking the truth. And Ken Starr gets blamed for that, and then 7 months later we find out that the President was lying all the time. He was lying all the time. And somehow this is Ken Starr's fault that he pursued the matter? I am sure he suspicioned the President was lying but it couldn't be proven until the dress appeared and then we finally got something like the truth.

One of the most thunderous statements made by counsel—I am surprised it didn't make more news than it did—was the representation by White House counsel that judges hold office on good behavior.

Those of you who fight tenaciously for the independence of the judiciary, know that this is not the standard for removal of judges. The courts have gone through it in some detail. Law reviews have been written about it. Judge Harry T. Edwards, Court of Appeals for D.C. Circuit, wrote in a Michigan law review that:

> Under article II, a judge is subject to impeachment and removal only upon conviction by the Senate of treason, bribery, or other high crimes and misdemeanors.

This is because he is a civil officer. The President, Vice President and judges are civil officers of the United States. There is only one standard for impeachment.

The Constitution is a marvelous document. We respect it. To do so, we must enforce it as it is written. It says that civil officers, judges are removed for only those offenses. There are no distinctions between the President and judges. Just because one official is elected and one is not elected, one's term is shorter, or there are more judges than Presidents—makes no difference—that is not what the Constitution says. They face the same standard for impeachment.

I really believe we are making a serious legal mistake if we suggest otherwise. If the standard is the same, then we have a problem because we removed a bunch of judges for perjury.

Of course a President gets elected, but the President holds office subject to the Constitution. One of the limitations on your office as an elected official is don't commit a high crime or misdemeanor and if you commit a high crime or misdemeanor, you are to be removed. I don't think there is a lot of give in this, frankly.

With regard to precedent, precedent is important because it helps us be objective, less political, less personal and do justice fairer. That is what the Anglo-American common law is all about. Judges have established precedent, and judges tend to follow that precedent unless there is a strong reason not to. This is important for the rule of law.

Perjury and its twin, obstruction of justice, do amount to impeachable crimes, and our precedent in the Judge Nixon case proves that. I believe we set a good standard in that case, finding that perjury is a high crime, clearly, and we ought to stay with this standard.

Some have argued that the House Judiciary Committee on the President Nixon matter declared that tax evasion was not an impeachable offense because it was not directly related to one of the President's duties. I don't think that is clear at all. In fact, as I recall, a few House Members and minority Members signed a statement to that effect. But let me ask you this, and think about this: If a minority on the House Judiciary Committee voted on something, or Gerald Ford said something when he was in the House about impeachment, such is not precedent for the U.S. Senate. It is our precedent that counts. It is the precedent established by Judge Hastings, Judge Nixon, and Judge Claiborne about which we ought to be concerned.

I do not believe the Constitution says that the standard for removal is whether somebody is a danger to the Republic's future. The Constitution says if you commit bribery, treason, or other high crimes or misdemeanors, you are out, unless there are some mitigating circumstance somebody can find, but the test is not whether or not the official is going to continue to do the crime in the future. What if it is a one-time bribery that is never again going to happen. Mr. Ruff advocated the "danger" standard, and it really disturbed me because it is not in the Constitution.

If we were to reject the standard we use for judges for impeachment, I do believe that would mean a lowering of our standards. We will not be holding the President to the same standards we are holding the judges in this country, and I don't think the Constitution justifies a dual standard.

As a prosecutor who has been in the courtroom a lot, I am not as cynical as some have suggested today about the law. I have been in grand juries hundreds of times—thousands really. I have tried hundreds of cases. I have seen witnesses personally. I have been with them before they testified and have seen them agonize over their testimony. I know people who file their tax returns and pay more taxes than they want to, voluntarily, because they are men and women of integrity. I have seen it in grand juries. I have seen people cry because they did not want to tell the truth, but they told it. They filed motions to object to testifying, but when it came right down to it, they told the truth.

I believe truth is a serious thing. Truth is real and falsehood is real. This is, in my view, a created universe and we have a moral order and when we deny the truth we violate the moral order and bad things happen. Truth is one of the highest ideals of Western civilization commitment to it defines us as a people. As Senator KYL said, you will never have justice in a court of law if people don't tell the truth.

So this is a big deal with me. I have had that lecture with a lot of people who were about to testify. I believe we ought not to dismiss this lightly.

There was a poignant story about Dr. Battalino and her conviction for lying about a one-time sex act and the losses she suffered. Let me tell you this personal story, and I will finish.

I was U.S. attorney. The new police chief had come to Mobile. He was a strong and aggressive leader from Detroit. He was an African American. He shook up the department, established community-based policing, and caused a lot of controversy. A group of police officers sued him. His driver, a young police officer, testified in a deposition that the chief had asked him to bug other police officers illegally. Not only that, he said, "I've got a tape of the chief telling me to bug."

It leaked to the newspapers, all in the newspapers. They wanted to fire the chief. The FBI was called because it is illegal to bug somebody if there is not a consenting person in the room.

It is different with Linda Tripp. Let me just explain the law. If you can remember and testify to what you hear in conversation, you can record that conversation and play it later under law of virtually every State in America. Maryland apparently is different.

Here, the driver's action would be illegal. Anyway, the young officer finally, under pressure of the FBI, confessed. The lawsuit hadn't ended. The civil suit was still going on. He went back and changed his deposition and recanted. His lawyer came to me and said, "Don't prosecute him, Jeff. He's sorry. He finally told the truth. He went back. The case wasn't over."

We prosecuted him. I felt like he had disrupted the city, caused great turmoil and violated his oath as a police officer, and that we could not just ignore that. The case was prosecuted. He was convicted, and it was affirmed on appeal.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR PAUL COVERDELL

Mr. COVERDELL. Mr. Chief Justice and fellow colleagues, in the Capitol's Mansfield Room where our Conference has met over the last few weeks, there is a picture of our first President, George Washington, who celebrates a birthday this Monday. I was reminded that, from childhood through adulthood, George Washington carried around with him a copy of the "Rules of Civility." The rules could be seen as a roadmap of how one should appropriately conduct himself or herself in society. As the Senate began its course through uncharted waters, civility has been our goal, if not our duty. We have done our best to work together, to be re-

spectful of each other's views and to do justice according to the Constitution. Had we not started with this goal in mind, I fear the debate would have quickly descended into rancor, doing a disservice to our Nation.

In the next few minutes, I want to explain how this trial unfolded for me, as well as the rationale behind some of the votes I've cast, including on the articles of impeachment.

When the historians write their accounts of the impeachment trial of William Jefferson Clinton, I trust that, regardless of where one comes down on the facts of the case, they will agree that the Senate did it right. We conducted a trial that was fair to all sides, correct according to the Constitution and expeditious in accordance with the wishes of the American people. We also did our best to conduct our deliberations on a bipartisan basis.

We began this process by taking a second and most solemn oath of office: to do impartial justice. For me, as a Senator, I can think of no more somber and important a constitutional duty than the one that was given us. Our first task was to draft a blueprint of how we would proceed in the trial. We met in closed session in the Old Senate Chamber where the discussions were civil, respectful, and frank on both sides. In the end, it was Senator GRAMM of Texas, joined by Senator KENNEDY of Massachusetts, two opposite sides of the political spectrum, who led us to a unanimous bipartisan agreement on how to proceed. The support of all 100 Senators was important because it opened the door to a trial that was conducted in a professional and judicious manner and without the discord that so many of the Washington wise men had predicted.

After hearing the opening arguments made by both sides, Senator ROBERT BYRD offered a motion to dismiss the case against the President. If successful, this would have been the first dismissal of an impeachment trial in our Nation's history.

My vote against this dismissal motion was premised on my sworn constitutional obligation to hear the facts and evidence and consider the law before I rendered a decision on whether the articles warranted the President's conviction and removal from office. Indeed, this was part of the oath we took—to do impartial justice. The Senate would not have been able to render a fair and correct judgment on the articles without receiving and objectively assessing the wealth of evidence presented by the House of Representatives and the White House. In short, dismissal was premature and inappropriate.

Consistent with our duty to consider all the evidence fully, I supported an effort to allow both the House managers and the White House the opportunity to depose a limited number of key witnesses to resolve inconsistencies in testimony. After reviewing the depositions, I supported a bipartisan motion to make all of this information—both the videotapes and written transcripts—part of the permanent record so that each and every American could examine the evidence and draw their own conclusions. I also voted to allow both the House managers and the White House to use the videotaped deposition testimony on the floor of the Senate.

Although I did support deposing a limited number of witnesses, I did not support an attempt to allow Ms. Lewinsky to testify as a live witness on the floor of the Senate. In my judgment, we pro-

vided the House managers a more than adequate opportunity to present their case: allowing for witnesses to be deposed, for the House managers to ask any questions necessary to resolve inconsistencies in testimony and to allow any portion of these tapes to be used on the floor to argue the case against the President. Consequently, I thought it inappropriate and unnecessary for Ms. Lewinsky to testify on the Senate floor. Seventy Senators felt similarly on this issue.

The presentation with videotaped excerpts, rather than live witnesses, allowed both sides to make their arguments cogently. In my opinion, witnesses questioned on the floor, under a time agreement, would have made for a more fragmented process—objections by counsel would have disrupted the flow of presentations considerably. I believe that our decision to exclude live witness testimony was appropriate, fair, and improved the nature of closing arguments.

It is the same sense of obligation and a desire to maintain decorum that guided me in my vote to uphold the Senate's time-tested tradition of deliberating impeachment trials in private. Opening the doors of the Senate during these final deliberations would have been a tragic mistake, ignoring years of precedent on this issue. For 2,600 years, since the ancient Athenian lawgiver Solon, trials have been open and jury deliberations have been private. Throughout our own history in every courthouse in America, we have had open trials, we have had public evidence, we have had public witnesses. But when the jury deliberates, it meets in private. Jury deliberations are held in private for the protection of all parties and to ensure a frank and open discussion of the evidence.

Private jury deliberations have also been part of the Senate rules for 130 years. Some argue that these rules are outdated and need to be revised. However, in 1974 and 1986, when the Senate had an opportunity to vote on changes to these rules, it chose to leave intact the precedent that the deliberations should remain closed.

Our private deliberations have promoted civil discussion on this grave matter of impeachment. Some of the most profound and thoughtful statements I've heard have come during these private meetings—where the absence of cameras has had the effect of turning politicians into statesmen. These private deliberations set a tone of civility and allowed the healing process to begin.

After hearing all evidence and deliberations, at the end, I voted for both impeachment articles. Setting all the legal contortions aside, a vote against the articles, or to acquit, would be to ratify that there are two sets of law in our country—one set for our citizens and another for the President of the United States. This is a conclusion I could not reach or support. Therefore, my vote on both articles says in the simplest terms that no American is above the law and there must be one law that applies to us all.

Today's outcome should be a surprise to no one. From the beginning, our two parties approached this issue in fundamentally different ways. While Democrats and Republicans agree that President Clinton committed very serious offenses, the disagreement is over whether or not these issues rise to the level that he should be removed from office. To some extent, the die had been cast when the Democrat Party decided to rally around the President. Like

President Nixon's fate was sealed when his party fell against him, President Clinton's Presidency was secured by his party's allegiance.

My hope is that no future Senate will ever be required to consider articles of impeachment against the President of the United States. But, if they do, I have every confidence that we have left behind an appropriate roadmap for them to fulfill their constitutional responsibilities. I am proud of the Senate and its Members. The Senate should be proud of the way it has conducted itself; we have done our jobs right by being fair to all parties, correct according to the Constitution and expeditious in accordance with the wishes of the American people.

In conclusion, I thank the leaders on both sides. In particular, I single out Senator LOTT for his leadership. This has clearly been one of his finest hours as our majority leader.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR ORRIN G. HATCH

Mr. HATCH. Mr. Chief Justice and distinguished Senators, Daniel Webster once observed that a "sense of duty pursues us ever. It is omnipresent like the Deity. If we take to ourselves the wings of morning, and dwell in the uttermost parts of the sea, duty performed or duty violated is still with us. . . ." The duty which has faced each United States Senator is the obligation to do impartial justice in a matter of significant historical import with lasting consequences for our constitutional order—the consideration of the impeachment articles against President William Jefferson Clinton.

Our duty calls on us to answer a serious question—whether the President's actions warrant his removal from office. Fundamentally, in arriving at our individual decisions, we must consider what is in the best interests of the American people. The President engaged in conduct that even his defenders recognize was reprehensible and wrong. A bipartisan majority of the House also found that he committed serious, impeachable crimes.

So the test for the Senate must be to do what's in the best interest of our Nation. It is not a matter of what is easiest or cleanest. It is a matter of what is in the immediate and long term national interest. This has been, and it will continue to be, a subjective and difficult standard and one which I will discuss in greater detail later in my remarks.

First, however, I wish to speak on the Senate's procedural responsibility when sitting as a Court of Impeachment, the constitutional law concerning impeachable offenses, and the articles of impeachment at issue in the present case. Finally, I will conclude with a discussion of whether—assuming the facts alleged have been proven—the best interests of the country would be served by removing President Clinton from office.

Let me begin by explaining what the role of the Senate is in the impeachment process.

Simply put, the Senate's role in the impeachment process is to try all impeachments. As Joseph Story wrote:

The power [to try impeachments] has been wisely deposited with the Senate. . . . That of all the departments of the government, 'none will be found more suitable to exercise this peculiar jurisdiction than the Senate.' . . . Precluded from ever becoming accusers themselves, it is their duty not to lend themselves to the animosities of party, or the prejudices against individuals, which may sometimes unconsciously induce" the other body. In serving as the tribunal for impeachments, we must strive to attain and demonstrate impartiality, integrity, intelligence and independence. If we fail to do so, the trial and our judgment will be flawed.—Joseph Story, Commentaries on the Constitution of the United States, Section 386.

In short, impeachment trials require Senators to act, wherever possible, with principled political neutrality. One question I have repeatedly asked myself during this scandal—when faced with questions concerning the interpretation of the relevant law, the process, the calls for resignation, or forgiveness—has been whether I would have taken the same position were this a Republican President. I have done this throughout the past year and I expect many of my colleagues have done the same.

In 1993, the Supreme Court ruled in the case of United States versus Nixon that the process by which the Senate tries impeachments was nonjusticiable. As a result of the Nixon decision, the Senate has a heightened constitutional obligation in impeachment cases.

As constitutional scholar Michael Gerhardt notes in his 1996 book, "The Federal Impeachment Process":

Congress may make constitutional law—that is, make judgments about the scope and meaning of its constitutionally authorized impeachment function—subject to change only if Congress later changes its mind or by constitutional amendment. Thus, Nixon raised an issue about Congress's ability, in the absence of judicial review, to make reasonably principled constitutional decisions.

I believe the Senate has conducted this trial in a fair manner and that we have made principled constitutional decisions. I commend my colleagues on both sides of the aisle—in particular the majority leader, TRENT LOTT—for the impartial and proficient manner in which we have conducted our constitutional obligation.

At the core of our deliberations was the tension between, on the one hand, our shared interest in putting this matter behind us and getting on with the Nation's business, and, on the other hand, our interest in affording the President, and the weighty matter of impeachment, that process which is due and fair. While there are decisions the Senate reached with which I differed, I want to make clear my view that the Senate has ably balanced these competing interests. A fair and full trial that we were once told would take 1 year has been completed in less than 6 weeks. The credit for this process rests with every Member of the Senate, with the House managers, counsel for the President, and the Chief Justice.

Of great concern to me is what the standard should be for impeachment in this and future trials. The President's counsel argued that the President can only be removed for constituting, what Oliver Wendell Holmes termed in free speech cases a "clear and present danger." It was contended that a President can only be removed if he is a danger to the Constitution. As such, according to the President's counsel, removable conduct must relate to egregious conduct related to performance in office. Even if the House's allegation that President Clinton committed acts of perjury and obstruction of justice is proven true, it was argued then such behavior does not rise to impeachable offenses because it was private, not

public, conduct. In this case an inappropriate sexual relation with a subordinate employee was the predicate of the charged offenses. But such a standard establishes an impossibly high bar as to render impotent the impeachment clauses of the Constitution. I hope that no matter the outcome of this trial, President Clinton's view of what constitutes an impeachable offense does not become precedent. If it does, I fear the moral framework of our Republic will be frayed. If it does, the legitimacy of our institutions may very well become tattered. It would create the paradox of being able to convict and jail an official for committing, let's say, homicide but not to be able to remove that official from holding positions of public trust. Committing crimes of moral turpitude, such as perjury and obstruction of justice, go to the very heart of qualification for public office.

The overwhelming consensus of both legal and historical scholars is that the Constitution mandates the removal of the "President, Vice President, and all civil Officers of the United States"—which includes federal judges—"upon impeachment by the House and conviction by the Senate of 'Treason, Bribery or other high Crimes and Misdemeanors.'" (U.S. Const., art. II., sec. 4.) The precise meaning of this latter clause is critical to the outcome of the impeachment trial.

The President's advocates agree with their critics that this standard is the sole standard for Presidential impeachment but contend that the "or other" phrase indicates that grounds for impeachment must be criminal in nature because treason and bribery are crimes or acts committed against the state.

Such crimes or acts must be heinous, they contend, because the term "crimes and misdemeanors" is preceded by the descriptive adjective "high" in the impeachment clause. These advocates also claim that there exists no proof of criminal wrongdoing, that we have evidence of only a private affair unrelated to performance in public office, and that abuse of power related to official conduct—not present here—is a prerequisite for impeachment.

Many learned scholars oppose this view. Looking at the debates in the Constitutional Convention in Philadelphia in 1787, they note that the Convention originally chose treason and bribery as the sole standard for impeachment. George Mason argued that this standard was too stringent and advocated that "maladministration" be added to the list. James Madison objected, believing that no coherent definition of "maladministration" existed and that such a lenient standard would make the President a pawn of the Senate. The Convention, as a result, settled on the phrase "Treason, Bribery or other high Crimes or Misdemeanors." It is clear that the phrase "high crimes and misdemeanors" was considered by the framers to have a more narrow and specific meaning and, indeed, it is a term taken from English precedent.

Accordingly, many scholars, including Raoul Berger, the dean of impeachment scholars, in "Impeachment: The Constitutional Problems" (1973), contend that the phrase "high Crimes and Misdemeanors" is a common law term of art that reaches both private and public behavior. Treason and bribery are acts that harm society in that they constitute a corruption on the body politic. Consequently, "other high crimes and misdemeanors" encompasses

similar acts of corruption or betrayals of trust and need not constitute formal crimes. Indeed, Alexander Hamilton in Federalist No. 65 makes clear that impeachment is political, not criminal, in nature and reaches conduct that goes to reputation and character. In the 17th and 18th centuries the term "misdemeanor" refers not to a petty crime but to bad demeanor.

History thus demonstrates that acts or conduct that demeans the integrity of the office or harms an individual's reputation in such a way as to engender a lack of public confidence in the office holder or the political system is an impeachable offense. Justice Joseph Story, in his celebrated "Commentaries on the Constitution of the United States," section 762 (1835), made this abundantly clear when he wrote that impeachment lies for private behavior that harms the society or demeans its institutions:

> In the first place, the nature of the functions to be performed: The offences, to which the power of impeachment has been, and is ordinarily applied, as a remedy, are of a political character. Not but that crimes of a strictly legal character fall within the scope of the power, (for, as we shall presently see, treason, bribery, and other high crimes and misdemeanors are expressly within it;) but that it has a more enlarged operation, and reaches, what are aptly termed, political offenses, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.

Even though the framers rejected the English model of impeachment as a form of punishment and promulgated removal as the remedy for conviction, most scholars contend that the framers looked to English precedent to define "high crimes and misdemeanors." There is a wealth of evidence that a betrayal of public trust or reckless conduct that places a high office in disrepute constitutes "high misdemeanors." The modifier "high" refers to acts against the state or commonwealth. In the 18th century, the term "political" also encompassed our modern term of "social." So conduct that harmed society as a whole or denigrated the public respect and confidence in governmental institutions constituted "high crimes and misdemeanors."

As such, both English and American officials have been impeached for drunkenness, for frequenting prostitutes, even for insanity, in other words private conduct that is unrelated to official acts. Such behavior is seen as defaming the office that the accused held and diminishing the people's faith in government. Impeachment is thus seen by many scholars as a means of removing unqualified office holders.

Thus, impeachment and removal does not have to be predicated upon commission of a crime. Consequently, impeachment and removal is not in essentially a criminal punishment, a conclusion that is also textually demonstrated by the fact that the framers expressly provided for later indictment and criminal conviction of an impeached and removed President.

A high crime and misdemeanor, according to this view, does not have to amount to a crime or be related to official conduct. Even if President Clinton's acts of perjury were predicated upon lying about a private sexual relation, they still must be considered high crimes and misdemeanors. The fact that the underlying behavior was private in its genesis is irrelevant. Such private acts demean the Office of the President and betray public trust. Those acts, therefore, are impeachable.

I must emphasize that even if the President's counsel is correct in that private acts unrelated to performance in office are not impeachable offenses, I believe the gravamen of what President Clinton committed are public, not private, acts that are unambiguous breaches of public trust. Perjury and particularly obstruction of justice are conduct that attack the very veracity of our justice system. Furthermore, I vehemently disagree that the underlying conduct was a purely private concern because the conduct involved a Federal employee in a work environment.

Lying under oath, hiding evidence, and tampering with witnesses destroy the truth-finding function of our investigatory and trial system. Perjury and obstruction of justice are particularly pernicious if committed by a President of the United States who has sworn pursuant to the oath of office to protect the Constitution and laws of the United States. Whether perjury and obstruction of justice can be considered private or public acts is of no moment. They are twin "high crimes," harming the political order and requiring impeachment and removal from office.

A related argument made by the President's counsel is that a President should be held to a less stringent standard than Federal judges in impeachment trials. Because many judges have been removed for conduct unrelated to performance in office, such as Judges Claiborne and Nixon, who were convicted and removed for perjurious statements unrelated to their performance in office, the President is almost compelled to make this argument.

In essence, the President's counsel contend that article III's requirement that judges hold office for "good behavior" is not simply a description of the term of office, but a grounds for impeachment if violated. Presidents—and other civil officers—are subject to the more stringent high crimes and misdemeanors standard.

Most scholars reject this view. For instance, Michael J. Gerhardt, author of "The Federal Impeachment Process" (1996), testified in the House Constitutional Subcommittee of the Judiciary Committee in November that the impeachment standard of high crimes and misdemeanors applies to all civil officers, including judges as well as the President. This is the sole constitutional ground for impeachment. Article III's good behavior provision for judges simply sets the duration for judicial office—lifetime unless impeached. There are simply no differing standard for judges and the President.

Let me now turn to the facts of this case. The House alleges in article I that the President should be removed because he committed acts of perjury. The House alleges in article II that the President should be removed because he obstructed and interfered with the mechanisms and duly constituted processes of the justice system.

To demonstrate why I believe it is so, it is necessary to discuss both the legal standards and how the facts meet the requirements of those standards. I will first discuss perjury, and, next, turn to obstruction of justice.

ARTICLE I

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the

Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury.

"Whoever under oath . . . in any proceeding before or ancillary to any court or grand jury knowingly makes any false material declaration . . . shall be fined under this title or imprisoned not more than five years, or both." See 18 U.S.C. 1623(a). In a prosecution for perjury under 18 U.S.C. 1623(a), the prosecution must prove the following elements: (i) the declarant was under oath, (ii) the testimony was given in a proceeding before a court of the United States, (iii) the witness knowingly made, (iv) a false statement, and (v) the testimony was material. *United States* v. *Whimpy,* 531 F.2d 768 (1976). The first two elements are not at issue here because it is undisputed that President Clinton testified under oath before a grand jury of the United States. As the discussion below reveals, the House managers proved the remaining elements of perjury beyond a reasonable doubt for key aspects of President Clinton's grand jury testimony.

President Clinton committed perjury before the grand jury when he testified falsely concerning his motivation for making five statements to Betty Currie. Hours after his deposition in the Jones case, President Clinton called his secretary Betty Currie and asked her to come to the White House the next day, January 18. (Currie Grand Jury Testimony, Jan. 27, 1998, pp. 65–66.) On that Sunday afternoon, the President made the following five statements to Ms. Currie about Monica Lewinsky: (1) "You were always there when she was there, right?"; (2) "We were never really alone."; (3) "Monica came on to me, and I never touched her, right?"; (4) "You can see and hear everything, right?"; and (5) "She wanted to have sex with me, and I cannot do that." (Currie Grand Jury Testimony, Jan. 27, 1998, pp. 71–74.) President Clinton repeated these same questions and statements to Betty Currie a few days later. (Currie Grand Jury Testimony, Jan. 27, 1998, pp. 80–81.) When he discussed his deposition testimony regarding Ms. Lewinsky with Betty Currie on these two occasions, President Clinton violated Judge Wright's strict order prohibiting any discussion of the Jones deposition.

President Clinton lied to the grand jury when he testified about his motivation for making these statements. When asked before the grand jury about these statements to Betty Currie, the President testified that he asked these "series of questions" in order to "refresh [his] memory about what the facts were." (Clinton Grand Jury Testimony, Aug. 17, 1998, p. 131.) He further testified that he wanted to "know what Betty's memory was about what she heard, what she could hear" and that he was "trying to get as much information as quickly as I could . . . [a]nd I was trying to figure [it] out . . . in a hurry because I knew something was up." (Clinton Grand Jury Testimony, Aug. 17, 1998, p. 56.) Immediately following extensive questioning on this issue, a different prosecutor from the Office of Independent Counsel asked the President that

"[i]f I understand your current line of testimony, you are saying that your *only* interest in speaking with Ms. Currie in the days after your deposition was to refresh your own recollection." (Clinton Grand Jury Testimony, Aug. 17, 1998, pp. 141–42; emphasis added.) President Clinton answered: "Yes." (Id.)

President Clinton's testimony that he was "only" trying to "refresh [his] memory about what the facts were" is perjury because a person cannot "refresh" his memory with statements and questions that he knows are false. Each of President Clinton's five statements to Currie is either an outright lie or extremely misleading. President Clinton knew the facts of his relationship with Ms. Lewinsky, and he knew his statements to Betty Currie were false. By definition, these false questions and statements could not have helped President Clinton accurately refresh his memory.

In addition, Betty Currie could not possibly have known the answers to some of these questions. For example, how could Betty Currie have known whether the President ever "touched" Ms. Lewinsky or whether Ms. Currie was "always there when [Ms. Lewinsky] was there?" Common sense defies the President's explanation: if one is trying to refresh his memory or gather information quickly, he does not ask questions of a person to which the person could not know the answers. The fact that Betty Currie could not have known the answers to these questions further undermines President Clinton's testimony that he was trying to refresh his memory or gather information quickly.

If the President was merely trying to refresh his recollection or gather information quickly why did he repeat these questions and statements to Currie a few days later? As the House managers noted during the trial, instead of asking a series of specific leading questions, why didn't President Clinton ask Currie a general question about what she recalled about Ms. Lewinsky's activity at the White House? Moreover, President Clinton's blatant violation of Judge Wright's order prohibiting any discussion of the Jones deposition casts further doubt on his testimony on this issue. The President's testimony regarding his motivation for these statements is false. He did not make these statements to refresh his recollection. Rather, as the following section explains, the President made these statements to Ms. Currie in order to influence her potential testimony in the Jones suit and to influence her possible responses to the media.

In a perjury case under 18 U.S.C. 1623, the prosecution must prove that the defendant "knowingly" made the false statement. Under this statute, "knowingly" means merely that the defendant made the false statement "voluntarily and intentionally, and not because of mistake or accident or other innocent reason." *United States* v. *Fawley*, 137 F.3d 458, 469 (7th Cir. 1998); *United States* v. *Watson*, 623 F.2d 1198 (7th Cir. 1980).

The President knowingly made these false statements about his motivation for speaking to Betty Currie after his deposition. He did not make these statements by "mistake or accident or other innocent reason." Rather, President Clinton lied about his motivation to conceal his true purpose in making these statements to Currie. In reality, President Clinton was attempting to corroborate his deceitful testimony in the Jones deposition with a prospective witness.

When he made these statements to Currie, the President knew that she was a likely witness in the Jones case because he repeatedly referred to Currie when asked about Ms. Lewinsky by the Jones lawyers. (Clinton Deposition Testimony, Jan. 17, 1998, p. 58.) President Clinton actually told the Jones lawyers to "ask Betty" in response to one question in the deposition. (Clinton Deposition Testimony, Jan. 17, 1998, pp. 64–66.) In fact, Betty Currie was subpoenaed by the Jones lawyers only days after the President's deposition.

Moreover, in addition to influencing a prospective witness in the Jones suit, the President had another motivation for coaching Ms. Currie: She was a probable target of press inquiries about this controversy. In fact, a prominent reporter from Newsweek had already called Currie on January 15, 1998 and asked her about Ms. Lewinsky. (Currie Grand Jury Testimony, May 6, 1998, pp. 120–21.) The President had a motive to influence information Currie might give to the media—in addition to testimony she might give as a witness in Jones v. Clinton. The President knowingly made these statements to Ms. Currie in order to influence both her potential testimony and her possible responses to the media.

"Because the Grand Jury's function is investigative, materiality in that context is broadly construed." *United States* v. *Gribbon*, 984 F.2d 471 (2d Cir. 1993). Courts have consistently held that in a grand jury, "a false declaration is 'material' within the meaning of [18 U.S.C.] 1623 when it has a natural effect or tendency to influence, impede or dissuade the Grand Jury from pursuing its investigation." *United States* v. *Kross*, 14 F.3d 751 (2d Cir. 1994).

President Clinton's false statements to the grand jury regarding his January conversations with Betty Currie are material to the grand jury's investigation of obstruction of justice. To determine whether the President obstructed justice in the Jones case, it was critical for the grand jury to ascertain whether President Clinton attempted to influence the testimony of Currie, a potential witness in that case. President Clinton's statements to Currie the day after his deposition strongly indicate that he was seeking to influence her testimony. The President's false statements about his motivation for making these statements to Currie had the "natural effect or tendency" to "impede or dissuade the Grand Jury from pursuing its investigation" of obstruction of justice in the Jones case.

In his trial brief, the President offers only a brief defense to this perjury allegation. First, the President argues that "Ms. Currie's testimony supports the President's assertion that he was looking for information as a result of his deposition" when he made these statements to Currie. (President's Trial Brief, p. 53.) As discussed earlier, however, this is implausible. A person cannot accurately gather information by making false or misleading statements to another person.

Second, in his brief, the President refers to Currie's grand jury testimony in which she testified that she felt no pressure to agree with the President when he made these questions and statements. (President's Trial Brief, pp. 51–53.) However, the fact that Ms. Currie testified that she did not feel pressured is completely irrelevant to whether the President committed perjury concerning these

statements. President Clinton's state of mind—not Ms. Currie's—is at issue here because he is the one accused of perjury.

In sum, the House managers proved beyond a reasonable doubt that President Clinton: (1) knowingly (2) lied about his motivation for making these deceitful statements to Betty Currie (3) concerning a material matter under investigation by the grand jury (4) while under oath before a Federal grand jury.

Another example of perjury before the grand jury concerns President Clinton's testimony that he did not engage in "sexual relations" with Ms. Lewinsky even under his alleged understanding of the definition used in the Jones case. Even under his purported interpretation of the term, however, Clinton admitted to the grand jury that if the person being deposed touched certain enumerated body parts of another person, then that would constitute "sexual relations." (Clinton Grand Jury Testimony, Aug. 17, 1998, pp. 95–96.) When asked if he denied engaging in such specific conduct, Clinton answered "[t]hat's correct." (Id.)

President Clinton lied to the grand jury when he testified concerning the nature and extent of the sexual relationship. First, human nature and common sense strongly undermine President Clinton's testimony. It is undisputed that President Clinton and Ms. Lewinsky engaged in sexual activity on at least 10 occasions over the course of 16 months. President Clinton's testimony to the grand jury that he never touched Ms. Lewinsky in certain areas with the intent to arouse is simply not believable given the nature and extent of their contact.

In addition, Ms. Lewinsky's testimony directly contradicts the President. She testified in detail repeatedly before the grand jury about each of their sexual encounters. According to Ms. Lewinsky's testimony, she and President Clinton engaged in conduct that constituted "sexual relations" even under the President's purported understanding of the term during 10 encounters. It is important to note that Ms. Lewinsky's testimony about the extent of their sexual conduct occurred before the President's grand jury testimony made these precise sexual details important. Moreover, Ms. Lewinsky's friends, family members, and medical therapists corroborated her account by testifying to the grand jury that Lewinsky made near-contemporaneous statements to them that President Clinton fondled her in a variety of ways during their encounters. Finally, the fact that President Clinton lied to the American people about this tawdry affair badly undermines his implausible testimony on this issue.

As mentioned earlier, in a perjury case under 18 U.S.C. 1623, the prosecution must prove that the defendant "knowingly" made the false statement. Under this statute, "knowingly" means merely that the defendant made the false statement "voluntarily and intentionally, and not because of mistake or accident or other innocent reason." *United States* v. *Fawley*, 137 F.3d 458, 469 (7th Cir. 1998); *United States* v. *Watson*, 623 F.2d 1198 (7th Cir. 1980).

President Clinton knowingly made these false statements about the nature and extent of his sexual relationship. He did not make these statements by "mistake or accident or other innocent reason." Instead, the President had a strong motive to lie about the extent of the sexual contact in order to avoid being accused of perjury in

the Jones deposition. After Ms. Lewinsky's dress was discovered, President Clinton could no longer deny a sexual affair. However, because he repeatedly denied having "sexual relations" with Ms. Lewinsky in the Jones deposition, the President was trapped. As mentioned earlier, the President was forced to admit that fondling Ms. Lewinsky in certain ways would constitute "sexual relations" even under his purported interpretation of the term. Consequently, President Clinton had to deny such fondling before the grand jury to prevent an admission that he committed perjury in his civil deposition, despite how implausible this denial is. In summary, President Clinton committed perjury before the grand jury by insisting that his testimony in the Jones deposition on this key matter was true. Perhaps due to fear of being charged with perjury in the Jones deposition, President Clinton committed the more serious offense of perjury before a grand jury.

As mentioned earlier, "because the Grand Jury's function is investigative, materiality in that context is broadly construed." *United States* v. *Gribbon*, 984 F.2d 471 (2d Cir. 1993). Courts have consistently held that in a grand jury, "a false declaration is 'material' within the meaning of [18 U.S.C.] 1623 when it has a natural effect or tendency to influence, impede or dissuade the Grand Jury from pursuing its investigation." *United States* v. *Kross,* 14 F.3d 751 (2d Cir. 1994).

The President's false statements about the extent of his sexual conduct with Ms. Lewinsky are material to the grand jury's investigation of whether the President committed perjury in the Jones deposition. In an effort to determine whether President Clinton testified truthfully in his deposition, the Office of Independent Counsel questioned the President at length before the grand jury about the nature and extent of his sexual relationship with Ms. Lewinsky. The President's tortured definition of sexual relations makes these details material to whether he committed perjury in the Jones deposition. Simply put, if the President touched Ms. Lewinsky in certain ways, he is guilty of perjury in the Jones deposition. Obviously, President Clinton's false statements on this matter had the "natural effect or tendency to influence, impede or dissuade the Grand Jury from pursuing its investigation" of perjury in the Jones deposition.

In President Clinton's trial brief, the only rebuttal to his allegation of perjury is that "[t]his claim comes down to an oath against an oath about immaterial details concerning an acknowledged wrongful relationship." (President's Trial Brief, p. 44.) Even this one pithy sentence, however, is inaccurate. First, as the earlier discussion reveals, there is more evidence than an oath against an oath. Human nature and common sense badly undermine the President's testimony. In addition, Ms. Lewinsky testified in detail repeatedly before the grand jury about the extent of the sexual relationship, while the President reverted to his prepared statement 19 times to avoid answering specific sexual questions. Moreover, the testimony of Ms. Lewinsky's family, friends, and medical therapists provide additional evidence of the President's perjury. Finally, the fact that President Clinton lied to the entire Nation about this sordid affair—and only acknowledged the affair when confronted

with evidence of Ms. Lewinsky's dress—devastates his credibility on this issue.

In sum, the House managers provide beyond a reasonable doubt that President Clinton: (1) knowingly (2) lied about the extent of his sexual activity with Ms. Lewinsky (3) concerning a material matter under investigation by the grand jury (4) while under oath before a Federal grand jury.

In addition, I have concluded that President Clinton lied in other instances before the grand jury. While these lies might not sustain a conviction for perjury in a court of law, they are profoundly troubling nonetheless. For instance, it strongly appears that President Clinton lied to the grand jury when he testified that he did not believe certain acts that he and Ms. Lewinsky engaged in were covered by any of the terms and definitions used in the Jones suite. The following definition of "Sexual Relations" was used at the Jones deposition:

> For the purposes of this deposition, a person engages in 'sexual relations' when the person knowingly engages in or causes contact with . . . [certain enumerated body parts] of *any person* with the intent to arouse . . ." (Emphasis added.)

Amazingly, President Clinton testified to the grand jury that he does not believe and did not believe at the Jones deposition that this definition includes certain acts which I will not specify. Without addressing these lurid details, Clinton interprets "any person" to mean "any other person" under the definition. There is no legal basis for him to interpret the definition in this manner.

I do not believe that President Clinton can reasonably claim this interpretation. First, under the President's interpretation, one person can engage in sexual relations, while his or her partner in the same activity is not engaged in sexual relations. Obviously, this is an implausible and absurd conclusion. Second, no reasonable person would have understood the definition in the Jones suit not to encompass the particular activity that President Clinton and Ms. Lewinsky engaged in. It is important to remember that the underlying allegation in the Jones suit concerned the same particular acts involved in the Lewinsky affair. Why would the Jones lawyers use a definition that did not include the very conduct alleged by their client? Given this context, the President's testimony that he did not believe the definition included certain conduct is not believable.

Finally, the President had a clear motive to lie about his understanding of the definition of sexual relations. After Ms. Lewinsky's dress was discovered, the President could no longer deny his sexual affair. However, the President repeatedly denied having "sexual relations" with Ms. Lewinsky in the Jones deposition. President Clinton's absurd interpretation of the definition of sexual relations allowed him to admit to a sexual relationship—which he had to do given the dress—without simultaneously admitting to perjury in the Jones deposition. Because perjury is such a difficult crime to prove, I have concluded that the President might not be convicted in a court of law for perjury concerning his testimony on this issue. I am convinced, however, that President Clinton lied to the grand jury about this matter. While this testimony might not generate a conviction in a court of law, it was clearly contrived and is profoundly troubling.

Let me now turn to the facts of the second article of impeachment alleging obstruction of justice. Article II alleges that:

> In his conduct while President of the United States, William Jefferson Clinton, in violation of his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

In order to determine whether the President has engaged in the type of acts charged, it is important that the law be first addressed in order to guide us in understanding how the facts relate to the violations alleged.

The Federal obstruction of justice statute punishes "[w]hoever . . . corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice." (18 U.S.C. 1503(a).) Known as the "omnibus clause," section 1503(a) "clearly forbids all corrupt endeavors to obstruct or impede the due administration of justice," *United States* v. *Williams,* 874 F.2d 968, 976 (5th Cir. 1989), which is defined as "the performance of acts required by law in the discharge of duties such as appearing as a witness and giving truthful testimony when subpoenaed." *United States* v. *Partin,* 552 F.2d 621, 641 (5th Cir. 1977). The statute has alternatively been interpreted as forbidding "interferences with . . . judicial procedure" and aiming "to prevent a miscarriage of justice." *United States* v. *Silverman,* 745 F.2d 1386, 1398 (11th Cir. 1984).

"There are three core elements that the government must establish to prove a violation of the omnibus clause of section 1503: (1) there must be a pending judicial proceeding; (2) the defendant must have knowledge or notice of the pending proceeding; and (3) the defendant must have acted corruptly with the specific intent to obstruct or impede the proceeding in its due administration of justice." *United States* v. *Williams,* 874 F.2d 968, 976 (5th Cir. 1989). Accord *United States* v. *Grubb,* 11 F.3d 426, 437 (4th Cir. 1993) (adding the word "influence" to the terms "obstruct or impede" in the intent element).

The purpose of the statute, according to the Supreme Court is not directed at the success of the corruptive effort, "but at the 'endeavor' to do so." *United States* v. *Russell,* 255 U.S. 138, 143 (1921) (opining that the word "endeavor" was used instead of "attempt" in order to avoid the technical distinctions between attempts, which are punishable, and preparation for attempts, which are not). See also *United States* v. *Aguilar*, 515 U.S. 593, 599 (1995) (holding that while the endeavor must have the 'natural and probable effect' of interfering with the due administration of justice, the defendant's actions need not be successful, citing Russell).

The statute criminalizing witness tampering prohibits, inter alia, the use or attempted use of corrupt persuasion or misleading conduct with the intent of influencing, delaying, or preventing testimony in an official proceeding, causing a person to withhold testimony or documentary evidence, alter or destroy physical evidence, evade legal process, or be absent from an official proceeding to

which such person has been legally summoned. (18 U.S.C. 1512(b).) "To sustain its burden of proof for the crime of tampering with a witness . . . the Government must prove . . . that the [d]efendant knowingly, corruptly persuaded or attempted to corruptly persuade . . . a witness; and second, that the [d]efendant . . . did so intending to influence the testimony of [that witness] at the [g]rand [j]ury proceeding." *United States* v. *Thompson,* 76 F.3d 442, 452–453 (2d Cir. 1996).

The witness tampering statute's prohibition of corruptly persuading someone with intent to "influence, delay, or prevent the testimony of any person in an official proceeding," has been interpreted to mean exhorting a person to violate his legal duty to testify truthfully in court. *United States* v. *Morrison,* 98 F.3d 619, 630 (D.C. Cir. 1996) (rejecting defendant's argument that a simple request to testify falsely was outside the scope of section 1512(b)), *cert. denied,* 117 S.Ct. 1279 (1997). As the Second Circuit explained: "Section 1512(b) does not prohibit all persuasion but only that which is 'corrupt.' The inclusion of the qualifying term 'corrupt' means that the government must prove that the defendant's attempts to persuade were motivated by an improper purpose to . . . . A prohibition against corrupt acts 'is clearly limited to . . . constitutionally unprotected and purportedly illicit activity." *United States* v. *Thompson* 76 F.3d 442, 452 (2d Cir. 1996) (quoting *United States* v. *Jeter,* 775 F.2d 670, 679 (6th Cir. 1985)).

Apart from corrupt persuasion with intent to influence a person's testimony, section 1512(b) proscribes engaging in misleading conduct with intent to influence such testimony. (18 U.S.C. 1512(b)(1).) As one court described it, "[t]he most obvious example of a section 1512 violation may be the situation where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it before the grand jury." *United States* v. *Rodolitz,* 786 F.2d 77, 81–82 (2d Cir. 1986).

Some courts have interpreted conduct that was not misleading to the person at whom it was directed, even if it was intended to mislead the government, as outside the scope of section 1512. E.g., *United States* v. *King,* 762 F.2d 232, 237–238 (2d Cir. 1985). However, the Rodolitz court distinguished the facts in King, where there was insufficient evidence that the witness was actually mislead, from the situation where the declarant makes false statements to a witness who is ignorant of their falsity. See *Rodolitz,* 786 F.2d at 81–82 ("In giving the statutory language its fair meaning, the court must find that making false statements to convince another to lie falls squarely within the definition of 'engaging in misleading conduct toward another person' under section 1512.").

The witness tampering statute explicitly states that "an official proceeding need not be pending or about to be instituted at the time of the offense." (18 U.S.C. 1512(e)(1).) However, courts have implied some state of mind element. E.g., *United States* v. *Kelly,* 36 F.3d 1118, 1128 (D.C.Cir. 1994) ("It therefore follows that section 1512 does not require explicit proof of [defendant's] knowledge . . . that such proceedings were pending or were about to be instituted. . . . The statute only requires that the jury be able reasonably to infer from the circumstances that [defendant], fearing that a grand jury proceeding had been or might be instituted, corruptly

persuaded persons with the intent to influence their possible testimony in such a proceeding.")

In subpart (1) of article II, it is averred that:

> On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading.

Subpart (2) alleges that:

> On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony if and when called to testify personally in that proceeding.

Subparts (1) and (2) are flip sides of the same coin. In essence, the two subparts charge that the President's 2:30 a.m. phone call to Ms. Lewinsky on December 17, 1997, informing her of her presence on a witness list in the Jones case was designed to encourage her to provide a false affidavit in the case to avoid testifying, or failing that, that she give false testimony hiding the true nature of their relationship. What does the evidence show?

It should be recalled that the presence of Ms. Lewinsky's name on the Jones witness list first came to the attention of the President no later than December 17, 1997. (Clinton Grand Jury Testimony, Aug. 17, 1998, pp. 83–84.) He was certainly aware of the true nature of their relationship, and it can be inferred that he knew that knowledge of the existence of that relationship would be detrimental to his case. It is also known that a cover story had been developed earlier to hide the relationship from others that included the false representation that Ms. Lewinsky's visits to the oval office were for the purpose of bringing the President papers or to visit Ms. Currie. (Clinton Grand Jury Testimony, Aug. 17, 1998, pp. 83–84.)

Ms. Lewinsky testified that in the same 2:30 a.m. conversation in which he informed her of the presence of her name on the witness list, the President told her that she could always say she was bringing him papers or visiting Ms. Currie, consistent with their previous cover series. (Lewinsky Deposition Testimony, Feb. 1, 1999, 145 CONG. REC. S1219.) Ms. Lewinsky and the attorneys for the President have argued that since Ms. Lewinsky did in fact "see" Ms. Currie on those visits to the President and since she was "carrying" papers, that story was not untruthful and therefore could not have been designed to obstruct justice. However, that rationale defies logic and common sense.

In the first place, the purpose of the visits was not to see Ms. Currie. Secondly, the papers she carried were just props, not to be handed over to the President, but to be falsely characterized as papers for the President if questioned. Therefore, were she to testify in a deposition that the purpose of her trips to the Oval Office to visit the President were actually to deliver papers or visit Ms. Currie, those would be false representations. The creation of a cover story followed by actions consistent with that cover story do not make the story any more truthful. Therefore, the President's instruction to her to rely on the cover story is in fact an instruction to her to lie.

Other evidence supports this conclusion, not the least of which is the affidavit filed by Ms. Lewinsky in the case after those discus-

sions with the President took place, an affidavit she herself later testified as being false. How else could she have characterized it? In that affidavit, Ms. Lewinsky stated that she "never had a sexual relationship with the President." This was false. She swore that "[t]he occasions I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions." This statement too was false. She also averred that "I do not possess any information that could possibly be relevant to the allegations made by Paula Jones or lead to admissible evidence in this case." Once again, this statement was false, as the President was aware, since he knew of the gifts he had given to Ms. Lewinsky. (Clinton Grand Jury Testimony, Aug. 17, 1998, pp. 32–35.)

The President repeatedly said that he thought that Ms. Lewinsky "could," and he emphasizes the word "could," have been able to draft a narrow truthful affidavit. (Clinton Grand Jury Testimony, Aug. 17, 1998, pp. 69, 116–17.) The problem is that although she "could" have been able to draft such an affidavit, the end product was not a truthful affidavit. Thus the President's intentional failure to prevent his attorney from using that false affidavit at his deposition provides further evidence of his corrupt intention during the December 17, 1997, phone call to Ms. Lewinsky.

Given these facts, the House has proven beyond a reasonable doubt that the President endeavored to corruptly influence the affidavit and potential testimony of Ms. Lewinsky in his December 17, 1997, 2:30 a.m. call to her.

In subpart (3), it is alleged that:

> On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

This allegation relates to the obstruction of justice by Ms. Lewinsky and Ms. Currie in hiding gifts provided to Ms. Lewinsky by the President under the bed of Ms. Currie. The only question that needs to be answered here in whether the President participated in that effort.

What does the evidence show? By December 28, 1997, Ms. Lewinsky had been subpoenaed to appear as a witness in the Jones case. In addition to demanding her appearance to testify, the subpoena also required that Ms. Lewinsky turn over any gifts given to her by the President. (Lewinsky Deposition Testimony, Feb. 1, 1999, 145 CONG. REC. S1221.) Under the pretense of meeting with Ms. Currie, Ms. Lewinsky went to the White House on Sunday, December 28, 1997, to discuss her subpoena with the President. Now, at the time of that visit, there is no indication that the President was aware that particular items had been subpoenaed by the Jones lawyers from Ms. Lewinsky. Without the benefit of that information, the President freely gave Ms. Lewinsky a number of additional gifts. (Lewinsky Deposition Testimony, Feb. 1, 1999, 145 CONG. REC. S1224.) So when Ms. Lewinsky informed the President of that fact, one can infer that he must have been at the very least, surprised, and probably, somewhat troubled. When asked by Ms. Lewinsky at that meeting whether she should hide the gifts or give

them to someone else like Ms. Currie for safekeeping, the President either failed to respond or said he needed to think about it. (Id.)

Ms. Lewinsky testified that she left the White House and later received a phone call from Ms. Currie stating that she understood Ms. Lewinsky had something for her, or, the President said you have something for me. Ms. Lewinsky immediately understood that statement by Ms. Currie to refer to the gifts from the President she had discussed with him earlier in the day. (Lewinsky Deposition Testimony, Feb. 1, 1999, 145 CONG. REC. S1225.) She then proceeded to gather up all those gifts. However, according to Ms. Lewinsky, she unilaterally withheld some of those gifts from Ms. Currie which were of sentimental value to her.

The President's first defense to this allegation is based upon a minor discrepancy in Ms. Lewinsky's testimony concerning the time that the gifts were retrieved by Ms. Currie. The argument is that if Ms. Lewinsky was mistaken by 1½ hours in her recollection of when the gifts were retrieved by Ms. Currie, then her recollection of who initiated the retrieval is also suspect. (Statement of Cheryl Mills, Jan. 20, 1999, 145 CONG. REC. S826–27.)

This is a red herring. The timing itself is unimportant. What is important is the fact that the call came from Ms. Currie. (Lewinsky Deposition Testimony, Feb. 1, 1999, 145 CONG. REC. S1225.) Ms. Currie's cell phone records tend to support the notion that Ms. Lewinsky's memory is accurate as to who called whom about the gifts. After all, the only way that Ms. Currie would have known about the gifts and made the call is if the other party to those discussions, the President, apprised her of that conversation and asked her to pick up the gifts.

The fall-back defense of the President is based upon the fact that he had given her more gifts that same day, the idea being that his giving other gifts to Ms. Lewinsky is inconsistent with a plan to hide those gifts. (Statement of Cheryl Mills, Jan. 20, 1999, 145 CONG. REC. S827.) This, however, is belied by the fact that the President provided her with those gifts before the issue of the gifts being subpoenaed came up in their conversation that day. (Lewinsky Deposition Testimony, Feb. 1, 1999, 145 CONG. REC. S1224.) It is reasonable to infer that the President's understanding of the gift pickup was unrestricted. He expected Ms. Lewinsky to give all the gifts to Ms. Currie for safekeeping, even the ones she had received that day. The fact that Ms. Lewinsky kept some of the gifts does not change the nature of the intended scheme.

The evidence adduced as to subpart (3) shows beyond a reasonable doubt that the President corruptly engaged in, encouraged or supported a scheme to conceal evidence in the Jones case.

Subpart (4) makes the accusation that:

> Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

It is uncontroverted that Vernon Jordan did not actively seek to find a job for Ms. Lewinsky until she was on the witness list in the Jones case. Once she was on the witness list, he engaged in a high-

level job search under the guidance of the President and reported his progress in that regard directly to the President. (Jordan Deposition Testimony, Feb. 2, 1999, 145 CONG. REC. S1231–36.) Moreover, he knew at the time of his job search that Ms. Lewinsky was a potential witness in the Jones case and, according to Ms. Lewinsky, was apprised by her of the sexual nature of her relationship with the President. (Lewinsky Grand Jury Testimony, Aug. 6, 1998, pp. 138–39.) And of course, in that very same time frame, he procured for her an attorney to help her file a false affidavit freeing her from testifying in the case and to prepare that false affidavit in time for it to be used in the President's deposition in the Jones case. (Jordan Deposition Testimony, Feb. 2, 1999, 145 CONG. REC. S1240–41.)

One could speculate that the President's use of one of the most powerful attorneys in Washington, and a close friend of the President, to find a lowly Defense Department employee and former intern a lucrative and prestigious job by contacting some of the most powerful executives in the country was just an act of kindness unrelated to her pending testimony in the Jones case. One could conclude that the numerous calls made by Mr. Jordan to the President and Ms. Currie, the calls made by the President to Mr. Jordan, and the calls made by Mr. Carter to Mr. Jordan, calls which coincided with the effort to get Ms. Lewinsky to file a false affidavit and secure her a job, were simply coincidental.

One could surmise that Mr. Jordan's call to Ronald Perelman after Ms. Lewinsky felt she had a bad interview, which call led to a second successful interview, was unrelated to her cooperation in signing the affidavit only a day earlier. One could believe that Mr. Jordan had a great interest in assisting Ms. Lewinsky to find a job prior to her name showing up on the witness list in the Jones case and only failed to do so because he had no time, but was somehow able to find and devote substantial time to that effort, coincidentally, after her name showed up on the witness list. One could undertake such speculation. But that would defy common sense and reason.

The President became personally engaged in the effort to find Ms. Lewinsky a job only after her name appeared on the Jones witness list. He then used his powerful friend to find Ms. Lewinsky a job because he believed out of gratitude for his help in obtaining a job, she would continue to hide their relationship. He kept in constant direct contact with Mr. Jordan up until the time that the affidavit was completed and she had received and accepted a job offer from Revlon. Indeed, the President actually spoke to Mr. Jordan during a meeting between her and Mr. Jordan on December 19, 1997. (Lewinsky Grand Jury Testimony, Aug. 6, 1998, p. 131.) Mr. Jordan immediately called the President to report his fears the moment he thought Ms. Lewinsky may have turned Government witness when he learned Mr. Carter had been relieved of his representation by her. (Jordan Grand Jury Testimony, June 9, 1998, pp. 45–46.)

One need only look at the contrary actions by the President once he believed Ms. Lewinsky may have decided to cooperate with the independent counsel investigation. Once he believed that she may have been cooperating with the Office of the Independent Counsel,

he began to disparage her to aides like Sidney Blumenthal. (Blumenthal Deposition Testimony, Feb. 3, 1999, 145 CONG. REC. S1248). After that date, the President discussed the wisdom of destroying her credibility and reputation with Dick Morris. (Morris Grand Jury Testimony, Aug. 18, 1998, p. 35.) Can anyone doubt that her favorable testimony was tied into the President's efforts to conceal his relationship with her and that the intensified job search was the President's endeavor to keep her from telling the truth? Put another way, does anyone believe that the President would have used Vernon Jordan to help get her a job after she agreed to tell the truth to the Jones attorneys or to the independent counsel? Of course not. It was not in the President's interest to reward her for the truth—she was only rewarded for her failure to tell the truth. Her reward for telling the truth was to be smeared by the President and his spin machine.

The President's attorneys repeat the mantra that Ms. Lewinsky believes that she was not promised a job for her false testimony in the Jones case. But that really isn't the issue. The law requires an endeavor to corruptly influence her testimony. Regardless of how Ms. Lewinsky perceived or misperceived the reasons for the high-level assistance she received, there was no such misconception on the part of the President and Mr. Jordan. The corrupt endeavor by the President was confirmed by two powerful and compelling words that cannot be parsed or stripped of meaning. Those two words summed up the month long effort to protect the President: "Mission accomplished." There can be no other meaning of those words in the context used by Mr. Jordan other than the completion of a crucial and time sensitive task by him on behalf of the President.

The proof as to subpart (4) is sustained beyond a reasonable doubt that the President intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

Subpart (5) alleges that:

> On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

There is no question that during the deposition of the President by the Jones attorneys, the President's attorney, Mr. Bennett, made the following statement:

> . . . Counsel is fully aware that Ms. Lewinsky has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind, in any manner, shape or form, with President Clinton . . .

Mr. Bennett made this statement in an effort to cut off any questioning of the President about his relationship with Ms. Lewinsky. That statement was false, as was later admitted by Mr. Bennett, even given the contorted reading of the definition of sexual relations as purportedly understood by the President. It is equally clear that the President did not correct this assertion by his attorney.

The President's primary defense to this allegation is that he wasn't paying attention to what was said by his attorney. This statement cannot be believed. The videotape of that deposition clearly shows the eyes of the President shifting from person to person as each spoke or argued their perspective on the issue. As each spoke, the President focused on the speaker. It is ludicrous to assert that when the name Monica Lewinsky was brought up, the President was not keenly aware of the significance of that line of questioning.

He knew the work that had been done to get her affidavit completed before the deposition. He understood the disclosure of that relationship could do irreparable damage to his case and to his Presidency. There is nothing to indicate he was anything less than completely aware of what was said and of his failure to correct that record to his detriment. I choose to believe my own eyes and common sense, not the implausible explanation put forward by the attorneys for the President.

The secondary defense offered by the President, that Mr. Bennett's use of the word "is" precluded the necessity to reveal any sexual relationship with Ms. Lewinsky not occurring, essentially, in that room during the deposition, is not worthy of a detailed refutation or response.

The evidence demonstrates that the President allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge, thus obstructing the administration of justice.

In subpart (6), the House makes the contention that:

> On or about January 18, 1998, and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

This allegation relates to the statements made to Ms. Currie by the President in his unusual Sunday meeting with her after the Jones deposition, and in his repetition of those statements the following Tuesday or Wednesday after the Starr investigation had become public. The President has not contested the fact that the statements made to Ms. Currie were false and misleading. Nor has he provided any answer as to why the statements, if designed to help refresh his recollection, were false and had to be repeated to her again several days later. After being confronted with the subpoena issued to Ms. Currie by the Jones attorneys in the days after his deposition, and the revised witness list containing her name, the President's attorneys have now backed off the notion that no one could have thought Ms. Currie would be a witness at the time of these statements. Despite this, the President still asserts that those false and misleading statements were designed to refresh his recollection and that he personally did not believe that she would become a witness. Once again, this defense defies credulity.

When these statements were made, the President was defying a court order not to discuss his testimony. (Clinton Deposition Testimony, Jan. 17, 1998, pp. 212–13.) He knew it was essential to do so regardless of that order because he had blatantly inserted Ms. Currie into the case as a fact witness. He mentioned her name dur-

ing his deposition no less than six times, on one occasion even stating that the Jones attorneys would have to "ask Betty." Clearly, the Jones attorneys got the message; they added Ms. Currie to the witness list and subpoenaed her the following week. So did the President. Having "brought" her into the case, the President realized the absolute need to make sure her testimony would dovetail with his assertions that he had no improper relationship with Ms. Lewinsky.

It is apparent that the Sunday meeting was designed to corruptly mislead Ms. Currie when she would be called as a witness in the Jones case. What was left unanswered by the President, but for which there can be but one answer, was why the President repeated the false statements to Ms. Currie on Tuesday or Wednesday.

The answer lies in the record. By Tuesday, the President had learned that Judge Starr was investigating the case. (Jordan Grand Jury Testimony, June 9, 1998, pp. 55–74.) He knew that the evidence in the Jones case would lead Judge Starr to Ms. Currie, just as surely as he knew it would lead the Jones attorneys to her. So he had to reinforce the false statements he had told Ms. Currie the previous Sunday because the stakes had just risen substantially. The President needed to be sure he was covered by Ms. Currie for both the Jones case and for the independent counsel investigation to come.

Once again the evidence shows that the President related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

The House asserts in subpart (7) that:

> On or about January 21, 23 and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

This subpart relates to the President's discussions with Erskine Bowles, John Podesta and Sidney Blumenthal concerning the nature of his relationship with Ms. Lewinsky. The President does not deny the testimony of Mr. Podesta where he related that the President said that he had no sexual relationship with Ms. Lewinsky, including oral sex. Nor does he deny the testimony of Sidney Blumenthal that he characterized Ms. Lewinsky as a stalker who had threatened him, and whose seduction he had declined. The President also admits that he knew it was likely they would be grand jury witnesses when he made those statements to them.

Their client having conceded the basic facts of this allegation, the President's attorneys first try to make the argument that the President could not have been intending to influence the grand jury since he did not tell his aides anything different than he had told any other person publicly. However, the evidence is unrefuted that his denials to his aides were fundamentally different from his public pronunciations in that they departed from even his tortured definition of sexual relations. Moreover, he created a false impression

of Ms. Lewinsky in order to besmirch her character and credibility in a blatant attempt to both misguide the grand jurors, and it can be inferred by the fact such information was provided to his communications aide, to publicly disparage her character.

The second defense offered is that the President's attempts to keep his aides out of the grand jury show he was not trying to corruptly influence that body. However, this argument loses force in light of the fact that only specious arguments were made to prevent their testimony. Knowing they would fail, they were arguably designed to serve his private interest in delaying the investigation and creating an impression of Judge Starr as overreaching and out of control. Moreover, the President had months to correct his misstatements to Mr. Blumenthal prior to his grand jury testimony, but failed to do so even when he knew he would be called before the grand jury to repeat the earlier lies told to him by the President. (Blumenthal Deposition Testimony, Feb. 3, 1999, 145 CONG. REC. S1249.)

In effect, the President killed two birds with one stone. His chimeric fight to prevent his aides from testifying was used effectively in a public relations campaign to impugn the independent counsel investigation. And when he lost the "battle" that he knew would inevitably fail, he was aware the false and slanderous testimony preordained to be given by his aides would be of assistance to him in misleading the grand jury.

There is substantial proof as to subpart (7) that the President made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses.

For the reasons I have just outlined, the evidence proves beyond a reasonable doubt, that the President is guilty of article II.

This impeachment trial is of momentous constitutional consequence. A removal of the President—a coequal branch of government—must not be taken lightly. But that—now that we have decided to end the trial by a final vote—does not negate the duty that each Senator has, as individual conscience dictates, to vote to acquit or convict based upon the evidence. Posterity demands that each of us justify the votes Senators render in the impeachment trial of the President.

Future generations of Americans will look to what we do as precedents for impeachments. This is particularly true since our Nation has faced only one impeachment trial of a President—that of Andrew Johnson in 1868. But it is also true for judges and other Federal officials as well. Let me thus explain in some detail why I shall vote for conviction.

The Constitution vests great discretion in the Senate in determining whether to remove an impeached official. The framers intentionally followed the English model where the House of Commons possessed the power to impeach or indict officials and the House of Lords the authority to try the impeached official. As such, the House of Representatives was delegated the authority to impeach and the Senate the power to try, convict, and remove. The Senate was chosen as the repository of this awesome power because it was considered the more mature Chamber of Congress. Serving 6-year terms instead of the 2 years for the House, the Sen-

ate was seen as a bulwark against the shifting tides of public opinion.

The age qualification differences—30 for the Senate and 25 for the House—demonstrates that maturity in the Senate would dominate over youthful passion. And most important, while the House was prone to passionate factional rifts, because Representatives are elected from small sometimes single-issue districts, Senators are elected statewide where, it was hoped, factions would counteract factions. Thus, the Senate was designed to be more attuned to the public interest than to the special interest.

Consequently, when the Senate sits as a court of impeachment, it does not have to rubber-stamp the House's view as to what is an impeachable offense. As recognized by the Supreme Court in the Nixon case, the Senate was vested by the framers with the sole power to try impeachments. The Senate is thus vested with independent judgment as to what process to employ in the trial.

It also follows that the Senate was granted the discretion to determine whether the factual allegations made by the House are true and whether such findings by the Senate rise to the level of high crimes and misdemeanors. Furthermore, the Senate, as the upper Chamber insulated against popular passions and the factions of special interests, could make a subjective determination of the public good in defining high crimes and misdemeanors and in removing an official.

In the words of my esteemed colleague, ROBERT BYRD, the answer of whether a person is fit to remain in office requires both detached objectivity and subjective judgment rising above temporary popular passions of whether continuation in office "brings the political—or judicial—system into disrepute and undermines the people's trust and confidence in government."

Supportive of this discretionary authority to remove officials—an authority that must be divorced from the fleeting and flaming emotions of the times—is the constitutional supermajority safeguard of a two-thirds vote of the Senate needed to remove officials. This requirement is a further guarantee against the tide of popular passion and tilts the impeachment process towards acquittal.

Accordingly, a Senator in impeachment trials must consider two factors: (1) whether the allegations are true; and (2) whether the facts proven rise to the level of high crimes and misdemeanors—impeachable offenses. In determining the second prong—whether the facts proven rise to the level of high crimes and misdemeanors—the subjective intent of Senators of what is in the public interest is a factor to consider. I have already discussed the facts and the standard for impeachable offenses. Now I will discuss whether the public interest—in other words what is best for the country—requires that the acts committed by President Clinton rise to the level of high crimes and misdemeanors requiring his removal.

I believe that it has. Some of my colleagues, particularly those on the other side of the aisle, contend that it is not in the public interest to remove President Clinton, because the economy is doing well, or because of his foreign policy successes, or because he is extremely popular in the polls. But these factors—no matter how im-

portant—do not justify ignoring the constitutional mandate of removal upon proving that impeachable acts were committed.

Polls should not be a factor in this trial. Our system of government is not a pollocracy. It is a representative republic where the people, as a constitutional matter, speak only through elections of their representatives. America is thus a constitutional republic, and will remain so "if"—in the words of Benjamin Franklin—"you can keep it." The only way to "keep it" is to respect the processes established by the Constitution itself.

Simply put, the Constitution mandates the conviction and removal of civil officers, including the President, upon proving "treason, bribery, and other high crimes and misdemeanors." I believe that the House managers have proved beyond a reasonable doubt that President Clinton has committed acts of perjury and obstruction of justice. I believe that Senators should come to the same subjective determination, as I have, that these acts of perjury and obstruction of justice so erodes our civil and criminal justice system as to conclude that the public good is served by removal.

A President of the United States is not simply a political leader. A President is a head of state and a role model for Americans, particularly our children. What kind of message will we send to our posterity if President Clinton's conduct is not considered worthy of removal? What amount of cynicism and disrespect for our governmental institutions will we engender if we impose one set of rules for the common man—imprisonment for acts of perjury and obstruction of justice—and another for the President of the United States—who receives a pass from removal because he is powerful or has done a "good job" in some eyes?

Our children are extremely vulnerable to the growing cynicism surrounding this trial. We have all heard stories that some children justify their deceits by claiming that the President of the United States lied as well. Many wise philosophers have exclaimed that a republic can survive only if its citizens are moral. I am afraid that our children may not learn that lesson.

Not to remove here is to diminish the rule of law. As Manager ROGAN warned in his closing argument, "[u]p until now, the idea that no person is above the law has been unquestioned. And yet this standard is not our inheritance automatically. Each generation of Americans ultimately has to make the choice for themselves. Once again, it is time for choosing. How will we respond?" We should respond by safeguarding the rule of law by voting to remove the President.

Whether President Clinton has done a "good job" is a matter of partisan debate. In fact, adopting a "good job" exception—a term that is so flexible and vague as to be meaningless as a constitutional standard—merely exasperates the partisan tensions ever present in impeachment trials.

The same analysis applies for the "good economy means no removal" theory. It is intuitive that economic growth can never justify crime or acts rising to the level of high crimes and misdemeanors warranting removal. If President Clinton is removed, our economy will not suffer. The world will still spin on its axis. Our Constitution provides for orderly succession and stable government. Removal will not overturn an election, as some have argued.

The constitutional impeachment procedures were designed simply to remove unqualified or corrupt officials. Vice President GORE, pursuant to the Constitution, will become President and life will go on.

Let me emphasize that by requiring removal upon proving the commission of impeachable offenses, the framers believed that it is in the public good to remove the official.

President Clinton is guilty of high crimes and misdemeanors and his poll numbers, no matter how lofty, cannot insulate him from the dictates of the Constitution. The President believes that a rule of polls should govern the Senate's decision. But as Manager ROGAN correctly observed, "the personal popularity of any President pales when weighed against the fundamental concept that forever distinguishes us from every nation on the planet. No person is above the law." There is no escaping the Senate's duty enshrined in the impeachment oath that we do "impartial justice" and remove the President if we believe that his actions amounted to high crimes and misdemeanors.

I do not take pleasure or gain any sense of gratification for the decision I must make today. For literally months, night and day, I have anguished over the serious accusations against President Clinton and what they mean for our country, our society, and our children.

I know none of us enjoys sitting in judgment of the President, our fellow human being, but that is our job and we cannot ignore our responsibility. I believe most of us will do a sincere job of trying to fulfill our oath to do impartial justice.

I have diligently strived to extend my deepest respect to the President—indeed, to the Presidency—throughout this process. I wanted to be able to support President Clinton. I believe that I have been more than fair. I have tried not to rush to judgment.

All of my life I have been taught to forgive and forget. I have always tried to live up to that belief. As a leader in my church, I have dealt with a great number of human frailties, people with a wide variety of problems, and I have always believed that good people can repent of their sins and be forgiven.

Indeed, to the dismay of some, I had expressed a hope and a desire early on in this constitutional drama that the President would acknowledge his untruthful statements. He chose to do otherwise and perpetuated his untruthfulness. Although some believe this is solely a private matter, I feel this is really about the President's fidelity to the oath of office and the rule of law.

I have always been prepared to vote my conscience. Indeed, my concerns regarding the bad precedent a likely acquittal would set have been somewhat calmed by something the great constitutional scholar, Joseph Story, once wrote about acquittal in impeachment cases. Mr. Story noted that in cases in which two-thirds of the Senate is not satisfied that a conviction is warranted, "it would be far more consonant to the notions of justice in a republic, that a guilty person should escape than that an innocent person should become the victim of injustice from popular odium . . ."

Nonetheless, I am reminded of a quote by President Theodore Roosevelt, a statement that applies to the matter before the Senate:

> Honesty is not so much a credit as an absolute prerequisite to efficient service to the public. Unless a man is honest, we have no right to keep him in public life; it matters not how brilliant his capacity. . . .
>
> "Liar" is just as ugly a word as "thief," because it implies the presence of just as ugly a sin in one case as in the other. If a man lies under oath or procures the lie of another under oath, if he perjures himself or suborns perjury, he is guilty under the statute law. Under the higher law, under the great law of morality and righteousness, he is precisely as guilty if, instead of lying in a court, he lies in a newspaper or on the stump; and in all probability the evil effects of his conduct are infinitely more widespread and more pernicious.

President Theodore Roosevelt's words cannot be ignored—nor can the Constitution. After weighing all of the evidence, listening to witnesses, and asking questions, I have concluded that President Clinton's actions warrant removal from office.

Committing crimes of moral turpitude such as perjury and obstruction of justice go to the heart of qualification for public office. These offenses were committed by the Chief Executive of our country, the individual who swore to faithfully execute the laws of the United States.

This great Nation can tolerate a President who makes mistakes. But it cannot tolerate one who makes a mistake and then breaks the law to cover it up. Any other citizen would be prosecuted for these crimes.

President Clinton did more than just break the law. He broke his oath of office and broke faith with the American people. Americans should be able to rely on him to honor those values that have built and sustained our country, the values we try to teach our children—honesty, integrity, being forthright.

For 13 miserable months, we have struggled with the question of what to do about President Clinton's actions. The struggle has divided the Nation.

To those of us who have ourselves taken an oath to uphold the Constitution—which represents the rule of law and not of men—it should not matter how brilliant or popular we feel the President is. The Constitution is why we govern based on the principle of equality and not emotion. The Constitution is what guides us as a nation of laws and not personalities. The Constitution is what enables us to live in freedom.

I will vote for conviction on both articles of impeachment not because I want to but because I must. Upholding our Constitution—a sacred document that Americans have fought and died for—is more important than any one person, including the President of the United States.

When all is said and done, I must fulfill my oath and do my duty. I will vote guilty on both article I and article II.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. LEAHY. Mr. Chief Justice, I would like to submit a statement delivered by our colleague Senator DODD on January 8 at the commencement of the impeachment trial of President Clinton.

This statement, like the others delivered that day, is remarkable in several respects.

First, it captures the rich history that has transpired over the years in the Old Senate Chamber—a history marked often by greatness, but occasionally by shame.

Second, it wonderfully expresses Senator Dodd's own personal sense of the history of the Senate. His reflections on past Senators—from Roger Sherman, the Founding Father whose seat Senator DODD occupies, to his own father, former Senator Thomas Dodd—remind us that the Senate is an institution made up of individuals, and that the totality of their actions shapes the destiny not just of the Senate itself but indeed of the entire country.

Third, and most importantly, Senator DODD's statement stands as a powerful plea for cooperation and bipartisanship in the discharge of the Senate's profound responsibility in this trial. Senator DODD's statement played a critical role in setting the stage for the historic bipartisan agreement reached at the outset of the trial, and for the spirit of civility that prevailed throughout this ordeal. I commend Senator DODD's statement to all citizens who in the future may wish to learn something of how the Senate was inspired to conduct the impeachment trial of President Clinton in a noble and dignified manner.

I am beginning my 25th year in the Senate. After Senator DODD spoke I told him his speech was one of the finest I had heard in those years.

No Senator ever spoke more directly—or more persuasively—to other Senators about the duty we all have to the Constitution and the Senate. I am proud to serve with him.

I ask unanimous consent that the text of Senator DODD's statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD as follows:

REMARKS BY SENATOR CHRISTOPHER J. DODD, OLD SENATE CHAMBER, JANUARY 8, 1999

Mr. DODD. Let me begin by thanking our two leaders. While none of us can say with any certainty how this matter will be concluded, if we, like every other institution that has brushed up against this lurid tale, end up in a raucous partisan brawl, it will not be because of the example set by Tom Daschle and Trent Lott. The graces have once again blessed this extraordinary body by delivering two noble and decent men to lead us.

I want to express a special thanks to you, Tom, for asking me to share my thoughts this morning on the issue before us.

On a light note, it was in this very room 4 years ago that I lost the Democratic leader's post to Tom Daschle. Of the 47 members of the Democratic Caucus, 46 were here that morning to vote. When the ballots were counted, Tom and I had each received 23 votes—a dead heat. The absent Democratic colleague who voted for Tom with a proxy ballot was Ben Nighthorse Campbell. Several weeks later I received a very late night call from Ben in which he shared with me his decision to change political parties. Ben and I have been good friends for some time, and I told him he ought to do what he felt was right. The next morning I decided to have some fun with our Democratic leader, Tom Daschle, by sending him a note asking that in light of Ben's decision to become a Republican, did Tom think a recount of the leader's race might be in order?

Considering the wonderful job our leader Tom has done, particularly over these last several weeks, I'm glad he did not even consider the offer.

Allow me further to note a point of personal privilege. I am deeply proud to share the representation of my State in the Senate with Joe Lieberman. Over these past couple of weeks, Joe and Slade Gorton have once again demonstrated the value of their presence in the Senate. While many of us, from time to time, have claimed to speak for the Senate—few rarely do. On that day in September, Joe, your re-

marks delivered on the Senate floor about the President's behavior were, I believe, the sentiments of the entire Senate. We thank you.

Joe and I represent the Constitution State. Joe sits in the seat once held by Oliver Ellsworth, the second Chief Justice of the Supreme Court. I sit in the seat of Roger Sherman, the only Founding Father to sign all four of our cornerstone documents: the Declaration of Independence, the Articles of Confederation, the Constitution and The Bill of Rights. Roger Sherman was also the author of the Connecticut Compromise which created this Senate in which we now serve.

So by institutional lineage, I feel a special connection with the Senate. On a personal level, I am also very much a product of the Senate. Forty years ago this week, I was a very proud 14-year-old watching from the family gallery as my father took the same oath I took on Wednesday. I also remember that day meeting another new Senator, Robert C. Byrd of West Virginia.

I only mention these facts because I am overwhelmed by a profound sense of history as we embark on this perilous journey over the coming weeks. I want my institutional forebear, Roger Sherman, and my father to judge that on my watch, as a temporary custodian of this Senate seat, I did my best.

I want to express a special thanks to Trent Lott for having the wisdom of choosing this most historical room for our joint caucus. Trent could have chosen any number of other venues, larger, more accommodating rooms around the Capitol for this meeting. But either by divine inspiration or simple choice he decided to bring us—Democrats and Republicans—together here.

It was 140 years ago this week—January 4, 1859—that our Senate predecessors moved from this room to the Chamber we now occupy. While in use, this room was the stage of some of the Senate's most worthy and memorable moments.

The Missouri Compromise was brokered here. So was the Compromise of 1850. And the famous Webster-Hayne debate took place here in 1830. The spirits of Henry Clay, John Calhoun and Daniel Webster—great statesmen, great compromisers, giants of our Senate—are here with us today. Maybe one day those who come after us will add this joint meeting to the list of those other great moments in the history of the U.S. Senate.

But this Chamber also witnessed one of the Senate's most regrettable moments—the caning in 1856 of Senator Charles Sumner by Representative Preston Brooks.

Congressman Brooks walked right through this center door and proceeded to beat Senator Sumner.

That tragic incident was precipitated by a strong antislavery speech from Senator Sumner in which Representative Brooks felt Sumner had accused his colleague and Brook's cousin, Senator Andrew Butler of South Carolina, of having an illicit sexual relationship with a young woman who was a slave.

Far from being a momentary bitter, personal dispute, the Sumner caning, according to many historians, effectively ended the thin shred of comity and compromise that existed in the Senate. Forty-eight months later our great Civil War began.

We are now gathered in this revered room in the face of a great constitutional question. Which of the spirits that inhabit this Chamber will prevail as we begin this process? Can we find the common ground of Clay, Calhoun and Webster? Or will we assault each other by resorting to a rhetorical caning?

I would urge our two leaders to try once more before the scheduled vote of 1 p.m. to find a solution to the issue of witness testimony.

It has been argued that there is little or no difference between the two proposals, and, while they may seem slight, I believe our failure to make the right choice puts the conduct of this process and the public confidence in the Senate at grave risk.

The President's conduct was deplorable; the conduct of the Office of Independent Counsel has raised grave concerns on all sides; and the highly partisan spectacle in the House has provoked public revulsion. We are the court of last resort—the only hope of restoring public confidence rests with us.

The issue of whether to exclude witnesses altogether or leave open the possibility of their testimony rests on how we weigh the relative risk of prohibiting witnesses against the risk of severely damaging or destroying the shared goals and desires of all Senators.

Over the past several weeks, in telephone conversations, meetings and joint appearances on news programs, I have concluded there are six points of common agreement:

(1) There is the sincere desire for this profound burden we did not ask for to be devoid of partisanship;

(2) We must act with total fairness, and we must be perceived by the public as having acted fairly;

(3) We must act with deliberate speed and not flounder;

(4) We must assure that the Senate retains sole custody of how this matter is conducted and concluded;

(5) We must demonstrate appropriate respect for the judicial branch, the executive branch and the House of Representatives; and

(6) We must jealously protect the dignity of the Senate as we consider what most Americans believe to be, at the very least, the most undignified personal behavior of an American President.

If we permit the House managers and the White House to call witnesses, do we not risk the partisan brawling through party-line voting that will surely ensue? And does not that risk outweigh the risk that some of us may not benefit from body language or voice inflection that some witnesses may provide? I think not.

A process as proposed by Senators Gorton and Lieberman that allows a full explanation of the House managers case over several days and an equal amount of time allocated for the President's defense, in addition to 2 days of questions from Senators, would meet any reasonable person's standard of fairness. The added fact that we will have at our disposal more than 60,000 pages of grand jury testimony, hearings and evidence should satisfy any objective analysis that we can conduct this process fairly.

There is no more important business before the Senate than the conduct and conclusion of this impeachment trial. I am of the view that no other business ought to intervene while this matter is pending. As I have said, we must act fairly—but we must also act expeditiously—not rush—but act with deliberate speed and purpose.

Any first semester law student knows that once witnesses are subpoenaed, fundamental fairness allows for depositions and discovery. Depending on the number of witnesses, the delays will undoubtedly be lengthy.

I readily acknowledge that there are some risks in excluding the testimony of live witnesses—but does that risk exceed the almost certain risk of causing the Senate to be unnecessarily tied up with this matter for weeks if not months?

As I have stated, this unsolicited task of disposing of this impeachment is paramount, but we would all agree it is not our only responsibility.

There are urgent matters, both foreign and domestic, that we must attend to in the 106th Congress. Pete Domenici's concern about the budget and not repeating the budget debacle of last year, Social Security reform, Ted Stevens' concern about the accuracy of our weapons in Iraq, and the Brazilian economic crisis are just a small sample of the agenda this Senate must address. The risk of not dealing with these matters must be weighed against the wisdom of calling live witnesses in this proceeding.

The Constitution is clear—only the Senate has the power to try impeachments. We and we alone must be the custodians of our own procedures. While the calling of live witnesses does not necessarily mean the Senate would lose control of the proceedings, there is the undeniable risk that once the witness parade begins, the ability of the Senate, and the Senate alone, to manage these proceedings fairly, expeditiously, and in a nonpartisan fashion could be lost.

We Senators have a serious responsibility to be respectful of the judicial branch in the presence of Chief Justice Rehnquist, the executive branch in the presence of counsel for the President, and the House of Representatives in the presence of the House managers. Being respectful and deferential to these institutions should not be confused with deferring to these institutions. Chief Justice Rehnquist has indicated to our leaders that he intends to be a passive presiding officer, except in some narrow instances. The White House, through their counsel, indicated that it would prefer to avoid calling witnesses. Only the House managers are insisting on the use of witnesses. Furthermore, the House managers agree that the exclusion of witnesses by the Senate would deprive them of the ability to make their case and be taken as an act of disrespect by the Senate.

I find it stunningly ironic that the House Judiciary Committee saw no similar disrespect to their fellow House members when they presented their articles of impeachment before the full House without the benefit of a single witness appearing before their panel. When asked why no witnesses had been called before the House Judiciary Committee, some Members argued that the calling of witnesses would have unduly delayed their proceedings and the presence of some witnesses could have reflected poorly on the dignity of the House.

The obvious question occurs that if the House managers were unwilling to risk an expeditious handling of their procedures and unwilling to risk the potential for a lewd and lurid spectacle in their Chamber, why then should we in the Senate submit our Chamber to similar risks when there is no compelling benefit to be gained?

A process that would allow either side in this matter to call witnesses—with the approval of a bare majority—risks setting in motion a Senate proceeding where we

Senators would sit in muted silence, as my friend Mitch McConnell has pointed out, while our Chamber becomes the stage for the most lurid and salacious testimony of which we and the American people are all too painfully aware and of which the public wants to hear no more.

Would whatever marginal benefit this testimony could provide outweigh the cost to the reputation of the Senate or the dignity of this institution?

I submit that we should not run the risk of allowing this institution to be used by anyone as a forum to appeal to the most base instincts of a few.

For these reasons, I would strongly urge you, my colleagues, not to run all the substantial risks to the conduct of this process and the reputation of our Senate by permitting the unnecessary procession of witnesses in the well of our Chamber.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR JEFF SESSIONS

Mr. SESSIONS. Mr. Chief Justice, the Constitution of the United States requires the Senate to convict and remove the President of the United States if it is proven that he has committed high crimes while in office. It has been proven beyond a reasonable doubt and to a moral certainty that President William Jefferson Clinton has persisted in a continuous pattern to lie and obstruct justice. The chief law officer of the land, whose oath of office calls on him to preserve, protect and defend the Constitution, crossed the line and failed to protect the law, and, in fact, attacked the law and the rights of a fellow citizen. Under our Constitution, such acts are high crimes and equal justice requires that he forfeit his office. For these reasons, I felt compelled to vote to convict and remove the President from office.

Facing a lawsuit the U.S. Supreme Court had upheld against him, President Clinton had to make a decision. He could tell the truth or lie and obstruct justice. He took the course of illegality. This case is not about an isolated false statement, it is about the President of the United States using his office, his power, his staff, and his popularity to avoid providing truthful answers and evidence that was relevant to a civil lawsuit. President Clinton's actions demonstrated a pattern of untruth and disdain for the legal system he had sworn to uphold.

President Clinton resisted the lawsuit from the time it was filed. Among other defenses, he argued that he, as the President, was not subject to the civil legal system while in office. The Supreme Court unanimously rejected this proposition. His legal arguments having failed, the President began to use illegal means to defeat the action. Since the truth would be damaging, he took steps to see that the truth concerning his relationship with Monica Lewinsky would never come out.

President Clinton began his obstruction of justice by denying to the court material truths. He first filed with the court false answers to written questions, interrogatories, under oath. He then bolstered his lies to the court by procuring from Monica Lewinsky a supporting false affidavit which he filed with the court. When questioned at his deposition about the truthfulness of the Lewinsky affidavit, President Clinton, without any hesitation, told the court that it was "absolutely true." The President then proceeded, confident in his obstruction of the truth, to lie repeatedly under oath about their relationship in the deposition.

Indeed, the President orchestrated a scheme to deceive the court, the public and the grand jury. The facts are disturbing and compelling on the President's intent to obstruct justice. When Monica Lewinsky received a subpoena for the gifts, the President knew that if they were produced, his relationship would be revealed. I believe Monica Lewinsky's testimony that she discussed with the President what to do with the gifts. I also believe that Betty Currie got the gifts from Monica Lewinsky and hid them under her bed only after approval from the President. Secreting evidence under subpoena is a crime. The President secured a job for Ms. Lewinsky in large part because he wanted her to file a false affidavit and to continue to cover up their true relationship. The President coached his personal secretary twice to ensure that if she were called as a witness in the civil case she would not contradict his testimony given the day before. The President intentionally lied to aides in an effort to have them mislead the public and the grand jury. This is to me a clear pattern of obstruction of justice.

The most conclusive proof of obstruction of justice, however, is the most obvious. Clearly, the President succeeded at defeating the right of the Paula Jones attorneys to get discovery as they were entitled. He got away with it. But for the indisputable DNA evidence that was only produced when Ms. Lewinsky confessed 7 months later, the obstruction would have continued to be successful. Even when confronted with this evidence at the grand jury in August, the President chose to confuse the definition of words that have plain meanings instead of telling the truth.

From a strictly legal point of view the perjury count was not as clear as it might first appear. In fact, standing alone these perjury charges may have failed to be impeachable. However, the President made his false statements as part of a continuous pattern to obstruct justice and deceive. This pattern establishes the necessary criminal intent. The President before the grand jury continued to deny facts and details that are by their very nature important in a sexual harassment suit. The President also intentionally deceived the grand jury regarding his participation in the concealing of the gifts and lied regarding his effort to obstruct justice by coaching Betty Currie. His admissions, though significant, steadfastly failed to cover any issues that would establish that his previous actions were in violation of the law. The President denies that these statements are false. However, he has no reservoir of credibility left after he so persistently lied to the public for 7 months. In my judgment these statements, which were aggravated by continuous lying to the American people, are sufficient under the circumstances of this case to warrant conviction on this article. The President was not obligated to appear before the grand jury, but if he chose to do so, he was obligated to tell the complete truth.

Each statement must be individually evaluated in a perjury case. The President's statements that he did not believe he had violated the law and that he was not paying "a great deal of attention" to his lawyers when they gave false information to the court are not credible. Even so, I believe they are too subjective in nature to be defined as clear acts of perjury under the law. The President's response to clearly worded questions were intentionally designed to be misleading and deceptive; however, the Supreme Court has held

in *Bronston* v. *United States,* 409 U.S. 352 (1973), that it is not perjurious for a witness to give an unresponsive answer even if the witness intends to mislead his questioner. With this in mind, I conclude that the other charged statements, not delineated above, are misleading and false but not perjurious. I wish it were not so, but the President is a practiced liar. In summary, this President has deliberately, premeditatedly, and with calculation set about to defeat the justice system by criminal acts which include perjury and obstruction of justice.

Contrary to the stunning argument by the President's attorneys, there is just one impeachment standard for Presidents and judges. It is found in article II, section 4 of the Constitution, which states,

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Advocates on both sides of this case agree that Federal judges are civil officers of the United States. As civil officers, they "shall be removed" on impeachment and conviction of high crimes and misdemeanors. The President's attorneys in this case have argued that there is a different standard for impeachment and removal of Federal judges.

The President's attorneys made a clever argument that the "good behavior" clause, which refers to a judge's tenure, sets a separate standard of impeachable conduct for Federal judges. They cite in support of this proposition article III, section 1 of the Constitution, which states:

> The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Historical research clearly shows that when the Constitution was drafted and ratified, the phrase "good behavior" had nothing to do with impeachment. The clause simply referred to the term of office and compensation for a Federal judge. It is generally accepted that the legislative branch's power to actually remove a Federal judge, a member of a separate and coequal branch of government, is limited to impeachment.

Before the American Revolution, American colonial judges were not independent. They served at the pleasure of the British king and could be dismissed at his command. The British monarch also controlled the salaries of colonial judges. Americans recognized that an independent judiciary was a fundamental component of a free society. In fact, they included the lack of an independent judiciary as part of the "long train of abuses" in the Declaration of Independence: "[King George III] has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries." In response, the framers of the Constitution delineated through article III, section 1, that Federal judges would not serve at the whims of Congress or the President.

Moreover, Alexander Hamilton, a drafter of the Constitution, addressed the impeachment standard for judges in Federalist No. 79, one of a series of essays explaining the Constitution. In that essay he writes:

> The precautions for [federal judges'] responsibility are comprised in the article respecting impeachments. . . . This is the only provision on the point, which is con-

sistent with the necessary independence of the judicial character, and it is the only one which we find in our own constitution in respect to our own judges.

Thus, the Constitution provided but one standard of removal of judges and it is the same one applied to the President.

In our history there has been only one effort to impeach a judge on the "good behavior" standard, and that effort failed. In 1805, the Jefferson administration encouraged an impeachment of Justice Samuel Chase, an outspoken Justice of the Supreme Court and member of the opposition Federalist Party. Chase was impeached for his conduct while sitting as a circuit judge. The Senate acquitted Justice Chase and thus redeemed the drafters' original intent that judges can only be impeached for high crimes and misdemeanors.

So let any notion that judges may be impeached under a different standard be put to rest. That conclusion is inconsistent with the Constitution and not supported by history.

It is easy to understand why the President's attorneys found it necessary to argue that Federal judges may be removed under a different impeachment standard. The reason is that if the President is guilty of the same conduct that has led to the impeachment, conviction, and removal of three Federal judges in the last 13 years, and if the constitutional standard is the same, and if the substance of the allegations are the same, then he too must be removed.

In 1986, the Senate convicted Federal Judge Harry E. Claiborne of three articles of impeachment that involved fundamental dishonesty: Judge Claiborne was convicted for knowingly filing false tax returns. Like every American who pays income tax, Judge Claiborne certified under penalty of perjury that his tax returns were true. For 2 years, he submitted such returns when he knew them to be false. He was subsequently impeached, convicted and removed. The President's lies in this case were, in my opinion, worse because they constituted a frontal assault on the integrity of the justice system. The President did not lie on a form to hide income from the Government; he lied under oath before a Federal judge in an official proceeding to defeat a civil rights lawsuit filed by an American citizen. Under Senate precedent, that is impeachable conduct.

Another example of recent senatorial precedent is the Hastings case. In 1989, the Senate convicted Judge Alcee Hastings of Florida on 7 of 12 articles of impeachment that were presented by the House. Judge Hastings was alleged to have taken a bribe to alter the outcome in a case before his court. Judge Hastings was convicted in the Senate on seven articles of impeachment. Judge Hastings was convicted for knowingly making false statements to the jury in his own bribery trial at which he was acquitted. In the same year, Judge Walter Nixon was convicted by the Senate for lying under oath before a grand jury. Judge Nixon corruptly attempted to obstruct justice by denying his efforts to intervene in a State court prosecution for a friend—a case unrelated to his duties as a Federal judge.

In the present impeachment case, we are not dealing with a blank slate. The Senate's actions in earlier cases are our clearest guide on how to proceed in the trial of President Clinton. The Sen-

ate has demonstrated three times in the last 13 years that perjury by civil officers of the United States requires removal. It is inconceivable that equally reprehensible conduct by the President in this case should not also lead to his conviction and removal. By not so acting, the result will be an immediate lowering of our standards for impeachment and that standard will apply to judges as well. This argument defines us down, reducing the dignity of the Presidency and the Congress.

As one who loves the law and who has spent the better part of his professional career trying cases, I understand in a profound way just how important it is for justice that citizens tell the truth in court. As a Federal prosecutor, I presented thousands of cases to a grand jury and tried hundreds. On many occasions I have seen witnesses tell the truth, even when it was very painful for them. Many have been driven to tears but still they honored their oath. Millions of Americans honestly fill out their tax returns and pay large sums of money simply because they are honest and believe in the rule of law. Such integrity is a source of great strength for our country.

The rule of law and the need for integrity in our justice system is why perjury cases are prosecuted in America. About 7 years ago, when I was still the U.S. Attorney for the Southern District of Alabama, a case came before me. My own city of Mobile had as its chief of police a strong African American who aggressively worked to reform the office, establish community-based policing, and worked to create a new level of discipline. Opposition grew and lawsuits were filed against him. A young police officer, who had been the chief's driver, testified in a deposition in a Federal lawsuit against the chief. He stated that the chief of police had ordered him to "bug" the patrol cars of other police officers and that he had a secret tape recording giving him this illegal order to commit a crime. The deposition was released quickly to the newspapers. The city council, police department, and the people were in an uproar. Under careful questioning by an experienced FBI agent, the young officer admitted that he had lied in the deposition regarding the tape recording.

As U.S. attorney, it was my decision whether the officer would be prosecuted for his perjury. His counsel argued that he was young, that he did lie but had corrected his false testimony at a later time. He argued that we should decline to prosecute. After reflection and review, I concluded that a sworn police officer who had told a plain lie under oath, even a young officer, should be prosecuted in order to preserve the rule of law and the integrity of the system. Our office prosecuted that case. The officer was convicted, and that conviction was later affirmed by the U.S. Court of Appeals for the Eleventh Circuit. For me personally, I have concluded that I cannot hold a young police officer to a different and higher standard than the President of the United States.

In sum, it is crucial to our system of justice that we demand the truth. I fear that an acquittal of this President will weaken the legal system by suggesting that being less than truthful is an option for those who testify under oath in official proceedings. Whereas the handling of the case against President Nixon clearly strengthened the Nation's respect for law, justice and truth by

sending a crystal-clear message about the requirement for honesty, the Clinton impeachment may unfortunately have the opposite result.

Finally, it is important to pause a moment to reflect on truth itself. I believe we live in a created and ordered universe and that truth and falsehood are real. They are capable of being ascertained. I reject the doctrine of relativism that suggests everything is OK. We must always strive to hold the banner of truth high. Indeed, the pursuit of truth wherever it leads has been a hallmark of our civilization and is the single quality that has made us such a vibrant and productive nation. Of course, none of us are perfect and we often fail in our personal affairs, but when it comes to going to court, and its comes to our justice system, a great nation must insist on honesty and lawfulness. Our country must insist upon that for every citizen. The chief law officer of the land, whose oath of office calls on him to preserve, protect and defend the Constitution, crossed the line and failed to defend the law, and, in fact, attacked the law and the rights of a fellow citizen. Under our Constitution, equal justice requires that he forfeit his office. For these reasons, I felt compelled to vote to convict and remove the President from office.

Some will not agree with my conclusion. In that case, or if I have otherwise offended you in any way during this process, I ask for your forgiveness. I have sincerely tried to bring to bear the training and experience that I have had, along with the values with which we were raised in Alabama, to decide this important matter.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR CHRISTOPHER J. DODD

Mr. DODD. Mr. Chief Justice, I rise to extend a word of thanks to Chief Justice Rehnquist for his distinguished service in presiding over this trial.

The Supreme Court sits just a few short yards from this Chamber. Yet its Justices and its working remain largely unknown to those of us who serve here. Perhaps that conceptual distance successfully reflects the framers' construct of legislative and judicial branches that act for the most part independently of one another.

Suffice it to say that our knowledge of the Chief Justice was rather limited prior to the commencement of the impeachment trial. We knew of his reputation as a formidable intellect, as a scholar—including on the topic of impeachment—and as an efficient manager of the courtroom. We did not as a group know much more about him.

What we learned during that course of that trial is that the Chief Justice brought his many estimable qualities to bear on this unique legal challenge. He brought a deep historical understanding of the impeachment process. He instilled confidence in each Senator that he would conduct himself in a manner faithful to the role prescribed for the Chief Justice by the framers. At all times, he guided the trial with a firm and fair hand—not hesitating to use his judgment and common sense when appropriate, but never pressing a

point of view on matters better left to the collective judgment of the Senate. He demonstrated a continuing respect and appreciation for the workings of this body. Last but not least, he brought a refreshing sense of humor to his task, which made our task as triers of fact somewhat more bearable.

Although this was a historic occasion, no one who took part in it relished doing so. There is collective relief, I think, that this constitutional ordeal is now behind us. But as we look back at these past remarkable weeks, we can all take comfort and pride in knowing that this second impeachment trial in our Nation's history was presided over by an individual of great intelligence, historical knowledge, and wit.

These qualities made him uniquely suited to his task. The Senate and the entire Nation owe a debt of thanks to Chief Justice Rehnquist for rendering such valued and distinguished service.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR CHRISTOPHER J. DODD

Mr. DODD. Mr. Chief Justice, the Senate has just discharged its duty under the Constitution to try the impeachment of President Clinton. We have rendered our judgment.

We have been asked to consider another, albeit lesser, form of punishment of the President—a resolution of censure. That resolution is authored by the Senator from California, Mrs. FEINSTEIN, and the Senator from Utah, Mr. BENNETT. Senator FEINSTEIN attempted to bring it before the Senate by way of a motion to suspend the rules in order to permit her motion to proceed. The Senator from Texas, Mr. GRAMM, objected, and then moved to indefinitely postpone consideration of Mrs. FEINSTEIN's motion. Since two-thirds of the Senate failed to vote in the negative, his point of order was sustained, and the motion to proceed failed.

I did not support Senator GRAMM's motion for the simple reason that I did not believe it appropriate to deny to Senator FEINSTEIN and others the opportunity to bring before the Senate a resolution of censure following the conclusion of the impeachment trial of the President. Had this resolution or something similar to it—say, a proposal to make "findings of fact" about the President's conduct—been offered during the impeachment trial, I would have strenuously opposed its consideration.

In my view, such a proposal is not permitted by the Constitution when raised as part of an impeachment trial. The Constitution is clear on this point. Article I, section 3 states that "Judgment in Cases of Impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States. . . ." Our sole choice when trying an impeachment case is whether or not to convict and remove—and then disqualify from holding any further office—the individual in question. The framers decided not to give Senators leeway to create additional judgment options—no matter how creative, convenient, or compelling they may be.

Because Senator FEINSTEIN's motion was made after the conclusion of the trial, during legislative session, I believed it was appropriate and timely for the Senate's consideration.

That is not to say, however, that I would have supported the resolution had the motion to proceed carried. On the contrary, I would have opposed it—as I would have opposed each of the several proposed censure resolutions that have circulated in recent days. The President has acted in a manner worthy of censure. No one denies that.

However, I have serious misgivings about a censure resolution emanating from this body and this body alone. I am concerned about what it may mean—not for this President, but for the institution of the Presidency. I understand the passion to voice—loudly and unmistakably—disapproval of the President's conduct. But it must be tempered by an even greater passion for the office he holds, and for the constitutional balance of power between the executive and legislative branches of government.

Federalist No. 73 speaks of "the propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other department." It warns of a presidency "stripped of [its] authorities by successive resolutions, or annihilated by a single vote."

My colleagues, we must qualify our understandable disdain for this President's conduct with the admonition to protect the office that he will occupy for a mere 23 months longer.

Nowhere does the Constitution expressly permit us to take up such a resolution. Nor does it expressly prohibit such a step. Yet the Senate, and the Congress as a whole, has been remarkably restrained in even considering censure resolutions. It has been even more reluctant to adopt them. Only once, in 1834, was a President formally censured by resolution. Three years later, that resolution was expunged.

The President at that time was Andrew Jackson. The driving force behind his censure was Henry Clay. Jackson had defeated Clay in the presidential election of 1832. In 1834, they remained bitter political adversaries.

Jackson argued that the resolution was repugnant to the constitutional principle of checks and balances between the branches of government. If the Senate wanted to punish him, he said, it has only one avenue acceptable under the Constitution: It would have to wait for the House to send an impeachment.

I am not convinced that a resolution censuring a President is unconstitutional. But I certainly agree that it is, at least in the context of the present case, unwise. There have been numerous instances where Presidents behaved in a manner deemed outrageous and even dangerous to the country. Franklin Roosevelt was roundly criticized for his efforts to "pack" the Supreme Court. President Truman seized the steel mills. President Reagan and then-Vice President Bush presided over the Executive Branch while an illegal scheme, run out of the White House, was conducted to sell arms to Iran and use proceeds from those sales to support armed rebellion in Nicaragua. The behavior of these individuals arguably was at least as egregious as President Clinton's. But the Senate did not pursue a censure resolution against any of them.

Ours is not a parliamentary system. In the United States, we do not entertain votes of "no confidence" against our chief executive. We elect presidents, not prime ministers.

A censure resolution in the present instance will seem modest, perhaps even insignificant, in relation to the impeachment conducted by the House. However, future generations may well come to view censure as an American-made vote of "no confidence" against future occupants of the Oval Office. We may pave the way to a new form of executive punishment. And it may be used not only in cases of personal misconduct. It could be used against a President who simply makes an unpopular or unwise, but nevertheless lawful and well-intended, decision.

Ultimately, we could subject future Presidents, who have not been impeached, to this form of punishment. In doing so, we risk eroding the independence and authority of the Presidency. I do not want to see the Senate take such a risk.

[From the Congressional Record—Senate, February 23, 1999]

STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. LEAHY. Mr. Chief Justice, I regret to have to return to an unfinished aspect of the Senate impeachment trial of President Clinton.

On February 2, I attended the deposition of Vernon Jordan as one of the Senators designated to serve as presiding officers. On February 4, the Senate approved the House managers' motion to include a portion of that deposition in the trial record. Unfortunately, the House managers moved to include only a portion of the videotaped deposition in the trial record and left the rest hidden from the public and subject to the confidentiality rules that governed those proceedings.

On Saturday, February 6, at the conclusion of his presentation, Mr. Kendall asked for permission to display the last segment of the videotaped deposition of Vernon Jordan, in which, as Mr. Kendall described it, "Mr. Jordan made a statement defending his own integrity." The House managers objected to the playing of the approximately 2-minute segment of the deposition that represented Mr. Jordan's "own statement about his integrity."

I then rose to request unanimous consent from the Senate that the segment of the videotaped deposition be allowed to be shown on the Senate floor to the Senate and the American people. There was objection from the Republican side.

I noted my disappointment at the time and in my February 12 remarks about the depositions. After the conclusion of the voting on the articles of impeachment and before the adjournment of the Court of Impeachment, unanimous consent was finally granted to include the "full written transcripts" of the depositions in the public record of the trial. As far as I can tell, however, the statement of integrity by Mr. Jordan has yet to be published in the CONGRESSIONAL RECORD.

I regret that the Senate chose to prohibit the viewing of the videotape of this powerful personal statement during the trial. I regret that it continues to be restricted from public viewing.

In order to be sure the transcript that is being made a part of the public trial record is readily available to the public, I ask unanimous consent that the following portion of the written transcript of the deposition of Vernon Jordan, that containing his statement of integrity heretofore suppressed, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The WITNESS. Mr. Chairman, may I be just permitted a moment of personal privilege? I don't know about the rules here, but uh, I'd like to say something if you would permit.

Mr. HUTCHINSON. Mr. Chairman——

Senator THOMPSON. Well, Mr. Jordan, quite frankly, it depends on what the subject matter is and what you'd like——

The WITNESS. Well, it won't be a declaration of war. [Laughter.]

Senator THOMPSON. Counsel, did you have——

Mr. HUTCHINSON. I would reserve the objection. I think that's permissible under the rules. So I would state my objection, let him answer it, and if—we can debate that if it becomes an issue in the Senate. I'd like to reserve the objection.

Senator THOMPSON. All right.

The WITNESS. It's just something I want you, Mr. Hutchinson, and the House Managers to understand about Vernon Jordan. And that is, you know, it's a very long way from the first public housing project in this country for black people, where I grew up. It's a long way from there to a corner office at Akin Gump. It's a long way from University Homes to the corporate board rooms of America. It's a long way from University Homes to the Oval Office. And I have made that journey understanding one thing, and that is that the only thing I have in this world that belongs to me is fee simple absolute, completely and totally, is my integrity.

My corner office at Akin Gump is at best tenuous. My house, my home, is at best tenuous. My bank account, my stocks and my bonds, they are ultimately of no moment.

But what matters most to me, and what was taught to me by my mother, is that the only thing that I own totally and completely is my integrity. And my integrity has been on trial here, and I want to tell you that nothing is more important to me than that.

The President is my friend. He was before this happened, he is now, and he will be when this is over. But he is not a friend in that I have no friends for whom I would sacrifice my integrity. And I want you to understand that.

Senator THOMPSON. Thank you, Mr. Jordan.

If there is no further question, then this deposition is completed, and we stand adjourned.

The WITNESS. Thank you.

[From the Congressional Record—Senate, February 24, 1999]

STATEMENT OF SENATOR JACK REED

Mr. REED. Mr. Chief Justice, I ask unanimous consent that my opinion memorandum relating to the impeachment of President Clinton be printed in the RECORD.

There being no objection, the opinion memorandum was ordered to be printed in the RECORD, as follows:

[In the Senate of the United States sitting as a Court of Impeachment]

OPINION MEMORANDUM OF UNITED STATES SENATOR JOHN F. REED, FEBRUARY 12, 1999

I. CONCLUSION

Based on the evidence in the record, the arguments of the House managers and the arguments of counsel for the President, I conclude as follows: The President has disgraced himself and dishonored his office. He has offended the justified expectations of the American people that the Presidency be above the sordid episodes revealed in the record before us. However, the House managers have failed to prove that the President's conduct amounts to the Constitutional standard of "other high Crimes and Misdemeanors" subjecting him to removal from office.

II. STATEMENT OF THE CASE

On December 19, 1998, the United States House of Representatives passed H. Res. 611,[1] "Impeaching William Jefferson Clinton, President of the United States, for high Crimes and Misdemeanors." The House Resolution contains two Articles of Impeachment declaring that, first, the President committed perjury before a Federal grand jury on August 17, 1998, and, second, the President obstructed justice in connection with the civil litigation of Paula Jones.[2]

Pursuant to article I, section 3 of the United States Constitution, the United States Senate convened a Court of Impeachment on January 9, 1999, and each Senator took an oath to render "fair and impartial justice."[3] As Alexander Hamilton stated in *Federalist No. 65*, "what other body would be likely to feel *confidence enough in its own situation* to preserve, unawed and uninfluenced, the necessary impartiality between an *individual* accused and the *representatives of the people, his accusers*?"[4]

The obligation of the Senate is to accord the President, as the accused, the right to conduct his defense fairly and, while respecting the House's exclusive Constitutional prerogative to bring Articles of Impeachment, to put the House to the proof of its case. At the core of our task is the fundamental understanding that our system of government recognizes the rights of defendants and the responsibilities of the prosecution to prove its case. Such a basic tenet of our law and our experience as a free people does not evaporate in the rarified atmosphere of a Court of Impeachment simply because the accused is the President and the accusers are the House of Representatives.

The House of Representatives submitted a certified, written record of over 6,000 pages. By unanimously adopting S. Res. 16, on January 8, 1999, the Senate agreed to proceed with the Court of Impeachment based on "the record which will consist of those publicly available materials that have been submitted." The Senate Resolution also provided that, following the presentations of the House managers, the response of the President's attorneys, and a period of questions by Senators, it would be in order to consider a motion to dismiss and a motion to depose witnesses.

On January 27, 1999, the Senate voted 56 to 44, against dismissing the Articles of Impeachment. On the same day, by the same margin, the Senate passed a resolution, S. Res. 30, allowing the Managers to depose three witnesses: Ms. Monica S. Lewinsky, Mr. Vernon E. Jordan, Jr., and Mr. Sidney Blumenthal. These depositions were taken on February 1, 2, and 3, 1999, respectively.

After Senators were provided an opportunity to view the videotaped depositions, the Senate reconvened as a trial of impeachment on February 4, 1999. At that time a motion by the House Managers to call Ms. Lewinsky to the floor of the Senate as a witness was rejected by a vote of 30 to 70. Voting 62 to 38, the Senate agreed to permit portions of the video to be used on the floor of the Senate during both a 6-hour "evidentiary" session and for closing arguments. The White House declined

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[1] H. Res. 611, 105th Cong., 2d Sess., (1998) (enacted).

[2] In the course of deliberations in the House, no witnesses to the underlying events were called. The House Judiciary Committee held four hearings and called only one material witness, the Independent Counsel, Kenneth Starr. Mr. Starr testified that he was not present when any of the witnesses testified before the Grand Jury. The President's attorneys were allowed two days to present their defense, and they called a series of expert witnesses.

[3] Rule XXV, *Procedure and Guidelines for Impeachment Trials in the United States Senate*, Prepared by Floyd Riddick and Robert Dove, 99th Cong., 2d Sess., S. Doc. 99–33 (August 15, 1986) at 6.

[4] *The Federalist No. 65*, at 398 (Alexander Hamilton) (Clinton Rossiter, ed., 1961) (Emphasis in original).

to offer a motion to call witnesses. The Senate then rejected a motion by Democratic Leader Daschle to proceed directly to a vote on the Articles of Impeachment.

On Saturday, February 6, 1999, the Senate heard 6 hours of presentation, evenly divided, concerning the evidence obtained in the three depositions. On Monday, February 8, 1999, the Senate heard closing arguments from the House Managers and Counsel for the President. The following day, the Senate voted on a motion to open deliberations to the public. That motion received 59 votes, several short of the supermajority required to change Senate impeachment rules. The Senate then voted to adjourn to closed deliberations. A final vote was taken on the articles on Friday, February 12, 1999.

III. THE CONSTITUTIONAL STANDARD

"The Senate shall have the sole Power to try all Impeachments."[5] With these few words, the Framers of the Constitution entrusted the Senate with the most awesome power within a democratic society. We are the final arbiters of whether the conscious and free choice of the American people in selecting their President will stand.

1. "Other High Crimes and Misdemeanors"

The Constitutional grounds for impeachment indicate both the severity of the offenses necessary for removal and the essential political character of these offenses. "The President, Vice President and all civil Officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."[6] The clarity of "Treason" and "Bribery" is without doubt. No more heinous example of an offense against the Constitutional order exists than betrayal of the nation to an enemy or betrayal of duty for personal enrichment. With these offenses as predicate, it follows that "other high Crimes and Misdemeanors" must likewise be restricted to serious offenses that strike at the heart of the Constitutional order.

Certainly, this is the view of Alexander Hamilton, one of the trio of authors of the *Federalist Papers,* the most respected and authoritative interpretation of the Constitution. In *Federalist No. 65,* Hamilton describes impeachable offenses as "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself."[7]

This view is sustained with remarkable consistency by other contemporaries of Hamilton. George Mason, a delegate to the Federal Constitutional Convention, declared that "high Crimes and Misdemeanors" refer to "great and dangerous offenses" or "attempts to subvert the Constitution."[8] James Iredell served as a delegate to the North Carolina Convention that ratified the Constitution, and he later served as a Justice of the United States Supreme Court. During the Convention debates, Iredell stated:

The power of impeachment is given by this Constitution, to bring great offenders to punishment. . . . This power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from *acts of great injury to the community,* and the objects of it may be such as cannot be easily reached by an ordinary tribunal.[9]

Iredell's understanding sustains the view that an impeachable offense must cause "great injury to the community." Private wrongdoing, without a significant, adverse effect upon the nation, cannot constitute an impeachable offense. James Wilson, a delegate to the Federal Constitutional Convention and, like Iredell, later a Supreme Court Justice, wrote that impeachments are "proceedings of a political nature . . . confined to political characters, to political crimes and misdemeanors, and to political punishments."[10]

Later commentators expressed similar views. In 1833, Justice Story quoted favorably from the scholarship of William Rawle in which Rawle concluded that the "legitimate causes of impeachment . . . can have reference only to public character,

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[5] U.S. Const., art. I, § 3, cl. 7.
[6] U.S. Const., art. II, § 4.
[7] *The Federalist No. 65,* at 396 (emphasis in original).
[8] Max Farrand, ed., *The Records of the Federal Convention of 1787,* at 550 (1966).
[9] Jonathon Elliot, *Debates on the Adoption of the Federal Constitution* at 113 (1974).
[10] Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* at 21 (1996).

and official duty. . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subject of impeachment."[11]

This line of reasoning is buttressed by the careful and thoughtful work of the House of Representatives during the Watergate proceedings. The Democratic staff of the House Judiciary Committee concluded that: "[b]ecause impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of president office."[12]

This view was echoed by many on the Republican side. Minority members of the Judiciary Committee declared:

The Framers . . . were concerned with preserving the government from being overthrown by the treachery or corruption of one man. . . . [I]t is our judgment, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government.[13]

2. The Constitutional Debates

Adding impressive support to these consistent views of the meaning of the term, "high Crimes and Misdemeanors," is the history of the deliberations of the Constitutional Convention. This history demonstrates a conscious movement to narrow the terminology as a means of raising the threshold for the impeachment process.

Early in the debate on the issue of Presidential impeachment in July of 1787, it was suggested that impeachment and removal could be founded on a showing of "malpractice," "neglect of duty" or "corruption."[14] By September of 1787, the issue of Presidential impeachment had been referred to the Committee of Eleven, which was created to resolve the most contentious issues. The Committee of Eleven proposed that the grounds for impeachment be "treason or bribery."[15] This was significantly more restricted than the amorphous standard of "malpractice," too restricted, in fact, for some delegates. George Mason objected and suggested that "maladministration" be added to "treason and bribery."[16] This suggestion was opposed by Madison as returning to the vague, initial standard. Mason responded by further refining his suggestion and offered the term "other high Crimes and Misdemeanors against the State."[17] The Mason language was a clear reference to the English legal history of impeachment. And, it is instructive to note that Mason explicitly narrowed these offenses to those "against the State." The Convention itself further clarified the standard by replacing "State" with the "United States."[18]

At the conclusion of the substantive deliberations on the Constitutional standard of impeachment, it was obvious that only serious offenses against the governmental system would justify impeachment and subsequent removal from office. However, the final stylistic touches to the Constitution were applied by the Committee of Style. This Committee has no authority to alter the meaning of the carefully debated language, but could only impose a stylistic consistency through, among other things, the elimination of redundancy. In their zeal to streamline the text, the words "against the United States" were eliminated as unnecessary to the meaning of the passage.[19]

The weight of both authoritative commentary and the history of the Constitutional Convention combines to provide convincing proof that the impeachment process was reserved for serious breaches of the Constitutional order which threaten the country in a direct and immediate manner.

3. The Independence of Impeachment and Criminal Liability

Article I, section 3 of the United States Constitution provides that "[j]udgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office or honor, Trust or Profit under the United States: *but the Party convicted shall nevertheless be liable and subject to In-*

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[11] 2 Joseph Story, Commentaries on the Constitution § 799 at 269–70 quoting William Rawle, A View of the Constitution of the United States at 213 (2d ed. 1829).

[12] Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, House Comm. on Judiciary, 93rd Cong., 2d Sess. at 26 (1974).

[13] Impeachment of Richard M. Nixon, President of the United States, Report of the House Comm. on the Judiciary, 93rd Cong., 2d Sess., H. Rep 93–1305 at 364-65 (Aug. 20, 1974) (Minority Views of Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorhead, Maraziti and Latta).

[14] 2 Farrand, The Records of the Federal Convention of 1787, at 64–69.

[15] *Id.*

[16] *Id.*

[17] *Id.* (emphasis added).

[18] *Id.*

[19] *Id.*

dictment, Trial, Judgment and Punishment, according to Law."[20] As James Wilson wrote:

[i]mpeachments, and offenses and offenders impeachable, [do not] come . . . within the sphere of ordinary jurisprudence. They are founded on different principles; are governed by different maxims; and are directed to different objects; for this reason, the trial and punishment of an offense on an impeachment, is no bar to a trial and punishment of the same offence at common law.[21] The independence of the impeachment process from the prosecution of crimes underscores the function of impeachment as a means to remove a President from office, not because of criminal behavior, but because the President poses a threat to the Constitutional order. Criminal behavior is not irrelevant to an impeachment, but it only becomes decisive if that behavior imperils the balance of power established in the Constitution.

4. Conclusion

Authoritative commentary on the Constitution, together with the structure of the Constitution allowing independent consideration of criminal charges, makes it clear that the term, "other high Crimes and Misdemeanors," encompasses conduct that involves the President in the impermissible exercise of the powers of his office to upset the Constitutional order. Moreover, since the essence of Impeachment is removal from office rather than punishment for offenses, there is a strong inference that the improper conduct must represent a continuing threat to the people and the Constitution. It cannot be an episode that either can be dealt with in the Courts or raises no generalized concerns about the continued service of the President.

IV. JUDICIAL IMPEACHMENTS

The House managers urge that the standards applied to judges must also be applied identically to the President. Their argument finds particular urgency with respect to Article I and its allegations of perjury. Several judges have been removed for perjury, and the House managers suggest that this experience transforms perjury into a per se impeachable offense.[22]

This reasoning disregards the unique position of the President. Unlike Federal judges, the President is elected by popular vote for a fixed term. Popular elections are the most obvious and compelling checks on Presidential conduct. No such "popular check" is imposed on the judiciary. Federal judges are deliberately insulated from the public pressures of the moment to ensure their independence to follow the law rather than a changeable public mood. As such, impeachment is the only means of removing a judge. Moreover, the removal of one of the 839 Federal judges can never have the traumatic effect of the removal of the President. To suggest that a Presidential impeachment and a judicial impeachment should be treated identically strains credulity.

There is an additional Constitutional factor to consider. The Constitution requires that judicial service be conditioned on "good Behavior."[23] This adds a further dimension to the consideration of the removal of a judge from office. Although "good Behavior" is not a separate grounds for impeachment, this Constitutional standard thoroughly permeates any evaluation of judicial conduct.

We expect judges to be above politics. We expect them to be inherently fair. We expect their judgment to be unimpeded by personal considerations. And, we demand that their conduct, both public and private, reflect these lofty expectations. Judges are subject to the most exacting code of conduct in both their public life and their private life.[24] Without diminishing the expectations of Presidential conduct, it is fair to say that we expect and demand a more scrupulous standard of conduct, particularly personal conduct, from judges. A large part of these heightened expectations for judges emerges directly from their particular role in our government. They immediately and critically determine the rights of individual citizens. The fates and lives of individual Americans are literally in their hands. They personify more dra-

[20] U.S. Const., art. I § 3, cl. 7 (emphasis added).

[21] James D. Andrews, ed., *The Works of James Wilson* at 408 (1896).

[22] For example, both Judge Walter L. Nixon, Jr. and Judge Alcee L. Hastings were convicted on charges based on perjury.

[23] "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior . . ." U.S. Const., art. III, § 1.

[24] The Judicial Conference of the United States publishes a Code of Conduct for United States Judges, as prepared by the Administrative Office of the United States Courts. Cannon 2 of the Code requires federal judges to "avoid impropriety and the appearance of impropriety in all activities." (March, 1997). This Cannon requires a Judge to act at all times in "a manner that promotes public confidence in the integrity and impartiality of the judiciary." Perceived violations of the Code could result in a complaint to the Judicial Conference, which can make referrals to the House Judiciary Committee.

matically than anyone, including the President, the fairness and reasonableness of the law. Should they falter, the foundation of "equal justice under law" is more seriously strained than the failings of any other citizen.

The differences between a Presidential impeachment and a judicial impeachment are not merely theoretical. The Senate treats a Presidential impeachment differently from a judicial impeachment in both procedure and substance. The Senate routinely allows a select committee to receive testimony in the trial of a judge.[25] Such a delegation of responsibility would be unthinkable in the trial of a President. But of even more telling effect are the substantive differences between Presidential and judicial impeachments. For example, Judge Harry Claiborne was impeached and removed subsequent to his criminal conviction for filing a false income tax return.[26] In contrast, the inquiry into the Watergate break-in disclosed similar violations of the Federal Tax Code by President Nixon. Yet, the Judiciary Committee of the House of Representatives declined to approve an article of impeachment with respect to President Nixon's apparent violation of the Internal Revenue Code. A major factor in declining to press this article was the widespread feeling that such private misconduct was not relevant to a Presidential impeachment. According to Representative Ray Thornton (D–AR), "there [had] been a breach of faith with the American people with regard to incorrect income tax returns . . . But . . . these charges may be reached in due course in the regular process of law. This committee is not a tax court nor should it endeavor to become one."[27] Republican Representative Tom Railsback (R–IL) pointed out that there was "a serious question as to whether something involving [the President's] personal tax liability has anything to do with his conduct of the office of the President."[28]

The reconciliation of this disparate treatment is found by once again recalling the Constitution and not by simply adopting the facile notion that if impeachment applies to judges then it must apply identically to the President. The function of impeachment is to remove a "civil officer" who so abuses the particular duties and responsibilities of his office that he poses a threat to the Constitutional order. Furthermore, the Constitution provides an additional condition on the performance of judges with the "good Behavior" standard. The particular duties of the Judiciary together with their obligation to demonstrate "good Behavior," renders comparison with the President inexact at best.[29]

The Managers' argument is ultimately unpersuasive. Rather than reflexively importing prior decisions dealing with judicial impeachments, we are obliged to consider the President's behavior in the context of his unique Constitutional duties and without the condition to his tenure of "good Behavior."

V. THE STANDARD OF PROOF

Judicial proceedings, by definition, resolve an issue in dispute. A party seeks an outcome, provided for by the rule of law, and petitions for that result. The petitioning party has the burden of producing evidence. After hearing the evidence, the

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[25] Rule XI, Procedure and Guidelines for impeachment Trials in the United States Senate, Prepared by Floyd Riddick and Robert Dove, 99th Cong., 2d Sess., S. Doc. 99–33 (August 15, 1986) at 4.

[26] Proceedings of the United States Senate in the Impeachment Trial of Harry E. Claiborne, A Judge of the United States District Court for the District of Nevada, 99th Cong., 2d Sess., S. Doc. No. 99–48 (1986) at 291–98.

[27] The Evidentiary Record of the Impeachment of President William Jefferson Clinton, [hereinafter The Record] S. Doc. 106–3, 106th Cong., 1st Sess., Vol. XVII, at 10 (January 8, 1999) (quoting Hearings Before the House Comm. on the Judiciary Pursuant to H. Res. 803, 93d Cong., 2d Sess. 549 (1974) (Statement of Congressman Ray Thornton)).

[28] Id. (Statement of Congressman Railsback).

[29] Various legal scholars and authoritative commentary make this point. In support of the "Judicial Integrity and Independence Act," which would have established a non-Impeachment procedure for removing judges, Senator Lott submitted an article by conservative legal scholars Bruce Fein and William Bradford Reynolds. Messrs. Fein and Reynolds concluded "federal judges are also subject to Article III § 4, which stipulates that judges shall serve only during 'good Behavior.' This is a stricter standard of conduct than the Impeachment standard. . . ." 135 Cong. Rec. S15269 (daily ed. July 19, 1989) (*quoting* Fein and Reynolds, *Judges on Trial: Improving Impeachment,* Legal Times, October 30, 1989.) Senator Lott also submitted a statement, by then Assistant Attorney General William Rehnquist, supporting similar legislation in 1970, which stated that "the terms 'treason, bribery and other high Crimes and Misdemeanors' are narrower than the malfeasance in office and failure to perform the duties of the office, which may be grounds for forfeiture of office held during good behavior." 135 Cong. Rec. S 15270 (daily ed. July 19, 1989) (*quoting The Judicial Reform Act: Hearings on S. 1506 Before the Subcomm. on Improvements in Judicial Machinery of the Comm. on the Judiciary,* 91st Congress, 2d Sess. (April 9, 1970) (Statement of Asst. Attorney General William H. Rehnquist, Office of Legal Counsel)).

trier of fact, to some degree of certainty, reaches a conclusion. The critical factor is often the degree of certainty necessary.

American jurisprudence utilizes three standards of certainty: evidence beyond a reasonable doubt, clear and convincing evidence, and a preponderance of the evidence. The standard is determined by the gravity of the issue in dispute and the degree of harm resulting from an incorrect decision.

Generally, proof beyond a reasonable doubt, or to a moral certainty, is required to convict an individual of a criminal offense. *Black's Law Dictionary* defines reasonable doubt as "a doubt as would cause prudent men to hesitate before acting in matters of importance to themselves."[30] Sample Federal jury instructions provide that "[a] reasonable doubt is a doubt based upon reason and common sense—the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs."[31]

Clear and convincing evidence is utilized in cases involving a deprivation of individual rights not rising to criminal offenses, such as the termination of parental rights. Finally, general civil cases, which pit private parties against each other, are adjudicated on the preponderance of the evidence, i.e., more likely than not. Frequently the burden of proof is determinative of the outcome.

In an impeachment trial, each Senator has the obligation to establish the burden of proof he or she deems proper. The Founding Fathers believed maximum discretion was critical for Senators confronting the gravest of constitutional choices. Differentiating impeachment from criminal trials, Alexander Hamilton argued, in *Federalist No. 65*, that impeachments "can never be tied down by such strict rules . . . as in common cases serve to limit the discretion of courts in favor of personal security."[32] In this regard, Hamilton also recognized that an impeached official would be subject to the comprehensive rules of criminal prosecution after impeachment.[33]

Senate precedent maintains this discretion. In the 1986 impeachment trial of Judge Claiborne, the Senate overwhelmingly rejected a motion by the judge to adopt "beyond a reasonable doubt" as the standard of proof necessary to convict and remove.[34] That vote has been interpreted by subsequent courts of impeachment as "a precedent confirming each Senator's freedom to adopt whatever standard of proof he or she preferred."[35]

The constitutional gravity of an impeachment trial suggests that the evidentiary bar be high. As I have discussed previously, the Founders viewed impeachment as a remedy to be utilized only in the gravest of circumstances by a supermajority of Senators. The Constitution gives to the people the right to remove a President through the electoral process every four years. Only in the most extreme of examples, when the constitutional order is threatened, is Congress to intervene and remove our only nationally elected representative. Nullification of a popularly elected President is a grave action only to be taken with high certainty.

Constitutional analysis strongly suggests that in a Presidential impeachment trial a burden of proof at least equivalent to "clear and convincing evidence" and more likely equal to "beyond a reasonable doubt" must be employed.[36] Had the charges of this case involved threats to our constitutional order not readily characterized by criminal charges, I would have been forced to further parse an exact standard. However, for all practical purposes, the managers have themselves established the burden of proof in this case.[37]

The articles, embodied in H. Res. 611, accuse the President of perjury and obstruction of justice. This allegation of specific criminal wrongdoing is repeated in

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[30] *Black's Law Dictionary* at 1265 (6th ed. 1990) (*citing U.S.* v. *Chas. Pfizer & Co., Inc.,* 367 F.Supp. 91, 101(S.D. N.Y. 1973)).

[31] Edward J. Devitt, Charles B. Blackmar, Michael A. Wolff, Kevin F. O'Maley, *Federal Jury Practice and Instructions*, § 12.10 Presumption of Innocence, Burden of Proof, and Reasonable Doubt (West 1992).

[32] *The Federalist No. 65,* at 398.

[33] *Id.* at 399.

[34] 132 Cong. Rec. S15507 (daily ed. October 7, 1986).

[35] Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis*, at 42 (1996).

[36] See Charles L. Black, Jr., Impeachment: A Handbook, at 14–19 (1974)

[37] The adoption of a standard of "beyond a reasonable doubt" in this matter should not be construed as implying that the same standard must be utilized in each and every Impeachment proceeding. Conduct of "civil officers" in the performance of their official duties might pose such an immediate threat to the Constitution that a less exacting standard could properly be used. Any choice of a standard of proof must, at a minimum, consider the nature of the allegations and the impact of the alleged behavior on the operation of the government.

their trial brief.[38] Indeed, in their presentation, the managers have stated, "none of us, would argue . . . that the President should be removed from the office unless you conclude he committed the crimes that he is alleged to have committed. . . ."[39] The House Managers invited the Senate to arrive at a conclusion beyond a reasonable doubt before voting to convict the President. I take them at their word.

After reading their trial brief, listening to their presentation of the evidence, viewing depositions, and considering their closing argument, I conclude that the President is not guilty of any of the allegations beyond a reasonable doubt. I reach this conclusion mindful of the admonishment of the Founders that impeachment is not a punitive, but rather a constitutional remedy. Having concluded that the charges, even if proven, do not rise to the level of "high Crimes and Misdemeanors" an analysis of the specific charges is unnecessary. However, given the gravity of the charges alleged, an explanation is appropriate.

VI. PERJURY ALLEGATIONS OF ARTICLE I

Article I alleges that the President committed perjury before a Federal grand jury on August 17, 1998. The charge must be measured against the fact that the full House of Representatives rejected an article of impeachment charging the President with perjury in a civil deposition. House Judiciary Committee Republicans, citing case law, have asserted that "perjury in a civil proceeding is just as pernicious as perjury in criminal proceedings."[40] The article before the Senate is further undercut by the fact that the article fails to cite, with specificity, testimony alleged to be false.

Perjury is a statutory crime, set forth in the U.S. Code at 18 U.S.C. § 1621, § 1623. It requires proof that an individual has, while under the oath of an official proceeding, knowingly made a false statement about facts material to the proceeding. As seasoned Federal prosecutors testified before the House Judiciary Committee, perjury is a specific intent crime requiring proof of the defendant's state of mind, i.e., the charge cannot be based solely upon unresponsive, misleading, or evasive answers.[41] Both the House managers and counsel for the President have referred to the statutes referenced above and agree on the elements necessary to convict on a charge of perjury.

I find it hard to accept the proposition by the President's counsel that Mr. Clinton "testified truthfully before the grand jury."[42] Rather than truthful, his testimony appears to be motivated by a desire not to commit perjury, i.e., making intentionally false statements about material facts. This dance with the law is not what one expects of a President. However, it is important to realize that in beginning his grand jury testimony, the President read a statement in which he admitted being "alone" with Ms. Lewinsky and engaging in "inappropriate intimate"[43] contact with her. Thus, unlike the testimony he provided in the *Jones* civil deposition, the President admitted an improper, consensual relationship with Ms. Lewinsky. It is against this backdrop that the House managers allege perjury.

The managers allege in H. Res. 611, which reported the articles of impeachment to the Senate, that the President "willfully provided perjurious . . . testimony . . . concerning one or more of the following: (1) the nature and details of his relationship with" Ms. Lewinsky; (2) "prior perjurious . . . testimony" given in the Jones deposition; (3) "prior false and misleading statements he allowed his attorney to make" in the Jones deposition; and (4) "his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence" in Jones. The facts refute some of these charges, while legal analysis, precedent and common sense preclude pursuit of the others.

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[38] Trial Memorandum of the United States House of Representatives, In Re Impeachment of President William Jefferson Clinton, [hereinafter HMTB] (Submitted pursuant to S. Res. 16) at 1.

[39] 145 Cong. Rec. S260 (daily ed. Jan. 15, 1999) (Statement of Mr. Manager McCollum).

[40] Impeachment of William Jefferson Clinton, President of the United States, Report of the Comm. on the Judiciary, 105th Cong. 2d Sess., H. Rep. 105–830 (December 15, 1998) at 118 [hereafter Clinton Report].

[41] The Record, supra note 27, Volume X at 284 (Statement of Thomas P. Sullivan, Former U.S. Attorney, Northern District of Illinois).

[42] Trial Memorandum of President William Jefferson Clinton, In Re Impeachment of President William Jefferson Clinton, [hereinafter PCTB] (Submitted January 13, 1999, pursuant to S. Res. 16) at 38.

[43] The full text of the President's statement before the Grand Jury can be found in The Record, supra note 27, Volume III, Part 1 of 2, at 460–62; See also PCTB, supra note 42, at 39; See also HMTB, supra note 38, at 52–60.

1. The Nature and Details of the Clinton/Lewinsky Relationship

With regard to the first charge of perjury, the managers fail to cite specific perjurious language in the article; however, their trial brief provides several allegations. It asserts that the President's denial that he touched Ms. Lewinsky in certain areas with a specific intent is "patently false."[44]

The most troubling evidence that the President lied in this instance is Ms. Lewinsky's testimony to the contrary. While Ms. Lewinsky has more credibility than the President concerning the intimacies of their relationship, experienced prosecutors, appointed by both Democrats and Republicans, have testified that conflicting testimony of this type would not be prosecuted for two reasons. First, "he said, she said" discrepancies regarding perjury are difficult to prove beyond a reasonable doubt without third party corroboration.[45] This is particularly true in this case, where first Independent Counsel Starr and now the House managers choose to believe Ms. Lewinsky when she helps their case, but impugn her testimony when she refutes their accusations. Second, testimony concerning sex in a civil proceeding would not normally warrant criminal prosecution.[46] Indeed, in her Senate deposition, Ms. Lewinsky was unwilling to portray the President's testimony as untruthful.[47]

In further support of the perjury allegation regarding the "nature and details" of the Clinton-Lewinsky relationship, the managers also alleged that the President's grand jury testimony concerning his relationship with Ms. Lewinsky was perjurious because (1) his recollection of when the approximately two-year affair began differs from Ms. Lewinsky's by a few months; (2) he admitted to occasionally having inappropriate banter on the phone with Ms. Lewinsky when it occurred as many as seventeen times; and (3) he described his relationship with Ms. Lewinsky as beginning as a "friendship."[48]

Disregarding the futility of attempting to judge the veracity of these statements, they appear to be totally immaterial to the grand jury given that the President admitted an affair with Ms. Lewinsky. Indeed, the triviality of these charges are indicative of the inability of the House managers to utilize any sense of proportionality in adjudicating the unacceptable behavior of the President. This weakness is magnified by the fact that the House managers have asserted that conviction on any one of their allegations of perjury warrant conviction.[49]

It is difficult to believe that anyone would charge an individual with perjury, never mind advocate the removal of a popularly-elected President, based upon an interpretation of the words "occasionally" or "friendship." It is staggering that the managers, after forcing Ms. Lewinsky to testify under oath during this trial, would press her on the details and timing of her first intimate contacts with the President in order to "prove" the relationship did not begin as a "friendship."[50] As demonstrated by the frustration of the American people with this line of inquiry, the resources, both human and financial, expended by the managers were not warranted by the substance of the charge.

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[44] HMTB, supra note 38, at 53.

[45] The Trial Brief of the House Managers states that the President's testimony is "directly contradicted by the corroborated testimony of Monica Lewinsky." Id. By "corroborated" the Managers refer to the fact that the Office of Independent Counsel (OIC) was extremely thorough in questioning all of Ms. Lewinsky's friends and associates to whom she described the intimate details of her contact with the President. Legally, the fact that Ms. Lewinsky relayed her recollection of the facts to various third parties does not provide additional, independent evidence of the nature of her contact with the President.

[46] The Record, supra note 27, Volume X at 284 (Statement of Thomas P. Sullivan, Former U.S. Attorney, Northern District of Illinois); see also Id. at 325, 332, 333 (testimony of Ronald K. Noble and William F. Weld).

[47] During her Senate deposition, Manager Bryant asked Ms. Lewinsky if, contrary to his defense, the President's contact with her fit into that described in the Jones deposition. In response Ms. Lewinsky said, "I'm not trying to be difficult, but there is a portion of . . . [the] definition [used in the Jones deposition] that says, you know, with intent, and I don't feel comfortable characterizing what someone else's intent was. I can tell you that I—my memory of this relationship and what I remember happened fell within that definition . . . but I'm just not comfortable commenting on someone else's intent or state of mind or what they thought." 145 Cong. Rec. S1221 (daily ed. Feb. 4, 1999) (Senate deposition of Ms. Lewinsky).

[48] See HMTB, supra note 38, at 57; see also Clinton Report, supra note 40 at 34.

[49] H. Res. 611.

[50] 145 Cong. Rec. S1213 (daily ed. Feb. 4, 1999) (Transcript of Lewinsky Deposition in which Mr. Manager Bryant is questioning Ms. Lewinsky about the timing and intimate details of her relationship).

2. Perjury Concerning the President's Deposition Testimony in Jones

The managers' second charge of perjury is that before the grand jury the President repeated false testimony he gave in the Jones deposition. This argument appears to be an attempt to convict the President for lies he told in his Jones deposition, an article which the full House of Representatives rejected. Ultimately, this subsection of article I collapses on itself.

In their trial brief the managers also assert that the President reaffirmed or adopted his entire deposition testimony before the grand jury. This is simply not true. To make this assertion the managers use the President's grand jury testimony that "I was determined to walk through the mine field of this deposition without violating the law, and I believe I did."[51] Before the grand jury the President refuted his deposition testimony that he was never alone with Ms. Lewinsky.[52] In addition to being inaccurate, these charges were rejected by the full House. Not even Independent Prosecutor Starr alleged that the President committed perjury concerning this issue.

3. Perjury With Respect to Mr. Bennett's Offer of the Lewinsky Affidavit

The third charge asserted by the managers to substantiate article I is that the President lied before the Grand Jury when he testified that "I'm not even sure I paid attention to what he [Mr. Bennett] was saying."[53] The President made this statement to the grand jury after being asked about Mr. Bennett's representation to the Jones court that Ms. Lewinsky's deposition verified that there was "no sex of any kind in any manner" between her and the President.

On page 62 of their trial brief the managers assert that this testimony is perjurious because "it defied common sense" and the fact that the video of the deposition "shows the President looking directly at Mr. Bennett." This evidence fails to provide any insight on the President's state of mind and thus cannot meet the standard of proof that the President knowingly made a false statement.

4. Perjury in Denying the Obstruction of Justice Charges

Finally, in subpart four of article I, the managers allege that the President lied when he denied both tampering with witnesses and impeding discovery in the Jones case. This allegation bootstraps every allegation made in article II into an additional charge of perjury.

First, the managers charge that the President lied when he told the grand jury that he instructed Ms. Lewinsky that if gifts were subpoenaed they would have to be turned over. I will address article II's charge of obstruction later. With regard to the charge that he committed perjury, Ms. Lewinsky provided testimony in her Senate deposition which requires rejection of the allegation. Ms. Lewinsky has testified that when she asked the President if she should give the subpoenaed gifts to someone, "maybe Betty," the President either failed to reply or said "I don't know," or "let me think about that."[54] However, after the President's grand jury testimony, Ms. Lewinsky was pressed on the issue. When a FBI agent asked if she recalled the President telling her that she must turn over gifts in her possession should they be subpoenaed by the Jones attorneys, Ms. Lewinsky said, "You know, that sounds a little bit familiar to me."[55] On its face, Ms. Lewinsky's testimony would seem to make it more likely than not that the President told her to turn over whatever gifts she had.

There are two remaining allegations in the final subpart of article I. First, it is alleged that the President committed perjury when he told the grand jury that on January 18, 1998, he made statements to Ms. Currie to "refresh his memory." Second, the managers allege that he lied when he testified to the grand jury that facts he relayed to his aides in denying an affair were "true" but "misleading."

I am troubled by the inability of the President to be completely forthright concerning both his relationship with Ms. Lewinsky and subsequent attempts to conceal this affair from his family, friends, staff, constituents, and Ms. Jones. In no way do I condone this behavior. However, seasoned Federal prosecutors have made it known that the statements of this type, made by the President or an average citizen, would not, indeed should not, be prosecuted as perjury. The power and prestige of the Federal Government should not be brought to bear on a citizen regarding tes-

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[51] HMTB, supra note 38, at 60.

[52] In his opening statement before the Grand Jury the President began, "When I was alone with Ms. Lewinsky. . . ." The Independent Counsel followed-up and asked if he was alone with Ms. Lewinsky. The President answered, "yes." The Record, supra note 43 at 460–62, 481.

[53] HMTB, supra note 38, at 62.

[54] HMTB, supra note 38, at 64 (quoting Grand Jury testimony of Ms. Lewinsky).

[55] 145 Cong. Rec. S1228 (daily ed. February 6, 1999)(Senate Deposition Testimony of Ms. Lewinsky).

timony in a civil case pertaining to an improper sexual affair. The impeachment trial has borne this out. Discrepancies in testimony between two individuals, and only those two, seldom satisfy the standard of proof beyond a reasonable doubt (or by preponderance of the evidence, for that matter.) Moreover, citizens are uncomfortable with such a role for government.

The managers have alleged that a failure to convict the President on perjury grounds will destroy civil rights jurisprudence and allow any future President to lie with impunity. Both the managers and our Government weathered untruths during both the Iran-Contra investigation and the ethics investigation of former Speaker Gingrich. Citizens may well lack confidence in the ability of President Clinton to be honest about his personal life, this is not, however, a threat to our Government. The President, as a citizen, remains subject to both criminal and civil sanctions. The managers have failed to meet the burden of proof they set regarding the perjury charges brought against President William Jefferson Clinton.

VII. OBSTRUCTION ALLEGATIONS OF ARTICLE II

Article II alleges that the President obstructed justice by engaging "personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding."[56] The focal point of these allegations is the *Jones* litigation. Article II outlines seven specific "acts" that the President used to implement this "course of conduct or scheme." These "acts" will be analyzed to determine if they established a foundation for a finding of "high Crimes and Misdemeanors."

As an initial point, it is necessary to set out the elements of the crime of obstruction of justice, as set forth at 18 U.S.C. § 1503. The components of the offense include: (1) there existed a pending judicial proceeding; (2) the accused knew of the proceeding; and (3) the defendant acted "corruptly" with the specific intent to obstruct and interfere with the proceeding or due administration of justice.[57]

The critical question in regard to the allegations is whether the President acted with the specific intent to interfere with the administration of justice. Absent a demonstrable "act" coupled with a demonstrable "specific intent," no crime occurs. The House managers point to the seven following acts as the basis of their claim.

1. The Lewinsky Affidavit

The article alleges that "[o]n or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading."[58] The allegations go to the Affidavit prepared by Monica Lewinsky in conjunction with the *Jones* litigation.

The best evidence of the President's involvement in this affidavit is the testimony of Monica Lewinsky. Ms. Lewinsky has repeatedly and consistently stated that no one asked her or instructed her to lie.

"[N]o one ever asked me to lie and I was never promised a job for my silence."[59]

"Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie."[60]

"Neither the President or JORDAN ever told LEWINSKY that she had to lie."[61]

"Neither the President nor anyone ever directed LEWINSKY to say anything or to lie . . ."[62]

Despite these repeated denials, the House managers persist in arguing that the President influenced Ms. Lewinsky to file a false affidavit in a early morning phone call on December 17, 1997. They hang their case on a portion of the conversation that involved a discussion of the filing of an affidavit in response to a subpoena from the *Jones* lawyers and another portion of the conversation that dealt with the "cover

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[56] H. Res. 611.

[57] 18 U.S.C. § 1503. The House Managers periodically urge that the President is guilty of witness tampering. The crime of witness tampering is set forth at 18 U.S.C. § 1512. This statute requires proof that a defendant knowingly engaged in intimidation, physical force, threats, misleading conduct, or corrupt persuasion with the specific intent to influence, delay, or prevent testimony or cause any person to withhold objects or documents from an official proceeding. Like the obstruction of justice charge, witness tampering requires proof of a specific intent to interfere with a witness.

[58] H. Res. 611.

[59] *The Record, supra* note 27, Volume III, Part 1 at 1161 (Lewinsky Grand Jury testimony 8/20/98).

[60] *Id.* at 718 (handwritten proffer of Lewinsky, given to OIC 2/1/98).

[61] *Id.* at 1398 (FBI Interview with Lewinsky 7/27/98).

[62] *Id.* at 1400.

story" that both the President and Ms. Lewinsky had been using to disguise their affair. Ms. Lewinsky has testified that, in a call on December 17, 1997, the President said "Well, maybe you can sign an affidavit."[63] The House managers argue that this statement alone must convict because both the President and Ms. Lewinsky knew that a truthful affidavit could never be filed given the clandestine nature of their relationship.[64] This theory disregards the testimony of both the President and Ms. Lewinsky.[65]

Any lingering doubt about the nature of the telephone conversation on December 17, 1997, was erased by the videotaped testimony of Ms. Lewinsky before the Senate. The House managers repeatedly argued that the President not only influenced the content of her affidavit, but that the President was knowledgeable of those contents. In a response to Mr. Manager Bryant's question, however, Ms. Lewinsky unequivocally stated that "[h]e didn't discuss the content of my affidavit with me at all, ever."[66] The House managers argued that the telephone call on December 17, 1997, was a deliberate attempt by the President to compel Ms. Lewinsky to submit an affidavit that would explicitly encompass their pre-existing cover story. Again, in response to Mr. Manager Bryant's questions, Ms. Lewinsky stated:

"Q: Now, you have testified in the Grand Jury. I think your closing comments was that no one ever asked you to lie, but yet in that very conversation of December 17th, 1997, when the President told you that you were on the witness list, he also suggested that you could sign an affidavit and use misleading cover stories. Isn't that correct?

"A: Uh—well, I—I guess in my mind, I separated necessarily signing affidavit and using misleading cover stories. So, does——

"Q: Well, those two——

"A: Those three events occurred, but they don't—they weren't linked for me."[67]

The House managers argued that Ms. Lewinsky could have only filed the affidavit as a result of pressure from the President. They reasoned that only the President could benefit from Ms. Lewinsky's affidavit. Ms. Lewinsky totally refuted their view. Again, in another exchange with Mr. Manager Bryant, Ms. Lewinsky stated:

"Q: But you didn't file the affidavit for your best interest, did you?

"A: Uh, actually, I did.

"Q: To avoid testifying.

"A: Yes.

"Q: Why—why didn't you want to testify? Why would not you—why would you have wanted to avoid testifying?

"A: First of all, I thought it was nobody's business. Second of all, I didn't want to have anything to do with Paula Jones or her case. And—I guess those two reasons."[68]

After Ms. Lewinsky's videotaped testimony, it is clear that she filed the affidavit of her own volition to satisfy her own needs. The President did not influence the content of the affidavit. His remark in the December 17, 1997, conversation was, at the most, a terse response to her request rather than a elaborate directive to Ms. Lewinsky. There is no credible evidence that the President orchestrated an attempt to file a false affidavit.

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[63] *Id.* (Grand Jury Testimony of Ms. Lewinsky on 8/6/98) (*quoted in HMTB, supra* note 38, at 22.)

[64] "Both parties knew that the Affidavit would need to be false and misleading to accomplish the desired result." *HMTB, supra* note 38, at 22.

[65] The President testified that "I've already told you that I felt strongly that she could issue, that she could execute an affidavit that would be factually truthful, that might get her out of having to testify. . . . And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not." *The Record, supra* note 27, Volume X at 571.

Ms. Lewinsky testified to the Grand Jury on 8/6/98, that "I thought that signing an affidavit could range from anywhere—the point of it would be to deter or to prevent me from being deposed and so that that could range from anywhere between maybe just somehow mentioning, you know, innocuous things or going as far as maybe having to deny any kind of relationship." *Id.* at 844. In her Senate Deposition Mr. Manager Bryant asked Ms. Lewinsky, "The night of the phone call, he's [the President is] suggesting you could file an affidavit. Did you appreciate the implications of filing a false affidavit with the court?" Ms. Lewinsky replied, "I don't think I necessarily thought at that point it would have to be false, so, no, probably not." 145 Cong. Rec. at S1218 (daily ed. February 4, 1999).

[66] 145 Cong. Rec. at S1307 (daily ed. February 6, 1999).

[67] *Id.* at. S1306.

[68] *Id.*

2. The Lewinsky Testimony

The House managers assert that during that same early morning telephone conversation on December 17, 1997, the President "corruptly" encouraged Ms. Lewinsky to give "perjurious, false and misleading testimony if and when called to testify personally in that proceeding."[69]

Once again, this allegation completely fails to consider the sworn testimony of Ms. Lewinsky that "no one ever asked me to lie and I was never promised a job for my silence."[70] Moreover, Ms. Lewinsky's videotaped testimony before the Senate provides even more detail to her previous statements.

The House managers suggest that the "cover story" developed by Ms. Lewinsky and the President to disguise their relationship was explicitly urged upon Ms. Lewinsky by the President in response to the subpoena. There is little evidence to support this view. Indeed, the available evidence undermines the position of the House managers. The following grand jury testimony of Ms. Lewinsky indicates that there was no explicit linkage between their ongoing denials of a relationship and the *Jones* litigation.

"Q [JUROR]: It is possible that you also had these discussions [about denying the relationship] after you learned that you were a witness in the Paula Jones case?

"A: I don't believe so. No.

"Q: Can you exclude that possibility?

"A: I pretty much can. I really don't remember it. I mean, it would be very surprising for me to be confronted with something that would show me different but I—it was 2:30 in the—I mean, the conversation I'm thinking of mainly would have been December 17th, which was——

"Q: The telephone call.

"A: Right. And it was—you know, 2:00, 2:30 in the morning. I remember the gist of it and I—I really don't think so.

"Q: Thank you."[71]

The House managers have presented no credible evidence to overcome the sworn testimony of the parties.

3. Concealment of Gifts

The article alleges that "[o]n or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him." The allegation refers to the transfer of gifts from Ms. Lewinsky to Betty Currie on December 28, 1997.

The House managers argue that the President directed Ms. Currie to contact Ms. Lewinsky and arrange for the collection of personal gifts that he gave Ms. Lewinsky and for their subsequent concealment in Ms. Currie's home. There is conflicting evidence whether Ms. Currie or Ms. Lewinsky arranged for the pickup of gifts. Regardless of who initiated the gift transfer, however, there is insufficient evidence that the President was involved in the transfer.

The chain of events leading to the transfer of gifts began with a meeting between the President and Ms. Lewinsky on December 28, 1997. Ms. Lewinsky indicated in one of her grand jury appearances that in the course of the meeting she raised the topic of the numerous personal gifts that the President had given her in light of the *Jones* subpoena. According to her grand jury testimony, Ms. Lewinsky recalled: "[A]t some point I said to him, 'Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic."[72]

The next link in the chain is the most confusing. There is no question that Betty Currie picked up a box of gifts from Monica Lewinsky on the afternoon of December 28, 1997. However, there is still an unresolved dispute concerning who initiated this activity. Both Ms. Currie and the President denied ever having any conversation in

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[69] H. Res. 611.

[70] *The Record, supra* note 27, Volume X at 1161 (quoting Ms. Lewinsky's Grand Jury testimony on 8/20/98). *See also PCTB, supra* note 42, at 56–57.

[71] *The Record, supra* note 27, Volume X at 1119–90 (quoting Ms. Lewinsky's Grand Jury testimony on 8/20/98).

[72] *Id.* Volume III, Part 1 at 872 (Lewinsky Grand Jury testimony 8/6/98). Ms. Lewinsky discussed this exchange with the President at least ten different times during her multiple interviews and appearances as a witness. In a subsequent appearance before the Grand Jury on August 20, 1998, she again recalled this discussion and stated "And he—I don't remember his response. I think it was something like, "I don't know, or 'Hmm,' or—*there really was no response.*" *Id.* at 1122 (emphasis added). It is clear from her testimony that there was no discussion of the concealment of gifts with the President.

which the President instructed Ms. Currie to retrieve the gifts from Ms. Lewinsky. Ms. Currie has repeatedly testified that it was Ms. Lewinsky who contacted her about the gifts. On the other hand, Ms. Lewinsky testified that Ms. Currie called her to initiate the transfer.

The managers and the committee report cited the following passage from Ms. Lewinsky's grand jury testimony.

"Q: What did [Betty Currie] say?

"A: She said, "I understand you have something to give me." Or, "The President said you have something to give me." Along those lines. . . .

"Q: When she said something along the lines of "I understand you have something to give me," or, "The President says you have something for me," what did you understand her to mean?

"A: The gifts."[73]

The uncontradicted evidence is that the President and Ms. Currie did not discuss the gifts. The uncontradicted evidence is that the President did not initiate the discussion of gifts with Ms. Lewinsky and made no substantive response to her discussion of the gifts. The unresolved issue is whether Ms. Lewinsky or Ms. Currie initiated the transfer of gifts. Ms. Lewinsky's videotaped testimony before the Senate does not resolve the issue of who initiated the gift transfer. It does, however, add critical details that suggest that Ms. Lewinsky, of her own volition, decided to surrender certain "innocuous" items to the *Jones* lawyers, while concealing other gifts. First, Ms. Lewinsky had already decided *before* the meeting with the President, on December 28, 1997, to conceal items from the *Jones* lawyers. As she told House Manager Bryant in Senate deposition testimony: on December 22, 1997, 6 days before her meeting with the President, she brought the gifts that she was willing to surrender to a meeting with Vernon Jordan.

"Q: Did, uh, you bring with you to the meeting with Mr. Jordan, and for the purpose of carrying it, I guess, to Mr. Carter, items in response to this request for production?

"A: Yes.

"Q: Did you discuss these items with Mr. Jordan?

"A: I think I showed them to him. . . .

"Q: Okay. How did you select those items?

"A: Uh, actually, kind of in an obnoxious way, I guess . . . they were innocuous. . . .

"Q: In other words, it wouldn't give away any kind of special relationship?

"A: Exactly.

"Q: And was that your intent?

"A: Yes.

"Q: Did you discuss how you selected those items with anybody?

"A: No."[74]

Not only did Ms. Lewinsky decide unilaterally to withhold certain gifts, she also decided unilaterally to conceal these gifts, not at the behest of the President, but out of her own concern for privacy. In response to a question posed by Mr. Manager Bryant, Ms. Lewinsky stated, "I was worried someone might break into my house or concerned that they actually existed, but I wasn't concerned about turning them over because I knew I wasn't going to, for the reason you stated."[75]

The final detail added by Ms. Lewinsky's videotaped testimony may be the most significant. The President testified to the grand jury that when Ms. Lewinsky raised the issue of gifts he responded: "You have to give them whatever you have."[76] When

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[73] *Clinton Report, supra* note 40 at 67–68 (*quoting The Record, supra* note 27, Volume III at 874–75 (Lewinsky Grand Jury testimony 8/6/98); *see also HMTB, supra* note 38, at 32–33. However, Ms. Lewinsky's recollection of references to the President in this conversation were later cast in doubt by her subsequent testimony. In her Grand Jury testimony, Ms. Lewinsky was quoted as:

Q: [Juror]: Do you remember Betty Currie saying that the President had told her to call?

A: Right now, I don't. I don't remember. . . .

The Record, supra note 27, Volume III at 1141 (Lewinsky Grand Jury testimony 8/20/98).

[74] 145 Cong. Rec. S1222 (daily ed. February 4, 1999) (deposition of Ms. Lewinsky).

[75] 145 Cong. Rec. S1309 (daily ed. February 6, 1999) (deposition of Ms. Lewinsky as replayed during the trial). Manager Bryant's question is compound and slightly confusing, Ms. Lewinsky's response, combined with her testimony that she avoided testifying for reasons in her own best interest, makes clear that she had come to an independent conclusion not to provide gifts to the *Jones* attorneys.

[76] This statement has been dismissed by the House managers as self-serving at best. However, Ms. Lewinsky's Senate Deposition testimony lends significant collaboration to the President's claim. *See supra,* note 55, p. 23.

questioned by an FBI agent after the President's testimony, Ms. Lewinsky said that the words in the President's testimony, "sounds [sic] a little bit familiar to me."[77]

4. The Lewinsky Job Search

The article alleges that "[b]eginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him."[78]

This allegation focuses on the efforts to find employment for Ms. Lewinsky. Of critical importance is the undisputed fact that these efforts began long before Ms. Lewinsky was identified as a potential witness in the *Jones* case. Ms. Lewinsky herself initiated the search for employment based on her dissatisfaction with her job at the Pentagon and her perception that she would not be able to return to work in the White House. Ms. Lewinsky suggested that Vernon Jordan be enlisted to aid her, and his involvement was obtained at Ms. Lewinsky's request by Mr. Jordan's long-time friend Betty Currie.[79]

The allegation of the House managers crashes on the same unshakable and uncontradicted statement that has bedeviled them from the start. Monica Lewinsky's unchallenged statement is that "no one ever asked me to lie and I was never promised a job for my silence."[80]

Unable to refute her statement, the House managers attempted to weave a pattern of circumstantial evidence. Each attempt of the House managers rapidly unraveled.

Mr. Manager Hutchinson argued with great force and skill in his opening presentation that December 11, 1997, was the critical date in the case against the President. It was on that date that Judge Wright ordered the President to answer certain questions about "other women." As Mr. Manager Hutchinson argued on the floor: "And so, what triggered—let's look at the chain of events. The judge—the witness list came in, the judge's order came in, that triggered the President into action and the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along . . . . Remember what else happened on the day [December 11] again. That was the same day that Judge Wright ruled that the questions about other relationships could be asked by the *Jones* attorneys."[81]

The thrust of the House managers' argument is that the President learned that Ms. Lewinsky was on the witness list on December 6, 1997. He met with Mr. Jordan on December 7, 1997, to enlist Mr. Jordan in the Lewinsky job search, and, with the judge's order on December 11, 1997, making Ms. Lewinsky's testimony more likely, Mr. Jordan "intensified" what had been a dormant record of assistance. This scenario is demonstrably false.

The House Judiciary Committee report acknowledges that the meeting between the President and Mr. Jordan on December 7, 1997, had nothing to do with Ms. Lewinsky.[82] Because of this lack of interest by the President and Mr. Jordan in Ms. Lewinsky's job search, the House managers had to seize an event that could plausibly trigger the "intensification" of the job search which allegedly occurred on December 11, 1997.

Although December 11, 1997, was the date of a meeting between Mr. Jordan and Ms. Lewinsky, the record shows that this meeting was arranged prior to that date without the participation of the President. As early as Thanksgiving, Mr. Jordan and Ms. Lewinsky had a conversation in which Mr. Jordan told her that "he was working on her job search" and asked her to "contact him again around the first week of December."[83] In response to a request from Ms. Lewinsky, Betty Currie called Vernon Jordan on December 5, 1997, to request a meeting. This was one day before the President became aware of the appearance of Ms. Lewinsky's name on the witness list. Mr. Jordan told Ms. Currie to have Ms. Lewinsky call him to ar-

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[77] *Id.*

[78] H. Res. 611.

[79] In one of the more unusual aspects of this case, it appears that the idea to enlist Mr. Jordan's assistance came from Linda Tripp's "advice" to Ms. Lewinsky. *See PCTB, supra* note 42, note 103, at 78.

[80] *Supra*, note 70 at 29.

[81] 145 Cong. Rec. S234 (daily ed Jan. 14, 1999) (presentation of Manager Hutchinson).

[82] *Clinton Report, supra* note 40, at 11. This fact alone casts serious doubt on the theory of the House Managers. If Ms. Lewinsky's appearance on the witness list was disturbing to the President, and he was participating in the job search to silence Ms. Lewinsky, why would he avoid discussing this matter with Mr. Jordan?

[83] *The Record, supra* note 27, Volume III at 1465 (Lewinsky OIC interview 7/31/98).

range a meeting. Ms. Lewinsky did so on December 8, 1997, confirming a meeting with Mr. Jordan on December 11, 1997.

Since the appearance of Ms. Lewinsky on the witness list did not prompt any accelerated action on the job search and since the meeting of Ms. Lewinsky and Mr. Jordan was contemplated and initiated before the release of the witness list, the House managers were forced to grasp for some other triggering event. Unwisely, as clearly stated in Mr. Manager Hutchinson's remarks, they chose the issuance of Judge Wright's order.

Judge Wright initiated a conference call with lawyers in the *Jones* case at 6:33 p.m. (EST) on December 11, 1997. At 7:50 p.m. (EST), she concluded the conference by informing the parties that she would issue an "order to compel" testimony about "other women." At that moment, Vernon Jordan was somewhere over the Atlantic Ocean on United flight 946 bound for Amsterdam. His meeting with Ms. Lewinsky had concluded hours before. Obviously, the meeting with Ms. Lewinsky, the calls on her behalf, the "intensification" of the job search, had nothing to do with Judge Wright's order.

Nothing so illustrates the fragility of the House managers' case as this dubious and discredited attempt to characterize Judge Wright's order as a catalyst for an illegal job search. Forced to beat a hasty retreat by the revelation of this attempted legal slight of hand, the House managers reversed course and argued, unconvincingly, that they always saw the triggering event as the release of the witness list on December 5, 1997, or the President's receipt of the list on December 6, 1997.[84]

This assertion, however, contradicts the evidence that there was no discussion about Ms. Lewinsky during the meeting between the President and Mr. Jordan on December 7, 1997, and the evidence that the December 11, 1997, meeting was arranged by Ms. Lewinsky and Mr. Jordan without knowledge of the witness list or Judge Wright's order and without the assistance of the President.

Ms. Lewinsky received the active assistance of Mr. Jordan to obtain interviews and favorable recommendations with three prominent New York firms. She succeeded in obtaining a job at one of these firms, Revlon. According to representatives of these firms, they felt no pressure to hire Ms. Lewinsky[85]—behavior that undercuts the suggestions of the House managers that Mr. Jordan was engaged in a high stakes effort to find Ms. Lewinsky a job at all costs.

Mr. Jordan emphatically denied that he acted to silence Ms. Lewinsky. "Unequivocally, indubitably, no."[86] The President denied that he attempted to buy her silence. "I was not trying to buy her silence or get Vernon Jordan to buy her silence."[87] But, Ms. Lewinsky said it best: "I was never promised a job for my silence."[88]

5. Allowing False Statements by his Attorneys

The article alleges that the President "corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit . . ."[89] This allegation rests on the President's silence during the *Jones* deposition while his attorney, Mr. Robert Bennett, cited the Lewinsky affidavit to Judge Wright as a representation that "there is no sex of any kind in any manner, shape or form."[90]

There is no doubt about the President's silence. There is, however, doubt about the President's state of mind; whether he was aware of the interchange between his

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[84] It is interesting to note that the Article alleges that the incriminating events began on December 7, 1997, and continued thereafter until January 14, 1998. Once again, these constantly shifting dates illustrate the ad hoc nature of this argument.

[85] The FBI investigators working for Mr. Starr recorded the following testimony of representatives of Revlon, American Express and Young and Rubicam: "On December 11, 1997, HALPERIN received a telephone call from VERNON JORDAN [who recommended Ms. Lewinsky]. . . . There was no implied time constraint for fast action. HALPERIN did not think there was anything unusual about Jordan's request." The Record, supra note 27, Volume IV, Part 1 at 1286 (FBI Interview with Richard Halperin, Executive VP and Special Counsel, Mac Andrews & Forbes (holding company for Revlon) 3/27/98); "Fairbairn said . . . there was no perceived pressure exerted by JORDAN." Id. at 1087 (FBI Interview with Ursula Fairbairn, Executive Vice President, Human Resources and Quality, American Express, 2/4/98). "JORDAN did not engage in a 'sales pitch' about LEWINSKY." Id. at 1222 (FBI Interview with Peter Georgescu, CEO of Young and Rubicam, 3/25/98).

[86] The Record, supra note 27, Volume IV, Part 2 at 1827 (Jordan Grand Jury testimony on 5/5/98).

[87] Id., Volume III, part 1 at 576 (Clinton Grand Jury testimony on 8/17/98).

[88] Id. at 1161 (Lewinsky Grand Jury testimony 8/20/98).

[89] H. Res. 611.

[90] Clinton Report, supra note 40, at 72.

counsel and Judge Wright; and whether he formed the specific intent to use his silence to allow a falsehood to be advanced.

The President consistently denied his awareness of this exchange and testified that he was concentrating on his testimony:

"I'm not even sure I paid much attention to what he was saying. I was thinking, I was ready to get on with my testimony here and they were having these constant discussions all through the deposition. . . ."

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"I was not paying a great deal of attention to this exchange. I was focusing on my own testimony. . . ."

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"I'm quite sure that I didn't follow all the interchanges between the lawyers all that carefully. . . ."

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"I am not even sure that when Mr. Bennett made that statement that I was concentrating on the exact words he used. . . ."

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"When I was there, I didn't think about my lawyers. I was, frankly, thinking about myself and my testimony and trying to answer the questions. . . ."

* * * * * * *

"I didn't pay any attention to this colloquy that went on. I was waiting for my instructions as a witness to go forward. I was worried about my own testimony."[91]

The President's statements are clearly self-serving. The only evidence introduced by the House managers to refute the President's assertions is an invitation to the Senate to look at the videotape of the President's deposition in the *Jones* case and "read his mind," and an affidavit from Barry W. Ward, Judge Wright's clerk. Mr. Ward confirms what may be inferred from the tape. "From my position at the conference table, I observed President Clinton looking directly at Mr. Bennett while this statement was being made."[92] But, Mr. Ward's "mind reading" abilities are probably on a par with the Senate's. As he indicated in an article in the Legal Times after the date of his affidavit, Mr. Ward concluded, "I have no idea if he was paying attention. He could have been thinking about policy initiatives, for all I know."[93] The House managers have not presented sufficient evidence to sustain the burden of proof with respect to this allegation.

6. The Conversations with Betty Currie

The article alleges that "[o]n or about January 18 and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding. . . ."[94] This allegation embraces two conversations between the President and Betty Currie, his executive secretary. On January 18, 1998, the day after his deposition in the *Jones* case, the President met with Ms. Currie and asked her a series of leading questions that he promptly answered himself by declaring "Right?"[95] He had a similar conversation on January 20, 1998.

The House managers argue that the President knew these rhetorical questions were false and the only purpose for raising these questions was to influence the testimony of Ms. Currie.[96]

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[91] The Record, supra note 27, Volume III, Part 1 at 476–513 (Clinton Grand Jury testimony on 8/17/98).

[92] Ward Affidavit.

[93] Legal Times, February 1, 1999.

[94] H. Res. 611.

[95] HMTB, supra note 38, at 65.

[96] Ms. Currie was not a witness in the *Jones* proceeding at the time of these conversations. House Managers argue that the President knew she would be called as a witness because of his constant references to Ms. Currie in his *Jones* deposition. Moreover, Ms. Currie became a witness on January 23, 1998, when the *Jones* lawyers added her to their witness list. White House counsels argue that Ms. Currie's addition to the witness list was not prompted by the President's testimony, but by information secretly provided to the *Jones* lawyers by Linda Tripp. They further add that it cannot be reasonably assumed that the President was aware that Ms. Currie was likely to be called as a witness. Obstruction and witness tampering statutes require knowledge that the individual is or will be a witness. This argument remains unresolved, but a lack of resolution injects further uncertainty as to the allegations.

What is clear from the evidence is the fact that Ms. Currie was not influenced by the President's statements. Ms. Currie testified to that effect to the Grand Jury on July 22, 1998.

"Q: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?

"A: None whatsoever.

"Q: What did you think, or what was going through your mind about what he was doing?

"A: At the time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking."[97]

Ms. Currie added in her testimony:

"Q: That was your impression, that he wanted you to say—because he would end each of the statements with "Right?", with a question.

"A: I do not remember that he wanted me to say "Right." He would say, "Right?" and I could have said, "Wrong."

"Q: But he would end each of those questions with a "Right?" and you could either say whether it was true or not true.

"A: Correct.

"Q: Did you feel any pressure to agree with your boss?

"A: None."[98]

What is unclear from the evidence is the President's intent in making these statements. The President has testified: "I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think.[99]

The President's assertion is not without plausibility. He initiated the conversation after the *Jones* deposition where he learned that all of the details of his relationship with Monica Lewinsky were known by the *Jones* lawyers and shortly would be public knowledge. He faced an immediate public and political disaster. Although he knew what went on, he had to know what Betty Currie knew, not to influence her testimony but to determine the potential gaps in this story. Ms. Currie was the key "go-between" with Ms. Lewinsky and her recollection had to be confirmed. More precisely, the President had to know if his story would be contradicted by Ms. Currie.

Given the facts, the President's explanation is as plausible as that advanced by the House managers. They have not established beyond a reasonable doubt that the President had the specific intent to transform these events into the crimes of obstruction of justice or witness tampering.

7. The Corruption of Potential Grand Jury Witnesses

The final subpart of the second article of impeachment states that "[o]n or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal Grand Jury proceeding in order to corruptly influence the testimony of those witness." The managers have alleged that this caused the grand jury to receive "false and misleading information."

In his referral, Independent Counsel Starr outlines denials about an affair with Ms. Lewinsky that the President made to members of his senior staff: John Podesta, Erskine Bowles, Sidney Blumenthal, and Harold Ickes.[100] The lies that the President told ranged from immaterial[101] to despicable.[102] These lies call into question the President's character and judgment regarding this personal affair, but they most certainly do not rise to the level of criminal behavior.

In order to constitute obstruction of justice, the President would have had to specifically intended these individuals to go before the grand jury and lie. It is just as

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[97] *The Record, supra* note 27, Volume III, Part 1 at 668 (Currie Grand Jury testimony on 7/22/98).

[98] *Id.*

[99] *The Record, supra* note 27, Volume III, Part 1 at 593 (Clinton Grand Jury testimony on 8/17/98).

[100] *Referral from Independent Counsel Kenneth W. Starr to the House of Representatives,* House Doc. 105–310, at 198–203 (September 11, 1998).

[101] Mr. Podesta testified that the President told him that after Ms. Lewinsky left the White House (to work at the Department of Defense), she returned to visit Ms. Currie and that Ms. Currie was with them at all times. *Id.* at 88 (*quoting* Podesta Grand Jury Testimony of 6/16/98).

[102] In his Senate Deposition Testimony Mr. Blumenthal testified that he related to the Grand Jury that on 1/21/98 the President told him that Ms. Lewinsky had "come on to" him, he [the President] had "rebuffed" her, and that Ms. Lewinsky then "threatened" him with telling people that the two had an affair. *See* 145 Cong. Rec. S1248 (daily ed. February 4, 1999).

plausible, if not more plausible, that the President was simply trying to conceal and deny the affair from the public at large. The President spoke to his staff because of the appearance of press articles; their conversations had nothing whatsoever to do with the grand jury. As the Democratic minority of the House Judiciary Committee pointed out: "does anyone really think the President would have admitted to this relationship . . . if no grand jury had been sitting?"[103] Independent Counsel Starr called senior aides to the President before the grand jury because his prosecutors knew that the President, in furtherance of the public denials he was making, would have lied to his aides. Under the OIC and House managers' theory, by publically denying the affair, the President tampered with all the grand jurors, who must have known of his denials. This simply cannot be the case. The President is dishonorable for lying to his aides and putting them in legal jeopardy in this way, but he is not a criminal.

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[103] *Clinton Report, supra* note 40, at 385 (Minority Views).