The PRESIDING OFFICER. The Chair recognizes the Senator from California.

RESOLUTION OF CENSURE

Mrs. FEINSTEIN. Mr. President, I move to proceed to my censure resolution which is at the desk.

The text of the motion reads as follows:

I move to suspend the following:

Rule VII, paragraph 2 the phrase "upon the calendar";

Rule VIII, paragraph 2 the phrase "during the first two hours of a new legislative day".

In order to permit a motion to proceed to a censure resolution, to be introduced on the day of the motion to proceed, notwithstanding the fact that it is not on the calendar of business.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I have to object. This resolution is not on the Calendar. Therefore, it is not in order to present it to the Senate.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, in light of that objection, I move to suspend the rules, the notice of which I printed in the RECORD on Monday, February 8, in order to permit my motion to proceed.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. Without objection, is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will report the motion.

Mr. GRAMM. Mr. President, I ask that reading of the motion be dispensed with, and I ask for the yeas and nays.

The PRESIDING OFFICER. Without objection, is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas, Mr. GRAMM. The yeas and nays have been ordered. The clerk will call the roll.

The yeas and nays resulted—yeas 43, nays 56, as follows:

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<th>YEAS</th>
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The PRESIDING OFFICER (Mr. INHOFE). On this vote, the yeas are 43, the nays are 56. Two-thirds of the Senators not having voted in the negative, the motion to suspend is withdrawn and the Clerks point of order is sustained. The Feinstein motion to proceed falls.

(Under a previous unanimous consent agreement, the following statements pertaining to the impeachment proceedings were ordered printed in the RECORD.)

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Mr. GORTON. Mr. President, the statement that I am placing in the record is the record 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 two 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 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?

And, 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 of 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 Miss 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 simply few of her descriptions of those activities, he testified under oath that he did not have "sexual relations". His accommodation of this paradox is based on the incredible claim that he did not touch Miss 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 Miss 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 a 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 Mrs. 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 Mrs. 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 be well founded. Four of them, however, those regarding the president's encouraging Miss 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.

(1) From the time she was transferred to the Pentagon in April, 1996, Miss Lewinsky had pressed 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. During the last week of October the President and his agents stepped up their efforts to find Miss Lewinsky a job. Three weeks later, on October 21, the United States Ambassador to the United Nations, Bill Richardson, interviewed Miss 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 Miss Lewinsky.

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

When Miss 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. Miss Lewinsky met with Mr. Jordan in early November. He was acting at the President's behest, apparently did not fully appreciate how important it was for him to cater to Miss Lewinsky, and took no action for a month.

The President and Mr. Jordan realized, on December 5, 1997, the importance of satisfying Miss Lewinsky's fancy when her name appeared on the Jones witness list. Before that date, the President needed Miss Lewinsky only to commit a lie of omission—simply to refrain from making their employment 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 Miss Lewinsky a job and keep her in his camp. In the weeks after Miss 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 & Rubicam, and MacAndrews & Forbes (Revlon's parent corporation). When Miss 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, 1998, Miss Lewinsky signed the affidavit, which she later admitted was false, denying that she had a "sexual relationship with the First Lady." On January 9, she repeated the same story, which President's lawyers arranged for Miss Lewinsky's affidavit to be filed on January 14, 1998. After this date, although Miss 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" 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 how could no longer protect the President.

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

(2) Next we have the Currie conversation—a set of statements by the President in the nominal form of questions, addressed by the President to Mrs. 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 touched 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." These five statements have a single common thread: the President knew each and every one of them to have been totally false.

Had Mrs. 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 President's assertions to his staff were coupled with his public statements, the President's platonic relationship with 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. 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 whether the President gave false testimony and conspired 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 publicized attempt to influence 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 testimony 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 compromise the President's only defense to 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 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: 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 not be criminal in order to be impeachable.) As these examples illustrate, perjury is and historically has been the reason 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 who 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. The Managers for the House of Representatives have pointed out, the 1974 report by the staff of the Nixon impeachment inquiry concluded that the constitutional provision stating that judges would remain in office during "good behavior," 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.

But the inevitable result of a guilty verdict in this trial is the President's removal from office, and I believe that reason to differ one way or another as to 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. He simply held that the high crime of perjury, 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, as most 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—those 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 chose to 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: "I 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 in 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, consider the impacts 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 where our history suggests he engaged in 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?

I believe that history, involving one incident 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 crimes and offenses which may not be speculatively 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 four 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 affair, speculated 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 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 two 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.

But 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. 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 deposed 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 will vote 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 vote 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 Article II of these Articles of Impeachment. That is how I vote, with clear conscience and a saddened heart.

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 aspirations. 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 that urge to personalize a separate oath helped me get into the mindset necessary to do that task.

But let me say that 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. That case 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 not saying that the case that we disallowed was the case at the time it was first suggested.

But 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 important fact of all, that there is an entire legal system, that we must prove 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 is intent. Was his intent about avoiding discovery by his own counsel? If so, could this be a different intention? Alternatively, could this be an effort to avoid the Jones proceeding and the consequences of that?

I don't think it has been shown beyond a reasonable doubt that the President was involved in 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 don't think it has been shown beyond a reasonable doubt that the obstruction of justice 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 it would be in the interest of 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 its case. The House managers argued that this was a close 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 argue together with the House managers that they 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.

February 12, 1999

CONGRESSIONAL RECORD — SENATE

S1465
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 President masterminded the hiding of the gifts. So I cannot deny what Representativerehman 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 believe a showing beyond a reasonable doubt has not been made that the President obstructed the hiding of the gifts.

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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 try a defendant accused of obstruction of justice.

I believe the evidence presented to a final vote on each article of impeachment sent to the Senate by the House of Representatives.

Through skillful use of the written record, coupled with 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. But the Grand Jury did not establish any 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 had directed her to coach Ms. Lewinsky how to take 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. If the President perjured himself by his false testimony, it is obstruction of justice.

The President also lied before the Grand Jury about his conversations with White House aides regarding Ms. Lewinsky at about the time the gifts were retrieved. He summarily dismissed any suggestion that Ms. Lewinsky might have been present. 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.”

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The President lied under oath 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 had directed her to coach Ms. Lewinsky how to take 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. If the President perjured himself by his false testimony, it 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 two fundamental reasons 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 broader attempt to obstruct the due process of law, but we chose to look the other way?


I ask unanimous consent 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 the oath, 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 “juries” in the only second such proceeding in the history of our Nation, reminded me with vivid clarity that our Constitution belongs to all of us. However, that the laws of our Country are applicable to us all, including the President, and they must be observed. The concern for the 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 with the White House Intern who was directly under his command and control, 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 why 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 is the following:

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 by persecuting her by the performance of 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, after the public disclosure of the affair, engaged in patterns of conduct that were similar to the allegations of the plaintiff in the case.

In December, 1997, the Independent Counsel subpoenaed 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: "No.

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 statement to the White House federal Court, referred to it, and vouched for its accuracy in the presence of the President.

After an immunity agreement was reached between counsel (discussed below) and the Intern on July 28, 1998, the Intern delivered a dress to the Independent Counsel that, according to her testimony, she had been wearing 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 16, 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 obstruct the investigation by manipulating or controlling the views and actions of persons and agents in a course of conduct or scheme designed to delay, impede, cover up, and conceal the evidence of 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) causing the Intern to execute false affidavit in the Arkansas case, (ii) encouraging the Intern to give false testimony in the Arkansas case, and when and where he gives false testimony in the 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 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 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, (vii) making false and misleading statements to witnesses in the Federal grand jury proceeding, and, (viii) making false and misleading statements to witnesses in the Federal grand jury proceeding.
Perjury, obstruction of justice, and witness tampering are impeachable offenses under the Constitution. These offenses are not "accuse," "venture outside the record," or "create and assert new allegations." They are akin to perjury, known as "lying under oath," and are combined with obstruction of justice as alleged in this proceeding.

The Supreme Court of the United States has observed that there is an occasional misapprehension that the crime of perjury is somehow distinct from obstruction of justice. The Court has cited English law on which portions of our Constitution were founded, including the crimes of "obstructing the execution of the lawful process" and of "false witness." See the treatise commented by James Madison as "a book which is in every man's hand." See also Commentaries on the Laws of England, a treatise described by Thomas Jefferson as "a book which is in every man's hand." See also Congressional Record, 42d Congress, 1st Session, Hearings on Senate Joint Resolution to Fix the Penalty for Perjury and Obstruction of Justice, pt. 1, p. 7, 1971.

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, 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 subvert the moral and legal standards of accountability that are imposed on ordinary citizens every day. The same standard should be imposed on our leaders.

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

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

(ii) cause or induce any person to (A) Withhold evidence or refuse to appear in an official proceeding, or (B) alter or destroy evidence in an official proceeding; or

(iii) evade legal process summoning that person as a witness or altering the legal process; or

(iv) corruptly influence, obstruct, or impede, or endeavor to influence, obstruct, or impede the lawful administration of justice in any manner or for any purpose. Whoever is guilty of witness tampering and/or obstruction of justice. Title 18, Sections 1506, 1507.

Whoever knowingly, or with intent to defraud, conspires with any other person, or attempts to do so, to obstruct the lawful administration of justice, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

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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 most vulnerable 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 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 inher- ent value of the American living in the State of Arkansas to principled judgments about matters of national origin. In the last two decades, we have enacted sexual harassment laws that permit half our citizens of the United States to hold a job without being forced to engage in sexual harrassment and cover-up grew, expanded, and developed into the next century.

When, on January 26, 1998, the President of the United States pointed his finger at the White House Intern and told her to lie, 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 efforts were focused on what was called "the White House Intern", and its affair accomplished.

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.

The President's testimony before the Federal grand jury 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 perjury testimony on August 17, 1998, before the Federal grand jury in Washington, D.C., of willfully corruptly and impeding the judicial process and the administration of justice and perjuring testimony about his relationship with the White House Intern, about his January 17, 1998, deposition testimony in the Arkansas sexual harassment case and about his false depositions and perjury testimony before the Federal judge in the Arkansas case an affidavit that was knowingly false while giving his deposition in that case, and about his attempts to influence the testimony of White House employees 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 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 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 you mean by 'is.'"

The false testimony complained of in Article I of the Articles of Impeachment relates to testimony before the grand jury, and only indirectly 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.

Willful, corrupt, and false sworn testimony before a Federal grand jury is a separate and distinct element of the applicable Federal offenses. The law of Title 18, Sections 1001, 1003, 1005, 1006, 18 U.S.C., and Federal court cases interpreting that Section.

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

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 on this moment, Federal judges would be able to say with assurance that our Constitution has been applied fairly and survives, that we have come to principled judgments about matters of national importance, and that the role of law in American has been sustained.

Mr. CONRAD. Mr. Chief Justice, I have served twelve years in the United States 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 United States Senate. Most of all, I respect our oath of office to be " empresive, 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, there are three 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, does the 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. 67 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?

THE SUFFICIENCY OF THE EVIDENCE

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 the evidence that a perjuror 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.

But 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 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 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.

**IMPEACHABLE CRIMES**

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 nineteenth century constitutional scholar has written that impeachment was designed for "great and public [sic] offenses 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 Rawles, a contemporary of the Founders and a distinguished commentator on the Constitution wrote: "In general, those offenses which may be committed 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: "[T]he President . . . shall be removed 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 two hundred 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 conviction of 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.

**REMOVAL FROM OFFICE**

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's why they required a 2/3 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'm not casting aspersions here. I am stating a fact.

This proceeding will forever be a reminder. 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 co-equal branches of government.

They did not want the President serving at the pleasure—or being removed against 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 any future President to follow, and ultimately for the very system of government who 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.

Mr. HUTCHINSON. 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 leader 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 served our State 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 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, the knowledge of Arkansas's history, and his charisma. We had seen for years his remarkable political skills, his uncanny ability to connect with people. I believe I'm 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's 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 or the vote on the floor or the President or a witness 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" our favor. Frankly, both sides wanted to win, both sides were fervent in their presentations, and I'm glad we didn't hear half-hearted arguments. A vigorous prosecution and defense is the basis of a successful adversarial system. Saying you are done is important. I'm glad they believe in what they are doing, but in the end it's 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's not about getting our pound of flesh from the Democrats. It's not about getting our retribution on the President. It's not political vengeance. It's not about doing a win or lose. If polls have 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 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 have are doing is the evidence. What I want to remove is a President—the very thought sobered and humbled me. But the facts are so inescapable, the evidence so powerful.

I am convinced beyond a reasonable doubt that he is guilty on both articles of impeachment—perjury and obstructing 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 direct order of the President, he lied about his affair 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, 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 President's actions are not the simple matter of the office of the Presidency, the precedent of lowering the bar on the importance of our nation's rule of law. It's about the oath Bill Clinton took when he was sworn in as our President, to uphold our nation's laws. 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 lessen the significance of 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, Arkansas, life was much simpler 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, and 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.

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 partisan, I want to describe how deeply disappointed and angry I am with the President.

I came to Washington, D.C. in 1992. Over the last 6 years I have worked with 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.

But 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 available articles of impeachment. Like all of you, I have spent more hours on this case that 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 provide their theory of perjury and obstruction of justice and 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 defined a President would be imperfect. 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 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. But if you must, do it 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 our country and the 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 all of this behind us.

Mr. Chief Justice, 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 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’s time to move on.

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’ action 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 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. The President deliberately lied under oath by his conscience for shirking 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 is guilty, what would be the effect, 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 acquittal if I determine the President is guilty.

But are these articles of impeachment sufficient gravity to warrant removal or can we seek their redress by 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 offenses charged 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 private life private. I have done things in my private life that I am not proud of, but support 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 would violate the oath, as we all know, were punished severely and considered outcasts from our society. I do not hold the President to the same standard that I hold military officers to. I hold him to a higher standard. Although I may not fail to take the oaths he must take, 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 very private nature. 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.

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 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’s time to move on.
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 law. And even if both threshold questions are met in the mind of an individual Senator, can that Senator represent the understanding that presidents will be routinely brought as defendants of their 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 the evidence presented by the House Managers. First, is there a 2/3 majority vote for the over-turning of the people’s will as expressed in a fair, free 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 law of some—this plausible scenario of obstruction was established. Some may even believe that the President was more likely than not to obstruct 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 (involuntary, 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 the transaction 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 overwhelming bipartisan horror 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 ordinary citizens 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 personal, selfish, and threatens the nation—such as treason or bribery. By requiring a 2/3 vote for the over-turning 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, haven’t been disciplined by law and by the electoral process and the reaction to that open partisanship was immediate. It is a moment to a lawsuit dismissed by a federal court as having no merit) is delivered an unmistakable message to the House, the nation, and the world, that we will not permit the singled out or targeted any lesser standard to result, even without an independent counsel law, in a situation whereby civil actions against standing presidents will be routinely brought as yet another destructive 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 United States 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 singled out or targeted any lesser standard to result, even without an independent counsel law, in a situation whereby civil actions against standing presidents will be routinely brought as yet another destructive 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.

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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 resolutions 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 that will have the civic 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 United States 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 times statewide for 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 judgement, 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 not vote guilty on both Article one and Article two.

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 endowed 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 Constitution to make certain that the process was one and Article two.

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 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 wife. His published 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 diligently to obstruct 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 ourselves 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, 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, by any account, 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 a "triumvirate" of law. For that reason, it is most important that all of us in this chamber treat this as a court of law. 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 her 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. Simply to be near him in the White House has meant not only tragic heartache for his wife and her 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. Simply to be near him in the White House has meant not only tragic heartache for his wife and her 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.

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 our President be given more than two 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 two 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 sex scandal 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 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 to get a glimpse 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's actions and its effects are mirrored in the judgment of the 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 government to the level of high crimes and misdemeanors necessary to justify the most obviously anti-democratic 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 your 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 Robin—period.'

But if we listen to the oft-times confusing presentation of the House Managers—there 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.

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 Constitution.

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. We hear Flinders Fields intoned—the honor of our most decorated heroes. How incredibly self-serving and autocratic such a plea is.

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

But 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 man 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 by deposing from high office principles in a way that simply has no constitutional parallel. By contrast, there is nothing anti-democratic 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 by any kind by a President was a high crime and misdemeanor. For this they cite the colloquy between Colonel George Mason and James Madison. We now also argue 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 the imprecation 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 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. If Hamilton did not want to use “political” to describe his 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 for each democracy to own. In other words, “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 cannot 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 citizen 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 as impeachable? “Such kinds of misdemeanor or misconduct as particularly injure the community 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—ensuring the liberty of the people against abuse of executive 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 misdeemors.”

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 in ways that would 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 United States 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 in its own judgment 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 been eroded 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 of Representatives. 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 distinguishing 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 action 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 toward whom I felt oppositely than 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 this is an occasion to remove an elected President if he were a person towards whom you felt oppositely than you do toward Bill Clinton?

Given the essentially anti-democratic nature of impeachment and the great dangers inherent in the temptation to 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 my 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 repeat their actions in their own political reputation and that Monica Lewinsky was both used and a user, while Linda Tripp, Lucianne Goldberg, Paula Jones and the other less distinguished 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 only job as a United States Senator hearing an impeachment trial is not to discount the motives or even the tactics of Ken Starr, the trial lawyers, or 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. If I concluded 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 anti-democratic 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 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 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 an 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 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 established. Impeachment must be used against a President only as an extreme measure, when the President has so abused his 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 crimes that he is alleged to have committed.

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 a few crimes. They have set out an elaborate scheme that included "lots and lots of perjury" and "many obstructions of justice," to quote Mr. McCollum. The dangers the President is accused of so depressingly posed 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 President. The House of Representatives quite correctly pointed out that the President violated a scheme that included "lots and lots of perjury" and "many obstructions of justice," to quote Mr. McCollum. The dangers the President is accused of so depressingly posed 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.

But we have heard what Mr. McCollum and Mr. Barr have insisted. 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 the like, 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 if, nonetheless 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 laws? 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 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 perjury case. It also says in the Constitution that the House has the power to impeach. The Constitution asserts that what makes his actions impeachable is that he has violated federal criminal laws, specifically 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 the House 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 the charges of which he was convicted, he is nevertheless committing impeachable offenses.

This record falls short of the certainty required to remove a President from office.

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 the President is convicted of a crime, then the Senate is not engaged in perjury or obstruction of justice any more than a criminal court is. But if the Senate is not engaged in perjury or obstruction of justice, then the Senate cannot be impeached for perjury or obstruction of justice.

Furthermore, in applying the standard of proof beyond a reasonable doubt, the Senate simply does not have the authority to define 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 respect the rules of law—the precise legal definitions of the crimes, as found 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 the Senators.

On that basis, I have reached the conclusion that the House has not presented evidence that could sustain a conviction on criminal jury.

One of the major dangers they see from keeping President Clinton in office, and indeed, one of the major dangers they see from impeaching and removing him out of office because he committed those crimes, is that there is no conceivable basis for concluding that the public will be harmed by his remaining in office.

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 we can 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 to support the House Managers and to political ones.

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, 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, if 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.

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. He said, "So what are the consequences of this case," he said, "no matter what you decide, in my opinion, this country will survive. If you acquit the President, he will survive. If you convict the President, he will survive."

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 against him, 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 so categorically stated, impeachment is a political process.

"Political", in Hamilton's usage had two meanings as it relates to impeachments. The House, I have recently, and I have spoken about in this chamber before: impeachable offenses are offenses against the body politic. The words of James Wilson, in the United States Constitution, the impeachments are confined to political characters, to political crimes and misdemeanors, 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 the 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 Hamilton 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 that judgment as to how best to accomplish that objective.

The obligation to evaluate the competing costs of retention and removal, incidentally, is what I believe makes the constitutional issues in 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 anti-democratic. Never in our history has the Senate removed a President for 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.

That the Senate would be a big deal.

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 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 intended our system of government to be parliamentary. They meant for the President and Congress to be independent of and co-equal with one another. Maintaining the independence that is such an inherent fundamental 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 could destroy or undermine the primary structural guarantee of liberty—the separation of powers. They worried that 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.

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.

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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 of removing the President before any Senate inquiry could take place, nor of the possibility that these consequences would be so dire as to outweigh our long-term obligation to the country a "normal and non-deferential" President.

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 was in the context of a politically-motivated lawsuit and involved concealing an embarrassing improper relationship that was irrelevant to the merit of the lawsuit—a trial—then it is very hard to imagine that this Senator would see how the President’s continuing in office poses the sort of grave danger to our system of government that the framers of our Constitution had in mind when they gave the Senate the awesome power to impeach and remove an elected President.

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 believe is necessary to properly evaluate the facts.

Chief Justice Salmon Chase, who himself had political presidential ambitions, wrote in his diary on the day the trial ended, saying, “What possible harm can result in the country from continuance of Andrew J. 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 Johnson’s impeachment, 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 able to weigh the competing consequences of an indubitably 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 United States Senate has removed any President from office. If we vote to convict and remove the President, it will be a 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 public’s desire for action to force him out. But it has brought us to the brink of a profoundly constitutional moment.
Given the essentially anti-democratic nature of impeachment and the great dangers inherent in the too ready exercise of that power, impeachment has no place in our system of democratic government. As an extreme measure—reserved for breaches of the public trust by a President who so violates his official duties, misuses his official power, or acts in a system of government at such risk that our constitutional government is put in immediate danger by his continuing to serve the term to which the people of this country elected him—I urge my colleagues to remain faithful to the constitutional design and to our obligation to do impartial justice.

Below I have laid out the 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 into the House, the constitutional principles at stake as its arrival 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 seven months, I have prepared my conclusion with my colleagues and the public in speeches and memorandum portions of which are below. (Bracketed comments are additions to the original text, inserted to assist 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 significant, and more impacting the American public than the process of impeaching the sitting President of the United States.

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 in office. And while the circumstances surrounding these two events are starkly different, the consequences are starkly the same. The gravity of the challenge to the Constitution from the President of the United States 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 Nixon crisis:

"In the case of an impeachment trial, the emotions of the American people would be stymied, as a guitar, with every newscast and every 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. And like the federal institutions of government would be intense—and not necessarily beneficial. This is why my plea today is for restraint on whatever its basis of legitimacy—would be tantamount to a demand for news or rumors of news—each edition of the daily paper in communities throughout the country."

And 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 process was reserved for offenses that relate to the public trust or abuses that relate to the public trust. In 1999, the restrictions on the President's removal authority were not dominated by partisan considerations. I am sad to say that we do not follow the Queen's directive in Alice in Wonderland and that we will make a wise judgment after deliberate consideration of the issues.

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, a system 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 significant inquiry regarding our country's history, 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 American voters, Henry Clay, President Clinton, and 6.2 million more than voted for the President's opponent.

"Let me now stand back from the issues of substance and procedure, and look at the impeachment process that 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, entailing 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 enemies: he signed an important bill raising tariffs and the president was not seriously concerned by the potential partisan abuse. We should be no less aware of the dangers of partisanship.

President Tyler reached out to his political enemies: he signed an important bill raising tariffs without regard to their views—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, such factional considerations did not dominate decision making.

While the framers included impeachment powers in the Constitution, they were concerned by the potential for 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 trust. Yet neither of the recent impeachment situations, what is impeachable is not necessarily criminal and what is criminal is not necessarily impeachable.

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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 ran the risk of alienating both parties. Evidence of their concern was 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 debate is guided by fact, not reason. One example: The House Judiciary Committee this month heard a battery of witnesses address the question of whether President Clinton's actions constituted an impeachable offense. Clinton's lawyers presented the views of some of the pundits and experts. But I believe they have reached two clear conclusions: Congress should resolve the matter expeditiously and in the matter in a fair and non-partisan manner.

These conclusions have great significance to the question 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 went down 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. It, therefore, is clear to me that for history's sake, and with the Committee's legacy in mind, Chairman Hyde and the Republican majority in the Committee have an obligation to demonstrate that they have conducted this proceeding based on principle, not politics.

There is yet another issue where public opinion is concerned. It is simply 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 Senate, we exercise judicial judgment, not simply to be weathervanes that shift with the political winds. The fact that this 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. If you decide whether an offense is a breach of the public trust, it is important to know what the public thinks. If the American people believe that impeachment is warranted, 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 members of Congress, but in effect, he serves directly by the people of the United States.

The election is based on 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, as it turned out—that she was voting 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?" I said, "I started to give her a noncommital answer about the process needing to go forward, but she brought me up short. 'Don't you or any other take my vote away, Joe. He's my President! If you remove him, I will never vote again.'"

But that's not what impeachment Bill Clinton needs to keep in mind what the American people think about it, because he is their President. This is an absolute clarification. 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 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 part of our constitutional democracy to use impeachment to overturn an election on partisan grounds. It violates the independence of the President and it usually is the voice of the people.

The Framers saw this danger when they wrote the impeachment power into the Constitution. Hamilton warned that an impeachment and the "connection of pre-existing factions," just as Black much later said that impeachment was an occasion for "prejudices to assume the guise of reason." Should they fail to do this, the risk they face is that they will inflict more damage on our system of government and in- genuity 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 his policies, or if you do not like the man, vote to impeach. If 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.

President Eisenhower did not resign when the Suez war 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 institutions. They are out of office and another government. Each is elected directly by the people. The President and Vice President are the only officials elected by all the people. The Senate is elected by the people to 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 recent House hearings on a centen- nial 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 as an important check in support of individual liberty and against government tyranny. The separation of pow- ers prevents government power from being concentrated in any single branch of govern- ment. Permit one branch of government to subjugate another to its partisan wishes, and you permit the kind of concentration of power the Framers feared.

So the system the Framers established is utterly incompatible with the idea that sharp partisan divisions could be sufficient to impose system-wide checks and balances. The Framers never intended that the impeachment power from being abused is the good faith of Members of Con- gress.

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 Republican’s point of view.

It is very difficult to perform this test, es- pecially in the highly charged partisan atmos- phere in which we live, but you get the point. One likely reason it is so politically difficult to meet.

As for the Johnson impeachment itself, ac- cording to the records of the Republi- can House members who voted for impeach- ment, he and others came in time to regret the effort. In private correspondence, Blaine wrote to friends that he had for five years persuaded many who favored impeach- ment that it was not justifiable on the charges made, and that its success would have led the country to free two insti- tutions than Andrew Johnson in whose utmost endeavor was able to inflict.

The conclusion I reach is this. The burden is, as is often the case, to be able to seek to impeach and convict a President. To over- turn a popular election, they must convince the American people and at least some in the President’s party that the Presi- dent’s actions are sufficient to free the insti- tutions. So I say to my colleagues in the House, do not make him suffer.

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

As a result, the burden of demonstrating that they are proceeding with a standard of high crimes and misdemeanors must be met. The American people will know whether each member met that test. They will not demand unanimity, but they will demand consensus.

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

To those who say that failure to bring arti- cles of impeachment against the President guarantees general be- havior or overlooking a criminal act, not- withstanding 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 a way to punish the President without doing damage to the system of sepa- rated 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. The President has already faced 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 you try to give him a political neutral- ity. For if you do, history will judge you kindly. And if you do not, it will judge you kindly.

And for those of us who hold high public office and the public trust, history is a judge.—[Speech, 11/19/98]

**BURDEN OF PROOF**

What is the standard of proof? The Constitu- tion 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 deter- mine 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 preponderance to prove or this her case by a preponderance of the evidence. This means that the plaintiff must prove that it is more likely than not that the defendant’s assertions are true. Criminal trials require the most exacting degree of proof. The prosecution must prove the de- fendant’s guilt beyond a reasonable doubt. A higher standard of proof is applied in some cases. This standard, clear and convincing evi- dence, requires proof that substantially ex- ceeds 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 cer- tainty.

Many Senators, analogizing to a criminal trial, have expressed that they would require the House Managers to prove their case “be- yond a reasonable doubt.” One proposed an impeachment trial of President Richard Nixon, Senators Sam Ervin, Strom Thur- mond, and John Stennis all declared that they would apply the beyond a reasonable doubt standard. But it is clear that individ- ual Senators may opt for a civil standard.

This issue may not be of great legal or meta- phorical 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. Resolution of the question requires the Senate to exercise its legal and political judgment in order to determine whether the constitutional judgment fits the misconduct. It does not call upon the Senate to make a factual determination about what conduct actually occurred.—[Memorandum, 12/29/98]
In recent days, some have suggested that because the Starr report provides prima facie evidence of what are arguably impeachable offenses, the Senate has a constitutional responsibility to see the impeachment process through to its conclusion. In my view, the constitutional history that I have sketched here 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 rejected an impeachment proceeding 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 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 seeing this as a test of his term 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 Constitution prescribes 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 demand it?

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 conflict short of impeachment. The separation of powers, the checks and balances whereby the legislative branch could sit in judgment of the President, and evidence in support of the impeachment proceedings could become part of the process of honoring the Constitution through the Article I procedures. The Constitution preserves the President, and evidence in support of the impeachment proceedings could become part of the process of honoring the Constitution through the Article I procedures.

[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 are incompatible with the Constitution 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 the defendant would in fact be punished by a criminal court. In other words, the Senate 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, that he obstructed justice, and thatmember of the public could do nothing about it, a Senator would be able to rely upon his word, and the defendant would not be punished by a criminal court. In other words, but not my view, the Senate should acquit.

This sentiment is as true today as it was when the Constitution was being written. It
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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 foundation. The 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 corruption and incompetence. 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 observation of the debate. He said, "I thought it indispensable that some provision should be made for defending the community from corruption or perjury of the chief magistrate [that is, the president]. The limitation of the period of his service was not a sufficient security. He might not resign 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 the intertwined intelligence 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, constitutional scholars have been debating the meaning of this phrase from the very early days of the republic.

Yet despite this ongoing dialogue, I believe there are two important points of agreement as to the original understanding of what the phrase means when 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 "lax administration of office." 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 William Rawle's 1829 treatise on the Constitution, he observed of the early commentators on the Constitution of the United 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 offenses which may be committed equally by a private person or 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:

"Ordinary" a remedy for offenses "of a political character, a "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 death. In contrast, the American Constitution completely separates the issue of criminal sanctions from impeachment. 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 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.

Additional support comes from yet another commentator, James Wilson, a delegate to the convention from Pennsylvania. In his Commentaries on the Constitution, he 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 and political duty to the larger public good.

The framers knew that impeachment proceedings could become partisan, and they needed to deal with strong anti-federalist factions.

Mr. GEORGE MASON, animadverting on the President's power of pardon, said it would be extremely improper to vest it in the House of Representatives, and not with the President. Mr. George Mason referred to the Convention from Pennsylvania. In his Convention, he wrote that "in the United States and Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments."

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The second was the framers substantive understanding of the impeachment power. It was a power to hold accountable government officials 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 such a government than the House, which was conceived and defined 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 was part of several changes during that summer of 1787. In initial drafts, the grounds for impeachment were restricted to treason and bribery alone.

When the Convention met Sept. 8, 1787, George Mason of Virginia inquired as to why the grounds should be restricted to these two provisions. He argued that "the Constitution may not be treason as above defined." Accordingly, he moved to add "mal-administration." 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 influence the president at the expense of the larger public good.

The objection apparently proved effective because Mason subsequently withdrew the motion and substituted a clause "or other high crimes and misdemeanors." What does the phrase mean? It is clear the framers intended it to be all-encompassing.

But beyond this, constitutional scholars have been debating the meaning of this phrase from the very early days of the republic.

Yet despite this ongoing dialogue, I believe there are two important points of agreement as to the original understanding of what the phrase means when 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 "lax administration of office." 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.

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be grounds to believe he will shelter him, the House of Representatives can impeach him. . . . This is a great security." [Memorandum, 2/9/99]

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 its design, does not contain an express definition of the phrase "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 the general welfare. To do so, the framers understood that the government would have to be entrusted with broad coercive powers necessary to make a government effective. The framers understood that the government under the Articles of Confederation would be necessary. In framing a government that was "armed" to defend itself against encroachments by the others. As Justice Robert Jackson observed, "The President is a tool of partisan punishment. The Constitution empowers 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 trying not to create an imperial presidency; they were concerned about protecting all American citizens and the national welfare. In their view, the 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 fear 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 impeachment 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 contrary, 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 demonstrable facts of the case.

The framers were fully aware that impeachment proceedings could become partisan struggles. The framers were concerned about the 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 executive power. They wisely entrusted the construction and operation of the Constitution to men who understood that the government needed to be independent in order to control itself. "If men were angels, no government would be necessary. If angels were to govern man, 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 reconcile the concern that any one 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. Article 1, Section 2 requires a legislative basis or appropriations or other legislative support and is subject to judicial review.

Finally, the establishment and jurisdiction of the federal courts generally depends upon the concern that any process whereby the framers divided the government into 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 the people through the next election. One delegate to the constitutional convention, Charles Pinckney of South Carolina, worried that the threat of impeachment would turn the president out in the next election. He might pervert his administration into a scheme of speculating 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 leaving in the Constitution to gain the advantages of impeachment.

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 question of whether there should be a new 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 would 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 man, 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."

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So in the end, the framers of the Constitution risked the abuse of power by leaving in the Constitution 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 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." This text begins with terms that have definite meaning (treason, which is defined in the Constitution itself, and bribery, whose definition was fixed in the 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 is to be understood as similar in kind to the definite terms. Application of these rules makes sense of the provision in its historical context.
President Andrew Johnson that “treason and bribery... these are offenses which strike at the existence of [the] government. ‘Other high crimes and misdemeanors.’ Noscuri a socia... other public men, or, in other words, from the abuse or viola- tion of some public trust. They are of a nature which without proper propriety may be deemed PUBLICAL... as the 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 or “society in its political character.” They specifically did not mean political offenses in the sense of partisan which the framers affirmatively feared. Charles Pinckney, James Wilson, and Alexander Hamilton, for example, each declared 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 the Senate would have the necessary independence, stature, and impartiality to prevent the impeachment powers from becoming a tool for factionalism and partisanship. The framers expected that the Senate, among government institutions, uniquely capable of fidelity to the constitutional limits placed on 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 Commentaries on the Constitution, looked to British practice to understand the scope of impeachment in the United States Constitution. Recognizing that the British Constitution contained the impeachment to a narrower set of offenses than those permitted under British law, he observed that even Great Britain had “such kinds of misdeeds... as, peculiarly injurious 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 liability from the issue of political office. The Constitution states that “judgment in cases of impeachment shall not extend further than to removal from office, and the subsequent 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 is the removal from office and disqualification from holding future offices.

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March 15, 1787, as the convention was drawing to a close, Colonel George Mason and James Madison undertook colloquy that gave this provision its ultimate formulation. Mason opened his remarks, which he feared were too vague and so potentially too expansive. He feared that “seditious abuse of a public officer” would threaten the independence of the executive branch, and Madison rebutted his fear with the observation that “seditious abuse... is not to be considered as an abuse of power.” The colloquy between the signers of the Constitution denominated treason and bribery as the exclusive grounds for impeachment and removal of civil officers. In response, the debates of the Philadelphia Convention of 1787, where the Constitution was drafted, and those in the subsequent state ratifying conventions provide important evidence of the meaning of “high Crimes and Misdemeanors.” Close examination of these proceedings demonstrates that the framers gave careful consideration to Congress’s 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 the debate over what offenses constitute impeachable conduct, Madison expressed the concern 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 offenses of a political character, of the nature of the separation of powers, of which the impeachable offenses are a significant component. Indeed, the Constitution specifically provides that civil officers, including the President, remain subject to criminal prosecution and proceedings that do not involve official conduct.

Moving beyond the text and structure of the Constitution and the debates at the Constitutional Convention of 1787, where the Constitution was drafted, and those in the subsequent state ratifying conventions provide important evidence of the meaning of “high Crimes and Misdemeanors.” Close examination of these proceedings demonstrates that the framers gave careful consideration to Congress’s impeachment powers. This consideration led them to understand the Constitution as setting forth a very narrow category of impeachable offenses.

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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 potential 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 public. After all, said impeachment proceedings are “not so much designed to punish an offender as to secure the state against gross official misdemeanors.”

Importantly, the Senate 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 duties and official duties.” That is, general those which may be committed equally by a private person as a public officer in the capacity of an impeachment. Additional support for this proposition comes from the renowned constitutional scholar, Philip Kurland who wrote that “at both the convention that framed the Constitution and at the conventions that ratified it, the existence 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 Senate’s judgment of J. C. DeWine, 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 to protect the public against gross abuse of power.”

D. CONSTITUTIONAL PRACTICE AND PRECEDENT

A notable precedent germane to the present construction of the Constitution is the impeachment construct applied throughout our history by those who have been charged with applying its provisions. The significance of constitutional practice is heightened in the context of applying constitutional 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 with a possible narrative construction 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 no reason to doubt whether these cases, mostly involving federal judges, provide directly analogous precedent for cases involving the President. First, the Madison-Mason coloquy and the debates in the state ratifying conventions demonstrate the framers’ primary concern was a vehicle for encroachments on the President’s structurally necessary independence from the legislature. Second, federal judges serve at the pleasure of the President and the automatic removal of the President upon conviction of high crimes and misdemeanors has the widely remarked upon consequence of através of the President. Therefore, the Constitution contemplates impeachment for conduct that the Senate is 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 make a finding, that fact is relevant to assessing the credibility of the testimony and evidence given by those witnesses.

While the Senate has never accepted that it is bound by the Federal Rules, it may vote to follow them. In a given case, the Senate did just that on at least one occasion. During the Rule XI committee deliberations in the impeachment trial of

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it did not allow the defense to pursue elements of its theory that were purely speculative and highly dubious.—[Memorandum, 12/29/98]

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 vote on the substantive or underlying alleged federal laws against perjury and obstruction of justice.

Under one presumed scenario, the findings of fact would be the subsequent step on the articles would fail. Thus, while the President would remain in office, his legacy would be besmirched by an impeachment trial’s findings of guilt. There are several constitutional arguments against this procedure, each based on the fact that it is either equivalent to, or tantamount to, separation of a vote on guilt or innocence from a vote on removal.

Very early in the Senate’s history, the Senate decided in fact separate these two votes, controversially 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 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 justifiable removed from office.

However, this possible interpretation of the trial procedure was repudiated in the 1996 impeachment trial of Judge Halstead Ritter, when the chair ruled that removal followed automatically from a finding of guilt, 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 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 officer 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 consideration and 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 2/3. Looking at the vote, the President’s verdict had been acquittal, and remains in office.

Who, then, is the President of the United States if these two votes have been cast—Bill Clinton and 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 they 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 which transcends the office of the 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 receptions, co-tour the United States, etc.—by creating a true co-presidency.)

The uncertainty would occur 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 President’s power to remove federal officials are “political,” and it might well so find in this instance, as well.

Even if the findings of fact did not garner 2/3’s 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 procedure 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 opinion by the Isenbergh, Kmiec and Krane: “The Senate proceeds with the proposed findings of fact, [I]f the Senate would then have taken another bite out of the constitutional apple by impeachment into a tool of partisan politics.

“The Clinton impeachment would then establish the proposition that it is a legitimate constitutional procedure proceeding to “find” that the President committed crimes or serious misconduct (but not high crimes). In that case, why shouldn’t a President be able to remove any high, or not the 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. And such a rule would amount to just one more way 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 censure. It is about removing the President from office. The Senate must vote, up or down, on conviction and removal. Anything less or in-between is unconstitutional.”

The idea that the House could routinely start up the Senate impeachment trial appara-
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, except for constitutionally prohibited conduct, such offenses would be just as well served if the basis for the final judgment was expressed in more discrete and articulated collective judgments rather than as a single unarticulated conclusion. Thus, the preparation of a report as set forth in Rule XXIII would be preferable to the form of the articles that proposed the impeachment of President Richard Nixon. Some of its legislative history is pertinent:

"The Virginia 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 might tar and feather the Senate, and ill will . . . .'

The rule and its history suggests 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—that it is not constitutionally required that the Senate 'divide' any article of impeachment, but rather that 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, the burden of the argument is that such findings would amount to an unconstitutional trial by legislature. In reaching conclusions as to guilt or innocence, without the interposition of potentially divisive antecedent motions seeking to clarify exactly what the Senate as a body has found the accused to have committed.

A. Elements of the General Obstruction of Justice

To establish a violation of the witness tampering statute (§ 1512(b)), the government must establish that the defendant

1. knew that the proceeding was pending; and

2. used the power of his office as a United States official to influence, obstruct, or impede the due administration of justice.

The first two elements are straightforward. The third element is more complex. In the words of the statute: "Corruptly" means to engage in an act voluntarily and deliberately for the purpose of improperly influencing, obstructing, or impeding the due administration of justice.

"Endeavor" means that the defendant also knowingly and deliberately acted or made an attempt 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

   a. to influence, delay, or prevent a witness's testimony from being presented at official federal proceedings

   b. to cause or induce any person to withhold testimony or physical evidence from an official federal proceeding

   c. 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 engaged in 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 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 partial or complete 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, 1/1999]
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 intention even if misleading and nonresponsive to the question asked. The burden is on the questioner to identify evasive answers and press for clarity at the moment rather than let it pass and charge perjury later.

Grand jury perjury convictions can be based on 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 some bearing on the substantive elements of the issues that the grand jury was convicted to investigate. The only provision on point states, “Judgment of conviction on impeachment shall not operate as a bar to indictment, trial, and punishment for, and conviction of, treason, bribery or other high crimes and misdemeanors.”

The better reading has always been that the Constitution’s text is ambiguous. It can just as easily be understood to mean that the impeachment of the officer was to occur first, are not a bar to judicial process. This interpretation has been vindicated by recent practice. The three judges impeached and convicted in January 1998 were all indicted and prosecuted criminally first. In addition, Vice President Spiro Agnew was indicted while in office, as was sitting Vice President Richard Nixon. The prosecution cited does not distinguish between the President and other officers subject to impeachment. Thus, if the President is to be treated differently from 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 treason and bribery to “the Constitution’s text is ambiguous. It can just as easily be understood to mean that the impeachment of the officer was to occur first” (emphasis added).

The Constitution structures the federal government by dividing it into three branches. Each branch is one of the three branches of government. The other branches have collective heads. The legislative branch is headed by the Speaker of the House. The executive branch is headed by the President. The judicial branch is headed by the Supreme Court.

To indict and prosecute the President is in some ways, perjury can not be based only on the Constitution’s structural safeguards. By contrast, there are hundreds of district court judges. A criminal proceeding against one of them can reasonably be interpreted in multiple ways. The better reading has always been that the Constitution’s text is ambiguous. It can just as easily be understood to mean that the impeachment of the officer was to occur first. The better reading of the Constitution’s text is that the President is unique, and materially distinguishable from 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 Speaker of the House. The executive branch is headed by the President. The judicial branch is headed by the Supreme Court. To indict and prosecute the President is in this sense the constitutional equivalent of indicting and removing 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 all the things that the presidency demands, just how consuming the office is.” For example, Lyndon Johnson related that “Of all the things that the presidency demands, just how consuming the office is.”

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 J udge Halstead Ritter, when the chair ruled that the second vote was not necessary for 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 ways to interpret 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.”
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. He serves as the presiding officer during the impeachment trial of the President, 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. (This was in fact Chief Justice Chase's practice on evidentiary motions made during the Johnson trial.) His rulings can be overturned by a 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 chief 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 work to his advantage include the power to conduct pre-trial proceedings or to oversee settlement negotiations. If the Chief Justice is perceived as impartial, his rulings and other rulings of the Senate will carry great weight and place a heavy burden on anyone seeking to overrule them. On the other hand, a determined majority can simply ignore the Chief Justice and authorize the managers to proceed 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 presenters of evidence and arguments in the Senate. 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, or 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 as those of the managers except they do not include authority to conduct pre-trial proceedings or to oversee settlement negotiations. If the Chief Justice is perceived as impartial, his rulings and other rulings will carry great weight. If the Chief Justice is seen as biased, his rulings and other rulings will carry little weight. Once again we find support for this view from the country's history. In 2 of the first 3 impeachment trials brought forward from the House to the Senate, the Senate acquitted the accused.

In each of the two acquittals, however, the Senate did not have the House documents that supported the facts. One case involved a senator, William Blount, the other an Associate Justice of the Supreme Court, Samuel Chase. In neither case did the Senate have evidence that the individual 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 which was best for the country and for the President and, if true, represent a high crime and misdemeanor, if true, represent a high crime and misdemeanor.

I should try to be as clear as I can about this point, because the media discussion has come close to the errors of being 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 was convicted of 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.

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 discuss motions and evidence in open session.

Senators also act as judges, with authority to decide whether a rule of the Senate 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 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 through written requests or 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 contempt of and disobedience to its orders, but it does 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 adjudge guilty 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 for- tifies 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."

Although the Constitution defies a simple label, the procedures required to hold live evidentiary proceedings in every conceivable impeachment case. If, for example, the House were to impeach an official who is not charged with any specific statutory offenses, 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 bring impeachment proceedings for 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
Clinton will proceed in the Senate, unless trials, almost all of which involved federal country's history. In preparation for these trials have been held in the Senate over the shortly thereafter, and the articles were voted to send articles of impeachment with 22/98 to hold evidentiary proceedings where the representatives. As with the federal judiciary, law to the facts and circumstances of every forth in the Constitution and to apply that indication in the context of a Senate impeachment. This is because the Senate acts as both judge (finder of law) and jury (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 impeachmennt process. Fidelity to the Constitution, the Senate cannot 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]

I. THE HISTORY OF PRESIDENTIAL IMPEACHMENT TRIALS

We have had exactly one impeachment trial of a President, Andrew J. 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, four 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 developed a body of standing rules to regulate and practice for such trials, as well as a body of precedent concerning questions of procedure that have arisen in the past. 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 prior to the opening 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, rather than debate in open session. Because the Senate is not a court, the Senate has absolute power to refuse to hear impeachments. The Senate has held that there is no need to hear impeachment proceedings when a President is in his office.

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 process is provided in the Constitution and is governed by the Senate. The Senate shall have sole power to try all impeachments. The Constitution provides that “the Senate shall have sole power to try all impeachments.” The Senate has not yet heard an impeachment trial, so it is still open to question whether the Senate can continue an impeachment trial after the President leaves office.

Those providing support for summary adjudication as a means of resolving impeachment cases without a full trial argue that the Senate can exercise its constitutional duty to try impeachments can be done without a full trial. The Senate has the power to try impeachments and to remove a President from office.

The opposing party has the option of filing a motion for summary judgment or of filing motions for summary judgment or of filing motions for summary judgment or of pleading for summary judgment. The Senate has not yet heard an impeachment trial, so it is still open to question whether the Senate can continue an impeachment trial after the President leaves 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 or obstruction of justice offenses charged in these articles of impeachment do not warrant conviction and removal from office.

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the facts warranted further evidentiary proceedings in the Senate or if the matter could be decided solely on the basis of Judge Clai-
borne’s conviction for tax evasion. The Senate considered the question without reference to judicial standards.

This approach is consistent with the Senate’s position that it is not bound by the federal rules of procedure. Removal of the pro-
motion from the technical categories and requirements under those rules allows each Senator the discretion to consider whether additional evidence, if the proceeding involving 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 all committee members would be able to watch them as they occurred, and videotapes could also be prepared for submission to the Senate. A number of the 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, seven of which are to be chosen by 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 exercises 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]

House Managers have asserted repeatedly that live witness testimony will resolve discrepancies in the testimonies of wit-
nesses, 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 HissWhittaker Chambers. Some people were convinced by one side, some people by the other. Demeanor is not necessarily dispositive in any event. Both witnesses can come across as reliable, honest and trust-
worthy. Witnesses often give credible performance reviews.

The House Managers are poorly situated to claim the necessity of hearing from live wit-
nesses, and therefore they ought to be called. For example, one prominent disagreement that the House Managers have cited is that between President Clinton and Ms. Lewinsky regarding whether the President ever had an affair with Ms. Lewinsky. If both witnesses are called and reiterate their prior testimony, the Senate will cer-
tainly get the opportunity to observe their demeanor and confirm or deny their credibility. It is also possible that additional information will be revealed. It is not necessary for the Senate to decide whether the President committed the offenses in order to resolve credibility issues. The costs will be assessed against the costs. The costs will come from live testimony. 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 all committee members would be able to watch them as they occurred, and videotapes could also be prepared for submission to the Senate. A number of the 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.

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dent with nothing more than an assessment of monetary compensation. An adverse ver-
dict at a criminal trial threatens imprisonment. It is clear that the Constitution does not bar the judicial im-
position of the President. Extending the holding of the Paula Jones to criminal proceedings is subject to an additional objection. The course of events since the Court rendered its decision has not been as one would have expected. The Court’s decision has not been made known either publicly or to the President. The President remains under the cloud of an indictment and faces the specter of criminal proceedings. The Sixth Amendment expresses the constitutional commitment to allowing a criminal defendant’s presence at trial. Finally, consider what follows a judg-
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as the President is subject to criminal prosecution once out of office. Under these circumstances, the President is subject 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 tried and convicted. 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 President. There is now precedent is the investigation of President Richard Nixon. The biographer to special counsel Archibald Cox reports that Cox had come to the conclusion that while the President is subject to impeachment, he is not subject to indictment. The President’s legal advisors decided to use the impeachment process as a substitute for prosecution under the Constitution. This decision has been criticized as being inappropriate and as being a violation of the President’s legal rights.

In 1972, Vice President Spiro Agnew argued to the Supreme Court that a sitting President could not be indicted. Then-Solicitor General Robert Bork submitted an amicus brief on behalf of the United States in support of this position. Bork argued that the Constitution vests the power to try impeachments in the Senate and that a sitting President is not subject to criminal prosecution. Judge Bork repeated this position in a dissenting opinion in the Watergate case. Hamilton addressing the specific question of whether a sitting President may be indicted and prosecuted.

Mr. ABRAHAM. 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 that this 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 removal changes as the President’s misdeeds increase. I believe this is not the case. 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 threshold for removal likely would suffer. . . . . . The President is subject to criminal prosecution once out of office. . . . . .

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 the Whitewater investigation, 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 threshold for removal likely would suffer. . . . . .

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 treason, bribery, and other high Crimes and Misdemeanors.” The President’s lawyers invoked this line but in my view, they misunderstood 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 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 function is a much 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 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 charged with carrying out the 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 J ones case, a federal crime 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 statutes, 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, charged, under a 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 useless.

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.

To combat these temptations, the Constitution 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.”

In my opinion, there is no way that the President could have testified as he did in his J ones deposition concerning his relationship with Monica Lewinsky, or that 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 come to see Ms. Betty Currie, or that you were bringing me letters.”

To whom did he intend her to say this? They’d already agreed on the use of these cover stories in non-legal contexts. The timing was clearly, the J ones 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 J ones 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 the letters.

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.

And finally, if you believe that was the President’s intention, then you must conclude 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.”

And 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 August afternoon, 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 he violated the public trust, and that therefore I must vote to convict him on these charges.

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 dealing with a member 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 overwhelmingly 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 standards, or whether his previous conduct warranted prosecution or possible impeachment.

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 eleven months, from December 6, 1997 to November 13, 1998, when the President agreed to pay Paula J ones $850,000 to settle her harassment lawsuit, the President engaged in a systematic course of obstructing justice and tampering with witnesses in Ms. J ones’s case. There is no room for reasonable doubt that as part of this course of conduct the President made threats to Ms. Monica Lewinsky and Ms. Betty Currie that I 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 the Jones 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 witnesses 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 in the court that heard the Jones 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 relationship 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 acknowledge on both sides, reasonable people can differ on this conclusion. 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 for the President. But in my judgment, it should be his 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 two years remaining in this term, removing his is not worth the disruption it would cause.

These considerations would legitimate a more protracted investigation. We are 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 “serene, judicial and impartial” oath.

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. How high is 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 objects 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.

But 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 Constitution requires that the President’s actions and functions be such as to warrant the “violation of some public trust.”

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Obstruction of justice, witness tampering, and grand jury perjury are serious federal crimes. How do we explain the President’s actions in this case? Is there any genuine question 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 he 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 investigate and prevent our 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 attempt 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 in this country. Just as our Framers viewed the rule of law as the ultimate guarantor of our system of government, we, too, 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 conclusion: it is necessary for me to conclude that President William J. 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.

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 any I have undertaken yet 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 1797 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 and the way that our famed system of “checks and balances”—our Constitution, 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 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 this 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 United States 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 believe that "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 "on certain occasions." The Managers disagree about the definition of "on certain occasions." The Republican House Managers also claimed President Clinton committed perjury by not recalling the exact date, time, or place of events that occurred two years before. This was because other witnesses recalled things slightly differently and they believe that all recollections 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 Manager's 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 that other witnesses did not agree about the definition of "certain occasions." To define "certain occasions" meant fewer than the 11 times that were counted by Federal investigators and they labeled it "a direct lie."

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 One and Article Two; he committed perjury and he clearly obstructed justice. I agree we must 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 Vice President, 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 the decision whatever the sad 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 should be afraid.

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 rule-making 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 condemning 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 same offense created by a two-tiered standard for perjury. A President commits perjury, yet remains in office. But would a cabinet member who committed perjury 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 perjury.

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, whose fate you and I have known for the trial this case has taken on the nation, but with certainty that it is the only choice my conscience and the Constitution permits me to make.

Mr. BREAUX. Mr. Chief Justice and my colleagues. Thank you very much, Mr. Chief Justice, 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 be on the board.

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. They should be feared.

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 misconduct. It is essentially 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 you know what is going on. When a 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 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, and we have tried to do a job 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 of us. Many of us are old enough to remember 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 have say 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 President for his conduct. 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, that 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 understood, what we are about to happen to this President, that this trial 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 that when people started finding out about it, he lied about it, tried to cover it up, tried to make it very difficult to say what happened. I 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 he was wrong. 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 the question here is 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 it was not meant for him to be absolved of 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. That is the Judicial System. That is the Constitution.

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.

But 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 deplorable, it was wrong, but Hamilton was the Secretary of the Treasury 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 there 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, and he may have been required to.

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 office of the President.” 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 connection 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.

Mr. DOMENICI. I have listened carefully to the arguments of the House Managers and the counter-arguments 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 to the debate, they may have been.

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 “bribery, treason 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 Constitution.

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, DIANE FEINSTEIN, and others have been diligent in trying not once but four times to obstruct justice.

Bluntly acknowledged publicly that the President lied, misled, obstructed, and attempted in many ways to thwart the justice-impartial course in a civil rights case. The sticking point has been: Does this misbehavior rise to the level of impeachable offenses that the Founding Fathers envisioned?

I have concluded that President Clinton's actions do, indeed, rise to the level of impeachable offenses that the Founding Fathers envisioned. I do not blame the 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 impeachable insult which perjury offers to the divine Being, there is no crime more pernicious to Society. It discolors and poisons the Streams of personal and public Rights. Testimony is given under solemn obligations which an appeal to the God of Truth imposes; 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 discolors 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 proceeding. At a number of critical junctures, he had a choice either to tell the truth or lie, first in the civil rights case and then in the impeachment proceeding. My good friends and Democratic colleagues, Senators JOE LIEBERMAN, DANIEL PATRICK MOYNIHAN, BOB KERREY, DIANE FEINSTEIN, and others have been diligent in trying not once but four times to obstruct justice.

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I have concluded that President Clinton's actions do, indeed, rise to the level of impeachable offenses that the Founding Fathers envisioned. I do not blame the 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 impeachable insult which perjury offers to the divine Being, there is no crime more pernicious to Society. It discolors and poisons the Streams of personal and public Rights. Testimony is given under solemn obligations which an appeal to the God of Truth imposes; 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 discolors and poisons the Streams of justice . . . and . . . saps the Foundations of personal and public Rights.”
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 facts on the impeachment process. He ponders this question:

"What kind of non-criminal 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 millions of 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 evidence from the Federal and state authorities. (4) He had been subpoenaed in the civil rights lawsuit. (5) He intensified and succeeded in an effort to find Monica Lewinsky a job so that she would not cooperate against him by the House of Representatives.

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 three-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, but 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 video tape. 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 permit 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, if I have concluded 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. President.

Mr. SARBANES. Mr. Chief Justice and colleagues, in his award-winning book "The Making of the President, 1960," Theodore Sorensen spoke of the American Presidential election as "the most awesome transfer of power in the world."

He notes that:

No one 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 empty chair outside a church or school or a 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 fired. And after 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 magnificence. In 1998, 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, I believe, 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 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, implem. physicians call ileo-eric 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 that 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 salary. 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, under penalties of perjury, I declare that I...
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 32 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 the grave 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 demoting 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 in the United States:

Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement—substantiality. In deciding whether this further requirement is 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.

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 forty hand-written pages I've taken from the 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, “United States Senate.”

We want them to turn the pens back in. I heard there are going to be valuable collectors' items, and I am not turning mine in. I want to see what it's worth.

And 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's true and, perhaps, I am living proof of that great diversity of this nation because 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 orphans; a law breaker and high school drop out 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, statements or the press or 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 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 sit right there in the back row fifteen 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 have already sprinted 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 three 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 not do this again 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 I know from common experience he cared for his family. But after agonizing as many of my Senate friends have, I remember the first question my then-nine-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'm 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'll save this body the time and expense and resign.

I would not fear being thrown out. When I was young and not yet housebroken, 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 one thing in common I share with J ohn 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.

Mr. KERREY. Mr. President, 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. It's hard to 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 commit perjury.

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. None of the other charges are relevant to 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 a fit person to hold high office in 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.

There are 513 words 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, Iowa, 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 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 four 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 One** 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 lied, but only if they purposely gave a false statement. In many, 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 reviewing 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 Alice 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 materially false, as required by the law.

**Article Two** accuses the President of obstructing justice in seven instances. The House managers relied on circumstantial evidence, saying that common sense provides only one conclusion in each of the instances. I accept 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 it would 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’s 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 any of these actions 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.

Mr. Vice President, 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 behavior only got worse.” It is not the President’s inappropriate relationship, but his deliberate and willful attempts to conceal and mislead that brings 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 United States 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 connected 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 inappropiate 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 made 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 quintessential 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 disqualified himself from serving as President, Commander-in-Chief, and chief law enforcement officer. The President also represents the American people. The presidency is “the personal embodiment of the American people.” And, President William Howard Taft described the president as “the personal embodiment 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.

Mr. President, Chief Justice, the Senate must now fulfill a weighty and solemn duty. For only the second time in the more than two hundred 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 determine what 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 radicalized 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?

And 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 Family. I can even imagine the President’s family. 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 and 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 the President. 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 measure of public confidence in the president, as 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 impeachable. Instead, they take 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, Number 65, Alexander Hamilton noted that the prosecution of impeachable offenses would “connect itself with the pre-existence of the facts on which the impeachment is founded.” He warned 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 two hundred 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 Clinton. As pointed out by the Independent Counsel, the charges brought against President Clinton have been ‘‘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-reaching 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.

And 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 cautious 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 and it will not be hard for skilled attorneys to hurl charges of perjury and obstruction of justice. We cannot allow the President 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 must be ‘‘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.

And 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 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.

Now, 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 re dedicate ourselves to the challenges facing our nation.

Mr. BOND. On a point of order, Mr. Speaker, on February 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 Ms. Clinton. 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 allowed after the affidavit was presented, Mr. Clinton falsely to file an affidavit or to lie under oath. To paraphrase a statement made during the trial by Vernon J. Jordan, “He is no fool.” He would have known that such a statement could be revealed by subsequent judicial inquiry.

Mr. Clinton had 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 J. Jordan to an attorney who drafted the affidavit for her. The President, through Mr. J. Jordan, was kept advised of the progress of the affidavit.

During the time that Mr. J. Jordan was serving as liaison between the attorney and the President in the preparation 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. The President in the preparation of the affidavit was summoned before federal judge Susan Webber Wright to participate in the deposition on January 17, 1998, by the Jones attorneys. The President’s attorney, Mr. Bennett, referred to the deposition 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 (President) is fully aware of Ms. Lewinsky’s affidavit, for I have not told him a single thing he doesn’t know.”

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.

I believe Mr. Clinton 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. In the course of the proceeding, 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 to draft the affidavit. 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 j. Jones. According to Ms. Lewinsky, Mr. Clinton showed her a definitive statement of the gifts.

Very shortly thereafter, according to Ms. Lewinsky’s testimony, Mr. Clinton’s personal secretary Betty Currie initiated a series of telephone conversations regarding the gifts. Ms. Lewinsky 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 and bringing 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. Lewinsky, 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. Imme¬diately 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 not even going to tell 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. . . . right?”; (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 them had been made on January 18, 1995, and several days later constituted relating a false and misleading account of relevant events to influence the testimony of a witness in a federal civil rights action as alleged in Article II, paragraph 6, of the Impeachment Articles.

Subsequently, he also made statements to his subordinates including Sidney Blumenthal, John Podesta, and Erskine Bowles. The statements he made were designed to provide misleading information through them which could be and subsequently was transmitted under oath in the judicial proceedings by the subordinates.

Statements by the President’s subordinates on January 21, 23, and 26, 1998, were false and misleading statements to potential witnesses in a federal grand jury proceeding to influence the testimony of witnesses as alleged in Article II, section 7, of the Articles of Impeachment.

At his federal grand jury testimony on August 17, 1998, the President falsely and corruptly denied he had attempted to influence the testimony of potential witnesses and impede the discovery of evidence in civil rights actions as set out in the analysis above. Thus, the committed the acts as charged in Article I, paragraph 4, the count charging perjury. At his federal grand jury transcript at 107-08, Evidence Record, Vol. 1, Part 1 of 2, 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 what 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, 1996.

HIGH CRIMES AND MISDEMEANORS

Having resolved in my mind the question that clear and convincing evidence shows that William Jefferson Clinton obstructed justice and committed perjury, 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 where he was not of sufficient age 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 offenses, 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 convictions 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 law suit 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 law. She has lost her practice of medicine and also her ability to utilize her law degree to practice law.

The seriousness of these offenses is particularly clear when considered in the context of the proceedings. The United States 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, in 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 in 1994 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 impaneled 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 where he was not of sufficient age to merit a criminal proceeding, and that it certainly was not sufficient to warrant removing the President from office.

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 United States 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 too strong and forceful in foreign policy and conduct 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 turned on the approval or disapproval of formation 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 United States 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.

CONCLUSION

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.

Mr. ROBB, Mr. Chief Justice, colleagues, sitting in judgment that 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
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 to mislead, 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 lived under a king and they didn't want another.

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 weak Chief Executive who would serve at the pleasure of the legislature, and making it too easy, thereby creating a weak 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 they 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. Therefore, as we all know, a Committee on Style, which had no authority to make substantive changes, dropped the last four words, considering them redundant.

As we wrestle with the decisions before us today, I believe that it is incumbent upon us to reflect on the consequences 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.

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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.

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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 Constitution, he wrote, "The President's oath requires him to faithfully discharge his duty 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 maintaining peace. And all of us who have served in the Armed Forces understood that we swore an oath to faithfully execute the laws, any violation of those laws should thereby warrant his removal from office. And if any of us, whose Members would continue in appointment at each and every one of us.

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. But if 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 told the American people that he had changed his story 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 testimony 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.

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, hair-splitting, 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 M.S.P.I. 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, the President's grand jury testimony, 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 another group voted to acquit on each of the other subparts, 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 it is not allowed in a 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 doing the same thing now offers no solace. 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 standards for removal were 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 the past is this—either 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 a vote to perpetuate the behavior.

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 created the Senate as the place to determine 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. This is not the responsibility of protecting the Republic by judging the President when articles of impeachment are exhibited by the House of Representatives. Nor is it our duty or 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.

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 offered against 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, not a scandal. 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 taped 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.

I have spoken to my constituents for voting in favor of the Independent Counsel Act 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 four 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 was built 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 or 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.

But 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.

Because, being against the line-item veto and the balanced budget amendment were not popular positions in my state; my positions 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 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 and an 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.

The 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 a case 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 President 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 with Ms. Lewinsky, 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. 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 on this matter. I served in the House for ten years, and I never saw the minority party deny 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 by 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.

But I believe that 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 not serve at the pleasure of the Senate.

The Senate did the right thing in 1968—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.

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 judgement 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 by his own party 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 imputation.

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 presentiments today—Mr. President, 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 wilful acts of the President.

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 important political questions. 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 and this Senate.

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 charged of perjury and obstruction of justice who in this case—in all its tawdry and unseemly detail—has made unnecessary a thorough process of determining the truth.
February 12, 1999

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We stand in judgement of the President. Our decisions will be remembered throughout history. Our precedent may be followed by future Senators. Yet, still we have heard throughout this exercise the unfortunate call to end these proceedings in a few weeks. We must reject 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. I 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 precursors to this matter were many minds, predetermined. In spite of this, the integrity of the process was, time and again, fought for and protected. Today—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 two 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 history of the United States of America. William Jefferson Clinton. This document laid the framework for what has taken place. 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 equally.

Although the trial of this President was not a trial in the traditional sense, it is important to note that impeachment and removal of a President presents itself again, there is nothing restricting a more traditional trial from occurring. In fact, I would encourage future Senators 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 over a few weeks, and in the end, the President is acquitted. A prosperous time. The citizens of this nation are generally 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, I would encourage 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 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 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 the historic impeachment trials of the nation's two great Presidents, Andrew Johnson and Richard Nixon, the trial of William Jefferson Clinton was not a trial in the traditional sense, it was not a trial in the traditional sense, it was a forum by which the President's civil rights action against the President, of the United States Court of Appeals for the District of Columbia, a right which nine justices of the United States Supreme Court mandate, the President was granted the right to file a civil rights action against the President of the United States. It is my firm belief that the President's civil rights action against the President of the United States is not obligated to abide by the rule of law. As a citizen and as a Senator, I would always be the good guy in the courtroom trial. Every impeachment trial has been the subject of much controversy. This topic has been the subject of much controversy in the past months. It is true that private acts are the subject of the matter before us. Had the acts stayed private, we would not be here today. The President, however, took action that falls outside our judicial 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. Additionally, 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 is chilling and deserves condemnation by those who cherish freedom.

Before I proceed to my view of the specific articles, it may be useful to explain 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 the United States. 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 would always be the good guy in 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 is chilling and deserves condemnation by those who cherish freedom.

Before I proceed to my view of the specific articles, it may be useful to explain the standards used in these cases also apply to the charges levied against the President.
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.

**OBSTRUCTION OF JUSTICE**

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 law suit. 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, 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 alleging that the nature of the President's relationship with Ms. Lewinsky was consensual; and by instructing his attorneys 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 attempting 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 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 to several former state and federal employees suspected of having sexual relations with the President. Within the President's argument that the Lewinsky matter was not essential 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, on the President's 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 clear that the President's attention is riveted on every person who speaks. He is attentive and his eyes track the speakers as they engage in dialogue. I believe the President purposely allowed Mr. Bennett to mislead the court.

Moreover, I am not persuaded by the President's argument that the affidavit was false, but for the fact that she was in fear of being prosecuted for perjury herself.
was technically true because “is” meant “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’s effort to manipulate the truth began before he even stepped from the Oval Office and continued as he spoke every word. To take the President’s interpretation of “is” to its logical conclusion that nothing was occurring at that very minute is ridiculous.

Certainly, 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 defendants. 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. When the President and Ms. Currie tested their relationship, there was no 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 were posed 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?”

“Her she wanted to have sex with me, and I cannot do that.”

This conversation was repeated between the President and Ms. Currie again two 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 Ms. 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 he was aware that the media frenzy was about to break loose. I find this explanation unconvincing for numerous reasons.

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 matter. That alone is 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 witness list, 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 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 the approach Mr. 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, 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 testifying before the grand jury. 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, he 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 her, 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 was given an informal job offer in New York by a company recommended by Mr. Jordan.

Because I feel the sequence of events that took place in December is extremely telling; I will lay these events out. On December 6, the President learned Ms. Lewinsky was a potential witness in the Jones case. On December 7, the President spoke 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 2:00 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 White House. 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 and 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 eleven days after he learned of this news. Rather, it appears the President was using these eleven days to ensure that Ms. Lewinsky was given an informal job offer, which she accepted. On January 13, 1998, Ms. Lewinsky received a formalized job offer.

The President is also charged with perjury before the grand jury. The President was also charged with making perjurious, false, and misleading testimony to a Federal grand jury concerning his corrupt efforts to influence the Jones’ testimony 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 conversations on the day of the deposition involving 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 lawyer, 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 seven 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 concerning 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, places a false and misleading account of perjury 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 President intended to: 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 the sexual interactions that 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 that 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 nineteen 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” because he believed that the evidence overwhelmingly affirms that the President had sexual contact with Ms. Lewinsky and his attempts at legal hair-splitting 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 the President was not honest. Whereas the President had every motive to conceal the details of this intimate relationship. Not only was it 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 concerning her conversations with the President 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 on the day 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 to expand 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: “No.” 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 his affair with 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 inanimate 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 then, he tried 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 to the effect 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 told the grand jury 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 the Lewinsky case, and I never tried 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 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 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 an important witness. The President sought to avoid the need for her to testify. The President’s testimony is in direct contradiction to 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 of both Article I and Article II.

CONCLUSION

Mr. Chief Justice, the President of the United States and the Senate are 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 wilful 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 done our job, 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 have their 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 our House of Representatives, nor did we 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 J. 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 other senators to whom different standard may be more appropriate.

I am proud of the United States Senate and how it conducted itself during this process. Despite extraordinary difficulties, 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 judgement of this case.

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

Mr. FITZGERALD. 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 new comer. Thank you for your patience, 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 which has anchored us for over two hundred 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 to which we took in 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 STANDARD OF PROOF

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 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 too narrow for the remedy it would entail. If the President were guilty of the charge raised in the articles of impeachment, conviction on this standard would entail removal from office and disqualification from future political office. The standard of proof in the Articles of Impeachment is a matter of life and death, not merely the loss of office.

I have concluded that the appropriate standard of proof is “clear and convincing evidence.” In civil cases, the standard is applied in cases in which the court must make a finding that invalidates a person’s constitutionally protected interest, such as the removal of the President. Conviction requires proof of allegations beyond a reasonable doubt, but the evidence must be so convincing that it leaves little or no room for doubt. The standard is applicable in cases in which the proof met this standard.

I reach this decision after detailed consideration of the evidence that makes sense of the facts. There is a standard that each of us must apply.

THE STANDARD OF PROOF

APPLICABLE TO THE CONGRESSIONAL RECORD

To its conclusion. He did so through direct conversations with Ms. Lewinsky,/projected 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 retracted 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 CONGRESSIONAL RECORD 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.

ARTICLE II: OBSTRUCTION OF JUSTICE

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 Independent Counsel, 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 tape to a Federal grand jury in Washington, D.C.

The President’s deposition testimony in the Jones case was false in numerous respects, and his grand jury statements were not consistent with what he had testified to be true. He had testified to Ms. Currie’s anticipated testimony by “ascertaining 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, 1/17/98, H. Doc. 105-316, p. 599-60] It is unreasonable to conclude that the President was trying to influence the Jones deposition by making patently false statements to Ms. Currie, in the days immediately following his deposition for the Jones case. Ms. Currie 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 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 retracted 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, 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 CONGRESSIONAL RECORD 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.
and through his close friend, Mr. J. or- 
dan, who was able to monitor the proc- 
ess through an attorney that, Mr. J. or- 
dan, procured for Ms. Lewinsky.

Ms. Lewinsky admitted that on De-

cember 17, 1997, the President informed 
herself that he, Mr. Jordan, was able to 
separate each aspect of his work 
with Mr. Jordan at the same time. 
[Id. at S1241–42] On the day that Ms. 
Lewinsky received the job offer, Mr. Jor-
dan called the President, through 
Ms. Currie, to inform him that she had 
been subpoenaed, and that the sub-
poena required her to produce all gifts 
she had received from the President. 
Ms. Currie told Ms. Lewinsky to 
call Betty Currie if she was sub-
poenaed. [Id.]

Mr. Jordan kept the President in-
formed throughout the affidavit-draft-
ing process. He personally notified the 
President that Ms. Lewinsky had 
signed the false affidavit. [Deposition 
Testimony of Vernon Jordan, 2/29/99, 145 
CONGRESSIONAL RECORD S1241 (daily ed. 
Feb. 4, 1999)]

The evidence also clearly and con-
vincingly demonstrates that after Ms. 
Lewinsky's name appeared on the wit-
ness list in the Jones case, the Presi-
dent, through Mr. Jordan, provided in-
tensified assistance to Ms. Lewinsky in 
finding a job in order to encourage her 
to file the false affidavit. Mr. J. or-
dan accepted responsibility for the job 
search and has admitted that he and 
Ms. Lewinsky discussed both the job 
search and her affidavit in most con-
versations. [Id.] Mr. Jordan attempted 
to separate each aspect of his work 
with Mr. Jordan at the same time. 
[Id.]

The evidence also clearly and con-
vincing that the President obstructed 
justice by coaching Ms. Currie, a po-
tential witness in the Jones case, to 
provide false testimony in the Jones 
case, and by arranging for the reca-
lement of gifts subpoenaed by the Jones 
lawyers.

On Saturday, January 17, 1998, a few 
hours after completing his own deposi-
tion 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 indis-
putably 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. Curi-
e's name up, without prompting, in at 
least sixteen different answers to ques-
tions, clearly anticipating and inviting 
the Jones attorneys to subpoena her 
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 com-
motions tells us that “the President 
know what he had said in his depo-
sition and that he was hoping that she 
would later corroborate his false ac-
count.

HIGH CRIMES AND MISDEMEANORS

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. I do not find a 
singularity difficult question for this 
body, but I conclude that the Presi-
dent’s offenses rise to the level of “high crimes and misdemeanors” within 
the meaning of the Constitution.

The Framers of our Constitution pro-
vide 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’s Commentaries on the Laws of 
England. In the fourth book of his Com-
mentaries on the Laws of England, 
Blackstone addressed the criminal law. 
He distinguished between crimes that 
were “violations of the actual duties 
of the public or commonwealth, taken in 
its collective capacity,” and “those 
which in a more peculiar manner injure 
individuals or private subjects.” [IV William Blackstone, Commentaries on 
the Laws of England 74, 176 (special ed., 
1963)]

Within the latter category, Black-
stone 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. [45x56-59] 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.

But 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 “impeachments of justice” are “high misprisions” and “contempts” of the King’s courts. [ld. at 126-28]

The intent of the Framers and subsequent interpretation of this clause show that impeachment and conviction of the President is a Constitutional remnant for “public” offenses against the 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, they strike at the very heart of the 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 five years imprisonment in a federal penitentiary. [18 U.S.C. § 1621-23] The Supreme Court, in a 1988 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 before a civil trial and of offenses 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. J.udge Nixon was impeached and convicted for lying to a grand jury that was investigating him, and J.udge 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 U.S. 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. In United States v. Nixon, 418 U.S. 683 (1974), 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 the 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. Nixon 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 United States Constitution.

IMPARTIAL JUSTICE

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. As 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 J.ury;...” implying that an impeachment trial is a trial by the Senate. 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.

...President is 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 be so. In reviewing the law, we must be content 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 compromise at the blindfold that covers the eyes of Justice.

CONCLUSION

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 counter-argument, 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 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 costs of doing nothing are but the fruit of liberty that does not come without a price—a liberty sustained, only and finally, by the rule of law, and those willing to defend it. Our
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commitment to impartial justice, now and forever, is an abomination 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 with determination, obstruct justice and commit perjury before a grand jury. It cannot be.

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 was 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 and test for incompatibility.

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 law, the executive executes the laws, and the judiciary interprets the laws and dispenses justice. As the head of the executive branch, the President works closely with, indeed, is 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 and its function.

When a private citizen sued President Clinton under our civil rights statutes, the President took the position that he 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, it deliberated time 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 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 are faithfully executed. To obstruct justice poisons the well from which justice is administered. 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 very system 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. They tell the truth, the whole truth, and nothing but the truth. When the President chooses to lie, he not only defaces the judicial process, he defaces America’s right of self-defense against unfit officeholders, something that the Framers specifically provided for in the Constitution.
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 oath.

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 a perjury conviction on grounds that 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 system. To imagine this President remaining in office brings to mind Alexander Pope's troubling question: "If gold should rust, what is the use? 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 J. Jefferson Clinton from office.

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 removing this President.

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 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 Paula Jones deposition. He hid evidence from her; 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 law. As a lawyer, even 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 hid a lawsuit against 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 was to poison the well of public opinion. Once the focus shifted away from the facts and toward opinion, once the clutter 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; we can fix 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 bureaucracy. We can do it to put 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.

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 purpose 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 that acquitted 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 clatter 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 Senate Judiciary 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 Bob Dole, 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 non-attorney, I have a hard time reconciling the idea that there might be certain permissible exceptions to tell 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
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.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 our 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 6, 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, and what is going on over there, I imagine.

Even our good friend, Dale Bumpers, would say that the House managers had risen superlubly to the occasion, and I believe they have done a great job throughout. I think the House lawyers are very skilled, very persuasive people. I would make this observation—again, a non-lawyer 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 let drink the acid. I think they had a tendency to close their presentations with arguments that undermined their credibility.

Even my 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 that I am 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:

Captain Derrick Robinson, an Army officer who came up in a 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, 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 currently ask: 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.

But 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.

You know, Winston Churchill said: “Truth is incontrovertible. Ignorance may evade 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 much, much more will be asked.”

Mr. Chief Justice, I think Jesus is right.

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 my country and my Commander-in-Chief, 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 United States 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 Bureau 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 (he had vowed 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 United States 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 Senator Herman Talmadge. I was fortunate to serve under the able leadership of Senator Sam Nunn in the 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.

On both my back and ignorance to 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 forebears for insight and guidance. I have counseled privately with experts on American history and government who have had the good fortune to meet 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 that the process be held in private, 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 “high crimes and misdemeanors.” This language did not just turn up in the Constitution overnight. The language grew and survived 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, under-undoubtedly had more experience in 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 referring to impeachment must be more fully fleshed out and should more appropriately read “...and other high crimes and misdemeanors against the state.”

Here we enter 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 misconduct 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 United States Constitution, his offenses do not rise to the required level for impeachable offenses under the United States Constitution.

I will be voting against conviction and removal from the office of the President to be legitimate, the President on both articles because I do not believe that these particular charges reach the high standard for impeachment which I believe that George Mason and the other Founders intended: that such an offense must be conduct which threatens grievous harm to our entire system. I provided more detail about the reasons for these conclusions in an earlier statement I submitted for the RECORD, and I ask unanimous consent that those remarks be inserted following this statement.

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

Mr. CLELAND. Mr. President, let me begin by saying that the reason I am here today, the reason the United States Senate is being asked to exercise what Alexander Hamilton
The people have not heard the evidence trial before the people, but before the Senate these charges, I reply that he is not now on described responsibility in this matter, and have a very precise Constitutionally-pre
neither the Senate nor the House can or calculations.
news media which were not a part of my cal-
been discussed or speculated about in the
prosecution's standpoint. Thus, I will not
without even the presence of the witnesses
the exception of the President's testimony,
Grand Jury, with not only no cross-examina-
tions by the President's counsel but, with
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tered the "awful discretion" of impeachment, is because of the wrongful, reprehensible, indefensible conduct of one person, the President of the United States, William J. ef-
ors, I do not believe that the public officialship, and of-dering 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 ask 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 is much greater than the House's 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, 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 dismis the impeachment case against William J. efferson Clinton, and to vote for the Senate report which is unnecessary work for the American people.

To this very point, I have reserved my judgment because it concerns the 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 six weeks has long been before the public, and indeed most of that public, including editorial, board 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 wish to call before the Senate, the existing record represents multiple interrogations by the Off-

first of the Independent Counsel and its Grand J ury, with not only no cross-examina-
tions 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 making my judgment, there are a number of factors which have been discussed or speculated about in the news media which were not a part of my calculation.

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-pre-scribed responsibility in this matter, and popular opinion must not be controlling consid-
ering the Independent Counsel and the Staff of the Impeachment Inquiry con-
ed that "impeachment is the first step in a remedial process—removal from office and possi-
le office. The purpose of impeachment is not
personal punishment; its function is pri-
itive proofs and from partisan consider-
ations, the office of President would be de-
grade, 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. The impeachment process is based on a stronger foundation now than in the after-

While in the history of the United States the U.S. Senate has never before considered impeachment articles against a sitting elect-
official, we do have numerous cases of each House exercising its Constitutional杈 to dismiss an officer of lesser authority under the Constitution, and even after subordinated to
the legislative will. It would practically have revolutionized our splendid political fabric into a partisan Congressional autocracy. The impeachment process is based on a stronger foundation now than in the after-

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, 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, 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

While our government is certainly on a
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 social body, and have therefore
conceived of instances in which both perjury
and obstruction of justice would meet this
test, and I certainly believe that most, if not all,
cases including more than one can 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 J ohn F. Kennedy, "with a
good conscience our only sure reward, with
history the final record of our deeds," I be-
that dismissal of the impeachment case
against William J efferson Clinton is the ap-
propriate action for the U.S. Senate. It is the
action which will preserve the system of
government which has served us so well for
over two hundred 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 conclu-
sion to my judgment in this case. I do ques-
tion the sincerity or legitimacy of your viewpoint. The process itself pushes us to make absolute judgments—yes or no to con-
viction on office—and the nature of debate yields portraits of complex
issues in stark black-and-white terms, but I
believe that reasonable persons could 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, includ-
ing the need to ensure the possibility that
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, out-
weighs the potential harm to the rule of law,
because that latter risk is mitigated by:

1. The professional and political price; and an in-
depth, independent criminal justice system,
because that latter risk is mitigated by: an
independent, impartial process.

2. The threat to our system of a weakened
Presidency, made in some ways subordinate
to the will of the legislative branch, out-
weighs the potential harm to the rule of law,
because that latter risk is mitigated by:

3. The danger that the decision will be
beyond a reasonable doubt. I believe that the
decision will be beyond the scope of the
government which has served us so well for
over two hundred years, a system of checks
and balances, with a strong and independent
chief executive.

INTRODUCTION AND THE BURDEN OF PROOF

I sought throughout President Clin-
ton's trial to be true to my oath to do
"impartial justice according to the Consti-
tution and laws of the United States." When
I raised my right hand and swore that oath on January 7, I ac-
cepted a solemn responsibility. I did
not approach this trial with some pre-
ordained outcome in mind; I carefully
listened during the five weeks of this
trial to what I was told about the argu-
ments, and sought to do justice.

In considering the allegations against President Clinton, I believed that
I should apply a "beyond a reason-
able doubt" burden of proof—even though the Constitution does not speci-
ify a particular burden of proof in im-
peachment trials. The Constitution en-
trusts the decision to convict an im-
peachment officer to the individual judg-
ment of each Senator; however, I want-
to go more directly to the 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 estab-
lished to meet this burden of proof:

Proof beyond a reasonable doubt does not
mean proof beyond all possible doubt. Pos-
sible doubts or doubts based purely on specu-
lation are not reasons to doubt the
reasonable doubt is based on reason and common
sense. It may arise from evidence, the lack of
 evidence, or the lack of both 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 rea-
sonable doubt that President Clinton
repeatedly lied under oath before a fed-
eral grand jury. I also concluded be-
ond a reasonable doubt that he en-
gaged in a calculated, premeditated
campaign to obstruct justice. I now
wish to address each of those articles of
impeachment in turn.
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. She was on January 19 or 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. It is undisputed 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; he simply chose not to. He denied that he had lied to these aides. The Supreme Court has addressed just this sort of a lie, stating: "A citizen may propound the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood." See United States v. Romano, 323 U.S. 282 (1945).

PRODUCT OF JUSTICE

The evidence establishes beyond a reasonable doubt that President Clinton obstructed justice. He suggested that Ms. Lewinsky file 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 would 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 attempts 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 justice. 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, under 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 2:00 and 2:30 a.m. on December 17, 1997. According to Ms. Lewinsky, President Clinton informed her that he was going to be sued 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." Ms. Lewinsky then stated, "I'm not going to do that." 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 that if Ms. Lewinsky testified that she had had a sexual relationship with President Clinton, she would have encouraged the deposition.

Ms. Lewinsky testified that President Clinton sought to tamper with the testimony of her 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 tell me. 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?"
"I thought you were 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 things that he "agreed with them and concurred 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 6:00 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 two or three days later she called him 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. These 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. J ohn PODEsta, then-Deputy Chief of Staff to President Clinton, testified before the grand jury about a conversation with President Clinton on January 23, 1998:

"He 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. He was very explicit in saying he never had sex with her.

Well, I think he said—he said that—there was some state 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, and I 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 she had an affair then she wouldn’t be a stalker any more.

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 that he testified falsely about the 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 a high crime and misdemeanor 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, however, 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, 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. Indeed, the receipt of 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 argued some 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 witnesses. The present panel of 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-telling arsenal’; we allowed a ‘trial’ that may have been politically expedient, but I doubt history will judge it kindly.

**HIGH CRIMES AND MISDEMEANORS**

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. Appar-ently, 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. During the 1960s, 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. We 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: “Offences which proceed from the misconduct of public men, or, in other words, their 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, Dr. William Osler was to become a physician. In January 1895, he took an oath of office as a United States 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 a presidential 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 unfurl 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 the 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, seeming 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 long-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 conscious.

CONCLUDING THOUGHTS

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 understandable. However reprehensible his affair might be, both it and his efforts to hide it were morally 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 co-workers, however, escalated into illegal activity, which in turn led to perjury. That affair should not have trampled the civil rights of Paula Jones, nor should it have caused the grand jury 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 medicine. Dr. Osler lectured 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 human existence. In the practice of medicine, 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 involved 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 waged his re-election campaign 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 reprove. That pattern is driven by President Clinton's repetition of wrong, often illegal choices: the Lawson fact consists largely in balancing probabilities.

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 rule of law. For 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 Mississippi virtues: truthfulness and responsibility.

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 rare opportunity 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 true from the false. Often 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 can be 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 and took an oath of 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.

Mr. BUNNING. 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, our time was turned 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 looking at the facts as presented by the managers from the House of Representatives. Each of us took an oath when we went into this chamber that 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 remove a Democrat President they do not like from office.

The difficulty you run into when you start throwing around the term “partisan politics is that 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 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 offer us choices.

So, it is the facts that matter. And each of us must weigh them individually. We are not taking 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 the facts we don't have any other 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 affair with Miss Lewinsky. He lied under oath to the grand jury when he testified about the nature of his relationship with Miss Lewinsky. He lied under oath to the grand jury when he testified about what he told his aides about his relationship with Miss 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 Miss Lewinsky to file a affidavit in the case; when he coached Betty Currie on how to respond to questions about his relationship with Miss Lewinsky.

When he lied to aides whom he knew would be called as grand jury witnesses, when he promoted a job search for Miss Lewinsky, and when he encouraged Miss 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 the determination impartially without being biased by my political affiliation. Have I been successful? I believe so.

I am encouraged in the belief that they have reached the proper conclusion for the proper reasons by the sharp wording of the resolution being circulated by some of the defenders of the President, senators who oppose impeachment but support a censure resolution.

The managers stated repeatedly that what is at stake in this trial is the rule of law.

It is a matter of trust. And it leaves us no choice but to vote for conviction.

Mr. DURBIN. 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 law.

MORE. No more far below; but let me draw your attention to a fact—I’m not God. The current 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? 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, United States 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 obstruct justice, he did it to protect himself 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.

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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.
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 pride to serve in for 14 years, was so hellbent on impeachment that it 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 President 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 the facts and the law, 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 this field. But our job is not to judge Bill Clinton as a person, a husband, a father. Our responsibility under the Constitution is to judge the facts and the law, not whether he should be an object of scorn but whether he should be removed from office.

And the House Judiciary Committee—so anxious to complete its work in a fume-dog 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.

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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 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 vices of pride and arrogance them- selves. Before we don the armor and vices of pride and arrogance them- selves. Will our people live under them like anybody else.

And oaths are essential to the rule of law because the judicial process 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.

And 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 truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—a truth—

I believe there are two questions to be answered.

The first is whether the President impeachably took the law into his own hands in the Jones civil rights case and seven 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 proportionally, 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 affirmatively. 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. Few 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 conviction is a matter of law—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." (See Senate Proceedings in the Impeachment Trial of J judge Claiborne, S. Doc. No. 99-48, at 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 limiting the movement of evidence—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 "perjuri- ous, 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 testi-
mony of his aides who were potential grand jury witnesses.

And it seems clear to me that the President obstructed justice—that he corrup-
ted Ms. Lewinsky to lie if called as a witness; (3) encouraged Ms. Lewinsky to conceal gifts; (4) encouraged co-
operation of Ms. Lewinsky through job assistance; (5) allowed his attorney to
make false and misleading statements about the affidavit; (6) attempted to in-
fluence the testimony of his secretary, Ms. Currie; and (7) attempted to influ-
ence the testimony of other aides.

The final question is whether the President should be removed for his ac-
tions. As a preliminary matter, there can be no doubt that perjurious, false, and
misleading statements made under oath in federal court proceedings are in-
deed impeachable offenses. The fact that the House of Representatives
reached this conclusion, of course, es-
tablishes the precedent as to the kind
of conduct in this case. But, it is also confirmed by the impeachment and con-
viction of federal judges—of which, as a
vested member of the Bench, I have no
objection to. (The President has not
injured his Vietnam war draft record by
a perjury conviction.)

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 be-
fore a grand jury, and of Judge Alcee
Hastings, removed in 1989 for misde-
meanor conduct not related to financial misconduct. I cannot agree with those colleagues who as-
sert that there is a different standard for a President—that it would require a
more egregious kind of perjury to re-
move a President than a judge. Noth-
ing 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 be-
cause it “discolors and poisons the
streams of justice.” (Grand Jury
Charge (C.C.D.N.Y. (Apr. 5, 1792)) (Jay,
C.J.), in 2 The Documentary History of the Supreme Court of the United
States, 1789-1800: The Justices on Cir-
cuit: 1790-1794, at 253, 255 (Maeva
Marcus ed., 1988).)

As to obstruction of justice, on which there is no other direct precedent, Chief Justice Rehnquist, our presiding officer in impeachment pro-
ceedings, pointed out 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, ac-
curately, that even though perjury and obstruction of justice are not specifi-
cally listed as impeachable offenses in the Constitution, the Federal Sentenc-
ing Guidelines treat those offenses more seriously than they do the crime of bribe-
y—one of two specifically enumer-
ated impeachable offenses. Signifi-
cantly, 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 pro-
cess, 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 of-
fenses are not limited to the Presi-
dent’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
Senate seat would not be impeachable, while a million dollar bribe to cover up public dirty tricks would not be.

It simply cannot be, as some have ar-
gued, that only those impeachable of-
fenses are those that can only be com-
mitted by the President. If a President
commits murder, can he not be re-
moved? Must we wait until he dies before he is convicted? The 1974 House
Judiciary report on the “Constitu-
tional Grounds for Presidential Im-
peachment” summarized that impeach-
ment of a President can “be predicted
only upon conduct seriously incom-
patible with either the constitu-
tional form and principles of our government or the proper performance of constitu-
tional duties of the presidential of-
fice.” (Staff of House Comm. on the Ju-
diciary, 93rd Cong., 2d Sess. (Comm.
Print 1974), Constitutional Grounds for
Presidential Impeachment, at 24.)
Surely the violation of constitutional obligations can constitute high crimes or misdemeanors for which the Presi-
dent 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 re-
sponsibilities, President Clinton is sup-
posed to see that the sexual discrimi-
nation was not legally executed. But he thought the Jones case was ille-
gitimate, 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 an-
other branch of the government.

The same is true for his deliberate ef-
forts to impede legitimate discovery ef-
forts in federal court proceedings. Such
action “is incompatible with . . . the
constitutional form and principles of
our government,” as the 1974 House Ju-
diciary report said. It simply cannot be
that a President who wrongfully inter-
fered with the proper functioning of an-
other branch of our government by at-
tempts 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 aggra-
vating not a mitigating factor. In sex-
discrimination litigation, where there is frequently no corroboration for the
plaintiff, a defendant who lies can eas-
ily subvert justice. Had the blue dress
not been found, with its incontrovert-
ible tangible evidence, I doubt Paula
Jones would have gotten a dime in set-
tlement.

Judgments about the severity of the
impeachable conduct in this case will
lead different Senators to reach dif-
ferent 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,
no, I believe that there can only be
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 cover-up is no longer worthy of trust—which all agree is essential to the conduct of his of-

cice—but also must be removed to
avoid the perpetuation of a legal dou-
ble standard. If federal judges (such as
judges Claiborne, Nixon, and Hastings) are removed for similar conduct; if average Americans are impris-
oned for it, can the rule of law long
survive “special exceptions” for power-
ful people we like, or who are doing a
good job, or who hold elective office?

None of these rationalizations are de-
fenses to illegal or impeachable con-
duct.

As I said, sexual harassment cases
are precisely the kind of judicial pro-
cedings that demand the maximum
cooperation of and truth-telling by the
defendant, because of the lack of third-
party witnesses or corroborating evi-
dence. 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, domes-
tic violence, or sexual assault cases be-
cause defendants lie and obstruct jus-
tice (and there is no blue dress to keep
them honest) before it becomes seri-
ous?

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 stand-
ard if the lowest common denomina-
tor 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 case helped to remind us of how grave is the power of the President 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 and must not do nothing. 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 Article of Impeachment.

He failed to discharge the House 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, Arizona. He was quoted recently in a map-on-the-street interview about this case. "They talk about justice," he told the Arizona Republic. "They talk about the right thing," said Mr. Valenzuela. "But they always look the other way when someone rich, famous or powerful..."

And 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 and again and again. The President said he knew that things were true. Well, he didn't comment directly on anything he told them that were false. But nobody said, "Did you tell them things that were false as well?" to give him a chance to perjure himself on that. When asked about Monica Lewinsky—was he alone with her—on a series of rambling answers 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 sometime after that?" He was not asked and, therefore, did not deny and, therefore, on this record did not commit perjury under the Bronx case.

The testimony of Betty Currie we heard again and again and again. Here 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 she came back on in July, she said, Well, it was different on that occasion. She testified that the President asked, and, therefore, did not deny and, therefore, on this record did not commit perjury under the Bronx case.

The testimony of Betty Currie we heard again and again and again. Here 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 she came back on in July, she said, Well, it was different on that occasion. She testified that the President asked, and, therefore, did not deny and, therefore, on this record did not commit perjury under the Bronx case.

Betty Currie was not a witness in this proceeding—didn't even have her deposition taken, and was not a witness; did not have her deposition taken because of very, very restrictive rules which the U.S. Senate said what the House managers could do. The House managers were on very, very sharp notice that if they asked for too many documents they would have been held in contempt of court. They made their selection of witnesses, and they left off Betty Currie.

But had House managers been able to present their case in the normal course—of questions, the kind of questions that would have been even faster; that we heard some 12 days of speeches, 6 days of opening speeches; 3 and 3. We could have done that in 2 hours. We then spent 2 days propounding questions through the Chief Justice, 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 burdened 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 find an American President guilty of a crime.

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 vote to the effect that the third plus would not be for conviction and, therefore, to end it. And then when we had the vote on the motion to dismiss, and 44 Senators voted to dismiss, it confirmed what we all knew: 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 votes that we submitted 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.

For the full record. 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 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 the Senate, and walked over and talked to my friends on the other side of the aisle, the people that 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 in the Senate. 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 by-passed, but instead we now have the President 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 is appropriate; if indicted, if convicted, the 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, it would have to be in 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 Constitutional Convention, the Federalist papers, and the English and United States 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 be called political..."

The President's conduct is "in his public character" as a citizen, and 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..."

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 defining it, but I know it when I see it..."

PARTISANSHIP IN THE HOUSE

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 bi-partisan, some Republicans bore the brunt of the public disfavor 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 substance.

It has been widely noted that there must be significant bi-partisan support to remove a president. President Nixon's forced resignation occurred only with Republican defections. 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 bi-partisanship, mostly without success, but we did avoid the rancor and bitterness which prevailed on the House side.

THE IMPROBABILITY OF TWO-THIRDS FOR CONVICTION OVERSHADOWED THE PROCESS

From the outset, the conventional wisdom was there would not be two-thirds in the Senate in favor of conviction. That pervasive view has cast a long shadow over the impeachment proceedings. When the Senate convened on January 6th, there was immediate informal consideration on taking a test vote to determine if there were 50 Senators so opposed who based their judgments on news media accounts. That trial balloon was abandoned when 34 Senators opposed to conviction threatened to vote for acquittal 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 34 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 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 CONSTITUTIONAL REQUIREMENT FOR A TRIAL**

The Constitution explicitly provides for a trial:
The Senate shall have the sole Power to try all impeachments (emphasis added). Article II, Section 3, Clause 3

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 6 and 17 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 of Representatives.

In a series of halting half-steps, the Senate stumbled through a “pseudo-trial”, a “sham trial” — really no trial at all. In the end, it would have taken a vote to let the House Managers put on their case with a full White House defense rather than the helter-skelter procedures adopted by the Senate.

**THE ADVERSE PUBLIC REACTION**

From the time the Senate reconvened on January 26, 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 multi-year, multi-million dollar investigation.

Instead of hearing testimony from 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 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 senators' counsel had fought so strenuously for the public to observe the videos, it is inevitable that many saw only a portion of 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 was 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.

**LAWYERS' ARGUMENTS INSTEAD OF TESTIMONY**

Instead of hearing testimony from live witnesses, the Senate listened to twelve days of lawyer's arguments. Six days were consumed by opening statements which should have taken a few hours. For two days, Senators submitted questions through the Chief Justice for responses from attorneys which added little illumination to what was occurring back in the cloakrooms.

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 witness 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 counsel and process, but the Senate is duty bound to “try” the case as mandated by the Constitution and do "impartial justice" as the Senators’ oath specified.

**THE WITNESS WAR**

I was one of three Senator-presidents/observers designated by Senator Lott, the Majority Leader, for the deposition 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.

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 he was fresh off his work before the 100th 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 bi-partisanship on witnesses and procedures. At a joint caucus on January 8th, by almost spontaneous combustion, agreement was reached 100-0 on preliminary procedures leaving depositions and witnesses until later.

Immediately thereafter, bi-partisanship broke down. While this may seem self-serving from the Republican point of view, Republicans had more to gain from bi-partisanship 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 districts.

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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. The oral argument was held with lawyers again presenting arguments which had been repeated on eleven 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 PERJURY ARTICLE

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 cameos 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 versus 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 six months, in Zurich.”

His answer that the company had an account there for about six months was accurate. It was not accurate that was the only account the company had. The Supreme Court exonerated Bronston on the charge of perjury because the questions raised more questions by far than they answered. The President was, in effect, asking the Senate to testify? If not, why not? If he 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 eleven sexual encounters either in the Oval Office or the adjacent hallway. In his January 17th 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, the President was asked if he was ever alone with Ms. Lewinsky in the hallway between the Oval Office and the kitchen area.

“I don’t believe so, unless we were walking back to the 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 said “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 Bremen 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. Mr. Blumenthal further testified that the President told him that he had ‘rebuffed’ Ms. Lewinsky’s advances.”

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 of gratifying the person being deposed or 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 was that what’s 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, ‘(f) you 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 “is” means is and it has been, then this 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 in his own initiative or a Senate invitation, would the Senate be justified in drawing an adverse inference from his failure to testify?

While my 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 29th the President refused to answer ten written questions submitted by Republican Senators.

On February 3rd, twenty-six Republican Senators sent the President a letter requesting a deposition. As expected, 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 of the Senate, the President could then consider exercising the political will to act 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 are open questions?

In my legal judgment, the Senate has the power to subpoena the President. (My memorandum to Senator LOT T dated December 10, 1998, attached as Appendix B discusses the Senate’s legal authority to subpoena the President at pages 8 through 11. My memorandum to Senator LOTT dated December 29, 1998, attached as Appendix C, discusses possible testimony by the President at pages 12 and 13.) Senate Impeachment Rule 6 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 in the 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.

The Article on Obstruction of Justice

Following President Clinton’s deposition in the Paula Jones case on January 17, 1998, the President called his personal secretary, Betty Currie, 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 (1/27/98) that, based on his demeanor and the way he made the statements, the President wanted her to agree with them.

Six months later (7/22/98) when she testified for the second time, Ms. Currie said that although the President stated “right?” at the end of the statements, she felt 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 undertook her January 27th 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:

“arrests that is on the same 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 conversation 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 2:00 pm or so”. Cellular phone records reveal that Ms. Currie phoned Monica Lewinsky’s home at 3:32 on December 28th and had a conversation of one 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 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 conflicts (3:32 pm) 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 the President 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 Monica 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 these phone calls took place prior to the issuance of Judge Wright’s order of the same day.

On January 7th, Ms. Lewinsky signed an affidavit denying a sexual relationship with the President. On January 8th, Ms. Lewinsky had an interview with McAndrews and 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 McAndrews and Forbes, and asked for this help. The next day, Ms. Lewinsky was given another interview and was extended an offer to work for Revlon, a subsidiary of McAndrews and 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 the obstruction 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 until she was subpoenaed or the President coached her or Vernon Jordan helped her get a job.

LIMITATIONS ON THE HOUSE MANAGERS

The signals to the House Managers from the Senate were unmistakable. Many Senators have sought to explain 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. 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.

TV AND THE TRIAL

The Senate proceeding posed a curious dichotomy with one hundred sitting silent Senators in the Chamber and non-stop 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 ended 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 merits to dismiss and the Resolution on depositions, the sessions were closed so that 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 TV and the Trial. The informal, seat-of-the pants, corridor comments may be found in the Sunday talk shows. The President's lawyers have displayed the egregious character described harshly by his defenders in their proposed censure petitions. That sequence might have led to his removal.

But 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. President Clinton may still be impeached 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 been spared 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.

CONCLUSION

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 depositions, the House Managers had one hand tied behind their back. There has been no "trial" but only a "pseudo-trial" 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 would have been no other 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. President Clinton may still be prosecuted in the Federal criminal courts when his term ends. His lawyers have displayed the egregious character described harshly by his defenders in their proposed censure petitions. That sequence might have led to his removal.

When the Senate prohibited live witnesses, the House Managers submitted only three names for depositions necessarily leaving off potentially important witnesses. 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.

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 9:30am on January 8th where the outline of a procedural agreement was reached and that first stage without resolving the witness or deposition issues, but deferring them until we knew more about the opposing parties’ cases.

When a resolution of agreement was being drafted in the early afternoon fleshting 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 for that vote. On the afternoon of January 11th, I met with Chairman Ruff on January 12th advising him of the need, as they saw it, for specific witnesses.

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 a witness list and the situation 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 witnesses as they saw it, for specific witnesses.

I called White House Counsel Charles Ruff on January 12th advising him of the
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 they would proceed 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 of the procedures or decisions 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 sufficient 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. In our discussions with our caucus on January 25th, we said it was problematic whether there would be sufficient votes for a lengthy witness list.

Late in the evening on January 26th after closed door Senate debate on calling witnesses for depositions, Senator CARL LEVIN and I discussed a bipartisan compromise. We continued that discussion 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 worked together on 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 committee that they would be videotaped only by House Managers and limited staff. Republicans insisted that the depositions 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 with latitude to develop depositions without specifying their use after defeating Senator DASCHLE’s amendment to limit the depositions to the typed transcript without videotapes.

After these positions 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


To: Senator TREN'T LOTT, Majority Leader.

From: Senator ARLEN SPECTOR.

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 late January?

2. Must the Senate start the day following the House presention of the articles of impeachment?

3. Is censure authorized in an impeachment proceeding?

4. Must the Senate hear testimony from live witnesses?

5. How long will the Senate impeachment trial take?

6. Possibility of conviction

7. Constitutionality of procedure

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 L. Ouillion, a Unitied 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 impeachment of Alcez L. Hastings, a United States judge for the southern district of Florida.1

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’s jurisdiction, and the Senate may establish a more flexible schedule.

Rigorous consideration of the United States Supreme Court in the case involving Judge Nixon where the Court held the Senate had the authority to conduct an impeachment proceeding is concluded, it is my judgment that 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 conduct an impeachment proceeding.

Must rule III on Senate impeachment procedure 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 days (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 interesting action between the time the articles are presented 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 impeachment proceeding is given a date to answer the Articles and the House is then given a date to reply.

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, references from the Constitution, the Senate Rules on impeachment proceedings and the prior practice strongly suggest that live witnesses were contemplated by the framers instead of merely a hearsay report.

The Constitution realy only provides for a trial in the provision of Article I, 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 stat that would require something more than a hearsay document to answer any questions about the factuality of the charges.

Would the Senate follow the Starr Report or is the Senate obligated to hear testimony from live witnesses?

For example, in the trial of President Andrew Johnson, the President was given 17 days to prepare his answer, and the House Managers filed 12 days to prepare their brief reply to the President’s answer. In the 1999 trial of Judge Walter Nixon, the Judge was given 29 days to prepare his answer, and the House Managers given 29 days to prepare their response.

The Senate, as noted above, did not follow the Starr Report but did give 29 days to prepare their response and 12 days to prepare their brief reply to the President’s answer.
bound by traditional rules of evidence so that we might consider matters not admissi-
ble in a court of law, it would seem questionable or appear unseemly to base our judg-
mint only on our hearsay on such an import-
ant proceeding.

The provisions of Article I, Section 3, Clause 7 carry forward the analogy of trial refer-
ed to in the “judgment of acquittal.” The Senate would apply. A motion to adjourn
an impeachment trial, the general rules of
compliance at the outset by a majority vote
ation, there is authority that could be ac-
cepted by the Senate. A motion to adjourn
is made on the basis of which 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 question of whether the Senate
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 neces-
sarily be long. The key witnesses would be
Monica Lewinsky 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
call a total of 55 witnesses. That would be
a mistake of weeks, not months. That 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 un-
predictable turns of events. The President’s
August 17th short speech was a bomb. The
House’s release of the President’s grand jury
questions reversed the President’s answers to the House questions reversed the
reversal. It is entirely conceivable that a Senate
trial could determine the outcome and
find the two-thirds votes for conviction if
the evidence is properly presented focusing on
abuse of power and obstruction of justice in-
stead of lying about sex. While impossible
to quantify with precision, it may be that there
are now about fifty votes for conviction, per-
haps a half dozen open minds and maybe an-
other dozen severely prejudiced. If they
think there is insufficient political
acquittal. If the President had talked on those two
dates to Congressmen Sonny Boy comms 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 testi-
mony on the obstruction charge. Vernon Jor-
dan was the best witness on the potential on
the abuse of power issue. Jordan testified he
reported to the President “mission accom-
plished” 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 with a nickname and a sugar
grower in Florida with a name something
like “Fanjul.” It was later confirmed that
the President had talked on those two dates
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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.

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. And 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 managess ample time for the Hastings, Nixon or Claitbourne trials, this is obviously a very different matter. The impeachment trials of President Johnson and those which occurred after the 1972 Watergate affair provided 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 will have a fair, just and 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 that 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 more efficient for appellate procedures 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 had 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 (or a county) court with a criminal jury trial would have a minimum trial day established from 9:30 am to 5 pm. Senate Impeachment Rule 3 provides for Saturday sessions in impeachment trials.

I recommend the so-called double track rule 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 Senate expend this period as 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 July breaks and proceedings which would likely produce significant public approval.

THE IMPORTANCE OF LIVE WITNESSES

I strongly recommend live witnesses on the key issues and also prohibiting any evidence against use of hearsay such as the Starr Report. Prior impeachment cases establish the precedent for live witnesses and the Senate should not deviate. Senate rules provide procedures for dealing with witnesses.

Live witnesses have customarily testified in House impeachment proceedings. In the Senate, for example, live witnesses testified in all impeachment cases involving the President 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 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 watched in history. Notwithstanding constant pressure from Chief Justice Warren, who wanted the inquiry concluded at an early date, the staff lawyers insisted on extensive and extensive depositions. We had some idea 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) the President 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 Prof. 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 true to some extent that everyone has different expectations. It is important not 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 everyone expects, he will testify.

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 J. Ordain to testify about contacts with the President including his telephone conversations. He reported his phone was “unreliable” after arranging with another lawyer to get Ms. Lewinsky’s perjurious affidavit and giving 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 is a valued and articulate witness, the element of her testimony could be put on the record at trial by going through her first statements 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: "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold 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 already enumerated in the Constitution.

The argument is now being strenuously advanced by many, including the 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 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.”

Censure would be punishment 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.

The Senate, as the court of impeachment, could not 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.

The Senate, or the Court of Appeals, or no one, can grant immunity from future criminal prosecution. The Senate can take steps to have immunity granted by the Court. But the ground could be for refusal by the President or any witness asserts the privilege against self-incrimination under the Fifth Amendment. The Court then grants immunity and then the testimony could later be used against that person in a criminal prosecution.

A general statement which 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 does not 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, which delegates the authority to compel the President to testify: “The Senate shall have the power to compel the attendance of witnesses” and “to enforce its rules, orders, mandates, writs, precepts and judgments.”

Notwithstanding that express language, some have argued that if the President is subject to compulsory process (subpoena) because of Rule 8 which provides: “A writ of summons shall issue to the person in question for the purpose of obtaining his attendance 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 afraîd attending, . . . and 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 any testimony. That is incorrect and because Rule requires the President to respond to the summons and filing an answer “either in person or by attorney.” So the attorney’s actions satisfy the rule without the appearance of any 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 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: “The head of the executive . . . 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, 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 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 prosecution 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 authority in a civil case, a defendant may be called involuntarily to the witness stand by his/her opponent “as on cross” which means he/she may be cross-examined.

In re: 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 the facts can be left to a later day if, and as 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 Senate-jurors. The President’s lawyers could not shield him from cross-examination and he could not avoid testifying about a series of matters 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 Senate-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, and when he declined to testify after serious incrimination forced him to do so. If subpoenaa sentiments formed along party lines, it would be the most severe test of acting only with a bipartisan consensus.

Over the years, long 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 is completed before the President decides, it is conceivable, although highly unlikely at this point, that a plea bargain could be structured with the Independent Counsel’s conclusion 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’s view of President Clinton’s other business would not be attended to forever long the trial took.

That is why I continue personally to favor putting of President accountable 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 matters investigated by 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 reaction would not react unfavourably 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 and Republicans.

Public reaction, as gauged by the polls, was adverse to the House proceedings, at least in part, because of their highly partisan nature as many House members have 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 on whether the public feel that the proceedings are bipartisan, so the Senate must take extreme care to make the trial bipartisan. As the majority party, the Republicans need to work towards 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 have 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 hearings and Starr Report for the key of its decision. 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 Starr Report shows the President’s answers 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 historic record and have the indigent grand jury, trial jury and presiding judge hold the President accountable to whatever extent warranted after his term ends.

A rush-to-judgment censures plea bargain would not protect the key of the case. The opposite could happen where the Senate decides to leave it to the public to decide the key facts. An inquisition by the public could leave it to the Senate to hear from the President. It will not matter contrary to the polls.

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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 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 it was, "President Clinton who initiated the retrieval of the gifts and the concealment of the evidence on December 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, disprove the existence of a relationship. So on the 22nd she decided on her own to withhold some of the gifts. And yet we are told by the managers in 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 initiated the retrieval of the gifts. "Maybe I will call and get some of the gifts to Betty." She initiated that. And then the President said either nothing or, "Let me think about it." And then the question came up: Well, 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?

And here is where another inference is drawn, that in fact it was Betty Currie. I think I would say the call that inference is that the President told Betty Currie to call Monica Lewinsky. There is a conflict there between Betty Currie and Monica Lewinsky.

But one of the most intriguing issues in this whole matter is 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 attention by the way.

The President gave Monica Lewinsky at least three things that day: That bear carving that Dale Bumpers refers to that came from Vancouver, a small blanket, and a stuffed animal.

Now, 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 bore some symbolic strength, were a tacit reminder to Ms. Lewinsky that they would deny the relationship even in the face of a Federal subpoena. Is that the inference that they say is the only logical inference? Giving three gifts to Monica Lewinsky, including a bear.

Now, there is a real problem with that. First of all, that bear was obtained by the President in Vancouver and then given to Betty. That's the 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 she would deny their relationship? Is it reasonable to deny their relationship in the face of some future, unforeseen Federal subpoena?

But 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 response was "Yes." But 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. Is that the kind of inference we are asked to draw?

Now, 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 in the negotiation 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 28th order 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 accomplice of the alleged obstruction of justice was the President—if that prosecution and conviction would not be pursued by a grand jury. 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 none said that President Clinton 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 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," these former prosecutors said, "it is my view that the alleged obstruction of justice and perjury would not be prosecuted by a grand jury." I have great faith in the grand jury.

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 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 be pursued by a grand jury. If 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 the 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, the presumption of innocence.
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 regularly 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 is . . . unequivocal in asserting 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 she was never “encouraged” 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 uncontroverted 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 . . . burden of speculation,” 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 uncontroverted 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 28th visit, the President encouraged Monica Lewinsky to give away 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 receipt of the gifts 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 undeniably true and 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 and even offered as speculative 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. 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 sign to her 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, “unequivocably, indisputably, 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 the multiple inferences presented.

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 offer of Jordan, the President “advised Ms. Lewinsky that he ‘saw nothing happen’ 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 3rd.

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 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 Zirinsky, who served as U.S. Attorney for the Northern District of Illinois, and whom Chairman HYDE described as having “extraordinarily high” qualifications had this to say:
The articles of impeachment before us are all, in reality, 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 Senate directed the Senate 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 Senate Judiciary Committee, J. J. 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. . . . renders no moral or social judgments. The Report is a simple and straightforward compilation of information gathered by the Grand Jury, and so more. . . . (In 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 J. J. 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 judgment, containing 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 2/3rds majority of the Senate actually agreed on a particular allegation. Article I, for example, charges that President Clinton committed one or more of the 4 possible acts of perjury; Article II charges that President Clinton committed one or more of 7 possible acts of obstruction. Without separate votes on each of the alleged acts, it would be impossible to determine whether 2/3rds of the Senate agreed that the President had committed any of the actions alleged. Since the Court of Impeachment decided upon a vote of 2/3rds 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 [. . .] 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, whether 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 has 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 fruition a bipartisan product. The President should know, the American people should know, and history should know that in declining to proceed 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 believe 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 we are in the position of having 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 matter 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.

Ms. SNOWE. Mr. President, now that we have come to the end of the process required by the Constitution, I feel we have arrived at an appropriate time to consider a measure required by the President’s conduct.

I rise in support of censure because while I do not find that the President’s behavior constitutes high crimes and misdemeanors requiring removal, I do believe that it compels us to record for history our recognition of the damage that he has inflicted upon the Office of the Presidency and the Nation.

Acquittal must not be the last word. And while I have felt that it would have been more appropriate for the Senate to issue findings of fact in the impeachment case against the President, I am now prepared to support censure so that there is no mixed message for posterity about what the Senate thinks of the President’s actions. Yesterday’s finding that the President’s behavior is indefensible, and I for one have no interest in seeing another shameless “Rose Garden Jubilee” after today’s vote by the Court of Impeachment. Acquittal is not exoneration. Nothing we do here today in any way absolves the President’s responsibility for the harm he has inflicted—and the President must know this.

Indeed, this has been a sordid chapter in the history of the Presidency, and it deserves to be closed. The President has a stern and a strongly worded rebuke that will leave no doubt to future generations that this process was not simply much ado about nothing. It was, in
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fact, about something very important—the sanctity of public service.

That’s why I worked with Senators Feinstein and Bennett to include language expressing the will of this Senate that this resolution not be revoked by a future Congress. I also want to thank them for their willingness to include language that makes clear the Senate believes the President should be treated like any other citizen facing criminal allegations once he leaves office.

The fact is, even while this body has acquitted the President on Articles of Impeachment, the framers provided for an additional remedy for his conduct in a standard criminal court. Why? Because they had known a country where some men were above the law, and some below. And they determined to create a nation where the level of justice served was not proportional to a person’s pocketbook, social rank or political power.

I believe acquittal, though the proper outcome, by itself could present a skewed picture of the Senate’s findings, and runs the risk that the President would be permitted to conduct himself with impunity. Lowering the standard would undermine the Constitution? Are these matters of opinion and fact.

The President may not have committed high crimes and misdemeanors, but what he has done—in my mind including unlawfully influencing a potential witness—deserves a formal rebuke by the Senate. Censure would be an appropriate and constitutionally permissible way to do this.

For a President who from the very beginning promised the most ethical administration any of us would ever see, censure would be a well-deserved legacy of a promise broken and a President sullied. I will vote for this sentence motion and I urge my colleagues to do likewise.

Mr. KOHL. Mr. Chief Justice, throughout this process my colleagues from both parties 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 ostracize 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 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 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 disgust I feel about the failings, lies, personal matters. I have no doubt about my duty as President, 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 nation.

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 intended 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 even 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 in the constitutional sense. 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:

“If 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 that the President is guilty in your mind from the facts that’s he didn’t obstruct justice, you’ve got to some how 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. . . . You’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 the nation.” To do that, it makes sense to consider the views of the American 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 at removing a President?

To ask that question is to answer it. It is true, of course, that we have removed judges for lying under oath; for example, ten 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 being not sex. More importantly, the only way a judge can be removed is by impeachment. A President, on the other hand, can be removed every four years through an election, and is automatically removed after eight years by the 22nd 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 the standard of serious allegiance. 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 one Article—perjury, abuse of power, obstruction of justice 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 would still result in a 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, it’s plain and should concern 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 to ensure that the President and this Court stand united and demand accountability. How could the President ever again be trusted to serve as our Commander in Chief if 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, it’s plain and should concern the President, and we ought make our condemnation of his conduct as strong as possible.

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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 did not appear responsible for its becoming known, told Jordan herself that she had addressed 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 called 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 satisfy the President concerning that relationship, the affidavit would have to have been filed in time for the court to consider it. Jordan telephoned Jordan's lawyer to see it before the deposition. The President's lawyer 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. But the deposition was not taken until January 20, 1998. Mr. Jordan then called the President's counsel, who 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. The judge questioned Lewinsky based on the judge's peculiar ruling that used only one-third of a standard courtroom definition of "sexual relations" and the plaintiff's "insistence in using that 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 questions should "ask Betty." Indeed, the President repeatedly 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, the President admonished 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) "We 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 11:00 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 two hours on the morning of the 19th, Ms. Currie paged Ms. Lewinsky four additional times. The President then called Mr. Jordan, who called the White House three times, paged Ms. Lewinsky, and called Mr. Carter, all within twenty-four 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 twenty-four 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 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 he had not had oral sex with Ms. Lewinsky. Blumenthal also indicated that Lewinsky said that she was known among her peers as the stalker, and 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 anymore. He also told Blumenthal that he had not had oral sex with Ms. Lewinsky. 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 Morris to conduct an informal 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 he had not had oral sex with Ms. Lewinsky.
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 the basis of this evidence 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 had 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 inappropriate 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 was maintained because he wanted “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 relations 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 regarding the Hillary Clinton/Monica Lewinsky sexual relationship, were in response to questions propounded to the President by the House of Representatives, failed to pass the House.

“HIGH CRIMES AND MISDEMEANORS”

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 states that “the President shall be removed.” Therefore, the questions become, 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 criminal cases, 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 sufficiently serious to merit removal from office. The better analysis is that the Senate may conclude that the President’s conduct is not sufficient for removal and 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 discovered by the Independent Counsel 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 Constitution, precedent, scholarly commentary, 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 define 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, 1876. As reported out of Committee, impeachable offenses included only “treason and bribery.” Mason wanted to add “mal-administration,” 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 “impeachable offenses” that are not only political but also criminal. The Constitution makes the Senate the repository of the decision to impeach. Madison was under the impression that such language would leave the President at the mercy of the Senate.

There was continued discussion and debate after ratification concerning the impeachment process. James Madison contended that the wanton removal of meritless officers would subject a President to impeachment and removal from office. Forty years later, Justice Story, in his Commentaries insisted that “not every offense” is a high crime and misdemeanor, that “many offenses, purely political . . . have been held to be within the reach of parliamentary impeachments, not one of which is of the slightest manner alluded to in our Constitution.”

There are those who believe that the Constitution is “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. The ratifiers at the Virginia Convention clearly agreed that a President could be impeached for non-indictable offenses.

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Therefore, it seems that despite the framers' and ratifiers' incomplete discussion, our inability to put our hands
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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 developing—certain perimeters within which our decision is 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 helpful derived from convictions, in terms of precedent 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 were brought by 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 certain offenses 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 decisions based 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." There is little more help derived from this 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 in itself as it is political, the Framers vested the process in the legislative branch. Protection for crimes was lodged in the judiciary. Thus, a President, who cannot be prosecuted while in office, can 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." The theory was that common law courts should be free of 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.

I derive from that 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. 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 offense must be a crime. They then make the further argument that the violation has to be a crime of "high crimes and misdemeanors." I do not think that either position is consistent with history or proper analysis.

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 a reliable category 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
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 that it is mere lapsing 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 necessarily serious) offense. But 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 I have outlined. 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. Bartovitz in his seminal 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 perjury or false 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 factorsÐrepetition, pattern, coherenceÐthat tend to establish the offense. A single isolated act is not sufficient to constitute an impeachable offense unless it serves to undermine the President's reputation or seriously harms the country. The concept of a pattern of conduct is much more meaningful in impeachment cases.

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I believe that this statement is very relevant to the obstruction of justice charge, which I will discuss later.

Article I—Grand Jury Perjury

Article I, after alleging generally that President Clinton violated his oath of office and care and diligence to see that the laws be faithfully executed 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 shall apply them to congressional proceedings.

The reason for rules against charging several offenses in one article is clear. A group of senators as few as seventeen 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. To understand what 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 reliance 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 argued that its committee report provided adequate notice of one or more 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 occurred 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 so eliminated, so eliminating the 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 aggregated 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 Senate has been more precise in the case before us and 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] 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 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 disjointive “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. It should be deprived of the basis of any motion to dismissal filed by any court or grand jury of the United States. Statements which are misleading but literally true cannot form the
In reality, there were eleven such occasions, and that he had "occasional" telephone encounters with Ms. Lewinsky when they were at least seventeen that contained sexual banter. I do think that these statements constitute perjury. They were false, made willfully, and were material. Something that happens seventeen 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 tried to minimize his relationship with her begun in 1996, when she no longer had that status. Finally, the statement was 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 sexual 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 material importance to the grand jury, I conclude that it was perjurious. 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's inquiry, it was material as well, since they went to the serious, such as treason, then the Senate should consider the case 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 criminal proceeding, but a hybrid. It is therefore inappropriate to 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 harm to the national security or health, 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 statements to Ms. Lewinsky 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 trial that he had an inappropriate relationship with Ms. Lewinsky. To be sure, President Clinton conceded that the relationship began in 1996, rather than 1995. The House managers note that this is significant because the President's office was an inappropriate relationship with Ms. Lewinsky began as a friendship changed into an inappropriate sexual relationship. However, the President said that he "was not even sure" that he was paying 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, 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 statement as perjurious. 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. In fact, I believe that the President 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 and presentation of evidence." 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 four of Article I apparently concerns whether the President truthfully told the grand jury that when the subject of the "specific statement in January" 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 they were true. The law was. Although Ms. Lewinsky never testified that the President said this to her, she once indicated that it sounded familiar. 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 four 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 never advised aides that he had 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 if 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. I have not been able to determine whether the 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 four of Article I does not constitute perjury, I conclude that the other two sets of facts -- the statements to 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 one 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 some day bring him to the bar of public opinion and 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 lie the very day before he 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 indicative 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—OBSTRUCTION OF JUSTICE**

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, or 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 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 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 a job assignment, in his capacity as a Federal grand jury and 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 truth of that testimony 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 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, 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 subsequently acknowledged by his attorney, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton undermined the integrity of his office, has brought disrespect 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 proceeding in aid of the United States, or any 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 judgment, or any process, or any indictment, information or other proceeding, instituted or caused to be instituted, by, or at the instance of, the defendant, or in the exercise 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 acted with the intent to influence a witness to give perjurious false and misleading testimony if and when called to testify personally in that proceeding, 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 the proceeding to obstruct 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 (8th Cir. 1994); 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 succeeded in obstructing justice. Id. at 599, 600.

Among the acts that courts have concluded violate § 1503(a) include the creation of false documents to be presented in evidence, United States v. Chihak, 137 F.3d 252 (3rd Cir. 1998); and prohibiting a witness from reporting 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. United States, 76 F.3d 442, 452-53 (2d Cir. 1996). Unlike § 1503, § 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 insufficient 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. 1998). 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, the defendant’s conduct 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, as shown by the cases filed an affidavit he had strong reason to call as a witness, the President cleared would have definitely led to her being mistimed is fatal to the theory 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 the fourth item of Article II charges 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 before he was asked if she were subpoenaed, and that she could file an affidavit in the case in order 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 thus corruptly acted to obstruct the Jones case by asking Ms. Currie to retrieve and secret the gifts. That constitutes obstruction of justice, as shown 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, asked Ms. Currie that the subpoena had been suppressed, and he determined that he would ask Ms. Currie 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 shown by the cases that have convicted defendants of that charge for having instructed subordinates to conceal 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 minutes concerning his improper relationship with Ms. Lewinsky, began, while insisting that the cell phone call’s 90 minute length was proposed. Ms. Lewinsky testified that she received other telephone calls from Ms. Currie that day to learn whether 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 last 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 by encouraging or supporting a scheme 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 June 19, 1998, television network news that 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. Ms. Currie was present on 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 Ms. Currie 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 Jordan signed the affidavit, when he called the CEO of McAndrews & Forbes to successfully obtain a second interview for her at Revlon after she told him that
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 the court that 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 or form with Ms. Lewinsky.” The President’s statement was false because he had never seen the affidavit. The President obstructed justice by corruptly allowing his attorney to make false and misleading statements to the court that the President had seen the affidavit, and that it showed that “there is absolutely no sex of any kind or form with Ms. Lewinsky.” The President’s statement was false because he had never seen the affidavit.

The sixth item of Article II concerns the President’s obstruction of justice by corruptly allowing his attorney to make false and misleading statements to the court that the President had seen the affidavit, and that it showed that “there is absolutely no sex of any kind or form with Ms. Lewinsky.” The President’s statement was false because he had never seen the affidavit.

The conversation occurred in the Oval Office, where the President was attempting to influence the testimony of a witness in a case against him.

The White House responded to this charge in a flurry of activity. Ms. Lewinsky had begun her job search in July, and after a few months had not landed a job of her liking. The President then began taking steps to make sure she did obtain a job. He then took steps to ensure that Ms. Lewinsky was not 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 Lind made no effort to assist Ms. Lewinsky in finding a job is irrelevant to whether, not having obtained a job, the President took steps to make sure she did obtain one and that the effort to keep her off the potential witness list. President Clinton knew, and Mr. Jordan knew, that the affinity was a person in support of his denials was critical with-
The White House arguments in response to these facts is 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 in fact has no knowledge of such a proceeding 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 §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.

The White House also contended the President could 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 of it. But this 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 aides, including Sidney Blumenthal and Mrs. Lewinsky, that he had not had sexual relations with Monica 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 was in 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 aids might be summoned before the grand jury. These facts constitute paradigmatic witness tampering. The President knowingly engaged in misleading conduct, as defined by Congress, with intent to influence the testimony of those aids in an official proceeding.

Once again, the White House’s arguments to the contrary are unavailing. The White House contends that the President did not know that the information he gave 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 irrelevant, as the White House contends, that the President did not attempt to influence his aids’ 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 Mr. White House Counsel Ruff raised for the first time in closing argument that the President could not be convicted of obstructing justice if he did not have sexual relations with Ms. Lewinsky, to give false testimony; facilitating and encouraging Monica Lewinsky to submit an affidavit that she 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.

Government employees to transfer false information to the grand jury was inadequate as a matter of law for 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 Mr. White House Counsel Ruff raised for the first time in closing argument that the President could not be convicted of obstructing justice if he did not have sexual relations with Ms. Lewinsky.

The charge is not that the President attempted to prevent its disclosure. Nor is there any 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 and governor, is 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 basis for Blumenthal to call the President’s 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 interested in 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 known to an independent counsel proceeding in which he was a defendant, used all the methods at his disposal, including his stature 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 she 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.

The charge of witness tampering under §1512 requires that the defendant need not know that there is any pending federal proceeding. The defendant must 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 arguments in response to these facts is 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 in fact has no knowledge of such a proceeding 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 §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.
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were dealing with a stranger on the street. It is this persistent relentless, remorseless pattern of conduct that requires a verdict of guilt. He was willing to lie, defame, hide evidence and enlist anyone necessary, including govern- men’s law enforcement agents, over and over and 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 evi- dence.

Consider what those who oppose impeach- ment say about his actions:

Senator Bumpers, one of the counsel for the President during his trial, de- scribed the President’s conduct as “in- definable,” outrageous, unforgivable, shameless, without excuse, and argued that “the President cannot be acquitted by this Court.” He concluded that “President Clinton behaved reprehensibly, [and] betrayed his constitutional duty to uphold the rule of law.” A censure resolution of- ered 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 reprehensi- ble 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 “disgrace- ful,” “disgracefully disgraceful,” and “disgracefully disgraceful” and “disgracefully disgracefully disgraceful.”

So we castigate the President in the most bitter terms; decry his disgrace- ful conduct; decry the damage to the institutions we hold most dear; disgrace him with the most condemning lan- guage 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 imag- nable for a public official. Has public office become so precious in the United States that we treat it as a divine right? According to Madison’s formulation “other high crimes & misdemeanors” 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 I must express my disapproval.

Mr. MOYNIHAN. Mr. Chief Justice, Senators, I speak to the matter of pru- dence. Charles L. Black, Jr., J.苯 begins his masterful account Impeachment: A Handbook with a warning: Everyone must think about this most drastic of measures. . . . [It] is an awful step.”

For it is just that. The drafters of the American Constitution had, from Eng- land and from Colonial government, fully formed models of what a legisla- tive impeachment was and what it should look like. But nowhere on earth was there a nation with an elected head of an exec- utive branch of government. Here they turned to an understanding of governance which marks the Amer- ican 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 very few, could be “subjected to the law of kings.” The American Constitution as a signal event in human history—what the Framers called “the new science of politics.”

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Mr. MADISON So vague a term will be re- stricted to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings which had begun in April of 1786 with Edmund Burke presenting twenty-two “Articles of Charge of High Crimes and Misdemeanors.” The debate in the House of Commons continued into 1787 and was reported in the Penn- sylvania 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 well respected in regards to 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 im- peachment 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 de- bate 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 re- strained to Treason & bribery only? Treason as defined in the Constitution may not be Treason as above defined. As bills of attainder which the Constitution may not be equal to anything as- sociated in 1776. Until then, with but few exceptions, the whole of political thought had turned on ways to inclu- cate 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: pre- dictable. Thus, men could be relied upon, under the self-interests. Very well: “Ambition must be made to coun- teract ambition.” Whereupon we derive the central principle of the Constitu- tion, the various devices which in Madison’s formulation “oppo- site and rival interests, the defect of better motives.”

Impeachment was to be the device whereby the Congress might counter- act the “defect of better motives” in a President. But any such behavior need- ed to be massive and immediately threatening to the state for impeachment ever to go forward. Otherwise a quadrennial election would serve to re- stitute wrongs.

Further, they had a model for this practice in the impeachment of Warren Hastings which had begun in April of 1786 with Edmund Burke presenting twenty-two “Articles of Charge of High Crimes and Misdemeanors.” The debate in the House of Commons continued into 1787 and was reported in the Penn- sylvania Gazette.

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Impeachment was to be the device whereby the Congress might counter- act the “defect of better motives” in a President. But any such behavior need- ed to be massive and immediately threatening to the state for impeachment ever to go forward. Otherwise a quadrennial election would serve to re- stitute wrongs.
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 Arkansas, has said it well. He has said it well: 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 25th in which he 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 quite 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 from a party from which 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, also, are a burden, 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—repeat eight—nations which both more than once had 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 two years. But do not let him go before the misjudgment of the Constitution we are sworn to uphold and defend.

Mr. GRAHAM. “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 in 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 efficiency by design.

Our nation’s founders had personal knowledge of and experience with English history, in which both Kings and Parliament 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 three 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 Congress, and mandating a two-thirds Senate majority for removal, the Framers purposely made it difficult for Congress to undo the results of a 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, with its profoundly disruptive acts of creating 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 activities 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, and having 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 power 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.

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 by Articles II of the Constitution, 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, Judgement, 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 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 poses 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.

Mr. ALAN D. SIMPSON. 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 of 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.

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 Nicholas H. Rubenstein 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 the President 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.

I hold one 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 and done to hide the truth, these are pure and simple reasons for impeaching the President.

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 mandates 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 roll 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; and that I will obey 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 civil organizations is designed to encourage values and good citizenship.

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 resolving.

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.

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 he was asked what advice 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 has traveled 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—perhaps in the reasonable belief 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 or 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 that 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 two-lane, two-laned 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 still might 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:

1. Ms. Lewinsky had been placed on the witness list in the Jones case.
2. Judge Susan Webber Wright had ordered the President to provide information concerning any government employee with whom he engaged in sexual activity; and
3. 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. He could, alternatively, “[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. . . .”

As 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. From the President’s way of thinking, there would be no “sexual relationship” of any kind, if Lewinsky did not have 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, the answers, 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 Ms. Lewinsky at the deposition. Then the President—in violation of the federal obstruction of justice law—fired off a string of fundamentally declarative statements to his secretary.
May you have all the right friends and none of the wrong ones.

We could all do with less work and more friends.

May your friends be more there than you ever expected.

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 and 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, at times, evident discomfort with 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, the only 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 what the President's lawyers 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 secretary 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 1996, I sat on the impeachment committee that heard the evidence presented to the House of Harriet Clai- lborne. After hearing the evidence, I, along with an overwhelming number of my colleagues, concluded that Judge Clai- lborne had made false statements under the pains and penalties of perjury by failing to disclose certain income amounts on his tax forms. The Senate—understanding the gravity of a public official making false statements under oath—voted to remove Judge Clai- lborne from office.

In 1999, 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.
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 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 has violated 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 my 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 example. Crime is contagious. If the government becomes a lawbreaker, it invites 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. CROSSROADS FOR THE UNITED STATES SENATE

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 his usual standard, 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 condemn it? Will we change our standards or will we change our President?

AN EARLIER CROSSROADS FOR THE SENATE

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 Albert Gore called him "brilliant" and said he was a man who "had 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 high road 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 okay. Or, we could have said, "He should have sacrificed 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 was 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 must ignore the fundamental, founding principles of truth and justice. We chose to rise above, not sink below. Rather than change our standards, we changed our Senate.

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, lose the President, or lose 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 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 become fascinated by how closely you can walk without losing your balance.

Again, let me quote my esteemed colleague, Senator DIANNE FEINSTEIN, who said just a few months ago: "My trust in the 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 now 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 must ask people 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 offices 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.
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-depositional 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 violated the executive agreement he made under Article I of the Constitution to preserve the confidentiality of the grand jury investigation of the relationship between the President and Monica Lewinsky. Thus, I find the President guilty under Article II.

Mr. KENNEDY. Every four 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 on a grand scale—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 that 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, 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 removing the President. If the last Congress feared that their slimmer majority in the current Congress would not approve any articles of impeachment at all, 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 unnecessarily 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 to the Senate in an attempt to remove the President. 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 would 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 actions.

But they were shameless in their attempt to force the Senate to walk in their shoes. 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. Finally, in their most blatant attempt of all to destroy the President, the House Republican leadership decided that they would not proceed with the trial but would move to remove the President from office.

As an alternative to impeachment an alternative that would have ended this unnecessarily charade two months ago. Instead, Members of the House were given a single choice—a vote to impeach the President or do nothing. 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 removing the President. If the last Congress feared that their slimmer majority in the current Congress would not approve any articles of impeachment at all, 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 unnecessarily charade two months ago. Instead, Members of the House were given a single choice—a vote to impeach the President or do nothing.

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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 actions.

But they were shameless in their attempt to force the Senate to walk in their shoes. 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. Finally, in their most blatant attempt of all to destroy the President, the House Republican leadership decided that they would not proceed with the trial but would move to remove the President from office. As an alternative to impeachment an alternative that would have ended this unnecessarily charade two months ago. Instead, Members of the House were given a single choice—a vote to impeach the President or do nothing. 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 removing the President. If the last Congress feared that their slimmer majority in the current Congress would not approve any articles of impeachment at all, 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 unnecessarily charade two months ago. Instead, Members of the House were given a single choice—a vote to impeach the President or do nothing.
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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 even approved 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 condone 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 saw impeachment power whatever...” they 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 relied on the idea that there might be limited circumstances 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 those 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.” He wrote the language in the Constitution so that it included “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 the impeachment clause should be interpreted as it was originally drafted.

The debate surrounding the Impeachment Clause was significant. By first expanding the standard of impeachment to apply at all to the President, 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 the 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, meaning their provision, which ought to be looked on as impeachable offenses...” Using treason and bribery as “the minor 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 perpetrators.”

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 assertion 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, “[t]he Framers explicitly reserved [impeachment] for... ‘grave and momentous offenses against 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, the crime for which a federal judge could be impeached should not be the same as the crime for which the President Clinton should be removed from office.

The requirement that the Senate 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 four year term, while federal judges are appointed for life, subject to good behavior. The distinctiveness of the President’s role makes any comparison of the role of judges and the President nonsensical, 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 under reported 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 function of the President. Before impeaching and convicting the President, the Senate must find that he committed “Treason, Bribery, or other high...
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.

Thus, in the context of an 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 for acquittal. It is a blunt instrument that does not allow me to express clearly my belief that President Clinton willfully lied to the grand jury—perhaps out of a misguided sense of deference—neglected to interfere with the evidence; he tried to influence the testimony of key witnesses; he attempted 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 press 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 sketchy to warrant impeaching or removing 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 of documents, the changed story 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 any approach 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 adjudication of private disputes. Consistent with this conclusion, the vast majority of obstruction prosecutions involve underlying criminal actions, and the statutory penalties are vastly different in civil and criminal trials. This is not for 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 democracy. The harms involved in the impeachment 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 for acquittal. It is a blunt instrument that does not allow me to express clearly my belief that President Clinton willfully lied to the grand jury—perhaps out of a misguided sense of deference—neglected to interfere with the evidence; he tried to influence the testimony of key witnesses; he attempted to conceal evidence related to Paula Jones' lawsuit.

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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 government's institutions. Neither occurs 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. The House has failed to persuade me that a two-thirds majority in Congress to attack 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 yearlong distraction for the nation. But we should deplore even more the partisan attempt to abuse the Constitution by misusing the impeachment power.

Mr. 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 important principles. They intended 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 const
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 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 spin can obscure. 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.

Mr. Starr, may be removed. Just 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 blatanant partisan actions taken by the House of Representatives since Andrew Johnson’s case was involved in the case. The longer this case has gone on, the more I am convinced this characterization is correct.

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 Ms. Lewinsky and Marcus. 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 by appearing on CNN’s “Larry King Live” to discuss his activities and his 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. Their arguments do not yet appear in print.

In his long efforts to promote Ms. Jones’s lawsuit, and helping Ms. Clinton “and her private attorneys” (as he phrased it) to “get here,” Marcus found other allies, including another Chicago law classmate, Richard W. Porter. Porter had worked as an aide to Vice President Gore and was a partner of Starr’s at the law firm of Kirkland & Ellis, based in Chicago.

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 but how we approach it, how we weigh our decision. We are not judges, 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.

While the central 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 Paper No. 65, and Hamilton warned the greatest danger would be “that the discretion of those parties would be troubling the house of their 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 summary, 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.

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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 Senator 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 committee formed with former congressman Newt Gingrich. Beginning in 1992, Smith spent more than $80,000 to finance anti-Clinton research in an effort to persuade the mainstream media to cover Clinton negatively. Among others, his efforts involved David Brock, the journalist who first mentioned the name "Paula" in an article on Clinton.

Smith's interview request was turned down.

In 1993, Brock said, Smith helped introduce him to the Arkansas state troopers who accussed 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 the idea, because they would undermine the troopers' credibility.

To allay his concerns, Brock, said Smith urged him to talk with Porter, who was 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 several years' worth of records on thePortable Allen case, the Arkansas Supreme Court case that suspended Clinton from office, and a former White House counsel.

At least two times. But we do know they talked a number of times. But we do know that on January 20, 1994, before Starr became independent counsel, in fact, Starr has been criticized for not disclosing the phone conversations to Attorney General Janet Reno when she was seeking to expand his investiga-

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“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. That is what Ken Starr did, and presented him with this distinction of “surreptitious recordings” 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, in keep in mind that Linda Tripp briefed the Paula Jones attorneys the night before that deposition and gave them the taps 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 appears to have taken an action 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 prints in the RECORD, as follows:

**[From the New York Times, February 9, 1998] Inquiry to Ask Whether Reno Was Misled by Starr's Office**

(From David J. Johnston and Don Van Natta, Jr.)
WASHINGTON, Feb. 9—The Justice Department began an internal inquiry today 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 meeting 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 a three-page memo to Ms. Reno that there were no contacts with the Jones legal team. Mr. Holder said: “I had no contact with plaintiff'satty's.”

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, Steven Bates, a prosecutor in Mr. Starr’s office, indicate that he had met with M. Bennett, one of Mr. Starr’s deputies, the Justice Department officials: “We’ve had no contact with the Jones team, 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 notes became public just last month as part of the Senate record of documents related to the impeachment trial of the President.

The transcripts of the prosecutors’ notes 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 and his prosecution team acted within their authority to convene grand juries, or improperly pressed witnesses like Ms. Lewinsky, and disclosed secret grand jury information to Ms. Reno.

Mr. Clinton’s lawyers and supporters have long contended that there was collusion between Mr. Starr’s office and the Paula Jones attorneys, 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 had sex with an intern, Monica S. Lewinsky. E. Jordan Jr. was helping Ms. Monica 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 the notes showed that prosecutors had supplied the Justice Department with a thorough status report on the nascent inquiry.

They don’t put up the wall,” Mr. Bakaly said, “There was no misleading of Justice. This was a very fluid evolving situation. Unlike most public corruption cases, in this one theonestones 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 person familiar with the matter. Ms. Reno’s aides were still possibly being committed.

Some aides told her that it would be a mistake, comparing it to the “Saturday Night Massacre” that followed the firing of the Watergate special prosecutor Archibald Cox in October 1973.

“Bakaly,” 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 have deepened since the first new ethics inquiry. The ethics investigators recently wrote to Mr. Starr outlining the scope and authority for the independent counsel statute. 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 the independent counsel.

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 publicly.

“At time went on, people became more and more frustrated with him,” the Justice Department officials said today. “He seemed less concerned with Department of Justice policies.”

The ethics lawyers are trying to determine whether the 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 former Justice Department official compared to “Thatcher and Gorbachev.”

At times, Ms. Reno has expressed exasperation over Mr. Starr’s conduct, fuming over leaks reported by Mr. Starr’s office to the press accusing the Justice Department of trying to undercut the inquiry.

Mr. Starr’s prosecutors had also grown anxious 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 efforts, the officials said.

Since October, several news organizations have reported that Mr. Starr’s office first learned about the Linda Tripp tapes on Jan. 8, 1998—four days before Linda R. Tripp contacted Mr. Starr’s office—J erome 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 448-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 sensitive 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.

The 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.

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 the investigation, 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 Press Secretary.
had several conversations about the Jones case, said a lawyer familiar with their discussions.

Mr. Baker, the spokesman for Mr. Starr, has also 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 committee, Mr. D. Lowell, about "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," he said. "I've had communications with him from time to time." Mr. Starr testified, "But I'm in terms of a special relationship with 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—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 new deposition in the Whitewater investigation.

"The president's battle with the White House into the back of a black limousine and rode a block to his lawyer's office to undergo a new deposition in the Whitewater investigation."

Twelve hours earlier, she ended an intense interview 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 taped their intimate telephone conversations for months.

The tapes put the threat of prison for Lewinsky unless she dismissed her affidavit and cooperated with Starr. The tapes recorded Lewinsky saying that the president "won't settle" 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 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 surnaime for Lewinsky—Christman Eve. 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.

LEWINSKY GETS HELP WITH JOB INTERVIEWS

On Oct. 7, Lewinsky sent the first of nine packages from her office at the Pentagon to Revlon, the West Coast 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. Lewinsky secured one job interview with President Clinton's personal aid, Mr. Carter, on Jordan's recommendation.

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. 7, a Wednesday, Lewinsky completed an affidavit saying she never had sex with the president, said her lawyer William Ginsburg. The affidavit was immediately filed with Mrs. Jones' lawyers.

The judge in the case had suggested that testimony be limited to accounts of sexual relationships revealed by Clinton 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.

Now events approached critical mass.

On Jan. 12, Tripp made contact with Revlon, and offered to make phone calls on her behalf to the company, where she 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. 13, Tripp, with a tiny tape recorder provided by Starr's office, met Lewinsky for a job interview. 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 Jan. 14, during a short 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 at Richardson's public relations staff.

Lewinsky eventually declined the offer. She wanted a better-paying position in the private sector in New York.

In early December, Jordan told to Lewinsky about helping her find that job. The go-between for their discussions was Mr. 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.

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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 in Clinton’s Jan. 20 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 House Republican Judiciary Committee officials, including Ken Starr, last Sunday asked whether the president had tried to influence other people’s testimony in the Jones vs. Clinton case. A House official said the staff of Starr’s expanded investigation had already leaked.

On Jan. 16, a Friday, the case reached an explosive state. The Federal Bureau of Investigation confronted Lewinsky. That day and the succeeding Monday, House Republicans and House officials pointed questions, including whether the president had tried to influence other people’s testimony in Jones vs. Clinton, at a House official said the staff 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 had not been alone with Lewinsky and that he had re- sisted 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. He summoned a panel of aides, including Mrs. Currie, to a grand jury.

On Jan. 21, a Wednesday, the inquiry was national news. That day, Tripp signed an affidavit 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, 1998.”

If so, that is the president “committed perjury” in his sworn deposition, and “embarkered in an illicit affair” afterward, one of Mrs. Jones’ lawyers, Donovan Campbell, said in court papers filed last Thursday.

The 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. JAWORSKI. The famous seven 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 grand jury records. 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. And so does the president’s defense. This kind of balanced evidentiary material given the Judiciary Committee in the House by Leon Jaworski in the Watergate case contrast with this.

So in summary, what we have here is an out-of-control independent counsel with his own political agenda and ven- dotta, 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 al- ready sort of had 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 oth- ers to cover it up. That is the truth. All 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 is per- sonal. 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 a public defense. I have said many times the American people can abide sin but not hypocrisy.

Throughout this entire case, hypoc- risy 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 ever asked me to lie? How about honesty when it comes to him not providing ex- culpatory material?

Having failed to get Bill Clinton on the stated reasons for the independent counsel Whitewater, Filegate and Travelgate—shut down a sex investigation. So we are left with two charges. Per- jury. This falls far short, and there is no evidence to support the fact that he perjured himself before the jury. Eva- sive? Yes. Dodging? Yes. But not know- ingly 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 pil- lars 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 deposition, said to Starr’s assistant, “You didn’t have a per- sonal 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 lawyers in doing 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 coun- terfeit 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 dif- ference.

In closing, two wrongs don’t make a right. President Clinton did have an il- licit 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 not vote 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 appro- priate form is for each Senator to ex- press his or her opinion on this matter. I personally see no need to join 99 oth- ers 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 con- done his behavior that has been so thoroughly exposed and so vividly 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 con- duct in his official capacity as Presi- dent. The President has stated clearly and in person 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 for- giveness.
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.

Mr. REID. Mr. Chief Justice, I extend to you my personal appreciation for the dignity that you have extended to each of us throughout this proceeding. 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 on 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 disagreement 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 new 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 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 debate about the right to a trial by jury. I have thought about the law and history of this case, 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, lust, envy, sloth, 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 the American people. He is a good example, 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 man initially stood alone in leading the defense of Western civilization, was by most standards an alcoholic—albeit that modern standards. Franklin Roosevelt, Churchill's steadfast 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 forbearance 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 Roman Catholic faith. He has tarnished 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. 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. I have no doubt that he has strayed from the path of goodness.

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 the goodness and even great goodness. 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, unindulgent, unrepentant vindictiveness. These are the sins of pride, the sins of anger—they are damning sins indeed.

I do not use lightly McCarthy's name or accuse others of his tactics. I am old enough to remember how he misused the power of his office, how he terrorized his 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, he believed he was fighting 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 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, he believed he was fighting 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 the courage to stand up and fight back. Others fought, but many also suffered irreparable harm because of Senator McCarthy.

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 and cases involving corporate fraud. 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—White House, FBI, 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, court with attorneys for Paula J ones, do business. The Trial Judge, who did not have an office 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 respect not to abuse 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 the 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: for that he will pick people that he thinks he should get, rather than cases that need to be prosecuted. . . . 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 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 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 the people of the State of Iowa. What Mr. Starr did, and continues to do, is also wrong, and it is also immoral. I don't believe it constitutes a President did was wrong. It was immoral. I don't believe it constitutes a moral. I don't believe it constitutes a

"What Mr. Starr did, and continues by that standard. That is how the system is supposed to work, and in the long run it is 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 work."

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 J ustice. 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, and I am going to, tell you the story of how my friend, for his wife, for his precious daughter. It is breathtaking to me the level to which that disrespect has risen."

"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."
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. 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 say in their case that they had 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, both only evidences are 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 comes together at a certain time. We have had 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 President Clinton thought? I will never forget Manager Lindsay Graham coming to this microphone and his answer was “Absolutely.” Now if the prosecution concedes that reasonable 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.

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 and friendships. 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 the integrity of 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 it away from all of the outside view. 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 listened to you informally; I watched you suffer. I believe you all have done your best and I believe you all have done your best. 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 presentations. 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 party line votes, to pit a 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 this proceeding 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. Managers on both sides of the aisle have been thorough in their testimony, bringing 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 presentations. 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.

Thank you, Mr. Chief Justice. 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 thoughtful testimony 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 presentations. 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.
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. I was reasoned that the President's misleading tax return trial was a fraud 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 the facts and arguments 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 concerning the 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.

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 and civil liabilities after he leaves office in two years. As I will point out, the facts and other evidence accumulated and presented to the Senate do not meet the constitutional standards for impeachment and removal that our founding fathers established.

Article One 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 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 is 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 considered in the context of the testimony." 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 Two charges the President with seven different instances of obstruction of justice. The House Managers insist 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. I am convinced 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 no nexus exists 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 believe 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 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 oath, and 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 Mrs. Currie to keep the gifts, not the President. The House Managers state that the President asked Vernon Jordan to intensify an ongoing 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. Since then, I 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 with 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 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 in 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, Ms. Lewinsky, 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 disagree with Mr. Bryant. As a lawyer, 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 did Mr. Jordan, 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 used in the case against the President. 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 standard of high crimes and misdemeanors, and I will vote to acquit the President.

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 Exhibit 1.)

Mr. LEAHY. Mr. Chief Justice, I ask unanimous consent to have my remarks made part of the public record.

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

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 that, in my view, the Senators also had 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 the President landing. What was most memorable 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.

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 him and with the listed witnesses 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 affects all of us.

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 frames knew this. We all know this.

Socrates said: "The greatest flood has soonest ebb; the sorest tempest, the most sudden calm."

In my notes, as I flew back through 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, and I 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 the differing view, the contrary view, they will try to emulate it. Our actions can stir a chord that will vibrate throughout the history of our Republic.
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provided a forum to replay the embar- 
raging 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 one taken by those who 
acted in the conflicting roles as 
Mr. Lewinsky’s intimate confidante 
and ultimate betrayer. 

As a former prosecutor, one of the 
questions I asked is whether these 
charges of perjury and ob- 
struction would have been brought 
against President 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 
agree that 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 origi- 
nated and carried out the plan to hide 
certain gifts from the Jones lawyers. 
The only crimes shown to possibly 
have been committed were 
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 actions 
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 Representa- 
tives to tell me how to raise my chil- 
dren. 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 con- 
sequences brought on himself and his 
Presidency. That is not our the Con- 
sideration. That is the job for parents in this 
country.

I don’t believe the Constitution calls 
upon us to remove a duly elected Presi- 
dent for symbolic purposes. Rather, 
I believe we have two choices: 
removal 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 Con- 
stitution; that is what we have to up- 
hold.

Partisan impeachment drives are 
doomed to fail. The Senate must re- 
sist any to this impeachment proc- 
ess. 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 re- 
solved in a way that serves the good 
of the country, not the political ends of 
any party or the fortunes of any per- 
son.

We have all talked about President 
Andrew Johnson’s impeachment. Few 
people will recall that after the unsuc- 
cessful effort to remove him from of- 
cice, former President Johnson re- 
turned 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 rep- 
resenting our States.

I have spoken with 259 Senators, 
including the 100 here now. I have 
respected all of you. I have had great af- 
fection 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 use any Senator’s vote on this. But the Senator from Vermont 
cannot vote to convict and I will not. 

Thank you.

EXHIBIT 2

Procedural and Factual Insufficiencies in 
The Impeachment of William Jefferson Clinton 
by Senator Leahy

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 elect- 
ed 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 1788 to 
help bring the country back together. As 
Senator Lott has noted, following the Civil 
War, some urged continued use of an iron- 
clad oath that had served the Confederacy in 
serving in the Federal Government. It took “nearly a quar- 
ter of a century of confusion and acrimony” 
for the Senate to settle upon the oath that 
we take today.

The same year in which our oath was 
developed, our country experienced its first, 
and until now, its only presidential impeach- 
ment trial. History has judged harshly the 
“Radical Republicans” who pursued that im- 
peachment against President Andrew J ohns- 
son. A notable exception is William Maxwell 
Everts, a Vermonter who was criticized by 
many Republican party leaders for defending a 
President of the opposite political party.

We 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. That challenge took another oath, an oath to do "impartial justice according to the Constitution and laws." That is the oath administered to Senators, certifying whether they will uphold their oath to ensure the election of the President of the United States and remove him from office. That oath calls upon us to rise above partisan politics and our personal feelings about President Clinton.

I focus first on the oaths we take to be Members of Congress. Our duty to serve in an impeachment trial since the House Managers opened and closed their presentation to the Senate pointing to the oaths the President swore and the special constitutional footing to remove this President. But, the Constitution simply does not say that a President shall be removed for "Treason, Burglary or other High Crimes and Misdemeanors." It says that a President shall be removed for "Treason, Bribery or other High Crimes and Misdemeanors." To find an alternative constitutional footing to remove this President, we must not ignore how we arrived at this point. Senator acknowledge that in this sense it is not just the President but also the Senate on trial in this matter.

Point in this process must start with the answer to the question: "How did we get here?" 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 on how the world teetered to the brink 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 why this sorry episode of admitted presidential misconduct led this great country to the brink of war in a generation in no small part because of the actions of the present President. 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 in a war 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 personal conduct of the President, whose personal conduct was inexcusable; the antics of a Special Prosecutor run amok; and the lies of the President that have written the history of the Clinton presidency. No one can say this is a proper relationship. No one can say this is the exercise of sound judgment. Each step of this unfortunate process has 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 us to perform 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 not required to perform the same act 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, my oath requires me 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 wrong to lie to the American people. When 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 the facts. 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.

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, said 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 happened in this case, it was 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 a law enforcement becomes personal, and the real charge is that the government has come into bed 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."

In the case of President Clinton, things became personal a long time ago. When White-water failed to produce, the President's de-
President was taking yet another wrong turn.

Finally, after four years of fruitless investigations, Special Prosecutor Starr renewed his accusations of perjury and obstruction of justice for the Monica Lewinsky phase of his investigation. According to Mr. Starr, that contact with Ms. Lewinsky occurred on January 20, 1998, before Ms. Lewinsky had filed her affidavit in the Jones case and before the President's deposition in that matter. As an officer of the court, Mr. Starr had a duty to refer Ms. Trip'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 of his authority to harass the client, and Secret Service protectors against the fleeting appearance of the President, and lack of prosecutorial discretion of his independent counsel, was committed solely to the House of Representatives. The charges must be so grave and dispositive factual differences between these two impeachment trials, despite the need for bipartisanship in judicial impeachments, were so minimal that the Framers were not concerned with 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 two impeachment proceedings. . . . The domina tion of the impeachment process by 'faction' was not the model followed in the impeachment saga was the House Judiciary Committee. In addition to the serious substantive concerns raised by the managers and by broad sections of the Judiciary Committee on the Constitution on November 9, 1998, stating that the Framers anticipated that impeachments might be driven by partisanship rather than real demonstrations of guilt. The distinguished historian Dr. Schlesinger, Jr., stressed the need for bipartisanship in impeachment proceedings in his testimony before the House J udiciary Subcommittee on the Constitutional legitimacy, the bill of particulars must be clear and dispositive factual differences because a political, partisan impeachment will not be trusted.

The Framers believed that the impeachment process is to acquire popular legitimacy, the bill of particulars must be clear and dispositive factual differences between these two impeachment trials, despite the need for bipartisanship in judicial impeachments, were so minimal that the Framers were not concerned with 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 two impeachment proceedings. . . . The domination of the impeachment process by 'faction' was not the model followed in the impeachment saga was the House Judiciary Committee.

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.
had been alleged, the majority on the House Judiciay Committee never questioned Mr. Starr’s initial judgment that the President had committed impeachable offenses. Had the Committee confined itself to examining the case at the start, a factual inquiry may have been unnecessary.

This being 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 a finding of investigatory fact, the resolution authorized the Committee to issue subpoenas for the attendance and testimony of any person, to take depositions of potential witnesses, and to require the production of documents and other things, and to issue interogatores.

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 information and hearing testimony from multiple witnesses before debating and voting to adopt articles of impeachment.

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 firsthand knowledge of the facts to testify about the matters that Mr. Starr’s investigation revealed. The Committee instead relied on the one-sided testimony procured by Mr. Starr’s lieutenants in the grand jury. Though this testimony was sworn 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 exclatory 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 BARR’S inquiry about whether the President told her she should turn the tapes over to the Junes lawyers that she had previously told Mr. Starr’s agents that the President saying, “Well, you have to turn over whatever you have,” sound familiar to you?

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.

Four months and finally the House Judiciary Committee minimized the constitutional role of the House in the impeachment process. The erroneously worded referral, “the grand jury function,” left to the Senate the heavier responsibility of determining whether the conduct at issue warranted removal of the President. Chairman HYDE said, on September 30, 1998, at the beginning of the House impeachment process, “We are acting as a grand jury... we are not a grand jury.”

This view persisted during the House floor debate on the Articles of Impeachment against President Clinton. Manager BOROUGH said that the House had “the ‘grand jury function.’” Yet another House Member said, “the role of the House and our duty to the American people is to act like a grand jury in reference to impeachment charges presented.” 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 trial court.”

Having incorrectly analogized the role to that of a grand jury, the House then applied that analogy in re-viewing 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.” Manager HYDE likewise described the House as having “a lower threshold... which is to seek a trial in the Senate.”

Harvard Law Professor Laurence Tribe warned House Republicans against mistaking the role of the House in the impeachment process for that of a grand jury. 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.” His warning went unheeded.

Minimizing the House’s role has had serious consequences. It explains why the majority in the House Judiciary Committee for-feit the opportunity and shirked its responsibilities to the Senate for oversight of the President’s removal. There is no prior examination of the facts. The House’s constitutional responsibility for charging the President should not be misinterpreted to justify applying only the grand jury’s “probable cause” standard of proof.

It also amounted to giving the House a “free vote” to make any responsible for actually removing the President. On the contrary, House Members who vote to impeach should also be convinced that this President should not be removed, and so threatens the public that he should be removed. Sending impeachment articles to the Senate means exactly what the articles say: This President is impeached. That is the only action by which the House, the President has committed acts warranting his conviction and removal.

Even so, a majority 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.

In spite of what the House Manager’s believed, there is nothing not a “guilt” that should not be about partisan political pique or about sending a message. Rather, along with the power to declare war, and the power of the purse, the responsibility is one of the most important constitutional responsibilities 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. It is not to be used for political re-sponsibility to 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.

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We suffered a lengthy Senate impeachment trial. Neither Mr. Starr, nor the President, nor the Constitution, nor the Senate have adopted resolutions expressing disapproval of various individuals, including sitting Presidents. The Senate censured Andrew Jackson in 1834; the Senate censured Abraham Lincoln 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 speech of Speaker Gingrich and the House. He 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 scholars Black, Goodwin, and Winston, along party lines “would go to the Senate tainted, or at least suspicious, and would be unlikely to satisfy the country, because partisan questions would be stirred up. The impeachment of a President must be bipartisan. A partisan impeachment cannot command the respect of the American people.

House Republicans have permanently marked this President as impeached, but I do not believe that the House majority thought that this was permissible. The majority did not have the smarts to do it. The manner in which these impeachment proceedings were conducted in the House Committee on the Judiciary, and in the full House, and the Committees will serve as models of mistakes that should be avoided in the future.
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, I asked the stenographer 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: “defendants fail in their integrity.” There is no question but that the Managers attacked and impugned Mr. Jordan’s word and his integrity. Senator Boxer’s objections, however, neither request was accepted and, unfortunately, that 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 situation in which the Managers believe Senators can responsibly and constitutionally pass judgment on it. The notion that President 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 merged the three additional categories of allegedly false testimony, without specifying the alleged perjury statements. Those additional categories cover statements that the President made or allowed his attorney to make during the J ones 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 charged perjury has continued to be a moving target. In their initial Trial Brief, the Managers alluded to 26 instances of grand jury perjury, President Roger spoke of 30 in his opening statement in the Senate, but 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 alleged perjury is “one or more” of four broad categories. This is wholly inconsistent with criminal law and Senate standards. To illustrate, suppose aMoving him from the office to which the people had given 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 the past. Two prior impeachments before the Senate, both of Federal judges, involved perjury charges. In both instances, the House of Representatives’ Articles identified perjury false-hood in a separate Article of Impeachment. In the case of Judge Alcee Hastings, 14 of the Articles alleged that he had committed perjury, and on the Articles alleged perjury, again, each with respect to a single discrete statement. In the case of Judge Walter Nixon, two of the Articles alleged perjury, each with respect to a single discrete statement.

This time, however, the House of Representatives chose to be unacceptable vague. How, can the Senate be sure, how can the Senate 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 were unhappy with as many as 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 two 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. For example, how do the Managers know how to explain it to the Senate for a vote. Instead they defend the fairness of this Article by asserting that if President Clinton had suffered from any vagueness, he would have moved to have the Article referred to the Senate for a bill of particulars. Just as the Managers had to be corrected by the Chief Justice about the role of the Senate in the impeachment process, the Managers have not moved 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 defendant without usurping the constitutional role of the grand jury, these Managers may not save a defective bill of impeachment without usurping the constitutionally limited role of the full House. Otherwise, 13 Members may not take it upon themselves to guess what was in the minds of over 200 Members of the 106th 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 1883, the impeached judge Harold Leibolt moved the Senate to require the House to make one of its articles “more definite and certain.” In that instance, the Managers strongly opposed the amendment to the articles that was then approved by the full House and presented to the Senate.

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 for the purpose of clarifying 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 supposed falsehoods alleged by the President. Any advantage gained by the House Managers by purposely crafting Article I in this vague fashion diminishes the fairness of the proceeding.

8. 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 Rogen tried to spin this as “a technical amendment only,” 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 conduct. It fails to list the broad categories that could allude to virtually every word the President said before the grand jury and says, in effect, take your pick. And somehow, said something, that was not true, then vote to convict. Article II, which lumps together seven alleged acts of obstruction, does the same.

Managers have treated the omission Senators must make on Article I like a choice dinner would make from a Chinese take-out menu: chose 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, and some of them not merely, but certainly a good quantity, and there are a whole bunch of them that have been charged.”

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 tackled 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 impossibility that Senators be convicted 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. Ultimately, that omnibus Article against Judges Hastings and Nixon, while convicting them of more specific charges of perjury, Articles that all conviction that contain multiple allegations are troubling in several respects. First, they make it virtually impossible for the impeached person to prepare an adequate defense because 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.

The Senators are elected 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, or even to hint at, the basic issues.” The Article Managers in the Johnson case called for the first vote to be on that deliberative catchall Article. I thought at the time 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.

But impeachment is not a shell game. Deliberate obfuscation trivializes what should be a grave and solemn process.

In 1883, when faced with 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. 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 proceeding is not based on the Senate’s relationship to the House, and the specificity and care with which the Articles reached the Senate. The Senate does not sit as an impeachment court in a vacuum. The fairness of the proceeding is not based on the Senate’s relationship to the House, and the specificity and care with which the Articles reached the Senate. The Senate is the court in this trial. The Senate is the court in a vacuum. The fairness of the proceeding is not based on the Senate’s relationship to the House, and the specificity and care with which the Articles reached the Senate. The Senate considered the standard of proof in advance what standard the Senate will apply. The standard of proof in impeachment proceedings is “beyond a reasonable doubt” and in civil proceedings is generally “a preponderance of the evidence.” An impeachment trial is not a criminal proceeding, leading some commentators to suggest that “a hybrid of the civil and criminal 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.

The fact that the Senate has adopted no uniform standard of proof is perhaps less of a problem than it might appear. The Senate has refused to bind itself to a single standard for all impeachment proceedings. As a result, each Senator may follow the burden of proof or he she believes is appropriate to determine whether the House’s charges have been adequately proven.

Fulfilling our duty in the impeachment trial involves evaluating the evidence presented by the Managers to determine whether the allegations have been proven. Juries in legal cases are asked to determine whether a defendant is guilty of 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 impeachment proceedings. As a result, each Senator may follow the burden of proof or he she believes is appropriate to determine whether the House’s charges have been adequately proven.

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The Senators are elected to avoid accountability to the American people, who may never know exactly which charges their representatives regarded as proven and warranting removal from office.
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 in circumstances merely suggesting that he committed a crime. 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 similarity between an impeachment trial and an ordinary criminal trial, the standard of proof by 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 intended their preference for stability in the executive. That stability should not be jeopardized except on the strongest possible proof of presidential wrongdoing."

We were the President accused of treason or serious public corruption, the best interests of the Nation might well demand a somewhat lower standard. But he is not, however, accused of such crimes. We hundred Senators are stand-ins for over a quarter billion Americans. President Clinton is 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. The two burdens they had to meet—"The record does not come close to supporting the allegations in Article I. Perjury is a complex charge, requiring more than just lying. Monica Lewinsky has been twice excused from testifying or being present in court, and has been excused from testifying by a court."

The American people saw President Clinton's perjury yesterday when a videotape was made public by the House JUDICIARY Committee. We saw him admit that:

- He had given her a number of gifts.
- Given these admissions, the Managers had a heavy burden to prove that the President testified falsely concerning material facts.
- Perhaps for this reason, the Managers re-packaged the three alleged falsehoods identified by the Special Prosecutor in their Senate presentation of the impeachment brief, the Managers claimed that the President perjured himself no less than 48 times during his grand jury appearance. They hoped that the Managers could 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. Indeed, perjury is committed when a witness falsely answers questions concerning her awareness of facts, and 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.

The President said that the inappropriate intimate contacts occurred on "certain occasions," and described their telephone conversations as "occasional"; there is nothing in the record to support this. In this regard, 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 a description trivializes the serious business in which we are now engaged. Can anyone really believe that the President would be unaware of a six-week discrepancy as to when his admittedly inappropriate affair began? Or because of general statements that are allegedly contradicted by 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 considered evidence against the President's state of mind. The Managers claim, without support, that the President did not consistently maintain that no one ever asked or encouraged her to lie, and 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."

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 his involvement in the affair was "minimal." Ms. Lewinsky's affidavit stated 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.

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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 that she had signed and did not discuss the content of the affidavit with her “at all, ever.” Manager ROGAN cited this as evidence of obstruction of justice 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 prior drafts of the affidavit—speculation at odds with Ms. Lewinsky’s testimony that she did not show the President her affidavit in final form. Neither Mr. MCCOLLUM’s theory nor Mr. MCCOLLUM’s speculation can overcome or obscure the fundamentally exculpatory nature of Ms. Lewinsky’s testimony of being dragged into a civil lawsuit to testify.

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 the President had no motive “to avoid testifying” in the Jones case. 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. Uh, actually, I did.
A. Yes.”

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.” On her own initiative, she devised an elaborate scheme comprising compounding perjury with the President’s secretary; deleted correspondence from her computer and urged Linda Tripp to do the same; and composed false testimony because, with Mr. Jordan, she had decided on her own to protect her own privacy. 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. 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 knew nothing of Ms. Currie’s retrieval of the gifts; Ms. Currie’s claim that it was Ms. Lewinsky, not the President, who asked her to retrieve the gifts; and the fact that the President never told Ms. Lewinsky to retrieve the gifts. Before they were retrieved, the President had been told on the very morning that he is alleged to be a witness to New York in November 1997—all well before she had made any reference to the President’s meetings with Ms. Lewinsky.

The Managers have also argued that the President must have known that Ms. Lewinsky’s affidavit would be false because no truthful affidavit could have saved Ms. Lewinsky from the “stalker.” Manager BRYANT specifically said that he inferred this from the December 7 meeting, that “the President knew that Ms. Lewinsky had told him that she was afraid of being dragged into a civil lawsuit to testify.” But the Managers’ Trial Brief acknowledges that the December 7 meeting was “unrelated” to Ms. Lewinsky.

More generally, the Managers failed to show any connection between Ms. Lewinsky’s status as an affidavit 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. This time, 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 were involved in getting her 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 she had made any reference to the Jones case.

The Managers have also argued that the President must have known that Ms. Currie retrieved the gifts because she had no motive to testify falsely. But Mr. Jordan recalls having told Ms. Currie, “[S]he turned out to be this huge liar. I found out she left the [T]h [White House] because she was lying about the [P]reident [and] something like that.” Ms. Lewinsky acknowledged in her original pretrial deposition that her relationship with the President was public, encouraged Ms. Tripp not to reveal anything about the President’s affair, and that Ms. Lewinsky knew that she had sought to conceal her relationship with the President. Moreover, Manager BRYANT 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; she was never subpoenaed in the Jones case; and she carried out her plan to hide evidence from the Jones lawyers; and Linda Tripp rather than Ms. Lewinsky originated and carried out her plan to hide evidence from the Senate, and sought 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. But it was evident from the approaching deadline for completing discovery. Moreover, he did not know that Mr. Starr had initiated an investigation. In fact, one learned that the President 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.” I was seriously troubled by the President’s counsel’s initial suggestion that Ms. Currie had been coached 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 misrepresentation of a critical point in this case.

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”—is 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 and his legal team are interested in mining whether Ms. Currie was the source of the Jones lawyers' apparent knowledge regarding Ms. Lewinsky. In the end, in light of the prohibited and innocent explanations for these conversations, I do not accept as proven beyond a reasonable doubt the Managers' conclusion that they were criminal "coaching" statements. The Managers do not have a personal recollection that probably the only reason for their statements to the House was to obstruct the impeachment process. In fact, during the deposition of Ms. Lewinsky, Manager BRYANT conceded, "Obviously, you testified extensively in the 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 questions in the impeachment proceeding that subjecting the witnesses to further examination would not provide any new revelations."" In fact, during the impeachment proceedings 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 appearances and conceded, "I know that probably about every question that could be asked has been asked, but there are a number of questions in the impeachment proceeding that subjecting the witnesses to further examination would not provide any new revelations.""

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 Senate must weigh whether 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 purely private misconduct, however 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 was the same individual who created the establishment of the Senate in the New Jersey and New York for the murder of Alexander Hamilton in a duel in 1804. Chief Justice Chase was impeached in the House. "This fact caused one contemporary wag to remark that whereas in most courts the murderer was arraigned before the judge, in this case the judge was arraigned before the murderer!" Nonetheless, Burr was not the subject of the impeachment trial, Chief Justice Chase was.

In any event, the Framers would treat serious private misconduct, I do not hesitate to conclude that heinous crimes, such as murder, would warrant the remedy of removing the President. Professor Cooter has 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 the public order." As 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 enough of a violation shall be required to constitute grounds for impeachment. There is a further requirement—substantiality."
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account the type of duties that the impeached official is called upon to perform and whether the charges, if proved, clearly impair the official's ability to perform those duties. The fact of an adverse vote of the Presidency in this analysis would very well differ depending on the job of the impeached official.

VII. "FINDINGS OF FACT" FALLACIES

As the impeachment trial wore on, without any prosecution and in absence of 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, followed by a second vote on removal. I opposed this initiative because, in my view, it reflected a basic misunderstanding of the Senate's institutional 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 beyond the jurisdiction of the Constitution to our criminal courts, where an accused is entitled to due process rights far in excess of the minimal procedural due process afforded by the Constitution to our criminal courts, where an accused is entitled to due process rights far in excess of the minimal procedural due process required by the Constitution and other courts. The Senate's limited jurisdiction, as specified by the Constitution, not a simple majority as is now proposed. Moreover, the Senate rejected this proposal 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 facts" is clear.

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." Former Reagan Attorney General Edwin Meese cautioned that the Senate "should not flirt with unconstitutional action, especially removal of the President at stake." Robert Frost said that the best way out is always through. In the end, the Senate's best way out was to abandon its 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 a threat to the Republic. They incorrectly patented 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 Republic, Senator Hyde responded that it would, because it set a bad example for our children. I was surprised by this answer. This is hardly the sort of danger that the Constitution was 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 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, Senator Hyde, I work hard to be a role model for my children and grandchildren. 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 American people to raise their children, to explain what the President did was wrong, and to point out the humiliation and other consequences he has brought to his entire family. After this matter year and fore as long as history books are written. I do not believe that the Constitution calls upon us to remove a duly elected President.

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 that we would have seen ill-effects from President Bush's pardon of former Defense Secretary Caspar Weinberger, who had been indicted on 11 counts, including lying before a grand jury. But we did not.

In fact, at that time, Manager Hyde applauded the decision to pardon Mr. Weinberger in a position that would have been tantamount to conviction on the Articles themselves and more.

The last protection against impeachment is that removal follows automatically from conviction. 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-expendable, oxymoron route of convicting without removing.

Proponents of the Republican proposals pointed to eighteen century precedents long ago rejected: 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 Senate required two-thirds supermajority, as specified by the Constitution, not a simple majority as is now proposed. Moreover, the Senate rejected this proposal 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 facts" is clear.

The Managers' position were correct then we would appear to be held to a double standard. 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 that we would have seen ill-effects from President Bush's pardon of former Defense Secretary Caspar Weinberger, who had been indicted on 11 counts, including lying before a grand jury. But we did not.

In fact, at that time, Manager Hyde applauded the decision to pardon Mr. Weinberger in a position that would have been tantamount to conviction on the Articles themselves and more.
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 government in court, before juries on numerous occasions. I fully appreciate the traditions and importance of allowing juries to deliberate and make their decisions 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 juries.

The Senate sitting as an impeachment court is unlike any jury in any civil or criminal case, for a court of law is independent and free from influence, far more independent than the Senate. The Senate is a self-governing body, voting on its own rules regarding how it conducts business. The Senate is the same body that elected the President and will have the task of deciding his fate. The Senate is like no other legislative body in the world.

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 propriety of televising the proceedings of the Senate trial. Such coverage did not become routine in the Senate until later in 1986. In urging such coverage of the impeachment trial of President Clinton, former Senator Richard Durbin (D-IL) said, "It is a Republican plot to get a Democratic President out of office, former President Johnson returned to the White House."

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. We have denied the right of the people to see how government decisions are made. Keeping closed our deliberations is wholly inconsistent with the traditions of our democratic government and the Constitution, and the symbol of our democracy. Keeping open deliberations to the public helps assure that we make the right decisions, 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 we make here. Opening our deliberations to the public helps ensure that the Senate trial is a public event with a purpose and responsibility for the American people why each of us voted one way or another.

Opening deliberation ensures accurate and complete record of the proceedings for history by news photographers. It 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 our history that should be permanent for both the contemporary and its lasting significance.

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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 amended in a fashion that protects a President's right to be conclusively presumed innocent of a criminal investigation and it requires the appointment of a special prosecutor in any criminal investigation that is likely to result in a proceeding in which the President could be a witness. Further, the statute is irrelevant if the President is not personally under investigation.

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 may initiate the dismissal of an independent counsel if he oversteps his bounds or acts improperly. Not only was that 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 obligated to send to the House any evidence 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 effect, of course, upon our society. His misdeeds have caused many to mistrust elected officials. Cynicism is swelling among the grass roots. His breach of trust has eroded the public's faith in the office of the President. 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 teacher's wife succinctly states the case.

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...[As] an educator in Iowa's public schools for the past 36 years, I have witnessed 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 central 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 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 another single act.

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 perfect 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 refine and improve their own truthifications, they do know that if you want to be trusted and if you want to be respected, you must tell the truth as I understood it at the time."

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." She said, "I thought you were smart, 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 reframe 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 charged under oath, 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. Nevertheless, 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. That is our duty.

Mr. CRAIG. 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 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 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 J. 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 try to explain my position 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 J. 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 those 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 difficulty 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 misdemeanor is such that the motive behind 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 much crime. 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 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 this 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. I am not alone in this view. I believe the executive branch is at risk 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 constitutional response, and a political 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 generalize 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 J ustice 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 best 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 and with the majority party or what 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 on office. Our young people, our citizens, our Constitution deserve a better end to a better story.

Mr. DODD. Mr. Chief J ustice, my colleagues, 31 days ago at about this very hour we gathered in the Old Senate Chamber in closed session to begin the journey of constitutional magnitude that we are today. We are only hours away from casting what ROBERT C. BYRD has appropriately described as the most important vote of any of us have cast or are likely to cast in our service as U.S. Senators. A decision to declare the presidency a vacant office or to absorb the powers of other departments to intrude upon the rights and powers of government, to render. It has been thrust upon us. Our responsibilities were limited to how to proceed in this trial and what verdict we might give equal consideration to the impact of removing this President, we hope that as we consider the facts of 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 and energetic executive and in the words of Alexander Hamilton, free of “propensity of the legislative department to intrude upon the rights and to absorb the powers of other departments.” As our presiding Chief J ustice 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 election as opposed to a parliamentary system of government.

In the introduction of his treatise on impeachment, 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 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 attended by others is abhorrent. History will judge this 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 to 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 you vote to acquit. President Ford is often quoted as having said the grounds for impeachment are whatever the House of Representatives say they are by a majority vote. I do not take issue with that statement, except that it strikes me as somewhat cavalier. In the Senate, the grounds for conviction and removal of a President must be so loosely fashioned. The grounds for conviction will be restricted to the offenses 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 of impeachment. Whether we like it or not, we have a constitutional duty to confine our judgment to the specific accusations. The standard of proof that we use to arrive at our decision is probably up to each Senator, but we do not have a similar luxury to decide what grounds to use to convict. Those grounds are set by the House and must be proven 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, have not the House managers, to some degree, deprived the Members of this 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 any case of any other citizen, then a vote to take the drastic measure of conviction and removal of a President from office would be based on evidence that may establish only beyond a reasonable doubt that he would not try a case such as this one. He now asks us to reach the judgment of conviction beyond a reasonable doubt.

Does it not also strike you as somewhat 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 before the House managers, and yet they made the calculated decision not to take her deposition.

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 our colleague, CARL LEVIN, I cannot conclude beyond all reasonable doubt that the President is guilty of the criminal charges enumerated in either article of impeachment. I therefore cannot and will not 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 this President. It should be equally appropriate to condemn the damage done by an independent counsel and a special master that has spawned runaway, reckless prosecutors that would 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 of the Office of Independent Counsel and court decisions that allows 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, I would suggest, to unprecedented strains as a result of the events that have occurred over these past several years.

I would urge our two leaders to include an examination of these issues as part of the agenda in the 106th Congress.

Thank you.

Mr. JEFFORDS. 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 judicial, deliberative and fair. That meant the Senate, 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.

A. A Loss of Respect.

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 six 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 always remember the knowledge that the President has indeed committed shameful acts, misled the American people and brought disrepute on the office of Presidency. By his own actions, he has ensured himself a place in history along side President Andrew Johnson.

B. Setting an Important Precedent.

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 greatest 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 will establish a 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 be mistaken for signals that meaning to mean that perjury and obstruction of justice are not impeachable offenses.

II. HAVE THE HOUSE MANAGERS PROVEN THE ARTICLES OF IMPEACHMENT?

A. The Standard of Proof: Clear and Convincing Evidence

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 sharp distinction drawn between the civil and criminal proceedings; the 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.

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.

B. Article I: Perjury Before the Grand Jury

I begin by covering the perjury that is alleged in the President's article I-- the one that charges him with crimes within the jurisdiction of a grand jury.
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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 to federal grand juries 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 "in certain respects" and "at that time" intentionally misled, 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 convinced that he did not literally lie about these immaterial details.

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 had all too many moments where we appear to be paying attention to a speaker, when we are actually lost in our own thoughts.

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 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, 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 obstruct or impede the due administration of justice." After considering these allegations, I have concluded that the House Managers have not proven the obstruction of justice allegations with respect to the Jones case. I have considered the obstruction of justice allegations in Article II.

The first allegation in Article II is that the President obstructed justice by having 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 proved that Ms. Lewinsky received her job offer just two 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. Finally, in 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 not proven the final allegation, where 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 never discussed obstructing justice. The President's deposition statements about the Jones case 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 lie to his aides about 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 obstructed justice in his continuing effort to conceal the true nature of his relationship with Ms. Lewinsky.

While I found the other charges alleged in Article II to be either legally or factually deficient, there is one allegation of obstruction which I believe that the House Managers have proven by clear and convincing evidence: the President's post-deposition statements to Betty 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 I was there, right? You were never alone. You could see and hear everything. Monica came on to me and I never touched her, right? She wanted 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 get as much information as quickly as I could” or that he was “trying to ascertain what the facts were” or what Ms. Currie “eluciated” because 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 should 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. According to the facts, 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.

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 was 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 Wright appointed me as an Independent Counsel to investigate alleged wrongful acts in the so-called Whitewater land deal. During the course of the next four 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. In the meantime, 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 extra-marital affair with White House employee Monica Lewinsky.

We must not forget that 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 behavior constituted 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 Doe, 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 sexually harassed or hostile work environment sexual harassment. . . . Whether other women may have been subjected to workplace harassment, and whether such harassment when 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 rule so important in my decision? Well, we are essentially here today because the Whitewater investigation was expanded to determine whether the President Clinton’s efforts to conceal his consensual relationship with Ms. Lewinsky obstructed Paula Jones’ rights to justice. The plain fact is that the Jones case was thrown out because Judge Wright ruled that Paula Jones had no case. Had the President confessed that the President had revealed the true nature of his consensual relationship with Ms. Lewinsky, it would not have changed the outcome of 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 Jones deposition testimony of Betty 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 appealed 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 effect Paula Jones’ justice. In other words, there was no justice to obstruct in the Jones case.

C. Is the President Fit to Serve?

Most of us now believe that the President lied about his relationship with Ms. Lewinsky when he testified under oath and that he knew about the nature of his relationship to his staff, his family and the American people. I have concluded that 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 the public. 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.

I use 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 cannot 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
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the most serious offenses would justify overturning a popular election. The
caption of “maladministration” was
considered and rejected.

I believe that whether the Presi-
dent’s misconduct occurred in the pri-

I also want to describe what I think—
and frankly have thought for months—
is a more appropriate mechanism to
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 Presi-
dency for all time.

In recent months, hundreds of Con-
stitutional scholars—including many
respected conservatives—have argued
that the Constitution does allow this
censure vote; the Senate’s precedents allow it; we have done it before. It’s true that the Constitu-
tion is silent on the question of what
else we can do in addition to removal;
but it is true as well that the Constitu-
tion in no way prevents us from moving
forward on censure. The argument that we
are somehow blocked Constitutionally
from censuring the President is con-
trived, 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, repeat-
edly if they like. I certainly have. A
corporate expression of the Senate’s
condemnation of the President’s ac-
tions, while of course preferable, is not
essential if we believe the President has
made known our views.

We all condemn the President’s be-
havior. It has been said so many times, it
hardly bears repeating, were it not for
the wilful, partisan attempts to
mischaracterize a vote against removal
as a vote to condone what the Presi-
dent has done. That is, of course, pre-
posterous; the President has been im-
peached by the House. That has only
happened once before in our history.
That 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 had a terrible price in the eyes of
history, not least in the shame and hu-
miliation that this permanent mark on
his presidency has caused him, his fam-
ily, his friends and supporters, and his
Administration. The message is clear,
including to our young people: When
the facts fail to support the truth, there are
real, lasting, even fatal, consequences.

The President’s behavior was shameful, despicable, un-
worthy, a disgrace to his office. And in
this long, sorrid, painful process, I be-
lieve he has been held accountable for
what he has done.

Pursued overzealously by Kenneth
Starr and by House Judiciary Commit-
tee Republicans, the articles were then
passed by the full House. Luckily,
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 to-
gether to put it behind us. In my view,
that bank of the Constitution has
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
the things we did. The things we have
made, had not all been seen. Think of
the good laws that we could have writ-
ten, 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 bet-
ter, more prudent and proportionate
judgment fell by the wayside. First,
and most important, the President
should have avoided this sorry rela-
tionship. 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 Amer-
ican people could have handled it.

Then, the Independent Counsel could
have shown greater discretion in judg-
whether to bring this case forward.
The leadership of the House of Rep-
resentatives could have allowed a vote
on censuring the President, instead of
the farcical farce for 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
will, and against any shred of charity,
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 sen-
ators and not the deliberations them-
selves—doing so only at the end of
the trial—is, in my view, a great leap
sideways.

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
the country to think that such crimes
as sexual harassment and perjury are
“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 presi-
dent from office would be dangerous.

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
encouraged by the phrase “other high

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 Rep-
resentatives, and on the removal of
the President from office which they would
prompt.

First, I am shocked and saddened
that our Republican colleagues persist-
ently have blocked our efforts to have
open and public debate on this matter
in our deliberations in this Senate, and
most especially in our deliberations
on the final votes on whether to remove
the President. Whatver their motives,
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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 must not be conducted 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 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 not merely partisan, nor ambiguous. 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 grounds for doubt about both the facts and law surrounding each of the two grounds for doubt about both the facts and law surrounding each of the two.

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, there are just enough lingering doubts. It is true that they abhor the President’s behavior, but don’t believe it merits his removal. In addition, they believe that 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 should be spent to go to bolster Medicare, or to some combination of universal savings accounts or tax cuts. These are the things that 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 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. The case for fines against the President is a 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; 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 attention. That judgment is by now clear: Bill Clinton should remain President; the censure of this body, and the historic impeachment that will forever attach to his name, will leave a permanent mark on his presidency.

I thank you, Mr. Chief Justice, for the fine work that 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 did not have a full session, and I will say that, but I also agree with 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—I actually meant about the last election, and the others who met in Philadelphia 212 years ago; of the generations of Americans since then; of the American people; and of future generations of Americans.

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, 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.

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 had to 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.

Thank you, Mr. Chief Justice, for the fine work that you have done and for being the member of the Senate who 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: "...do solemnly swear that I will support and defend the constitution of the United States of America..."
States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will take this obligation freely, without any mentalreservation 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 J efferson Clinton, President of the United States, now pending, [I] will do impartially 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 President; and the oath to tell the whole truth, and nothing but the truth to a jury of his peers.

I am most concerned that the action we take here to day not denigrate the role of truth in our society. To be fair to the President, I feel he believed that he had 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 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.

The most basic principle at issue is the separation of powers between the three branches of government. The most basic principle referenced by the Framers was clearly wrong, and his actions of perjury, perjury alone, have not violated the oath to faithfully execute laws, and by testifying before the grand jury. We have pledged to "Support and Defend the Constitution," and to us, that means that in our present role 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 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.

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As a former United States 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 beyond the pale, and if the 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. I do not believe his actions were a violation of his oath to "faithfully execute the law of the United States," or does he have the constitutional right 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 to us, that means that in our present role 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 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.

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if I knew my vote would be the deciding vote here, I would not vote to remove this President, despite his unlawful actions. He has not brought that level of danger to the nation which, in my judgment, is necessary to justify such an act.

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, in a majority vote, when voting to remove him from office, 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 underlines the grave situation we face, as a nation, the 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 that the great principle under which we are conducting an impeachment would require 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 plagues 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 suffered over the past year has been agonizing for all of us. Since the Senate convened as a Court of Impeachment, I have received hundreds of e-mails and letters from every reach of my state, from the most remote Eskimo village to our largest urban centers.

I have literally received letters from 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, last Christmas Eve, I had a motto that I have tried to live by. “To hell with the politics. Just do what’s right for the nation.” 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.

Mr. LIEBERMAN. Mr. Chief Justice, throughout the history of this great nation, 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 guidance, its principles, its ultimate verity. Each time we have emerged from these trials stronger, more resilient, more certain of Daniel Webster’s claim of “one country, one constitution, one destiny.” (Speech as a Whig Party rally in New York City, March 15, 1837.)

And each time we awoke 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. Now, as the impeachment trial of William J. 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. 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 unsettling 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 or 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 is 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 been broken along party lines, they have never broken the spirit of common purpose we share. Indeed, throughout the past several weeks we 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 coequals 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, 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 now, 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 made false 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 trust we have placed in him as our chief executive, our chief law enforcement officer, and as our most senior public servant.

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 President 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 Constitution, 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 proponents. 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 deliberated 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—"that the people are 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." (Jefferson ed. 1956 p. 58)

In debating the President's fate, we must remember that 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 elected 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 him popula- larly-chosen President. The Framers provided a very narrow escape valve 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, a standard 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, [the President's] 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 a situation which must be held in check by an independent and impartial 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 debate, which we have shared in 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 from the infamy of the misconduct 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 administer into a scheme of peculation or oppression. He might betray his trust to foreign powers. ... In the case of the Executive Magistrate, 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. (II Records of the Federal Convention of 1787, 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 corruption," that would make the President guilty of "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 it would "give a term no equivalent to a tenure during pleasure of the Senate." (II Records of the Federal Convention of 1787, 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 I 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 cannot be 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 whose continuance in power may threaten the nation’s interests, not simply each of us in the Senate must conclude 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 they would rise to the level of a high crime or misdemeanor.”

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 no longer has the moral or the ability 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 an 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. (See Trial Memorandum of President Clinton 1998 ed.) 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 in a way 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” and 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.

An impeachment proceeding is not a criminal proceeding since the Court of Impeachment is barred by the Constitution from imposing any of the usual 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 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 Handbook on Impeachment (p. 17) offer 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 J. 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 Managers assert that those 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 Managers have not adequately explained how the President, by 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 her job search at the President’s request, both Ms. Lewinsky and Mr. Jordan testified that there was no connection between the two events. Mr. Jordan testified 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 evidence to the 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. (See, e.g., Aug. 17, 1998 Grand Jury Testimony of President Clinton pp. 9, 10.) Mr. 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 attempt at an elastic interpretation of the delicate details concerning an acknowledged wrongful relationship.” (Trial Memorandum of President Clinton p 44). I disagree. The President’s statement almost certainly was not an accurate account of 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’s statement was true, or whether the President perjured himself in his Jones deposition and obstructed justice.

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 a 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. (See Feb. 1, 1999 Deposition of Monica Lewinsky, 145Congressional Record S 1225 (Feb. 4, 1999).)

Although it is less central matter, I am puzzled by the President’s inclusion in his prepared grand jury testimony that the statement that I regret that I did not have sexual relations 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 her 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 lowered Ms. Currie’s name in connection with Ms. Lewinsky in response to those questions. (See Jan. 17, 1998 Deposition of President Clinton, reprinted in Senate Doc. 106-3 Vol. XXII, pp. 17, 20, 21, 22, 23, 24, 25, 26, 27.) Certainly, if the President 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 her memory.

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 in his Jones deposition, 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. I would impose no penalty on 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 misbehavior could have 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, 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. The Managers have tried 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 other than 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 so, 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 they would approve of President Clinton's record, that President Clinton is doing a job 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 our constituents rank 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 the President is not linkage or 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. Particularly 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 a right to be disappointed in the 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 polls also show that the electorate is divided on the subject of whether the President is fit for office. Consequently, I believe the public's judgment of the President's actions was reawakened by the prevailing controversy over one-fifth of the American people claim the President's false or misleading explanations 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 cover-up 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 embarrassingly shamed, even indefensible, yet not illegal.

Indeed, the evidence by which much of the evidence the Managers presented to the President his misconduct, is in the eyes of the House Managers and many of the President's critics and 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 future Presidents to come.

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 and 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 future Presidents to come.

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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 this to a head. It is that, which 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 high office.

And what it can 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 the 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 persistently denies 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 partisan and articulate our common values even though we Senators and our constituents have disagreed about impeachment.

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 the Paula Jones case, he said, was public cynicism, "the widespread conviction that all politics is 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 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 Government Accountability Office 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 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 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.

Mr. BROWNBACK. I find that William J. Jefferson Clinton did commit perjury and obstruct justice; that these offenses constitute a direct violation of Article 2, § 4 of the Constitution; that the President is guilty of moral turpitude; that the President broke his faith; and that the President has engaged in willful corruption.

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 not an ordinary man. Gifted and charismatic, brilliant and creative, he has used his sexual attraction 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 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 has done great harm to the norms of honesty and integrity that form the underpinnings of this great Republic.

The following represents the specific facts upon which I find William J. 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—PERJURY BEFORE A FEDERAL GRAND JURY

In his conduct while President of the United States, William J. 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 corrupted and manipulated the judicial process of the United States for his personal gain and exomeration, impeding the administration of justice, in that:

On August 17, 1998, William J. 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 J. 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's account of the relationship:

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 contemporaously shared the details of her encounters with the President. Ms. Lewinsky is a 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 this story is grand jury concerned about sexual relations with 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 body with the specific potential to cause injury 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 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 external relations of President Clinton 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 evidence of President Clinton's deposition 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.

B. Testimony concerning his account of the relationship to Betty Currie:

On January 18, 1998, President Clinton met with Mrs. 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 he was not trying to hide anything from Mrs. Currie to say something that was untruthful." However, as discussed further in the obstruction of justice charges, President Clinton said to Mrs. Currie "Monica came on to me, and I never touched her, right?" Based upon both Ms. Lewinsky's 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 contact is accurate. As a result, I must further conclude that President Clinton was lying when he told Mrs. Currie that he had not touched Ms. Lewinsky, and that the President permitted perjury when he testified before the grand jury that he had not as with Mrs. Currie to say something that was untruthful."

Mr. Clinton further testified that his only interest in speaking to Mrs. Currie that day after the President was deposed in the Paula Jones case was to "refresh [this] perjury 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 Mrs. Currie was to recall events concerning the President's affair with Ms. Lewinsky.

C. Testimony concerning his account of the relationship to Sidney Blumenthal and John Podesta:

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 also stated that "I was not trying to get Betty Currie to say something they could—that would be true, even if misleading in the context of this deposition." Mr. Clinton told Sidney Blumenthal that "Monica Lewinsky threatened me with 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 make a public affair out of that. 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 anybody." Even President Clinton acknowledges that he was alone with Monica Lewinsky and 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 stated that he had "not engaged in [sexual activity that fell 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 "[if] the White House aides testified that you denied sexual relations or relationship with Monica Lewinsky, or if they told us that you denied that, you knew you had 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 account of the conversation and 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—OBSTRUCTION OF JUSTICE

In his conduct while President of the United States, William Jefferson Clinton obstructed justice by violating 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, 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:

A. 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 Mrs. Currie, who stated "I understand you have something to give me" or "the President said you have something to give me." Mrs. Currie then retrieved the gifts that President Clinton had given to Ms. Lewinsky and hid them under her bed. Based upon the fact that Mrs. Currie did not contact Lewinsky and hid the gifts, I conclude that President Clinton obstructed justice by attempting to hide evidence requested
in a subpoena in a federal civil rights case.

B. Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William J. Jefferson Clinton intensified and succeeded 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 assistance in finding 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 a job in New York.

Mr. Jordan stepped up his activities on December 11, 1998, because, on that date, Judge Susan Webber Wright ordered Mr. Jordan to appear before a grand jury for testimony of an intimate relationship with the President. On January 7, 1998, Ms. Lewinsky signed a false affidavit, stating that she had not engaged in a sexual relationship with the President. 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.

C. On or about January 18 and January 20-21, 1998, William J. 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.

Mrs. 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 Mrs. 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 Mrs. 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 Mrs. Currie and President Clinton contradicts the fact that these statements were an attempt to influence the future testimony of Mrs. Currie, as the Court of Appeals for the District of Columbia has held. The President related a false and misleading account of events that had occurred in an effort to secure job assistance from Mr. Jordan.

D. On or about January 21, 23, and 26, 1998, William J. 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 were made by William J. 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 Mr. Clinton what the President had done wrong. According to Mr. Blumenthal, the President responded "[n]othing" and "I haven't done anything wrong.

When Mr. Blumenthal asked the President why 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 on 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." 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 to Mr. Blumenthal. However, the credibility of such statements is evident 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. He asked whether the President 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 Mr. 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 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 grand jury witness. As 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.

**HIGH CRIMES AND MISDEMEANORS**

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. Where we do not 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 Enforcer of the land. He 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 law “other crime.”

**CONCLUDING COMMENTS**

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 years. The public’s respect for 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 two 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. We pointed not 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 adoration 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 are no longer worn out by the 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 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 whether our country sustains 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.

Mr. BRYAN. We are about to embark upon a roll call 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 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. Concerning the country, 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, and we are a better country for it.

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 Congress. It was the declaration of the Constitution that “the President shall be deemedCompatible with the Constitution. Without the rule of law, and without a culture of prevarication to honor and uphold the truth. 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 are to sustain the legal foundation upon 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 “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.”

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considered. As the Constitutional Convention proceeded, 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 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 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.

The Constitution wisely imposes a heavy burden of proof upon the House of Representatives to convict and remove an duly elected President. And when that constitutional process is tainted by partisan actions, the Articled of Impeachment must be subjected to an additional measure of scrutiny.

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's conduct was improper, 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 on 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 exists to conceal his improper relationship with the White House intern.

In this record, as one of the House prosecutors pointed out reasonable people can differ as to the conclusions they reach. The President pursued a course of conduct necessary to remove a duly elected 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.

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.
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 a 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 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 from 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.

Mr. AHCROFT. When the impeachment trial began on January 7th, 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. Many witnesses have a right 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. If I were to consider the evidence that I have considered, I would have to conclude beyond a reasonable doubt that the President committed perjury. If I were to do that, I would find that the standard required by the Constitution is not met.

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 lies to his aids are another example of a false statement that was made to the grand jury. Ms. Currie was asked if she believed that Monica Lewinsky was involved in the President's relationship with her. Her response was "I do not know. I do not believe he ever had a relationship with Monica." (See 1/22/98 GJ, at 193.) If that is the truth, then Ms. Currie's testimony to the grand jury was true. 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.

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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." (See CONGRESSIONAL RECORD 6/4/98 GJ, at 106.)

The President's testimony about his own aides, however, makes it clear that the President was not truthful with his aides. He did not tell 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. (See Sen. Rec. Vol. IV, part 3, at 3311; Mr. Podesta 6/16/98 GJ, at 92.) Sidney Blumenthal, another presidential aide, testified that the President told him that Mr. Clinton "came at me and made a sexual demand on me," that he "rebuffed her," and that Ms. Lewinsky "was known as the stalker." (See Sen. Rec. Vol. IV, part 1, at 185; Mr. Blumenthal 6/4/98 GJ, at 40.) In his Senate deposition Mr. Blumenthal unequivocally stated that he now believes the President lied to him. (See CONGRESSIONAL RECORD S1249; Mr. Blumenthal 2/3/99 Dep.) As the President's closest aides have not paid attention to their relationship, 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 PRESIDENT'S TESTIMONY ABOUT HIS RELATIONSHIP WITH MS. LEWINSKY

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 and the President's attorneys that she 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 with 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 not sufficient 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 present with a "he said, she said" situation such as there were "said" situations. 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," but "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 PRESIDENT'S TESTIMONY CONCERNING HIS DEPOSITION

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 be the basis for his perjury conviction for two reasons. First, when viewed in its entirety, the President's grand jury testimony makes this one statement imma-
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 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 attention to Mr. Bennett, I have not been able to remove all doubts from my mind on this score.

THE LEGAL ELEMENTS OF GRAND JURY PERJURY

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 President’s grand jury 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 false, material, made under oath, 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. Thus, the President’s statement 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 false at the time it was given.”

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 fact-finding function and fact-finding authority are so broad, statements that such testimony was knowingly false at the time he provided it.”

I have already discussed why I have concluded that such testimony was knowingly stated or submitted. This requirement is ordinarily satisfied by proof that the defendant knew his testimony was false at the time he provided it. Moreover, in light of the legal standards for grand jury perjury, I am convinced President’s grand jury 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 false, material, made under oath, with intent, and the statement must be both false and material.

As noted in the discussion of perjury, the President called in Ms. Currie the day after his sworn deposition testimony 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 6:00 a.m.” According to Ms. Currie, she would have been asleep during this time and “I was never really alone with Monica when she was there.”

In other words, during his deposition, the President 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 corroborative evidence. 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 also 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.

ARTICLE II—OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING

The second article of impeachment approved by the House alleges that the President obstructed justice and provides seven examples of specific conduct obstructing justice 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.

COACHING MS. CURRIE’S TESTIMONY

As noted in the discussion of perjury, the President called in Ms. Currie the day after his sworn deposition testimony 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 6:00 a.m.” (See Sen. Rec. Vol. IV, part 1, at 559-560; Ms. Currie 1/27/98 GJ, at 70-75.) According to Ms. Currie, the President repeated this rehearsal of questions and answers two or three 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 directed 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 6:00 a.m.” (See Sen. Rec. Vol. XIV, at 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 at 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, as well as 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.

THE PRESIDENT, MS. LEWINSKY, AND THE FALSE AFFIDAVIT

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 corruptionally encouraged Ms. Lewinsky to file a false affidavit in the Jones litigation. The President does not dispute that he called Ms. Lewinsky on September 1, 1998, in the presence of her personal secretary, Dr. Leonard, on December 17, 1997, to inform her that she was on the witness list in the Jones case. The President's argument is that she wanted Ms. Lewinsky to file a false affidavit and to call her to testify about Ms. Jones. However, as he himself recognized in his letter to Ms. Lewinsky, she did not want to file a false affidavit. As the President put it in his grand jury testimony, "I did 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." (See Sen. Rec. Vol. III, part 1, at 571; Mr. Clinton 8/17/98 GJ, at 119). 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 the President's defense because it is a crime to corruptly persuade a potential witness to delay or prevent their testimony.

THE GIFT EXCHANGE

Ms. Lewinsky's testimony in the Jones case is critical to the President's defense because it is a crime to corruptly persuade a potential witness to delay or prevent their testimony. 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". (See Sen. Rec. Vol. III, part 1, at 843; Ms. Lewinsky 8/17/98 GJ, at 123). To be sure, Ms. Lewinsky stated that she did not want to file a false affidavit and that only a false affidavit could have prevented her from being called as a witness. 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's 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 or deliver" anything that could be relevant to the case against her, (2) it stated 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." (See Sen. Rec. Vol. III, part 1, at 1235). Moreover, any doubt about the falsity of Ms. Lewinsky's affidavit is removed by her decision to testify in the Jones case. 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 may be deceptive, in their origins, the President's revocation 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 could not use 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 revocation of the cover stories constituted obstruction of justice. His actions obstructed the true course of justice and debased our American citizen a fair hearing of her claim.

THE THIRD EXAMPLE OF OBSTRUCTION OF JUSTICE

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 argues 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 argues that 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 any correspondence you may have written on behalf of Defendant Clinton." (See Sen. Rec. Vol. III, part 2, at 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. Mr. Jordan 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." (See Sen. Rec. Vol. III, part 1, at 872; Ms. Lewinsky 8/11/98 GJ, at 152.) 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." (See Sen. Rec. Vol. III, part 1, at 495; Clinton 8/11/98 GJ, at 43.)

Ms. Lewinsky left the White House and returned home only to receive a call from Mr. Jordan to tell her that he understood that you have something to give me" or "the President said you have something to give me." (See Sen. Rec. Vol. III, part 1, at 874; Ms. Lewinsky 8/15/98 GJ, at 154-55.) Ms. Currie does not recall making this call, and even if she did, Mr. Jordan testified that Ms. Lewinsky initiated the gift exchange. It is uncontested, 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 we do not have direct evidence 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.

search and that he was finding Ms. Lewinsky a job at the "behest" of the President. (See Cong. Rec. S1245; Mr. Jordan Dep. 2/29/99). This word choice is telling. The Dictionary defines "behest" as "an authoritative order," or secondarily as "an urgent prompting," and suggests "commanded" as a synonym. Merriam-Webster's Collegiate Dictionary (Tenth Edition 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. (See Jones 4/11/97 GJ, at 152.) 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 City. Ms. Lewinsky's level of job assistance was overwhelming 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 had previously 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 corroborated by 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 regarding the meeting 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 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 omission 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 next 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 President told these lies to his aides with the expectations 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 the President told the 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 next 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.” The President also 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 Law of Obstruction of Justice and Witness Tampering

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 that the defendant: (1) knowingly engaged in conduct that obstructed or interfered with the grand jury proceeding; (2) the defendant knew of the grand jury’s investigation; (3) with intent to influence, delay or prevent testimony or cause any person to withhold a record, object or document from an official proceeding; (4) from an official proceeding. Each of these elements is satisfied in this case.

The President’s attorneys have emphasized that the President never physically threatened any witness or otherwise engaged in witness tampering. This argument, however, is not supported by the evidence. Specifically, the President and his aides were not trying to be particularly helpful” to the Jones lawyers. (See Sen. Rec. Vol. III, part 1, at 532; Mr. Clinton 8/17/98 GJ, at 80.) As a result, the President’s acts did not amount to witness tampering. Moreover, there is simply no relevant precedent for the President’s actions in the context of a 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 a grand jury perjury, the assertion that witness tampering requires actual intimidation simply misstates the law.

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.” 35 American Law Review 989, 1004 (1998). Each of these elements is satisfied in this case.

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There is ample evidence to support Chief Justice Jay's view that, of all criminal acts, 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: "[If] oaths are to be kept, 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, wields the only remaining device of oaths; it will demonstrate the importance of personal responsibility and accountability. Rather than signaling that some in society are too talented to be prosecuted or too entitled to be tried, 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 endorse 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 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 a sign of abandonment, I argue 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 would have preferred to return to a positive 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 stronger the one and only 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, my duty is to represent the most important assigned to the Senate under our Constitution. It has been my goal to do my very vest 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” for “treason, bribery, or other crimes and misdemeanors.” It makes no sense to punish a man. It is not a way to execute the Constitution and procedure.

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 do so, he engaged in classic witness tampering with his secretary seem innocuous; and to make his testimony in the Paula J ones case appear truthful.

As to obstruction of justice, in my view there is no dispute but that the President intentionally interfered with the testimonies. When the President spoke to Monica Lewinsky about her being a witness in the Paula J ones 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, she knew exactly what he meant; he was misrepresenting the facts, and attempted to make his efforts at witness tampering with his secretary seem innocent.

The House Managers performed their duty admirably, making a comprehensive, coherent, and eloquent presentation. The White House attorneys presented a spirited defense. Similarly, the Senate had a duty to undertake this task, and I do not believe they failed.

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The purpose of impeachment is not to punish a man. It is not a way to express displeasure or disagreement with a President. It is an extraordinary process which is designed to scrutinize the President’s conduct. The purpose of impeachment is to determine whether the President should be removed from office. The President is not above the law. The President is accountable to the people for his conduct.

The 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 J udiciary of the United States. The second is whether the President obstructed justice, interfered with the investigation of the Paula J ones deposition, and obstructed the Federal grand jury, to the J udiciary of the United States.

A President’s role in an impeachment trial is a mix of roles from our judicial system. The Senate is a court, and the Senate’s function is to determine whether the President is an unfit President. It is not a way to punish a man. It is not a way to execute the Constitution and procedure.

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Mr. CRAPO Mr. Chief Justice, very soon we will all cast what is clearly not the case 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 all “the President, Vice President and all civil Officers of the United States.” There is no support for it in the Constitution, which establishes one standard of impeachment for all “the President, Vice President and all civil Officers of the United States.”

I must think about our soldiers and our children. Can it be possible that the President is the Chief Law Enforcement Officer if, we vote not guilty, 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 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 to our soldiers about duty, honor, and country?

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 this should be followed by the election of a President by the Congress. If the President is removed, the Administration does not change from one party to another. The Constitution wisely provides for continuity.

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.

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 J. 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 past few weeks by President Clinton's legal advisors has simply been beyond reasonable 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 the President'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 to render "impartial justice," and others, are faithfully executed 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 to be taken 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 right that will only be realized as we embark 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 Iowans to represent them impartially. I committed that I would conduct this trial in a fashion so that 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 in the context of a civil trial, 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, the evidence presented to the Senate shows a 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 for 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 a grand jury. Clearly, the President is subject to criminal 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 civil 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 cannot be subject to the 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 precious and powerful concepts 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 with which the Public Right would 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, 1790

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 Iowans 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.

Mr. DORGAN. Thank you Senator LOTT, Senator DASCHLE, and Mr. 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. There 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 "Tiffany's" 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 were 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?

Many had 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 2/3 vote required in the Senate, impossible to do on a "partisan" basis.

It is in the matter that calls us to this duty 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 prosecution promises 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 denying having a sexual relationship with Monica Lewinsky. That was a lie. Oh, I know about the仓学lit documents that were 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 three 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 recruited to participate in that investigation that was obtained 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 have put 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 Monica Lewinsky story 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.

Well, this sorry chapter in our rich history embraces both. Lies, yes! And truth that is almost unbelievable.

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 two 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 impeachment said in their impeach 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.

I cannot help but wonder whether, as in the case of the Watergate scandal, the public demonstrations of the President’s behavior, which the country has endured over the past year, have further transformed the conduct of public business in any way that is either salutary or the result of informed judgment.

There is a special spirit in this Chamber. No matter all the easy criticisms of the President’s behavior, it is clear to all that 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 we say, 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 do not think the case has been made 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. 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 Senate has no judges, that 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, which is the basis of the President’s actions.

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, sometimes a clear articulation of why 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 is certainly a suspect, does not make it harder to do. If anything, there may now be a greater appreciation for the trouble you get into for certain behavior. More parents are teaching their children about lying, about humiliation, about family hurt, about public responsibility, than before we ever heard the name of Monica Lewinsky.

The clear answer to children who write letters about the President is that they 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.

Let me be clear about the President’s behavior. No matter all the easy criticisms 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 simple conduct that doesn’t meet 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 high a 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 political purpose. 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 the law 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, proportion 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—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. And 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 that reason did we need eighty 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 would have the past of a Mother Teresa, because our investigators will eventually turn away from the fact that all of these figures—Jackie Bennett, Linda Tripp, and Ken Starr's staff and his witnesses—would have the past of a Mother Teresa.

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 Paul@ Jones filed her suit in 1994, announced 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 who comes out and testifies against Paula better have the past of a Mother Teresa, because our investigators will eventually discover 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 J ones pledged that: "We're going to use 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 about this case." 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.

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measures 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 conviction, 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 S'Baranes 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.

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 we also believe in 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 the 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 to all aspects of this case. I hope that 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, that there was the commitment to rule of law by which we save each other, and are beginning to heal our country.

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.

I refer to one of 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 with Betty Currie 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 itBetty Currie, about her job, her hours at work, etcetera.

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 Presidentcalled Betty Currie at home on a Saturday night and asked her to come to the White House the following 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 the President said “When do I know 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 blatant statements to Monica Lewinsky 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 obstructed justice on August 17, 1998, when he testified about these two post-deposition meetings with Betty Currie. I know there may be some who are still struggling with the perjury charge. I simply do not 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 all 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 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 his 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 conviction.

This perjury had to do with the nature and details of his relationship with Monica Lewinsky.

I know that 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 for a vote. I voted against it because I share some of the same concerns we have heard expressed here today and yesterday. We all will have to deal with the Secret Service that is now vulnerable to subpoena and Presidents who are vulnerable to civil right suits while in office.

These are important issues, but I submit they are issues not for today
immediately following these remarks.

Obstruction of justice and perjury strike at the very heart of our system of justice. By obstructing justice and committing perjury, the President has directed, authorized, 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 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 of his office. As an article of impeachment, 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 larger context of a pattern of events relating to the operations 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.

Of course, the search for the facts would not have stopped if the President had been found to have committed no other crimes.

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.

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mands that he "take care that the laws be enforced these laws. The Constitution com- America the law is king" (17).

The rule of law: "Let a crown be placed (on the ruler) and determine the rule of law. The law is indeed king in America. There is no law for the powerful and one for the meek. We mean when we say we are a nation of laws. We elect a President to enforce these laws. The Constitution com-mandments the rule of law.

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 impeach and remove the President on both counts, and to remove him from office.

Walter Mondale, speaking before the Senate, November 19, 1993, made a statement that the Senate would vote not guilty. I assumed that the President was guilty of "Behaving in a Manner Grossly In-her to your private kitchen with Jane Doe 6 Lewinsky down the hallway..."

"Whatever you-all might call this, to me it seemed like a natural thing to do to me, But I didn't believe that I actually was the pre-cipitating force. I think that she and Betty suggested that he meet with her. Anyway, he met with her. I, I thought that he talked to her about these other issues..."

"We define ourselves as a people not just by our recollection of that. And so I said you would qualify, or every woman I ever talked to and ask them..."

Betty, Betty was present, for sure. Somebody else might have been there, too, too, too, too, too. I mean that's just something I said..."

What must we do with this President who has obstructed justice, and then committed perjury about that obstruction? Obstructing 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 cor-ruptly attacked the co-equal branch of government, the judiciary. The requirement to obey the law applies to us all, in all cases. To say the President can obstruct justice and then commit perjury is to put the President above the law, and above the Constitution. Perjury is 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 in-volves self-incrimination. But a decision to place an oath 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 ju-diciary, turning it into a mechanism that ac-cepts lies—so that injustice may prevail.

2. Each Senator must determine the standard of proof of "clear and convincing evidence". The Modern Federal Jury Instruction de-scribes clear and convincing evidence as "proof that leaves no substantial doubt in your mind... 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 'rea-sonable doubt'...." Modern Federal Jury In-structions, section 73.01 (1998). I have re-jected the standard of proof "beyond a rea-sonable doubt," which applies to criminal cases, because the perjury case is not a criminal case, but a case in which the defendant is threatened not with loss of liberty but with loss of of-fice. I have chosen the standard of "preponderance of the evidence." This stand-ard, 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 serious-ness 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: No, I think, I think, I think Betty suggested that he meet with her. My impression was that Vernon was talking to her about her moving to New York. I think that's what Betty said to me. 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 Vernon and then he said something to me about it... Question: My question, though, is focused on the time before the conversation oc-curred, 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 we get back to the question you made, but what 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 meet-ing, I do not believe that I did. I believe that Betty did that, and she may have men-tioned, 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 13..."
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 Bill. And then, and she went to Bill and went to an interview with him. That’s what I believe happened.

7. 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 both of them about moving to New York, and I, my recollection is that that was the chain of events.

8. 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’s, I certainly wouldn’t have been opposed to it, based on anything I knew, anyway.

9. Question: How long has Betty Currie been your secretary?
Answer: Since I’ve been president.

10. Question: How is her work schedule arranged? Does she have a certain shift that she works? Does she 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, 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.

11. 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.

Answer: No, you ever met—

Answer: Now, let me just say, when she was working here, during, there may have been times where 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 late 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 under 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. 1502 which provides, “Whoever 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.


10. Ibid., p. 56.

11. Ibid., pp. 121-2.

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 . . . court or grand jury of the United States . . . shall be guilty of a 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 has the natural tendency to influence, the decision of the decisionmaking body to whom it is addressed.” A statement is no less material because it did not or could not influence or distract that decisionmaking body, as I understood this term to be defined in definition (1), would that be, under the United States authorizes an oath to be 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 . . . court or grand jury of the United States . . . shall be guilty of a false material declaration . . . shall be guilty of an offense against the United States.


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 other person would that be and with the intent to arouse the sexual desire, arouse or gratify, as defined in definition (3), would that be, under your understanding then and now—
Answer: Yes, sir.

Question: —Sexual relations?
Answer: 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 the—arousal or gratification, that would fall within the

Definition. So, you didn’t do any of those three things?
Answer: You—

Answer: —With Monica Lewinsky?
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 heart felt 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 matter as a parent, 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 actions of a reprehensible 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, 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? I have discovered 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 truth 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 the example of his actions 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 reasonable. This expression of humanity and forgiveness from the real-life people of this Nation that we represent reassures us that in our highly technical, fast-paced and somewhat impersonal society, we as a country but, more importantly, 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 facing personal or being intolerant—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 we 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.

Mr. HELMS. Mr. Chief Justice, 26 years ago this past November, I was first elected to serve as a United States 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 the 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 have 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 exception 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 statements 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 Christmas 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 sang "* * * 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 eternity. I remember 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 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 virtues by the Creator who blessed America 210 years ago with the survival of America?

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, Mr. Chief Justice, the House managers is very 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 andสมบุญ 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." 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 United States 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 United States Senate is prepared 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 found 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 lie of the President of the United States of America to stand, Mr. Chief Justice, then I genuinely fear for America's survival.

Shortly before written testimony, 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'll 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 obligated 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 1995, 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. Only children tell their parents and teachers that it's okay 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!"

Mr. HOLLINGS, Mr. Chief Justice, I shall vote with a clear conscience not to convict; rather, to acquit. And 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 present evidence, could one reasonably 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 playing a crime 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 danger to the country, an abuse of Presidential power. And 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.

Let's get to it. Fooling around—that was what Monica Lewinsky called it—seen as sex and not, fooling around is not a crime. In fact, actual intercourse constitutes adultery, a crime which the man in the street, I would say, are very familiar with.

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 any jury? We wouldn't 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—whomever 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 Duckett. I said, "George, have you ever taken persons 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, again, everybody says that is true and we can go on 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 money; and thereafter subpoenaing the mother in tears; the Secret Service, the White House steward, the bookstore; some 4/1, 2, 5 years and $50 million. And they come up with private sexual misconduct. A and B both swear 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.

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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 on 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, I, 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
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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 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; it’s a different thing to understand 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 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 65, said that the types of crimes for which impeachment is the appropriate remedy are “political.” 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, that I know a fair amount about.

I worked on a 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 brochures.

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 Moravian from the country. That 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 commitment 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 do what I want to do—end 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 action on the House. It is a grave responsibility. 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 on our Nation as a whole. The Times has started to call us the “odd couple.” I 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 could 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.

If I am going to cast a 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 United States Senate. What I want 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 tearing out the very fabric of the 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.

But this is not a bipartisan mess that we have all helped to create. Nor does it have to continue. Let it end here, and let it end now. 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 Senate seat here in Oregon— 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 of the matter 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
that this trial will bring us closer
together over time, and I hope lay a foun-
dation for some very good work in the
106th Congress.

Today, as Oregon's other Senator, I
will cast two votes to convict and re-
move President Clinton. Indeed, over
the last 2 years there have been many
issues, ranging from the expan-
sion 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 in-
spired 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 Clin-
ton's conduct has made a mockery of
most of his words, or that his example
has been beyond catas
trophic 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 Rep-
resentatives argued two articles of im-
peachment 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 circumstan-
tial evidence, and the White House law-
yers worked skillfully to plant the
seeds of reasonable doubt. But as the
trial progressed, I found that these
seeds only grew, and they have taken
portion to my ability to suspend com-
mon sense. I struggled throughout the
trial to find a way to acquit the Presi-
dent, if possible, on both or at least one
of the articles. But in the end, the facts
kept getting in my way. The stained
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
return to the White House, and then being threatened that it was 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 in-
discretions 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. Blum-
thal saying that what he had been
told by Mr. Hamilton was a lie. We saw
Mr. Ruff play the videotape of Mr. Clin-
ton'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 calcula-
tions of his mind to obstruct justice.
So common sense caught up with this
juror.

Having concluded that the President
did, indeed, commit perjury and at-
misedly said, "What I told him was truthful but
nothing else can.

Consider the painful contrast this
creates when measured against the
public life of President Clinton. When
he was accused before the grand jury of
his misdeeds, did he appoint to disperse justice? I can-
not and I never will agree to such a low
standard for the Presidency of the
United States.

I want 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 expan-
sion of NATO to the promotion of free
trade and the fight against big tobacco,
in which I have supported him and
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ton's grand jury testimony in which he
said, "What I told him was truthful but
misleading." That was a lie. And it was
so junior I do it from a distance—I deeply regard—and because I am wrong.

oppose them when I believe them to be right, and I will continue to support his proposals fore, I hope the President will spend with any Federal office—yours as crimes, and they are utterly inconsistently applied. The Constitution is very clear. It requires Members of the United States Senate to vote for or against each Article of Impeachment. No provisions, No substitutions. No censures. No finding of Impeachment. No improvising. No one of us would say that he is free of serious fault.

Mr. HAGEL. I write this statement at my desk on the floor of the United States Senate. After weeks of listening, 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 United States 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 power of the Constitution to remove a President who has abused 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 of 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 inquiry and afterwards 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. The President is one of the 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 pin head of legal technicality. Everyone 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 same case for the Vice President. He 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 same case for the Vice President. He 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 same case for the Vice President. He 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.

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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 were both relatively definite terms. But “high crimes and misdemeanors” are indefinite.

In this setting, two rules of construction exist to add the word—Madison and Mason to add the word—or another, 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 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 with the world, the President committed perjury, obstruction of justice, and those crimes are so serious that they constitute, by definition, high crimes and misdemeanors, defined by definition 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 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 were later 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 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 that, 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 a high crime or misdemeanor.

And the doubts about the perjury 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 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. Whoever conduct, any other charges, are left to the judgment of the people in casting 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 are required, 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 deliberately ignore it 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 threshold 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 five-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 that, in the end, justice will be done, and the Constitution will have protected the President. 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 been subjected 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—ungrounded 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.
February 12, 1999

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 not been—the relentless attempts at political and personal destruction that he has been subject to. His failures do not deserve—and have never deserved—the triggering of a constitutional process that our Founding Fathers reserved for the most serious of our 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 believe the United States of America is 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.

Let me also be clear that I believe the United States of America is not solely in defense of President Clinton—but principally in defense of the 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 partisan 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. With equal vigor, they demand that we, in fact, demand it. But they also demand that we, in fact, demand it. But they also demand that we, in fact, demand it.

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 a small number 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 two 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. The last two 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, 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 come forward. But the President refuses to be held accountable. And I have a problem with the repeated reference from the First Lady that the President minsters 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 figure' 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 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, 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's 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 in 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 discreet activities he and Monica Lewinsky had engaged in. To believe his testimony 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 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 secure an affidavit that did not serve his interest. Mr. Jordan is not at fault; he was merely a pawn in the President's strategy to obstruct justice by encouraging the subscription of a false affidavit from Ms. Lewinsky.

Mr. Chief Justice, 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 betrayed their oath. On Saturday, we heard the videotape testimony of Dr. Barbara Battalino who had been an attorney and 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 same 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 under oath to 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! Mr. Chief Justice, 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 it very survival on maintaining the integrity of the oath that a person swears to tell the truth under oath. 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 individual right to a fair trial is endangered when the President of the United States has a personal interest in not having the President testifying under oath. The President's counsel has undermined the rule of law by obstructing justice and committing perjury.

Why should a citizen tell the truth in a court room when he does not serve his interest? Was I, as a parent, allowed to perjure myself because it does not serve my interest? Why should an individual not try to influence the testimony of a witness, when the President suffers no adverse consequence? 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 impeach and remove the President. That is the mandate of the Constitution.

Article II, Section 4 of the Constitution provides the President... shall be removed from Office on Impeachment... Bribery, or other High Crimes and Misdemeanors.

There is nothing in the Constitution that says that a President with a high popularity rating should 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.

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 14, 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 didn't even know whether I would be 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, I said to a place my 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, by the Supreme Court of the United States, demands 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 Supreme Court, 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 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 tarrying 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 road map to follow during the early days of this trial. We followed that road map to the letter, considering a motion to dismiss the proceedings and to provide for the deposition of witnesses. When there was a question or conflict, we decided the answer together. I commend Senators DASCHLE and SOTT for their unflagging 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 injustice, injury or injury to the public safety 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, classified, and made the subject 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—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 once we practice to deceive.”

Impeachment of Damocles 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 awesome power 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 classified, that the task of proceeding further would be put to 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 by any people, particular elected people. I do not believe that this process has been a fair process. They are further supported in their viewpoint by the polarization and partisanship so regretfully 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 conscience 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 that no one, watched by the Committee, watched by the country, watched by the media, has been able to censor. 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 concerning the future 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. If 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 reputation 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 about that oath he took, the oaths he swore. 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 lied, 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—now 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 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 Mr. Clinton 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.”

But 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 of our Constitution, 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 one-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 knowing it 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, 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 considerations 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 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 twenty Senators—the chair, my colleague Mr. Starr; 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 residue 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 sordid 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 God,” the oath concludes, “I will do my duty and the truth will appear.” If the President has 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 perceiving a gargoyle 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.

Mr. Chief Justice, 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 of our history is closed. Perhaps the gravity of 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 those voices are being heard through the chamber, while some of their 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 a decision that confines 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 shredding 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 will still be affected by 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 thousand winds are not carried on 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
February 12, 1999

STENNIS TECHNOLOGY HELPS FARMERS AND ENVIRONMENT

Mr. LOTTON Mr. President, I call my colleagues’ attention to a recent Associated Press article on the Gulf of Mexico “Dead Zone,” a large area that suffers from hypoxia, a lack of oxygen in the water. The article states that researchers are raising the national meeting of the American Chemical Society for the Advancement of Science say that fertilizer runoff, which is rich in nitrogen, into the Mississippi River may contribute to this oxygen deprivation.

Now, I do not know the extent to which this may be true. However, I am proud to say that the Stennis Space Center in Mississippi is working on a high technology system that may hold the key to reducing farm nitrogen runoff while improving crop yield. The NASA Commercial Remote Sensing Program at Stennis, in concert with the local farming industry, is developing a new technique known as precision farming. It is, in real-time, bringing space age technology down to earth. Precision farming uses emerging space-based instruments to monitor farmers’ soil content and computer technology to target fertilizer level to the acreage. It will replace the widely used practice of fertilizing the entire crop to the same degree. Precision farming offers farmers the potential to improve their yield, decrease costs, and be good stewards of the environment.

The PRESIDING OFFICER. The acting majority leader is recognized.

Mr. THOMAS. Mr. President, I would like to go through a number of closing comments here.

PROVIDING FOR AN ADJOURNMENT OR RECESS OF THE TWO HOUSES

Mr. THOMAS. First, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 27, the adjournment resolution, which was received from the House.

The PRESIDING OFFICER. The adjournment resolution, which was received from the House, is ordered to be laid upon the table.

Mr. THOMAS. Mr. President, I ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table.