The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. PEASE).

APPOINTMENT OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC, February 12, 1999.

I hereby appoint the Honorable EDWARD A. PEASE to act as Speaker pro tempore on this day.

J. DENNIS HASTERT, Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Gracious God, as You have created each person and You have breathed into every soul the breath of our humanity, so teach us to live with each other as brothers and sisters who share a common heritage. May self-righteousness not taint our hearts nor undue pride mark our thoughts. As we think of people with whom we live, whether in our families or work or play, may Your words, O God, of faith and hope and love guide and support us all the day long and may Your blessing and hope and love guide and support us into every soul the breath of our humanity, so teach us to live with each other as brothers and sisters who share a common heritage. May self-righteousness not taint our hearts nor undue pride mark our thoughts. As we think of people with whom we live, whether in our families or work or play, may Your words, O God, of faith and hope and love guide and support us all the day long and may Your blessing remain with us always. This is our earnest prayer. Amen.

THE JOURNAL

The SPEAKER pro tempore (Mr. PEASE). The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from North Carolina (Mr. BALLNEGTER) come forward and lead the House in the Pledge of Allegiance.

Mr. BALLNEGTER led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ADJOURNMENT TO TUESDAY, FEBRUARY 16, 1999, PENDING ADJOURNMENT MESSAGE FROM THE SENATE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that when the House adjourns on the legislative day of February 12, 1999, it stand adjourned until 2 p.m. on Tuesday, February 16, 1999, unless the House sooner receives a message from the Senate transmitting its concurrence in House Concurrent Resolution 27, in which case the House shall stand adjourned pursuant to that concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

APPOINTMENT AS MEMBERS OF HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

The SPEAKER pro tempore. Without objection and pursuant to the provisions of clause 11 of rule X and clause 11 of rule I, the Chair announces the Speaker's appointment of the following Members of the House to the Permanent Select Committee on Intelligence: Ms. PELOSI of California; Mr. Bishop of Georgia; Mr. Sisisky of Virginia; Mr. Condit of California; Mr. Roemer of Indiana; Mr. Hastings of Florida. There was no objection.

HIGH SCHOOL STUDENTS IN NEVADA WILL RECEIVE SCHOLARSHIPS BASED ON SCHOLASTIC ACHIEVEMENT

Mr. GIBBONS. Mr. Speaker, I ask permission to address the House for 1 minute and to revise and extend his remarks.

Mr. GIBBONS. Mr. Speaker, we often hear a lot about what Washington bureaucrats want to do about our children's education, but let me tell you what my Governor is doing about education at the State level.

Last month, in his first State of the Address, Nevada Governor Kenny Guinn announced a bold and innovative plan to improve Nevada's high school dropout rate. In this plan, every Nevada high school student will receive a scholarship to a Nevada college or university based on scholastic achievement of maintaining a B average. The Millennium Scholarship plan will help motivate Nevada's students to seek higher education and better opportunities.

When Governor Guinn visited high schools recently, many students expressed excitement over this proposal, and that is our responsibility, to make these students excited about their education. This scholarship program by our Republican governor will change the landscape for educating Nevada's students by creating opportunities that never before existed.

CUTTING TAXES DOES NOT TAKE MONEY FROM THE POOR TO GIVE TO THE RICH

Mr. BALLNEGTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. BALLNEGTER. Mr. Speaker, at our gathering we had down in Virginia this past week, I got a great and very interesting fact delivered to me. Most people do not know how much the tax
GLOBALIZATION THE SINGLE MOST IMPORTANT ISSUE FACING THE WORLD'S ECONOMY TODAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. FRANK) is recognized for 5 minutes.

Mr. FRANK. Mr. Speaker, I believe the most important issue facing our country today and other countries in the world is how we deal with the globalization of the economy. That impact is spurred by technological change and other matters beyond anyone's control.

I do not believe it is reasonable to talk about stopping globalization because that is not an option we have, but we do have a choice to make as to how we will go forward, and there are at least two competing models. One is the argument that says all we need do is let capital find its highest level, let the owners of capital invest wherever in the world they think they can get the best return, urge every government to facilitate that process by making themselves as attractive as they can be to capital. I say to capital that government regulation will be the most important issue facing the American economy.

Domestically, we call that the trickle-down theory because what it says is, do not worry about negative effects on income distribution. Do not worry that to attract capital some places will cut their environmental standards and reduce taxes on the wealthy. Do not worry that this will reward the owners of capital disproportionately. In the end, we will all be better off.

There is an alternative conception. It is one that Franklin Roosevelt began in the early thirties in this country and it is one that says let us have for ourselves the benefits of capitalism, let us get the wealth creation that comes from the incentive structure that the free market gives us, but let us then take strong steps to address the tremendous income inequality that is all too evident around the world within nations and between nations.''

This is the sort of philosophy which, if it is made concrete, will be the basis on which we can come together and go forward in the areas of trade and promoting international development and promoting international economic activity.

The recognition that capitalism unadorned is not enough but that a combination of the carrot of the potential for economic success and public policies which protect vulnerable people against the excesses that are inherent in that system, that is the basis on which we can come together, and I am delighted to congratulate Secretary Rubin. I do not think this is a message that has often been heard in Davos, and certainly not from someone of the public and private eminence of Secretary Rubin. It is a very promising move towards the policy consensus that we need.

OPTIMISM GETS THE JOB DONE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri (Mr. HULSHOF) is recognized for 5 minutes.

Mr. HULSHOF. Mr. Speaker, I have come to the floor of the United States House of Representatives this morning to talk about some big news in a small town in Missouri's Ninth Congressional District. That small town is Ashland, Missouri, in Southern Boone County.

Now, Ashland is a community of just under 2,000 residents but today, Mr.
Speaker, I want to single out 105 residents of that community, the Ashland Optimist Club, who are really making a tremendous impact in the lives of many more Mid-Missourians. The Ashland Optimist Club is in the news in my district because of one huge contribution it made to the community. Now, the Ashland Optimist Club is one of 4,000 Optimist clubs in the United States and Canada, and was chartered in September of 1964 with only 24 members. Today the club has grown and still has an original charter member, Mr. Labmon Wren. Mr. Wren, who was once president of the club, has seen firsthand how the community of Ashland has really prospered by the dedication of those at the Ashland Optimist Club that he helped to establish.

The motto of the club is, “Friend of Youth.” Here are just a few of the noteworthy accomplishments the club has made to give life to that motto. The Ashland Optimist Club has organized the youth basketball and soccer programs. In fact, Mr. Speaker, one of the local soccer teams will be competing in the national playoffs this summer.

The club has built and donated two tennis courts near the city park. It operates a 32-team Little League baseball program. It purchased new band uniforms for the school marching band; owns and operates the Ashland community swimming pool, the only municipal pool in the county to utilize solar energy. The club has sponsored Boy Scouts for three decades. I also want to single out the club, Mr. Speaker, for praise in helping the general population of the community in several other ways. For example, when a local school nurse needed a tymetoper to test the hearing of the elementary students and the school district budget did not quite allow for the purchase of one, the Ashland Optimist Club bought the equipment for the school. When the Southern Boone County Volunteer Fire Department needed the “Jaws of Life” to extricate accident victims from their vehicles, the club came to the rescue and purchased one for the department.

There are so many activities, food donations to needy families, scholarships for high school students, that the Ashland Optimist Club has taken on to improve the quality of life. The members have also done their part to save a life. Without a doubt the most meaningful fund-raising the club has done this year is the effort last year to help two residents win the fight against life-threatening health conditions.

A few months ago Mr. John Johnson, a local resident and club member, desperately needed a kidney transplant. The Ashland Optimist Club established a J ohn Johnson Kidney Fund and raised over $7,000 to help defray medical and travel expenses. Just a few months ago in August, 4-year-old Tailor Heneisen was diagnosed with a cancerous tumor in her stomach. Without hesitation the Ashland Optimist Club sprang into action and organized an auction in her benefit. The club raised over $22,000 to help pay for her care and travel expenses. I am pleased to report that through the help and effort of the club, little Tailor’s cancer is in remission after a long hard battle and several treatments of chemotherapy.

And these examples of small miracles performed by the Ashland Optimist Club prove how a small number of individuals in a community can really make a tremendous impact and better not only the lives of those within the community but all of those who live in mid-Missouri.

Finally, Mr. Speaker, I wish to honor the club for its most crowning achievement for this new year. In 1992 the club constructed a 10,000 square foot facility to house the community center, on 21 acres in the city. The building has been the site of numerous wedding receptions and high school reunions, Friday night bingos. The facility also provides seniors a place to walk in cold winter months, an indoor court for the local basketball teams. On the grounds surrounding the facility are large soccer fields and the newly constructed rodeo arena that hosts the Missouri High School Rodeo Association rodeos.

The Ashland Optimist Club constructed this facility after borrowing $330,000 for the project. Last month, Mr. Speaker, the club wrote their last check and paid their mortgage off. And on February 28th the club will be having a special community social and will be having a mortgage burning party.

I am pleased to acknowledge that the club has been able to pay off their mortgage 13 years early due to the efforts of Carl and Lena Long and their STAR team, and the efforts of Champion. The Longs and the STAR team diligently worked and promoted the Club’s weekly bingo game, which is the major form of fundraising for the club. Now that the facility is paid in full, the Ashland Optimist Club will have an additional $80,000 to $100,000 annually to continue to spend for the youth and community as a whole.

Mr. Speaker, Carl and Lena Long, the STAR bingo team, and the entire club deserve special recognition for their years of hard work. And on behalf of the entire House of Representatives, I offer my commendation for a job well done.

TRIBUTE TO CHAMPION ENTERPRISES
The SPEAKER pro tempore (Mr. PEASE). Under a previous order of the House, the gentleman from New York (Mr. BOEHLERT) is recognized for 5 minutes.

Mr. BOEHLERT. Mr. Speaker, I would like to bring to the attention of this body and to the American people one of the greatest examples of responsible corporate citizenship that I have ever come across in my 17 years serving in this great body.

Champion Enterprises, a builder of manufactured homes with production operations in my district in Sangerfield, New York, lost its factory last month after a devastating fire destroyed the entire facility. Nothing but ruin and ashes. Two hundred plus workers and their families were left wondering about their future, agonizing over what tomorrow would bring.

But in the ultimate act of loyalty to its employees, Champion Enterprises decided not only to rebuild the factory, something that was going to take four or five months, but to continue to pay its employees their full pay plus their benefits until that new facility is built. That means over 200 families do not have to worry about not having enough money to pay their mortgage, nor make their car payments or feed their children as a result of that devastating fire.

This responsible corporate decision is good for the workers, it is good for their families, it is good for the local economy, and it is good for the company as well. It is an act of compassion and, frankly, it represents good business.

When I called the chief executive officer, Mr. Walter Young, Jr., to tell him how proud all of us were of that responsible action, he said to me something that was very revealing. He said, “I have to test the character of individuals and organizations.” He told me that he was pleased with the character of his organization and he thanked me for noticing, and I told him all of us are pleased and proud of the character of that organization.

The Governor, George Pataki, the Governor of the Empire State, wrote to Jack Ireton-Hewitt, who is the general manager of the Titan Homes Division of Champion, whose plant was destroyed. He said, “Like so many New Yorkers, I have followed the news accounts detailing the situation of the employees of your Sangerfield plant which was recently destroyed by a devastating fire.

Your admirable actions of the past few weeks not only define the true meanings of corporate citizenship; it refines it, deepens it and amplifies it. Titan Homes’ loyalty to its employees in the face of the total destruction of this plant has transformed a tragedy into an occasion for celebration.

We realize that your parent company, Champion Enterprises—the Governor went on to say, could have moved this manufacturing operation to any number of its 66 North American plants.

But it did not. And let me add parenthetically here, so often we hear tales about corporate citizenship that does not pass the responsible test. When something like this happens, on occasion organizations are known to try to bid one community against another, threatening to move out unless they are given more, threatening
MEDIA MISREPRESENTATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, I read a letter from Florida (Mr. SCARBOROUGH) is recognized for 60 minutes as the designee of the majority leader.

Mr. SCARBOROUGH. Mr. Speaker, it might surprise a lot of my conservative friends, but one of my joys every day is reading The New York Times, and especially the editorial page of The New York Times. There are a lot of writers there that I do not particularly agree with, but I certainly appreciate their flair and their style and just how they are really some of the best and the brightest writers in the business.

One of the best writers stylistically is also one of the most liberal and somebody that I rarely agree with, and that is Anthony Lewis. A few days ago, on February 9th, Mr. Lewis wrote an article entitled "Self-Inflicted Wound" regarding the impeachment process, and gave a searing critique of the House managers' performance in that. He talked about his greatest concern being that the House managers took over to the Senate trial. This is what he said:

"Representative LINDSEY GRAHAM'S voice trembled as he ended the Republican prosecutors' presentation of evidence. 'For God's sake,' he told the Senate, 'figure out what kind of people we have here in the White House.'

"Why the trembling emotion? Frustration, I think. Mr. Graham and the other Republican managers are true believers.

"If they could only see it, one reason' that Americans don't understand their argument is their absolute conviction that they are right.'

Mr. Lewis goes on to say: 'Americans are wise to be uncomfortable with absolutism. Sir Isaiah Berlin, the great British historian-philosopher, showed us that certainty about everything has been the hallmark of totalitarian movements.'

Mr. Lewis goes on to say: "The Republican managers did not understand how their zealoity troubled the audience. The Financial Times put it, they were 'blinded by their moral righteousness.'" And he goes on to discuss how such moral absolutism is dangerous for the Republic.

Well, I personally believe that the House managers have done a very good job and been pleased with their performance. But if Mr. Lewis believes that they have been blinded by moral absolutism, then I think that is certainly what he needs to get to the American people. But I wish while he was getting that message out to the American people, I wish he would also send a message to the most extreme elements of the left in this House, and in the media, and in Hollywood and across America that moral absolutism from the extreme left is dangerous, just as it would be from the extreme right.

For over a decade the extreme left has practiced the type of moral absolutism of the destructive nature that Mr. Lewis warned of. I remember back in 1987 at the beginning of the nomination of Robert Bork, who has been so vilified over the years. It is really hard to recognize that he was one of the most respected voices in the judiciary for years and years. But in 1987 the blind moral absolutism of the extreme left took a vicious, vicious turn during the nomination of Robert Bork.

As Charles Krauthammer wrote in The Washington Post on February the 9th, "The Democrats owe Robert Bork an apology. You remember Bork: the brilliant judge and legal scholar who was savagely attacked when nominated in 1987 by President Reagan for the Supreme Court that his name became a verb. 'Bork: to attack viciously a candidate or appointee, especially by misrepresentation in the media.' That is Saffire's political dictionary.

"Within hours of Bork's nomination, Krauthammer goes on to write, "Senator EDWARD KENNEDY was on the floor of the Senate charging that, 'Rob-\n\n\nrt Bork's America is a land in which schools could no longer teach evolution, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, schoolchildren could not be taught evo-\n\n\ntion, et cetera.'"

Now, these arguments were absolutely false. They were proven absolutely false and outrageous. But the extreme left took them and ran with them and savagely attacked Judge Bork. Simply because he was not exactly what they wanted him to be. The extreme left took him and ran with them and their view of the Constitution. He believed that the Constitution should be interpreted in much the same way that many today still believe it should be interpreted, and that is looking at the original intent.

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But I do not recall in 1987 Mr. Lewis ever talking to the Senate or condemning anybody for this sort of moral absolutism that now supposedly is this great threat to western-style democracy. Sadly, I expect they did not. And sadly, I expect they never will so long as the moral absolutism and the extreme right and the vicious attacks come from the left.

We do not hear about it in the media, either. Let me tell you. I was deeply, deeply offended, I was deeply saddened by a campaign commercial that ran in Missouri, the home State of the minority leader of this House. This is what this Democratic ad in Missouri said in 1998. I am talking about 11 years ago. I am talking about 1998.
This is what the Democratic ad said right before this past election.

When you don’t vote, you let another church explode. When you don’t vote, you allow another assault wound a brother or a sister. When you don’t vote, you let the Republicans continue to cut school lunches and Head Start. When you don’t vote, you let the Republicans to give tax breaks to the wealthy while threatening Social Security and Medicare. * * *

a false message that continues to be delivered today on the House floor.

Do vote, and you elect Democrats who want to strengthen Social Security and Medicare.

When you vote, you elect Democrats committed to a Patients Bill of Rights that lets us, not the insurance companies, make choices about our health care.

Voting will change things for the better. On November 3, Republican voters smart. Vote Democratic for Congress and the U.S. Senate.

Paid for by the Democratic Missouri Party, Donna Knight, Treasurer.

That was an ad that aired on WGNU radio, St. Louis, Missouri, that was targeted toward an African-American audience.

Now, to me this is so shocking. It is demagoguery of the lowest order to suggest, to vote for or against a Republican, then they support churches exploding; if they vote for me because I am a Republican, they are voting to allow another cross to burn; if they vote for me, they let another assault wound a brother or a sister. Because after all, according to these Democratic ads, Republicans support church burnings. According to this Democratic ad, Republicans support crosses burning. According to this Democratic ad, Republicans support brutalizing African-Americans.

Basically, this is an argument that the Democrats rolled out the last hour, an argument of the first order of closed-mindedness and moral absolutism and extremism. How in the world can somebody in a campaign stoop that low?

I suppose the Democrats can bring up the Willie Horton ad which attacked Michael Dukakis in the 1988 campaign. But did that ad say that every single Democrat was for letting murderers out of prison? Did that ad say that Democrats supported church burnings? Did that ad say they supported cross burnings?

These people do not know about my background. They do not know about every Republican’s background. In fact, I would challenge them to find a single Republican that is elected in Congress that supports cross burnings, that supports church bombings, that supports the assault of African-Americans or any American.

This ad says here, “scandalous, insulting and patronizing.” But I never, ever heard major media outlets take the Democrats down for engaging in this vicious, hateful, mean-spirited, extreme race baiting.

I have never once heard the minority leader, who is from Missouri, come to this floor and attack his State party for suggesting that Republicans support cross burnings. I have never heard the minority leader come to this floor and attack his State party for suggesting that the Republican Party supported church bombings. I have never heard the minority leader come to this floor and attack his home State party for suggesting that the Republican Party supports the assault of African-Americans. Not once.

In fact, and I certainly have not heard the major media types come forward and say that. No, the moral absolutism that they want to attack today is the one that suggests by our House managers that the President committed the crimes of perjury and obstruction of justice. And while they want to quote the polls about how all the people love the President, I have never heard them once quote the poll that 86 percent of Americans, according to recent CBS/New York Times poll, believes that this President committed the crimes of perjury and obstruction of justice.

But to them, and certainly to Mr. Lewis with the New York Times, that is a devastating attack on that sort of extremism. But I guess it is not extreme to suggest that if they are a Republican, if they believe in limited government, if they believe in lower taxes, if they were willing to fight to balance the budget in 1995 when the President said balancing the budget in seven years will destroy the economy, I suppose that that sort of extremism, that sort of race baiting, that sort of moral absolutism is okay. It is certainly the message that we have picked up from the media.

But it does not stop there. Also, our dear friends from Missouri had this to say in a January 26, 1999, Democratic senatorial campaign press release. The affidavit that was, as Senator Ashcroft’s Presidential Choice: Senator John Ashcroft.” That is shocking. That is absolutely shocking.

They go on and give a press release and say that the Council for Conservativer Citizens had some member that said they would have chosen John Ashcroft as their presidential nominee if he had run, this one person. And so from that, the Democratic Senatorial Campaign Committee from the very moment this ad aired gives us a headline that calls Senator John Ashcroft, a great Missouri governor, a great Missouri Senator, just a great man, calls him a white supremacist’s presidential choice.

Now, I do have a question to ask, and I certainly hope in the coming days the majority leader of this Senate will step forward with an answer that I think Americans need to hear. Just how desperate is the extreme left to elect people in the State of Missouri and across America to public office? What will they do? What compromises will they make? What slanderous attacks will they participate in? What low grade race-baiting will they engage in? How low in the gutter will they go to win seats?

We certainly know that the minority leader wants to be the Speaker of the House. We know they are five or six seats short of the majority, and if they do that based on issues, then God bless them because that is what this great Republic is all about. It is about the power of ideas. And if the minority leader and the Democrats in Missouri and across America have an agenda that Americans want, then I wish them all the luck in getting the six seats that they want and taking over this House. But one has to seriously question the strength of their ideas when we look at the gutter tactics that they engage in to win, saying that because I am a Republican I support cross burnings and because I am a Republican I support church burnings, or saying because I am a Republican I support the deliberate assault of African-Americans. This is shocking and moral absolutism of the first order.

Yet again, I hear absolutely nothing from Mr. Lewis. I hear nothing from other people in the mainstream media. And maybe that is because a lot of the mainstream media attacks have actually come from the media.

I give my colleagues the tirade of Geraldo Rivera on February 2, 1999. Of course, Mr. Rivera has been unabashedly the President’s cheerleader, and has the President on his program two or three times a week with his vicious personal attacks on men and women who did not share their view of the President, who for their own reasons believed, like 86 percent of Americans, that the President committed perjury and obstruction of justice.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. PEASE). If the Member will suspend, the Chair reminds all Members that the House is currently depending against the President.

Mr. SCARBOROUGH. Mr. Speaker, I certainly will not do that. I am simply reflecting the views of the polls.

But certainly Rivera and many other journalists did not for one second see how anybody could be troubled by certain allegations and proceedings currently pending against the President.

So, on February 2, this is what Mr. Rivera on the lead of many people on the left with their vicious attacks, vicious personal attacks on men and women who did not share their view of the President, who for their own reasons believed, like 86 percent of Americans, that the President committed perjury and obstruction of justice.
wouldn't even let me into their home or their neighborhood or to work alongside them?"

Now, this is a classic sort of diatribe, not only from Mr. Rivera but from the extreme left, that has so dominated the media in the past few months. First of all we have reverse race-baiting, and I read the Democratic ads from Missouri, Mr. Speaker, that engaged in extreme race baiting. We have religious intolerance.

If they cannot attack a conservative's position, then just say they are born-again, say they are right-wing extremists. Because make no mistake of it, in 1999, among with the elite in America, among educators, among media types, among Hollywood types, being a born-again Christian is seen as being closed-minded and extreme.

This sort of religious intolerance continues and continues. It is demagoguery of the first order. Now, I know these guys, all 13 of them, and I know they do not share the same religious views or the same views on immigration.

But it is this sort of moral absolutism, "you either believe everything that I believe, or you are evil," that Mr. Lewis supposedly is concerned about when it comes from the right, but certainly not when it comes from the left. You know, it seems that the Christian right has been the favorite whipping boy of media elites and our own far left Democratic peers here who dominate their caucus for some time.

I wonder if Mr. Lewis in being concerned about moral absolutism has ever written about the vicious attacks that constantly take place and are launched against those Christians who are unfortunate enough to be conservative? Because certainly the conservative right, the Christian right, is constantly attacked and demonized under moral absolute terms, but we do not hear such persecution about the Christian left. In fact, Members of the Christian left are able to attack those that disagree with them with personal vicious attacks without any accountability.

Of course, we had a great example just this past week where the Reverend Jesse Jackson did not agree with everything that David Duke dressed in a coat and a tie. He compares them to segregationists governors in the 1960's. The Chair would remind Members that they are to refrain from attacking African Americans for simply pursuing their rights, was evil of the first order.

Now, that is a moral absolutism that I feel comfortable saying and talking about. And just today, if you disagree with somebody on welfare reform, just do what the Reverend Jesse Jackson did, and compare them to segregationists, racist governors in the 1960's.

I heard other people going throughout the 1998 campaign doing the same thing, calling the former Speaker, Newt Gingrich, and Trent Lott, the current majority leader, "the forces of evil.''

I talk about dangerous moral absolutism. It does not matter whether you agree with everything that Speaker Gingrich and Majority Leader Lott support legislatively.

I did not support everything that Speaker Gingrich supported. Nor do I support everything minority leader Dick Gephardt stands for. I certainly would not say he is a racist or a bigot or hateful or a socialist or somebody who, like his party in Missouri, as Mr. Lewis says, supports church burnings or supports beating up African Americans.

It is extremism, it is moral absolutism of the first order, and it cannot be tolerated in American politics in 1999.

I look forward to a follow-up column by Mr. Lewis. It does not have to condemn all of these things. He does not have to condemn the Reverend Jesse Jackson saying Mr. Pataki is a bigot. He can choose the Missouri ad that said John Ashcroft is a white supremacist choice for President, or perhaps he can go ahead and attack the Missouri ad.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER pro tempore (Mr. Pease). The Chair would remind Members that they are to refrain to references to sitting members of the Senate.

Mr. SCARBOROUGH. I thank the gentleman, and I certainly made only positive references to the Senator from Missouri. In deference to the Speaker's statement, I will refrain from mentioning his name.

But the Senator, who was viciously attacked in these Missouri ads, did not deserve that. It is this moral absolutism that Mr. Lewis is concerned about from the right, but obviously turns a blind eye to when it comes from the left, that is dangerous to democracy in this country.

Other media types have thrown ker- osey on this. Newweek's Eleana Clift said on January 9, "I think there are real questions about separation of powers, and I do not think that the President should go up there and ap-
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that supposedly had that good sense, according to these same Democrats, elected Republicans to Congress because we are bigots. It does not go together.

Of course it does not go together, because it is megalomaniacal moral absolutism that Mr. Lewis wrote about. But, again, I suppose again it is only dangerous when it comes from the right, and not from the left.

We had a New York Times article on January 28th talking to a these same right-wing Democrats. Of course, they found one that would say that Mr. Hyde’s work reminded her of what the Nazis did under Hitler in the 1930’s and the 1940’s.

My gosh, this is the remarkable thing. I was a history major. I have read so many books about World War II and the prewar period. I am just shocked by the crudeness.

There is a new documentary out on the Holocaust survivors in Hungary. I am just absolutely shocked that we have heard time and time again over the past four years the comparison of the Republican party to a movement that slaughtered 6 million human beings, 6 million Jews.

Take that same thing, apply moral absolutism. Every time they compare the Republican party to Nazis, because we want the school lunch program to grow by 6.4 percent instead of 6.6 percent, and because we want to allow states and local districts to raise these school lunch programs instead of huge bureaucracies in Washington, D.C., they minimize the horrors and the impact of the Holocaust. They minimize the absolute evilness of Adolf Hitler and the Nazis that he ran.

It is just shocking. About as shocking as John Hockenberry, who has his own show on MSNBC, who refused to simply suggest that the Republican House managers were not “uniquely stupid,” but he said instead, “uniquely stupid is not the word I would use to describe this process. The word I would use is Stalinist.”

Now, of course, for those history students that know Russian history, it is estimated that Joseph Stalin while running the Soviet Union throughout the 1920’s to the 1950’s may have been responsible for as many as 40 million deaths in his own country. But according to a man who runs his own show on a major cable network, MSNBC, controlled by Microsoft, and Daryl has his own show running an operation that compares to the operation of perhaps the greatest murderer in the 20th Century, Joseph Stalin.

But, again, no outliers, no outbursts, no editorials, no op-eds from Ainsley Earhardt about moral absolutism from the extreme left or absolutism in the media, or absolutism from the extreme elements of the Democratic Party. No, it is just allowed to pass by without a single word of complaint.

And who has heard protest about what the President’s dear friend and fund-raiser and Hollywood star Alec Baldwin said on December 11, 1998? He shared his views with Connan O’Brien where he said regarding the House vote on possible impeachment of the President, “I come back from Africa, and I am thinking to myself that in other countries they are laughing at us 24 hours a day. And then I turn on the TV and saw them say, and I am thinking to myself, if we were in other countries, we would all right now, all of us go down together,” and at this point he starts to get up and he starts to shout, he said, “We would all go together down to Washington fact; we would stone Henry Hyde to death.”

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“We would stone him to death. Wait, shut up, shut up, no, shut up, I am not finished. We would stone Henry Hyde to death and we would then go to their homes and we would kill their wives and we would kill their children, and we would kill their families. What is happening in this country? What is happening in this country?”

Mr. Speaker, what is happening in this country? Now, I think that is a question that could be well posed of Mr. Baldwin. And the person that could pose to NBC for airing that it is a question we can pose to the mainstream media. My colleagues would be surprised how few Americans know that the President’s friend and fund-raiser a day ago said that Americans come to Washington, stone Henry Hyde to death and kill him.

Now, he says it was just a joke. Let me tell my colleagues, I have got the clip. It is on my web site. One can click it and download it, Mr. Speaker, and decide whether one thinks he was joking or not. It is absolutely shocking. I think the most shocking thing is not the stupidity of Mr. Baldwin, not the callousness of Mr. Baldwin. To suggest that Henry Hyde and his wife, who in fact has gone after photographers for coming too close to his wife and his child when they were coming home, why he would say such a thing.

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Mr. Speaker, it is my hope that in the coming weeks and months this process can become more civil, and we can avoid such name-calling, hurtful, personal attacks from not only the extreme left and the Democratic party represented here in the House, but also the extreme left represented on television shows that Americans are exposed to every night.

I have quite a few, maybe less than I had an hour ago, but I have quite a few Democratic friends, in fact I know I have quite a few Democratic friends. It is my hope that they will come forward and support the leader’s home State Democratic party for suggesting that all Republicans support cross burnings or support church burnings. I hope they will step forward and
have the courage to say we can move forward, we can win on the issues, we can lose on the issues. We can win on whether we want a bigger government and higher taxes, or whether we want a smaller government and fewer taxes. We can stand with things and engage in the type of debates that Americans expect us to engage in.

I think if that happens, then this horrible exercise of personal destruction that started in 1987 with Judge Bork, continued with Justice Thomas, and continued throughout this decade with Republicans and Democrats alike, maybe, just maybe, we can go into the next millennium and really talk about the future. Maybe we can talk about the future of Social Security, how to make Medicare stronger, how to protect ourselves against the dangers that continue to explode across the world.

If we do that, and if Mr. Lewis will stop and look at the moral absolutism and the extremism that has come from the extreme left over the past year, then I think maybe America has a chance to have a representative government in Washington over the next century that they can once again be proud of.

THE ADMINISTRATION'S COMMITMENT TO INTERNATIONAL RELIGIOUS FREEDOM: ALL TALK AND NO ACTION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, the gentleman from Virginia (Mr. Wolf) is recognized for 60 minutes.

Mr. WOLF. Mr. Speaker, recently, the Clinton administration submitted its budget proposals for the year 2000 to Congress. The President's budget included many important requests, but one that I considered not to be funding for the Commission on International Religious Freedom created by the International Religious Freedom Act passed overwhelmingly by Congress last year. Mr. Speaker, I am concerned that the administration may be all talk and no action when it comes to promoting international religious freedom.

A brief lesson is in order. In the closing days of the 105th Congress, the Senate passed the International Religious Freedom Act by a unanimous vote of 98 to nothing. Several days later, the House endorsed the measure by a voice vote. It had already endorsed an earlier version of the bill several months before by a vote of 375-to-41. Republicans and Democrats alike endorsed the International Religious Freedom Act. So did a broad coalition of religious and civic groups representing millions of Americans of all faiths concerned with religious freedom.

One important part of the act was the International Religious Freedom Commission, a 10-member, independent commission established to monitor persecution around the world and make policy recommendations to the President. The Speaker of the House, the majority leader of the U.S. Senate, and the President were each given 3 appointments to the Commission. To ensure that it remains independent, Congress authorized $3 million for the Commission in fiscal year 1999 and the year 2000.

The bill was passed, thanks to the tireless efforts over a 2-year period by a broad coalition of religious and civic groups dedicated to this issue. The groups in support of the bill included, among many, the U.S. Catholic Bishops Conference, the Anti-Defamation League, the Christian Coalition, the National Association of Evangelicals, the International Campaign for Tibet, the Family Research Council, the Religious Action Center for a Reformed Judaism, the Union of Orthodox Hebrew Congregations, B’nai B’rith, the Episcopal Church, the Southern Baptist Convention, Jehovah’s Witnesses, the Lutheran Church, Missouri Synod, and many, many others in support of this bill.

The coalition was diverse, but it was united in its commitment to abolishing the rampant and brutal religious persecution taking place in many countries around the world.

J ust 2 weeks ago in China, the Public Security Bureau officials arrested 2 Roman Catholic priests from Hebei province. These are just the 2 latest priests to be arrested. Dozens, if not hundreds, more bishops and priests and lay people are already in prison for practicing their faith.

We know in the Chinese prisons torture is common. Last month the Vatican reported that authorities tortured one Catholic priest by subjecting him to sexual abuse by prostitutes. They tried videotaping the seduction to further humiliate and crush his spirit. That happened in China, and the Clinton administration knows about it. They quite frankly have not said very much about it. But we know persecution continues.

The Chinese government continues to arrest, harass, and torture leaders of China's Protestant church. Most of the key leaders are on the run for fear of their lives, and are moving from place to place to avoid being thrown into prison.

In Tibet, where I visited last year, the Chinese government has continued its brutal assault on Tibetan Buddhists. A 700-year-old monastery and an 800-year-old nunnery were closed down just 2 weeks ago. I think the administration has been silent on that issue, though. Hundreds have been destroyed since 1959, and those open are still under attack, with military reasons to bomb them whatsoever; high altitude bombing of civilian targets; and the enslavement of Christian women and children.

We know today, and if we watched CBS news last week we saw Dan Rather's two-part report that in Sudan today women and children are being sold into chattel slavery. Yes, there is slavery in Sudan today, women and children, yet this administration does absolutely nothing about it. They are absolutely silent.

The enslaved are forced to work as concubines and domestic servants and farm hands. Some, the boys, are sent to the front lines to fight for a government they do not support. Millions are starving in Sudan while the government uses food as a weapon, and denies aid flights to the neediest regions, regions inhabited mostly by Christians or Muslims who do not support the government. Millions are dying in the country of Sudan. This administration is silent.

In Egypt, the Coptic Christian Church continues to have a very, very difficult time. Last Pakistan, the government is actively pushing for passage of a law that would discriminate against and potentially lead to violence against the Pakistan non-Muslim population. Ahmadi Muslims are being persecuted.

In Iran, the Baha’i faith is being persecuted. In India, some 48 incidents of violence against Christians have been reported since Christmas of 1998, and dozens of churches burned or destroyed. Nuns have been raped and Christians have been killed in a wave of violence.

I just after Christmas an Australian Christian missionary whose two sons were burned alive in their car by mobs. This missionary had been there for 30 years to minister to those who were impacted by leprosy.
In Indonesia dozens of Christian churches and Moslem mosques have been attacked and burned. People of faith have been attacked and murdered. This goes on and on. Very briefly, I have this picture here which was taken by a staff member for former congressman, now Senator, SAM BROWNBACK of Kansas. He and his staff person went to Sudan over the Christmas break and took pictures of this young boy who was in slavery, who was marked with a slave brand; slavery, in 1999, and we hear nothing at all from this administration.

This is a picture taken in Sudan of the famine, and the number of people. You can see the corpse, and the people that have died because they have no food. This was just taken not very, very long ago.

This is a picture taken when I went to Tibet by my staffer, Charlie White, of a young boy outside of a Buddhist temple that had been destroyed. Over 4,000 to 5,000 monasteries in Tibet have been destroyed, and yet the silence of this administration is deafening.

In Tibet, by the guard tower of the Drosi prison, where many of the Buddhist monks and nuns are put into the prison. The only basic growth industry in Lhasa is the prisons, the number of people that are being put in, and where there ask, why is the United States not speaking out?

In China, here is a picture of young men who are being executed so they can give their organs to people that want to purchase their lungs and kidneys for transplants. Yes, the Chinese government is making money, up to $35,000 for an organ. Yet, this administration says nothing.

Here is a picture we took when we were in Lhasa. It would be very hard to pick it out, but atop all the buildings there are TV cameras where the public security police are monitoring the movement of all the Buddhist monks and nuns and the people.

We picked the conditions that have taken place to set the mood as to what I am going to comment on, to see that this persecution of people of faith, Christians, Muslims, Buddhist, Bahai', and many other denominations of faith, is taking place around the world.

Congress passed the International Religious Freedom Act to ensure that U.S. foreign policy would give priority to combating religious persecution. I think the record must show that the United States Department of State fought it every step of the way through the legislative process. They did everything they could to stop this bill from passing.

The State Department officials constantly misrepresents the bill's provisions to kill it through gutting amendments in committee and on the floor. They worked hand in glove with some in the business community to exaggerate the bill's impact on trade, and threatened that its passage would unfairly harm religious communities abroad.

If they could have only talked to Scharansky and those in the Soviet Union, who said that when the United States spoke out on their behalf, their life got better. But yet the State Department forgot that and worked against this legislation.

Secretary of State Madeleine Albright told an audience at Catholic University that the bill would "create a hierarchy of human rights, and would create an unneeded bureaucracy." She said, of efforts to promote religious freedom abroad, "It is in our interests and it is essential to our identity as a country to have religious freedom rights, but if we are to be effective in the values we cherish, we must also take into account the perspective and values of others.

To which values was she referring? The values of the Sudanese government, that are slaughtering Christians in southern Sudan, or the values of the Chinese government, that is imprisoning Catholic bishops and Tibetan Buddhist monks and nuns?

President Clinton told an audience, which included a New York Times reporter, that passing the religious persecution bill would force him "to fudge the facts regarding persecution."

But only after the Administration's efforts to stop the bill were thwarted, the President did then the right thing and signed the bill. He put himself on the right side of history. He has had nothing but good things to say about the bill ever since.

That is what makes this budget decision, a deletion, meaning they have asked no money for the commission, very, very troublesome. I am beginning to think that it is just words and no action.

I hope the President is not manipulating this issue for his own gain, while the lives of millions of innocent men and women and children in Sudan and China and Egypt and Indonesia and Vietnam and India and Pakistan and in many of the other countries?

What was requested? Well, $1.3 million for the Marine Mammal Commission is one example that is in that budget. I personally support the $1.3 million for the Marine Mammal commission. But are not men and women and children who are being persecuted and killed because of their faith just as important as marine mammals?

There is a village in southern Sudan where a woman named Rebecca came up to me, and was telling me of the hardship and the death of all the people of her family who had died. She said something to me that almost brings this right back. She said, if you in the United States and in the West care about the whales, why don't you care about the people? We have that, where she said that.

Now we find the Ocean Mammal Commission which is good. I commend the President, I commend NOAA, I commend the Department of State if they put it in, and I commend the Department of Commerce. But why could they not have put some money in for a large domestic constituency concerned about human rights and the plight of those suffering for their faith.

What was requested? Well, $1.3 million for the Marine Mammal Commission is one example that is in that budget. I personally support the $1.3 million for the Marine Mammal commission. But are not men and women and children who are being persecuted and killed because of their faith just as important as marine mammals?

Thankfully, the International Religious Freedom Act has strong bipartisan support in both the House and Senate. It is not a Republican or Democratic issue. There are people of both sides, literally, when we look at it, equally in support of this effort. We
had as much support from the Democratic side as from the Republican side. Now the Congress has a chance to do the right thing and provide the funding for the Commission. I will be working with Senator Nickles and others who sponsored the legislation in the Senate and my congressional colleagues on this side of the Capitol to be sure the money is appropriated for fiscal year 2000 and in the FY 1999 supplemental appropriations bill.

But the fact is that the President did not see the commission as a priority and did not ask Congress to fund it; telling, because they did not ask for the money. But we wonder, if we give them the money, will they even put their efforts behind it and support it? It says that he is all talk and no action; big hat, no cattle; talk about it, get the credit, but do not follow through.

During that period of time, in November and December and January and this spring, monasteries have been destroyed, monks and nuns arrested in Tibet, the Catholic Church continues to be persecuted in China, and conditions do not improve for the Coptic Christians in Egypt. Not only is this a human rights violation, but they do not put the money into the commission that they now claim.

I hope I am wrong. I hope it was an oversight. I hope the President and the Secretary of State will make implementation of the commission a priority. I hope they will work in good faith. There is still an opportunity to work in good faith with the commission, and name good people to the panel. That will show the American people that their commitment is genuine.

That will show the world thugs that the United States is watching, and will take action against countries that refuse to stop persecuting men and women who name themselves voiceless victims of China, in Vietnam, in Sudan, in Indonesia, in India and Pakistan, Sri Lanka, and many other places where faith is under attack are waiting, are waiting for a message to show that we care.

A woman I talked to in Tibet said she listened to Radio-Free Asia every day to hear, is the United States interested? They will wait to see if we act on this effort.

Putting off funding of the Commission on International Religious Freedom and appointing good people will send that message that this administration cares.

Finally, I want to say a word about Dr. Bob Seiple, the person appointed to be the assistant to the Secretary of State for International Religious Freedom. I am pleased that President Clinton appointed him to the job. He is a good man, with a heart for those who are suffering from poverty and injustice.

As president of World Vision for over a decade, he gave his life to helping those in need and now he is seeking to make a difference for those suffering for their faith.

When he was offered the job, he called me on the telephone and asked me what I thought, should he take it. I said, take it. I encouraged him to go for it because I felt that he could make a difference. I felt he would have the opportunity to do things and to get some things moving, but now we see there is no funding for the commission to give them the ability to make that. The President cannot just appoint Bob Seiple and take credit for having done something for the issue. That would be like Dietrich Bonhoeffer talking about cheap grace. It would be like appointing somebody and putting out a press release and coming to a gathering and speaking to religious leaders to tell them what you have done but there is no follow-through, there is no money, there is no effort because you personally appear to say one thing and do just the other.

The President cannot just appear before the gatherings of religious leaders and mention Bob Seiple’s name in order to get the kudos with the audience and then walk away and do nothing. That would be, I believe, immoral, that would be dishonest, and believe it would be an affront to those who are suffering and dying for their faith around the world. It would be a betrayal of American values and an example of political opportunism at its worst.

I hope the President will instruct the Secretary of State to empower Bob Seiple to make a real difference for the State Department. I hope his office will receive the adequate resources. I hope the President will meet with Dr. Seiple and listen to what he has to say. I hope he will instruct our ambassadors around the world to do the same, and I hope he will do what he can to help this commission carry out its important duties, not to allow the commission of Mr. Seiple to be marginalized within the agency.

That is what will win him real kudos. That is what will help save lives, and that is what will help make the world a safer place for people of faith.

If the administration does not come to the Hill and actively seek funding for this commission, the honorable thing to do would be for Bob Seiple to resign, to step down and show that he was speaking out for those who do have the voice. He would be the voice for the voiceless. So if there is no funding for this commission and if President Clinton does not support this commission, and if President Webster does not support this commission, then Bob Seiple should not serve and should do the honorable thing and should resign, so he is not being used by this administration.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

The following Member (at his own request) to revise and extend his remarks and include extraneous material:

Mr. WOLF. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

Accordingly, the House adjourned until 12:30 p.m. on Tuesday, February 23, 1999, for morning hour debate, pursuant to House Concurrent Resolution 27, or, under the previous order of the House until 2 p.m. on Tuesday, February 16, 1999, if not sooner in receipt of a message from the Senate transmitting its concurrence in House Concurrent Resolution 27.

Thereupon (at 11 o’clock and 35 minutes a.m.), pursuant to House Concurrent Resolution 27, the House adjourned under the previous order of the House until 2 p.m. on Tuesday, February 16, 1999, if not sooner in receipt of a message from the Senate transmitting its concurrence in House Concurrent Resolution 27.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker’s table and referred as follows:


546. A letter from the Chairman of the Council, Council of the District of Columbia, transmitting a copy of D.C. Act 12-600, “Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Act of 1998” received February 10, 1999, pursuant to D.C. Code section 1–233(c)(3); to the Committee on Government Reform.


By Mr. GOODLING:

H. Res. 71. A resolution providing amounts for the expenses of the Committee on Education and the Workforce in the One Hundred Sixth Congress; to the Committee on House Administration.

By Mr. KASICH:

H. Res. 72. A resolution providing amounts for the expenses of the Committee on the Budget in the One Hundred Sixth Congress; to the Committee on House Administration.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 222: Mr. SENSENBRENNER.
H.R. 263: Mr. RAMSTAD, Mr. MOAKLEY, Mr. NEAL of Massachusetts, and Mr. MCDERMOTT.
H.R. 264: Mr. DAVIS of Florida, Mr. HASTINGS of Florida, Mr. SCARBOROUGH, and Mr. DIAZ-BALART.
H.R. 265: Mr. JEFFERSON.
H.R. 327: Mr. SOUDER.
H.R. 384: Mr. TANNER, Mr. BRADY of Pennsylvania, Mr. MCINTYRE, and Mr. WYNN.

H.R. 385: Mrs. EMERSON, Ms. JACKSON-LEE of Texas, Mrs. MINK of Hawaii, Mr. ORTIZ, and Mr. RANGEL.
H.R. 609: Mr. COMBEST, Mr. STENHOLM, Mr. HASTINGS of Washington, and Mr. SIMPSON.
H.R. 623: Mr. BEREUTER, Mr. DEAL of Georgia, Mr. GOODLATTE, Mr. SAM JOHNSON of Texas, Mr. LEWIS of Kentucky, Mr. PICKERING, Mr. TIAHRT, and Mr. WICKER.
H.R. 654: Ms. SLAUGHTER.
H.R. 693: Mr. KIND of Wisconsin.
H.R. 706: Mr. MINGE.
H.R. 718: Mr. TOWNS.
H.R. 750: Mr. ALLEN.
H. Con. Res. 8: Mr. WALDEN of Oregon.
H. Con. Res. 30: Mr. ROYCE, Mr. SKEEN, Mrs. MYRICK, Mr. HEFLEY, and Mr. COBURN.
The Senate met at 9:36 a.m. and was
called to order by the Chief Justice of
the United States.

TRIAL OF WILLIAM JEFFERSON
CLINTON, PRESIDENT OF THE
UNITED STATES

The CHIEF JUSTICE. The Senate
will convene as a Court of Impeach-
ment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John
Ogilvie, offered the following prayer:

Gracious God, whose love for this Na-
tion has been displayed so magnifi-
cently through our history, we praise
You that Your presence fills this his-
toric Chamber and enters into the
minds of the Senators gathered here.
Each of them is here by Your divine ap-
pointment. Together they claim Your
promise, “Call upon Me in the day of
trouble: I will deliver you.”—Ps.50:15.
We call upon You on this day of trouble
in America as this impeachment trial
comes to a close. You have enabled an
honest, open debate of alternative solu-
tions. Soon a vote will be taken. You
have established a spirit of unity in the
midst of differences. Most important of
all, we know that we can trust You
with the results. You can use what is
decided today to enable a deeper experience of Your grace
in his life and healing in his family. We
commit this day to You and thank You
for the hope that fills our hearts as we
place our complete trust in You. You
are our Lord and Saviour. Amen.

The CHIEF JUSTICE. The Sergeant
at Arms will make the proclamation.

The Sergeant at Arms, James W.
Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are
commanded to keep silent, on pain of impris-
onment, while the Senate of the United
States is sitting for the trial of the articles
of impeachment exhibited by the House of
Representatives against William J Jefferson
Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no
objection, the Journal of proceedings of the
trial are approved to date.

The majority leader is recognized.
Mr. LOTT. Thank you, Mr. Chief Ju-
stice.

ORDER OF PROCEEDURE

Mr. LOTT. For the information of all
Senators, later on today, the Secretary
of the Senate will be putting at each
Senator’s desk something I think you
will enjoy reading later. It is the prayers
of the Chaplain during the impeachment
trial. Subsequently, we plan to put it in a small pamphlet, because
they truly have been magnificent. We
thought you each would like to have copies.
The Senate will resume final delib-
erations now in the closed session.
Thank goodness. At this point in the
proceedings, there are approximately
eight Members who still wish to speak or submit part of their speech into the
Record.

Following those final speeches, the
Senate will resume open session and
proceed to the votes on the two articles
of impeachment. I estimate that those
votes will begin at approximately 11,
11:30. However, the exact time will de-
depend on the length of the remaining
speeches, and also we will have to have
a few minutes to open the Chamber and the
galleries so that our constituents and
our families can enter the galleries if
they would like to.

Following those votes, all Senators
should remain at their desks as the
Senate proceeds to several house-
keeping items relating to the adjourn-
ment of the Court of Impeachment. So
again, I emphasize, please, after the
votes, don’t rush out of the Chamber
because we have some very important
proceedings to attend to, and I think
you will enjoy them if you will stay
and participate.

Under the consent agreement reached
last night, following those votes, a mo-
tion relating to censure may be offered
by the Senator from California, Sen-
ator FEINSTEIN. If offered, Senator
GRAMM will be recognized to offer a
motion relative to the Feinstein mo-
tion, with a vote to occur on the
Gramm motion. Therefore, Senators
may anticipate an additional vote or
votes following the votes on the arti-
cles.

I thank the Senators. And I believe
we are ready to proceed to the closed
session.

Mrs. BOXER. Will the majority leader
yield for a question?

Mr. LOTT. Yes.

Mrs. BOXER. Will there be interven-
debate or no debate on any of those
votes?

Mr. LOTT. In the UC that was
reached last night, I believe we have 2
hours, which will be equally divided,
for Senators to submit statements at
that point or to make speeches if they
would like. So I presume—after the
votes, yes.

Mrs. BOXER. That is the question.
Yes.

Mr. LOTT. I presume we will go on
for a couple hours—2 or 3 o’clock in the
afternoon, yes.

UNANIMOUS-CONSENT AGREEMENT—PRINTING OF
STATEMENTS IN THE RECORD AND PRINTING
OF SENATE DOCUMENT OF IMPEACHMENT PRO-
CEEDINGS

Mr. LOTT. I would like to clarify one
other matter. Senators will recall the
motion approved February 9, 1999,
which permitted each Senator to place
in the CONGRESSIONAL RECORD his or
her own statements made during final
deliberations in closed session.

I ask unanimous consent that public
statements made by Senators subse-
quent to the approval of that motion,
with respect to his or her own state-
ments made during the closed session,
be deemed to be in compliance with the
Senate rules. This would permit a Sen-
ator to release to the public his or her
statement made during final deliberations in closed session, except that, in doing so, a Senator may not disclose any remarks of the other Senators made during deliberations, without the prior consent of, course, of that Senator.

I further ask unanimous consent that Senators have until Tuesday, February 23, 1999—that would be the Tuesday after we come back—to have printed statements and opinions in the CONGRESSIONAL RECORD, if they choose, explaining their votes.

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

Mr. REID. Mr. Leader, point of clarification. I had a couple of Members ask, does it take an affirmative act of a Senator to get their speech placed in the RECORD or does it happen automatically?

Mr. LOTT. I believe it does take an affirmative act. It is not automatic.

Mr. REID. To whom should that be given?

Mr. LOTT. It should be given to the clerks at the desk, or to Marty on your side, or your secretary of the minority, or the secretary of the majority. They will get it into the RECORD at the right place.

I believe, once again, we are ready to go to our closed session.

Mrs. HUTCHISON. Will the majority leader yield for a question?

Mr. LOTT. Yes.

Mrs. HUTCHISON. It does not require each Senator to ask unanimous consent to insert their remarks, just giving it? Mr. LOTT. Yes. That has already been cleared.

I believe we have a unanimous consent request propounded.

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

The Senate will now go into closed session to complete its deliberations on the articles of impeachment. The Sergeant at Arms is directed to clear the galleries and close the doors of the Senate Chamber.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The Senator will call the roll.

The legislative clerk proceeded to call the roll.

CLOSED SESSION

(At 9:44 a.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 12:04 p.m., at which time the following occurred.)

OPEN SESSION

Mr. LOTT. Will Senators return to their desks? Managers, thank you for joining us. Would Senators stand, and the gallery, as the Chief Justice enters the Chamber, please.

The CHIEF JUSTICE. The Senate will be in order.

Mr. LOTT. Mr. Chief Justice, Members of the Senate have met almost exclusively as a Court of Impeachment since January 7, 1999, to consider the articles of impeachment against the President of the United States. The Senate meets today to consider whether the articles of impeachment, thereby, fulfilling its obligation under the Constitution. I believe we are ready to proceed to the votes on the articles. And I yield the floor.

The CHIEF JUSTICE. The Chair would inform those in attendance in the Senate galleries, that under rule XIX of the Standing Rules of the Senate, demonstrations of approval or disapproval are prohibited, and it is the duty of the Chair to enforce order on its own initiative.

ARTICLE I

The CHIEF JUSTICE. The clerk will now read the first Article of impeachment.

The legislative clerk read as follows: ARTICLE I

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, has undermined the integrity of his office, and (4) his corrupt efforts to influence the grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided 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 explaining their votes.

The CHIEF JUSTICE. The Chair also refers to article I, section 3, clause 6, of the Constitution regarding the vote required for conviction on impeachment. Quote: "[N]o Person shall be convicted without the Concurrence of two-thirds of the Members present."
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, and did attempt to, subvert and conceal the evidence of existence 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 facts:

(1) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjured, false and misleading testimony and if and when called to testify personally in that proceeding.

(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 perjured, false and misleading testimony and 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 he had been subpoenaed in a Federal civil rights action brought against him.

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton falsified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly influence the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

(5) On or about January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge.

(6) On or about January 18 and January 20-21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal civil rights action in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought discredit 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 false and misleading statements and actions, 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, and did attempt to, subvert and conceal the evidence of existence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

The CHIEF JUSTICE. The galleries will be in order.

The CHIEF JUSTICE. The clerks will read the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 37) to express gratitude to the President of the United States as Presiding Officer during the impeachment trial.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 37 introduced earlier today by Senator LOTT and Senator DASCHLE.

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

The CHIEF JUSTICE. The clerk will read the resolution.

The resolution (S. Res. 37) was agreed to.

The CHIEF JUSTICE. The vote on article II is now closed.

The CHIEF JUSTICE. The Senate, having tried William Jefferson Clinton, President of the United States, guilty as charged, 50 Senators having pronounced him guilty, two-thirds of the Senators present not having pronounced him guilty, the Senate adjudges that the respondent, William Jefferson Clinton, President of the United States, is not guilty as charged in the second article of impeachment.

The Chair directs judgment to be entered in accordance with the judgment of the Senate as follows:

The Senate, having tried William Jefferson Clinton, President of the United States, upon two articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: it is, therefore, ordered and adjudged that the said William Jefferson Clinton, hereinafter designated 'he,' is hereby, acquitted of the charges in this said article.

The Chair recognizes the majority leader.

COMMUNICATION TO THE SECRETARY OF STATE AND TO THE HOUSE OF REPRESENTATIVES

Mr. LOTT. Mr. Chief Justice, there is an order at the desk.

The CHIEF JUSTICE. The clerk will read the order.

The legislative clerk read as follows:

Ordered, that the Secretary be directed to communicate with the House of Representatives, as provided by Rule XXIII of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials, and also to the House of Representatives, the judgment of the Senate in the case of William Jefferson Clinton, and transmit a certified copy of the judgment to each.

The CHIEF JUSTICE. Without objection, the order will be entered.

Whereas Article I, section 3, clause 6 of the Constitution of the United States provides...
that, when the President of the United States is tried on articles of impeachment, the Chief Justice of the United States shall preside over the Senate.

Whereas, pursuant to Rule IV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, on January 6, 1999, the Senate notified William H. Rehnquist, Chief Justice of the United States, of the time and place fixed for consideration of the articles of impeachment against William J. Clinton, President of the United States, and requested him to attend;

Whereas, in the intervening days since January 7, 1999, Chief Justice Rehnquist has presided, when sitting on the trial of the articles of impeachment, for long hours over many days;

Whereas Chief Justice Rehnquist, in presiding over the Senate, has exhibited extraordinary qualities of fairness, patience, equanimity, and wisdom;

Whereas, by his manner of presiding over the Senate, Chief Justice Rehnquist has contributed greatly to the Senate's conduct of fair, impartial, and dignified proceedings in the trial of the articles of impeachment;

Whereas Senate and the Nation are indebted to Chief Justice Rehnquist for his distinguished and valued service in fulfilling his constitutional duty to preside over the Senate in the trial of the articles of impeachment: Now, therefore, be it

Resolved, that the Senate expresses its profound gratitude to William H. Rehnquist, Chief Justice of the United States, for his distinguished service in presiding over the Senate, while sitting on the trial of the articles of impeachment against William J. Jefferson Clinton, President of the United States.

SEC. 2. The Secretary shall notify the Chief Justice of the United States of this resolution.

Mr. LOTT. Mr. Chief Justice, on behalf of myself and the entire U.S. Senate, we want to offer you our thanks and the gratitude of the American people for your service to the Nation and throughout this Impeachment Court and to this institution.

As our Presiding Officer during most of the last 5 weeks, you have brought to our proceedings a gentle dignity and an unfailing sense of purpose, and sometimes sense of humor.

The majority leader realized when it was time to take a break and not to take a break when the Chief Justice said let's go forward.

By placing duty above personal convenience and many other considerations, you have taught a lesson in leadership. Your presence in the Chair of the President of the Senate, following the directives of our Constitution, gave comity to this Chamber and assurance to the Nation. I would like to close with our traditional Mississippi parting: Y'all come back soon. But I hope that is not taken the wrong way, and not for an occasion like this one.

So instead, as you return to your work on the Court in the great marble temple of the law right across the lawn from this Capitol, we salute you, sir, with renewed appreciation and esteem for a good friend and good neighbor.

PRESENTATION OF THE GOLDEN GAVEL AWARD

Now, Mr. Chief Justice, if the Democratic leader will join me, we have a small token of our appreciation. We have a tradition in the Senate that after you have presided over the Senate for 100 hours, we present you with the Golden Gavel Award. I am not sure it quite reached 100 hours, but it is close enough.

The CHIEF JUSTICE. It seemed like it.

(Appause, Senators rising.)

MRS. HUTCHISON. Mr. President, I wish to add my thanks to the Chief Justice for his untiring efforts throughout the impeachment trial and to commend him for his dignity, fairness, and humor.

Mr. KYL. I add my expression of appreciation to the Chief Justice and the officers of the court who had a role in this proceeding—the House managers, the counsel for the White House, and Independent Counsel Kenneth Starr—for their honorable service.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the February 5, 1999, affidavit of Mr. Christopher Hitchens; the February 7, 1999, affidavit of Ms. Carol Blue; and the affidavit of Mr. R. Scott Armstrong be admitted into evidence in this proceeding and the full written transcripts of the depositions taken pursuant to S. Res. 30 be included in the public record of the trial. This matter has been cleared on both sides of the aisle.

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

ADJOURNMENT SINE DIE OF THE COURT OF IMPEACHMENT

Mr. LOTT. Mr. Chief Justice, I move that the Senate, sitting as a Court of Impeachment on the articles exhibited against William J. Jefferson Clinton, adjourn sine die.

The motion was agreed to, and at 12:43 p.m., the Senate, sitting as a Court of Impeachment, adjourned sine die.

LEGISLATIVE SESSION

ESCORTING OF THE CHIEF JUSTICE

Mr. LOTT. The committee will go to the podium to escort the Chief Justice from the Chamber.

Whereupon, the Committee of Escort: Mr. Thurmond, Mr. Roth, Mr. Domenici, Mr. Sarbanes, Mr. Moynihan, and Mrs. Lincoln, escorted the Chief Justice from the Chamber.

The PRESIDING OFFICER (Mr. Enzi). The Sergeant at Arms will escort the House managers out of the Senate Chamber.

Whereupon, the Sergeant at Arms escorted the House managers from the Chamber.

Mr. LOTT addressed the Chair. The PRESIDING OFFICER. The Senate will please come to order. The majority leader.

Mr. LOTT. Mr. President—I almost called you Mr. Chief Justice; I have to get used to this, going back to “Mr. President”—before Senator Feinstein is recognized, I must take just a moment further to recognize a few individuals, and I know Senator Daschle would like to do that. In addition to the Chief Justice and his assistants who were here throughout—Mrs. Hutchison. Mr. President, I believe the White House attorneys should have the same privilege of being escorted out.

Mr. LOTT. I think we will ask Senator Nickles to handle that. (Laughter.)

The PRESIDING OFFICER. The White House counsel will be escorted from the Chamber. Whereupon, White House counsel were escorted from the Chamber.

THANKING SENATE STAFF

Mr. LOTT. Mr. President, if I could resume, I thank the assistants who came with the Chief Justice from the Supreme Court. I thank the Secretary of the Senate, Gary Cisco; the Sergeant at Arms, Jim Ziglar; and the Deputy Sergeant at Arms, Loretta Symms, who also gave us our instructions—the first time in history, I am sure, that a week called the Senate to order.

I would like to thank the secretaries of the majority, Elizabeth Letchworth; counsel of the Senate, Tom Griffen, and deputy Morgan Frankel, our special impeachment counsel, Mike Wallace; my chief of staff, Dave Hoppe—who has just been tremendous and worked untold hours—and also all of our assistants at the desk—and especially our friend Scott Bates—for their wonderful work. I want the Record to reflect how much we appreciate the dedication and the long hours, the patience, and the competence of all these staff members.

I would like to yield to Senator Daschle for his comments in this area. The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I know I speak for all of my colleagues on this side of the aisle, sharing the expressions of gratitude that Senator Lott has just articulated for all of our staff. They have done a remarkable job. He mentioned all those who work for all of us. Let me mention a couple of people who work for those of us on this side: Bob Bower, Bill Corr, Pete Rouse, Marty Paone, and so many people who were particularly responsible for the fact that we were able to conduct our work so effectively throughout this very difficult challenge.

So on behalf of the Democratic Caucus, we join with Senator Lott in expressing our deep sense of gratitude for the great, great job that they have done in these difficult weeks that we have now concluded. I yield the floor.

Mr. CHAFEE addressed the Chair. The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

APPLAUSE TO THE LEADERSHIP

Mr. CHAFEE. I wonder if this isn't an appropriate time to express our appreciation to our two leaders for guiding us through these very difficult times.
CENSURE RESOLUTION

Mr. ASHCROFT. Mr. President, the debate we will be having in the Senate is one that should be within the confines of the Senate to consider a resolution censuring the President's conduct.

A motion will be made to indefinitely postpone the motion to suspend the rules. These votes will occur before the Senate can discipline the President for any impeachable offenses. Censure is an effort to end-run the Constitution.

I take the floor of the Senate to make clear that I am opposed to a censure resolution of President Clinton.

On this last point, I chose my words carefully. I did not say it is time for the Senate to turn to the people's business. Some have said we should not have had the trial or should have adjourned the trial much earlier so that we could turn to the people's business.

I reject that notion. I firmly believe that conducting the trial was doing the people's business.

But the truth is the trial is over. I do not see any place for the pending resolution censuring the President. It is not the business of the Senate to punish President Clinton.

As Senator BYRD has concluded censure, unlike impeachment, is "extra-constitutional." The Constitution empowers the Senate to try a President impeached by the House and remove him if 67 Senators agree.

The Constitution does not empower the Senate to punish a President, in the absence of 67 votes to remove. The impeachment trial is over. The Senate should move on and leave President Clinton alone.

The Constitution recognizes that a President cannot be removed through impeachment, he should not be weakened by censure. Although the Senate passes sense of the Senate resolutions on many subjects, censure is different because the Constitution requires a 2/3 vote before the Senate can discipline the President and requires removal upon a two-thirds majority for impeachable offenses. Censure is an effort to end-run these constitutional requirements.

One final problem is that any censure resolution will have to be weak. Even proponents of censure concede that a censure resolution that actually punishes the President would be an unconstitutional bill of attainder. Any censure that is consistent with the Bill of Attainder Clause is too weak to be worth voting on.

The highest form of censure the Constitution allows is impeachment by the House. The failure to convict the President will not erase that action by the House. It is time for the Senate to move on.

If the effort to suspend the rules passes, and the text of the censure resolution is before the Senate, and is amendable, I will seek recognition to offer the following substitute, and I quote:

"When the United States Senate at the earliest opportunity will consider and have final votes on legislation favorably reported by its committees that—

(1) reduces taxes so that Americans no longer pay record highs of federal income taxes;

(2) prohibits the financial surplus in the Social Security Trust Funds from financing additional deficit spending in the operating budget of the United States Government;

(3) increases funds and flexibility for programs that local school districts and their parents, teachers and principals believe will enhance teaching and learning;

(4) offers comprehensive responses to juvenile justice needs and criminal drug abuse, including increased penalties for adults who use minors in the commission of crimes, increased penalties for drug trafficking, and greater resources for local law enforcement agencies to stop methamphetamine trafficking;

(5) improves military pay to reduce sharp declines in attracting new and keeping well-qualified soldiers in the all-volunteer Armed Forces."

This substitute resolution speaks for itself. This resolution sets the Senate on the right course for the Senate to accomplish the legislative priorities of this nation.

These priorities include:

First, we should direct the budget surplus to where it belongs, and that is to the people whose hard work produced the surplus.

That means Congress should cut taxes. Americans should no longer pay record high levels of federal income taxes.

The average household paid 25 percent of its income in taxes (federal, state, and local) and 30 percent of every additional dollar earned by a four-person median-income household of $55,000 will go to pay taxes.

The typical American family spends more money on taxes than on food, clothing, and shelter combined. Each year Americans work four months and 10 days just to pay their taxes. The tax burden is getting worse, not better. For the past five years, tax payments have grown faster than salaries. Total federal taxes in 1997 were the highest since World War II.

Second, Congress should protect Social Security.

The best action we can take now is to protect the economic security of tomorrow's retirees is to protect current surpluses from government raiding. Using these surpluses to pay down our debt will put our country in the best possible financial position to meet our future obligations.

This bureaucratic maze takes up to 90 days just to receive federal dollars. With direct funding, local schools could deploy resources to areas they deem most crucial for their students, such as hiring new teachers, raising teacher salaries, buying new textbooks or new computers.

Fourth, Congress must fight crime and drug abuse.

While in the last few years the violent crime rate has declined, it remains at levels that are far too high. In 1980, 125 violent crime incidents were reported; in 1997, 611 were reported. In short, violent crime has quadrupled since 1960.

Drug abuse, especially use of methamphetamines, is also at dangerous levels. Public health and law enforcement officials believe that meth is more dangerous and addictive than cocaine and heroin. Communities are being devastated and the problem is growing exponentially. In 1994, DEA agents in Missouri seized 14 clandestine meth labs. Last year, they seized 421 labs.

Meth use is dangerous, threatens our children and causes users to commit other crimes. Among 12th graders, the use of ice, a smokeable form of meth, has risen 60 percent since 1992. Meth-related emergency room incidents are up 63 percent over this same period.

Fifth, Congress should improve military pay to reduce sharp declines in attracting new and keeping well-qualified soldiers in the all-volunteer Armed Forces.

1999 marks the 14th straight year of decline in real dollars spent on our national defense. The number of active duty personnel is down 30 percent since 1991. Despite these reductions, the military is being asked to do more than it did during the Cold War.

CONCLUSION

In writing these principles, I striving for bipartisan agreement. I believe many, if not all of these, principles have been articulated as priorities on both sides of the aisle. I did not include my own proposals for accomplishing these objectives. The details of these principles can and should be worked out by the committees of the Senate, and then by the full Senate.

Mrs. FEINSTEIN addressed the Chair.
The PRESIDING OFFICER. The Chair recognizes the Senator from Texas.

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"); and,

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. The Senator from Texas.

Mr. GRAMM. Mr. President, I send a motion to the desk, a motion to indefinitely postpone the consideration of the Feinstein motion.

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:

[Roll Call Vote No. 19 Leg.]

YEAS—43

NAYS—56

Abraham
Abak
Baucus
Bayh
Bennett
Biden
Bingaman
Boxer
Breaux
Bryan
Chafee
Kerry
Collins
Conrad
Daschle
Dodd
Dodd
Dorgan
Durbin
Edwards
Lieberman

Lincoln
Lugar
McConnel
Mikulski
Meynihan
Murray
Reed
Robb
Rockefeller
Roth
Sanburns
Schumer
Smith
Snowe
Stone
Wyden

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 Gramm 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 statement I would have given had I been permitted to speak longer and in open session. During our closed deliberations, I gave a similar, but abridged statement.

For almost 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 a volunteer at and then an employee of the White House and eventually the Pentagon. Though he denies directly few of her descriptions of those activities, he testified under oath that he did not have "sexual relations" with her. His accommodation of this paradox is based on the incredible claim that he did not touch 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 no reasonable doubt that the President committed perjury on a second such charge when he told the grand jury that the purpose of the five statements he made to 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 is what I will discuss later.

All the material allegations of Article II seem to me to be well founded. Four of them, however, those regarding the President's encouraging Miss Lewinsky to file a false affidavit and then to give false testimony, those regarding the President's failure to correct his lawyer'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 purpose of this discussion.

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

On the first of October, 1997, the
president was served with interro-gatories in the Jones case asking about his
sexual relationships with women other and during the period 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 Ambas-sador to the United Nations, Bill Rich-ards, introduced Miss Lewinsky pers-sonally to schedule an interview in herapartment complex, though apparently heinterviewed no one else. Shortly after this unusual interview, the Ambas-sador 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 held the specially crafted sinecure 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 Novem-ber. He called the White House to inform the President’s behalf, 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 real-ized, however, that 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 affair 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 ef-forts 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, 1997, Miss Lewinsky signed the affidavit, which she later admitted was false, denying that she had a “sexual relationship with the president.” On January 7, the President was questioned by a grand jury that the President himself to share his success.

The 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 mis-sions, lifted a finger to help the “bright *** terrific” young woman. Why? Be-cause shortly thereafter the fiction of the president’s platonic relationship with Lewinsky had exploded. Monica Lewinsky was the same Monica that Lewinsky, but now who 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 from testifying at all. The case for obstruc-tion of justice is clear. Obstruction was the President’s only motive.

(2) Next we have the Currie conversa-tion—a set of statements by the Presi-dent in the 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 ex-traordinary time and for apparently a single purpose. We are all familiar now with the questions he posed:

“I was never really alone with Monica, right?”

“You were always there when Monica was there, right?”

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

“You could see and hear everything, right?”

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

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

HAD 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 Presi-dent’s clear attempt to obstruct jus-tice, both in the Jones case and in the subsequent grand jury investigation. The President’s clear attempt to obstruct justice, both in the Jones case and in the subsequent grand jury investigation.

(3) The false self-serving statements by the President to senior members of his staff, to his cabinet, to his confidantes, the media, the American people, and ultimately, the grand jury, is—beyond a reasonable doubt—a wide-ranging and highly pub-lic silence allows the inference that deeply dam-aging 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 re-solved by truthful testimony and confronted with wit-nesses—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 pub-lic silence allows the inference that deeply dam-aging to the judicial fabric of the United States.

With sufficient material facts alleged in the two Articles of Impeachment ei-ther essentially uncontested or estab-lished 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 Con-stitution?

This is the easiest of the four ques-tions to answer. Perjury and crimes less serious than obstruction of justice have always and properly been consid-ered high Crimes and Misdemeanors.

In 1986 Judge Claiborne was con-victed 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 con-victed because filing a false return was irrelevant to his performance as a judge. In 1989 Judge Nixon was con-victed 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 con-victed of lying under oath and removed
by the Senate even though he had already been acquitted in a criminal trial. (It is generally recognized that an act need not be criminal in order to be impeachable.) As these examples illustrate, perjury is and historically has been a key cause for conviction and removal. Although no person has been convicted and removed for obstruction of justice, the nature and gravity of this crime, punished more harshly under our laws than bribery, clearly is also sufficient cause for conviction and removal.

Most of the Senate's precedents, of course, are based on the impeachment trials of judges. President Clinton argues that those precedents should not apply; that presidents, who hold the highest office in the land, should benefit from a lower standard for removal than the judges they appoint and the military officers they command. This President would have presidents remain in office for acts that have resulted in the dismissal of military officers under his command, in the removal of judges, and for acts that would have resulted in the removal of Senators like Bob Packwood, who, like the President, are popularly elected for a fixed term. House Manager ADMY has pointed out, the 1974 report by the staff of the Nixon impeachment inquiry concluded that the constitutional provision stating that judges would remove during "good Behaviour," does not limit the relevance of judges' impeachments with respect to standards for presidential impeachments. The President's argument that he should be held to a lower standard than judges, military officers and Senators has no basis in the Constitution, in precedent, in equity, or in common sense.

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

But the inevitable result of a guilty verdict in this trial is the President's removal from office, and I believe that reason alone is sufficient to sustain 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 convicted of high crimes and removal, he said, is the equivalent of the political death penalty, and the death penalty is not imposed for every felony. Considerations such as repentence 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 the appropriate consequence.)

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

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

On Article I I have decided, with some regret, that the instances of perjury I believe were established beyond a reasonable doubt are offenses insufficient for removing the President from office—based on the gravity of the offenses as against the drastic nature of removal. Equally important is the fact that these instances of perjury are also, at least, 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 whatever.

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: "Judgment in Cases of Impeachment shall extend no further than to试 to 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 judicial process. Nevertheless, a number of commentators have suggested that the impeachment 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, face the fact 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 clearly in our history a public scandal and a 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?

So does at least one of the authors of the Constitution, Alexander Hamilton, shows clearly the bright line between, on the one hand, a private sexual scandal, and on the other, a public obligation—a line the president has intentionally crossed.

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

Within 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, suspected that they might involve Treasury funds, and confronted Hamilton. Despite the tremendous political advantage the story, which eventually leaked, offered them, he immediately and without hesitation told them the truth and nothing but the truth. The president's defenders place great reliance on this explanation.

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 perjury and the 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.
February 12, 1999

CONGRESSIONAL RECORD — SENATE

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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 debased the presidency now and, if he is allowed to remain in office, the low level to which he has brought the presidency will continue, and that is not tolerable.

I would vote for the contempt resolution that the House has brought to the floor to have the contempt of Congress determined by the Senate. And then, and not until then, we could bring charges in the Senate. And I would vote with that, if it were to pass the House.

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 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 at all disappointed that we did not dismiss 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—that it is the entire law and facts of this case, and that is one simple fact that many others have mentioned: In November 1996, 47 million Americans voted to reelect President Clinton. The people hired him. They are the hiring authority. An impeachment is a radical undoing of that authority. The people hire and somehow, under this process, the Congress can fire. So, I caution against, with all due respect to the excellent arguments made, the attempt to anguage this as an employee, employer relationship, or a military situation, or even the situation of judges—one situation is all clearly different. Along with the choice of the Vice President, in no other case, do the American people choose one person, and in no other case can a completely different authority undo that choice.

Having said that, the President will conduct in this case, in my view, does come perilously close to justifying that extraordinary, that to me has never been three Presidential impeachments in our Nation’s history. I see this one as being in the middle. The Andrew Johnson case is usually considered by historians to have been a relatively weak case. President Johnson had a different interpretation of the Constitutionality of the statute that he believed allowed him to remove the Secretary of War, Mr. Stanton. He was not convicted, and subsequently the U.S. Supreme Court, I believe, ruled that in fact that he was right. I see that as having been a relatively weak case.

The case of Richard Nixon, in my view, was a pretty strong case, involving a 1972 Presidential election and attempts to get involved with the aspects of that election—frankly—an attempt to cover up what happened during that 1972 election. I think that had more to do with core meaning of “high crimes and misdemeanors.” This is a 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 am together with the House managers who say their evidence is “overwhelming,” nor with the President’s counsel who says the evidence against the President is “nonexistent.” The fact is, this is a hard case, and sometimes they say that hard cases make bad law. But we cannot afford to have this be bad law for the Nation’s sake.

So how do we decide? There have been a lot of helpful suggestions, but one thing that has been important to me is the way the House presented its evidence. It didn’t do that. But we are here, and I want to take the approach you want to take, then it is clear, in my view as one Senator, that you must prove that beyond a reasonable doubt. Otherwise, you are using the power and the opprobrium of the Federal criminal law as a sword but refusing to let the President and the defense counsel have the shield of the burden of proof that is required in the criminal law.

I do not have time to discuss the perjury count this afternoon, but will do so in a longer presentation for the Record. Suffice it to say I do not believe the managers have met their burden of proving perjury beyond a reasonable doubt. It is clear that 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 legal team or the power and the opprobrium of the Federal criminal law? If so, was it reasonable or irrational or not a reasonable or irrational? Was it rational or not? Was it legally sufficient to support a verdict of obstruction? Did the House managers bring out the facts that the President’s legal team, the House managers, the President himself, wanted to make this go away? Was the core issue trying to avoid the Jones proceeding and the abnormalities and the consequences of that?

I don’t think it has been shown beyond a reasonable doubt that the Jones proceeding was the President’s concern. Perhaps Ms. Currie could have shed some light on this. That is why I was extremely puzzled when the House managers didn’t call Betty Currie. Let me be the first to say that I don’t think it is appropriate for House managers to want to go “weeble-wobble.” I don’t think they wanted to win badly enough to take the chance of calling Betty Currie, a crucial witness.
I was very concerned about the false affidavit until I saw Ms. Lewinsky's Senate deposition testimony. I am persuaded that you cannot say beyond a reasonable doubt that she was urged by the President to make a false statement.

Finally, I was very concerned about the hiding of the gifts. And maybe every one will disagree with me on this. But when I watched her testimony, I thought Ms. Lewinsky was the most incredible witness I have ever watched in my 45 years of watching testimonies. She had gotten that call from Ms. Currie than any other part of her testimony. I happen to believe that. Ms. Lewinsky was the one who was the most concerned about the gifts. And I believe a showing beyond a reasonable doubt has not been made that the President masterminded the hiding of the gifts.

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

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

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

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

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

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

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

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

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

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

The answer is: No. To the contrary: we can be more lenient than to select one individual to represent us all as President. In one person we endow the character of our nation, as the head of state and the head of government:

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

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

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

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

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

In his own Attorney's chose to deny the allegations, and fight them with a coordinated scheme of manipulation and obstruction. He lied outright to the American people, to his close associates, and to his cabinet. An enduring impression of this whole trial is finger-pointing lie to the American people, even after admonishing us to listen closely, because he didn't want to have to say it again.

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

The President chose to impeach the pursuit of justice by the Independent Counsel, who was given the authority to investigate this matter by the President's own Attorney General.

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

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

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

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

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

As a result of these choices by the President of the United States, the image of the President was left with no other than to confront the charges and hear the case pursuant to the President's impeachment in the House of Representatives.
In many ways, obstruction of justice is even more corrosive than perjury to the machinery of our legal system. As the target of a grand jury and an independent prosecutor, the President has defended himself against charges of perjury by claiming he was caught off guard, which was admitting that he was attempting to mislead but not lie.

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

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

The President sought out Mr. Blumenthal to tell his misleading story. The President directed Betty Currie to retrieve the gifts. He summoned her to coach her testimony. He 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 testified to suggest that Ms. Lewinsky give her the gifts. We have cellular telephone records that indicate a call from Ms. Currie to Ms. Lewinsky at about the time the gifts were picked up. It was clear that Ms. Currie initiated a retrieval of the gifts at the direction of the President, for this was the only source of information she had that there were gifts. The evidence is overwhelming that the President directed Betty Currie to retrieve these gifts. Thus, his statement is false. If he is guilty of perjury, it is obstruction of justice.

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

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

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

That solemn occasion in the well of this Senate, and the weight of the burden imposed on us as “jurors” in only the second such proceeding in the history of our Nation, reminded me with vivid clarity that our Constitution belongs to all of us. And if, however, that the laws of our Country are applicable to us all, including the President, and they must be observed. The concept of due process of 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 1991, 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 in the White House on the personal gifts, jobs within and outside of government, and “missions accomplished.” The underlying details will not be repeated by me here.

While some facts about that relationship and the timing of some events were disputed at the trial in the Senate, their essence has been publicly admitted by the President, by his Counsel, and by the sworn testimony in written or oral 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 relate instead to alleged attempts to prevent the disclosure of this relationship in a pending civil sexual harassment lawsuit in the United States district court for the Eastern District of Arkansas. Thus, the legal fact that has brought us to this extraordinary moment in our nation’s history is whether or not to remove from office the President of the United States. We are not doing this because we are curious about America what they can only hope for in their own countries—If the Senate of the United States were to conclude: The President lied under oath as an element of a scheme to obstruct the due process of law, but we chose to look the other way. I cannot make that choice. I cannot look away. I vote “Guilty” on Article I, Perjury. I vote “Guilty” on Article II, Obstruction of Justice.

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

In May, 1994, the Senate conducted a fair and expeditious trial. We rejected the idea of an early test vote that would have truncated the process. We rejected the motion for an early dismissal. The Senate is fulfilling its Constitutional responsibility to hold a trial with a complete evidentiary record and a final vote on each article of impeachment sent to the Senate by the House of Representatives.

Through skilful use of the written record, collectively, 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 his relationship at the Grand Jury, but did so only after confronted with clinical evidence of its existence. But his relationship with Ms. Lewinsky was also admitted as was the character of Ms. Lewinsky.

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

The edifice of American jurisprudence rests on the foundation of the due process of law. The mortar in that foundation is the oath. Those who seek to obstruct justice weaken that foundation. The oath is how we defend ourselves against those who would subvert our system by breaking our laws. There are damages accomplished.” The underlying details will not be repeated by me here.

While some facts about that relationship and the timing of some events were disputed at the trial in the Senate, their essence has been publicly admitted by the President, by his Counsel, and by the sworn testimony in written or oral 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 relate instead to alleged attempts to prevent the disclosure of this relationship in a pending civil sexual harassment lawsuit against the President in an Arkansas Federal court and to the media. That is the critical fact that has brought us to this extraordinary moment in our Nation’s history when we are considering whether or not to remove from office the President of the United States.

CORE FACTS LEADING TO THE ARTICLES OF IMPEACHMENT

In May, 1994, a female citizen and employee of the State of Arkansas filed a lawsuit in an Arkansas Federal District Court, alleging, in summary, that in 1991 while President Clinton was Governor of Arkansas, the Governor committed the civil offense of sexual harassment against her by compelling her to perform sexual acts identical or similar to those later performed by the Intern.
In the course of preparing for the trial of the Arkansas case, the plaintiff, with the consent of the presiding Federal Judge, attempted to develop evidence that defendant Clinton had, after his deposition, engaged in patterns of conduct that were similar to the allegations of the plaintiff in the case. In December 1996, the Office of Independent Counsel submitted its referral to the House of Representatives consisting of thousands of pages of exhibits, including recorded telephone conversations, video tapes, interviews, reports, legal briefs, and arguments, including the following: "This referral presents substantial and credible information that President Clinton criminally obstructed the judicial process, and perjured himself, by: (i) making false statements to the Federal Judge characterizing the Independent Counsel's referral to the Federal Judge; (ii) corruptly encouraging the Independent Counsel submitted its referral to the Federal Judge characterizing the Independent Counsel's referral to the Federal Judge; (iii) corruptly allowing his attorney in the Arkansas case, (iv) prior false and misleading statements he allowed his attorney to make about the Arkansas Intern case, (v) obstructing the administration of justice, and, to that end, of engaging perjury and false testimony in the Arkansas case.

On September 9, 1998, the House of Representatives passed two articles of impeachment, namely: (i) the "perjury" article: (i) perjury, false, and misleading testimony given in the Arkansas case. (ii) obstructing the administration of justice, and, to that end, of engaging perjury and false testimony in the Arkansas case. (iii) obstructing the administration of justice, and, to that end, of engaging perjury and false testimony in the Arkansas case. (iv) corrupting efforts to influence the testimony of witnesses and to impede the discovery of evidence in the Arkansas case. (v) obstructing the administration of justice, and, to that end, of engaging perjury and false testimony in the Arkansas case. (vi) corrupting efforts to influence the testimony of witnesses and to impede the discovery of evidence in the Arkansas case.

In support of the accusation, Article II accuses the President of seven specific acts of obstruction: (i) corruptly encouraging the Independent Counsel submitted its referral to the Federal Judge characterizing the Independent Counsel's referral to the Federal Judge; (ii) corruptly allowing his attorney in the Arkansas case, (iii) obstructing the administration of justice, and, to that end, of engaging perjury and false testimony in the Arkansas case.

The Ethics in Government Act, 28 U.S.C. § 595(c), directs any Independent Counsel assigned to investigate the President to have the right to subpoena the President of the United States.

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THE TRIAL IN THE SENATE

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

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

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

The two Articles of Impeachment before the Senate proceeding do in fact accuse the President of committing three actual crimes, "perjury before the grand jury," "obstruction of justice," and "witness tampering," that meet the requirements for conviction of an indicted defendant in a criminal case brought under Federal law. The House Managers and Counsel for the President did not propose that Article, and such a charge is, therefore, not before us in this proceeding.

It is argued by both sides in this proceeding that there is a "felony-plus" standard of conduct, not a lower one. The fact is that the standards are set by the Constitution for all officers of the Federal government. They are precisely the same, and we are obligated to apply them evenly.

In order to find the President "guilty" under either Article, this Senator must conclude that in his capacity as President, the President has committed an impeachable offense. To say otherwise would be to severely lower the moral and legal standards which the Constitution for all officers of the Federal government. They are precisely the same, and we are obligated to apply them evenly.

It is argued by both sides in this proceeding that to convict the President at risk of being impeached and convicted for trivial offenses. The two-thirds vote requirement for conviction imposed by the Constitution, itself, is designed to protect public officers from precisely such a result.

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

This Senator, as a child he himself, had to cut down a cherry tree and lied about it, he would be guilty of "lying," but not guilty of "perjury." If, on the other hand, President Washington, as an adult, had been warned not to cut down a cherry tree, but he cut it down anyway, with the tree falling on a man and severely injuring or killing him, with President Washington stating later under oath that it was not he who cut down the tree, that would be "perjury." Because it was a material fact in determining the circumstances of the crime.

Some would argue that the President in the second example should not be impeached because the whole thing is about a cherry tree. If the underlying facts in the case are "just about sex," or if the Senator cannot tell the difference.

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

ELEMS REQUIRED FOR CONVICTION OF WITNESS TAMPERING AND OBSTRUCTION OF JUSTICE

Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engaged 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 to avoid an official proceeding; (B) alter or destroy evidence in an official proceeding; (C) evade legal process by avoiding personal responsibility under the law, either civil or criminal. Such would be an impeachable offense. To say otherwise would be to severely lower the moral and legal standards which are imposed on ordinary citizens every day. The same standard should be imposed on our leaders.

The President is elected should call for the highest moral and legal standards that are imposed on ordinary citizens every day. The same standard should be imposed on our leaders.

Because of the uniqueness of this Constitutional process in which "guilt" and "punishment" are combined, each Senator, as a trier of both fact and law, before voting as to the guilt or innocence of the President under either of the Articles must answer the basic question: Do the President's perjury, obstruct the judicial system in determining how the man was injured or killed, in order to escape personal responsibility under the law, either criminal or civil. Such an offense would be an impeachable offense. To say otherwise would be to severely lower the moral and legal standards which are imposed on ordinary citizens every day. The same standard should be imposed on our leaders.

The President shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.

Because of the uniqueness of this Constitutional process in which "guilt" and "punishment" are combined, each Senator, as a trier of both fact and law, before voting as to the guilt or innocence of the President under either of the Articles must answer the basic question: Do the President's perjury, obstruction of justice, and destruction of evidence rise to the level of "high crimes and misdemeanors" contemplated by the Constitution that would permit a conviction in this proceeding, since a finding of "guilt" under either Article would, under the Constitution, automatically result in the removal of the President from office and prohibit him forever from holding another office of profit or trust under the United States.

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

Section 4 of Article II of our Constitution provides: "The President...shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.

Lying is a moral wrong. Perjury is a lie told under oath that is legally wrong. To be illegal, the lie must be willfully told, must be believed to be untrue, and must relate to a material matter. Title 18, Section 1521 and 1523, U.S. Code.

If President Washington, as a child, had cut down a cherry tree and lied about it, he would be guilty of "lying," but not guilty of "perjury." If, on the other hand, President Washington, as an adult, had been warned not to cut down a cherry tree, but he cut it down anyway, with the tree falling on a man and severely injuring or killing him, President Washington stating later under oath that it was not he who cut down the tree, that would be "perjury." Because it was a material fact in determining the circumstances of the crime.

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CONGRESSIONAL RECORD — SENATE
February 12, 1999

MY VOTES ON THE ARTICLES OF IMPEACHMENT

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

(i) The President of the United States willfully, and with intent to deceive, gave false and misleading testimony under oath with respect to material matters that were pending before a grand jury and was knowingly false while giving his deposition under oath with respect to material and perjurious if it is “capable” of influencing the grand jury in any matter before it, including any collateral matters that were pending before a Federal grand jury.

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

ARTICLE I, PERJURY—EXPLANATION OF VOTE

This Article accuses the President, while giving deposition 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 role in developing and tendering to the Federal Judge in the Arkansas case an affidavit that was knowingly false while giving his deposition in that case, and about his other 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 the meaning of ‘is’ is.”

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

The Federal grand jury was investigating broad issues and many persons at the time the President gave false and misleading testimony before.

Willful, corrupt, and false sworn testimony before a Federal grand jury is a separate and distinct basis for perjury and obstruction of justice. It is not the level of “materiality” that is required for a lie to rise to the level of a crime under Federal law, but rather, it is the level of “materiality” that is required for a lie to rise to the level of a crime under Federal law.

This Article charges the President with obstructing justice and perjuring testimony that was knowingly false while giving his deposition under oath with respect to material matters that were pending before the Federal grand jury in January 1998.

The false testimony complained of in Article II of the Articles of Impeachment is “capable” of influencing the grand jury in any matter before it, including any collateral matters that were pending before a Federal grand jury.

The President’s testimony before the Federal grand jury was knowingly false while giving his deposition under oath with respect to material matters that were pending before a Federal grand jury.

When, on January 17, 1998, the President of the United States pointed his finger at the White House Intern and said, “I am the victim of lies and not their perpetrator,” it was perjurious.

The White House Intern had executed a false affidavit; subpoenaed gifts had been hidden; his own false deposition had been given; the President’s deposition was tendered falsely based upon his own false representations to the grand jury; retribution against the White House Intern had been programmed should he testify; and the President had been reprimanded and fired by the White House.

This Article charges the President with obstructing justice and perjuring testimony concerning the politics of the President’s sexual relationship with Monica Lewinsky.

The President, in his deposition before the White House Intern Investigating Committee, had said: “I cannot tell a lie.”

Shift the blame; change the subject. Blame it on the White House; blame it on the Independent Counsel. Blame it on the majority members of the House Judiciary Committee. Blame it on the process.

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

CONCLUDING STATEMENT

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

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

In the middle of the century, our country and our courts began to recognize the inherent dignity and rights of all people, regardless of race and national origin. In the last two decades, we have begun to address issues of gender. We have enacted sexual harassment laws that permit women and men to enter the justice system, that seek to prevent acts of willful deception and sexual abuse.

This has been a case about civil rights. It has been about the right of the weakest and the most vulnerable 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.

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 before us is not whether the President’s conduct meets the Constitutional standard for removing a President from office.

That requires us to make a profound judgment on whether we should override 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 addressed by a Federal grand jury? Third, do the crimes 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 President’s conduct would bring perjury charges based on the facts in this case.

The President in his grand jury testimony acknowledged an intimate and irregular sexual 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 of justice charges, again the federal prosecutors told us they would not bring charges based on the facts in this case.

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 at this moment, Federal jurists will conclude that our Constitution has been applied fairly and survives, that we have come to principled judgments about matters of national importance, and that our rule 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 preserve, protect, and defend the Constitution of the United States.

I know all of us take that oath seriously.

At the end of this proceeding, however, 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 before us is not whether the President’s conduct meets the Constitutional standard for removing a President from office.

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On the obstruction of justice 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 on two occasions he put the same set of questions to Ms. Currie. That could constitute witness tampering.

But at the time of these conversations, Betty Currie was not a witness in any 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 publicc [sic] offences by which the Commonwealth was brought into danger."

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

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

William 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 proceedings."

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

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

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

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

Almost 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 conduct was 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 rise to 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. A President will not remain if a party does not want him to.

But there are two elements of our Founding Fathers' approach that I believe are lacking in this proceeding. 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 for 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 Bill Clinton, Mr. President. 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 figure in Arkansas and still immensely popular in my home state, so I am acutely aware of the political implications of this vote for me. As an Arkansan, I share pride in one of our own having achieved so much and having attained the highest elective office in the land. Arkansas has produced more than its share of political leaders—the Joe T. Robinsons, the
Hattie Caraway, 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, his knowledge of the people 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 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 Senate. 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. The process 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 getting our retribution on the President. If polls have failed, Andrew Johnson would have been removed, and that would have been wrong. To argue that a popular President should not be removed regardless of his actions, merely because he is popular, is to lower our Constitutional Republic to a meaningless level.

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

What I have to weigh is the evidence. What we have to remove a President—the very thought soberies and humbles me. But the facts are so inescapable, the evidence so powerful. All the Presidential testifying has been before the federal grand jury and said that he had been truthful to his aides in what he had said about his relationship with Ms. Lewinsky—that he committed perjury and obstructed justice. When he told Sidney Blumenthal that Ms. Lewinsky was a stalker and he was a victim, he was not being truthful. He was trying to destroy her reputation and he would have, had it not been for the very thought of what he lied about his lie to the grand jury.

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

If this trial was only about one man’s actions, it might be easier. But this man is the President of the United States, the President of the United States of America. This trial is not about one man’s actions; it might be easier. But this man is the President of the United States, the President of the United States of America. This trial is not about process. It is about the President’s behavior.

I am deeply disappointed and angry I am with the President. I came to Washington, D.C. in 1992. 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, let it be called what it may.”

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

Mrs. MURRAY. Mr. Chief Justice, this past year certainly has been a difficult time for America. I have to say, as a citizen, as a woman, and as a parent, it is difficult to explain 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 President Bill Clinton, and 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 and documents. Like all of you, I have spent more hours on this case than I ever wanted to and have felt the tremendous weight of this decision.

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

The Republican House managers presented a theory. But after listening carefully to both sides and, most importantly, reviewing the words of the witnesses themselves, they did not provide their theory of perjury and obstruction of justice. They have produced 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. The 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 fail. While it would be wrong to suggest they approved of such behavior, they were not interested in the individual and his flaws. They sought to protect the nation.

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

This President’s behavior was reprehensible, but it does not threaten our nation. In the past year, despite the scandal that ran on the front page nearly every day, our country has prospered. Our economy is growing. Our communities are safer. Our education system is stronger. America is not poised on the brink of disaster. Our democracy is safe.
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 of perjury and obstruction of justice, should we take the risk of removing the President from office? Or, even if we believe the President's character flaws disqualify him from office, would we not damage and obstruct the President's character flaws?

If I determined that the President was guilty of perjury and obstruction of justice, I would vote for his conviction. Of course not. Neither, then, would I let public opinion restrain me from voting as I believe I should. If I determined that the President is guilty of perjury and obstruction of justice, I would vote for his conviction. Of course not. Neither, then, would I let public opinion restrain me from voting as I believe I should. If I determined that the President's character flaws disqualify him from office, would we not damage and obstruct the President? Of course not. Neither, then, would I let public opinion restrain me from voting as I believe I should.

The tortured explanations with which the House managers have tried to buttress their case failed to raise reasonable doubts about his guilt. It seems clear to me, and to most Americans, that the President is guilty of perjury and obstruction. The circumstances that led to these offenses may be tawdry, trivial to some, and usually of a very private nature. But the President broke the law. Not a tawdry law, not a trivial law, not a private law.

The House managers have made, and I believe some of my colleagues on the other side of the aisle would agree, a persuasive case that the President is guilty of perjury and obstruction. The circumstances that led to these offenses may be tawdry, trivial to some, and usually of a very private nature. But the President broke the law. Not a tawdry law, not a trivial law, not a private law.
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 people. Are perjury and obstruction of justice expressly listed as high crimes and misdemeanors? No. Why? Because they are self-evidently so. Just as the President is self-evidently the nation’s chief law enforcement officer, despite his attorneys’ quibbling to the contrary. It is self-evident to us all, I hope, that we cannot overlook, dismiss or diminish the obstruction of justice by the very person we charge with taking care that the laws are faithfully executed. It is self-evident to me. And accordingly, regrettably, I must vote to convict the President, and urge my colleagues to do the same."

Mr. JOHNSON. Mr. Chief Justice, the great decision now before the Senate is not whether the rule of law will prevail—it surely will—both by the actions of this body and by possible proceedings within the judicial system. The question before the Senate is whether the Articles of Impeachment against the President beyond that allowed for in our nation’s courts. We are, I believe, confronted by two threshold questions which must first be resolved before consideration can or need be given to the evidence presented by the House Managers. First, is whether the Articles of Impeachment have been adequately drawn to allow the accused to know with precision the wrong-doing to which he is accused, and to require that a 2/3 majority vote of the Senate be secured upon a single act of wrong-doing in order to convict. As a second threshold matter, if the Articles are at least adequately drawn, do they, if true, allege wrongdoing of sufficient import to justify for the very first time in our nation’s history, the over-turning of the people’s will as expressed in a free, fair and democratic national election? I am troubled by the adequacy of the articles, but even accepting them, the second threshold question of impeachability is simply not met. Only if these threshold questions are adequately met in the mind of an individual Senator, can that Senator proceed to determine whether the weight of the evidence is sufficient to convict. And even if both threshold questions are ignored, it is impossible for me to say that the circumstantial evidence presented reaches a “beyond a reasonable doubt” standard on either article. Reasonable doubt means that if there are multiple reasonable theories as to what occurred—if one of the reasonable theories is consistent with innocence, then an acquittal must follow. Especially relative to article two—I can understand the law of some that an insubstantial scenario of obstruction was established. Some may even believe that the President was more likely than not obstructing justice. But the evidence is clearly not so powerful as to lead anyone to believe that no reasonable and innocent scenario remains.

I am both profoundly honored and humbled to have this historic responsibility to participate with my Senate colleagues (invocant—invoking—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 J. 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 transient notions 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 American people have a right to bipartisanship honoring 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 everyday tyranny 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 the very conduct that threatens the nation—such as treason or bribery. By requiring a 2/3 vote for the over-turning of the people’s will as expressed in a free, fair and democratic national election? I am troubled by the adequacy of the articles, but even accepting them, the second threshold question of impeachability is simply not met.

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The American public and most Members of Congress, including myself, have criticized President Clinton’s personal conduct in harsh terms. But the American public also seems to understand that at stake is not simply Bill Clinton’s future, but the integrity of our election system and the long-term freedom of the executive branch from partisan congressional attack—this understanding about the need for stability, for proportionality, for continuity, is a natural and a deeply conservative inclination on the part of our citizenry. The writer of our Constitution wanted some degree of proportionality between a president’s conduct and the penalties applied—otherwise they would have made impeachment applicable to all crimes and misdemeanors. It is certainly conceivable that the will of the people expressed in an election may someday be rightly overturned by Congress. But it is also certain to me that while this president’s personal conduct may be explored or exposed, his involvement in a lawsuit dismissed by a federal court as having no merit is deserving of public condemnation, and even possible prosecution within the judicial system. It simply does not rise to the level of extraordinary danger to the nation that justifies removal from office.

Some will no doubt say that I have set a high standard for overturning presidential elections but I would very much agree. Particularly as a recently former member of the House of Representatives, I have witnessed first hand the depth and the intensity of partisan anger that can occur from time to time in Congress and among portions of the national public. It is a reaction to that open partisanship demonstrated by the House and the Independent Counsel that surely is at the foundation of the American people’s overwhelming concern for this proceeding and the view that this process is politics as usual, an exercise in raw political power and beneath what should be the dignity of Congress. I have no certain solutions for that sad and angry state of affairs, other than to attempt to conduct my own political life in as thoughtful and moderate a manner as I am capable, but I believe the Constitution provided our nation with a strong shield against negative and hateful partisanship by creating an executive branch which is largely shielded from congressional partisanship and which is instead disciplined by law and by the electoral will of the people.

I greatly fear that any lesser standard would result, even without an independent counsel law, in a situation whereby civil actions against standing presidents will be routinely brought as yet another destructive 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 each time the House is controlled by a different political party than the Presidency. 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 partisan independ-
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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 reservations 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, will have a cost that 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 state-wide from my largely Republican state, and I have long been proud of the bipartisan support extended to me by the good people of South Dakota. In turn, I have long recognized that neither political party has a monopoly on good ideas or bad, good people or bad. But I know this—the issue before me is too grave for politics. At the end of the day, when my service in this body is done, I want my children, my family and myself to view my decisions here as honorable, as an exercise in responsible judgment, and in a small way, as efforts that strengthened the bulwark of democracy that our Constitution represents.

The President dishonorably lied to the American people, however, the two Articles before the Senate fail, first because they do not allege offenses that give rise to removal from office, and secondly, because it cannot be said that the evidence proves guilt of perjury or obstruction of justice beyond all reasonable doubt (to such a degree of 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 devoted 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 wisely defined the words “high crimes and misdemeanors” as a threshold, but left it to us to determine what transgressions met this standard. All of us have endeavored to fulfill this enormous responsibility.

From the beginning of the consideration of impeachment last year, many Members of Congress in both parties have made public statements expressing their belief that the President’s misbehavior, and perhaps even more disturbing, was so serious as to require, in the words of the Constitution, the “removal from office.”

With few exceptions, Senators recognize that the Constitution gives only one outcome to a verdict of “guilty,” namely, removal from office. At the same time, many Senators are shocked by conduct which they call “shameless,reckless, and indefensible,” and they want their constituents to know that they have not been fooled or overwhelmed by Presidential charm. They have taken the initiative to explicitly denounce the bizarre conduct and the extraordinary corruption of this President. Members of both parties have deplored the fact that the President conducted an illicit sustained physical sexual relationship in spaces close to the Oval Office and publicly denied this to his family, his staff, and to the world. His prescribed statements to the world only to see all of the elaborate cover-up collapse after DNA tests on the dress of a young woman.

But the impeachment trial of President Clinton is not about adultery. The impeachment trial involves the President’s illegal efforts to deny a fair result in the suit brought by Ms. Paula Jones. I have no doubt that the President worked deliberately to 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 his affairs are found, gifts are concealed, false affidavits are made, the character of a witness is publicly impugned, all without the knowledge or direction of the President, who is the sole beneficiary of these actions. The President’s lawyers further contend that such crimes are, in any event, insufficient to remove the President. The drafters of the Constitution would have rejected these rationalizations for the indefensible Presidential misconduct at issue. They were political men with a profound reverence for the sanctity of the oath and our entire system of justice. They did not suggest that Senators park their common sense and
their stewardship for the security of our country at the Senate door as they entered into an impeachment trial.

In fact, we have discovered in this trial that the founding fathers wanted the Senate to act as “triers” of fact and in the roles of both trial court and in the appeal of our government must exemplify and trust him if we are to follow him. Our job is not to dissect the motives or even the tactics of Ken Starr, the trial lawyers, Linda Tripp, and others.”

The only job is to examine whether the President of the United States by his conduct committed the specific acts alleged in the two Articles of Impeachment. Not generally, but specifically: Did he do what is alleged? And if he did, do these actions rise to the level of high crimes and misdeeds 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 my client is a man you would want your daughter to date—a man you would invite home to dinner. The issue is did my client kill Cock Robin—period.”

But if we listen to the oft-times confusing presentation of the House Managers—would they 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 Managers keep saying that this case is about what standards we want our President to meet. We hear Planters Fields intoned—the honor of our most decorated heroes. How incredibly self-serving and autocratic such a plea is.

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

Spare me from those who would tell the American people what standard they must apply when voting for President. Ours is an Impeachment standard and our oath to do justice under that same Constitution which also provides a path for a new beginning.

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

Mr. BIDEN. Let me begin by stating what I believe the American people view as the obvious. There are no good guys in this sordid affair. Rightly or wrongly, the public has concluded that the President is an adulterer and liar; that Ken Starr has abused his authority by unfair tactics born out of vindictiveness; that the House Managers have acted in a narrowly partisan way and are now desperately attempting to justify their actions for their own political advantage. Finally, they have concluded that Monica Lewinsky was both used and a user, while Linda Tripp, Lucianne Goldberg, Paula Jones and her official and unofficial legal team are part of a larger political plot to “get the President.”

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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 J udges and the President. But that argument fails to consider 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 land—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 War Powers 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, the congressional princi- ples 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 of any kind by a President was a high crime and misdemeanor. For this they cite the colloquy between Colonel George Mason and James Madison. Madison argued that a President who abused his pardon power could be impeached. That colloquy illustrates that it is not any obstruction that would satisfy the Constitu- tion—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 ex- planation of impeachment found in Federalist No. 65. But careful reading demonstrates that these articles of im-peachment are a constitutionally insufficient ground for removing the President from office. Federalist No. 65 states:

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

Hamilton had the word “political” typed in all capital letters to emphasize that this is the central, defining element of any impeachable offense. It is this word, which has defied its meaning, he did not leave its definition to chance. While all crimes by definition harm so- ciety, impeachable offenses involve a specific category of offenses. Using Hamilton’s terms, these are offenses that may be committed by “public men” who “violate[e] some public trust” cause “injuries done immediately to the soci- ety itself.” The public trust that re- sides in, to use Hamilton’s hoary phrase, “public men” is what we would call today public office.

What other construction can be given these words? Hamilton did not define an impeachable offense to be any of- fense 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 di- rectly and politically are impeachable.

While I would like to take credit for this insight into Hamilton’s meaning, I must confess I agitatedly stand in a line of interpreta- tion that stretches back to the found- ing era. William Rawle wrote the first distinguished commentary on the Constitu- tion, “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 char-acter and official duty. . . . In general those which may be committed equally by a private person as a public officer are not the subject of impeachment.”

Joseph Story was not only a long- serving and important J udge of the Supreme Court of the United States, he was a preeminent constitutional schol- ar and author of a treatise that re- mains an important source for under- standing 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 misdemeanors as may particularly injure the commonwealth by the abuse of high offices of trust.” J udge Story tied the definition of impeachable of- fenses to the purpose that underlies the separation of powers—safeguarding the liberty of the people against abusive exercise of governmental power. He ob- served that impeachment “is not so much designed to punish an offender as to secure the state against gross offi- cial misdeemors.”

> There is no question that the Constitu- tion sets the bar for impeachment very high—especially where the Presi- dent is involved. Federalist 65 bears this out, as do numerous other com- mentaries.

But Federalist 65 also sounds a warn- ing—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 “ani- mosities, 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 “out of context.” What outcome they otherwise wished to reach— not necessarily out of any malevolence, but simply because of the great capac- ity 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 F rammers urged us to avoid.

In Federalist 65, Hamilton defended the United States Senate as the only other body that could possibly hear a presi- dential 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 con- cerned enough in its own salvation to preserve, unawed and uninfuenced the necessary impartiality between an in- dividual accused and . . . his accus- ers?”

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

Charles Black, the renowned con- stitutional law professor from Yale, boiled down the attitude that we as Senators must adopt in order to achieve an impartiality and independ-ence sufficient to the responsibilities of the impeachment. He said we must act with a “principled political neutral- ity.”

That is a tough standard to meet. In the Johnson impeachment, for exam- ple, J ames Blaine originally voted for the impeachment of the President in the House. Yet years later he admitted his mistake, saying that “the sober reflec- tion of after years has persuaded many who favored Impeachment that it was not justifiable on the charges made,
and that its success would have re-
sulted in greater injury to free institu-
tions than Andrew Johnson in his ut-
most endeavor was able to inflict."

And in our contemporary situation, for-
er President Ford and our distin-
guishing and former majority leader, Robert Dole, have both urged us not to go down the road to impeach-
ment, but to seek other means to ex-
press our displeasure.

Charles Black knew that principled polici-

ingly 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 whom I felt oppositely from the way I feel toward the President threatened with removal?

In reaching a final decision, the ques-
tion I wish to pose to my colleagues is this: Can you legitimately conclude that the President should be removed from of-
tering President if he were a person to-
wards whom you felt oppositely than you do toward Bill Clinton?

Given the essentially anti-demo-
ocratic nature of impeachment and the great dangers inherent in the trial and exercise of that power, impeachment has no place in our system of constitu-
tional democracy except as an extreme measure—reserved for breaches of the public trust by a President who so vio-
lates his official duties, misuses his of-
ficial powers or places our system of government at such risk that our con-
stitutional government is put in imme-
diate 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 neu-
trality, the case before us falls far, far short on the facts and on the law.

I ask unanimous consent that the text of the motion to print this statement be printed in the RECORD.

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

**STATEMENT ON IMPEACHMENT DELIBERATIONS**

Senator Joseph R. Biden’s Comprehensive Statement on Impeachment Deliberations

There are no good guys in this sordid af-
fair. Rightly or wrongly, the public has con-
cluded 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 at-
tempting to derail 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 her official and unofficial legal team are part of a larger political plot to "get the President".

At this point, all that occurred before this is beyond my ability to affect. My job as a United States Senator hearing an impeach-
ment trial is not to dissect the motives or even the tactics of Ken Starr, the trial law-
yers, or the Managers. My only job is to deter-
mine whether the President of the United States, by his conduct committed the acts alleged in the two Articles of Impeach-
ment. If we are to form the judgment of the nation and of the Senate on the structure.

As I said in a speech last September at Syracuse Law School and in another on the floor of the United State Senate, the inde-
dependent Counsel and the Gendarme of the Congress was no minor detail in the constitutional de-
sign. 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 Presi-
dent to sign the Emancipation Proclamation in the face of congressional opposition, as Abraham Lincoln did. A strong and independent President to sign the executive order integrating the Armed Services in the face of congressional resistance, as Harry Truman did. 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 we do, disagree about the wis-
dom 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 founded. Impeachment must be used against a President only as an extreme measure, when the Presi-
dent's action has so breached the public trust that our system of government is put in danger by his continuing to serve out the term to which the people of the United States elected him.

Have the House Managers presented a case of sufficient severity, and have they proved it with sufficient clarity, to justify the dras-
tic and awesome step of convoking 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 and sober consideration of the precise nature of the President's crimes to the realm of emotion and speculation.

And I suggest to you one thing: That the President is an adulterer and a user. That he has committed perjury and obstruction of justice. The ultimate effects of perjury will send out ripples to all corners of our society. Like a pebble dropped into a pond, it will send up ripples to all corners of our judicial system.

SECOND, they said that failing to remove the President will also condone his plot or scheme to deny a specific civil rights plain-
tiff—Paula Jones—one of a full opportunity to litigate her claim against the President.

Regardless of the ripple effects of his actions, the acts themselves were viola-
tions of law that amounted to a failure of the President to "faithfully execute, in violation of his oath of office.

**MULTIPLE VIOLATIONS OF THE CRIMINAL LAW NECESSARY**

As I have said in earlier speeches on the impeachment power, not all crimes are impeach-
able, 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 at that. The框架, a scheme that included "lots and lots of per-
jury" and "many obstructions of justice," to quote Mr. McCollum. The dangers the Presi-
dent supposedly poses to the President's repre
sentative, or conduct the President to "faithfully execute, in violation of his oath of office.

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 obstructer of justice.

What standard of proof should a Senator apply in deciding whether the record supports the accusations contained in the arti-
cles 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 impeach-
ment. 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 rea-
sonable doubt that the President violated the laws that the House alleges. Proof be-
eyond a reasonable doubt is the same stand-
ard applied in criminal cases—it is the stand-
ard that would apply if the President were
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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 put it, "impeachment is a political process." "Political" in Hamilton's usage had two meanings as it relates to impeachments. The first is that if after a hearing, and I have spoken about in this chamber before: impeachable offenses are offenses against the political body. The second is one of which Wilson, Article II, Section 1. The impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments.

The Senate's judgment in an impeachment trial is ultimately political in a second sense, too. It is political in the sense that the Senate has the responsibility to weigh the consequences of its decision— the consequences that might flow from removing the President as well as the consequences that might flow from failing to do so. That is what I mean, and what Hamilton meant, by the ultimate judgment being a political one. As I reminded us, the consequences of the decision we make will live on long after Bill Clinton has left office and long after each of us has left office. We must hand our constitutional structure on to our children and to future generations with its foundation as solid as it was when it was handed to us. It is our responsibility as Senators to make a judgment as to how best to accomplish that objective.

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

Removing the President from office without compelling evidence would be historically anti-democratic. Never in our history has the Senate removed an elected President. The last time the Senate removed a President for sufficient reasons and upon sufficient evidence that impeachable offenses have been committed, was in 1837, when Andrew Johnson was removed. In a speech on the Senate floor, Charles Pinckney observed: "One of the first objects of the framers of the Constitution was to protect the two most essential branches of government from the influence and pressure of the third. 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 warned during the Constitutional Convention?

The solution to this problem must lie in approaching the Senate's ultimate decision from as much of a position of bipartisanship as we can possibly achieve. This is the only way in which we can 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 what I characterized as the 'abdication of the part of all parties involved in the affair.' That was in the case of the possible impeachment of Richard Nixon. And it was my view last year, when I urged restraint and bipartisanship as the attitude I hoped my colleagues would adopt. And it remains my view.

As 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. And I have little doubt about this proposition reciting that our union stands for 'government of the people, for the people, and by the people. The sovereignty of the people is exercised through national elections. All citizens, but particularly those of us who have had the honor to stand for election, have an instinctive respect for the 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 coequal branch unavoidably harms our constitutional structure. The framers intended that the political system of government be too cumbersome to be tampered with. For that reason, they enshrined the provision for impeachment. They meant for the President and Congress to be independent of one another. Maintaining that independence 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 because of the too ready exercise of that power mean that impeachment should be seen as an extreme measure. The framers were accomplished, practical statesmen. They reasoned that removal could be misapplied to undermine the primary structural guarantee of liberty—the separation of powers. They worried that Congress could misuse the impeachment power to make the President "less equal." As Charles Pinckney warned his colleagues at the Philadelphia Convention, Congress could hold impeachment "as a rod over the Executive and by that means effectively destroy his independence.

We are 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 warned during the Constitutional Convention?

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HARMFUL CONSEQUENCES RECONSIDERED

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

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

We need to step back a moment and cool down the rhetoric. Manager Senator Graham suggested as much when he reminded us all of the resiliency of the American system of government. He said: "So what are the 'harmful 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 remove him, it will be traumatic, and if you remove him, it will be traumatic, but we will survive.'"
That same calmer judgment ought to apply to the administration of justice and the rule of law. The House Managers presented no evidence whatsoever of the dire consequences that flowed from there being no evidence of such dire consequences that they could present—because their evaluation of the consequences is nothing but speculation. I do not mean to say that the consequences of finding the President will most likely be very different from those described by the House. This is one pebble whose pebbles will in all likelihood simply wash up harmlessly on the shores and be forgotten forever. I, frankly, do not see how failing to remove the President will alter the conduct of the next prosecutor having to deconstruct the President's words to determine whether to bring a perjury indictment, nor do I think that juries will be persuaded by a lawyer's argument that because the President got away with it, the President should acquit his client. The fact of the matter is, lots of perjury trials result in acquittals without implicating the criminal justice system to bring such charges where appropriate.

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

The Constitution is very clear about this. In Article I, §3, cl. 7, the Constitution provides that whether or not a person is removed from office through impeachment that party “shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.” If the evidence is overwhelming as the Managers say, the President can be prosecuted for perjury and obstruction after he leaves office. There is a very important understanding that impeachment is a political process—and a particularly clear understanding that this impeachment has been thoroughly politicized. If there is no example of the Senate—I don’t think anyone is confusing it with a legal process. No one, therefore, will take any solace from the President’s acquittal in terms of their ability to commit perjury or obstruct justice and thereby avoid criminal charges.

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

The House Managers have also warned that failing to remove the President will also con- done his plot or scheme to deny a specific civil victory to Paula Jones. As I pointed out in my lengthy argument on a matter of fact, the President was not all letting him off from a crime, and second, that our decision will not have the kind of “sky is falling” consequences described by the House in any event. In my judgment, the rule of law and the sound administration of justice in this country will be unaffected by the action we take in the Senate, one way or the other.

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If you listened just to the House Managers, you would think that the J ones lawsuit was just a run-of-the-mill typical sexual harassment civil rights case. It was not. From the very beginning, that lawsuit had been politically motivated. All the facts suggest that Paula J ones was being rewarded behavior of which we ought to con- demn. We need to think more than once about rewarding this kind of political witch hunt. 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 of impeachment. But I do not think it serves any purpose to seek other means to express our displeasure.

We ought to follow these lessons, and to be attentive to the damage that removing a duly elected President on these charges will inflict on our system of government. A decision to remove Bill Clinton will not destroy our system of government. But it will stand as a precedent—the very first time the United States Senate has removed any president from office. If we vote to convict and remove the President, the resulting 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 the system of government. But we have not reached this point due to his failings alone. It has taken the volatile combination of his blameworthiness and the circumstances and that the House undertook when we swore to do “impartial jus-
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 democracy. It is not an extreme measure—reserved for breaches of the public trust by a President who so violates his official duties, misuses his official power, and pursues a course of political despotism that at such risk that our constitutional government is put in immediate danger by his continued to serve out the term to which the people have elected him. I urge my colleagues to remain faithful to the constitutional design and to our obligation to do impartial justice.

Before us today are 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, I called the framing of that question was not as politically significant that we remember Alice's plight when the story of same. It is uncanny how much things stay the same. It is the part of all parties involved in the affair. This is why my plea today is for restraint on the federal institutions of government would be intense—and not necessarily beneficial. The consequential impact on the country, our Constitution, and our President. The power to overturn and undo a popular election of the people, for the first time in our nation's history, must be exercised with great care and sober deliberation. We should not forget that 47.4 million American voters for our President in 1996, 8.2 million more than voted for the President's opponent.—[Speech, 10/29/98]

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

As we have seen, the framers worried that impeaching a sitting president would most likely be highly charged with partisan politics and pre-existing factions, entering the “anomolies, partialities, and influence and interest” that inevitably swirl around a sitting president. History shows that they had a right to be worried.

Prior to the case of President Nixon, presidential impeachment had only been used for partisan reasons. History tells us that John Tyler was an enormously unpopular president, facing a hostile Congress dominated by his arch political enemy, Henry Clay. After several years of continual clashes, numerous presidential vetoes and divisive conflicts with the senate over appointments, a select committee of the House issued a recommend a formal impeachment inquiry.

President Tyler reached out to his political enemies: he signed an important bill raising tariffs—suggested instead the lesser action of a “want of confidence” vote rather than formal impeachment proceedings. In early 1843, the resolution actions, such factional considerations did not dominate decision making.

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

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

While the founders included impeachment powers in the Constitution, they were concerned about the potential 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 duties of the President. If a member, what is impeachable is not necessarily criminal and what is criminal is not necessarily impeachable.—[Speech, 10/29/98]

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

The framers of the Constitution knew that the greatest danger associated with impeachment was the presence of partisan factions that could dictate the outcome. I urge my colleagues to remain faithful to the framers who were concerned that
anything less than bipartisanship could, and would do great damage to our form of government. They knew that to contemplate an action as profound as undoing a popular election result by four million votes of both parties find that the alleged wrong is grave enough to overturn the will of the majority of the American people.

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

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

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

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

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

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

I don't think I am being partisan myself in warning about the risks of partisan excess. As a 32-year-old Senator, I experienced the same tension during the time of the fate of a Republican President. On April 10, 1974, I rose on the floor of the United States Senate and said: "...I am here today for a reason. The emotions of the American people would be strung, as a guitar, with every newsflash and every edition of the daily papers in communities throughout the country.

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

I make the same plea for restraint today. And while the circumstances surrounding these two events are starkly different, the consequences for our Nation are the same.

The gravity of removing a sitting President from office is the same today as it was twenty-four years ago.

The American people understand that the consequences of impeaching a sitting President are grave and, thus far, they have been resistant to any attempts to do so. We are not alone in this; even some of the pundits and experts. But I believe they have reached two clear conclusions: Congress should resolve the matter expeditiously, and the matter in a fair and non-partisan manner.

These conclusions have great significance to the person with whom 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 proceeds in a strict party lines and whether the House of Representatives acts in a similar manner.

That may not be fair, but I believe that is how they will judge it. Therefore, it 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 must demonstrate that they have conducted this proceeding based on principle, not politics.

There is yet another issue where public opinion can and should be heard. It is the question of whether the President's transgressions warrant impeachment. We know from survey after survey that the American people believe the President's actions do not justify impeaching him.

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

But I believe it is a serious mistake to take the position that public opinion should have no bearing on how we act and what we do. Let me explain. Many people—and many legal scholars—have said that impeachment should be reserved for grave breaches of the public trust. But if you try to decide whether an offense is a breach of the public trust, it is important to know what the public thinks. If the American people think the President's actions warrant impeachment, we should listen to their views, and take them seriously.

It would be a serious mistake to ignore public opinion for another, more fundamental reason. This is their President we are talking about. The President of the United States doesn't serve at the pleasure of the House of Representatives. In a parliamentary system, he is elected directly by the people of the United States.

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

This was brought home to me several weeks before the elections at a filling station in Wilmington. The woman working the cash register looked up at me with something of a scowl on her face. I assumed—in a state of anger, I voted against me the last time I ran. She said, "You're Joe Biden, aren't you?" I nodded. She said, "What are you going to do to President Clinton for doing that thing?"

She started to give me a noncommital answer about the process needing to go forward, but she brought me up short. "Don't you or anyone else take my vote away, Joe. He's my President! If you remove him, I will never vote again." That is simply not our system of government. The President and the American people understand the genius of the American system in their bones. They know that the Congress and the President are separate branches of government. They understand that each branch is responsible to them, not to the other branch of government. Just as they know that the Senators from their state are theirs, and that the Congress from their district is theirs, they know that the President is theirs, too.

The American people think Bill Clinton needs to keep in mind what the American people think about him, because he is their President. This is absolutely clear. This does not mean just doing what the opinion polls say. It means proceeding in a manner that the American people understand to be fair. In the case of an impeachment, fair means bipartisan. It means putting aside the disagreements that stem from partisan factions. It means that partisan factions to play a part, but only a part, 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 people elect or fire them.

The public thinks. If the American people think the President's actions do not warrant impeachment, they will vote to acquit. But that is not fair. Should they fail to do this, the risk they face is that they will inflict more damage on our system of government and the public's confidence in it than anything the President has done so far.

So we must be prudent. Otherwise we will succumb to the danger the framers warned against. We will subject the President to what amounts to a vote of no confidence. If you disapprove of his presidency and its policies, or if you do not like the man, vote to remove him. That is the way our system of government works. It is the way our system of government was designed to work. If you disapprove of his presidency and his policies, or if you do not like him, vote to acquit. But that is not our system of government. That is not the way our system operates.

Reflect for just a moment on how different our government is. Here, the President and the Congress are in separate offices of government. Each is elected directly by the people. The President and Vice President are the only officials elected by all the people. The elected officials have direct accountability 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, 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 a bulwark in support of individual liberty and against government tyranny. The separation of powers prevents government power from being concentrated in any single branch of government. Permit one branch of government to subjugate another to its partisan wishes, and you permit the kind of concentration of power that can lead to tyranny.

So the system the Framers established is utterly incompatible with the idea that sharp partisan divisions could be sufficient to impugn the system. The only thing that prevents impeachment power from being abused is the good faith of Members of Congress.

Professor Black proposed a simple test. He said that for the purposes of impeachment, members take off their party’s hat—shed their partisan identity—and then try to take up with respect to a president towards whom 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, especially in the highly charged partisan atmosphere in which we live, but you get the point. The issue is not whether the President’s behavior is impeachable, but whether Members can agree on the seriousness of the offense and the appropriateness of the sanction.

The choice is not whether the President’s conduct was a crime, but whether his guilt is impeachable. As a result, the burden of demonstrating the misconduct. It does not call upon the defendant’s guilt beyond a reasonable doubt. A third, middle course is applied in some cases. This standard, clear and convincing evidence, requires proof that substantially exceeds a mere preponderance but that does not eliminate all reasonable doubt. There must be a very high degree of probability that the evidence proves what the plaintiff asserts, but the proof may fall short of certainty.

Many Senators, analyzing to a criminal trial, have expressed that they would require the House Managers to prove their case “beyond a reasonable doubt.” From the judicial setting there are three major standards than an impeachment. The Constitution contemplates and the practice has left to each Senator to determine for him or herself what standard to apply.

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

Failure to impeach, even failure to proceed with a criminal action, does not mean that the President has not paid for his immoral behavior. It is a way to punish the President without doing damage to the system of separated powers or overruling the judgment of the American people.

Failure to impeach, even failure to proceed with a criminal action, does not mean that the President has not paid for his immoral behavior. It is a way to punish the President without doing damage to the system of separated powers or overruling the judgment of the American people.

The constitutional standard for the impeachment trial of President Richard Nixon, Senators Sam Ervin, Strom Thurmond and John Stennis agreed that they would apply the beyond a reasonable doubt standard. But it is clear that individual Senators may opt for a civil standard.

The issue may not be one of purely technical 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 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]

** The Burden of Proof in Assessing the House’s Case **

But can the President rightly be charged with having committed the massive number of crimes that the House Managers allege? As Mr. McCollum said, if we cannot conclude that the House Managers have established the necessary elements of a crime, then the House Managers would agree that he should not be removed from office. Even if

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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 shows this position to be entirely mistaken. Indeed, if anything, history shows a thoroughly understandable reluctance to have the procedure invoked.

Stopping short of impeachment would not be reaching a solution “outside the Constitution,” as some suggest it would be entirely compatible and consistent with the Constitution. The 28th Congress [which contemplated but then terminated impeachment proceedings against President Tyler] hardly violated its constitutional duty when the House decided that, all things considered, terminating impeachment proceedings after cooperation between the Congress and the President improved was a better course of action than proceeding with impeachment based on his past actions, even though it apparently did so for reasons no more laudable than those that initiated the process.

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

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

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

In answering that, we need to ask ourselves, what is in the best interest for the country. And while I have not decided what ultimately should happen, I do want to suggest that it is certainly constitutionally permissible to consider a middle ground as a resolution of this impasse. This might bring together those of the President’s detractors who believe there needs to be some sanction, but are willing to stop short of impeachment. If some of the President’s supporters who reject impeachment, but are willing to concede that some sanction ought to be implemented.

As a country, we have often faced decisions as stark and potentially momentous as the impeachment of a president. On the other hand, we have not, to my knowledge, ever had state such claims—surely we have faced some moments just as stark and serious as this one. We have survived those moments, and we will survive this.

Whatever the outcome of the present situation, I am confident that our form of government and the strength of our country are present not only to withstand crisis, but rather with the constitutional framework and flexibility to deal responsibly with the decisions we face in the coming months. —James Madison's notes, Pinckney called impeachment a "rod" that congress would hold over the president.

In being reluctant to include an impeachment power, the framers were not trying to make the president immune to what they were worried about was protecting all American citizens against the tyranny of a select group.

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

The framers were concerned that any process whereby the legislative branch could sit in judgment of the president would render the country vulnerable to abuse by partisan factions. Federalist No. 56 begins its defense of the impeachment process by warning of the dangers of abuse. It argues that impeachments:

"...will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, as it justifies one of the two branches of government. It will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side or the other. It will either destroy the power of the party which is hostile to it, or will give it a dangerous superiority over the other. It will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence." So the framers were fully aware that impeachment proceedings could become part of the political process, and they knew that the animosities generated by all manner of prior struggles and disagreements, over executive branch decisions, over policy disputes, over issues of law and policy, would not disappear. Federalist No. 65 expresses the view that the use of impeachment to vindicate these animosities would actually be an abuse of that power.

This sentiment is as true today as it was when the constitution was being written. It
was also true when Richard Nixon faced impeachment in 1974. In fact, it would have been wrong for Richard Nixon to have been removed from office based upon a purely partisan vote. But because 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 observations of the debate. He: "Thought it indispensable that some provision should be made for defending the community against corruption and perjury of the chief magistrate [that is, the president]. The limitation of the period of his service was not a sufficient security. He might retire in disgrace 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 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 that 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 followed the pattern of the English Parliament—where the House of Commons initiates charges of impeachment. Beyond this, evidentiary intelligence that Madison thought was impeachable.

The third point to make about the scope of the impeachment power is this: to be impeachable the President must have to be a breach of the criminal law.

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

If you put the notion that an impeachable offense must be a serious breach of an official trust or duty, together with the point that it does not have to be a violation, you reach the conclusion that not all crimes are impeachable, and not every impeachable offense is a crime. [Speech, 10/2/98]
be grounds to believe he will shelter him, the House of Representatives can impeach him. . . . This is a great security.' [Memorandum, 2/99]

* * * * *

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

The Constitution establishes that the President "shall be removed from Office on impeachment for and Conviction of Treason, Bribery, or other high Crimes and Misdemeanors." That instrument, by design, does not contain an express definition of the phrase "other high Crimes and Misdemeanors." It does not abandon us to an ad hoc or partisan exercise of our discretion. Indeed, the framers strongly urged that the federal government would endure for centuries and recognized that they could not provide a more specific definition that would justly serve the nation's interest into an unknowable future. Instead, they wisely entrusted the construction and adaptation of that phrase to the judgment and conscience of the people's chosen representatives in Congress. Thus, the Senate is left to exercise what Alexander Hamilton termed our "awful discretion" to judge whether the President's conduct warrants removing him from Office.

While the Constitution calls upon each Senator to bring his or her good faith political judgment to bear on the meaning of the constitutional 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 constitutional standard is not properly understood to allow impeachment to be used as a tool of self-aggrandizement. To craft the Constitution and the state ratifying conventions the framers understood that the constitutional standard is not properly understood to allow impeachment to be used as a tool of self-aggrandizement. To craft the Constitution, the framers understood that the government whose charter they were about to write must be capable of defending the fledgling union to "the last stage of national humiliation." They intended to establish a government through which the people could effectively define and pursue the general welfare. To do so, the framers understood that the government whose charter they were about to write would have to be entrusted with broad coercive powers to act directly upon American citizens. At the same time, the framers were practical statesmen who understood that the powers necessary to make a government effective 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 men, neither external nor internal controls on government would be necessary. In framing a government which is administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

To meet this potential threat to liberty, the framers divided the federal government into three co-equal branches and further divided the legislative branch into two houses in order to guard against the concentration of branches before the government's coercive power could be brought to bear on the people. Thus, while Article I, Section 1 of the Constitution vests the legislative power in Congress, this power is subject to presidential veto and judicial review for constitutionality. Finally, the establishment and jurisdiction of the federal courts generally depends upon legislative authorization, subject again to presidential veto. Within this structure each branch of government is "armed" to defend itself against encroachments by the others. As Justice Robert J. Jackson observed, "the best way to save liberty is to better secure liberty. . . . It enjoinson its branches separateness but interdependence, autonomy but reciprocity. Maintaining the independence of the three branches of government dominated the debates regarding impeachment at the Constitutional Convention. Initially, the framers considered offering the country a constitution that did not include the power to impeach the president. After all, any wrongs against the public could be dealt with by the ordinary avenues of judgment. In the next election, one delegate to the constitutional convention, Charles Pinckney of South Carolina, worried that the threat of impeachment was being used to "sway the judgment of a hostile congress, thereby weakening the independence of the office and threatening the separation of powers. According to James Madison, impeachments were called impeachments a "rod" that congress would hold over the president. In being reluctant to include an impeachment power, the framers were not trying to create an imperial presidency; they were concerned about protecting all American citizens and the nation as a whole. In their view, the separate 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 animates the concern that any process whereby the legislative branch could sit in judgment over the president had to be able to withstand 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 the other, 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 merits of the accusation." The framers were fully aware that impeachment proceedings could become partisan affairs clouded with animosities generated by all manner of prior struggles and disagreements over executive branch decisions, over policy disputes, over resentment at losing the prior election. Federalist No. 65 expresses the view that the use of impeachment to vindicate these animosities would actually be an abuse of that power.

"Although the framers were concerned about impeachment proceedings becoming partisan, they needed to deal with strong animosities. The Founding generation was very aware that the anti-federalists strenuously urged that the federal government would quickly get out of step with the sentiments of the people and would become vulnerable to corruption and intrigue, arrogance and tyranny. This charge proved close to fatal as the New York convention took up the proposed constitution. The framers of the constitution knew that the constitution would have been even more vulnerable to corruption and intrigue if the people were not subject to removal at all except at the time of an election. James Madison's notes of the Philadelphia Constitutional Convention record his observation of the debate where he said it was clear that some provision should be made for defending the community against the incapacity, negligence or corruption of the chief magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers." So in the end, the framers of the Constitution risked the abuse of power by the Congress to gain the advantages of impeachment.

B. THE CONSTITUTION'S TEXT AND STRUCTURE

The Constitution does not define impeachable offenses, yet its text and structure provide clear manifestation that these words refer to official misconduct causing grave harm to our constitutional 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." The text sets forth with terms that have definite meaning (treason, which is defined in the Constitution itself, and bribery, whose definition was fixed by 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 of construction is bolstered here by the text itself. The indefinite element, "high Crimes and Misdemeanors," is introduced by the term "other." This specifically refers to the reader to preceding definite terms, treason and bribery, as supplying the context and parameters for the meaning of the indefinite phrase, "high Crimes and Misdemeanors." Every criminal offense, including such trivial infractions as parking offenses, involves public or societal harm. It is for this reason that criminal cases are titled, "The State versus . . ." or "The Government versus . . ." Each of the definite impeachable offenses, treason and bribery, are distinct in that they cause grave harm to the public not in some undefined sense but in a way that strikes directly at our system of constitutional government. Bribery defines treason as "levying War against [the United States] or in adhering to their Enemies, giving them Aid and Comfort." This phrase involves the most serious offense against our system of government. Similarly, bribery inescapably involves a serious threat to the independence of government. In describing the common characteristics of treason and bribery, Professor Charles Black of Yale Law School explained that each of these offenses involves the most serious threat of political society as to make pestilent and dangerous the continuance in power of their perpetrators. For example, Professor Edwin Corwin quoted with approval the statement of Justice Benjamin Curtis who said in defense of
President Andrew Johnson that "treason and bribery . . . these are offenses which strike at the existence of [the] government. 'Other high crimes and misdemeanors.' Noscitur a sociis. High crimes and misdemeanors signify, I think, that they belong in this company with treason and bribery.

In the bicameral constitutional setting, the terms treason and bribery take on a second distinctive aspect. As used in Article II, Section 4, each term involves official misconduct. Bribery, but not treason, occurs only where an official undertakes an official act in return for payment or some other corrupt consideration. Likewise, treason necessarily involves official misconduct. In other words, the Constitution's text. To be sure, it is possible for a private citizen to commit treason by giving aid and comfort to the enemies of the United States. It must be understood 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 violations of the national duty and trust of government that result from official misconduct—comports with and draws significant support from the Constitution's structure. The framers' conscious decision not to adopt a parliamentary system of government, in which the executive power is subordinate to and controlled by the legislature. The structure also reflects the framers' judgments that the executive branch not be accorded primacy; their experience with the tyranny of the British monarchy is too recent and too raw to permit them to accept executive supremacy. Instead, the Constitution establishes three branches that are independent, strong, and co-equal. Construing the category of high crimes and misdemeanors too broadly would threaten the independence of the executive and judicial branches. This specific concern animated James Madison in the Philadelphia Convention and moved him to object to vagueness and potentially expansive formulations of the grounds upon which the President could be impeached and removed from office.

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

The Constitution's structure also supports limiting the category of impeachable offenses to those involving official misconduct. The constitutional separation of powers is designed to safeguard liberty against tyrannical and excessive exercise of the government's power. In advocating the specific governmental structure erected in the Constitution, Madison repeatedly described the motivating force as the establishment of checks and balances, to control the federal government's power and minimize threat to the liberty of the people. This supposition limited the scope of impeachable offenses to official misconduct; that is, to conduct in which the civil officer misuses his or her official power. Other sorts of misbehavior by civil officers are simply beyond the concern of the separation of powers, of which the impeachment power is 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.

C. HISTORY OF THE DEBATES AND RATIFICATION OF THE CONSTITUTION

Moving beyond the text and structure of the Constitution, the debates at the Philadelphia Convention of 1787, where the Constitution was drafted, and those in the subsequent state ratifying conventions provide insight into 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 response to Madison's concern, James Madison undertook colloquy that gave this provision its ultimate formulation. As Madison explained in a letter to James Iredell who was a delegate to the Philadelphia Convention and later became a Justice of the United States Supreme Court, Madison repeatedly assured the delegates that only "great offenses" would be misused by the Congress to reduce the executive power and remove the President out of personal misconduct, or gross neglect, or, in other words, from the abuse or violation of some public trust. They are of a nature which with proper propriety may be denounced as political. As the concern of impeachment would "arise from acts of great injury to the community." The debates surrounding ratification in New York produced the Federalist Papers. Alexander Hamilton explained that,

"[The subjects of [the Senate's impeachment] jurisdiction are those offenses which the framers understood to be of a political nature, which involve the system of government or "society in its political character." They specifically did not mean political corruption, or the corruption of officeholders affirmatively feared by Charles Pinckney, James Wilson, and Alexander Hamilton, for example. Each declared that the impeachment powers in ways that would allow these powers to be put to partisan ends. They lodged the power to try impeachments in the Senate precisely because they thought the Senate would have the necessary independence, stature, and impartiality to prevent the impeachment powers from becoming a tool of factionalism and partisanship.

The framers expected that the Senate, among government institutions, uniquely capable of fidelity to the Constitutional limits on the power of impeachment, would 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 limited the scope of impeachment in the United States Constitution, including the impeachment of the President, he held that the framers intended to confine impeachment to a narrower set of offenses than those permitted under British law, bodies that even Great Britain had kept. 'Such kinds of misdeeds . . . as peculiarly injure the Commonwealth by the abuse of high offices of trust are the most proper and have been the most usual ground for this kind of prosecution in parliament.' Story went on to say that impeachment is a remedy for offenses "of a political character," "growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office."

The public character of the impeachment offense is further reinforced by the limited nature of the remedy for the offense. In the English tradition, impeachments were punishable by fines, imprisonment, and even death. In contrast, the American Constitution completely separates the issues of criminal prosecution from office. The Constitution states that "judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States." The remedy for violations of the public's trust in the performance of one's official duties is limited to removal from office and disqualification from holding future offices. S1487
Therefore, the Constitution contemplates both an impeachment and a criminal action as consequences for Presidents who commit impeachable offenses. This differs from the English common law, which only provides for criminal punishments after an impeachment conviction. If, however, a President engages in egregious but non-impeachable activity, the Constitution subjects the President to criminal liability. Impeachment therefore, is viewed not as a mechanism to punish a President, but rather a device to protect the public from egregious misconduct. impeachment proceedings are “not so much designed to punish an offender as to secure the state against gross official misdemeanors.”

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

At least one important early treatise writer, William Rawle, concluded that only official misconduct could provide a basis for impeachment. He contended that “the causes of impeachment can only have reference to public and not to private, to official duty and not to the private conduct of an impeached officer.” Additional support for this proposition comes from the renowned constitutional scholar, Phillip Kurland who wrote that “at both the state and federal levels, the constitutional prohibition has consistently operated fairly establishes a separate public character and official duty. In this context the Constitution subjects the President to criminal punishments after an impeachment conviction. He contended that “the causes of impeachment can only have reference to public and not to private, to official duty and not to the private conduct of an impeached officer.” Additional support for this proposition comes from the renowned constitutional scholar, Phillip Kurland who wrote that “at both the state and federal levels, the constitutional prohibition has consistently operated fairly establishes a separate public character and official duty. In this context the Constitution subjects the President to criminal punishments after an impeachment conviction.

Evidence of Prosecutorial Misconduct Admissible? The President’s counsel may seek to introduce evidence of prosecutorial misconduct. The House Managers or Senators may object on the grounds that such evidence is irrelevant. Either the President committed high crimes or misdemeanors, or he did not; evidence relating to what the independent counsel might have done or not done during the course of his work does not directly implicate the President.

Evidence is apparently based on the judgment that the President’s lawyers had no opportunity to cross examine grand jury witnesses. In one previous case, the Rule XI committee received the Starr report and supporting materials that independent counsel Kenneth Starr submitted to the House Judiciary Committee. Much of this material would not be admissible in a judicial proceeding as substantive evidence, but a summation of evidence contained in the attachments. The attachments include grand jury testimony where witness testimony was corroborated by other evidence, including documents and other material could represent hearsay.

There is some precedent for admitting the record and proceedings from a judicial proceeding as substantive evidence in an impeachment trial. In the impeachment trial of Judge Harry Claiborne, one of the House Managers, then-Representative Michael DeWine, argued that the Rule XI committee should accept the record of the judicial trial in which Judge Claiborne was convicted of tax evasion charges. Specifically, Manager DeWine argued that the Rule XI committee should accept the record of the judicial trial in which Judge Claiborne was convicted of tax evasion charges.
it did not allow the defense to pursue elements of its theory that were purely speculative and highly dubious.—[Memorandum, 12/28/98]

FINDINGS OF FACT

Various proposals to have the Senate vote on “findings of fact” prior to a final vote on the articles of impeachment are circulating. The most onerous of these would ask the Senate to vote, prior to the subsequent substantive vote on the articles, whether the President had violated federal laws against perjury and obstruction of justice.

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

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

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

However, this possible interpretation of the trial procedure was repudiated in the 1966 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 wide support and some of 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 this vote, the President’s term had been acquitted, and remains in office.

Who, then, is the President of the United States after these two votes have been cast—Bill Clinton? 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 take, in however, as many of them are on record defending the proposition that perjury and obstruction of justice are clearly impeachable offenses.

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

The uncertainty would, in all likelihood, result in litigation. Suit could be brought by someone adversely affected by a law “signed” by Bill Clinton that would otherwise have been pocket vetoed due to the adjournment of Congress, claiming that the bill never became law. Or it could be brought by someone seeking the benefits of a law that Bill Clinton had “vetoes,” 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 unanswerable. In United States v. Nixon, the Court held that nearly all questions regarding the Senate’s power to initiate impeachments are legal questions, 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 vote provides a mechanism for doing exactly what the Ritter interpretation of 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 submitted by the Senate’s legitimate and proper functions. The Senate proceeds with the proposed findings of fact, “[t]he Senate would then have taken another bite at the constitutional apple, impeach-ment into a tool of partisan politics.”

“The Clinton impeachment would then establish the proposition that it is a legitimate practice to provide the Senate with a bifurcated power (i.e., impeachment available only for high crimes and misdemeanors; removal follows automatically from conviction). The contemplated bifurcated vote provides a mechanism for doing exactly what the Ritter interpretation of the prevailing view among scholars say the constitution does not permit: impeaching and convicting a person of lesser offenses than high crimes and misdemeanors.”

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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 said that such facts, if true and if the conduct constituting the offenses were just as well served if the basis for the final judgment was expressed in more discrete and articulated collective judgments of facts as the current rules, and then as to their consequences.

This last point runs counter to the Senate's current rules and practices. Rule XXIII of the rules of impeachment provides that “an article of impeachment shall not be divisible for the purpose of voting thereon unless during the trial the provision was adopted in 1986. Some of its legislative history is pertinent: "The portion of the amendment effectively enjoining of an individual article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional violations followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had based upon support of any or more of the enumerated specifications. The general view of the Committee at that time was expressed by Senators Byrd and Allen, both of whom felt that division of the articles in question into potentially 14 separately voted specifications might be ‘time consuming and confusing, and a matter which might change and division, bitterness, 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 impossible to subject 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 ‘not being construct as ‘dividing’ any article of impeachment, but rather as a motion antecedent to an eventual vote on the articles. Still, the findings do seem inconsistent with the spirit of Rule XXIII and with its evident intention to avoid divisive preliminary votes of this kind.

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

The third finding is by a majority of the Senate that such findings would amount to an unconstitutional Bill of Attainder. The risk that such findings would be found to be an unconstitutional "trial by legislature" is enhanced (a) by the fact that under some of the proposals, the finding would be that the President had committed an impeachable offense, but additional facts that the findings would occur in the context of a Senate trial. Such Senate action could well have an adverse impact on President Clinton’s bar membership. Bar rules disqualify individuals who have been convicted of perjury or obstructed justice. If those consequences followed from a Senate finding of guilt, the President would be constrained from being called as a witness, thus bringing the findings of fact within the constitutional prohibition on bills of attainder. –[Memorandum, 2/2/99]"

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

This section highlights the major questions that deserve examination before the trial begins. It also discusses the available mechanisms for resolving outstanding procedural issues.

Should any of the existing rules be modified? The existing Rules were last amended in 1986. Should the Senate wish to revise any of them, motions to do so would be in order on the first day and would be fully debatable. Once actual the trial begins motions are not debatable, and a motion to suspend, modify, or amend the rules would require unanimous consent. Before the trial begins (the period between the exhibition of the articles of impeachment and the presentation of opening statements by the Senate) precedent precedents supports allowing debate on preliminary motions that relate to how the Senate will organize itself to conduct the trial. It appears that such motions are subject to the Standing Rules of the Senate, and not the limitations on debate contained in the impeachment Rules. Thus, they could be filibustered during the period to suspend, modify, or amend the rules, any such motion would be subject to a heightened cloture requirement. Standing Rule XXIII requires the Senate to invoke cloture and end debate on a motion to suspend, modify, or amend the rules.

The impeachment rules provide for the proceeding to be conducted as a civil trial (with legislative business conducted in the morning session and the impeachment trial conducted in the afternoon). Even after the trial begins, a motion to suspend, modify, or amend could be made in a morning legislative session, but would be subject to filibuster with two-thirds cloture requirement.[Memorandum, 1/15/99]

OBSTRUCTION OF JUSTICE

The House relies on two different federal obstruction of justice statutes. The first, 18 U.S.C. § 1503, is the general obstruction of justice statute. The second, 18 U.S.C. §1512(b), addresses witness tampering.

A. Elements of the General Obstruction of Justice Statute

To establish a violation of the general obstruction of justice statute (§1503), the government must prove each of the following:

1. That there was a pending judicial proceeding;
2. That the defendant knew this proceeding was pending; and
3. That the defendant corruptly influenced, obstructed, or impeded the due administration of justice or endeavored to corruptly influence, obstruct, or impede the due administration of justice.

The first two elements are straightforward. The third element is more complex. In the House’s terms, “corruptly” means to engage in an act voluntarily and deliberately for the purpose of improperly influencing, obstructing, or impeding, with the 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 the defendant “endeavored” to bring about the desired result of interfering with the due administration of justice. He need only “endeavor” to obstruct justice, he need not succeed.

B. Elements of the Witness Tampering Statute

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

1. Knowingly
2. Corruptly persuaded another person or attempted to do so, or engaged in misleading conduct toward another person
3. With the intent to
4. Influence, delay, or prevent a witness’s testimony from being presented at official federal proceedings
5. To cause or induce any person to withhold testimony or physical evidence from an official federal proceeding
6. 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 by his prohibited conduct to obstruct a federal proceeding or the reporting of a federal crime.

There is no judicial consensus as to the meaning of “corrupt persuasion,” but several courts have defined the term to mean that the defendant’s attempts to persuade “were motivated by an improper purpose.”

The term “misleading or probable cause” 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 preliminary 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 an inadmissible record 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 in accordance with it. [Memorandum, 1/15/99]
Only unambiguous questions can form the basis of perjury convictions. If a question can reasonably be interpreted in multiple ways, perjury cannot be based on the question. The fact is that the words must be evidence of what the person answering understood when responding.

Grand jury perjury cannot be based on an answer that is literally true but misunderstandings and nonresponsive to the question asked. The burden is on the questioner to identify evasive answers and press for clarity at the instant 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 declaratory utterances 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 convened to investigate. A matter is not one that serves simply as an influencing or an impeding that investigation, regardless of whether the declarant actually was misleading on a particular point.

The court in the House Report argues that because the judge in the Jones sexual harassment case ruled in January 1998 that evidence relating to Monica Lewinsky was not material to the case, the core issue is "in that case," J.'s lawyers could not have introduced evidence about her relationship with the President in order to attack his credibility in that suit, so that his statements on the subject are not material under perjury law.—[Memorandum, 12/30/98]

I. TEXT

The New York Times recently reported that Ken Starr and his staff have recently concluded that the Constitution does not prohibit them from indicting and prosecuting President Clinton while he is still in office. The independent counsel has a legitimate reason for seeking an indictment before the end of President Clinton's term. The grand jury that is currently investigating has not yet rendered a decision. The independent counsel waits until the President leaves office, he will have to impanel a new grand jury and present evidence all over again.

This memorandum reviews the constitutional issues that would be raised if a prosecutor were to indict and prosecute President Clinton while he is still in office. The independent counsel has a legitimate reason for seeking an indictment before the end of President Clinton's term. The grand jury that is currently investigating has not yet rendered a decision. The independent counsel waits until the President leaves office, he will have to impanel a new grand jury and present evidence all over again.

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The Chief Justice of the United States is the Presiding Officer over the Senate's deliberations when the President has been impeached. The Senate's role in impeachment proceedings takes place in front of the Chief Justice, who is acting as the presiding officer during an impeachment trial of the President. 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 (this was in fact Chief Justice Chase's practice in the Johnson trial) can be overturned by majority vote of the Senators present and voting.

The Constitution dictates that the Chief Justice acts as the presiding officer during an impeachment trial of the President. The content and extent of his role is subject to determination by the Senate. There could be sentiment to expand his powers, such as by making him the chair of a Rule XI committee, on the theory that the Chief Justice will be non-partisan and impartial. Other powers that might be given to the Chief Justice could include authority to conduct pre-trial proceedings or to oversee settlement negotiations. If the Chief Justice is perceived as impartial, his rulings and other actions will carry great weight and place a heavy burden on anyone seeking to overrule them. On the other hand, a determined majority can select someone who would minimize the effectiveness of the Chief Justice on the proceedings by reversing his rulings and refusing to grant him powers beyond the inherent powers of the presiding officer. —[Memorandum, 1/28/98]

**ROLE OF HOUSE MANAGERS**

The House of Representatives appoints a delegation of its own members to serve as presenters and examiners of impeachment charges. The managers exhibit the articles of impeachment and perform all functions normally performed by a prosecutor. They make an opening and closing statement on the case, decide what evidence to present and what witnesses to call, subject to the Senate's decision to issue a subpoena to compel attendance of involuntary witnesses. The managers lead examination of witnesses they offer and cross-examine witnesses called by the President's counsel. They may also make procedural, evidentiary, and other motions. —[Memorandum, 12/28/98]

**ROLE OF PRESIDENT'S COUNSEL**

The President may choose an attorney or agent to present his defense. These attorneys perform the same functions in defense of the President as the house managers perform in behalf of the impeachment. Neither the President's Counsel nor the House Managers may appear as a jury. Only a member of the Senate may do that. —[Memorandum, 12/28/98]

**ROLE OF THE SENATE**

[The constitutional text, the Framers' understanding of innate judicial practices] Provide important anchors for any impeachment inquiry, but they do not resolve all questions of scope that may arise. Much remains to be worked out—in the context of particular circumstances and allegations.

As Hamilton explained in the Federalist No. 65, an impeachment “can never be tied down by . . . strict rules, either in the delineation of the offence by the prosecutors, or in the construction of it by the judges.” After much research, we are still left with the realization that the power to convict for impeachment constitutes an “awful burden.”

This brings us directly to the Senate’s role. To state it bluntly: I believe the role of the Senate is to resolve all the remaining questions. Let me elaborate.

The Senate’s role as final interpreter of impeachments was recognized from the beginning of our history. For example, in 1799, Chief Justice John Marshall issued again to Chief Justice Story, after he devoted almost fifty sections of his commentaries to various disputed questions about the impeachment process. In particular, Chief Justice Story and Story’s instance fully into account.

Eventually, then, if the current impeachment proceedings, it will fail 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 what was best for the country and the context and circumstance fully into account. I should try to be as clear as I can be about this point, because the media discussion has come close to imagining that the Senate must be widely assumed that if the President committed perjury, then he must be impeached and convicted.

Conversely, you may think that unless it can be proven that the President committed perjury or violated other laws, impeachment cannot occur. Both statements are wrong. Not all crimes are impeachable, and not every impeachable offense is a crime.

The Senate could decline to convict even if the President had committed perjury. If it concluded that under the circumstances, this perjury did not constitute a sufficiently serious breach of duty to warrant removal of this President. On the other hand, the Senate could convict the President of an impeachable offense even if it were not a violation of the criminal law. For instance, if the grounds for conviction are that the President had committed abuses of power sufficiently grave, it need not find any action to amount to a violation of some criminal statute. —[Speech, 10/2/98]

* * * * *

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 refusal of Chief Justice should stand. This law interpreting role is also a component of the ultimate decision on conviction or acquittal. Senators must determine not only whether the factual allegations against the President are true, they must also determine whether the facts alleged, if true, represent a high crime and misdemeanor.

Senators may also take actions that resemble those typically undertaken by counsel for the parties. They may propound questions of fact, whether in the form of counsel or of counsel; they may make objections to questions by counsel or to evidence sought to be introduced; and they may make any motion that a party may make.

The Senate has the power to compel the attendance of witnesses by instructing the Chief Justice to issue subpoenas and to enforce obedience to its orders. The Senate also has authority to punish summarily contempt of and disobedience to its orders, although the rules do not specify the penalties it may impose. Under the Standing Rules of the Senate, the Senate can also refer a contempt citation to the United States Attorney for the District of Columbia for prosecution pursuant to 2 U.S.C. §§ 191–194 for criminal prosecution. —[Memorandum, 12/28/98]

**TRIAL, NATURE OF**

The Constitution assigns the Senate the sole power to try all impeachments. This power imposes upon the Senate a duty to adjudicate every case it receives. 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 this reason in the Senate’s structurally conferred capacity for deliberation, independence, and impartiality would allow it to act as a check against partisanship. The Constitution fundamentally provides that conviction requires a vote of two-thirds of the members present.

The Constitution, however, does not define the Senate's power to “try” impeachments and appears to leave broad discretion for the Senate to interpret it as allowing whatever method of inquiry and examination is best suited to a given case. Justice White declared emphatically that “the Senate has very wide discretion in specifying impeachment trial procedures.” The constitutional power, and corresponding duty, to try impeachments does not absolutely require the full Senate or a committee to take live testimony and other forms of examination. The Senate has routinely entertained and voted on motions for summary adjudication. Indeed, it is difficult to imagine that the Senate would be constitutionally required to hold live evidentiary proceedings in every conceivable impeachment case. If, for example, the House were to impeach an officer who is not implicated in any misconduct that would be absurd to construe the Constitution to require the Senate to go forward with an evidentiary proceeding. Similarly, if the House impeached solely on the grounds of misconduct that is not properly considered a high crime or misdemeanor, no constitutional purpose is served by an evidentiary hearing.

Even if an impeachment meets all of the constitutional criteria to invoke a Senate
trial, evidentiary proceedings may be unnec-

essary. It is well-established that the House managers charged with prosecuting the im-

peachment may introduce the record of other substantive evidence into the Senate trial. The House managers have independent discretion over their prosecu-

tion of the case, and may decide to rest their case on the record or pass entirely over it. In this way, the impeached defendant may choose to present no affirmative evidence in his de-

fense. Where the parties have decided that the documentary record is so efficiently en-

compassing to allow adjudication, the Con-

stitution does not require the Senate to fer-

ret out additional evidence.

Strong support for summary adjudication as a faithful discharge of the Senate's con-

stitutional duty to try impeachments may also be found in the operation of the federal judi-

ciciary. The constitution guarantees "the right of trial by jury" in "suits at common law." There is a tension between the right to trial by jury and summary adjudication by the court. Where a federal court grants sum-

mary judgment or dismisses a lawsuit, for example because it fails to state a claim, there is no trial at all, let alone a trial by jury. As an implication of this approach, Congress has upheld the authority of the federal courts to grant motions to dismiss and motions for summary judgment. There would seem to be even less concern regarding the proper alloca-

tion of the adjudicative function between judge and jury.

The Constitution imposes upon the Senate a duty to try impeachments so that the Sen-

cate can act as a check against partisan abuse of the impeachment process. Fidelity to the Con-

stitution requires the Senate to interpret the law of impeachment as set forth in the Constitu-

tion and to apply that law to the facts and circumstances of every impeachment approved by the House of Rep-

resentatives. As with the federal judiciary, this adjudicative duty, however, does not re-

quire 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 Johnson, in 1868. His result in this 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 has developed a large number of standing Rules of Procedure and Practice for such trials, as well as a body of precedent concerning questions of procedure that have arisen in the Senate in previous trials. These rules and precedent provide a good basic outline to determine the trial of President Clinton will proceed in the Senate, unless they are amended prior to the opening of President Clinton's trial.

II. CURRENT SENATE RULES OF PROCEDURE AND PRACTICE

Senate procedures while hearing an impeach-

ment and the power and responsibilities of those that operate during normal legislative and executive business. Senators are com-

binations of judges and jurors. Senators take an oath to do "impartial justice." They can-

not debate or discuss matters in open ses-

sion. They are expected to commit questions to the Presiding Officer. The Senate when sitting to consider impeachment is a very different body than the Senate we are used to seeing on C-SPAN. Ma-

Ma, Ma.

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 its conclusion. Disposi-

tive motions are Rule III, stating that the Senate shall continue in session from day to day (Sundays excepted) until the trial is con-

cluded. If the Senate is unable to complete the trial, the trial proceedings shall begin at 12 noon each day, unless otherwise provided by the Senate.

Majority rules. Motions and objections during the proceedings are governed by majority vote.

There are few opportunities to filibuster. Un-

like the normal Senate, almost all trial mo-

tions, decisions, and orders are resolved under strict time limits—although these time limits would not prevent a determined effort to prolong the trial through repeated motions and objections. Where the Senate is unwilling to take a vote on a matter, the Senate can avoid a vote by simply adjourning sine die. The Senate has not understood this duty to adju-

dicate as necessitating the conclusion of the im-

peachment proceedings sine die. The Senate has not viewed dispositive motions as seeking to sus-

pend, modify, or amend the rules. As a re-

sult, dispositive motions are ordinary trial motions subject to the limits on debate set for-

th in the impeachment rules and governed by simple majority vote.

An additional factor that is available to resolve the matter is adjournment sine die. In the case of Andrew Johnson, the Senate voted on three articles of impeachment, acquitting on each. Rather than vote on the remaining eight articles, the Senate simply adjourned the impeachment proceedings sine die. The impeachment rules allow for a vote to adjourn sine die. Adjournment sine die does not specifically pass judgment on the articles of impeachment and so may not be satisfactory to those who consider the Senate duty-bound to try the impeachment.

B. Different motions to adjudge the matter without an evidentiary trial. Several different motions would seem possible, some drawing on analogies to judicial proceedings.

1. A motion to dismiss would assert that the articles of impeachment fail as a matter of law to state actions upon which a conviction may constitutionally be based. Such an as-

sertion could be based upon the claim that the articles do not state "high crimes and mis-

demeanors." Because this motion rests on a view of the facts asserted in his moving papers. If the opposition party has the option of filing a cross motion for summary judgment or of making a motion to dismiss, the Senate may constitutionally be based on all material facts and that a trial is required on the disputed facts. If the op-

posing party chooses the first course of action (and this could be done by prior agree-

ment between the parties), then the Senate could enter judgment in the case without holding any evidentiary trial.

2. A motion for summary judgment, the Senate by majority vote could issue a judg-

ment for the President if it concluded that the undisputed facts fail to establish the ex-

istence of a high crime or misdemeanor war-

ranting the President's removal from office. Because this motion rests on a view of the undisputed facts in the specific case, grant-

ing the President's motion for summary judgment would mean only that the specific perjury and obstructions charged in these ar-

ticles of impeachment do not warrant con-

viction, and that the facts failed to establish that these offenses had actually been committed. It would not imply that perjury or obstruction of justice could never be established as grounds for im-

peach, convict, and remove a President from office.

3. The trial might also be ended by a motion for a directed verdict. Where the civil litigation is brought after the plaintiff has sus-

pended his case, and before the defendant mounts a defense. The motion asserts that the plaintiff's evidence is insufficient to sus-

tain the claim, and that no reasonable fact finder would disagree. Were the House Man-

agers to decide to submit the impeachment to the Senate based on evidence already gathered by Starr, the President could bring a "motion for a directed verdict" prior to an evidentiary trial involving any live witness testimony.

4. Finally, the Senate's own precedents supply the possibility of a fourth option, a motion for summary disposition. Such a motion might be entertained as an alternative to any of the motions just discussed, in order to avoid contending with the technicalities of such motions.

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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 J. Judge Clai- borne’s conviction for tax evasion. The Senate could also dismiss the motion without reference to judicial standards.

This approach is consistent with the Sen- ate’s position that it is not bound by the fed- eral rules of procedure. Removing the motion from the technical categories and re- quirements under those rules allows each Senator the discretion to consider whether additional evidentiary proceedings, includ- ing 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 Su- preme 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 the committee members would be able to watch them as they oc- curred, and videotapes could also be prepared for subsequent review. 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 prosecution in the Senate.

Composition of a Rule XI committee would be very important. Traditionally, these committees have been composed of twelve mem- bers, with four each party with the committee chair chosen from the committee members in the majority party. The Chair exercises the same role within the committee that the Chief Justice plays 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 com- plicating factor in a presidential impeachment is the requirement that the Chief Jus- tice 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 J ustice would be upheld on any party-line vote.  

House Managers have asserted repeatedly that live witness testimony will resolve dis- crepancies between the testimony of wit- nesses, and therefore they ought to be called. There are several points to be made against this point of view.

First, evidence is notoriously unreliable. Recall, for example, Alger HisstWhit- taker Chambers. Some people were win- ced by one side, some people by the other. Demeure is not necessary to be positive, in any event. Both witnesses can come across as reliable, honest and trust- worthy. Witnesses often give credible perfor- mances that are subject to cross- examination. The House Managers are poorly situated to claim the necessity of hearing from live wit- nesses in order to resolve credibility issues. The House Managers have no live witnesses, except Ken Starr, and yet the managers have had no difficulty in decid- ing all credibility disputes against the Presi- dent. Anyone giving testimony favorable to his story.

Any gains from live witnesses need to be assessed against the costs. The costs will come from Senate chamber business into the facts of the case with the specificity that will come from live testimony.

For example, one prominent disagreement that the House Managers have cited is that between President Clinton and Ms. Lewinsky regarding whether the President ever exchanged oral or genitalia. If both witnesses are called and reiterate their prior testimony, the Senate will cer- tainly get the opportunity to observe their demeanor. Additional evidence will shed light on the question, but it probably won’t. The possibility of securing the additional credibility data must be weighed against the serious negative ramifications such proceed- ings would likely have.

A. INDICTMENT

The Supreme Court engaged in a similar balancing exercise in deciding Clinton v. Jones. In that case, the Court required the President to submit to judicial process in a civil case and go through an en- tire civil trial would not so damage the pres- idency as to justify interfering with the ordi- nary judicial process that vindicates the rule of law. Considering only indictment, as dis- tinct from prosecution of a criminal trial, seems to impose less of a burden on the President. Indictment alone imposes no de- mains on the President’s time.

An attempt at a criminal indictment could proceed on two fronts. First, the Presi- dent is apt to be more concerned about being criminally convicted than found civil- ly liable. That alone is a greater distraction from the President’s duties than is a civil suit. Second, criminal indictment, unlike filing a civil complaint, stigmatizes the President.

Each of these distinctions is subject to dispute. As the Paula Jones suit itself demon- strates, a civil case can be extremely dis- tracting. Further, even if the President is more distracting, it seems doubtful that it is so much more distracting as to be constitu- tionally significant. A distinction based on stigma seems to exist in this case. President Clinton has been impeached. Correctly or not, the House of Representa- tives has construed this impeachment as analogous to a grand jury indictment. It is thus not obvious that an actual criminal indi- cment would add materially to the stigma the President has already suffered.

Even accepting that the President would be more distracted by the spectacle of indic- tions, the independent counsel may seek a sealed indictment. A sealed indictment would not be made known either publically or to the President, as long as it remains sealed until the President leaves office. It is difficult to see how it could either distract the President or stigmatize him.

Prosecution presents a different matter. Unlike an indictment with nothing more, proceeding to an actual prosecution would place significant physical and temporal burdens on the President. Preparing for trial and then actually presenting a defense would consume the President’s time and attention. Any ongoing public scrutiny of the President’s conduct in criminal proceedings, the President would repeatedly face a choice between spending the time necessary to mount a meaningful defense by stigmatizing himself. Thus, an indictment could be minimized through proper case management by the trial judge. A court does not have the same authority as the independent counsel to order the imprisonment, stigmatize and distract the President.

Against this significant disruption is con- cern for the rule of law. If in any event, it is critical to recall that sentencing would be stayed until the President leaves office.

The Paula J ones suit threatened the Presi- dent with nothing more than an assessment of monetary compensation. An adverse ver- dict at a criminal trial threatens imprison- ment. It is clear that the Constitution does not confer the judicial imposi- tion of the President. Thus, at the very least, sentencing would have to be stayed until the President leaves office.

Extending the holding in Clinton v. Jones to cover criminal prosecutions is subject to an additional objection. The course of events since the Court rendered that decision casts significant doubt upon the conclusions the Court drew in that case. In Clinton v. Jones, the Supreme Court doubted that the civil lawsuit would consume much time or atten- tion of the President. The President’s re- trainer that this prediction was wrong. While there is no reason to believe that the Court is con- sidering over what the President has no very powerful reason to apply the practical lessons we have learned since that decision to any claim for extending the Clinton v. Jones holding to criminal prosecutions. In light of all that has occurred since that rul- ing, it is wildly implausible to contend that a criminal proceeding against the President would not significantly distract him from his constitutional and statutory duties.

Against this significant disruption is con- cern for the rule of law. The question in any event, it is critical to recall that sentencing would be stayed until the President leaves office.

This is why it is critical to recall that sentencing would be stayed until the President leaves office. This is why it is critical to recall that sentencing would be stayed until the President leaves office.

In light of the President’s unique constitu- tional role, it is error to contend that the President must be treated identically to a private citizen. The rule of law is to encompass the fundamental law of the Consti- tution, and account for the peculiar role of the President within the constitutional struc- ture. This immediately results in staying criminal proceedings until the President is out of office respects the rule of law as long
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 consequences, even for the President individually would suffer. And the military or economic consequences to the nation could be severe. ... Those repercussions, if they are to occur, should not require that the President be indicted. Rather, the President should be indicted if some conduct occurred that would meet the criteria that he was committing some political act.

Thus, as the Constitution suggests, the decision about the act he is in office should be made where all great national political judgments in our country should be made—the Congress of the United States. There is an additional, closely related consideration—protecting Congress's constitutional impeachment power. If an independent counsel could not be indicted while in office, this act alone tends to force Congress's hand with respect to impeachment. The mere fact of an indictment is an additional factor that generates some pressure to impeach and convict a sitting President. That pressure is even more coercive in the context of a prosecution and verdict than of indictment alone.

V. DEPARTMENT OF JUSTICE POLICY

Professor David Strauss recently argued that there is no need to address the constitutional issues because the independent counsel is statutorily barred from indicting a sitting President. The United States Code instructs that the independent counsel “shall except where not possible comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.” 28 U.S.C. 594(f).

Professor Strauss argues Judge Bork's Supreme Court decision is confirmed in the practice of special counsel—Judge Bork's successor, Leon Jaworski, decided against seeking indictment of President Nixon. Professor Strauss argues Judge Bork's Supreme Court decision is probably accurate, but there is significant dissent as to each conclusion. In other words, the scholarship does not betray a consensus.

Another framer, Gouverneur Morris, explained the Constitution vests in the President the power to try impeachments in the Senate rather than the judiciary because the judiciary would not have the same interest in protecting the President as the President has in the President's conduct. Morris explained the Constitution vests in the President the power to try impeachments in the Senate rather than the judiciary because the judiciary would not have the same interest in protecting the President as the President has in the President's conduct.

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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 this issue is not only central to the case at hand, it is also central to all future evaluations and applications of what we do here.

In arguing for the President, White House lawyers have asserted that the threshold for removal of a single President 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 accept.

So, then, where do we set the bar?

As we know, the Constitution says: The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.

Now it has been suggested by some that a “high crime” must be a truly heinous crime. But that interpretation is obviously wrong. Treason is certainly among the most heinous crimes. But bribery is not.

Bribery, like treachery, is however, a uniquely serious act of misconduct by a public official. That suggests a different meaning for “high Crime,” one that is linked somehow to the fact that the person committing it holds public office.

Alexander Hamilton’s comment about the impeachment power, quoted by so many of us here, provides the clue. In Federalist 65, Hamilton says: “The subjects of its jurisdiction are those actions of the President which violate of some public trust.”

The President’s lawyers invoked this line—put in my view, they misread it. They argued that what it means is that a President’s conduct must involve misuse of official power if he is to be removed from office.

But that is not what the Constitution demands, or what Hamilton’s comment, fairly read, suggests. Otherwise, as has been noted, we would have to leave in office a President or a federal judge who committed murder, so long as they did not use any powers of their office in doing so.

Rather, as Hamilton’s language notes, and our own precedents in the judicial impeachment cases confirm, the connection the Constitution requires between an official’s actions and the functional test is a more practical one: the official’s conduct must demonstrate that he or she cannot be trusted with the powers of the office in question.

This rule certainly encompasses official acts demonstrating unfitness for public office in its most direct sense. 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 that makes laws; he is the officer that carries 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

February 12, 1999 CONGRESSIONAL RECORD — SENATE S1495
I deeply regret that 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 such conduct constitutes a "High Crime and Misdemeanor" under our Constitution, 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 a "High Crime and Misdemeanor" 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 de- ciding, not as 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 comp-elled by the evidence to conclude that the President did engage in the con-duct charged in both Articles. In reaching this conclusion, I rely solely on those elements of the case that I be-lieve have been proven beyond a rea-sonable doubt. Because I believe these dictate my conclusion, I do not decide whether in an impeachment trial, the Constitution requires application of the highest of evidentiary standards, which governs in ordinary criminal cases, or whether it would also be proper for me to rely on any of the other conduct charged by the House, much of which might well find proven under either of the lower civil law standards.

Let me briefly outline the basis for my conclusions. I will start with the second Article, because the conduct gives rise to it as part of the larger issue that concerned the President.

In my view the evidence shows beyond a reasonable doubt that, for over a year, from December 6, 1997 to November 13, 1998, when the President agreed to pay Paula JONES $850,000 to settle her sexual harassment lawsuit, the President engaged in a systematic course of obstructing jus-tice and tampering with witnesses in Ms. JONES's case. There is no room for reasonable doubt that as part of this course of conduct the President made statements to Ms. Monica Lewinsky and Ms. Betty Currie that were in- tended 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 instances 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 potential 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, as the court found in 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 acknowledged on both sides, reasonableness must differ on this question. And indeed it is only on this issue, whether the President must be removed, that Americans are consequentially divided. A decided majority of Americans agree that the President committed the crimes alleged in at least one of the Articles. And in their hearts I believe a significant majority of my colleagues do as well.

The public, like us, is in disagreement over what the consequences should be. The House has voted for 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 placing the ultimate decision in the hands of a constitutional 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 an oath of allegiance to the Constitution. Accordingly, it is my view that our decision cannot be based on other considerations, but instead must be based on what the Constitution dictates, and taken with a view toward the precedent we will establish regarding what is acceptable Presidential behavior.

In arguing for the President, White House lawyers have asserted that the threshold for Presidential removal must be very high—and I agree. At the same time, however, we must remember that there is an inverse relationship between the level at which we set the removal bar and the degree of Presidential misconduct we will accept. So, where 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 subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the violation of some public trust." The President's lawyers invoke this line, but they misread it. They argue that what it means is that to require removal, a President's conduct must involve misuse of official power. 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 connection the Constitution requires between the official's actions and functions is a more practical one: the official's conduct must demonstrate that he or she cannot be trusted with the powers of the office in question. This rule encompasses official acts demonstrating unfitness for the office in question, but it also reaches beyond such acts.

We could not determine the outer limits of its principle to decide the question before us today: whether the President's actions here constitute a violation of a "public trust" as Hamilton uses the term. The answers to that question is plain when we consider his conduct in relation to his responsibilities.

The President's role and status in our system of government are unique. The Constitution vests the executive power in the President, and in which he went alone. That means he is the officer chiefly charged with carrying out our laws. Therefore, far more than any federal judge, he holds the scales of justice in his own hands.

In the wrong hands, that power can easily be transformed from the power to carry out the laws into the power to bend them to one's own ends. The very nature of the Presidency guarantees that it will be occupant driven, that the President will be tempted to twist the laws for personal gain, for party benefit or for the advantage of friends in or out of power. To combat these temptations, the Constitution spells out in no uncertain terms that the President shall "take care that the laws be faithfully executed," and his oath of office requires him to swear that he will do so.

By obstructing justice and tampering with witnesses in the Jones case, a federal judge convicted as the defendant, the President violated his oath and failed to perform the bedrock duty of his office. He did not faithfully execute the laws. He thereby made clear that he cannot be trusted to exercise the executive power lawfully in the future, to handle impartially such specific Presidential responsibilities as serving as the final arbiter on bringing federal civil or criminal cases or determining the content of federal regulations—especially if, as will often be the case, he has a personal or political interest in the outcome.

Surely retaining a President in office under these circumstances constitutes the type of threat to our government and its institutions so many have said must exist for conviction. That brings his conduct squarely within the purview of our impeachment power, whose purpose, as described by Hamilton, is to "deal with "the violation of some public trust.""

Obstruction of justice, witness tampering, and grand jury perjury are serious federal crimes. How do we explain the many out of motives surely as understandable as the President's, that while the President stays in the White House, his Department of Justice is trying to send them to prison? How can we expect ordinary citizens to accept that the President can remove an officer 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 President Clinton 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 power to prevent the President from usurping power and engaging in unlawful conduct. To permit such behavior could, in effect, allow nullification of the impeachment process itself, rendering it meaningless. Hence, a President who attempts 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, the birthright of all Americans. Indeed, we Americans take the rule of law so thoroughly for granted that while it has been much invoked in these proceedings, there has been little discussion of what it means or why it matters. Simply put, the rule of law guarantees our system makes to all of us that our rights and those of our countrymen will be determined according to rules established in advance. It is the guarantee that there will be no special rules, treatment, and outcomes for some, but that the same rules will be applied, in the same way, to everyone.

If America's most powerful citizen may bend the law in his own favor with impunity, we have come dangerously close to trading in the rule of law for the rule of men. That in turn jeopardizes the freedoms we hold dear, for our equality before the law is central to their protection.

We are a great nation because, in America, no man—no man—is above the law. Americans broke from Great Britain because the mother country claimed it had a right to rule its colonies without restraint, as it saw fit. Our tradition of chartered rights—rights in law, without a king, Parliament or other official could breach—culminated in our Constitution. That Constitution, which is itself only a higher law, protects us from tyranny. Once the law becomes an object of convenience rather than awe, that Constitution becomes a dead letter, and with it our freedoms and our way of life.

Mr. Chief Justice, my grandparents did not fight this country's wars merely to seek a more convenient, profitable life. They came here seeking the freedoms that were given birth on Bunker Hill and in the Convention at Philadelphia. I know some people mock as selfish, righteous or feel less the piety many Americans have toward their heritage and toward the Constitution that guards their freedom. But I will never forget that it is not the powerful or those favored by the powerful who need the law's protection.

If we set a precedent that allows the President—the chief magistrate and the most powerful man in the world—to render the judicial process subordinate to his own interests, we tell ordinary citizens that Americans are no longer really equal in the eyes of the law. We tell them that they may be denied justice. And we thereby forfeit our own heritage of constitutional freedoms.

None of us asked for this task, but we must live with the consequences of our actions, not just on this administration, but on our nation for generations to come. That responsibility cannot be shirked. It has led me to a difficult but inexorable decision: that it is necessary for me to conclude that President William J. efferson 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 J 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 I have done in my life. A little over a month ago, I escorted the Chief Justice into this chamber and stood with my colleagues when we took a collective oath, as an institution, to render impartial justice in this trial. Then, we individually signed our names and pledged our honor to faithfully fulfill our oath. That was an indelible and profound moment.

I have sought to fulfill both responsibilities—to be impartial and to render justice. I have sought to be impartial, which I view as a test of character and will. And I have sought to pursue justice, which to me includes the responsibility to perform the homework—do the reading, review the evidence and weigh the facts.

I have listened carefully, and with an open mind, to the presentations of the Republican House Managers and the President's Counsel. I have reviewed the evidence. I have read all of the key witnesses' testimony before the grand jury. I have intensely studied the law pertaining to perjury and obstruction of justice, discussed the issue with respected lawyers, developed an appropriate standard of proof, and reviewed the House testimony of Republican and Democratic former prosecutors for their views on the charges. Finally, I have read what our nation's founders wrote about impeachment during those months in 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. They viewed our famed system of "checks and balances"—our Constitution. That system, designed with the precision of Swiss watchmakers and the concern of loving parents, has served our nation very well over the last 200 years and served as a guidepost for nations around the world as they struggled to establish democracies.

I wondered what the Framers of the Constitution would think of this trial—how they would counsel us. In fact, we can use their rationale and their framework to guide us as we reach conclusions about the evidence and as we determine whether that evidence merits removing a president from office.

Using all this as my guide, I have concluded that the evidence presented by the House Managers does not meet a sufficient standard of proof that President Clinton engaged in the criminal actions charged by the House. I conclude that the President should not be removed from office.

In coming to that conclusion, I have used the highest legal standard of proof—"beyond a reasonable doubt," which is required in federal and state criminal trials. I believe that removing a president is so serious, and such an undeniably tumultuous precedent to set in our nation's history, that we should act only when the evidence meets that highest standard. The 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."
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 this definition of “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” that would determine whether the evidence established that I would use a two-tier analyst. The Managers confirmed it. In a recent deposition by the House Managers, and, perhaps the American people, public they are not perjurious as defined by law.

Similarly, the case presented by the Republican House Managers has not presented sufficient direct evidence to prove beyond a reasonable doubt that the President obstructed justice. Instead, the House Managers relied on extensive conjecture about what the President may have been thinking. In fact, there is direct and credible testimony by others who testified and the affidavit she gave in the Jones deposition, which was the material point.

The Republican House Managers also claimed President Clinton committed perjury by not recalling the exact date, time, or place of events that occurred two years before. This was because other witnesses recalled things slightly differently. I believe that this 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.

Since my analysis of the charges brought by the Republican House Managers determined that they had not been proven beyond a reasonable doubt, the question of determining high crimes and misdemeanors is, I believe, moot. I will say, however, that I am angry, disillusioned, and appalled by the vindictiveness of the founders of the found ing of Fathers in addressing this point. I, like many, have read and re-read the work of Alexander Hamilton with particular interest. On March 7, 1788, he wrote “Federalist 65,” outlining the serious consequences of an impeachment trial in the Senate. In that writing, Mr. Hamilton asserted that the proper subject of an impeachment trial would be “the abuse or violation of some public trust as they relate to injuries done immediately to the society itself.”

I believe it is clear from those words, and the words of others who drafted the Constitution, that impeachment was not intended to be used for an act that did not meet that standard. I also believe that President Clinton’s conduct, as wrong as it was, rises to that level. As Mr. Chief Justice, I still find reason for tremendous hope.

First, I find hope in the unflagging commitment of the United States Senate to do the right thing for the right reason. I am proud to be a part of this historic trial. Mr. DASCHLE and Mr. RUFF said in testimony before the House Judiciary Committee, and here they did an excellent job in presenting their case in support of the articles of impeachment and laying out the facts. I listened to them carefully, as I listened to the House Counsel and the President’s lawyers in their vigorous defense of William Jefferson Clinton.

Mr. GRAMS. Despite the handicaps placed upon the House managers, I feel that they have presented an excellent case in support of the articles of impeachment and laying out the facts. I listened to them carefully, as I listened to the White House Counsel and the President’s lawyers in their vigorous defense of William Jefferson Clinton.

I have heard some of my colleagues say that it was one particular fact or incident that led them to their conclusion. That was not the case with me. I reviewed the facts throughout the trial, before I truly could decide how I would vote.

But after carefully weighing all the evidence, all of the facts, and all the arguments, I have come to the conclusion—the same conclusion reached by 84% of the American public—that President Clinton committed perjury and wove a cloth of obstruction of justice.

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Mr. GRAMS. Despite the handicaps placed upon the House managers, I feel that they have presented an excellent case in support of the articles of impeachment and laying out the facts. I listened to them carefully, as I listened to the White House Counsel and the President’s lawyers in their vigorous defense of William Jefferson Clinton.

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But after carefully weighing all the evidence, all of the facts, and all the arguments, I have come to the conclusion—the same conclusion reached by 84% of the American public—that President Clinton committed perjury and wove a cloth of obstruction of justice.
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 may differ on whether these charges rise to the level of high crimes which dictate conviction. Again, I believe they do and have voted yes, on both articles.

The President was invited by letter to come and testify before the Senate. As the central figure in this trial, he alone knows what happened, and if truthful, he could have addressed the compelling evidence against him. He refused.

It has been said that many have risked their political futures during this process. Perhaps—yet I will not hesitate telling constituents in my state how and why I voted the way I did. With a clear conscience, I will stand in their judgment and I will live with whatever the Senate decides 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 will be judged.

Collectively too, we will have to await what history will say about this trial and how it was handled. Will this Senate be judged as having followed the rules of law; that is, deciding this case on the facts? 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 condoning a society where a majority could impose injustice on a minority group, only because it has a larger voice. A rule of law is followed so that justice is done and our Constitution is respected, regardless of popularity polls.

The foundation of our legal system, I believe, is at risk, if the Senate ignores these charges. The constitutional language of impeachment for judges is the same as for the President. Judges are removed from the bench for committing perjury, and also face criminal charges, as do ordinary citizens. We must not accept double standards.

The prospect of such a double standard was raised countless times by the House managers. Consider the perjury offense. The Constitution 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, for his family, for his pride and honor, for the toll this trial 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, too hard.

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 judged.

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 they involve some that you 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 recognizing the human frailties that he has, as all of us have. If this were a normal trial, maybe we would be here; we would have been excused a long time ago; we would never have been selected to sit in judgment of this President. We would have been excused because of friendship, we would have been excused because we know him, we would have been excused because we campaigned for him and with him, or we would have been excused for the opposite reasons—because he is a political adversary that we have campaigned against, that we have given speeches against, that we have campaigned against, that we have been very difficult to set those emotions aside and say I am going to be fair in judging someone I just cannot stand politically, that I don’t agree with 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 tried to understand that this case is about from the very beginning. They understood what it was about before the trial ever started, they understood what it was about during the trial, and I think they understand what it is all about after the trial. I think they understand what happened. I think they know when it happened, they know where it happened, and they know what was said about it. I think that they were correct from the very beginning.

What we really have is a middle-aged man, who happens to be President of the United States, who has a sexual affair with someone in his office, and that when people started finding out about it, he lied about it, tried to cover it up, tried to have it swept under the rug. I don’t deny what happened. I do not deny that this is not the first time in the history of the world that this has ever happened. I do not deny that this is 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...
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not make it excusable. It cannot be
condoned and it cannot be overlooked.
Actions that are wrong have conse-
fquences, and now the consequences
must be determined by the Senate.
The question here is not really whether
it 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 ad-
jective you can possibly think of to
talk about it would be one that is not
really a 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 of-
cize of President.
I have concluded that the Constitu-
tion was designed very carefully to
remove the President of the United
States for wrongful actions as Presi-
dent of the United States in his capac-
ity as President of the United States and
it is not being done by his duties as Presi-
dent 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. There is the con-
sideration of 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 Con-
stitution 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 Sec-
cretary, he was having an affair with a
woman here in this city and they found
out about it. He was paying off the hus-
band 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 pri-
vate. It was wrong, it was terrible, it
was dishonest, but a crime was not.
He was not impeached. Not because
he had sent letters, but because he did.
Besides, 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 im-
peached because they decided that it
was essentially private behavior. That
was in 1792, and Adams and the Found-
ing Fathers were here at that time and
they came to that conclusion.
More recently, the situation with
President Richard M. Nixon was a
clear example of what we are strug-
gling 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 fraudu-
 lent 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
which he should have reported. By a
26-to-12 vote, the House Judiciary
Committee said, among other things,
that “the conduct must be seriously in-
compatible with either the constitu-
tional form and principles of our Gov-
ernment or the proper performance of
the duties of the President of the Presi-
dent’s office.” They said that it did not
demonstrate public misconduct, but
rather private misconduct that had be-
come 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 us conclude by saying I am vot-
 ing 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 some-
how establish his innocence. If the
charge 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 hap-
pened and what was said about what
happened so that history will be able
to, forever, look at that censure resolu-
tion 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 care-
fully to the arguments of the House
Managers and the counter-arguments
by the White House counsel during this
impeachment trial. I have taken seri-
ously my oath to render impartial jus-
tice.

While the legal nuances offered by
both sides were interesting and essen-
tial, I kept thinking as I sat listening
and there may have been.

I have concluded that President Clin-
ton’s actions do, indeed, rise to the
level of impeachable offenses that the
Founding Fathers envisioned.
I am not a Constitutional scholar, as
I have told you before. But, more than
200 years ago, Chief Justice of the Su-
preme Court J ohn J ay summed up my
feelings about lying under oath and its
subversion of the administration of jus-
tice and honest government.

Independent of the abominable insult
which Perjury offers to the divine Being,
There is no Crime more pernicious to Soci-
ety. It discolors and poisons the Streams of
Justice and by subverting the Serves of
Truth, 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 citi-
zen.

We must start by saying that this
trial has never been about the Presi-
dent’s private sex acts, as tawdry as
they may have been.

This trial has been about his failure
to properly discharge his public respon-
sibility. The President had a choice
to make during this entire, lamentable
episode. At a number of critical junc-
tures, he had a choice either to tell the
truth or to lie, first in the civil rights
case and then in the criminal case.
Bluntly acknowledged publicly that the
President lied, misled, obstructed,
and attempted in many ways to thwart
justice's impartial course in a civil
rights case. The sticking point has
been: Does this misbehavior rise to the
level of impeachable offenses?

I have concluded that President Clin-
ton’s actions do, indeed, rise to the
level of impeachable offenses that the
Founding Fathers envisioned.

I urge a “no” vote on conviction and
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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 worthy of the Presidency? 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 most important books on the impeachment process. He ponders this question: what kinds 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 judge, 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 a wider audience.

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 stories if she were called to testify in a civil rights lawsuit; (3) He engaged in, encouraged or supported a scheme to conceal from the public the fact that Monica Lewinsky had been subpoenaed in the civil rights lawsuit; (4) He intensified and succeeded in an effort to find Monica Lewinsky a job so that she would not testify truthfully in the civil rights lawsuit; (5) He gave a false account of his relationship with Monica Lewinsky to Betty Currie in order to influence her to lie before a Federal judge about her relationship with Monica Lewinsky. (6) He allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently called to the attention of the judge by his attorney; (7) He lied to John Podesta, Sidney Blumenthal, Erskine Bowles and other White House aides regarding his relationship with Monica Lewinsky to influence their expected testimony before the Federal grand jury.

In this day and age of public yearning for heroes, we criticize basketball, football, tennis players and entertainers and singers who commit crimes or otherwise fail to be "good role models." One of those celebrities said a few years ago that he was only a basketball player, not a role model. He said in essence that he wasn't the model, look to the President.

Do not underestimate, my friends, the corrupting and cynical signal we will send if we fail to enforce the highest standards of conduct on the most powerful man in the nation.

Finally, I want to address a question that my good friend, Senator Byrd, raised over the weekend in a television interview. He asked, would the President have lied if he knew that the President had lied and obstructed justice, and after concluding these acts were impeachable offenses, Senator Byrd, for whom I have great respect, noted that it was very hard, in his judgment, to impeach a president who enjoyed the high popularity that this President enjoys.

Let me respond to that. Popularity is not a defense in an impeachment trial. Indeed, one of our Founding Fathers addressed this issue of popularity directly in the oft-quoted Federalist Papers: "It takes more than talents of low intrigue and the little arts of popularity" to be President. And, popularity isn't a pillar of Character Counts.

What if a President committed the same acts as those alleged in this trial but he was presiding over a weak economy, a stock market at a three-year low, 12 percent unemployment, 16 percent inflation and a nation worried about the war in Iraq 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 and treated that same way. And the facts were obvious and clear: he gave a job to someone in exchange for a $5,000 bribe and the entire episode was on 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 want the Constitution to provide a popularity defense? Would we create a "booming economy exception" to the conviction and removal clause of the Constitution? I doubt it. I doubt it very much. Let me repeat, temporary popularity of a President cannot be a legitimate defense against impeachment.

The President has committed high crimes and misdemeanors, in violation of his oath of office. He lied under oath. He obstructed justice. His behavior was unworthy of the Presidency of the United States.

Thus, I sadly conclude that the President is guilty of the charges made against him by the House of Representatives and I will vote to convict him on both counts before the Senate.

Thank you, Mr. President.

Mr. SARBANES. Mr. Chief Justice and colleagues, in his award-winning book "The Making of the President, 1960," Theoretical Political Scientist A. O. Hirschman described American Presidential election as "the most awesome transfer of power in the world."

He notes that:

No people has succeeded at it better or over a longer period of time than the Americans. Yet as the transfer of this power takes place, there is nothing to be seen except an endless line of people filing into a church or school or file of people fidgeting in the rain, waiting to enter the voting booths. No bands play on election day, no troops march, no guns are fired. No conspirators gather in secret headquarters.

And later in that opening chapter White observes:

"Good or bad, whatever the decision, America will accept the decision and cut down any lines we go against it for millions the decision runs contrary to their own votes. The general vote is an expression of national will, the only substitute for violence and blood."

I begin with those quotes to underscore the critical significance of a Presidential election in the structure of our national politics. Many learned commentators have observed that one of the original contributions to the art of government made by the Constitutional Convention was to develop a Presidential, as opposed to a parliamentary, system of government, wherein the executive is chosen by the electorate and is not dependent upon the confidence of the legislature for his removal.

Mr. SARBANES. He is not outside a church or school or file of people fidgeting in the rain, waiting to enter the voting booths. No bands play on election day, no troops march, no guns are fired. No conspirators gather in secret headquarters.

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The House Judiciary Committee's conduct in the matter of impeachment of Richard Nixon was before the House Judiciary Committee in 1974. That article charged President Nixon with knowingly filing tax returns which fraudulently claimed that he had donated pre-Presidential papers before the time he was nominated—such a charitable tax deduction. (It was worth $576,000 in deductions.) This deduction was claimed in tax returns that contained the following assertion just above the taxpayer's signature:

"Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct and complete."

The House Judiciary Committee voted down that article of impeachment by a vote of 12 for, 26 against. As one of nine Democrats who joined the Republicans in voting against this article of impeachment in the Nixon case, I did not believe that in the circumstances of that case it rose to the level of a high crime and misdemeanor, I did not believe it was conduct against which the Founding Fathers intended the Congress to invoke the impeachment remedy.

Let me turn briefly to the procedure followed in this impeachment matter, since good procedure enhances the chances of good results while bad procedure does the opposite. I am prompted to vary somewhat from what I have examined by House managers criticizing the Senate for the procedure we have followed. I think the Senate has handled this matter well under very difficult circumstances. Given that the House managers questioned our procedure, let us look at the procedure on the House side.

The House, which brought in no "fact" witnesses, came to the Senate and said to us, "In order to evaluate testimony that is in the record, you must bring witnesses in and look them in the eye in order to assess their credibility." Obviously, one must ask, how did the House managers assess the credibility of witnesses when they brought none before them and yet voted to bring articles of impeachment recommending the President's removal to the Senate?

Secondly, the other day, in response to a reasonable request by the President's lawyers on how the House proceeded in using depositions or excerpts, a House manager said, "I believe the appropriate legal response to your request is that it is none of your damn business what the other side is going to put on."

That same attitude marked the treatment of President Clinton's lawyers before the House Judiciary Committee.

Contrast this with the House Judiciary Committee's conduct in the matter of President Nixon's impeachment. When the President's lawyers sat in with the committee in its closed sessions when committee staff presented findings of fact, The President's lawyers were able to challenge material,
to ask questions, to supplement all presentations. Fact witnesses were called in and were subjected to questions by all. There was an understanding of the gravity of the matter for the Nation and the absolute imperative of having a fair process.

In this matter the House Judiciary Committee took only a few weeks to report impeachment articles. In the Nixon case the committee took 6 months. In the Judge Hastings case, the House Judiciary Committee received an 841-page report from the Judicial Conference as to why Hastings should be removed. Nevertheless, the committee undertook its own examination of the evidence. It heard 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 the President. The United States provided for in our Constitution.

President Clinton has engaged in disgraceful and reprehensible conduct which has severely sullied and demeaned his tenure as President. Because of his violations 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 dimming of Bill Clinton must not lead us to diminish the Presidency for his successors as our Nation moves into the new millennium. There is a danger to the Nation in deposing a political leader chosen directly by the people and we must be wary of the instability it would bring to our political system.

In the report of the staff of the impeachment inquiry in 1974 on the constitutional grounds for Presidential impeachment, the only United States provided for in our Constitution.

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 fact 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 home for my family. 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 had to hand-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. I am 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 welcomed a mixed blood kid from the wrong side of the tracks. The offspring of an alcoholic father and a tubercular mother; in and out of orphanages; a 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 indiscreet actions. But, statements uttered by me, or I did not—must use common sense.

I want to tell you an anecdote—a conversation I had with the President right after he made his rather startling confession before this nation and a group of reverends which I watched from my Denver office as millions of others were also watching at the same time.

I was so moved by his statement that I wrote him a personal note telling him how sorry I was for what his family was going through. I told him I would not be one to pile on; that I would make no statements to the press; nor would I be a party to the impeachment process going on in the other body.

As I look around this room, I see several others who subscribed to that belief. I had with the President and took on soap opera proportions, and members of both parties ran pell mell to the cameras at each recess.

I sit right there in the back row 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. His statement that he 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 try to dazzle you with my knowledge of the law which is minimal, or the forty hand-written pages I've taken home for my family. But after agonizing as many of my Senate friends have, I remember the first question my then nine-year-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 of resigning.

I would not fear being thrown out. When I was young and not yet house-broken, I was thrown out of a lot of places. I swore a lot of oaths—not when I went in, but when I came out.

There is a difference: one is about anger in private—the other is about honor in public. If we are not going to honor our oath, why don't we get rid of it and have an every-man-for-himself kind of elected official?

Better yet, let's change it. Mr. Chief Justice, you could say: Senators-elect. Raise your right hand and repeat after me: On my honor, I'll do my best, to help myself and lie like the rest.

I took a solemn oath—and perhaps it is the only thing in common I shared with John F. Kennedy, Harry Truman and Daniel Webster as well as the founders of this nation—and that is why honoring it is all the more important to me.

Simply speaking, the President did, too. And, even 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 a President who has found 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 the
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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 knowingly lie under oath.

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 easily able to 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. I have had to make some very difficult decisions in the President's conduct looking for any reason for removal.

Some Nebraskans have told me the President should be removed from office by the Congress because he is no longer trusted, has lost the respect of many, and has displayed reprehensible behavior. As strong as those feelings are, the Constitution does not provide for overturning an election even if all of these things are true.

The recent letter 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 misrepresented themselves falsely. A statement is made under oath with willful intent to mislead in a material matter. Lying is immoral; perjury is illegal. I should not accuse the President of ignoring the rule of law and then ignore it myself in making a judgment.

After examining 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 material to a criminal act.

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 about 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 the President’s conduct could lead to a conclusion that the President intended to obstruct justice, common sense could also lead to other reasonable conclusions about the reasons for his actions. Third, with respect to the allegations of obstructing justice in the civil case, Paula Jones’ lawsuit was thrown out, then eventually settled. In the end, justice was done.

As reprehensible as I find the President’s behavior to be, I do not believe that the offenses 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. VOINOVICH. We are not here today because the President had a relationship that he himself has described as inappropriate and wrong. As House Manager JAMES ROGAN appropriately noted, “Had the President’s bad choice simply ended with this indiscretion, we would not be here today. Adultery may be a lot of things, but it is not an impeachable offense. Unfortunately, the President’s bad choices went 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 arguments and arguments of 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 agreeing to the trial of the impeachment of William Jefferson Clinton, President of the United States, now pending, you will do impartial justice according to the Constitution and laws, so help you God?

I understood that the private inappropriate conduct of the President alone did not then and does not now rise to a level necessitating his removal from office. My responsibility is to fulfill the oath I took to determine impartially based on the facts, evidence and testimony whether the President committed high Crimes and Misdemeanors as outlined in the Constitution.

During my 33 years in public office, I have had to make some very difficult 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 personal embodiment of the Constitution and representative of their dignity and majesty.”

By virtue of his own conduct, William Jefferson Clinton has forfeited his elected right to hold the office of President. I sincerely believe that this country can survive the removal of a popular president who has forfeited public trust. But, our country cannot survive the abandonment of trust itself.

Mr. G. V. Blawick of the First Lady and his daughter Chelsea. I pitied them as they felt the searing glow of the public spotlight. I am sure that colleagues, on both sides of the aisle, have empathized with similar emotions. But now we must put those feelings aside. We have a very specific charge under the Constitution. That hallowed document delineates our duty. Under Article II, Section 4, we must determine whether the President has committed “treason, bribery, or other 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 a 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 ephemeral gauge of the public temperment. Instead, we must look back through history, and toward the future, to reach a decision that will reflect well on the Senate and the nation for generations to come.

In my view, this case does not involve efforts to subvert the Constitution, and the national interest will not be served by removing the President from office.

Before turning to the evidence, I want to express my concern with the way in which the Articles of Impeachment are written. They do not specify which statements and actions by the President are grounds for removal. 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.

Article II 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-existing passions.” Article II would create “the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.”

Prior to the present case, the House of Representatives had seriously considered Articles of Impeachment against only two Presidents—Andrew Johnson and Richard Nixon. In the more than 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
BACKGROUND

On January 16, 1998, at the request of the United States Attorney General Janet Reno, the three judges of the United States Court of Appeals for the District of Columbia Circuit expanded the previously entered Order authorizing the Office of Independent Counsel Kenneth W. Starr to look into certain matters relating to a lawsuit brought against President William Jefferson Clinton by former Arkansas state employee Paula Jones alleging sexual harassment. Pursuant to that Order, Ms. Jones' attorneys issued subpoenas for evidence and deposed Mr. Clinton and others seeking information on a pattern of conduct that might be relevant to the issues in the Jones case.

The President denied in a deposition in the Jones case and in a forceful statement to the American public that he had sexual relations with "that woman," referring to Monica Lewinsky. Subsequently, however, Ms. Lewinsky turned over a stained blue dress that she had worn in an encounter with the President; a scientific examination revealed that the DNA on the dress was President Clinton's DNA.

On January 16, 1998, at the request of the Office of Independent Counsel, the District Court for the District of Columbia convened a federal grand jury to look into the matter and deposed Mr. Clinton in The White House on August 17, 1998, about his participation in the Jones lawsuit.

The Office of Independent Counsel then referred the matters developed in the investigation to the United States House of Representatives, which on December 19, 1998, voted two Articles of Impeachment against Mr. Clinton alleging that he committed perjury before the federal grand jury in four instances and that on seven occasions he had obstructed justice by tampering with witnesses and evidence in the Jones case proceedings.

For the sake of brevity, I shall only cover several of the allegations and evaluate the evidence supporting them.

ALLEGATIONS

Counsel for the President has admitted that there was an inappropriate relationship between the President and Ms. Lewinsky and that they had concocted a cover story to conceal their relationship and activities. On December 17, 1997, at approximately 2 a.m., Mr. Clinton telephoned Ms. Lewinsky after he learned that she had been summoned for a deposition in the Jones case. According to this testimony he called to tell her of the death of the brother of Ms. Clinton's sister, and 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.

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 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 powerful desire to punish. And I submit that to impeach the President in this case would be a terrible use of the impeachment power, lacking proportionality and perspective.

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 government.

Let us put this matter behind, heal the wounds inflicted by partisanship, and rededicate ourselves to the challenges facing our nation.

Mr. Bond. On a point of order, February 12, 1999, I voted to convict President William Jefferson Clinton on both counts of the Impeachment Articles brought by the United States House of Representatives charging that he committed perjury and obstruction of justice.

My reasons for voting to convict are that President Clinton's actions were extraordinary and fall outside the privilege of executive privilege, that he abettor obstructed justice.

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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 falsely represented to the court that he provided false information. He asked that the affidavit to file a false affidavit or to lie under oath. To paraphrase a statement made during the trial by Vernon Jordan, “He is no fool.” He would have known that such a statement could be revealed by subsequent judicial inquiry.

Mr. Bennett did not have to tell Ms. Lewinsky expressly to execute a false affidavit. She knew that in the absence of contrary instructions she was to continue to follow their story. She was referred by the President’s best friend Vernon Jordan to an attorney who drafted the affidavit for her. The President, through Mr. Jordan, was kept advised of the progress of the affidavit.

During the time that Mr. Jordan was serving as liaison between the attorney and the President in the preparation of the affidavit, he was also pursuing a job search for Ms. Lewinsky, which he admitted was under his control.

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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. Subsequently, he also made statements to his subordinates including Sidney Blumenthal, John Podesta, and Erskine Bowles. The statements he made to his subordinates indicated that he wanted to have sex with Ms. Lewinsky and that he was concerned about the testimony of witnesses. He also wanted to influence the testimony of witnesses in a federal civil rights action as alleged in Article I, paragraph 6, of the Articles of Impeachment.

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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 managed his cover story. Had it not been for the DNA on the stained dress, there is little likelihood that the false cover story would have been exposed for the lies that it was. In perpetrating that false and misleading story Mr. Clinton tampered with witnesses, obstructing justice in the civil rights lawsuit brought against him by Paula Jones. He also falsely misrepresented those acts in testimony before the grand jury August 17, 1998.

HIGH CRIMES AND MISDEMEANORS

Having resolved in my mind the question that clear and convincing evidence shows that William J. Jefferson Clinton obstructed justice and committed perjury in his grand jury testimony, the next issue is whether these activities rise to the level of offenses for which removal from office is the appropriate remedy. Defendants of the President have said that no one would press charges in a case like this, that it was not grave enough to merit a criminal proceeding, and that it certainly was not sufficient to warrant removing the President from office.

With respect to the seriousness of the 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 prosecutions were brought by Clinton Administration appointees and in many instances in front of Clinton-appointed judges.

The case of Dr. Barbara Battaglia is particularly compelling. In a 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 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 brought by Paula Jones. A federal judge 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 context of the 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 had said 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 investigation, he could invoke the power of a pardon to stop inquiry and prevent detection. James Madison responded that, "If the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will not himself be subjected to the power of a pardon, to stop inquiry and prevent detection." (See Elliott, Debates on the Adoption of the Federal Constitution, at 498.)

Another argument has also been made by the White House counsel and supporters of the President that to remove the President from office on impeachment would be to nullify the election. This argument suggests that impeachment is never an appropriate remedy, provided the President is popular and the country is enjoying good times. The Office of the Presidency is not so brittle that it would be gravely damaged by removing the current President or any other President. The Founding Fathers certainly did not envision that impeachment could only apply to an unpopular President or one who was leading the country in hard times.

At the height of a Cold War with United States forces engaged in Vietnam, impeachment proceedings against President Richard M. Nixon forced him to leave office. The country was not wounded, it did not lose its way; Vice President Gerald Ford assumed the Presidency and continued the course of government. In this case, Vice President Al Gore would assume office and would be expected to continue the policies of the Clinton Administration.

The 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 a strong and forceful ally in foreign policy and conducted such wise relations with other nations that we could not afford to lose him. That argument, too, smacks of a referendum on the President's conduct of office, not a judgment on his wrongful acts. If we were to judge impeachment on the basis of the policies of the President, then impeachment could always be expected to be purely a partisan matter turned on the approval or disapproval of formulation and implementation of policy by the President. The framers thoughtfully 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. 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 oppress, 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 understood the danger of holding the President under a king and they didn't want another.

History and common sense tell us, therefore, that the threshold for impeachment should be high—very high. It should be difficult, not easy, to impeach a President of the United States because impeachment is the ultimate sanction for protecting the Republic. It is a weapon to be respected and feared, but wielded only under the most compelling circumstances. Similarly, history and common sense tell us that removing a President is not the same as removing a Federal judge. In James Madison's records of the debate at the Federal Constitution, he wrote, "The President is to hold his place for a limited time, but during good behavior." The Executive was to hold his place for a limited term, like the members of the legislature.

Like them—particularly the Senate, whose members would continue in appointment in the same term of 6 years—he would periodically be tried for his behavior by his electors, who would continue or discontinue him in trust, according to the manner in which he had discharged it. Likewise, removing a President is not the same as removing a member of the Armed Forces for violating the military code of conduct. The Uniform Code of Military Justice is required to maintain the good order and discipline for waging war and securing peace. And all of us who have served in the Armed Forces understood that we swore an oath to obey a code not required of any civilian, even those with the power to send us into harm's way—a civilian Commander in Chief, our Secretary of Defense, and Members of Congress.

Finally, removing a President is not the same as punishing a citizen in a court of law. Like any citizen, a President could be fully punished in court after he leaves office, and the failure to convict him in an impeachment trial in no way precludes a subsequent criminal prosecution. If a President is subject to the law, then he is clearly not above it, as some have claimed.

Some also argued that since the President's oath requires him to faithfully execute the laws, any violation of those laws should thereby warrant his impeachment. This office is sufficiently armed 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 denied the affair with Ms. Lewinsky, he lied. His testimony was perjured. His subsequent testimony was found to be full of perjury and lying under oath. He lied to the grand jury. He lied to the House. He lied to the nation. He lied to Mr. Brewster, who he had dismissed. He lied to the Armed Forces. He lied to the FBI. He lied to the White House counsel, Mr. Webster. He lied to Mr. Starr. He lied to Mr. Lewinsky. He lied to the grand jury. He lied to the American people. He lied to his family and the Nation about an eminently embarrassing personal relationship. While 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.

The apparent strength of the evidence, the House of Representatives defeated an article alleging perjury in the President's civil deposition. They voted to impeach the President for perjury based solely on his testimony before the grand jury. But the House did not impeach the President on the allegations that the President willfully provided perjurious, false, and misleading testimony to the grand jury.

I listened intently to the arguments presented by both sides, and I have read the President's grand jury testimony carefully. In my judgment, the President's grand jury testimony ultimately boiled down to a few irreconcilable discrepancies, and while often slippery, 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 misleading personal relationship. While his intent is difficult to prove, the uncontroverted facts contained in the bill of impeachment 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, on the other hand, is drafted in the disjunctive and containing 7 separate subsets 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 a third group voted to acquit on subpart 3, 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, nor would I allow any pleading that would add up to 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 citing the Senate’s own offer of 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 this trial is that the Senate, sitting as a Court of Impeachment, proved worthy of the faith of our founders to render justice.

No matter what judgment is rendered, however, this trial cannot exonerate the President. A vote against conviction is not a vote to condone his lying to the American people, nor does it suggest that any Member of the U.S. Senate believes that perjury or obstruction of justice charges are anything but serious. They are very serious charges.

 Sadly, the vote we are poised to take on these charges has divided our Nation. In the eyes of too many of our citizens, this vote will represent either a nonmilitary coup attempt against a duly elected President or a victory for those bent on accelerating the moral decline of the Nation. In truth, this vote represents neither. A vote for acquittal indicates nothing more and nothing less than that.

The case to remove the President from office was not proven.

We sit in judgment today not because we are free from human failings—I certainly have my share—but because our forefathers bestowed upon the Senate the responsibility of protecting the Republic by judging the President when articles of impeachment are exhibited by the House of Representatives. In doing so, they carefully and deliberately limited the scope of our judgment.

We are judging the President in his capacity as President, and we are called upon to decide only one issue—whether he should be removed from office. The Senate is not called upon to define what is impeachable, nor the capacity to rule on the broader character of the President. In our limited role, we are not called upon to judge him as husband and father, for that is the province of his family. We are not called upon to judge him as accused citizen, for that is the province of the courts. We are not called upon to judge him as sinner, for that is the province of God. And we are not called upon to judge his legacy, for that is the province of history.

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 filed against Republican President Ronald Reagan—an impeachment resolution because of Iran-Contra, which involved selling arms to a terrorist nation with the proceeds going to the Nicaraguan contra. 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 premise: 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, multiple victims. It was irresponsible and indefensible: a young woman, a relationship wrong in every way, a President trying desperately to hide the affair.

The young woman was secretly tape recorded and forced to testify. Her mother was forced to testify. The young woman was secretly tape recorded and forced to testify. Her mother was forced to testify.

The more than 20 women who complained about Senator Packwood alleged forced sexual misconduct against them. One victim was 17 years old. They wanted to tell their stories.

So each of us can decide for himself or herself the relationship of one case to the other. But surely that is not the issue before us.

Neither is the Paula Jones case, which was thrown out of court by a Republican female judge who ruled that there was no sexual harassment by the President. Testimony about a consensual sexual affair was immaterial.

Yes, the case was later settled, but that doesn’t change its history: no sexual harassment, determined by a Republican female judge.

So, Senator Packwood is not before us, nor is Paula Jones. What is before us is the sanctity of the Constitution. Here, the Constitution is called upon by my constituents for voting in favor of the Independent Counsel Law in its current form—a law that has given one person an unlimited budget, unlimited scope, unlimited time and an unlimited ability to hurt people, 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 seeking for an impeachment case.

And while I condemn the President’s behavior, it was no excuse for the Ken Starr witchhunt, which went from a real estate deal, to several other fruitless investigations, to a sex deal built around illegally recorded phone conversations with someone named Linda Tripp. Linda Tripp, who says she’s like all of us. Heaven help us if all of us act like Linda Tripp, secretly recording our dear friends. What a country this would be.

I also want to comment on one other matter which is personal to me, and that is my daughter’s family connection to the First Lady.

While none of my Senate colleagues questioned the propriety of my participation in the impeachment matter—for which I thank you all—I was the target of a barrage 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.

But we were, 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, or an officer, and 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 intimated by the President and Vernon Jordan saying the jeep 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 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, but the President, indeed, is subject to the rule of law—our Founders made that certain.

At this point, I want to thank Senator Tom Harkin for his challenge to the House Managers that the Senate is a court, 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 Senate.

The Senate did the right thing in 1868—and by its decision not to remove the President, it brought stability to our nation. We should do no less now.

Voting against these 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 question of perjury and obstruction of justice. We have worked our will in this matter according to a process rooted in English common law, written by our Founders into the Constitution, and exercised against the Chief Executive only once before in American history.

This is not a task to be taken lightly, and we have not arrived easily at our decision. The Senate today is engaged in weighty struggles that go to the very heart of our private and public lives. We are at an unlikely juncture between principle and public opinion, repentance and the rule of law, perception and punishment, forgiveness and

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 importantly in this situation—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.
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, save a few weeks, and 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. It is a reckless and 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 single fact is that the President recognizes this matter was in many minds, predetermined. In spite of this, the integrity of the process was, time and again, fought for and protected. Now—today—it only remains for us to cast our votes.

WILLIAM JEFFERSON CLINTON

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 life of William Jefferson Clinton. This document laid the framework for what has taken place. I believe, however, that the competing environment should not be considered the process before us 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 initial impeachment proceedings in this matter began on December 19, 1998, when the United States House of Representatives impeached the President, William J. Clinton. After listening to the evidence, reading the trial transcripts, and carefully considering the arguments presented by both the House Managers and White House counsel, I believe the President is guilty of both articles.

Before I address the case against the President, I think it is necessary to discuss whether the crimes of perjury and obstruction of justice constitute high crimes and misdemeanors as contemplated by the Framers of our Constitution. This topic has been the subject of much controversy in the past months. It is true that private acts are the genesis of the matter before us. Had the acts stayed private, we would not be here today. The President, however, raised these private acts to the public purview and created a matter of public concern when he used his position and power to deny and obstruct the civil rights of Paula Jones.

Contrary to what has been asserted, this is not just a case about a sexual encounter between the President and a young White House intern. This instead is a case about depriving Paula Jones, an individual who sought and was granted the right to file a civil rights action against the President, of her constitutional right to a day in court, a right which nine justices of the Supreme Court unanimously decided that she deserved. And—almost unbelievably—on the heels of this Supreme Court mandate, the President seemed to strengthen his efforts to deny Paula Jones' civil rights. Once these acts moved into the public arena, forming the basis for charges as serious as perjury and obstruction of justice, it is my opinion these acts became high crimes and misdemeanors as envisioned by our Founders. While our only precedent involves the impeachments of federal judges, I am satisfied the standards used in these cases also apply to the charges levied against the President.

The President of the United States is the head of the Executive Branch and the Chief Law Enforcement Officer of 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 J. 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 know this is a good faith belief by William Jefferson Clinton is high crimes and misdemeanors and warrant impeachment, conviction, and removal from office.

Amusingly, we continue to hear the argument that although the President's actions rise to the level of high crimes and misdemeanors, he should not be removed from office. The Constitution provides if a President is found guilty of high crimes, then he is automatically removed from office. Our Constitution does not allow for finding the President guilty of high crimes and misdemeanors, and then permitting him to stay in office. Only an amendment to the Constitution would make such a step permissible.

There were several points during the trial of the President when I had a visceral reaction to certain charges raised by the House Managers. This reaction occurred, each time, at precisely the moment the Managers discussed the President's strategy to attack the character of Monica Lewinsky, Kathleen Willey and others. The callous disregard for the soul of another human being and the unsympathetic wounding of the character of another carried out by the President using the apparatus of the Presidency is chilling and deserves condemnation by those who cherish freedom.

Before I proceed to my view of the specific articles, it may be helpful to explain that the serious offenses committed by William Jefferson Clinton are high crimes and misdemeanors and warrant impeachment, conviction, and removal from office.
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 lawsuit. The record before us is replete with examples which, in my opinion, prove that the President of the United States intended to, and did in fact, obstruct justice. Specifically, 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 create a false affidavit in the Jones case by allowing his personal aide 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 obstructing 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 and negligent 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. The President, however, still did not turn over the gifts and instead replied that he had none. The President's unwillingness to comply is ironic given that later—in his grand jury testimony—he stated that he received and gives hundreds of gifts a year, and that the whole gift-giving concept is inconsequential to him. The President's behavior belies his testimony.

The gift concealment continued beyond the President refusing to turn over the presents Ms. Lewinsky gave him. Ms. Lewinsky was also subpoenaed in the Jones case and was asked to turn over gifts the President had given to her. According to Ms. Lewinsky, when she suggested to the President that the gifts be hidden, he responded, “I think about it.” I am aware that the record does not reflect a specific directive by the President to Ms. Lewinsky to hide the gifts. My reading of the record and my interpretation of the President's words led me to the inescapable conclusion that the Chief Law Enforcement Officer of the country, and a well-educated lawyer to boot, did not fulfill his duty to turn gifts over himself and did not abide by his duty again when Ms. Lewinsky asked him what she should do with her gifts.

There is some confusion over exactly how the President's secretary, Ms. Currie, came to be in possession of the gifts that the President gave Ms. Lewinsky. I find it compelling, however, that when the President and Ms. Lewinsky met on the morning of December 28, Ms. Lewinsky suggested that the gifts the President had given to her should be hidden. A few hours later, on the evening of December 29, Ms. Currie asked Ms. Lewinsky for a gift and Ms. Currie went to Ms. Lewinsky's residence. On that same afternoon, Ms. Currie arrived at Ms. Lewinsky's residence to pick up the gifts and, ultimately, the gifts were found under Ms. Currie's bed. In my view, this tendency to conceal the President's involvement with the gift concealment. I find it hard to believe that Ms. Currie would on her own, without influence from the President, decide to hide Ms. Lewinsky's gifts.

As an aside, I feel compelled to point out a pattern that seems to have evolved during this administration. The hiding of evidence in a personal residence harks back to the mysterious disappearance of billing records in the White House residence several years ago. There seems, in my mind, a proclivity on the part of the President to cause the disappearance of key evidence whenever wrongdoing is alleged. Hence, gifts under the bed equate to billing records in the White House residence.

In view of the President's actions up to this point, I am convinced the President was involved in Ms. Currie's retrieval of the gifts, and was in fact, aware of Ms. Currie's involvement. The President's determination to obstruct justice by exercising his authority to hide the gifts. My reading of the record and my interpretation of the President's actions lead me to believe that the President purposely allowed Mr. Bennett asking the trial court not to rely on the affidavit or his comments regarding the document. Thus, it appears Mr. Bennett also believed that the President allowed him to mislead the court.

Moreover, I am not persuaded by the President's argument that the affidavit...
was technically true because "is" 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 makes no attempt to manipulate the words and every word. To take the President's interpretation of "is" to its logical conclusion that nothing was occurring at that very minute is ridiculous. Clearly, things did not go well at the Jones deposition. In fact, the President admitted later in his grand jury testimony that he was surprised by the depth of the inquiry regarding Monica Lewinsky. This probing questioning made the President increasingly desperate. On Saturday, after the President's deposition, he called his secretary, Ms. Currie, and asked her to come to the White House the following day. As the President and Ms. Currie testified, that such a Sunday meeting was out of the ordinary. When Ms. Currie arrived, the President called her into the Oval Office and made several statements, which he later described as questions regarding Monica Lewinsky. Ms. Currie testified before the grand jury, that the President said the following to her:

I was never really alone with Monica, right?

You were always there when Monica was there, right?

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

You could see and hear everything, right?

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

This conversation was repeated between the President and Ms. Currie again 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 of 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 there would have been an "exhibitionist" if he had conducted these acts in public view. In fact, when asked during the grand jury proceedings if Ms. Currie was nearby when he and Ms. Lewinsky had intimate contact, the President responded: "I don't think I didn't try to involve Betty in that in any way." Further, the President's statements to Ms. Currie implying that she was always present, and that she could see and hear would appear to imply logic by decontextualizing that Ms. Currie was always with the President and Ms. Lewinsky. The President clearly knew that was not the case.

The sum of this evidence convinces me the President was not only obstructing justice by tampering with a potential future witness, but also violating the gag order that had been put into effect by Judge Wright in the Jones case. The reason why this was of such importance was because the President knew that reason Ms. Currie became a potential witness was due to the President's own urging. Throughout the Jones deposition the President repeatedly offered "you should ask Betty." Then, on the very next day, 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 case.

I have also concluded the President's conversations with his aids concerning his relationship with Ms. Lewinsky constitute witness tampering. The President told his aids, 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 he explicitly explained 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 what Ms. Currie in that he did not ask this group to agree with his statements, I find these conversations equally disturbing. To mislead his key aids, 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 anyone 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 being a witness in the Jones case. Although the President promised Ms. Lewinsky assistance with her New York job search prior to her name appearing on a witness list in the Jones case, it seems odd and much too coincidental that the President's assistance intensified after he learned that Ms. Lewinsky was on the witness list.

In October, Ms. Lewinsky expressed her interest to the President in moving to New York and finding a job. In early November, 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, in a letter written to Ms. Lewinsky, her job search would take a 360 degree turn in December. Possibly the most important day was December 6, 1997, when the President learned that Ms. Lewinsky's name had appeared on a list of potential witnesses in the Jones case. A little over a month later, Ms. Lewinsky was offered and accepted a job with Revlon in New York City.

Because I 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 11, Mr. Jordan received Ms. Lewinsky's resume by courier. On December 11, Mr. Jordan met with Mr. 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 & 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 he 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 the White House understood the President was her friend and was trying to assist her in her New York job hunt. Interestingly, Ms. Lewinsky was not informed of her witness status until after interviews in New York had been scheduled for her by Vernon Jordan.

PERJURY BEFORE THE GRAND JURY

The President is also charged with making perjurious, false, and misleading testimony to a Federal grand jury concerning his corrupt efforts to influence the testimony of a witness 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 with Ms. Currie which provided the basis for his decision to have Bob Bennett 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 regarding 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 President's own 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.

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Deputy Chief of Staff John Podesta’s testimony indicates that 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 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 make a date restriction? Did you make it clear to them that you were there alone with her after?” 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 been there in, in fact, 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 honest about the nature of her relationship with the President, Ms. Lewinsky indisputably would have been an important witness.

The President stated before the grand jury, when asked about the Lewinsky affidavit: “Did I hope [Monica Lewinsky would] be able to testify on an affidavit? No. I did not.” The President’s testimony is not credible and is misleading in light of the fact that it was virtually impossible for Ms. Lewinsky to file a truthful affidavit that would have permitted the President to achieve his objective of not having Ms. Lewinsky testify. This is just one more instance where the President lied, misled, and violated his solemn oath to tell the truth.

In addition, the President gave perjurious testimony in regard to false and misleading statements he allowed his attorney Bob Bennett to make to a federal judge in the Jones case. When asked during his grand jury testimony how he could have lawfully sat silent while his attorney made a false statement, the President explained that he was not paying “a great deal of attention” when he reviewed 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.

I believe that the President is guilty of both Article I and Article II.

CONCLUSION

Mr. Chief Justice, the President of the United States finds himself 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 up his culpability with enough information to bring us to this moment. In doing so, the President has made himself an example of what is wrong in politics. In fact, I happen to consider it as an institution, and for the Constitution that has anchored our Republic 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 that has anchored our Republic 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.

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 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 issues before the Senate were 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 a standard to warrant the belief in the instance, i.e., the removal of the President, is not punitive, but remedial. In contrast, the civil standard would place the Presidency at too great a risk. The "clear and convincing" evidence standard strikes a prudent balance, providing sufficient protection for the authority of the Presidency and the expression of popular will represented by the President's election, while avoiding the risk of a President remaining in office despite clear and convincing evidence of impeachable offenses.

ARTICLE I: PERJURY BEFORE A FEDERAL GRAND JURY

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 Federal Grand Jury, which superintends the Independent Counsel law, to expand his jurisdiction to inquire into whether the President testified truthfully in his deposition. On August 17, 1998, the President, as the target of the investigation testified by video to a Federal grand jury in Washington, D.C.

The President's deposition testimony in the Jones case was false in numerous respects, and his grand jury statements were made in a course of conduct designed to impede, cover up, and conceal evidence and testimony related to the Federal civil rights action brought against him.

The evidence shows that the President improperly influenced Ms. Lewinsky to file a false affidavit in the Jones suit. I believe that the only version of the evidence that makes sense is that offered by the House. Thus, I conclude that the President influenced the entire process that led to the filing of the false affidavit, from its inception to its conclusion. He did so through direct conversations with Ms. Lewinsky,
and through his close friend, Mr. J. Jordan, who was able to monitor the process through an attorney that he, Mr. Jordan, procured for Ms. Lewinsky.

Ms. Lewinsky admitted that on December 17, 1997, the President informed her by phone that Ms. Currie had placed her name on the witness list in the Jones case, and suggested that she might avoid testifying by filing an affidavit. [Deposition Testimony of Monica Lewinsky, 2/1999, 145 CONGRESSIONAL RECORD S1218 (daily ed. Feb. 6, 1999)] Mr. Jordan, who was able to monitor the process, confirmed throughout the affidavit-drafting process that Ms. Lewinsky filed an affidavit, and by arranging for the return of gifts subpoenaed by the President's lawyers. [Id. at pp. 921-22, 1229-30 (Exhibit 3)]

Ms. Currie's testimony that Ms. Lewinsky file an affidavit by Ms. Lewinsky would have ensured that she would have been called as a deposition witness, and that her subsequent truthful testimony would have been legally damaging to the President. Through the affidavit the President suggested that Ms. Lewinsky file an affidavit, they discussed the cover stories they could use to avoid public knowledge of the truth. [Id. at S1219]

Mr. Jordan testified in his Senate deposition that he “was acting on behalf of the President to get Ms. Lewinsky a job.” [Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONGRESSIONAL RECORD S1223 (daily ed. Feb. 6, 1999)] Mr. Jordan confirmed in the deposition that “The President was obviously interested in her job search.” [Id. at S1314] It was Mr. Jordan—one of the President’s closest friends-whom Ms. Lewinsky called when she was subpoenaed. Mr. Jordan met with Ms. Lewinsky and arranged a lawyer for her. [Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONGRESSIONAL RECORD S1234-36 (daily ed. Feb. 4, 1999)]

Mr. Jordan delivered Ms. Lewinsky to her lawyer, [Id. at S1236] Mr. Jordan monitored the drafting and content of Ms. Lewinsky’s affidavit. [Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105-311, p. 920] Ms. Lewinsky herself delivered a copy of her first signed affidavit to Mr. Jordan’s office. Ms. Lewinsky testified that she and Mr. Jordan conferred about the contents of the affidavit and agreed to delete one portion inserted by her lawyer and make other changes. [Id. at pp. 921-22, 1229-30 (Exhibit 3)]

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

The evidence also clearly and convincingly demonstrates that after Ms. Lewinsky’s name appeared on the witness list in the Jones case, the President, through Mr. Jordan, provided intensified assistance to Ms. Lewinsky in finding a job in order to encourage her to file the false affidavit. Mr. Jordan accepted responsibility for the job search and has admitted that he and Ms. Lewinsky discussed both the job search and her affidavit in most conversations. [Id. Mr. Jordan attempted to separate each aspect of his work with Ms. Lewinsky in the affidavit by saying that “I[ ]the affidavit was over here. The job was over here.” [Id. Whatever Mr. Jordan’s belief, it cannot have been lost on Ms. Lewinsky that she had a very prominent and powerful lawyer soliciting jobs for her. At the same time, she was being asked to help that lawyer’s friend, the President, who had first suggested that she file an affidavit.

On the day after Ms. Lewinsky signed the false affidavit, Mr. Jordan personally called the CEO of a Fortune 500 company to secure a job for her, a job she was offered on the subsequent day. [Id. at S1241-42] On the day that Ms. Lewinsky received the job offer, Mr. Jordan called the President, through Ms. Currie, and left the message “mission accomplished.” [Grand Jury Testimony of Vernon Jordan, 5/29/98, S. Doc. 106-3, p. 1988] The President’s own testimony in his deposition for the Jones case followed exactly the false claims in Ms. Lewinsky’s affidavit. While the President’s lawyers encouraged the perception that this convergence was a coincidence, I do not buy it.

The evidence is clear and convincing that the President continued to involve Ms. Currie in his lies and obfuscation. Ms. Lewinsky testified that on December 28, 1997, she met with President Clinton and informed him that she had been subpoenaed, and that the subpoena required her to produce all gifts she had received from the President. She testified that the subpoena specifically requested a hat pin, which alarmed her. [Grand Jury Testimony of Monica Lewinsky, 8/6/98, H. Doc. 105-311, p. 920] The President responded to Ms. Lewinsky’s what-she-received-him. [Id. at p. 872] When Ms. Lewinsky asked him what she should do in response to the subpoena for the gifts, the President answered, “I don’t know,” or “Let me think about that.” [Id.] He never gave the only appropriate answer, which was to comply.

Ms. Lewinsky testified that later that same day, Ms. Currie telephoned her, saying, “I understand that you have something for me,” or “the President told me to give me.” [Id. at pp. 874-75] Ms. Currie had an unclear memory about this incident, but said that “the best [she] remembered,” Ms. Lewinsky called her. [Grand Jury Testimony of Betty Currie, 5/6/98, H. Doc. 105-316, p. 581] The President’s assertions and leading questions to Ms. Currie on January 18 and January 20 or 21, 1998, were indisputably false. The President knew that Ms. Currie was a potential witness when he made these false statements to her. In his deposition in the Jones case, the President brought Ms. Currie on the witness list and by arranging for the return of gifts subpoenaed by the Jones lawyers.

On Saturday, January 17, 1998, a few hours after completing his own deposition in the Jones case, the President called Ms. Currie and asked her to come to the White House on Sunday, January 18, 1998. [Id. at p. 558] The President’s assertions and leading questions to Ms. Currie on January 18 and January 20 or 21, 1998, were indisputably false. The President knew that Ms. Currie was a potential witness when he made these false statements to her. In his deposition in the Jones case, the President brought Ms. Currie on the witness list and by arranging for the return of gifts subpoenaed by the Jones lawyers.

I am unable to conclude that the President was attempting to “refresh his recollections” by calling Ms. Currie and requesting her to come to the White House on a weekend and making false statements to her. Simple common sense tells us that the President knew what, he had said in his deposition and that he was hoping that she would later corroborate his false account.

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. Ideally, there would be a singularly difficult question for this body, but I conclude that the President’s offenses rise to the level of “high crimes and misdemeanors” within the meaning of the Constitution.

The Framers of our Constitution provided that the Senate can only convict a President for “treason, bribery, or other high crimes and misdemeanors.” [IV William Blackstone, Commentaries on the Laws of England 74, 176 (special ed., 1963)] Within the latter category, Blackstone included crimes such as murder,
burglary, and arson. The former category of "public" crimes included offenses that were counted as "offenses against the public justice." Blackstone included within this category the crimes of perjury and bribery side-by-side. [45-56] 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.

Barred, 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” are “high misprisions” and “contempts” of the King’s courts. [id. 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 remedy for offenses against our system of government. Alexander Hamilton, in Federalist No. 65, explained that impeachable offenses, “relate chiefly to injuries done immediately to the society itself,” and arise “from the abuse or violation of some public trust.”

Certainly, perjury before a grand jury and obstruction of justice are offenses against the American system of government. They strike at the very essence and foundation of the judicial branch. These acts, when committed by the 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 1982 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. 56, 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 federal grand jury was a good-faith error or a bad-faith error. The question before the Court is whether the President has committed perjury in a Federal grand jury investigation of which he was the target. I am convinced that his acts fall into the category that warrants removal from office.

Further support for this conclusion comes from Senate precedent in the impeachment, conviction, and removal from office of two Federal judges in the 1980s—Walter Nixon and Alcee Hastings. Judge Nixon was impeached for committing to a grand jury that was investigating him, and Judge Hastings was impeached and convicted for making numerous false statements under oath in testimony in his own criminal trial.

Obstruction of justice is particularly serious. Two federal criminal statutes, Sections 1503 and 1512 of Title 18 of the 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 U.S. v. Hastings, 1988, a federal appellate court upheld the conviction of an individual for attempting to influence a witness even though that witness was not scheduled to testify before the grand jury nor ever appeared before 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. Shannon 836 F. 2d 1125, 1127 (8th Cir. 1988)].

The Supreme Court has called the President’s responsibility to enforce the laws, “the Chief Executive’s most important Constitutional duty.” [Lujan v. Defenders of Wildlife, 504 U.S. 555, 577 (1992)] A President who obstructs the very laws he is called upon to enforce has committed high crimes and misdemeanors as set out in the impeachment clause of the 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. I believe the Constitution, the intent of the Framers, and the Senate’s own impeachment procedures show that when the Senate convenes to fulfill its obligation to “try all impeachments,” as Article I of the Constitution prescribes, it takes on a judicial role quite distinct from its normal legislative proceedings. The Constitution also states, in Article III, that “the trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . .” implying that an impeachment trial is a judicial trial. When a President stands accused, the Constitution requires the Chief Justice of the Supreme Court to preside, explicitly introducing the judicial branch into the trial by the Senate. And Alexander Hamilton, in Federalist No. 65, discusses “the judicial character of the Senate” when it meets as “a court for the trial of impeachments.”

We are required to take a special oath for impeachments, above and beyond our oath of office, to “do impartial justice according to the Constitution and the laws.” What can this oath mean if it does not place on us a special, judicial burden, unique among our other 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 remain above the law. We must take the sworn oath 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 birthday. I also recently 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 prior to a grand jury and obstruction of justice are not removable offenses—or that if they are, removal of a President, in this time, is too disruptive to contemplate. And truly, the call to do nothing is seductive. I hear it, too. We are so comfortable—so prosperous—that it is difficult to be bothered with unpleasantness. But as the youngest member of this body, I believe we must hold firm to the oldest truths. The material benefits of prosperity 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
commitment to impartial justice, now and forever, is an abstraction more profound and precious than a soaring Dow and a plummeting deficit. I vote as I do because I will not stand for the proposition that a President can, with premeditation, an attitude of obstruction, or simply a desire to commit perjury before a grand jury, 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 inconsistent with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.” In other words, Congress must determine whether the particular misconduct in which President Clinton engaged is serious enough to warrant removal from that particular office. This is what I call the “incompatibility” test.

The “incompatibility” test requires Senators to exercise their expertise in, and knowledge of, government and to use their best judgment, focusing on the offenses committed and the effect of those offenses on the office and on the operation of government. It is this kind of threat to the republic which we must avoid. The “incompatibility” test makes the laws, the executive executes the laws, and the judiciary interprets the laws and dispenses justice. As the head of the executive branch, the President stands alone as the official responsible for executing the laws of our country.

The duty of a branch to respect the other branches is a duty that can only be carried out by federal officeholders. It cannot be borne by private citizens. And it is fundamental to the operations of the federal government. Our government could not function if the branches did not respect one another.

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. It is our duty to ensure that the President is willing to place his personal and political interests above his duties as President, he is not fit for the office he holds.

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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. It is our duty to ensure that the President is willing to place his personal and political interests above his duties as President, he is not fit for the office he holds.
is the cornerstone of our system of justice. We simply cannot allow people across the country to look at the conduct of our President and raise legitimate questions about whether they need to comply with their solemn oaths.

Moreover, how can judges refer violations of perjury or obstruction of justice to the executive branch for prosecution, when the chief executive himself has committed these offenses? On prior occasions, the Senate has removed perjury by executive action. 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 good of gold?” 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 revenge or gloating.

In reaching my conclusions, I asked myself two questions: Were the articles of impeachment proven, and if so, should the president be removed from office?

I believe the president perjured himself before a grand jury. He put the protection of his presidency ahead of the protection of the institution of the presidency. He gave false testimony about his efforts to keep other witnesses from telling the truth. We have already learned in our history that lies lead to more lies, and the pattern in this case led to perjury.

I also feel strongly that a case for obstruction of justice was proven conclusively. The Senate heard the many actions and motives of the president, and it was easy to connect the dots. Those dots reveal a clear and convincing case against the president.

I believe the president tampered with the testimony of witnesses to protect them; 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-suit against him, and when he tried to undermine that lawsuit. His actions were an attack on the separation of powers between the executive and judicial branches when he abused his power in an effort to obstruct justice. Remember, he hid a lawsuit in 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. 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 clatter and clutter echoed on 24-hour talk television, the president’s goal was reached. But the facts remain, and they are not in dispute.

Montanans didn’t send me to the Senate to be a weathervane, shifting in the wind, but to be a compass. It may be common to say the president’s offenses don’t rise to the level of high crimes and misdemeanors,” but I believe that would ignore our history and what we stand for as a nation.

That’s why I also oppose censuring the president. The Constitution gives us one way to deal with impeachable offenses: a yes or no vote on guilt. Anything else would be like amending the Constitution on the fly and infringing on the separation of powers between the branches.

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 have time to 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 have time to cut the record burden of taxation on Montana, 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 present 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 that accused murderer. This can happen. It is an experience that taught me a lot about our judicial system.

I sometimes say one of the few qualifications I have for the U.S. Senate is I am not a lawyer. So that when I read the Constitution, I know what it says; when I read the oath of office, I know what it says; when I read the law, I know what it says. I don’t have to clutter up my mind with what the definition of “is” is. So it makes it a little easier for me.

From a nonlawyer perspective let me share a couple of observations.

First, insofar as perjury is concerned—lying under oath—I might be wrong, but I don’t think there is a Senator in this Chamber who doesn’t believe the President lied under oath.

I quote from Representative ROBERT WEXLER, a strong supporter of the President, who serves on the House Judiciary Committee, who said: “The President did not tell the truth. He lied under oath.”

I quote from Senator CHUCK SCHUMER who said: “He lied under oath both in the Paula Jones deposition and what he said in the grand jury.”

I quote from Representative ROBERT WEXLER, a strong supporter of the President, who serves on the House Judiciary Committee, who said: “The President did not tell the truth. He lied under oath.”

I quote from former U.S. Senator Paul Simon, one of my favorite Democrat colleagues, who appeared with me on a television program before the trial, who said: “You have to be an extreme Clinton zealot to believe perjury was not committed.”

Second, as a non-attorney, I have a hard time reconciling the idea that there might be certain permissible exceptions to telling the truth under oath. Maybe you who are attorneys, and have a different background than mine, see it differently. But how can you reconcile this idea that under some
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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 22 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 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 have just as much standing as anyone else's. Do they not? Is not our country based on the principle that even the least among us is entitled to equal treatment under the law?

It amazes me how these feminist organizations continue to hold this President in such high regard—groups such as the National Organization of Women. I went back and read their by-laws. They claim to want to protect women with regard to "equal rights and responsibilities in all aspects of citizenship, public service, employment...including freedom from discrimination."

And here we have a president who not only misused his power to seduce a college-age intern, but who has also engaged in extensive similar misconduct outside of his marriage. It is not just Monica Lewinsky. There is Jennifer Flowers, Elizabeth Ward Gracen, Paula Jones, Kathleen Willey, Dolly Kyle Browning, Beth Coulson, Susan McDougal, Crusty Zercher—the list goes on and on.

This President has a consistent pattern of using and abusing women. You know that. I imagine most of you watched the Monica Lewinsky tapes as did I. Why did the House managers didn't pick this up—somehow they let it slip through—about when she told this story concerning the two security badges. She came here to Washington, this wide-eyed kid, and there is a blue badge that lets you get into the White House proper and a pink badge that lets you only into the Old Executive Office Building. And she wanted to be in there—in the West Wing—where she could see what was going on.

She had the pink badge so she had to be escorted to the West Wing by someone else. So the very first day she meets and talks to the President in person, he begins the relationship we're talking about. He didn't even know her name. And then he reached across and grabbed her pink badge, yanked it down, and said, "This is going to be a problem." I don't think there is anyone who doesn't know what he was referring to. He was preparing to use this girl and abuse her and discard her like an old shirt. But I know that these are not things the lawyers expect us to consider.

I do not know how to give another observation, though. I thought the playing field would be very uneven when this trial started. The members of the Judiciary Committee who are the House managers are all lawyers. But mostly, they are Congressmen first. Many of these Congressmen-lawyers had not been in a courtroom for literally years. And here they were taking on the most prestigious, the most prominent, the most skilled, the most experienced, the highest priced lawyers anywhere in America. And yet when they finished with their opening statements, there was no doubt the House managers had risen superlly to the occasion, and I believe they have done a great job throughout.

The White House lawyers are very skilled, very persuasive people. I would make this observation—again, a non-lawyer observation: I felt that three or four of them should have quit their opening remarks about 5 minutes sooner—but 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 called "lesser women" were not significant. I really think she destroyed her otherwise very persuasive presentation.

I think the same thing was true with Gregory Craig. He ended by talking about how conviction in this case would somehow "destroy a fundamental underpinning of democracy" by overturning the results of an election, as if Bob Dole would come in if that were to happen.

Even 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 predating the innocence of this President on his foreign policy. And as I just look at Iraq and what is going on over there, I think if that had been the test for this, I could have made up my mind a lot earlier.

Another perspective I bring to this is as chairman of the Armed Services Subcommittee on Readiness. Having been in the service myself, and knowing how important discipline is, I am very disturbed that we have so many cases where severe punishment is dealt to individuals who have engaged in conduct far less serious than that of the President. Consider:

Captain Derrick Robinson, an Army officer, was convicted of having an adulterous affair.

Remember Kelly Flinn. She is not flying B-52s anymore. She was forced out the Air Force for lying about an adulterous affair.

Sergeant Major Gene McKinney, the Army's top enlisted man, was tried for perjury, adultery, and obstruction of justice—all concerning sexual misconduct. He was convicted of obstruction, but not before his attorney asserted at the trial how people in uniform could 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 wants to acquit has to say that we are going to hold this President to a lower standard of conduct 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.

I know Winston Churchill said: "Truth is incontrovertible. Ignorance may deme it, panic may resent it, malice may destroy it, but there it is."

I think we have seen the truth. And I think the final truth is that this President should be held to the very highest of standards.

Sometimes when I am not really sure I am right, I consult my best friend. His name is Jesus. And I asked that
question. Now I will quote to you the response that is found in Luke: “From one who has been entrusted with more, much more will be asked.”

Mr. Chief Justice, I think Jesus is right.

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 the United States Constitution, I have taken an oath four times. I have followed up each oath with my signature.

The first such oath I took was when I was 21 years old. I was sworn in to the 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 Administration under President Carter. I still remember that turbulent time after the Vietnam War when so many of my fellow veterans were returning from that conflict. The words from Abraham Lincoln’s second inaugural address seemed to constantly echo in my mind: “. . . to care for him who has borne the battle and for his widow and his orphan.” Having been wounded in Vietnam myself I felt a grave responsibility to carry out my oath on behalf of my fellow veterans.

The next time I took an oath it was January 19, 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 Sam Nunn in service on the Senate Armed Services Committee. I fully expected that any threat to our Constitution, our electoral process, or our delicately- honed system of checks and balances would come from outside our country, not from within.

I was wrong.

This leads me to my most recent oath to do “impartial justice” in the Senate in the impeachment trial of the President of the United States. In my personal view, this final oath, sealed with my signature in a book which will become part of the archives of American history, is a culmination of the other three oaths I have taken.

I have sworn to defend this country. I have sworn to take care of its defenders.

I have sworn to uphold the Constitution for which my fellow defenders have suffered and died.

In my own back and ignore the challenge to that Constitution posed by this precedent-setting, first-time ever impeachment of an elected President of the United States?

I cannot.

When my name is called in regular order for my vote on the articles of impeachment, I will vote “not guilty.”

I have reached my decision after much effort. I have tried to keep an open mind. But 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 the Constitution, and consulted 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 that 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 “no comments, no exceptions, no latitude, where he hoped to find, “dignity and independence.” I believe that under the circumstances the Senate has conducted itself appropriately, and has complied with Hamilton’s standards of conducting an impeachment trial with “dignity and independence.” I also believe the Senate should continue to follow the standards set by our Founding Fathers regarding the use of impeachment power. According to the Founders as articulated in the Constitution, the impeachment clearly should be reserved for “bribery, treason or other high crimes and misdemeanors.” This language did not just turn up in the Constitution overnight. The language grew and developed over a period of months in Philadelphia in 1787.

One of the Founders who especially impressed me is George Mason. Mason had an interesting background. Like many of our country’s early statesmen, he was from Virginia. For me, Mason is a bridge of insight into what the impeachment clause in the Constitution is all about.

Mason was a soldier. Indeed, he was an officer, a colonel. He, too, understood and embraced the responsibility of military leadership, of leading men in combat and in caring for them afterwards. He certainly knew about the gravity of his own personal oath. It was Mason, then, who articulated during the Constitutional Convention that the phrase in the Constitution regarding impeachment must be more fully fleshed out and should more appropriately read “… and other high crimes and misdemeanors against the state.”

Here was the framers’ intent that the American Revolution. Here was an officer in that Revolution working with his fellow statesmen charting out a course for the Nation’s future. Here was a brother of the bond from Northern Virginia who wanted to make sure the actual Constitutional language was clear that any impeachment must rise to a high level. According to the thrust of Mason’s argument, for an impeachment of the President to be legitimate, the impeachable offenses must pose a threat to the nation itself. The Committee which reviewed the language believed that the phrase “against the state” was redundant, and, in effect, assumed. President Clinton has committed serious offenses. His 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/ or removal from the office of the President on both articles because I do not believe that these particular charges reach the high standard for impeachment which I believe 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 record today, the reason the United States Senate is being asked to exercise what Alexander Hamilton
termed the "awful discretion" of impeachment, is because of the wrongful, reprehensible, indefensible conduct of one person, the President of the United States, William J. Jeff-erson Clinton. And I believe it is based on the constitutional provision under which I believe we are not now to be deprived of the censure of the Senate, and I will support such a resolution when it comes before us.

The question before the Senate, however, is not whether the President's conduct was wrong, or immoral, or even censurable. We must address 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 conviction is much greater than that presented by the massive 60,000 page report submitted by the House, in many hours of very capable but often repetitive presentations to the Senate by the House managers, 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 dis- miss the impeachment case against William J. Jefferson Clinton, and to vote for the Senate resolution that is necessary work for the American people.

To this very point, I have reserved my judgment because the Constitutional responsibility and Oath to "render impartial justice" in this case. Most of the same record presented in great detail to Senators on February 9, 10, and 11, has been before the public for weeks has long been before the public, and indeed most of that public, including editorial boards, talk show hosts, and so forth, long ago reached their own conclusions as to the impeachment of President Clinton. But I have now heard enough to make my decision. With respect to the witnesses the House Manager, and I wish to tell the Senate before the Senate, the existing record represents multiple interrogations by the Offi- ce of the Independent Counsel and its Grand Jury, 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 truth, I have concluded that there are a number of factors which have been discussed or speculated about in the news media which were not part of my cal- culation.

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-pres-cribed responsibility in this matter, and popular opinion must not be controlling con- siderations. As the Republican Senator William Pitt Fessenden of Maine said it best during the only previous Presidential Impeachment Trial in 1868: "To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not now on trial before the people, but before the Senate . . . . The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to "do impartial justice according to the Constitution and the laws." I have taken an oath that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment if I violate my own."

The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to "do impartial justice according to the Constitution and the laws." I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment if I violate my own. While in the history of the United States the U.S. Senate has never before considered impeachment articles against a sitting elect- ed official, we do have numerous cases of each House exercising its Constitutional right to, "punish its Members for disorderly Behavior," and, with the concurrence of two-thirds expel a Member." However, since the Constitution while a trial involving personal and private misconduct has been considered, the Senate has never voted to expel a member, choosing to censure instead on seven occasions, and the House has rarely chosen the ultimate sanction. Should the re- moval of a President be subject to greater punishment with lesser standards of evidence than the Congress has applied to itself when the Constitution appears to call for the re- verse in limiting impeachment to cases of "treason, bribery and other high crimes or misde- meanors?" In my view, the answer must be NO.

Thus, for me, as one United States Sen- ator, the bar for impeachment and removal from office of a President must be a high one, and I want the record to reflect that my vote to dismiss is based upon a standard of evidence equivalent to that used in criminal proceedings—that is, that guilt must be proven "beyond a reasonable doubt"—and a standard of impeachable offense which, in my view, conforms to the Founders' inten- tion. That such an offense is one which represents official misconduct threatening grievous harm to our whole system of gov- ernment. To quote Federalist No. 65, Hamil- ton, Madison, and Jay said: if for "no other offenses than которые 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. Many have before been said before. I recollect some instances in which both perjury and obstruction of justice would meet this test, and I certainly believe that most, if not all, cases in which perjury 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 John F. Kennedy, “with a good conscience our only sure reward, with history’s long candle our eternal light,” let us consider the case of William Jefferson Clinton. I believe that dismissal of the impeachment case against William Jefferson Clinton is the appropriate action for the U.S. Senate. It is the action which would preserve the strength and authority 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 conclusion than I have in this case. I do not question the sincerity or legitimacy of your viewpoint. The process itself pushes us to make absolute judgments—yes or no to conviction from office—and the nature of debate yields portraits of complex issues in stark black-and-white terms, but I believe that reasonable people can reach different conclusions on this matter.

Indeed, I recognize that, while my decision seeks to avoid the dangers of setting the impeachment bar too low, setting that bar too high is not without risks. I believe the House Managers spoke eloquently about the need to preserve respect for the rule of law, including the importance of not setting a precedent 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, outweighs the potential harm to the rule of law, because that latter risk is mitigated by: an intact, independent criminal justice system, which indeed will retain the ability to render final, legal judgment on the President’s conduct; a vigorous, independent press corps which is capable of exposing such conduct, and of extracting a personal, professional and political price; and an independent Congress which will presumably continue to hold the President and his advisors accountable for their actions.

By the very nature of this situation, where I sit in judgment of a Democratic President as a Democratic Senator, I realize that my decision cannot convey the non-partisanship which would be essential to achieve closure on this matter, one way or the other. Indeed, in words which could have been written today, the chief proponent among the Founding Fathers, Alexander Hamilton, wrote in 1788, in No. 65 of The Federalist Papers, that impeachments “will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regular and conclusive”.

In the end, I concluded beyond a reasonable doubt that President Clinton lied under oath before a grand jury. I now wish to address each of those articles of impeachment in turn.

**Grande Jury Perjury**

The circumstantial and direct evidence demonstrates beyond a reasonable doubt that President Clinton committed perjury during his grand jury appearance. The criminal law of the United States forbids perjury by a grand jury. To prove a case of grand jury perjury, a prosecutor must demonstrate: (1) that the defendant testified under oath before a grand jury; (2) that the testimony so given was false in one of more material respects; (3) that the false testimony concerned material matters; and (4) the false testimony was knowingly given. There are three instances during the President’s August 17, 1998 grand jury testimony in which these four elements were established.

First, he lied when he denied that he had “sexual relations” with Ms. Lewinsky, even under his own interpretation of the definition of that term. Quite simply, Ms. Lewinsky offered a detailed account of numerous times when they engaged in intimate physical contact. President Clinton conjured up a tortured definition of the term “sexual relations” to explain the blue dress (and its physical evidence corroborating sexual relations) to the grand jury—while still asserting the essential lie of his earlier denial of “sexual relations” in his deposition in the Paula Jones sexual harassment suit. This attempt to have it both ways, in turn, forced him to lie before the grand jury about the details and nature of his relationship with Ms. Lewinsky. There is no doubt in my mind that President Clinton lied about this matter. Moreover, this lie was material; that is, it had the tendency to affect the grand jury’s investigation. That investigation focused on whether President Clinton committed perjury and obstruction of justice in the Jones case. Lying to the grand jury to attempt to deny the earlier perjury in the Jones deposition was clearly material to that investigation.

Second, President Clinton lied to the grand jury about his attempt to coach Ms. Currie immediately following the deposition. This coaching, which I will discuss in more detail later, was explicitly denied by the President before the grand jury. Moreover, he made a series of false statements to Ms. Currie and sought her agreement with them in an attempt “to refresh [his] memory about what the facts were” and that he was “trying to get as much information as quickly as [he] could” is false. He did not ask her what she recalled; he made false declarations and sought her agreement with them. One cannot refresh one’s recollection by making knowingly false statements for purposes of perjury. It is a classic example of why courts instruct juries to use their common sense in resolving factual disputes. Moreover, President Clinton coached her twice in
the exact same manner: Once on January 18, 1998, and again on January 20 or January 21. He had just finished lying in his civil deposition on January 17, and he wanted to enlist her support for his lies if she was called by Paula Jones on or before January 22. Again, this issue was plainly material to an investigation into President Clinton's possible obstruction of justice.

Third, President Clinton lied to the grand jury about attempting to influence the testimony of his aides whom he knew would be called before the grand jury. These allegations are discussed later. For now, it is only important to note that he testified that he "said to them things that were true about this relationship. . . . So, I said things that were true. They may have been misleading. . . ." In fact, he lied to his aides, as even Sidney Blumenthal stated in his videotaped deposition. It is unlikely that he would have asserted his Fifth Amendment right against self-incrimination; he could have asserted his Fifth Amendment privilege to his aides, as even Sidney Blumenthal stated in his videotaped deposition. The Supreme Court has addressed just this possibility: "A citizen may . . . corruptly pervert the course of justice. . . .'' There is no reasonable doubt that President Clinton was suggesting that Ms. Lewinsky file an affidavit consistent with their previously-agreed upon cover stories. Ms. Lewinsky testified that she understood after that conversation that she would deny their relationship to Paula Jones' lawyers.

The evidence also establishes beyond a reasonable doubt that President Clinton sought to tamper with the testimony of his secretary, Ms. Currie. Within a few hours of completing his deposition in the Jones case on Saturday, January 17, 1998, President Clinton called Betty Currie and made an unusual request: She should come to work to meet with him the following day, Sunday. Sunday afternoon, she met with him at her desk outside the Oval Office. Ms. Currie testified that she 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 consider. 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 was never alone with Ms. Lewinsky, 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 the 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 her 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 he called her in again, presented the same statements (with which she again agreed), and had the same "tone and demeanor" as he had during the Sunday coaching session. This amounted to egregious witness tampering.

Last, the unrefuted evidence establishes beyond a reasonable doubt that
President Clinton obstructed justice by giving a false account of his relationship with Ms. Lewinsky to aides that, by his own admission, he knew might be called by the grand jury. John Podesta, then-Deputy Chief of Staff to President Clinton, testified before a 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 denied 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 said she had an affair. She threatened him. She said that she wouldn't be a stalker any more."

I did not vote to convict President Clinton on that basis. The videotaped testimony of Ms. Lewinsky 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 subpoenad gifts from President Clinton to Ms. Lewinsky were found underneath Ms. Currie's bed. The evidence tends to establish that President Clinton directed Ms. Currie to get gifts from Ms. Lewinsky; however, I cannot say that the proof establishes beyond a reasonable doubt that this occurred. In the absence of hearing directly from Ms. Currie as a witness on this issue and having the chance to look her in the eye and gauge her credibility, I cannot resolve beyond a reasonable doubt the testimonial conflict between Ms. Lewinsky and Ms. Currie on the return of the gifts. The weight of the evidence suggests that Ms. Currie initiated the return on instructions from President Clinton; however, without Ms. Currie's testimony, I cannot say that case has been proven "beyond a reasonable doubt.""

For this reason, I am disappointed that the Senate chose to cut itself off from hearing from whatever fact witnesses either side wished to call. I voted to allow live testimony, but the motion was unsuccessful. Although there was ample evidence upon which to convict for many allegations, some allegations remain in doubt. Rather than have a traditional trial, we listened to lawyers argue, then argue some more. 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 that the present case did not establish a sufficient evidentiary link between President Clinton and Ms. Lewinsky to establish an intent to obstruct justice.

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 a 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 that ground present before the House Managers. For example, though I was concerned that the intensification of efforts to secure Ms. Lewinsky a private sector job was undertaken to influence her testimony (and secure a false affidavit from her), I had reasonable doubt that there was a sufficiently direct nexus between the two to justify finding against President Clinton on that basis. The videotaped testimony of Ms. Lewinsky 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."
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, as the Hippocratic Oath begins, a medical student first took an oath that he would become a physician. In January 1995, I 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 in our impeachment trial. Raising your right hand and swearing before God is meant to be serious business. Swearing falsely is equally serious. I recall the conclusion of the Hippocratic Oath:

If I fulfill this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.

President Clinton broke his oaths; the opposite of honor and fame should be his lot.

Many of my colleagues have publicly expressed the fear 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, knowing 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 unfortunates who have learned 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 conscience.

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 clearly of no concern to the public or the Senate. None of us knows how many of our highest callings. Years ago, as the Hippocratic Oath begins, a medical student first took an oath that he would become a physician. In January 1995, I 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 in our 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:

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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 under oath to the grand jury when he testified about the nature of his relationship with Miss Lewinsky.

And the Constitution does not give us much wiggle room when it comes to choices. The Framers were pretty explicit about out options. If we determine that the President is guilty of the charges as outlined in the two Articles of Impeachment, the penalty is removal from office. We have no other choice.

Because we are all political animals, I think it is natural that the legitimacy of this process and the outcome of this debate will be clouded to some degree by the perception that it is a partisan exercise.

Many of the President's defenders and many of our friends in the media, in fact, have insisted all along that the whole process has been driven by partisan Republicans who are intent to 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 not let ourselves be deterred from doing what we feel is right simply to avoid charges of partisanship.

So, hiding behind the charge that the process has been tainted by political partisanship gives us no relief from our responsibility to look at the facts nor does it change our 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 those 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 and he must be removed from office. Censure is not an option.

I would rather be speaking about Social Security but I wasn't given a choice in the matter.

I would prefer to vote to convict any President of Articles of Impeachment. But I don’t have a choice in that matter either.

If he is guilty, he must be convicted.

And I believe he is guilty as charged.

The Constitution doesn’t really give us that kind of choice. If the President is guilty of these charges, he must be convicted and he must be removed from office. Censure is not an option.

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February 12, 1999

CONGRESSIONAL RECORD – SENATE
S1531

ROPER. I’d cut down every law in England to do that; MORE. Oh? And when the last law was down, and the Devil turned round on you—where, Mr. Roper, the hell would you stand flat? This country’s planted thick with laws from coast to coast—Man’s laws, not God’s—and if you cut them down—and you’re just beginning to talk—do you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own safety’s sake.

Sir Henry B. Fessenden remind us the law must be followed not only by the accused but also by the accusers.

And every day in America many who are accused of crimes are released because this government has violated their constitutional rights—denied them due process—forksaken the rule of law.

How American of us—we are prepared to release an accused because the accuser has not played by the rules * * * the rules of law.

The House managers built their case on one key question: Did the President respect the rule of law?

But the same managers who exalted the rule of law from their opening words would have us ignore the process which brought us to this moment:

An independent counsel in name only whose conduct before the House Judiciary Committee led Sam Dash, former Watergate counsel and Mr. Starr’s ethics advisor, to resign in protest.

Listen to Dash’s words to Kenneth Starr in his letter of resignation concerning Starr’s appearance and testimony:

In doing this you have violated your obligation under the Independent Counsel Statute and have unlawfully intruded on the power of impeachment, which the Constitution gives solely to the House. . . . By your willingness to serve in this improper role (advocating for impeachment) you have seriously harmed the public confidence in the independence and objectivity of your office.

Much has been made about the so-called ‘‘political’’ witch hunt, some House Democrats held for President Clinton at the White House after the impeachment vote. If you wonder how those members could act in such an apparently partisan manner after the historic vote on December 19, 1998, I hope you will recall that the Republican members of the House Judiciary Committee gave Mr. Starr nothing less than a standing ovation when he completed testimony which Mr. Dash characterized as ‘‘unlawful’’ and ‘‘improper’’.

Is it any wonder why the American people think this whole impeachment process reeks of partisanship and the excesses of the Independent Counsel have created a bipartisan sentiment to amend or even abolish that statute?

Did Mr. Starr respect the rule of law?

And the House Judiciary Committee—so anxious to complete its work in a lame-duck session that it would vote for impeachment by calling a single material witness. Then those same managers came to the Senate and argued justice cannot be served without live witnesses on the Senate floor.

When I listen to Paul Sarbanes recount the painstaking efforts to avoid partisanship during the impeachment hearing on President Nixon, it is a stark contrast to the committee process which voted these articles of impeachment against President Clinton.

Did the House Judiciary Committee respect the rule of law?

And the House of Representatives, an institution which I was proud to serve for 14 years, was so hellbent on impeachment that its own chief prosecutor, the House managers, refused the House a vote to censure the President so the Majority would have a better chance to visit the dis grace 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 subject—too easy to discard the fruit of this process.

Justice and history will not give us this easy exit. We must ignore the birthing of this impeachment and judge it on its merits.

First, let me stipulate the obvious. The personal conduct of this President has been disgraceful and dishonorable. He has brought shame on himself and his Presidency. No one—not any Senator in this Chamber nor any person in this country—will look at this President in the same way again.

I have known Bill Clinton for 35 years. I remember him as a popular student when we both attended Georgetown. And I know despite all of the talk about ‘‘compartmentalization’’ that this man has suffered the greatest humiliation of any President in our history. I hope his marriage and his family can survive it.

But our job is not to judge Bill Clinton as a person, a husband, a father. Our responsibility under the Constitution is to judge the actions of the President, not whether he should be an object of scorn but whether he should be removed from office.

Did William J. Jefferson Clinton commit perjury or obstruct justice, and for these acts should he be removed from office?

When this trial began I believed that President Clinton’s only refuge was in a strict reading of ‘‘high crimes and misdemeanors’’—that James Madison, George Mason and Alexander Hamilton, the Federalist founders, would have to serve as his defense team and save this President from removal.

The managers’ case was compelling, but as the defense team rebutted their evidence I saw the charges of perjury crack, obstruction of justice crumble and impeachment collapse.

The managers failed in Article I on perjury to meet the most basic requirement of the law: specificity. In the Andrew Johnson impeachment trial, Senator William Fessenden of Maine pointed out the unconstitutionality of failing to name specific charges:

It would be contrary to every principle of justice to the clearest dictates of right, to try and condem any man, however guilty he may be thought, for an offense not charged, of which no notice has been given to him, and against which he has had no opportunity to defend himself.

Senator Fessenden understood the rule of law.

And by what standard should the President be judged?

When the House managers discussed the gravity of the case for impeachment, they said repeatedly: ‘‘There are crimes.’’ But when asked why they failed to meet the most basic criminal procedural requirements of pleading and proof, Mr. Canady said: ‘‘This proceeding is not a criminal trial.’’

And what is the difference between charging a crime and proving something less than a crime? The difference is known as the rule of law—a rule which requires fair notice and due process whether the accused is President or penniless.

How many times have we seen the House managers run into the brick wall of sworn testimony contradicting their charges. On gifts—Monica Lewinsky said hiding them was Betty Currie’s idea—Betty Currie claimed it was Lewinsky’s idea—neither of them claimed it was the President’s idea. On the affidavit issue—the House Managers could not produce one witness—not Lewinsky, not Jordyn and not the President to support their charge of obstruction.

Time and again the House managers failed to prove their case—failed to produce testimony or evidence and at best played to a draw. I don’t need to remind my colleagues in the Senate that playing to a draw on this field comes down in favor of the President.

The House managers failed to meet their burden of proof. And let me say a word about witnesses.

We have spent a lot of time on this issue. I do not know who came up with the limitation of three witnesses for the managers. But is there anyone in this chamber who believes that Sidney Blumenthal was a more valuable witness to this case than Betty Currie? Surely my colleagues in the Senate remember that the House managers spent three solid days building their obstruction of justice case on concealing gifts and tampering with witnesses. And Dr. Kur, Dr. Kur, was critical to the most credible charges against the President.

Then when the House managers were given a chance to call this key witness, they refused.

And what can we conclude from this tactical decision? Let me read Rule 14.15 from Instructions for Federal Criminal Cases.

If it is peculiarly within the power of either the government or the defense to procure a witness who could give relevant testimony on an issue in the case, failure to call that witness may give rise to an inference that this testimony would have been favorable to that party. That conclusion should be drawn by you, however, with regard to a witness who is equally available...
to both parties or where the testimony of that witness would be merely cumulative.

The jury must always bear in mind that the law never imposes on a defendant in a criminal proceeding or duty of calling any witnesses or producing any evidence.

Betty Currie was no help to the House managers in her deposition and they clearly concluded she was more likely to hurt than help their case if called as a witness. The key witness in the obstruction of justice charge never materialized and neither did the proof the House managers needed.

How will history judge this chapter in our history?

The House managers and many of my colleagues believe an acquittal will violate the basic American principle of equal justice under the law—they argue that acquitting the President will weaken the Presidency—and imperil our nation and its values.

I have heard my colleagues stand in disbelief that the American people could still want a man they find so lacking in character to continue as their President. William Bennett and his pharisaical followers have profited from books and lectures decrying the lack of moral outrage in our nation against Bill Clinton.

I hope my colleagues will pause and reflect on this conclusion that the American people have somehow lost their moral compass—that the polls demonstrate our people have lost their soul—and that we, their elected leaders, have to impeach this President to remind the American people of the values—the integrity—the honor which is so important to our nation.

May I respectfully suggest that those who appoint themselves as the guardians of moral order in America risk the vices of pride and arrogance themselves. Before we don the armor and choose our side in what Manager Hyde calls "a war," let us not give up on the wisdom and judgement of the people we represent.

Like Abraham Lincoln, I am a firm believer in the American people. If given the truth they can be depended upon to meet any national crisis.

And the American people have this right. The President’s personal conduct was clearly wrong. He has endured embarrassment and will spend the rest of his natural life and forever in the annals of history branded by this experience. The people clearly believe that the process which brings him before us in this trial was too partisan, too unfair, too suspect.

What has occurred here is a personal and family tragedy—it is not a national tragedy which should result in the removal of this President from office.

In 1798, Thomas Jefferson wrote to James Madison: “History shows that in England, impeachment has been an engine more of passion than justice.” Jefferson feared that even our process for impeachment could become a formidable partisan weapon. He feared that a determined faction in Congress would use it “...for getting rid of any man whom they consider as dangerous to their views, and I do not know that we could count on one-third in an emergency.”

In 1868, with the suffering and death of our Civil War still fresh in everyone’s mind, this Senate came within one vote of impeaching a President who was viewed as too sympathetic to the vanquished South.

In 1993, with years and millions of tax dollars spent in investigation of this President, I believe the Senate will once again cool the political passions, preserve the Constitution, protect the Constitution, and prove to Thomas Jefferson that his trust in this body and that great document was not misplaced.

I will vote to acquit William J. Jefferson Clinton on both Articles of Impeachment and support a strong resolution of censure to bring this sad chapter in American politics to a close.

Mr. KYL. This case is about the rule of law—specifically, whether actions and statements of President Clinton in federal civil rights cases have done such harm to the rule of law that he should be removed from office. I conclude in the affirmative, and reluctantly vote to convict on both Articles of Impeachment.

Chairman Newt Hynde observed that the House of Representatives had come to the Senate “as advocates for the rule of law, for equal justice under law, and for the sanctity of the oath.” (145 Cong. Rec. S221 (January 14, 1999).)

These are my words.

The rule of law refers to our judicial process, which is governed by uniform standards and procedures that we say will always be guaranteed and applied fairly and equally. We are willing to submit ourselves to this process because we have worked hard for 210 years to ensure that it produces impartial justice for all.

Equal justice means that each of us, including the least among us, has rights that the state is bound to protect; and it surely includes the requirement that those who make the laws (including the President) must live under them like anybody else.

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 so important that its violation is itself a crime.

I believe there are two questions to be answered.

The first is whether the President's conduct impressively took the law into his own hands and failed to uphold a federal 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 in the affirmative. The President “wilfully 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. Executive 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 charge of perjury is not always 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 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 effectually foreclosing other discovery, and by precluding “live” testimony—it would be unfair to impose a “beyond reasonable doubt” standard.

The President’s counsel argued that the Senate should not consider Article I because the House of Representatives defeated a perjury count relating to the Jones civil action. But Article I also included allegations of “perjurious, false, and misleading” statements in the Jones case; so the argument is meritless. Moreover, the President’s falsehoods in the Jones civil suit also form part of his strategy to obstruct justice.

What is striking about this case is the President’s persistent, sustained, carefully calculated, deliberate, and callous manipulation of the judicial process for over a year.

Without attempting to summarize all of the evidence, I conclude that the President lied before the federal grand jury about (1) the nature of details of his relationship with Ms. Lewinsky; (2) his assertion that he told the truth in the Jones deposition; (3) the false and misleading statements that he allowed his lawyer to make to a federal judge
in the Paula Jones civil case; and (4) his corrupt efforts to influence the testimony of his aides who were potential grand jury witnesses.

And it seems clear to me that the President obstructed justice—that he corrundered Ms. Lewinsky and Ms. Currie to make false and misleading statements about the affidavit; (6) attempted to influence the testimony of his secretary, Ms. Currie; and (7) attempted to influence the testimony of other aides.

The final question is whether the President should be removed for his actions.

As a preliminary matter, there can be no doubt that perjurious, false, and misleading statements made under oath in federal court proceedings are indeed impeachable offenses. The fact that the House of Representatives reached this conclusion, of course, establishes the precedent as to the kind of conduct in this case. But, it is also confirmed by the impeachment and conviction of several judges—of Judge Harry Claiborne, removed in 1986 for filing a false income tax return under penalty of perjury, of Judge Walter Nixon, removed in 1989 for perjury before a grand jury, and of Judge Alcee Hastings, removed in 1989 for perjury related to financial misconduct. I cannot agree with those colleagues who assert that there is a different standard for a President—that it would require a more egregious kind of perjury to remove a President than a judge. Nothing in the Constitution suggests such a double standard.

John Jay, the first Chief Justice of the United States, said “there is no crime more extensively pernicious to society, more pernicious, precisely because 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 Circuit: 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 of impeachment, precisely because 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 Circuit: 1790-1794, at 253, 255 (Maeva Marcus ed., 1988.).

Surely the violation of constitutional obligations to constitute high crimes or misdemeanors for which the President may be impeached. And surely, such violation would constitute an abuse of trust by the Chief Executive.

By his oath of office and Article II responsibilities, President Clinton is supposed to see that the sexual discrimination was properly executed. But he thought the Jones case was illegitimate, so he took the law into his own hands. His conduct in this case clearly violated his public duties, his oath, and the public trust. And it interfered with the proper functioning of another branch of the government.

The same is true for his deliberate efforts to impede legitimate discovery efforts in federal court proceedings. Such action “is incompatible with . . . the constitutional form and principles of our government,” as the 1974 House Judiciary report said. It simply cannot be that a President who wrongly interfered with the investigation of an other branch of our government by attempting to subvert justice in federal court proceedings cannot be impeached because he did not do it as President, but, rather, as a citizen.

That the underlying conduct covered up was sexual, is, if anything, an aggravating not a mitigating factor. In sex-discrimination litigation, where there is frequently no corroborating for the plaintiff, a defendant who lies can easily subvert justice. Had the blue dress not been found, with its incontrovertible tangible evidence, I doubt Paula Jones would have gotten a dime in settlement.

Judgments about the severity of the impeachable conduct in this case will lead different Senators to reach different conclusions. That is why some of us are willing to say reasonable people can differ. For those who fear the long-term consequences to the rule of law, however, I believe that there is only one result. Anyone who so willingly, 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 covetousness is no longer worthy of trust—which all agree is essential to the conduct of his office—but also must be removed to avoid the perpetuation of a legal double standard. If federal judges (such as judges Claiborne, Nixon, and Hastings) are removed for similar conduct; if average Americans are imprisoned for it, can the rule of law long survive “special exceptions” for powerful people we like, or who are doing a good job, or who hold elective office? Any of these rationalizations are defenses to illegal or impeachable conduct.

As I said, sexual harassment cases are precisely the kind of judicial proceedings that demand the maximum cooperation of and truth-telling by the defendant, because of the lack of third-party witnesses or corroborating evidence. In these cases, justice is denied if obstruction, witness tampering, or perjury prevent the truth from coming out. Can anyone say this is not serious? To what standard of seriousness does it not rise? How many plaintiffs will have to lose their sexual harassment, domestic violence, or sexual assault cases because defendants lie and obstruct justice (and there is no blue dress to keep them honest) before it becomes serious?

An acquittal in this case will make it harder to deal properly with similar conduct in the future. We will be hard pressed to perpetuate a double standard, so the lowest common denominator of conduct will be established as the permissible norm. And this cannot help but weaken the ability of courts
to enforce truth-telling and prevent obstruction of justice.

The precedent set by this case may not change the law overnight, but this unforgettable episode is now part of the institutional life of our country. The court perversely subjected the President to questioning and remained in power. The lesson is corrosive. Like water dripping on a rock, it eventually makes a deep hole in the American justice system.

It is true the President could be sent to jail. But it is also true that it is his right to appoint judges and be head of U.S. law enforcement now? How does that square with his leadership of the armed forces right now, as our Commander-in-Chief? Should the standard for the President not be at least as high as for those who 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 say that the President has to do something about it that does not leave it stand. And under our Constitution that means removal of the President through conviction on the Articles of Impeachment.

He elsewhere described the House case by warning that public cynicism is the greatest threat we face. Our failure to remove the President will only fuel the cynicism of Americans such as Louie Valenzuela of Glendale, 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 doing the right thing,” said Mr. Valenzuela. “But they always look the other way when someone rich, famous or powerful does something wrong. Look at O.J. Simpson. Clinton will be next. Asi es. That’s just the way it is.”

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That is not the way it has to be. But how it is, is up to us.

Mr. SPECTER, Mr. Chief J ustice, colleagues, a great deal has been spoken in the Chamber about separation of powers and tomes has been written on it. And in reading the Constitution, article I, creating the Congress; and article II, the executive branch; and article III, the judiciary, we have seen the wisdom of limiting power.

The one provision of the Constitution—the impeachment provision—reaches across that divide. It is my thinking the Congress can exercise the power of removal, there has to be a very, very heavy burden of proof.

I had occasion, fairly recently, to go very deeply into the issue of separation of powers when I argued the Base Closing Commission case regarding the Philadelphia Navy Yard case, which was unfairly closed—a subject that I will not amplify on—and I had an opportunity to appear before the Supreme Court, which ended on time. As I did on both two speeches, will say that the Chief Justice is a good deal more tolerant here than in the Supreme Court. In the Supreme Court, I was cut off in mid-syllable. I didn’t know that was possible. But with the forcefulness of the Presiding Officer, I did not do well in that case.

I had done better on my previous appearances in the Supreme Court when I was representing the district attorney’s office in the Philadelphia Navy Yard case. But that sojourn into that case brought me into 200 years of reflection and analysis on case law on separation of powers, something that is not often done. But the blurring of power is certainly not Senators. It instilled in me a very, very deep appreciation of separation of power.

So when I approached this case—and it has been the toughest case I have ever seen, and I think it has been a very, very intense drain on this body and all of us individually—the focus I had was, What is the burden that you ought to have to show if the Senate is going to remove a President? As I reviewed the evidence, I am not satisfied at all that I met.

The definition of perjury is a very tough one by the Supreme Court of the United States in the famous case called Bronston. Bronston was giving testimony in a bankruptcy proceeding in New York about bank accounts in Zurich, and said, “My company had a bank account for about 6 months,” leading to the implication that he did not have a personal bank account when in fact he did. He was convicted in a New York State court, but reversed by unanimous Supreme Court because the interrogator, the prosecutor, has to go further. You have to ask the last questions.

And the President was very artful, very careful, and full of guile as he would his way through the grand jury proceedings. We heard the testimony again and again. The President said he told his aide. “I told them things that were true.” Well, he didn’t comment on the 12 days of cross-examination. He did tell 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 rambbling 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?” to give him a chance to perjure himself on that. When asked about Monica Lewinsky—was he alone with her—on a series of rambbling 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?” to give him a chance to perjure himself on that. When asked about Monica Lewinsky—was he alone with her—on a series of rambbling 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?” to give him a chance to perjure himself on that.
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 end, 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 saw 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, whatever a judge would have to say. I am still hopeful that the rule of law will be vindicated in that process.

We obviously have learned much from this proceeding. It is my hope that we will leave a mark to guide future Senators if we ever have to repeat this very, very tryng sort of an experience.

Mr. Chief Justice, I ask unanimous consent that a full text and exhibits A, B, and C be included in the Record as if read on the Senate floor.

The removal of an American president through impeachment carries a high burden of proof and persuasion. For conviction in the criminal courts on charges of perjury and obstruction of justice, the proof must be beyond a reasonable doubt. An extra measure of certainty is necessary to persuade the Senate that the national interest mandates invoking the extraordinary remedy of removing the President.

The question here is impeachment for removal.

The starting point is Article II, Section 4 of the Constitution:

The President ... shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.

From that language, there is reason to interpret "other High Crimes and Misdemeanors" as relating back to specific categories of offenses earlier enumerated, such as "Treason and Bribery." That is too simplistic, as the precedents and commentators have argued.

Nor do I agree with the simplistic definition that perjury and obstruction of justice, being felonies and therefore more serious than misdemeanors in the criminal law, are automatically impeachable offenses.

The Framers did not foresee the circumstances before us. The omission of "perjury" and "obstruction of justice" from the enumerated offenses probably reflected the Framers' thought that it would be highly improbable that President Clinton 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 offenses (sic) which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

From Hamilton's statement, the conventional wisdom has evolved that impeachment is essentially a political question. The Framers, cases and commentators have not articulated a hard definition for "high crimes and misdemeanors."

Whether to impeach and convict transcends the facts and law to what is in the national interest at a specific time in the nation's history on the totality of the circumstances.

Consideration of the national interest may include whether there is a clear and present danger to the integrity or stability of the national government; or whether the conduct is so vile or deplorable as to establish unfitness for office; or whether the electorate has lost confidence in the President to the extent that he cannot govern.

The precedents and commentaries leave substantial latitude for Senators to establish their own standards. The ultimate definition may be analogous to Supreme Court Justice Potter Stewart's struggle to define obscenity when he concluded: ... perhaps I could not succeed in defining it myself. 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 be bipartisan, some Republicans bore the brunt of the public disdain on the partisan charge. It was more than the party line votes. The whole process was filled with rancor, acrimony and bitterness which contributed significantly to the public view that it was all politics without real 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 when a Republican as well as Senators Goldwater and Scott joined Democrats in urging his resignation.

In an early Sunday TV talk show on December 20, 1998, a 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 John Cornyn 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 two-thirds. My colleagues, Republicans, who would put the matter to a vote.

The trial balloon was abandoned when 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
Kenneth Starr’s jurisdiction to include the Lewinsky matter. In mid-January 1998, contemporaneously with the Attorney General’s action, I commented that the public would suspect a vendetta on the part of Judge Starr because there had been so many apparently futile investigations going on for so long. This was not a criticism of Judge Starr, but an inevitable public reaction. The public’s suspicion of Judge Starr carried over to impeachment proceedings. When I challenged Attorney General Reno in the Judiciary Committee oversight hearing on July 15, 1998 about why she acted to expand Judge Starr’s authority, she refused to answer the question saying only: “The application speaks for itself, Senator.”

The failure of the House to call witnesses during their hearings injected a Trojan Horse into the Articles. The House had good reason not to call witnesses because Judge Starr’s work before the 105th 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. The Senate Democrats had the advantage of being out-of-office. Notwithstanding the serious implication of the Lewinsky matter, and their party line votes followed 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.

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.

ARD PUBLIC REACTION

From the time the Senate reconvened on January 6, 1998, 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. If the Independent Counsel, they argued, had not been the object of widespread derision, the House Managers would have put their case with a full White House defense rather than the helter-skelter procedures adopted by the Senate.

LAWYERS’ ARGUMENTS INSTEAD OF TESTIMONY

Instead of hearing testimony from live witnesses, the Senate listened to twelve days of lawyer’s arguments. Six Republican senators gave their 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 already on the record. Two more days were spent arguing the motion to dismiss and the resolution on deposition witnesses where the lawyers essentially repeated earlier arguments with an additional day for votes on those issues. Limited time was not seen as the most contentious issue of the trial as billing and stickers went 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 Lewinsky and lascivious testimony was answered by the commitment of the House Managers to avoid such testimony. The arguments 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 position, but the Senate is duty bound to “try” the case as mandated by the Constitution and do “impartial justice” as the Senators’ oath specified.

I was one of three Senate presidens/designated by Senator Lott, the Majority Leader, for the depositions of Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. Observing these live depositions 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 Senator-jurors did not utilize that opportunity to observe all the videos.

Ms. Monica Lewinsky was a very impressive witness: poised, articulate, well-prepared. Seeing her testify in person, I understand why the President has wanted 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.
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. For the most part, those arguments 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 cameo appearances raised more questions by far than they answered. As expected, the President was exceptionally well prepared on the law and exceptionally adroit and manipulative on the facts or, more accurately, on evading the facts.

The law on perjury is set forth in the case of Bronston 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 question did not press for a specific answer on whether the company had an account in addition to the one responded to by Bronston.

Utilizing the holding in Bronston to the utmost, the President couched his answers with great care relying on the questioner not to pursue the unanswered issues. For example, the President did not deny lying to his aides, but rather evaded the question and answered issues. For example, the President did not press further to get a specific answer on whether the company had an account in addition to the one responded to by Bronston.

The President responded, “I don’t believe we were alone when they had eleven sexual encounters either in the President’s 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 don’t believe we were alone in the hallway, no.”

The President again gets away with quietness and listening to his lawyer. 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. A videotape of his deposition shows the President sitting quietly and listening to his lawyer.

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?

With so many other questions submitted, this one was not asked. During the trial, White House Counsel said the President would respond to written questions, but that offer was rescinded.
On January 25th 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 where the Senate could have considered exercising the political will to ask, let alone compel, the President to leave the Oval Office for a day or a few days to testify at his impeachment trial or even to give a deposition, how could the Senate be expected to exercise the much greater political will to remove the President from office?

In her civil lawsuit, Paula J. Jones had been able to compel the President to give a deposition. In the grand jury investigation, the Independent Counsel, in effect, compelled the President to testify. Why, then, shouldn't the Senate exercise its commensurate power in an impeachment proceeding to obtain the President’s testimony when there were open questions?

In my legal judgment, the Senate has the power to subpoena the President. (My memorandum to Senator LOTT dated December 10, 1998, attached as Appendix B, discusses the Senate’s legal authority to subpoena the President and I'm sorry I don’t remember when it was submitted.) 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 testify. Why, then, shouldn’t the Senate exercise the commensurate power in an impeachment proceeding to obtain the President’s testimony when there were open questions?

In my legal judgment, the Senate has the power to subpoena the President.

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 Perlman, 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 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 witness tampering would have had to be part of that. The House Managers raise no such contention.

An important piece of evidence on this issue was the uncontradicted testimony of Monica Lewinsky that she intended to deny her relationship with the President from the outset before she was subpoenaed or the President coached her or Vernon Jordan helped her get a job.

LIMITATIONS ON THE HOUSE MANAGERS

The signals to the House Managers from the Senate were unmistakable that the Senate was unlikely to approve depositions if the list was too long. Responding to that advance notice, the House Managers submitted only three names for depositions necessarily leaving off potentially important witnesses like Ms. Currie. Given the absence of live witnesses and limitations on depositions, the House Managers have been compelled to rely on transcripts from questioning by the Independent Counsel in grand jury proceedings. Those transcripts have left many key issues unresolved.

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 opened on the ground that my oath to do "impartial justice" was in jeopardy by interviews on the day's proceedings which might conflict with my juror's functions. Again, oddly, on the occasions when Senators were permitted to speak on the Senate floor on the motion to dismiss and the resolution on depositions, the sessions were closed so 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, coroner's inquest may be found on the CNN or MSNBC files, but there will be no Senate videotape to record what could be important Senators' views.

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 was a simpler 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 our society. However, I remain unconvinced that impeachment is the best course to vindicate the rule of law on this offensive conduct. President Clinton may still be prosecuted in the Federal criminal courts. His lawyers have, in effect, invited that prosecution by citing it as the preferable remedy to impeachment.

A criminal trial for the President after his term ends may yet be the best vindicator for the rule of law. If the full weight of the evidence with live witnesses had been presented to the Senate instead of bits and pieces of cold transcript, it is possible that the Senate and the American people would have demanded the President's appearance in the well of the Senate. Under firm examination, the President might have displayed the egregious character described harshly by his defenders in their proposed censure petitions. That sequence might have led to his removal.

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. I view this trial, if this trial, I suspect that many Senators would choose "not proven" instead of "not guilty".

That is my verdict: not proven. The President has dodged perjury by calculated evasion and poor interrogation. Obstruction of justice fails by gaps in the proofs.

Many Senators have sought to express their gross displeasure by findings of fact or censure. I reject both. The Constitution says judgment. In cases of impeachment, shall not extend beyond removal and disqualification from future office. Under the crucial doctrine of separation of powers, the Congress is not and should not be in the business of censuring any President. We are properly in the business of examining our own conduct as Senators. On that score, on the record of this "pseudo-trial", it is my view that the Senate failed to meet its constitutional mandate to "try" this case.

I ask unanimous consent that Appendices A, B and C be printed in the RECORD.

There being no objection, the appendices were ordered to be printed in the RECORD, as follows:

APPENDIX A

When the Republican and Democratic caucuses could not agree on the preliminary procedures and witness issue, including depositions, a vote was set for late afternoon on January 7th. That vote was canceled in an effort to achieve a bipartisan compromise. A joint caucus was then held in the Old Senate chamber at 9:30 am on January 8th where the outline of a procedural agreement was reached to try the first stage without resolving the witness or deposition issues, but deferring them until we knew more about the opposing parties' cases.

While a resolution of agreement was being drafted in the early afternoon fleshing out the compromise, Senator Lott asked Senator Kyl, Senator Sessions and me to explore the case to determine what witnesses, if any, the Senate should hear for that first stage without resolving the witness or deposition issues, but deferring them until we knew more about the opposing parties' cases.

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In an effort to carry out a bipartisan 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 doing a witness trial and that the majority 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 witness list as they saw it, for specific witnesses.

I called White House Counsel Charles Ruff on January 12th advising him of
the meeting with House Managers stat-
ing that Senators KYL, SESSIONS and I were interested in meeting with the President's attorneys. Mr. Ruff called back on January 13th declining the in-
vitation.

On January 25th, in advance of con-
sideration of Senator BYRD's motion to dismis-s Senator LOTT's resolution on taking depositions, Senator LOTT requested Senator KYL and me to talk again to House Managers to determine how many witnesses they would need and for what purpose. Senator LOTT had extended an invitation to join in those discussions to Senator DASCHLE who declined. Before that meeting was held on January 25th, I advised Senator LIEBERMAN of the scheduled meeting and told him Senator DASCHLE declined Senator LOTT's invitation.

Between our January 11th and January 25th meetings with House Managers, there had been numerous public com-
ments by Republican Senators opposing many of the House Managers' positions, with some expressing possible opposi-
tion 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 more votes for a lengthy wit-
ness list.

In arguments before the full Senate, House Managers complained about the limitations on deposition witnesses and expressed their interest in calling live witnesses if they were available. In his letter to the Constitution, Senator DASCHLE expressed concern about the practical precedents with some expressing possible opposi-
tion 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 more votes for a lengthy wit-
ness list.

Late in the evening on January 26th after closed-door Senate debate on call-
ing witnesses for depositions, Senator CARL LEVIN and I discussed a bi-par-
tisan compromise. We continued that discussion early the next morning and presented our views to our respective caucuses on January 27th. While Sen-
ator 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 depo-
sitions of only three witnesses.

For the balance of the afternoon of January 27th and all day on the 28th, there were strenuous efforts to agree on deposition procedures. Democrats were adamant that the depositions should not be videotaped; or, if videotaped, on the commitment that they would be viewed only by Senators and limited staff. Republicans insisted that the depositions should be videotaped, while the Senators and I agreed with the Republicans on the videotaping of the three deposed wit-
nesses. The amendment was adopted to videotape the deposi-
tions after the defeat of Senator
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bound by traditional rules of evidence so
that we might consider matters not admissi-
ble in a court of law, it would seem question-
able or appear unseemly to base our judg-
ment exclusively on hearsay on such an im-
portant proceeding.

The provisions of Article I, Section 3, Clause 7 carry forward the analogy of trial referred to in Rule 17. A motion to adjourn in cases of impeachment shall not ex-
tend further . . .” (Emphasis added).

The Senate Rules on Impeachment further contem-
plate, although do not necessarily mandate, a proceeding with live witnesses and opportunities for the examination and cross-examination of such witnesses. For in-
stance, Rule 6 provides that: “The Senate shall have power to compel the attendance of wit-
nesses. . . .” Rule 17 provides that: “Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side. . . .

Although the Rules never explicitly give the parties the right to call witnesses, the language “on behalf of the party producing them” in Rule 17 implies that the parties do have such a right. The practice of the Senate confirms that the parties have the right to call witnesses. For example, in the trial of Andrew Johnson, wit-
nesses were called and heard over a period of one week. In the trial of Alcee Hastings, both sides were allowed to call a total of 55 witnesses.

The foregoing analysis does not conclusively rule out the propriety of proceeding on the Starr Report.

The House of Representatives relied upon the Starr Report for the facts even though the practice of the House in prior impeach-
ment hearings has been to take testimony from witnesses. “Hinds’ Precedents of the House” notes: “The House generally hears witnesses in the impeachment hearings on Senator Blount and Judge Perry. More recently, during the House deliberations on the impeachments of President Nixon, Judge Cline and Judge Nixons, prominent witnesses were called to lay a factual basis for the impeachment charges. In the case of Judge Nixon alone, witnesses provided testi-
mony to the House committee for over a month.

As a practical matter, it is obvious the House did not take the time to hear wit-
nesses because the House proceedings were structured to finish in the abbreviated time frame of November 3rd and the end of the year. Starting in mid-No-


To: Senator Trent Lott, Majority Leader.
From: Senator Arlen Specter.

Supplementing my memorandum of December 21 and our telephone conversation of December 22, this memo suggests procedures to deal with the Senate trial in light of the public dissatisfaction with the House pro-
ceedings on impeachment generally and ways to achieve a judi-
cious, non-partisan Senate trial. Since this memorandum was written while I have been traveling, the rules and case citations could be checked only by long-distance telephone.

If the Senate returns Articles of Impeach-
ment, the Senate should proceed with a dig-
tective trial. Perhaps the public will have a similar change of heart.

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ment, the Senate should proceed with a dig-
tective trial. Perhaps the public will have a similar change of heart.

The Senate prides itself on being the world’s greatest deliberative body. This trial will be by far the highest visibility for the Senate in its history to date and for the fore-
seeable future. While the President will be on trial, the Senate will be on trial.

Appendix C

The Senate would be under greater pressure to
finish at an early date which accounts for the call for short-circuiting the trial through a plea-bargained censure. It is obviously in the national interest to end the trial as soon as possible without rushing to judgment and it would doubtless meet with public approval to announce at the outset a plan to accom-
plish that.

Several steps could be taken to abbreviate the trial time:

1. Organize the House Managers’ case, with input from the Senate, to focus on only the key witnesses and indispensable lines of questions; and
debate establish long trial days and Saturday sessions.

Without management and limitations, the lawyers could take a long, indeterminate time on the House trial, thus this trial could be managed by having the parties submit pre-trial memoranda which
would identify any pre-trial motions, list prospective witnesses and lines of questions, etc., and approximate the time involved at each stage.

Each judge 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. Individually for ourselves what is the burden of proof and what evidence on what conduct is sufficient for a guilty verdict.

The Senate will be proceeding without precedent on most issues. The Senate has broad latitude as noted by the Supreme Court of the United States in the case of Judge Nixon where the Court held the Senate had authority to establish its procedures under the Impeachment Clause. This case and these times call for a more activist approach by the Senate than prior impeachment trials. While it was not inconvenient or problemsome to allow the House managers to call witnesses for the House managers and President’s lawyers on what the Senate wants to hear, taking into consideration any differences with the House managers which could then be worked out.

Arguments in appellate courts customarily take the form of the appeals judges focusing on the questions they want addressed by counsel as opposed to having the lawyers decide how to use their allotted time. It would be a better approach for the Senate to have a nonpartisan trial which could 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 between 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 a better approach for the Senate to have a nonpartisan trial which could gain public acceptance. So, all significant procedures must have the concurrence of most Senators from both parties.

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 Senate to have a small 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 court had a minimum trial day established from 9:30 am to 5 pm. Senate Impeachment Rule 3 provides for Saturday sessions in impeachment trials. In my view, the so-called double trouble with the Senate sitting half days on the trial and half on other Senate business, there is too much legitimate public concern to have the trial end expediently and 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 recess and having the Senate sit, by which we would likely produce significant public approval.

The importance of live witnesses

I strongly recommend live witnesses on the key issues also to prohibit against use of hearsay such as the Starr Report. Prior impeachment cases establish the precedent for live witnesses and the Senate should make its own rules for live witnesses. Live witnesses have customarily testified in House impeachment proceedings. In the Senate, for example, live witnesses testified in the Senate’s investigations 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 micro-scope both contemporaneously and historically. While it is a sweeping generalization, I think it is fair and accurate to say that no trial in history to date has been or will be so closely watched.

We have some gauge as to how closely this trial will be scrutinized from the work of the Warren Commission which has been the most closely watched trial in history. Notwithstanding constant pressure from Chief Justice Warren, who wanted the inquiry concluded at an early date, the staff lawyers insisted on extended tests and extensive interrogation knowing the record would be closely examined. At that time, we couldn’t conceive of the extent of the scrutiny, but we did have some hint 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 the key evidence is; all the indispensable lines of questioning, a suggested focused strategy would be to call: (1) Betty Currie 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 day.

If the President testifies, consideration should also be given to a closed session on the specifics of their sexual activities. It is my feeling that there is a crucial factual difference as to whether 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 seems likely, the case will be closed.

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) Conversely, if Judge Currie testifies about any matters that the President wants to turn over to her, it will be the right of the President to examine her testimony and that she may be used against him in any criminal proceeding. If the President knew she would be examined and that the admission could not be used against him in any criminal proceeding, then the President might be more willing to have her testify.

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
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Senate should hear from the President. It may be that the President will choose to testify; and if so, as a matter of comity, the Senate should await the President’s decision. If the President decides not to testify, the Senate will be faced with a difficult legal question and perhaps an even more difficult political question. On its face, Impeachment Rule 6 gives the Senate the authority to compel the President to testify:

“The Senate shall have the power to compel the attendance of witnesses and to enforce its orders, mandates, writs, precepts and judgments.”

Notwithstanding that express language, some have argued that the President is subject to compulsory process (subpoena) because of Rule 8 which provides: “A writ of summons shall issue to the person in lawful custody, commanding him to appear before the Senate upon a day and at a place to be fixed by the Senate and file his answer to said articles of impeachment. If the person impeached, after service, shall fail to appear in person or by attorney, on the day so fixed, the Senate shall have power to compel him to appear by a subpoena.”

No’s decision is imperative to the function of the courts to present the facts. The very integrity of justice would be defeated if judgments were to be made without the President’s evidence. To ensure that justice is done, it is necessary that all the facts be considered. The judicial system and public confidence in the impartiality of the justice system depend upon the full disclosure of all evidence. The ends of criminal justice would be defeated if judgments were to be made without the President’s evidence. The judicial system and public confidence in the impartiality of the justice system depend upon the full disclosure of all evidence.

The President is subject to compulsory process (subpoena) because of Rule 8 which provides: “A writ of summons shall issue to the person in lawful custody, commanding him to appear before the Senate upon a day and at a place to be fixed by the Senate and file his answer to said articles of impeachment. If the person impeached, after service, shall fail to appear in person or by attorney, on the day so fixed, the Senate shall have power to compel him to appear by a subpoena.”

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 confrontation 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 in 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 Senate-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 if subpoenaing the President if, as and when he declined to testify after serious incriminating evidence was presented against him. If subpoena petitions formed along party lines, it would be the most severe test of acting only with a bipartisan consensus.

Over several centuries, litigation experience has demonstrated the unpredictability of trials. That is why they are called trials. A two-thirds majority may not appear out of thin air, as noted by Congressman DELAY, but it could appear from forceful presentation of the key evidence including cross-examination of the President. If the trial were completed before the President, it is conceivable, although highly unlikely at this point, that a plea bargain could be structured with the Independent Counsel’s concurrence that the President would resign with his pension, his law license and immunity from prosecution.

Once a trial starts, the genie is out of the bottle and anything can happen. Emotions in all directions are at an all-time high with Republicans, the President, Democrats or anybody else in the line of fire at risk for the ultimate public’s verdict. The other business would not be attended to forever long the trial took.

That is why I continue personally to favor putting off holding the President accountable until after his term ends through the criminal process. That accommodates the public’s short-term desires for the Congress, the President and the Supreme Court to focus on the nation’s business and the long-term national interest to later hold the President accountable for the serious crimes and misdemeanors through the grand jury so decides, and to sentencing by a judge if a jury convicts.

THE PUBLIC REACTION

Prospects are reasonably good that the public would react favorably to a non-partisan, judicious, focused, relatively brief Senate trial. In addition, the public would likely understand the Senate has an explicit Constitutional duty to hold a trial after Articles of Impeachment are passed by the House. There has already been a bipartisan recognition of this duty by Senators who are Democrats.

Public reaction, as gauged by the polls, was adverse to the House proceedings, at least in part, because of their highly partisan nature that House the House never zoned 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 the President’s decision to testify. If the President chooses to testify, the Senate should take extreme care to make the trial bipartisan. As the majority party, we Republicans should bend over backwards to avoid even the appearance of seeking partisan advantage which marred the House proceedings.

I strongly support the suggestion that there should be no separate party caucuses on impeachment issues. It would be useful to convene all Senators from both parties a couple of years ago on appropriations or budget issues near the end of the session.

CONCLUSION

History will cast a long shadow on what the Senate does in this impeachment proceeding.

The Senate should not, in effect, sweep the matter under the rug by relying on the hearsay in the Starr Report for the key facts. Some say the Starr Report is a sufficient factual basis for Senate action because the facts are not in dispute. That is not true. A close reading of the President’s testimony and his famous 82 answers to interrogatories demonstrate that he has not concealed the accuracy of the key incriminating evidence.

History will cast a long shadow on what the Senate does in this impeachment proceeding.
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 the President "encouraged"—that is their word—Monica Lewinsky to lie was contradicted by Monica Lewinsky's professed, which was then incorporated into her grand jury testimony, that the President “never” encouraged her to lie. That is her word. They say by inference the President encouraged her to lie. She says, “The President never encouraged me to do so.”

The House managers' inference that it was, “President Clinton who initiated the retrieval of the gifts and the concealment of the evidence on December the 28th,” was contradicted by Monica Lewinsky's direct testimony that she initiated the concealment of the gifts. It is uncontested that on December 22 she took some of the gifts and concealed the rest—some of the gifts to her lawyer's office. She decided on her own that she would not turn over the gifts in response to that subpoena because they would embarrass her, or they would, in her words, dis- close that there was a special relationship. So on the 22nd she decided on her own to withhold some of the gifts. And yet we are told by the managers by inference that somehow or other it is the President who initiated the withholding and the concealment of the gifts.

And then on the 28th, when they met at the White House, it was Monica Lewinsky who said, "Maybe I should go and get some of the gifts from Betty." She initiated the issue. And then the President said either nothing or, "Let me think about it." And then the question came up: Well, who then made the phone call to Betty, telling her to be strong in the face of a Federal subpoena? That is 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 11 issue has been discussed here. It was extraordinary to me, listening here as both factfinder and judge, that it could be represented to us that on December 11 the first accusation of criminal 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 responsible U.S. attorney." I know this is not a criminal case, this is an impeachment trial, but I would think that our standards should be at least as high as 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 had. In a criminal case, we should be loathe, I believe, and very, very cautious and careful before we remove an elected President from office.

I learned about the burden of proof and presumption of innocence as a young boy, long before law school, when my father, who was a lawyer, taught me that American justice is dependent on these principles. As I grew up and became a lawyer myself, I experienced firsthand the significance of these bedrock principles and learned that it applies to all Americans accused of crimes, including the President. These principles of the burden of
proof and the presumption of innocence help guide me now as we exercise our constitutional duty to judge the specific accusations of criminal behavior lodged against the President of the United States.

The burden of proof on the House of Representatives that the President has committed serious crimes and should be removed from office is a heavy one, because overturning an election in a democracy is a drastic and dire action. The House has not carried that burden of proof as to the specific accusations against the President.

The arguments of the House Managers in support of the Articles suffer from fundamental weaknesses. They repeatedly rely on inferences while ignoring direct testimony to the contrary; they omit key materials which contradict their charges; and they contain serious misstatements of key facts. In a matter of such consequence as the removal of an elected President from office, such a case should not lead to conviction.

Let me cite some key examples from Article II, the allegation of obstruction of justice. First, the House Managers in their report, brief, and arguments to the Senate repeatedly rely on inferences to prove key points and ignore direct testimony to the contrary. In opening arguments, House Manager HUTCHINSON made the following claims:

"...As evidenced by the testimony of Monica Lewinsky, the President encouraged her to lie. ... The testimony of Monica Lewinsky ... is not only the only logical inference, but it is also contrary to the direct 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. ... The House Managers' arguments rely on inferences. Relying on inferences is not unique to proving a case. What is unique is that the House Managers use inferences primarily from bits and pieces of testimony of people who explicitly deny those inferences in their direct testimony. The House Managers' inference that the President encouraged Monica Lewinsky to lie was contradicted by Monica Lewinsky's direct testimony that the President never 'encouraged' her to lie. The House Managers' inference that it was President Clinton who initiated the retrieval of the gifts and the concealment of the evidence. The President needed the signature of Monica Lewinsky on the false affidavit, and that was assured by the efforts to secure her a job. ... The only logical inference is that it was President Clinton who initiated the retrieval of the gifts and the concealment of the evidence. The House Managers' report explicitly represented that '(the) fact is nothing happened in November of 1997.' But, in fact, our Ambassador to the United Nations, at the request of the Deputy Chief of Staff of the White House, offered Ms. Lewinsky a U.N. job on November 3rd. The House Managers' report explicitly represented that '(the) fact is nothing happened in November of 1997.' The lack of substantive evidence supporting the charges explains why a panel of five highly regarded former Democratic and Republican federal prosecutors, who appeared before the House Judiciary Committee, testified that this case against the President would not have been pursued by a responsible federal prosecutor. Thomas Sullivan, who served for four years as the responsible federal prosecutor. Thomas Sullivan, who served for four years as the U.S. Attorney for the Northern District of Illinois, and whom Chairman Hyde described as having 'extraordinarily high' qualifications had this to say:
The contrast to the Watergate investigation and the impeachment of President Nixon is stark. In the Watergate investigation, the Senate convened a select committee in February 1973 to investigate the Watergate break-in and other campaign irregularities in the 1972 election. That committee took testimony for a year. In February 1974, the House voted to direct the House Judiciary Committee to conduct an inquiry into impeachment. The House took that prosecutor's record and his testimony and made them the basis of articles of impeachment presented to us.

The articles of impeachment before us are, in fact, 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.

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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 standard criminal court. Why? Because they had known a country where some men were above the law, and some below. And they were 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 will be elevated to a special kind of entitlement. That’s why I voted against both articles. First, removing a President is a drastic measure, called for in only the most extraordinary circumstances. And our Constitution’s very design makes it clear that the harm and the loss this President has caused will not let go of my firm belief that the nation’s expectations for the Office of the Presidency. And I will not let go of a commitment to do everything I can to restore and protect the idea that good character is essential in those who ask to serve and represent this nation.”

Representative Gramm deserves credit for putting candor above partisanship and inviting us all to decide what’s best for this nation.”

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 not sex, and most importantly, the only way a judge can be removed is by impeachment. A President, on the other hand, can be removed every 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 itself a serious allegation. The House Managers argue that more witnesses would have made a difference in bolstering their case, and they may be right. But why then did the House choose not to call witnesses in its own proceedings, even though it had called “facts” from witnesses in nearly every other impeachment?

Third, as many of us told the House in the J. J. Nixon impeachment trial, lumping together a series of charges in one article—conversion, perjury, and seven obstruction of justice charges here—isn’t fair or responsible. Alarming, the President could be found guilty without a two-thirds conviction in the Senate.
The President told Ms. Lewinsky that she could return to the White House after the 1996 election had concluded. Although Ms. Lewinsky tried numerous times to regain employment at the White House, she was never able to do so. After being informed by a friend, Linda Tripp, that she would not be returning to the White House, Ms. Lewinsky decided to seek employment in New York, initially receiving and rejecting a job offer with the United States Ambassador to the United Nations. She then decided to go into business in New York in the private sector. On November 5, 1997, she met with Vernon Jordan, a prominent Washington lawyer and friend of President Clinton, to seek his assistance in securing such a position. This meeting was arranged by Ms. Currie. Mr. Jordan took no action to help her in November, and does not remember meeting her at this time.

On December 5, 1997, attorneys for Ms. Jones notified the President's attorneys of their list of witnesses. That list included Ms. Lewinsky. Although she was unaware at the time that her name was on the Jones litigation witness list, Lewinsky coincidentally decided to terminate her relationship with the President the following day, but wanted to remain employed at the White House. President Clinton and Ms. Lewinsky initially exchanged angry words that day over the telephone, but later that day, she came to the White House at his invitation. During this meeting, the President informed Ms. Lewinsky that Mr. Jordan had not appeared to have done anything to help her in her job search. In a conversation Ms. Lewinsky described as “sweet” and “very affectionate,” he told her that he would speak to Mr. Jordan about her job situation. The President did not at that time inform Ms. Lewinsky that her name was on the witness list.

Ms. Currie again called Mr. Jordan, and on December 8, 1997, Ms. Lewinsky was called in by Mr. Jordan for December 11. Although Ms. Lewinsky provided Mr. Jordan with a list of corporations in which she was interested in obtaining employment, Mr. Jordan determined based on his own contacts which companies he would pursue on Ms. Lewinsky’s behalf. Following his meeting with Ms. Lewinsky, acting by his own admission at the behest of the President, Mr. Jordan called three corporate executives in New York. He also called the President to report on his efforts on behalf of Ms. Lewinsky.

December 11, 1997 was also the date on which Judge Susan Webber Wright, the presiding judge in the J ones litigation, issued an order permitting J ones’ attorneys to pursue discovery concerning the names of any state or federal employees with whom the President had had sexual relations, proposed sexual relations, or sought to have sexual relations.

On December 17, 1997, between 2:00 and 2:30 a.m., the President telephoned Ms. Lewinsky. He informed her that Ms. Currie’s brother had been killed, as well as that her name was on the J ones witness list. The President indicated that if Ms. Lewinsky was subpoenaed, she should let Ms. Currie know. He also told her that she might be able to sign an affidavit in that event to avoid testifying. In addition, he said that he could say that she was coming to see Betty or was bringing him papers. Ms. Lewinsky said that she understood implicitly that she was to continue to deny their relationship.

On December 20, 1997, Ms. Lewinsky was subpoenaed to testify in the J ones litigation on December 19, 1997. The subpoena also required Ms. Lewinsky to produce all gifts that she had received from the President, and enumerated one specific gift that the President had given Ms. Lewinsky, a hatpin. Because Ms. Currie was in mourning, Lewinsky called Jordan, who invited her to his office. She was in a highly emotional state, and that fact, combined with her statements in the conversation that demonstrated her personal fascination with the President, prompted Jordan to ask whether she, a person for whom he was providing job assistance, had had sexual relations with the President. He says she denied such relations. Jordan then called the President and informed him of the President’s reaction during that meeting, and made plans to see him that night. Jordan later called Frank Carter, a Washington lawyer, to arrange a meeting at which he would refer Ms. Lewinsky to Mr. Carter as a client.

Notwithstanding Ms. Lewinsky’s denial of sexual relations with the President, Jordan asked President Clinton that same evening the same question. The President also denied having had sexual relations with Ms. Lewinsky. Jordan also conveyed a number of Lewinsky’s statements to the President, and informed Clinton that Lewinsky had received a subpoena to testify in the J ones case. Following a discussion of the subpoenas, Jordan informed Clinton that he was interested in obtaining employment. Mr. Jordan of the nature of the telephone calls she had had with the President, Jordan drove Lewinsky to a meeting at Mr. Carter’s office on December 22.

The President met with Ms. Lewinsky on December 26, 1997, at which time they again exchanged gifts. They discussed the subpoena, and she expressed concern, which the President shared, about the specific enumeration of the hatpin, since that suggested that she knew new details about their relationship. Ms. Lewinsky then suggested taking the gifts out of her apartment or giving them to Ms. Currie. The President responded, “I don’t know” or “Let me think about that.” Later that same day, Ms. Lewinsky’s consistent recollection is that Ms. Currie called her and stated, “I understand you have something to give me” or “the President said you have something to give me.” Ms. Currie later drove to Ms. Lewinsky’s apartment, picked up a box containing gifts the President had given Ms. Lewinsky, and hid that box under her bed without asking any questions.
On December 31, 1997, Jordan and Lewinsky had breakfast. Lewinsky, fearing that her relationship with the President would become known and wanting to ensure that she did not appear responsible for its becoming known, told the President 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 himself. Believing that the interview had proceeded poorly, she called Jordan, who then called the head of the holding company of the firm with which she had interviewed. Jordan asked that a second interview be granted. Lewinsky. She interviewed again the next day, and was made an informal job offer. Jordan testified that his "magic" was responsible for that offer. Lewinsky informed Jordan of her success, and he telephoned Ms. Currie to notify her: "Mission accomplished." He later informed the President.

The President was scheduled to be deposed in the Jones litigation on January 17, 1998. The President knew that one of the issues was his relationship with Ms. Lewinsky. For the affidavit to successfully deflect questions to the President concerning that relationship, the affidavit would have had to have been filed in time for the court to consider it. Jordan had drafted the President's lawyers call Ms. Lewinsky's attorney 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 Jordan made a decision that President Clinton made numerous false statements while under oath. These included the sexual nature of his relationship with Ms. Lewinsky, and whether they had exchanged gifts. He relied on the same cover stories as he had discussed with Ms. Lewinsky. The President's lawyer used Ms. Lewinsky's affidavit in an attempt to deflect questions about the President's relationship with her, specifically stating that the President had already seen that affidavit. As the President appeared to be paying close attention, he did not contradict his attorney when he represented to the court that "there is absolutely no sex of any kind in any manner, shape or form with President Clinton. . . ." And he testified, when asked by his attorney, that Ms. Lewinsky's affidavit was absolutely true. However, the judge insisted that President Clinton answer additional questions about his relationship with Ms. Lewinsky. These questions were based on the judge's peculiar ruling that used only one-third of a standard courtroom definition of "sexual relations" and the plaintiff's attorneys' insistence in using that definition as a reference for questions they posed to the President about the nature of his relationship with Ms. Lewinsky, rather than asking specific questions concerning what had occurred. In six instances, the President answered questions by referencing Betty Currie, such as in using the cover story that Ms. Lewinsky had come to the White House to visit Ms. Currie, and on one occasion, expressly stated that his questions should "ask Betty." Indeed, Jordan had 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, a and Jordan 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) "They 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.

On January 19, 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 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. 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 President 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 claim on him, and that he rebuffed her. The President told Blumenthal that he rethought his stance on who could not get out the truth. Blumenthal later testified that he believes the President lied to him. The President testified that he was aware at the time that he made his statements that his aides might be summoned before the grand jury.

The President also met with his political consultant, Dick Morris, on January 21. The President authorized Ross to conduct an overnight poll measuring potential public reaction to the affair. The poll concluded that the American people would forgive the President for adultery, but not for perjury or obstruction of justice. The President then indicated that he "just have to win, then." The President's lawyers could not answer senators' questions why such a poll had been undertaken if the President had not committed any of these acts.
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 who may take into consideration the "punishment" in determining guilt. Some have contended that the President may be guilty of high crimes and misdemeanors, but his actions may not be sufficient for removal. A more precise analysis is that the Senate may conclude that the President's conduct is not sufficient for removal and that that determination, by definition, means that the President is not guilty of high crimes and misdemeanors. I believe that this analysis is important in understanding the scope of our discretion and helps us get away from the notion that there is an objective standard for high crimes and misdemeanors if we could only find it. Historical analysis of the era 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, the history of impeachment, even the Constitution debates, American impeachment precedents and scholarly commentary.

The phrase "high crimes and misdemeanors" can be traced back to the thirteen hundreds in England. It was clear from the outset that the phrase covered serious misconduct in office whether or not the conduct constituted a crime. Commentators say that the English impeachment tradition covered political crimes against the state and injuries to the state. Beyond that, it is difficult to identify conduct from the English tradition.

Apparantly there was only one discussion during the Constitutional Convention that dealt with the phrase high crimes and misdemeanors and that occurred on September 8, 1787. As reported out of Committee, impeachable offenses included only "treason and bribery." Mason wanted to add "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 "punishment" of the President. In Madison's words, "the Constitution was not for "want of judgment" but rather to hold him responsible for "willfully abusing his trust." Iredell also called attention to the complexity if not impossibility of defining the scope of impeachable offenses with any more precision than the above. And the ratifiers at the Virginia Convention clearly agreed that a President could be impeached for non-indictable offenses.

There was continued discussion and debate after ratification concerning the impeachment process. James Madison contended that the wanton removal of a meritorious President 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 a nature which may be peculiarly denounced political, as they relate to injuries done immediately to the society itself.

The ratifiers at the North Carolina convention spoke in terms of serious injuries to the Federal government. Thomas Jefferson, Madison's Associate Justice on the Supreme Court, stated that impeachment was "calculated to bring [great offenders] to punishment for crimes which it is not easy to describe but which everyone cannot doubt to be crimes and impeachable misdemeanor against governments...the occasion for its exercise will arise from acts of great injury to the community." He gave as an example of an impeachable offense the giving of false information to the Senate. Impeachment was not for "want of judgment" but rather to hold him responsible for "willfully abusing his trust." Iredell also called attention to the complexity if not impossibility of defining the scope of impeachable offenses with any more precision than the above. And the ratifiers at the Virginia Convention clearly agreed that a President could be impeached for non-indictable offenses.

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 upon conviction in the Senate the President "shall be removed." Therefore, the questions becomes, in effect, "what actions constitute grounds for removal?"
on documentation reflecting some of their thoughts, and the fact that perhaps they simply did not think of some of the problems that might arise in the future, we see a certain framework develop—certain perimeters within which our debate 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, and 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. It is little more helpful in terms of precedent in 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 not 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 legislation 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 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 not those of federal judges.

The other side says that they simply did not think of some of the problems that might arise in the future, we see a certain framework develop—certain perimeters within which our debate 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, and 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. It is little more helpful in terms of precedent in 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 not those of federal judges.

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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 they meant to cover behavior that has a negative effect on the public if it is of sufficient gravity. Furthermore, if the President’s conduct poses a threat and danger to a country, that certainly is a legitimate (though not exclusive) reason for impeachment. If that same conduct serves to undermine the President’s credibility and moral authority, that also would 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 oft difficult analysis that inevitably follows therefrom. 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 these circumstances, if it is in the best interest of the country to remove this President.

The significance of a “pattern of conduct” is recognized by John R. Labovitz in his book Presidential Impeachment. Labovitz concluded that focusing on whether the President has committed “an impeachable offense” is of limited usefulness, since few individual crimes warrant removal, such as a single count of perjury. “It is necessary to combine distinct actions into a pattern or course of conduct to establish grounds for removal from office.” As he also wrote:

The concept of an impeachable offense guts an impeachment case of the very factors—repetition, pattern, coherence—that tend to establish the seriousness of wrongdoing warranting the removal of a president from office. Just as a recidivist deserves a more stringent sentence than a first offender, so presumably a repeated offender is more likely to deserve removal from an office of public trust, and especially the highest trust in the land. [It] is necessary to take a less individual view of the charges. Because the remedy is not additive, the offenses must be considered cumulatively in deciding whether they add up to an impeachable offense. The House must decide whether or not to prosecute an impeachment on the basis of the charges taken as a whole. And, unless the Senate is to take the determinative fact into account, it must judge the combined seriousness of the wrongdoing that is proved.

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

ARTICLE I—GRAND JURY PERJURY

Article I, after alleging generally that President Clinton violated his oath of office and care of the laws by willingness to have the laws be faithfully executed by manipulating the judicial process for his personal gain, alleges that on August 17, 1998, following taking an oath to tell the truth, he willfully provided perjurious, false, and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior false, false, and misleading testimony that he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has sought to obstruct justice, and has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Never has the Senate convicted on an article worded such as this. Several crimes or categories of crimes (the exact number cannot be determined from reading the article) are charged in this one article. The perjurious statements are not described, nor are their dates. In large part, this article charges that the President committed perjury because he denied prior perjury.

At the outset, it is clear that a count such as this in an indictment would not survive court challenge. However, it is equally clear that the Senate is not bound to follow normal legal rules. Impeachment, Hamilton wrote in Federalist No. 65, “can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases serve to limit discretion of courts in favor of personal security.” Nevertheless, we should examine the basis for such rules and determine the extent, if any, we should apply them to the present situations.

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. But I believe that the president had actual notice for the most part, what is actually being charged in this article has not been without dispute. The articles pending against President Clinton are unique. Never has the Senate considered articles that are simultaneously omnibus, vague, and based upon “one or more” of the charges being proved.

Again, we have substantial leeway in considering these matters, but we must be fair. We are creating precedent, and this is not good practice. The rule of law must apply to the President when it inures to his benefit just as when it inures to his detriment. The Senate relies on Rule XXIII of the Senate’s impeachment rules as granting this body’s tacit approval for the drafting of impeachment articles in the form of those from President Nixon’s impeachment proceedings. The House also argues that its committee report provides adequate notice of charges, occupying 20 pages just to list “the most glaring instances of the president’s perjurious, false, and misleading testimony before a federal grand jury and requiring 13 pages just to list the most glaring instances 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 only occur 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 organized as to eliminate any incentive for the House to adopt duplicitous articles of impeachment.

In prior impeachments charging false statements, the House has always delineated the date and substance of the false statement. Indeed, in every impeachment proceeding since Judge Pickering in 1803, articles of impeachment exhibited by the House have included allegations of specific misconduct. Although the Senate has at times included 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 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] headquarter[s] 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 the 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 acts, 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 1969 was an article alleging that Judge Nixon made “one or more” false statements. Unlike the articles against President Nixon, however, the article in question in the case of Judge Nixon specifically enumerated the alleged material false statements, including the date and nature of the statement made. The Senate, though defeating a motion to dismiss the article, nevertheless acquitted Judge Nixon on this article. Several Senators explained their votes to acquit on this article due to the multiplicitous (actually, duplicitous) and disjunctive “one or more” form of the article.

I agree with those senators who criticized the form of the omnibus article of impeachment that was brought against Judge Nixon. An article of impeachment charging a defendant with “one or more” acts is not only unfair to the defendant, but it does not permit senators to perform adequately their constitutional duty and the American people to understand their actions. If the Senate were to convict on a “one or more” acts count of an article of impeachment, the votes to convict would obscure the real basis for each senator’s vote. Ultimately, the American people would never have the basis on which the president they duly elected was removed from office.

The Senate also has never been asked to convict someone for conduct that formed the basis for an article of impeachment that was rejected by the House. Although in a literal sense, no such article is before the Senate, in a practical sense that is the situation. The House failed to pass an article of impeachment against President Clinton that accused him of, on January 17, 1998, “willfully provid[ing] perjurious, false, and misleading testimony in response to questions deemed relevant by a special grand jury concerning the nature and details of his relationship with a subordinate Government employee, his knowledge of that employee’s involvement and participation in the civil rights action brought against him, and his corrupt efforts to influence the testimony of that employee.” Yet, in Article I, the Senate is asked to convict the President based on “one or more” sets of actions, one of which is the President’s “prior perjurious, false, and misleading testimony before a federal civil rights action brought against him.” That portion of Article I has resulted in the House recharging all the allegations of perjury made by the President in his civil deposition that were dismissed when the House rejected an article of impeachment that was based on that deposition. The House does so explicitly: “In addition to his lie about not recalling being with Ms. Lewinsky, the President told numerous other lies at his deposition. All of those lies are incorporated in Article I, Item 2.” House Trial Memo. at 61. The House claims that the President’s statement in his grand jury testimony that he intended to be unhelpful but truthful in his deposition, and that he did not violate the law in his deposition, amount to perjury in the grand jury if a single statement in his deposition was perjurious. However, the President repeatedly reaffirm the truth of all his deposition testimony. Indeed, before the grand jury, the President revised many statements he had made in the one deposition.

Two perjury statutes have been enacted as part of the federal criminal code. 18 U.S.C. §§ 1623 and 1621. The elements of section 1623 are that the defendant (1) knowingly makes a (2) false (3) material declaration (4) under oath in proceedings ancillary to any court or grand jury of the United States. Statements which are misleading but literally true cannot form the
basis for a perjury conviction. Bronston v. United States, 409 U.S. 352 (1973). The most difficult element of the offense is materiality. A statement is said to be material "if it has a natural tendency to influence, or is capable of influencing a decision of the acquitting body to whom it is addressed." United States v. Durham, 139 F.3d 1325, 1329 (10th Cir. 1998); see Kunyas v. United States, 485 U.S. 759 (1988).

The Supreme Court has characterized a perjury conviction (bitten by § 1621) as follows: "A witness testifying under oath or affirmation violates this section if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." United States v. Dunnigan, 507 U.S. 87, 94 (1993). As with § 1621, testimony that is misleading but literally true does not fall within the ambit of § 1621.

A perjury conviction is said to be material "if it has a natural tendency to influence, or is capable of influencing a decision of the acquitting body to whom it is addressed." United States v. Durham, 139 F.3d 1325, 1329 (10th Cir. 1998); see Kunyas v. United States, 485 U.S. 759 (1988).

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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 prescribing 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 be necessary to address high crime and misdemeanor. 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 "lame" the wrong year and actually encompassed more telephone encounters than could truthfully be described as "occasional"? To ask the question is to answer it. In my opinion, these statements, while wrong and perhaps indictable after the President leaves office, do not justify removal of the President from office.

In no way does my conclusion ratify the White House lawyers' view that private conduct never rises to impeachable offenses, or that only acts that will jeopardize the future of the nation warrant removal of the President. It simply recognizes how the principles the Founding Fathers established apply to these facts.

I therefore vote to acquit the President of the charges alleged against him in Article I.

ARTICLE II—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 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 for a witness, a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truth thereof of that witness would have been harmful to him.

(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton falsely and misleadingly answered questions 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 related false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in that such account falsely and misleadingly influence the testimony of that witness.

(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were conveyed to such witnesses in a communication to that grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disgrace 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 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 trial, endeavoring to influence, intimidate, or in any manner obstruct, or impede any grand or petit juror, or officer of the United States, or to obstruct, or impede the due administration of justice, shall be punished . . . ."

Among the acts that courts have concluded violate § 1503(a) include the creation of false documents to be presented in evidence, 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.

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.

On February 12, 1999, United States v. Munus, 128 F.3d 376, 387 (8th 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 witness, United States v. Monus, 128 F.3d 376, 387 (8th Cir. 1998). 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. Mullins, 22 F.3d 1365, 1369 (8th Cir. 1994); United States v. Chihak, 76 F.3d 662 (8th Cir. 1996); United States v. Russo, 104 F.3d 431, 435 (D.C. Cir. 1997).
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 contained in Article II. The first two 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. This is the day President Clinton told Ms. Lewinsky that she was on the Jones witness list, that she should contact Ms. Currie if she were subpoenaed, and that she could file an affidavit in the case to avoid testifying. In this conversation, the President told Ms. Lewinsky that she could “always say you were coming to see Betty or that you were bringing me letters.” The President conducted an improper relationship with an employee of the federal government, Monica Lewinsky. He carried on that relationship off the Oval Office. He engaged in sexual banter over unsecured telephone lines to Ms. Lewinsky’s residence, compromising himself and making himself susceptible to the White House’s willingness to pay for confidentiality. The Fourth Item of Article II charges that the President did not initiate the call that led to that exchange of the gifts. Since only the President and Ms. Lewinsky were present when the subject of giving the gifts to Ms. Currie was raised, and since Ms. Lewinsky did not call Ms. Currie, the only way that Ms. Currie could have called Ms. Lewinsky and not be surprised to obtain the gifts was if the President had told her to contact Ms. Lewinsky to retrieve them. This is also consistent with the President’s course of conduct in this matter. The President thus corruptly acted to obstruct the Jones case by asking Ms. Currie to retrieve and secretly give the gifts. That constitutes obstruction of justice in the case by the President, as demonstrated by the cases that have convicted defendants of that charge for having instructed subordinates to conceal evidence.

As an example of obstruction of justice, 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, called Ms. Currie, retrieved the gifts from Ms. Lewinsky. The President’s and Ms. Currie’s denial simply cannot be squared with the evidence.

Also irrelevant is the fact that Ms. Currie’s cell phone call to Ms. Lewinsky occurred at 3:30 p.m., whereas Ms. Lewinsky testified that the gift pickup occurred at 2 p.m. Notwithstanding the White House’s willingness to excuse the President’s error by two minutes concerning his improper relationship with Ms. Lewinsky, began, while insisting that the cell phone call’s 90 minute mistiming is fatal to the theory that Ms. Currie instituted the gift exchange, the cell phone call at 3:30 does not prove that Ms. Lewinsky instituted the gift exchange. First, Ms. Lewinsky testified that she might have been mistaken about the time that Ms. Currie picked up the gifts. There is no evidence that the cell phone call was the one in which Ms. Currie’s gift pickup was proposed. Ms. Lewinsky testified that she received other telephone calls from Ms. Currie that day to learn what Ms. Currie was doing in her apartment and also to know when she should actually come outside to meet Ms. Currie. The White House also maintains that the President would not have given Ms. Lewinsky additional gifts on December 28 if he planned to hide the gifts. The facts do not support that theory. The President gave Ms. Lewinsky those gifts before, pondering Ms. Lewinsky’s idea, he determined that he would ask Ms. Currie to retrieve them. He had no intention to retrieve the gifts at the time he gave her the gifts on December 28, there is no inconsistency with his later direction to Ms. Currie to pick them up.

The Fourth Item of Article II alleges that the President, beginning on December 7, 1997, and continuing through January 14, 1998, intensified and succeeded in an effort to secure job assistance to a witness in a federal civil rights action brought against him to corruptly prevent the truthful testimony of that witness. Following a meeting with Ms. Lewinsky in November in which she sought his assistance, Mr. Jordan took no action and provided no help. He did 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 President’s witness list, and followed the President’s promise to Ms. Lewinsky that he would ask Mr. Jordan to do more to help her find a job. Although Ms. Currie, not the President, called Mr. Jordan, he was aware that the request came from the President and that he acted at the behest of the President. Jordan did not call the companies Ms. Lewinsky suggested, but rather, the companies where he was likely to produce a job for her. Ms. Currie retrieved them. Since he 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 he 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. In the President’s presence, his attorney represented to the court, based on Ms. Lewinsky’s affidavit, that the President had seen the affidavit, and that it showed that “there is absolutely no sex of any kind between the President and Ms. Clinton,” a statement his lawyer later retracted out of professional ethics obligations. The affidavit stated, inter alia, that “I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship . . .” and “the occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the White House.”

The sixth item of Article II concerns the President’s obstruction of justice by attempting to influence the testimony of a witness in a case against him.

The White House responded to this charge by stating that Ms. Lewinsky had begun her job search in July, and after a few months had not landed a job of her liking. She then obtained a job after she knew she was on the Jones witness list, the President corruptly obstructed justice by attempting to influence the testimony of a witness in a case against him. The White House stated that Ms. Lewinsky had not obtained a job offer in each company Mr. Jordan called. Nothing in the record shows that the President ever requested Mr. Jordan to intensify his job efforts to assist Ms. Lewinsky to obtain a job after he knew she was on the Jones witness list. The President’s obstruction of justice claim is also irrelevant that she did not obtain a job offer in each company Mr. Jordan called. Nor is it of consequence that Mr. Jordan offered Ms. Lewinsky a job once her name appeared on the list. That Ms. Lewinsky’s name was removed from the witness list did not depend on the President taking action. 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 Ms. Lewinsky originally speak with Mr. Jordan means nothing because he took no action following that meeting; only after the President requested that Mr. Jordan assist Ms. Lewinsky once her name appeared on the witness list did he do so. That Mr. Jordan testified that he acted with no sense of urgency is also of no import: it was the President who acted with a sense of urgency, using Mr. Jordan as his agent. Nor is it relevant that Mr. Jordan placed undue pressure on the persons he contacted in support of Ms. Lewinsky. The corrupt influence in obstruction of justice that matters is directed to the witness, not to the prospective employer of the witness. President Clinton knew, and Mr. Jordan knew, that the “Jordan magic” in finding people employment did not depend in any way on undue pressure being applied. Thus, the White House’s contention that there was no connection between Ms. Lewinsky obtaining her Revlon offer and Mr. Jordan’s call to Mr. Perelman is denied by Mr. Jordan himself. President Clinton could be sure that Mr. Jordan would find Ms. Lewinsky a job when her testimonial support of his denial was critical without his own need to do anything. It is also irrelevant that she did not obtain a job offer in each company Mr. Jordan called. Nothing in the record shows that the President ever requested Mr. Jordan to intensify his deployment for any White House intern no one was on a witness list in a federal case pending against him. The President obstructed justice through using Mr. Jordan to find Ms. Lewinsky a job once her name appeared on the Jones witness list.

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The White House arguments in response to these facts is inadequate. It is 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 impossible to make that distinction factually. Nor as a matter of law is it “critical,” as the White House contends, that Ms. Currie testified that she did not have a previous document 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 valid proceeding to constitute witness tampering. United States v. Kelley, 36 F.3d 1118, 1128 (D.C. Cir. 1994). The White House contends that the President could not have tampered with Ms. Currie in the proceeding in which she was ultimately a witness, the independent counsel’s investigation, since the President could not have known that it existed, at least of its existence. But this does not require that the defendant need not know that there is any pending federal proceeding to constitute witness tampering. 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 denying the President’s aides that he had not had sexual relations with Ms. Lewinsky. On January 23, he told one of those aides, Sidney Blumenthal, that Ms. Lewinsky had threatened him. President Clinton also indicated that Lewinsky was known among her peers as the stalker, and that she would say that she had an affair with the President whether it was true or not, so that she would not be known as the stalker any more. Blumenthal later testified that he believes the President lied to him. The President testified that he was aware at the time that he made his statements that his aides might be summoned before the grand jury. These facts constitute paradigmatic witness tampering. The President knowingly engaged in misleading conduct, as defined in his aides, with no attempt to influence the testimony of those aides in an official proceeding. Once again, the White House’s arguments to the contrary are unavailing. The Storage is undoubtedly the President lied to his friends, as the White House maintains, but that he lied to potential witnesses about his conduct that the grand jury was investigating. It is not relevant, as the White House contends, that the President did not attempt to influence his aides’ own personal knowledge, only their knowledge of the President’s views, nor, as stated above, is it relevant as a matter of law that the President did not know that any of these individuals would ultimately become witnesses. Most surprising was the claim that Mr. White House Counsel Ruff raised for the first time in closing argument that the President could not have been convicted of obstructing justice with respect to a potential witness. United States v. Kelley, 36 F.3d 1118, 1128 (D.C. Cir. 1994).

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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- ment employees over and over again. At every juncture when he had the opportunity to stop, relent or come clean with a forgiving public, he chose instead to go forward. And even today he refuses to acknowledge the damage he has done to the Presidency and the J udiciary, 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- defensible,” outrageous, unforgivable, shameful, reserved for only the most trea- surous of villains. Has public office be- come so precious in the United States that we treat it as a divine right? Ac- tually, by such treatment we cheapen it.

At a time when all of our institutions are under assault, when the Presidency has been diminished and the Congress is viewed with scepticism, our J udici- ary and our court system have remark- ably maintained the public’s confi- dence. Now the President’s actions are known to every school child in America. And in the midst of these par- tisan battles, many people still think this matter is just “lying about sex.” But little by little, there will be a growing appreciation that it is about much more than that. And in years to come, in every court house in every town in America, juries, judges, and litigants will have the President’s ac- tions as a benchmark 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 so- ciety, I cannot imagine what does. And for that I accuse the President.

Mr. MOYNIHAN. Mr. Chief J ustice, Senators, I speak to the matter of pru- dence. Charles L. Black, Jr., begins his masterful account Impeachment: A Handbook with a warning: “Everyone must start from this most drastic of measures. . . . [t]his 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 monarchy should be and what it should not be. But nowhere on earth was there a nation with an elected head of an execu- tive branch of government.

Here they turned to an understanding of governance which marks the Amer- ican Constitution as a signal event in human history—which the Framers called “the new science of politics.” What we might term the intellectual revolution of 1787. The victors in the Revolution could agree that no one, or not many, wanted another monarchy in line with the long melancholy suc- ceSSION since Rome. Yet given what Madison termed “the futile and tur- bulent existence of . . . ancient republics,” who could dare to suggest that a modern republic could hope for any- thing better?

Madison could. And why? Because study had produced new knowledge, which could now be put to use. This great new claim rested upon a new and more profound idea of the human nature. Ancient and medieval thought and practice were said to have failed disastrously by clinging to illu- sions regarding how men ought to be. Instead, the new science would take a new and more profound view of the human nature; of how self- interestedness and passion displayed by all men everywhere and, precisely on that basis, would work out decent po- litical solutions.

The convention declared the intellectual independence of the United States, and the Constitution was a deliberate attempt to construct a government dedicated to ensuring that independence. They had saved the British Constitution are for- and yet the framers of the Constitution may not be Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined. As bills of attainder which have saved the British Constitution are for- bidden, it is the more necessary to extend the writ of impeachments. How, now, to add after “bribery” or “maladministration.” Mr. GERRY seconded him.

Mr. MADISON. So vague a term will be equiva- lent to a tenure during pleasure of the Senate.

Mr. GOV.r MORRIS, it will not be put in force even do no harm. An election of every four years will prevent maladministration.

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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 offenses,” in Mason’s phrase.

The question now before the Senate is whether the acts that form the basis for Mr. Graham’s Articles of Impeachment against President Clinton rise to the level of “high Crimes and Misdemeanors.” Which is to say, “great and dangerous offenses” 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 asserted charges, even if proven, would rise to the standard of “great and dangerous offenses” against the United States. More than one commentator observed that we were dealing with “low crimes.” Matters that can be tried in criminal courts after the President’s term expires. Early in his address to the Senate our distinguished former colleague Dale Bumpers made this point:

Colleagues, you have such an awesome responsibility. My good friend, the senior Senator from New York, has said it well. He says, in effect, 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 I said this:

We are an indispensable nation and we have to protect the Presidency as an institution. You could very readily destabilize the Presidency, move to a randomness. That’s an institution that has to be stable, not in dispute. Absent that, do not doubt that you could degrade the Republic quickly.

This could happen if the President were removed from office for less than the “great and dangerous offenses” 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 J effersonians, including Jefferson himself, who saw impeachment as a convenient device for getting rid of a J ustice of the Supreme Court with whose opinions they disagreed. Not many years later Radical Republicans sought the same approach to removing a President with whom they disagreed over policy matters.

It could happen again. Impeachment is a power singularly lacking any of the checks and balances on which the Framers depended. It is solely a power of the Congress. Do not doubt that it could bring radical instability to American government.

We are a blessed nation. But our blessings are conditional. 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 now do not have 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 J efferson 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 take the Presidency and 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’ ties to King George III—many of the same individuals who had declared independence gathered again in Philadelphia to secure those rights so recently and tenuously won.

The governmental structure they constructed during those weeks in the oppressive summer heat was far from simple. But its complexity wasn’t an accident, or simply a result of the diverse geographical and economic interests represented at the Constitutional Convention. As our colleague Senator PATRICK MOYNIHAN has so aptly observed, our government was the first to insert conflict as a conscious element, to achieve inefficiency by design.

Our nation’s founders had personal knowledge of and experience with English history, in which both Kings and Parliaments had at times exerted excessive power over the people. They realized that liberty would be enhanced if political power was divided instead of centralized.

Unlike other forms of democracy, where a no confidence vote of the national legislature can bring down a government at any time, the Framers took great pains to establish a delicate balance of powers—and a careful system of checks and balances—between the nation and the states and among the 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, when improvidently used, could create an overbearing Congress from the ruins of a destabilized and delegitimized Presidency.

But the Framers’ attention to balance was not limited to the procedures of impeachment. They also made clear their belief that impeachment and removal from office should only be an option in situations in which a President becomes a threat to the government and the people it serves. We see this in their small number of enumerated offenses—Treason, Bribery, other High Crimes and Misdemeanors—and in their commentary.

For example, at the Constitutional Convention in 1787, George Mason said that the term “high crimes and misdemeanors” referred to “great and dangerous offenses” and “attempts to subvert the Constitution.”

Mr. Chief Justice, the President’s self-indulgent actions were immoral. Disgraceful. Reprehensible. History should—and, I suspect, will—judge that William J efferson Clinton dishonored himself and the highest office in our American democracy.

But despite their disruptive nature, President Clinton’s actions should not result in his conviction and removal from office. After careful objective study of each article presented by the House of Representatives, I have concluded that the charges against the President do not meet the high constitutional standards established by the Framers. Removal of this President on the grounds established by the House managers would upset the delicate balance of powers so meticulously established 212 years ago.

Mr. Chief Justice, the Framers set high standards for removal because they understood that the power of the presidency would be held by imperfect human beings. They assembled a government that could withstand personal failings.
February 12, 1999

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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 balances.

I hope that the Chief Justice, my colleagues, and the American people will not misinterpret my comments. While it has not been proven that President William Jefferson Clinton committed the high crimes and misdemeanors required for impeachment, his acquittal in this impeachment trial is not exonerating.

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 B. 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 speaks that positively.

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 John A. Clifford 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 now 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 Dr. Fania 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 President a few days later. But pure and simple trying to influence her testimony.

While we may never know with absolute certainty what occurred, the evidence is such that the President took numerous actions designed to impede the administration of justice.

I am also of the view that if the President committed perjury, then he obstructed justice. Perjury is a form of obstruction of justice.

I will therefore vote for conviction on both articles. I don't believe I will be voting to undo an election. We have a process of succession to the Presidency which maintains control in the Vice President of the same party with the same agenda.

Let me now explain why I feel conviction is so important in this case. It has to do with the 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; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

I took the same oath on three occasions when I served in the U.S. House of Representatives. The President takes a similar oath when he enters office:

I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

Both of these oaths are required by the Constitution.

Article VI of the Constitution requires that all Senators, Representatives, Members of the State Legislatures, and all executive and judicial Officers of the United States and the States shall be bound by oath or affirmation to support the Constitution. The oath of office lies at the center of this impeachment debate.

As George Washington stated in his Second Inaugural Address on March 4, 1793:

Previous to the execution of any official act of the President the Constitution requires an oath of office. This oath I now assume, and will to the best of my ability, execute the Office of President of the United States, and will to the best of my ability, discharge the duties of the office on which I am about to enter. So help me God.

In this constitutional process of securing a witness, it requires an oath of office. This oath I am now about to take; That if it shall be found during my administration of the Government I have in any instance violated willingly or knowingly the injunctions thereof, (besides incurring constitutional punishment) to be subject to the upbraidings of all who are now witnesses of the present solemn ceremony.

The sworn oath is central not only to our Constitution, but also to the administration of justice. Our legal system would not function without it.

Witnesses in trials swear under oath to "tell the truth, the whole truth, and nothing but the truth." Similarly, parties in civil lawsuits answer written questions or "interrogatories" put to them by their opponents. All answers are given under penalty of perjury. The answering party must sign a statement attesting to the truthfulness of the answers.

Testimony before a federal grand jury is given under oath, with the witness swearing to "tell the truth, the whole truth, and nothing but the truth." And the citizens who sit on a grand jury take an oath to seek the truth.

The Federal Rules of Evidence make reference to the importance of the oath in our judicial system.

Rule 603 states that the oath is "calculated to awaken the witness' conscience and impress the witness' mind with the duty" to tell the truth.

The Supreme Court has commented in a number of cases on the question of perjury to the United States v. Maduanyo the Court opinion noted:

In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obstacle to the administration of justice. Effective restraints against this type of egregious offense are therefore imperative.

In the much earlier 1937 case of United States v. Norris the Court observed:

There is occasional misunderstanding of the effect that perjury is somehow distinct from "obstruction of justice." While the crimes are distinct, they are in fact variations on a single theme: preventing a court, the parties, and the public from discovering the truth. Perjury, subornation of perjury, concealment of subpoenaed documents, and witness tampering are all forms of obstruction of justice.

As the House prosecutors have argued, the principle of "Equal Justice Under Law" is at the very heart of our legal system.

In order to survive it requires not only an impartial judiciary and an ethical bar, but also a sacred oath. Without the sanctity of the oath, "Equal Justice Under Law" cannot be guaranteed.

In addition to our legal system, other sectors of our society rely on oaths to ensure truthfulness and uphold values. Every early age we frequently ask our young people to take an oath: The Boy Scout Oath is as follows:

On my honor I will do my best
To do my duty to God and my country
And to obey the Scout Law;
To help other people at all times;
To keep myself physically strong,
mentally awake, and morally straight.
And the Girl Scout Promise:

On my honor, I will try:
To do my duty to God and my country,
To help people at all times,
And to live by the Girl Scout Law.

Members of our armed forces take the following oath of enlistment:

I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and will to the best of my ability, observe, support, and defend the Constitution of the United States.

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 senators 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 of all the oaths in our Constitutional system. If that oath can be ignored it will set a very damaging precedent for our society.

Throughout this impeachment process there have been many proposals concerning the best means of resolution.

At each turn however, Members of the Congress have ultimately recognized that the appropriate path to take is the path laid out in the Constitution. That path was a full trial in the U.S. Senate.

I am proud to have been among those who argued for a trial.

Whatever the outcome, I will leave this process confident that the system has worked. While I may disagree with the final vote, I will respect that vote and I will urge that we move forward united and determined to do the people's business.

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 that agreement was reached. 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 shares that same 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. Time after time, he chose to hold on to the public office.

Nowhere is the President's cold, calculated choice more clear than in the private conversation he had with his close friend 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 the 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 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.

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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.
"You were always there when she was there, right? We were never really alone. You could see and hear everything. Monica came on to me, and I never touched her, right? She wanted to have sex with me and I couldn't do that."

And, of course, the President didn't stop there. According to Ms. Currie, the President again called her into the Oval Office a few days later, and again, repeated the same false statements to her that he had made under oath in his civil deposition.

CROSSROADS #5: FALSE STATEMENTS TO SENIOR OFFICIALS AND TO THE AMERICAN PEOPLE

The winding road continued its perilous twists and turns. The President next came to a point where he had to decide whether to tell the truth to his Cabinet, his top aides, and, most importantly, to the American people.

Again, the President rejected the right path, telling his Cabinet and staff that the allegations were untrue. He claimed to his then-Deputy Chief of Staff, John Podesta, for example, that he "never had sex with [Ms. Lewinsky] in any way whatsoever." Specifically, he told Podesta that "they had not had oral sex." And, the President admits in his grand jury testimony that he knew that his aides could be called to testify before the grand jury. Ultimately, his top aides were called to testify, and they repeated his lies.

And, as everyone in America knows, the President lied to the nation. I do not need to recite the defiant, indignant, finger-wagging denial that the President gave to 270 million Americans who had placed their trust in him as the chief law enforcement officer of this land.

But, it didn't have to go any further. I think that there's still a chance that had the President stopped there at that awful, disgraceful moment, we would not be here today.

CROSSROADS #6: FALSE STATEMENTS TO THE GRAND JURY

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—according to 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 whether she had 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 his testimony 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.

HIGH CRIMES AND MISDEMEANORS

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.

SENATE PRECEDENT

First, Senate precedent establishes that false statements under oath by a public official are high crimes and misdemeanors. In 1986, I sat on the impeachment committee that heard the evidence against Judge Harry Claiborne. After hearing the evidence, I, along with an overwhelming number of my colleagues, concluded that J udge Claiborne had made false statements under the pain and penalties of perjury by failing to disclose certain tax amounts on his tax forms. The Senate—understanding the gravity of a public official making false statements under oath—voted to remove Judge Claiborne from office.

In 1991, the Senate's impeachment trial of President George H.W. Bush and Judge Nixon—both of whom had been accused of making false statements under oath. In Judge Nixon's case, the false statements were made directly to a criminal grand jury. The Senate—again understanding the gravity of a public official, who has sworn to uphold the laws, violating those very laws by lying under oath—voted to remove Judge Hastings and Judge Nixon from office.

My colleagues on both sides of the aisle had no hesitation about removing these federal officials for making false statements under oath. As Senator HERB KÖHL explained:

"One might argue, as Judge Nixon does, that his false statements were not material. . . . But Judge Nixon took an oath to tell the truth and the whole truth. As a grand jury witness, it was not for him to decide what would be material. That was for the grand jury to decide. . . . So I am going to vote 'guilty' on articles I and II. Judge Nixon lied to the grand jury. He misled the grand jury. These acts are criminal and warrant impeachment."

I think Senator KÖHL's statements accurately reflect the sentiment of the 89 Senators who voted to remove Judge Nixon for lying to a federal grand jury. And, I might add, one of those senators voting to remove Judge Nixon for perjury was then-Senator, now-Vice President Al GORE.

Of those 89 Senators, 48 of us are still here in this distinguished body. Will we send the same message about the corrosive impact of perjury on our legal system or will we simply lower our standards for the nation's chief law enforcement officer?

Constitution and Federal Law

Second, Article II, Section 4 of the Constitution plainly sets forth that bribery is a high crime and misdemeanor, and our federal laws tell us clearly that perjury and obstruction of justice are equivalent offenses to bribery. In fact, the federal sentencing guidelines actually mandate a harsher punishment for perjury than for bribery and a harsher punishment for obstruction of justice than for bribery. So I am completely perplexed by those who argue that perjury and obstruction of justice are not high crimes and misdemeanors.

If federal law mandates a harsher penalty for perjury and obstruction of justice, how can this Senate—who drafted, debated, and passed those federal laws—now argue that perjury and obstruction of justice are lesser offenses than bribery?

Federal law requires a court of good conscience to apply the Supreme Court's declaration: "'[f]alse testimony in a formal proceeding is intolerable." ABF Freight System v. NLRB, 510 U.S. 317, 323 (1994). Moreover, the high Court has labeled perjury as an "egregious of offense," United States v. ¤millionaire, United States v. Mandujano, 425 U.S. 564, 576 (1976), calling it "an obvious and flagrant affront to the basic concepts of judicial proceedings." Id.

Even the President's own Justice Department understands that our nation cannot tolerate perjury and obstruction of justice. President Clinton and his Justice Department have prosecuted approximately 600 cases of perjury since he came to office.
today—as we debate whether perjury is a serious offense—over 100 people are locked behind bars in federal prison for committing the criminal act of perjury.

Perjury and obstruction hammer away at the twin pillars of our legal system: truth and justice. Every witness in every deposition is required to raise his or her right hand and swear to tell the truth, the whole truth, and nothing but the truth, so help them God. Every witness in every grand jury proceeding and in every trial is required to raise his or her right hand and swear to tell the truth. Every official declaration filed with the court is stamped with the express affirmation that the declaration is true. In the words of our nation’s first Supreme Court Chief Justice, John Jay: “If oaths should cease to be held sacred, our dearest and most valuable rights would become insecure.”

The facts clearly show that the President 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 our 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 every man to become a law unto himself; it invites anarchy.”

William J. 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 or sinks below his usual condition, and the same thing is true of nations.”

So what will we do this day? Will we rise above or will we sink below? Will we condone this President’s conduct or will we 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[ed] certainly been fair.” But, that brilliant and fair man had crossed the line.

At that critical moment in Senate history, we could have taken the wrong path and called it a private matter, saying “it’s just about sex.” But, my friend, Senator DIANNE FEINSTEIN was right when she said: “This is not private, personal conduct. This is conduct that took place in public service, and many of the people involved are themselves Federal employees.”

At that moment, the Senate could have said, “He lied about his conduct to everybody, so lying in an official proceeding is OK.” Or, we could have said, “He was overwrought by 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, but we all know, that is, the American people do not trust their Commander-in-Chief. A majority of Americans believe that President Clinton has lied to the country and that he will lie to the country again.

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. You’re always playing 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 J. Jefferson Clinton has lost his balance. He has lost his sense of right and wrong. Of truth and justice. And, doing so, he has, in the words of Alexander Hamilton in Federalist No. 65—abused and violated the trust of the American people.

Again, let me quote my esteemed colleague, Senator DIANNE FEINSTEIN, who said just a few months ago: ‘My trust in the President’s credibility has been badly shattered.’

Senator FEINSTEIN is not an island on this issue of shattered trust. There are many others who have expressed similar sentiments. A recent poll confirms what we all know: that is, the American people do not trust their Commander-in-Chief. A majority of Americans believe that President Clinton has lied to the country and that he will lie to the country again.

The New York Times, which I rarely ever quote, had this to say about the President’s violation of the public trust:

“The American President is a person who sometimes must ask people in the ranks to die for the country. The President is a person who asks people close around him to serve the government for less money than their talents would bring elsewhere. The President sometimes must ask people in the country to give up money and 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 undisguised private behavior in a revered place, but with his cavalier response to public concern.”

In 1828, at his home in Lexington, Kentucky, Henry Clay opined that “[g]overnment is a trust, and the officers of the government are trustees[,]” I believe that fundamental principle to be true, and I believe that William J. Jefferson Clinton has abused and violated that public trust.

His cold, calculated actions betrayed the trust vested in him by the American people and the high office of the presidency. The President of the United States is one of the most powerful people in the world, and to use that influence and power to lie—deliberately and methodically. He took an oath to faithfully execute the laws of this nation, and he violated that oath. He
pledged to be the nation’s chief law enforcement officer, and he violated that pledge. He took an oath to tell the truth, the whole truth, and nothing but the truth, and he willfully and repeatedly violated that oath.

I firmly believe that the evidence establishes beyond a reasonable doubt that William Jefferson Clinton made statements to the federal grand jury regarding the nature of his relationship with a subordinate government employee and the purpose of his post-deposition conversation with a loyal secretary that were false, misleading, and perjurious, and warrant removal from office. Thus, I find the President guilty under Article I.

I believe with equal conviction that the evidence establishes beyond a reasonable doubt that William Jefferson Clinton willfully engaged in a deliberate course of conduct designed to delay, impede, cover up, and conceal the existence of evidence and testimony relating to a Federal civil rights employee and the purpose of his post-deposition conversation with a loyal secretary against him, and that this conduct warrants removal from office. Thus, I find the President guilty under Article I.

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 around the world—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 created. They clearly did not intend the Impeachment Clause to nullify the vote of the people, except in the most extraordinary cases of great danger to the nation.

The entire history of the debates at the Constitutional Convention demonstrates their clear intent to limit impeachment as narrowly as possible, to prevent a willful partisan majority in Congress from undermining the right to vote and the power of the President the people had elected.

The Framers of the Constitution also made clear that the President was not to be subject to the House of Representatives. The new government they created was based on another fundamental principle as well—the principle of separation of powers among the three coequal branches of government: the Legislative Branch, the Executive Branch, and the Judicial Branch. They specifically did not create a parliamentary system of government, in which the President would serve at the pleasure of Congress.

In their wisdom, the Framers recognized that in certain extreme cases, a narrow exception to the orderly transfer of Presidential power through national elections every four years was necessary to protect the nation from an abusive President. And so they created by presidential process, by which the President could be removed from office by the Senate and the House of Representatives in extreme cases where the President had committed “Treason, Bribery, or other high Crimes and Misdemeanors,” a term borrowed from the English impeachment experience.

The Framers intended the House and the Senate to use the impeachment power cautiously, and not wield it promiscuously for partisan political purposes. Sadly, in this case, Republicans in the House of Representatives, in their partisan vendetta against the President, have wielded the impeachment power in precisely the way the Framers rejected—recklessly and without regard for the Constitution or the will of the American people. In their most blatant attempt of all, the Republicans, in their partisan vendetta against the President, have used the referral as a basis to remove him from office.

President the people had elected.
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 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 did not think impeachment power whatsoever . . . [t]hey suggested that in a world of separation of powers and election of the President, there was no place for impeachment. . . . That position was defeated by reference to egregious hypotheticals in which the President betrayed the country during war or got his office through bribery. Those are the cases that persuaded the swing votes that there should be impeachment power.” In the end, the Framers relented on impeachment, but at least they agreed 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, vigorously opposing the amendment, ten other Framers who believed that such a vague phrase would give Congress too much power to undermine the President. Mason withdrew his original proposal and substituted the phrase, “other high Crimes and Misdemeanors against the State” — a phrase well-known from English law.

The Constitutional Convention adopted the modification by a vote of eight states to three—confident that only serious offenses against the nation would provide the basis for impeachment. Later, the Committee of Style removed the words, “against the State,” but because the Committee had been instructed not to change the meaning of the impeachment clause should be interpreted as it was originally drafted.

The debate surrounding the Impeachment Clause was significant. By first expanding the two specific impeachable offenses in the Constitution, the Framers clearly intended that the President could be removed from office for “crimes” beyond treason and bribery, but that he could not be removed for inefficient administration or administration inconsistent with the dominant view in Congress. Impeachment was not to be the illegitimate twin of the English vote of “No Confidence” under a parliamentary system of government. The doctrine of separation of powers was paramount. The President was to serve at the pleasure of the people, not the pleasure of the Congress, and certainly not at the pleasure of a willful partisan majority in the House of Representatives.

As Charles Black stated in his highly regarded work on impeachment, the two specific impeachable offenses—treason and bribery—can help identify both the “ordinary crimes which ought also to be looked upon as impeachable offenses, and those serious misdeeds, meaning by proviso, ought to be looked on as impeachable offenses . . .” Using treason and bribery as “the minor’s 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 “evidence 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 is plain. The question is: “[I]t goes without saying that lying under oath is a very serious offense. But even if the House of Representatives had the constitutional authority to impeach for any instance of perjury or obstruction of justice, a responsible House would not exercise this awesome power on the facts alleged in this case.” The historians wrote, “[The Framers explicitly reserved [impeachment] for high Crimes and Misdemeanors 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, when it comes to determining whether the President should be removed from office requires the Senate to do more than make simplistic analogies to federal judges.

Removal of the President of the United States and removal of a federal judge are vastly different. The President is unique, and his role is in no way comparable to the role of the over 900 federal judges we have today. The impact on the country of removing one of 900 federal judges is infinitesimal, compared to the impact of removing the only President we have. And the people elect the President for a specific four year term, while federal judges are appointed for life, subject to good behavior. These distinctions are obvious, and they make all the difference.

Other precedents also undermine the House Managers’ insistence that the Senate is bound to remove President Clinton from office. The House Judiciary Committee refused on a bipartisan basis to impeach President Nixon for deliberately lying under oath to the Internal Revenue Service, although he 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 dependent on removing the President. Before impeaching and convicting the President, the Senate must find that he committed “Treason, Bribery, or other high
President Clinton’s conduct was condemned even more severely by history for his use of the impeachment process to unseat the President of the United States from office than whether to remove the President from office. 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 essential institutions. They created 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 never be shunned out of political expediency nor invoked for political gain.

The question before us is not whether President Clinton’s conduct was contemptible or utterly unworthy of the great office he holds. It was. The question before us is whether the President has committed an impeachable offense for which he should be removed from that office. The Framers thought carefully about where to vest the ultimate power to remove a president. They chose the United States Senate. This was not an obvious choice. The power to convict and remove could as easily have been assigned to a court of law, where a jury would apply the law to the facts in the ordinary way.

But the Framers gave the power to try impeachments to the Senate. They did so because they recognized that an impeachment trial should not be an ordinary trial, requiring an ordinary application of law to fact. The Framers wanted the Senate to make not only a determination of guilt, but also a judgment about what is best for our nation and its institutions.

The ultimate question in 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 will be taking is not for acquittal. It is a blunt instrument that does not allow me to express clearly my belief that President Clinton willfully lied to a federal grand jury, and that he wrongfully tried to influence testimony and to conceal evidence related to Paula Jones’ lawsuit.

As this case has been argued in this chamber, I have become convinced that the perjury charges of Article I are not fully substantiated by the record. The President’s grand jury testimony is replete with lies, half-truths, and evasions. But significantly, not all evasion is lying, and not all lying is perjury. Even blatantly misleading testimony that all fair-minded people would consider dishonest may not actually constitute perjury, as the law defines it.

Time and time again, the attorneys questioning President Clinton before the grand jury—perhaps out of a misunderstanding of his conduct—asked him questions that could only be answered by perjury. Even if President Clinton did not lie, he incorrectly answered questions that could only be answered by perjury.

The evidence supporting Article II is more convincing. Indeed, the case presented by the House Managers proves to my satisfaction that the President did, in fact, obstruct justice in Paula Jones’ civil rights case. While the circumstances surrounding Monica Lewinsky’s filing of a false affidavit are unclear, there is no doubt in my mind that the frantic efforts to find Ms. Lewinsky a job, the retrieval and destruction of relevant evidence, and the testimony of the President’s secretary, and, most egregious, the President’s blatant coaching of Betty Currie—not once, but twice—were clear attempts to tamper with witnesses and obstruct justice. Indeed, if I were a juror in an ordinary criminal case, I might very well vote to convict faced with these facts.

Nevertheless, I do not think that the President’s actions constitute a "high crime" or "misdemeanor" as contemplated by Article II, Section 4 of the Constitution. This is, I readily acknowledge, a judgment that can neither be made nor explained with anything approaching scientific precision. But I derive my judgment from 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 generally more severe in criminal trials. This is not to suggest for a moment that we should tolerate obstruction of justice in civil cases, but only to observe that our legal system treats it as a less serious offense.

Second, I believe that for impeachment purposes, obstruction of justice has more ominous implications when the conduct concealed, or the method used to conceal it, poses a threat to our governmental institutions. Neither occurred in this case.

Therefore, I will cast my vote not for the current President, but for the presidency. I believe that in order to convict, we must conclude from the evidence presented to us with no room for doubt that our Constitution will be injured and our democracy suffer should the President remain in office one moment more.

In this instance, the claims against the President fail to reach this very high standard. Therefore, I do not think that the President fail to reach this very high standard. Therefore, I will vote to acquit William Jefferson Clinton on both counts.

In voting to acquit the President, I do so with grave misgivings for I do not mean in any way to exonerate this man. He lied under oath; he sought to interfere with the evidence; he tried to influence the testimony of key witnesses. And, while it may not be a crime, he exploited a very young, starstruck employee whom he then promoted and rewarded. The President has more ominous implications when the conduct concealed, or the method used to conceal it, poses a threat to our governmental institutions. Neither occurred in this case.

Therefore, I believe that impeachment purposes, obstruction of justice has more ominous implications when the conduct concealed, or the method used to conceal it, poses a threat to our governmental institutions. Neither occurred in this case.

In voting to acquit the President, I do so with grave misgivings for I do not mean in any way to exonerate this man. He lied under oath; he sought to interfere with the evidence; he tried to influence the testimony of key witnesses.
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 impeachment, 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. As Maine’s great poet, Henry Wadsworth Longfellow, wrote in 1874, “Whatever hath been written shall remain, nor be erased, nor written o’er again.”

When the history of the Clinton presidency is written, every book will begin with the fact that William Jefferson Clinton was impeached, and that will not only be the ultimate censure but also the final verdict on this sad chapter in our nation’s history.

Mr. President, for 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.

The case should never have been brought before the Senate. I think it is one of the most blatant partisan actions taken by the House of Representatives since Andrew Johnson’s case was pushed through by the radical Republicans of his time.

I think it is important for us to take a look at how this case got here. One might ask why it is important how it got here?

Well, if you believe that the end justifies the means, it is probably not very important. But if you believe the end doesn’t justify the means, that those who are charged with enforcing the law cannot break the law in order to bring someone to the bar of justice, and if it is true that the rule implies not only to the defendant, the President in this case, but also to the prosecutors and those sworn to uphold the law, then it is important to look at how this case got here.

First, we have a statute, the independent counsel statute which at best I believe is flawed and at worst unworkable which allows someone to be targeted without regard to money or time. In fact, it has essentially created a fourth branch of Government with no checks or balances.

Again, the conduct, I want to point out, of Ken Starr does not excuse the behavior of the President but has everything to do with our perspective on the case and how we approach it, how we weigh our decision. We are not judges, we are the Senate 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.

When the political motivation is so blatant, as it has been in this case, I think we in the Senate should have our guard up, not only on what the case is about, but how it got here. This is the sort of political impeachment case that Madison and Hamilton wanted to avoid, and I refer you to Federalist Paper No. 65, and Hamilton warned the greatest danger would be that the Constitution may be invaded by those who are obsessed with the comparative strength of parties than by the real demonstrations of innocence or guilt.” That is why he argued for it to come to the Senate and have a two-thirds requirement in order to convict and remove.

So in 1996, Ken Starr is picked by a three-judge panel to investigate Whitewater. Whitewater turns into Travelgate. Travelgate turns into Filegate, and then one wonders, how did Monica Lewinsky ever drop in on this?

If we look back, when Ken Starr was a private attorney, in 1994, he had dealings with Paula Jones’ attorneys in terms of her then-pending lawsuit. So he had prior involvement himself with the Paula Jones case.

So the Paula Jones case proceeds forward. And in October of 1997, an entity called the Rutherford Institute, funded by conservative forces in the United States, found some new attorneys for the Paula Jones case.

Now some time around that time, Linda Tripp, with whom Monica Lewinsky had shared her most intimate details of her involvement with the President, began talking with these attorneys. That is sort of the status of the case as of December 1997.

And here I ask unanimous consent to have printed an article from the New York Times, dated January 24, which more or less documents this.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the New York Times, Jan. 24, 1999]

QUIETLY, TEAM OF LAWYERS WHO DISLIKED CLINTON CASE ALIVE

(By Don Van Natta Jr. and Jill Abramson)

WASHINGTON—This time last year, Hillary Rodham Clinton described, in a now-famous appearance on the NBC News Program "Today," how a "fast-rising wing-conspiracy" was trying to destroy her husband's presidency.

As it turns out, some of the most serious damage to Bill Clinton's Presidency came not from his high-profile political enemies but from a small secret clique of lawyers in the President's inner circle who were searching for the next big case.

These lawyers, including Paula Corbin Jones's attorney, Donald E. Bacon, and Linda R. Tripp, a 43-year-old associate at the Philadelphia law firm of Kirkland & Ellis, based in Chicago, helped bring the Paula Jones case alive in the courts.

The group's leader was Jerome M. Marcus, a 39-year-old associate at the Philadelphia law firm of Kirkland & Ellis, based in Chicago. A former law student of the President, Marcus had helped arrange for Mrs. Tripp to take her explosive allegations to Mrs. Jones's lawyers.

In his long efforts to promote Mrs. Jones's lawsuit and help Mrs. Tripp get herself a lawyer, Marcus found other allies, including another Chicago law classmate, Richard W. Porter. Porter had worked as an aide to Vice President Dan Quayle and was a partner of Starr's at the law firm of Kirkland & Ellis, based in Chicago.

A third classmate, George T. Conway 3d, a New York lawyer educated at Yale, shared Marcus's low view of President Clinton. When the Jones case led to Ms. Lewinsky, Marcus and Conway searched for a new lawyer for Ms. Lewinsky called the Rutherford Institute, funded by conservative forces in the United States, found some new attorneys for the Paula Jones case.

In November 1997, Marcus and Porter helped arrange for Mrs. Tripp to take her explosive allegations to the President's lawyers. Among the lawyers that had been approached, Paul Rosenzweig, briefly considered doing work for Ms. Jones in 1994, according to billing records and interviews.

Last month, when he wrote an impassioned commentary in The Washington Times urging the impeachment of Clinton, "The cancer is deadly," Marcus wrote, "It, and its cause, must be removed." He identified himself in the newspaper simply as "a lawyer in Philadelphia."

In his long efforts to promote Mrs. Jones's lawsuit and help Mrs. Tripp find a lawyer, Marcus found other allies, including another Chicago law classmate, Richard W. Porter. Porter had worked as an aide to Vice President Dan Quayle and was a partner of Starr's at the law firm of Kirkland & Ellis, based in Chicago.

Charles G. Bakaly 3d, the spokesman for Starr, denied there was collusion between the independent counsel's office and the Paula Jones lawyers. Some of the lawyers, who were approached, Paul Rosenzweig filed a "heads-up" phone call from Marcus on Jan. 8, 1998, that first tipped off Starr's office about Ms. Lewinsky. Another tip was not mentioned in the 445-page Starr report, even though the information revived a moribund Whitewater investigation that would not have produced, it now seems, an impeachment referral to Congress.

Marcus did make his views known publicly last week when he wrote in The Washington Times urging the impeachment of Clinton. "The cancer is deadly," Marcus wrote, "It, and its cause, must be removed." He identified himself in the newspaper simply as "a lawyer in Philadelphia."

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Charles G. Bakaly 3d, the spokesman for Starr, denied there was collusion between the independent counsel's office and the Paula Jones team, including Marcus. "There was absolutely no conspiracy between the Jones lawyers and our office," Bakaly said. "Judge Sullivan testified that the President was not given the opportunity to testify on how this matter came to our attention, and that the actions we took were pursuant to the President's request."

Clinton said in his grand jury testimony in April that he had no recollection of how he first learned of the sexual conduct lawsuit brought by Ms. Lewinsky under the Sexual Conduct Act of 1987. "I just thought they would take a wrecking ball to me and see if they could do some damage," he said. "That wrecking ball was wielded by Marcus and his colleagues, who managed to drive Paula Corbin Jones's allegation of sexual misconduct out of the courtroom and beyond."

THREE CLASSMATES AT CHICAGO LAW SCHOOL

Marcus, Porter and Rosenzweig were classmates at the University of Chicago Law School, graduating in 1986. Conway met the others through the Jones case. Some of the lawyers were also law partners in the liberal Democratic Society, a legal group that includes conservative and libertarian luminaries like...
Conway, a polished, scholarly briefs written by the Cammarata and Davis team, and the said he noticed a marked difference in qualitative legal advice that Cammarata said was in the case with Cammarata and Davis, offering numerous times at the most critical moments vital. Although the billing records show communication between Porter and the ones lawyers from 1994 to 1997, he denied in a written statement last fall doing legal work for Ms. Jones. Because Porter is a partner at the firm where Starr worked until he took a leave of absence last May by Porter, in the Jones case one could have posed a conflict of interest for Starr once he became independent counsel. Starr has acknowledged contacts with Davis, specifically six telephone discussions the two had in 1994, before Starr became independent counsel. In fact, Starr has been criticized for not disclosing the phone conversations to Attorney General Janet Reno when he was seeking to expand his investigation. Bork wrote an article based on the troopers' women when he was Governor of Arkansas. Saying that it did not occur to him to mention the conversations to Attorney General Janet Reno, he was supporting this findings of fact procedure, and I wanted to see what his exactly the nature of these discussions, but we do know they talked a number of times. But we do know that on January 8 Marcus contacted Rosenzweig and told him about the relationship of Monica Lewinsky and the President. Right after this, Marcus contacts the Office of Independent Counsel to talk about Lewinsky and tells them about the tapes she has made, the telephone tapes, the tapes of her telephone conversations with Monica Lewinsky. They were searched by FBI agents working with Starr, meets with Lewinsky, and records their conversation without Lewinsky's knowledge—and doing this without any authorization to do it. They didn't get it until 4 days later. Now, all this is done prior to President Clinton ever giving a deposition or testifying before a grand jury. And so Clinton has done nothing yet in terms of testifying. So one might ask, What was Starr and his team after? If, in fact, this was a consensual sexual relationship between Clinton and a young woman who was an adult, what did it have to do with Whitewater or anything else they were investigating? Well, here is why it had something to do with it. Let me quote from an article written by Joseph Isenburgh, a professor of law at the University of Chicago. I happen to have read it because he was supporting this findings of fact procedure, and I wanted to see what his thoughts were, but later on in his treatise he said this:

What is perverse about the impeachment of President Clinton is the idiotic premise on which it rests. The President wasn’t forced to respond to judicial process in the Paula Jones harassments suit, because he committed a crime of paramount public concern. That case, remember, was dismissed as meritless. I am continuing to quote him:

The misconduct at issue here had no independent significance. It is, itself, merely a byproduct of a judicial process directed at the President, essentially of a “sting” set-up in the courts.
February 12, 1999

CONGRESSIONAL RECORD – SENATE

S1571

"A 'sting' set-up in the courts." That is what Ken Starr and the J ones 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 J ones attorneys. The notes both present him with this definition of "sting operations" 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 J ones attorneys the night before that deposition and gave them the tapes of her telephone conversations. In light of this, it is interesting to note that in today's New York Times, February 10, the conduct of the independent counsel is so suspect and potentially violative of J ustice Department policy and law that he now faces a reprimand for a number of reasons which I won't read. But I ask unanimous consent that it be printed in the RECORD. And you can read it in today's New York Times.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, February 9, 1998]

INQUIRY TO ASK WHETHER RENO WAS MISLED BY STARR'S OFFICE

(By David J. Johnston and Don Van Natta, Jr.)

WASHINGTON, Feb. 9—The Justice Department is beginning an inquiry to determine whether Kenneth W. Starr's prosecutors misled Attorney General Janet Reno about possible conflicts of interest when they obtained permission from Ms. Reno 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 J ones legal team in the Whitewater matter before turning them over 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 J ones legal team from November 1997 to January 1998.

But a series of newly disclosed notes taken at the initial meeting on Jan. 15 and Jan. 16, 1998, between Mr. Starr's prosecutors and J ustice Department officials, shows that the prosecutors flatly asserted that there had been no contacts with the Jones team attorneys.

For example, Eric H. Holder Jr., the Deputy Attorney General, wrote in this three pages of notes of a jan. 15, 1998, meeting with Mr. Starr's prosecutors: "They had no contact with plaintiff's attys."

Handwritten notes by two other Justice Department officials, Monty Wilkinson and Josh Hochberg, corroborate the statements attributed to Mr. Starr's prosecutors.

Moreover, notes taken by another participant in the initial meeting, Steven Bates, a prosecutor in Mr. Starr's office, indicate that Jack M. Bennett, one of Mr. Starr's deputies, told the J ustice Department officials: "We've had no contact with the plaintiffs' attorneys. We're concerned about appearances."

The notes have become crucial evidence in the J ustice 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 truthfulness of Mr. Starr's prosecutors is one of several issues that the department wants to examine, the Government officials said. Lawyers in the ethics office also intend to investigate whether Mr. Starr abused his authority to convene grand juries, or improperly pressed witnesses like Ms. Lewinsky, and disclosed secret grand jury information to the media.

Mr. Clinton's lawyers and supporters have long contended that there was collusion between Mr. Starr's independent counsel office and some J ones lawyers, noting that Linda R. Tripp found her way to the Office of Independent Counsel through a group of private lawyers who performed legal work on the J ones case.

Mr. Starr has insisted that his office sought permission from Ms. Reno to expand his jurisdiction when he learned of allegations that President Clinton's close friend Vernon E. Jordan, Jr. was helping Monica S. Lewinsky find a job in exchange for her silence as a possible witness in the J ones lawsuit.

Charles G. Bakaly 3d, a spokesman for Mr. Starr's office, would not comment on the J ustice Department's plans to start an investigation. But the notes showed that prosecutors had supplied the J ustice Department with a thorough status report on the then-nascent inquiry.

"I don't know how else to put it," Mr. Bakaly said. "There was no misleading of Justice. This was a very fluid evolving situation. Unlike most public corruption cases, this one breathed in and out many of the issues still fastened to the Attorney General's belt and still possibly being committed."

This latest inquiry has exacerbated tensions that have existed between the Justice Department and Mr. Starr's office—particularly over Mr. Starr's handling of the Lewinsky matter. At one point last spring, Ms. Reno asked Ms. Reno to take the Lewinsky matter.

At another point, the ethics unit of the J ustice Department launched its inquiry after Mr. Starr's 445-page referral to Congress. Mr. Starr's prosecutors and J ustice Department officials have feuded privately.

The early tip was not disclosed in Mr. Starr's 445-page referral to Congress. Nor was it disclosed to the J ustice Department. And The New York Times reported last month that there were several conversations between Mr. Marcus and Paul Rosenwein from November 1997 to January 1998.

David E. Kendall, one of the President's personal lawyers, complained to Ms. Reno in November that Mr. Marcus was "very confusing" over his dealings with the J ustice Department. He said the J ustice Department was "very confused about issues" raised about those contacts.

The allegations of collusion prompted lawyers at the J ustice 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 independent counsel 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 aide. But Mr. Starr said that the call was made.

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 J ones case. Mr. Marcus drafted legal documents and was involved in many of the most important strategic decisions in the J ones lawsuit, according to billing records in the J ones case and interviews with other lawyers who worked with him.

Mr. Marcus recruited other conservative lawyers to work assistance with the Republican Senate, among others. Paul Rosenwein, who briefly considered doing work for Ms. Jones in 1994, the billing records show, but decided not to do it.

In November 1997, Mr. Rosenwein joined Mr. Starr's office, where he and Mr. Marcus
had several conversations about the Jones case, said a lawyer familiar with their discussions.

Mr. Bakaly, the spokesman for Mr. Starr, has adamantly denied any suggestion of perjury. When Mr. Starr testified before the House Judiciary Committee on Nov. 19 of last year, he was asked by the chief counsel for the D. D. Lebowitz, to reveal "substantial contacts" that Mr. Starr had with Jones lawyers.

In a series of questions, Mr. Lowell tried to suggest that Mrs. Currie 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 Mrs. J.

"I know Richard Porter; I've had communications with him from time to time," Mr. Starr testified. "But I'm in terms of a specific discussion with respect to what the law firm may be doing or may not be doing, I'm not recalling that specifically, no."

[From the New York Times, Feb. 9, 1998]

TRACING THE PAST: HOW LEGAL PATHS OF JONES AND LEWINSKY JOINED

(By Tim Weiner with Neil A. Lewis)

WASHINGTON—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 down 16th Street to the D. C. O's office to have a six-hour grilling in the case of Paula Jones vs. William J. Jefferson Clinton.

For six weeks, the president's lawyers had known that he might be asked a startling question: Did you have a sexual relationship with Monica Lewinsky? When the question came, the president's body tensed and his jaw shot out. He knew he had been involved in the case, and, under oath, he denied it.

The questions continued: Had the president been alone with Lewinsky? Had he given her gifts? Had he helped her find a new job? The president said he would answer some of these questions when he asked for a private talk with Clinton at the White House, said lawyers in the case. The president asserted that he had never been alone with Lewinsky at the White House.

When they met, the president asserted that Lewinsky had lied in her affidavit in the Jones case by denying that she had ever had sex with Clinton. White Tripp was working on the Jones case, and offered to file an affidavit in Jones vs. Clinton, swearing that Lewinsky had a sexual relationship with President Clinton.

The tapes preserved the threat of prison for Lewinsky unless she divulged her affidavit and cooperated with Starr. The tapes recorded Lewinsky saying that the president "doesn'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 misgivings 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 Clinton in the White House. The same tipster, described by the institute as a director, recovered from the shock of her life. The tipster had sex with Clinton, said her lawyer William Francis Carter, on Jordon's recommendation.

"Tripp," she was Lewinsky's last day of work at the Pentagon. She still did not have a new job.

On or about Dec. 28, a Sunday, she had a private talk with Clinton at the White House. Lewinsky said lawyers in the case. The president told her not to worry about being drawn into a lawsuit and advised her to describe her earlier White House visits as meetings with Mrs. Currie, the lawyer.

As for the subpoenaed gifts, the president said Lewinsky could not produce them if she no longer had them, according to the lawyer. Mrs. Currie has told investigators that she retrieved a box of gifts from Lewinsky—including the dress, the brooch and the hat pin—and subsequently turned the items over to the White House.

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

The judge in the case had suggested that testimony be limited to accounts of sexual conduct received 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.

Tripp has suggested to lawyers in the case that Lewinsky did not intend to file the affidavit until she had secured a job. That suggestion has not been independently corroborated by Lewinsky or anyone else.

On Jan. 8, Lewinsky had a final job interview with Revlon, and called her phone 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. 12, Tripp made contact with Starr's office, saying that Lewinsky had had an affair with the president and that she, Tripp, had secret tapes to prove it. The same day, Carter told Mrs. Jones' lawyers that Lewinsky had denied any sexual relationship with the president in her affidavit.

On Jan. 13, Tripp, with a tiny tape recorder provided by Starr's office, met Lewinsky for a private talk. Lewinsky said she had to have described her conversations about her affidavit with Jordon.
On Jan. 14 or Jan. 15, Lewinsky handled Tripp three pages of "talking points," aimed at persuading Tripp to deny any knowledge of sexual impropriety by Clinton in the Jones lawsuit. It is unclear who wrote the document.

On Jan. 15, Starr's office told the J ustice Department about Tripp's accusations. A panel of federal judges last Thursday was to investigate whether Clinton and Jordan had encouraged Lewinsky to lie under oath in her affidavit.

On Jan. 16, a Friday, the case reached an explosive state. The Federal Bureau of Investigation confronted Lewinsky. That day and the next, House officials pointed questions, including whether the president had tried to influence other people's testimony in J ones vs. Clinton, a House official said. Starr's expanded investigation had already leaked.

Clinton knew none of this. Nor did he know, as he confronted Mrs. J ones on Jan. 17, that he would be so extensively questioned about Lewinsky. Mrs. J ones 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 spoken to 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 investigation directly at the White House. He had already summoned a passel 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. J ones' 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 that is so, the president "committed perjury" in his sworn deposition, and "em-barked on a series of misrepresentations" afterward, one of Mrs. J ones' 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. HARKIN. In many, many times in his opening and closing arguments about what this teaches our kids about honesty and truthfulnesst, that the rule of law means something. Well, yes, it means something. It means something to our kids and future generation.

So now, in this long process, the case is before the House J udiciary Commit-tee. 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 tapes, which had never been dropped. That happens after the election. They hear Ken Starr. And it is interesting to note that at the end of his long testi-mony, every Republican on the House J udiciary Committee gives him a standing ovation. And of the political statement does that make? This was something like the kind of balanced evidentiary material given the J udiciary Committee in the House by Leon Jaworski in the Watergate case con-cerning then-President Nixon.

So in summary, what we have here is an out-of-control independent counsel with his own political agenda and ven-detta, 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 J udiciary Committee members who fanned the flames, and some Members who al-ready, for a resolution to impeach the President. What you have here is a blatantly, vindictive political case.

The American people figured it out a long time ago. They know the truth of what happened. 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 this other stuff we are delving into is the details of about who touched who where, how many times they met, who exchanged gifts. The truth is simple and straightforward, and the American people figured it out, and they have a judgment about this case. They felt it was wrong, but it's personal. And he violated his marriage oath, not his oath of office. It is a sin, but not a crime. It is between him and his wife and his family and his God. And it is not a public offense. Ken Starr has said many times the American people can abide sin but not hypocrisy.

Throughout this entire case, hypocrisy abounds. Much has been said about the rule of law and the truthfulness and honesty regarding President Clinton. How about as it applies to Starr? How about truthfulness, when he doesn't include, in his presentation, that very important statement that he 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 committee Whitewater, Travelgate and Filegate—they shifted to illicit sex and a classic sting operation.

So we are left with two charges. Perjury. This falls far short, and there is no evidence to support the fact that he perjured himself before the jury. Evasion? Yes. Dodging? Yes. But not knowing making a false statement under oath material to the case. Doesn't fit.

Second article. Obstruction of justice. The House managers built their case on what they called the seven pillars of obstruction, which we have seen turned out to be seven sand castles of speculation. I think the most telling point was Monica Lewinsky, on her own tape last Saturday, SBY-ANT asked her, "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 J ones lawsuit. I didn't want to give either one of them 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 House's case was based on direct facts in evidence, and that is the difference.

In closing, two wrongs don't make a right. President Clinton did have an illicit affair. It was wrong and demeaning. Ken Starr abused justice, set up a sting operation, the wiring of Linda Tripp, the leaks, the salacious material.

Clinton's wrong, I submit, was more of a sin. Ken Starr's wrong is more of a crime. The damage to the rule of law is done more by Ken Starr than by Bill Clinton. At the beginning, I said the House had a heavy burden, given the history and partisanship of this case, to prove articles I and II and that they rise to an impeachable level. They never met that burden. Accordingly, I will 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 believe the appropriate form is for each Senator to express his or her opinion on this matter. I personally see no need to join 99 others and doing so, set a dangerous precedent that could be easily abused in the future. So here is my censure of the President.

I want to state emphatically, I do not condone his behavior that has been so thoroughly exposed and searched in the American consciousness. It is the sordid affair of all sordid affairs. The President brought dishonor to 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. 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 year 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. Both the gifts and the failings have surprised 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.

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 who did rise to his high destiny initially stood alone in leading the defense of Western civilization, was by most standards an alcoholic—at least modern standards. Franklin Roosevelt, Churchill's counterpart 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 enmity has placed the 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 know that he has destroyed the careers of innocents and 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 was heroically responding to a real 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 excuse. Kenneth Starr doesn't have an excuse.

Before I came to the national legislature 17 years ago, I was a trial lawyer. At various times, I prosecuted and defended people charged with crimes. Long before that, I served as a police officer. I never argued a case in the U.S. Supreme Court, but I tried more than 100 jury trials, hundreds of other cases before various courts, and argued before different appellate courts. I try to judge not according to stories heard in books or in court or through the trial lawyer's art. I don't use lightly McCarthy's name; I believe that the core of the impeachable offense here is to me. Bill Clinton has committed crimes, and I know something about prosecutorial misconduct, and I know something about professional misconduct. Every American is entitled to equal justice, no matter their rank in society, to 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, who 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 Water, 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, covered with attorneys for Paula Jones, do business. The Trial Attorney, unlike the special prosecutor, would not have leaky 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 for the Constitution and the Office of the President not to misuse their office to go all out, no holds barred, to “get” that targeted individual out of pride, anger and envy.

I invite each of you to look at Justice Scalia’s brilliant dissent in the Morrison versus Olson case where he talks about the constitutionality of the independent prosecutor. He predicted what we are now witnessing. Justice Scalia was visionary. Here is one of the things he said:

The context of this statute is acrid with the smell of threatened impeachment.

He was right. What else did he say? His opinion was 8 or 9 years ago. He said then: Congress appropriates approximately $30 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 think people that he thinks he should get, rather than cases that need to be prosecuted. . . . It is not uncommon in 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 leave them with the hope that those in high office have not been bereft of all reason, sense and sensibility. What the President did was wrong. It was immoral. I don’t believe it constitutes a crime justifying his removal from office. What Mr. Starr did, and continues to do, is also wrong, and it is also immoral.

But their conduct is not the standard to which we must hold ourselves. We, all of us in Government, can do better. We must do better. The American people have the right to expect that or it doesn’t matter how great we are, how great our ideas or how powerful our values. Set the standard high and judge by that standard. That is how the system is supposed to work, and in the long run it is how our constitutional form of government, with a legacy of more than 200 years, has worked and, with the help of a power greater than any of us, will 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 Justice. A healing device.

(Laughter.)

Mr. EDWARDS. Thank you, Mr. Chief Justice. I have prepared remarks. But I am not going to use them. I made that decision about 20 minutes ago.

I have been reflecting what my friend, the Senator, said, but he also quoted Scalia. Scalia talked about what Justice Jackson had said, but he also quoted Scalia. Scalia could see that coming. He was right. What else did he say? His opinion was 8 or 9 years ago. He said then: Congress appropriates approximately $30 million annually for general legal activities, salaries, and expenses of the Criminal Division of the Department of Justice.

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But their conduct is not the standard to which we must hold ourselves. We,
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 second charge, the job search. On the prosecution side of the scales of justice, we have an intensified effort to find a job for Monica Lewinsky. I think that has been proven. I think that has been proven clearly. On the other side, we have testimony from Monica Lewinsky that she was never promised a job for her silence. We have evidence that the job search, although not as intense, was going on before anyone knew she would be a witness. We have Vernon Jordan testifying under oath—I sat there and watched it and looked him in the eye—that there was never a quid pro quo, that the affidavit was over here and the job search was over here.

The reality is, when you put all that evidence on the scale—prosecution evidence on one side, defense evidence on the other—at worst the scale stays even. And the prosecution has got to prove this case in order to remove the President of the United States beyond a reasonable doubt. They just have not proven it no matter what we suspect. No matter what we suspect. So that is the false affidavit which we have talked about, coaching Betty Currie, the job search.

Now to the gifts. Let’s see what the proof is. What is the proof—not the suspicion. On the prosecution side, we know that the President’s secretary went to Monica Lewinsky’s house, got the gifts, took them home and hid them under the bed. And the prosecution has proved 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.

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 he had never 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, the 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 can be summed up in one word: “I sweep it away.” I will never forget Manager Lindsey 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 on both sides. Senators Leahy and Dodd, who I worked with on these depositions—wonderful, wonderful Senators. I have learned what leadership is about from these two men sitting right here—Senators Lott and Daschle. I have loved working with Senators DeWine and Thompson. And Senator Specter and I worked together on a deposition. He showed me great deference and respect. I have no idea why, but he did; and I appreciate it. I have deep respect and admiration for that. And now, 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, to do it away. I have to say, I have a boundless faith in the American people sitting on those juries. They want to do what is right. They want to do what is right in the worst kind of way.

An extraordinary thing has happened to me in the last 30 days. I have watched you struggle, every one of you. I have watched you come to this 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?

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An extraordinary thing has happened to me in the last 30 days. I have watched you struggle, every one of you. I have watched you come to this podium. I have listened to what you have had to say. I talked to you informally; I watched you suffer. I believe that you are the most patriotic people in the world. The American people want you to do the right thing. The result of that for me is a gift. And that gift is that I now have a boundless faith in you.
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 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 reasonated that the President's misleading tax return trial for a President to Monica Lewinsky. How-

The witnesses' statements are a matter of record, and they comprise thousands of pages encompassed in the volumes of testimony and sworn affidavits in the Paula Jones case. Since it does 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 perjury dates 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.

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 disagreed with Mr. Brandy,as I do now. My decision was bolstered when I viewed Ms. Lewinsky's videotaped testimony in which she reaffirmed her grand jury testimony. I saw no purpose in bringing her to the witness table again, nor the 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 testimonies.

The witnesses' statements are a matter of record, and they comprise thousands of pages encompassed in the volumes of testimony and sworn affidavits in the Paula Jones case. Since it does not appear to be involved in the inquiries by Mr. Jordan on her behalf that led to two job rejections and one job offer.
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 high level 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 other Members, 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 Mr. President, 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 of United States legislators was a grand and 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 remarkable to the people assembled from around the world for the funeral was the dramatic appearance not only of the President of the United States, William Jefferson Clinton, but three former U.S. Presidents—Gerald Ford, Jimmy Carter and George Bush—they joined with President Clinton as an extraordinary demonstration not only of bipartisanship but of a united American commitment to the peace policies of King Hussein and the U.S. role in a continuing peace process.

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 talk with him. Many of them listened to his conversation. It was clear to me he had a very good understanding of the issues that faced not only our country, but their country, and an understanding about how America's interest affect all of us.

So in explaining my decisions in this trial, I know that I am addressing myself to fellow Vermonters and fellow Senators, but also to future generations. In that future generation is my own grandson and perhaps even his grandchildren.

The conclusion I have reached on the articles of impeachment is imbued with this solemn knowledge and sense of duty. My conclusion is we must not avenge the faults of William Jefferson Clinton upon our Nation, our children and our Constitution.

Extreme partisanship and prosecutorial zealotry have strained this process in its critical early junctures. Partisan impeachments are lacking in credibility. The framers knew this. We all know this.

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

But let me say to my friends, especially our two distinguished leaders who worked so hard on this, in many ways the Senate's work has been the calm after the storm. We began the 106th Congress, the last 20th century, facing a challenge no Senator has been called upon to address since the aftermath of the Civil War. We took a special oath administered to Senators who must determine whether to override the election by the people of the United States of their President and remove him from office.

The Constitution purposely restrains the Congress, and carefully circumscribes our powers to remove the head of the executive branch of the Federal Government. The Constitution intentionally makes it difficult to override the electoral judgment of the American people. I will cast my vote wary of the dangers posed by the House managers' seductive invitation to vote to remove the President for symbolic purposes.

We all agree the President's conduct was inexcusable. It was deeply discrediting, especially for those who know the President and who support the many good things he has done for this country and the world. His conduct in trying to keep this relationship secret from his wife and family, his friends and associates, from the public glare of a politically charged lawsuit, may be understandable on the human level, but it has had serious consequences for him personally and for the legacy of his Presidency.

The President has demonstrated before a Federal grand jury terribly embarrassing personal conduct and has seen a videotape of that grand jury testimony broadcast to the entire Nation, with excerpts replayed over and over again. The modern day version of the public stockade has been difficult to witness for those who know this man and his family and care about them.

The Jones lawsuit has now been settled and $850,000 has been paid on a case that the District Court judge had dismissed for failing to state a claim.

The Clinton Presidency has been permanently tarnished. The Senate trial
provided a forum to replay the embar-
rassing and humiliating facts of the Presi-
dent's improper relationship. No one
can say the Presidency has emerged un-
scathed.

For me, the most regrettable act is
the trial televised to the American peo-
ple, where he shook his finger defiantly
and said the allegations were untrue.
That was not charged in the articles of
impeachment, but it was intended to mislead
the American people. That statement
was not within the jurisdiction, thought he later
apologized for his action. I feel strong-
ly that no President should do so inten-
tionally deceive the American people.

But condemning the President is not
the purpose of the impeachment trial.
Impeachment cannot be about punish-
ing the officeholder. One of the prede-
cessors of mine and of Senator Jeff-
fords, Senator George Edmunds of
Vermont, explained in 1868, that:

[punishment by impeachment does not
exist] in the Constitution. The penalty ac-
curred can only be removed from the office
he fills and prevented from holding office,
not as punishment, but as a means merely of
attention to the community.

So our focus has to be on whether
conduct which the House has charged
has been proven and warrants Presi-
dent Clinton's removal from office to
protect the public.

The President's indiscretions alone
did not bring us to this point. Raising
this matter to the level of a constitu-
tional impeachment only began with the
referral from the special prosecu-
tor, Kenneth Starr. Justice Robert
Jackson, when he was attorney gen-
eral, observed that the most dangerous
power of prosecutors is the power to
"pick people that he thinks he should
get rather than cases that need to be
prosecuted."
I am concerned that is
what has happened in the case of Presi-
dent Clinton.

Don't we recall the after the fruitless
years of investigation of this Presi-
dent, the past year of upheaval, that it
was the talking points given to Ms.
Tripp by Ms. Lewinsky which were sup-
posed to be the smoking gun that
proved a vast conspiracy to suborning
perjury? I don't think anybody doubts
Ms. Lewinsky's account that she wrote
the talking points based on her discus-
sions with Ms. Linda Tripp, and she
never discussed them with the Presi-
dent.

Monica Lewinsky consistently main-
tained that no one ever asked or en-
couraged her to lie; she was never
promised a job for her silence. Indeed,
in her 24th interview, the Senate
videotaped deposition demanded by the
House managers, she testified to her
own purposes in keeping her relation-
ship secret. She acted in what she
thought was her own best interests.
She sought to conceal this relationship
because she did not want to be humil-
iated in front of the whole world. And
the record establishes it was Linda
Tripp rather than President Clinton
who acted in the conflicting roles as
Ms. Lewinsky's intimate confidante
and ultimate betrayer.

As a former prosecutor, one of the
questions I asked is whether these
charged perjury and ob-
struction would have been brought
in the case against Bill
Clinton. Experienced prosecutors,
Republican and Democrat, testified before the
House Judiciary Committee that
no prosecutor would have proceeded
based on the record compiled by Mr. Starr, and
prosecutors I have talked to have
told me 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 conduct were not
high enough but bad enough for
removal. That is not our the Con-
gress' job. 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 that only serious violations
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
headed to fail. The Senate must re-
sate sanity 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-
olved 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 and the process of impeach-
ment. Few people will recall that after the unsuccess-
ful effort to remove him from of-
fice, 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 repre-
senting our States.

There are currently with 259 Senators,
including the 100 here now. I have re-
spected 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
vote on any Senator's vote on this. But the Senator from Vermont
cannot vote to convict and I will not.

Thank you.

(Exhibit 1)

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

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I. OATH OF OFFICE

On the first day of this Congress, the Vice
President of the United States administered
the oath of office to the most recently
lected Members of the Senate. I was honored
by the people of Vermont to be among those
Members and to take the oath of office to
serve here as a representative of Vermont.
With this oath I have again sworn to protect
and defend the Constitution of the United
States.

We were reminded by the Majority Leader
at the beginning of the last Congress that
the oath we take was formulated in 1868 to
help bring the country back together. As
Senator Lott has noted, following the Civil
War, some urged continued use of an iron-
clad oath that those who had served the Confederacy from 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 de-
veloped, our country experienced its first,
and until now, its only presidential impeach-
ment trial. History has judged harshly the
"Radical Republicans" who pursued that
impeachment against President Andrew J ohn-
son. A notable exception is William Maxwell
Evarts, a Vermonter who was criticized by
many Republican party leaders for defending
a President of the opposite political party.
Two 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. It is silent on whether we should remove the President or whether we should consider the impeachment of the President. 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 the Senate and to serve in this impeachment trial since the House Managers opened and closed their presentation to the Senate pointing to the oaths the President swore. We are assured on two occasions of the office of the President. The Managers have emphasized that the President's inaugural oath of office imposes a constitutional duty to "take Care that the Laws be faithfully executed." Their argument is that the President's oath is silent on whether we should remove the President or whether we should consider the impeachment of the President. But, the Constitution simply does not say that a President shall be removed for "Treason, bribery, or other high crimes and misdemeanors." It finds another constitutional footing to remove this President. The Constitution specifically that a President shall be removed if it becomes the opinion of two-thirds of the Senate that the President is "incapacitated to discharge the powers and duties of his office." Nor does it say that a President shall be removed for "Treason, bribery, or other high crimes and misdemeanors." The Managers have repeatedly lectured us. Our process has notably lacked one important element: the exercise of sound judgment.

As my oaths demand, I will work to protect and defend the Constitution. I will continue to defend our constitutional democracy against encroachments from all sides. Over the last few years, we have seen scores of constitutional amendments introduced each Congress and several voted upon each year. I have spoken about the assault by amendment being made against the Constitution and defended the Constitution against what some have termed "stickers." I have spoken of either follow the Constitution or alter the intent of the Framers and lower those standards for all time. I have heard more than one Senator acknowledge that in this sense it is not just the President but also the Senate on trial in this matter.

In the case of President Clinton, things began with the Special Prosecutor having his case that the District Court judge had dismissed. It was a $850,000 paid on a case that initially sought $250,000 in compensatory damages—a Mr. Clinton had deposited to which he had dis- missed for failing to state a claim.

Presidential impeachment is a very narrow, legalistic, technical process. It is the forum to replay the embarrassing and humiliating facts of the President's improper relationship. No one can say this President or his presidency has emerged unscathed.

B. Special Prosecutor Starr

The President's indiscinations 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 J. Jackson, when he was Attorney General in 1947, 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 happens, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then putting investigators to work, to pin some offense on him." It is here," he concluded, "that law enforcement becomes personal, and the real concern lies not so much 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- tractors began searching for a scandal. "Travelgate" went nowhere. "Filegate" was another dead end. Vincent Foster's tragic death was a suicide. Last summer, it was revealed that one of the President's closest friends had investigators scouring the countryside looking for women who may have been intimate with Bill Clinton at some point over the last 15 years. I spoke of my concern and trying to sound a cautionary note that the permanent investigation of the
President was taking yet another wrong turn. Finally, after four years of fruitless investigations, Special Prosecutor Starr renewed his attack on Linda Tripp and the Monica Lewinsky phase of his investigation. According to Mr. Starr, that contact with Ms. Lewinsky on January 26, 1998, days before Ms. Lewinsky had filed her affidavit in the J ones case and before the President’s deposition in that matter, as an officer of the office could— and should— have kept “better records” of the President’s relationship with Ms. Lewinsky. His theory, as described in his report, was that he had determined he could indict a sitting President. Even the House Managers balked at this interference, saying Mr. Starr’s latest leap was “not helpful at all.”

The next protagonist in this constitutional saga was the House Judiciary Committee. In addition to the serious substantive concerns raised by the powerful and broad sections of the Articles of Impeachment—which I will discuss later—the Committee also made at least for critical procedural oversights. First, the Republicans on the House Judiciary Committee used the muscle of the majority to force its partisan will. History tells us that to be successful, proceedings must be handled in a bipartisan manner.

The Framers anticipated that impeachments might be driven by partisanship rather than real demonstrations of guilt. The distinguished historian Arthur M. Schlesinger, Jr., made the point in his opening speech in impeachment proceedings in his testimony before the House Judiciary Subcommittee on the Constitution on November 9, 1998, stating: “The Framers further believed that, if the impeachment process is to acquire popular legitimacy, the bill of particulars must be made available to all members of the House, both liberal and conservative. The charges must be so grave and the evidence for them so weighty that they persuade members of both parties that removal must be considered. The proceedings must be conducted in a manner that speaks for the nation as a whole, not for the nation’s Grand Inquisitor, nor to retrieve any doubt that Ms. Lewinsky never told Mr. Starr’s office of a violation of federal secrecy rules. He issued a press release on October 20, 1994, pledging that neither he, nor his Counsel (“OIC”) would “abide by all of the obligations imposed upon us to protect the integrity of the grand jury process and our ethical obligations concerning the privilege of requiring the secrecy of our proceedings.”

Despite this pledge by Mr. Starr, a federal judge determined in June 1998 that the evidence established a prima facie case that Mr. Starr’s office had violated federal secrecy rules prohibiting attorneys for the government from disclosing confidential grand jury material. A final adjudication of the matter has not been made. Then we come to the matter of the referral from Mr. Starr’s office. The independent Counsel statute authorizes an independent counsel to “advise the House of Representatives of any substantial and credible information which serves as the grounds for an impeachment.” This provision should not be construed to make an independent counsel the House’s Grand Inquisitor, nor to require him or her to become an advocate for impeachment. Rather, a simple, straightforward delivery of the facts collected by the independent counsel, unadorned by surmise, conjecture and conspiracy theories is all that is authorized. Nevertheless, Mr. Starr used this statutory authority to authorize the House to move forward to advocate for impeachment. His conduct stands in stark contrast to that of the Special Prosecutor in Watergate. As Georgetown University Law Professor Paul F. Brest has observed, with distinction on the House Judiciary Committee, observed last November in testimony before the House Judiciary Subcommittee on the Constitution: “It is noteworthy that in 1974, the Special Prosecutor gave information and facts to the House of Representatives; Mr. Jordan did not, however, recommend impeachment. He knew that the power to recommend impeachment was committed solely to the House of Representatives. That not to be surprised.”

I am not alone in questioning Mr. Starr’s conduct and his misinterpretation of his role. His own ethics advisor felt compelled to resign his post. He stated that Mr. Starr appeared before the House Judiciary Committee as the chief cheerleader for impeachment. Thereafter, Mr. Starr went from chief cheerleader to chief “talking head,” making a lengthy television appearance on the news show 20/20. This was only days after he told the House Judiciary Committee, “We [the OIC] go to court and not on the talk-show circuit.” In this regard, it bears mention that Mr. Starr’s public relations advisor and “his handlers” have also appeared on countless talk shows over the past year. Even during the Senate impeachment trial, Mr. Starr has overstaged his proper role and intruded into the Senate’s prerogatives on how these proceedings should be conducted. The proponents of the Senate’s continuing control of the impeachment. In contravention of a unan- mously adopted consent resolution on how the trial would proceed, the Managers en- listed Mr. Starr’s help to force Monica Lewinsky to meet with them as part of her immunity agreement. If she did not say the right things, she subjected herself and her mother to a tempest of pressure and threats. Press accounts make clear that while Mr. Starr’s representatives were allowed to attend the interview of Ms. Lewinsky on January 24, 1999, neither the Senate nor the President’s counsel were extended such courtesy. This colusive move between the Managers and the special prosecutor and the President’s counsel and contemptuous of the Senate, which had resolved to defer the issue of witnesses until later in the trial.

The Senate impeachment trial has been roundly criticized by both Democrats and Republicans. With his appetite whetted by one weekend’s interference with the Senate impeachment trial, the very next weekend, on Sunday, January 31, 1999, Mr. Starr’s office filed papers in the Jones case asserting that he had determined he could indict a sitting President. Even the House Managers balked at this interference, saying Mr. Starr’s latest leap was “not helpful at all.”

C. The House Judiciary Committee

The next protagonist in this constitutional saga was the House Judiciary Committee. In addition to the serious substantive concerns raised by the powerful and broad sections of the Articles of Impeachment—which I will discuss later—the Committee also made at least for critical procedural oversights. First, the Republicans on the House Judiciary Committee used the muscle of the majority to force its partisan will. History tells us that to be successful, proceedings must be handled in a bipartisan manner. Chairman Henry Hyde himself has observed on more than one occasion that bipartisan- ship is crucial to any case that the political, partisan impeachment will not be trusted.
had been alleged, the majority on the House Judiciary Committee never questioned Mr. Starr’s initial judgment that the President had committed impeachable offenses. Had the Chief Justice taken this stance at the outset, a factual inquiry may have been unnecessary.

In light of avoiding this threshold issue, the Committee 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 fact and potential witness, the resolution required the Committee to issue subpoenas for the attendance and testimony of any person, to take depositions, and to subpoena any documentation or other things, and to issue interrogatories.

House Resolution 581 was patterned from the resolution adopted by the House in February 1974, directing the Judiciary Committee to investigate President Nixon. That Committee spent almost five months gathering evidence 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 first-hand knowledge of the facts to testify about the matter to the American people. Mr. Starr’s Committee instead relied on the one-sided testimony procured by Mr. Starr’s lieutenants in the grand jury. Though this testimony came under oath, it certainly was not tested by cross-examination nor was the Special Prosecutor’s office interested in any information that might have been exculpatory to the President.

The most probative testimony by Ms. Lewinsky before the grand jury, for example, about no one asking her to lie or promising her a job, was elicited by a diligent grand juror. Yet another startling omission of exculpatory information from Mr. Starr’s referral was only discovered during the Senate deposition of Ms. Lewinsky. She testified in response to Manager Bryant’s inquiry about whether the President told her she should turn to the Jones law firm that she had previously told Mr. Starr’s agents that the President saying, “Well, you have to turn over whatever you have,” sounded familiar to her.

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 prosecutor’s duties to be fair and to disclose exculpatory information in his presentation.

Four final times, the House Judiciary Committee minimized the constitutional role of the House in the impeachment process. This time, it erroneously returned the House to the role of mere “accuser,” leaving to the Senate the heavier responsibility of determining whether the conduct at issue warranted removal of the President. Chairman Hyde said, on September 13, 1998, at the beginning of the House impeachment process, “We are acting as a grand jury . . . we are a grand jury.”

This view persisted during the House floor debate on the Articles of Impeachment against President Clinton. Manager Burrell said that the House should be “the grand jury function.” Yet another House Member said, “the role of the House and our duty to the American people is to act simply as a grand jury in referring the 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 its role to that of a grand jury, the House then applied the grand jury standard in reviewing the evidence. Manager BARR confirmed this mistake, stating, “the House performed admirably in essentially reaching the conclusion that there is probable cause to convict the President of perjury and obstruction of justice.” 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 misinterpreting the grand jury’s constitutional impeachment role. He testified before the House Judiciary Subcommittee on the Constitution that, “the fallacy is that this is not, despite the loose analogies that some invoke, not like a grand jury.” His warning went unheeded.

Manager Burrell’s view of the House’s role has had serious consequences. It explains why the majority in the House Judiciary Committee forfeited the opportunity and shirked its responsibility to fully examine the allegations. 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” on a responsibility for actually removing the President. On the contrary, House Members who vote to impeach should also be convinced that this President and his crime is so grave that it so threatens the public that he should be removed. Sending impeachment articles to the Senate means exactly what the articles purport and minimize the constitutional responsibility of the Congress. This impeachment role. He testified before the grand jury, for example, that “there is not, despite the loose analogies that some invoke, not like a grand jury.”

It should not be about partisan political pique or about sending a message. Rather, along with the power to declare war, it is one of the 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 but for such serious reasons as has serious consequences.

We suffered a lengthy Senate impeachment trial on a jury “probable cause” standard of proof. The Senate’s constitutional responsibility for reviewing the charges and determining whether the charges warrant the President’s removal is one of the enumerated functions of the Senate, a responsibility of the Senate for reviewing the charges and determining whether the charges warrant the President’s removal. Some witnesses suggested that the Senate’s impeachment process is simply not an appropriate vehicle for the expression of political disapproval to be punished by a partisan vote in the House to the Senate for some purpose.

Not surprisingly, given their misinterpretation of their own role, the first ruling that the Chief Justice was called upon to make in this trial was to correct the Managers’ mischaracterization of the role of the Senate. The Chief Justice sustained Senator B Aaron’s objection and directed the Managers, stating, “the Senate is not simply a jury; it is a court in this case. Therefore counsel should refrain from referring to the Senators as jurors.”

D. Vote by the House of Representatives

Proceedings in the full House were themselves a sorry spectacle. On December 19, 1998, a lame duck session of the House of Representatives approved the impeachment articles accusing President Clinton on the slickest of partisan margins.

1. Lame Duck House

The two Articles of Impeachment now before the Senate were decided by the votes of a handful of Members who were defeated in the November election or are no longer serving. Article I passed with an 11-vote margin, which is the number of House Republicans replaced by Democrats in the new Congress due to election defeats and retirements. Mr. Newt Gingrich set the Congress and the Senate with only a 5-vote margin, which is the number of House Republicans who lost their re-elections in November and were replaced by Democrats. As early as 1998, 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 the House and the Senate have adopted resolutions expressing disapproval of various individuals, including sitting Presidents. The Senate censured Andrew Jackson in 1834; the House censured James Buchanan in 1859. As early as 1800, with “Founding Fathers” then serving in Congress, the House debated a resolution on censure of John Adams, though this resolution was ultimately rejected.
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2. Rejected Charges

In the end, the House did not approve the 11 articles recommended by Special Prosecutor Starr or the 15 articles of impeachment recommended by the Republican Committee staff. The House rejected outright two of the four articles reported along party lines by the House Judicary Committee, and authorized the Managers to draft the Articles of Impeachment in the Senate. In considering these two Articles, the Senate has been forced to sort through what is left of the allegations and in light of the matters rejected by the House.

III. SECRET EVIDENCE

Before the vote, press reports indicated that wavering House Members were escorted by Republican Managers to review certain “secret evidence” that the President’s counsel had never been allowed to review or given an opportunity to rebut. That action was fundamentally unfair. A bedrock principle of our system of justice is that the prosecutor, not the accused, has the burden of proof in a criminal trial. Waits only when the accused is presumed innocent until and unless adequate proof of guilt is presented. Such proof may take many forms—direct or circumstantial, testimonial or extrinsic—whatever it takes, it must be introduced, admitted into evidence, and subject to examination and inspection before it may be considered by the fact finder.

I note that in 1974, the House Judicary Committee made available to President Nixon all of the transcripts and other material considered by the Committee, whether in executive or open session. In short, during the House Judicary Committee’s investigation into Nixon, there was no secret evidence and President Nixon and his counsel were allowed to see—fully and completely—every item of evidence in the possession of the House Judicary Committee.

As both a judge and juror in the Senate, I take seriously my responsibility to ensure that the trial is conducted fairly. A bedrock principle of our system of justice is that the prosecutor, not the accused, has the burden of proof in a criminal trial. Waits only when the accused is presumed innocent until and unless adequate proof of guilt is presented. Such proof may take many forms—direct or circumstantial, testimonial or extrinsic—whatever it takes, it must be introduced, admitted into evidence, and subject to examination and inspection before it may be considered by the fact finder.

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 to the Managers of 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 and Senator Feinstein have eloquently echoed at the conclusion of the Managers’ rebuttal presentation. Due to Republican objections, however, neither request was accepted and, unfortunately, the record doesn’t contain that moving and important part of Mr. Jordan’s deposition.

IV. THE ARTICLES ARE UNFAIRLY DRAFTED

Close examination of the Articles exhibiting unfairness in the impeachment proceedings in the House.

A. Article I is Defective Vague

Article I is drafted with such vague accusations, a sign that 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 identified 11 articles of impeachment. Two prior impeachments before the Senate, however, neither request was accepted and, unfortunately, the record doesn’t contain that moving and important part of Mr. Jordan’s deposition.

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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 serve as defendants without a serious, no-defendant test, the constitutional role of the grand jury, these Managers may not serve as a defendant without usurping the constitutional role of the full House. In another way, 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 1868, impeached President Andrew Johnson and, if you think he said something, anything, that was not true, then vote to convict. If you think he said something, any- thing, that was not true, then vote to con- vicit. The House Managers by purposely crafting Article I in this vague fashion diminishes the fairness of the entire proceeding.

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 apparently added 25 amendments to 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 undefined falsehoods that 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 Rogan 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 statements. It lists four broad categories that could allude to virtually every word the President said before the grand jury and says, in effect, take your pick. And sometimes, said something that, that was not true, then vote to convicit. Article II, which lumps together seven things, that was not true, then vote to con- vicit. 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 undefined falsehoods that the President. Any advantage gained by the House Managers by purposely crafting Article I in this vague fashion diminishes the fairness of the proceeding.

B. Both Articles Charge Multiple Offenses

In 1989, after the Senate rejected the omnibus Article against President Nixon, then Minority Leader Bob Dole and others urged the House to stop bunching up its allegations and, instead, to separate 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 proc- edure is ensured by the Senate, not by the President, the Senate, and the specificity and care with which the Articles are drafted to identify the charges fairly to the respondent, are signifi- cant considerations in deciding whether to vote for conviction or acquittal. Senators are not merely serving as petit jurors who cant considerations in deciding whether to vote for conviction or acquittal. Senators cant consider the evidence under any standard of proof of each Senator may follow the burden of 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 for impeachment proceedings is generally “a preponderance of the evidence.” An impeachment trial is neither a civil or criminal proceeding, leading some commentators to suggest that “a hybrid of the criminal and civil burdens of proof may be desirable.” To be certain, our Constitution does not confer that authority on the Senate by the President to conceal a personal inap- propriate relationship. While the relation- ship may be a very, very bad thing, it is not a crime, even whether Bill Clinton should be punished by the President for his conduct, nor whether he has suffered enough. The question is not what the Senate has done, but what the Senate can do. Our job is to do justice and be fair in this case, as the Chief Justice properly observed. This vote only and necessarily requires ad- dressing the following questions: has the conduct charged in each Article been proven beyond a reasonable doubt; is the standard of proof standard would allow the Senate to im- pose the serious punishments for impeach- ment ‘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.”

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line into criminal activity did this matter become the subject of an impeachment inquiry. Indeed, Manager McCollum argued that the President must not be convicted and removed from office except upon a finding that he committed a crime. Fairness dictates that we use the exacting standard of proof that is used—and that is constitutionally mandated—in criminal trials.

I note that Majority Leader Trent Lott reached the same conclusion 25 years ago, as a young member of the House Judiciary Committee considering articles of impeachment against President Nixon. He joined other Republican Members in writing:

"Because of the fundamental similarity between an impeachment trial and an ordinary criminal trial . . . the standard of proof beyond a reasonable doubt is appropriate in both proceedings. Moreover, the gravity of an impeachment trial and its potentially drastic consequences are additional reasons for requiring a rigorous standard of proof. This is especially true in the case of a presidential impeachment . . . The removal of a President by impeachment in mid-term . . . should not be too easy of accomplishment, for it contravenes the will of the electorate. In providing for a fixed four-year term, not subject to interim votes of No Confidence, the Framers provided for the protection of the executive. That stability should not be jeopardized except on the strongest possible proof of presidential wrongdoing.

Were the President accused of treason or serious public corruption, the best interests of the Nation might well demand a somewhat lower standard. He is not, however, accused of such crimes. We hundred Senators are stand-ins for over a quarter billion Americans. We are the decision makers, the protectors of their preference for stability in the executive. That stability should not be jeopardized except on the strongest possible proof of presidential wrongdoing.

The only explanation for the misleading characterization of Mr. Lewinsky in the Managers' motion brief is that the President of the United States, if William Jefferson Clinton were Billy Blythe or Bill J ones, would any prosecutor in the country have successfully brought such charges? Experienced prosecutors, Republican and Democratic, testified before the House Judiciary Committee that no prosecutor would have proceeded based on the record compiled by Mr. Starr. I agree and note that during the course of these Senate proceedings, the case has only gotten weaker.

2. Article II

The same is true of Article II, which charges the President with obstruction of justice. The Managers are busy searching for an exculpatory story 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." Manager Rogan ascribed the President's perjury to the fact that, he said, "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 the President's discussions with Ms. Lewinsky were 'conferences.'" Manager Rogan contended that the President's statements were of particular importance to the perjury charge.

To begin with, the principal witnesses to the President's alleged scheme to obstruct justice testified that there was no such scheme. Monica Lewinsky has always and consistently maintained that no one ever asked or encouraged her to lie, and that she was never promised a job for her silence. Before the President's second special counsel, Vernon Jordan, a distinguished attorney, also exonerated the President of any wrongdoing or any conspiracy with them to obstruct justice. For example, Ms. Currie testified that the President did not ask her on December 28, 1997, or at any time, to obtain any gifts or money from Ms. Lewinsky. Ms. Lewinsky and Mr. Jordan testified that his involvement in Ms. Lewinsky's job search was unrelated to any participation by Ms. Lewinsky in the Jones deposition. It is simply not believable that the President would have used Ms. Lewinsky and Mr. Jordan testified that his involvement in Ms. Lewinsky's job search was unrelated to any participation by Ms. Lewinsky in the Jones deposition. It is simply not believable that the President would have used Ms. Lewinsky for his nefarious purposes. If the Managers' position is that lack of proof is evidence of innocence, then they argue that such exculpatory testimony "may well take on a sinister, or even criminal connotation when observed in the context of the witnesses' deliberate recollections." But that is flatly wrong. Exculpatory testimony cannot be viewed for what it is: exculpatory.
The Managers do their best to transmogrify other exculpatory testimony into evidence of criminality. For example, Ms. Lewinsky testified that the President declined to review the affidavit she signed and did not discuss the contents of the affidavit with her "at all, ever." Manager ROGAN cited this as evidence of obstruction of justice theory that the President would not have reviewed the affidavit if he really believed it could be truthful. In case we rejected this theory, Manager MCCOLLUM speculated that the President would have 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. Whether 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. In their opening brief, the Managers argued that Ms. Lewinsky's affidavit would be false because she had testified that the President must have known anybody that she could think of as leverage to retrieve the gifts; and the fact that the President was not a party to any conversation between Ms. Lewinsky and Mr. Jordan on or about December 28, 1997. The Managers have made much of a conversation between Ms. Lewinsky and Mr. Jordan on December 31, 1997, but denied having told her to destroy them. The Managers have asked us to disregard Ms. Lewinsky's testimony that it was the President, not Ms. Lewinsky, who benefited from the filing of her affidavit. Manager BRYANT went further, arguing that the President had "nothing to lose," and that the President "had no motive" to have anyone provide inculpatory testimony into Ms. Lewinsky's status as an affiant and possible deponent in the Jones case and was not likely to be one given her reputation at the White House and the approaching deadline for completing discovery. Moreover, he did not know that Mr. Starr had initiated an investigation. In fact, the only crimes shown to have possibly occurred are not high crimes but those for which Ms. Lewinsky and Ms. Tripp have not been detained or given immunity from prosecution from Mr. Starr. What remains when you sweep aside the cobwebs of unsupported speculation and conspiracy theory? To my mind, the case on obstruction boils down to the charge that the President, in the wake of his deposition in the Jones case, "coached" his secretary about what to say if asked about Ms. Lewinsky. The President has argued that Ms. Currie was not then a witness in the Jones case and was not likely to be one given the approaching deadline for completing discovery. Moreover, he did not know that Mr. Starr had initiated an investigation. In fact, 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. I just relax, go in there and tell the truth." I was seriously troubled by the President's counsel's initial suggestion that Ms. Currie might be a witness and was not likely to be one given the approaching deadline for completing discovery. Moreover, he did not know that Mr. Starr had initiated an investigation. In fact, 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. I just relax, go in there and tell the truth." I was seriously troubled by the President's counsel's initial suggestion that Ms. Currie might be a witness and was not likely to be one given the approaching deadline for completing discovery. Moreover, he did not know that Mr. Starr had initiated an investigation. In fact, 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. I just relax, go in there and tell the truth."
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as he did in mid-January 1998. His explanation—what 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”—could not be 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 notables also had a legitimate interest in determining whether Ms. Currie was the source of the Jones lawyers’ apparent knowledge regarding Ms. Lewinsky. In the end, in light of the probative and innocent explanations for these conversations, I do not accept as prov- en beyond a reasonable doubt the Managers’ conclusion that they were criminal “coaching” scenarios over and over again. This Special Prosecutor’s lawyers and investigators may have come to believe the managers’ conclusions, but they were not required to. A Senate impeachment trial is not a make-up exam for an incomplete inquiry by the Managers. The Senate approved a motion by then-Majority Leader Dole not to hear any witnesses on the Senate floor. Indeed, in the impeachment trial of President Johnson, notwithstanding the House’s failure to do so. As most histori ans agree, however, the Johnson impeachment was in large part because the House of Representatives expelled the President whose policies they disliked. It was hardly a model of procedural correctness.

The Managers’ complaint is that the Senate removed three impeached federal judges without hearing any witnesses on the Senate floor. Indeed, in the impeachment trial of Judge Claiborne in 1986, a majority of the Senate approved a motion by then-Majority Leader Dole not to hear any live testimony. Instead, in each case, the Senate reviewed a private record prepared by the special committee of Senators. The Senate did this over the objections of the judges being removed.

If the President is willing to forego the opportunity to cross-examine the witnesses being relied upon by the Managers, that eliminates the most pressing need for further discovery in this matter. After all, Ms. Lewinsky, Ms. Currie and other witnesses were interviewed multiple times by the Special Prosecutor’s investigators and then testified repeatedly before the grand jury. That is testimony that we can believe and accept. We chose to believe it and accept it. Why reinvestigate Betty Currie to take another statement when we already had her statement? Why interview Monica Lewinsky when we had her statement under oath, and with a grant of immunity that if she lied she would forfeit?

Having chosen to proceed in the House without witnesses, the Managers were in no position to demand in the Senate that witnesses be introduced. A Senate impeachment trial is not a make-up exam for an incomplete inquiry by the House. In giving him this opportunity to explain his inconsistent positions on witnesses, Manager Hyde said, “We were operating under time constraints which were self-imposed but I promised my colleagues to finish it before the end of the year. I didn’t want it to drag out.” But self-imposed time constraints do not begin to explain why Mr. Hyde’s Committee declined to call a single fact witness. The Committee did hold two day-long hearings. It heard from a panel of convicted felons who testified, to nobody’s surprise, that perjury is a crime. And it listened to the prosecutor, Stephen Starr, who had no first-hand knowledge of any facts in the case, and had not even spoken with anyone who had. Those two days could have been spent hearing fact witnesses and surely they would have been, if the Committee majority thought for one moment that fact witnesses were necessary to his role in the impeachment process. According to Mr. Hyde, “[t]he threshold in the House was for impeachment, which is to seek a trial in the Senate. All I could do was present evi- dence sufficient to convince our colleagues that there ought to be a trial over here in the House.” I wonder if the Senate would have shared this fallacy of this position. When these Articles of Impeachment fail, as I believe they must, I hope it will send a clear message to the President: House of Representatives representatives not to do a slapdash, partisan job on something as mo- mentous and wrenching for the nation as a presidential impeachment.

Contrary to the suggestions of some Managers, there is no authority for the notion that the Senate must hear witnesses. It is true, as one Manager noted, that the Senate heard witnesses in the impeachment trial of President Johnson, notwithstanding the House’s failure to do so. As most historians agree, however, the Johnson impeachment was in large part because the Senate was not convinced the House of Representatives expelled the President whose policies they disliked. It was hardly a model of procedural correctness.

More recently, the Senate removed three impeached federal judges without hearing any witnesses on the Senate floor. Indeed, in the impeachment trial of Judge Claiborne in 1986, a majority of the Senate approved a motion by then-Majority Leader Dole not to hear any live testimony. Instead, in each case, the Senate reviewed a private record prepared by the special committee of Senators. The Senate did this over the objections of the judges being removed.

If the President is willing to forego the opportunity to cross-examine the witnesses being relied upon by the Managers, that eliminates the most pressing need for further discovery in this matter. After all, Ms. Lewinsky, Ms. Currie and other witnesses were interviewed multiple times by the Special Prosecutor’s investigators and then testified repeatedly before the grand jury. That is about as one-sided as it gets—no cross-examination, no opportunity to confront witnesses with the way things are reconfigured and re-expressed after numerous preparation sessions with Mr. Starr’s office.

These witnesses testified under threat of prosecution by Mr. Starr. Ms. Lewinsky is still under a very clear threat of prosecution, even though she has a limited grant of immunity. The majority has shown his every willingness to threaten and prosecute even those who have played minor, tangen- tial roles in his investigations of the President, such as Ms. Jones, and those who have already been relentlessly pursued in serial prosecutions, such as Webster Hubbell and Susan McDougal.

Thus, if the President has not initiated eff- forts to obtain more discovery and witnesses and is willing to have the matter decided on the current Senate record, the Managers can- not have carried a heavy burden to justify extending these proceedings further and requiring the reexamination of people who have already testified.

During his opening remarks, Manager McCollum said, “I don’t know what the wit- nesses will say, but I assume if they are con-testing the President’s impeachment case, they will be referring to the voluminous record before the Senate. Nevertheless, the majority in the Senate acceded to the Managers’ request to conduct depositions, which only confirmed that subjecting the witnesses to further ex- amination would not provide any new revela- tions.

In fact, during the deposition of Ms. Lewinsky, Manager Bryant conceded, “Obvi- ously, 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 num- ber of substantive questions with Ms. Lewinsky, Manager Bryant conceded, "Obvi- ously, 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 num- ber of substantive questions with Ms. Lewinsky, Manager Bryant conceded, "Obvi- ously, 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 num- ber of substantive questions with Ms. Lewinsky, Manager Bryant conceded, "Obvi- ously, 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 num- ber of substantive questions with Ms. Lewinsky, Manager Bryant conceded, "Obvi- ously, 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 num- ber of substantive questions with Ms. Lewinsky, Manager Bryant conceded, "Obvi- ously, 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 num- ber of substantive questions with Ms. Lewinsky, Manager Bryant conceded, "Obvi- ously, 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 num-
Professor Black also addressed the "substantiality" of the misconduct necessary to meet the constitutional standard for impeachment and removal, with the following illustration:

"Suppose a president transported a woman across a state line or even (so the Mann Act reads) to another town in the District of Columbia, for what is quite properly called an 'immoral purpose.' Or suppose a president did not immediately report to the nearest policeman that he had discovered that one of his aids may have practiced homosexual activity—thereby committing 'misprision of a felony.' Or suppose the president actively assisted his aids in concealing the latter's possession of three ounces of marijuana—thus himself becoming guilty of 'obstruction of justice.' Would it not be preposterous to think that any of this is what the Framers meant when they referred to 'Treason, Bribery, and other high Crimes and Misdemeanors,' or that any sensible constitutional plan would make a presid- ent removable on such grounds?"

In my view, the charges that the President committed perjury and obstructed justice to conceal his extramarital affair with Monica Lewinsky not only fail as a matter of proof, but to the extent they raise legitimate questions about his conduct they fail the test of substantiality. In a court of law, not a Senate court, the standard for judging whether a person is guilty of perjury or obstruction of justice, or that I do not appreciate the need for enforcement of our laws prohibiting such conduct for the functioning of our judicial system. If committed, these are serious crimes. Nevertheless, as Manager Graham recognized, reasonable people can disagree on the ultimate questions in this trial.

I do not agree with the Managers that they have concluded that the conduct at issue here is sufficiently heinous to warrant impeachment and removal of the President. Chairman Henry Hyde of the House Judiciary Committee has pointed for life. Presidents are elected for terms for life, not for the sake of maintaining the very existence of the Government— it is a crime against and under- standing of the Senate. The President is that, under the Consti- tution, only the former hold their Offices during good Behaviour." The proposition, however, that this clause creates a different constitutional standard for removal of judges than for removal of the President or other civil officers is dangerous. Such an interpretation would invite attacks on the independence of the federal judiciary and un- needed conflict among the co- equal branches of our federal government. Indeed, Alexander Hamilton opined in Federalist No. 79 that impeachment was the only provision for removal "which we find in our own Constitution in respect to our own judges." In the past few years have been unprecedented attacks on controversial decisions by Federal judges. Should such decisions be deemed malfeasance by the party in control of Congress, then impeachment proceedings against judges who render unpopular decisions could provide a platform for endless political posturing. More importantly, this would chill the independent operation of our Federal judiciary.

As Professor Michael Gerhardt has ex- plicated, the point is this: the Constitution as professor, promises that Federal judges may be impeached on the basis of a lower standard than the President, but it does suggest that they may be impeached "on a basis that takes account of their special duties or functions." A judge who lies under oath is uniquely unfit to con- tinue in an office that requires him to ad- minister the laws and sit "perfectly appropriate for the Senate when sitting as a court of impeachment to take into
account the type of duties that the impeached official is called upon to perform and whether the charges, if proved, clearly impair the official’s ability to perform those duties. The outcome of this analysis would very well differ depending on the job of the impeached official.

VII. “FINDINGS OF FACT” FALACIES

As the impeachment trial wore on, without any prior discussion and review, a popular Republican exit strategy was to force a preliminary vote on so-called “findings of fact” that the President committed perjury and abused his executive privilege, followed by a second vote on removal. I opposed this initiative because, in my view, it reflected a basic misunderstanding of the Senate’s constitutional position when sitting as a court of impeachment.

The Senate’s constitutional role is to determine whether to convict the President of an impeachable offense and remove him from office. This is a unitary question, requiring a unitary answer. In recognition thereof, the Senate has rules prohibiting dividing articles of impeachment.

A presidential impeachment trial is not an appropriate forum for “finding” that a public official has committed a crime. Crime and punishment are issues expressly reserved by the Constitution to our criminal courts, where an accused is entitled to due process rights far in excess of the minimal procedural due process required by the Constitution for a constitutional impeachment trial. In the current case there are also additional complicating factors since the Senate made up its procedures as it went along. The specific process against the President has constantly shifted.

Impeachment is not about punishing the officetholder but about protecting the public. Senator George Edwards of Vermont explained in 1868 that “[punishment by] impeachment does not exist under our Constitution. . . . [The accused] can only be removed from the office he fills and prevented from holding office, not as punishment, but as a means merely of protection to the community . . . .” Our focus must be on whether the conduct with which the House has charged President Clinton has been proven and warrants his removal from office to protect the public.

Branding the President is not the function of impeachment. On the contrary, a congressional effort for criminal prosecution would be an illegitimate exercise in shamming the President and an abuse of the impeachment process in support of a future criminal prosecution, which recent leaks from prosecutor Starr’s office confirm he is considering. A preliminary vote on guilt in the form of “findings of fact” would set the dangerous precedent that a Senate impeachment trial could be used for the purpose of criticizing conduct that the constitutionally-required number of lawmakers did not believe to be impeachable. The last protection against impeachment by an opposing party with majoritarian control of Congress would be eviscerated.

My consideration of the Articles would be incomplete without addressing one final point raised by the House Managers about recent events. Article II, Section II, Clause I, states that should the 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 rule of law, President Hyde responded that it would, because it would set a bad example for our children. I was surprised by this answer. This is hardly the sort of thing 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, my grandfather, my father, I work hard to be a role model for my children and grandchild. They do not need the President to serve that role. They do not have to look to the Congress to impeach and remove this President to know the difference between right and wrong.

I trust the 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 upon himself and his entire family for the entire year and for as long as history books are written. I do not believe that the Constitution calls upon us to remove a duly elected President because he is a bad example. 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 President were to be found guilty, I would have seen ill-effects from President Bush’s pardon of former Defense Secretary Caspar Weinberger, who had been indicted on several 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. My position Chamberlain has stated the “political” prosecution and stated: “I just wish [us] out of this mess, this six years and this $30-40 million that has been spent [by Manager Bush’s] administration, Lawrence E. Walsh. It’s endless and it is a bottomless pit for money, with no accountability.”

The fact that the Constitution sets a high standard for removal of a President has no bearing on the standard of conduct applicable to military service. In addition, it does not place the President above the law. In the past, many of us in Congress have immunity under the speech and debate clause. That has never been argued to place us above the law nor undermine military morale.

IX. DELIBERATIONS OF THE COURT—THE TRIAL—MOTIONS SHOULD BE OPEN

Accustomed as we and the American people are to having our proceedings in the Senate open to the public and subject to press coverage, the most striking prescription in the “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials” has been the closed deliberations reported “in order that the world might know, without diminution or exaggeration, the reasons and views upon which the Senate acted.”

The requirement of closed deliberation, more than any other rule, reflects the age in which the rules were originally adopted in 1868. Even in 1868, not everyone favored secrecy. During the trial of President Johnson, the senior Senator from Vermont, George F. Edmunds, moved to have the closed deliberations on the Articles transcribed and officially reported “in order that the world might know, without diminution or exaggeration, the reasons and views upon which the Senate acted.” The motion was tabled.

In the 130 years that have passed since then, the Senate has seen the advent of telecommunication, the direct election of Senators by the people in our States. Opening deliberations would help further the dual purposes of our rules to promote fairness and political accountability in the impeachment process. I supported the motion by Senators Harkin, Wellstone and others to suspend this rule requiring closed deliberations and to open our deliberations on Senator Byrd’s motion to dismiss and at other points earlier in this trial. We were unsuccessful. Now that the Senate has approached final deliberations on the Articles of Impeachment, I had hoped that this secrecy rule would be suspended so that the Senate’s deliberations would be open and the American people would be able to witness our deliberations. It has indicated objection to opening our final deliberations because petit juries in courts of law conduct their deliberations in
secret. Analogies to juries in courts of law are misplaced. I was privileged to serve as a prosecutor for eight years before I was elected to the Senate. As a prosecutor, I represented the government in court. I heard cases for over two decades before juries on numerous occasions. I fully appreciate the traditions and importance of allowing jurors to deliberate and make their decisions without influence from the outside. The pressure from the parties, the judge, or the public. The sanctity of the jury deliberation room ensures the integrity and fairness of our judicial process.

The Senate sitting as an impeachment court is unlike any jury in any criminal or civil court. It is a court of law in a stricter sense specifically because the jurors have no connection or relation to the parties or their lawyers and no familiarity with the allega-

tions. Keeping the deliberations of regular juries secret ensures that as they reach their final decision, they are free from outside influence or pressure. As the Chief Justice made clear on the third day of the impeachment trial, the Sen-

ate is more than a jury; it is a court. Courts are called upon to explain the reasons for de-
cisions. The Senate is ideally suited for making these decisions public here. The Senate is called upon to evaluate the evidence as is a jury, we stand in different shoes than any juror in a court of law. We all know many juror have been influenced in this matter; we all know the Managers—indeed, one Senator is a brother of one of the Man-
gers—and we were familiar with the un-
derlying history of this case before the Managers ever began their presentation.

Because we are a different sort of jury, we should have a heavier burden in explaining the reasons for the decisions we make here. I ap-

preciate why Senators would want to have some aspects of our deliberations in closed ses-
sion; to avoid embarrassment to and pro-
tect the privacy of persons who may be dis-
cussed. Yet, on the critical decisions we are now being called upon to make on our votes on the Articles themselves, allowing our de-
liberations to be open to the public helps as-
sure the American people that the decisions we make are for the right reasons.

In 1794, when the Senate was preparing itself for the anticipated impeachment trial of former President Richard Nixon, the Com-

mittee on Rules and Administration dis-
cussed and voted against televised cover-
ge of the Senate trial. Such coverage did not become routine in the Senate until later in 1966. In urging such coverage of the pos-
sible trial of President Richard Nixon, Senator Metcalfe (D-MT), explained: “Given the fact that the party not in con-

trol of the White House is the majority party in the Senate, the need for broadcast media access is even more compelling. Charges of a ‘kangaroo court,’ or a ‘lynch mob proceed-
ing’ must not be given an opportunity to gain credibility from the indecision and uncer-
tainty of a closed proceeding. Americans must be able to see for themselves what is occurring. An impeachment trial must not be perceived by the public as a mysterious or unaccountable proceeding. The perception of third parties. The procedure whereby the in-
edividual elected to the most powerful office in the world can be lawfully removed must command, if it is possible, level of ac-
ceptance from the electorate.’”

Opening deliberation would ensure com-
plete and accurate record to the extent that the proceedings and the reasons for the de-
cisions we make here. Opening our delibera-
tions on our votes on the Articles would tell the American people why each of us voted the way we did.

The last time this issue was actually taken up and voted on by the Senate was more than 130 years ago. At that impeachment trial of Secretary of War William Belknap. Without debate or deliberation, the Senate refused then to open the delibera-
tions of the Senate to the public. That was before Senators were elected directly by the people of their State, that was before the Framers of our Constitution envisioned the right of the people to see how government decisions are made. Keeping closed our deliber-
ations is wholly inconsistent with the spirit of the Constitution to make our government more accountable to the people.

Constitutional scholar Michael Gerhardt noted that the Senate is ideally suited for balancing the tasks of making policy and finding facts (as required in impeachment trials) with political accountability. “Public access to the deliberations that result in these important deci-
sions is unfair and undemocratic.

The Senate should have suspended the rules so that the final question of whether to convict the President of these Articles of Impeachment were held in open session. After this impeachment trial is over, I urge the Senate to re-examine the rule on closed deliberations in impeachment trials and rule the decision to reflect the open and accountable government that is now the pride and hallmark of our democracy.

X. CONCLUSION

The House Managers have warned that should the President be acquitted we will set a dangerous precedent and damage “the rule of law.” We will have set the following important precedent for the future: that partisan impeachment drives are doomed to failure. It is up to this chamber to show that the Senate is the decision to reflect the open and accountable government that is now the pride and hallmark of our democracy.

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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 in effect for 16 years. It is today a force for Government integrity and public confidence.

Those were the words of President Clinton, June 30, 1994.

Before reauthorization, it was the President himself who advocated the appointment of a special prosecutor. That appointment was made by the President's own Attorney General. After reauthorization, the Attorney General supported the appointment of an independent counsel. The independent counsel was then appointed by a special three-judge panel, as required by law.

Also under the law, the Attorney General can initiate the dismissal of an independent counsel if he oversteps his bounds or acts improperly. Not only was this never done by the President's Attorney General but, in contrast, she even agreed several times to expand his jurisdiction, including to cover the Monica Lewinsky matter.

Also under the law, the independent counsel is obliged to send the House any evidences of crimes that might be impeachable.

In short, this case came about through a legitimate, legal process. It is a process that historically was vigorously defended by this side of the aisle. There are various checks and balances built into the process. They are designed to prevent abuse by the independent counsel, but they were never triggered, even though the President's own Attorney General could move for dismissal.

No, this President is in this predicament because of his own private wrongdoing and because of public policy he pursued. There is no conspiracy.

The President's actions are having a profound 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 Presidency. The President's wrongdoing has painted all of us in Washington with a very broad brush.

In the past 12 months, thousands of Iowans have registered their opinions with me. One letter from a middle school principal in Iowa's public schools for the past 16 years. . .our students' reaction to President Clinton is one of the saddest moments I can recall. In that instant, I realized how deeply his conduct has affected our country.

Mr. Chief Justice, there is that word "sad" again. It seems to come to the fore in people's minds over this case, over this President's conduct, and over the impact it has had on our country. The true tragedy in this case is the collapse of the President's moral authority. He undermined himself when he wagged his finger and lied to our people on national television, denying that relationship with Ms. Lewinsky. That did more damage to his credibility than any 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 send her a job. Another abuse of power: The full powers of the White House were on lease to a single process to attack the credibility of those who investigated him.

This White House has perfected the art of stonewalling around the truth. I fear that future White Houses will learn much from these experts and will refine and improve their own truth-defending art of stonewalling around the truth. I expect you and me to be completely truthful, as they were not. And when the President tried to obstruct justice, he lied to his aides, Sidney Blumenthal and John Podesta. Each of these aides ended up being a witness in official court proceedings. I believe, based on the evidence before the Senate, that the President lied to these witnesses so they would repeat those lies before official court proceedings. That is obstruction of justice.

In addition, I find it very interesting that a power lawyer like Vernon Jordan would be so active in the job hunt for Ms. Lewinsky. Regardless of what she felt or thought, I believe the President was arranging to get her a job. That way, she wouldn't provide harmful testimony in the Paula Jones sexual harassment lawsuit. Again, obstruction of justice.

Mr. Chief Justice, these actions weren't just outrageous, and more important, morally wrong, but they were also illegal. They were a direct assault on the integrity of the judicial process. The President is guilty of the offenses charged under Article II.

The first article charges that the President committed perjury on several occasions. While I am not convinced he committed perjury on each occasion charged, I believe he did commit perjury when he lied about his efforts to obstruct justice. That is the fourth count.

I don't believe the President's statement that he was merely trying to refresh his memory when he spoke with Ms. Lewinsky about her relationship with the President, and that he didn't believe he had committed perjury when he lied about his efforts to obstruct justice. That is the fourth count.

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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 he was under oath. I will vote guilty on article I as well.

Mr. Chief Justice, these were not easy decisions. They are the product of soul-searching, as it is for all of you.
So they leave me with a good conscience. I believe my votes reflect the truth of what happened in this case.

The Senate is about to close this chapter in American history. It may or may not be the final chapter in this story. Nonetheless, our decision in this impeachment trial will stand against the test of time. You only truly understand the present when it is past. In that respect, future generations will serve as our jury and, in the end, history will serve as the final judge. Thank you.

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 sinner. But we’re not in a church.

If we were in a court of law, the judge would tell us to hate the crime, and punish the criminal. But we’re not in a court of law.

We’re part of a constitutionally-directed, constitutional tribunal, and our job is to love the Constitution and protect the office of the president. Our decision should not be about saving or re-jecting 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 votes 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 these conclusions, it was important to me that the Senate is not bound to a specific constitutional or statutory standard in judging the evidence; instead, each Senator is left to his or her own experience and conscience. That is both the political and judicial nature of the impeachment process prescribed by the Constitution.

However, reaching this conclusion about the facts does not trigger automatic conviction and removal of the president. A Senator must still resolve two questions: whether the acts committed were the kind of “high crimes and misdemeanors” warranting removal from office, and whether the interests of the nation are served by removal. Impeachment by the House expresses that chamber’s opinion on those two questions, but it is up to the Senate to render final judgment.

And it is these two questions that have driven our deliberations in this impeachment process—not to mention the most furious debate, hand-wringing, and logical contortions.

For example, we have heard much during these proceedings about proportionality—in other words, about ensuring that the punishment or sanction fits the crime. Some of our colleagues have suggested that while the crimes of perjury and obstruction of justice may rise to the level of impeachable offenses, that conclusion is not inevitable on every set of facts. More to the point, they argue there is something in this particular case that diminishes the seriousness of the offense or renders it a private, as opposed to public, crime: perhaps the context of the misdeeds, the motive behind the crime, or the motive behind the obstruction of justice.

Yet considerations such as these have not prevented the government from prosecuting clerics who committed similar crimes. Furthermore, while we are not bound by statutory definitions of crimes here, these arguments frustrate the very goal our Founders had in mind when they established the extraordinary remedy of impeachment: to protect the presidency and the nation from a lawless president. The Framers of the Constitution believed that governments are established in the first place to protect the rights of the governed. It follows that the most serious breach of duty in public office—the most serious threat to the order of society itself—is for the enforcers of the law to break the law. How much more grave that breach becomes when it is committed by the one individual 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, being deliberately sought by some to allow President Clinton to escape accountability, it seems to me that creating such loopholes would require tearing down the Constitution—something that cannot be justified to protect this president or any president.

This brings me to the final question: whether the public interest will be served by the president’s removal from office. Let me say there are those in Washington, D.C., who have been seeking this result ever since the president was elected, because they simply don’t agree with him. I, too, generally disagree—sometimes loudly—with President Clinton’s approach to public policy.

However, political and policy differences are emphatically not the focus of this question. Instead, the Founders intended us to focus on the safety of the nation. That is a very high threshold, appropriate to the serious impact of the vote we must cast. In this case, many are arguing that our nation is not at risk; we’re prosperous; the government is not collapsing; there is no immediate or external threat to the country.

But I would submit that if a generation of young people are taught by our actions in this case that a lie carries no consequences, then the nation is at risk. If our citizens conclude that lawlessness in the highest office is acceptable, that their elected representatives are complicit in that corruption, and that nothing can be done to stop it, then the nation is at risk. If future presidents think they can go further in this kind of behavior, that nation is at risk. If they apply the “Clinton Indicator,” then the nation is at risk. If the Executive Office of the President is occupied by an individual who is generally believed to have lied and betrayed the public trust—the icon of the presidency being compromised, the nation is at risk.

Some have suggested that removing this president from office would put the nation at risk. That is false argument. I can say with confidence that I would never vote to remove this president 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, a necessary constitutional response. I believe it is an appropriate response, a necessary response, a constitutional response, and something no one should ever fear. Instead, we should place our faith in the Constitution and the wisdom of its Framers, who provided a roadmap for a peaceful, swift, and orderly transition of power to the vice president.

That transition poses no threat to the nation.

On the other hand, I believe exonerating President Clinton with a vote for acquittal does create a threat to our nation. In short, I am convinced that President Clinton is not above the law 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, a necessary constitutional response.
of this trial, as I watched the Chief Justice take the chair, I was angry—profoundly angry that this president had brought this nation to this point because of his own self-gratification, setting what was good for himself above what was good for the nation itself 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 every other issue does not blind me. 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 Justice, my colleagues, 31 days ago at about this very hour we gathered in the Old Senate Chamber in closed session to begin the original Constitutional Court. I was there to see and to judge the case 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 United States Senators. For only the second time in our Nation's glorious history, we, who are temporary custodians of these 100 seats, will decide whether to take the most extraordinary and grave action that could ever be asked of U.S. Senators. A decision to declare the president removed from office. The constitutional process of impeachment calls in comparison to trying the impeachment of a popularly elected President of the United States.

Unlike the House of Representatives, we did not decide to initiate the impeachment action. We did not seek this burden. It has been thrust upon us. Our responsibilities were limited to how to proceed in this trial and what verdict to render.

Despite our procedural differences along the way, the Senate has fulfilled, in my view, Alexander Hamilton's vision as a “tribunal significantly and sufficiently dignified.” The credit for that result, I suggest, belongs primarily to TOM DASCHLE, the Democratic leader, and to TRENT LOTT, the majority leader. Let history record that these two leaders, saddled with different challenges, led us with patience, fairness, good humor and dignity.

I have listened intently to all of you who have spoken on this matter, and I urge all Senators to add the reason for your vote to this record for, in many respects, it will be our words, our thinking, our rationale that will be re-read in the coming millennium, and when and if those who succeed us in this Chamber are ever asked to confront the judgment that is upon us.

The contemporary press will record what decisions we have reached but the cold, dispassionate eye of history will also scrutinize collectively and individually how we reached our conclusion and what impact this ordeal has had on the Constitution, the Congress, the courts, the Presidency and the maintenance of our tripartite federal system of government.

I agree heartily with those who say we should not decide this matter on the evidence of a single article of impeachment against this President, but nor should we totally disregard the voices of those who elected this President or who have sent us here to represent them, including the voices of those who voted against us.

It is not entirely insignificant that of the 13 House Republican managers who have presented their case, seven were unopposed in the last election and three were elected with such significant majorities they were virtually unopposed.

I find it disheartening that the passion for conviction of 10 of the 13 House managers may not have been tempered by the voices of dissent within their own congressional districts. I sincerely 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 Justice properly noted in his book “Grand Inquests,” the Constitutional Convention that met in Philadelphia in 1787 borrowed many of its ideas from existing governments and from political philosophers, but it did make two original contributions to the art of government. The first was the idea of a Presidential as opposed to a parliamentary system of government.

In the introduction of his treatise on impeachment, I say to my colleague from New York and repeat his words, the noted constitutional scholar, Charles Black, reminds us that the Presidency is a prime symbol of our national unity.

The election of the President is the only political act 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 the courts. These elections are of higher political importance than our considering whether, in any given instance, this act of choice is to be undone and the chosen President dismissed from office in disgrace.

Charles Black adds forebodingly, as PAT MOYNIHAN has already noted, everyone—everyone—must shrink from this most drastic of measures. In all candor, I say to you, my colleagues, I saw little evidence in the House majority of shrinking from the drastic measure of removing the President, and I wish all future occupants of the Oval Office to inherit a strong, independent, and energetic office.

Now to the specifics of the case.

I fear the precedent of this impeachment case will come to haunt us. The scandal has seriously bruised every institution that has come in contact with it, but none has been battered more than the executive branch itself. The culpability for this damage lies first and foremost with President Clinton. His illicit affair with a young woman, a subordinate in the west wing of the White House has properly been given more than the universal derision it deserves. President Clinton's subsequent and misleading false statements to his staff, his Cabinet, the country, and others is abhorrent. History will judge his actions and signify the lapses of judgments harshly, as it should. If he is acquitted by this Senate, he will not, as some have suggested, get off scot-free. To stand as the only popularly elected President to be impeached will relegate him as the Hester Prynne in the pantheon of our Chief Executives.

Do not allow your decision to convict this President to be influenced by the false and ludicrous notion that he will emerge from this national nightmare unscathed if 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 not be so loosely fashioned. The grounds for conviction will be restricted to offenses in 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 determine what grounds we are 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, insisting that the president is guilty of misleading false statements to his constituents, and erasing his memory to his constituents. This is the basis for the President's subsequent and misleading false statements to his staff, his Cabinet, the country, and others.

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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 an idea that may or may not be based on the truth.

I find it unsettling while the House Republican managers were passionately asking the Senate to convict this President of criminal charges, two of its most active managers were simultaneously expressing their own reservations.

First, House Manager Lindsey Graham candidly told this Senate, in response to a question, that reasonable people could reasonably conclude to acquit this President. It appeared to me that Manager Graham was less than convinced this President was guilty beyond a reasonable doubt.

Secondly, House Manager Asa Hutchinson, in a moment of candor on a national TV news program conceded 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 to 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. Nor would I shrink from this most drastic of measures, I positively affirm we must not remove this President from office.

Some final thoughts. The criminalization of our political process must stop before irreparable damage is done to the institutions of our federal system. It is right to condemn in harsh words the behavior of this President. It should be equally appropriate to condemn the damage done by an independent counsel whose conduct has spawned runaway, reckless prosecutors that storm the country trampling on our system of justice, completely unchecked by any branch of Government.

The damage this President has caused has not only given him unbridled power, but has undermined the very fabric of our democracy. The President's actions have eroded trust in the integrity of our institutions and the public's faith in government. We must not allow this to happen again.

It is crucial that we hold the President accountable for his actions, and the Senate has a duty to ensure justice is served. We cannot afford to lose faith in our institutions, and I believe that by voting to acquit, we can restore public trust in our government.

In conclusion, I find it unsettling while the House Republican managers were passionately asking the Senate to convict this President of criminal charges, two of its most active managers were simultaneously expressing their own reservations. I believe that a vote to acquit the President is the right course of action.
U.S. § 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 perjured himself 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 “certain” and “occasional” were intentionally misleading, I agree with the House Managers that the President lied about when and how his relationship with Ms. Lewinsky began. However, given that the President admitted to the key issue before the grand jury, I am not persuaded that lies about these immaterial details justify a charge of perjury. I also reject the related allegations pertaining to the President’s testimony regarding the definition of sexual relations used in the Jones case.

The second allegation of this Article is that the President committed perjury in his grand jury testimony by repeating the perjurious answers he had given in his civil deposition. The House Managers have certainly proven that the President lied about a number of issues in his civil deposition. However, Article I concerns the President’s grand jury testimony, not his deposition testimony and the House Managers seem to rely upon the President’s reaffirmation of his deposition testimony as proof that he committed perjury. Since I do not find that the President reaffirmed his deposition testimony before the grand jury, I reject this as an 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 federal grand jury was actually paying attention to at that time. We have all had moments where we appear to be paying attention to a speaker, when we are actually lost in our own thoughts. Because the House Managers could not possibly prove whether or not the President was actually paying attention to the exchange, they have not met the burden of proving that the President’s testimony was false.

The 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 the obstruction was either to prevent or impede the due administration of justice.” After considering these allegations, I have concluded that the House Managers failed to prove all but one of the obstruction of justice charges. My basis for this conclusion is the following.

The first allegation in Article II is that the President obstructed justice by having his friend Vernon Jordan assist Ms. Lewinsky in her New York job search in exchange for her silence in the Jones case. To prove this allegation, the House Managers presented compelling circumstantial evidence that Mr. Jordan assisted Ms. Lewinsky with both her job search and with her affidavit. The House Managers also pointed out 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 Lewinsky was involved. 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 a final altar 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 directed her to hide the gifts. The thrust of the House Managers claim is that the President instructed Ms. Currie to pick up the gifts from Monica Lewinsky on December 28, 1997, so that Ms. Lewinsky would not have to turn the materials over to Paula Jones’ attorneys. I would agree that the circumstances of the President’s secretary, Ms. Currie picking up the gifts several hours after Ms. Lewinsky suggested to the President that Ms. Currie might hold onto the copies for a few days 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 certainly unethical for the President to refer to Ms. Lewinsky as a stalk 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’s remarks in his continuing effort to conceal the true nature of his relationship with Ms. Lewinsky. There is no evidence that the President knew that these aids would be called to testify. Therefore, I believe that this allegation has no merit.

While I found the other charges alleged in Article II to be either legally or factually deficient, there is one allegation of obstruction 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 following the President’s deposition in the Jones case, the President called her into his office and made a series of remarks to her “You were always there when she was there, right? That’s where I was alone. You could see and hear anything Monica said to me and I never touched her, right? She wanted to have sex with me and I couldn’t do that.”
I simply do not believe the President’s explanation that he was question- ing Ms. Currie in an “effort get as much information as quickly as I could” or that he was “trying to ascer- tain what the facts were” or that Ms. Currie “had to know” the facts. 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 in- formation, he would not have been ask- ing rhetorical questions. I also believe that the President’s explanation would be more plausible if his statements to Ms. Currie were not false.

The facts is that the President gave false testimony in the Jones deposi- tion, that during his deposition he repeated to Ms. Currie as someone who could back up his testi- mony and that immediately following the deposition he summoned Ms. Currie into work on a Sunday and cleverly spoon-fed his cover stories to her. De- spite the President’s counsel’s protest- tion, there was still a possibility that Ms. Currie could be called to test- ify in the Jones case. According to the President, Ms. Currie’s testimony would be true. In my judgment, the President was actually seeking in- formation because he knew that Ms. Currie’s testimony would not be true.

A. To Decide Whether the President’s Actions rested on the Inde- x sumptions that brought us here and to consider the underlying cir- nstances to determine whether the President committed obstruction of justice was actually being obstructed in the Paula Jones case. Congress designed the Independent Counsel statute to insulate and protect investi- gations of alleged criminal conduct by the President and other high-level federal officials. Unfortunately, the statute was never envisioned it would. This well intended statute has resulted in a proliferation of interminable, expensive investiga- tions against public officials. It has cost our taxpayers more than $130 mil- lion 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 and the OIC appointed Judge 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”) ex- panded 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, the OIC was able to expand its investigation and redirect its D.C. based Whitewater Grand Jury to investigate the President’s concealment of his extra- marital affair with White House em- ployee 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 actions were part of a pattern and practice of sexual harass- ment. Judge Wright initially ruled that Paula Jones was entitled to informa- tion on the so-called Jane Does, be- cause that evidence might help estab- lish 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 de- cision 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 suppres- sion of pattern and practice evidence. What- ever 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 sum- marry judgment, i.e., whether plaintiff her- self was sexually harassed or at the very least whether President’s conduct was motivated by quid pro quo or hostile work environment sexual harass- ment. Whether other women may have been subjected to workplace harassment, and whether the President concealed such harassment when sup-pressed, does not change the fact that plaintiff has failed to demonstrate that she has a case worthy of submitting to a jury.

B. To Consider the Underlying Circumstances in the Paula Jones Case.

The House Managers has left us with the impression that once we conclude that the President has committed either perjury or obstruction of justice, we have a Constitutional duty to vote to remove the President from office. They maintain that perjury and ob- struction of justice must be considered a high crime and punishment because they carry the same penalties as bribery. I reject this premise. In fact, the severity of a bribery sentence is dependent on sub- ject matter and the amount of the bribe. Similarly, a conviction for perjury or obstruction of justice should not automatically war- rant his removal. It is incumbent upon each of us to examine the underlying facts and circumstances to determine whether or not the President has com- mitted a high crime.

B. Background: How Did We Get Here Anyway?

Most of us now believe that the President lied about his relationship with Ms. Lewinsky when he testified under oath and that in an attempt to conceal the truth from the American people, he lied about the nature of his relationship to his staff, his family and the American people. I have concluded that the Presi- dent not only lied about the affair but that he took at least one illegal action in an attempt conceal the truth from Paula Jones. However, I believe that President Clinton took these steps to avoid deep personal embarrassment, not to seize, maintain or subvert the power of the state.

To not forget that the ultimate question we must each answer is whether on these facts arising out of these circumstances this President poses such a danger to the state that we can no longer permit him to remain in office. The ultimate issue here is a determination of whether the Presi- dent is fit to serve.

Consider our constitutional guidance: The President of the United States shall be removed from Office on Im- peachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.” The Framers in- tended to set this standard at an ex- tremely high level to ensure that only
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the most serious offenses would justify overturning a popular election. The concept of “maladministration” was considered and rejected.

I believe that whether the President’s misconduct occurred in the private sphere, in speech, or in conduct which I think no reasonable person would doubt reflect poorly on a president’s fitness for office and would warrant impeachment and removal. I think we can all see the difference in gravity between the offenses of which President Clinton stands accused and a hypothetical accusation that he took a bribe. While the former reflects poorly on his character and discretion, the latter reflects on his fitness to serve and describes a classic case of abuse of office.

For the President to do what he did was reprehensible and morally wrong. I believe that the President lied to avoid embarrassment. However, the Framers did not envision such behavior as being encompassed by the phrase “other high crimes and misdemeanors.”

The bottom line is that old maxim that bad facts lead to bad law. Such a low threshold for removal of a president from office would be dangerous. After careful consideration, I have concluded that President Clinton has not committed an offense that indicates the President is not fit to serve. Therefore, I will not vote to convict President Clinton.

I do not want the President to come away from this trial thinking that he is forgiven, or that what he has done is not serious, because I think it was most serious. I do not want the people of this country to think that an acquittal means that the President’s conduct is acceptable because it is not acceptable. Lying and obstruction are wrong. I also hope that my vote does not lend any credence to the notion that sexual harassment is not that important. Because it is important. A determination to let the President serve out his term should not be taken as an exoneration of his actions. At the same time, I think it is extremely important that we leave this chapter behind us and move on to the nation’s business.

Mr. WELLSTONE. Mr. Chief Justice, I want to explain my views publicly on the impeachment articles sent to us by a partisan vote of the House of Representatives, and on the removal of the President from office which they would prompt.

First, I am shocked and saddened that our Republican colleagues persistently have blocked our efforts to have open hearings and debate this issue in our deliberations in this matter, and most especially in our deliberations on the final votes on whether to remove the President. Whatever their motives, this is not what a free, representative, accountable democracy is all about. Simply publishing partial transcripts of our proceedings, which include only some formal statements made by senators and not the deliberations themselves—and doing so only at the end of the trial—is, in my view, a great leap sideways.

I also want to describe what I think—and frankly have thought for months—is a more appropriate mechanism to evaluate the President’s conduct. I believe that the Constitution does allow this censure vote; the Senate’s precedents allow it; we have done it before. It’s true that the Constitution is silent on the question of what else we can do in addition to removal; what the Constitution in no way prevents us from moving forward on censure. The argument that we are somehow blocked Constitutionally from censuring the President is contrived, and fraught with partisan pleading.

Even so, if we are ultimately blocked by a filibuster from a vote on censure, the President will not have escaped the judgment of Congress or the American people. Any Senator, in any venue they choose, can offer their own forceful, public censure of the President, repeatedly if they like. I certainly have. A corporate expression of the Senate’s condemnation of the President’s actions, while of course preferable, is not essential. All we need to do now is say to the American people that we already have made known our views.

We all condemn the President’s behavior. It has been said so many times, it hardly bears repeating, were it not for the willful, partisan attempts to mischaracterize a vote against removal as a vote to condone what the President has done. That is, of course, preposterous; the President has been impeached by the House. That has only happened once before in our history. The trial has gone forward, and every member of this body has condemned the President’s behavior as unacceptable, meriting only scorn and rebuke.

It is clear that the President already has paid a terrible price in the eyes of history, not least in the shame and humiliation that this permanent mark on his presidency has caused him, his family, his friends and supporters, and his Administration. The message is clear, including to our young people: When the facts of the truth, there are real consequences, even lawful consequences and costs. The President’s behavior was shameful, despicable, unworthy, a disgrace to his office. And in this long, sorrowful process, I believe he has been held accountable for what he has done.

Pursued overzealously by Kenneth Starr and by House Judiciary Committee Republicans, the articles were then brought to the Senate by the full Senate. Unfair and partisan proceeding that was destructive both of our polity and our politics. All of us should be deeply troubled by it, and all should work together to put it behind us.

In my view, the most important thing that could have happened was for the Independent Counsel to have come forward and told the whole truth, instead of misleading us all. The American people could have handled it. Then, the Independent Counsel could have shown greater discretion in judging what to bring this case forward.

The leadership of the House of Representatives could have allowed a vote on censuring the President, instead of misleading us all. The American people could have handled it. Did Lodge and friends of the President should have avoided this sorry relationship. Then, a little over a year ago, the President could have been more forthcoming and told the whole truth, instead of misleading us all. The American people could have handled it. Then, the Independent Counsel could have shown greater discretion in judging whether to bring this case forward.

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 the opportunities lost, the hopes staved off. We must ask with Langston Hughes, “What happens to a dream deferred?”

Sadly, so many opportunities for better, more prudent and proportionate judgment fell by the wayside. First, and most important, the President should have avoided this sorry relationship. Then, a little over a year ago, the President could have been more forthcoming and told the whole truth, instead of misleading us all. The American people could have handled it. Then, the Independent Counsel could have shown greater discretion in judging whether to bring this case forward.

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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 pursued 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 strong, nor unambiguous. As the White House defense team has made clear, there are ample grounds for doubt about both the facts and law surrounding each of the two articles before us.

It is true that the impeachment process has further alienated millions of Americans from their government, and that is a tragic harm for which the President bears considerable responsibility. It is also true, as we were told 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 partisanism, 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 that we have reached the point of no return; there is time in this Congress to recover from this episode, and to move on.

Despite the claims of pundits that Americans have simply tuned out, I think a deeper reality is present in their reactions, and in the polls. In fact, most Americans, in their wisdom, have reached a subtle, sophisticated judgment in this case, and have already moved beyond it. As is so often the case, they are not only outraged, 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 factoring 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 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. Let us build 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 the American people—representing 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 ever 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 are in closed session and will say that, but I agree that the work you have done have been great. I thank the two of you.

I was thinking I might do something a little different, because even if I were to give a great speech to the best of my ability, I don’t know that there are any more arguments that can be made. I was thinking like, I might agree—actually I have a printed statement—I might agree to just have my statement included in the Record and not speak any further. If I can get some support for some legislation. (Laughter.) Just on some children’s legislation. Does it look like we are at that point?

It does? Well, I like that show of support, and I think, Mr. Chief Justice, what I will do is give you in a moment a full statement and just simply say to everybody here about three things in 2 minutes.

One, I wish we had done this in open session, and I cover that more in my full statement.

Second of all, I think that a decision to acquit is certainly not a decision to condone the President’s behavior for which I think merits scorn and rebuke.

Third of all, I think that the standard, and I want to say this to Senator Domenici, talking about children, to me the standard is guilty beyond a reasonable doubt. I think the evidence has to be unambiguous and strong. I don’t think it was. Senator Levin said that very well, so I don’t need to repeat any of those arguments.

One, I wish we had done this in open session, and I cover that more in my full statement.

Finally, I think a lesson that I have learned as a political scientist, when I teach class again, is I do not think the articles work and this process works when it is clearly not bipartisan. I think it becomes illegitimate. It just doesn’t work.

You did not have broad support coming from the House, and you do not have it here. That is why I think it was doomed from the start.

Finally, it has been a long, sad year, and I wish—I just wish—that those who could have really rendered decisions with judgment had done so, starting with the President and his sorry affair. He could have told the truth about the last election, it seems to me if it ever does, it is on such a decision. I think before you overturn an election, you really have to meet a very high threshold. I don’t think the House managers have done so.

Finally, it has been a long, sad year, and I wish—just wish—that those who could have really rendered decisions with judgment had done so, starting with the President and his sorry affair. He could have told the truth about the last election, it seems to me if it ever does, it is on such a decision. I think before you overturn an election, you really have to meet a very high threshold. I don’t think the House managers have done so.

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. Senator Domenici, I thank our majority leader. Throughout this ordeal, no one has tried to poll me on any substantive matter or influence my vote. That, to me, means a great deal. I view this process as the most serious task I have faced as a Senator over the past 30 years, and I appreciate the recognition by the leadership of the solemnity of our duties under these circumstances and the fact that we each must reach our own conclusions based on the evidence.

As Senators, each of us joined in this oath:

I . . . do solemnly swear that I will support and defend the constitution of the United

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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 mental reservation or purpose of evasion; and that I will well and faithfully discharge my duties of the office on which I am about to enter. So help me God.

And now, we took an additional oath: [I] solemnly swear or affirm, that in all things appertaining to the trial of the impeachment of William J. Jefferson Clinton, President of the United States, now pending, [I] will do impartial justice thereunto 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’s用人 the steps of this building, and the oath to tell the truth, the whole truth, and nothing but the truth to a jury of his peers.

I am most concerned that the action we take here to day not denigrate the role of oaths in our society. To be fair to the President, I believe that he admitted to the Grand Jury that he had not testified truthfully under oath in his deposition. In fact he did not, and he did not tell the truth to that 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 and obstruction of justice as charged in Article I. For me, the jury’s verdict, it would then fall to the judge to determine appropriate punishment within the bounds of the federal sentencing guidelines provided by Congress.

But an impeachment trial is no ordinary proceeding. We sit as judge and jury—rulers on law and triers of fact. The Constitution charges us with a great responsibility. Section 4 of Article II of the Constitution requires that the President be removed from office upon conviction of high crimes and misdemeanors. No President has ever been removed under these circumstances. To me, that history alone makes the trial highly contentious and serious.

I suggest that in our present roles we need do so by fulfilling and reaffirming our oaths to faithfully execute laws, and by our actions we can build confidence in the judicial branch of government—should not be undermined. The most basic principle at issue is the obligation of each branch to dedicate itself to protecting the separation of powers and the independence of government.

Remember in the House committee deliberations, the minority submitted a joint resolution of censure for consideration in lieu of the Articles finally voted upon. It restated:

Expressing the sense of Congress with respect to the impeachment of President William J. Jefferson Clinton. Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress:

(1) on January 20, 1993, William J. Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President; implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William J. Jefferson Clinton has egregiously failed in this obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and disdained the office which they have entrusted to him;

(2) That the House of Representatives of the United States of America, by his conduct has brought upon himself, and fully deserves, the censure and condemnation of the American people and by his signature on this joint Resolution, acknowledges this censure and condemnation.

On December 19, 1998, the House minority in the full house offered this resolution on the House floor which stated:

That it is the sense of the House that—

(1) on January 20, 1993, William J. Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President; implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William J. Jefferson Clinton has egregiously failed in this obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and disdained the office which they have entrusted to him;

(2) William J. Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate;

(3) William J. Jefferson Clinton wrongfully took steps to delay discovery of the truth; and

(4) inasmuch as no person is above the law, William J. Jefferson Clinton remains subject to criminal and civil penalties.

As 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 clearly was not consistent with 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. The article claims that Presidential powers to impede or imperil the impartial administration of justice in a civil as well as before the grand jury. We have pledged to "Support and Defend the Constitution," and the authors of our present rules 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.

In his 1992 book “Lessons in Government,” The President of the United States and (and the Chief Justice of the United States) wrote:

The framers of the United States Constitution and the authors of the Federalist Papers had not envisioned the political parties as we now know them. Would the dominant role played by political parties make the Senate a partisan tribunal which would be willing to undermine the fundamental principles of the Constitution in order to remove a political enemy from office?

I also wonder whether the Framers anticipated that in 85 of the 106 Congresses, the minority party has held more than the necessary one-third strength to prevent the removal of a President?

The action of the House of Representatives was not partisan. But, it is obvious from the final vote that future generations could reach such a conclusion. It is obvious that the President and his attorneys have assigned the D.C. Circuit Court of Appeals to review the evidentiary record and the presentations of both sides of the House committee deliberations which the minority of the Democratic Senators have done so. In this Senate, a final vote strictly on party lines should not occur. The fundamental principles referenced by the Chief Justice—particularly the balance of powers, both current and future of our Federal Government—should not be undermined.

In my judgment, the power of the Senate to reach across to the executive branch and remove a President of the United States may be exercised only when the President’s actions seriously threaten our nation’s security, when he has violated his oath to “faithfully execute the law of the United States,” or does such violence to the rule of law that removal from office is clearly the only way to protect our nation from the potential that he might do great harm to our people.

While I believe the President violated his oath, it does not necessarily follow that he must be removed. For myself,

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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 acts. 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, by a two-thirds majority of those voting, may remove him from office. For me, that makes this more than a factual issue, so I do not vote as I would were I a juror in a criminal case.

As I prepared my decision, it was apparent to me that there was no alternative that will dispose of this matter consistent with the sanctity of oaths and the importance of truth other than to adopt findings of fact. Not to do so and to not remove the President under mine, the House's actions would render the President from office. I do so to demonstrate my firm conviction not only that the President has obstructed justice, but also that we should have followed the procedure which would establish the facts clearly and then determine if the President should be removed from office.

When we had our first meetings on this issue, I told my colleagues we had forces in Kuwait on high alert, forces in Bosnia, an alarming situation in North Korea, and Asian flu plaguing the economies of emerging nations, and Pakistan and India drawing closer and closer to conflict. President Yeltsin, when I saw him yesterday, was a very ill leader, a leader of a nation that has moved from office or not, all express the view that the President should be removed from office.

The President remains answerable, as all Americans should be, to every walk of life: from doctors, lawyers, and Indian chiefs. Many are filled with advice on how I should cast my vote, the most important vote I will ever cast as a Senator. But whether they believe the President should be removed from office or not, all express deep concerns about the future of our country and the example we set for future generations. I have laid awake many nights pondering those very questions, and I share the anguish that many have felt.

When I was appointed to the Senate 30 years ago Christmas Eve, I had a motto that I have tried to live by. “To hell with the politics. Just do what’s right for Alaska.” Today, as one of 100 men and women who have been chosen to exercise this mighty power that our founding fathers conveyed upon 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 country, we have endured trials that have strained the sinews of our democracy and sometimes even threatened to tear apart our unparalleled experiment in self-government. Each time the nation has returned to the Constitution as our common lodestar, trusting in its precepts and its ultimate verity. Each time we have emerged from these tests stronger, more resilient, more certain of Daniel Webster’s claim of “one country, one constitution, one destiny.” (Speech as a Whig Party rally in New York City, March 15, 1837.) And each time our awe of the Founders’ genius has been renewed, as has our reverence for the brilliantly-calibrated instrument they crafted to guide their political progeny in the unending challenge of governing as a free people.

At this moment, we face a test that, although not as grave or perilous as some before, is nevertheless unlike anything this nation has ever experienced. I believe we know now, the impeachment trial of William J efferson 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 unseemly process for the nation. It has divided us, 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 complicated 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 with the most radical disruption of the presidency—all too familiar to us, in our nation’s history.

Yet despite the significant pain this trauma has caused for the country, I take heart from the fact that we have once again reaffirmed our commitment to the Constitution and the fundamental principles underpinning it. The conduct of the trial here in the Senate has been passionate at times, but never uncivil, and while some votes have broken along party lines, they have never broken the spirit of common purpose we share. Indeed, throughout the past week or so, 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 the representatives of the President. This, I believe, is in the end a remarkable testament to the foresight of our forefathers, that even in this most unusual of crises, we could and would rely on the Constitution as our compass to find a peaceable and just resolution.

We are about to achieve that resolution and complete our constitutional responsibilities by rendering a judgment, a profound judgment, about the conduct of President Clinton and the call of the House of Representatives to remove him from office. This is the duty we accepted when we swore to do “impartial justice,” and it is a duty that I, as each of you, have pondered night and day since this trial began.

As I have stated previously on this Senate floor, I have been deeply disappointed and angered by this President’s conduct—that which is covered in the Articles, and the more personal misbehavior that is not—and like all of us here, I have struggled unconfortably 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 nation’s trust in his moral authority and public credibility. But the judgment we must now make is not about the rightness or wrongness
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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 the Constitution, our institutions, 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 portions. The House was also authorized to conduct depositions of the three witnesses it deemed most important to its case. I have listened intently throughout, watched the videotaped depositions, and been impressed by both the House Managers and the counsel for the President. The House Managers, for their part, have presented the facts and argued the Constitution so effectively that they impelled me more than once to seriously consider voting for removal.

But after much reflection and review of the extensive evidence before us, of the meaning of the term “high Crimes and Misdemeanors,” and, most importantly, of the best interests of the nation, I have concluded that the facts do not meet the high standard the Founders established for conviction and removal. No matter how deeply disappointed I am that our President, who has worked so successfully to lift up the lives of so many people, so lowered himself and his office, I conclude that his wrongdoing in this sordid saga does not justify making him the first President to be ousted from office in our history. I will therefore vote against both Articles of Impeachment.

In reaching the judgment that President Clinton is not guilty of high crimes or misdemeanors, I started from the same premise that the Founders did— that the Framers and their leaders is paramount in America, derived directly, as Thomas Jefferson wrote in the Declaration of Independence, from the equality of rights endowed to the people by our Creator. The supremacy of this first democratic principle was well described by Alexis de Tocqueville in Democracy in America: “The people reign in the American political world as the Deity does in the universe. They are the cause and the aim of all things; everything comes from them, and everything is absorbed in them.” (Heffner ed. 1956 p. 58)

In debating the President’s fate, we must remember that 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 absolutistic rule of a monarch, with the 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 a popularly-chosen President. The Framers provided for the President as the narrowest of escape valves in the most extreme of cases. As a result, they set an extraordinarily high bar—both procedurally and substantively—for Congress to override 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 which the Framers surely knew, and the current proceedings have demonstrated, is exceedingly difficult to obtain. They also established a very strict substantive standard, authorizing the Congress to remove a President from office only upon “Impeachment, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” (U.S. Constitution, Art. II, sec. 4).

The first time I read that clause, “high Crimes and Misdemeanors,” I assumed it included any criminal offense—and only criminal offenses—and I thought that it gave Congress broad latitude to impeach and remove from office a President who had committed any violation of the criminal code. But the more I studied the history, the less clear that interpretation became. The phrase “high Crimes and Misdemeanors” was a term of art to the Framers, and it meant something very different from ordinary crimes, the response to which is prosecution of an individual through our criminal justice system. The Framers chose the term high crimes, to connote a very specific type of offense, like treason or bribery, which has a direct impact on the government and undermines the 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 nature of the office, and are therefore acts of a personal nature only, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.” (The Federalist Papers, No. 65 Rossiter ed. 1961 p. 396 (emphasis in original))

It is not necessary here to offer a lengthy dissertation on the Constitutional Convention’s impeachment debates, but I would like to share a statement of James Madison that illuminates the reasons why the Framers wanted to authorize impeachment and removal, as well as the intended scope of that power. In response to the suggestion that it was dangerous to authorize the legislature to remove the President, Madison argued that it was: indispensable that some provision should be made by defending the Community against the danger of an incapacity 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 apply his administration 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 a corruption that made the Framers believe that they had to provide impeachment to serve as the narrowest of escape valves in the most extreme of cases. 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 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 nature of the office, and are therefore acts of a personal nature only, 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))

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 do it again.

But as Professor Charles Black so well explained in Impeachment: A Handbook, criminality in and of itself is neither a necessary nor a sufficient basis for concluding that a President has committed a high crime or misdemeanor, because our goal is to protect the nation's interests, not to punish a President for violating the criminal law. He states: "I think we can say that 'high Crimes or Misdemeanors,' in the constitutional sense, ought to be held to be those offenses which are rather obviously wrong, whether or not 'criminal,' and which so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetra-
tor. The fact that such an act is also criminal helps, even if it is not essen-
tial, because a general societal view of wrongness, and sometimes of serious-
ness, is, in such a case, publicly and au-
thoritatively recorded." (1990 ed. pp. 39-40)

If the purpose of impeachment was to ensure that the President is held ac-
countable 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 pro-
tect the Republic from a Chief Execu-
tive who, by his acts, has demonstrated that he no longer has the moral or spiritual integrity to govern in the national interest. Re-
sponses to all other forms of malefa-
sance were left to the other branches.

That is why I conclude that the ap-
propriate question for each of us to ask is not whether the President commit-
ted perjury or obstruction of justice, but whether he committed a high crime or misdemeanor—a term I under-
stand from the history to encompass two categories of offenses. The first in-
cludes those that are like treason or bribery in that they represent a misuse of official power to directly in-
jure the State or its people. Those guilty of such offenses must be re-
moved from office because they have explicitly demonstrated, by their con-
duct, that they will place their per-
sonal interests above the national in-
terest.

The President's counsel and others suggest that we should stop here, argu-
ing 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 p. 193) 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 de-
 fend "the Community against the inca-
pacity, negligence, or perfidy of the chief Magistrate," coupled with Hamil-
ton's definition of "high Crimes and Misdemeanors" as an "abuse or viola-
tion of some public trust," convince me that it is more than just the loss of offi-
cial power that can require the Senate to remove an office holder. Acts that, although in their immediate nature and effect differ from treason or brib-
ery because they do not stem from a misuse of official power 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" as a high crime or misdemeanor, have not unequivocally demonstrated the same threat posed by treason or bribery: that the President can no longer be trusted to use his power in the best interests of the nation. It is for this reason that I reject the contention that a President's giving false or misleading statements under oath or his impeding the discovery of evidence in a lawsuit arising out of his personal conduct may never constitute a high crime or misdemeanor. I have no doubt that under certain cir-
cumstances such offenses could demon-
strate such a level of depravity, de-
cet and disregard for the administra-
tion of justice that we would have no choice but to conclude that the Presi-
dent could no longer be trusted to use the authority of his office and make the decisions entrusted to him as Chief Executive in the best interest of the nation. It is because I hold this posi-
tion that I found reaching a decision in this case such a difficult matter.

Before evaluating the charges against the President, and determining whether his misconduct in fact meets the high threshold the Constitution es-
ablishes for removal, each of us had to resolve the important question of what standard of proof should be used for judging the evidence against the Presi-
dent. It is widely agreed that the House Managers have the burden of convinc-
ing Members of the Senate that the President has committed a high crime or misdemeanor, but there are dif-
ficulties of opinion on the level of cer-
tainly each of us in the Senate must reach here. I conclude that the House has met its burden.

During the Impeachment Trial of Judge Alcee Hastings, I gave a great deal of thought to this question, and after weighing the competing interests of preserving the integrity of the judi-
ciary, maintaining the independence of the judiciary, and protecting the per-
sonal interests of the office holder, I concluded that the House had to prove it by "clear and convincing evi-
dence." (See 135 Cong. Rec. S 14399-61 (Oct. 27, 1999) Clear and convincing evidence is evidence that, in one formu-
lation, produces in the mind "a firm belief or conviction as to the matter at issue." U.S. Federal District J udges Association, Pattern Jury In-
structions §2.14 (1998 ed.) or, put an-
other way, persuades the finder of fact that the claim "is highly probable" (Committee on Model Jury Instruc-

There are valid arguments for adopt-
ing the higher standard of "beyond a reasonable doubt" in this case, most importantly that the national trauma caused by the removal so far surpasses the damage imposed by the removal of a single judge, that the Senate must remove a President only if it has a very high degree of certainty in the facts underlying its decision. On the other hand, just as the trauma of removing a President is greater than that flowing from removing a judge, the danger an errant President poses to the Republic far exceeds the threat pre-
sented by a misbehaving judge. This need not conflict with the need for public re-
plicity and the welfare of its people ar-
ges against setting the standard of proof so high that it would result in leaving in power an individual whose fitness to continue serving in the na-
tional interest is seriously in doubt, re-
membering that no matter what the standard, removal still requires two-
thirds of the Senators' support.

In 1974, then Senate Majority Leader Mike Mansfield recommended that the standard of "clear and convincing evi-
dence" be lowered between the burden of proof require-
ment in criminal proceedings ("beyond a reasonable doubt") and the burden of proof requirement in civil proceedings ("by a preponderance of the evidence"). He added these words of insight and reason:

An impeachment proceeding is not a crimi-
ナル proceeding since the Court of Impeach-
ment is barred by the Constitution from im-
posing any of the usual criminal 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 removing a President and removal (in at least the case of an impeach-
ment 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 the period of the legislative and the judicial, the political and the legal. (Senate Committee on Rules and Administration Executive Session Hearing on Senate Rules and Precedents Applic-
able 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 the 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 was 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 statement 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 for 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 which 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) Ms. Lewinsky testified that they had several such encounters. (Aug. 26, 1998 Grand Jury Testimony of Monica Lewinsky pp. 6-40) The President’s counsel responded to this allegation by saying: “This claim comes down to an assertion against Ms. Lewinsky’s material details concerning an acknowledged wrongful relationship.” (Trial Memorandum of President Clinton p. 44) I disagree. The President’s statement almost certainly was false. Indeed, 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 were beyond Ms. Lewinsky’s knowledge, and that Ms. Currie could not possibly help refresh his memory. The President called Ms. Currie in on January 18, 1998 to ask her those questions after the surprise questions he was asked the day before in his Jones deposition about his relationship with Ms. Lewinsky, and after he repeatedly invoked Ms. Currie’s name in connection with Ms. Lewinsky in response to those questions. (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 knew that Ms. Currie 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 by January 18, 1998, when he asked Ms. Currie the series of questions, that the statements they contained (for example, that “I was never alone with Monica Lewinsky”; that Ms. Currie “could see and hear everything,” and that “Monica came on to me, and I never touched her, right!”) either were not true or were beyond Ms. Currie’s knowledge and that Ms. Currie could not possibly help refresh his memory.

The President called Ms. Currie in on January 18, 1998 to ask her those questions after the surprise questions he was asked the day before in his Jones deposition about his relationship with Ms. Lewinsky, and after he repeatedly invoked Ms. Currie’s name in connection with Ms. Lewinsky in response to those questions. (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 knew that Ms. Currie had “inappropriate intimate contact” with Ms. Lewinsky and that the relationship occurred “When I was alone with Ms. Lewinsky,” he therefore must have known by January 18, 1998, when he asked Ms. Currie the series of questions, that the statements they contained (for example, that “I was never alone with Monica Lewinsky”; that Ms. Currie “could see and hear everything,” and that “Monica came on to me, and I never touched her, right!”) either were not true or were beyond Ms. Currie’s knowledge and that Ms. Currie could not possibly help refresh his memory.

In summary, although the House Managers have left me thoroughly unconvinced of some of their allegations, the evidence presented on others does lead me to believe that it is likely that there were occasions on which the President made false or misleading statements and that Ms. Currie’s false statements 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 leave it up to the Constitution and decide whether the House Managers have presented clear and convincing evidence that the President has committed a high crime or misdemeanor, which is to say whether they have demonstrated that his misconduct was so serious as to compromise his capacity to govern in the national interest that he must be removed.

I conclude that the House Managers have not met that high burden. I am, of course, profoundly unsettled by President Clinton’s irresponsible behavior 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 failed to convince me with the evidence they have presented that his misbehavior, as charged in the articles of impeachment, makes him a threat to the national interest, and that we can no longer expect the President to govern free of corruption in the nation’s best interests.

Indeed, the Managers have barely addressed this point of consequences at all, providing almost no evidence of presidential corruption. The American people need the republic needs the President to conduct this proceeding. Our responsibility is to determine whether the President is guilty of a high crime or misdemeanor, and to do so with evidence of the republic’s need for protection 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 a high crime or misdemeanor automatically warranting the President’s removal. And in doing so, I believe they have failed to establish the higher constitutional threshold of proving that the President has forfeited his right to fill out the term for which the people elected him.

The voice of the American people, in fact, indicates that just the opposite is true. According to every public poll we have seen, a clear majority of the American people have continued to support the President throughout this ordeal. Nearly two-thirds of them say repeatedly and approve of President Clinton’s job performance and the way he is running the country, and that he opposes his removal. In my state of Connecticut, a survey done by The Hartford Courant just last week showed that 68 percent of the people in my state believe the President should not be removed from office. But in doing so, I believe they have failed to establish the higher constitutional threshold of proving that the President has forfeited his right to fill out the term for which the people elected him.

In noting this, recognize that it would be a serious 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 opinion is not compelling, nor should it be. For it is the only one that the Founders intended this proceeding to serve.

It is possible, of course, that a popular President could nevertheless be corrupt and pose a threat to the nation, which is to say that public opinion is not the only barometer of fitness for office. But in this democracy it is an indispensable measure, and in light of the ultimately unconvincing evidence the Managers have presented to demonstrate the President’s loss of capacity or corruption, the public’s opposition to removal carries weight in my deliberations. It carries particular weight given the overwhelming amount of information the news media has provided us about the details of the President’s behavior, which strongly suggests that the American people have no reason to succumb to an 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 who provide evidence of his high ratings for his job performance have also strongly expressed their disapproval of his sexual behavior and his deliberate lies to the nation. Indeed, surveys have routinely shown that, as a consequence of this scandal, less than one-fifth of the American people claim that they share the President’s moral and ethical values, a result I find stunning and which may be unparalleled in our history.

How can so many Americans simultaneously hold the views that the President has demeaned his office and yet should not be evicted from it? We will be trying to answer that question and to weigh the consequences of those seemingly conflicting opinions for a long time to come. But I believe the explanation must have something to do with the context of the President’s actions. As the record makes abundantly clear, the President’s false and misleading statements under oath and his broader-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 deeply embarrassing, shameful, even indefensible, yet not illegal.

Indeed, together with by much of the evidence the Managers presented and the arguments they made, on each occasion I considered voting for removal I invariably came back to this question of context, and I asked myself: Are these the kinds of offenses the Founders envisioned when they entrusted us with the awesome power of invoking our democracy’s ultimate sanction? Does this specific episode justify, for the first time in our proud history, ejecting from office the individual the American people chose to lead the country? And each time I had to answer no.

To reach this conclusion, that the context matters in judging the President’s misconduct, is in the eyes of the House Managers and many of the President’s critics 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.

As I stated in the speech I made on this floor on September 3rd of last year, I was deeply angered by the President’s recklessness and his purposeful deceit. But I was also deeply aware that at that point in his grand jury testimony the President had not only immoral but harmful. The President is, as eminent historian Clinton Rossiter noted, the American people’s "one authentic trumpet," (Rossiter "The American Presidency," 1955 p. 23) and when the notes he sounds in the expression of our common values, it has an effect, one that cannot be ignored. That was made clear to me in talking with many parents and children about this matter over the last several months, hearing the dismay and distrust in their voices, which was powerful evidence to me that the President had undercut his moral authority and undermined public confidence in his leadership.

My disappointment and anger with the President’s actions were reawakened as I listened to the evidence the Managers have presented. And like many of my colleagues, I am left dissatisfied with the all-or-nothing nature of the choice we have been asked to make in this proceeding, between removing this President from office on the one hand, or not removing him on the other, which could imply exonerating or even vindicating him.

But as unsatisfying as that choice is, it is the only one that the Founders empowered the Senate to make in this impeachment proceeding. Our responsibility is not to pass judgment on the morality of the President’s behavior, or to find whether he committed a specific crime. Impeachment is not an instrument of protest, or of prosecution, but one of protection, of our country, its people, and our democratic ideals. We are in this as a court of law, and I answer "not guilty." I want it understood that I am saying "not guilty of a high crime or misdemeanor," and that is all I can say.
With that understood, I do believe the Constitution allows for one recourse that would provide a means for us as the people's representatives to register our and their disapproval, and would, I believe, help us to bring appropriately focused attention to that which is wrong. Such a censure would not amount to a punishment, nor would it be intended to do so. What it would do, particularly if it united Senators across party lines and positions on removal, is fulfill our responsibility to our children and our posterity to speak to the common values the President has violated, and make clear what our expectations are for future holders of that highest office.

And what it could do, I believe, is to help us to begin healing the wounds the President's misconduct and the impeachment process's partisanship have done to the American body politic, and to the soul of the nation. I have observed in 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 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 were in violation of the laws; that William Jefferson Clinton did commit perjury and obstruct justice under the Articles of Impeachment; and that he must be removed as President of the United States.

This is a sad chapter in our nation's long and illustrious history. A man of extraordinary talent took a mistake and turned it into a tragedy. William Jefferson Clinton is no ordinary man. Gifted and charismatic, brilliant and commanding, a man of refined, he took raw ability and focus and turned it into a Presidency. Such is the stuff of story books and heroes. Sadly for this tale, the hero had a habit he would not break, and, when it occurred, he sought to hide it at all cost. And there the tragedy occurred. Such a censure would not 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 the trial is concluded, we will put aside our partisan loyalties and our political hesitations and overcome parliamentary obstacles to join together in passing a resolution that affirms that belief that the presidency is and must continue to be, in the words of Clinton Rossiter, "the man of distillation of the American people." (The American Presidency p. 11), the steward of our freedom and our values.

In closing, Mr. Chief Justice, I would like to quote from a wise and compelling insight that Manager H YDE put forward in his final argument. The most formidable obstacle the Managers faced was not the Articles of Impeachment. As he put it, "no public cynicism can overcome the deep conviction that all politics and all politicians are by definition corrupt and venal."" He went on to say, "That cynicism is an acid eating away at the vital organs of American public life. It is a clear and present danger because it blunts the nobility and the fragility of being a self-governing people." While I disagree with Manager H YDE's ultimate conclusion in this case, I could not agree more with his eloquent assessment of this threat to our democracy. It is a problem I addressed at the end of the campaign finance investigation that the 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.
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]...[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 to Betty Currie". 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 external relations of President Clinton to Betty Currie, (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 testimony 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 "Monica came on to me, and I didn't say anything. I let her believe I was not trying to get Betty Currie to say something that was untruthful."

However, as discussed further in the obstruction of justice charges, President Clinton said to Mrs. Currie "Monica came on to me, and I never touched her, right?" Based upon both Ms. Lewinsky and President Clinton's testimony concerning their intimate contact, and upon Ms. Lewinsky's Senate deposition, I must conclude that Ms. Lewinsky's account of their intimate 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 "touched Ms. Lewinsky & I told 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 by the Paula Jones' case was to "refresh [this] personal 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 illicit affair and not to refresh the President's memory. The President's interest in talking to Mrs. Currie concerning his interest in talking to Mrs. Currie would thus constitute perjury.

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 had never had sex with her at all. They may have been misleading." President Clinton also testified that "what I was trying to do was give them something they could—that would be true, even if misleading in the context of this deposition." Mr. Clinton told Sidney Blumenthal that "Monica Lewinsky had made a sexual demand on me" and that the President had rebuffed her. Mr. Blumenthal also testified that the President claimed that Ms. Lewinsky threatened the President, saying "that she would have an affair with him, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more." When Mr. Blumenthal asked the President whether Mr. Clinton had been alone with Ms. Lewinsky, the President replied "I was within eyesight or earshot of someone."

Even President Clinton acknowledges that he was alone with Monica Lewinsky and 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 sex with her [Ms. Lewinsky] in any way whatsoever. Mr. Podesta further testified that President Clinton elaborated that "the President and I had Lewinsky 'had not engaged in sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case.'" During President Clinton's grand jury testimony, he refused to directly contradict Mr. Podesta's characterization of their conversations: "I'm not saying that anybody who had a contrary memory is wrong." President Clinton was asked "[i]f [the White House aides] testified that you denied sexual relations or relationship with Monica Lewinsky, or if they told us that you denied that, do you have any reason to doubt them?" The President responded "no."  

Based on the evidence concerning the extent of the sexual relationship between President Clinton and Ms. Lewinsky, and based on the President's own admission concerning the accuracy of statements made by his aides, I conclude that President Clinton committed perjury when he characterized the manner in which he conveyed false statements to Mr. Podesta and Mr. Blumenthal. President Clinton did not simply mislead his aides, he lied to them about his relationship with Ms. Lewinsky.

ARTICLE II—OBSTRUCTION OF JUSTICE

In his conduct while President of the United States, William Jefferson Clinton obstructed justice and violated 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 by 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—I maybe 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 facts that (1) Mrs. Currie was a White House aide and (2) 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 Jefferson Clinton intensified and succeeded to secure judicial assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.  

At President Clinton's request, Vernon Jordan met with Monica Lewinsky in November of 1997 to discuss assistance that Mr. Jordan could provide Ms. Lewinsky in securing a job in New York. However, Mr. Jordan took no action until December 11, 1997, five days after President Clinton learned that Monica Lewinsky was on the witness list in the Paula Jones case and that Mr. Jordan had not yet provided Ms. Lewinsky with an assistant to help her find 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 that Mr. Clinton's witness list be unsealed, so that she could see or hear that, Presi-
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 he knew that Sidney Blumenthal and John Podesta might be called into a grand jury, President Clinton responded, "That's right." Therefore, I must conclude that President Clinton lied to 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 had sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case." As stated above, Mr. Clinton acknowledges that he knew that Mr. Podesta might be called as a witness by the grand jury as was 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 to be defined in the Paula Jones case. As a result, Mr. Clinton lied to Mr. Podesta. In addition, because President Clinton knew that Mr. Podesta might be called as a witness by the grand jury, I must conclude that the President lied to Mr. Podesta, not simply to mislead him and his White House colleagues, but in order to plant false testimony on a potential grand jury witness.

PERJURY Before a Federal Grand Jury and Obstruction of Justice do rise to the level of being a "high crime or misdemeanor" that is the standard set forth in the Constitution for impeachment. Indeed in recent years the United States Senate has impeached two federal judges for perjury. Where we not to remove the President for the same offense we would be breaking established precedent.

Furthermore, would it be right to set a lower standard for the President than the judges he appoints? I think not. The President must be held to the same standard, if not a higher one.

Perjury and obstruction of justice are crimes against the state. Perjury goes directly against the truth-finding function of the judicial branch of government. If the President can lie under oath, others will plead the same defense, sacrificing the truth.

The President is the Chief Law 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 interests. 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 high 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 several years, from trust in public officials, respect for the rule of law, confidence in the truth of the White House's public statements. But perhaps the most tragic loss has been the steady erosion of our societal standards.

It is hard to imagine that a generation or two ago, a majority of Americans would have greeted news of Presidential crimes and cover-ups with a shrug. We did not expect our leaders to 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 to the President of the United States and told 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. It is no longer outraged by the outrageous. We have grown comfortable with presidential misconduct, even as we prosecute, convict, and imprison the less powerful for the same crimes.

If we are to remain a nation of media, much of our reluctance to enforce the laws of our land springs from our material concerns. We have heard, from many quarters, the assertion that things are good in America, we are at peace, the stock market is doing well, why rock the boat? Why shake things up?

We seem to have forgotten that all of our prosperity would be impossible without the rule of law, and without a cultural predisposition to honor and uphold the law. Reducing the administration of justice to opinion polls debases our country. Putting pocketbook concerns over standards of right and wrong impoverishes our culture. If we do not sustain the legal foundation on which our system of government and our prosperity is based, both will surely and steadily diminish.

The great southern writer Walker Percy once stated that his greatest fear for our future lies in "seeing America, with all of her great strength and beauty and freedom...gradually subside into decay through default and be defeated...from within by weariness, boredom, cynicism, greed, and in the end, helplessness before its great problems."

I am optimistic about our future, but this point is an important one. America is at a place in history where our great enemies have been defeated. Our economy is strong, our expectations high. We are the only remaining world superpower.

Our future looks bright. But our continued success is not a historical certainty. It will be determined by the character of our nation, our 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 become.

For all of the reasons described above, I have chose, 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 one years ago, the 40th Congress faced a similar decision. Then, as now, the Nation was divided. Then, as now, the passions of the day raged across the land. Then, as now, the critics of the President were in the majority in the Senate. Confronting the cynicism of the day, the Senate rose above itself by the slenderest of margins, a single vote, and acquitted President Andrew Johnson.

More than a century later, that decision has stooped the test of time. The Senate's acquittal reaffirmed a basic constitutional doctrine that the Executive branch and the Legislative branch shall be separate and co-equal; and that the Executive Branch should not be subservient to the prevailing views of Congress.

How different the course of our constitutional history might have been had President Andrew Johnson been
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considered. As the Constitutional Conven-

tion drew to a close, the Convention’s
Committee of Eleven proposed “trea-
sion or bribery” as the appropriate
standard.

George Mason suggested the addition of
“maladministration” due to his con-
cern that the single penalty of only the
offense of treason or bribery would still allow a
president to commit “many great and
dangerous offences” which would not be
subject to impeachment. [The Records of the Federal
Convention].

However, President Madison believed “maladministration” was “... [a] vague term [it] will be equivalent to a
tenure during [the] pleasure of the Senate.” [The Records of the Federal
Convention]. George Mason then pro-
posed the addition of “high crimes and
misdemeanors against the State”,
which the Committee on Style modi-
fi ed by deleting “against the State” be-
lieving that language unnecessary.

Alexander Hamilton in Federalist
Paper Number 65 argues that the Sen-
ate, shall be removed from office on Im-
peachment for the Conviction of, Trea-
sion, Bribery, or other high Crimes and
Misdemeanors.

What constitutes impeachable con-
duct, as contemplated by the Constitu-
tion, is the central issue of this trial.

The Framers of the Constitution la-
bored at some length to fashion an im-
peachment article. As their guide, they
looked to the English experience in their
parliamentary system. They fol-
lowed that history in deciding to in-
clude both the House of Representa-
tives and the Senate giving them dif-
f erent roles—the former to charge and
impeach, and the latter to convict or
acquit.

Unlike the British parliamentary
system with its monarch, the Framers
decided impeachment would apply against
its highest office holders, ex-
pressly including the President. Fur-
ther, the Framers determined that im-
peachment would in and of itself be
limited. Rather than including capital
punishment and other criminal pen-
alties as a part of impeachment as
Britain did, the Framers limited im-
peachment to the removal of the indi-
vidual from office upon conviction.

As the drafting of the Constitution’s
impeachment clause proceeded, the
drafters struggled with how to char-
terize the offenses for which a presi-
dent could be impeached, convicted,
and removed from office. Initially, of-

fenses such as “malpractice”, “neglect
of duty”, and “corruption” were con-
sidered. As the Constitutional Conven-

tion
But is it impeachable conduct? Does it rise to the constitutionally required standard of bribery, treason or other high crimes and misdemeanors. I think not.

The President's conduct is boorish, indefensible, even reprehensible. It does not threaten the Republic. It does not impact our national security. It does not undermine or compromise our position of unchallenged leadership in international affairs.

Although I conclude that the evidence presented in this case does not reach the standard commanded by the Constitution to convict and remove a President, it does not follow that we are precluded from registering our strong disapproval of the President's personal conduct.

There is a way. After our vote on these Articles of Impeachment, and assuming, as most believe, there are not the votes to convict the President—the Senate should proceed immediately to adopt a bipartisan resolution of censure.

It is important for us to do this. There are two reasons. First, the American people need to hear from us in strong and unambiguous language that the President's personal conduct is unacceptable and unworthy of the President of the United States.

The record of these proceedings must also reflect that the acquittal of the President in no way be construed as an exoneration of his conduct. A censure resolution should not be embarked upon lightly or for political reasons, but it should be used in this case.

And finally, a response to the injunction that we have frequently heard over the past several weeks: that no man is above the law. That is a core value. It goes to the very essence of our beliefs as Americans. No violence is done to this sacred principle by pursuing this course.

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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 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 Ms. Lewinsky came at me and made a sexual demand on me," that he "rebuffed her," and that Ms. Lewinsky "was known as the stalker." (See Sen. Rec. Vol. IV, part 1, at 185; Mr. Blumenthal 6/4/98 GJ, at 29.) 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 said, he did not then mislead them, he did not speak the truth, 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 is 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 that he had engaged in a sexual relationship. The President publicly and repeatedly denied the truth of these allegations. It was a classic "he said, she said" situation. Then physical evidence of a sexual relationship between the President and Ms. Lewinsky was discovered. After this physical evidence came to light, it ceased to be a "he said, she said" situation. He changed his story and admitted an "inappropriate intimate relationship" to a federal grand jury, while she was vindicated.

However, the President declined to follow his oath to tell the grand jury the whole truth and admit the true nature of the relationship. Instead, the President attempted to walk an impossibly fine line, admitting to a relationship which involved sufficient contact to explain the physical evidence but insufficient contact to explain 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 flatteringly 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 where there are two differences. First, the President's implausibly contorted version of events appears to be tailored precisely to avoid admitting a prior perjury. Second, we have the benefit of a prior "he said," in which the same two people, in 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 serve as the basis for a perjury conviction for two reasons. First, when viewed in its entirety, the President's grand jury testimony makes this one statement immaterial. It is the equivalent of the statement of a murderer who begins his confession with the statement that "I didn't do anything wrong." Second, in light of the House's decision to reject a separate article focusing on deposition perjury, I am uncomfortable allowing the President a do-over as a means to "backdoor" allegations that the President lied in that forum.

The allegation that the President lied to the grand jury when he testified that he was not paying attention to his lawyer when he used Ms. Lewinsky's affidavit to deny that there was any sexual relationship between the President and Ms. Lewinsky is a closer matter. During the President's deposition in the Jones case, the President's lawyer, Mr. Bennett, argued to the Court that Ms. Lewinsky's affidavit demonstrated "there is absolutely no sex of any kind in any manner, shape or form" between the President and Ms. Lewinsky. (See Sen. Rec. Vol. XIV, at 23.) The President allowed his lawyer to make this representation to the Court, even though the President knew that representation and the underlying affidavit were both false. When confronted with these facts before the grand jury, the President attempted to excuse his behavior with the claim that he was not paying attention and this "whole argument just passed me by." (See Sen. Rec. Vol. III, part 1, at 481; Mr. Clinton 8/17/98 GJ, at 29.) The available evidence provides a much more plausible explanation of his behavior with the claim that he was not paying attention to his lawyer before, during, and after his lawyer's representation. Once again, the President's deposition testimony was false.

What is more, in light of the President's admitted fears about the true nature of his relationship with Ms. Lewinsky becoming public, it is impossible to believe that he would have not paid attention to his lawyer's efforts to use the Lewinsky affidavit to prevent questioning about their relationship. The President does not dispute that he suggested that Ms. Lewinsky file an affidavit in a December 17, 1997, telephone call. The President's stated objective in suggesting the filing of an affidavit was to keep Ms. Lewinsky from becoming an issue in the Jones litigation. The notion that the President would not pay attention to his lawyer's efforts to foreclose such an issue on credibility grounds is implausible. The President's deposition testimony was false.

The President's deposition testimony was false. The President paid no attention to the affidavit he used to prevent questioning about a sexual relationship with Ms. Lewinsky. The President's deposition testimony was false. After all, whether the President paid attention to Ms. Lewinsky's affidavit or not, the affidavit was false. As a result, the President's deposition testimony was false.
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.

I was 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 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 in 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 beyond a reasonable doubt that every element of felony perjury under section 1623 of the federal criminal code, Title 18, there are five elements to the crime of grand jury perjury. To constitute perjury a statement must be made under oath, before a grand jury, with intent, and the statement must be both false and material.

I have already discussed why I have concluded that these statements were false, and there is no question that they were made under oath to a grand jury. The only two remaining elements are intent and materiality. Neither of these standards is difficult to satisfy in the context of grand jury perjury. Congress passed a special statute, section 1623, to make it easier to prosecute grand jury cases. The true purpose of that grand jury perjury is a more serious threat to the administration of justice than other perjuries. As a result, the intent requirement is not demanding—the defendant need only make the statement with knowledge of its falsity. As the well-respected American Criminal Law Review published by Georgetown University concludes: “Section 1623, unlike 1621 [the general perjury statute], does not require proof that the allegedly false testimony was submitted willfully. Rather, it requires that such testimony was knowingly stated or subscribed. This requirement is ordinarily satisfied by proof that the defendant knew his testimony was false at the time he provided it.”

The one thing that emerges from the presentations made by both the White House and the House Managers is that the President made his grand jury statements with a great deal of forethought and precision. The President’s false statements did not result from inadvertence or confusion. The President knew these statements were false. For example, he knew full well that his conversation with Ms. Currie was not designed to refresh his memory.

Likewise, the materiality standard is easily satisfied in this case. Courts are generally quick to find grand jury perjury to be material in deference to the broad investigatory authority of a federal grand jury. As the Second Circuit observed in United States v. Kross, 14 F.3d 751, 754 (2d Cir.), cert. denied, 513 U.S. 828 (1994): “Because the grand jury’s materiality inquiry is phrased in substantive terms—i.e., in context that is broadly construed.” The grand jury in this case was investigating whether the President committed perjury in his Jones deposition or obstructed justice in the Jones lawsuit. Generally, the grand jury was concerned that the President may have lied in denying a sexual relationship with Ms. Lewinsky and obstructed justice by coaching Ms. Currie and making sure her story would square with the President’s sworn testimony. The President’s grand jury testimony concerning what he said to his aides and the nature of his relationship with Ms. Lewinsky was directly relevant to the grand jury’s investigation. The President’s statements were knowingly material—they were at the heart of the grand jury’s inquiry.

THE PRESIDENT’S LEGAL DEFENSES

Lawyers for the President raised a number of legal smoke screens in his defense that do not change the ultimate conclusion that the President committed perjury. For example, they emphasize the so-called Bronston defense, in which a misleading statement does not constitute perjury if it is technically true. However, the Bronston defense provides no defense to a statement that is literally false. As United States Supreme Court Justice Breyer, while still on the First Circuit, observed: “The Supreme Court’s analysis of the perjury statute, does not require proof that such proof be made by any party. supra”, at 357. According to Ms. Currie, the President repeatedly rehearsed this legal defense with his lawyers over several days of writing her story and answering questions, such as “Monica came on to me, and I never touched her, right?” “You were always there when Monica was there, right?” and “I was never really alone with Monica, right?” (See Sen. Rec. Vol. IV, part 1, at 559-560; Ms. Currie 12/7/98, p. 70-75). According to Ms. Currie, 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 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 was a correct statement of the law because there is ample corroborative evidence. But the truth of the matter is that section 1623 expressly rejects the two-witness rule, stating that: “it shall not be necessary that such proof be made by any particular number of witnesses.” As the American Criminal Law Review observed, “it was a deliberate policy 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 the 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 that obstructed 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.

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 and confronted her with a series of questions and answers, such as “Monica came on to me, and I never touched her, right?” “You were always there when Monica was there, right?” and “I was never really alone with Monica, right?” (See Sen. Rec. Vol. IV, part 1, at 559-560; Ms. Currie 12/7/98, p. 70-75). According to Ms. Currie, the President repeatedly rehearsed this approach 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 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 as to which the President directed the Jones’ lawyers to “ask Betty.” In short, having invoked Ms. Currie as an alibi in his deposition, the President wasted no time in contacting Ms. Currie and making sure her story would square with the President’s sworn testimony. As the President’s counsel 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 admonition not to 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 President did not dispute that he called Ms. Lewinsky on December 17, 1997, to inform her that she was on the witness list in the Jones case. The President likewise does not dispute that he hoped Ms. Lewinsky would not have to testify and suggested to her that she could file an affidavit to reduce her chances of being deposed or called to testify in the Jones proceeding. (See Sen. Rec. Vol. III, part 1, at 576–73; Mr. Clinton 8/17/98 GJ, at 115–121). The President's defense is that he wanted Ms. Lewinsky to file an affidavit to avoid testifying, he did not want her to file a false affidavit. As the President put in his grand jury testimony, "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 Ms. Lewinsky would have been called as a witness. It is folly to suggest that an affidavit that admitted the relationship but emphasized its consensual nature could have prevented Ms. Lewinsky from being called. Judge Wright had already approved discovery of governmental employees involved in relationships with the President without regard to whether they were consensual.

Additional evidence that the President encouraged Ms. Lewinsky to file a false affidavit comes from the President's revival of previously developed cover stories in this same 2:30 a.m. telephone conversation. Specifically, according to Ms. Lewinsky, the President reminded her that "you can always say you were going to see Betty or that you were bringing me letters?" (See Sen. Rec. Vol. III, part 1, at 843; Ms. Lewinsky 8/19/98 GJ, at 123). To be sure, the President believed that the ideas of filing an affidavit and using the cover stories were not explicitly linked in her mind. However, there must have been some implicit link, in fact, because Ms. Lewinsky's draft affidavit featured one of the cover stories. Although it was dropped in the editing process to eliminate any suggestion that the President and Ms. Lewinsky were alone, the draft affidavit suggested that Ms. Lewinsky had brought the President's papers.

In addition, the notions that the President wanted Ms. Lewinsky to file a false affidavit and that only 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 the facts" that could possibly be relevant to the investigation—made by Paula Jones...", (2) it stated that on the occasions on which Ms. Lewinsky saw the President after she left employment at the White House in April 1996, her perception of formal functions related to real jobs, and that "there were other people present on those occasions," and (3) it stated that—contrary to the President's admission before the grand jury that he and Ms. Lewinsky had an inappropriate intimate relationship—"the President... always behaved appropriately in my presence." (See Sen. Rec. Vol. III, part 1, at 1225).

Moreover, any doubt about the falsity of Ms. Lewinsky's affidavit is removed by her decision to enter into a formal agreement to prevent her prosecution for perjury with respect to the affidavit.

Finally, the President's claim that he did not want Ms. Lewinsky to file a false affidavit is belied by the fact that the President allowed his attorney to use the false affidavit in an effort to keep the Jones lawyers from questioning him about his relationship with Ms. Lewinsky. The President's attorney, Mr. Bennett, relying on the Lewinsky affidavit in a joint court that "there is absolutely no sex of any kind in any manner, shape or form, with President Clinton." (See Sen. Rec. Vol. XIV, at 23). Mr. Bennett expressly told the court that the President was "fully aware" of Ms. Lewinsky's affidavit. (See Sen. Rec. Vol. XIV, at 23). It is difficult to credit the President's claim that he did not want Ms. Lewinsky to file a false affidavit when he allowed his lawyer to use a false affidavit—of which he was "fully aware"—to keep him from being questioned about Ms. Lewinsky.

The House has alleged that the President's decision to allow Mr. Bennett to use this affidavit—knowing it to be false—was an additional example of obstruction of justice. I am not convinced that the President's failure to correct his attorney's representation to the Court amounts to an obstruction of justice. However, it is clear beyond a reasonable doubt that the President wanted Ms. Lewinsky to file a false affidavit. When all the evidence is considered, it is clear beyond a reasonable doubt that the President's revival of the cover stories constituted obstruction of justice.

**THE COVER STORIES**

The second example cited by the House in its obstruction of justice article was the President's suggestion that Ms. Lewinsky could use cover stories to disguise the true nature of their relationship from the Jones lawyers. These cover stories, of course, were used by the President and Ms. Lewinsky before her name appeared on the witness list in the Jones litigation. As a result, the cover stories—that she was visiting Ms. Currie or bringing the President papers—were instantly familiar to Ms. Lewinsky. But even though these cover stories were previously in her possession, in their origins, the President's revival of these cover stories after Ms. Lewinsky became a witness in a civil suit against the President stands on a very different footing.

The President's reiteration of the cover stories in the same conversation that he told her she was on the witness list is evidence of an effort to alter her testimony. As demonstrated above, Ms. Lewinsky included one of the cover stories in her false draft affidavit. Although the President emphasizes that the cover stories had an element of truth to them, that claim is not a defense to a witness tampering or obstruction of justice charge. For the federal witness tampering statute it is enough that the President attempted to influence Ms. Lewinsky's testimony through corrupt or misleading conduct, see 18 U.S.C. 1512, and for obstruction of justice it is enough that the President endeavored to influence the due administration of justice, see 18 U.S.C. 1503. As a result, the President's revocation of the cover stories constituted obstruction of justice. His actions obstructed the true course of justice and deprived an American citizen a fair hearing of her claim.

**THE GIFT EXCHANGE**

The third example of obstruction of justice cited in the House article concerns the efforts to conceal the President's gifts to Ms. Lewinsky from the Jones lawyers. The House alleges that the President orchestrated a scheme by which Ms. Lewinsky concealed the gifts from the Jones lawyers to avoid having them discovered. The President's alleged conduct is based on the uncontroverted 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 and all documents or other objects, from an official proceeding," or for some other purpose. In evaluating this issue, the President's past failure to provide job assistance to Ms. Lewinsky is relevant. Since Ms. Lewinsky left the White House in April 1996, she was anxious to get back and enlisted the President's support. He never helped her return to the White House. Eventually, Ms. Lewinsky's continuing cooperation was conditioned on her job assistance. The President's acts of commission and omission also are relevant. The President is, and the President's acts of omission were no different than the President's acts of commission that they would resurface in the Jones litigation. The President's decision to stand mute while his attorney used an affidavit to introduce evidence to avoid testifying in the Jones case. Mr. Jordan initially denied that this breakfast meeting had taken place. However, when confronted with a receipt for breakfast, Mr. Jordan conceded the meeting took place and that the subject of the notes came up. Ms. Lewinsky testified that Mr. Jordan told her to make sure that those incriminating notes were destroyed. Mr. Jordan denies that he gave her that advice. Ms. Lewinsky's testimony on this subject is 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 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 case is admissible. The President could not obstruct the due administration of justice because the grand jurors already were exposed to the President's false denials.

Although Ms. Lewinsky has testified that the President never expressly conditioned her job assistance on her continued cooperation in the Jones litigation, her conduct shows an implicit connection between the job search and the President's lies to his aides with the expectation that they would resurface in the Jones litigation. When she had concerns about what to do with incriminating notes, she discussed the matter with her job counselor. The evidence demonstrates that the President's decision to stand mute while his attorney used an affidavit to introduce evidence to avoid testifying in the Jones case. Mr. Bennett's use of the false affidavit sheds light on many of the President's acts of commission that do constitute obstruction of justice and witness tampering, such as his suggestion that Ms. Lewinsky file an affidavit to avoid testifying in the Jones case.

The President's acts of commission and omission are not in dispute. The President insisted before the grand jury that he was not involved 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 those lies to his aides with the expectation that they would resurface in the grand jury.

The White House's principal defense on this point is that the President's lies to his aides were no different than those he 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 regard to whether they were potential witnesses. The legal point appears to be that the President's acts of omission could not obstruct the due administration of justice because the grand jurors already were exposed to the President's false denials.

There are several problems with this argument, not the least of which is that it is based on a false premise. The President did not merely repeat the same denials he made to the public at
large. The President's denials to his aides were embellished and substantially more detailed. The President did not tell the American people that Ms. Lewinsky was a stalker or categorically state that there was no sex “in any way whatsoever,” though he had trouble leaving that false misimpression. He did share these details with his aides, and they repeated them to the grand jury. These details, moreover, were not material to the grand jury 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 criminal statutes against obstruction of justice and witness tampering. The federal obstruction of justice statute requires the government to prove three elements: “(1) there was a pending federal judicial proceeding; (2) the defendant acted corruptly with the specific intent to obstruct or interfere with the proceeding; and (3) the defendant acted corruptly with the specific intent to obstruct or interfere with the proceeding or due administration of justice.” 35 American Criminal Law Review 980, 992 (1998). There is no real dispute in this case that the President knew that the Jones’ suit was pending when he engaged in the conduct covered by the obstruction of justice article. The only relevant legal question is whether he intended to obstruct justice in the Jones case.

There is ample evidence in the record to suggest that obstructing justice in the Jones case was the President’s precise intent. Indeed, the President’s own testimony makes clear that he viewed the Jones litigation as illegitimate. He stated that he “deplied” the Jones lawsuit and felt it was only going forward “because of the funding they had from my political enemies.” (See Sen. Rec. Vol. III, part 1, at 532; Mr. Clinton 8/17/98 GJ, at 80.) As a result, the President concedes that, in his words, he was “not trying to be particularly helpful” to the Jones lawyers. (See Sen. Rec. Vol. III, part 1, at 480; Mr. Clinton 8/17/98 GJ, at 28.) Moreover, the discussion of the several criminal examples of obstruction of justice make clear that the President’s advice to Ms. Lewinsky file a false affidavit, the President’s coaching of witnesses, and the job search were all done with the object of obstructing justice in the Jones litigation.

The Victim and Witness Protection Act of 1982 criminalized a particular form of obstruction of justice, witness tampering. Part of that act, section 1512(b), of the federal criminal code, sets out the four elements of witness tampering. “Under section 1512(b), the government must prove that the defendant: (1) knowingly (2) engaged in intimidation, physical force, threats, misleading conduct or corrupt persuasion, (3) with intent to influence, delay or prevent testimony or cause any person to withhold a record, object or document (4) from an official proceeding.” 35 American Criminal Law Review 980, 1004 (1998). Each of these elements is satisfied in this case.

The President’s attorneys have emphasized that the President never physically threatened any potential witnesses. In particular, they point to Ms. Lewinsky’s testimony that she never felt threatened or intimidated in her conversations with the President. However, that is simply not relevant under the federal witness tampering statute, which criminalizes not just physical intimidation, but corrupt persuasion and misleading conduct as well. What is more, the statute makes clear that it applies to any witness in any official proceeding, and the statute specifies in subsection (d) that after an official proceeding need not be pending or about to be instituted at the time of the offense.” As with the perjury counts, the President’s legal defenses misstate the applicable law. Just as federal law does not require two witnesses to support a conviction for grand jury perjury, the assertion that witness tampering requires actual intimidation simply misstates the law.

**HIGH CRIMES AND MISDEMEANORS**

My conclusion that there is no real dispute in this case that the President obstructed justice in the Jones litigation, that he committed perjury, and that he obstructed justice in the Jones litigation, reaches this conclusion, the remaining step in my analysis of the cases to examine whether these criminal acts require the President’s removal from office. In other words, do perjury and obstruction of justice constitute high crimes and misdemeanors? The Constitution provides for conviction to support a removal for a second crime and for a conviction for grand jury perjury, the assertion that witness tampering requires actual intimidation simply misstates the law.

Three times in the last fifteen years the House has impeached and the Senate has removed a federal judge for perjury or related crimes. In two of the three cases, moreover, the judge was removed after the Senate refused to grant a new trial. The precedent with its infinitely greater effect on the culture, for good or ill—would be held to a lesser standard than one of 800 federal judges has as little basis in common sense as it has in the Constitution’s text.

Of course, even if we did not have the benefit of the Senate’s precedents treating perjury as a high crime, and had to consider this issue as an original matter, I would have little difficulty concluding that perjury and obstruction of justice qualify as high crimes and misdemeanors. The Constitution’s use of the adjective “high” to modify the phrase “crimes and misdemeanors” suggests that there may be some crimes and misdemeanors that do not fit under the provision. However, those crimes, such as perjury and obstruction of justice, threaten to undermine public confidence in government and strike at the integrity of our systems of government and justice surely must be covered by the phrase “high crimes and misdemeanors.”

In addition, the scope of “high crimes and misdemeanors” is informed by the two crimes specifically enumerated in the Constitution as a basis for impeachment: treason and bribery. Both these crimes, in common with perjury and obstruction of justice, threaten the proper functioning of government—either directly in the case of treason, or indirectly, by undermining the government’s integrity, in the case of bribery. Perjury is bribery’s twin. Perhaps the clearest illustration of this point is that the President could have accomplished the same result in this case—interfering with theJones litigation—by bribing a witness or the Judge. Perjury and bribery are grouped among the most serious crimes at least since the founding of our nation.

John Jay, one of the three authors of the Federalist papers and our nation’s first Chief Justice, provides a glimpse of the framers’ views on the seriousness of perjury. When riding circuit in Bennington, Vermont in the Summer of 1792, Chief Justice Jay instructed the Grand Jury in a perjury prosecution. His instruction is worth quoting at length:

Indepedent of the abominable insult which perjury offers to the divine Being, there is no crime more extensively pernicious to Society. It discoursels and poisons the streams of justice, and by substituting falsehood for truth, saps the Foundation of personal and public rights. Controversies of various kinds exist at all times, and in all communities. To decide these controversies, Judges are instituted. Their decisions must be regulated by evidence, and the greater part of the evidence will always consist of the testimonies of witnesses; and it is given under those solemn obligations which an appeal to the God of Truth impose; and if oaths

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should cease to be held sacred, our dearest and most valuable rights would become insecure.

There is ample evidence to support Chief Justice Jay’s view that, of all crimes, perjury among the least pernicous 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: “The crimes and misdemeanors of the President shall be removed upon conviction.”

Justice are high crime and misdemeanors.” Art. VIII cl. 2. Moreover, the belief that perjury is an impeachable offense is not limited to the framers. Less than a decade ago in a law review article, Chief Justice Rehnquist, the presiding officer in this impeachment trial, summed up our national experience with impeachment by noting that “an impeachment has been 

convicted of flagrant abuse of office—perjury, bribery, and the like.” William Rehnquist, The Impeachment Clause: A Wild Card in the Constitution, 85 Northwestern University Law Review 903, 910 (1991). There has also been raised that the President’s conduct does not rise to the same levels as President Nixon’s conduct in Watergate. That may well be true, but it is also irrelevant. Not every high crime and misdemeanor is created equal, but all require removal under the express terms of the Constitution. However, whatever differences exist between President Clinton’s conduct and Watergate, the reaction of Watergate Special Prosecutor Leon Jaworski to President Nixon’s misconduct is telling. Of all the misconduct portrayed on the famous Nixon tapes, Jaworski found one strip of dialogue “the most repulsive on the tape.” In that strip the President—a lawyer—coached [his aide] to testify untruthfully and yet not commit perjury. It amounted to subornation of perjury. For the number-one law enforcement officer of the country it was, in my opinion, as demeaning an act as could be imagined.” Leon Jaworski, The Right and the Power—The Prosecution of Watergate 47 (1976).

That is perjury. The nation’s first Chief Justice stated that “there is no crime more extensively pernicous to Society.” Our current Chief Justice described as a “flagrant abuse of office.” And the Watergate Special Prosecutor, after considering my oath by the President “as demeaning an act as could be imagined.” There is no doubt in my mind that perjury and the closely related crime of obstruction of justice are high crime and misdemeanors. For these crimes, the Constitution leaves me with no further discretion—it states that the President “shall be removed from office for impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.”

Some have argued that the Senate retains some discretion not to remove a President even if the evidence shows that he committed acts that constitute high crimes or misdemeanors. This simply misreads the Constitution. The Constitution is unequivocal that the President shall be removed upon conviction. Justice Story observed in his Commentaries on the Constitution, “the Senate, on the conviction, [is] bound, in all cases, to enter a judgment of removal from office.” The Senate recognized this constitutional imperative in the trial of Watergate Special Prosecutor

It arrogates to Senators the authority to the Constitution and conclude that although the President has committed crimes for which others should be removed, in this case the President should be permitted to remain in office. It is a brazen act of jury nullification.

The Constitution empowers the Senate to conclude that the facts do not support the crime alleged in the articles of impeachment. Likewise, the Senate may conclude that the crimes alleged in the articles do not rise to the level of high crimes and misdemeanors. But nothing in the Constitution allows the Senate to refuse to convict if it finds that the facts support the articles, and the articles allege high crimes. There has been much talk in this case about the rule of law. A power to refuse to convict in the face of evidence of a high crime is the antithesis of that rule of law. Such an action would be beyond repudiating the value of the Senate precedents that perjury is an impeachable offense, it would destroy the value of all Senate precedents. As Justice Story warned while riding circuit over 180 years ago, if jury nullification were permitted, “it would be almost impracticable to ascertain, what the law . . . actually is.” United States v. Battiste, 24 F. Cas. 1042 (Cir. Ct. D. Mass. 1827).

An discretion that exists in the constitutional framework to refuse to act in the face of impeachable offenses lies in the House of Representatives. The law has long recognized the legitimacy of prosecutorial discretion. But the law has also long criticized jury nullification. Unlike a normal jury, the Senate has the power to determine both law and facts. What it lacks is the raw power to refuse to convict in the face of law and facts that both support conviction.

I cannot leave this discussion of perjury and obstruction of justice as high crimes and misdemeanors without a comment on the consequences of failing to remedy perjury and obstruction of justice by the number-one law enforcement in the nation. Chief Justice Jay warned of the dangers of diluting the importance of oaths: “[I]f oaths mean nothing, 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, with only the taint of oaths; it will demonstrate the importance of personal responsibility and accountability. Rather than signaling that some in society are too talented to be accountable for their actions, it will send a message that 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.

CONCLUSION

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 rule. 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 expedient, I will not further damage the sacredness and vitality of oaths by disregarding my own.

I have not relished the responsibility of serving as a finder of fact and determiner of law in an impeachment trial. I have worked to return a legitimate agenda to provide Americans and Missourians with tax cuts, retirement security, educational opportunity and
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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 bonds of democracy 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, his inability is among 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.” In the United States Senate, the President requires a clear choice: acquit the President and leave him in office, or convict him and remove him. The framers deemed it wise not to allow the Senate to leave a President in place, but without punishment short of removal. Thus, once we discharge our impeachment responsibilities, the Senate should move energetically to its legislative agenda. To accomplish legislative goals for the nation, it will be necessary for this Senate and the Congress and the President to work together. If Senators wish to condemn the President’s conduct, they should do so on their own, and should not tie up the Senate and divert energy from doing the people’s work.

Mr. THURMOND. Mr. Chief Justice, the vote I cast on the articles of impeachment was one of the hardest votes that I have had to make in all my years in the United States Senate. I have not thought I made the correct decision. While I am saddened that we had to make the judgment we made in this impeachment trial, each of us had a duty to undertake this task, and I do not shirk from duties. The House Managers performed their duty admirably, making a comprehensive, coherent, and eloquent presentation. The White House attorneys presented a spirited defense. Similarly, due in part to the outstanding leadership of the Senate Majority Leader, I am confident that history will record that we in the Senate exercised our duty to conduct the trial appropriately and fairly. I believe the Founding Fathers would be pleased with the process and procedure.

The purpose of impeachment is not to punish a man. It is not a way to express displeasure or disagreement with a President. The process is designed to be a mechanism designed to preserve, protect, and defend the Constitution, the Country, and Office of the Presidency. My primary concern, from the first day of this scandal, was the impact it would have on the Office of the Presidency.

This case is not about illicit conduct or even about not telling the truth about illicit conduct. Instead, the case is about two activities. The first is whether the President intentionally made false statements under oath to a Federal grand jury, to the J udiciary of the United States. The second is whether the President obstructed justice by interfering with the work of the District Court and a Federal grand jury, again to the J udiciary of the United States.

A Senator’s role in an impeachment trial is a mix of roles from our judicial system and from our role as part of the J udiciary. At least in reviewing the evidence, we do act as j urors, and we should view evidence the way the courts expect jurors to view it. We use our common sense and our knowledge of human behavior based on our everyday experiences in life. In this case, the defense has attempted to take each act, separate it out, and artificially place it in isolation. I cannot view the evidence in this fashion. I cannot ignore common sense.

As to perjury, I have no doubt that the evidence presented to the Senate proves that the President did not tell the truth to the Federal grand jury. He made numerous false statements to make his illicit conduct seem more benign to us, the witnesses, he interfered with his secretary, Mr. Lewinsky, who had 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 mind there is no debate but that the President intentionally interfered with the J udiciary. 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 aide, Mrs. Lewinsky, for an explanation for his relationship with Monica Lewinsky that he knew was not true, he was engaged in classic witness tampering. There can be no other acceptable explanation. When the President failed to reveal to the Federal judge during his Paula J ones deposition that the Monica Lewinsky affidavit was false, he was obstructing the fact-finding process of the District Court. I can accept no other explanation.

The President has violated his sacred oath to faithfully execute the laws of the United States. Regardless of the bounds of private conduct and of the importance of allowing people to keep their private lives private, those bounds are broken when someone violates an oath to tell the truth in a court of law. Those bounds are also broken when someone interferes with a court of law in efforts to find the facts and find the truth.

Mr. CRAPO Mr. Chief Justice, very soon we will all cast what is clearly a co-equal branch of government. This should not be tolerated.

No one is above the law. I cannot accept the argument that a different legal standard applies to judges than to the President. The Congress has never accepted that argument before. There is no support for it in the words of the Constitution, which establishes one standard of impeachment for “the President, Vice President and all civil Officers of the United States.” There is no support for it in the debates at the Constitutional Convention or in the Federalist Papers. Is it reasonable to conclude that our standards for removal from office for criminal conduct is less for the Chief Law Enforcement Officer than it is for civil officers who are appointed to apply the law?

Because the President is the Commander in Chief, I must think about our soldiers and their families. I do not suggest that the President should be strictly subject to the Uniform Code of Military J ustice during his term in office. However, if we vote not guilty on the articles on these facts, what message do we send to our soldiers about duty, honor, and country? Given that the President is the Chief Law Enforcement Officer, if we vote not guilty, what message do we send American citizens about respect for the rule of law? For that matter, what message do we send our children and grandchildren for generations to come about the consequences of not telling the truth?

We have been told that we should not remove the President from office because doing so would “overturn the results of an election.” The Senate does not have this power. Our power extends no further than removal of the President, and the law provides that this responsibility is vested in the United States Senate. We need to ask ourselves a different question: what message do we send our children and grandchildren for generations to come about the consequences of not telling the truth?

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 imposed 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 two weeks by Mr. President's counsel was reasonably subject to any conclusion other than that the President did commit the crimes alleged against him.

From the very beginning of this matter, I have been circumspect about convening on President Clinton's conduct. As a newly elected Senator, I was inundated with interview requests from national media. I chose not to appear on these programs and restricted my comments to a discussion of the process. I felt it was incumbent upon me as a member of the impeachment court to avoid commenting on the evidence until the trial has concluded.

At the outset, each Senator was administered a separate oath by the Chief Justice of the Supreme Court. This special oath of office, private and exclusive, is taken 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 from each Senator 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, I realized again over the previous four weeks is not reasonably subject to any conclusion other than that the President did commit the crimes alleged against him. The offenses are even worse when committed against the poor or powerless. Our Constitution guarantees, fortunately, that the most ordinary person has the right to the same day in court as the rich. If the person who 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 functions of our system of justice are so dangerous to our freedom: Independent of the abominable Insult with which Falsehood and Perjury are loaded, it is certain that if there is no crime more Pernicious to Society. It discolors and poisons the Streams of Justice, and by substituting Falsehood for Truth spurs the Founding and Public Right. . . . Testimony is given under those solemn obligations which an appeal to the God of Truth impose; and if oaths should cease to be held sacred, our dearest and most valuable Rights would become insecure—Chief Justice John Jay, Charge to a Grand Jury of the Circuit Court of the District of Vermont, June 25, 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 Idaahoans 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.

We are different people, coming from different regions with different philosophies, and that is what creates the unique character of this wonderful institution.

I want to tell you briefly today about Teddy Roosevelt. Over a century ago, Teddy Roosevelt was consumed with grief following the death of his wife and mother who died on the same day. He decided to change...
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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 a 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 gunman.

And then Teddy Roosevelt was accepted. Being different, looking different didn't much matter to the folks in the Badlands after that.

Here in the Senate we're very different people too. No saloon fights here, though. We engage in verbal battles. And the Senate works because we accept each other, and we share a common purpose.

The discussion we are having today reminds me again of the unique skills and passion for our country possessed by each and every member of the Senate.

How do we apply these skills and that passion here and now?

Mark said, "with tongue in cheek, that "the next best thing to a lie, is a true story one 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.

The matter that calls us to this duty is a sordid one.

It is truly a scandal and a drama without heroes and without winners.

It is about a president who should be, and I'm sure is, ashamed of his behavior. Is there anyone here in the Senate who had a sexual relationship with one of their interns? Of course not! The President did. He had a sexual relationship with an intern, and he lied about it, to the country, to all of us, to try to conceal it.

This President has betrayed our trust and I have expressed to him personally how profoundly disappointed I am with his actions.

This matter is also about an Independent Counsel who you and I know has leaked confidential information from secret proceedings of a grand jury, and whose actions in detaining Monica Lewinsky should be troubling to every Senator. And an Independent Counsel who came to Congress with such prosecution power that his ethics advisor resigned in protest.

And it is about many others as well.

Major figures and bit players, some who conspired in disgraceful ways, and others who were innocently swept into the maelstrom of a sensational scandal.

But, for all of the intrigue, the matter here is less complicated than some would have us believe. Here is a short chronology.

Several years after the day she claims that then-Governor Bill Clinton made unwanted sexual advances toward her, Paula Jones appeared at a conservative political gathering to announce she was filing suit against the President.

Some while later, following the Supreme Court ruling that the case could go forward, the President was called to a deposition in the Jones case.

In that deposition, which the Judge later determined to be immaterial, and in a case that was later dismissed, Bill Clinton denied having a sexual relationship with Monica Lewinsky. That was a lie. Oh, I know about the con-walnut colored tie that was used, but I think he lied. But that's not a matter before us. The impeachment article about that deposition was defeated in the U.S. House.

Following the President's testimony in the Jones case, the Independent Counsel, appointed three years earlier to investigate a Whitewater land deal, and controversies called Travelgate and Filegate, swung into action to investigate this sexual scandal. Linda Tripp was working as a courtroom reporter in that case and was later determined to be immaterial, 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 expect 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.

In short, impeachment is a device to prevent grave danger to the Nation.

I believe that the Framers of the Constitution would be startled by this impeachment effort.

That this impeachment process was passionately partisan in its birth in the U.S. House is not in question. In fact, two of the House managers who brought these articles of impeachment to us called for the impeachment of President Clinton long before they had ever heard of Monica Lewinsky. Seventeen Republican Congressmen had called for impeachment hearings long ago. Theirs was a cause searching for a reason.

Nearly 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 against the impeachment, had introduced an impeachment inquiry resolution. Representative Bob Barr and Representative Lindsey Graham said then that it was about "the rule of
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 seem the room to wonder then, that maybe this is exactly the partisan passion that persuaded our Framers to place the impeachment bar just above the vertical leap of those Members of Congress who would carry "fill in the blank" impeachment paper for every reason and every season.

Take the partisan flavor away. I don't think the case has been made that the President's behavior, while reprehensible, poses a grave danger to the Nation. Therefore I cannot vote to nullify the results of the last election. The people chose Bill Clinton and I do not believe the case made against the President meets the constitutional threshold for removing a president.

I respect those here who differ. I do not and I would be guilty party partisan. You have reached a different conclusion charge than I did, and I respect you for that.

But I cannot vote for these articles of impeachment. This is not a case of high crimes and misdemeanors. This is a case of bad behavior by a President who has shamed himself.

But let us not respond to his bad behavior by hurting our country.

Let us not aim at Bill Clinton and hit the Constitution.

I do not vote to support our President. I vote against these articles of impeachment to support our Constitution.

In the final analysis, however, the President should take no solace in this vote. I and others in the Senate have joined in a censure resolution that expresses a harsh judgement about the President's actions.

Now, it is time for the country to move forward.

Mr. KERRY. Mr. Chief Justice, my colleagues, I want to thank the Chief Justice for his important stewardship of these proceedings. And I thank Senator LOTT and Senator DASCHLE for their patient leadership in helping to bridge the divide of partisan votes so that these are not partisan deliberations.

There is a special spirit in this Chamber. No matter all the easy criticisms directed at it, this is a great institution and in our own way we are witnessing—living out—the remarkable judgment of the Founding Fathers.

Let me turn to the question of removing President William Jefferson Clinton.

Many times the House managers have argued to us that if you find the facts as you argue them, you must vote to convict and thereby remove. But of course, that, like a number of things that the Senate is really not true. You can, of course, find the facts and still acquit, because you don't want to remove on a constitutional basis or, frankly, on any other balance that a Senator decides to make in the interest of the Nation.

Now, I agree that perjury and obstruction of justice can be grounds for removal or grounds for impeachment. The question is, Are they in this case? I will go further and say no 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 scholars say there is a difference between impeachment of judges and the President, despite a difference clearly spelled out in the Constitution, and despite all of the distinguishing facts of each one of those cases that the President’s actions match.

Some have said that 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, someone who is reading the Constitution clearly the country itself does not agree with. The country does not believe the fiber of our Nation is unraveling over the President's egregious behavior, because most people have a sense of proportion about this case that seems totally lacking in the House managers' presentation.

No parent or school in America is teaching kids that lying or abusing the justice system is now OK. In fact, the President’s behavior, does not make it harder to do so. If anything, there may now be a greater appreciation for the trouble you can get into for certain behavior. More parents are teaching their children about lying, about humiliation, about family hurt, about 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 so no one misinterprets. I am not in any measure on the order of high a crime and misdemeanor 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 deniers—of 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 straightforward misconduct is not 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 presented by the House managers.

No election was interfered with. No FBI or IRS power was wrongly employed. At worst, this President lied about his personal, consensual affair and tried wrongly, 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 majority?

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, proportions 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. If you do that, you give new meaning to the concept of proportionality. You are setting the President up for a lie.

I wonder if there is no former district attorney, now Senator, who is at the center of creating the crime which we are deliberating on now?

Think about it. When Mr. Starr was appointed, when we authorized an independent counsel, the grand jury was convened, the crime on trial before us now had not even been committed, let alone contemplated.

I wonder also if there is no one even concerned about Linda Tripp—who now gives definition to the meaning of friendship—working with Paula Jones' attorneys even as she was in the guidance and control of Mr. Starr as a Federal witness. Some of you may want to turn away from these facts. Secondly, the House managers never even acknowledged the known preconceptions. I raise them, my colleagues, not for ideological or political purposes, but fundamental fairness demands that we balance all of the forces at play in this case.

With the President's acknowledgment of intimate contact, everyone in this Chamber understood what had happened. Everyone in America understood what had happened. For what reason did we need 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—had colluded with Paula Jones' attorneys and Linda Tripp to set the Monica trap in the January deposition, and now he was going to set the perjury trap in the grand jury. Mr. Bennett's comments in the deposition underscore this:

"I mean, this is not what a deposition is for, Your Honor. He can ask the President, What did he do? He can ask him specifically in certain instances what he did, and not that what this deposition is for? It is not to sort of lay a trap for him."

I wonder if there is no former district attorney, now Senator; no former attorney general, now Senator; no former U.S. attorney, now Senator; former officials, now Senator, how is not deeply disturbed by a so-called independent counsel grilling a sitting President of the United States of America about his personal sex life, based on information from illegal phone recordings?

Is there no one finding a countervailing proportionality in this case when confronted by our own constitutionally protected President, who is just pursuing a crime but who is at the center of creating the crime which we are deliberating on now?

Think about it. When Mr. Starr was appointed, when we authorized an independent counsel grand jury was convened, the crime on trial before us now had not even been committed, let alone contemplated.

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Now, some has also been made in this trial of the rights of Paul@ Jones and her civil rights case—that we must protect Paul Jones' rights against the President of the United States.

My fellow colleagues—please let us have the decency to call this case what it was. This was no ordinary civil rights case. It was an assault on the Presidency and on the President personally, and the average American's understanding of that is one of the principal reasons our fellow citizens figured this case out long ago.

But there is more to it than that:

Mr. Starr became involved in the Paula Jones suit before he became independent counsel.

He had contacts with Paula Jones' attorneys before his jurisdiction was expanded.

He wired Linda Tripp before his jurisdiction was expanded.

Many sources documented that without any expansion of jurisdiction. In 1997, he had FBI agents interrogating Arkansas State troopers, asking about Governor Clinton's private life—especially inquiring into Paula Jones.

After Paul@ Jones filed her suit in 1994, announced a change 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 going to get that little slut out of the game."

She later said: "Unless Clinton wants to be terribly embarrassed, he'd better cough up what Paula needs. Anybody that comes out and testifies against Paula better have the past of a Mother Teresa, because if President Clinton's investigators will investigate their morality.

Even Steve J ones, Paula Jones' husband, was part of an operation to poise the President's public reputation by divulging the secrets of his personal life—threatening even to employ subpoena power to depose, under oath, every State trooper in Arkansas who may have worked for the Governor.

Steve J ones pledged that: "We're going to go after Clinton's medical records, the raw documents, not just opinions from doctors... we're going to find out everything.

Into all of this came Ken Starr, and the police power of our Nation. This was not a civil rights suit in the context most of us would recognize. Indeed, there existed an extended and secret Jones legal team of outside lawyers—including George Conway and James 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 of counsel to the opposition guru, who also wrote briefs for the Jones team; and the conservative pundit and longtime Clinton opponent Ann Coulter, who worked on Paula Jones' response to President Clinton's motion for a dismissal. The connections between this crack—and covert—legal team, and Ken Starr's staff and his witnesses—including Paul Rosenzweig, Jackie Bennett, and Linda Tripp—as well as familiar figures including Lucianne Goldberg, add up to something far more than a twisted and disturbing game of six degrees of separation.

I do not suggest that this was the right approach to take on the talk shows. But I ask you—are we not able to acknowledge that this was a legal and political war of personal destruction—not just a civil rights case? And we cannot simply dismiss the fact that all of this—the entire proceedings—arise out of this deeply conflicted, highly partisan, ideologically driven, political civil rights case with incredible tentacles into and out of the office of the independent counsel?

Moreover, I remind my colleagues, Mr. Starr is supposed to be independent counsel—not independent prosecutor. He was and is supposed to represent all of the Congress and nowhere do I revery voting for him to make a referral of impeachment—a report of facts, yes—a referral of impeachment, no.

Now there is a rejoinder to all of this. Nothing wipes away what the President did or failed to do.

So, some of you may say, So what? The President lied. The President obstructed justice. No one made him do it. But if he did, yes, you're right. The President behaved without common sense, without courage, and without honor, but we are required to measure the totality of this case.
measure how political this may have been; whether process was absurd; whether the totality of what the President did meets the constitutional threshold set by the Founding Fathers.

We must decide whether the removal of the President is proportional to the offense and we must remember that proportionality, fairness, rule of law—they must be applied not just to 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 SARBANES exerted to avoid partisanship and maintain proportionality. I wish I did not conclude that their example frankly is in stark contrast to the experience we are now living.

The House managers often spoke to us of principle and duty. And equally frequently we were challenged to stand up for the rule of law. Were we speaking in rule of law. But we also believe in the law being applied fairly, evenly—that the rule of law is not something to cite when it serves your purposes, only to be shunted aside when it encumbers.

But the managers' duty to their colleagues in the House—in the committee—on the floor; where was the same self-conscious sense of pain for what they were going through, when they denied a bipartisan process for impeachment; when there was their commitment to rule of law in denying the President's attorneys access to the exculpatory evidence which due process affords any citizen?

Rule of law is a process in a democratic institution, and there is a duty to honor process. I believe the Senate has distinguished itself in that effort and I want to express my deep respect for the strongly held views of all my colleagues. Reasonable people can differ and we do, but we can still come together in an affirmation of the strength of our Constitution.

Chairman Hyde says "let it be done"—I hope it will be. Right requires we be proportional as to all aspects of this case. I hope 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. We must call an end to this process by which we savage 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 submit if the President is guilty of obstruction of justice, I believe, has been proven by clear and convincing evidence, and I might add it has been proven beyond a reasonable doubt.

Let me now turn to the second allegation, the allegation that the President committed perjury. On January 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 case. 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 be 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 that 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 prosecution. 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 under the first vote. I voted against it because I share some of the same concerns we have heard expressed here today and yesterday. We also will have to deal with the Secret Service that is now vulnerable to 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.
but rather for another day. None of us wanted to be here, but we are where we are, the facts are what they are, and we know what we know. What we know is that the President obstructed justice and committed perjury. What must we do with this President who has obstructed justice and then committed perjury?

Obstruction of justice and perjury strike at the very heart of our system of justice. By obstructing justice and committing perjury, the President has directed, induced, and corruptly attempted to obstruct 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 and that he is guilty of the abuse or violation of a public trust. Alexander Hamilton, in Federalist No. 65, used those precise words to define an impeachable offense.

I have also concluded that the President is guilty of the abuse or violation of a public trust. Hamilton, in Federalist No. 65, used those precise words to define an impeachable offense. What the President did is a serious offense against our system of government. It undermines the integrity of his office and it undermines the rule of law.

Here is what Thomas Paine said about the rule of law:

A. To what man can we give the power to make law, and to whom do we commit the preservation of our rights and property? How can we allow a man who has obstructed justice and then committed perjury to remain as the chief law enforcement officer of our country? How can we call ourselves a nation of laws and leave a man in office who has flouted those laws? We define ourselves as a people not just by what we hold up, not just by what we rest on, but also we define ourselves by what we tolerate. I submit that this is something we simply, as a people, cannot tolerate.

Mr. Chief Justice, I will vote to convict with enthusiasm on both counts and to remove him from office.

I ask unanimous consent that my full statement be included in the RECORD immediately following these remarks.

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

SUPPLEMENTAL STATEMENT OF SENATOR DEWINE

Mr. Chief Justice, members of the Senate:

The President has been impeached on two separate articles by the House of Representatives.

Article I charges that the President willfully provided false and misleading testimony to the grand jury. Article II charges that the President obstructed justice (1).

Each article contains numerous examples of conduct, any of which, it is alleged, would constitute grounds for the President's removal from office. I have examined each of these separate grounds or allegations, and I have determined that most of these allegations have not been proven by clear and convincing evidence (2).

I now turn to the three allegations that I believe have the most merit.

I examine first the allegation that the President obstructed justice when on January 18, 1998, and January 20 or 21, 1998, he related a false and misleading version 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 him.

These are the essential facts: On January 17, 1998, the President gave his deposition in the Paula Jones case. J ones’ lawyers zeroed in on Ms. Lewinsky and the President. It was clear that the Jones lawyers had specific knowledge of the details of this relationship. In the President’s answers, he referred—repeatably—to Betty Currie. For example, when asked whether he walked with Ms. Lewinsky from the Oval Office to his private kitchen at the White House, the President said Ms. Lewinsky was not there alone or that Betty was there (3); when asked about the last time he spoke with Monica Lewinsky, he falsely testified that he only recalled that she was only there to see Betty (4); when asked whether he provoked Vernon Jordan to speak to Monica Lewinsky, he stated that he thought Betty asked Vernon Jordan to meet with Monica (5); and he said that Monica asked Betty to ask someone to call Mr. Jordan about a job at the United Nations (6). Further, counsel for Ms. J ones questioned the President in detail about Betty Currie, her job, and her hours of work (7).

Anyone reading the transcript would have no trouble concluding that the President’s denials were quite specific and would clearly indicate a motive to lie. He could not, in his Grand Jury charge concerning the Jones deposition, avoid the President’s statement to the White House exit and entry logs.

Counsel for the President have failed to show any motive for Monica Lewinsky to lie about these details.

Conversely, the President clearly had a motive to lie. He could not, in his Grand Jury testimony, avoid the busting of his own credibility without directly contradicting his deposition testimony in the Paula Jones case. Such a contradiction would have led to his perjury charge in that case. To avoid a perjury charge concerning the Jones deposition, the President had to carefully craft an explanation so it was clear he did not touch Monica Lewinsky. He had to do this to avoid falling within the definition of “sexual relations” that had been given him in the Jones deposition.

The President’s story defies common sense and human experience. This is particularly true if you consider the number of times the President had to craft an explanation without directly contradicting his deposition testimony in the Paula Jones case. Such a contradiction would have led to a perjury charge in that case. To avoid a perjury charge concerning the Jones deposition, the President had to carefully craft an explanation so it was clear he did not touch Monica Lewinsky. He had to do this to avoid falling within the definition of “sexual relations” that had been given him in the Jones deposition.

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The President also testified that “I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could” (10).

When asked again about these statements, the President said: “I was trying to refresh her memory about what the facts were. . . . And I believe that this was part of a series of questions I asked her to try to quickly refresh my memory. So, I wasn’t trying to get her to say something to me” (11).

He was asked this specific question: “If I understand your current line of testimony, you are saying that your only interest in the Betty Currie deposition after you deposition was to refresh your own recollection?” The President responded: “Yes” (12).

If the President is guilty of obstruction of justice in his statements to Betty Currie, then clearly, he must also be guilty of perjury in his account of these events to the grand jury. The two findings are inextricably connected—one cannot reach the first conclusion without also reaching the second.

I conclude, Mr. Chief Justice, that the evidence presented in the House of Representatives has proven beyond a reasonable doubt that the President committed perjury in 1994, the House Judiciary Committee used those precise words to define an impeachable offense.

I have also concluded that the President is guilty of the abuse or violation of a public trust. Hamilton, in Federalist No. 65, used those precise words to define an impeachable offense.

What the President did is a serious offense against our system of government. It undermines the integrity of his office and it undermines the law.

Here is what Thomas Paine said about the rule of law:

A. To what man can we give the power to make law, and to whom do we commit the preservation of our rights and property? How can we allow a man who has obstructed justice and then committed perjury to remain as the chief law enforcement officer of our country? How can we call ourselves a nation of laws and leave a man in office who has flouted those laws? We define ourselves as a people not just by what we hold up, not just by what we rest on, but also we define ourselves by what we tolerate. I submit that this is something we simply, as a people, cannot tolerate.

Mr. Chief Justice, I will vote to convict with enthusiasm on both counts and to remove him from office.

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Mr. Chief Justice, I will vote to convict with enthusiasm on both counts and to remove him from office.

I ask unanimous consent that my full statement be included in the RECORD immediately following these remarks.
would vote not guilty. I assumed that the evidence simply would not be sufficient to convict.

Unfortunately, the facts are otherwise. Many witnesses, including myself, are deeply concerned about how we got here. Congress—beginning with this one—will have to deal with the aftermath of this sorry affair. I have weakened the Presidency; a discreted independent counsel law; a Secret Service vulnerable to subpoenas; and an American people who are subjects to civil strife while in office.

These are important issues. But they are issues for another day.

None of us wanted to be here. But we are where we are. The facts of the President’s misconduct are what they are. We know what we know. And although each of us may find the other cases more offensive than others, all of them are disturbing, all are very serious, and all lead to the same conclusion: The President obstructed justice and committed perjury.

What must we do with this President who has obstructed justice, and then committed perjury about that obstruction? Obstructed justice and perjury strike at the very heart of our system of justice. By obstructing justice and committing perjury, the President has directly, illegally, and corruptly attacked the co-equal branch of government, the judiciary.

The requirement to obey the law applies to us all, in all cases. To say President can obstruct justice but the President above the law, and above the Constitution.

Perjury is also a very serious crime. The Constitution gives every defendant a choice: Testify truthfully, or remain silent. No one can be forced to testify in a manner that involves self-incrimination. But a decision to place one’s hand upon the Bible and invoke God’s witness—and then lie—threatens the judiciary. The judiciary is designed to be a mechanism for finding the truth—so that justice can be done. Perjury perverts the judiciary, turning it into a mechanism that accepts lies—so that injustice may prevail.

It has been proven by clear and convincing evidence that the President of the United States has committed serious crimes. But although I have found specific violations of law, it is not insignificant in my final decision that the President has engaged in a course of conduct that shows a reckless disregard for the laws of others, all of them are disturbing, all are very serious, and all lead to the same conclusion: The President obstructed justice and committed perjury.

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

I wish to acknowledge the assistance of many talented individuals who have helped with the issues and questions of fact, law, and policy. I have been given able counsel by Karla Carpenter, Helen Rhee, Louis DuPart, Robert Hoffman, Laurel Pressler, and Michael Parmalee staff; my good friends William F. Schenk, Curt Hartman, Nicholas Wise, and Charles Wise; and my son and valued adviser Patrick DeWine.

NOTES

1. Specifically, the article charges that “the President has prevented, obstructed, and impeded the administration of justice and has to that end engaged personally, and through his subordinates and agents, in a course of conduct that delayed, impeded, and concealed the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.”

2. Each Senator must determine the standard of proof to be applied in judging an impeachment case. In weighing the facts of this impeachment, I have used the standard of proof of “clear and convincing evidence.” The Modern Federal J ury Instruction defines 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 ‘reasonable doubt’.” Modern Federal J ury Instructions, section 73.01 (1998). I have rejected the standard of proof “beyond a reasonable doubt,” which applies to criminal cases, and the preponderance of the evidence, which is “the standard of proof that a reasonable person would use to decide a case in which the defendant is threatened with loss of liberty but with loss of other property. It is established by a preponderance of the evidence—more likely than not.” This standard, which would provide for conviction if the scales of evidence were tipped even so slightly against the President, would not treat removal from office with the seriousness and gravity it deserves.

3. Question: Do you recall ever walking with Jane Doe Lewinsky down the hallway from the Oval Office to your private kitchen there in the White House?
Answer: Yes.

4. Question: My question, though, is focused on the time before the conversation occurred, and the question is whether you did anything to cause the conversation to occur.
Answer: I think in the mean—I’m not sure how you mean the question, the answer to that is no, I’ve already testified. What my memory of this is, if you’re asking did I set the meeting, I do not believe that I did. I believe that Betty did that, and she may have mentioned, asked me if I thought it was all right if she did it, and if she did ask me I would have said yes, and so if that happened, then I did something to cause the conversation to occur. If that’s what you mean, yes. I didn’t think there was anything wrong with it. It just seemed like a natural thing. But I don’t believe that I actually was the precipitating force. I think that she and Betty
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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 I did. I believe that, I believe that Monica, what I know about that is I believe, Monica offered Betty Currie, to ask someone to talk to Bill Richardson, and she went to him, and we 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 Betty about moving to New York, and I, my recollection is that was the chain of events.

6. Question: Did you say or do anything whatsoever to suggest, to 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—a she had worked in the White House, she had worked in the Defense Department, and she was moving to New York. She was a friend of Betty, I certainly wouldn’t have been opposed to it, based on anything I knew, anyway.

7. Question: How long has Betty Currie been your secretary?

Answer: Since I’ve been president.

8. Question: How is her work schedule arranged? Does she have a certain shift that she works, or do she do what she wants to work certain hours the following day? Please explain how her schedule is determined.

Answer: She works, she comes to work early in the morning and normally stays there until I leave at night. She works very long hours, and then when I come in on the weekend, when 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.

8. 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.

8. Question: Have you ever met—

Answer: Now, let me just say, when she was working here, during, there may have been in times there were all—we were all working late. There are lots of, on any given night, when the Congress is in session, there are always several people around until later in the night, but I don’t have any memory of that. I just can’t say that there could have been a time when that occurred, I just—but I don’t remember it.

11. Question: If it happened, nothing remarkable would have occurred?

Answer: No, nothing remarkable. I don’t remember it.

11. 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.

11. 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.

14. Question: Including touching her breast, kissing her breast, or touching her genitalia?

Answer: That’s correct.

14. Question: In your view, which he does not believe to be true . . .’’ shall be guilty of an offense contrary to such oath states or subscribes a declaration . . .’’ shall be guilty of an offense against the United States. A statement is material ‘‘if it has a 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 the decision. The President made false statements to a grand jury investigating ‘‘whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses or otherwise violated federal law other than a Class B or C misdemeanor or in violation of the civil case Jones v. Clinton.’’ [January 16, 1998 Order of the Special Division of the United States Court of Appeals for the District of Columbia Circuit to expand the jurisdiction of independent counsel Kenneth W. Starr.] The President’s false statements strike at the very heart of what the grand jury was investigating—perjury, obstruction of justice—and are material.

15. Question: Is it fair to infer that my testimony is that I did not have sexual relations with Monica Lewinsky in the Jones deposition, under that definition, correct?

Answer: That’s correct sir.

15. Question: And you testified that you didn’t have sexual relations with Monica Lewinsky in the Jones deposition, under that definition, correct?

Answer: Yes, sir.

18. Question: —Sexual relations?

Answer: Yes, it would.

18. Question: —Yes, it would.

Answer: Yes, it would. If you had direct contact with any of these places in the body, if you had direct contact, you would arouse or gratify, that would fall within the definition.

18. Question: So, you didn’t do any of those three things.

Answer: —With Monica Lewinsky?

Answer: You are free to infer that my testimony is that I did not have sexual relations, as I understood this term to be defined.

16. Question: Including touching her breast, kissing her breast, or touching her genitalia?

Answer: That’s correct.

13. Question: So, touching, in your view and then now—the person being deposed touching or kissing the breast of another person would fall within the definition?

Answer: That’s correct sir.

13. Question: And you testified that you didn’t have sexual relations with Monica Lewinsky in the Jones deposition, under that definition, correct?

Answer: Yes, sir.

13. Question: If the person being deposed touched the sexual tissue on full they 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.

13. Question: —Sexual relations?

Answer: Yes, it would.

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Answer: Yes, it would. If you had direct contact with any of these places in the body, if you had direct contact, you would arouse or gratify, that would fall within the definition.

Answer: You are free to infer that my testimony is that I did not have sexual relations, as I understood this term to be defined.

13. Question: Including touching her breast, kissing her breast, or touching her genitalia?

Answer: That’s correct.

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. A statement is material ‘‘if it has a 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 the decision. The President made false statements to a grand jury investigating ‘‘whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses or otherwise violated federal law other than a Class B or C misdemeanor or in violation of the civil case Jones v. Clinton.’’ [January 16, 1998 Order of the Special Division of the United States Court of Appeals for the District of Columbia Circuit to expand the jurisdiction of independent counsel Kenneth W. Starr.] The President’s false statements strike at the very heart of what the grand jury was investigating—perjury, obstruction of justice—and are material.

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She quickly corrected me. Right and wrong becomes more difficult for each of us as we grow older, because the older we get the more we know personally about our own human frailties.

I will not discuss the historical or the legal aspects about what we are doing here today and what we have been doing in these past weeks. I am not a lawyer; neither am I a historian. But I do want to thank each of you for your legal and your historical aspects, and the heartfelt wisdom and guidance that you have shared with me and with all of us as colleagues.

I want desperately to cast the right vote for the people that I represent in Arkansas and for all the people of this great country. My heart has been heavy and I have deliberated within my own conscience, knowing that my decision should not come out of my initial emotion of anger toward the President for such reckless behavior, but should be based on the facts. I have approached this as both a parent and a public servant, with the ultimate goal of doing what is right for our country.

Since hearing the President's misconduct, I have in no way tried to make excuses for the President or to defend his actions, as we as human beings, are still equipped to handle this or any other situation.

It is striking to me that we are at a crossroads in our Nation at this entrance into the 21st century. We are facing profound problems or being exasperated— 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 commission 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.

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The second was sent to me at Christmas time by a friend whose name and voice I suspect is familiar to most if not all Senators, my dear friend, George Beverly Shea, who for so many years has thrilled and inspired millions as he stood beside Billy Graham and, singing with that remarkably deep voice:"* * How great Thou art."

Our trouble today is that the American people every day, must choose between what is popular and what is right. There is a constant deluge of public opinion polls telling us which way to go, almost without fail showing the popular way.

But I must put it to you that we will, at our own peril, look to opinion polls to decide how we vote, when the real need is to look to our hearts, to our consciences and to our soul. So many decisions are made in the Senate—be it on the fate of treaties, or legislation, or even presidents—decisions having implications, not merely for today, but for the future. I remember thinking 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 values by the Creator who blessed America 200 years ago with more abundance, more freedom than any other nation in history has ever known.

There is certainly evidence fearfully suggesting that the Senate may this week fail to convict the President of charges of which he is obviously guilty. What else can be made of the behavior of many in the news media whose eyes are constantly on ratings instead of the source? 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, it was pretty 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 to make the whole forest had burned down. The press gallery bought that whole concept.

Some years ago, there was a western movie starring Jimmy Stewart and John Wayne called "The Man Who Shot Liberty Valance." Jimmy Stewart portrayed a tender-footed young lawyer who ran afoul of the local outlaw, Liberty Valance.

"Through a twist of fate, the character played by Jimmy Stewart received credit for ridding the county of the outlaw, even though it was John Wayne's gun that brought Liberty Valance down. Yet it was Stewart who rode public acclaim into a political career in the United States Senate, while John Wayne's character faded into obscurity."

Lately, of course, Jimmy Stewart has accepted credit for ridding the county of the Sen. Frank Church and the commission investigating Watergate. I have no better authority, of course, than Chief Justice Warren Burger, who said, "We have the facts before us and we must become the legend." We have the facts before us and we should heed those facts because truth must become the legend.

We must not permit a lie to become the truth.

A couple of weeks ago, a Falls Church Episcopal minister, the Reverend John Yates delivered a remarkable sermon to his parishioners. The Reverend Dr. Yates had this to say about lying—and liars:

...if a person will lie, and develops a pattern of lying as a way of life, that person will do anything. Someone who becomes good at lying loses his fear of being discovered and will move on to any number of evil actions. He becomes arrogant and self-assured. He comes to believe he is above the law. You should fear people like this. If such a person is caught red-handed in a lie and confronted with the evidence, that sort of man or woman will be forced to admit it, but he won't like it. It will make him angry and vengeful. He will do all he can to move and leave it behind. It's what the Bible calls evidence of a seared conscience, not a sensible conscience, but a seared conscience."

If we allow the lies of the President of the United States of America to stand, Mr. Chief Justice, then I genuinely fear for America's survival.

Shortly before he left the Senate, Senator Hubert Humphrey visited this chamber for the last time. He knew it was the last time; we knew it was the last time. Hubert's frail body was wracked with cancer, his steps were halting, his voice feeble. But as he walked down the aisle, Hubert saw me standing at my desk over there. He walked over to me, arms outstretched. Tears welled up in my eyes as Hubert hugged me softly saying, "I love you.

I loved Hubert Humphrey too, Mr. Chief Justice, and I told him so.

Hubert and I disagreed on almost all policy matters, large and small. Often Hubert got the better of me in debates. But a few times I did it to him. But I loved Hubert Humphrey because we agreed on so much more—honor, patriotism, faith and justice, the very essence of America.

But we are obliged to ponder: What is the essence of America now? Public life once was about honest debate on the merits, but it is now often a debate on the merits of honesty. And it was the President of the United States who brought us where we are today.

In November of 1955, a young editor named William F. Buckley undertook an ambitious mission, now completed. Bill had decided to start a conservative journal of ideas that would fuel an entire political movement. In his "Publisher's statement," printed in the very first edition of National Review, he declared that his magazine "stands athwart history yelling 'Stop!'"

Mr. Chief Justice, I plead with Senators to look around and see what Bill Clinton's scandal has wrought. National debate is now a national joke. Congressmen 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 pres- ent trial, could a reasonable manager 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 criminal case rather than a political case. What is really for the good of the country? I go to the understanding of the impeachment clause...
with respect to the author himself, George Mason, who said, “must be guilty of high crimes and misdemeanors against the State.” And Justice Story, in the midcentury, said that you could only impeach a President for conduct that only the President could engage in.

I will never forget, when they gave us the booklet, in the Nixon impeachment, by the eminent professor of constitutional law, Charles Black, he said that an impeachable offense must consist of a misconduct peculiar 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 to the country.

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 who 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 cues B for the crime of adultery, sexual misconduct. A and B both swear under oath and through their pleadings and their testimony and not before a halfway grand jury, I always wondered, what if prosecutors went under oath before a halfway grand jury? We would have built 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—whoevers the loser—are they taken over to criminal court and charged for lying under oath and obstruction of justice?

I called a prosecutor in Congressman Graham’s district, an 18-year experienced prosecutor, a Republican, George Duckworth. I said, “George, how have you ever taken the country 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, everybody, everybody is said this and we can go ahead and do that. We are not saying that at all, because the President can be charged with it, as anybody can. It might be a rare case, but we ought to remember, rather than that one witness that they found—and I guess they will find another one—but the Republican district attorneys who testified on the House side, the deputy attorney general in charge of the Criminal Division, William Weld, they said the President did 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 evidence; and thereafter subpoening the mother in tears; the Secret Service, the White House steward, the book store; some 41/2, 5 years and $50,000. And they come up with private sexual misconduct?—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.

The President took the case, the Jones case, was participated in by the White House. He thought he wasn’t embarrassed. He should never have taken it. A member of the Kirkland & Ellis law firm that had an interest in the case, the Jones case, was participating at the time. Instead of recusing himself, he immediately started pursuing that case with the official hand of Government.

Three years ago, seven former independent prosecutors expressed dismay at Starr’s ethics. He was representing private clients inimical to the defendant, our President, The New York Times and other newspapers editorialized that he ought to step aside. But instead of removing himself, he continued to talk to political groups, all the time leaking information and, yes, holding up his findings after 4½ years until after the election and saying he found nothing with respect to Filegate, Travelgate, Whitewater, or any of the other cases for which he was commissioned—not embarrassment at all.

He injected himself on the House proceedings to where finally his ethics advisor, Sam Dash— who, of course, had been the principal participant in Watergate—had to resign. Then he injected himself further on the Senate side, and last weekend, during a key moment, of course, he said he was going to bring a criminal indictment. He leaked that information.

So now we have the Justice Department, the independent prosecutor with his misconduct in the way he treated the main witness with respect to her access to counsel. And you have an 8-to-1 vote in the American Bar Association, which has been inserted; they say let this independent prosecutor thing die.

Yes, we have, like Bryant said, broad overreaching of power. Not by Clinton. He got into an illicit affair, and he tried like everybody else to cover it up. They tried and they failed. They charged the President with perjury and he lied under oath and lying, lying, lying under oath. We had the chief of the managers; he lied not just from January till August, but 30 years —and others over there. The hypocrisy of that crowd.

Yes, we had broad overreaching of power, mind you, of course, of the reason that we declared our independence 223 years ago—sounding hitherto swarms of officers to harass our people and seek out their substance.” We have it now, and we have a chance to try it. We have an impeachment case, but we are trying to impeach the wrong person. That is why the American people as concerned as they are. That is what you find in the polls that we keep talking about.

Let’s understand, of course, that President Clinton debased the Office of the Presidency, but let’s say once and for all that we are not going to have the political hijacking of the Office of the Presidency. Let’s be certain when we vote this week that we don’t debase the Constitution.

Mr. Wyden. Mr. Chief Justice, our leaders, Senators Lott and Daschle, my colleagues, my friends.

I doubt that I will ever know what the President of the United States was up to when he lied to Betty Currie about the nature of his relationship with Monica Lewinsky. Did the President lie to Ms. Currie because he didn’t want her to know the truth about the affair? Did the President lie because he wanted her to defend him to the White House staff? Did the President lie because he wanted her to repeat those lies under oath? I doubt that I am ever going to get the real answer to those questions.

But I believe I do know why it has been exasperatingly 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. The 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 is another to work your head off and not let 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 unfriendly, 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 was involved in 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 few from the city, a Midwestern governor and an independent. But I don't want 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 work 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 that I want to wrap up this impeachment debate through a bipartisan statement that makes it clear that each of us finds the President's conduct repugnant. If we miss that chance, let's keep looking for every possible opportunity to come together.

Senator Frist and I have a bipartisan education bill. No speeches about that now, but every Governor in the country is for it. My point is that this impeachment process has brought us to a critical moment in our history. We can either rise to the occasion by forging new and healthier ways to deal with our differences, or we can sink from the collective weight of a partisan mess that we have all helped to create.

In arriving at my decision in this case, I kept coming back to the reality that Congress has not once removed a President, not once in 211 years. The Constitution places the burden on such a grave decision. 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 President, not once in 211 years. The Constitution places the burden on such a grave decision. 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 collective weight of our history 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. man should they be. If the evidence required to convict a President of the United States in an impeachment trial is allowed to be less than that required in a shoplifting trial, the constitutional foundation for the Presidency will disintegrate before our very eyes. That is something that a few future Presidents in this body ought to consider for just a moment.

I am going to vote to acquit on both counts. But I don't want that to be my final contribution today.

I had a lot of farfetched dreams as a boy, but never once did I dream that I could serve with all of you on the floor of the U.S. Senate. My parents fled Nazi Germany, and not all of my family got out. We lost family in Hitler's brutal Kristallnacht. So you might understand how I grew up revering the greatness of America and the institutions of our democracy.

I will tell you, I never, ever believed that some skinny fellow with modest oratorical skills and a face for radio—(laughter)—could have a chance to serve in the United States Senate. I want to tell my grandchildren 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 going to rip the world apart.

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. 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.

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that this trial will bring us closer to the truth and to the justice that we are seeking.

Today, as Oregon's other Senator, I cast two votes to convict and remove the President of the United States. Reaching this verdict has been a very difficult ordeal for me, and I hope for the sake of justice that this trial will bring us closer to truth and to the justice that we are seeking.

As you know, the House of Representatives argued two articles of impeachment against the President. Article I alleged four instances of perjury before a grand jury; Article II alleged seven instances of obstruction of justice. The House managers presented us with volumes of direct and circumstantial evidence, and the White House lawyers worked skillfully to plant the seeds of doubt. But as the trial progressed, I found that these seeds failed to sprout, and I was reminded of my responsibility to keep the whole truth. I knew and respected the magic of his enormous personal and political talents. It is the magnitude of his misdeeds so disappointing. There can be no doubt that President Clinton's conduct has made a mockery of the Constitution. They can find the truth and act upon it, they have the means to do so, and they have done so. But it is not Bill Clinton's opinions that affect my vote, it is his conduct.

Now, what is his conduct here? Last night, this trial was a brilliant statement by Senator Edwards. I think we saw firsthand why he has made so much money talking to jurors. We are seeing right now why I had to take my money selling frozen peas. I went through the same calculations as Senator Edwards. I want to point out to you some very different reasoning that led me to come down on the other side. See, Senator Edwards is talking about protecting the public trust, protecting the Constitution. So the arguments that he made ultimately aren't the ones that we ought to be using to decide whether to remove President Clinton from office.

Now, what was so bad about President Clinton's conduct? The scales that Senator Edwards spoke to us about, the fulcrum of justice, won't work if President Clinton's conduct is sanctioned by this body or by any court. What President Clinton did was an attack on the Government, and specifically on the judicial branch of Government. You see, the courts aren't supposed to be a Mr. Chief Justice; they do too much of that. The courts don't have any power to raise taxes or appropriate money, and they can't raise an army or send a navy. They can find the truth and act upon the truth. And if what Bill Clinton did is OK, then we have weakened the weakest of the branches of our Government, and that is a high crime under the Constitution.

I mentioned Mr. Hamilton. I think it is worth pointing out that, after the publication of Federalist Paper No. 65, he became the Secretary of the Treasury for President George Washington. He also became involved in an adulterous relationship with a woman named Maria Reynolds. Her husband, upon learning of the affair, demanded of Mr. Hamilton a job at the Treasury Department in exchange for keeping his silence and keeping Mr. Hamilton from being impeached and tried for the political scandal. Hamilton refused Mr. Reynolds a position on the public payroll, but he agreed to pay him blackmail from his personal funds. News of this arrangement soon found its way to Mr. Hamilton, who was in his personal life fronted, without being under oath, Hamilton confessed the truth and the whole truth. He knew and respected the boundaries between the public and the private. He wrote them down for our country, and he lived his life within those boundaries, never veering recklessly over the line of impeachability.

Consider the painful contrast this creates when measured against the public life of President Clinton. When Hamilton was faced with a notorious corrupt female he was entwined with another woman's civil rights action against him, which a unanimous Supreme Court ruled that she had the right to bring, President Clinton set about trying to cover him and his staff, to his Cabinet, to the Congress, and to the country. And then, as the evidence so clearly shows, it demonstrates that when brought to court—the weakest of our branches of Government—the evidence is revealed, and he lied, lied again and again and again.

Now, in the end, I suspect this place is going to divide pretty much down the middle. I simply sound a warning note to raise your awareness to the fact that, ultimately, history and biographies and accounts yet to be revealed, facts yet to be uncovered, shoes yet to drop, will determine which of us voted right. But we have to decide on the evidence today, and the evidence to come. I am absolutely certain that if the President is discharged and punished for far less than what the President did and judges are impeached by the House and removed by the Senate for far less than this. Indeed, we have to ask, is the President to be held to a lower standard than those he contends to war or those he appoints to dispense justice? I cannot and I never will agree to such a low standard for the Presidency of the United States.

I want to tell you how strongly Americans and Oregonians feel about this case and how conflicted their feelings. Large majorities have concluded that the President is guilty of the felonies charged. Yet, large majorities have also concluded that they do not want him to be removed from office. These numbers remind me that the demands of justice are sometimes hard. I hope, however, that we remember to the law will protect our liberties as nothing else can.

You see, political prisoners around the world look to the United States for hope, not because we have a popular President, but because we have laws to
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protect us from a popular President. If the President of the United States is allowed to break our laws when they prove embarrassing to him or conflict with his political interests, then truly some public trust has been violated, a trust that we shared with him as Hamilton says, "relates chiefly to injuries done immediately to society itself."

These felonies are impeachable offenses, and the Constitution makes our duty clear, even though it appears harshly. When the President of the United States violates the Constitution, and our country. I believe they are right, and I will oppose them when I believe them to be wrong.

Now, the other man in this Chamber who deeply regard—and because I am so junior I do it from a distance—is William Jefferson Clinton. I have appre- sions of the Senate will vote as I will. There- fore, I hope the President will spend the balance of his office repairing the damage done to his family, our democ- cratic institutions, and our country. I will continue to support his proposals when I believe they are right, and I will oppose them when I believe them to be wrong.

Mr. HAGEL. I write this statement at my desk on the floor of the United States Senate. After weeks of listen- ing, reading, reviewing, reflection, and research, 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 improperly. No substitutions. No censures. No findings of fact. The completeness of the charges against the President is power- ful. The Constitution is the only law that the President abuse his power and there- fore violate the Nation’s trust in him? We must remember that the only true currency elected officials have— Perjury and obstruction of justice are not just federal crimes. When com- mitted 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 expediencies that govern 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 dishon- oring of the spirit that is the guardian of American justice.

There can be no shedding of right and wrong. The complicated currents that have coursed through this impeach- ment, this trial, after strip- ping away the underbrush of legal tech- nicalities 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 jus- tice 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 responsibil- ity, accountability for one’s actions. The President is one of us. I look for people to- gether. 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 Constitu- tional 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 ac- tions cannot be defended by dancing on the pin head of legal technicality. Every check and balance must know actions have consequences. Even for presi- dents. All Americans must have faith in our laws and know that there is equal justice for all. The core of our ju- dicial process is the rule of law. Americans deserve to always expect the highest standard of conduct from their elected officials. If that expecta- tion is defined down over time, it will erode the very base of our democracy and put our Republic in peril. That is the reason we must know actions have consequences. Even for presi- dents.

The President only if he has committed treason, bribery or other high crimes and misdemeanors— is not a power to pass moral judgment or render moral punishment. It is not even a power to render a judicial con- vict or judicial punishment. The power of the Senate is drawn carefully and narrowly by the Constitution of the United States, and it is a power to sit in judgment of a President only as a means of protecting our Nation from great harm. It is a power to remove a President only if he has committed treason, bribery or other high crimes and misdemeanors against the state.

As U.S. Senators, the Constitution must be our predominant guidepost. It must be the compass we come back to at every point of hesitation or ambigu- ity or doubt. "Treason, bribery, or other high crimes and misdemean- ors"—these words are powerful, extra-ordinary, and carefully crafted. We know how very grave treason and brib- ery are, and we know that they are not just fundamental corruption of public office. But what about high crimes and misdemeanors? The words, "or other high crimes and misdemeanors," on its
face means high crimes and high misdemeanors.

Borrowing from my good friend, Senator Biden, the word, "treason," was defined in the Constitution itself. The word, "bribery," was not. It was a definition fixed at common law. These are both relatively definite terms. But "high crimes and misdemeanors" are indefinite.

In this setting, two rules of construction were added to the word—Madison and Mason to add the word—or other, in their famous colourogy. 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 unanswerable.

As U.S. Senators, the Constitution must be, as I said, our guidepost. We know from the statements of our founders that the phrase was intended in a very careful way—"high crimes and misdemeanors"—to cover only very grave and threatening abuses of Presidential duty and public office.

The House managers contend, as did Independent Counsel Ken Starr before them, that in the course of hiding his illicit affair from the world, the President committed perjury, obstruction of justice, and those crimes are so serious that they constitute, by definition, high crimes and misdemeanors, demanded 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 utterly failed to prove beyond a reasonable doubt that the President committed perjury or obstructed justice. Their case is speculative, circumstantial, and contradicted by facts.

Admittedly, the burden of proof on the House managers is a very heavy one. We have a presumption in this country of innocence until proven guilty. And we have a presumption that natural elections should be upheld.

With the fate of a twice-elected President before us in this Senate, I believe that the evidence must be the universally accepted standard of proof that is applied to other criminal cases. It must be proven beyond a reasonable doubt.

What does that mean, to prove a case beyond reasonable doubt? It means that it is proven to a moral certainty, that the case is clear, that the case is concise. It means 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—or is alleged to—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. If there were, any other charges are left to the judgment of the people in casting of their votes, and to the judgment of the courts once the President has left office.

Despite the anger that we feel at the President, despite misgivings that we have about his honesty, despite his lies to the American people, we cannot allow emotions—or, I might say, homilies—or partisanship to interfere with our judgment. The Constitution alone puts us in the box from which we dare not venture.

On impeachment, our constitutional history is well established. And we in the Senate and across the Nation must abide by it, and abide by it strictly. We are reminded for using his great office to commit high crimes against the Nation, against the state, and against the people. There is no question in my mind that the President has not done this. We would be derelict in our duties 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 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 the President has been confronted 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—false or unproven—and splashed it across the front page or put it at the top of the evening newscast. Ratings and revenues too often have taken priority over sound and judicious coverage of the news. Far from serving the public interest, this has only fueled the efforts of those who have sought to undermine the reasoned pursuit of truth and justice.
As I made clear earlier, none of this diminishes my belief that the President's actions were wrong and indefensible. His personal failures in this matter deserve our condemnation.

But his failures do not deserve—and have not received—the relentless attempts at political and personal denigration that he has been subjected 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 fanning 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 vindictive venom that has become such a common part of our political discourse.

I let this clear that I am 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 gripped this nation and this city. Because, as disturbing as the President's actions are, I am far more concerned by the fanaticism of those who have driven our great nation so close to the precipice.

For our system of Democracy to be successful for another two centuries, it must be driven by people's best instincts—not their worst. It must be founded in moral strength and guided by civil discourse. We must, as Minority Leader Gephardt has so eloquently stated, end the politics of personal destruction.

I have great hope that we can do this, because as I look around, I see a vast majority of Americans who are tired of good people being destroyed by a vindictive minority. I see a majority of Americans who understand clearly that President Clinton should not be removed from office for his deep personal failings. I see a majority of Americans who know better than to believe everything and anything they hear in the media.

The American people want us to seek the truth—they, in fact, demand it. But with equal vigor, they demand that we cast fair judgment, and they demand that we seek the truth, we do not seek to destroy lives and careers.

I believe that this Senate is prepared to cast a fair judgment on the President. We have been through a trying time in our nation's history—a time that not one of us has relished or gained the least bit of satisfaction from. We have all done our best to seek impartial justice, and I am certain that history will judge us well in this pursuit.

But history will cast a very severe judgement if we do not go forward with the purpose of healing the wounds that this episode has caused, and restoring the moral and civil foundation of our political society.

I leave my colleagues with the wisdom of James Madison in Federalist Paper 62 when he addressed the important role of the Senate in tempering the passion of the House: "As a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government."

By dismissing these charges against the President, we will have done our duty to provide that salutary check, and we will have taken the first step in restoring the trust and faith of the people of this nation. It is time to do as the American people have asked: end this sad episode and get back to work.

Mr. MURKOWSKI. Mr. Chief Justice, it seems to be a prerequisite to speak today for Senators to indicate the number of grandchildren each has. I am proud to say Nancy and I have 11, but I won't indulge you with naming each of them.

I along with all of you will soon cast our votes on the Articles of Impeachment that have been presented against President Clinton. With the exception of one vote that of war, I cannot 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. On 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 because the DNA evidence implicating the President beyond a doubt. Without that dress, it would have been an old story of "He said/She said." Think about that.

Finally, we are all held accountable for our actions. But the President refuses to be held accountable. And I have a problem with the repeated reference from the First Lady that the President ministers to troubled people, suggesting that Monica Lewinsky was such a person.

What has been happening, not just here in Washington, but all around the country is something far more disturbing than the trial of a President. What we have been witnessing is a contest for the very moral soul of the United States of America—and that the great casualty so far of the national scandal is the notion of Truth.

Truth has been shown to us as an elastic commodity. It has been said that this trial is not about the partisan political gamesmanship between the President's Democratic supporters and the Republican forces on the other side, as the media would have you think.

Indeed one pundit said that more Americans get their ideas and reactions of the impeachment process from Jay Leno than they do from CNN. The polls show Americans favoring leaving the President in office while they say Republicans appear bent on political suicide.

It has been said that Republicans see accountability, discipline and punishment as fundamental to the very structure of American society and that the President ought to be the "stern father" image and a figure of moral authority.

Clinton's liberal supporters model American society on the "nurturing parent" concept. To them, the Presidency is less a figure of moral authority than a helpful and powerful friend capable of doing good.

Where were you when former President Nixon resigned? I wondered at the time whether the republic would survive Watergate. We did survive and I believe we are a stronger nation because of that process.

In reaching a judgment in this case, I have reviewed the evidence presented by the House Managers and the able defense offered by the President's counsel. I have concluded that the President is guilty on both Articles and that the two Articles more than satisfy the Constitutional standard of high crimes and misdemeanors.

I believe the President should be removed from office not because he engaged in irresponsible, reckless, and reprehensible conduct in the Oval Office with a White House intern. He should be removed from office because...
he engaged in conduct designed to undermine the foundation, the very bedrock, of the concept of due process of law and, by extension, the very notion of the rule of law.

There is no question in my mind that President Clinton'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, 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, one would have to assume the unbelievable—that the President engaged in these acts with Ms. Lewinsky in the full expectation that Ms. Currie witnessed them.

It is only reasonable to assume that the 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 Ms. 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 grand jury, evidence that was clearly relevant in the civil case.

The House Managers have presented a credible case showing that the President increased the pressure on his friend, Vernon Jordan, to obtain a private sector job for Ms. Lewinsky when she was named as a potential witness in the civil case brought against the President. It was not a coincidence of events, but rather a concerted effort by the President to secure employment for Ms. Lewinsky to ensure an affidavit that did not harm his interest. Mr. Jordan is not at fault; he was merely a pawn in the President's strategy to obstruct justice by encouraging the submission of a false affidavit from Ms. Lewinsky.

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 were convicted of obstructing justice. On Saturday, we heard the videotape testimony of Dr. Barbara Battalino who had been an attorney and a VA doctor. Her crime? She lied about sex under oath in a civil proceeding. Her penalty? She lost her medical license. She lost her right to practice law. She was fired from her job. The Clinton Justice Department prosecuted her for perjury and she was sentenced to 6 months of imprisonment under electronic monitoring and paid a $3,500 fine.

Should not the same apply to Ms. Lewinsky? Should not the President be held accountable for the perjury he committed in his interview when he told the Grand Jury he was "trying to figure out what the facts were"? Should not the President be held accountable for the perjury he committed in his interview when he told the Grand Jury he was "trying to figure out what the facts were"? Should not the President be held accountable for the perjury he committed in his interview when he told the Grand Jury he was "trying to figure out what the facts were"?

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, the whole truth, and nothing but the truth when he testifies before the Grand Jury? Or should we condone the standard the President suggested in his Grand Jury testimony, when he testified that he said "things that were true, that may have been misleading"? Think about that statement!

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 stalk 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 word "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 of the words "In God we Trust." And I think my country sinks beneath the yoke, it weeps, it bleeds, and each new day, a gash is added to her wounds.

I never dreamed that this day would ever come. And, until 6 months ago I never placed myself in this position. I couldn't imagine that, really, an American President was about to be impeached.

A few years ago, when my youngest grandson, who now is a Ph.D. in physics, was on a trip to Washington, D.C., I couldn't imagine that, really, an American President was about to be impeached.

Now, Senators who made this mess? Now, Senators who made this mess? Now, Senators 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 says that he be here. Senators are not here because you wanted to have them here today.

We are here because the Constitution said that the Senate shall have the sole power to try all impeachments. So 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—have been strained and rebuked by the polarization and discord among the people of the United States.

There are, 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 feeling for that. But I can never forget the 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 Senator think that that was a bit overdone if the purpose was to protect his family? "O, what a tangle web we weave when once we practice to deceive."

Impeachment of Damocles that hangs over the heads of presidents, vice presidents, and all civil officers, always ready to drop should it become necessary. But, the impeachment of a President is uniquely and especially grave. We must recognize the gravity and assess it, and act in accordance with the oath we took to do "impartial justice". We are the wielders of this weapon, responsible for using it sparingly and with prudence and wisdom.

This is only the second time that this nation has ever impeached a President, President Nixon resigned when it was made clear to him that, if impeached and tried, he would be convicted and removed from office. In that instance, both the country and the Congress were of the same mind that the President’s offenses merited his removal. It was not a partisan political impeachment; it was a bipartisan act. But where political partisanship becomes political partisanship becomes overpowering, such a motion is to put the country and the Congress at odds, as it has with this impeachment, something draws us back. We must be careful of the precedent we set. One political party, alone, should not be enough to bring Goliath’s great sword out of the Temple.

Regrettably, this process has become so partisan on both sides of the aisle and particularly in the House and was so tainted from the outset, that the American people could not be held against it. The President lied to the American people, and, while a great majority of the people believe, as I do, that the President made false and misleading statements under oath, still, some two-thirds of the American people do not want the President removed from office. I do not think that this is just a reflection of the American people’s traditional bias for the underdog, but rather, of the much more basic American dislike of unfairness. Many people, perhaps even our President, 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 proportion and balance have been lost by all too many people. As a byproduct of the venom, a process intended to be serious and sober has, instead, devolved into a virulent, off-color soap opera that has taken on a life of its own.

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 conference on both sides of the aisle. Moreover, the House Managers 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 a snakelike pit of bitter partisanship like the House of Representatives had done. Always with a weather reporter, concerning the mixing 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 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 and balance for 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 around 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 other things beyond perjury.

Mr. Clinton’s offenses do, in my judgment, constitute an “abuse or violation of some public trust.” Reasonable
The American people deeply believe in fairness, and they have come to view the President as having "been put upon" for politically partisan reasons. They think that the House proceedings were unfair. History, too, will see it that way. The people believe that the Independent Counsel, Mr. Starr, had a questionable purpose not beyond the duties strictly assigned to him.

In the end, the people's perception of the entire matter as being driven by possible 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 partisanism 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 partisanism surrounding this entire matter, would only serve to further undermine a public trust that is too damaged already. Therefore, I will reluctantly vote "Not Guilty."
the flames. Public passion has been aroused to a fever pitch, and we as leaders must come together to heal the open wounds, bind up the damaged trust, and, by our example, again unite our people. We would all be wise to cool the rhetoric.

For the common good, we must now put aside the bitterness that has infected our nation, and take up a new mantle. We have to work with this President and with each other, and with the members of the House of Representatives in dealing with the many pressing issues which face the nation. We must, each of us, resolve through our efforts to rebuild the lost confidence in our government institutions. We can begin by putting behind us the distrust and bitterness caused by this sorry episode, and search for common ground instead of shoring up the divisions that have eroded decency and good will and dimmed our collective vision. We must seek out our better natures and aspire to higher things. I hope that with the end of these proceedings, we can, together, crush the seeds and enmity which have taken root in the sacred soil of our republic, and, instead, sow new respect for honestly differing views, bipartisanship, and simple kindness towards each other. We have much important work to do. And, in truth, it is long past time for us to move on.

RECESS SUBJECT TO CALL OF THE CHAIR

Mr. LOTT. Mr. President, I move the Senate recess subject to the call of the Chair.

The motion was agreed to, and at 1:08 p.m., the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 2:43 p.m., when called to order by the Presiding Officer.

The PRESIDING OFFICER. The acting majority leader is recognized.

Mr. THOMAS. Mr. President, I would like to go through a number of closing activities 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. I further ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (H. Con. Res. 27) was agreed to, as follows:

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Friday, February 12, 1999, it stand adjourned until 12:30 p.m. of the next day, February 13, 1999, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, February 11, 1999, Friday, February 12, 1999, or Saturday, February 13, 1999, or Sunday, February 14, 1999, pursuant to a motion made by the Majority Leader, or his designee, pursuant to this concurrent resolution, it stand recessed oradjourned until noon on Monday, February 22, 1999, or such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns, it shall stand adjourned until noon on Monday, February 22, 1999.

SEC. 2. The Speaker of the House and the Minority Leader of the House, acting jointly, and the Majority Leader and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

STENNIS TECHNOLOGY HELPS FARMERS AND ENVIRONMENT

Mr. LOTT. 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 attending the national meeting of the Association 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 Office at Stennis, in concert with the local farming industry, are developing a new technique known as “precision farming”. In real-time, this system will bring 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 replace the widely used practice of fertilizing the entire crop to the same degree. Precision farming allows the farmer to give the land only what it needs.

Mr. Kenneth Hood of Perthshire Farms, in the Mississippi Delta town of Gunnison in Bolivar County, which is about 25 miles north of Greenville, monitors the health and soil consistency of his farm through NASA’s hyperspectral imaging techniques. This technique allows Mr. Hood to add fertilizer as needed in specific portions of his acreage. It also helps him detect crop stress, before it can be seen by the human eye. Stennis Space Center’s goal is to help Mr. Hood use less fertilizer, lower his costs, and improve his crop yield.

This is a win for the farmer and a win for the environment. Most importantly, this technology may yield a private sector incentive to voluntarily reduce farm fertilizer runoff, a far better solution than imposing regulatory burdens or subsidizing inefficient and less productive fertilizer limiters.

NASA’s Commercial Remote Sensing Program Office at Stennis Space Center should be congratulated for developing practical and productive commercial uses of this technology. This imaging technique, I believe, has application in other areas as well, such as in highway planning, environmental monitoring, resource exploration, coastal zone management and timber management.

Mr. President, I encourage all of my colleagues with an interest to contact Mr. David Brannon of the Stennis Space Center’s Commercial Remote Sensing Program. I am sure many of my colleagues have farmers such as Mr. Hood who want to improve crop yield, decrease costs, and be good stewards of the environment. All they need to do is call Stennis and learn about what Mississippi has to offer.

A CALL FOR AN END TO THE POLITICAL WARS

Mr. DASCHLE. Mr. President, today’s votes on the Articles of Impeachment mark the end of a long and difficult journey. The story of this impeachment process suggests a number of lessons on which I expect we will all reflect individually and collectively for some time.

From the beginning of this process, I objected in the clearest terms to the President’s legal hairsplitting and attempts to find a legal excuse, for his deplorable personal conduct. In my view, the President violated the public trust and brought dishonor to the office he holds. For that, he will have to answer to the people of this country, and to history.

But it was every senator’s duty to put personal views aside and render impartial justice, based on constitutional standards and the evidence before the Senate. In my view, the President’s conduct did not, under our Constitution, warrant his removal from office. Others, acting on equally sincere motives, reached a different conclusion.

It is regrettable that something about this process led to a situation, particularly in Washington, where sincere voices on both sides were too often drowned out by partisan voices—again, on both sides. But, if we listen to the voices of the citizens, the voices of citizens rather than of partisans, those voices tell us that something has gone terribly wrong in our public discourse.

Those citizens see the impeachment process not as a solemn constitutional event, which it assuredly was, but rather as another sad episode in the sorry saga of a bitter, partisan and negative political process that runs on the fuel of scandal. In this sense, to many Americans, the Starr investigation, and the impeachment process it spawned, were all too familiar.

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To much of the American public, this whole process was a long-running, 50-
million-dollar negative ad built on personal attacks, the likes of which Americans regret and reject.

I know this belief is shared by thousands of South Dakotans and millions of Americans who hold widely varying views of what the outcome of the impeachment proceeding should have been—conviction or acquittal, removal or continued service by the President to the conclusion of his term.

Where are the elements, the component parts, of this political process that so many Americans judge to be merely an ugly spectacle increasingly unworthy of their participation? What is making Americans so cynical that they are voting in record-low numbers and tuning out the government meant to serve them?

Surely they must be concerned about the increased use, and misuse, of the legal process in our political process. They are no longer certain they can distinguish the proper application of the law to address real wrongdoing properly before the courts from the hijacking of the law to bludgeon political opponents and extend the battlefield of political attack.

In just ten years, we have seen the public careers of three House Speakers, representing both political parties, destroyed by scandal. As the process has escalated, Independent Counsels have pursued members of Presidents' cabinets—of both parties—and then, the President of the United States himself.

We have watched what we all acknowledge as "the politics of personal destruction" threaten to devour our democratic ideals.

We can, and we will, argue the merits of the Independent Counsel statute when it comes up for reauthorization this session. We can, and we will, continue to pursue those who are corrupt, who use their offices for personal gain, or who otherwise deserve punishment.

But the law must be preserved as an instrument for the rendering of justice, not manipulated to serve as another readily accessible weapon to be used against political adversaries.

And the law should not become a substitute for elections. Political choices in this country must remain in the hands of the people of this country, not conveyed to prosecutors and lawyers.

It is a fault, this culture has been a hardening of position and a commitment to win at any cost. To paraphrase our former colleague Dale Bumpers' now famous declaration in his presentation to the Senate, "Sometimes we want to win too badly."

It is time for elected officials to ask themselves, "Does anyone in this country really feel as though they have been winners in this seemingly interminable process of investigation, media spectacle and impeachment controversy?"

I hope we can keep Senator Bumpers' words in mind and honor each other with the same degree of commitment that we bring to our disagreements. I hope we can persuade without spinning; that we can argue without shouting; that we can dissent without dividing.

We can be passionate in our beliefs without prosecuting those who believe differently.

There were no winners in this impeachment process, but there were plenty of losers. There are good people who have accumulated thousands of dollars in legal bills as a result of the years of investigating the President. There are good people—on both sides of the aisle—whose private lives will be never be private again. There are people whose reputations have been battered and beaten.

I hope we can keep those people in mind and call for—indeed, insist upon—a truce in the political wars. We need now to think about what we owe ourselves, to our constituents, and to the people we represent as we move—and I hope without further delay—to address the true agenda of the American people.

SCOTT BATES, LEGISLATIVE CLERK OF THE SENATE

Mr. HUTCHINSON. Mr. President, I would like to take a few moments to pay tribute to a fellow Arkansan, Scott Bates, who was struck and killed by a car on Friday. He will be severely missed by all of us.

Scott was born in Pine Bluff, AR, where he was active in church and the Boy Scouts of the rank of Eagle Scout. He developed a love of politics, which he followed to Washington, D.C. For twenty-six years, he performed dedicated service to the Senate, the last eight as the Senate's Legislative Clerk, working tirelessly behind the scenes to ensure the smooth operation of this institution. Scott was perhaps most visible, or audible, in that role because of his deep, resonant voice, calling the roll or reading legislation.

But Scott was much more than a dignifying voice to the Senate. He was a husband, a father, a colleague, and a friend to many. I spent a lot of time in the last two years with him, learning the ways of the Senate. Scott and I would reminisce about our common Arkansas roots and our mutual love for the Razorbacks. He was a man of honor and humility, an encouragement to both staffers and Senators.

We pray for his wife Ricki. May the Lord grant her a swift recovery from her surgery. We pray for his three children, Lori, Lisa, and Paul, and for his family in Arkansas. May the Lord bring healing to them in their time of loss.

We grieve and we mourn his passing, for we know that the Senate and the world will be a better place because of his life.

TRIBUTE TO LINDA NERSESIAN

Mr. GRASSLEY. Mr. President, I want to take a moment to lament the too early death on December 19, after a four-year long battle with breast cancer, of a former staff member and friend, Linda Nersesian, and to offer my heartfelt sympathy to her husband Robert Rae Gordon; her two children, nine year old George Raeburn Gordon, and five year old Linda Gordon; her parents, Elsie Louise Nazarian and Serop S. Nersesian; her brother Robert S. Nersesian; and the many, many friends and associates in the Congress and in Washington who will miss her greatly.

Linda served in the Senate for six and one-half years, from August 4, 1980 to January 5, 1987. She began her Senate career in the office of Senator Dole where she worked on energy and environmental issues. Linda left Senator Dole's office in April of 1981 to join my staff as a staff attorney on the Subcommittee on Agency Administration of the Judiciary Committee, which I then chaired. On the Subcommittee, Linda worked on a number of my highest legislative priorities. She consistently demonstrated initiative, intelligence, and savvy.

When I became Chairman of the Subcommittee on Aging of the Labor and Human Resources Committee at the beginning of the 98th Congress in 1983, the strong leadership qualities that Linda consistently demonstrated in her work on the Administrative Practices Subcommittee made her the perfect person to serve as the subcommittee chief counsel and staff director of the Subcommittee on Aging. In that capacity, she organized the office, recruited a staff, and oversaw the work of the Subcommittee through 1983. She was also responsible for advising me on major bills relating to pharmaceutical drugs which were then under consideration by the Committee.

In late 1983, Linda once again seemed to have the perfect choice for a position of responsibility: she became the chief counsel and staff director of the Subcommittee on Administrative Practice and Procedure. In that capacity, she was responsible for the Child Pornography Act. She also worked on what became the 1986 amendments to the False Claims Act and the Equal Access to Justice Act. She also worked on defense procurement fraud. These were among my highest legislative and oversight priorities at that time.

Serving as the chief counsel of the Subcommittee until January 21, 1985, Senator Dole asked Linda to be the assistant secretary of the Senate. She served in that capacity until January 5, 1987, when she left the Senate to become legislative counsel to the Pharmaceutical Manufacturers Association. In due course, Linda again assumed greater responsibility, becoming the Association's vice president for government relations, a position she held until she left to build her own consulting firm, the Columbia Consulting Group.

Mr. President, Linda Nersesian was a unique and remarkable individual. Her
FOOD AND MEDICINE FOR THE WORLD ACT

Mr. BROWNBACK. Mr. President, I am pleased to join my distinguished colleagues, Senators ASHCROFT, BAUCUS, and KERREY, in authoring the Food and Medicine for the World Act of 1999, which would limit the ability of the U.S. government to unilaterally cut off our exports of food and medicine to foreign countries.

The current stressed state of the farm economy is simply highlighting a problem that has existed in U.S. foreign policy for years. That is, our law allows for the application of unilateral sanctions to the export of food, despite the extensive evidence that this policy is not only ineffective in achieving U.S. foreign policy goals but also is harmful to American economic interests. This is especially the case for agricultural commodities, which are readily available from other suppliers around the world and which are a critical component of the U.S. export portfolio. Moreover, limiting access to food and medical products is likely to have the most devastating effect on not the governments that the U.S. seeks to punish, but rather the poorest citizens of the foreign country. Thus it makes sense for the U.S. to engage with the citizens of that country by supplying—either through aid programs or through trade—basic life-sustaining products.

This bill takes a moderate approach and prohibits sanctioning of food and medical products only. It also provides a safeguard by allowing the prohibition to be waived if the President submits a report to Congress asking that the sanction include agriculture and medicine and Congress approves, through an expedited process, his request to sanction. Therefore, there is a mechanism to prohibit aid or trade from occurring with any regime when there is broad national consensus that it is the right thing to do. I believe that this is a reasonable balance between our need so stop using ineffective agricultural sanctions and our need to continue protecting U.S. foreign policy interests.

It is high time we stop shooting ourselves in the foot by cutting off agricultural exports, which are a real building block of the U.S. economy. I am encouraged by the many members of the Senate who have focused their attention on this problem and I look forward to working with my colleagues on a bipartisan basis to enact needed reforms.
During the Blumenthal deposition, the President's counsel asked no questions on cross-examination, but the House Managers were allowed to ask questions on a limited scope of the deposition. Senator Leahy made clear when he presided at the Lewinsky deposition that the witness would be given an opportunity to examine the transcript to make any necessary corrections. By letter dated February 2, 1999, her attorney provided a list of corrections to the deposition (145 Cong. Rec. S1229).

C. OBJECTIONS TO QUESTIONS AND STATEMENTS

Procedures for Resolving Scope Objections. Section 204 of S. Res. 30 limited the examination in chief of the witness to matters reflected in the Senate record. Prior to the Lewinsky deposition, Senators DeWeine and Leahy determined that if objection was made, a list of objections to the scope of the deposition was provided by the party objecting to the scope of questioning. Senators Specter and Edwards also decided that questions regarding Kathleen Willey were within the scope of the deposition. If the proponent could satisfy the Presiding Officers that the subject matter of the question was reflected in the Senate record, the witness would be instructed to answer the question.

In the Blumenthal deposition, a scope objection arose about questions regarding White House strategy discussions of Kathleen Willey. (145 Cong. Rec. S1240). Senators Specter and Edwards decided to reserve that line of questioning until the end of the deposition. After the issuance of a subpoena for a second examination, Senator Specter and Edwards decided that questions regarding Kathleen Willey were within the scope of the deposition. If the proponent could satisfy the Presiding Officers that the subject matter of the question was reflected in the Senate record, the witness would be instructed to answer the question.

B. THE WITNESS

Counsel May Not Coach the Witness. Senator DeWeine instructed Ms. Lewinsky's counsel not to coach the witness in her answers. He stated that she was free to ask for advice from counsel, but they should not whisper responses to her while a question was pending. (145 Cong. Rec. S1215).}

Relating to Prior Grand Jury Testimony. Ms. Lewinsky objected to certain questions, answers to which were already in the record. After conferring, Senators DeWeine and Leahy instructed Manager Bryant to postpone that line of questioning. Senators DeWeine and Leahy instructed Manager Bryant to postpone that line of questioning until after Ms. Lewinsky's counsel could determine whether prior grand jury testimony had raised the privilege for that subject matter. (Id. at S1224). The attorney-client privilege was asserted by Ms. Lewinsky's counsel in the line of questioning. Senators DeWeine and Leahy instructed Manager Bryant to postpone that line of questioning until after Ms. Lewinsky's counsel could determine whether prior grand jury testimony had raised the privilege for that subject matter. (Id. at S1224).

When Manager Graham asked about Mr. Blumenthal's prior use of executive privilege to assert the confidentiality requirement, he noted that the question was misleading because Mr. Blumenthal had not raised the privilege, but the White House had. Senators Specter and Edwards overruled that line of questioning, and asked Mr. Blumenthal to answer the question, which was rephrased. (Id. at S1249).
Compound or Ambiguous Questions. During the depositions, there were numerous objections that the questions were compound and/or ambiguous. In each instance, the Presiding Officers ruled that the Managers should phrase the question and allow the questioning to proceed. (See, e.g., id. at S1214-15 (Lewinsky), S1228 (Lewinsky), S1252 (Blumenthal)).

Referring to the Blumenthal deposition, Senators Specter and Edwards ruled that Mr. Blumenthal could answer a question to which Mr. McDaniels was confusing the witness. (id. at S1250).

Open-ended Question. On cross-examination, Mr. Kendal asked Mr. Jordan if he had anything more to add to what he had given during his direct examination. That question drew an objection from Manager Hutchinson that it was too broad. Senator Thompson asked Mr. Kendal to rephrase the question, which he did. (id. at S1245).

Witness Statement. At the conclusion of his examination, Mr. Jordan asked the Presiding Officers if he could make a statement. (Jordan Depo. Tr., p. 157, Inc. 6-7). Manager Hutchinson reserved the right to object if the statement exceeded the scope of inquiry. (id. at ln. 18; Mr. Jordan then offered a statement defending his integrity, which the Presiding Officers allowed. (id. at ln. 24–p. 158, Inc. 7). Manager Hutchinson did not assert an objection following the statement.

Leading Questions. Senator Thompson allowed Manager Hutchinson to ask a leading question. Since according to S. Res. 30 these witnesses were to be treated as adverse to the Managers. (145 Cong. Rec. S1238).

Questions Assuming Facts Not in Evidence. Senator Edwards, with Senator Specter’s concurrence, sustained an objection to a Manager’s question that contained premises not already in the Senate record. (id. at p. 83, ln. 15–p. 85, ln. 25). Thus, any documents in that Senate record were already admitted into evidence by the time the deposition began. (See S. Doc. No. 106-3, vols. I–XXIV (1999)). Thus, many documents in that Senate record were already admitted into evidence by the time the deposition began. (See S. Doc. No. 106-3, vols. I–XXIV (1999)).

Speculation. Senators DeWine and Leahy asked Manager Bryant to rephrase questions after objection was made that the questions called for speculation about another person’s state of mind. (id. at S1219, S1221 (Lewinsky)). Senator Specter and Edwards asked Manager Graham to rephrase questions calling for Mr. Blumenthal’s speculation about other’s thoughts. (id. at S1250, S1254).

D. USE OF EXHIBITS

Prior Production of Exhibits. Section 204 of S. Res. 30 requires “[t]he party taking a deposition shall produce all documents, books, pamphlets, and other materials in his possession or control which the party taking the deposition is or may be expected to introduce as an exhibit at the deposition.” Following objection from the President’s counsel that the Managers had failed to comply with this requirement and had largely supplied only general descriptions of exhibits without copies of specific documents, the Managers and Senate counsel argued that this provision required production to the witness, the other party, and the Presiding Officers of a copy of any document that would be used during the deposition. (See S. Res. 30, § 3, at p. 18.)

After the Managers told Mr. Blumenthal, the President’s counsel, Lanny Breuer, presented various news articles that were admitted into evidence. (Blumenthal Depo. Tr., p. 108, ln. 20–p. 109, ln. 24). Thus, the Managers were informed that no reference had been made to the articles during the examination. (id. at p. 82, Ins. 16–25, p. 83, Ins. 15–p. 85, Ins. 25).

CORRECTION TO THE RECORD

In the Record on February 10, 1999, on page S1425–1427, the remarks of Senator Thomas appear incorrectly. The permanent Record will be corrected to reflect the following:

By Mr. THOMAS (for himself, Mr. ENZI, Mr. HELMS, Mr. MURKOWSKI, Mr. HAGEL, Mr. SMITH of Oregon, Mr. SMITH of New Hampshire, Mr. ROBERTS, Mr. NICKLES, and Mr. SESSIONS):

S. 404: A bill to prohibit the return of veterans memorial foreign artifacts to foreign nations without specific authorization in law; to the Committee on Veterans’ Affairs.

S. 404: THE VETERANS MEMORIAL PHYSICAL INTEGRITY ACT OF 1999

• Mr. THOMAS, Mr. President, I come to the floor today to introduce S. 404, a bill to prohibit the return to a foreign country of any memorial to American veterans without the express authorization of Congress. The bill is identical to S. 1903 which I introduced at the end of the last Congress.

I would not have thought that a bill like this was necessary or timely, Mr. President, but it would never have occurred to me that an Administration would even briefly consider dismantling part of a memorial to American soldiers who died in the line of duty in order to send a piece of that memorial to a foreign country; but a real possibility of just that happening exists in my state of Wyoming involving what are known as the “Bells of Balangiga.”

In 1898, the Treaty of Paris brought to a close the Spanish-American War. As part of the treaty, Spain ceded possession of the Philippines to the United States. At about the same time, the Filipinos began an insurrection in their country. In August 1901, as part of their American effort to win the insurrection, a company of 74 officers and men from the 9th Infantry, Company G, occupied the town of Balangiga on the island of Samar. These men came from Ft. Russell in Cheyenne, Wyoming—today’s F.E. Warren Air Force Base.

On September 28th of that year, taking advantage of the preoccupation of the American troops with a church service for the just-assassinated President McKinley, a group of Filipino insurgents infiltrated the town. Only three American sentries were on duty that day. As described in an article in the November 19, 1997 edition of the Wall Street Journal:

Officers slept in, and enlisted men didn’t bother to carry their rifles when they ambled out of their quarters for breakfast. Balangiga had been a boringly peaceful village since the infantry company arrived a month earlier, according to affidavits and statements of soldiers. The American sentries were wiped out by a sudden attack that afternoon.

With the signal, hundreds of Filipino fighters swarmed out of the surrounding forest, armed with machetes, club-like bolo knives. Others poured out of the church. They arrived the night before, disguised as women mourners and carrying coffins filled with blood. A sergeant was beheaded in the mess tent and dumped into a vat of steaming wash water. A young bugler was cut down in a nearby stream. The company commander was hacked to death after jumping out a window. Besieged infantrymen defended themselves with kitchen forks, mess kits and baseball bats. Others threw rocks and sticks and beans.

Though he was also slashed across the back, PFC . . . Gamlin came to and found a Filipino named Adolph Gamlin walked past the local police chief. In one swift move, the Filipino grabbed the slightly built Iowan’s rifle and smashed the butt across [Gamlin’s] head. As PFC Gamlin crumpled, the bells of Balangiga began to peal.

The Bells of Balangiga...
The remaining soldiers escaped in five dug-out canoes. Only three boats made it to safety on Leyte. Seven men died of exposure at sea, and another eight died of their wounds; only 20 of the company’s 74 members survived.

A detachment of 9th infantry units stationed at Leyte returned to Balangiga and recaptured the village. They were reinforced a few days later from Companies K and L of the 11th Infantry Regiment. When the 11th Infantry was relieved on October 18, by Marines, the 9th Infantry took two of the church bells and an old cannon with them back to Wyoming as memorials to the fallen soldiers.

The bells and cannon have been displayed in front of the base flagpole on the central parade grounds since that time. The cannon was restored by local volunteers and placed under a glass display case in 1985 to protect it from the elements. The bells were placed in openings in a large specially constructed wall with the opening designed to resemble the memorial to the memory of the fallen soldiers.

Off and on since 1981, there have been some discussions in various circles in Cheyenne, Wyoming, and elsewhere about the future of the bells, including the possibility of returning them to the Philippines. Most recently, the Philippine government—having run into broad opposition to their request to have both bells returned to them—has proposed making a copy of both bells, and having both sides keep one copy and one original. Opposition to the proposal from local and national civic and veterans groups has been very strong.

Last year, developments indicated to me that the White House was seriously contemplating returning one or both of the bells to the Philippines. In 1998 marked the 100th anniversary of the Treaty of Paris, and a state visit by then-President Fidel Ramos—his last as President of the United States. The disposition of the bells was high on President Ramos’ agenda; he has spoken personally to President Clinton and several members of Congress about it over the last three years, and made it one of only three agenda items the Filipino delegation brought to the table. Since January 1998, the Filipino press has included almost weekly articles on the bells’ supposed return, including several in the Manila Times in April and May. In each, reports that a new tower to house the bells was being constructed in Borongan, Samar, to receive them in May. In addition, there have been a variety of reports viliﬁing me and the veterans in Wyoming for our position on the issue, and others threatening economic boycotts of US products or other unspecified acts of retaliation to force capitulation on the issue.

Moreover, inquiries to me from various members of the Administration licitating the opinion of the Wyoming congressional delegation on the issue increased in frequency in the first four months of 1998. I also learned that the Defense Department, perhaps in conjunction with the Justice Department, prepared a legal memorandum outlining its opinion of who actually controls the disposition of the bells.

In response, the Wyoming congressional delegation led by Senator Enzi introduced S. 1903 on April 1. The bill had 18 cosponsors, including the distinguished Chairmen of the Committees on Armed Services, Foreign Relations, Finance, Energy and Natural Resources, Rules, Ethics, and Banking; the Chairmen of five Subcommittees of the Foreign Relations Committee; and five members of the Armed Services Committee.

Mr. President, at this point let me dispose of a canard that was forwarded shortly after the time I introduced S. 1903 by those seeking the return of the bells. That is, the bill was actually in contravention of the wishes of the people of the State of Wyoming because the Wyoming Legislature, quoting a letter from the Ambassador of the Philippines dated April 3, 1998, ‘‘supports the return of the bells.’’ That statement, however, glosses over the real facts.

Wyoming’s legislature is not a ‘‘professional’’ one—that is, the legislators have other, full-time jobs and the Legislature only sits for forty days at the beginning of each year and twenty days in the fall. When the Legislature meets, it is often to process an entire year’s worth of legislation in just a few weeks.

Like Congress, the Wyoming Legislature has a formal process of introducing, considering, and then voting on bills which become law upon the signature of the chief executive—in this case the governor. Also like Congress, the Legislature has a system for expressing its non-binding viewpoint on certain issues through resolutions. But unlike Congress, the Legislature also has an informal resolution process to express the viewpoint of only a given number of legislators, as opposed to the entire legislative body, on a given topic; the vehicle for such a process is called a ‘‘joint resolution.’’

In this process, a legislator circulated the equivalent of a petition among his or her colleagues. Support for the subject matter is signified simply by signing one’s name to the petition. Once the sponsor has acquired all the signatures he or she can—or wishes to acquire—the joint resolution is simply delivered for the record to the Office of the Governor; it is never voted on in either House of the Legislature, nor is it signed by the governor. As a consequence, it is not considered to be the position of, or the expression of the will of, the Legislature as a whole, but only of those legislators who signed it.

Although the bells are an issue of interest among some circles state-wide, it is not an issue of concern to all over Wyoming. I have heard from several of the signatories of the joint resolution on the bells that they were not aware of the circumstances surrounding the bells at the time they signed the joint resolution. In this context, it is important to note that the sponsor of the joint resolution did not enlighten them about the role of the bells in the unprovoked killing of 54 American soldiers in Balangiga before they signed the document. Moreover, that fact was completely and purposefully left out of the wording of the joint resolution itself; the death of these American soldiers was completely glossed over. The closest the joint resolution gets to mentioning the surprise attack and resulting deaths is this, which I quote verbatim:

Whereas, that incident involved the ringing of the Church Bells of Balangiga on Samar to signal the outbreak of fighting.

Imagine. The author of the joint resolution reduced the surprise attack and horrible deaths of fifty-four soldiers to a seemingly innocent, benign ‘‘note-worthy incident.’’ So while some may rely on the joint resolution as though it were the ‘‘voice of Wyoming’’ in support of their position, an examination of the actual facts surrounding it proves that reliance to be very misplaced.

While time has passed since this issue came to a head last April, Mr. President, my deep concern that the Administration might still dispose of the bells has not. The Administration has not disavowed its earlier intent to seek to return the bells—an intent detailed by the introduction of S. 1903 last year. In addition, despite Article IV, section 3, clause 2 of the Constitution, which states that the ‘‘Congress shall have the power to dispose of . . . the property belonging to the United States,’’ the Justice Department has issued an informal memorandum stating that the Bells could possibly be disposed of by the President pursuant to the provisions of 10 U.S.C. § 2572.

I continue to be amazed, even in these days of political correctness and revisionist history, that a U.S. President—the Commander-in-Chief—would appear to be ready to ignore the wishes of our veterans and tear down a memorial to U.S. soldiers who died in the Philippines during the course of the Spanish-American War, armed conflict between the United States and the Philippines; and

Whereas, that incident involved the ringing of the Church Bells of Balangiga on Samar to signal the outbreak of fighting.

Imagine. The author of the joint resolution reduced the surprise attack and horrible deaths of fifty-four soldiers to a seemingly innocent, benign ‘‘note-worthy incident.’’ So while some may rely on the joint resolution as though it were the ‘‘voice of Wyoming’’ in support of their position, an examination of the actual facts surrounding it proves that reliance to be very misplaced.
S. 404 will protect the bells and similar veterans memorials from such an ignoble fate. The bill is quite simple; it prohibits the transfer of a veterans memorial or any portion thereof to a foreign country or government unless specifically authorized by law; Representative BARBARA CUBIN is introducing similar legislation this week in the House. I am pleased to be joined by Senator ENZI and I have decided to re-introduce the bill in the 106th Congress.

Mr. President, to the veterans of Wyoming, and the United States as a whole, the bells represent a lasting memorial to those fifty-four American soldiers killed as a result of an unprovoked insurgent attack in Balangiga on September 28, 1901. In their view, which I share, any attempt to remove either or both of the bells—and in doing so actually physically dismantling a war memorial—is a desecration of that memory.

S. 404 will protect the bells and similar veterans memorials from such an ignoble fate. The bill is quite simple; it prohibits the transfer of a veterans memorial or any portion thereof to a foreign country or government unless specifically authorized by law; Representative BARBARA CUBIN is introducing similar legislation this week in the House. I am pleased to be joined by Senator ENZI, HELMS, HAGEL, SMITH of Oregon, MURKOWSKI, SMITH of New Hampshire, ROBERTS, SESSIONS, NICKLES, and COVERDELL as original cosponsors. I trust that my colleagues will support its swift passage.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees. (The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 6, 1999, the Secretary of the Senate, on February 12, 1999, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 27. Concurrent resolution providing for an adjournment or recess of the two Houses.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H. R. 391. An act to amend title 44, United States Code, for the purpose of facilitating compliance by small business with certain Federal paperwork requirements, to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses, and for other purposes.

H. R. 347. An act to provide for a Chief Financial Officer in the Executive Office of the President.

H. R. 705. An act to make technical corrections with respect to the monthly reports submitted by the Postmaster General on official mail of the House of Representatives.

The message further announced that pursuant to section 852(b) of Public Law 105-244, the Minority Leader appoints the following Members and individuals to the Web-Based Education Commission: Mr. FATTAH of Pennsylvania and Mr. Doug King of St. Louis, Missouri.

The message also announced that pursuant to section 3(b)(1)(B) of Public Law 105-341, the Minority Leader appoints the following Member and individuals to the Woman's Progress Commemoration Commission: Ms. SLAUGHTER of New York, Ms. Clayola Brown of New York, New York, and Ms. Barbara Haney of Irvine, New Jersey.

The message further announced that pursuant to section 955(b)(1)(B) of Public Law 105-93, the Minority Leader reappoints the following Member to the National Council on the Arts: Mrs. LOWEY of New York.

The message also announced that pursuant to the provisions of 22 U.S.C. 1928a, the Speaker appoints the following Members of the House to the United States Group of the North Atlantic Assembly: Mr. BEREUTER of Nebraska, Chairman, Mr. BATEMAN of Virginia, Mr. BLEILEY of Virginia, Mr. BOEHLERT of New York, Mr. REGULA of Ohio, Mr. GOSS of Florida, Mr. DEUTCH of Florida, Mr. BORSKI of Pennsylvania, Mr. LANTOS of California, and Mr. RUSH of Illinois.

The message further announced that pursuant to the provisions of 22 U.S.C. 276d, the Speaker appoints the following Member of the House to the Canada-United States Interparliamentary Group: Mr. HOUTHOUT of New York, Chairman.

The message also announced that pursuant to the provisions of 22 U.S.C. 276d, the Speaker appoints the following Member of the House to the Mexico-United States Interparliamentary Group: Mr. KOLBE of Arizona, Chairman.

The message further announced that pursuant to subsection (c)(3) of division A of Public Law 105-277, the Minority Leader appoints the following individuals to the Trade Deficit Review Commission: Mr. George Becker of Pittsburgh, Pennsylvania, Mr. Kenneth Lewis of Portland, Oregon, and Mr. Michael Wessel of Falls Church, Virginia.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WARNER, from the Committee on Armed Services, without amendment:
S. 257. A bill to state the policy of the United States regarding the deployment of a defense component of the missile defense in the territory of the United States against limited ballistic missile attack (Rept. No. 106-4).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI:
S. 426. A bill to amend the Alaska Native Claims Settlement Act to provide for a land exchange between the Secretary of Agriculture and the Huna Totem Corporation, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ABRAHAM (for himself, Mr. DOMENICI, Mr. THOMPSON, Mr. LOTT, Mr. ALLARD, Mr. HAGEL, Mr. SESSIONS, Mr. HUTCHISON, Mr. BURNS, Mr. MCCAIN, Mr. INHOFE, Mr. DEWINE, Mr. BOND, Mr. SMITH of Oregon, Mr. ENZI, Mr. HELMS, and Mr. NICKLES):
S. 427. A bill to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, pursuant to the order of August 4, 1997, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. GORTON:
S. 429. A bill to amend the Agricultural Market Transition Act to ensure that producers of all classes of soft white wheat (including club wheat) are permitted to repay marketing assistance loans, or receive loan deficiency payments, for the wheat at the same rate; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURBIN (for himself, Mr. NEDDY, Mr. CLELAND, Mr. GRAMS, Mr. DASCHLE, Mr. DEWINE, Mr. LAUTENBERG, and Mr. LEVIN):
S. 428. A bill to designate the legal public holiday of "Washington's Birthday" as "Presidents' Day" in honor of George Washington, Abraham Lincoln, and Franklin Roosevelt and in recognition of the importance of the institution of the Presidency and the contributions that Presidents have made to the development of our Nation and the principles of freedom and democracy; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DASCHLE):
S. Res. 37. A resolution to express gratitude for the service of the Chief Justice of the United States as Presiding Officer during the impeachment trial; considered and agreed to.

By Mr. MCCONNELL (for himself and Mr. DODD):
S. Res. 38. A resolution to waive the Standing Rules of the Senate in order to permit a resolution authorizing Senate committee expenditures for the period March 1, 1999 through September 30, 1999; considered and agreed to.

By Mr. DOMENICI (for himself and Mr. LAUTENBERG):
S. Res. 39. A resolution commending J une Ellen O'Neill for her service to Congress and to the Nation; considered and agreed to.

S. Res. 40. A resolution commending L. Blum for his service to Congress and to the Nation; considered and agreed to.

By Mr. THURMOND (for himself, Mr. LOTT, Mr. DASCHLE, Mr. BYRD, Mr.
STATMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

S. 426. A bill to amend the Alaska Native Claims Settlement Act, to provide for a land exchange between the Secretary of Agriculture and the Huna Totem Corporation and for other purposes; to the Committee on Energy and Natural Resources.

KAKE TRIBAL CORPORATION PUBLIC INTEREST LAND EXCHANGE ACT

Mr. MURKOWSKI. Mr. President, today I rise to offer two similar bills both of which passed the Senate last year with unanimous consent. One of these bills amends the Alaska Native Claims Settlement Act (ANCSA), to provide for a land exchange between the Secretary of Agriculture and the Huna Totem Corporation, a village corporation created under that Act. The other bill provides for a similar land exchange between the Secretary and the Kake Tribal Corporation. Both of these bills will allow the Kake Tribal and Huna Totem Corporations to convey land needed as municipal watersheds in their surrounding communities to the Secretary in exchange for Federal land of equal quality and value.

Enactment of these bills will meet two objectives. First, the two corporations will finally be able to recognize the economic benefits promised to them under ANCSA. Second, the watersheds that supply the communities of Hoohnah, Alaska and Kake, Alaska will be protected in order to provide safe water for those communities.

The legislation I offer today clarifies several issues that were raised during the Committee hearings and mark-up last year. First, the legislation directs that the subsurface estates owned by Sealaska Corporation in the Huna and Kake exchange lands are exchanged for similar subsurface estates in the conveyed Forest Service lands. Second, the substitute clarifies that these exchanges are to be done on an equal value basis. Both the Secretary of Agriculture and the corporations insisted on this provision. I believe this is critical, Mr. President, because both these bills provide that any timber derived from the newly acquired Corporation lands be processed in-state, a requirement that does not currently exist on the watershed lands the corporations are exchanging. Therefore, if this exchange simply were done on an acre-for-acre basis it is likely that the acreage resulting from the conveyancing would have a much higher value than what they would get in return. It is for this reason that these exchanges will not be done on an acre-for-acre basis. If the Kake Tribal Corporation has additional compensation, either in additional lands or in cash to equalize the value, then it is my hope this will be done in an expeditious way to allow the exchange to move forward within the times specified in the legislation.

I believe these two pieces of legislation are in the best interest of the native corporations, the Alaska communities where the watersheds are located, and the Federal government. It is my intention to try and pass these bills out of the Senate Energy and Natural Resources Committee at the earliest opportunity.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 426

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Kake Tribal Corporation Public Interest Land Exchange Act."

SEC. 2. AMENDMENT OF SETTLEMENT ACT.

The Alaska Native Claims Settlement Act (Public Law 92-203, December 18, 1971, 85 Stat. 688, 43 U.S.C. 1601 et seq.), as amended, is further amended by adding at the end thereof:

"SEC. . KAKE TRIBAL CORPORATION LAND EXCHANGE.

(a) GENERAL.--In exchange for lands and interests therein described in subsection (b), the Secretary of Agriculture shall, subject to valid existing rights convey to the Kake Tribal Corporation the surface estate and to Sealaska Corporation the subsurface estate of the Federal land identified by Kake Tribal Corporation pursuant to subsection (c):

(b) The surface estate to be conveyed by Sealaska Corporation to the Secretary in exchange for these rights shall consist of the 2,427 acres of Federal land described in subsection (b):

Approximate total ................................ 2,427

(c) Within ninety (90) days of the receipt of the conveyance mandated by subsection (a), the Secretary of Agriculture shall convey to the Kake Tribal Corporation the surface estate and to Sealaska Corporation the subsurface estate of the Federal land identified by Kake Tribal Corporation pursuant to subsection (c):

(d) TIMING OF CONVEYANCE AND VALUATION.---The conveyance mandated by subsection (a) by the Secretary of Agriculture shall occur on the date or within ninety (90) days after the list of identified lands is submitted to the Secretary of Agriculture in writing which lands Kake Tribal Corporation has identified.

(e) MANAGEMENT OF WATERSHED.---The Secretary of Agriculture shall enter into a Memorandum of Agreement with the City of...
Kake, Alaska, to provide for management of the municipal watershed.

"(f) Timber Manufacturing; Export Restriction.—Notwithstanding any other provision of law, timber harvested from land conveyed to Kake Tribal Corporation under this section shall not be exported as unprocessed logs from Alaska, nor may Kake Tribal Corporation, or its successors, change, substitute, or otherwise convey that timber to any person for the purpose of exporting that timber from the State of Alaska.

"(g) Relation to Other Requirements.—The land conveyed to Kake Tribal Corporation and Sealaska Corporation under this section shall be considered, for all purposes, land conveyed by the Alaska Native Claims Settlement Act.

"(h) Maps.—The maps referred to in this section shall be maintained on file in the Office of the Chief, United States Forest Service, and in the Office of the Secretary of the Interior, Washington, D.C. The acreage cited in this section is approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

By Mr. ABRAHAM (for himself, Mr. DOMENICI, Mr. THOMPSON, Mr. PETE L. ALLARD, Mr. HAGEL, Mr. SESSIONS, Mr. HUTCHINSON, Mr. COCHRAN, Mr. BURNS, Mr. MCCAIN, Mr. INHOFE, Mr. DREWINE, Mr. BOND, Mr. SMITH of Oregon, Mr. ENZI, Mr. CRALEY, Mr. YATES, Mr. HUTCHINSON, Mr. PHILLIPS of New Mexico, and Mr. NICKLES):

S. 427. A bill to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1997, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

THE MANDATES INFORMATION ACT OF 1999

Mr. ABRAHAM. Mr. President, I rise today to join my colleagues, including the Chairmen of the Senate Small Business, Commerce, Government Affairs and Budget Committees, as well as the Majority Leader, in introducing vital legislation in protecting our nation's businesses from ill-thought-governed mandates. The Mandates Information Act of 1999. This bill in my view furthers the cause of careful deliberation in this, the greatest deliberative body in the world. It will force Members of Congress to carefully consider all aspects of potential legislation containing mandates affecting consumers, workers, and small businesses.

We have been working towards final passage of this bill for quite some time, Mr. President, as we introduced very similar legislation in the last Congress. I wish to thank Chairman THOMPSON and DOMENICI for their tireless leadership in shepherding this through their two Committees last Congress. I am only able to bring a limited amount of time to bring it to the floor before adjournment. With their support and leadership in this Congress, I believe we can bring it to the floor for quick consideration and move to Conference with the House.

And too it is the House that I also wish to extend my thanks and respect. Under the careful leadership of Representatives PORTMAN and CONDIT, and others, the House version of the Mandates Information Act, H.R. 350, easily passed the House on Wednesday with a bipartisan majority of 274 to 194. Their conscientious sponsorship of the bill allowed it to quickly pass through Committee, and to avoid being watered down by unneeded amendments. I offer my thanks and respect for their efforts.

Mr. President, this is not a new idea, but one that builds upon the important work of the 104th Congress when we passed the Unfunded Mandates Reform Act of 1995. That legislation required the Congressional Budget Office to make two key estimates with respect to any bill reported out of committee: First, whether the bill contains intergovernmental mandates that have an annual cost of $50 million or more; and, second, whether the bill contains private sector mandates with an annual cost of $100 million or more. The 1995 act also established a point of order against bills with a total intergovernmental cost threshold for intergovernmental mandates. Although the point of order can be waived by a simple majority vote, it encourages Congress to think carefully before imposing new intergovernmental mandates.

The 1995 act did not apply its point of order to private sector mandates. This was understandable, given the bill's focus on intergovernmental mandates. But States and localities are not alone in being affected by Federal mandates. Consumers, workers, and small businesses also are affected when the Federal Government passes along the costs of its policies. This is why the Mandates Information Act of 1997 will apply a similar point of order to bills with a $100 million cost threshold for private sector mandates, while also directing the CBO to prepare a "Consumer, Worker, and Small Business Impact Statement" for any bill reported out of committee.

These reforms are necessary in my view, Mr. President, because the 1995 Act, while effective in its chosen sphere of intergovernmental mandates, does not contain the necessary mechanisms to sufficiently think seriously about the wisdom of proposed mandates on the private sector. This leaves our private sector faced with the same dilemma once faced by our States and localities: Congress does not give full consideration to the costs its mandates impose. Focusing almost exclusively on the benefits of unfunded mandates, Congress pays little heed to, and sometimes seems unaware of, the burden that unfunded mandates impose on the very groups they are supposed to help.

Unfunded mandate costs by definition do not show up on Congress' balance ledger. But, as President Clinton's Deputy Treasury Secretary Lawrence Summers has written, "[t]here is no sense in which benefits become `free' just because the government mandates them." Congress has merely passed the costs on to someone else. And sometimes, it passes them along to the American people. As economists from Princeton's Alan Krueger to John Holohan, Colin Winterbottom, and Sheila Zedlewski of the Urban Institute agree, the costs of unfunded mandates on the private sector are primarily borne by three groups: consumers, workers, and small businesses.

What forms do these costs take? For consumers, mandate costs take the form of higher prices for goods and services, as unfunded mandates drive up the cost of labor.

For workers, the costs of unfunded mandates often take the form of significantly lower wages. According to the Heritage Foundation, a range of independent studies indicates that for every 1% of growth in private sector mandates are shifted to workers in the form of lower wages.

And mandates can cause workers to lose their jobs altogether. Faced with uncontrollable increases in employee costs, small businesses oftentimes find that they can no longer afford to retain their full complement of workers. The Clinton health care mandate, for example, would have resulted in a net loss of between 200,000-500,000 jobs, according to a study conducted by Professor Krueger.

Small businesses and their potential employees also suffer. Mandates typically apply only to businesses with at least a certain number of employees. As a result, small businesses have a powerful incentive not to hire enough new workers to reach the mandate threshold. As the Wall Street Journal recently noted, "The point at which a new [mandate] kicks in * * * is the point at which the [Chief Financial Officer] asks 'Why grow?'"

That question is asked by small businesses all over the country, but let me cite one example from my State. Hasselbring/Clark is an office equipment supplier in Lansing, MI. Noelle Clark is the firm's treasurer and secretary. Mindful of the raft of mandates whose threshold is 50 employees, Ms. Clark reports that lately "we have hired a few temps to stay under 49." True, unfunded mandates not only eliminate jobs, but also prevent jobs from being created.

Much as Members of Congress may wish it were not so, mandates have a very real cost. This does not mean that all mandates are bad. But it does mean that Congress should think very carefully about the wisdom of a proposed mandate before imposing it.

Such careful thinking, Mr. President, is the goal of the Mandates Information Act of 1999. Jointly with the Unfunded Mandates Reform Act of 1995 protects State and local governments from hasty decisionmaking with respect to proposed intergovernmental mandates,
the Mandates Information Act would protect consumers, workers, and small businesses from hasty decisionmaking with respect to proposed private sector mandates. It would do so, in essence, by extending the reforms of the 1995 act to direct mandates.

The bill I introduce today would build on the 1995 act’s reforms in two ways. First, it would give Congress more complete information about the impact of proposed mandates on the private sector, by mandating CBO to prepare a “Consumer, Worker, and Small Business Impact Statement” for any bill reported out of committee. This statement would include analyses of the bill’s private sector mandates’ effects on the following: First, consumer prices and the actual supply of goods and services in consumer markets; second, worker wages, worker benefits, and employment opportunities; and third, the hiring practices, expansion, and profitability of businesses with 100 or fewer employees.

But providing Congress with more complete information about the impact of proposed private sector mandates will not guarantee that it pays any attention to the new information. As Senator Sasser himself explained in introducing a follow-up bill in 1993, “[t]he problem [with the 1981 act], it has become clear, is that this yellow caution light has no red light to back it up.”

To supply that “red light,” Senator Sasser’s Mandate Funding Act of 1993 contained a point of order. Of course, the Unfunded Mandates Reform Act of 1995 likewise contained a point of order, which is why it succeeded where Senator Sasser’s 1981 act had failed.

The Mandates Information Act of 1999 will provide this red light for proposed private sector mandates. It contains a point of order against any bill whose direct private sector mandates exceed the $100 million threshold set by the 1995 act. Like the 1995 act’s point of order against intergovernmental mandates, the 1997 bill’s point of order can be waived by a simple majority of Members. Thus it will not stop Congress from passing bills it wants to pass. It is here, Mr. President, that I wish to thank Chairman Thompson and Domenici for the excellent revisions of the mandates language offered during the Government Affairs mark-up of the Mandates Information Act of 1997. We have incorporated those changes in this bill and believe they greatly strengthen the legislation, including making it very clear that the point of order only applies to direct mandates upon the private sector that exceed $100 million.

It is that point of order which will serve the vital purpose to ensure Congress does not ignore the information contained in the Consumer, Worker, and Small Business Impact Statement. It will do so by allowing any Member to focus the attention of the entire House or Senate on the impact statement for a particular bill.

The Mandates Information Act of 1999 will provide Congress with more complete information about proposed mandates’ effects on consumers, workers, and small businesses. It will also ensure that Congress actually considers this information before reaching a judgment about whether to impose a new mandate. The result, Mr. President, will be a much more careful, high-quality deliberation on the wisdom of private sector mandates.

Because of the success of the 1995 act, Congress is now much more careful to consider the interests of States and local governments in making decisions about unfunded mandates. But Congress must be just as careful to consider the interests of consumers, workers, and small businesses in making such decisions. This bill will help ensure that Congress does this by providing better legislation; legislation that imposes a lighter burden on working Americans.

Mr. President, I will include in the record the following sample of letters from small business groups supporting the bill along with a list of groups that have expressed their support for it.

Mr. President, the support for this legislation is broad and deep. It is needed to protect our small businesses against mandates which have not been fully analyzed and which harm these businesses in ways that Congress may never have intended. But, Mr. President, I believe they can best argue for the need for this bill.

Therefore, I call on my colleagues to join us in supporting this important legislation, and to move it through Committee and to the floor as quickly as possible. It is necessary, it is wise, and it is fair. Mr. President, I ask unanimous consent that the text of the legislation as well as a section-by-section summary of the bill, a list of groups in support of the bill, letters of support from the U.S. Chamber of Commerce, the Small Business Survival Committee and the Competitive Enterprise Institute also be printed in the Record.

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

S. 427

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTIONS 1. SHORT TITLE. This Act may be cited as the “Mandates Information Act of 1999.”

SEC. 2. FINDINGS. Congress finds that—

(1) before acting on proposed private sector mandates, Congress should carefully consider their effects on consumers, workers, and small businesses;

(2) Congress has often acted without adequate information concerning the costs of proposed private sector mandates, instead focusing only on their benefits;

(3) the costs of private sector mandates are often borne in part by consumers, in the form of higher prices and reduced availability of goods and services;

(4) the costs of private sector mandates are often borne in part by workers, in the form of lower wages, reduced benefits, and fewer job opportunities;

(5) the costs of private sector mandates are often borne in part by small businesses, in the form of hiring disincentives and stunted growth.

SEC. 3. PURPOSES. The purposes of this Act are—

(1) to extend Congress’s deliberation with respect to proposed mandates on the private sector, by—

(A) providing Congress with more complete information about the effects of such mandates; and

(B) ensuring that Congress acts on such mandates only after focused deliberation on their effects; and

(2) to enhance the ability of Congress to distinguish between private sector mandates that harm consumers, workers, and small businesses, and mandates that help those groups.

SEC. 4. FEDERAL PRIVATE SECTOR MANDATES. (a) IN GENERAL.—

(1) ESTIMATE OF INDIRECT IMPACTS.—Sec. 424(b) of the Congressional Budget Act of 1974 (2 U.S.C. 685(b)) is amended by adding at the end the following:

“(b)(1)’’.

“(A) ESTIMATE OF INDIRECT IMPACTS.—

“(A) IN GENERAL.—In preparing estimates under paragraph (1), the Director shall also estimate, if feasible, the impact (including any disproportionate impact in particular regions or industries) on consumers, workers, and small businesses, of the Federal private sector mandates in the bill or joint resolution, including—

“(i) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on consumer prices and on the actual supply of goods and services in consumer markets;

“(ii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on unemployment, worker benefits, and employment opportunities; and

“(iii) an analysis of the effect of the Federal private sector mandates in the bill or joint resolution on the hiring practices, expansion, and profitability of businesses with 100 or fewer employees.

“(B) ESTIMATE NOT CONSIDERED IN DETERMINATION.—The estimate prepared under this paragraph shall not be considered in determining whether the direct costs of all Federal private sector mandates in the bill or joint resolution exceed the threshold specified in paragraph (1).’’.

(2) POINT OF ORDER.—Sec. 424(b)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 685(b)(3)) is amended by adding after the period “If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.”.

(3) THRESHOLD AMOUNTS.—Sec. 425(a)(2) of the Congressional Budget Act of 1974 (2 U.S.C. 685(a)(2)) is amended by striking “Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1)” and inserting “Federal private sector mandates by an amount that causes the thresholds specified in section 424 (a)(1) or (b)(1)”.

February 12, 1999
INCREASED REPORTING OF PRIVATE SECTOR MANDATES

February 12, 1999

CONGRESSIONAL RECORD – SENATE

S1647

(4) Application relating to Appropriations Committees—Section 425(c)(1)(B) of the Congressional Budget Act of 1974 (2 U.S.C. 658c(c)(1)(B)) is amended—
(A) in clause (i) by striking “intergovernmental”;
(B) in clause (ii) by striking “intergovernmental”;
(C) in clause (iii) by striking “intergovernmental”; and
(D) in clause (iv) by striking “intergovernmental”.

(5) Application relating to Congressional Budget Office.—Section 427 of the Congressional Budget Act of 1974 (2 U.S.C. 658f) is amended by striking “intergovernmental”.

(b) Exercise of Rulemaking Powers.—This section is enacted by Congress—
(1) to exercise its rulemaking power over the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and
(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent, as in the case of any other rule of each House.

SECTION-BY-SECTION ANALYSIS

SECTION I. SHORT TITLE

This Act may be referred to as the “Mandates Information Act of 1999.”

SEC. 2. FINDINGS

Finds that Congress should consider the effects of proposed mandates on consumers, workers, and small businesses, and that Congress has often acted on mandates while knowing their benefits but not their costs.

SEC. 3. PURPOSES

The purposes of this Act are to—
(1) To improve the quality of Congress’ deliberation on proposed private sector mandates by providing Congress with more complete information;
(2) To ensure that Congress acts on such mandates only after focused deliberation on their effects; and
(3) To enhance the ability of Congress to distinguish between helpful and harmful private sector mandates.

SEC. 4. FEDERAL PRIVATE SECTOR MANDATES

(a) In General—
(1) Estimation of Costs—Directs the Congressional Budget Office, if feasible, to estimate the impact of private sector mandates on consumers, workers, and small businesses, including the impact on—
Consumer prices and the supply of goods and services;
Worker wages, benefits, and employment opportunities; and
The hiring practices, expansion and profitability of businesses with 100 or fewer employees.

The estimate prepared under this paragraph shall not be considered in determining whether the direct costs of all Federal private sector mandates in the bill shall exceed the $100 million threshold.

(2) Point of Order—Provides that if the Congressional Budget Office is unable to estimate the impact of private sector mandates in a bill or joint resolution, a point of order will still lie against consideration of that bill or joint resolution.

(3) Additional Reports—Exempts funded private sector mandates from a point of order.

(4) Application to Appropriations—Extends the point of order only to appropriations bills only if a legislative provision that includes a Federal private sector mandate is contained in an appropriations bill or conference report; or
Continued in an amendment to an appropriations bill; or
Amendments in disagreement between the two Houses to an appropriations bill.

(5) Amendments—Requires the Congressional Budget Office, when practicable, to estimate the direct costs of a Federal private sector mandate contained in an amendment at the request of any Senator.

(b) Exercise of Rulemaking Powers—States that the Act is enacted as an exercise of the rulemaking power of the Senate and House of Representatives under their constitutional right to change such rules at any time.

ORGANIZATIONS SUPPORTING THE MANDATES INFORMATION ACT OF 1999

NATIONAL ORGANIZATIONS


MICHIGAN ORGANIZATIONS

Associated Underground Contractors, Inc.; Grand Rapids Area Chamber of Commerce, Michigan Association of Timbermen; Michigan Chamber of Commerce; Michigan Farm Bureau Family of Companies; Michigan NFIB; Michigan Retailers Association; Michigan Soft Drink Association; Small Business Association of Michigan.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Washington, D.C. February 9, 1999

Hon. Spencer Abraham, U.S. Senator, Senate Office Building, Washington, D.C.

Dear Senator Abraham: As long standing advocates of mandates relief for the private and public sectors, the Chamber of Commerce strongly supports the legislation that you will be introducing, The Mandates Information Act of 1999.

Recent studies estimate the compliance costs of federal regulations at more than $700 billion annually and project substantial future growth even without the enactment of new legislation. Congressional mandates impose significant costs on the private sector, particularly small business. These costs are passed along in the form of higher prices and taxes, reduced wages, stunted economic growth, and decreased technological innovation.

The Mandates Information Act builds upon the success of the Unfunded Mandates Reform Act by requiring the Congressional Budget Office (“CBO”) to provide Congress with information on the potential impacts associated with proposed significant mandates on the private sector. This legislation promotes better decision making and greater accountability by providing Congress with information relating to the costs and impacts of its mandates before enacting them and passing the costs on to consumers. It also promotes better decision making on behalf of higher prices and taxes, reduced wages, stunted economic growth, and decreased technological innovation.

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Sincerely,

Karen Kerrigan, President.

From the Competitive Enterprise Institute, Feb. 8, 1999

So, What Will This Unfunded Mandate Cost Me?

(By Clyde Wayne Crews Jr.)

The $1.7 trillion spending budget President Clinton sent to Congress February 2 tells just part of the story of the Federal government’s reach in the economy. Regulatory mandates placed on Americans increase the costs of government by over a third. Legislation now being debated in the House of Representatives (H.R. 350) could help better control that cost.

Some know the problems of mandates more acutely than others. Back in 1995, government regulations saddled small businesses with fees—fed up with the federal government’s imposing excessively costly environmental and economic regulation burdens.

The U.S. Chamber of Commerce, the world’s largest business federation representing more than three million businesses of every size, sector, and region, appreciates your effort to make Congress more accountable to small businesses, workers, and consumers through the Mandates Information Act.

Sincerely,

Lonnie P. Taylor, Senior Vice President.


Hon. Spencer Abraham
U.S. Senator, Washington, D.C.

Dear Senator Abraham: Any effort to highlight the burden of private-sector mandates on small business and consumers earns the support of the Small Business Survival Committee’s (SBSC’s) 50,000 members.

The Mandates Information Act of 1999 is an important piece of legislation that would provide Congress with the ability to determine the economic impact of mandates by directing the Congressional Budget Office to supply Congress with an analysis of new mandates’ impact on small businesses, workers, and consumers.

Small businesses bear a disproportionate burden of the costs of federal regulations. The per employee costs of these regulations are usually 80% higher for small businesses when compared to that of large corporations. Ultimately, the costs his employees hard, through lower wages, reduced benefits, and fewer job opportunities and consumers are hurt by high prices and reduced availability of goods and services.

To draw attention to private-sector mandates with annual costs of $100 million, the Mandates Information Act of 1999 allows any member to raise a “point of order” to ensure the Members of Congress do not ignore the economic impact imposed by their mandates on taxpayers. This provision is an important step in favor of true congressional accountability.

The Small Business Survival Committee strongly support this important piece of legislation and looks forward to working with you to ensure its passage.

Sincerely,

Karen Kerrigan, President.

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So, What Will This Unfunded Mandate Cost Me?

(By Clyde Wayne Crews Jr.)
other mandates on them—revolted. To many state and local officials, every dollar spent on federal priorities, however beneficial and popular, compromised their ability to achieve their state or local budget priorities. Some even felt they could protect their own local environments without Washington’s intervention, thank you very much. Major complaints that were too often ignored were the costs of mandates. Washington, too often, ignored the fact that it was passing the burden of the mandates to the states.

Happily, the mandates have passed the Senate, albeit with a number of important provisions. By the end of the session, the Senate passed the Unfunded Mandates Act, which was initially a 95-0 vote—without a single dissenting vote. The Senate passed the act by 95-0, and the House will soon follow. The act is a unique step toward full disclosure, its potential to make Congress more answerable for the impacts of mandates.

But full congressional accountability and disclosure remain to be achieved for rules implemented by the private sector. For example, agency rules significantly impacting small businesses increased 33% over the past five years, from 868 to 937. Yet Congress remains largely in the dark about the accumulated costs when enacting legislation that will impose many private sector mandates. And if costs become an issue down the line with constituents, it is easy to blame the regulatory agencies that write the rules to implement the legislation.

The Mandates Information Act (H.R. 350) vs. Those Other Unfunded Mandates.—One remedy, on which House floor debate will resume February 10, is the bipartisan Mandates Information Act of 1999 (H.R. 350), sponsored by Reps. Gary Condit (D-CA), Rob Portman (R-OH), Jim Moran (D-VA) and Tom Davis (R-VA). Virtually identical to a version that passed the 105th Congress on a 279-132 vote, the bill would extend certain provisions of the Unfunded Mandates Act to mandates on the private sector. H.R. 350 would establish a point of order against any legislation that would impose costs over $100 million annually, such as mandates implementing new taxes, prices or standards. If raised, the point of order would halt further floor action unless members have the opportunity to vote explicitly on the intent to impose those costs.

Unfunded public-sector mandates weren’t halted by the Unfunded Mandates Act, of course. But total rules in the federal pipeline impacting state and local governments has dipped 12 percent over the past five years, from 1,317 to 1,161. The real innovation wasn’t rule blockage at all, but rather increased congressional, rather than agency, accountability to the public for the impacts of rules.

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By Mr. GORTON.

S. 428. A bill to amend the Agricultural Market Transition Act to ensure that producers of all classes of soft white wheat (including club wheat) are permitted to repay marketing assistance loans, or receive loan deficiency payments, for the wheat at the same rate; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GORTON. Mr. President, I rise today to introduce legislation that will restore payment equity to Pacific Northwest soft white wheat producers. Last year, during the middle of the 1998 harvest season, the U.S. Department of Agriculture made a rule change regarding the Loan Deficiency Payment (LDP) club wheat, a member of the wheat subclass. While I applaud USDA for its efforts in providing equal payments for club wheat and soft white wheat, by making the policy change in the middle of the production year, many club wheat producers had already contracted with the lower payment.

In order to address the inequity between the 1998 club wheat LDP contracts, my colleagues and I requested that USDA make the policy retroactive. USDA claimed it does not have the authority to grant retroactivity, and as a result, I have introduced this legislation to provide the agency retroactive authority.

At a time when commodity prices are at all-time low, it is my hope that the LDP inequity for club wheat will be resolved by passage of this legislation. I ask unanimous consent that the legislation be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 428

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPAYMENT RATE FOR MARKETING ASSISTANCE LOANS FOR WHEAT; LOAN DEFICIENCY RATE FOR LOAN DEFICIENCY PAYMENTS FOR WHEAT.

(a) In general.—Section 134(a)(2) of the Agricultural Market Transition Act (7 U.S.C. 7234(a)(2)) is amended—

(1) in subparagraph (C), by striking “and” at the end;

(2) in subparagraph (D), by striking the period at the end and inserting “; and”;

(3) by adding at the end the following:—

“(E) in the case of soft white wheat, be uniform for all classes of the wheat, including club wheat.’’;

(b) Application.—The amendments made by subsection (a) shall apply beginning with the 1997 crop of wheat.

By Mr. DURBIN (for himself, Mr. KENNEDY, Mr. CLELAND, Mr. GRAMS, Mr. DASHCLE, Mr. DEWINE, Mr. LAUTENBERG, and Mr. LEVIN):

S. 429. A bill to designate the legal public holiday of “Washington’s Birthday” as “Presidents’ Day” in honor of George Washington, Abraham Lincoln, and Franklin Roosevelt and in recognition of the role of the institution of the Presidency and the contributions that Presidents have made to the development of our nation and the principles of freedom and democracy; to the Committee on the Judiciary.

THE REDESIGNATION OF WASHINGTON’S BIRTHDAY

Mr. DURBIN. Mr. President, I want to take this opportunity, along with my distinguished colleagues, Senators KENNEDY, CLELAND, GRAMS, DASHCLE, DEWINE, LAUTENBERG, and LEVIN, to reintroduce legislation recognizing the importance of the institution of the Presidency. My legislation would redesignate “Washington’s Birthday” as “Presidents’ Day,” honoring George Washington, Abraham Lincoln, and Franklin Roosevelt. In taking this step, we would honor three of our nation’s most important leaders, Presidents who led our nation through our greatest challenges and crises. In so doing, we would be celebrating the contributions that these and other great Presidents have made to the development of freedom and democracy in our great nation.

Our democracy depends upon the participation of a well-informed electorate—citizens who take their civic responsibilities seriously. However, many Americans appear to have lost confidence in our political system. In the last presidential election, less than half of eligible voters—49 percent—voted. In the 1998 midterms, only 36 percent of the voting populace cast their vote to determine the future of our nation. This was the lowest voter turnout since before World War II, over 50 years ago. The turnout rate among younger voters is even lower.

Tests administered by the National Assessment of Educational Progress found that almost 60 percent of high school seniors lacked even a basic understanding of American history. These findings indicate that too many Americans feel a sense of alienation from the political process and do not believe that government and political involvement are relevant to their lives.

In this time of cynicism about American politics, we must restore the faith and pride of our nation’s future leaders. Passage of this legislation will recognize three of our nation’s greatest leaders and the enduring strength of the Office of the Presidency. It will remind all of us—but particularly young people who are our nation’s future leaders—of the important contributions made by Presidents of the United States and the principles on which our nation was founded.

ADDITIONAL COSPONSORS

S. 5

At the request of Mr. GRASSLEY, the name of the Senator from Iowa (Mr. BROWNBACK) was added as a cosponsor of S. 5, a bill to reduce the transportation and distribution of illegal drugs and to strengthen domestic demand reduction, and for other purposes.

At the request of Mr. ASHCROFT, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 185, a bill to establish a Chief Agricultural Negotiator in the Office of the United States Trade Representative.

S. 249

At the request of Mr. HATCH, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 249, a bill to provide funding for the National Center for Missing and Exploited Children, to reauthorize the Runaway and Homeless Youth Act, and for other purposes.

S. 279

At the request of Mr. MCCAIN, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 279, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 285

At the request of Mr. MCCAIN, the name of the Senator from Maryland (Mr. MIKULSKI) was added as a cosponsor of S. 285, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

S. 314

At the request of Mr. BOND, the names of the Senator from South Dakota (Mr. GRAMS) and the Senator from Vermont (Mr. EFFORDS) were added as cosponsors of S. 314, a bill to provide for a loan guarantee program to address the Year 2000 computer problems of small business concerns, and for other purposes.

S. 315

At the request of Mr. ASHCROFT, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of S. 315, a bill to amend the Agricultural Trade Act of 1978 to require the President to report to Congress on any selective embargo on agricultural commodities, to provide a termination date for the embargo, to provide greater assurances for contract sanctity, and for other purposes.

S. 327

At the request of Mr. HAGEL, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 327, a bill to exempt agricultural products, medicines, and medical products from U.S. economic sanctions.
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S. 333

At the request of Mr. LEAHY, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 333, a bill to amend the Federal Agriculture Improvement and Reform Act of 1996 to improve the farmland protection program.

S. 335

At the request of Ms. COLLINS, the names of the Senator from Hawaii (Mrs. AKA) and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of S. 335, a bill to amend title 30 of the United States Code to provide for the nonavailability of certain deceptive matter relating to games of chance, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.

S. 346

At the request of Mrs. HUTCHISON, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 346, a bill to amend title XIX of the Social Security Act to prohibit the recoupment of funds recovered by States from one or more tobacco manufacturers.

SENATE CONCURRENT RESOLUTION 5

At the request of Mr. BROWNBACK, the names of the Senator from Ohio (Mr. DEWINE), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Virginia (Mr. WARNER), and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of Senate Concurrent Resolution 5, a concurrent resolution expressing congressional opposition to the unilateral declaration of a Palestinian state and urging the President to assert clearly United States opposition to such a unilateral declaration of statehood.

SENATE CONCURRENT RESOLUTION 10—EXPRESSING THE SENSE OF CONGRESS THAT THERE SHOULD CONTINUE TO BE PARITY BETWEEN THE ADJUSTMENTS IN THE COMPENSATION OF MEMBERS OF THE UNIFORMED SERVICES AND ADJUSTMENTS IN THE COMPENSATION OF CIVILIAN EMPLOYEES OF THE UNITED STATES

Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. WARNER, and Mr. CLELAND) submitted the following concurrent resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 10

Whereas members of the uniformed services of the United States and civilian employees of the United States make significant contributions to the general welfare of the United States; and

Whereas, increases in the levels of pay of members of the uniformed services and of civilian employees of the United States have not kept pace with increases in the overall levels of pay of workers in the private sector so that there is now up to a 30 percent gap between compensation levels of Federal civilian employees and the compensation levels of private sector workers and a 9 to 14 percent gap between the compensation levels of members of the uniformed services and the compensation levels of private sector workers; and

Whereas, in almost every year of the past two decades, there have been equal adjustments in the compensation of members of the uniformed services and the compensation of civilian employees of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that there should continue to be parity between the adjustments in the compensation of members of the uniformed services and the adjustments in the compensation of civilian employees of the United States.

Mr. SARBANES. Mr. President, I am pleased to join with Senators MIKULSKI and WARNER in submitting a resolution which would express the sense of the Congress that parity between Federal civilian pay and military pay should be maintained. Disparate treatment of civilian and military pay goes against longstanding Congressional policy that for more than a decade has ensured parity for all those who have chosen to serve our Nation, whether that service be in the civilian workforce or in the armed services. I urge my colleagues to join me in support of this important resolution.

SENATE CONCURRENT RESOLUTION 11—EXPRESSING THE SENSE OF CONGRESS WITH RESPECT TO THE FAIR AND EQUITABLE IMPLEMENTATION OF THE AMENDMENTS MADE BY FOOD QUALITY PROTECTION ACT OF 1996

Mr. CAMPBELL (for himself, Mr. CONRAD, Mr. BROWNBACK, Mr. FRIST, Mr. GRAMM, Mr. HUTCHINSON, Mrs. HUTCHINSON, and Ms. LANDRIEU) submitted the following concurrent resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. CON. RES. 11

Whereas the Food Quality Protection Act of 1996 (Public Law 104-170; 110 Stat. 1489) was enacted with unanimous congressional approval and with the assistance and leadership of a broad coalition of agricultural, industry, and public interest groups; and

Whereas the amendments made by that Act are intended to be an important tool in protecting public health, particularly the health and well-being of the most valuable resource of the United States, the children of the United States; and

Whereas it is critical that the amendments made by that Act be implemented in a way that accomplishes the intent of Congress while maintaining an abundant, affordable, and safe food supply for the United States, ensuring urban pest control, and not unfairly providing competitive advantages to foreign food suppliers over domestic producers; and

Whereas the amendments made by that Act require the Administrator of the Environmental Protection Agency to develop risk assessment methodologies that are based on reliable data, and to undertake a massive review of all approved pesticide tolerances; and

Whereas on August 4, 1997, the Administrator published a schedule for reassessment of more than 3,000 tolerances by August 3, 1999, that could include certain classes of products that are extensively used; and

Whereas the sudden loss of uses and products could both cripple a host of agricultural commodities, including corn, soybeans, wheat, rice, cotton, and dozens of fruit and vegetable crops and create a public health threat to the United States from the unchecked infestation of insects; and

Whereas it is critical that the amendments be implemented in a fair and orderly manner and that the protections be implemented while maintaining an abundant, affordable, and safe food supply for the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that

(1) the Administrator of the Environmental Protection Agency and the Secretary of Agriculture should ensure that the implementation of the amendments made by the Food Quality Protection Act of 1996 (Public Law 104-170; 110 Stat. 1489)—

(A) be based on sound science that protects public health;

(B) include transparent processes with full disclosure of decisions and be subject to peer and public review;

(C) provide for a reasonable transition for agriculture and food suppliers over domestic producers; and

(D) require consultation with the public and other agencies;

(2) the development of risk assessment methodologies, guidelines, and protocols for collection of data under the amendments made by that Act be based on sound science and not default assumptions in the absence of reliable data;

(3) the Administrator of the Environmental Protection Agency should devote sufficient resources to register new pesticide products and uses to provide substitutes for pesticides that may be considered high risk under the amendments made by that Act; and

(4) the Administrator should establish ongoing means for input regarding the implementation decisions of the Administrator with respect to that Act from producers, pesticide users, registrants, environmental and public health groups, consumers, State and local agencies, tribal governments, Members of Congress, and appropriate Federal agencies.

Mr. CAMPBELL. Mr. President, today I submit a Senate Concurrent Resolution which addresses the controversy surrounding the Food Quality Protection Act. I am pleased to be joined today by my colleagues, Senators CONRAD, BROWNBACK, HUTCHINSON, FRIST, GRAMM of Texas, LANDRIEU, and HUTCHINSON who are original cosponsors of the resolution.

The Food Quality Protection Act directs the EPA to base its implementation review decisions pertaining to pesticides on reliable data that is currently available. Or, the EPA can require the development of new data through the data call-in provisions of the Food Quality Protection Act. In order to meet the review deadlines, the EPA is basing some critical decisions on assumptions, which are primarily EPA’s preliminary findings. This could lead to needless and questionable product cancellations, and have a significant impact on the agricultural industry.

It is essential that the EPA’s insect tolerance assessment process be based
on sound scientific data. If the EPA’s current approach to pesticide risk assessments is not modified, it is likely that many uses of crop protection products will be unjustifiably terminated. The sudden adoption of new restrictions of certain pesticide applications and products could needlessly cripple a host of agricultural commodities, including corn; soybeans; wheat; rice; cotton; and dozens of fruit and vegetable crops. It could also add a public health threat to the urban environment from mosquitoes, cockroaches, and termites that might go unchecked. American farmers, ranchers, and consumers will feel the unnecessary and avoidable repercussions of the EPA’s actions.

We all know pesticide use must be closely monitored and some pesticides need to be replaced. The protection of the environment must always be foremost in our minds. But, common sense and real science must be involved in this matter so that all parties will benefit. Certain pesticides that warrant replacement or removal must have available, affordable, and effective replacements. And, any changes must be made in a sufficient time frame to allow producers to learn the safe use of the new products as they transition away from old dated products.

Also, the current Food Quality Protection Act puts the United States at a distinct disadvantage in the global marketplace. Other countries do not have the same requirements that our producers have, but we still import and consume their products. We need to offer every advantage to our producers and safeguard consumers instead of providing other countries an upper hand in the world’s agricultural market.

To address this issue, the resolution I introduce today expresses the sense and intent of Congress for the fair and equitable implementation of the Food Quality Protection Act of 1996. The resolution calls on the EPA Administrator and the Secretary of Agriculture to use sound science to protect the public health while effectively administering the Food Quality Protection Act.

Some important organizations have endorsed my resolution, including the Colorado Farm Bureau and the Rocky Mountain Farmers Union.

We must modify the enforcement mechanisms in the Food Quality Protection Act to ensure the act is properly implemented, so that it can help, not hurt the people and our environment it was intended to protect. The resolution I submit today will help accomplish this goal, and I urge my colleagues to support its passage.

SENATE RESOLUTION 37—TO EXPRESS GRATITUDE FOR THE SERVICE OF THE CHIEF JUSTICE OF THE UNITED STATES AS PRESIDING OFFICER DURING THE IMPEACHMENT TRIAL

Mr. LOT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

Whereas Article I, section 3, clause 6 of the Constitution of the United States provides that, when the President of the United States is tried on articles of impeachment, the Chief Justice of the United States shall preside over the Senate;

Whereas, pursuant to Rule IV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, on January 6, 1999, the Senate notified William H. Rehnquist, Chief Justice of the United States, of the time and place fixed for consideration of the articles of impeachment against William J. Jefferson Clinton, then President of the United States, and requested him to attend;

Whereas, in the intervening days since January 6, 1999, Chief Justice Rehnquist has presided over the Senate, when sitting on the trial of the articles of impeachment, for long hours over many days;

Whereas Chief Justice Rehnquist, in presiding over the Senate, has exhibited extraordinary qualities of fairness, patience, equanimity, and wisdom;

Whereas, by his manner of presiding over the Senate, Chief Justice Rehnquist has contributed greatly to the Senate's conduct of fair, impartial, and dignified proceedings in the trial of the articles of impeachment;

Whereas the Senate and the Nation are indebted to Chief Justice Rehnquist for his distinguished and valued service in fulfilling his constitutional duty to preside over the Senate in the trial of the articles of impeachment; Now, therefore, be it Resolved, That the Senate expresses its profound gratitude to William H. Rehnquist, Chief Justice of the United States, for his distinguished service in presiding over the Senate, while sitting on the trial of the articles of impeachment against William J. Jefferson Clinton, President of the United States.

SEC. 2. The Secretary shall notify the Chief Justice of the United States of the passage of this resolution.

SENATE RESOLUTION 38—TO WAIVE THE STANDING RULE OF THE SENATE IN ORDER TO PERMIT A RESOLUTION AUTHORIZING SENATE COMMITTEE EXPENDITURES FOR THE PERIOD OF MARCH 1, 1999 THROUGH SEPTEMBER 30, 1999

Mr. McCONNELL (for himself and Mr. DODD) submitted the following resolution; which was considered and agreed to:

Resolved, That, notwithstanding paragraph 9 of rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration is authorized to report a continuing resolution to the Senate committee expenditures for the period March 1, 1999 through September 30, 1999.
cope and leadership and has encouraged high standards of scholarship and clarity of presentation from them;
Whereas he was the 1990 recipient of the Roger W. Jones Award for Executive Leadership;
Whereas he has performed various duties within the Congressional Budget Office with intelligence while displaying calm leadership;
Whereas he possesses irreplaceable institutional knowledge which has been indispensable to the effective functioning of the Congressional Budget Office extending over a period of almost 25 years; and
Whereas he has earned the respect and esteem of the United States Senate: Now, therefore, be it
Resolved, That the Senate of the United States commends James L. Blum for his many years of dedicated, faithful, and outstanding service to his country and to the Senate.

SENATE RESOLUTION 42—RELATING TO THE RETIREMENT OF DAVID G. MARCOS
Mr. LOTT (for himself and for Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

Whereas, David G. Marcos became an employee of the United States Senate on August 16, 1960, and since that date has ably and faithfully upheld the highest standards and traditions of the staff of the United States Senate;
Whereas, David G. Marcos has faithfully served the United States Senate as Executive Clerk during the past 4 years;
Whereas, prior to that, David G. Marcos rendered exemplary service as the Assistant Executive Clerk, Keeper of the Stationery, Assistant Keeper of the Stationery and other positions of responsibility in offices of the United States Senate for 35 years;
Whereas, during this 39-year period, David G. Marcos has at all times discharged the duties and responsibilities of his office with extraordinary efficiency, aplomb, and devotion; and
Whereas, David G. Marcos’ service to the United States Senate has been marked by his personal commitment to the highest standards of excellence and highest regard for the institution of the Senate: Now, therefore, be it
Resolved, That the United States Senate commends David G. Marcos for his honorable service to his country and to the United States Senate, and wishes to express its deep appreciation and gratitude for his long, faithful, and outstanding service.

SENATE RESOLUTION 43—RELATING TO THE RETIREMENT OF THOMAS G. PELLIKAAN
Mr. LOTT (for himself and for Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

Whereas, Thomas G. Pellikaan has faithfully served the United States Senate as Editor of the Daily Digest of the Congressional Record during the past 10 years, and has served in that office since 1977;
Whereas, prior to that, Thom rendered exemplary service in the Office of the Sergeant at Arms for 14 years as Senate Press Liaison;
Whereas, during this 35½-year period, he has at all times discharged the difficult duties and responsibilities of his office with extraordinary efficiency, aplomb, and devotion; and
Whereas, Thomas Pellikaan’s service to the Senate has been marked by his personal commitment to the highest standards of excellence: Now, therefore, be it
Resolved, That Thomas G. Pellikaan be and hereby is commended for his outstanding service to his country and to the United States Senate.

SEC. 2. That the Secretary of the Senate shall transmit a copy of this resolution to Thomas G. Pellikaan.

SENATE RESOLUTION 44—RELATING TO THE CENSURE OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES
Whereas, William J. efferson Clinton, President of the United States, engaged in an inappropriate relationship with a subordinate employee in the White House, which was shameful, reckless and indefensible;
Whereas, William J. efferson Clinton, President of the United States, deliberately misled and deceived the American people, and people in all branches of the United States government;
Whereas, William J. efferson Clinton, President of the United States, gave false or misleading testimony and his actions have had the effect of impeding discovery of evidence in judicial proceedings;
Whereas, William J. efferson Clinton’s conduct in this matter is unacceptable for a President of the United States, does demean the Office of the President as well as the President himself, and creates disrespect for the laws of the land;
Whereas President Clinton fully deserves censure for engaging in such behavior;
Whereas future generations of Americans must know that such behavior is not only unacceptable but also bears grave consequences, including loss of integrity, trust and respect;
Whereas William J. efferson Clinton remains subject to criminal actions in a court of law like any other citizen;
Whereas William J. efferson Clinton’s conduct in this matter has brought shame and dishonor to himself and to the Office of the President; and
Whereas William J. efferson Clinton through his conduct in this matter has violated the trust of the American people;
Resolved, The United States Senate does hereby censure William J. efferson Clinton, President of the United States, and does condemn his wrongful conduct in the strongest terms; and
The United States Senate recognizes the historic gravity of this bipartisan resolution, and trusts and urges that future congresses will recognize the importance of allowing this bipartisan statement of censure and condemnation to remain intact for all time; and
The Senate now move on to other matters of significance to our people, to reconcile differences between and within the branches of government, and to work together—across party lines—for the benefit of the American people.
SENATE RESOLUTION 45—EXPRESSING THE SENSE OF THE SENATE REGARDING THE HUMAN RIGHTS SITUATION IN THE PEOPLE'S REPUBLIC OF CHINA

Mr. HUTCHINSON (for himself, Mr. WELLSTONE, Mr. MCCAIN, Mr. FINKEL, Mr. LEAHY, Mr. HELMS, Mr. TORRICELLI, Mr. LOTT, Mr. INHOFE, Mr. SESSIONS, Mr. ASHCROFT, Mr. DEWINE, Mr. Kyl, Mr. BROWNBACK, and Mr. LUGAR) submitted the following resolution, which was referred to the Committee on Foreign Relations.

S. RES. 45

Whereas the annual meeting of the United Nations Commission on Human Rights in Geneva, Switzerland, provides a forum for discussing human rights and expressing international support for improved human rights performance; Whereas, according to the United States Department of State and international human rights organizations, the Government of the People's Republic of China continues to commit well-documented human rights abuses in China and Tibet and continues the coercive implementation of family planning policies and the sale of human organs taken from executed prisoners; Whereas such abuses stem from an intolerance for dissent and oriented toward authorities in the People's Republic of China and from the absence or inadequacy of laws in the People's Republic of China that protect basic freedoms; Whereas such abuses violate internationally accepted norms of conduct; Whereas the People's Republic of China is bound by the Universal Declaration of Human Rights and recently signed the International Covenant on Civil and Political Rights, but has yet to take the steps necessary to make the covenant legally binding; Whereas the President decided not to sponsor a resolution criticizing the People's Republic of China at the United Nations Human Rights Commission in 1998 in consideration of commitments by the Government of the People's Republic of China to sign the International Covenant on Civil and Political Rights and based on a belief that progress on human rights in the People's Republic of China could be achieved through other means; Whereas authorities in the People's Republic of China have recently escalated efforts to extirpate expressions of protest or criticism and have detained scores of citizens associated with attempts to organize a legal democratic opposition, as well as religious leaders, writers, and others who petitioned the authorities to release those arbitrarily arrested; and Whereas these efforts underscore that the Government of the People's Republic of China has not retreated from its longstanding pattern of human rights abuses, despite expectations to the contrary following two summit meetings between President Clinton and President Jiang in which assurances were made regarding improvements in the human rights record of the People's Republic of China; Now, therefore, be it

Resolved, That it is the sense of the Senate that at the 58th Session of the United Nations Commission on Human Rights in Geneva, Switzerland, the United States should introduce and make all efforts necessary to pass a resolution criticizing the People's Republic of China for its human rights abuses in China and Tibet.

Mr. HUTCHINSON. Mr. President, today I, along with Senators WELLSTONE, MACK, and FEINKELD, submit a simple sense of the Senate resolution. This resolution urges the Administration to take the necessary steps to introduce and pass a resolution criticizing the People's Republic of China and its abuses in China and Tibet at this year's meeting of the United Nations Human Rights Commission. With this resolution, we send a clear signal to the Administration that the U.S. must not be silent on the human rights abuses perpetrated by the government of the People's Republic of China.

The U.N. Human Rights Commission meeting in Geneva, Switzerland, will take place in March and April this year. The Commission is the most valuable multilateral forum for monitoring and investigating human rights abuses around the world. Resolutions offered at the Commission both highlight human rights abuses and pressure governments to correct them. The U.S. has appropriately supported resolutions critical of China eight times in recent years.

The Communist government of China has long committed a litany of human rights abuses. Of political prisoners remain in prison, many sentenced after unfair trials, others without any trial. At least two hundred of these prisoners are still suffering because of their participation in or support of non-violent demonstrations. Religious persecution runs rampant in China. People who dare to worship outside the aegis of officially sponsored religious organizations face fines, detention, arrest, imprisonment, and torture. Thousands of peaceful monks and nuns have been detained and tortured in Tibet, where the Chinese government is imposing a harsh patriotic education campaign. Under China's one family, one child policy, couples face punitive fines and loss of government for having unapproved children. But it doesn't stop with monetary penalties. Local authorities, with or without the approval of the Communist Party cadre, forcibly perform abortions or sterilizations on women who are pregnant with their second child. Relatives are held hostage until couples submit to this coercion. Furthermore, prisoners are executed after grossly unfair trials, their organs sold on the black market. What constitutes a common end to all of this? They oppose the Chinese Communist government or its policies. Opposition bears a high price.

What has been the Administration's response? Last year, President Clinton decided not to pursue a resolution critical of China at the U.N. Human Rights Commission in Geneva, Switzerland, citing China's commitment to sign the International Covenant on Civil and Political Rights (ICCPR), as well as other developments. And so, in July, President Clinton told the Communist government undeserved legitimacy by making a state visit to China. China did sign the ICCPR, a covenant which affirms free speech and free assembly. In October, only to turn around and violate its every principle. Since July 1998, the Communist government of China has renewed its crackdown on all who would dare to oppose it. Over the last 100 days, members of the fledgling Chinese Democratic Party (CDP) have been detained. Some have been released, others awaited trial, and the most unfortunate have been sentenced to long prison sentences. Three visible leaders of the CDP, Xu Wenu, Qin Yongmin, and Wang Youcai were sentenced to 13, 12 and 11 years in prison, respectively, on charges of subversion and endangering state security, after dubious trials. In reality, these democracy activists exercised their legal rights under Chinese law to form a political party. There true crime, in the eyes of the Communist Party, was their love of democracy.

But the crackdown does not end there. In fact, incidents of harassment and imprisonment are almost too numerous to list here. I will highlight a few examples. The Communist government sentenced businessman Lin Hai for sending email addresses to a pro-democracy internet magazine based in the U.S. Zhang Shanguang is in prison for ten years for providing Radio Free Asia with information about farmer protests in Jiangsu. Mr. Lin, the government sentenced poet and writer, Ma Zhe, to seven years in prison on charges of subversion for publishing an independent literary journal. In addition, the Communist government has cracked down on film directors, artists, computer software developers, and the press, and continues to harass and detain religious activists. In November 1998, police imprisoned 70 worshipers from house churches in Henan province. The pattern of human rights violations is unmistakable. It must be confronted.

In light of these abuses, it is critical that the U.S. push for a resolution at the U.N. Human Rights Commission criticizing these abuses. Last year, the Administration chose not to pursue a resolution, despite clear signals from Congress. In this body, we passed a resolution similar to the one before us today by a 95 to 5 vote. We cannot afford to stand by idly as the Chinese Communist government thumbs its nose at internationally-accepted norms—norms to which it claims to subscribe.

There are some in the Administration who argue that a resolution critical of China at the Human Rights Commission is pointless because it is certain to fail. This very sentiment is self-fuelling. The more half-hearted the Administration is in its attempts to advance such a resolution, the less chance it has to pass. The longer the Administration refrains from exercising leadership on the international community on this matter, the less likely it is that the resolution will be successful.

February 12, 1999

CONGRESSIONAL RECORD — SENATE

S1653
Bringing forth a resolution at the Commission is a matter of principle. Success will be measured by the statements of truth that flow from debate at the Commission. A resolution at the Commission will proclaim boldly that the human rights abuses in China are an affront to the international community.

I urge all of my colleagues to support this bipartisan sense of the Senate resolution.

I further ask unanimous consent that any statements by Senators WELSTONE, MACK, or FEINGOLD regarding this resolution be inserted at the conclusion of my remarks.

Mr. FEINGOLD. Mr. President, I rise today as an original co-sponsor of S. Res. 45 with regard to human rights in China.

The resolution expresses the sense of the Senate that the United States should initiate active lobbying at the United Nations Commission on Human Rights for a resolution condemning human rights abuses in China. It calls specifically for the United States to introduce and make all efforts necessary to pass a resolution on China and Tibet at the upcoming session of the Commission which is due to begin in March in Geneva.

This resolution makes a simple, clear statement of principle: The Senate believes that there should be a China resolution period.

Mr. President, the Commission on Human Rights first met in 1947, spending its first year drafting the Universal Declaration of Human Rights. Over the next two decades, the Commission was responsible for drafting an impressive body of international human rights law and set the global standards for human rights. In the 1990s, the Commission has increasingly turned its attention to assisting states in overcoming obstacles to securing human rights for their citizens. It has been a focal point for protection of human rights for vulnerable groups in society, and as such, the Commission serves as an ideal multilateral forum for a resolution and debate on China’s human rights practices.

The effort to move a resolution is particularly important this year, in light of the Administration’s decision, contrary to the nearly unanimous sentiment of the Senate, not to sponsor such a resolution. Their misguided belief that progress could be achieved by other means was clearly not borne out by events in 1998, when, particularly in the last quarter, China stepped up its repression.

As we all know, for the past few years, China’s leaders have aggressively lobbed against efforts at the Commission earlier and more actively than the countries that support a resolution. Last year, Chinese officials belligerently refused to get the European Union’s Foreign Ministers to drop any European cosponsorship of a resolution. In the past, China’s vigorous efforts have resulted in a “no action” motion at the Commission, however, in 1995 a “no action” motion was defeated and a resolution almost adopted, losing by only one vote. I sincerely hope we will not have the same results again at this year’s meeting.

It is essential that we have a resolution on China under the auspices of the Commission on Human Rights. The multilateral nature of the Commission makes it a very appropriate forum to debate and discuss the human rights situation in China. The Commission’s review has led to proven and concrete progress on human rights in other countries, and the expectation is that such scrutiny could also lead to progress on human rights in China. Under the pressure of previous Geneva resolutions, China signed in 1997 the UN Covenant of Social, Economic and Cultural Rights and in October 1998 the International Covenant on Civil and Political Rights. Neither has yet been ratified or implemented.

Nearly five years after the President’s decision, which I deeply regret, to delink most-favored-nation status from human rights, we cannot forget that the human rights situation in China has not improved. While the State Department has not yet provided its most recent human rights report, I have no doubt it will be as critical of China as the 1997 report was when it noted that “the Government of the People’s Republic of China continues to commit widespread and well-documented human rights abuses in violation of internationally accepted norms, including extrajudicial killings, the use of torture, arbitrary arrest and detention, forced abortion and sterilization, the sale of organs from executed prisoners, and tight control over the exercise of the rights of freedom of speech, press, and religion.”

According to testimony to Congress by Amnesty International, the human rights situation in China has not fundamentally changed, despite the recent promises from the government of China. At least 2,000 people remain in prison for counter-revolutionary crimes that are no longer even on the books in China. At least 200 individuals detained or arrested for Tiananmen Square activities nearly a decade ago are also still in prison. By China’s own statistics, there are nearly a quarter of a million people imprisoned under the “re-education through labor” system. Of these, Yang Qinsheng, received a three year term in March after he was arrested for reading an open letter on Radio Free Asia calling workers’ rights to unionize.

The litany of specific violations of human rights also has continued unabated in the last several months. Attempts to register the fledgling opposition China Democratic Party resulted in at least six arrests of opposition members. On December 9, Wang Youcai, a student leader during Tiananmen Square protests, Xu Wenli, and Qin Yongmin were each sentenced to over 10 years in prison allegedly for “attempting to overthrow state power” because of their roles in the Democratic Party.

China took great strides to keep overseas dissidents out of China. In April, less than an hour after her arrival in Paris, 10 dissenting students were arrested by the Chinese authorities claiming that many were suicides. Further, during the 1998, Chinese officials continued the “patriotic education campaign” designed to force Tibetans, especially Buddhist monks and nuns, to denounce their faith and to attest that Tibet has always been a part of China. As a result of the campaign, authorities reported that 76 percent of Tibetan monasteries and nunneries had been “rectified”.

In a December speech, Secretary Albright said, “As we look ahead to the new century, we can expect that, perhaps, the greatest test of democracy, human rights and the rule of law will be China.” If the Administration believes this, perhaps it should use the time left in this century to take positive steps to encourage international condemnation of China’s human rights practices.

In January, Assistant Secretary of State for Democracy, Human Rights and Labor, Harold Koh held a bilateral human rights dialogue with the Chinese, the first such discussions in four years at her parents’ home, Li Xiaorong, a research scholar at University of Maryland, who was traveling on a US passport with a valid visa, was taken into custody. Her crime, according to police, was that her US on behalf of human rights in China was unacceptable. Similarly, in October, Shi Binhai, a journalist at the state-run China Economic Times and co-editor of a book on political reform was indicted for collusion with overseas dissident organizations. As recently as February 4, Wang Ce was sentenced to four years in prison for illegally reentering China and providing financial support to the banned Democratic Party.

Demonstrating that the range of potential crimes has moved into the computer era, this year in late January, Lin Hai received the distinction of being sentenced to two years in prison for providing e-mail addresses to an Internet pro-democracy magazine. These are but a few of the many detentions, arrests, and assignments to forced labor that befall individuals for expressing their views. Since the President’s human rights dialogue at the June 1998 summit in Beijing.

Mr. President, the situation is just as bad in Tibet, where, according to Human Rights Watch, at least ten prison terms were reportedly assigned to a student for protesting two protests in a prison in the Tibetan capital in May. In the weeks following, scores of prisoners were interrogated, beaten and placed in solitary confinement. Other deaths in prison reportedly occurred in June, with Chinese authorities claiming that many were suicides. Further, during the 1998, Chinese officials continued the “patriotic education campaign” designed to force Tibetans, especially Buddhist monks and nuns, to denounce their faith and to attest that Tibet has always been a part of China. As a result of the campaign, authorities reported that 76 percent of Tibetan monasteries and nunneries had been “rectified.”

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“The Administration supports the Geneva process, and intends to participate vigorously in this year’s Commission activities.” I was encouraged to hear these words and I hope they will translate into determination by the Administration to actively pursue this issue, in this forum, this year.

I urge the Administration to make a decision to sponsor a resolution and to begin high level lobbying of governments around the world to support a resolution before Secretary of State Albright travels to Beijing on March 1 and 2.

Mr. President, the situation in China indeed remains troubling. The United States has a moral responsibility to take the lead in sponsoring and pushing for a resolution at the United Nations Commission on Human Rights.

I believe that there is a strong bipartisan consensus in the Foreign Relations Committee—and I predict on the floor—that we must send a message to China and that this is the appropriate time and the way in which to do it.

I strongly commend my friends, the Senator from Arkansas and the Senator from Minnesota, for their leadership on this terribly important issue.

SENIOR RESOLUTION 46—RELATING TO THE RETIREMENT OF WILLIAM D. LACKEY

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. Res. 46

Whereas, William D. Lackey has faithfully served the United States Senate as an employee of the Senate since September 4, 1964, and since that date has ably and faithfully upheld the highest standards and traditions of the staff of the United States Senate;

Whereas, during his 35 years in positions of responsibility in offices in the United States Senate, Mr. Lackey has at all times discharged the duties and responsibilities of his office with extraordinary efficiency, aplomb and devotion.

Whereas, William D. Lackey has faithfully served the United States Senate with honor and distinction in the Office of the Journal Clerk since October 1, 1978 and his hard work and outstanding performance resulted in his appointment as Journal Clerk: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of March 21 through March 27, 1999, as “National Inhalants and Poisons Awareness Week”;

(2) encourages parents to learn about the dangers of inhalant abuse and to discuss those dangers with their children; and

(2) requests that the President issue a proclamation calling upon the people of the United States and interested groups to observe such week with appropriate ceremonies and activities.

ADDITIONAL STATEMENTS

ANOTHER MILE HI SALUTE TO THE WORLD CHAMPION DENVER BRONCOS

Mr. ALLARD. Mr. President, last year I rose to offer a Mile High Salute to the Denver Broncos for winning their first world championship. It gave me great pleasure to rise again today and offer a “Repeat Mile High Salute” to Colorado’s repeat Super Bowl champions. On Sunday the Denver Broncos won their second world championship in two years in Super Bowl Thirty-Three by beating Coach Dan Reeves and the Atlanta Falcons.

The Broncos thrilling win came after the finest regular season in club history. Coach Mike Shanahan guided the Broncos to a winning streak to start the season and an overall 19-2 record. Hall of Fame bound icon John Elway became only the second quarterback ever to throw for over 50,000 yards and he stands today as the winningest quarterback in NFL history with 148 regular season wins. Running back Terrell Davis became only the fourth player in NFL history to run for more than 2,000 yards and his season ranks as the third best ever for his position. Even place kicker Jason Elam kicked his way into the record books with a record tying 63 yard field goal earlier this year.

The Denver receiving corps is among the finest in football for sure. The sure-handed, hard blocking Ed McCaffrey and Rod Smith who each caught for over 1,000 yards this season. And no one will be able to forget the verbose Shannon Sharpe who became the first tight-end in history to record 70 catches in a single season. The Broncos will send an American Football Conference record 10 players to the Pro Bowl in Hawaii. John Elway, Terrell Davis, Ed McCaffrey, Shannon Sharpe, Steve Atwater, Bill Romanowski, Tom Nalen, Mark Schlereth, Tony Jones and Jason Elam each made the trip to Hawaii.

The Denver offensive line, while quiet and unassuming off the field, dominates the line of scrimmage every week.

The well-balanced offense has been complimented by an equally well-balanced defense. Led this season by leading tackle Bill Romanowski and veterans Ray Crockett, Steve Atwater, Neil Smith, Maa Tanuvasa and Keith Traylor. The Broncos defense has improved every step of the way through the regular season and playoffs.

The Broncos defense was as equally team oriented in their Super Bowl effort. Their 30 tackles were distributed among twelve players. Darrien Gordon and Darrius Johnson combined for three interceptions and linebackers John Mobley and Bill Romanowski each recorded a sack on Atlanta quarter-back Chris Chandler.

What makes the Broncos special, though, is that all of their individual accomplishments highlight fine team play from each and every player. When you look at the Super Bowl, Mr. President, you can see that this championship was truly a team effort.

The Broncos offense totaled 457 yards. Terrell Davis rushed for 102 yards, while John Elway connected with six different receivers for 336 yards. Rod Smith led all receivers with 152 yards, including a key 80 yard reception that broke the game open in the second quarter. At the conclusion of the game, and perhaps at the close of his amazing sixteen year career, John Elway was named Most Valuable Player of the Super Bowl.

While nothing will compare to the excitement of last year’s win, I know I speak for all Coloradans when I say that we are proud to be the home of the back to back world champion Denver Broncos.

IN RECOGNITION OF JUDGE LAURENCE E. HOWARD

Mr. LEVIN. Mr. President, I rise today to pay tribute to a remarkable person from my home state of Michigan, Judge Laurence E. Howard. On February 26, 1999, Judge Howard will
Pat's integrity and commitment to New Jersey are two of the qualities I admire most. He has worked to pass legislation that advances as of the fall semester. One recognition for their outstanding achievements. Forty-five Spartans have been Big Ten championships, one national title, and has made ten consecutive post-season tournament appearances. Forty-five Spartans have been drafted by the National Basketball Association, fifteen have been honored as first-team All-Americans, and four have been Big Ten Player of the Year. This year's Spartans basketball team is living up to the standards set by the heroes of the past. They are currently in first place in the Big Ten and are ranked fourth in the nation. Under the leadership of their coach, Tom Izzo, the Spartans are roaring into the post-season ready for the challenges "March Madness" will bring. Like countless basketball fans nationwide, I am looking forward to watching Mateen Cleaves, Morris Peterson and the rest of the team add another national championship to the Michigan State program.

But I am sorry that a small minority will keep us from also doing what is honorable and what is right. We need to officially express our collective disapproval for the President's conduct. It's the only truly appropriate, bipartisan way to bring closure to the melancholy moment in American history.

When Senator Feinstein and I started talking about a censure resolution, as early as last December, I had no certainty that we would come so far and bring so many along. Her perseverance, hard work and legislative craftsmanship deserve our praise, but our efforts deserve a clean "up or down" vote.

IN RECOGNITION OF 100 YEARS OF BASKETBALL AT MICHIGAN STATE UNIVERSITY

Mr. LEVIN. Mr. President, I rise today to pay tribute to the Michigan State University basketball program, which is celebrating 100 years of excellence this year.

The MSU fight song begins, "On the banks of the Red Cedar, is a school that's known to all, Its specialty is winning, And those Spartans play good basketball." Any basketball fan who has watched the Spartans on the court throughout their history knows just how good they have been. Who could forget the wizardry of Lansing, Michigan's own Earvin Johnson, who performed "miracles" every time he stepped onto the court? Or the deft shooting touch of Big Ten scoring champion Mike Robinson? Or the dapper sensibility of legendary coach Jud Heathcote, who coached Michigan State to a national championship in 1979? In all, the MSU men's basketball team has won seven Big Ten championships, one national title, and has made ten consecutive top-four appearances. But now we need to go one step further because neither acquittal nor conviction is an entirely adequate conclusion to this sordid matter. We must speak our contempt and disappointment for the low behavior of our highest elected officials.

We need to work for the spirit behind our laws, behind this institution, behind the country. We need to say that the President's actions and lies were wrong—"shameful, reckless and indefensible." We need to acknowledge that the conduct, unacceptable for any American, is especially so for the President of the United States because it "creates disrespect for the laws of the land."

I am proud that all 100 Senators worked through this trial to do our duty. I am proud that so many of us from both sides of the aisle worked together to craft this tough censure resolution.

Mr. KOHL. Mr. President, during the impeachment trial, it was the duty of the Senate to look at the facts, look at the law, look at the Constitution, and make a judgment. We did our duty. But now we need to go one step further because neither acquittal nor conviction is an entirely adequate conclusion to this sordid matter. We must speak our contempt and disappointment for the low behavior of our highest elected officials.

We need to work for the spirit behind our laws, behind this institution, behind the country. We need to say that the President's actions and lies were wrong—"shameful, reckless and indefensible." We need to acknowledge that the conduct, unacceptable for any American, is especially so for the President of the United States because it "creates disrespect for the laws of the land."

I am proud that all 100 Senators worked through this trial to do our duty. I am proud that so many of us from both sides of the aisle worked together to craft this tough censure resolution.
Dean's List. And thirty-nine had 4.0 grade point averages. Now, thanks to the unprecedented generosity of a former Spartan basketball player, MSU's student athletes will have access to some of the finest academic support students anywhere in the country. Steve Smith, Michigan State's all-time leading scorer and current NBA star, recently gave $2.5 million to MSU to build the Clara Bell Smith Student-Athlete Center, named for Steve's late mother. The Center serves the more than 2,400 student athletes who play varsity sports at Michigan State. Athletes are able to take advantage of tutoring and mentoring programs, computer literacy training and career development sessions. The Clara Bell Smith Student-Athlete Center is truly a powerful symbol of Michigan State's commitment to the academic success of its athletes.

Mr. President, Michigan State basketball has brought pride to the students and alumni of that great university, as well as to the people of Michigan. I know my colleagues will join me in congratulating Michigan State's students, alumni and faculty as it celebrates 100 years of basketball excellence.

RESOLUTION OF CENSURE

Mr. HOLLINGS. Mr. President, I ask that a draft of a proposed resolution of censure be printed in the RECORD.

The material follows:

RESOLUTION OF CENSURE

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

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

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

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

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

Whereas William Jefferson Clinton remains subject to criminal actions in a court of law like any other citizen;

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

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

Resolved, That the Senate now move on to other matters of significance to our people, to reconcile differences between and within the branches of government, and to work together—across party lines—for the benefit of the American people.

YIELDING BACK OF MORNING BUSINESS TIME

Mr. THOMAS. Mr. President, the Senate will now yield back the 2 hours of morning business.

ORDER OF PROCEDURE

Mr. THOMAS. On behalf of the majority leader, I expect the Senate to be prepared to adjourn for the week. Obviously there will be no further rollcall votes today. Resolution 39 will reconvene at noon on Monday, February 22, following the President's Day recess.

On that Monday, Senator JOVINOVICH will be recognized at noon for the reading of Washington's Farewell Address. Following a period for morning business, the Senate will begin debate on S. 4, the Soldiers', Sailors', Airmen's and Marines' Bill of Rights Act of 1999. No votes will occur on Monday, the 22nd. However, Senators will address the Senate and organize for votes to begin as early as Tuesday morning.

On behalf of the majority leader, I wish all Senators a restful recess, and I look forward to the beginning of what we believe to be a productive legislative period.

AUTHORIZATION FOR APPOINTMENTS BY THE PRESIDENT OF THE SENATE; PRO TEMPORE, THE MAJORITY LEADER, AND THE MINORITY LEADER

Mr. THOMAS. Mr. President, I ask unanimous consent that notwithstanding any adjournment or recess of the Senate until Monday, February 22, 1999, the President of the Senate, the President of the Senate pro tempore, the majority leader of the Senate, and the minority leader of the Senate be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences by law, by concurrent action of the two Houses, or by order of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMEMDING JUNE ELLENOFF O'NEILL

Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 39 submitted by Senators DOMENICI and LAUBERG.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 39) commending June Ellenoff O'Neill for her service to Congress and to the Nation.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution? There being none, the resolution was agreed to.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 39) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas Dr. June Ellenoff O'Neill has served as the Director of the Congressional Budget Office since March of 1995;

Whereas she previously served in that office in its early years from 1976 to 1979 as the Chief of the Human Resources Cost Estimates Unit and has held numerous positions within the Executive Office of the Federal Government, within academia, and at respected private research institutions;

Whereas she has been recognized as a leader within the economics profession by her election as Vice President of the American Economics Association and has been published in numerous books, monographs, and professional journals;

Whereas during her tenure as Director, an unprecedented period that saw budget deficits, turning to surpluses, she has continued to encourage the highest standards of analytical excellence within the staff of the Congressional Budget Office while maintaining the independent and nonpartisan character of the organization;

Whereas she has improved and expanded Congress and the general public's access to the Congressional Budget Office's work product by establishing a web site for the organization;

Whereas she has actively promoted the importance of a budget process to a democratic society by participating in and encouraging her staff to participate in educational and foreign exchange programs;

Whereas she has performed her duties as Director with courage, grace, and intelligence; and

Whereas she has earned the respect and esteem of the United States Senate: Now, therefore, be it

Resolved, That the Senate of the United States commends Dr. June Ellenoff O'Neill for her dedicated, faithful and outstanding service to her country and to the Senate.

COMMEMDING JAMES L. BLUM

Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 40 submitted by Senators DOMENICI and LAUBERG.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 40) commending James L. Blum for his service to Congress and to the Nation.
The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 40) was agreed to.

The preamble was agreed to. The resolution, with its preamble, reads as follows:

S. Res. 40

Whereas James L. Blum has served as the Deputy Director of the Congressional Budget Office since December of 1991; Whereas he has served in that office since its creation in 1975, from 1975 to 1991 as the Assistant Director for Budget Analysis and in the post of Acting Director from December 1987 to March of 1989; Whereas, in his tenure at the Congressional Budget Office, he has held numerous positions within the Executive Branch of the Federal Government including the Office of Management and Budget and the Department of Labor; Whereas he is internationally recognized for his expertise in budget and finance; Whereas he has instilled professionalism and integrity in generations of staff at the Congressional Budget Office by his personal conduct and leadership and has encouraged high standards of scholarship and clarity of presentation from them; Whereas he was the 1990 recipient of the Roger W. Jones Award for Executive Leadership; Whereas he has performed various duties within the Congressional Budget Office with intelligence while displaying calm leadership; Whereas he possesses irreplaceable institutional knowledge which has been indispensable to the effective functioning of the Congressional Budget Office extending over a period of almost 25 years; and Whereas he has earned the respect and esteem of the United States Senate: Now, therefore, be it.

Resolved, That the Senate of the United States commends James L. Blum for his long years of service to his country and to the service of the United States Senate and to wish him well in his retirement.

EXPRESSIONS OF GRATITUDE FOR THE SERVICE OF FRANCIS L. BURK, JR.

Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 41 submitted by Senator Thurmond, and others.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 41) expressing the gratitude of the United States Senate for the service of Francis L. Burk, Jr., Legislative Counsel of the United States Senate.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. THURMOND. Mr. President, I rise to commend Mr. Frank Burk, the Legislative Counsel of the Senate, who retired on December 31, 1998, after serving in the Senate for more than 28 years, including 8 years as Legislative Counsel.

Mr. President, as President pro tempore of the Senate, it was my pleasure to oversee the work of the Office of the Legislative Counsel during the last four years of Frank Burk’s tenure. I appreciated the great dedication and professionalism he displayed in his role as Legislative Counsel.

The Legislative Counsel and his staff play a very important role in the legislative process. We all rely upon the Legislative Counsel and the attorneys in his Office to provide legislative drafts to effectively carry out our legislative policy. Mr. Burk has seen to it that we are all served well by a professional, career, and nonpartisan staff.

In addition to his service as Legislative Counsel, Frank Burk served for more than 25 years as the principal drafter of all major legislation affecting matters relating to banking, housing, securities, mass transit, and small business. As Legislative Counsel, he prepared legislation on matters relating to the operations and rules of the Senate.

Mr. President, I am proud to sponsor this resolution and I am proud to have known and worked with Frank Burk. He has served his Nation well for over 30 years, including two years with the United States Army. I wish Frank and his wife Virginia the very best for the future, especially time spent with their four daughters, Elizabeth, Alison, Abigail, and Emily, their two sons-in-law, Lange Johnson and Hunt Shipman, and their granddaughter, Anna Shipman.

Mr. BYRD. Mr. President, I am proud to co-sponsor with Senator Thurmond a resolution commending Mr. Frank Burk who retired as Legislative Counsel of the Senate on December 31, 1998. While serving as President pro tempore of the Senate, I had the pleasure of appointing Frank Burk to the position of Legislative Counsel of the Senate on January 1, 1991.

I wish to join with Senator Thurmond, and with all Senators, in expressing our deepest gratitude to Frank Burk for his long years of service to the United States Senate. He has been part of the Office of Legislative Counsel for more than 28 years, including the last 8 as Legislative Counsel, and during that time he has provided valuable assistance to me and to my staff.

Mr. President, while overseeing the Office of Legislative Counsel during the first 4 years of Frank Burk’s tenure as Legislative Counsel, I appreciated the great dedication and professionalism he displayed in carrying out his duties and responsibilities. I know that his departure will leave a void that is difficult to fill. In passing this resolution, the Senate recognizes his years of commitment to the Senate.

Mr. President, I wish Frank Burk and his family well in his retirement.

Mr. DASCHLE. Mr. President, I would like to take this opportunity to thank Francis Burk for his nearly three decades of service to the United States Senate and to wish him well as he begins the next chapter of his life.

Mr. President, Frank Burk is one of the dedicated public servants who serve the Senate for years and who become sources of knowledge and expertise for all Senators and staff. They are our institutional memory: those who allow us to proceed from Congress to Congress with a sense of history and continuity. Our jobs would be even more difficult without people like Frank.

I know I speak for other Senators and for staff when I say we will miss Frank Burk.

Mr. COCHRAN. Mr. President, I am pleased to join the Senator from South Carolina, Mr. Thurmond, in cosponsoring his resolution expressing the gratitude of the Senate for the service of the Senate Legislative Counsel, Frank Burk.

Many people outside the Senate do not know the office of the Legislative Counsel even exists. However, the legislative business of the Senate could not be accomplished without the able assistance of the office of the Legislative Counsel.

A graduate of Dartmouth College and George Washington University Law School, Mr. Burk served as an Army officer. Mr. Burk has worked in the Legislative Counsel’s office for more than 28 years, beginning as a law assistant in 1970 and rising to hold the office’s top position, Legislative Counsel in 1991.

As many know, attorneys in the legislative counsel’s office have specific areas of expertise and responsibility. For more than 25 years, Mr. Burk’s responsibilities included banking, securities, transportation, housing and small business. After becoming Legislative Counsel, he assumed the duty of drafting legislation relating to the operations and rules of the Senate.

I am very pleased to join my colleagues today in expressing our gratitude and in extending our best wishes to Frank Burk.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 41) was agreed to.
February 12, 1999

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 41

Whereas Francis L. "Frank" Burk, Jr., the Legislative Counsel of the United States Senate, employee of the Senate on June 8, 1970, and since that date has ably and faithfully upheld the high standards and traditions of the Office of the Legislative Counsel of the United States Senate for more than 28 years;

Whereas Frank Burk, from January 1, 1991, to December 31, 1998, served as the Legislative Counsel of the Senate and demonstrated great dedication, professionalism, and integrity in faithfully discharging the duties and responsibilities of his position;

Whereas Frank Burk for more than 25 years was the primary drafter in the Senate of virtually all legislation relating to banking, securities, housing, mass transit, and small business, and as Legislative Counsel participated in the drafting of legislation relating to the operations and rules of the Senate;

Whereas Frank Burk retired on December 31, 1998, after more than 30 years of Government service, including 2 years with the United States Army; and

Whereas Frank Burk has met the legislative drafting needs of the United States Senate with unfailing professionalism, skill, dedication, and good humor during his entire career, and be it resolved, That the United States Senate commends Francis L. Burk, Jr., for his more than 30 years of faithful and exemplary service to the United States Senate and the Nation, including 8 years as the Legislative Counsel of the Senate, and expresses its deep appreciation and gratitude for his long, faithful, and outstanding service.

The resolution was agreed to.

ORDER FOR STAR PRINT

Mr. THOMAS. Mr. President, I ask unanimous consent that a star print of S. 6 be made with the changes that are at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

RETIREMENT OF DAVID G. MARCOS

Mr. THOMAS. Mr. President, there are two resolutions at the desk relating to the retirement of two long-serving Senate employees. I ask unanimous consent that the Senate proceed to the immediate consideration of the resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the first resolution.

The legislative clerk read as follows: A resolution (S. Res. 42) relating to the retirement of David G. Marcos:

Whereas David G. Marcos became an employee of the United States Senate on August 16, 1960, and since that date has ably and faithfully upheld the highest standards and traditions of the staff of the United States Senate;

Whereas David G. Marcos has faithfully served the United States Senate as Executive Clerk during the past 4 years;

Whereas, prior to David G. Marcos rendered exemplary service as the Assistant Executive Clerk, Keeper of the Stationary, Assistant Keeper of the Stationary and other positions of responsibility in offices of the United States Senate for 35 years;

Whereas, during this 35 year period, David G. Marcos has at all times discharged the duties and responsibilities of his office with extraordinary efficiency, aplomb, and devotion; and,

Whereas, David G. Marcos’ service to the United States Senate has been marked by his personal commitment to the highest standards of excellence and highest regard for the Constitution of the Senate: Now, therefore, be it

Resolved, That the United States Senate commends David G. Marcos for his honorable service to his country dedicated to the United States Senate, and wishes to express its deep appreciation and gratitude for his long, faithful, and outstanding service.

The resolutions, with its preamble, was agreed to.

The resolution was agreed to.

The resolution (S. Res. 42) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 42

Whereas, David G. Marcos became an employee of the United States Senate on August 16, 1960, and since that date has ably and faithfully upheld the highest standards and traditions of the staff of the United States Senate;

Whereas, David G. Marcos has faithfully served the United States Senate as Executive Clerk during the past 4 years;

Whereas, prior to David G. Marcos rendered exemplary service as the Assistant Executive Clerk, Keeper of the Stationary, Assistant Keeper of the Stationary and other positions of responsibility in offices of the United States Senate for 35 years;

Whereas, during this 35 year period, David G. Marcos has at all times discharged the duties and responsibilities of his office with extraordinary efficiency, aplomb, and devotion; and,

Whereas, David G. Marcos’ service to the United States Senate has been marked by his personal commitment to the highest standards of excellence and highest regard for the Constitution of the Senate: Now, therefore, be it

Resolved, That the United States Senate commends David G. Marcos for his honorable service to his country dedicated to the United States Senate, and wishes to express its deep appreciation and gratitude for his long, faithful, and outstanding service.

The resolutions, with its preamble, was agreed to.

The resolution (S. Res. 43) was agreed to.

The preamble was agreed to.

The resolutions, with its preamble, read as:

S. Res. 43

Whereas, Thomas G. Pellikaan has faithfully served the United States Senate as Editor of...
the Daily Digest of the Congressional Record during the past 10 years, and has served in that office since 1977.

Whereas, prior to that, he rendered exemplary service in the Office of the Senate Sergeant at Arms for 14 years as Senate Press Liaison;

Whereas, during this 3½ year period, he has at all times discharged the difficult duties and responsibilities of his office with extraordinary efficiency, aplomb, and devotion; and,

Whereas, Thomas Pellikaan's service to the Senate has been marked by his personal commitment to the highest standards of excellence: Now, therefore, be it

Resolved, That Thomas G. Pellikaan be and hereby is commended for his outstanding services and responsibilities of his office with extraordinary efficiency, aplomb, and devotion; and,

SEC. 2. That the Secretary of the Senate shall transmit a copy of this resolution to Thomas G. Pellikaan.

PERMITTING THE USE OF THE ROTUNDA OF THE CAPITOL Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 19, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 19) permitting the use of the Rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

Mr. THOMAS. I ask unanimous consent that the Senate proceed to consider the concurrent resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 19) was agreed to.

REFERRAL OF NOMINATION OF DAVID WILLIAMS Mr. THOMAS. Mr. President, as in executive session, I ask unanimous consent that the Governmental Affairs Committee have until February 25, 1999, to report the nomination of David Williams to be Inspector General for the Treasury.

I further ask consent that if the nomination has not been reported by that date, the nomination then be automatically discharged and placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZING SENATE COMMITTEE EXPENDITURES Mr. THOMAS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 38 submitted by Senators MCCONNELL and DODD.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 38) to waive the standing rules of the Senate in order to permit a resolution authorizing Senate committee expenditures for the period March 1, 1999 through September 30, 1999.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 38) was agreed to, as follows:

S. Res. 38

Resolved, That, notwithstanding paragraph 9 of rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration is authorized to report a continuing resolution authorizing Senate committee expenditures for the period March 1, 1999 through September 30, 1999.

Mr. THOMAS. Mr. President, unanimous consents work well when no one is here.

ORDERS FOR MONDAY, FEBRUARY 22, 1999 Mr. THOMAS. Mr. President, I ask unanimous consent that when the Senate adjourns it do so subject to the call of the President before 3 p.m., unless cut off by the provisions of the Senate Standing Rules, which the Senate may, by unanimous consent, suspend until 3 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 19) was agreed to.

Mr. INHOFE. First, Mr. President, now that the vote to impeach William Jefferson Clinton has been taken, and before I discuss my vote, let me say that this whole thing could have been avoided had President Clinton resigned months ago. I say this because I called for his resignation last September. Rather than explain my reasoning for calling for President Clinton's resignation, I believe it is better explained by an 8th grade school teacher from Tulsa, Oklahoma, Mr. Terrance Hogan. I ask unanimous consent that Mr. Hogan's letter to the President dated September 26, 1998, be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

SEPTEMBER 26, 1998,
Mr. INHOFE. First, Mr. President, now that the vote to impeach William Jefferson Clinton has been taken, and before I discuss my vote, let me say that this whole thing could have been avoided had President Clinton resigned months ago. I say this because I called for his resignation last September. Rather than explain my reasoning for calling for President Clinton's resignation, I believe it is better explained by an 8th grade school teacher from Tulsa, Oklahoma, Mr. Terrance Hogan. I ask unanimous consent that Mr. Hogan's letter to the President dated September 26, 1998, be printed in the Record.

The legislative clerk read as follows:

The President, The White House, Washington, D.C.

Dear Mr. President: It is in the early morning hours. The infamous Starr report has been made public for less than twentyfour hours and I am unable to sleep. I don't imagine you've had much of a restful night either. As you no doubt are troubled, so am I.

As the fortyeight year old father of five and a teacher of eight grade Civics these past two years I am greatly concerned about the moral direction of our nation as I see it. It seems we have lost our compass and know not what we as a nation wish to be. I am fearful, for I do not wish us to become a nation that is only concerned about the economy and has lost the will to be a nation of admirable principles. I do not want us to dissolve into a people who are more influenced by the spin of the facts than the facts themselves. I am concerned about the effects the next six months of a legal nitpicking debate over whether or not you committed an impeachable offense will have on our nation. I am also concerned that we will not ask what I believe to be the two paramount questions. First, are you capable of leading this nation for the next 30 months in the direction that we want and need to go? And secondly, do you deserve to be allowed to lead this country?

The concurrent resolution (H. Con. Res. 19) was agreed to.

The concurrent resolution (S. Res. 38) was agreed to, as follows:
February 12, 1999

There is no question in my mind that you have the will to lead. The sad conclusion I have drawn is that you no longer have the moral authority to lead for you have violated a Constitution upon which relationships are built, that being the existence of mutual trust. In the elections of 1992 and 1996 the American voters forgave you for your conduct in your first term of office. Now they must be faced with the question—what kind of man you became.

I believe need to be dealt with. Please remember that the turmoil that the debate over your position of leadership.

With this in mind I am asking you to resign your position as President of these United States for if we are even to pretend to be a nation of principles we cannot tolerate from the principal of our neighborhood school.

No doubt you share my belief that God our Creator calls each of us to be all we can be and that we are also called to sacrifice ourselves for what is in the ultimate best interest of our neighbors. I am asking you now, Mr. President, to do both of those things. Please remember, as a Christian and as a citizen, to comply with ordinary legal obligations.

In the fall of 1998 you had begun to ask for the forgiveness of the American people. If your contrition is heartfelt you deserve the forgiveness of all those individuals whose trust you have violated. I for one forgive you. But as a member of the body politic I must also hold you accountable for your public choices and demand that certain natural consequences be allowed to occur. You no longer possess the trust of the majority of the American people and can therefore no longer lead that people and must therefore give up your position of leadership.

PRESIDENT'S SUPPORTERS CONCEDE ESSENTIAL FACTS

INTRODUCTION

In accord with my sworn oath to do "impartial justice according to the Constitution and the laws," I have approached the trial of William J. Jefferson Clinton as a solemn constitutional duty. Articles of Impeachment may be the most historically significant thing I will do in my entire career in public service. I have taken this obligation seriously, without concern for public opinion polls or for any partisan political advantage of consequence. This is a moment when one must put the longer-term interests of the country first.

PREVIOUS JURY TRIAL

As a political opponent of this President, I have made an extra effort to weigh the evidence and the arguments on both sides with a sense of detachment and fairness. Having served on a jury in a criminal trial some 24 years ago, I learned how important it is to listen and to exercise impartial judgment. From personal experience I know that the jury system for his own personal gain. In so doing, he set a perverse example for every school child, parent, teacher, employer, supervisor and citizen in America. He brought dishonor upon himself and his office.

White House lawyers went to great lengths to try to deny the specific charges, but common sense and the weight of the evidence leave no reasonable doubt in my mind that the charges are true. I believe there are few, if any, members of the Senate who do not believe the President lied under oath and obstructed justice. Even many of the President's most ardent supporters in and out of the Senate have openly stated their belief that the essential facts of the case are not in dispute.

Senator Robert Byrd pretty well summed it up in a recent TV appearance. He said of the President: "I have no doubt that he has given false testimony under oath and . . . there are indications that he did indeed obstruct justice . . . it undermined the system of justice when he gave false testimony under oath. He lied under oath."

NON-LAWYER PERSPECTIVE

I have often said that one of the qualifications I have for the U.S. Senate is that I am not a lawyer. So, when I read the Constitution, I know what it says. When I read the law, I know what it says. When I look at the evidence and apply common sense from a non-lawyer perspective, I know what it says. In this case, it says—without question—the President is guilty as charged.

CONDUCT WARRANTS REMOVAL

The President's attorneys kept arguing that the President's conduct does
not amount to the technical crimes of perjury or obstruction of justice, but that even if it does, it should not warrant his removal from office.

I have concluded the President’s conduct does amount to the crimes of perjury and obstruction, but that even if it does warrant his removal from office because it is unacceptable behavior, incompatible with his duties and responsibilities as President.

LYING UNDER OATH

I was not persuaded by the hair-splitting that the President did not lie under oath. The President’s lawyers claim he did not lie or commit perjury before the grand jury and they imply that his conduct there should be deemed acceptable. As a non-lawyer, I find their arguments preposterous and an insult to the intelligence and moral sensibilities of the members of the Senate of both parties, not to mention the American people.

The President was afforded every opportunity to treat the grand jury with the respect it deserved. He was not blind-sided, tricked or trapped. He could anticipate all the key questions in advance. He had plenty of time to prepare. He was warned on numerous occasions by members of both parties in the Congress of the serious consequences of untruthful testimony. Yet he deliberately sought to continue weaving a self-serving and misleading web of deception and falsehood.

OBLITERATING JUSTICE

Similarly, I reject the argument that the President did not commit obstructing justice in an improper and illegal effort to undermine the legitimate search for truth in the Paula Jones civil suit. To believe the President’s defense is to stand common sense on its head.

Does anyone seriously believe the Lewinski job search would have proceeded to a successful conclusion in early January 1998—a critical moment in the Jones case—had her name not appeared on the Jones case witness list?

Does anyone seriously believe the President was suggesting to Ms. Lewinski that she file a truthful affidavit?

Does anyone seriously believe that the decision to conceal the gifts (evidence) was not blessed and ordered by the President?

Does anyone seriously believe the President was seeking to “refresh his memory” while planting false stories with Ms. Currie when his conversations took place after he had testified that the Jones lawyers should talk to Ms. Currie?

Does anyone seriously believe the President did not want and expect Mr. Blumenthal and other aides to repeat false stories to the grand jury?

I do not believe any of these things. I believe—and I suspect most Senators believe—the President is guilty as charged of obstruction of justice.

THE PRESIDENT KNEW WHAT HE WAS DOING

The President’s efforts to cover up his relationship with Ms. Lewinski, however understandable in a non-legal context, became textbook examples of obstruction of justice once her name appeared in a duly constituted legal proceeding.

The President, after all, is himself a lawyer. He was well aware that—orchestrating a job search to silence a jutential potential witness by suggesting the filing of a false affidavit, concealing relevant evidence, and coaching potential witnesses to give false testimony—all are improper and illegal.

Yet he chose to take these actions, not in some Antonio Cardenas belief that they were proper, but in the calculation that if successful, he could thwart the legal search for truth and justice in the Jones case.

To accept this behavior by the President without Constitutional consequence is to permit the setting of a precedent which will reverberate negatively for years throughout our legal justice system and beyond.

DIFFERENT STANDARDS FOR JUDGES AND LEGAL PROFESSIONALS

I am amazed that there is any debate whatsoever over whether lying under oath before a grand jury is an impeachable offense. The President chose to lie perjuring Nixon and others have been rightly convicted and removed from office for lying under oath. Is there to be a different standard for a president, or for this particular president, or for this particular set of circumstances?

Our legal system depends on the sanctity of the witness oath. There can be no exceptions to the obligation every citizen incurs when he solemnly swears “to tell the truth, the whole truth and nothing but the truth.” Setting any other precedent would totally disrupt our system of jurisprudence by breaching the integrity of the very oath that makes us a nation.

The White House lawyers argued that since the President is elected and judges are appointed, a different standard should apply. The only conceivable way they might be right is if the President is held to a higher—not a lower—standard.

Important as each of a thousand judgments is to our legal system, it is the President alone who stands at the pinnacle of our system of law and justice. He is the President who, upon the urging of his aides, provided false testimony to the grand jury by a sitting president will constitute legal proceeding.

To accept this behavior by the President without Constitutional consequence is to permit the setting of a precedent which will reverberate negatively for years throughout our legal justice system and beyond.

WHAT KIND OF LYING IS IMPEACHABLE?

Recently, one of my Democrat colleagues, in a television interview, explained his standard for perjury as an impeachable offense: “Perjury could be an impeachable offense,” he said. “If he lied about the national security interest of the United States, or if he did something else that had serious consequences for the performing improperly in his official capacity, that’s impeachable.” But if he’s “not acting in his official capacity” and only “as an individual,” that’s different. That’s not impeachable, he says.

I believe this kind of making exceptions for lies about certain subjects, and not others, is a dangerous and slippery slope. I believe any lying before a grand jury by a sitting president will have “serious consequences for the country” if it is deemed to be in some way acceptable.

NATIONAL SECURITY IMPLICATIONS

Indeed, part of the reason this is so important is that if it breaks a pattern of lying unacceptably for years throughout our legal system. He lied or misled audiences over 130 times 1995 and 1996 in asserting that no nuclear missiles were aimed at American children. People know he has lied on numerous other public occasions. Such behavior eats away the public trust and the moral authority of the presidency, which are so vital to our system of jurisprudence by breaching the integrity of the very oath that makes us a nation.

In addition, it should not go unremarked that the President’s underlying conduct in this matter showed a flagrant lack of regard for the national security implications of his own behavior. In the modern world, the President is always a potential target of foreign intrigue, blackmail and salacious propaganda. The President knew the grand jury that the President himself speculated that his phone calls to her may have been monitored by a foreign embassy. In essence, he was admitting that he had exposed himself to potential blackmail. Such behavior by any president is not merely inappropriate. It is clearly dangerous and unacceptable.
Sgt. Maj. Gene McKinney, the Army’s top enlisted man, was tried for perjury, adultery and obstruction of justice concerning sexual misconduct. He was convicted of obstruction of justice, but not before his attorney asserted at trial how people in uniform rightly think they can hold an enlisted man to a higher standard than the President of the United States,” the Commander-in-Chief.

**DOUBLE STANDARD**

When we establish a glaring double standard in the law, we diminish respect for all law and we undermine the highest of standards for officials in public office.

**CENSURE**

I will oppose any censure resolution that may be offered after the trial, as I opposed any so-called “finding of fact” during the trial, because it is little more than a thinly veiled effort to give people political cover. I believe some who might otherwise vote to convict look to censure as a way to justify or politically cover a vote to acquit. There is no precedent for censure in impeachment, in part because the removal context. It would be dangerous and wrong to set such a precedent now. I believe it could threaten the separation of powers between the branches of government as Congresses start censuring Supreme Courts and Presidents for all manner of perceived misconduct.

Senators should vote on the Articles of Impeachment, explain their reasons, and live with the consequences.

I am struck that some of my colleagues who agree that the President did commit the serious offenses charged in the Articles of Impeachment, still believe Congress can render some effective consequence short of removal such as censure, which will uphold the integrity, about the political and governmental heritage they should admire and emulate.

**IMPEACHABLE OFFENSES**

These acts, which were committed willfully and premeditatedly by the President, are serious offenses which I believe clearly rise to the level of impeachable offenses.

I reject the White House lawyers’ argument that the President’s conduct was to get the trial over by some arbitrary date. This was in keeping with normal procedures in all previous impeachment trials. It also seemed to me to be essential to fundamental fairness and a full airing of the facts and issues in dispute. A trial will now, naturally, will care whether the trial lasted two weeks or six months. They will care, we must hope, about the extent to which justice was done. Overall, I was disappointed in the unnecessarily tight procedural restrictions imposed on our ability to hear from witnesses. I fear that a bad precedent has been unnecessarily set for the future.

Throughout the trial, I opposed efforts to waive the time-honored rules of procedure, which require that deliberations among senators be closed to the public. I am convinced this was the right decision. The closed meetings allowed for a more collegial atmosphere among senators, limiting much of the posturing and grandstanding that often goes on before the cameras. The closed sessions also helped enhance a greater spirit of duty and cooperation concerning the tasks at hand. As with all jury trials going back for more than 2000 years in history, closed deliberations constitute proper procedure and I believe this tradition should be maintained.

This need not, and does not, diminish the accountability of senators to their constituents and the public at large. All roll call votes remain open and I believe every member maintains an obligation to inform his constituents of the reason for his votes.

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February 12, 1999

**CONGRESSIONAL RECORD – SENATE**

S1663

**EROSION OF PUBLIC TRUST**

Economic-driven “popularity” polls are masking an unprecedented erosion of public trust in this President which has already caused serious damage to his ability to rally the country in time of national crisis. His consistent and long-term pattern of untruthful and deceptive behavior, as exemplified in the Articles of Impeachment, has undermined his credibility to such an extent that he cannot now be afforded the benefit of any public doubt about virtually any topic.

When the President took military action against overseas terrorists targets in August and when he ordered air strikes against Iraq in December, popular majorities (!) in the polls—questioned his timing and motives—and rightly so. Suspicions about both of these actions linger to this day, draining the small reserves of trust the President may have left.

What happens if and when there is a much more serious international or domestic crisis, requiring timely public sacrifice mobilized through presidential leadership? Will the President be believed—even if he is telling the truth? In a world of many lurking dangers of which much of the public is only vaguely aware (from information warfare to weapons of mass destruction), such questions raise very serious concerns.

**WHAT DO WE SAY TO PREVIOUSLY CONVICTED LIARS?**

If we do not hold the President accountable in this case, what do we say to the over 100 people who are serving time in federal prison for committing perjury in legal proceedings? What do we say to Ms. Barbara Battalino, who was convicted of perjury, sentenced, and lost her right to practice her profession because she lied under oath... about a civil case... that was eventually dismissed by the judge? What do we say to others in similar situations? I was waiting for the President’s lawyers to address these issues. But they never did in any remotely satisfying way.

**WHAT DO WE SAY TO MILITARY OFFICERS DISCIPLINED FOR LYING ABOUT SEXUAL MISCONDUCT?**

What do we say to the military officers whose careers and lives have been ruined over misconduct similar to the President’s, including sexual misconduct, lying and obstructing justice? Capt. Derrick Robinson, an Army officer caught up in the Aberdeen sex misconduct case, is serving time in Leavenworth prison for admitting to consensual sex with an enlisted person who was not his wife.

Drill Sgt. Delmar Simpson is serving 25 years in a military prison because a court martial found that, even though his relationship with a female recruit was consensual, the power granted him by his rank made such consensual sex with a subordinate unacceptable and—in the military—illegal.

Lt. Kelly Flinn was forced out of the Air Force for lying about an adulterous affair.

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**CLOSED DELIBERATIONS**

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This need not, and does not, diminish the accountability of senators to their constituents and the public at large. All roll call votes remain open and I believe every member maintains an obligation to inform his constituents of the reason for his votes.

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**KIDS**

I received a letter from Mr. Terrence Hogan of Owasso, Okla., an eighth grade civics teacher at the Cascia Hall Middle School in Tulsa for the past 22 years. He wrote last September saying he “was greatly concerned about the moral direction of our nation” in light of the President’s “willful and repeated lying.” He said the nation “cannot tolerate from our President actions and choices that we would not tolerate from the principal of our neighborhood school.”

And this is exactly the point that people across America are asking. Is the President subject to the same moral accountability as every other responsible citizen in the workplace, or in any other position of public trust? And what do we say to the kids about truth and justice? About the importance of integrity, about the political and governmental heritage they should admire and emulate?
at me, and I harbor no personal bitterness or hatred toward the President. It is time to look to the future. I hope all of us on all sides of these issues can unite in a prayer for the future of our country and for the ideals of freedom and justice it stands for in the world. God Bless America.

Mrs. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mrs. FEINSTEIN. Mr. President, I ask for a brief moment to speak as if in morning business.

Mr. President, Members of the Senate, I had hoped to be able to tell my granddaughter and, indeed, the rest of our nation, that the United States Senate had come together in bipartisan fellowship to approve a censure resolution that would deliver a clear message that the behavior of President William Jefferson Clinton has been inappropriate, intolerable and unacceptable.

Unfortunately, some in this body have forestalled our ability to bring such a resolution to the floor of the Senate for a vote. This I regret deeply. There are moments in history when we are able to rise up against the forces driving us apart and come together with a united purpose. I believe that the censure resolution provided us with just such an opportunity.

While not a cure-all, the resolution is a way to share with our children and the rest of our nation our findings, our sentiments, our belief that the actions of the President are a violation of the trust of the American people and have brought shame and dishonor upon the presidency and the man.

But as has been made clear, those of us who truly believe a strong censure is the appropriate resolution in this case are being prevented from bringing it to the floor of this Senate for a vote. The main co-sponsor is the Senator from Utah, Mr. Robert Bennett. In all, it is supported by 36 Senators, over ½ of this Senate.

The words of the resolution were chosen carefully, and I believe a bipartisan majority of the Senate would be prepared to vote for this censure resolution if it were permitted to come to a vote today.

Over the past few weeks, I have worked very closely with a large number of Senators to develop a bipartisan resolution, largely because I felt it so important that anyone who looks at this shabby episode of American history understands that while one may not vote to convict and remove a president, one can have profound dismay and foreboding about an individual that was inherent in the articles of impeachment.

That is why I regret deeply that some have seen fit to prevent us from voting on a censure resolution.

Because that cannot happen today, I have joined with the cosponsors of this resolution to formally present it to the Senate and record it in the CONGRESSIONAL RECORD, making clear for all time the strong censure of this President and condemnation of his actions by at least one-third of the U.S. Senate.

Earlier today, I voted against conviction and removal of the President on both articles of impeachment. I did not believe the House managers established beyond a reasonable doubt that this President is guilty of perjury and obstruction of justice.

Although I deplore the circumstances that have brought us to this point, I do not believe there is a clear and present danger to the functioning of our government, and therefore this President, who has been a good President for the people of the United States, should not be convicted and removed from office.

However, I feel very strongly and sincerely that the acquittal of the President on the articles of impeachment should not be the Senate's last word on the President's conduct, and that with further action such as a resolution of censure, the wrong message about the President's actions and the Senate's views thereon will be sent to the country.

One of the most worthwhile experiences of my Senate career has been listening to the remarks of the Senators over the past three days on the floor of the U.S. Senate. Each one gave substantial deliberation, serious thought and research and tried his or her level best to maintain their oath of impartiality.

It should be clear that this was not an easy time. It should be clear that every one in the Senate at every minute of every day wished this were not happening. But we think we have caught up in a constitutional requirement that gave us little choice.

I hope we come out of this with a deeper understanding of the divisions and polarization, which all of this has caused, and that every effort can be made not only by our leadership, but by every member of the Senate in every issue that comes before us to seek out a bipartisanism and to work
together to solve the problems facing our nation.

A good start in this process would have been to have allowed a vote on the censure resolution. I hope that when we return from the President's Day recess, we will do better.

**INTENT BEHIND THE CENSURE RESOLUTION**

I want to clear up once and for all the intent behind our censure resolution. The resolution does not express legal conclusions in the court of impeachment. Rather, it is a legislative measure, expressing our conclusions regarding the President's conduct.

The legal conclusions to be made in this case, if any, will be left to a court of law. Our intent is not to bind or influence the court one way or another, for good or ill, in making any determinations which it may about the President's conduct.

Instead, our purpose is to speak to the moral ramifications of the President's conduct, and to the message that those actions send to the people of our nation, especially its youth.

While the President's actions do not constitute a fundamental threat to the nation, neither were they at all acceptable. The President's conduct was both willful and wrong, clearly by any standard, his behavior is indefensible.

These actions demeaned the Office of the President, violated the trust of the American people, and brought shame upon President Clinton.

Let me now discuss the ample historical precedents for this censure resolution.

**Censure is an extraordinary measure that Congress has used sparingly over the past 200 hundred years.**

Censure is rare because it is such a powerful expression of Congressional criticism. In a censure resolution, a House of Congress publicly states its collective view that an individual has acted beyond the bounds of acceptable professional conduct. A censure records for history the major misdeeds of public men and women.

Over the past 200 years, the House and Senate have initiated censure proceedings against Executive Branch officials on at least 13 different occasions.

Three times a House of Congress has adopted measures that could be described as a censure of a President.

In 1834, the President censured President Andrew Jackson. Twice the House has adopted statements criticizing presidents—in the cases of John Tyler and James Buchanan.

Censuring President Clinton would be consistent with historical use of this rare, but powerful, Congressional power.

### The Case of Andrew Jackson

By far the most famous censure case of a sitting president involved Andrew Jackson.

President Jackson feuded with Congress over the establishment of a bank of the United States.

1. First, in 1832, he vetoed the rechartering of the Bank of the United States on the grounds that it was unconstitutional, elitist and had failed in establishing a sound currency.

2. Second, Jackson directed the government to withdraw its funds from the Bank. When his Treasury Secretary protested the withdrawal, Jackson removed him from his position.

On March 28, 1834, the Senate voted to censure President Jackson by a partisan vote of 26-20.

The resolution stated:

Resolved, That the President and the Secretary of the Navy, by receiving and considering the party relations of bidders for contracts and the effect of awarding contracts to political supporters.

On June 13, 1860, the House of Representatives voted 106-61 in favor of “censuring” the Secretary of the Navy and stating that President Buchanan’s conduct deserved its “reproof.”

The resolution stated:

Resolved, That the President and the Secretary of the Navy, by receiving and considering the party relations of bidders for contracts and the effect of awarding contracts to political supporters.

The House of Representatives has adopted two other statements that can constitute a fundamental threat to the presidency.

**PRESIDENT JAMES BUCHANAN**

Along with his Secretary of the Navy, President Buchanan was implicated in a financial scandal. There were accusations of "kickbacks" and the granting of government contracts to political supporters.

On June 13, 1860, the House of Representatives voted to expunge the censure resolution.

**PRESIDENT JOHN TYLER**

In 1841, John Tyler assumed the Presidency upon the death of President William Henry Harrison. In contrast to President Harrison, whose Whig views coincided with those of the majority of Congress, Tyler espoused State’s rights.

Tyler aroused the anger of Congress by vetoing Whig-sponsored bills related to tariffs and the creation of a national bank. Antigovernment Members of the House of Representatives finally decided to publicly rebuke the President.

A select committee drafted a report criticizing the President for: "Gross abuse of constitutional power and bold assumptions of powers never vested in him by any law"; for having "assumed the whole Legislative power to himself, and levying millions of money upon the people, without any authority of law"; for having "the abuse of the constitutional power of the President to arrest the action of Congress upon measures vital to the welfare of the people.

On August 17, 1842, the House passed this select Committee report.

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The resolution stated:

Resolved, That the President and the Secretary of the Navy, by receiving and considering the party relations of bidders for contracts and the effect of awarding contracts to political supporters.
In sum, censure is a powerful tool used very sparingly by Congress to condemn unacceptable conduct. Congress has initiated censure proceedings in policy disputes, but it has also censured officials in the case of President Buchanan, Navy Secretary Welles, and President Nixon for personal misconduct.

So to those who argue that passing this censure would establish a precedent for the future where presidents and cabinet officials could be censured, I hope this discussion has made it clear: that precedent has already been set.

BIPARTISAN CENSURE PROMOTES HEALING

In this bipartisan censure, we proposed the Senate with a real opportunity to achieve a strong, unifying, bipartisan conclusion to this whole tawdry, exhausting and divisive controversy.

The House’s actions were marred with partisanship. Indeed, one example of this was the action of the House leadership to prevent a censure resolution from even being considered on the House floor.

The Senate started its proceedings on a high note, when we came together to agree unanimously, across party lines, upon procedures for the trial. Passing our censure resolution by a strong, bipartisan vote would represent an appropriate “bookend” to this bipartisan beginning, and would stand this Senate well in the annals of history.

Moreover, it would put the proper historical perspective upon the Senate’s actions and determinations, which should not be read as a vindication of the President.

I believe that passing this censure on a bipartisan basis would bring a real closure to the process, and would help to heal the divisions between the parties which were created during these proceedings, so that we can move on to work together to address the real problems confronting the American people, like saving social security, improving education, and continuing the fight to reduce crime.

It is time that we move on to these other matters of significance to our people, to reconcile differences between and within the branches of government, to work together—across party lines—for the benefit of the American people.

I ask unanimous consent that a list of cosponsors and the text of the resolution be printed in the Record.

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

COSPONSORS

Mrs. Feinstein, Mr. Bennett, Mr. Moyer, Mr. Chafee, Mr. Kohl, Mr. Jeffords, Mr. Grossman, Mr.Smith of Oregon, Mr. Daschle, Ms. Snowe, Mr. Reid, Mr. Gorton, Mr. Bryan, Mr. McConnell, Mr. Cleland, Mr. Domenici, Mr. Torricelli, Mr. Campbell, Mr. Wyden, Mrs. Linda, Mr. Kerry, Mr. Schum, Mr. Durbin, Mrs. Murray, Mr. Wellstone, Ms. Mikulski, Ms. Dorgan, Mr. Baucus, Mr. Reed, Ms. Landrieu, Mr. Kennedy, Mr. Levin, Mr. Rockefeller, Mr. Robb, Mr. Inouye, and Mr. Akaka.

RESOLUTION OF CENSURE

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

Whereas William Jefferson Clinton, President of the United States, gave false or misleading testimony and his actions have had the effect of impeding discovery of evidence in judicial proceedings;

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

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

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

Whereas William Jefferson Clinton remains subject to criminal actions in a court of law like any other citizen;

Resolved, That the Senate now move to other matters of significance to our people, to reconcile differences between and within the branches of government, and to work together—across party lines—for the benefit of the American people.

Mr. WARNER. Mr. President, we are prepared to conclude the session. I simply ask unanimous consent that the order for the quorum call be rescinded. The PRESIDENT. Without objection, it is so ordered.

ORDER FOR STAR PRINT—S. 5

Mr. WARNER. Mr. President, I ask unanimous consent that the bill S. 5 be star printed with the changes that are at the desk.

The PRESIDENT. Without objection, it is so ordered.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDENT. The Chair, on behalf of the Vice President, pursuant to Public Law 94-304, as amended by Public Law 99-7, appoints the Senator from Colorado (Mr. Campbell) as Co-Chairman of the Commission on Security and Cooperation in Europe.

The Chair, on behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, appoints the Senator from Ohio (Mr. Voinovich) to read Washington’s Farewell Address on Monday, February 22, 1999.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDENT. The Chair, on behalf of the President pro tempore, pursuant to Public Law 96-388, as amended by Public Law 97-84, and Public Law 99-408, appoints the following Senators to the United States Holocaust Memorial Council: The Senator from California (Mrs. Boxer), and the Senator from New Jersey (Mr. Lautenberg).

The Chair, on behalf of the President pro tempore, pursuant to Public Law 99-408, appoints Donald R. Vickers, of Vermont, to the Advisory Committee on Student Financial Assistance for the term ending September 30, 2001.

APPOINTMENTS BY THE MAJORITY LEADER

The PRESIDENT. The Chair announces, on behalf of the Majority Leader, pursuant to Public Law
The resolution (S. Res. 46) was agreed to. The preamble was agreed to. The resolution, with its preamble, reads as follows:

S. Res. 46

Whereas, William D. Lackey has faithfully served the United States Senate as an employee of the Senate since September 4, 1964, and since that date has ably and faithfully upheld the highest standards and traditions of the staff of the United States Senate; Whereas, during his 35 years, in positions of responsibility in offices in the United States Senate, William D. Lackey has at all times discharged the duties and responsibilities of his office with extraordinary efficiency, aplomb, and devotion; and, Whereas, William D. Lackey has faithfully served the United States Senate with honor and distinction in the Office of the Journal Clerk since October 1, 1978 and his hard work and outstanding performance resulted in his appointment as Journal Clerk: Now, therefore, be it Resolved, That the United States Senate commends William D. Lackey for his service to his country and the United States Senate, and wishes to express its deep appreciation and gratitude for his long and faithful service.

 Sec. 2. That the Secretary of the Senate shall transmit a copy of this resolution to William D. Lackey.

HEALING OF THE NATION

Mr. WARNER. Mr. President, I ask the Senate to indulge me just a few words.

It is a privilege for me to stand in for our distinguished leader, Mr. LOTT. And my remarks also reflect on the outstanding performance not only by Leader LOTT but Leader DASCHLE on this historic day of the Senate. Mr. President, I have just returned, as have most Senators, from responding to many requests by the media on the grounds of the U.S. Capitol. I have said that the verdict is in. It has been given by the Senate. It is now before the Nation and they will be the final jury, the final arbiter. The sovereignty of this country rests not in the high office holders, but it is in the hands of the people. It is for them to decide.

As they approach the decision, I humbly submit to them: Let us put this chapter in our history, tragic though it may be, behind us, and that we heal ourselves and unite and go forward.

This is a great and strong nation. It is a leader of the world, not only in matters of security for ourselves but security for others, not only in matters of military security but in matters of economic security. Our President, by his own actions, is a weakened President. That strength which for a while he can no longer give to the Nation must be filled in by the people—individually and collectively. I think we should not spend time dwelling on the past. Leave it to the historians. Let us move forward to the future, heal ourselves, strengthen our Nation, so we can resume as a leader in the world. And may God rest his hand on this Senate and its verdict as being the best for the Nation and for our people.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 22, 1999

The PRESIDING OFFICER. Under the previous order, the Senate now stands adjourned until 12 noon, February 22, 1999.

Thereupon, the Senate, at 3:31 p.m., adjourned until Monday, February 22, 1999, at 12 noon.

NOMINATIONS

Executive nominations received by the Secretary of the Senate, February 12, 1999, under authority of the order of the Senate of January 6, 1999:

THE JUDICIARY

DAVID N. HURD, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK, VICE CON. G. CHOLAKIS, RETIRED.

NAOMI REICE BUCHWALD, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, VICE MIRIAM G. CEDARBAUM, RETIRED.

EXECUTIVE OFFICE OF THE PRESIDENT

G. EDWARD DESEVE, OF PENNSYLVANIA, TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET, VICE JOHN A. KOSKINEN, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST SESSION OF THE SENATE.
TRIAL OF WILLIAM JEFFERSON
CLINTON, PRESIDENT OF THE
UNITED STATES

Ms. SNOWE. Mr. Chief Justice, distinguished colleagues, let me begin by expressing my appreciation to the Chief Justice for his wisdom, for his infinite patience, and for conferring upon this body the judicial temperament envisioned by the Framers.

I would also like to commend both the Senate majority and minority leaders for upholding the dignity of this body, by preserving judiciousness and fairness, and maintaining bipartisanship and civility.

Colleagues, we have arrived at a juncture in our public lives that will largely define our place before the judgment of history, and I think it will be said that justice and the Constitution were well served.

Indeed, the consequences of our decision are manifest in the words of Alexander Hamilton, who wrote of "the awful discretion which a court of impeachment must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community."

Those words should weigh heavily upon us. But while the gravity of our task is humbling, the genius of our Constitution is ennobling; for we deliberate not under the imposing shadow cast by the exceptional men who framed this Nation, but in the illuminating light of their wisdom.

Impeachment was designed by the Framers to be a circuitbreaker to protect the Republic, when "checks and balances" would not contain the darker vagaries of human nature. Impeachment empowers the Senate—under the most extraordinary of circumstances—to step outside its legislative role, reach into the executive branch, and remove a popularly elected President.

Impeachment was not, however, devised as an adjunct or independent arm of prosecution, but is for the U.S. Senate to find solely whether the President committed statutory violations.

Rather, we have a larger question—whether there is evidence that persuades us, in my view beyond a reasonable doubt, that the President's offenses constitute high crimes and misdemeanors that require his removal.

Here is the precise point of our challenge—to give particular meaning to the elusive phrase, "high crimes and misdemeanors." This task is critical, because impeachment is not so much a definition, as it is a judgment in a particular case—a judgment based not upon an exact or universal moral standard—but upon a contemporary and historical assessment of interest and need.

"High crimes and misdemeanors" speak to offenses that go to the heart of matters of governance, social authority, and institutional power—of offenses that, in Hamilton's words, "relate chiefly to injuries done immediately to the society itself."

And these crimes must be of such magnitude that the American people need protection, not by the traditional means of civil or criminal law—but by the extraordinary act of removing their duly elected President.

For removal is not intended simply to be a remedy; it is intended to be the remedy. The only remedy by which the people—whose core interests are meaningfully threatened by the President's conduct—can be effectively protected.

This, to me, is what President Woodrow Wilson meant when he referred to "nothing short of the grossest offenses against the plain law of the land."

This, to me, is what Framers George Mason meant when he emphasized "great and dangerous offenses."

So in determining whether this President has committed a "great and dangerous offense" requiring removal, we must not weigh all of the credible evidence to identify which acts were actually committed. Then, we must assess the gravity or degree of the misconduct. This process requires that we review the acts from their origin, and the circumstances in their totality.

The allegations in article I do not paint a pretty picture. Indeed, we are all struggling with having to reconcile the President's lowly conduct with the Constitution's high standards. And we should all be concerned with the minimal threshold that he has set, and the poor example he has created for leadership in this country.

The President himself admits he gave evasive and incomplete testimony. He admits he worked hard to evade the truth. He admits he misled advisers, Congress, and the Nation. And he looked all of America in the eye—wagging his finger in mock moral indignation when he did it.

The fact is, the truth is not our servant. The truth does not exist to be summoned only when expedient. And I find his attempts to contort the truth profoundly disturbing. A President should inspire our most noble aspirations. Unfortunately, he has fueled our darkest cynicisms.

And I resent the ordeal he has put this country through—and we should make no mistake about it—whatever else may be said, we are here today because of the President's actions. I resent the shadow he has cast on what should be—and I feel still is—an honorable profession; public service. And I
think all of us who take our oaths to heart should resent it.

Finally, as a woman who has fought long and hard for sexual harassment laws, I resent that the President has undermined our progress. No matter how tangential this relationship was, it involved a man in a position of tremendous power, with authority over a 21-year-old female subordinate, in the workplace—and not just any workplace. He has shaken the principles of these laws to their core and it saddens me deeply.

But as I work my way through my distaste, my dismay, and my disappointment, I return to the discipline that the Constitution imposes upon us as triers of fact. My job here is to review the evidence, and to measure that evidence against my standard of proof, and the constitutional standard of high crimes and misdemeanors.

So let’s look at the evidence. Article I does not go to perjury about the eventual uncer-
derly—that charge was dismissed. Instead, the article before us alleges perjury based on statements about statements about conduct. Unfortunately, what this comes down to is a case of “perjury once removed”—an inherently tenuous charge.

As triers of fact, we are asked under article I not to find whether the Presi-
dent lied, but whether he committed the specifically defined act of perjury. Here, the law is clear that there must be proof that an untruth was told; that it was told willfully; and that it was told about a subject matter material to the case. These are the hard rules of the statute.

In this instance, article I alleges per-
jury in statements the President made explaining the nature and details of the relationship. Significantly, the under-
lying subject matter of most of these statements was ruled irrelevant and inadmissible in the underlying relationship—that charge was itself dismissed and set-
ttled. To me, these facts undermine the materiality of these statements.

Article I also alleges perjury in the President’s statements explaining his concealment of that relationship. Here, I find insufficient evidence of the re-
quisite untruth and the requisite intent. Given, again, that we are talking here about “perjury once removed,” I cannot con-
clude that the President is guilty of perjury.

As I look at article II, I have similar concerns and conflicts. Are there any among us who can look at the disturbing pattern that has been laid out for us and not be deeply troubled? I just look at the allegations. The President may have influenced the filing of an affidavit. The President may have initiated the concealment of po-
eential evidence. And the President may have accelerated a job search, in

But for all of this, there is only cir-
cumstantial evidence. Despite a 64,000 page record and countless hours of ar-
gument and testimony, there is no di-
rect evidence supporting any of these allegations.

To the contrary, where there is di-
rect evidence, the testimony is against the allegations. Indeed, not one witness with firsthand knowledge has come for-
ward with enough information to corroborate the charges. So, while I can draw inferences from the evidence, I cannot draw conclusions beyond a reasonable doubt.

The Framers clearly prescribed caution when measuring high crimes, and such caution is all the more important when a case rests on purely cir-
sumstantial evidence. Mindful of this caution, I still find that one allegation stands out from the rest; the Presi-
dent’s attempt to influence the poten-
tial testimony of his personal assist-
ant. Let’s look at the facts. In the Presi-
dent’s civil deposition, the President suggested, at least three times, that the attorneys should ask questions of his personal assistant. At the end of the deposition, the judge reminded him of the confidentiality order not to dis-
cuss the content of his deposition. In a manner that all but reveals the President’s motives, he included in his discussion with her false statements about the cir-
sumstances of his relationship. Indeed, when she, the personal assistant, be-
lieved the President sought her agree-
ment with those statements he was posing.

Consider this critical exchange in the testimony of the President’s assistant: She was asked, “Would it be fair to say then—based on the way he stated it and the demeanor he was using at the time he stated it to you—that you wished him to agree to that state-
ment?” The President’s assistant nodded. She was then asked, “And you’re nodding your head yes, is that correct?” And she answered, “That’s correct.”

And he again violated the gag order when he revisited these statements with her several days later.

As an experienced lawyer, the Presi-
dent knew that, by the force of his own testimony, he made his assistant a po-
etial witness.

As a former State attorney general, as an experienced lawyer, the President knew he was violating the confidentiality order when he spoke with her. As a defendant who repeatedly named the personal assistant, the President knew that his assistant would be subpoenaed. And she was subpoenaed just 3 days later. But even if she hadn’t, the Presi-
dent did not need absolute or direct knowledge that his assistant would tes-
tify. Under the law of obstruction, which, unlike perjury, does not ex-
pressly require materiality, he only had to know that she could offer rele-
vant facts.

Make no mistake about it, I find the President’s behavior deplorable and in-
defensible.

If I were a supporter, I would aban-
don him. If I were a newspaper editor, I would denounce him. If I were an his-
torian, I would condemn him. If I were a criminal prosecutor, I would charge
him. If I were a grand juror, I would indi-
hict him. And if I were a juror in a criminal case, I would convict him of attempting to unlawfully influence a potential witness under title 18 of the United States Code.

However, I stand here today as a U.S. Senator, in an impeachment trial, with a decision—does the President’s misconduct, even if deplorable, rep-
resent such an egregious and imme-
diate threat to the very structure of our Government that the Constitution requires his removal?

To answer this broad question, we need to ask several finer questions.

Do the people believe that their lib-
erties are so threatened that he should not serve his remaining 23 months? Is the President’s violation on par with treason and bribery? What are the ines-

capable and unprecedented effects of removing a duly elected President? And can the President’s wrongdoing be more effectively remedied by criminal prosecution, in a standard court of law, after he leaves office?

These are the questions which drive our consideration of the “gravity” and “degree” of the President’s conduct. To this end, I return to the words of an-
other Maine Senator, William Pitt Fessenden, who during the Andrew Johnson trial said that removal must “be exercised with extreme caution” and “in extreme cases.” It must, he said, “address itself to the country and the civilized world as a measure justly called for by the gravity of the crime . . . .”

In this case, I understand how rea-
sonable minds could differ, for I have struggled long and hard with my own decision.

But the Constitution tempers our passion and measures our judgment. And the Constitution requires each of us to determine not just whether the President violated a statute, but whether the Framers intended the offenses charged in this case to require removal in any and all circumstances, they would have specifically included them in the impeachment provisions of the Constitution.

Because they did not, we are com-
pelled to ask ourselves whether the na-
ture and circumstances of his conduct are such that we have no choice but to inflict upon him what one of the House managers called “the political equiva-

tent of the death penalty.”

If I could conclude that this Presi-
dent’s conduct is of that nature, I would vote to remove him. Because if there is one thing I’ve learned through-
out my 25 years in elective office, it is that some really tough decisions leave us with but one choice—doing what we know to be right and true.

In this instance, among the seven al-
legations charged in article II, I have
only been persuaded beyond a reasonable doubt that the President committed one of them. After due consideration of all the factual circumstances relating to this one finding, and the constitutional dictates and implications of this matter as a whole, I am persuaded that the President's wrongdoing can and should be effectively addressed by the additional remedy expressly provided by the Framers in the Constitution—namely, trial before a standard criminal court. And I am further persuaded that future Presidents, and future generations can be effectively deterred from such wrongdoing by this impeachment and a potential prosecution.

The President's behavior has damaged the Office of the Presidency, the Nation, and everyone involved in this matter. There are only two potential victims left—the Senate and the Constitution—and I am firmly resolved to allow neither to join the ranks of the aggrieved.

From the day I swore my oath of impartiality, I determined that the only way I could approach this case was to ask myself one question, “If I were the deciding vote in this case, could I remove this President under these circumstances?” The answer, I have concluded, is “no”—and therefore, I will vote against both articles of impeachment.

Mr. Chief Justice, I came to this process with an open notebook and an open mind, determined to honor my oath to do impartial justice and serve the best interests of the Presidency, the American people, and the Nation. I stand confident that in doing so, my manner has been impartial, and my judgment has been measured. Therefore, in my mind and in my heart, I believe to a moral certainty that my verdict is just.

As men and women of honor, that is the highest expectation to which we can aspire. For we are writing history with indelible ink, but imperfect pens.

In the end, when future generations dust off the record of what we have done here, may they say we validated the Framers' faith in the Senate. May they say we reached within ourselves to discover our most noble intentions. And may they say we achieved a conclusion worthy not just of our time, but of all time.
leadership of Presidents Washington and Lin-
colns to reflect on the wisdom, courage and
government of the people, by the people, for the
described the American experiment as a "gov-
ment to truly succeed, all Americans must be
moted the concept that for democratic govern-
ment the American experiment. By bringing those
succeeded.

Where George Washington could easily
have chosen to be a monarch or a despot un-
accountable to no one but himself, he, in-
stead, devoted his twin terms as President to
putting into practice the ideals of the American
Revolution.

President Washington never lost sight of a
basic tenant of the Revolution that Government’s
power ultimately resides in the people, and
that public officials are the servants of the
public.

Assuming office at a time of great peril and
uncertainty, President Washington returned to
Mount Vernon eight years later having proven
through his restraint and leadership that the great American experiment had

But unfortunately, seven decades later, our
country was wracked by division, anger and,
eventually, a bitter civil war. The American ex-
periment was suddenly imperiled.

At times of great crisis, the American people
have had the genius of entrusting the Nation’s
fate to great leaders.

Abraham Lincoln, by navigating our country
through the crucible of civil war, preserved the
nation and extended Washington’s vision of
the American experiment. By bringing those
previously enslaved under the protection of the
Constitution and Bill of Rights, Lincoln pro-
moted the concept that for democratic govern-
ment to truly succeed, all Americans must be
able to participate. Just last week we under-
scored the significance of full citizen participa-
tion by commemorating the 35th anniversary
of the ratification of the 24th Amendment to
the Constitution, which finally put an end to the
poll tax.

President Lincoln himself so eloquently de-
scribed the American experiment as a “gov-
ernment of the people, by the people, for the
people”.

On this holiday weekend, I urge all Ameri-
cans to reflect on the wisdom, courage and
leadership of Presidents Washington and Lin-
coln.

TRIBUTE TO WILLIAM FRIED-
LANDER, A GREAT LIVING CIN-
CINNATIAN

HON. ROB PORTMAN
OF OHIO

IN THE HOUSE OF REPRESENTATIVES
F riday, February 12, 1999

Mr. PORTMAN. Mr. Speaker, I rise today to
pay tribute to William Friedlander, a friend and
community leader, who will be honored as a
Great Living Cincinnati on February 19, 1999 by the Greater Cincinnati Chamber of
Commerce. He was selected based on his vol-
unteer activities, business and civic accom-
plishments, awareness of the needs of others,
and achievements that have brought favorable
attention to the Cincinnati area. Bill has en-
riched the lives of all Greater Cincinnatians
through his dedication, leadership, and love
for our community.

Bill graduated from Walnut Hills High School
and Amherst College. After serving 2 years in
the Army, he attended Harvard Business
School. He began his career at Bartlett &
Company in 1957, rising to the position of
Chairman. Bill is known for his tireless vol-
unteer work and fundraising for local organiza-
tions. He served on the boards of Jewish Hos-
pital and the Greater Cincinnati Foundation,
where he served as both a board member and
the Volunteer Director. During his very suc-
cessful tenure at the Foundation, assets grew
from $40 million to $140 million.

Bill has been especially active in the arts,
serving as a board member for the Cincinnati
Association for the Arts. He and his wife,
Susan, also chaired the Cincinnati Symphony
Orchestra’s Second Century Fund, raising $37
million—thought to be the largest amount ever
raised for an arts organization in Greater Cin-
cinnati. All of us in Cincinnati are grateful for
his commitment to our community.

PERSONAL EXPLANATION

HON. CARYON B. MALONEY
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES
F riday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker,
during rollcall vote No. 12, (H.R. 440), I was
unavoidably detained. Had I been present, I
would have voted “yea.”

GOOD FRIDAY AGREEMENT IN
PERIL

SPEECH OF
HON. VITO FOSELLA
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES
Thursday, February 11, 1999

Mr. FOSELLA. Mr. Speaker, I stand here
today as an American of Irish descent and as
a Representative from Staten Island and
Brooklyn, New York which is the home of
many Irish Americans. I am very happy to see
that the peace process in Ireland has pro-
gressed to the point we are at now—nearing
the one year anniversary of the Good Friday
agreement. It is a significant accomplishment
that the violence has ended, that those who
wish to further violence are not in power and
are no longer winning their battle.

Last fall, I had the opportunity to travel to
Ireland and to see the wonderful country from
which my descendants came. I was able to
meet with leaders from both sides and to wit-
ness for myself what the toll that violence has
taken on this beautiful country. Now is a
time to work together, to rebuild, to look towards
a future with a peaceful Ireland. We must en-
sure that peace in Northern Ireland becomes
a long-term, irreversible reality and the almost
year old Good Friday agreement remains en-
forced.

In closing, I would like to commend Con-
gressman WALSH from New York on his lead-
ership on this issue and to thank him for giv-
ing me the opportunity to speak today.

APPROVAL TO THE TRIDENT
FOUNDATION

HON. MAC COLLINS
OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES
F riday, February 12, 1999

Mr. COLLINS. Mr. Speaker, I rise today to
acknowledge and thank the Colorado-based
Trident Foundation for its tireless work in com-
nunities across the United States. The Trident
Foundation is a network of highly skilled men
and women from around the world, who come
together as volunteers, bringing specialized
equipment and the latest technology to offer
water recovery support.

Recently, that commitment brought the
group to Columbus, Georgia, to solve an un-
successful three month search for the body of
14-year-old Kelvin Moreland. Kelvin, a resident
of the Carpenter’s Way Ranch, a Catalua
home for boys who cannot live with their natu-
rinal families, drowned while on a supervised
outing.

The Trident Foundation’s recovery of Kel-
vin’s body provided the community needed
closure with use of specialized sonar equip-
ment and its team of volunteers from law en-
forcement agencies, fire departments, the
medical profession, the U.S. Navy, and tech-
nical and scientific diving fields. Although their
operations generally cost about $50,000 a
day, the group provides the services free of
charge. In addition, services for the divers
were provided by area companies.

Kelvin’s body could not have been found
and properly buried if not for the efforts of the
Trident Foundation and local organizations. I
commend their commitment and service to
Columbus and other communities across our
nation. Their work has allowed Columbus and
the Carpenter's Way family to mourn, and Kel- 
vin Moreland to rest in peace.

TRIBUTE TO M. J. KLYN, A GREAT 
LIVING CINCINNATI

HON. ROB PORTMAN 
OF OHIO

IN THE HOUSE OF REPRESENTATIVES 
Friday, February 12, 1999

Mr. PORTMAN. Mr. Speaker, I rise today to 
pay tribute to Mary Jeanne (M. J.) Klyn, a dear 
friend and community leader who will be hon- 
ored as a Great Living Cincinnati on Feb-
ruary 19, 1999 by the Greater Cincinnati 
Chamber of Commerce. She was selected for 
such an honor because of her exemplary com-
mitment to the community welfare. This is a 
well-deserved recognition of M. J.'s dedica-
tion to community service.

M. J. grew up in Illinois and attended North-
western University. She was successful in 
banking, retailing and advertising in Cleveland, 
and was named the first female vice president of 
the University of Cincinnati. Among her du-
ties was to work with the state legislature on 
state funding and other issues. During her 23 years 
with the University of Cincinnati, she played a 
pivotal role in bringing the university into the 
state system and helped obtain more than $2 
20 billion for important capital projects. Among 
M. J.'s accomplishments were obtaining funds 
for the Shoemaker Center and the Barrett 
Cancer Center. She also led the drive to ob-
tain the designation of the U.S. College of 
Engineering as one of ten NASA Federal Re-
search Centers.

M. J. also served for 20 years on the Board 
of the Greater Cincinnati Convention and Visi-
tor's Bureau, and earned its first Spirit of Cin-
cinnati Chairman's Award. Women in Commu-
nications honored her with its Movers and 
Shakers Award. M. J. makes friends wherever 
she goes, and I feel lucky to be among them. 
All of us in Cincinnati are grateful for her lea-
dership, service, and commitment to our Great-
er Cincinnati community.

PERSONAL EXPLANATION

HON. CAROLYN B. MALONEY 
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES 
Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, 
during rollcall vote No. 13 (H.R. 439), I was 
unavailable. Had I been present, I would have 
voiced "yea."

PACKERS AND STOCKYARDS ACT 
AMENDMENTS

SPEECH OF 
HON. BOB ETHERIDGE 
OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES 
Tuesday, February 9, 1999

Mr. ETHERIDGE. Mr. Speaker, I want to 
commend Mr. LATHAM for introducing this im-
portant legislation and Chairman COMBEST for 
bringing it to the floor today. As has been well 
documented, our pork producers have been 
devastated by record-low prices for their prod-
ucts over the past year. While hog prices have 
fallen dramatically, consumer prices are 
virtually unchanged. Someone is getting rich 
at the expense of our farmers. Pork producers 
need better and more up-to-date information on 
prices to ensure that they are being treated 
fairly, and I hope the investigation into pork 
prices prompted by this legislation will go a 
long way towards protecting their interests.

For too long, the processing and distribution 
of swine has been concentrated in too few hands. 
This concentration could be dangerous for 
our farmers, and I urge the Senate to 
move quickly to pass this important legislation.

Too many small farmers and their families in 
North Carolina depend on swine production for 
their livelihood for us not to take action now. 
This investigation is a small but important step 
in the right direction and I urge the House to 
adopt this important bill today.

REJECT THE LEGAL "END 
AROUND" ON GUN MAKERS

HON. JOHN E. SWEENEY 
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES 
Friday, February 12, 1999

Mr. SWEENEY. Mr. Speaker, in the wake of 
the tobacco lawsuits, many in our nation's 
legal profession have fallen into the wrong-
headed idea that courts, rather than legisla-
tures, should decide all public policy issues. 
This concentration is more notable than in the 
lawsuits recently filed by several cities against 
the firearms industry.

Mr. Speaker, even many publications that 
support restrictive gun control laws have spo-
ken out against this trend. The Schenectady 
Daily Gazette, a newspaper that serves many 
of my constituents in upstate New York, 
blames violence on the lack of gun laws. I 
strongly disagree with that view—in fact, our 
nation has tens of thousands of gun laws at 
every level of government, and the laws in 
New York state are particularly strict.

However, I do agree with the Daily 
Gazette's conclusion that the lawsuits are 
"hugely misguided" and nothing but an 
"ab-surd money grab" designed to make a scape-
 goat of a highly regulated industry that manu-
factures a lawful product. Mr. Speaker, I urge 
the nation's courts and legislatures to reject 
these ridiculous lawsuits, and I insert the Daily 
Gazette editorial for printing in the CONGRE-
SSIONAL RECORD.

[From the Daily Gazette, Nov. 5, 1998]

DON'T SUE GUN MAKERS

New Orleans is a great destination for 
music lovers and gourmets, but it's also a 
good place to get shot. In fact, until a law-
and-order mayor took office there four years 
ago, it had the dubious distinction of being 
"the murder capital of the United States." 
Now the city has filed a huge—and hugely 
misguided—lawsuit against 15 gun manufac-
turers. Numerous other large cities report-
edly want to join the suit. Unbelievable.

In the wake of such lawsuits pending 
against the tobacco industry, the suit at-
tempts to make manufacturers a scapegoat 
for products that are wholly lawful and used 
for lawful purposes. (Grant-
ed, guns aren't supposed to be used to 
commit murder, but there's little ambiguity 
about their primary function as weapons for 
killing and maiming, whether for hunting or 
self-defense.)

The lawsuit focuses on the product liabil-
ity angle, claiming that gun makers fail to 
use enough safety devices, their weap-
os are "unreasonably dangerous." This 
might be arguable if most gun deaths were 
primary for their intended purpose. (Grant-
ning the above, I didn't know it was loaded," or "it just went off"

But in New Orleans—as in most cities—the killings are intentional. And men 
who hold guns know to take at least a little care to guard against acci-
dents.

Are the gun makers to blame when some 
drug dealer steals a pistol and wastes his 
rival with it? Not unless they're handing 
out the weapons, or glorifying this sort of be-
havior with advertising, etc. And if some kid 
gets his hands on his parents' gun and 
accidentally blows his friend away, aren't 
the parents really at fault for not doing a better 
job securing the weapon?

Where cigarette manufacturers can be 
accused of promoting irresponsible usage, gun 
manufacturers almost never advertise—at least not 
happily. And where the cigarette's primary 
function is to provide smokers with pleas-
ures— with illness an unfortunate con-
sequence—guns are inherently lethal.

So let's stop this absurd money grab. Gun 
manufacturers may not be completely devoid of re-
Sponsibility for this country's gun problem, 
but a government that allows guns to be 
made and people to buy and possess the 
seems a lot more culpable.

STATES' INITIATIVE

HON. TOM BLILEY 
OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES 
Friday, February 12, 1999

Mr. BLILEY. Mr. Speaker, yesterday I intro-
hduced H.J. Res. 29. I have sponsored this leg-
islation with Congressmen COLBE, GOODE, 
STUMP, GILLMOR, METCALF, SHADEGG, 
and MANZULLO. This constitutional amend-
ment symbolizes what in Virginia we call the States' 
Initiative.

When the Founding Fathers wrote the Con-
stitution in Philadelphia in 1787, they drew 
upon life's experiences and history to perfect 
the ideas and ideals they embraced. After they 
finished writing the Constitution, the Founding 
Fathers were wise enough to know they could not foresee the future. As 
result, Article V provides for a mechanism to 
amend the Constitution.

We all know the Constitution is not perfect, 
even after 27 amendments. The Constitution has, although, protected the individual liberties 
all Americans have enjoyed for over 200 
years.

As the proud holder of the seat first held by 
James Madison, my first objective is to never 
do any harm to the Constitution. However, the 
Founding Fathers acknowledged a need to 
amend the Constitution. The States' Initiative 
is a direct descendant of Madison's writings.

In Federalist paper 43, James Madison wrote, 
. . . usef ul alterations will be suggested by 
experience. The Constitution moreover 
equally enables the general and the state 
governments to originate the amendment of 
errors as they may be pointed out in "the ex-
perience on one side or on the other."

At present, Article V provides for two ways to 
amend the Constitution.
The first involves the presentation of an amendment by Congress to the states for ratification. The second is by constitutional convention, convened at the request of the State legatures. Even with both methods available, to date, all amendments to the Constitution have been enacted following passage by the Congress and ratification by three-fourths of the States. Some have asserted that the second method has not been as effective as intended by the Framers.

On the Op/Ed pages of the Richmond Times-Dispatch, my local newspaper, Edward Grimley wrote about the dilemma which would be remedied by the States’ Initiative. Edward Grimley wrote, “In the hands of the people the amending process could produce some truly wonderful results.”

By allowing the States an effective mecha-nism to amend the Constitution, more power can be returned to the people. After all, “We the People” are the first 3 words of the Constitution. Why is the States Initiative necessary? Persuasive arguments have been made that a constitutional convention might alter the Constitution more expansively than intended by proponents of a specific proposed amendment. This is known as the fear of a “run-away” convention.

The States Initiative implements a more effective method by which states could take the initiative in the process by which the Constitu-tion is amended. This bill allows the States to initiate the amendment process that is devoid of the perils of a “run-away” constitutional convention. Another problem with a constitutional con-vention is that even if it isn’t a “run-away” convention (that is, even if the constitutional convention met to adopt only one amendment), the mere fact that the States met could have a far-reaching jurisprudential impact. Would the Supreme Court view a constitutional convention which kept the pre-existing Constitution as an implicit ratification of prior Supreme Court rulings? This would cause those on the left (who oppose certain Rehnquist Court rulings) and those on the right (who oppose certain Warren Court rulings) a considerable amount of trouble.

To restore the Framers’ design, that is a design where the states could initiate the amendment process, our proposal would allow a constitutional amendment to be presented to Congress after two-thirds of the States indicated approval of an identical amendment via their State legislatures. If two-thirds of each House of Congress does not agree to disapprove of the proposed amendment, it would be submitted to the States for ratification.

Upon ratification by three-fourths of the States, the amendment would become part of the Constitution. I am proud to sponsor this constitutional amendment which will return power back to States, where the Framers intended it to be.

HON. CAROLYN B. MALONEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, during rollcall vote No. 14 (H.R. 435), I was unavoidably detained. Had I been present, I would have voted “yea.”

TRIBUTE TO JOHN RUTHVEN, A GREAT LIVING CINCINNATIAN
HON. ROB PORTMAN
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mr. PORTMAN. Mr. Speaker, I rise to pay tribute to John Ruthven, a longtime friend and leader in my community, who will be honored as a Great Living Cincinnati on February 19, 1999 by the Greater Cincinnati Chamber of Commerce. He was selected based on his community service, business and civic accomplish-ments, awareness of the needs of others, and achievements that have brought favorable attention to the Cincinnati area.

As a child on the farm, John says his family didn’t have much—except of lot of love. He grew up in Walnut Hills and graduated from Withrow High School. After serving in the Navy during World War II, he graduated from the Cincinnati Art Academy and opened a commercial art studio. John won the prestigious Federal Duck Competition in 1960 with “Redhead Ducks,” and his work began to be known across the country. In 1971, he founded Wildlife Internationale to produce limited edition lithographs. He has earned numerous awards, including Ducks Unlimited’s First Art-list, and Trout Unlimited Artist of the Year. John’s art is displayed in the White House, in Congress and in other prominent places around the world. He has given generously of his time and ex-traordinary skill to many numerous charities over the years. He is a modern day Audubon who is both an internationally known wildlife artist and a committed naturalist. John Ruthven is also a warm and caring person who brightens the lives of those he meets. He is a truly great Living Cincinnati. All of us in Cincinnati are proud of his accomplishments and are grateful for his service to others.

IN MEMORY OF JERRY FELDMAN
HON. PETER DEUTSCH
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mr. DEUTSCH. Mr. Speaker, I rise today to honor the memory of Jerry Feldman, a gener-ous and ground-breaking community leader who will be greatly missed in South Florida. After spending a large portion of his life in New York as a highly successful corporate ex-ecutive and private business owner, Jerry and his wife Jacqueline retired to Century Village in South Florida. Adding to his already extraor-dinary list of accomplishments, Jerry Feldman plunged himself into community service in the hopes of improving the lives of his new neigh-bors and friends. As his wife so eloquently ex-pressed, “He felt that God put him on this earth to make things better for people, and his reward would be a better life,” she said. “If you cast your bread on the water, he felt, it would come back twofold.’’

Jerry Feldman became involved in many community organizations in his attempts to galvanize the community and create an open dialogue between South Florida’s citizens. Be-sides being the President of the Condominium Owners of the Pembroke Pines Association, Mr. Feldman also served as Chairman of the Pembroke Pines Board of Adjustment, Presi-dent of the Pembroke Pines Seniors and Law Enforcement Working Together (SALT) Coun-cil, and President of the Cambridge 4 Con-dominium Association in Century Village. As the Mayor of Pembroke Pines, Alex Fekete, noted, “he was a great community leader * * * he helped to resolve issues * * * there is a more harmonious relationship in Century Village now because of it.’’

In summary, Jerry’s genuine leadership is rare in this age and he will be surely missed by the Century Village Community, as well as by the Pembroke Pines community at large. Jerry was an extraordinary human being who went above and beyond what he needed to be, because of his sincere desire to help his fellow man. We will all miss Jerry, but we are lucky to have so many wonderful memories of his life and work.

HON. CAROLYN B. MALONEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, during rollcall vote No. 15, Boehlert amend-ment to H.R. 350, I was unavoidably detained. Had I been present, I would have voted “yea.”

HONORING SUSAN B. ANTHONY
HON. ROBARBARA CUBIN
OF WYOMING
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mrs. CUBIN. Mr. Speaker, one hundred and seventy-nine years ago, on February 15, a re-markable woman was born. Her passion for establishing equal rights for women led her to champion the rights of others dispossessed as well. That woman is Susan B. Anthony. Today she is mainly, and rightly, remembered as one of our greatest foremothers in the drive for women’s rights. And this drive for women’s rights led her to champion the rights of others as well. Anthony was a fierce opponent of slavery. And she also championed the rights of those who today have become the most dispossessed of all: the unborn. Although she herself was childless, she considered amongst her greatest achievements, to have saved the lives of the unborn. She said, "... Sweeter earth to make things better for people, and his reward would be a better life," she said. "If you cast your bread on the water, he felt, it would come back twofold.’’
Mr. Speaker, it is fitting that we take the anniversary of her birth as an opportunity to remember this great woman, Susan B. Anthony, and to reeducate ourselves to her life’s work of guaranteeing full rights for both women and their unborn children.

TRIBUTE TO WILLIAM F. BOWEN, A GREAT LIVING CINCINNATIAN

HON. ROB PORTMAN
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mr. PORTMAN. Mr. Speaker, I rise today to pay tribute to William F. Bowen, an outstanding individual who will be honored as a Great Living Cincinnatian on February 19, 1999 by the Greater Cincinnati Chamber of Commerce. He was selected based on his exemplary community service, business and civic accomplishments, and achievements that have brought favorable attention to the Cincinnati area. Bill has enriched the lives of all Greater Cincinnatians through his dedication, leadership and love for our community.

William Bowen, the eldest of seven children, was born before the American civil rights movement. He likes to tell people, “I spent my time fighting the battles; I worked full time at fighting for civil rights.” His long history in the civil rights movement includes the presidency of the Cincinnati Branch of the National Association for the Advancement of Colored People.

Bill grew up in Cincinnati’s West End, graduated from Woodward High School and studied business administration at Xavier University. His career as a legislator began when he was elected to the Ohio House of Representatives in 1966. During his tenure, he served as House Minority Whip. In 1970, Bill was appointed to the Ohio Ninth Senatorial District seat. He was elected to the seat later that year and reelected in 1974, 1978, 1982, 1986 and 1990.

He is known for his commitment and for being a good friend to his hometown. All of us in Cincinnati are grateful for his leadership and service to our community.

EXTENSION OF THE RESEARCH AND DEVELOPMENT TAX CREDIT: H.R. 760

HON. F. JAMES SENSENBRENNER, JR.
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mr. SENSENBRENNER. Mr. Speaker, today I have introduced a bill to permanently extend the Research and Development Tax Credit.

A permanent extension of the R&D Tax Credit is necessary to assuring those who conduct long-term research and development that the federal government values their efforts and will continue to provide support for the type of research that is the foundation of our economic prosperity. Failure to permanently extend the credit has created uncertainty in the research community. This uncertainty has created a disincentive for private industry to conduct long-term research projects to the detriment of our national welfare.

We must find ways to leverage our Nation’s resources to support Research and Development. Even with a $70 billion federal budget surplus, the Administration indicates that discretionary spending for science research and development programs will not be increased. As federal discretionary spending for R&D is squeezed, America must maintain America’s investment in private sector innovation so that we can maintain our global leadership in high-technology, high-growth industries that help to keep our economy the strongest in the world.

Congressional support. However, it has become apparent in recent years that this approach does not allow for industry to plan their R&D in ways that increase the level, and efficiency of research spending.

There is clear bipartisan support for permanent extension of the R&D Tax Credit and I urge my colleagues to support this important piece of legislation.

PERSONAL EXPLANATION

HON. CAROLYN B. MALONEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, during rollcall vote No. 16, Waxman amendment to H.R. 350, I was unavoidably detained. Had I been present, I would have voted “yea.”

BENJAMIN WOMICK—NATIONAL VOLUNTEER AWARD RECIPIENT

HON. JIM DeMINT
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mr. DeMINT. Mr. Speaker, I rise today to congratulate and honor a young South Carolinian from my district who has achieved national recognition for exemplary volunteer service in his community. Benjamin Womick of Spartanburg has just been named one of my state’s top honorees in The 1999 Prudential Spirit of Community Awards program, an annual honor conferred on the most impressive student volunteers in the nation.

Ben, a senior at Daniel Morgan Vocational Center, is the youngest commissioned state fire marshal in South Carolina history. He has...
called in their native language, the Huaorani. As a result, I journeyed with a friend to the Ecuadorian rain forest and also Quito, the capital, between Saturday, January 9, and Friday, January 15, for the purpose of meeting the people, becoming acquainted with the region, and assessing whether I could be of any assistance in understanding the particulars of their situation.

The challenges of tribal life in the Amazon Basin, particularly with the inroads of industry, are not small and have been well documented by social group anthropologists, and others. This huge area of rain forest, which is home to as few as 175,000 people in various tribal groups scattered throughout it, has received much attention from the scientific, industrial and religious communities.

Upon arrival at Quito airport Saturday evening, we were met by Peter Harding, political officer at our embassy, and Alicia Duran-Ballen, daughter of a former president of Ecuador. She served as host and interpreter for us while we were in Quito. We left the next morning early by private plane for Nemompa, a small village in the Amazon Basin, 150 miles southeast of Quito, a few miles from the site on the Curaray where the young men had been killed. We were met there by Steve Saint and spent the next two days and nights with the Huaorani learning how they live, being shown their ways, and talking with them about their concerns for the future.

Generally, we observed their way of life, their culture and their interactions with each other and learned what it is like to live on a day to day basis. A group of high school students from Wheaton Academy, a private school in the Chicago suburbs, were there at the same time.

The challenges facing the Huaorani are not on the same order as other groups which I have visited and for which I have expressed great concern previously. However, they are faced with learning to live interactively with high technology civilization in the coming years, and learning to do so while maintaining their own identity. Historically, they have been a highly egalitarian society without much vertical social order. That has been moderated some in the last 40 years to include community elders, who help guide life in the tribe. They have also become somewhat less nomadic in recent years.

Government requirements for personal registration, voting at designated venues which may be several days away by jungle trail, and other things necessary to interact with the national culture are matters which are currently under discussion with the Ministry of Government and specifically the Office for Indigenous Affairs. As hunter-gatherers in the rain forest, the national language, use of money, and means of transportation all critical to engagement with the outside world are foreign to the Huaorani and all need to be addressed. Additionally, the request for a radio frequency from the government by which to disseminate information throughout their own territory, which would be of interest to the Huaorani, we were able to invite the president to the National Prayer Breakfast, which he subsequently attended on February 4.

In the words of Steve Saint, what the Huaorani need are the following:

1. The right to vote and establish their citizenship within their own territory, which would include a place to register their birth, marriage and death, and to acquire the “cedulas” (identity cards) that are required of all citizens.

2. The right to develop their own means of disseminating information throughout their own territory, in their own language, without meeting stringent communication requirements that were established for densely populated territories. They need favorable concession in the acquisition or radio frequencies.

Although much of my interest has focused on the human rights around the world, it was encouraging to see a situation in which thoughtful assistance in a timely way could nurture self-determination and the democratic process. I am grateful for the efforts of our Foreign Service Corps in Ecuador for their skill and dedication in the public sector, as well as the work of private U.S. citizens in the humanitarian arena, which enhances the lives of peoples in both countries.

PERSONAL EXPLANATION
HON. CAROLYN B. MALONEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, during rolcall vote No. 18 (H.R. 950), I was unavoidably detained. Had I been present, I would have voted “nay.”

HUMAN RIGHTS
HON. JOSEPH R. PITTS
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Friday, February 12, 1999

Mr. PITTS. Mr. Speaker, this week, I chaired a Congressional Human Rights Caucus briefing in which expert witnesses from Indonesia showed photographic evidence and reported on the situation facing their people. Attacks on ethnic and religious minorities, particularly Chinese Muslims, are continuing and in some instances appear to be orchestrated. Ninety-five churches have been burned or destroyed since May of 1998.

Today I am submitting record and statements from this week’s briefing. These statements help to note the severity of acts being committed in Indonesia.

STATEMENT FOR MEMBERS BRIEFING ON CURRENT HUMAN RIGHTS ABUSES IN INDONESIA

Good morning ladies and gentlemen. It is a privilege for me to welcome you to the Congressional Human Rights Caucus briefing on Current Human Rights Abuses in Indonesia. The extreme nature of the recent human rights abuses in Indonesia has shocked the world. Reports show that churches and mosques have been burned, businesses of ethnic minorities have been looted and destroyed, students were arrested and killed, and women and girls have been brutally raped and sometimes murdered.

Today’s hearing is sponsored by the Congressional Human Rights Caucus. The Caucus, co-chaired by Congressman J ohn Porter and Congressman Tom Lantos, is a bipartisan group of members dedicated to advocating for the protection of human rights
worldwide. The situation in Indonesia has long concerned Human Rights Caucus Members and many American people because of the long-standing human rights violations in East Timor. It was not until more recently, however, that the world watched as the horrors perpetrated in East Timor spread throughout Indonesia.

As you may know, early last year, riots broke out in Indonesia. A young boy in Indonesia was found murdered and many people were shocked by what might be behind those abuses. The Congressional Human Rights Caucus encourages you to be vigilant in this area. Groups of unknown assailants would descend on a community, enter businesses, demand money, rape women who were present (often while uttering anti-Chinese rhetoric), and loot and sometimes burn the businesses.

Despite the change in the leadership of Indonesia's government, human rights abuses continue. Unfortunately, the stories of situations similar to last year’s tragedies have not ceased in Indonesia. Killing and rioting is still occurring. In January of this year, 40 people were murdered in a village in Ambon. Attacks on the village of Aninjai near Ambon stopped individuals in the streets, asked them what their religion was, and upon their admission of Christian beliefs, killed the inhabitants. Reports indicate that approximately “20,000 people sought refuge in military bases, police barracks, churches and mosques” in riots in which “seven mosques, nine churches, and 570 buildings were burned.” Similar reports have come from Banyuwangi, Ketapang, Poso, and other regions of Indonesia.

Other reports contain details that during the rioting in the region known as the “Spice Islands,” in one week 15 churches and 11 mosques were badly damaged or completely destroyed. Local inhabitants of attacked areas often state that villagers lived in harmony until outsiders came to their homes and, armed with various weapons, instigated the various riots and attacks on ethnic and religious minorities. It has been reported that approximately 42,000 people were murdered or lost their homes. Similar reports stated that approximately 12,000 people were injured. Reports indicate that approximately “20,000 people sought refuge in military bases, police barracks, churches and mosques” in riots in which “seven mosques, nine churches, and 570 buildings were burned.”

Many human rights reports suggest that the riots of 1998 and 1999 were orchestrated by a coalition or group of individuals. The question in people’s minds is who or what is behind the terrible violence sweeping through the various regions of Indonesia.

Unfortunately, a large portion of the Indonesian population is afraid to report what they have seen. However, today, we will hear from some courageous individuals who desire to see justice and national reconciliation in their country so that stability, based on democracy, will be the norm in Indonesia.

The actions of the perpetrators of rape, murder and other crimes and human rights abuses are cowardly and should be internationally condemned. In addition, the government of Indonesia must engage in a thorough investigation to bring to justice those who are behind the horrifying human rights abuses occurring even today.

I applaud the courage of today’s panel and thank them for their willingness, though possibly putting their own lives in danger, to share their experiences about current human rights violations in Indonesia and who or what might be behind those abuses. The Congressional Human Rights Caucus encourages you to be vigilant in this area. Groups of fundamental human rights for the Indonesian people.
which are not sensitive to the pluralistic conditions in Indonesia, which sharpens the potential of polarization. Unity is often talked about as a ceremonial thing only to maintain the status quo. In a pluralistic society, where different cultures and religions are not understood in the context of democracy and human rights, can things get worse. Not only the leaders, the leaders among ethnic groups or religions. Democracy and the freedom of human rights are being rhetorically talked every day, but it is doubtful all the leaders and their party, except a few ones, could live peacefully in this pluralistic society.

To end this short writing, let us ponder the saying of the late President J ohn F Kennedy: “And even if we are not able to agree, let us do so in such a way, that make the world safe, still in its diversity.”

J. E. SANETAPY,
Emeritus Professor of Unair.

POLITICAL AGENDA BEHIND THE RIOT OF POSO

(By Kie-Eng Go)

[Presented in the Briefing on The Current Human Rights issues in Indonesia with the US Congressional Human Rights Caucus, Feb 9, 1999]

The tragedy of Poso, which is also known as the “Poso’s Gray Christmas” on December 23-30 1998 resulted in the following: 183 people were injured, some seriously, 267 houses were demolished or burned down (1,632 people, representing 364 Christian households, lost their homes), 5 stores were burned down, 7 cars were burned or destroyed, 10 motorcycles were destroyed, 4 hotels were destroyed and 4 entertainment centers (karaoke) were damaged.

Beyond the physical destruction, the tragedy has brought about deep trauma in the life of the people of Poso.

Indonesia: Fundamentalism and the Human Rights Issue

From the Surabaya incident, June 9, 1996 to the Situbondo, then to the Tasikmalaya, on and on and up to the Ambon, there are several things, which should not go unnoticed:

1. There are three groups of people being attacked and marginalized: the ethnic Chinese, the Christians and the moderate Muslims.

2. The incidents were well planned, and provocateurs from outside were sent in to create riots.

3. There seems to be linkage among the incidents, although they took place in different locations. It seems to be a progression between one incident to the next; for instance, from the harassment of the right to worship, to the closing of the places of worship, to the attack and burning of the places of worship, to the attack and burning of the home of religious followers.

4. The increase of brutality has turned into sadistic killing. Mr. Meiky Sainyakit, according to the eyewitnesses who survived, was burnt alive to death, after his two arms were chopped off, in the Ambon case.

5. The police, the military, and the central government itself have done very minimal, if anything at all. The security forces would probably arrest those who were caught in the act, and that has been as deep as the kind of initiative done by them, as some cases have indicated. Not only are they not responding, often times, as reports suggest, not only are they very slow in following up leads, but they also are involved in discrediting the sources of the leads. When the whole situation is considered as a whole, it is a total, it should raise a very serious question about the cover up.

The core issue in Indonesia is trust; the erosion is a threat to the pluralistic society.

The kind of trust that has been emerging is the kind of trust that would only exist if everyone in Indonesia speaks the same language, wears the same clothing, follows the same diet, prays the same prayer. There is no longer trust toward government and its leaders, political and public figures, public and private institutions, organizations, banks, religious leaders, each one another.

ALTERNATIVES AND RECOMMENDATION

Therefore, in everything we do, we the Indonesians, and we the international community, we have to move with one thing in mind and that is to bring trust back into a culture which was originally built and based on the principle of a pluralistic society. Below are some thoughts and alternatives that I like to recognize to this panel:

1. Stop the madness and killing.—We recommend that all Indonesian Community leaders demands full accountability on the rapes and killing of many Indonesians. Why does the international community have to be involved in a domestic issue in Indonesia? The kind of crime and killing in Indonesia should not be looked at any longer as a domestic affair, rather it is an attack and an insult to all of the world. When civilizations are attacked by professional, trained, and army-like personnel, and the attacks are done systematically and repeatedly, and then done to the same group of people, the international community, we have to do something.

2. The victims.—We are the International Community for an immediate and decisive initiative to provide full rehabilitation for the victims and the families. Despite all the good and nice rhetoric by the government officials of Indonesia, including the head of the current government, victims, families members, and medical workers are still being terrorized and intimidated. Phone lines are still being tapped. Such conditions have made any kind of rehabilitation impossible.

3. Persecution.—On the issue of persecution against certain ethnic and religious groups, we have to tell the world that if all need to characterize the governments of the leaders, and state looking into the dynamics of how the culture of suspicion is being carried out. Today, when you are Chinese and/or Christian, you do not have any guarantee of physical safety on the street, nor protection under the law. The government, the police, and the military, including the leader of the government him self, are not interested in protecting the rights of the citizen, despite of all their nice and good rhetoric.

4. Social safety net program.—A Social safety net program is very urgent at this moment in Indonesia. Total chaos and massive killing could take place anywhere and at anytime, with no one anywhere to guarantee the safety of the people. The social safety net programs in Indonesia have not been very successful so far. It seems that everyone has to rob in order to survive. The people are very distrustful, very distrustful and a system of government that are clean and trustworthy. Such desire which exists very vividly in certain groups (NGOs and development organizations such as IRI, NDI, IFES and even The Carter Center have to take more creative initiatives, beyond the given normative ways of the international political economy.

The people who are interested in a better Indonesia in a context of global community have to take serious interest in the dynamic and culture of money-politics being played going into the election. Out of this horrible domination, one good thing comes is a stronger sense of national identity and a system of government that are clean and trustworthy. Such desire which exists very vividly in certain groups (NGOs and development organizations such as IRI, NDI, IFES and even The Carter Center have to take more creative initiatives, beyond the given normative ways of the international political economy.

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paid and at the same time threatened not to re- 

THE HOUSE OF REPRESENTATIVES

February 12, 1999

Mr. CRANE. Mr. Speaker, as the impeach- 

ment trial to President Clinton approaches its 

final act, I want to pay tribute to the managers 

on the part of the House, led by my distin- 

guished friend, Mr. Hyde. I thank them for enduring vitriolic attacks by the 

media, the President's minions, their constitu- 

cents, and, sadly, some of their colleagues as 

defended the law. Few of us have been put to 

such a severe test as these manager-

colleagues to prove allegiance to our sworn 

oath to "protect and defend the Constitution of 

the United States." 

I worry about the moral health of our coun- 

try when the modern-day justice system 

seems incapable of holding accountable ce- 

lebrities who murder and presidents who lie. 

As has been asked so many times in recent 

weeks: "What do we tell our children?" Thank- 

fully, we can hold up to the children men like 

our House managers as examples of Ameri- 

cans willing to sacrifice themselves for the 

benefit of our great nation. 

I was unable to witness the closing argu- 

cments made by Mr. HYDE, but instead read 

his script. I consider him to be the House's finest 

orator and, as I read his statement, I imagined 

with my mind's eye his passionate call to duty. 

I only hope that his speech similarly stirred 

our Senate colleagues to "let right be done." 

I commend the entirety of Mr. Manager 

HYDE's closing argument to the attention of my 

colleagues to prove allegiance to our sworn 

oath to "protect and defend the Constitution of 

the United States."
CONGRESSIONAL RECORD — Extensions of Remarks

E239

MRS. MALONEY of New York. Mr. Speaker, during rollcall vote No. 20 (H.R. 391), I was unavoidably detained. Had I been present, I would have voted “nay.”

PERSONAL EXPLANATION

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, during rollcall vote No. 21 (H.R. 437), I was unavoidably detained. Had I been present, I would have voted “yea.”

PERSONAL EXPLANATION

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, during rollcall vote No. 20 (H.R. 391), I was unavoidably detained. Had I been present, I would have voted “nay.”

PERSONAL EXPLANATION

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 12, 1999

Mrs. MALONEY of New York. Mr. Speaker, during rollcall vote No. 21 (H.R. 437), I was unavoidably detained. Had I been present, I would have voted “yea.”
Thursday, February 12, 1999

Daily Digest

HIGHLIGHTS

Senate sitting as a Court of Impeachment adjudged President Clinton not guilty as charged in Impeachment Articles I and II.

Senate

Chamber Action

Routine Proceedings, pages S1457–S1667

Measures Introduced: Four bills and thirteen resolutions were introduced, as follows: S. 426–429, S. Res. 37–47, and S. Con. Res. 10–11. Pages S1643–44

Measures Reported: Reports were made as follows:

S. 257, to state the policy of the United States regarding the deployment of a missile defense capable of defending the territory of the United States against limited ballistic missile attack. (S. Rept. No. 106–4). Page S1643

Measures Passed:

Expressing Gratitude to the Chief Justice: Senate agreed to S. Res. 37, to express gratitude for the service of the Chief Justice of the United States as Presiding Officer during the impeachment trial. Pages S1459–60

Adjournment Resolution: Senate agreed to H. Con. Res. 27, providing for the adjournment of the Senate and House of Representatives. Page S1637

Commending June Ellenoff O'Neill: Senate agreed to S. Res. 39, commending June Ellenoff O'Neill for her service to Congress and to the Nation. Page S1637

Commending James L. Blum: Senate agreed to S. Res. 40, commending James L. Blum for his service to Congress and to the Nation. Pages S1637–38

Expressing Gratitude to Frands L. Burk, Jr.: Senate agreed to S. Res. 41, expressing the gratitude of the United States Senate for the service of Francis L. Burk, Jr., Legislative Counsel of the United States Senate. Pages S1658–59

Retirement of David G. Marcos: Senate agreed to S. Res. 42, relating to the retirement of David G. Marcos. Page S1659

Retirement of Thomas G. Pellikaan: Senate agreed to S. Res. 43, relating to the retirement of Thomas G. Pellikaan. Pages S1659–60

Use of the Rotunda of the Capital: Senate agreed to H. Con. Res. 19, permitting the use of the Rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust. Page S1660

Senate Rules Waiver: Senate agreed to S. Res. 38, to waive the Standing Rules of the Senate in order to permit a resolution authorizing Senate committee expenditures for the period March 1, 1999 through September 30, 1999. Page S1660

Retirement of William D. Lackey: Senate agreed to S. Res. 46, relating to the retirement of William D. Lackey. Page S1667

Impeachment of President Clinton: The Senate, sitting as a Court of Impeachment, continued consideration of the articles of impeachment against William Jefferson Clinton, President of the United States, receiving further deliberations in closed session, and taking the following actions in open session:

Article I, that in his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice. (Vote No. 17) 45 guilty, 55 not guilty, two-thirds of the Senators present not having pronounced him guilty, the Senate adjudges that William Jefferson Clinton, President of the United States, is not guilty as charged in this article. Pages S1457–60, S1462–S1637
Article II, that in his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding. (Vote No. 18) 50 guilty, 50 not guilty, two-thirds of the Senators present, not having pronounced him guilty, the Senate adjudges that William Jefferson Clinton, President of the United States is not guilty as charged in this article.

Order Submitted by Senator Lott: Ordered, that the Secretary of the Senate be directed to communicate to the Secretary of State, as provided by Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and also to the House of Representatives, the judgment of the Senate in the case of William Jefferson Clinton, and transmit a certified copy of the judgment to each.

Admission of Affidavits—Agreement: A unanimous-consent agreement was reached providing that the affidavits of Christopher Hitchens, Carol Blue, and R. Scott Armstrong be admitted into evidence in this proceeding and that the full written transcripts of the depositions taken pursuant to S. Res. 30, agreed to by the Senate on January 28, 1999, be included in the public record of the trial.

The Court of Impeachment adjourned sine die at 12:43 p.m.

During today’s proceedings, the following also occurred:

Pursuant to the order of Thursday, February 11, 1999, by 43 yeas to 56 nays (Vote No. 19), Senate rejected the Gramm motion to indefinitely postpone the Feinstein motion to suspend the rules of the Senate in order to consider a censure resolution.

Subsequently, pursuant to the order of Thursday, February 11, 1999, the Feinstein motion is withdrawn, and no further motions relative to censure be in order prior to this week’s adjournment of the Senate. The point of order made by Senator Gramm was sustained and the motion to proceed was ruled out of order.

Senators’ Statements Compliancy With Senate Rules—Agreement: A unanimous-consent agreement was reached providing that public statements made by Senators subsequent to the approval of the motion approved February 9, 1999, with respect to their statements made during the closed sessions, be deemed to be in compliance with the Senate rules.

A further unanimous-consent agreement was reached providing that Senators have until Tuesday, February 23, 1999 to insert statements and opinions in the Congressional Record explaining their votes.

A further unanimous-consent agreement was reached providing that the Secretary of the Senate be authorized to include these statements, along with the full record of the Senate’s proceedings, the filings by the parties, and the supplemental materials admitted into evidence by the Senate, in a Senate document printed under the supervision of the Secretary of the Senate, that will complete the documentation of the Senate’s handling of these impeachment proceedings.

Reading of Washington’s Farewell Address: A unanimous-consent agreement was reached providing that, notwithstanding the Resolution of the Senate of January 24, 1901, on Monday, February 22, 1999, immediately following the prayer and the disposition of the Journal, the traditional reading of Washington’s Farewell Address take place and the Chair be authorized to appoint Senator Voinovich to read the address.

Soldiers’, Sailors’, Airmen’s, and Marines’ Bill of Rights Act—Agreement: A unanimous-consent agreement was reached providing for the consideration of S. 4, to improve pay and retirement equity for members of the Armed Forces, on Monday, February 22, 1999.

Authorization To Make Appointments: A unanimous-consent agreement was reached providing that notwithstanding any adjournment or recess of the Senate until Monday, February 22, 1999, the President of the Senate, the President Pro Tempore, the Majority Leader of the Senate, and the Minority Leader of the Senate be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two houses, or by order of the Senate.

Nomination—Agreement: A unanimous-consent agreement was reached providing for the Committee on Governmental Affairs to report the nomination of David C. Williams, of Maryland, to be Inspector General for Tax Administration, Department of the Treasury.
Appointments:

Washington's Farewell Address: The Chair, on behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, appointed Senator Voinovich to read Washington's Farewell Address on Monday, February 22, 1999. Page S1666

Advisory Committee on Student Financial Assistance: The Chair, on behalf of the President pro tempore, pursuant to Public Law 99-498, appointed Donald R. Vickers, of Vermont, to the Advisory Committee on Student Financial Assistance for a term ending September 30, 2001. Page S1666

Commission on Security and Cooperation in Europe: The Chair, on behalf of the Vice President, pursuant to Public Law 94-304, as amended by Public Law 99-7, appointed Senator Campbell as Co-Chairman of the Commission on Security and Cooperation in Europe. Page S1666

First Flight Centennial Federal Advisory Board: The Chair, on behalf of the Majority Leader, in consultation with the Democratic Leader, pursuant to Public Law 105-389, announced the appointment of the following citizens to serve as members of the First Flight Centennial Federal Advisory Board: Peggy Baty, of Ohio, Lauch Faircloth, of North Carolina, and Wilkinson Wright, of Ohio. Pages S1666-67

Advisory Committee on the Records of Congress: The Chair announced, on behalf of the Majority Leader, pursuant to Public Law 101-509, his re-appointment of C. John Sobotka, of Mississippi, to the Advisory Committee on the Records of Congress. Pages S1666-67

U.S. Holocaust Memorial Council: The Chair, on behalf of the President pro tempore, pursuant to Public Law 96-388, as amended by Public Law 97-84, appointed Senators Boxer and Lautenberg to the United States Holocaust Memorial Council. Page S1666

International Financial Institution Advisory Commission: The Chair, on behalf of the Democratic Leader of the Senate and the Minority Leader of the House, pursuant to Public Law 105-277, announced the appointment of the following individuals to serve as members of the International Financial Institution Advisory Commission: Richard L. Huber of Connecticut, Jerome L. Levinson of Maryland, Jeffrey D. Sachs of Massachusetts, Esteban E. Torres of California, and Paul A. Volcker of New York. Page S1667

Nominations Received: Senate received the following nominations:

David N. Hurd, of New York, to be United States District Judge for the Northern District of New York.

Naomi Reice Buchwald, of New York, to be United States District Judge for the Southern District of New York.

G. Edward DeSeve, of Pennsylvania, to be Deputy Director for Management, Office of Management and Budget.

Messages From the House:

Statements on Introduced Bills:

Additional Cosponsors:

Additional Statements:

Record Votes: Three record votes were taken today. (Total—19). Pages S1458, S1459, S1462

Adjournment: Senate convened at 9:36 a.m., and in accordance with H. Con. Res. 27, adjourned at 3:31 p.m., until 12 noon, on Monday, February 22, 1999. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S1660.)

Committee Meetings

No Committee Meetings were held.
House of Representatives

Chamber Action

Bills Introduced: 8 public bills, H.R. 760-767; and 10 resolutions, H. Con. Res. 34, and H. Res. 64-72, were introduced.

Reports Filed: One report was filed as follows:

Speaker Pro Tempore: Read a letter from the Speaker wherein he designated Representative Pease to act as Speaker pro tempore for today.

President's Day District Work Period: Agreed that when the House adjourns on the legislative day of February 12, it stand adjourned until 2 p.m. on Tuesday, February 16, 1999, unless the House sooner receives a message from the Senate transmitting its concurrence in H. Con. Res. 27, in which case the House shall stand adjourned pursuant to that concurrent resolution.

Permanent Select Committee on Intelligence: The Chair announced the Speaker's appointment of Representatives Pelosi, Bishop, Sisisky, Condit, Roe, and Hastings of Florida to the Permanent Select Committee on Intelligence.

Quorum Calls—Votes: No recorded votes or quorum calls developed during the proceedings of the House today.

Adjournment: The House met at 10:00 a.m. and adjourned at 11:35 a.m. until 12:30 p.m. on Tuesday, February 23, 1999 for morning-hour debate, pursuant to the provisions of H. Con. Res. 27, or, under the previous order of the House, until 2 p.m. on Tuesday, February 16, 1999, if not sooner in receipt of a message from the Senate transmitting its concurrence in H. Con. Res. 27.

Committee Meetings

AGRICULTURAL CREDIT OUTLOOK
Committee on Agriculture Subcommittee on General Farm Commodities, Resource Conservation and Credit held a hearing to review agricultural credit outlook. Testimony was heard from August Schumacher, Under Secretary, Farm and Foreign Agricultural Services, USDA; Marsha Pyle Martin, Chairman and CEO, Farm Credit Administration; and public witnesses.

FINANCIAL SERVICES ACT
Committee on Banking and Financial Services: Continued hearings on H.R. 10, Financial Services Act of 1999. Testimony was heard from the following officials of the Department of the Treasury: Robert Rubin, Secretary; John D. Hawke, Jr. Comptroller of the Currency; and Ellen Seidman, Director, Office of Thrift Supervision; Donna Tanoue, Chairman, FDIC; and Harvey J. Goldschmid, General Counsel, SEC.

CONGRESSIONAL PROGRAM AHEAD
Week of February 15 through February 20, 1999

Senate Chamber
Senate will be in adjournment until Monday, February 22, 1999.

Senate Committees
No meetings/hearings scheduled.

House Chamber
The House is not in session.

House Committees
Next Meeting of the SENATE  
12 noon, Monday, February 22  
Senate Chamber  
Program for Monday: Senator Voinovich will read Washington's Farewell Address, following which there will be a period of morning business (not to extend beyond 3 p.m.). Following morning business, Senate will begin consideration of S. 4, Soldiers, Sailors', Airmen's, and Marines' Bill of Rights Act.

Next Meeting of the HOUSE OF REPRESENTATIVES  
12:30 p.m., Tuesday, February 23  
House Chamber  
Program for Tuesday: To be announced.

Extension of Remarks, as inserted in this issue

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