COUNTLESS FRIENDS MOURN VINEGAR BEND MIZELL

Mr. HELMS. Mr. President, one doesn't lose a friend like Wilmer Mizell without experiencing a deep and penetrating sadness. And, by the way, Mr. President, my reference to ''Wilmer'' just now is one of the few times I have ever called him that. Sure, that's the name on his birth certificate; he was officially identified as Wilmer for the very good reason that Wilmer is the name given him by his parents.

At least 95 percent of his thousands of friends knew him as ''Vinegar Bend'', or sometimes as just ''Vinegar''. And everybody who knew him loved him. (He was born in Vinegar Bend, Alabama, 68 years ago.)

Vinegar Bend died this past Sunday while visiting his wife's family in Texas. He suffered a severe heart attack some weeks ago, but had bounced back and was apparently feeling well until the fatal attack on Sunday.

Vinegar Bend Mizell served three terms in the U.S. House of Representatives from 1969 through 1974. His first wife, Nancy, was exceedingly popular among Members of the House and Senate until her death several years ago. He and his second wife, Ruth Cox Mizell, were a devoted couple.

Mr. President, I have at hand a newspaper account regarding Vinegar Bend's death. I ask unanimous consent that the article, published Monday in The Greensboro (N.C.) News and Record, headed ''Former Ballplayer; N.C. Congressman Mizell Dies at 68'' be printed in the RECORD.

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

[From the Greensboro (NC) News and Record, Feb. 22, 1999]

FORMER BALLPLAYER, N.C. CONGRESSMAN MIZELL DIES AT 68

(From Staff and Wire Reports)

Wilmer ''Vinegar Bend'' Mizell spent 10 years in the majors and three terms in Congress.

HIGH POINT.—Former congressman and Major League Baseball pitcher Wilmer ''Vinegar Bend'' Mizell died Sunday while visiting his wife's family in Texas. He was 68.

Mizell, whose folksy, country-boy ways made him popular with voters in central North Carolina and with baseball fans in St. Louis and Pittsburgh, may have died from lingering effects of a heart attack suffered last October while attending a highs school football game, said his son, David Mizell who is coach at High Point Andrews High School.

David Mizell's team was playing North Davidson in Welcome, near the Midway community where Mizell has lived since the early 1950s when he pitched for the minor league team in Winston-Salem.

Mizell, after a 10-year career in the Major Leagues, became a Davidson County commissioner and then served three terms in Congress from the 5th Congressional District which included Davidson and Forsyth counties. He was defeated in 1974 by Democrat Stephen Neal, a year in which Republican candidates nationwide suffered losses in the aftermath of the Watergate scandal.

Mizell later held sub-cabinet posts in the Commerce and Agricultural departments under President Ford and Reagan. For Reagan, Mizell was the agricultural department's top lobbyist in the halls of Congress.

Mizell was known for his flat-top haircut. His nickname came from his hometown of Vinegar Bend, Ala. In the majors, Mizell pitched for the St. Louis Cardinals from 1952 until 1960 when he was traded to the Pittsburgh Pirates. He helped the Pirates win the National League pennant that year. Mizell pitched a losing game in the World Series that followed.

He finished his career with the New York Mets in 1962. His career record was 90 wins and 88 losses, with an earned run average of 3.85.

Mizell died in Kerrville, Texas, while he and his second wife, Ruth Cox Mizell, were visiting her family. Besides Midway, the couple also had a home in Alexandria, Va., David Mizell said.

Funeral services will be Thursday in Midway.

(Pursuant to the unanimous consent agreement of February 12, 1999, pertaining to the impeachment proceedings, the following statements were ordered to be printed in the Record:)

Mr. DASCHLE. Mr. Chief Justice, my colleagues, in just a few moments, each of us will be called upon to do something that no one has done in American history. We will be voting on two articles of impeachment against an elected President of the United States.

Having listened carefully to nearly 50 of our colleagues who share my point of view, it is both difficult and unnecessary to attempt to reiterate the powerful logic and the extraordinary eloquence of many of their presentations.

I share the view expressed by so many that this body must be guided by two fundamental principles. I recognize that we are not all guided by these principles, but I and others have been guided, first, by this question: Has the prosecution provided evidence beyond a reasonable doubt; and, second, if so, do the President's offenses rise to the level of gravity laid out by our founders in the Constitution?

After listening to both sides of these arguments now for the past 5 weeks, I believe—I believe strongly—that the record shows that on both principles the answer is no—no, the case has not been proven beyond a reasonable doubt, and, no, even if it had been it would not reach the impeachable level.

I also share the view expressed by many of my colleagues on the process which brought us here: an investigation by an independent counsel which exceeded the bounds of propriety; a decision by the Supreme Court subjecting sitting Presidents to civil suits—it is my prediction that every future President will be faced with legal trauma as a result—a deeply flawed proceeding in the House Judiciary Committee, which in an unprecedented fashion effectively relinquished its obligation to independently weigh the case for impeachment; the disappointing decision to deny Members of the Senate and the House the opportunity to vote on a censure resolution, even though I believe it would be supported by a majority in both Houses; and finally, the bitterly partisan nature of all the actions taken by the House of Representatives in handling this case.

But as deeply disappointed as I am with the process, it pales in comparison to the disappointment I feel toward this President. Maybe it is because I had such high expectations. Maybe it is because he holds so many dreams and aspirations that I hold about our country. Maybe it is because he is my friend. I have never been, nor ever expect to be, so bitterly disappointed again.

Abraham Lincoln may have been right when he said, ''I would rather have a full term in the Senate, a place in which I would feel more consciously able to discharge the duties required, and where there is more chance to make a reputation and less danger of losing it, than 4 years of the Presidency.''

Maybe it is because of my disappointment that I was all the more determined to help give the Senate its chance to make a reputation, as Lincoln put it, at this time in our Nation's history.

The Senate has served our country well these past 2 months. And I now have no doubt that history will so record. There are clear reasons why the Senate has succeeded in this historic challenge.

First is the manner in which the Chief Justice has presided over these hearings. We owe him a big, big debt of gratitude. He has presented his rulings with clarity and logic. He has tempered the long hours and temporary confusion with a fine wit. In an exemplary fashion, he has done his constitutional duty and has made it possible for us to do ours.

The second reason is our majority leader. Perhaps more than anyone in the Chamber, I can attest to his steadfast commitment to a trial conducted with dignity and in the national interest. He has demonstrated that differences—honest differences—on difficult issues need not be dissent, and in that end the Senate can transcend those differences and conclude a constitutional process that the country will respect, and I do.

Third is our extraordinary staff—the Chaplain, my staff in particular, Senator LOTT's staff, the floor staff, the Parliamentarians, the Sergeant at Arms, the Secretary of the Senate. They have served us proudly. Their professionalism and the quality that they have demonstrated each and every hour ought to make us all proud.

Finally, if we have been successful, it has been because of each of you—your diligence, your deportment, your thoughtful arguments on either side of these complex, vexing questions. This experience and each of you—each of you—have made me deeply proud to be a Member of the U.S. Senate.

Growing up in South Dakota, I learned so much, as many of us have, from relatives and from the people in

my hometown, and my parents especially. Something my father admonished me to do so many, many times in growing up is something I still remember so vividly today. He said, ''Never do anything that you wouldn't put your signature on.'' I thought of that twice during these proceedings—once when we signed the oath right here, and again last night when I signed the resolution for Scott Bates.

I will hear Scott Bates' voice when I hear my name called this morning. My father passed away 2 years ago. He and Scott are watching now. And I believe they will say that we have a right to put our signature on this work, on what we have done in these past 5 weeks, for with our votes today we can now turn our attention to the challenges confronting our country tomorrow. And, as we do, I hope for one thing: That we will soon see a new day in politics and political life, one filled with the same comity and spirit that I feel in the room today, one where good governance is truly good politics, one which encourages renewed participation in our political system. It is a hope based upon a fundamental belief which is now 210 years old, a belief that here in this country with this Republic we have created something very, very special, a belief so ably articulated by Thomas Paine as he wrote ''Common Sense.''

> The sun will never shine on a cause of greater worth. This is not the affair of a city, a county, a province, or a kingdom, but of a continent. This is not the concern of the day, a year, or an age.
>
> Posterity is are virtually involved in the contest, and will be more or less affected even to the end of time by the proceedings now.

So it is as we cast our votes today and begin a new tomorrow.

Each of us understands that the decision we must make is the most demanding assigned to us, as Senators, by the Constitution. The Framers did not believe it a simple matter to remove a President. They did not intend that it occur easily.

Only a certain class of offenses—treason, bribery and other high crimes and misdemeanors—could justify the President's removal. Only a supermajority—two-thirds of the Senate—could authorize it.

The Framers made as plain as they could that each Senator must judge, on all the circumstances of the case, whether the facts support this extraordinary remedy.

As I look at this case, I am compelled to consider it from beginning to end—from the circumstances under which the House fashioned and approved the articles, to the trial here in the Senate when the House pressed its arguments for conviction. And I find a case troubled from beginning to end—one marked by constitutional defects, inconsistencies in presentation, surprising concessions by the Managers against their own position, and even damage done to that position by their own witnesses.

In short, the case I have seen is one that I do not believe can bear the weight of the profound constitutional consequences it is meant to carry.

Its constitutional defects began in the House.

Rather than initiating its own investigation, and making its own findings, the House rested on the referral from Independent Counsel Kenneth Starr.

Never before has the House effectively relinquished its obligation to independently weigh the case for impeachment.

But this time it did, relinquishing that obligation to Mr. Starr.

Mr. Starr's 454-page referral became the factual record in the House. The arguments he made in that referral served almost exclusively as the basis for the articles prepared and voted by the House.

The House called no independent fact witness. The only witness was Mr. Starr. And it is telling that Mr. Starr's own ethics adviser, Professor Sam Dash, resigned his position with the Office of Independent Counsel to protest the improper role played by Mr. Starr in the impeachment process.

The House proceedings set a dangerous constitutional precedent, and the decision to follow this course has reverberated throughout the trial here in the Senate.

Because Mr. Starr carried the case in the House, the House did not develop or explain its own case until the time came to prepare for trial in the Senate. Those explanations, when they came, were replete with inconsistencies—not technical or minor inconsistencies, but rather inconsistencies that struck at the heart of their position.

On the one hand, the Managers charged the President with serious crimes. Yet, they also argued that they should not be required to prove ''beyond a reasonable doubt'' that the President committed those crimes—that they need not meet the standard that applies throughout our criminal justice system.

On the one hand, the Managers acknowledged that the House rejected an article based on President Clinton's deposition in the Jones case. Yet, throughout their presentations, including their videotaped presentation on February 6, they repeatedly relied on the President's statements in that civil deposition.

On the one hand, the Managers insisted that the record received from the House provided clear and irrefutable evidence of the President's guilt. Yet, one Manager declared that reasonable people could differ on the strength of the case, and another stated that he could not win a conviction in court based on that record.

On the one hand, the Managers originally claimed a record so clear that the House was not required to call a single fact witness—other than Mr. Starr. Yet, in the Senate, they insisted that their case depended vitally on witnesses.

In the end, the Senate authorized the deposition of witnesses, two of whom—Ms. Lewinsky and Mr. Jordan—were central to the core allegations of perjury and obstruction of justice. These were witnesses identified by the House—witnesses the Managers expected to help support their case.

This is not, however, how it turned out.

In the final blow to the case for removal brought by the Managers, those very witnesses provided the Senate with clear and compelling testimony—in the President's defense.

It cannot have escaped many of us that the defense showed more and longer segments of this testimony than the Managers who sought these witnesses in the first place.

What did Ms. Lewinsky say about the false affidavit she filed in the Jones case? That she never discussed the contents with the President. That she thought she might be able to file a truthful, but limited affidavit and still avoid testifying. That she had reasons completely independent from the President's for wanting to avoid testimony. That the President did not ask her to lie or promise her a job for her silence.

What did Ms. Lewinsky say about the return of the gifts given to her by the President? That she raised with the President whether she should turn the gifts over to Ms. Currie. That she recalls that the President may have advised her to turn them all over to the Jones lawyers. That she told an FBI agent of this advice, but it somehow was omitted from the Independent Counsel's investigative report. That six days before her White House meeting with the President, she had already made an independent decision to withhold gifts from her own lawyer.

What did Ms. Lewinsky and Mr. Jordan say about the job search for Ms. Lewinsky? That it was never connected to the preparation of her affidavit, much less conditioned on her making any false statements to a court.

What did Mr. Jordan say about any pressure placed on the companies he contacted to hire Ms. Lewinsky? That he only recommended her. That two companies he contacted would not hire her. That the third company, which did hire her, did so on the strength of an interview in which she made a strong personal impression—much like the one she made to the Managers in their first meeting with her.

These witnesses—the House's witnesses—made it impossible, I believe, for the Managers to sustain a case already weakened by a defective House process, serious inconsistencies in their arguments, and doubts about its merits that even some of the Managers themselves candidly expressed.

Surely a case for removal of the President must be stronger.

Surely a case for conviction must be strong enough to unite the Senate and the public behind the most momentous of constitutional decisions.

Surely a case to remove the President from office must be strong enough to meet the high standards established with such care by the Constitution's framers.

In requiring that the Senate remove only for ''high'' crimes and misdemeanors, the framers acted with care. As the House Judiciary Committee stated in its Watergate report 25 years ago, ''[I]mpeachment is a constitutional remedy addressed to serious offenses against the system of government.'' Its purpose is to protect our constitutional form of government, not to punish a President.

It is for this reason that the framers made clear that not all offenses by a Chief Executive are ''high'' crimes—and that even a President who may have violated the law, but not the Constitution, remains subject to criminal and civil legal process after he or she leaves office.

Whatever legal consequences may follow from this President's actions, the case made by the House Managers does not satisfy the exacting standard for removal.

For all of these reasons, I will vote to acquit on both articles.

This is my constitutional judgment about whether the Senate should remove the President from office. My personal judgment of the President's actions is something altogether different, reflecting my values and those of South Dakotans and millions of Americans.

Like them, I am extraordinarily disappointed, and angered, by the President's behavior. Since I have long considered the President a friend, my own sense of betrayal could not run more deeply.

There is no question that the President's deplorable actions should be condemned by the Senate.

I fervently hope that the Senate will do what the House would not—permit the people's elected representatives to express themselves and reflect their constituents' views on the President's conduct, for the benefit of our generation and those still to come.

So let us proceed now to a vote and resolve this constitutional task after these long and arduous months. Then the time will have come to return to the urgent work of the country.

When we do, I believe that all of us—members of the majority and members of the minority, however we choose to cast our votes—will be able to agree on this:

That in 1999, 100 Senators acted as the Constitution required, honoring their oath to do impartial justice and acting in the best interests of this country they so dearly love.

Mr. BOND. Mr. Chief Justice, my colleagues, I do not intend to give a comprehensive statement, nor do I intend to use all of the time allotted. But I feel it is very important to answer some of the points that have been raised. And let me deal with just a few of those.

When I spoke to you in a previous session here, I mentioned the cover story, and said that while the cover story was not impeachable—the cover story which was admitted by counsel for the White House—it is a framework and a context in which we judge other actions.

Objection has been made by my friends primarily on this side of the aisle that on occasion we have cited evidence where the President may not have been truthful, and we may have raised other arguments that go beyond the boundaries of the articles of impeachment as grounds for impeachment. Let me hasten to add that I hope that no one would vote for a conviction on anything other than the items set forth in article I and the items set forth in article II. If there are other activities that may bear upon or indicate a pattern of conduct, that is one thing. But we must make our decision on the basis of that which has been presented to us by the House.

On the other side, we have heard some very spirited and enthusiastic attacks on the independent counsel and on the House managers and even on the Paula Jones case itself. Let me make just a few points.

No. 1, we threw Judge ALCEE HASTINGS out of office as a judge for lying in a grand jury proceeding where he was not convicted. The objective is not to say that you can only commit perjury when a case is won or someone is convicted.

No. 2, the independent counsel got into this because the attorney general felt that there were grounds to pursue the potential violations of law by the President in the Monica Lewinsky case. And a three-judge court agreed, and the independent counsel was assigned to pursue this.

Whatever you may think about what the House did, or what the Paula Jones attorneys did, or what the independent counsel did, that is not the question before us. That can be addressed, as some of my colleagues said, if there are investigations by the Department of Justice on improper activities by the OIC. Let that proceed in its own realm. We are here to judge on the evidence before us.

As I said, we have a cover story. We have a cover story that was utilized regularly throughout by this President and by Monica Lewinsky.

Objection has been made that, while we have the clear testimony that William Jefferson Clinton never said you should lie, he never said expressly you should file a false affidavit. Well, of course, he didn't. Of course, he didn't. He is a very sophisticated, very able lawyer. And, if you are concocting a scheme to obstruct justice, you don't tell somebody who is to be part of that scheme with you that you should lie under oath, that you should file a false affidavit because those people might just get called to testify under oath at some point, as they were in this case. But Mr. Clinton didn't have to do that, because Monica Lewinsky understood very clearly that she was to stay with the cover story until she was told not to. She filed the false affidavit that he sought. He and his counsel used it in the deposition.

Why was it filed? To keep him from having to testify truthfully in the deposition. Was he surprised by it? I do not believe it has one iota of credibility to say that after he went out and procured that false affidavit, he didn't know that his attorney was going to use it, and he was not going to rely on it. He got her to do the felonious deed of filing a false affidavit so he could avoid the danger of having to lie himself in a deposition.

Mr. Clinton didn't engage in a conspiracy with his lawyer, Mr. Bennett. We hear about the one-man conspiracy. No. He foisted that on his attorney. And Mr. Bennett, when he found out about the falsity of that affidavit, had to do what no attorney ever wants to do—he had to write a letter to the judge, and say, ''Disregard it. Disregard it. I was part, inadvertently, of a scheme to defraud the court.'' And you notice he is not in the case any longer. He could not be part of that.

We know that Mr. Clinton enlisted his loyal secretary to violate the law to go pick up gifts, and she and Monica Lewinsky, once again, committed felonies to continue the story to protect the President. And the gifts wound up under Betty Currie's bed.

Mr. Clinton went to Betty Currie on a Sunday and 2 days later and told her things that he hoped she would say before the grand jury. He told his other subordinates things that he hoped they would say. He even trashed her when it appeared that she might be a hostile witness.

Ladies and gentlemen of the Senate, I suggest to you that when you have this clear-cut evidence of a scheme carried out with direct evidence, testimony of Monica Lewinsky and others, Betty Currie and his subordinates, an Audrain County jury would not have any trouble finding him guilty of tampering with a witness or obstructing justice.

Mr. SESSIONS. Mr. Chief Justice and fellow Senators, I appreciate this proceeding. And I appreciate the process we have gone through. I hope my remarks will be in the spirit of deliberation, and that some of what I say will be of value to you.

If there was a mistake made in this case, it is that we have treated this more like a piece of legislation than a trial. It probably would have been better to have just allowed the House to have a week or 8 days to present evidence and the other side present their evidence and then vote and we would have been out of here. As it is, we have been involved in the managing of it. And I have been impressed that together we have somehow gotten through it in a way that I think I can defend. It is marginal, but I think we have conducted a trial that I feel we can defend.

The impeachment came from the House so we have to have a trial and a vote, in my opinion. Judging on matters like this is not easy, but we all have had to do it. Juries make decisions like this every day. The President has to grant pardons and make appointments and remove appointments. Senators have to vote on nominations and so forth. I have had the adventure of appearing before Senators judging me on a previous occasion. And now I am in this body and the other day the Chief Justice declared that we were all a court, and I thought, ''My goodness, I am a Federal judge and a Senator, how much better can life get than that?''

Now, someone suggested that this is a political trial. But the more we make it like a real trial, the better off we are going to be and the better the people are going to like it and the more they will respect it. Our responsibility is to find the facts, apply the Constitution, the law, and the Senate precedent to those facts. And precedent is important. We should follow it unless we clearly articulate a reason to change. Unless we do so we are failing in our duty. If we want to change our precedent, we obviously have that power. But we don't come at this with a blank slate since the 1700s and Federalist 65. We have had a lot of impeachments since then, and this Senate has established some precedent during that time. I think the dialogue between Madison and Mason suggests a somewhat different view of things than Federalist 65, in the mind of many. But I would just say to you we have had impeachment trials of Judges Claiborne, Nixon and HASTINGS since then. That is our precedent, in recent years, about what we believe are our laws and how they should be interpreted.

I would say this about the case. Others may see it differently. But with regard to the obstruction article, I might have a bit of a quibble with the way the case was presented. I think there was a lot of time and effort spent on trees and not enough on the plain forest. Let me just say to you why I believe the proof of obstruction of justice is so compelling, beyond a reasonable doubt, to a moral certainty. And that is, because the President received interrogatories, he got a subpoena to a deposition, and he knew his day was coming. He knew he was going to have to tell the truth or he was going to have to tell a lie, and it wasn't going away.

He tried to avoid the day. He went all the way to the Supreme Court to try to stop that case from going forward, and the U.S. Supreme Court unanimously ruled ''No, you don't get special privileges. You have to go forward with the case.'' So, here he is having to do something. If he states he did not have a sexual relationship with Monica Lewinsky, if he files an answer to an interrogatory, which he did in December, in which he flatout stated that he had never had sex with a State or Federal employee in the last decade, that would be false. He filed such a false answer to a lawful interrogatory.

Then he is at a deposition, and what happens at the deposition? His attorney tries to keep him from being asked about Monica Lewinsky. They produce her affidavit and the attorney says that the President has seen that affidavit and had the opportunity to study it. The President testifies later in that deposition: It is ''absolutely true.'' That is when it all occurred, right there, and talking with Monica beforehand was critical because if she didn't confirm the lie he was going to tell he couldn't tell it. She wanted a job and the President got it for her. If they didn't submit the Lewinsky affidavit, the President was going to be asked those questions. If they talked about the gifts, the cat was going to be out of the bag. It is just that simple. The wrong occurred right there.

Then, when he left that deposition, he was worried. He called Betty Currie that night, right after that deposition, the same day, because he knew he had used her name and she was either going to have to back him up or he was in big trouble. So, he coached her. That is what it is all about. You can talk about the facts being anything you want to, but that is the core of this case and it is plain and it is simple for anybody to see who has eyes to see with, in my view. So I think that is a strong case. The question is whether or not, if you believe that happened, you want to remove him from office, and I would like to share a few thoughts on that.

Having been a professional prosecutor for 12 years as U.S. attorney, and I tried a lot of cases myself, I really have felt pain for Ken Starr. I had occasion to briefly get to know him. I knew that his reputation within the Department of Justice as Solicitor General was unsurpassed. He was given a responsibility by the Attorney General of the United States and a court panel to find out what the truth was. The President lied, resisted, attacked him, attacked anybody Mr. Starr dealt with, virtually, in seeking the truth. And Ken Starr gets blamed for that, and then 7 months later we find out that the President was lying all the time. He was lying all the time. And somehow this is Ken Starr's fault that he pursued the matter? I am sure he suspicioned the President was lying but it couldn't be proven until the dress appeared and then we finally got something like the truth.

Now, one of the most thunderous statements made by counsel—I am surprised it didn't make more news than it did—was the representation by White House counsel that judges hold office on good behavior.

Those of you who fight tenaciously for the independence of the judiciary, know that this is not the standard for removal of judges. The courts have gone through it in some detail. Law reviews have been written about it. Judge Harry T. Edwards, Court of Appeals for D.C. Circuit, wrote in a Michigan law review that:

> Under article II, a judge is subject to impeachment and removal only upon conviction by the Senate of treason, bribery, or other high crimes and misdemeanors.

This is because he is a civil officer. The President, Vice President and Judges are civil officers of the United States. There is only one standard for impeachment.

The Constitution is a marvelous document. We respect it. To do so, we must enforce it as it is written. It says that civil officers, judges are removed for only those offenses. There are no distinctions between the President and judges. Just because one official is elected and one is not elected, one's term is shorter, or there are more judges than Presidents—makes no difference—that is not what the Constitution says. They face the same standard for impeachment.

I really believe we are making a serious legal mistake if we suggest otherwise. If the standard is the same, then we have a problem, because we removed a bunch of judges for perjury.

Of course, a President gets elected, but the President holds office subject to the Constitution. One of the limitations on your office as an elected official is don't commit a high crime or misdemeanor and if you commit a high crime or misdemeanor, you are to be removed. I don't think there is a lot of give in this, frankly.

With regard to precedent, precedent is important because it helps us be objective, less political, less personal and do justice fairer. That is what the Anglo-American common law is all about. Judges have established precedent, and judges tend to follow that precedent unless there is a strong reason not to. This is important for the rule of law.

Perjury and its twin, obstruction of justice, do amount to impeachable crimes and our precedent in the Judge Nixon case proves that. I believe we set a good standard in that case, finding that perjury is a high crime, clearly, and we ought to stay with this standard.

Some have argued that the House Judiciary Committee on the President Nixon matter declared that tax evasion was not an impeachable offense because it was not directly related to one of the President's duties. I don't think that is clear at all. As a matter of fact, as I recall a few House Members and minority Members signed a statement to that effect. But let me ask you this, and think about this, if a minority on the House Judiciary Committee voted on something, or Gerald Ford said something when he was in the House about impeachment, such is not precedent for the U.S. Senate. It is our precedent that counts. It is the precedent established by Judge HASTINGS, Judge Nixon, and Judge Claiborne that we ought to be concerned about.

I do not believe the Constitution says that the standard for removal is whether somebody is a danger to the Republic's future. The Constitution says if you commit bribery, treason, or other high crimes or misdemeanors, you are out, unless there are some mitigating circumstance somebody can find, but the test is not whether or not the official is going to continue to do the crime in the future. What if it is a one-time bribery that is never again going to happen. Mr. Ruff advocated the ''danger'' standard, and it really disturbed me because it is not in the Constitution.

If we were to reject the standard we use for judges for impeachment, I do believe that would mean a lowering of our standards. We will not be holding the President to the same standards we are holding the judges in this country, and I don't think the Constitution justifies a dual standard.

As a prosecutor who has been in the courtroom a lot, I am not as cynical as some have suggested today about the law. I have been in grand juries hundreds of times—thousands really. I have tried hundreds of cases. I have seen witnesses personally. I have been with them before they testified and have seen them agonize over their testimony. I know people who file their tax returns and pay more taxes than they want to, voluntarily, because they are men and women of integrity. I have seen it in grand juries. I have seen people cry because they did not want to tell the truth, but they told it. They filed motions to object to testifying, but when it came right down to it, they told the truth.

I believe truth is a serious thing. Truth is real and falsehood is real. This is, in my view, a created universe and we have a moral order and when we deny the truth we violate the moral order and bad things happen. Truth is one of the highest ideals of Western civilization commitment to it defines us as a people. As Senator KYL said, you will never have justice in a court of law if people don't tell the truth.

So this is a big deal with me. I have had that lecture with a lot of people who were about to testify. I believe we ought not to dismiss this lightly.

There was a poignant story about Dr. Battalino and her conviction for lying about a one-time sex act and the losses she suffered. Let me tell you this personal story, and I will finish.

I was U.S. attorney. The new police chief had come to Mobile. He was a strong and aggressive leader from Detroit. He was an African-American. He shook up the department, established community-based policing, and caused a lot of controversy. A group of police officers sued him. His driver, a young police officer, testified in a deposition that the chief had asked him to bug other police officers illegally. Not only that, he said, ''I've got a tape of the chief telling me to bug.''

It leaked to the newspapers, all in the newspapers. They wanted to fire the chief. The FBI was called because it is illegal to bug somebody if there is not a consenting person in the room.

It is different with Linda Tripp. Let me just explain the law. If you can remember and testify to what you hear in conversation, you can record that conversation and play it later under law of virtually every State in America. Maryland apparently is different.

Here, the driver's action would be illegal. Anyway, the young officer finally, under pressure of the FBI, confessed. The lawsuit hadn't ended. The civil suit was still going on. He went back and changed his deposition and recanted. His lawyer came to me and said, ''Don't prosecute him, JEFF. He's sorry. He finally told the truth. He went back. The case wasn't over.''

We prosecuted him. I felt like he had disrupted the city, caused great turmoil and violated his oath as a police officer, and that we could not just ignore that. The case was prosecuted. He was convicted, and it was affirmed on appeal.

Mr. COVERDELL. Mr. Chief Justice and fellow colleagues, in the Capitol's Mansfield Room where our Conference has met over the last few weeks, there is a picture of our first president—George Washington—who celebrates a birthday this Monday. I was reminded that, from childhood through adulthood, George Washington carried around with him a copy of the Rules of Civility. The rules could be seen as a roadmap of how one should conduct himself or herself appropriately in society. As the Senate began its course through uncharted waters, civility has been our goal, if not our duty. We have done our best to work together, to be respectful of each other's views and to do justice according to the Constitution. Had we not started with this goal in mind, I fear the debate would have quickly descended into rancor doing a disservice to our Nation.

In the next few minutes, I want to explain how this trial unfolded for me, as well as the rationale behind some of the votes I've cast, including on the Articles of Impeachment.

When the historians write their accounts of the impeachment trial of William Jefferson Clinton, I trust that, regardless of where one comes down on the facts of the case, they will agree that the Senate did it right. We conducted a trial that was fair to all sides, correct according to the Constitution and expeditious in accordance with the wishes of the American people. We also did our best to conduct our deliberations on a bipartisan basis.

We began this process by taking a second and most solemn oath of office: to do impartial justice. For me, as a Senator, I can think of no more somber and important a constitutional duty than the one that was given us. Our first task was to draft a blueprint of how we would proceed in the trial. We met in closed session in the Old Senate Chamber where the discussions were civil, respectful and frank on both sides. In the end, it was Senator GRAMM of Texas, joined by Senator KENNEDY of Massachusetts, two opposite sides of the political spectrum, that led us to a unanimous bipartisan agreement on how to proceed. The support of all 100 Senators was important because it opened the door to a trial that was conducted in a professional and judicious manner and without the discord that so many of the Washington wisemen had predicted.

After hearing the opening arguments made by both sides, Senator ROBERT BYRD offered a motion to dismiss the case against the President. If successful, this would have been the first dismissal of an impeachment trial in our Nation's history.

My vote against this dismissal motion was premised on my sworn Constitutional obligation to hear the facts and evidence, and consider the law before I rendered a decision on whether the Articles warranted the President's conviction and removal from office. Indeed, this was part of the oath we took—to do impartial justice. The Senate would not have been able to render a fair and correct judgment on the Articles without receiving and objectively assessing the wealth of evidence presented by the House of Representatives and the White House. In short, dismissal was premature and inappropriate.

Consistent with our duty to consider all the evidence fully, I supported an effort to allow both the House Managers and the White House the opportunity to depose a limited number of key witnesses to resolve inconsistencies in testimony. After reviewing the depositions, I supported a bipartisan motion to make all of this information—both the videotapes and written transcripts—part of the permanent record so that each and every American could examine the evidence and draw their own conclusions. I also voted to allow both the House Managers and the White House to use the videotaped deposition testimony on the floor of the Senate.

Although I did support deposing a limited number of witnesses, I did not support an attempt to allow Ms. Lewinsky to testify as a live witness on the floor of the Senate. In my judgment, we provided the House Managers a more than adequate opportunity to present their case: allowing for witnesses to be deposed, for House Managers to ask any questions necessary to resolve inconsistencies in testimony and to allow any portion of these tapes to be used on the floor to argue the case against the President. Consequently, I thought it inappropriate and unnecessary for Ms. Lewinsky to testify on the Senate floor. Seventy Senators felt similarly on this issue.

The presentation with videotaped excerpts, rather than live witnesses, allowed both sides to make their arguments cogently. In my opinion, witnesses questioned on the floor, under a time agreement, would have made for a

more fragmented process—objections by counsel would have disrupted the flow of presentations considerably. I believe that our decision to exclude live witness testimony was appropriate, fair and improved the nature of closing arguments.

It is the same sense of obligation and a desire to maintain decorum that guided me in my vote to uphold the Senate's time-tested tradition of deliberating impeachment trials in private. Opening the doors of the Senate during these final deliberations would have been a tragic mistake that would ignore years of precedent on this issue. For 2,600 years, since the ancient Athenian lawgiver Solon, trials have been open and jury deliberations have been private. Throughout our own history in every courthouse in America, we have open trials, we have public evidence, we have public witnesses, but when the jury deliberates, it meets in private. Jury deliberations are held in private for the protection of all parties, and to ensure for a frank and open discussion of the evidence.

Private jury deliberations have also been part of the Senate rules for 130 years. Some argue that these rules are outdated and need to be revised. However, in 1974 and 1986, when the Senate had an opportunity to vote on changes to these rules, it chose to leave intact the precedent that the deliberations should remain closed.

Our private deliberations have promoted civil discussion on this grave matter of impeachment. Some of the most profound and thoughtful statements I've heard have come during these private meetings—where the absence of cameras has had the effect of turning politicians into statesmen. These private deliberations set a tone of civility and allowed the healing process to begin.

After hearing all evidence and deliberations, at the end, I voted for both impeachment articles. Setting all the legal contortions aside, as vote against the Articles, or to acquit, would be to ratify that there are two sets of law in our country—one set for our citizens, and another for the President of the United States. This is a conclusion I could not reach or support. Therefore, my vote on both Articles says in the simplest terms that no American is above the law and there must be one law that applies to us all.

Today's outcome should be a surprise to no one. From the beginning, our two parties approached this issue in fundamentally different ways. While Democrats and Republicans agree that President Clinton committed very serious offenses, the disagreement is over whether or not these issues rise to the level that he should be removed from office. To some extent, the die had been cast when the Democrat Party decided to rally around the President. Like President Nixon's fate was sealed when his party fell against him, President Clinton's presidency was secured by his party's allegiance.

My hope is that no future Senate will ever be required to consider Articles of Impeachment against the President of the United States. But, if they do, I have every confidence that we have left behind an appropriate roadmap for them to fulfill their constitutional responsibilities. I am proud of the Senate and its Members. The Senate should be proud of the way it has conducted itself: we have done our jobs right by being fair to all parties, correct according to the Constitution and expeditious in accordance with the wishes of the American people.

In conclusion, I would like to thank the leaders on both sides. In particular, I would like to single out Senator LOTT for his leadership—this has clearly been one of his finest hours as our Majority Leader.

I yield the floor.

Mr. HATCH. Mr. Chief Justice and distinguished Senators, Daniel Webster once observed that a ''sense of duty pursues us ever. It is omnipresent like the Deity. If we take to ourselves the wings of morning, and dwell in the uttermost parts of the sea, duty performed or duty violated is still with us. . . .'' The duty which has faced each United States Senator is the obligation to do impartial justice in a matter of significant historical import with lasting consequences for our constitutional order—the consideration of the impeachment articles against President William Jefferson Clinton.

Our duty calls on us to answer a serious question—whether the President's actions warrant his removal from office. Fundamentally, in arriving at our individual decisions, we must consider what is in the best interests of the American people. The President engaged in conduct, that even his defenders recognize, was reprehensible and wrong. A bipartisan majority of the House also found that he committed serious, impeachable crimes.

So, the test for the Senate must be to do what's in the best interest of our nation. It is not a matter of what is easiest or cleanest. It is a matter of what is in the immediate and long term national interest. This has been, and it will continue to be, a subjective and difficult standard and one which I will discuss in greater detail later in my remarks.

First, however, I wish to speak on the Senate's procedural responsibility when sitting as a Court of Impeachment, the constitutional law concerning impeachable offenses, and the Articles of Impeachment at issue in the present case; finally, I will conclude with a discussion of whether—assuming the facts alleged have been proven—the best interests of the country would be served by removing President Clinton from office.

I. THE SENATE'S ROLE

Let me begin by explaining what the role of the Senate is in the impeachment process.

Simply put, the Senate's role in the impeachment process is to try all impeachments. As Joseph Story wrote:

> The power [to try impeachments] has been wisely deposited with the Senate. . . . That of all the departments of the government, 'none will be found more suitable to exercise this peculiar jurisdiction than the Senate.' . . . Precluded from ever becoming accusers themselves, it is their duty not to lend themselves to the animosities of party, or the prejudices against individuals, which may sometimes unconsciously induce'' the other body. In serving as the tribunal for impeachments, we must strive to attain and demonstrate impartiality, integrity, intelligence and independence. If we fail to do so, the trial and our judgment will be flawed.—Joseph Story, Commentaries on the Constitution of the United States, Section 386.

In short, impeachment trials require Senators to act, wherever possible, with principled political neutrality. One question I have repeatedly asked myself during this scandal—when faced with questions concerning the interpretation of the relevant law, the process, the calls for resignation, or forgiveness—has been whether I would have taken the same position were this a Republican President. I have done this throughout the past year I and expect many of my colleagues have done the same.

In 1993, the Supreme Court ruled in the case of United States versus Nixon that the process by which the Senate tries impeachments was nonjusticiable. As a result of the Nixon decision, the Senate has a heightened constitutional obligation in impeachment cases. As constitutional scholar Michael Gerhardt notes in his 1996 book, The Federal Impeachment process, ''Congress may make constitutional law—that is, make judgments about the scope and meaning of its constitutionally authorized impeachment function—subject to change only if Congress later changes its mind or by constitutional amendment. Thus, Nixon raised an issue about Congress's ability, in the absence of judicial review, to make reasonably principled constitutional decisions.''

I believe the Senate has conducted this trial in a fair manner and that we have made principled constitutional decisions. I want to commend my colleagues on both sides of the aisle—in particular the Majority Leader, TRENT LOTT—for the impartial and proficient manner in which we have conducted our constitutional obligation.

At the core of our deliberations was the tension between, on the one hand, our shared interest in putting this matter behind us and getting on with the Nation's business, and, on the other hand, our interest in affording the President, and the weighty matter of impeachment, that process which is due and fair. While there are decisions the Senate reached with which I differed, I want to make clear my view that the Senate has ably balanced these competing interests. A fair and full trial that we were once told would take one year has been completed in less than six weeks. The credit for this process rests with every Member of the Senate, with the House Managers, counsel for the President, and the Chief Justice.

II. THE IMPEACHMENT STANDARD

Of great concern to me is what the standard should be for impeachment in this and future trials. The President's Counsel has argued that the President can only be removed for constituting, what Oliver Wendell Holmes termed in free speech cases, a ''clear and present danger.'' It was contended that a President can only be removed if he is a danger to the Constitution. As such, according to the President's Counsel, removable conduct must relate to egregious conduct related to performance in office. Even if the House's allegation—that President Clinton committed acts of perjury and obstruction of justice is proven true—it was argued—than such behavior does not rise to impeachable offenses because it was private, not public, conduct. In this case an inappropriate sexual relation with a subordinate employee—was the predicate of the charged offenses.

But such a standard establishes an impossibly high bar as to render impotent the impeachment clauses of the Constitution. I hope that no matter the outcome of this trial, President Clinton's view of what constitutes an impeachable offense does not become precedent. If it does, I fear the moral framework of our Republic will be frayed. If it does, the legitimacy of our institutions may very well become tattered. It would create the paradox of being able to convict and jail an official for committing, let's say, homicide, but not to be able to remove that official from holding positions of public trust. Committing crimes of moral turpitude, such as perjury and obstruction of justice, go to the very heart of qualification for public office.

The overwhelming consensus of both legal and historical scholars is that the Constitution mandates the removal of the ''President, Vice President, and all civil Officers of the United States''—which includes federal judges—''upon impeachment by the House and conviction by the Senate of ''treason, bribery or other high crimes and misdemeanors.'' (U.S. Const. Art. II. Sec. 4). The precise meaning of this latter clause is critical to the outcome of the impeachment trial.

The President's advocates agree with their critics that this standard is the sole standard for presidential impeachment, but contend that the ''or other'' phrase indicates that grounds for impeachment must be criminal in nature because treason and bribery are crimes or acts committed against the state.

Such crimes or acts must be heinous, they contend, because the term ''crimes and misdemeanors'' is preceded by the descriptive adjective ''high'' in the impeachment clause. These advocates also claim that there exists no proof of criminal wrongdoing, that we have evidence of only a private affair unrelated to performance in public office, and that abuse of power related to official conduct—not present here—is a prerequisite for impeachment.

Many learned scholars oppose this view. Looking at the debates in the Constitutional Convention in Philadelphia in 1787, they note that the Convention originally chose treason and bribery as the sole standard for impeachment. George Mason argued that this standard was too stringent and advocated that ''maladministration'' be added to the list. James Madison objected, believing that no coherent definition of ''maladministration'' existed and that such a lenient standard would make the President a pawn of the Senate. The Convention, as a result, settled on the phrase ''treason, bribery or other high crime or misdemeanor.'' It is clear that the phrase ''high crimes and misdemeanors'' was considered by the Framers to have a more narrow and specific meaning and, indeed, it is a term taken from English precedent.

Accordingly, many scholars, including Raoul Berger, the dean of impeachment scholars (Impeachment: the Constitutional Problems (1973)), contend that the phrase ''high crimes and misdemeanors'' is a common law term of art that reaches both private and public behavior. Treason and bribery are acts that harm society in that they constitute a corruption on the body politic. Consequently, ''other high crimes and misdemeanors'' encompasses similar acts of corruption or betrayals of trust, and need not constitute formal crimes. Indeed, Alexander Hamilton in The Federalist No. 65 makes clear that impeachment is political, not criminal, in nature and reaches conduct that goes to reputation and character. In the Seventeenth and Eighteenth Centuries the term ''misdemeanor'' refers not to a petty crime, but to bad demeanor.

History thus demonstrates that acts or conduct that demeans the integrity of the office, or harms an individual's reputation in such a way as to engender a lack of public confidence in the office holder or the political system is an impeachable offense. Justice Joseph Story, in his celebrated Commentaries on the Constitution of the United States §762 (1835), made this abundantly clear when he wrote that impeachment lies for private behavior that harms the society or demeans its institutions:

> In the first place, the nature of the functions to be performed: The offences, to which the power of impeachment has been, and is ordinarily applied, as a remedy, are of a political character. Not but that crimes of a strictly legal character fall within the scope of the power, (for, as we shall presently see, treason, bribery, and other high crimes and misdemeanors are expressly within it;) but that it has a more enlarged operation, and reaches, what are aptly termed, political offenses, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.

Even though the Framers rejected the English model of impeachment as a form of punishment and promulgated removal as the remedy for conviction, most scholars contend that the Framers looked to English precedent to define ''high crimes and misdemeanors.'' There is a wealth of evidence that a betrayal of public trust or reckless conduct that places a high office in disrepute constitutes ''high misdemeanors.'' The modifier ''high'' refers to acts against the state or commonwealth. In the eighteenth century, the term ''political'' also encompassed our modern term of ''social.'' So conduct that harmed society as a whole, or denigrated the public respect and confidence in governmental institutions, constituted ''high crimes and misdemeanors.''

As such, both English and American officials have been impeached for drunkenness, for frequenting prostitutes, even for insanity, in other words private conduct that is unrelated to official acts. Such behavior is seen as defaming the office that the accused held and diminishing the people's faith in government. Impeachment is thus seen by many scholars as a means of removing unqualified office holders.

Thus, impeachment and removal does not have to be predicated upon commission of a crime. Consequently, impeachment and removal is not in essentially a criminal punishment, a conclusion that is also textually demonstrated by the fact that the Framers expressly provided for later indictment and criminal conviction of an impeached and removed President.

A high crime and misdeameanor—according to this view—does not have to amount to a crime or be related to official conduct. Even if President Clinton's acts of perjury were predicated upon lying about a private sexual relation, they still must be considered high crimes and misdemeanors. The fact that the underlying behavior was private in its genesis is irrelevant. Such private acts demean the Office of the President, and betray public trust. Those acts therefore are impeachable.

But I must emphasize that even if the President's Counsel is correct in that private acts unrelated to performance in office are not impeachable offenses, I believe the gravamen of what President Clinton committed are public, not private, acts that are unambiguous breaches of public trust. Perjury and particularly obstruction of justice are conduct that attack the very veracity of our justice system. (Furthermore, I vehemently disagree that the underlying conduct was a purely private concern because the conduct involved a federal employee in a work environment).

Lying under oath, hiding evidence, and tampering with witnesses destroy the truth-finding function of our investigatory and trial system. Perjury and obstruction of justice are particularly pernicious if committed by a President of the United States, who has sworn pursuant to the oath of office to protect the Constitution and laws of the United States. Whether perjury and obstruction of justice can be considered private or public acts is of no moment.

They are twin ''high crimes'' harming the political order and requiring impeachment and removal from office.

A related argument made by the President's Counsel is that a President should be held to a less stringent standard than federal judges in impeachment trials. Because many judges have been removed for conduct unrelated to performance in office, such as Judges Clairborne and Nixon, who were convicted and removed for perjurious statements unrelated to their performance in office, the President is almost compelled to make this argument.

In essence, The President's Counsel contend that Article III's requirement that judges hold office for ''good behavior'' is not simply a description of the term of office, but a grounds for impeachment if violated. Presidents—and other civil officers—are subject to the more stringent high crimes and misdemeanor standard.

Most scholars reject this view. For instance, Michael J. Gerhardt (The Federal Impeachment Process (1996)) testified in the House Constitutional Subcommittee of the Judiciary Committee in November that the impeachment standard of high crimes and misdemeanors applies to all civil officers, including judges as well as the President. This is the sole constitutional ground for impeachment. Article III's good behavior provision for judges simply sets the duration for judicial office (lifetime unless impeached). There are simply no differing standards for judges and the President.

III. ARTICLE ONE—PERJURY

Let me now turn to the facts of this case. The House alleges in Article I that the President should be removed because he committed acts of perjury. The House alleges in Article II that the President should be removed because he obstructed and interfered with the mechanisms and duly constituted processes of the justice system.

To demonstrate why I believe it is so, it is necessary to discuss both the legal standards and how the facts meet the requirements of those standards. I will first discuss perjury, and, next, turn to obstruction of justice.

ARTICLE I OF THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal Grand Jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury.

I. STATEMENTS BEFORE THE GRAND JURY THAT CONSTITUTE PERJURY

OVERVIEW

''Whoever under oath . . . in any proceeding before or ancillary to any court or grand jury knowingly makes any false material declaration . . . shall be fined under this title or imprisoned not more than five years, or both.'' See 18 U.S.C. §1623(a). In a prosecution for perjury under 18 U.S.C. §1623(a), the prosecution must prove the following elements: (1) the declarant was under oath, (ii) the testimony was given in a proceeding before a court of the United States, (iii) the witness knowingly made, (iv) a false statement, and (v) the testimony was material. *United States* v. *Whimpy*, 531 F.2d 768 (1976). The first two elements are not at issue here because it is undisputed that President Clinton testified under oath before a Grand Jury of the United States. As the discussion below reveals, the House Managers proved the remaining elements of perjury beyond a reasonable doubt for key aspects of President Clinton's Grand Jury testimony.

A. STATEMENTS TO BETTY CURRIE ON JANUARY 18, 1998

President Clinton committed perjury before the Grand Jury when he testified falsely concerning his motivation for making five statement to Betty Currie. Hours after his deposition in the Jones case, President Clinton called his secretary Betty Currie and asked her to come to the White House the next day, January 18. See Currie 1/27/98 GJ at 65–66. On that Sunday afternoon, the President made the following five statements to Ms. Currie about Monica Lewinsky: (1) ''You were always there when she was there, right?''; (2) ''We were never really alone.''; (3) ''Monica came on to me, and I never touched her, right?''; (4) ''You can see and hear everything, right?''; and (5) ''She wanted to have sex with me, and I cannot do that.'' Id. at 71–74. President Clinton repeated these same questions and statements to Betty Currie a few days later. See BC 1/27/98 GJ at 80–81. When he discussed his deposition testimony regarding Ms. Lewinsky with Betty Currie on these two occasions, President Clinton violated Judge Wright's strict order prohibiting any discussion of the Jones deposition.

FALSITY

President Clinton lied to the Grand Jury when he testified about his motivation for making these statements. When asked before the Grand Jury about these statements to Betty Currie, the President testified that he asked these ''series of questions'' in order to ''refresh [his] memory about what the facts were.'' See WJC 8/17/98 GJ at 131. He further testified that he wanted to ''know what Betty's memory was about what she heard, what she could hear'' and that he was ''trying to get as much information as quickly as I could * * * [a]nd I was trying to figure [it] out * * * in a hurry because I knew something was up.'' See WJC 8/17/98 at 56. Immediately following extensive questioning on this issue, a different prosecutor from the Office of Independent Counsel asked the President that ''[i]f I understand your current line of testimony, you are saying that your *only* interest in speaking with Ms. Currie in the days after your deposition was to refresh your own recollection.'' (Emphasis added.) See WJC 8/17/98 GJ at 141–142. President Clinton answered: ''Yes.'' Id.

President Clinton's testimony that he was ''only'' trying to ''refresh [his] memory about what the facts were'' is perjury because a person cannot ''refresh'' his memory with statements and questions that he knows are false. Each of President Clinton's five statements to Currie is either an outright lie or extremely misleading. President Clinton knew the facts of his relationship with Ms. Lewinsky, and he knew his statements to Betty Currie were false. By definition, these false questions and statements could not have helped President Clinton accurately refresh his memory.

In addition, Betty Currie could not possibly have known the answers to some of these questions. For example, how could Betty Currie have known whether the President ever ''touched'' Ms. Lewinsky or whether Ms. Currie was ''always there when [Ms. Lewinsky] was there?'' Common sense defies the President' explanation: if one is trying to refresh his memory or gather information quickly, he does not ask questions of a person to which the person could not know the answers. The fact that Betty Currie could not have known the answers to these questions further undermines President Clinton's testimony that he was trying to refresh his memory or gather information quickly.

If the President was merely trying to refresh his recollection or gather information quickly why did he repeat these questions and statements to Currie a few days later? As the House Managers noted during the trial, instead of asking a series of specific leading questions, why didn't President Clinton ask Currie a general question about what she recalled about Ms. Lewinsky's activity at the White House? Moreover, President Clinton's blatant violation of Judge Wright's order prohibiting any discussion of the Jones deposition casts further doubt on his testimony on this issue. The President's testimony regarding his motivation for these statements is false. He did not make these statements to refresh his recollection. Rather, as the following section explains, the President made these statements to Ms. Currie in order to influence her potential testimony in the Jones suit and to influence her possible responses to the media.

KNOWINGLY

In a perjury case under 18 U.S.C. §1623, the prosecution must prove that the defendant ''knowingly'' made the false statement. Under this statute, ''knowingly'' means merely that the defendant made the false statement ''voluntarily and intentionally, and not because of mistake or accident or other innocent reason.'' *United States* v. *Fawley*, 137 F.3d 458, 469 (7th Cir. 1998); *United States* v. *Watson*, 623 F.2d 1198, (7th Cir. 1980).

The President knowingly made these false statements about his motivation for speaking to Betty Currie after his deposition. He did not make these statements by ''mistake or accident or other innocent reason.'' Rather, President Clinton lied about his motivation to conceal his true purpose in making these statements to Currie. In reality, President Clinton was attempting to corroborate his deceitful testimony in the Jones deposition with a prospective witness. When he made these statements to Currie, the President knew that she was a likely witness in the Jones case because he repeatedly referred to Currie when asked about Ms. Lewinsky by the Jones lawyers. See Clinton 1/17/98 Dep. at 58. President Clinton actually told the Jones lawyers to ''ask Betty'' in response to one question in the deposition. Id. at 64–66. In fact, Betty Currie was subpoenaed by the Jones lawyers only days after the President's deposition.

Moreover, in addition to influencing a prospective witness in the Jones suit, the President had another motivation for coaching Ms. Currie: She was a probable target of press inquiries about this controversy. In fact, a prominent reporter from Newsweek had already called Currie on January 15, 1998 and asked her about Ms. Lewinsky. See Currie 5/6/98 GJ at 120–121. The President had a motive to influence information Currie might give to the media—in addition to testimony she might give as a witness in Jones versus Clinton. The President knowingly made these statements to Ms. Currie in order to influence both her potential testimony and her possible responses to the media.

MATERIALITY

''Because the Grand Jury's function is investigative, materiality in that context is broadly construed.'' *United States* v. *Gribbon*, 984 F.2d 471 (2d Cir. 1993). Courts have consistently held that in a Grand Jury, ''a false declaration is 'material' within the meaning of [18 U.S.C.] §1623 when it has a natural effect or tendency to influence, impede or dissuade the Grand Jury from pursuing its investigation.'' *United States* v. *Kross*, 14 F.3d 751 (2d Cir. 1994).

President Clinton's false statements to the Grand Jury regarding his January conversations with Betty Currie are material to the Grand Jury's investigation of obstruction of Justice. To determine whether the President obstructed justice in the Jones case, it was critical for the Grand Jury to ascertain whether President Clinton attempted to influence the testimony of Currie, a potential witness in that case. President Clinton's statements to Currie the day after his deposition strongly indicate that he was seeking to influence her testimony. The President's false statements about his motivation for making these statements to Currie had the ''natural effect or tendency'' to ''impede or dissuade the Grand Jury from pursuing its investigation'' of obstruction of justice in the Jones case.

THE PRESIDENT'S DEFENSE

In his trial brief, the President offers only a brief defense to this perjury allegation. First, the President argues that ''Ms. Currie's testimony supports the President's assertion that he was looking for information as a result of his deposition'' when he made these statements to Currie. See President's Trial Brief at 53. As discussed earlier, however, this is implausible. A person cannot accurately gather information by making false or misleading statements to another person.

Second, in his brief, the President refers to Currie's Grand Jury testimony in which she testified that she felt no pressure to agree with the President when he made these questions and statements. See President's Trial Brief at 51–53. However, the fact that Ms. Currie testified that she did not feel pressured is completely irrelevant to whether the President committed perjury concerning these statements. President Clinton's state of mind—not Ms. Currie's—is at issue here because he is the one accused of perjury.

In sum, the House Managers proved beyond a reasonable doubt that President Clinton (1) knowingly (2) lied about his motivation for making these deceitful statements to Betty Currie (3) concerning a material matter under investigation by the Grand Jury (4) while under oath before a federal Grand Jury.

B. THE NATURE AND EXTENT OF THE PHYSICAL RELATIONSHIP WITH LEWINSKY

Another example of perjury before the Grand Jury concerns President Clinton's testimony that he did not engage in ''sexual relations'' with Ms. Lewinsky even under his alleged understanding of the definition used in the Jones case. Even under his purported interpretation of the term, however, Clinton admitted to the Grand Jury that if the person being deposed touched certain enumerated body parts of another person, then that would constitute ''sexual relations.'' See WJC 8/17/98 at 95–96. When asked if he denied engaging in such specific conduct, Clinton answered ''[t]hat's correct.'' Id.

FALSITY

President Clinton lied to the Grand Jury when he testified concerning the nature and extent of the sexual relationship. First, human nature and common sense strongly undermine President Clinton's testimony. It is undisputed that President Clinton and Ms. Lewinsky engaged in sexual activity on at least ten occasions over the course of 16 months. President Clinton's testimony to the Grand Jury that he never touched Ms. Lewinsky in certain areas with the intent to arouse is simply not believable given the nature and extent of their contact.

In addition, Ms. Lewinsky's testimony directly contradicts the President. She testified in detail repeatedly before the grand jury about each of their sexual encounters. According to Ms. Lewinsky's testimony, she and President Clinton engaged in conduct that constituted ''sexual relations'' even under the President's purported understanding of the term during 10 encounters. It is important to note that Ms. Lewinsky's testimonty about the extent of their sexual conduct occurred before the President's Grand Jury testimony made these precise sexual details important. Moreover, Ms. Lewinsky's friends, family members, and medical therapists corroborated her account by testifying to the Grand Jury that Lewinsky made near-contemporaneous statements to them that President Clinton fondled her in a variety of ways during their encounters. Finally, the fact that President Clinton lied to the American people about this tawdry affair badly undermines his implausible testimony on this issue.

KNOWINGLY

As mentioned earlier, in a perjury case under 18 U.S.C. §1623, the prosecution must prove that the defendant ''knowingly'' made the false statement. Under this statute, ''knowingly'' means merely that the defendant made the false statement ''voluntarily and intentionally, and not because of mistake or accident or other innocent reason.'' *United States* v. *Fawley*, 137 F.3d 458, 469 (7th Cir. 1998), *United States* v. *Watson*, 623 F.2d 1198 (7th Cir. 1980).

President Clinton knowingly made these false statements about the nature and extent of his sexual relationship. He did not make these statements by ''mistake or accident or other innocent reason.'' Instead, the President had a strong motive to lie about the extent of the sexual contact in order to avoid being accused of perjury in the Jones deposition. After Ms. Lewinsky's dress was discovered, President Clinton could no longer deny a sexual affair. However, because he repeatedly denied having ''sexual relations'' with Ms. Lewinsky in the Jones deposition, the President was trapped. As mentioned earlier, the President was forced to admit that fondling Ms. Lewinsky in certain ways would constitute ''sexual relations'' even under his purported interpretation of the term. Consequently, President Clinton had to deny such fondling before the Grand Jury to prevent an admission that he committed perjury in his civil deposition, despite how implausible this denial is. In summary, President Clinton committed perjury before the Grand jury by insisting that his testimony in the Jones deposition on this key matter was true.

Perhaps due to fear of being charged with perjury in the Jones deposition, President Clinton committed the more serious offense of perjury before a Grand Jury.

MATERIALITY

As mentioned earlier, ''because the Grand Jury's function is investigative, materiality in that context is broadly construed.'' *United States* v. *Gribbon*, 984 F.2d 471 (2d Cir. 1993). Courts have consistently held that in a Grand Jury, ''a false declaration is 'material' within the meaning of [18 U.S.C.] §1623 when it has a natural effect or tendency to influence, impede or dissuade the Grand Jury from pursuing its investigation.'' *United States* v. *Kross*, 14 F.3d 751 (2d Cir. 1994).

The President's false statements about the extent of his sexual conduct with Ms. Lewinsky are material to the Grand Jury's investigation of whether the President committed perjury in the Jones deposition. In an effort to determine whether President Clinton testified truthfully in his deposition, the Office of Independent Counsel questioned the President at length before the Grand Jury about the nature and extent of his sexual relationship with Ms. Lewinsky. The President's tortured definition of sexual relations makes these details material to whether he committed perjury in the Jones deposition. Simply put, if the President touched Ms. Lewinsky in certain ways, he is guilty of perjury in the Jones deposition. Obviously, President Clinton's false statements on this matter had the ''natural effect or tendency to influence, impede or dissuade the Grand Jury from pursuing its investigation'' of perjury in the Jones deposition.

THE PRESIDENT'S DEFENSE

In President Clinton's trial brief, the only rebuttal to his allegation of perjury is that ''[t]his claim comes down to an oath against an oath about immaterial details concerning an acknowledged wrongful relationship.'' See Clinton Trial Brief at 44. Even this one pithy sentence, however, is inaccurate. First, as the earlier discussion reveals, there is more evidence than an oath against an oath. Human nature and common sense badly undermine the President's testimony. In addition, Ms. Lewinsky testified in detail repeatedly before the Grand Jury about the extent of the sexual relationship, while the President reverted to his prepared statement 19 times to avoid answering specific sexual questions. Moreover, the testimony of Ms. Lewinsky's family, friends, and medical therapists provide additional evidence of the President's perjury. Finally, the fact that President Clinton lied to the entire nation about this sordid affair—and only acknowledged the affair when confronted with evidence of Ms. Lewinsky's dress—devastates his credibility on this issue.

In sum, the House Managers provide beyond a reasonable doubt that President Clinton (1) knowing (2) lied about the extent of his sexual activity with Ms. Lewinsky (3) concerning a material matter under investigation by the Grand Jury (4) while under oath before a federal Grand Jury.

OTHER LIES BEFORE THE GRAND JURY

In addition, I have concluded that President Clinton lied in other instances before the Grand Jury. While these lies might not sustain a conviction for perjury in a court of law, they are profoundly troubling nonetheless. For instance, it strongly appears that President Clinton lied to the Grand Jury when he testified that he did not believe certain acts that he and Ms. Lewinsky engaged in were covered by any of the terms and definitions used in the Jones suite. The following definition of ''Sexual Relations'' was used at the Jones deposition:

> For the purposes of this deposition, a person engages in 'sexual relations' when the person knowingly engages in or causes contact with . . . [certain enumerated body parts] of *any person* with the intent to arouse . . .'' (Emphasis added.)

Amazingly, President Clinton testified to the Grand Jury that he does not believe and did not believe at the Jones deposition that this definition includes certain acts which I will not specify. Without addressing these lurid details, Clinton interprets ''any person'' to mean ''any other person'' under the definition. There is no legal basis for him to interpret the definition in this manner.

I do not believe that President Clinton can reasonably claim this interpretation. First, under the President's interpretation, one person can engage in sexual relations, while his or her partner in the same activity is not engaged in sexual relations. Obviously, this is an implausible and absurd conclusion. Second, no reasonable person would have understood the definition in the Jones suit not to encompass the particular activity that President Clinton and Ms. Lewinsky engaged in. It is important to remember that the underlying allegation in the Jones suit concerned the same particular acts involved in the Lewinsky affair. Why would the Jones' lawyers use a definition that did not include the very conduct alleged by their client? Given this context, the President's testimony that he did not believe the definition included certain conduct is not believable.

Finally, the President had a clear motive to lie about his understanding of the definition of sexual relations. After Ms. Lewinsky's dress was discovered, the President could no longer deny his sexual affair. However, the President repeatedly denied having ''sexual relations'' with Ms. Lewinsky in the Jones deposition. President Clinton's absurd interpretation of the definition of sexual relations allowed him to admit to a sexual relationship—which he had to do given the dress—without simultaneously admitting to perjury in the Jones deposition. Because perjury is such a difficult crime to prove, I have concluded that the President might not be convicted in a court of law for perjury concerning his testimony on this issue. I am convinced, however, that President Clinton lied to the Grand Jury about this matter. While this testimony might not generate a conviction in a court of law, it was clearly contrived and is profoundly troubling.

IV. ARTICLE TWO—OBSTRUCTION OF JUSTICE

Let me now turn to the facts of the second article of impeachment alleging obstruction of justice. Article Two alleges that:

> In his conduct while President of the United States, William Jefferson Clinton, in violation of his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

In order to determine whether the President has engaged in the type of acts charged, it is important that the law be first addressed in order to guide us in understanding how the facts relate to the violations alleged.

A. The Law of Obstruction of Justice:

1. 18 U.S.C. §1503:

The Federal obstruction of justice statute punishes ''[w]hoever . . . corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.'' 18 U.S.C.A. §1503(a). Known as the ''omnibus clause,'' §1503(a) ''clearly forbids all corrupt endeavors to obstruct or impede the due administration of justice,'' *United States* v. *Williams*, 874 F.2d 968, 976 (5th Cir. 1989), which is defined as ''the performance of acts required by law in the discharge of duties such as appearing as a witness and giving truthful testimony when subpoenaed.'' *United States* v. *Partin*, 552 F.2d 621, 641 (5th Cir. 1977). The statute has alternatively been interpreted as forbidding ''interferences with . . . judicial procedure'' and aiming ''to prevent a miscarriage of justice.'' *United States* v. *Silverman*, 745 F.2d 1386, 1398 (11th Cir. 1984).

''There are three core elements that the government must establish to prove a violation of the omnibus clause of section 1503: (1) there must be a pending judicial proceeding; (2) the defendant must have knowledge or notice of the pending proceeding; and (3) the defendant must have acted corruptly with the specific intent to obstruct or impede the proceeding in its due administration of justice.'' *United States* v. *Williams*, 874 F2d 968, 976 (5th Cir. 1989). Accord *United States* v. *Grubb*, 11 F.3d 426, 437 (4th Cir. 1993) (adding the word ''influence'' to the terms ''obstruct or impede'' in the intent element).

The purpose of the statute, according to the Supreme Court is not directed at the success of the corruptive effort, ''but at the 'endeavor' to do so.'' *United States* v. *Russell*, 255 U.S. 138, 143 (1921) (opining that the word ''endeavor'' was used instead of ''attempt'' in order to avoid the technical distinctions between attempts, which are punishable, and preparation for attempts, which are not). See also *United States* v. *Aguilar* 515 U.S. 593, 599 (1995) (holding that while the endeavor must have the 'natural and probable effect' of interfering with the due administration of justice, the defendant's actions need not be successful, citing Russell).

2. 18 U.S.C. §1512.

The statute criminalizing witness tampering prohibits, inter alia, the use or attempted use of corrupt persuasion or misleading conduct with the intent of influencing delaying, or preventing testimony in an official proceeding, causing a person to withhold testimony or documentary evidence, alter or destroy physical evidence, evade legal process, or be absent from an official proceeding to which such person has been legally summoned. 18 U.S.C. §1512(b). ''To sustain its burden of proof for the crime of tampering with a witness . . . the Government must prove . . . that the [d]efendant knowingly, corruptly persuaded or attempted to corruptly persuade . . . a witness; and second, that the [d]efendant . . . did so intending to influence the testimony of [that witness] at the [g]rand [j]ury proceeding.'' *United States* v. *Thompson*, 76 F.3d 442, 452–453 (2d Cir. 1996).

The witness tampering statute's prohibition of corruptly persuading someone with intent to ''influence, delay, or prevent the testimony of any person in an official proceeding,'' has been interpreted to mean exhorting a person to violate his legal duty to testify truthfully in court. *United States* v. *Morrison*, 98 F.3d 619, 630 (D.C. Cir. 1996) (rejecting defendant's argument that a simple request to testify falsely was outside the scope of §1512(b)), cert. denied, 117 S.Ct. 1279 (1997). As the Second Circuit explained: ''Section 1512(b) does not prohibit all persuasion but only that which is 'corrupt.' The inclusion of the qualifying term 'corrupt' means that the government must prove that the defendant's attempts to persuade were motivated by an improper purpose to . . . . A prohibition against corrupt acts 'is clearly limited to . . . constitutionally unprotected and purportedly illicit activity.' *United States* v. *Thompson* 76 F.3d 442, 452 (2d Cir. 1996) (quoting *United States* v. *Jeter*, 775 F2d 670, 679 (6th Cir. 1985)).

Apart from corrupt persuasion with intent to influence a person's testimony, §1512(b) proscribes engaging in misleading conduct with intent to influence such testimony. 18 U.S.C. §1512(b)(1). As one court described it, ''[t]he most obvious example of a section 1512 violation may be the situation where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it before the grand jury. *United States* v. *Rodolitz*, 786 F.2d 77, 81–82 (2d Cir. 1986).

Some courts have interpreted conduct that was not misleading to the person at whom it was directed, even if it was intended to misled the government, as outside the scope of §1512. See e.g. *United States* v. *King*, 762 F.2d 232, 237–238 (2d Cir. 1985). However, the Rodolitz court distinguished the facts in King, where there was insufficient evidence that the witness was actually misled, from the situation where the declarant makes false statements to a witness who is ignorant of their falsity. See *Rodolitz*, 786 F2d at 81–82 (''In giving the statutory language its fair meaning, the court must find that making false statements to convince another to lie falls squarely within the definition of 'engaging in misleading conduct toward another person' under section 1512.'').

The witness tampering statute explicitly states that ''an official proceeding need not be pending or about to be instituted at the time of the offense.'' 18 U.S.C. §1512(e)(1). However, courts have implied some state of mind element. E.g. *United States* v. *Kelly*, 36 F.3d 1118, 1128 (D.C.Cir. 1994) (''It therefore follows that §1512 does not require explicit proof of [defendant's] knowledge . . . that such proceedings were pending or were about to be instituted. . . . The statute only requires that the jury be able reasonably to infer from the circumstances that [defendant], fearing that a grand jury proceeding had been or might be instituted, corruptly persuaded persons with the intent to influcence their possible testimony in such a proceeding.'')

B. The Facts Related to Obstruction of Justice.

1. Subparts (1) and (2) of Article II:

In Subpart (1) of Article II, it is averred that:

On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a federal civil action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading.

Subpart (2) alleges that:

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

Subparts (1) and (2) are flip sides of the same coin. In essence, the two subparts charge that the President's 2:30 a.m. phone call to Ms. Lewinsky on December 17, 1997, informing her of her presence on a witness list in the Jones case was designed to encourage her to provide a false affidavit in the case to avoid testifying, or failing that, that she give false testimony hiding the true nature of their relationship. What does the evidence show?

It should be recalled that the presence of Ms. Lewinsky's name on the Jones witness list first came to the attention of the President no later than December 17, 1997. See WJC 8/17/98 at 83–84. He was certainly aware of the true nature of their relationship, and it can be inferred that he knew that knowledge of the existence of that relationship would be detrimental to his case. It is also known that a cover story had been developed earlier to hide the relationship from others that included the false representation that Ms. Lewinsky's visits to the oval office were for the purpose of bringing the President papers or to visit Ms. Currie. See WJC 8/17/98 at 83–84.

Ms. Lewinsky testified that in the same 2:30 a.m. conversation in which he informed her of the presence of her name on the witness list, the President told her that she could always say she was bringing him papers or visiting Ms. Currie, consistent with their previous cover series. See ML 2/1/99 at CONG. REC. S1219. Ms. Lewinsky and the attorneys for the President have argued that since Ms. Lewinsky did in fact ''see'' Ms. Currie on those visits to the President and since she was ''carrying'' papers, that story was not untruthful and therefore could not have been designed to obstruct justice. However, that rationale defies logic and common sense.

In the first place, the purpose of the visits was not to see Ms. Currie. Secondly, the papers she carried were just props, not to be handed over to the President, but to falsely characterized as papers for the President if questioned. Therefore, were she to testify in a deposition that the purpose of her trips to the Oval Office to visit the President were actually to deliver papers or visit Ms. Currie, those would be false representations. The creation of a cover story followed by actions consistent with that cover story do not make the story any more truthful. Therefore, the President's instruction to her to rely on the cover story is in fact an instruction to her to lie.

Other evidence supports this conclusion, not the least of which is the affidavit filed by Ms. Lewinsky in the case after those discussions with the President took place, an affidavit she herself later testified as being false. How else could she have characterized it? In that affidavit, Ms. Lewinsky stated that she ''never had a sexual relationship with the President.'' This was false. She swore that ''[t]he occasions I saw the President after I left my employment at the White House in April, 1996, were official receiptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions.'' This statement too was false. She also averred that ''I do not possess any information that could possibly be relevant to the allegations made by Paula Jones or lead to admissible evidence in this case.'' Once again, this statement

was false, as the President was aware, since he knew of the gifts he had given to Ms. Lewinsky. See WJC 8/17/98 at 32–35.

The President repeatedly said that he thought that Ms. Lewinsky ''could,'' and he emphasizes the word ''could,'' have been able to draft a narrow truthful affidavit. See WJC 8/17/98 at 69, 116–17. The problem is that although she ''could'' have been able to draft such an affidavit, the end product was not a truthful affidavit. Thus the President's intentional failure to prevent his attorney from using that false affidavit at his deposition provides further evidence of his corrupt intention during the December 17, 1997, phone call to Ms. Lewinsky.

Given these facts, the House has proven beyond a reasonable doubt that the President endeavored to corruptly influence the affidavit and potential testimony of Ms. Lewinsky in his December 17, 1997, 2:30 a.m. call to her.

2. Subpart (3) of Article II:

In Subpart (3), it is alleged that:

On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

This allegation relates to the obstruction of justice by Ms. Lewinsky and Ms. Currie in hiding gifts provided to Ms. Lewinsky by the President under the bed of Ms. Currie. The only question that needs to be answered here in whether the President participated in that effort.

What does the evidence show? By December 28, 1997, Ms. Lewinsky had been subpoenaed to appear as a witness in the Jones case. In addition to demanding her appearance to testify, the subpoena also required that Ms. Lewinsky turn over any gifts given to her by the President. See ML 2/1/99 at CONG. REC. S1221. Under the pretense of meeting with Ms. Currie, Ms. Lewinsky went to the White House on Sunday, December 28, 1997, to discuss her subpoena with the President. Now at the time of that visit, there is no indication that the President was aware that particular items had been subpoenaed by the Jones lawyers from Ms. Lewinsky. Without the benefit of that information, the President freely gave Ms. Lewinsky a number of additional gifts. See ML 2/1/99 at CONG. REC. S1224. So when Ms. Lewinsky informed the President of that fact, one can infer that he must have been at the very least, surprised, and probably, somewhat troubled. When asked by Ms. Lewinsky at that meeting whether she should hide the gifts or give them to someone else like Ms. Currie for safekeeping, the President either failed to respond or said he needed to think about it. See ML 2/1/99 at CONG. REC. S1224.

Ms. Lewinsky testified that she left the White House and later received a phone call from Ms. Currie stating that she understood Ms. Lewinsky had something for her, or, the President said you have something for me. Ms. Lewinsky immediately understood that statement by Ms. Currie to refer to the gifts from the President she had discussed with him earlier in the day. See ML 2/1/99 at CONG. REC. S1225. She then proceeded to gather up all those gifts. However, according to Ms. Lewinsky, she unilaterally withheld some of those gifts from Ms. Currie which were of sentimental value to her.

The President's first defense to this allegation is based upon a minor discrepancy in Ms. Lewinsky's testimony concerning the time that the gifts were retrieved by Ms. Currie. The argument is that if Ms. Lewinsky was mistaken by one and one half hours in her recollection of when the gifts were retrieved by Ms. Currie, then her recollection of who initiated the retrieval is also suspect. See Statement of Cheryl Mills 1/20/99 at CONG. REC. S826–27.

This is a red herring. The timing itself is unimportant. What is important is the fact that the call came from Ms. Currie. See ML 2/1/99 at CONG. REC. S1225. Ms. Currie's cell phone records tend to support the notion that Ms. Lewinsky's memory is accurate as to who called whom about the gifts. After all, the only way that Ms. Currie would have known about the gifts and made the call is if the other party to those discussions, the President, apprised her of that conversation and asked her to pick up the gifts.

The fall-back defense of the President is based upon the fact that he had given her more gifts that same day, the idea being that his giving other gifts to Ms. Lewinsky is inconsistent with a plan to hide those gifts. See Statement of Cheryl Mills 1/20/99 at CONG. REC. S827. This, however, is belied by the fact that the President provided her with those gifts before the issue of the gifts being subpoenaed came up in their conversation that day. See ML 2/1/99 at CONG. REC. S1224. It is reasonable to infer that the President's understanding of the gift pickup was unrestricted. He expected Ms. Lewinsky to give all the gifts to Ms. Currie for safekeeping, even the ones she had received that day. The fact that Ms. Lewinsky kept some of the gifts does not change the nature of the intended scheme.

The evidence adduced as to Subpart (3) shows beyond a reasonable doubt that the President corruptly engaged in, encouraged or supported a scheme to conceal evidence in the Jones case.

3. Subpart (4) of Article II:

Subpart (4) makes the accusation that:

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

It is uncontroverted that Vernon Jordan did not actively seek to find a job for Ms. Lewinsky until she was on the witness list in the Jones case. Once she was on the witness list, she engaged in a high level job search under the guidance of the President and reported his progress in that regard directly to the President. See VJ 2/2/99 at CONG. REC. S1231–36. Moreover, he knew at the time of his job search that Ms. Lewinsky was a potential witness in the Jones case and, according to Ms. Lewinsky, was apprised by her of the sexual nature of her relationship with the President. See ML 8/6/98 GJ at 138–39. And of course, in that very same time frame, he procured for her an attorney to help her file a false affidavit freeing her from testifying in the case and to prepare that false affidavit in time for it to be used in the President's deposition in the Jones case. See VJ 2/2/99 at CONG. REC. S1240–41.

One could speculate that the President's use of one of the most powerful attorneys in Washington, and a close friend of the President, to find a lowly Defense Department employee and former intern a lucrative and prestigious job by contacting some of the most powerful executives in the country was just an act of kindness unrelated to her pending testimony in the Jones case. One could conclude that the numerous calls made by Mr. Jordan to the President and Ms. Currie, the calls made by the President to Mr. Jordan, and the calls made by Mr. Carter to Mr. Jordan, calls which coincided with the effort to get Ms. Lewinsky to file a false affidavit and secure her a job, were simply coincidental.

One could surmise that Mr. Jordan's call to Ronald Perelman after Ms. Lewinsky felt she had a bad interview, which call led to a second successful interview, was unrelated to her cooperation in signing the affidavit only a day earlier. One could believe that Mr. Jordan had a great interest in assisting Ms. Lewinsky to find a job prior to her name showing up on the witness list in the Jones case and only failed to do so because he had no time, but was somehow able to find and devote substantial time to that effort, coincidentally, after her name showed up on the witness list. One could undertake such speculation. But that would defy common sense and reason.

The President became personally engaged in the effort to find Ms. Lewinsky a job only after her name appeared on the Jones witness list. He then used his powerful friend to find Ms. Lewinsky a job because he believed out of gratitude for his help in obtaining a job, she would continue to hide their relationship. He kept in constant direct contact with Mr. Jordan up until the time that the affidavit was completed and she had received and accepted a job offer from Revlon. Indeed, the President actually spoke to Mr. Jordan during a meeting between her and Mr. Jordan on December 19, 1997. See ML 8/6/98 GJ at 131. Mr. Jordan immediately

called the President to report his fears the moment he thought Ms. Lewinsky may have turned government witness when he learned Mr. Carter had been relieved of his representation by her. See VJ 6/9/98 GJ at 45–46.

One need only look at the contrary actions by the President once he believed Ms. Lewinsky may have decided to cooperate with the Independent Counsel investigation. Once he believed that she may have been cooperating with the Office of the Independent Counsel, he began to disparage her to aides like Sidney Blumenthal. See SB 2/3/99 at CONG. REC. S1248. After that date, the President discussed the wisdom of destroying her credibility and reputation with Dick Morris. See DM 8/18/98 GJ at 35. Can anyone doubt that her favorable testimony was tied into the President's efforts to conceal his relationship with her and that the intensified job search was the President's endeavor to keep her from telling the truth? Put another way, does anyone believe that the President would have used Vernon Jordan to help get her a job after she agreed to tell the truth to the Jones attorneys or to the Independent Counsel? Of course not. It was not in the President's interest to reward her for the truth—she was only rewarded for her failure to tell the truth. Her reward for telling the truth was to be smeared by the President and his spin machine.

The President's attorneys repeat the mantra that Ms. Lewinsky believes that she was not promised a job for her false testimony in the Jones case. But that really isn't the issue. The law requires an endeavor to corruptly influence her testimony. Regardless of how Ms. Lewinsky perceived or misperceived the reasons for the high level assistance she received, there was no such misconception on the part of the President and Mr. Jordan. The corrupt endeavor by the President was confirmed by two powerful and compelling words that cannot be parsed or stripped of meaning. Those two words summed up the month long effort to protect the President: ''Mission Accomplished.'' There can be no other meaning of those words in the context used by Mr. Jordan other than the completion of a crucial and time sensitive task by him on behalf of the President.

The proof as to subpart (4) is sustained beyond a reasonable doubt that the President intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

4. Subpart (5) of Article II:

Subpart (5) alleges that:

On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

There is no question that during the deposition of the President by the Jones attorneys, the President's attorney, Mr. Bennett, made the following statement.

> . . . Counsel is fully aware that Ms. Lewinsky has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind, in any manner, shape or form, with President Clinton . . .

Mr. BENNETT made this statement in an effort to cut off any questioning of the President about his relationship with Ms. Lewinsky. That statement was false, as was later admitted by Mr. Bennett, even given the contorted reading of the definition of sexual relations as purportedly understood by the President. It is equally clear that the President did not correct this assertion by his attorney.

The President's primary defense to this allegation is that he wasn't paying attention to what was said by his attorney. This statement can not be believed. The videotape of that deposition clearly shows the eyes of the President shifting from person to person as each spoke or argued their perspective on the issue. As each spoke, the President focused on the speaker. It is ludicrous to assert that when the name Monica Lewinsky was brought up, the President was not keenly aware of the significance of that line of questioning.

The President's primary defense to this allegation is that he wasn't paying attention to what was said by his attorney. This statement can not be believed. The videotape of that deposition clearly shows the eyes of the President shifting from person to person as each spoke or argued their perspective on the issue. As each spoke, the President focused on the speaker. It is ludicrous to assert that when the name Monica Lewinsky was brought up. the President was not keenly aware of the significance of that line of questioning.

He knew the work that had been done to get her affidavit completed before the deposition. He understood the disclosure of that relationship could do irreparable damage to his case and to his Presidency. There is nothing to indicate he was anything less than completely aware of what was said and of his failure to correct that record to his detriment. I choose to believe my own eyes and common sense, not the implausible explanation put forward by the attorneys for the President.

The secondary defense offered by the President, that Mr. Bennett's use of the word ''is'' precluded the necessity to reveal any sexual relationship with Ms. Lewinsky not occurring, essentially, in that room during the deposition, is not worthy of a detailed refutation or response.

The evidence demonstrates that the President allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge, thus obstructing the administration of justice.

5. Subpart (6) of Article II:

In Subpart (6), the House makes the contention that:

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

This allegation relates to the statements made to Ms. Currie by the President in his unusual Sunday meeting with her after the Jones deposition, and in his repetition of those statements the following Tuesday or Wednesday after the Starr investigation had become public. The President has not contested the fact that the statements made to Ms. Currie were false and misleading. Nor has he provided any answer as to why the statements, if designed to help refresh his recollection, were false and had to be repeated to her again several days later. After being confronted with the subpoena issued to Ms. Currie by the Jones attorneys in the days after his deposition, and the revised witness list containing her name, the President's attorneys have now backed off the notion that no one could have thought Ms. Currie would be a witness at the time of these statements. Despite this, the President still asserts that those false and misleading statements were designed to refresh his recollection and that he personally did not believe that she would become a witness. Once again, this defense defies credulity.

When these statements were made, the President was defying a court order not to discuss his testimony. See WJC 1/17/98 DT at 212–13. He knew it was essential to do so regardless of that order because he had blatantly inserted Ms. Currie into the case as a fact witness. He mentioned her name during his deposition no less than six times, on one occasion even stating that the Jones attorneys would have to ''ask Betty.'' See generally WJC 1/17/98 DT. Clearly, the Jones attorneys got the message; they added Ms. Currie to the witness list and subpoenaed her the following week. So did the President. Having ''brought'' her into the case, the President realized the absolute need to make sure her testimony would dovetail with his assertions that he had no improper relationship with Ms. Lewinsky.

It is apparent that the Sunday meeting was designed to corruptly mislead Ms. Currie when she would be called as a witness in the Jones case. What was left unanswered by the President, but for which there can be but one answer,

was why the President repeated the false statements to Ms. Currie on Tuesday or Wednesday.

The answer lies in the record. By Tuesday, the president had learned that Judge Starr was investigating the case. See VJ 6/9/98 GJ at 55–74. He knew that the evidence in the Jones case would lead Judge Starr to Ms. Currie, just as surely as he knew it would lead the Jones attorneys to her. So he had to reinforce the false statements he had told Ms. Currie the previous Sunday because the stakes had just risen substantially. The President needed to be sure he was covered by Ms. Currie for both the Jones case and for the Independent Counsel investigation to come.

Once again the evidence shows that the President related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

6. Subpart (7) of Article II:

The House asserts in Subpart (7) that:

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

This subpart relates to the President's discussions with Erskine Bowles, John Podesta and Sidney Blumenthal concerning the nature of his relationship with Ms. Lewinsky. Now the President does not deny the testimony of Mr. Podesta where he related that the President said that he had no sexual relationship with Ms. Lewinsky, including oral sex. Nor does he deny the testimony of Sidney Blumenthal that he characterized Ms. Lewinsky as a stalker who had threatened him, and whose seduction he had declined. The President also admits that he knew it was likely they would be grand jury witnesses when he made those statements to them.

Their client having conceded the basic facts of this allegation, the President's attorneys first try to make the argument that the President could not have been intending to influence the grand jury since he did not tell his aides anything different than he had told any other person publicly. However, the evidence is unrefuted that his denials to his aides were fundamentally different from his public pronunciations in that they departed from even his tortured definition of sexual relations. Moreover, he created a false impression of Ms. Lewinsky in order to besmirch her character and credibility in a blatant attempt to both misguide the grand jurors, and it can be inferred by the fact such information was provided to his communications aide, to publicly disparage her character.

The second defense offered is that the President's attempts to keep his aides our of the grand jury show he was not trying to corruptly influence that body. However, this argument loses force in light of the fact that only specious arguments were made to prevent their testimony. Knowing they would fail, they were arguably designed to serve his private interest in delaying the investigation and creating an impression of Judge Starr as overreaching and out of control. Moreover, the President had months to correct his misstatements to Mr. Blumenthal prior to his grand jury testimony, but failed to do so even when he knew he would be called before the grand jury to repeat the earlier lies told to him by the President. See SB 2/3/99 at CONG. REC. S1249.

In effect, the President killed two birds with one stone. His chimeric fight to prevent his aides from testifying was used effectively in a public relations campaign to impugn the Independent Counsel investigation. And when he lost the ''battle'' that he knew would inevitably fail, he was aware the false and slanderous testimony preordained to be given by his aides would be of assistance to him in misleading the grand jury.

There is substantial proof as to Subpart (7) that the President made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses.

For the reasons I have just outlined, the evidence proves beyond a reasonable doubt, that the President is guilty of Article II.

V. WHY REMOVAL?

This impeachment trial is of momentous constitutional consequence. A removal of the President—a coequal branch of government—must not be taken lightly. But that—now that we have decided to end the trial by a final vote—does not negate the duty that each Senator has, as individual conscience dictates, to vote to acquit or convict based upon the evidence. Posterity demands that each of us justify the votes Senators render in the impeachment trial of the President.

Future generations of Americans will look to what we do as precedents for impeachments. This is particularly true since our Nation has faced only one impeachment trial of a President—that of Andrew Johnson in 1868. But it is also true for judges and other federal officials as well. Let me thus explain in some detail why I shall vote for conviction.

The Constitution vests great discretion in the Senate in determining whether to remove an impeached official. The Framers intentionally followed the English model where the House of Commons possessed the power to impeach or indict officials and the House of Lords the authority to try the impeached official. As such, the House of Representatives was delegated the authority to impeach and the Senate the power to try, convict, and remove. The Senate was chosen as the repository of this awesome power because it was considered the more mature chamber of Congress. Serving six year terms instead of the two years for the House, the Senate was seen as a bulwark against the shifting tides of public opinion.

The age qualification differences—30 for the Senate and 25 for the House—demonstrates that maturity in the Senate would dominate over youthful passion. And most important, while the House was prone to passionate factional rifts, because Representatives are elected from small sometimes single-issue districts, Senators are elected state-wide where, it was hoped, factions would counteract factions. Thus, the Senate was designed to be more attuned to the public interest than to the special interest.

Consequently, when the Senate sits as a court of impeachment, it does not have to rubber-stamp the House's view as to what is an impeachable offense. As recognized by the Supreme Court in the Nixon case, the Senate was vested by the Framers with the sole power to try impeachments. The Senate is thus vested with independent judgment as to what process to employ in the trial.

It also follows that the Senate was granted the discretion to determine whether the factual allegations made by the House are true and whether such findings by the Senate rise to the level of high crimes and misdemeanors. Furthermore, the Senate, as the Upper Chamber insulated against popular passions and the factions of special interests, could make a subjective determination of the public good in defining high crimes and misdemeanors and in removing an official.

In the words of my esteemed colleague, ROBERT BYRD, the answer of whether a person is fit to remain in office requires both detached objectivity and subjective judgment rising above temporary popular passions of whether continuation in office ''brings the political (or judicial) system into disrepute and undermines the people's trust and confidence in government.''

Supportive of this discretionary authority to remove officials—an authority that must be divorced from the fleeting and flaming emotions of the times—is the constitutional supermajority safeguard of a ⅔ vote of the Senate needed to remove officials. This requirement is a further guarantee against the tide of popular passion and tilts the impeachment process towards acquittal.

Accordingly, a Senator in impeachment trials must consider two factors: (1) whether the allegations are true; and (2) whether the facts proven rise to the level of high crimes and misdemeanors—impeachable offenses. In determining the second prong—whether the facts proven rise to the level of

high crimes and misdemeanors—the subjective intent of Senators of what is in the public interest is a factor to consider. I have already discussed the facts and the standard for impeachable offenses. Now I will discuss whether the public interest—in other words what is best for the country—requires that the acts committed by President Clinton rise to the level of high crimes and misdemeanors requiring his removal.

I believe that it has. Some of my colleagues, particularly those on the other side of the aisle, contend that it is not in the public interest to remove President Clinton, because the economy is doing well, or because of his foreign policy successes, or because he is extremely popular in the polls. But these factors—no matter how important—do not justify ignoring the constitutional mandate of removal upon proving that impeachable acts were committed.

Polls should not be a factor in this trial. Our system of government is not a pollocracy. It is a representative republic where the people, as a constitutional matter, speak only through elections of their representatives. America is thus a constitutional republic, and will remain so ''if''—in the words of Benjamin Franklin—''you can keep it.'' The only way to ''keep it'' is to respect the processes established by the Constitution itself.

Simply put, the Constitution mandates the conviction and removal of civil officers, including the President, upon proving ''treason, bribery, and other high crimes and misdemeanors.'' I believe that the House Managers have proved beyond a reasonable doubt that President Clinton has committed acts of perjury and obstruction of justice. I believe that Senators should come to the same subjective determination, as I have, that these acts of perjury and obstruction of justice so erodes our civil and criminal justice system as to conclude that the public good is served by removal.

A President of the United States is not simply a political leader. A President is a head of state and a role model for Americans, particularly our children. What kind of message will we send to our posterity if President Clinton's conduct is not considered worthy of removal? What amount of cynicism and disrespect for our governmental institutions will we engender if we impose one set of rules for the common man—imprisonment for acts of perjury and obstruction of justice—and another for the President of the United States—who receives a pass from removal because he is powerful or has done a ''good job'' in some eyes?

Our children are extremely vulnerable to the growing cynicism surrounding this trial. We have all heard stories that some children justify their deceits by claiming that the President of the United States lied as well. Many wise philosophers have exclaimed that a republic can survive only if its citizens are moral. I am afraid that our children may not learn that lesson.

Not to remove here is to diminish the rule of law. As Manager ROGAN warned in his closing argument, ''[u]p until now, the idea that no person is above the law has been unquestioned. And yet this standard is not our inheritance automatically. Each generation of Americans ultimately has to make the choice for themselves. Once again, it is time for choosing. How will we respond?'' We should respond by safeguarding the rule of law by voting to remove the President.

Whether President Clinton has done a ''good job'' is a matter of partisan debate. In fact, adopting a ''god job'' exception—a term that is so flexible and vague as to be meaningless as a constitutional standard—merely exasperates the partisan tensions ever present in impeachment trials.

The same analysis applies for the ''good economy means no removal'' theory. It is intuitive that economic growth can never justify crime or acts rising to the level of high crimes and misdemeanors warranting removal. If President Clinton is removed, our economy will not suffer. The world will still spin on its axis. Our Constitution provides for orderly succession and stable government. Removal will not overturn an election, as some have argued. The constitutional impeachment procedures were designed simply to remove unqualified or corrupt officials. Vice President GORE, pursuant to the Constitution, will become President and life will go on.

Let me emphasize that by requiring removal upon proving the commission of impeachable offenses, the Framers believed that it is in the public good to remove the official.

President Clinton is guilty of high crimes and misdemeanors and his poll numbers, no matter how lofty, cannot insulate him from the dictates of the Constitution. The President believes that a rule of polls should govern the Senate's decision. But as Manager ROGAN correctly observed, ''the personal popularity of any President pales when weighed against the fundamental concept that forever distinguishes us from every nation on the planet. No person is above the law. There is no escaping the Senate's duty enshrined in the impeachment oath that we do ''impartial justice'' and remove the President if we believe that his actions amounted to high crimes and misdemeanors.

VI. CONCLUSION

I do not take pleasure or gain any sense of gratification for the decision I must make today. For literally months, night and day, I have anguished over the serious accusations against President Clinton and what they mean for our country, our society, and our children.

I know none of us enjoys sitting in judgment of the President, our fellow human-being, but that is our job and we cannot ignore our responsibility. I believe most of us will do a sincere job of trying to fulfill our oath to do impartial justice.

I have diligently strived to extend my deepest respect to the President—indeed, to the Presidency—throughout this process. I wanted to be able to support President Clinton. I believe that I have been more than fair. I have tried not to rush to judgment.

All of my life I've been taught to forgive and forget. I've always tried to live up to that belief. As a leader in my church, I have dealt with a great number of human frailties, people with a wide variety of problems, and I've always believed that good people can repent of their sins and be forgiven.

Indeed, to the dismay of some, I had expressed a hope and a desire early on in this constitutional drama that the President would acknowledge his untruthful statements. He chose to do otherwise and perpetuated his untruthfulness. Although some believe this is solely a private matter, I feel this is really about the President's fidelity to the oath of office and the rule of law.

I have always been prepared to vote my conscience. Indeed, my concerns regarding the bad precedent a likely acquittal would set have been somewhat calmed by something the great constitutional scholar, Joseph Story, once wrote about acquittal in impeachment cases. Mr. Story noted that in cases in which two-thirds of the Senate is not satisfied that a conviction is warranted, ''it would be far more consonant to the notions of justice in a republic, that a guilty person should escape than that an innocent person should become the victim of injustice from popular odium * * *''

Nonetheless, I am reminded of a quote by President Theodore Roosevelt, a statement that applies to the matter before the Senate:

> Honesty is not so much a credit as an absolute prerequisite to efficient service to the public. Unless a man is honest, we have no right to keep him in public life; it matters not how brilliant his capacity * * *.
>
> 'Liar' is just as ugly a word as 'thief,' because it implies the presence of just as ugly a sin in one case as in the other. If a man lies under oath or procures the lie of another under oath, if he perjures himself or suborns perjury, he is guilty under the statute law. Under the higher law, under the great law of morality and righteousness, he is precisely as guilty if, instead of lying in a court, he lies in a newspaper or on the stump; and in all probability the evil effects of his conduct are infinitely more widespread and more pernicious.

President Theodore Roosevelt's words cannot be ignored—nor can the Constitution. After weighing all of the evidence, listening to witnesses, and asking questions, I have concluded that President Clinton's actions warrant removal from office.

Committing crimes of moral turpitude such as perjury and obstruction of justice go to the heart of qualification for public office. These offenses were committed by the chief executive of our country, the individual who swore to faithfully execute the laws of the United States.

This great nation can tolerate a President who makes mistakes. But it

cannot tolerate one who makes a mistake and then breaks the law to cover it up. Any other citizen would be prosecuted for these crimes.

But, President Clinton did more than just break the law. He broke his oath of office and broke faith with the American people. Americans should be able to rely on him to honor those values that have built and sustained our country, the values we try to teach our children—honesty, integrity, being forthright.

For 13 miserable months, we have struggled with the question of what to do about President Clinton's actions. The struggle has divided the nation.

To those of us who have ourselves taken an oath to uphold the Constitution—which represents the rule of law and not of men—it should not matter how brilliant or popular we feel the President is. The Constitution is why we goven based on the principle of equality and not emotion. The Constitution is what guides us as a nation of laws and not personalities. The Constitution is what enables us to live in freedom.

I will vote for conviction on both articles of impeachment—not because I want to—but because I must. Upholding our Constitution—a sacred document that Americans have fought and died for—is more important than any one person, including the President of the United States.

When all is said and done, I must fulfill my oath and do my duty. I will vote ''Guilty'' on both Article One and Article Two.

SENATOR DODD'S HISTORIC SPEECH IN THE OLD SENATE CHAMBER

Mr. LEAHY. Mr. President, I would like to submit a statement delivered by our colleague Senator DODD on January 8th at the commencement of the impeachment trial of President Clinton.

This statement, like the others delivered that day, is remarkable in several respects.

First, it captures the rich history that has transpired over the years in the Old Senate Chamber—a history marked often by greatness, but occasionally by shame.

Second, it wonderfully expresses Senator Dodd's own personal sense of the history of the Senate. His reflections on past Senators—from Roger Sherman, the Founding Father whose seat Senator DODD occupies, to his own father, former Senator Thomas Dodd—remind us that the Senate is an institution made up of individuals, and that the totality of their actions shapes the destiny not just of the Senate itself but indeed of the entire country.

Third, and most importantly, Senator DODD's statement stands as a powerful plea for cooperation and bipartisanship in the discharge of the Senate's profound responsibility in this trial. Senator DODD's statement played a critical role in setting the stage for the historic bipartisan agreement reached at the outset of the trial, and for the spirit of civility that prevailed throughout this ordeal. I commend Senator DODD's statement to all citizens who in the future may wish to learn something of how the Senate was inspired to conduct the impeachment trial of President Clinton in a noble and dignified manner.

I am beginning my 25th year in the Senate. After Senator DODD spoke I told him his speech was one of the finest I had heard in those years.

No Senator ever spoke more directly—or more persuasively—to other Senators about the duty we all have to the Constitution and the Senate. I am proud to serve with him.

I ask unanimous consent that the text of Senator DODD's statement be printed in the RECORD.

REMARKS BY SENATOR CHRISTOPHER J. DODD, OLD SENATE CHAMBER, JANUARY 8, 1999

Mr. DODD. Let me begin by thanking our two leaders. While none of us can say with any certainty how this matter will be concluded, if we, like every other institution that has brushed up against this lurid tale, end up in a raucous partisan brawl, it will not be because of the example set by Tom Daschle and Trent Lott. The graces have once again blessed this extraordinary body by delivering two noble and decent men to lead us.

I want to express a special thanks to you, Tom, for asking me to share my thoughts this morning on the issue before us.

On a light note, it was in this very room four years ago that I lost the Democratic leader's post to Tom Daschle. Of the forty-seven members of the Democratic Caucus, forty-six were here that morning to vote. When the ballots were counted, Tom and I had each received 23 votes- a dead heat. The absent Democratic colleague who voted for Tom with a proxy ballot was Ben Nighthorse Campbell. Several weeks later I received a very late night call from Ben in which he shared with me his decision to change political parties. Ben and I have been good friends for some time, and I told him he ought to do what he felt was right. The next morning I decided to have some fun with our Democratic leader, Tom Daschle, by sending him a note asking that in light of Ben's decision to become a Republican, did Tom think a recount of the leader's race might be in order?

Considering the wonderful job our leader Tom has done, particularly over these last several weeks, I'm glad he did not even consider the offer.

Allow me further to note a point of personal privilege. I am deeply proud to share the representation of my state in the Senate with Joe Lieberman. Over these past couple of weeks Joe and Slade Gorton have once again demonstrated the value of their presence in the Senate. While many of us, from time to time, have claimed to speak for the Senate—few rarely do. On that day in September, Joe, your remarks delivered on the Senate floor about the President's behavior were, I believe, the sentiments of the entire Senate. We thank you.

Joe and I represent the Constitution State. Joe sits in the seat once held by Oliver Ellsworth, the second Chief Justice of the Supreme Court. I sit in the seat of Roger Sherman, the only founding father to sign all four of our cornerstone documents : The Declaration of Independence, The Articles of Confederation, The Constitution and The Bill of Rights. Roger Sherman was also the author of the Connecticut Compromise which created this Senate in which we now serve.

So by institutional lineage, I feel a special connection with the Senate. But, on a personal level, I am also very much a product of the Senate. Forty years ago this week, I was a very proud 14 year old watching from the family gallery as my father took the same oath I took on Wednesday. I also remember that day meeting another new Senator, Robert C. Byrd of West Virginia.

I only mention these facts because I am overwhelmed by a profound sense of history as we embark on this perilous journey over the coming weeks. I want my institutional forebearer, Roger Sherman, and my father to judge that on my watch, as a temporary custodian of this Senate seat, I did my best.

I want to express a special thanks to Trent Lott for having the wisdom of choosing this most historical room for our joint caucus.

Trent could have chosen any number of other venues, larger more accommodating rooms around the Capitol for this meeting. But either by divine inspiration or simple choice he decided to bring us—Democrats and Republicans—together here.

It is one hundred and forty years ago this week—January 4, 1859—that our Senate predecessors moved from this room to the chamber we now occupy.

While in use, this room was the stage of some of the Senate's most worthy and memorable moments.

The Missouri Compromise was brokered here. So was the Compromise of 1850. And the famous Webster-Hayne debate took place here in 1830. The spirits of Henry Clay, John Calhoun and Daniel Webster—great statesmen, great compromisers, giants of our Senate—are here with us today. And maybe one day, those who come after us will add this joint meeting to the list of those other great moments in the history of the United States Senate.

But this chamber also witnessed one of the Senate's most regrettable moments—the caning in 1856 of Senator Charles Sumner by Representative Preston Brooks.

Congressman Brooks walked right through this center door and proceeded to beat Senator Sumner.

That tragic incident was precipitated by a strong anti-slavery speech from Senator Sumner in which Representative Brooks felt Sumner had accused his colleague and Brook's cousin, Senator Andrew Butler of South Carolina, of having an illicit sexual relationship with a young woman who was a slave.

Far from being a momentary bitter, personal dispute, the Sumner caning, according to many historians, effectively ended the thin shred of comity and compromise that existed in the Senate. Forty-eight months later our great Civil War began.

We are now gathered in this revered room in the face of a great Constitutional question. Which of the spirits that inhabit this chamber will prevail as we begin this process? Can we find the common ground of Clay, Calhoun and Webster? Or will we assault each other by resorting to a rhetorical caning?

I would urge our two leaders to try once more before the scheduled vote of 1pm to find a solution to the issue of witness testimony.

It has been argued that there is little or no difference between the two proposals, and, while they may seem slight, I believe our failure to make the right choice puts the conduct of this process and the public confidence in the Senate at grave risk.

The President's conduct was deplorable; the conduct of the Office of Independent