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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 19, 1999, at 2 p.m.

Senate

THURSDAY, JANUARY 14, 1999

The Senate met at 1:04 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

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

Almighty God, whose providential care has never varied all through our Nation's history, we ask You for a special measure of wisdom for the women and men of this Senate as they act as jurors in this impeachment trial. You have been our Nation's refuge and strength in triumphs and troubles, prosperity and problems. Now, dear Father, help us through this difficult time. As You guided the Senators to unity in matters of procedure, continue to make them one in their search for the truth and in their expression of justice. Keep them focused in a spirit of nonpartisan patriotism today and in the crucial days to come. Bless the distinguished Chief Justice as he presides over this trial. We commit to You all that is said and done and ultimately decided. In Your holy Name. Amen.

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

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

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

The CHIEF JUSTICE. The Presiding Officer recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

INSTALLING EQUIPMENT AND FURNITURE IN THE SENATE CHAMBER

Mr. LOTT. I send a resolution to the desk providing for installing equipment and furniture in the Senate Chamber and ask that it be agreed to and the motion to reconsider be laid upon the table.

The CHIEF JUSTICE. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 17), to authorize the installation of appropriate equipment and furniture in the Senate Chamber for the impeachment trial.

The CHIEF JUSTICE. Without objection, the resolution is considered and agreed to.

The resolution (S. Res. 17) was agreed to, as follows:

S. RES. 17

Resolved, That in recognition of the unique requirements raised by the impeachment trial of a President of the United States, the Sergeant at Arms shall install appropriate equipment and furniture in the Senate chamber for use by the managers from the House of Representatives and counsel to the President in their presentations to the Senate during all times that the Senate is sitting for trial with the Chief Justice of the United States presiding.

SEC. 2. The appropriate equipment and furniture referred to in the first section is as follows:

(1) A lectern, a witness table and chair if required, and tables and chairs to accommodate an equal number of managers from the House of Representatives and counsel for the President which shall be placed in the well of the Senate.

(2) Such equipment as may be required to permit the display of video, or audio evidence, including video monitors and microphones, which may be placed in the chamber for use by the managers from the House of Representatives or the counsel to the President.

SEC. 3. All equipment and furniture authorized by this resolution shall be placed in the chamber in a manner that provides the least practicable disruption to Senate proceedings.

PRIVILEGE OF THE FLOOR

Mr. LOTT. Mr. Chief Justice, I now ask unanimous consent floor privileges be granted to the individuals listed on the document I send to the desk, during the closed impeachment proceedings of William Jefferson Clinton, President of the United States.

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

The document follows.

FLOOR PRIVILEGES DURING CLOSED SESSION

David Hoppe, Administrative Assistant, Majority Leader.

Michael Wallace, Counsel, Majority Leader.

Robert Wilkie, Counsel, Majority Leader.

Bill Corr, Counsel, Democratic Leader.

Robert Bauer, Counsel, Democratic Leader.

Andrea La Rue, Counsel, Democratic Leader.

Peter Arapis, Floor Manager, Democratic Whip.

Kirk Matthew, Chief of Staff, Assistant Majority Leader.

Stewart Verdery, Counsel, Assistant Majority Leader.

Tom Griffith, Senate Legal Counsel.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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Morgan Frankel, Deputy Senate Legal Counsel.
Loretta Symms, Deputy Sergeant at Arms.
Bruce Kasold, Chief Counsel, Secretary & Sergeant at Arms.
David Schiappa, Assistant Majority Secretary.
Lula Davis, Assistant Minority Secretary.
Alan Frumin, Assistant Parliamentarian.
Kevin Kayes, Assistant Parliamentarian.
Patrick Keating, Assistant Journal Clerk.
Scott Sanborn, Assistant Journal Clerk.
David Tinsley, Assistant Legislative Clerk.
Ronald Kavulick, Chief Reporter.
Jerald Linnell, Official Reporter.
Raleigh Milton, Official Reporter.
Joel Breitner, Official Reporter.
Mary Jane McCarthy, Official Reporter.
Paul Nelson, Official Reporter.
Katie-Jane Teel, Official Reporter.
Patrick Renzi, Official Reporter.
Lee Brown, Staff Assistant, Official Reporter.
Kathleen Alvarez, Bill Clerk.
Simon Sargent, Staff Assistant to Sen. Cleland.

UNANIMOUS-CONSENT AGREEMENT—AUTHORITY TO PRINT SENATE DOCUMENTS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Secretary of the Senate be authorized to print as a Senate document all documents filed by the parties together with other materials for the convenience of all Senators.

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

Mr. LOTT. Mr. Chief Justice, I am about to submit a series of unanimous-consent agreements and a resolution for the consideration of the Senate. In addition to these matters, I would like to state for the information of all Senators that, pursuant to S. Res. 16, the evidentiary record on which the parties' presentations over the next days will be based was filed by the House managers yesterday and was distributed to all Senators through their offices. These materials are now being printed at the Government Printing Office as Senate documents. The initial documents of the record have been printed and are now at each Senator's desk. As the printing of the rest of the volumes of the record is completed over the next few days, they will also be placed on the Senators desks for their convenience.

THE JOURNAL

The CHIEF JUSTICE. Without objection, the Journal of the proceedings of the trial are approved to date.

The Presiding Officer submits to the Senate for printing in the Senate Journal the following documents:

The precept, issued on January 8, 1999;

The writ of summons, issued on January 8, 1999; and the receipt of summons, dated January 8, 1999.

The Presiding Officer submits to the Senate for printing in the Senate Journal the following documents, which were received by the Secretary of the Senate pursuant to Senate Resolution 16, 106th Congress, first session:

The answer of William Jefferson Clinton, President of the United States, to the articles of impeachment exhibited by the House of Representatives against him on January 7, 1999, received by the Secretary of the Senate on January 11, 1999;

The trial brief filed by the House of Representatives, received by the Secretary of the Senate on January 11, 1999;

The trial brief filed by the President, received by the Secretary of the Senate on January 13, 1999;

The replication of the House of Representatives, received by the Secretary of the Senate on January 13, 1999; and

The rebuttal brief filed by the House of Representatives, received by the Secretary of the Senate on January 14, 1999.

Without objection, the foregoing documents will be printed in the CONGRESSIONAL RECORD.

The documents follow:

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to James W. Ziglar, Sergeant at Arms, United States Senate, greeting:

You are hereby commanded to deliver to and leave with William Jefferson Clinton, if conveniently to be found, or if not, to leave at his usual place of abode, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least 2 days before the answer day mentioned in the said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the day for answering mentioned in the said writ of summons.

Witness Strom Thurmond, President pro tempore of the Senate, at Washington, D.C., this 8th day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.

Attest:

GARY SISCO,
Secretary of the Senate.

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to William Jefferson Clinton, greeting:

Whereas the House of Representatives of the United States of America did, on the 7th day of January, 1999, exhibit to the Senate articles of impeachment against you, the said William Jefferson Clinton, in the words following:

''Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against William Jefferson Clinton, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

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

''On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

''In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

''Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

ARTICLE II

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

''The means used to implement this course of conduct or scheme included one or more of the following acts:

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

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

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

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

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

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

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

''In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive to the rule of law and justice, to the manifest injury of the people of the United States.

''Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.''

And demand that you, the said William Jefferson Clinton, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said William Jefferson Clinton, are therefore hereby summoned to file with the Secretary of the United States Senate, S–220 The Capitol, Washington, D.C., 20510, an answer to the said articles of impeachment no later than noon on the 11th day of January, 1999, and therefore to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness Strom Thurmond, President pro tempore of the Senate, at Washington, D.C., this 8th day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.

Attest:

GARY SISCO,
Secretary of the Senate.

The foregoing writ of summons, addressed to William Jefferson Clinton, President of the United States, and the foregoing precept, addressed to me, were duly served upon the said William Jefferson Clinton, by my delivering true and attested copies of the same to Charles Ruff, at the White House, on the 8th day of January, 1999, at 5:27 p.m.

Attest:

JAMES W. ZIGLAR,
Sergeant at Arms.
LORETTA SYMMS,
Deputy Sergeant at Arms.

Dated: January 8, 1999.

Witnesseth:
Gary Sisco, *Secretary,*
United States Senate.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of William Jefferson Clinton, President of the United States

ANSWER OF PRESIDENT WILLIAM JEFFERSON CLINTON TO THE ARTICLES OF IMPEACHMENT

The Honorable William Jefferson Clinton, President of the United States, in response to the summons of the Senate of the United States, answers the accusations made by the House of Representatives of the United States in the two Articles of Impeachment it has exhibited to the Senate as follows:

PREAMBLE

THE CHARGES IN THE ARTICLES DO NOT CONSTITUTE HIGH CRIMES OR MISDEMEANORS

The charges in the two Articles of Impeachment do not permit the conviction and removal from office of a duly elected President. The President has acknowledged conduct with Ms. Lewinsky that was improper. But Article II, Section 4 of the Constitution provides that the President shall be removed from office only upon ''Impeachment for, and Conviction of, Treason, Bribery or other high Crimes and Misdemeanors.'' The charges in the articles do not rise to the level of ''high Crimes and Misdemeanors'' as contemplated by the Founding Fathers, and they do not satisfy the rigorous constitutional standard applied throughout our Nation's history. Accordingly, the Articles of Impeachment should be dismissed.

THE PRESIDENT DID NOT COMMIT PERJURY OR OBSTRUCT JUSTICE

The President denies each and every material allegation of the two Articles of Impeachment not specifically admitted in this answer.

ARTICLE I

President Clinton denies that he made perjurious, false and misleading statements before the federal grand jury on August 17, 1998.

FACTUAL RESPONSES TO ARTICLE I

Without waiving his affirmative defenses, President Clinton offers the following factual responses to the allegations in Article I:

(1) The President denies that he made perjurious, false and misleading statements to the grand jury about ''the nature and details of his relationship'' with Monica Lewinsky

There is a myth about President Clinton's testimony before the grand jury. The myth is that the President failed to admit his improper intimate relationship with Ms. Monica Lewinsky. The myth is perpetuated by Article I, which accuses the President of lying about ''the nature and details of his relationship'' with Ms. Lewinsky.

The fact is that the President specifically acknowledged to the grand jury that he had an improper intimate relationship with Ms. Lewinsky. He said so, plainly and clearly: ''When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters . . . did involve inappropriate intimate contact.'' The President described to the grand jury how the relationship began and how it ended at his insistence early in 1997—long before any public attention or scrutiny. He also described to the grand jury how he had attempted to testify in the deposition in the *Jones* case months earlier without having to acknowledge to the *Jones* lawyers what he ultimately admitted to the grand jury—that he had an improper intimate relationship with Ms. Lewinsky.

The President read a prepared statement to the grand jury acknowledging his relationship with Ms. Lewinsky. The statement was offered at the beginning of his testimony to focus the questioning in a manner that would allow the Office of Independent Counsel to obtain necessary information without unduly dwelling on the salacious details of the relationship. The President's statement was followed by almost four hours of questioning. If it is charged that his statement was in any respect perjurious, false and misleading, the President denies it. The President also denies that the statement was in any way an attempt to thwart the investigation.

The President states, as he did during his grand jury testimony, that he engaged in improper physical contact with Ms. Lewinsky. The President was truthful when he testified before the grand jury that he did not engage in sexual relations with Ms. Lewinsky *as he understood that term to be defined by the Jones lawyers during their questioning of him in that deposition*. The President further denies that his other statements to the grand jury about the nature and details of his relationship with Ms. Lewinsky were perjurious, false, and misleading.

(2) The President denies that he made perjurious, false and misleading statements to the grand jury when he testified about statements he had made in the Jones deposition

There is a second myth about the President's testimony before the grand jury. The myth is that the President adopted his entire *Jones* deposition testimony in the grand jury. The President was not asked to and did not broadly restate or reaffirm his *Jones* deposition testimony. Instead, in the grand jury he discussed the bases for certain answers he gave. The President testified truthfully in the grand jury about statements he made in the *Jones* deposition. The President stated to the grand jury that he did not attempt to be helpful to or assist the lawyers in the *Jones* deposition in their quest for information about his relationship with Ms. Lewinsky. He truthfully explained to the grand jury his efforts to answer the questions in the *Jones* deposition without disclosing his relationship with Ms. Lewinsky. Accordingly, the full, underlying *Jones* deposition is not before the Senate.

Indeed, the House specifically considered and rejected an article of impeachment based on the President's deposition in the *Jones* case. The House managers should not be allowed to prosecute before the Senate an article of impeachment which the full House has rejected.

(3) The President denies that he made perjurious, false and misleading statements to the grand jury about ''statements he allowed his attorney to make'' during the Jones deposition

The President denies that he made perjurious, false and misleading statements to the grand jury about the statements his attorney made during the *Jones* deposition. The President was truthful when he explained to the grand jury his understanding of certain statements made by his lawyer, Robert Bennett, during the *Jones* deposition. The President also was truthful when he testified that he was not focusing on the prolonged and complicated exchange between the attorneys and Judge Wright.

(4) The President denies that he made perjurious, false and misleading statements to the grand jury concerning alleged efforts ''to influence the testimony of witnesses and to impede the discovery of evidence'' in the Jones case

For the reasons discussed more fully in response to Article II, the President denies that he attempted to influence the testimony of any witness or to impede the discovery of evidence in the *Jones* case. Thus, the President denies that he made perjurious, false and misleading statements before the grand jury when he testified about these matters.

FIRST AFFIRMATIVE DEFENSE: ARTICLE I DOES NOT MEET THE CONSTITUTIONAL STANDARD FOR CONVICTION AND REMOVAL

For the same reasons set forth in the preamble of this answer, Article I does not meet the rigorous constitutional standard for conviction and removal from office of a duly elected President and should be dismissed.

SECOND AFFIRMATIVE DEFENSE: ARTICLE I IS TOO VAGUE TO PERMIT CONVICTION AND REMOVAL

Article I is unconstitutionally vague. No reasonable person could know what specific charges are being leveled against the President. It alleges that the President provided the grand jury with ''perjurious, false, and misleading testimony'' concerning ''one or more'' of four subject areas. But it fails to identify *any* specific statement by the President that is alleged to be perjurious, false and misleading. The House has left the Senate and the President to guess at what it had in mind.

One of the fundamental principles of our law and the Constitution is that a person has a right to know what specific charges he or she is facing. Without such fair warning, no one can prepare the defense to which every person is entitled. The law and the Constitution also mandate adequate notice to jurors so they may know the basis for the vote they must make. Without a definite and specific identification of false statements, a trial becomes a moving target for the accused. In addition, the American people deserve to know upon what specific statements the President is being judged, given the gravity and effect of these proceedings, namely nullifying the results of a national election.

Article I sweeps broadly and fails to provide the required definite and specific identification. Were it an indictment, it would be dismissed. As an article of impeachment, it is constitutionally defective and should fail.

THIRD AFFIRMATIVE DEFENSE: ARTICLE I CHARGES MULTIPLE OFFENSE IN ONE ARTICLE

Article I is fatally flawed because it charges multiple instances of alleged perjurious, false and misleading statements in one article. The Constitution provides that ''no person shall be convicted without the Concurrence of two thirds of the Members present,'' and Senate Rule XXIII provides that ''an article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial.'' By the express terms of Article I, a Senator may vote for impeachment if he or she finds that there was perjurious, false and misleading testimony in ''one or more'' of four topic areas. This creates the very real possibility that conviction could occur even though Senators were in wide disagreement as to the alleged wrong committed. Put simply, the structure of Article I presents the possibility that the President could be convicted even though he would have been acquitted if separate votes were taken on each allegedly perjurious statement. For example, it would be possible for the President to be convicted and removed from office with as few as 17 Senators agreeing that any single statement was perjurious, because 17 votes for each of the four categories in Article I would yield 68 votes, one more than necessary to convict and remove.

By charging multiple wrongs in one article, the House of Representatives has made it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of two-thirds of the members. Accordingly, Article I should fail.

FACTUAL RESPONSES TO ARTICLE II

Without waiving his affirmative defenses, President Clinton offers the following factual responses to the allegations in Article II:

(1) The President denies that on or about December 17, 1997, he ''corruptly encouraged'' Monica Lewinsky ''to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading''

The President denies that he encouraged Monica Lewinsky to execute a false affidavit in the *Jones* case. Ms. Lewinsky, the only witness cited in support of this allegation, denies this allegation as well. Her testimony and proffered statements are clear and unmistakable:

- ''[N]o one even asked me to lie and I was never promised a job for my silence.''
- ''Neither the President nor anyone ever directed Lewinsky to say anything or to lie . . .''
- ''Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie.''

The President states that, sometime in December 1997, Ms. Lewinsky asked him whether she might be able to avoid testifying the *Jones* case because she knew nothing about Ms. Jones or the case. The President further states that he told her he believed other witnesses had executed affidavits, and there was a chance they would not have to testify. The President denies that he ever asked, encouraged or suggested that Ms. Lewinsky file a false affidavit or lie. The President states that he believed that Ms. Lewinsky could have filed a limited but truthful affidavit that might have enabled her to avoid having to testify in the *Jones* case.

(2) The President denies that on or about December 17, 1997, he ''corruptly encouraged'' Monica Lewinsky ''to give perjurious, false and misleading testimony of and when called to testify personally'' in the Jones litigation

Again, the President denies that he encouraged Ms. Lewinsky to lie if and when called to testify personally in the *Jones* case. The testimony and proffered statements of Monica Lewinsky, the only witness cited in support of this allegation, are clear and unmistakable:

- [N]o one ever asked me to lie and I was never promised a job for my silence.''
- ''Neither the President nor anyone ever directed Lewinsky to say anything or to lie . . .''
- ''Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie.''

The President states that, *prior* to Ms. Lewinsky's involvement in the *Jones* case, he and Ms. Lewinsky might have talked about what to do to conceal their relationship from others. Ms. Lewinsky was not a witness in any legal proceeding at that time. Ms. Lewinsky's own testimony and statements support the President's recollection. Ms. Lewinsky testified that she ''pretty much can'' exclude the possibility that she and the President ever had discussions about denying the relationship *after* she learned she was a witness in the *Jones* case. Ms. Lewinsky also stated that ''they did not discuss the issue [of what to say about their relationship] is specific relation to the *Jones* matter,'' and that ''she does not believe they discussed the content of any deposition that [she] might be involved in at a later date.''

(3) The President denies that on or about December 28, 1997, he ''corruptly engaged in, encouraged, or supported a scheme to conceal evidence'' in the Jones case

The President denies that he engaged in, encouraged, or supported any scheme to conceal evidence from discovery in the *Jones* case, including any gifts he had given to Ms. Lewinsky. The President states that he gave numerous gifts to Ms. Lewinsky prior to December 28, 1997. The President states that, sometime in December, Ms. Lewinsky inquired as to what to do if she were asked in the *Jones* case about the gifts he had given her, to which the President responded that she would have to turn over whatever she had. The President states that he was unconcerned about having given her gifts and, in fact, that he gave Ms. Lewinsky additional gifts on December 28, 1997. The President denies that he ever asked his secretary, Ms. Betty Currie, to retrieve gifts he had given Ms. Lewinsky, or that he ever asked, encouraged, or suggested that Ms. Lewinsky conceal the gifts. Ms. Currie told prosecutors as early as January 1998 and repeatedly thereafter that it was Ms. Lewinsky who had contacted her about retrieving gifts.

(4) The President denies that he obstructed justice in connection with Monica Lewinsky's efforts to obtain a job in New York to ''corruptly prevent'' her ''truthful testimony'' in the Jones case

The President denies that he obstructed justice in connection with Ms. Lewinsky's job search in New York or sought to prevent her truthful testimony in the *Jones* case. The President states that he discussed with Ms. Lewinsky her desire to obtain a job in New York months before she was listed as a potential witness in the *Jones* case. Indeed, Ms. Lewinsky was offered a job in New York at the United Nations more than a month before she was identified as a possible witness. The President also states that he believes that Ms. Lewinsky raised with him, again before she was ever listed as a possible witness in the *Jones* case, the prospect of having Mr. Vernon Jordan assist in her job search. Ms. Lewinsky corroborates his recollection that it was her idea to ask for Mr. Jordan's help. The President also states that he was aware that Mr. Jordan was assisting Ms. Lewinsky to obtain employment in New York. The President denies that any of these efforts had any connection whatsoever to Ms. Lewinsky's status as a possible or actual witness in the *Jones* case. Ms. Lewinsky forcefully confirmed the President's denial when she testified, ''I was never promised a job for my silence.''

(5) The President denies that he ''corruptly allowed his attorney to make false and misleading statements to a Federal judge'' concerning Monica Lewinsky's affidavit

The President denies that he corruptly allowed his attorney to make false and misleading statements concerning Ms. Lewinsky's affidavit to a Federal judge during the *Jones* deposition. The President denies that he was focusing his attention on the prolonged and complicated exchange between his attorney and Judge Wright.

(6) The President denies that he obstructed justice by relating ''false and misleading statements'' to ''a potential witness,'' Betty Currie, ''in order to corruptly influence [her] testimony''

The President denies that he obstructed justice or endeavored in any way to influence any potential testimony of Ms. Betty Currie. The President states that he spoke with Ms. Currie on January 18, 1998. The President testified that, in that conversation, he was trying to find out what the facts were, what Ms. Currie's perception was, and whether his own recollection was correct about certain aspects of his relationship with Ms. Lewinsky. Ms. Currie testified that she felt no pressure ''whatsoever'' from the President's statements and no pressure ''to agree with [her] boss.'' The President denies knowing or believing that Ms. Currie would be a witness in any proceeding at the time of this conversation. Ms. Currie had not been on any of the witness lists proffered by the *Jones* lawyers. President Clinton states that, after the Independent Counsel investigation became public, when Ms. Currie was scheduled to testify, he told Ms. Currie to ''tell the truth.''

(7) The President denies that he obstructed justice when he relayed allegedly ''false and misleading statements'' to his aides

The President denies that he obstructed justice when he misled his aides about the

nature of his relationship with Ms. Lewinsky in the days immediately following the public revelation of the Lewinsky investigation. The President acknowledges that, in the days following the January 21, 1998, Washington Post article, he misled his family, his friends and staff, and the Nation to conceal the nature of his relationship with Ms. Lewinsky. He sought to avoid disclosing his personal wrongdoing to protect his family and himself from hurt and public embarrassment. The President profoundly regrets his actions, and he has apologized to his family, his friends and staff, and the Nation. The President denies that he had any corrupt purpose or any intent to influence the ongoing grand jury proceedings.

FIRST AFFIRMATIVE DEFENSE: ARTICLE II DOES NOT MEET THE CONSTITUTIONAL STANDARD FOR CONVICTION AND REMOVAL

For the reasons set forth in the preamble of this answer, Article II does not meet the constitutional standard for convicting and removing a duly elected President from office and should be dismissed.

SECOND AFFIRMATIVE DEFENSE: ARTICLE II IS TOO VAGUE TO PERMIT CONVICTION AND REMOVAL

Article II is unconstitutionally vague. No reasonable person could know what specific charges are being leveled against the President. Article II alleges that the President ''obstructed and impeded the administration of justice'' in both the *Jones* case and the grand jury investigation. But it provides little or no concrete information about the *specific acts* in which the President is alleged to have engaged, or with whom, or when, that allegedly obstructed or otherwise impeded the administration of justice.

As we set forth in the Second Affirmative Defense to Article I, one of the fundamental principles of our law and the Constitution is that a person has the right to know what specific charges he or she is facing. Without such fair warning, no one can mount the defense to which every person is entitled. Fundamental to due process is the right of the President to be adequately informed of the charges so that he is able to confront those charges and defend himself.

Article II sweeps too broadly and provides too little definite and specific identification. Were it an indictment, it would be dismissed. As an article of impeachment, it is constitutionally defective and should fail.

THIRD AFFIRMATIVE DEFENSE: ARTICLE II CHARGES MULTIPLE OFFENSES IN ONE ARTICLE

For the reasons set forth in the Third Affirmative Defense to Article I, Article II is constitutionally defective because it charges multiple instances of alleged acts of obstruction in one article, which makes it impossible for the Senate to comply with the Constitutional mandates that any conviction be by the concurrence of the two-thirds of the members. Accordingly, Article II should fail.

Respectfully submitted,

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Submitted: January 11, 1999.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

TRIAL MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES

Now comes the United States House of Representatives, by and through its duly authorized Managers, and respectfully submits to the United States Senate its Brief in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

SUMMARY

The President is charged in two Articles with: (1) Perjury and false and misleading testimony and statements under oath before a federal grand jury (Article I), and (2) engaging in a course of conduct or scheme to delay and obstruct justice (Article II).

The evidence contained in the record, when viewed as a unified whole, overwhelmingly supports both charges.

PERJURY AND FALSE STATEMENTS UNDER OATH

President Clinton deliberately and willfully testified falsely under oath when he appeared before a federal grand jury on August 17, 1998. Although what follows is not exhaustive, some of the more overt examples will serve to illustrate.

- At the very outset, the President read a prepared statement, which itself contained totally false assertions and other clearly misleading information.
- The President relied on his statement nineteen times in his testimony when questioned about his relationship with Ms. Lewinsky.
- President Clinton falsely testified that he was not paying attention when his lawyer employed Ms. Lewinsky's false affidavit at the Jones deposition.
- He falsely claimed that his actions with Ms. Lewinsky did not fall within the definition of ''sexual relations'' that was given at his deposition.
- He falsely testified that he answered questions truthfully at his deposition concerning, among other subjects, whether he had been alone with Ms. Lewinsky.
- He falsely testified that he instructed Ms. Lewinsky to turn over the gifts if she were subpoenaed.
- He falsely denied trying to influence Ms. Currie after his deposition.
- He falsely testified that he was truthful to his aides when he gave accounts of his relationship, which accounts were subsequently disseminated to the media and the grand jury.

OBSTRUCTION OF JUSTICE

The President engaged in an ongoing scheme to obstruct both the Jones civil case and the grand jury. Further, he undertook a continuing and concerted plan to tamper with witnesses and prospective witnesses for the purpose of causing those witnesses to provide false and misleading testimony. Examples abound:

- The President and Ms. Lewinsky concocted a cover story to conceal their relationship, and the President suggested that she employ that story if subpoenaed in the Jones case.
- The President suggested that Ms. Lewinsky provide an affidavit to avoid testifying in the Jones case, when he knew that the affidavit would need to be false to accomplish its purpose.
- The President knowingly and willfully allowed his attorney to file Ms. Lewinsky's false affidavit and to use it for the purpose of obstructing justice in the Jones case.
- The President suggested to Ms. Lewinsky that she provide a false account of how she received her job at the Pentagon.
- The President attempted to influence the expected testimony of his secretary, Ms. Currie, by providing her with a false account of his meetings with Ms. Lewinsky.
- The President provided several of his top aides with elaborate lies about his relationship with Ms. Lewinsky, so that those aides would convey the false information to the public and to the grand jury. When he did this, he knew that those aides would likely be called to testify, while he was declining several invitations to testify. By this action, he obstructed and delayed the operation of the grand jury.
- The President conspired with Ms. Lewinsky and Ms. Currie to conceal evidence that he had been subpoenaed in the Jones case, and thereby delayed and obstructed justice.
- The President and his representatives orchestrated a campaign to discredit Ms. Lewinsky in order to affect adversely her credibility as a witness, and thereby attempted to obstruct justice both in the Jones case and the grand jury.
- The President lied repeatedly under oath in his disposition in the Jones case, and thereby obstructed justice in that case.
- The President's lies and misleading statements under oath at the grand jury were calculated to, and did obstruct, delay and prevent the due administration of justice by that body.
- The President employed the power of his office to procure a job for Ms. Lewinsky after she signed the false affidavit by causing his friend to exert extraordinary efforts for that purpose.

The foregoing are merely accusations of an ongoing pattern of obstruction of justice, and witness tampering extending over a period of several months, and having the effect of seriously compromising the integrity of the entire judicial system.

The effect of the President's misconduct has been devastating in several respects.

(1) He violated repeatedly his oath to ''preserve, protect and defend the Constitution of the United States.''

(2) He ignored his constitutional duty as chief law enforcement officer to ''take care that the laws be faithfully executed.''

(3) He deliberately and unlawfully obstructed Paula Jones's rights as a citizen to due process and the equal protection of the laws, though he had sworn to protect those rights.

(4) By his pattern of lies under oath, misleading statements and deceit, he has seriously undermined the integrity and credibility of the Office of President and thereby the honor and integrity of the United States.

(5) His pattern of perjuries, obstruction of justice, and witness tampering has affected the truth seeking process which is the foundation of our legal system.

(6) By mounting an assault in the truth seeking process, he has attacked the entire Judicial Branch of government.

The Articles of Impeachment that the House has preferred state offenses that warrant, if proved, the conviction and removal from office of President William Jefferson Clinton. The Articles charge that the President has committed perjury before a federal grand jury and that he obstructed justice in a federal civil rights action. The Senate's own precedents establish beyond doubt that perjury warrants conviction and removal. During the 1980s, the Senate convicted and removed three federal judges for committing perjury. Obstruction of justice under mines the judicial system in the same fashion that

perjury does, and it also warrants conviction and removal.

Under our Constitution, judges are impeached under the same standard as Presidents—treason, bribery, or other high crimes and misdemeanors. Thus, these judicial impeachments for perjury set the standard here. Finally, the Senate's own precedents further establish that the President's crimes need not arise directly out of his official duties. Two of the three judges removed in the 1980s were removed for perjury that had nothing to do with their official duties.

INTRODUCTION

This Brief is intended solely to advise the Senate generally of the evidence that the Managers intend to product, if permitted, and of the applicable legal principles. It is not intended to discuss exhaustively all of the evidence, nor does it necessarily include each and every witness and document that the Managers would produce in the course of the trial. This Brief, then, is merely an outline for the use of the Senate in reviewing and assessing the evidence as it is set forth at trial—it is not, and is not intended to be a substitute for a trial at which all of the relevant facts will be developed.

H. RES. 611, 105TH CONG. 2ND SESS. (1998)

The House Impeachment Resolution charges the President with high crimes and misdemeanors in two Articles. Article One alleges that President Clinton ''willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice'' in that he willfully provided perjurious, false and misleading testimony to a federal grand jury on August 17, 1998. Article Two asserts that the President ''has prevented, obstructed, and impeded the administration of justice and engaged 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.'' Both Articles are now before the Senate of the United States for trial as provided by the Constitution of the United States.

The Office of President represents to the American people and to the world, the strength, the philosophy and most of all, the honor and integrity that makes us a great nation and an example for the world. Because all eyes are focused upon that high office, the character and credibility of any temporary occupant of the Oval Office is vital to the domestic and foreign welfare of the citizens. Consequently, serious breaches of integrity and duty of necessity adversely influence the reputation of the United States.

This case is not about sex or private conduct. It is about multiple obstructions of justice, perjury, false and misleading statements, and witness tampering—all committed or orchestrated by the President of the United States.

Before addressing the President's lies and obstruction, it is important to place the events in the proper context. If this were only about private sex we would not now be before the Senate. But the manner in which the Lewinsky relationship arose and continued is important because it is illustrative of the character of the President and the decisions he made.

BACKGROUND

Monica Lewinsky, a 22 year old intern, (ML 8/6/98 GJ, p. 8; H.Doc. 105–311, p. 728) was working at the White House during the government shutdown in 1995. (ML 8/6/98 GJ, p. 10; H.Doc. 105–311, p. 730) Prior to their first intimate encounter, she had never even spoken with the President. Sometime on November 15, 1995, Ms. Lewinsky and President Clinton flirted with each other. (*Id.*) The President of the United States of America then invited this unknown young intern into a private area off the Oval Office where he kissed her. He then invited her back later and when she returned, the two engaged in the first of many acts of inappropriate contact. (ML 8/6/98 GJ, p. 12; H.Doc. 105–311, p. 732)

Thereafter, the two concocted a cover story. If Ms. Lewinsky were seen, she was bringing papers to the President. That story was totally false. (ML 8/6/98 GJ, p. 54; H.Doc. 105–311, p. 774; 8/26/98 Dep., p. 34; H.Doc. 105–311, p. 1314) The only papers she brought were personal messages having nothing to do with her duties or those of the President. (ML 8/6/98 GJ, pgs. 54–55; H.Doc. 105–311, pp. 774–775) After Ms. Lewinsky moved from the White House to the Pentagon, her frequent visits to the President were disguised as visits to Betty Currie. (*Id.*) Those cover stories are important, because they play a vital role in the later perjuries and obstructions.

ENCOUNTERS

Over the term of their relationship the following significant matters occurred:

1. Monica Lewinsky and the President were alone on at least twenty-one occasions;
2. They had at least eleven personal sexual encounters, excluding phone sex: Three in 1995, Five in 1996 and Three in 1997;
3. They had at least 55 telephone conversations, at least seventeen of which involved phone sex;
4. The President gave Ms. Lewinsky twenty presents; and,
5. Ms. Lewinsky gave the President forty presents (O.I.C. Referral, App., Tab E; H.Doc. 105–311, pgs. 104–111)

These are the essential facts which form the backdrop for all of the events that followed.

The sexual details of the President's encounters with Ms. Lewinsky, though relevant, need not be detailed either in this document or through witness testimony. It is necessary, though, briefly to outline that evidence, because it will demonstrate that the President repeatedly lied about that sexual relationship in his deposition, before the grand jury, and in his responses to the Judiciary Committee's questions. He has consistently maintained that Ms. Lewinsky merely performed acts on him, while he never touched her in a sexual manner. This characterization not only directly contradicts Ms. Lewinsky's testimony, but it also contradicts the sworn grand jury testimony of three of her friends and the statements by two professional counselors with whom she contemporaneously shared the details of her relationship. (O.I.C. Referral, H. Doc. 105–310, pgs. 138–140)

While his treatment of Ms. Lewinsky was offensive, it is much more offensive for the President to expect the Senate to believe that in 1995, 1996, and 1997, his intimate contact with Ms. Lewinsky was so limited that it did not fall within his narrow interpretation of a definition of ''sexual relations''. As later demonstrated, he did not even conceive his interpretation until 1998, while preparing for his grand jury appearance.

HOW TO VIEW THE EVIDENCE

We respectfully submit that the evidence and testimony must be viewed as a whole; it cannot be compartmentalized. It is essential to avoid considering each event in isolation, and then treating it separately. Events and words that may seem innocent or even exculpatory in a vacuum may well take on a sinister, or even criminal connotation when observed in the context of the whole plot. For example, everyone agrees that Monica Lewinsky testified ''No one ever told me to lie; nobody ever promised me a job.'' (ML 8/20/98 GJ, p. 105; H. Doc. 105–311, p. 1161)

When considered alone this would seem exculpatory. However, in the context of the other evidence, another picture emerges. Of course no one said. ''Now, Monica, you go in there and lie.'' They didn't have to. Ms. Lewinsky knew what was expected of her. Similarly, nobody *promised* her a job, but once she signed the false affidavit, she got one.

THE ISSUE

The ultimate issue is whether the President's course of conduct is such as to affect adversely the Office of the President and also upon the administration of justice, and whether he has acted in a manner contrary to his trust as President and subversive to the Rule of Law and Constitutional government.

THE BEGINNING

The events that form the basis of these charges actually began in late 1995. They reached a critical stage in the winter of 1997 and the first month of 1998. The event culminated when the President of the United States appeared before a federal grand jury, raised his right hand to God and swore to tell the truth, the whole truth, and nothing but the truth.

DECEMBER 5–6, 1997

On Friday, December 5, 1997, Monica Lewinsky asked Betty Currie if the President could see her the next day, Saturday, but Ms. Currie said that the President was scheduled to meet with his lawyers all day. (ML 8/6/98 GJ, pgs. 107–108; H. Doc. 105–311, pgs. 827–828) Later that Friday, Ms. Lewinsky spoke briefly to the President at a Christmas party. (ML 7/31/98 Int., p. 1; H. Doc. 105–311, p. 1451; ML 8/6/98 GJ, p. 108; H. Doc. 105–311, p. 828)

THE WITNESS LIST IS RECEIVED

That evening, Paula Jones's attorneys faxed a list of potential witnesses to the President's attorneys. (849–DC–00000128; 849–DC–00000121–37; Referral, H. Doc. 105–311, p. 88) The list included Monica Lewinsky. However, Ms. Lewinsky did not find out that her name was on the list until the President told her ten days later, on December 17. (ML 8/6/98 GJ, pgs. 121–123; H. Doc. 105–311, pgs. 841–843) That delay is significant.

MS. LEWINSKY'S FIRST VISIT

After her conversation with Ms. Currie and seeing the President at the Christmas party, Ms. Lewinsky drafted a letter to the President terminating their relationship. (ML–55–DC–0177); ML 7/31/98 Int., p. 2; H. Doc. 105–311, p. 1452) The next morning, Saturday, December 6, Ms. Lewinsky went to the White House to deliver the letter and some gifts for the President to Ms. Currie. (ML 8/6/98 GJ, pgs. 108–109; H. Doc. 105–311, pgs. 828–829) When she arrived at the White House, Ms. Lewinsky spoke to several Secret Service officers, and one of them told her that the President was not with his lawyers, as she thought, but rather, he was meeting with Eleanor Mondale. (ML 8/6/98 GJ, p. 111; H. Doc. 105–311, p. 831; Mondale 7/16/98 Int., p. 1; H. Doc. 105–316, pgs. 2907–2908; H. Doc. 105–311, p. 2654) Ms. Lewinsky called Ms. Currie from a pay phone, angrily exchanged words with her, and went home. (ML 8/6/98 GJ, pgs. 112–13; H. Doc. 105–311, pgs. 832–833; Currie 1/27/98 GJ, p. 27; H. Doc. 105–316, p. 553) After that phone call, Ms. Currie told the Secret Service watch commander that the President was so upset about the disclosure of his meeting with Ms. Mondale that he wanted somebody fired. (Purdie 7/23/98 GJ, pgs. 13, 18–19; H. Doc. 105–316, pgs. 3356–3357).

THE TELEPHONE CONVERSATIONS

At 12:05 p.m., records demonstrate that Ms. Currie paged Bruce Lindsey with the message: ''Call Betty ASAP.'' (964–DC–00000862;

H. Doc. 105–311, p. 2722) Around that same time, according to Ms. Lewinsky, while she was back at her apartment, Ms. Lewinsky and the President spoke by phone. The President was very angry; he told Ms. Lewinsky that no one had every treated him as poorly as she had. (ML 8/6/98 GJ, pgs. 113–14; H. Doc. 105–311, pgs. 833–834) The President acknowledged to the grand jury that he was upset about Ms. Lewinsky's behavior and considered it inappropriate. (WJC 8/17/98 GJ, p. 85; H.Doc. 105–311, p. 537). Nevertheless, in a sudden change of mood, he invited her to visit him at the White House that afternoon. (ML 8/6/98 GJ, p. 114; H.Doc. 105–311, p. 834)

MS. LEWINSKY'S SECOND VISIT

Monica Lewinsky arrived at the White House for the second time that day and was cleared to enter at 12:52 p.m. (WAVES: 827–DC–00000018) Although, in Ms. Lewinsky's words, the President was ''very angry'' with her during their recent telephone conversation, he was ''sweet'' and ''very affectionate'' during this visit. (ML 8/6/98 GJ, pgs. 113–15; H.Doc. 105–311, pgs. 833–835). He also told her that he would talk to Vernon Jordan about her job situation. (ML 8/6/98 GJ, pgs. 115–16; H.Doc. 105–311, pgs. 835–836)

THE DISCUSSIONS WITH THE SECRET SERVICE

The President also suddenly changed his attitude toward the Secret Service. Ms. Currie informed some officers that if they kept quiet about the Lewinsky incident, there would be no disciplinary action. (Williams 7/23/98 GJ, pgs. 25, 27–28; H.Doc. 105–316, p. 4539; Chinery 7/23/98 GJ, p. 22–23; H.Doc. 105–316, p. 456). According to the Secret Service watch commander, Captain Jeffrey Purdie, the President personally told him, ''I hope you use your discretion'' or ''I hope I can count on your discretion.'' (Purdie 7/23/98 GJ, p. 32; H.Doc. 105–316, p. 3360; Purdie 7/17/98 GJ, p. 3; H.Doc. 105–316, p. 3353) Deputy Chief Charles O'Malley, Captain Purdie's supervisor, testified that he knew of no other time in his fourteen years of service at the White House where the President raised a performance issue with a member of the Secret Service uniformed division. (O'Malley 9/8/98 Dep., pgs. 40–41; H.Doc. 105–316, pgs. 3168–3171) After his conversation with the President, Captain Purdie told a number of officers that they should not discuss the Lewinsky incident. (Porter 8/13/98 GJ, p. 12; H.Doc. 105–316, p. 3343; Niedzwiecki 7/30/98 GJ, pgs. 30–31, H.Doc. 105–316, p. 3114)

When the President was before the grand jury and questioned about his statements to the Secret Service regarding this incident, the President testified, ''I don't remember what I said and I don't remember to whom I said it.'' (WJC 8/17/98 GJ, p. 86; H.Doc. 105–311, p. 534) When confronted with Captain Purdie's testimony, the President testified, ''I don't remember anything I said to him in that regard. I have no recollection of that whatever.'' (WJC 8/17/98 GJ, p. 91; H.Doc. 105–311, p. 543)

THE PRESIDENT'S KNOWLEDGE OF THE WITNESS LIST

President Clinton testified before the grand jury that he learned that Ms. Lewinsky was on the Jones witness list that evening, Saturday, December 6, during a meeting with his lawyers. (WJC 8/17/98 GJ, p. 83–84; H.Doc. 105–311, p. 535–536) He stood by this answer in response to Request Number 16 submitted by the Judiciary Committee. (Exhibit 18). The meeting occurred around 5 p.m., after Ms. Lewinsky had left the White House. (WAVES: 1407–DC–00000005; Lindsey 3/12/98 GJ, pgs. 64–66; H.Doc. 105–316, pgs. 2418–19) According to Bruce Lindsey, at the meeting, Bob Bennett had a copy of the Jones witness list faxed to Mr. Bennett the previous night. (Lindsey 3/12/98 GJ, pgs. 65–67; H.Doc. 105–316, p. 2419) (Exhibit 15)

However, during his deposition, the President testified that he had heard about the witness list *before* he saw it. (WJC 1/17/98 Dep., p. 70) In other words, if the President testified truthfully in his deposition, then he knew about the witness list before the 5 p.m. meeting. It is valid to infer that hearing Ms. Lewinsky's name on a witness list prompted the President's sudden and otherwise unexplained change from ''very angry'' to ''very affectionate'' that Saturday afternoon. It is also reasonable to infer that it prompted him to give the unique instruction to a Secret Service watch commander to use ''discretion'' regarding Ms. Lewinsky's visit to the White House, which the watch commander interpreted as an instruction to refrain from discussing the incident. (Purdie 7/17/98 GJ, pgs. 20–21; H.Doc. 105–316, pgs. 3351-3352; Purdie 7/23/98 GJ, pgs. 32–33; H.Doc. 105–315, pgs. 3360–3361)

THE JOB SEARCH FOR MS. LEWINSKY

Monica Lewinsky had been looking for a good paying and high profile job in New York since the previous July. She was not having much success despite the President's promise to help. In early November, Betty Currie arranged a meeting with Vernon Jordan who was supposed to help. (BC 5/6/98 GJ, p. 176; H.Doc. 105–316, p. 592)

On November 5, Ms. Lewinsky met for twenty minutes with Mr. Jordan (ML 8/6/98 GJ, pg. 104; H.Doc. 105–311, p. 824) No action followed; no job interviews were arranged and there were no further contacts with Mr. Jordan. It was obvious that he made no effort to find a job for Ms. Lewinsky. Indeed, it was so unimportant to him that he ''had no recollection of an early November meeting'' (VJ 3/3/98 GJ, pg. 50; H.Doc. 105–316, p. 1799) and that finding a job for Ms. Lewinsky was not a priority (VJ 5/5/98 GJ, p. 76; H.Doc. 105–316, p. 1804) (Chart R) Nothing happened throughout the month of November, because Mr. Jordan was either gone or would not return Monica's calls. (ML 8/6/98 GJ, p. 105–106; H.Doc. 105–311, pgs. 825–826)

During the December 6 meeting with the President, she mentioned that she had not been able to get in touch with Mr. Jordan and that it did not seem he had done anything to help her. The President responded by stating, ''Oh, I'll talk to him. I'll get on it,'' or something to that effect. (ML 8/6/98 GJ, pgs. 115–116; H.Doc. 105–311, p. 836) There was obviously still no urgency to help Ms. Lewinsky. Mr. Jordan met the President the next day, December 7, but the meeting was unrelated to Ms. Lewinsky. (VJ 5/5/98 GJ. pgs. 83, 116; H.Doc. 105–316, pgs. 1805, 1810)

THE DECEMBER 11, 1997 ACTIVITY

The first activity calculated to help Ms. Lewinsky actually procure employment took place on December 11. Mr. Jordan met with Ms. Lewinsky and gave her a list of contact names. The two also discussed the President. (ML 8/6/98 GJ, pgs. 119, 120; H.Doc. 105–311, pgs. 839–840) That meeting Mr. Jordan remembered. (VJ 3/5/98 GJ, p. 41; H.Doc. 105–316, p. 1798) Vernon Jordan immediately placed calls to two prospective employers. (VJ 3/3/98 GJ, pgs. 54, 62–63; H.Doc. 105–316, pgs. 1800–1802) Later in the afternoon, he even called the President to give him a report on his job search efforts. (VJ 3/3/98 GJ, pgs. 64–66; H.Doc. 105–316, p. 1802) Clearly, Mr. Jordan and the President were now *very* interested in helping Monica find a good job in New York. (VJ 5/5/98 GJ, p. 95; H.Doc. 105–316, p. 1807)

SIGNIFICANCE OF DECEMBER 11, 1997

This sudden interest was inspired by a court order entered on December 11, 1997. On that date, Judge Susan Webber Wright ordered that Paula Jones was entitled to information regarding any state or federal employee with whom the President had sexual relations, proposed sexual relations, or sought to have sexual relations.

The President knew that it would be politically and legally expedient to maintain an amicable relationship with Monica Lewinsky. And the President knew that that relationship would be fostered by finding Ms. Lewinsky a job. This was accomplished through enlisting the help of Vernon Jordan.

DECEMBER 17, 1997, MS. LEWINSKY LEARNS OF WITNESS LIST

On December 17, 1997, between 2:00 and 2:30 in the morning, Monica Lewinsky's phone rang unexpectedly. It was the President of the United States. The President said that he wanted to tell Ms. Lewinsky two things: one was that Betty Currie's brother had been killed in a car accident; secondly, the President said that he ''had some more bad news,'' that he had seen the witness list for the Paula Jones case and her name was on it. (ML 8/6/98 GJ, p. 123; H.Doc. 105–311, p. 843) The President told Ms. Lewinsky that seeing her name on the list ''broke his heart.'' He then told her that ''if [she] were to be subpoenaed, [she] should contact Betty and let Betty know that [she] had received the subpoena.'' (*Id.*) Ms. Lewinsky asked what she should do if subpoenaed. The President responded: ''Well, maybe you can sign an affidavit.'' (*Id.*) Both parties knew that the Affidavit would need to be false and misleading to accomplish the desired result.

THE PRESIDENT'S ''SUGGESTION''

Then, the President had a very pointed suggestion for Monica Lewinsky, a suggestion that left little room for compromise. He did not specifically tell her to lie. What he did say is ''you know, you can always say you were coming to see Betty or that you were bringing me letters.'' (ML 8/6/98 GJ, p. 123; H.Doc. 105–311, p. 843)

In order to understand the significance of this statement, it is necessary to recall the ''cover stories'' that the President and Ms. Lewinsky had previously structured in order to deceive those who protected and worked with the President.

Ms. Lewinsky said she would carry papers when she visited the President. When she saw him, she would say: ''Oh, gee, 'here are your letters,' wink, wink, wink and he would answer, 'Okay that's good.' '' (ML 8/6/98 GJ, p. 54; H.Doc. 105–311, p. 774) After Ms. Lewinsky left White House employment, she would return to the Oval Office under the guise of visiting Betty Currie, not the President. (ML 8/6/98 GJ, p. 55; H.Doc. 105–311, p. 775)

Moreover, Ms. Lewinsky promised the President that she would always deny the sexual relationship and always protect him. The President would respond ''that's good'' or similar language of encouragement. (ML 8/20/98 GJ, p. 22; H.Doc. 105–311, p. 1078)

So, when the President called Ms. Lewinsky at 2:00 a.m. on December 17 to tell her she was on the witness list, he made sure to remind her of those prior ''cover stories.'' Ms. Lewinsky testified that when the President brought up the misleading stories, she understood that the two would continue their pre-existing pattern of deception.

THE PRESIDENT'S INTENTION

It became clear that the President had no intention of making his sexual relationship with Monica Lewinsky a public affair. And he would use lies, deceit, and deception to ensure that the truth would not be known.

It is interesting to note that when the grand jury asked the President whether he remembered calling Monica Lewinsky at 2:00 a.m., he responded: ''No sir, I don't. But it would . . . it is quite possible that that happened. . . .'' (WJC 8/17/98 GJ, p. 115; H.Doc. 105–311, p. 567)

And when he was asked whether he encouraged Monica Lewinsky to continue the cover stories of ''coming to see Betty'' or ''bringing the letters,'' he answered: ''I don't remember exactly what I told her that night.'' (WJC 8/17/98 GJ, p. 117; H.Doc. 105–311, p. 565)

Six days earlier, he had become aware that Paula Jones' lawyers were now able to inquire about other women. Ms. Lewinsky could file a false affidavit, but it might not work. It was absolutely essential that both parties told the same story. He knew that he would lie if asked about Ms. Lewinsky, and he wanted to make certain that she would lie also. That is why the President of the United States called a twenty-four year old woman at 2:00 in the morning.

THE EVIDENCE MOUNTS

But the President had an additional problem. It was not enough that he (and Ms. Lewinsky) simply deny the relationship. The evidence was beginning to accumulate. Because of the emerging evidence, the President found it necessary to reevaluate his defense. By this time, the evidence was establishing, through records and eyewitness accounts, that the President and Monica Lewinsky were spending a significant amount of time together in the Oval Office complex. It was no longer expedient simply to refer to Ms. Lewinsky as a ''groupie'', ''stalker'', ''clutch'', or ''home wrecker'' as the White House first attempted to do. The unassailable facts were forcing the President to acknowledge some type of relationship. But at this point, he still had the opportunity to establish a non-sexual explanation for their meetings, since his DNA had not yet been identified on Monica Lewinsky's blue dress.

NEED FOR THE COVER STORY

Therefore, the President needed Monica Lewinsky to go along with the cover story in order to provide an innocent, intimate-free explanation for their frequent meetings. And that innocent explanation came in the form of ''document deliveries'' and ''friendly chats with Betty Currie.''

Significantly, when the President was deposed on January 17, 1998, he used the exact same cover stories that had been utilized by Ms. Lewinsky. In doing so, he stayed consistent with any future Lewinsky testimony while still maintaining his defense in the Jones lawsuit.

In the President's deposition, he was asked whether he was ever alone with Monica Lewinsky. He responded: ''I don't recall . . . She—it seems to me *she brought things to me* once or twice on the weekends. In that case, whatever time she would be in there, *drop it off*, exchange a few words and go, she was there.'' (WJC 1/17/98 Dep., p. 52–53)

Additionally, when questions were posed regarding Ms. Lewinsky's frequent visits to the Oval Office, the President did not hesitate to mention Betty Currie in his answers, for example:

And my recollection is that on a couple of occasions after [the pizza party meeting], she was there [in the oval office] but my secretary, Betty Currie, was there with her. (WJC 1/17/98 Dep., p. 58)

Q. When was the last time you spoke with Monica Lewinsky?

A. I'm trying to remember. Probably sometime before Christmas. She came by to see Betty sometime before Christmas. And she was there talking to her, and I stuck my head out, said hello to her. (WJC 1/17/98 Dep., p. 68)

DECEMBER 19, 1997, MS. LEWINSKY IS SUBPOENAED

On December 19, 1997, Ms. Lewinsky was subpoenaed to testify in a deposition scheduled for January 23, 1998 in the Jones case. (ML 8/6/98 GJ, p. 128; H.Doc. 105–311, p. 848) (Charts F and G) Extremely distraught, she immediately called the President's closest friend, Vernon Jordan. As noted Ms. Lewinsky testified that the President previously told her to call Betty Currie if she was subpoenaed. She called Mr. Jordan instead because Ms. Currie's brother recently died and she did not want to bother her. (ML 8/6/98 GJ, pgs. 128–129; H.Doc. 105–311, pgs. 848, 849)

VERNON JORDAN'S ROLE

Mr. Jordan invited Ms. Lewinsky to his office and she arrived shortly before 5 p.m., still extremely distraught. Around this time, Mr. Jordan called the President and told him Ms. Lewinsky had been subpoenaed. (VJ 5/5/98 GJ, p. 145; H.Doc. 105–316, p. 1815) (Exhibit 1) During the meeting with Ms. Lewinsky, which Mr. Jordan characterized as ''disturbing'' (VJ 3/3/98 GJ, p. 100; H.Doc. 105–316, p. 1716), she talked about her infatuation with the President. (VJ 3/3/98 GJ, p. 150; H.Doc. 105–316, p. 1724) Mr. Jordan decided that he would call a lawyer for her. (VJ 3/3/98 GJ, p. 161; H.Doc. 105–316, p. 1726)

MR. JORDAN INFORMS THE PRESIDENT

That evening, Mr. Jordan met with the President and relayed his conversation with Ms. Lewinsky. The details are extremely important because the President, in his deposition, did not recall that meeting. Mr. Jordan told the President again that Ms. Lewinsky had been subpoenaed, that he was concerned about her fascination with the President, and that Ms. Lewinsky had asked Mr. Jordan if he thought the President would leave the First Lady. He also asked the President if he had sexual relations with Ms. Lewinsky. (VJ 3/3/98 GJ, p. 169; H.Doc 105–3316, p. 1727) The President was asked at his deposition:

Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?

A. I don't think so.

Q. Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify in this case?

A. Bruce Lindsey, I think Bruce Lindsey told me that she was, I think maybe that's the first person told me she was. I want to be as accurate as I can.

(WJC 1/17/98 Dep., pgs. 68–69)

In the grand jury, the President first repeated his denial that Mr. Jordan told him Ms. Lewinsky had been subpoenaed. (WJC 8/17/98 GJ, p. 39; H.Doc. 105–311, p. 491) Then, when given more specific facts, he admitted that he ''knows now'' that he spoke with Mr. Jordan about the subpoena on the night of December 19, but his ''memory is not clear. . . .'' (WJC 8/17/98 GJ, pgs. 41–42; H.Doc. 105–311, p. 493–494) In an attempt to explain away his false deposition testimony, the President testified in the grand jury that he was trying to remember who told him first. (WJC 8/17/98 GJ, p. 41; H.Doc. 105–311, pgs. 492–493) But that was not the question. So his answer was false and misleading. When one considers the nature of the conversation between the President and Mr. Jordan, the suggestion that it would be forgotten defies common sense.

DECEMBER 28, 1997

December 28, 1997 is a crucial date, because the evidence shows that the President made false and misleading statements to the federal court, the federal grand jury and the Congress of the United States about the events on that date. (Chart J) It is also a date on which he obstructed justice.

THE PRESIDENT'S ACCOUNT

The President testified that it was ''possible'' that he invited Ms. Lewinsky to the White House for this visit. (WJC 8/17/98 GJ, p. 33; H.Doc. 105–311, p. 485) He admitted that he ''probably'' gave Ms. Lewinsky the most gifts he had ever given her on that date, (WJC 8/17/98 GJ, p. 35; H.Doc. 105–311, p. 487) and that he had given her gifts on other occasions. (WJC 8/6/98 GJ, p. 35) (Chart D) Among the many gifts the President gave Ms. Lewinsky on December 28 was a bear that he said was a symbol of strength. (ML 8/6/98 GJ, p. 176; H.Doc. 105–311, p. 896) Yet only two-and-a-half weeks later, the President forgot that he had given any gifts to Ms. Lewinsky.

As an attorney, the President knew that the law will not tolerate someone who says, ''I don't recall'' when that answer is unreasonable under the circumstances. He also knew that, under those circumstances, his answer in the deposition could not be believed. When asked in the grand jury why he was unable to remember, even though he had given Ms. Lewinsky so many gifts only two-and-a-half weeks before the deposition, the President put forth an obviously contrived explanation.

''I think what I meant there was I don't recall what they were, not that I don't recall whether I had given them.''

(WJC 8/17/98 GJ, p. 51; H.Doc. 105–311, p. 503)

RESPONSE TO COMMITTEE REQUESTS

The President adopted that same answer in Response No. 42 to the House Judiciary Committee's Requests For Admission. (Exhibit 18) He was not asked in the deposition to identify the gifts. He was simply asked, ''Have you ever'' given gifts to Ms. Lewinsky. The law does not allow a witness to insert unstated premises or mental reservations into the question to make his answer technically true, if factually false. The essence of lying is in deception, not in words.

The President's answer was false. The evidence also proves that his explanation to the grand jury and to the Committee is also false. The President would have us believe that he was able to analyze questions as they were being asked, and pick up such things as verb tense in an attempt to make his statements at least literally true. But when he was asked a simple, straightforward question, he did not understand it. Neither his answer in the deposition nor his attempted explanation is reasonable or true.

TESTIMONY CONCERNING GIFTS

The President was asked in the deposition if Monica Lewinsky ever gave him gifts. He responded, ''once or twice.'' (WJC 1/17/98 Dep., p. 77) This is also false testimony calculated to obstruct justice. He answered this question in his Response to the House Judiciary Committee by saying that he receives numerous gifts, and he did not focus on the precise number. (Exhibit 18) The law again does not support the President's position. An answer that baldly understates a numerical fact in response to a specific quantitative inquiry can be deemed technically true but actually false. For example, a witness is testifying falsely if he says he went to the store five times when in fact he had gone fifty, even though technically he had also gone five times. So too, when the President answered once or twice in the face of evidence that Ms. Lewinsky was frequently bringing gifts, he was lying. (Chart C)

CONCEALMENT OF GIFTS

On December 28, one of the most blatant efforts to obstruct justice and conceal evidence occurred. Ms. Lewinsky testified that she discussed with the President the fact that she had been subpoenaed and that the subpoena called for her to produce gifts. She recalled telling the President that the subpoena requested a hat pin, and that caused her concern. (ML 8/6/98 GJ, pgs. 151–152; H.Doc. 105–311, pgs. 871–872) The President

told her that it ''bothered'' him, too. (ML 8/20/98 GJ, p. 66; H.Doc. 105–311, p. 1122) Ms. Lewinsky then suggested that she take the gifts somewhere, or give them to someone, maybe to Betty. The President answered: ''I don't know'' or ''Let me think about that.'' (ML 8/6/98 GJ, pgs. 152–153; H.Doc. 105–311, pgs. 872–873) (Chart L) Later that day, Ms. Lewinsky got a call from Ms. Currie, who said: ''I understand you have something to give me'' or ''the President said you have something to give me.'' (ML 8/6/98 GJ, pgs. 154–155; H.Doc. 105–311, pgs. 874–875) Ms. Currie has a fuzzy memory about this incident, but says that ''the best she can remember,'' Ms. Lewinsky called her. (Currie 5/6/98 GJ, p. 105; H.Doc. 105–316, p. 581)

THE CELL PHONE RECORD

There is key evidence that Ms. Currie's fuzzy recollection is wrong. Ms. Lewinsky said that she thought Ms. Currie called from her cell phone. (ML 8/6/98 GJ, pgs. 154–155) (Chart K, Exhibit 2) Ms. Currie's cell phone record corroborates Ms. Lewinsky and proves conclusively that Ms. Currie called Monica from her cell phone several hours after she had left the White House. Moreover, Ms. Currie herself later testified that Ms. Lewinsky's memory may be better than hers on this point. (BC 5/6/98 GJ, p. 126; H.Doc. 105–316, p. 584) The facts prove that the President directed Ms. Currie to pick up the gifts.

MS. CURRIE'S LATER ACTIONS

That conclusion is buttressed by Ms. Currie's actions. If Ms. Lewinsky had placed the call requesting a gift exchange, Ms. Currie would logically ask the reason for such a transfer. Ms. Lewinsky was giving her a box of gifts from the President yet she did not tell the President of this strange request. She simply took the gifts and placed them under her bed without asking a single question. (BC 1/27/98 GJ, pgs. 57–58; H.Doc. 105–316, p. 557; BC 5/6/98 GJ, pgs. 105–108, 114; H.Doc. 105–316, pgs. 581–582)

The President stated in his Response to questions No. 24 and 25 from the House Committee that he was not concerned about the gifts. (Exhibit 18) In fact, he said that he recalled telling Monica that if the Jones lawyers request gifts, she should turn them over. The President testified that he is ''not sure'' if he knew the subpoena asked for gifts. (WJC 8/17/98 GJ, pgs. 42–43; H.Doc. 105–311, pgs. 494–495) Would Monica Lewinsky and the President discuss turning over gifts to the Jones lawyers if Ms. Lewinsky had not told him that the subpoena asked for gifts? On the other hand, if he knew the subpoena requested gifts, why would he give Ms. Lewinsky more gifts on December 28? Ms. Lewinsky's testimony reveals the answer. She said that she never questioned ''that we were ever going to do anything but keep this private'' and that meant to take ''whatever appropriate steps needed to be taken'' to keep it quiet. (ML 8/6/98 GJ, pgs. 166; H.Doc. 105–311, p. 886) The only logical inference is that the gifts—including the bear symbolizing strength—were a tacit reminder to Ms. Lewinsky that they would deny the relationship—even in the face of a federal subpoena.

THE PRESIDENT'S DEPOSITION TESTIMONY

Furthermore, the President, at various times in his deposition, seriously misrepresented the nature of his meeting with Ms. Lewinsky on December 28 in order to obstruct the administration of justice. First, he was asked: ''Did she tell you she had been served with a subpoena in this case?'' The President answered flatly: ''No. I don't know if she had been.'' (WJC 1/17/98 Dep., p. 68)

He was also asked if he ''ever talked to Monica Lewinsky about the possibility of her testifying.'' ''I'm not sure . . .,'' he said. he then added that he may have joked to her that the Jones lawyers might subpoena every woman he has ever spoken to, and that ''I don't think we ever had more of a conversation than that about it. . . .'' (WJC 1/17/98 Dep., p. 70) Not only does Monica Lewinsky directly contradict this testimony, but the President also directly contradicted himself before the grand jury. Speaking of his December 28, 1997 meeting, he said that he ''knew by then, of course, that she had gotten a subpoena'' and that they had a ''conversation about the possibility of her testifying.'' (WJC 8/17/98 Dep., pgs. 35–36) Remember, he had this conversation about her testimony only two-and-a-half weeks before his deposition. Again, his version is not reasonable.

JANUARY 5–9, 1998, MS. LEWINSKY SIGNS THE AFFIDAVIT AND GETS A JOB

The President knew that Monica Lewinsky was going to execute a false Affidavit. He was so certain of the content that when she asked if he wanted to see it, he told her no, *that he had seen fifteen of them.* (ML 8/2/98 Int., p. 3; H.Doc. 105–311, p. 1489) He got his information from discussions with Ms. Lewinsky and Vernon Jordan generally about the content of the Affidavit. Moreover, the President had suggested the Affidavit himself and he trusted Mr. Jordan to be certain the mission was accomplished.

ADDITIONAL PRESIDENTIAL ADVICE

In the afternoon of January 5, 1998, Ms. Lewinsky met with her lawyer, Mr. Carter, to discuss the Affidavit. (ML 8/6/98 GJ, p. 192; H.Doc. 105–311, p. 912) Her lawyer asked her some hard questions about how she got her job. (ML 8/6/98 GJ, p. 195; H.Doc. 105–311, p. 915) After the meeting, she called Betty Currie and said that she wanted to speak to the President before she signed anything. (ML 8/6/98 GJ, p. 195; H.Doc. 105–311, p. 915) Ms. Lewinsky and the President discussed the issue of how she would answer under oath if asked about how she got her job at the Pentagon. (ML 8/6/98 GJ, p. 197; H.Doc. 105–311, p. 917) The President told her: ''Well, you could always say that the people in Legislative Affairs got it for you or helped you get it.'' (ML 8/6/98 GJ, p. 197; H.Doc. 105–311, p. 917) That, too, is false and misleading.

VERNON JORDAN'S NEW ROLE

The President was also kept advised as to the contents of the Affidavit by Vernon Jordan. (VJ 5/5/98 GJ, p. 224; H.Doc. 105–316, p. 1828) On January 6, 1998, Ms. Lewinsky picked up a draft of the Affidavit from Mr. Carter's office. (ML 8/6/98 GJ, p. 199; H.Doc. 105–311, p. 919) She delivered a copy to Mr. Jordan's office. (ML 8/6/98 GJ, p. 200; H.Doc. 105–311, p. 920) because she wanted Mr. Jordan to look at the Affidavit in the belief that if Vernon Jordan gave his imprimatur, the President would also approve. (ML 8/6/98 GJ, pgs. 194–195; H.Doc. 105–311, pgs. 914, 915) (Chart M) Ms. Lewinsky and Mr. Jordan conferred about the contents and agreed to delete a paragraph inserted by Mr. Carter which might open a line of questions concerning whether she had been alone with the President. (ML 8/6/98 GJ, p. 200; H.Doc. 105–311, p. 920) (Exhibit 3) Mr. Jordan maintained that he had nothing to do with the details of the Affidavit. (VJ 3/5/98 GJ, p. 12; H.Doc. 105–316, p. 1735) He admits, though, that he spoke with the President after conferring with Ms. Lewinsky about the changes made to her Affidavit. (VJ 5/5/98 GJ, p. 218; H.Doc. 105–316, p. 1827)

MS. LEWINSKY SIGNS THE FALSE AFFIDAVIT

The next day, January 7, Monica Lewinsky signed the false Affidavit. (ML 8/6/98 GJ, pgs. 204–205; H.Doc. 105–311, pgs. 924–925) (Chart N; Exhibit 12) She showed the executed copy to Mr. Jordan that same day. (VJ 5/5/98 GJ, p. 222; H.Doc. 105–316, p. 1828) (Exhibit 4) Mr. Jordan, in turn, notified the President that she signed an affidavit denying a sexual relationship. (VJ 3/5/98 GJ, p. 26; H.Doc. 105–316, p. 1739)

MS. LEWINSKY GETS THE JOB

On January 8, 1998, Mr. Jordan arranged an interview for Ms. Lewinsky with MacAndrews and Forbes in New York. (ML 8/6/98 GJ, p. 206; H.Doc. 105–311, p. 926) The interview went poorly, so Ms. Lewinsky called Mr. Jordan and informed him. (ML 8/6/98 GJ, p. 206; H.Doc. 105–311, p. 926) Mr. Jordan, who had done nothing to assist Ms. Lewinsky's job search from early November to mid December, then called MacAndrews and Forbes CEO, Ron Perelman, to ''make things happen, if they could happen.'' (VJ 5/5/98 GJ, p. 231; H.Doc. 105–316, p. 1829) Mr. Jordan called Ms. Lewinsky back and told her not to worry. (ML 8/6/98 GJ, pgs. 208–209; H.Doc. 105–311, pgs. 928–929) That evening, Ms. Lewinsky was called by MacAndrews and Forbes and told that she would be given more interviews the next morning. (ML 8/6/98 GJ, p. 209; H.Doc. 105–311, p. 929)

After a series of interviews with MacAndrews and Forbes personnel, she was informally offered a job. (ML 8/6/98 GJ, p. 210; H.Doc. 105–311, p. 930) When Ms. Lewinsky called Mr. Jordan to tell him, he passed the good news on to Betty Currie stating, ''Mission Accomplished.'' (VJ 5/28/98 GJ, p. 39; H.Doc. 105–316, p. 1898). Later, Mr. Jordan called the President and told him personally. (VJ 5/28/98 GJ, p. 41; H.Doc. 105–316, p. 1899) (Chart P)

THE REASON FOR MR. JORDAN'S UNIQUE BEHAVIOR

After Ms. Lewinsky had spent months looking for a job—since July according to the President's lawyers—Vernon Jordan made the critical call to a CEO the day after the false Affidavit was signed. Mr. Perelman testified that Mr. Jordan had never called him before about a job recommendation. (Perelman 4/23/98 Dep., p. 11; H.Doc. 105–316, p. 3281) Mr. Jordan, on the other hand, said that he called Mr. Perelman to recommend for hiring: (1) former Mayor Dinkins of New York; (2) a very talented attorney from Akin Gump; (3) a Harvard business school graduate; and (4) Monica Lewinsky. (VJ 3/5/98 GJ, p. 58–59; H.Doc. 105–316, p. 1747) Even if Mr. Perelman's testimony is mistaken, Ms. Lewinsky's qualifications do not compare to those of the individuals previously recommended by Mr. Jordan.

Vernon Jordan was well aware that people with whom Ms. Lewinsky worked at the White House did not like her (VJ 3/3/98 GJ, pgs. 43, 59) and that she did not like her Pentagon job. (VJ 3/3/98 GJ, pgs. 43–44; H.Doc. 105–316, pgs. 1706, 1707) Mr. Jordan was asked if at ''any point during this process you wondered about her qualifications for employment?'' He answered: ''No, because that was not my judgment to make.'' (VJ 3/3/98 GJ, p. 44; H.Doc. 105–316, p. 1707) Yet, when he called Mr. Perelman the day after she signed the Affidavit, he referred to Ms. Lewinsky as a bright young girl who is ''terrific.'' (Perelman 4/23/98 Dep., p. 10; H.Doc. 105–316, p. 3281) Mr. Jordan testified that she had been pressing him for a job and voicing unrealistic expectations concerning positions and salary. (VJ 3/5/98 GJ, pgs. 37–38; H.Doc. 105–316, p. 1742) Moreover, she narrated a disturbing story about the President leaving the First Lady, and how the President was not spending enough time with her. Yet, none of that gave Mr. Jordan pause in making the recommendation, especially after Monica was subpoenaed. (VJ 3/3/98 GJ, pgs. 156–157; H.Doc. 105–316, p. 1725)

THE IMPORTANCE OF THE FALSE AFFIDAVIT

Monica Lewinsky's false Affidavit enabled the President, through his attorneys, to assert at his January 17, 1998 deposition ''. . . there is absolutely no sex of any kind in any manner, shape of form with President Clinton. . . .'' (WJC, 1/17/98 Dep., p. 54) When questioned by his own attorney in the deposition, the President stated specifically that paragraph 8 of Ms. Lewinsky's Affidavit was ''absolutely true.'' (WJC, 1/17/98 Dep., p. 204) The President later affirmed the truth of that statement when testifying before the grand jury. (WJC, 8/17/98 GJ, p. 20–21; H.Doc. 105–311, pg. 473) Paragraph 8 of Ms. Lewinsky's Affidavit states:

''I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship.''

Significantly, Ms. Lewinsky reviewed the draft Affidavit on January 6, and signed it on January 7 after deleting a reference to being alone with the President. She showed a copy of the signed Affidavit to Vernon Jordan, who called the President and told him that she had signed it. (VJ, 3/5/98 GJ, pgs. 24–26; H.Doc. 105–316, pgs. 1728, 1739; VJ, 5/5/98 GJ, p. 222; H.Doc. 105–316, p. 1828)

THE RUSH TO FILE THE AFFIDAVIT

For the affidavit to work for the President in precluding questions by the Jones attorneys concerning Ms. Lewinsky, it had to be filed with the Court and provided to the President's attorneys in time for his deposition on January 17. On January 14, the President's lawyers called Ms. Lewinsky's lawyer and left a message, presumably to find out if he had filed the Affidavit with the Court. (Carrier 6/18/98 GJ, p. 123; H.Doc. 105–316, p. 423) (Chart O) On January 15, the President's attorneys called her attorney twice. When they finally reached him, they requested a copy of the Affidavit and asked him, ''Are we still on time?'' (Carter 6/18/98 GJ, p. 123; H.Doc. 105–216, p. 423) Ms. Lewinsky's lawyer faxed a copy on the 15th. (Carter 6/18/98 GJ, p. 123, H.Doc. 105–316, p. 423) The President's counsel was aware of its contents and used it powerfully in the deposition.

Ms. Lewinsky's lawyer called the court in Arkansas twice on January 15 to ensure that the Affidavit could be filed on Saturday, January 17. (Carter 6/18/98 GJ, pgs. 124–125; H.Doc. 105–316, pgs. 423–424) (Exhibit 5) He finished the Motion to Quash Ms. Lewinsky's deposition in the early morning hours of January 16 and mailed it to the Court with the false Affidavit attached, for Saturday delivery. (Carter 6/18/98 GJ, p. 134; H.Doc. 105–316, p. 426) The President's lawyers left him another message on January 16, saying, ''You'll know what it's about.'' (Carter 6/18/98 GJ, p. 135; H.Doc. 105–316, p. 426) Obviously, the President needed that Affidavit to be filed with the Court to support his plans to mislead Ms. Jones' attorneys in the deposition, and thereby obstruct justice.

THE NEWSWEEK INQUIRY

On January 15, Michael Isikoff of Newsweek called Betty Currie and asked her about Ms. Lewinsky sending gifts to her by courier. (BC 5/6/98 GJ, p. 123; H.Doc. 105–316, p. 584; ML 8/6/98 GJ, p. 228; H.Doc. 105–311, p. 948) Ms. Currie than called Ms. Lewinsky and told her about it. (ML 8/6/98 GJ, p. 228–229; H.Doc. 105–311, pgs. 948–949) The President was out of town, so later, Betty Currie called Ms. Lewinsky back, and asked for a ride to Mr. Jordan's office. (ML 8/6/98 GJ, p. 229; H.Doc. 105–311, p. 949; Currie 5/6/98 GJ, p. 130–131; H.Doc. 105–316, p. 585) Mr. Jordan advised her to speak with Bruce Lindsey and Mike McCurry. (VJ 3/5/98 GJ, p. 71) Ms. Currie testified that she spoke immediately to Mr. Lindsey about Isikoff's call. (BC 5/6/98 GJ, p. 127; H.Doc. 105–316, p. 584)

JANUARY 17, 1998, DEPOSITION AFTERMATH

By the time the President concluded his deposition on January 17, he knew that someone was talking about his relationship with Ms. Lewinsky. He also knew that the only person who had personal knowledge was Ms. Lewinsky herself. The cover stories that he and Ms. Lewinsky created, and that he used himself during the deposition, were now in jeopardy. It became imperative that he not only contact Ms. Lewinsky, but that he obtain corroboration of his account of the relationship from his trusted secretary, Ms. Currie. At around 7 p.m. on the night of the deposition, the President called Ms. Currie and asked that she come in the following day, Sunday. (BC 7/22/98 GJ, p. 154–155; H.Doc. 105–316, p. 701 (Exhibit 6) Ms. Currie could not recall the President ever before calling her that late at home on a Saturday night. (BC 1/27/98 GJ, p. 69; H.Doc. 105–316, p. 559) (Chart S) Sometime in the early morning hours of January 18, 1998, the President learned of a news report concerning Ms. Lewinsky released earlier that day. (WJC 8/17/98 GJ, p. 142–143; H.Doc. 105–311, pgs. 594–595) (Exhibit 14)

THE TAMPERING WITH THE WITNESS, BETTY CURRIE

As the charts indicate, between 11:49 a.m. and 2:55 p.m., there were three phone calls between Mr. Jordan and the President. (Exhibit 7) At about 5 p.m., Ms. Currie met with the President. (BC 1/27/98 GJ, p. 67; H.Doc. 105–316, p. 558) He told her that he had just been deposed and that the attorneys asked several questions about Monica Lewinsky. (BC 1/27/98 GJ, p. 69–70; H.Doc. 105–316, p. 559) He then made a series of statements to Ms. Currie: (Chart T)

(1) I was never really alone with Monica, right?

(2) You were always there when Monica was there, right?

(3) Monica came on to me, and I never touched her, right?

(4) You could see and hear everything, right?

(5) She wanted to have sex with me, and I cannot do that.

(BC 1/27/98 GJ, pgs. 70–75; H.Doc. 105–316, pgs. 559–560; BC 7/22/98 GJ, pgs. 6–7; H.Doc. 105–316, p. 664)

During Betty Currie's grand jury testimony, she was asked whether she believed that the President wished her to agree with the statements:

Q. Would it be fair to say, then—based on the way he stated [these five points] and the demeanor that he was using at the time that he stated it to you—that he wished you to agree with that statement?

A. I can't speak for him, but——

Q. How did you take it? Because you told us at these [previous] meetings in the last several days that that is how you took it.

A. [Nodding.]

Q. And you're nodding you head, ''yes,'' is that correct?

A. That's correct.

Q. Okay, with regard to the statement that the President made to you, ''You remember I was never really alone with Monica, right?'' Was that also a statement that, as far as you took, that he wished you to agree with that?

A. Correct.

(BC 1/27/98 GJ, p. 74; H.Doc. 105–316, 559)

Though Ms. Currie would later intimate that she did not necessarily feel pressured by the President, she did state that she felt the President was seeking her agreement (or disagreement) with those statements. (BC 7/22/98 GJ, p. 27; H.Doc. 105–316, p. 669)

WAS THIS OBSTRUCTION OF JUSTICE?

The President essentially admitted to making these statements when he knew they were not true. Consequently, he had painted himself into a legal corner. Understanding the seriousness of the President ''coaching'' Ms. Currie, the argument has been made that those statements to her could not constitute obstruction because she had not been subpoenaed, and the President did not know that she was a potential witness at the time. This argument is refuted by both the law and the facts.

The United States Court of Appeals rejected this argument, and stated, ''[A] person may be convicted of obstructing justice if he urges or persuades a prospective witness to give false testimony. Neither must the target be scheduled to testify at the time of the offense, nor must he or she actually give testimony at a later time.'' *United States* v. *Shannon*, 836 F.2d 1125, 1128 (8th Cir. 1988) (citing, e.g., *United States* v. *Friedland*, 660 F.2d 919, 931 (3rd Cir. 1981)).

Of course Ms. Currie was a prospective witness, and the President clearly wanted her to be deposed to corroborate him, as his testimony demonstrates. The President claims that he called Ms. Currie into work on a Sunday night only to find out what she knew. But the President knew the truth about his relationship with Ms. Lewinsky, and if he had told the truth during his deposition the day before, then he would have no reason to worry about what Ms. Currie knew. More importantly, the President's demeanor, Ms. Currie's reaction to his demeanor, and the blatant lies that he suggested clearly prove that the President was not merely interviewing Ms. Currie. Rather, he was looking for corroboration for his false coverup, and that is why he coached her.

JANUARY 18, THE SEARCH FOR MS. LEWINSKY

Very soon after his Sunday meeting with Ms. Currie, at 5:12 p.m., the flurry of telephone calls in search of Monica Lewinsky began. (Chart S) between 5:12 p.m. and 8:28 p.m., Ms. Currie paged Ms. Lewinsky four times. ''Kay'' is a reference to a code name Ms. Lewinsky and Ms. Currie agreed to when contacting one another. (ML 8/6/98 GJ, p. 216; H.Doc. 105–311, pg. 936) At 11:02 p.m., the President called Ms. Currie at home to ask if she had reached Lewinsky. (BC 7/22/98 GJ, p. 160; H. Doc. 105–316, p. 702)

JANUARY 19, THE SEARCH CONTINUES

The following morning, January 19, Ms. Currie continued to work diligently on behalf of the President. Between 7:02 a.m. and 8:41 a.m., she paged Ms. Lewinsky another five times. (Chart S) (Exhibit 8) After the 8:41 page, Ms. Currie called the President at 8:43 a.m. and said that she was unable to reach Ms. Lewinsky. (BC 7/22/98 GJ, pgs. 161–162; H.Doc. 105–316, p. 703) One minute later, at 8:44 a.m., she again paged Ms. Lewinsky. This time Ms. Currie's page stated ''Family Emergency,'' apparently in an attempt to alarm Ms. Lewinsky into calling back. That may have been the President's idea, since Ms. Currie had just spoken with him. The President was obviously quite concerned because he called Betty Currie only six minutes later, at 8:50 a.m. Immediately thereafter, at 8:51 a.m., Ms. Currie tried a different tact, sending the message: ''Good news.'' Again, perhaps at the President's suggestion. If bad news does not get her to call, try good news. Ms. Currie said that she was trying to encourage Ms. Lewinsky to call, but there was no sense of ''urgency.'' (BC 7/22/98 GJ, p. 165; H.Doc. 105–316, p. 704) Ms. Currie's recollection of why she was calling was again fuzzy. She said at one point that

she believes the President asked her to call Ms. Lewinsky, and she thought she was calling just to tell her that her name came up in the deposition. (BC 7/22/98 GJ, p. 162; H.Doc. 105–316, p. 703) Monica Lewinsky had been subpoenaed; of course her name came up in the deposition. There was obviously another and more important reason the President needed to get in touch with her.

MR. JORDAN AND MS. LEWINSKY'S LAWYERS JOIN THE SEARCH

At 8:56 a.m., the President telephoned Vernon Jordan, who then joined in the activity. Over a course of twenty-four minutes, from 10:29 to 10:53 a.m., Mr. Jordan called the White House three times, paged Ms. Lewinsky, and called Ms. Lewinsky's attorney, Frank Carter. Between 10:53 a.m. and 4:54 p.m., there are continued calls between Mr. Jordan, Ms. Lewinsky's attorney and individuals at the White House.

MS. LEWINSKY REPLACES HER LAWYER

Later that afternoon, at 4:54 p.m., Mr. Jordan called Mr. Carter. Mr. Carter relayed that he had been told he no longer represented Ms. Lewinsky. (VJ 3/5/98 GJ, p. 141; H.Doc. 105–316, p. 1771) Mr. Jordan then made feverish attempts to reach the President or someone at the White House to tell them the bad news, as represented by the six calls between 4:58 p.m. and 5:22 p.m. Vernon Jordan said that he tried to relay this information to the White House because ''[t]he President asked me to get Monica Lewinsky a job,'' and he thought it was ''information that they ought to have.'' (VJ 6/9/98 GJ, pgs. 45–46; H.Doc. 105–316, p. 1968) (Chart Q) Mr. Jordan then called Mr. Carter back at 5:14 p.m. to go over what they had already talked about. (VJ 3/5/98 GJ, p. 146; H.Doc. 104–316, p. 1772) Mr. Jordan finally reached the President at 5:56 p.m. and told him that Mr. Carter had been fired. (VJ 6/9/98 GJ, p. 54; H.Doc. 105–316, p. 1970)

THE REASON FOR THE URGENT SEARCH

This activity shows how important it was for the President of the United States to find Monica Lewinsky to learn to whom she was talking. Betty Currie was in charge of contacting Ms. Lewinsky. The President had just completed a deposition in which he provided false and misleading testimony about his relationship with Ms. Lewinsky. She was a co-conspirator in hiding this relationship from the Jones attorneys, and he was losing control over her. The President never got complete control over her again.

ARTICLE I.—FALSE AND MISLEADING STATEMENTS TO THE GRAND JURY

Article I addresses the President's perjurious, false, and misleading testimony to the grand jury. Four categories of false grand jury testimony are listed in the Article. Some salient examples of false statements are described below. When judging the statements made and the answers given, it is vital to recall that the President spent literally days preparing his testimony with his lawyer. He and his attorney were fully aware that the testimony would center around his relationship with Ms. Lewinsky and his deposition testimony in the *Jones* case.

GRAND JURY TESTIMONY

On August 17, after six invitations, the President of the United States appeared before a grand jury of his fellow citizens and took an oath to tell the complete truth. The President proceeded to equivocate and engage in legalistic fencing; he also lied. The entire testimony was calculated to mislead and deceive the grand jury and to obstruct its process, and eventually to deceive the American people. He set the tone at the very beginning. In the grand jury a witness can tell the truth, lie or assert his privileges against self incrimination. (Chart Y) President Clinton was given a fourth choice. The President was permitted to read a statement. (Chart Z; WJC 8/17/98 GJ, pgs. 8–9)

THE PRESIDENT'S PREPARED STATEMENT

That statement itself is demonstrably false in many particulars. President Clinton claims that he engaged in inappropriate conduct with Ms. Lewinsky ''on certain occasions in early 1996 and once in 1997.'' Notice he did not mention 1995. There was a reason. On three ''occasions'' in 1995, Ms. Lewinsky said she engaged in sexual contact with the President. Ms. Lewinsky was a twenty-one year old intern at the time.

The President unlawfully attempted to conceal his three visits alone with Ms. Lewinsky in 1995 during which they engaged in sexual conduct. (ML 8/6/98 GJ, pgs. 27–28; H.Doc. 105–311, pgs. 747–748; ML 8/6/98 GJ, Ex. 7; H.Doc. 105–311, p. 1251; Chart A) Under Judge Wright's ruling, this evidence was relevant and material to Paula Jones' sexual harassment claims. (Order, Judge Susan Webber Wright, December 11, 1997, p. 3)

The President specifically and unequivocally states, ''[The encounters] did not constitute sexual relations as I understood that term to be defined at my January 17, 1998 deposition.'' That assertion is patently false. It is directly contradicted by the corroborated testimony of Monica Lewinsky. (See eg: ML 8/20/98 GJ, pgs. 31–32; H.Doc. 311, p. 1174; ML 8/26/98 Dep., p. 25, 30; H.Doc. 311, pgs. 1357, 1358)

Evidence indicates that the President and Ms. Lewinsky engaged in ''sexual relations'' as the President understood the term to be defined at his deposition and as any reasonable person would have understood the term to have been defined.

Contrary to his statement under oath, the President's conduct during the 1995 visits and numerous additional visits did constitute ''sexual relations'' as he understood the term to be defined at his deposition. Before the grand jury, the President admitted that directly touching or kissing another person's breast, or directly touching another person's genitalia with the intent to arouse, would be ''sexual relations'' as the term was defined. (WJC 8/17/98 GJ, pgs. 94–95; H.Doc 105–311, pgs. 546–547) However, the President maintained that he did not engage in such conduct. (*Id.*) These statements are contradicted by Ms. Lewinsky's testimony and the testimony of numerous individuals with whom she contemporaneously shared the details of her encounters with the President. Moreover, the theory that Ms. Lewinsky repeated and unilaterally performed acts on the President while he tailored his conduct to fit a contorted definition of ''sexual relations'' which he had not contemplated at the time of the acts, defies common sense.

Moreover, the President had not even formed the contorted interpretation of ''sexual relations'' which he asserted in the grand jury until after his deposition had concluded. This is demonstrated by the substantial evidence revealing the President's state of mind during his deposition testimony. First, the President continuously denied at his deposition any fact that would cause the *Jones* lawyers to believe that he and Ms. Lewinsky had any type of improper relationship, including a denial that they had a sexual affair, (WJC 1/17/98 Dep., p. 78) not recalling if they were ever alone, (WJC 1/17/98 Dep., pgs. 52–53, 59) and not recalling whether Ms. Lewinsky had ever given him gifts. (WJC 1/17/98 Dep., pg. 75) Second, the President testified that Ms. Lewinsky's affidavit denying a sexual relationship was ''absolutely true'' when, even by his current reading of the definition, it is absolutely false. (WJC 1/17/98 Dep., p. 204) Third, the White House produced a document entitled ''January 24, 1998 Talking Points,'' stating flatly that the President's definition of ''sexual relations'' included oral sex. (Chart W) Fourth, the President made statements to staff members soon after the deposition, saying that he did not have sexual relations, including oral sex, with Ms. Lewinsky, (Podesta 6/16/98 GJ, pg. 92; H.Doc. 105–316, p. 3311) and that she threatened to tell people she and the President had an affair when he rebuffed her sexual advances. (Blumenthal 6/4/98 GJ, p. 59; H.Doc. 105–316, p. 185) Fifth, President Clinton's Answer filed in Federal District Court in response to Paula Jones' First Amended Complaint states unequivocally that ''President Clinton denies that he engaged in any improper conduct with respect to plaintiff or any other woman.'' (Answer of Defendant William Jefferson Clinton, December 17, 1997, p. 8, para. 39) Sixth, in President Clinton's sworn Answers to Interrogatories Numbers 10 and 11, as amended, he flatly denied that he had sexual relations with any federal employee. The President filed this Answer prior to his deposition. Finally, as described below, the President sat silently while his attorney, referring to Ms. Lewinsky's affidavit, represented to the court that there was no sex of any kind or in any manner between the President and Ms. Lewinsky. (WJC 1/17/98 Dep., pg. 54)

This circumstantial evidence reveals the President's state of mind at the time of the deposition: his concern was not in technically or legally accurate answers, but in categorically denying anything improper. His grand jury testimony about his state of mind during the deposition is false.

REASONS FOR THE FALSE TESTIMONY

The President did not lie to the grand jury to protect himself from embarrassment, as he could no longer deny the affair. Before his grand jury testimony, the President's semen had been identified by laboratory tests on Ms. Lewinsky's dress, and during his testimony, he admitted an ''inappropriate intimate relationship'' with Ms. Lewinsky, In fact, when he testified before the grand jury, he was only hours away from admitting the affair on national television. Embarrassment was inevitable. But, if he truthfully admitted the details of his encounters with Ms. Lewinsky to the grand jury, he would be acknowledging that he lied under oath during his deposition when he claimed that he did not engage in sexual relations with Ms. Lewinsky. (WJC 1/17/98 Dep., pgs. 78, 109, 204) Instead, he chose to lie, not to protect his family or the dignity of his office, but to protect himself from criminal liability for his perjury in the *Jones* case.

ADDITIONAL FALSITY IN THE PREPARED STATEMENT

The President's statement continued, ''I regret that what began as a friendship came to include this conduct [.]'' (WJC 8/17/98 GJ, p. 9; H.Doc. 105–311, p. 461) The truth is much more troubling. As Ms. Lewinsky testified, her relationship with the President began with flirting, including Ms. Lewinsky showing the President her underwear. (ML 7/30/98 Int., p. 5; H.Doc. 105–311, p. 1431) As Ms. Lewinsky candidly admitted, she was surprised that the President remembered her name after their first two sexual encounters. (ML 8/26/98 Dep., p. 25; H.Doc. 105–311, p. 1295)

REASON FOR THE FALSITY

The President's prepared statement, fraught with untruths, was not an answer the President delivered extemporaneously to a particular question. It was carefully drafted testimony which the President read and relied upon throughout his deposition. The President attempted to use the statement to foreclose questioning on an incriminating topic on nineteen separate occasions. Yet,

this prepared testimony, which along with other testimony provides the basis for Article I, Item 1, actually contradicts his sworn deposition testimony.

CONTRARY DEPOSITION TESTIMONY

In this statement, the President admits that he and Ms. Lewinsky were alone on a number of occasions. He refused to make this admission in his deposition in the *Jones* case. During the deposition, the following exchange occurred:

Q. Mr. President, before the break, we were talking about Monica Lewinsky. At any time were you and Monica Lewinsky together alone in the Oval Office?

A. I don't recall, but as I said, when she worked in the legislative affairs office, they always had somebody there on the weekends. I typically work some on the weekends. Sometimes they'd bring me things on the weekends. She—it seems to me she brought things to me once or twice on the weekends. In that case, whatever time she would be in there, drop if off, exchange a few words and go, she was there. I don't have any specific recollections of what the issues were, what was going on, but when the Congress is there, we're working all the time, and typically I would do some work on One of the days of the weekends in the afternoon.

Q. So I understand, your testimony is that it was possible, then, that you were alone with her, but you have no specific recollection of that ever happening?

A. Yes, that's correct. It's possible that she, in, while she was working there, brought something to me and that at the time she brought it to me, she was the only person there. That's possible.

(WJC 1/17/98 Dep., pgs. 52–53)

After telling this verbose lie under oath, the President was given an opportunity to correct himself. This exchange followed:

Q. At any time have you and Monica Lewinsky ever been alone together in any room in the White House?

A. I think I testified to that earlier. I think that there is a, it is—I have no specific recollection, but it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend. That's—I have a general memory of that.

Q. Do you remember anything that was said in any of those meetings?

A. No. You know, we just had conversation, I don't remember.

(WJC 1/17/98 Dep., pgs. 52–53)

Before the grand jury, the President maintained that he testified truthfully at his deposition, a lie which provides, in part, the basis for Article I, Item 2. He stated, ''My goal in this deposition was to be truthful, but not particularly helpful . . . I was determined to walk through the mind field of this deposition without violating the law, and I believe I did.'' (WJC 8/17/98 GJ, p. 80; H.Doc. 105–311, p. 532) But contrary to his deposition testimony, he certainly was along with Ms. Lewinsky when she was not delivering papers, as the President conceded in his prepared grand jury statement.

In other words, the President's assertion before the grand jury that he was alone with Ms. Lewinsky, but that he testified truthfully in his deposition, in inconsistent. Yet, to this day, both the President and his attorneys have insisted that he did not lie at his deposition and that he did not lie when he swore under oath that he did not lie at his deposition.

In addition to his lie about not recalling being alone with Ms. Lewinsky, the President told numerous other lies at his deposition. All of those lies are incorporated in Article I, Item 2.

TESTIMONY CONCERNING THE FALSE AFFIDAVIT

Article I, Item 3 charges the President with providing perjurious, false and misleading testimony before a federal grand jury concerning false and misleading statements his attorney Robert Bennett made to Judge Wright at the President's deposition. In one statement, while objecting to questions regarding Ms. Lewinsky, Mr. Bennett misled the Court, perhaps knowingly, stating, ''Counsel [for Ms. Jones] 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[.]'' (WJC 1/17/98 Dep., pgs. 53–54) When Judge Wright interrupted Mr. Bennett and expressed her concern that he might be coaching the President, Mr. Bennett responded, ''In preparation of the witness for this deposition, the witness is *fully aware of Ms. Lewinsky's affidavit*, so I have not told him a single thing he doesn't know[.]'' (WJC 1/17/98 Dep., p. 54) (Emphasis added)

When asked before the grand jury about his statement to Judge Wright, the President testified, ''I'm not even sure I paid attention to what he was saying,'' (WJC 8/17/98 GJ, p. 24; H.Doc. 105–3131, p. 476) He added, ''I didn't pay much attention to this conversation, which is why, when you started asking me about this, I asked to see the deposition.'' (WJC 8/17/98 GJ, p. 24; H.Doc. 105–311, p. 477) Finally, ''I don't believe I ever even focused on what Mr. Bennett said in the exact words he did until I started reading this transcript carefully for this hearing. That moment, the whole argument just passed me by.'' (WJC 8/17/98 GJ, p. 29; H. Doc. 105–311, p. 481)

This grand jury testimony defies common sense. During his deposition testimony, the President admittedly misled Ms. Jones' attorneys about his affair with Ms. Lewinsky, which continued while Ms. Jones' lawsuit was pending, because he did not want the truth to be known. Of course, when Ms. Lewinsky's name is mentioned during the deposition, particularly in connection with sex, the President is going to listen. Any doubts as to whether he listened to Mr. Bennett's representations are eliminated by watching the videotape of the President's deposition. The videotape shows the President looking directly at Mr. Bennett, paying close attention to his argument to Judge Wright.

FALSE TESTIMONY CONCERNING OBSTRUCTION OF JUSTICE

Article I, Item 4 concerns the President's grand jury perjury regarding his efforts to influence the testimony of witnesses and his efforts to impede discovery in the *Jones* v. *Clinton* lawsuit. These lies are perhaps the most troubling, as the President used them in an attempt to conceal his criminal actions and the abuse of his office.

For example, the President testified before the grand jury that he recalled telling Ms. Lewinsky that if Ms. Jones' lawyers requested the gifts exchanged between Ms. Lewinsky and the President, she should provide them. (WJC 8/17/98 GJ, p. 43; H.Doc. 105–311, p. 495) He stated, ''And I told her that if they asked her for gifts, she'd have to give them whatever she had, that that's what the law was.'' (Id.) This testimony is false, as demonstrated by both Ms. Lewinsky's testimony and common sense.

Ms. Lewinsky testified that on December 28, 1997, she discussed with the President the subpoena's request for her to produce gifts, including a hat pin. She told the President that it concerned her, (ML 8/6/98 GJ, p. 151; H.Doc. 105–311, p. 871) and he said that it ''bothered'' him too. (ML 8/20/98 GJ, p. 66; H.Doc. 105–311, p. 1122) Ms. Lewinsky then suggested that she give the gifts to someone, maybe to Betty. But rather than instructing her to turn the gifts over to Ms. Jones' attorneys, the President replied, ''I don't know'' or ''Let me think about that.'' (ML 8/6/98 GJ, p. 152; H.Doc. 105–311, p. 872) Several hours later, Ms. Currie called Ms. Lewinsky on her cellular phone and said, ''I understand you have something to give me'' or ''the President said you have something to give me.'' (ML 8/6/98 GJ, pgs. 154–155; H.Doc. 105–311, pgs. 874–875)

Although Ms. Currie agrees that she picked up the gifts from Ms. Lewinsky, Ms. Currie testified that ''the best'' she remembers is that Ms. Lewinsky called her. (BC 5/6/98 GJ, p. 105; H.Doc. 105–316, p. 581) She later conceded that Ms. Lewinsky's memory may be better than hers on this point. (BC 5/6/98 GJ, p. 126; H.Doc. 105–316, p. 584) A telephone record corroborates Ms. Lewinsky, revealing that Ms. Currie did call her from her cellular phone several hours after Ms. Lewinsky's meeting with the President. The only logical reason Ms. Currie called Ms. Lewinsky to retrieve gifts from the President is that the President told her to do so. He would not have given this instruction if he wished the gifts to be given to Ms. Jones' attorneys.

TESTIMONY CONCERNING MS. CURRIE

The President again testified falsely when he told the grand jury that he was simply trying to ''refresh'' his recollection when he made a series of statements to Ms. Currie the day after his deposition. (WJC 8/17/98 GJ, p. 131; H.Doc. 105–311, p. 583) Ms. Currie testified that she met with the President at about 5:00 P.M. on January 18, 1998, and he proceeded to make these statements to her:

(1) I was never really alone with Monica, right?

(2) You were always there when Monica was there, right?

(3) Monica came on to me, and I never touched her, right?

(4) You could see and hear everything, right?

(5) She wanted to have sex with me, and I cannot do that.

(BC 1/27/98 GJ, pgs. 70–75; H.Doc. 105–316, pgs. 559–560; BC 7/22/98 GJ, pgs. 6–7; H.Doc. 105–316, p. 664)

Ms. Currie testified that these were more like statements than questions, and that, as far as she understood, the President wanted her to agree with the statements. (BC 1/27/98 GJ, p. 74; H.Doc. 105–316, p. 559)

The President was asked specifically about these statements before the grand jury. He did not deny them, but said that he was ''trying to refresh [his] memory about what the facts were.'' (WJC 8/17/98 GJ, p. 131; H.Doc. 105–311, p. 583) He added that he wanted to ''know what Betty's memory was about what she heard,'' (WJC 8/17/98 GJ, p. 54; H.Doc. 105–316, p. 506) and that he was ''trying to get as much information as quickly as [he] could.'' (WJC 8/17/98 GJ, p. 56; H.Doc. 105–311, p. 508) Logic demonstrates that the President's explanation is contrived and false.

A person does not refresh his recollection by firing declarative sentences dressed up as leading questions to his secretary. If the President was seeking information, he would have asked Ms. Currie what she recalled. Additionally, a person does not refresh his recollection by asking questions concerning factual scenarios of which the listener was unaware, or worse, of which the declarant and the listener knew were false. How would Ms. Currie know if she was always there when Ms. Lewinsky was there? Ms. Currie, in fact, acknowledged during her grand jury testimony that Ms. Lewinsky could have visited the President at the White House when Ms. Currie was not there. (BC 7/22/98 GJ, pgs.

65–66; H.Doc. 105–316, p. 679) Ms. Currie also testified that there were several occasions when the President and Ms. Lewinsky were in the Oval Office or study area without anyone else present. (BC 1/27/98 GJ, pgs. 32–33, 36–38; H.Doc. 105–316, pgs. 552–553)

More importantly, the President admitted in his statement to the grand jury that he was alone with Ms. Lewinsky on several occasions. (WJC 8/17/98 GJ, pgs. 9–10; H.Doc. 105–311, pgs. 460–461) Thus, by his own admission, his statement to Ms. Currie about never being alone with Ms. Lewinsky was false. And if they were alone together, Ms. Currie certainly could not say whether the President touched Ms. Lewinsky or not.

The statement about whether Ms. Currie could see and hear everything is also refuted by the President's own grand jury testimony. During his ''intimate'' encounters with Ms. Lewinsky, he ensured everyone, including Ms. Currie, was excluded. (WJC 8/17/98 GJ, p. 53; H.Doc. 105–311, p. 505) Why would someone refresh his recollection by making a false statement of fact to a subordinate? The answer is obvious—he would not.

Lastly, the President stated in the grand jury that he was ''downloading'' information in a ''hurry,'' apparently explaining that he made these statements because he did not have time to listen to answers to open-ended questions. (WJC 8/17/98 GJ, p. 56; H.Doc. 105–311, p. 508) But, if he was in such a hurry, why did the President not ask Ms. Currie to refresh his recollection when he spoke with her on the telephone the previous evening? He also has no adequate explanation as to why he could not spend an extra five or 10 minutes with Ms. Currie on January 18 to get her version of the events. In fact, Ms. Currie testified that she first met the President on January 18 while he was on the White House putting green, and he told her to go into the office and he would be in in a few minutes. (BC 1/27/98 GJ, pgs. 67–70; H.Doc. 105–316, pgs. 558–559) And if he was in such a hurry, why did he repeat these statements to Ms. Currie a few days later? (BC 1/27/98 GJ, pgs. 80–81; H.Doc. 105–316, pgs. 560–561) The reason for these statements had nothing to do with time constraints or refreshing recollection; he had just finished lying during the *Jones* deposition about these issues, and he needed corroboration from his secretary.

TESTIMONY ABOUT INFLUENCING AIDES

Not only did the President lie about his attempts to influence Ms. Currie's testimony, but he lied about his attempts to influence the testimony of some of his top aides. Among the President's lies to his aides, described in detail later in this brief, were that Ms. Lewinsky did not perform oral sex on him, and that Ms. Lewinsky stalked him while he rejected her sexual demands. These lies were then disseminated to the media and attributed to White House sources. They were also disseminated to the grand jury.

When the president was asked about these lies before the grand jury, he testified:

''And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I never would have to be here on this day giving this testimony? Of course.

''But I also didn't want to do anything to complicate this matter further. So I said things that were true. They may have been misleading, and if they were I have to take responsibility for it, and I'm sorry.''

(WJC 8/17/98 GJ, p. 106; H.Doc. 105–311, p. 558)

To accept this grand jury testimony as truth, one must believe that many of the President's top aides engaged in a concerted effort to lie to the grand jury in order to incriminate him at the risk of subjecting themselves to a perjury indictment. We suggest that it is illustrative of the President's character that he never felt any compunction in exposing others to false testimony charges, so long as he could conceal his own perjuries. Simply put, such a conspiracy did not exist.

The above are merely highlights of the President's grand jury perjury, and there are numerous additional examples. In order to keep these lies in perspective, three facts must be remembered. First, before the grand jury, the President was not lying to cover up an affair and protect himself from embarrassment, as concealing the affair was now impossible. Second, the President could no longer argue that the facts surrounding his relationship with Ms. Lewinsky were somehow irrelevant or immaterial, as the Office of Independent Counsel and the grand jury had mandates to explore them. Third, he cannot claim to have been surprised or unprepared for questions about Ms. Lewinsky before the grand jury, as he spent days with his lawyer, preparing responses to such questions.

THE PRESIDENT'S METHOD

Again, the President carefully crafted his statements to give the appearance of being candid, when actually his intent was the opposite. In addition, throughout the testimony, whenever the President was asked a specific question that could not be answered directly without either admitting the truth or giving an easily provable false answer, he said, ''I rely on my statement.'' 19 times he relied on this false and misleading statement; nineteen times, then, he repeated those lies in ''answering'' questions propounded to him. (See eg. WJC 8/17/98 GJ, pg. 139; H.Doc. 105–311, p. 591)

THE HOUSE COMMITTEE'S REQUEST

In an effort to avoid unnecessary work and to bring its inquiry to an expeditious end, the Judiciary Committee of the House of Representatives submitted to the President 81 requests to admit or deny specific facts relevant to this investigation. (Exhibit 18) Although, for the most part, the questions could have been answered with a simple ''admit'' or ''deny,'' the President elected to follow the pattern of selective memory, reference to other testimony, blatant untruths, artful distortions, outright lies, and half truths. When he did answer, he engaged in legalistic hair-splitting in an obvious attempt to skirt the whole truth and to deceive and obstruct the due proceedings of the Committee.

THE PRESIDENT REPEATS HIS FALSITIES

Thus, on at least 23 questions, the President professed a lack of memory. This from a man who is renowned for his remarkable memory, for his amazing ability to recall details.

In at least 15 answers, the President merely referred to ''White House Records.'' He also referred to his own prior testimony and that of others. He answered several of the requests by merely restating the same deceptive answers that he gave to the grand jury. We will point out several false statements in this Brief.

In addition, the half-truths, legalistic parsings, evasive and misleading answers were obviously calculated to obstruct the efforts of the House Committee. They had the effect of seriously hampering its ability to inquire and to ascertain the truth. The President has, therefore, added obstruction of an inquiry and an investigation before the Legislative Branch to his obstructions of justice before the Judicial Branch of our constitutional system of government.

THE EARLY ATTACK ON MS. LEWINSKY

After his deposition, the power and prestige of the Office of President was marshaled to destroy the character and reputation of Monica Lewinsky, a young woman that had been ill-used by the President. As soon as her name surfaced, the campaign began to muzzle any possible testimony, and to attack the credibility of witnesses, in a concerted effort to obstruct the due administration of justice in a lawsuit filed by one female citizen of Arkansas. It almost worked.

When the President testified at his deposition that he had no sexual relations, sexual affair or the like with Monica Lewinsky, he felt secure. Monica Lewinksy, the only other witness was on board. She had furnished a false affidavit also denying everything. Later, when he realized from the January 18, 1998, Drudge Report that there were taped conversations between Ms. Lewinsky and Linda Tripp, he had to develop a new story, and he did. In addition, he recounted that story to White House aides who passed it on to the grand jury in an effort to obstruct that tribunal too.

On Wednesday, January 21, 1998, *The Washington Post* published a story entitled ''Clinton Accused of Urging Aide to Lie; Starr Probes Whether President Told Woman to Deny Alleged Affair to Jones' Lawyers.'' The White House learned the substance of the *Post* story on the evening of January 20, 1998.

MR. BENNETT'S REMARK

After the President learned of the existence of the story, he made a series of telephone calls.

At 12:08 a.m. he called his attorney, Mr. Bennett, and they had a conversation. The next morning, Mr. Bennett was quoted in the Washington Post stating:

''The President adamantly denies he ever had a relationship with Ms. Lewinsky and she has confirmed the truth of that.'' He added, ''This story seems ridiculous and I frankly smell a rat.''

ADDITIONAL CALLS

After that conversation, the President had a half hour conversation with White House counsel, Bruce Lindsey.

At 1:16 a.m., the President called Betty Currie and spoke to her for 20 minutes.

He then called Bruce Lindsey again.

At 6:30 a.m. the President called Vernon Jordan.

After that, the President again conversed with Bruce Lindsey.

This flurry of activity was a prelude to the stories which the President would soon inflict upon top White House aides and advisors.

THE PRESIDENT'S STATEMENTS TO STAFF

ERSKINE BOWLES

On the morning of January 21, 1998, the President met with Whie House Chief of Staff, Erskine Bowles, and his two deputies, John Podesta and Sylvia Matthews.

Erskine Bowles recalled entering the President's office at 9:00 a.m. that morning. He then recounts the President's immediate words as he and two others entered the Oval Office:

And he looked up at us and he said the same thing he said to the American people.

He said, ''I want you to know I did not have sexual relationships with this woman, Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll understand.''

(Bowles, 4/2/98 GJ, p. 84; H.Doc. 105–316, p. 239)

After the President made that blanket denial, Mr. Bowles responded:

I said, ''Mr. President, I don't know what the facts are. I don't know if they're good, bad, or indifferent. But whatever they are, you ought to get them out. And you ought to get them out rignt now.''

(Bowles, 4/2/98 GJ, p. 84; H.Doc. 105–316, p. 239)

When counsel asked whether the President responded to Bowles' suggestion that he tell the truth, Bowles responded:

I don't think he made any response, but he didn't disagree with me.

(Bowles, 4/2/98 GJ, p. 84; H.Doc. 105–316, p. 239)

JOHN PODESTA

January 21, 1998

Deputy Chief John Podesta also recalled a meeting with the President on the morning of January 21, 1998.

He testified before the grand jury as to what occurred in the Oval Office that morning:

A. And we started off meeting—we didn't—I don't think we said anything. And I think the President directed this specifically to Mr. Bowles. He said, ''Erskine, I want you to know that this story is not true.''

Q. What else did he say?

A. He said that—that he had not had a sexual relationship with her, and that he never asked anybody to lie.

(Podesta, 6/16/98 GJ, p. 85; H.Doc. 105–316, p. 3310)

January 23, 1998

Two days later, on January 23, 1998, Mr. Podesta had another discussion with the President:

''I asked him how he was doing, and he said he was working on this draft and he said to me that he never had sex with her, and that—and that he never asked—you know, he repeated the denial, but he was extremely explicit in saying he never had sex with her.''

Then Podesta testified as follows:

Q. Okay. Not explicit, in the sense that he got more specific than sex, than the word ''sex.''

A. Yes, he was more specific than that.

Q. Okay, share that with us.

A. Well, I think he said—he said that—there was some spate. Of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever——

Q. Okay.

A. That they had not had oral sex.

(Podesta, 6/16/98 GJ, p. 92; H.Doc. 105–316, p. 3311) (Exhibit V)

SIDNEY BLUMENTHAL

Later in the day on January 21, 1998, the President called Sidney Blumenthal to his office. It is interesting to note how the President's lies become more elaborate and pronounced when he has time to concoct this newest line of defense. When the President spoke to Mr. Bowles and Mr. Podesta, he simply denied the story. But, by the time he spoke to Mr. Blumenthal, the President has added three new angles to his defense strategy: (1) he now portrays Monica Lewinsky as the aggressor; (2) he launches an attack on her reputation by portraying her as a ''stalker''; and (3) he presents himself as the innocent victim being attacked by the forces of evil.

Note well this recollection by Mr. Blumenthal in his June 4, 1998 testimony: (Chart U)

And it was at this point that he gave his account of what had happened to me and he said that Monica—and it came very fast. He said, ''Monica Lewinsky came at me and made a sexual demand on me.'' He rebuffed her. He said, ''I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.'' She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker anymore.

(Blumenthal, 6/4/98 GJ, p. 49; H.Doc. 105–316, p. 185)

And then consider what the President told Mr. Blumenthal moments later:

And he said, ''I feel like a character in a novel. I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out. I feel like the character in the novel *Darkness at Noon*.

And I said to him, ''When this happened with Monica Lewinsky, were you alone?'' He said, ''Well, I was within eyesight or earshot of someone.''

(Blumenthal, 6/4/98 GJ, p. 50; H.Doc. 105–316, p. 185)

At one point, Mr. Blumenthal was asked by the grand jury to describe the President's manner and demeanor during the exchange.

Q. In response to my question how you responded to the President's story about a threat or discussion about a threat from Ms. Lewinsky, you mentioned you didn't recall specifically. Do you recall generally the nature of your response to the President?

A. It was generally sympathetic to the President. And I certainly believed his story. It was a very heartfelt story, he was pouring out his heart, and I believed him.

(Blumenthal, 6/25/98 GJ, pgs. 16–17; H.Doc. 105–316, pgs. 192–193)

BETTY CURRIE

When Betty Currie testified before the grand jury, she could not recall whether she had another one-on-one discussion with the President on Tuesday, January 20, or Wednesday, January 21. But she did state that on one of those days, the President summoned her back to his office. At that time, the President recapped their now-infamous Sunday afternoon post-deposition discussion in the Oval Office. It was at that meeting that the President made a series of statements to Ms. Currie, to some of which she could not possibly have known the answers. (e.g. ''Monica came on to me and I never touched her, right?'') (BC 1/27/98 GJ, pgs. 70–75; H.Doc. 105–316, pgs. 559–560; BC 7/22/98 GJ, pgs. 6–7; H.Doc. 105–316, p. 664)

When he spoke to her on January 20 or 21, he spoke in the same tone and demeanor that he used in his January 18 Sunday session.

Ms. Currie stated that the President may have mentioned that she might be asked about Monica Lewinsky. (BC, 1/24/98 Int., p. 8; H.Doc. 105–316, p. 536)

MOTIVE FOR LIES TO STAFF

It is abundantly clear that the President's assertions to staff were designed for dissemination to the American people. But it is more important to understand that the President intended his aides to relate that false story to investigators and grand jurors alike. We know that this is true for the following reasons: the Special Division had recently appointed the Office of Independent Counsel to investigate the Monica Lewinsky matter; the President realized that Jones' attorneys and investigators were investigating this matter; the *Washington Post* journalists and investigators were exposing the details of the Lewinsky affair; and, an investigation relating to perjury charges based on Presidential activities in the Oval Office would certainly lead to interviews with West Wing employees and high level staffers. Because the President would not appear before the grand jury, his version of events would be supplied by those staffers to whom he had lied. The President actually acknowledged that he knew his aides might be called before the grand jury. (WJC 8/17/98 GJ, pgs. 105–109; H.Doc. 105–311, pgs. 557–557)

In addition, Mr. Podesta testified that he knew that he was likely to be a witness in the ongoing grand jury criminal investigation. He said that he was ''sensitive about not exchanging information because I knew I was a potential witness.'' (Podesta 6/23/98 GJ, p. 79; H.Doc. 105–316, p. 3332) He also recalled that the President volunteered to provide information about Ms. Lewinsky to him even though Mr. Podesta had not asked for these details. (Podesta 6/23/98 GJ, p. 79; H.Doc. 105–316, p. 3332)

In other words, the President's lies and deceptions to his White House aides, coupled with his steadfast refusal to testify had the effect of presenting a false account of events to investigators and grand jurors. The President's aides believed the President when he told them his contrived account. The aides' eventual testimony provided the President's calculated falsehoods to the grand jury which, in turn, gave the jurors an inaccurate and misleading set of facts upon which to base any decisions.

WIN, WIN, WIN

President Clinton also implemented a win-at-all-costs strategy calculated to obstruct the administration of justice in the *Jones* case and in the grand jury. This is demonstrated in testimony presented by Richard ''Dick'' Morris to the federal grand jury.

Mr. Morris, a former presidential advisor, testified that on January 21, 1998, he met President Clinton and they discussed the turbulent events of the day. The President again denied the accusations against him. After further discussions, they decided to have an overnight poll taken to determine if the American people would forgive the President for adultery, perjury, and obstruction of justice. When Mr. Morris received the results, he called the President:

''And I said, 'They're just too shocked by this. It's just too new, it's too raw.' And I said, 'And the problem is they're willing to forgive you for adultery, but not for perjury or obstruction of justice or the various other things.'''

(Morris 8/18/98 GJ. p. 28; H.Doc. 105–316, p. 2929)

Morris recalls the following exchange:

Morris: And I said, ''They're just not ready for it.'' meaning the voters.

WJC: Well, we just have to win, then.

(Morris 8/18/98 GJ, p. 30; H.Doc. 105–216, p. 2930)

The President, of course, cannot recall this statement, (Presidential Responses to Questions, Numbers 69, 70, and 71)

THE PLOT TO DISCREDIT MONICA LEWINSKY

In order to ''win,'' it was necessary to convince the public, and hopefully the grand jurors who read the newspapers, that Monica Lewinsky was unworthy of belief. If the account given by Ms. Lewinsky to Linda Tripp was believed, then there would emerge a tawdry affair in and near the Oval Office. Moreover, the President's own perjury and that of Monica Lewinsky would surface. To do this, the President employed the full power and credibility of the White House and its press corps to destroy the witness. Thus on January 29, 1998:

Inside the White House, the debate goes on about the best way to destroy That Woman, as President Bill Clinton called Monica Lewinsky. Should they paint her as a friendly fantasist or a malicious stalker? (*The Plain Dealer*)

Again:

''That poor child has serious emotional problems,'' Rep. Charles Rangel, Democrat of New York, said Tuesday night before the State of the Union. ''She's fantasizing. And I haven't heard that she played with a full deck in her other experiences.'' (*The Plain Dealer*)

From Gene Lyons, an Arkansas columnist on January 30:

''But it's also very easy to take a mirror's eye view of this thing, look at this thing from a completely different direction and take the same evidence and posit a totally innocent relationship in which the president was, in a sense, the victim of someone rather like the woman who followed David Letterman around.'' (NBC News)

From another ''source'' on February 1:

''Monica had become known at the White House, says one source, as 'the stalker.'''

And on February 4:

''The media have reported that sources describe Lewinsky as 'infatuated' with the president, 'star struck' and even 'a stalker'.'' (*Buffalo News*)

Finally, on January 31:

''One White House aide called reporters to offer information about Monica Lewinsky's past, her weight problems and what the aide said was her nickname—'The Stalker.'''

''Junior staff members, speaking on the condition that they not be identified, said she was known as a flirt, wore her skirts too short, and was 'A little bit weird.'''

''Little by little, ever since allegations of an affair between U.S. President Bill Clinton and Lewinsky surfaced 10 days ago, White House sources have waged a behind-the-scenes campaign to portray her as an untrustworthy climber obsessed with the President.''

''Just hours after the story broke, one White House source made unsolicited calls offering that Lewinsky was the 'troubled' product of divorced parents and may have been following the footsteps of her mother, who wrote a tell-all book about the private lives of three famous opera singers.''

''One story had Lewinsky following former Clinton aide George Stephanopoulos to Starbucks. After observing what kind of coffee he ordered, she showed up the next day at his secretary's desk with a cup of the same coffee to 'surprise him.'''' (Toronto Sun)

This sounds familiar because it is the exact tactic used to destroy the reputation and credibility of Paula Jones. The difference is that these false rumors were emanating from the White House, the bastion of the free world, to protect one man from being forced to answer for his deportment in the highest office in the land.

On August 17, 1998, the President testified before the grand jury. He then was specifically asked whether he knew that his aides (Blumenthal, Bowles, Podesta and Currie) were likely to be called before the grand jury.

Q. It may have been misleading, sir, and you knew though, after January 21st when the Post article broke and said that Judge Starr was looking into this, you knew that they might be witnesses. You knew that they might be called into a grand jury, didn't you?

WJC. That's right. I think I was quite careful what I said after that. I may have said something to all these people to that effect, but I'll also—whenever anybody asked me any details, I said, look, I don't want you to be a witness or I turn you into a witness or give you information that would get you in trouble. I just wouldn't talk. I, by and large, didn't talk to people about it.

Q. If all of these people—let's leave Mrs. Currie for a minute. Vernon Jordan, Sid Blumenthal, John Podesta, Harold Ickes, Erskine Bowles, Harry Thomasson, after the story broke, after Judge Starr's involvement was known on January 21st, have said that you denied a sexual relationship with them. Are you denying that?

WJC. No.

Q. And you've told us that you——

WJC. I'm just telling you what I meant by it. I told you what I meant by it when they started this deposition.

Q. You've told us now that you were being careful, but that it might have been misleading. Is that correct?

WJC. It must have been * * * So, what I was trying to do was to give them something they could—that would be true, even if misleading in the context of this deposition, and keep them out of trouble, and let's deal—and deal with what I thought was the almost ludicrous suggestion that I had urged someone to lie or tried to suborn perjury, in other words.

(WJC 8/17/97 GJ, pgs. 106–108; H. Doc. 105–311, pgs. 558–560)

As the President testified before the grand jury, he maintained that he was being truthful with his aides. (Exhibit 20) He stated that when he spoke to them, he was very careful with his wording. The President stated that he wanted his statement regarding ''sexual relations'' to be literally true because he was only referring to intercourse.

However, recall that John Podesta said that the President denied sex ''in any way whatsoever'' ''including oral sex.'' The President told Mr. Podesta, Mr. Bowles, Ms. Williams, and Harold Ickes that he did not have a ''sexual relationship'' with that woman.

Importantly, seven days after the President's grand jury appearance, the White House issued a document entitled, ''Talking Points January 24, 1998.'' (Chart W; Exhibit 16) This ''Talking Points'' document outlines proposed questions that the President may be asked. It also outlines suggested answers to those questions. The ''Talking Points'' purport to state the President's view of sexual relations and his view of the relationship with Monica Lewinsky. (Exhibit 17)

The ''Talking Points'' state as follows:

Q. *What acts does the President believe constitute a sexual relationship?*

A. I can't believe we're on national television discussing this. I am not about to engage in an ''act-by-act'' discussion of what constitutes a sexual relationship.

Q. *Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?*

A. Of course it would.

The President's own talking points refute the President's ''literal truth'' argument.

EFFECT OF THE PRESIDENT'S CONDUCT

Some ''experts'' have questioned whether the President's deportment affects his office, the government of the United States or the dignity and honor of the country.

Our founders decided in the Constitutional Convention that one of the duties imposed upon the President is to ''take care that the laws be faithfully executed.'' Furthermore, he is required to take an oath to ''Preserve, protect and defend the Constitution of the United States.'' Twice this President stood on the steps of the Capitol, raised his right hand to God and repeated that oath.

The Fifth Amendment to the Constitution of the United States provides that no person shall ''be deprived of life, liberty or property without due process of law.''

The Seventh Amendment insures that in civil suits ''the right of trial by jury shall be preserved.''

Finally, the Fourteenth Amendment guarantees due process of law and the equal protection of the laws.

THE EFFECT ON MS. JONES' RIGHTS

Paula Jones is an American citizen, just a single citizen who felt that she had suffered a legal wrong. More important, that legal wrong was based upon the Constitution of the United States. She claimed essentially that she was subjected to sexual harassment, which, in turn, constitutes discrimination on the basis of gender. The case was not brought against just any citizen, but against the President of the United States, who was under a legal and moral obligation to preserve and protect Ms. Jones' rights. It is relatively simple to mouth high-minded platitudes and to prosecute vigorously right violations by someone else. It is, however, a test of courage, honor and integrity to enforce those rights against yourself. The President failed that test. As a citizen, Ms. Jones enjoyed an absolute constitutional right to petition the Judicial Branch of government to redress that wrong by filing a lawsuit in the United States District Court, which she did. At this point she became entitled to a trial by jury if she chose, due process of law and the equal protection of the laws no matter who the defendant was in her suit. Due process contemplates that right to a full and fair trial, which, in turn, means the right to call and question witnesses, to cross-examine adverse witnesses and to have her case decided by an unbiased and fully informed jury. What did she actually get? None of the above.

On May 27, 1997, the United States Supreme Court ruled in a nine to zero decision that, ''like every other citizen,'' Paula Jones ''has a right to an orderly disposition of her claims.'' In accordance with the Supreme Court's decision, United States District Judge Susan Webber Wright ruled on December 11, 1997, that Ms. Jones was entitled to information regarding state or federal employees with whom the President had sexual relations from May, 1986 to the present. Judge Wright had determined that the information was reasonably calculated to lead to the discovery of admissible evidence. Six days after this ruling, the President filed an answer to Ms. Jones' Amended Complaint. The President's Answer stated: ''President Clinton denies that he engaged in any improper conduct with respect to plaintiff or any other woman.''

Ms. Jones' right to call and depose witnesses was thwarted by perjurious and misleading affidavits and motions; her right to elicit testimony from adverse witnesses was compromised by perjury and false and misleading statements under oath. As a result, had a jury tried the case, it would have been deprived of critical information.

That result is bad enough, but it reaches constitutional proportions when denial of the civil rights is directed by the President of the United States who twice took an oath to preserve, protect and defend those rights. But we now know what the ''sanctity of an oath'' means to the President.

THE EFFECT ON THE OFFICE OF PRESIDENT

Moreover, the President is the spokesman for the government and the people of the United States concerning both domestic and foreign matters. His honesty and integrity, therefore, directly influence the credibility of this country. When, as here, that spokesman is guilty of a continuing pattern of lies, misleading statements, and deceits over a long period of time, the believability of any of his pronouncements is seriously called into question. Indeed, how can anyone in or out of our country any longer believe anything he says? And what does that do to confidence in the honor and integrity of the United States?

Make no mistake, the conduct of the President is inextricably bound to the welfare of the people of the United States. Not only does it affect economic and national defense, but even more directly, it affects the moral and law-abiding fibre of the commonwealth,

without which no nation can survive. When, as here, that conduct involves a pattern of abuses of power, of perjury, of deceit, of obstruction of justice and of the Congress, and of other illegal activities, the resulting damage to the honor and respect due to the United States is, of necessity, devastating.

THE EFFECT ON THE SYSTEM

Again: there is no such thing as non-serious lying under oath. Every time a witness lies, that witness chips a stone from the foundation of our entire legal system. Likewise, every act of obstruction of justice, of witness tampering or of perjury adversely affects the judicial branch of government like a pebble tossed into a lake. You may not notice the effect at once, but you can be certain that the tranquility of that lake has been disturbed. And if enough pebbles are thrown into the water, the lake itself may disappear. So too with the truth-seeking process of the courts. Every unanswered and unpunished assault upon it has its lasting effect and given enough of them, the system itself will implode.

That is why two women who testified before the Committee had been indicted, convicted and punished severely for false statements under oath in civil cases. And that is why only recently a federal grand jury in Chicago indicted four former college football players because they gave false testimony under oath to a grand jury. Nobody suggested that they should not be charged because their motives may have been to protect their careers and family. And nobody has suggested that the perjury was non-serious because it involved only lies about sports; i.e., betting on college football games.

DISREGARD OF THE RULE OF LAW

Apart from all else, the President's illegal actions constitute an attack upon and utter disregard for the truth, and for the rule of law. Much worse, they manifest an arrogant disdain not only for the rights of his fellow citizens, but also for the functions and the integrity of the other two co-equal branches of our constitutional system. One of the witnesses that appeared earlier likened the government of the United States to a three-legged stool. The analysis is apt, because the entire structure of our country rests upon three equal supports: the Legislative, the Judicial, and the Executive. Remove one of those supports, and the State will totter. Remove two and the structure will collapse altogether.

EFFECT ON THE JUDICIAL BRANCH

The President mounted a direct assault upon the truth-seeking process which is the very essence and foundation of the Judicial Branch. Not content with that, though, Mr. Clinton renewed his lies, half-truths and obstruction to this Congress when he filed his answers to simple requests to admit or deny. In so doing, he also demonstrated his lack of respect for the constitutional functions of the Legislative Branch.

Actions do not lose their public character merely because they may not directly affect the domestic and foreign functioning of the Executive Branch. Their significance must be examined for their effect on the functioning of the entire system of government. Viewed in that manner, the President's actions were both public and extremely destructive.

THE CONDUCT CHARGED WARRANTS CONVICTION AND REMOVAL

The Articles state offenses that warrant the President's conviction and removal from office. The Senate's own precedents establish that perjury and obstruction warrant conviction and removal from office. Those same precedents establish that the perjury and obstruction need not have any direct connection to the officer's official duties.

PRECEDENTS

In the 1980s, the Senate convicted and removed from office three federal judges for making perjurious statements. *Background and History of Impeachment Hearings before the Subcomm. On the Constitution of the House Comm. on the Judiciary*, 105th Cong., 2nd Sess. at 190–193 (Comm. Print 1998), (Testimony of Charles Cooper) (''Cooper Testimony'') Although able counsel represented each judge, none of them argued that perjury or making false statements are not impeachable offenses. Nor did a single Congressman or Senator, in any of the three impeachment proceedings, suggest that perjury does not constitute a high crime and misdemeanor. Finally, in the cases of Judge Claiborne and Judge Nixon, it was undisputed that the perjury was not committed in connection with the exercise of the judges' judicial powers.

JUDGE NIXON

In 1989, Judge Walter L. Nixon, Jr., was impeached, convicted, and removed from office for committing perjury. Judge Nixon's offense stemmed from his grand jury testimony and statements to federal officers concerning his intervention in the state drug prosecution of Drew Fairchild, the son of Wiley Fairchild, a business partner of Judge Nixon's.

Although Judge Nixon had no official role or function in Drew Fairchild's case (which was assigned to a state court judge), Wiley Fairchild had asked Judge Nixon to help out by speaking to the prosecutor. Judge Nixon did so, and the prosecutor, a long-time friend of Judge Nixon's, dropped the case. When the FBI and the Department of Justice interviewed Judge Nixon, he denied any involvement whatsoever. Subsequently, a federal grand jury was empaneled and Judge Nixon again denied his involvement before that grand jury.

After a lengthy criminal prosecution, Judge Nixon was convicted on two counts of perjury before the grand jury and sentenced to five years in prison on each count. Not long thereafter, the House impeached Judge Nixon by a vote of 417 to 0. The first article of impeachment charged him with making the false or misleading statement to the grand jury that he could not ''recall'' discussing the Fairchild case with the prosecutor. The second article charged Nixon with making affirmative false or misleading statements to the grand jury that he had ''nothing whatsoever officially or unofficially to do with the Drew Fairchild case.'' The third article alleged that Judge Nixon made numerous false statements (not under oath) to federal investigators prior to his grand jury testimony. *See* 135 Cong. Rec. H1802–03.

The House unanimously impeached Judge Nixon, and the House Managers' Report expressed no doubt that perjury is an impeachable offense:

''It is difficult to imagine an act more subversive to the legal process than lying from the witness stand. A judge who violates his testimonial oath and misleads a grand jury is clearly unfit to remain on the bench. If a judge's truthfulness cannot be guaranteed, if he sets less than the highest standard for candor, how can ordinary citizens who appear in court be expected to abide by their testimonial oath?''

House of Representatives' Brief in Support of the Articles of Impeachment at 59 (1989). House Manager Sensenbrenner addressed the question even more directly:

''There are basically two questions before you in connection with this impeachment. First, does the conduct alleged in the three articles of impeachment state an impeachable offense? There is really no debate on this point. The articles allege misconduct that is criminal and wholly inconsistent with judicial integrity and the judicial oath. Everyone agrees that a judge who lies under oath, or who deceives Federal investigators by lying in an interview, is not fit to remain on the bench.''

135 Cong. Rec. S14,497 (Statement of Rep. Sensenbrenner)

The Senate agreed, overwhelmingly voting to convict Judge Nixon of perjury on the first two articles (89–8 and 78–19, respectively). As Senator Carl Levin explained:

''The record amply supports the finding in the criminal trial that Judge Nixon's statements to the grand jury were false and misleading and constituted perjury. Those are the statements cited in articles I and II and it is on those articles that I vote to convict Judge Nixon and remove him from office.''

135 Cong. Rec. S14,637 (Statement of Sen. Levin).

JUDGE HASTINGS

Also in 1989, the House impeached Judge Alcee L. Hastings for, among other things, committing numerous acts of perjury. The Senate convicted him, and he was removed from office. Initially, Judge Hastings had been indicted by a federal grand jury for conspiracy stemming from his alleged bribery conspiracy with his friend Mr. William Borders to ''fix'' cases before Judge Hastings in exchange for cash payments from defendants. Mr. Borders was convicted, but, at his own trial, Judge Hastings took the stand and unequivocally denied any participation in a conspiracy with Mr. Borders. The jury acquitted Judge Hastings on all counts. Nevertheless, the House impeached Judge Hastings, approving seventeen articles of impeachment, fourteen of which were for lying under oath at his trial.

The House voted 413 to 3 to impeach. The House Managers' Report left no doubt that perjury alone is impeachable:

''It is important to realize that each instance of false testimony charged in the false statement articles is more than enough reason to convict Judge Hastings and remove him from office. Even if the evidence were insufficient to prove that Judge Hastings was part of the conspiracy with William Borders, which the House in no way concedes, the fact that he lied under oath to assure his acquittal is conduct that cannot be tolerated of a United States District Judge. To bolster one's defense by lying to a jury is separate, independent corrupt conduct. For this reason alone, Judge Hastings should be removed from public office.''

The House of Representatives' Brief in Support of the Articles of Impeachment at 127–28 (1989). Representative John Conyers (D–Mich.) also argued for the impeachment of Judge Hastings:

''[W]e can no more close our eyes to acts that constitute high crimes and misdemeanors when practiced by judges whose views we approve than we could against judges whose views we detested. It would be disloyal . . . to my oath of office at this late state of my career to attempt to set up a double standard for those who share my philosophy and for those who may oppose it. In order to be true to our principles, we must demand that all persons live up to the same high standards that we demand of everyone else.''

134 Cong. Rec. H6184 (1988) (Statement of Rep. Conyers).

JUDGE CLAIBORNE

In 1986, Judge Harry E. Claiborne was impeached, convicted, and removed from office for making false statements under penalties

of perjury. In particular, Judge Claiborne had filed false income tax returns in 1979 and 1980, grossly understating his income. As a result, he was convicted by a jury of two counts of willfully making a false statement on a federal tax return in violation of 26 U.S.C. §7206 (a). Subsequently, the House unanimously (406–0) approved four articles of impeachment. The proposition that Claiborne's perjurious personal income tax filings were not impeachable was never even seriously considered. As the House Managers explained:

''[T]he constitutional issues raised by the first two Articles of Impeachment [concerning the filing of false tax returns] are readily resolved. The Constitution provides that Judge Claiborne may be impeached and convicted for ''High Crimes and Misdemeanors.'' Article II, Section 4. *The willful making or subscribing of a false statement on a tax return is a felony* offense under the laws of the United States. *The commission of such a felony is a proper basis for Judge Clairborne's impeachment and conviction in the Senate.''*

Proceedngs of the United States Senate Impeachment Trial of Judge Harry E. Clairborne, S. Doc. No. 99–48, at 40 (1986) (*Claiborne Proceedings''*) (emphases added).

House Manager Rodino, in his oral argument to the Senate, emphatically made the same point:

''Honor in the eyes of the American people lies in public officials who respect the law, not in those who violate the trust that has been given to them when they are trusted with public office. Judge Harry E. Claiborne has, sad to say, undermined the integrity of the judicial branch of Government. To restore that integrity and to maintain public confidence in the administration of justice, Judge Claiborne must be convicted on the fourth Article of Impeachment [that of reducing confidence in the integrity of the judiciary].''

132 Cong. Rec. S15,481 (1986) (Statement of Rep. Rodino).

The Senate agreed. Telling are the words of then-Senator Albert Gore, Jr. In voting to convict Judge Claiborne and remove him from office:

''The conclusion is inescapable that Clairborne filed false income tax returns and that he did so willfully rather than negligently. . . . Given the circumstances, it is incumbent upon the Senate to fulfill its constitutional responsibility and strip this man of his title. An individual who has knowingly falsified tax returns has no business receiving a salary derived from the tax dollars of honest citizens. More importantly, an individual quality of such reprehensible conduct ought not be permitted to exercise the awesome powers which the Constitution entrusts to the Federal Judiciary.''

Claiborne Proceedings, S. Doc. No. 99–48, at 372 (1986).

APPLICATION TO THE PRESIDENT

To avoid the conclusive force of these recent precedents—and in particular the exact precedent supporting impeachment for, conviction, and removal for perjury—the only recourse for the President's defenders is to argue that a high crime or misdemeanor for a judge is not necessarily a high crime or misdemeanor for the President. The arguments advanced in support of this dubious proposition do not withstand serious scrutiny. *See generally* Cooper Testimony, at 193.

The Constitution provides that Article III judges ''shall hold their Offices during good Behavior, U.S. Const. Art. III, 1. Thus, these arguments suggest that judges are impeachable for ''misbehavior'' while other federal officials are only impeachable for treason, bribery, and other high crimes and misdemeanors.

The staff of the House Judiciary Committee in the 1970s and the National Commission on Judicial Discipline and Removal in the 1990s both issued reports rejecting these arguments. In 1974, the staff of the Judiciary Committee's Impeachment Inquiry issued a report which included the following conclusion:

''Does Article III, Section 1 of the Constitution, which states that judges 'shall hold their Offices during good Behaviour,' limit the relevance of the ten impeachments of judges with respect to presidential impeachment standards as has been argued by some? It does not. The argument is that 'good behavior' implies an additional ground for impeachment of judges not applicable to other civil officers. However, the only impeachment provision discussed in the Convention and included in the Constitution is Article II, Section 4, which by its expressed terms, applies to all civil officers, including judges, and defines impeachment offenses as 'Treason, Bribery, and other high Crimes and Misdemeanors.' ''

Staff of House Comm. on the Judiciary, 93rd Cong. 2d Sess., *Constitutional Grounds for Presidential Impeachment* (Comm. Print 1974) (''1974 Staff Report'') at 17.

The National Commission on Judicial Discipline and Removal came to the same conclusion. The Commission concluded that ''the most plausible reading of the phrase 'during good Behavior' is that it means tenure for life, subject to the impeachment power. . . . The ratification debates about the federal judiciary seem to have proceeded on the assumption that good-behavior tenure meant removal only through impeachment and conviction.'' National Commission on Judicial Discipline and Removal, *Report of the National Commission on Judicial Discipline and Removal 17–18* (1993) (footnote omitted).

The record of the 1986 impeachment of Judge Claiborne also argues against different impeachment standards for federal judges and presidents. Judge Claiborne filed a motion asking the Senate to dismiss the articles of impeachment against him for failure to state impeachable offenses. One of the motion's arguments was that ''[t]he standard for impeachment of a judge is different than that for other officers'' and that the Constitution limited ''removal of the judiciary to acts involving misconduct related to discharge of office.'' *Memorandum in Support of Motion to Dismiss the Articles of Impeachment on the Grounds They Do Not State Impeachable Offenses 4* (hereinafter cited as *''Claiborne Motion''*), reprinted in Hearings Before the Senate Impeachment Trial Committee, 99th Cong., 2d Sess. 245 (1986) (hereinafter cited as *''Senate Claiborne Hearings''*).

Representative Kastenmeier responded that ''reliance on the term 'good behavior' as stating a sanction for judges is totally misplaced and virtually all commentators agree that that is directed to affirming the life tenure of judges during good behavior. It is not to set them down, differently, as judicial officers from civil officers.'' *Id.* at 81–82. He further stated that ''[n]or . . . is there any support for the notion that . . . Federal judges are not civil officers of the United States, subject to the impeachment clause of article II of the Constitution.'' *Id.* at 81.

The Senate never voted on Claiborne's motion. However, the Senate was clearly not swayed by the arguments contained therein because it later voted to convict Judge Claiborne. 132 Cong. Rec. S15,760–62 (daily ed. Oct. 9, 1986). The Senate thus rejected the claim that the standard of impeachable offenses was different for judges than for presidents.

Moreover, even assuming that presidential high crimes and misdemeanors could be different from judicial ones, surely the President ought not be held to a lower standard of impeachability than judges. In the course of the 1980s judicial impeachments, Congress emphasized unequivocally that the removal from office of federal judges guilty of crimes indistinguishable from those currently charged against the President was essential to the preservation of the rule of law. If the perjury of just one judge so undermines the rule of law as to make it intolerable that he remain in office, then how much more so does perjury committed by the President of the United States, who alone is charged with the duty ''to take Care that the Laws be faithfully executed.'' *See generally,* Cooper Testimony at 194)

It is just as devastating to our system of government when a President commits perjury. As the House Judiciary Committee stated in justifying an article of impeachment against President Nixon, the President not only has ''the obligation that every citizen has to live under the law,'' but in addition has the duty ''not merely to live by the law but to see that law faithfully applied.'' *Impeachment of Richard M. Nixon, President of the United States,* H. Rept. No. 93–1305, 93rd Cong., 2d Sess. at 180 (1974). The Constitution provides that he ''shall take Care that the Laws be faithfully executed.'' U.S. Const. Art. II, §3. When a President, as chief law enforcement officer of the United States, commits perjury, he violates this constitutional oath unique to his office and casts doubt on the notion that we are a nation ruled by laws and not men.

PERJURY AND OBSTRUCTION ARE AS SERIOUS AS BRIBERY

Further evidence that perjury and obstruction warrant conviction and removal comes directly from the text of the Constitution. Because the Constitution specifically mentions bribery, no one can dispute that it is an impeachable offense. U.S. Const., art. II, §4. Because the constitutional language does not limit the term, we must take it to mean all forms of bribery. Our statutes specifically criminalize bribery of witnesses with the intent to influence their testimony in judicial proceedings. 18 U.S.C. §201(b)(3) & (4), (c)(2) & (3). *See also* 18 U.S.C. §§1503 (general obstruction of justice statute), 1512 (witness tampering statute). Indeed, in a criminal case, the efforts to provide Ms. Lewinsky with job assistance in return for submitting a false affidavit charged in the Articles might easily have been charged under these statutes. No one could reasonably argue that the President's bribing a witness to provide false testimony—even in a private lawsuit—does not rise to the level of an impeachable offense. The plain language of the Constitution indicates that it is.

Having established that point, the rest is easy. Bribing a witness is illegal because it leads to false testimony that in turn undermines the ability of the judicial system to reach just results. Thus, among other things, the Framers clearly intended impeachment to protect the judicial system from these kinds of attacks. Perjury and obstruction of justice are illegal for exactly the same reason, and they accomplish exactly the same ends through slightly different means. Simple logic establishes that perjury and obstruction of justice—even in a private lawsuit—are exactly the types of other high crimes and misdemeanors that are of the same magnitude as bribery.

HIGH CRIMES AND MISDEMEANORS

Although Congress has never adopted a fixed definition of ''high crimes and misdemeanors,'' much of the background and history of the impeachment process contradicts the President's claim that these offenses are private and therefore do not warrant conviction and removal. Two reports

prepared in 1974 on the background and history of impeachment are particularly helpful in evaluating the President's defense. Both reports support the conclusion that the facts in this case compel the conviction and removal of President Clinton.

Many have commented on the report on ''Constitutional Grounds for Presidential Impeachment'' prepared in February 1974 by the staff of the Nixon impeachment inquiry. The general principles concerning grounds for impeachment set forth in that report indicate that perjury and obstruction of justice are impeachable offenses. Consider this key language from the staff report describing the type of conduct which gives rise to impeachment:

''The emphasis has been on the significant effects of the conduct—*undermining the integrity of office, disregard of constitutional duties and oath of office,* arrogation of power, abuse of the governmental process, *adverse impact on the system of government.*''

1974 Staff Report at 26 (emphasis added).

Perjury and obstruction of justice clearly ''undermine the integrity of office.'' They unavoidably erode respect for the office of the President. Such offenses obviously involve ''disregard of [the President's] constitutional duties and oath of office.'' Moreover, these offenses have a direct and serious ''adverse impact on the system of government.'' Obstruction of justice is by definition an assault on the due administration of justice—a core function of our system of government.

The thoughtful report on ''The Law of Presidential Impeachment'' prepared by the Association of the Bar of the City of New York in January of 1974 also places a great deal of emphasis on the corrosive impact of presidential misconduct on the integrity of office:

It is our conclusion, in summary, that the grounds for

''impeachment are not limited to or synonymous with crimes . . . Rather, we believe that *acts which undermine the integrity of government* are appropriate grounds whether or not they happen to constitute offenses under the general criminal law. In our view, the essential nexus to damaging the integrity of government may be found in acts which constitute corruption in, or flagrant abuse of the powers of, official position. It may also be found in acts which, without directly affecting governmental processes, *undermine that degree of public confidence in the probity of executive and judicial officers that is essential to the effectiveness of government in a free society.*''

Association of the Bar of the City of New York, *The Law of Presidential Impeachment,* (1974) at 161 (emphasis added). The commission of perjury and obstruction of justice by a President are acts that without doubt ''undermine that degree of public confidence in the probity of the [the President] that is essential to the effectiveness of government in a free society.'' Such acts inevitably subvert the respect for law which is essential to the well-being of our constitutional system.

That the President's perjury and obstruction do not directly involve his official conduct does not diminish their significance. The record is clear that federal officials have been impeached for reasons other than official misconduct. As set forth above, two recent impeachments of federal judges are compelling examples. In 1989, Judge Walter Nixon was impeached, convicted, and removed from office for committing perjury before a federal grand jury. Judge Nixon's perjury involved his efforts to fix a state case for the son of a business partner—a matter in which he had no official role. In 1986, Judge Harry E. Claiborne was impeached, convicted, and removed from office for making false statements under penalty of perjury on his income tax returns. That misconduct had nothing to do with his official responsibilities.

Nothing in the text, structure, or history of the Constitution suggests that officials are subject to impeachment only for official misconduct. Perjury and obstruction of justice—even regarding a private matter—are offenses that substantially affect the President's official duties because they are grossly incompatible with his preeminent duty to ''take care that the laws be faithfully executed.'' Regardless of their genesis, perjury and obstruction of justice are acts of public misconduct—they cannot be dismissed as understandable or trivial. Perjury and obstruction of justice are not private matters; they are crimes against the system of justice, for which impeachment, conviction, and removal are appropriate.

The record of Judge Claiborne's impeachment proceedings affirms that conclusion. Representative Hamilton Fish, the ranking member of the Judiciary Committee and one of the House managers in the Senate trial, stated that ''[i]mpeachable conduct does not have to occur in the course of the performance of an officer's official duties. Evidence of misconduct, misbehavior, high crimes, and misdemeanors can be justified upon one's private dealings as well as one's exercise of public office. That, of course, is the situation in this case.'' 132 Cong. Rec. H4713 (daily ed. July 22, 1986).

Judge Claiborne's unsuccessful motion that the Senate dismiss the articles of impeachment for failure to state impeachable offenses provides additional evidence that personal misconduct can justify impeachment. One of the arguments his attorney made for the motion was that ''there is no allegation . . . that the behavior of Judge Claiborne in any way was related to misbehavior in his official function as a judge; it was private misbehavior.'' (*Senate Claiborne Hearings*, at 77, Statement of Judge Claiborne's counsel, Oscar Goodman). (See also Claiborne Motion, at 3)

Representative Kastenmeier responded by stating that ''it would be absurd to conclude that a judge who had committed murder, mayhem, rape, or perhaps espionage in his private life, could not be removed from office by the U.S. Senate.'' (*Senate Claiborne Hearings*, at 81) Kastenmeier's response was repeated by the House of Representatives in its pleading opposing Claiborne's motion to dismiss. (*Opposition to Claiborne Motion* at 2)

The Senate did not vote on Judge Claiborne's motion, but it later voted to convict him. 132 Cong. Rec. S15,760–62 (daily ed. Oct. 9, 1986). The Senate thus agreed with the House that private improprieties could be, and were in this instance, impeachable offenses.

The Claiborne case makes clear that perjury, even if it relates to a matter wholly separated from a federal officer's official duties—a judge's personal tax returns—is an impeachable offense. Judge Nixon's false statements were also in regard to a matter distinct from his official duties. In short, the Senate's own precedents establish that misconduct need not be in one's official capacity to warrant removal.

CONCLUSION

This is a defining moment for the Presidency as an institution, because if the President is not convicted as a consequence of the conduct that has been portrayed, then no House of Representatives will ever be able to impeach again and no Senate will ever convict. The bar will be so high that only a convicted felon or a traitor will need to be concerned.

Experts pointed to the fact that the House refused to impeach President Nixon for lying on an income tax return. Can you imagine a future President, faced with possible impeachment, pointing to the perjuries, lies, obstructions, and tampering with witnesses by the current occupant of the office as not rising to the level of high crimes and misdemeanors? If this is not enough, what is? How far can the standard be lowered without completely compromising the credibility of the office for all time?

Dated: January 11, 1999.

APPENDIX

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

Appendix to Trial Memorandum of the Managers Appointed by the U.S. House of Representatives

THE UNITED STATES
HOUSE OF
REPRESENTATIVES

HENRY J. HYDE,
F. JAMES SENSENBRENNER, Jr.,
BILL MCCOLLUM,
GEORGE W. GEKAS,
CHARLES T. CANADY,
STEPHEN E. BUYER,
ED BRYANT,
STEVE CHABOT,
BOB BARR,
ASA HUTCHINSON,
CHRIS CANNON,
JAMES E. ROGAN,
LINDSEY O. GRAHAM.

Managers on the Part of the House

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[Chart A]

THE PRESIDENT'S CONTACTS ALONE WITH LEWINSKY

LEWINSKY WHITE HOUSE EMPLOYEE (7/95–4/96)

1995

11/15/95 (Wed): The President meets alone twice with Lewinsky in Oval Office study and hallway outside the Oval Office. (Sexual Encounter)

11/17/95 (Fri): The President meets alone twice with Lewinsky in The President's private bathroom outside the Oval Office study. (Sexual Encounter)

12/5/95 (Tues): The President meets alone with Lewinsky in the Oval Office and study. (No Sexual Encounter)

12/31/95 (Sun): The President meets alone with Lewinsky in the Oval Office and Oval Office study. (Sexual Encounter)

1996

1/7/96 (Sun): The President meets alone with Lewinsky in the bathroom outside the Oval Office study. (Sexual Encounter)

1/21/96 (Sun): The President meets alone with Lewinsky in the hallway outside the Oval Office study. (Sexual Encounter)

2/4/96 (Sun): The President meets alone with Lewinsky in the Oval Office study and in the adjacent hallway. (Sexual Encounter)

2/19/96 (Mon): The President meets alone with Lewinsky in the Oval Office. (No Sexual Encounter)

3/31/96 (Sun): The President meets alone with Lewinsky in hallway outside the Oval Office. (Sexual Encounter)

4/7/96 (Sun): The President meets alone with Lewinsky in the hallway outside the Oval Office study and in the Oval Office study. (Sexual Encounter)

1997

2/28/97 (Fri): The President meets alone with Lewinsky in the Oval Office private bathroom. (Sexual Encounter)

3/29/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (Sexual Encounter)

5/24/97 (Sat): The President meets alone with Lewinsky in the Oval Office dining room, study and hallway. (No Sexual Encounter)

7/4/97 (Fri): The President meets alone with Lewinsky in the Oval Office study and hallway. (No Sexual Encounter)

7/14/97 (Mon): The President meets alone with Lewinsky in Heinreich's office. (No Sexual Encounter)

7/24/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)

8/16/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (Sexual Encounter)

10/11/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)

11/13/97 (Thurs): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)

12/6/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)

12/28/97 (Sun): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)

[Chart B]

THE PRESIDENT'S TELEPHONE CONTACTS WITH LEWINSKY

1/7/96 (Sun): Conversation—first call to ML's home.

1/7/96 (Sun): Conversation—ML at office.

1/15 or 1/16/96 (Mon or Tue): Conversation, approx. 12:30 a.m.—ML at home.*

Approx. 1/28/96 (Sun): Caller ID on ML's office phone indicated POTUS call.

1/30/96 (Tues): Conversation—during middle of workday at ML's office.

2/4/96 (Sun): Conversations—ML at office—multiple calls.

2/7 or 2/8/96 (Wed or Thur): Conversation—ML at home.

2/8 or 2/9/96 (Thur or Fri): Conversation—ML at home.*

2/19/96 (Mon): Conversation—ML at home.

Approx. 2/28 2/28 or 3/5/96: Conversation—approx. 20 min.—after chance meeting in hallway—ML at home.

3/26/96 (Tues): Conversation—approx. 11 a.m.—ML at office.

3/29/96: Conversation—ML at office—approx. 8 p.m.—invitation to movie.

3/31/96: Conversation—ML at office—approx. 1 p.m.—Pres. ill.

4/7/96 (Easter Sunday): Conversation——ML at home.

4/7/96 (Easter Sunday): Conversation—ML at home—why ML left.

4/12/96 (Fri): Conversation—ML at home—daytime.

4/12 or 4/13/96 (Fri or Sat): Conversation—ML at home—after midnight.

4/22/96 (Mon): Conversations—job talk—ML at home.

4/29 or 4/30/96 (Mon or Tues): Message—after 6:30 a.m.

5/2/96 (Thur): Conversation—ML at home.*

5/6/96 (Mon): Possible phone call.

5/16/96 (Thur): Conversation—ML at home.

5/21/96 (Tues): Conversation—ML at home.*

5/31/96 (Fri): Message.

6/5/96 (Wed): Conversation—ML at home—early evening.

6/23/96 (Sun): Conversation—ML at home.*

7/5 or 7/6/96 (Fri or Sat): Conversation—ML at home.*

7/19/96 (Fri): Conversation—6:30 a.m.—ML at home.*

7/28/96 (Sun): Conversation—ML at home.

8/4/96 (Sun): Conversation—ML at home.*

8/24/96 (Sat): Conversation—ML at home.*

9/5/96 (Thur): Conversation—Pres. In Fla—ML at home.*

9/10/96 (Tues): Message.

9/30/96 (Mon): Conversation.*

10/22/96 (Tues): Conversation—ML at home.*

10/23 or 10/24/96 (early am): Conversation—ML at home.

12/2/96 (Mon): Conversation—approx. 10–15 min.—ML at home.

12/2/96 (Mon): Conversation—later that evening—ML at home—approx. 10:30 p.m.—Pres fell asleep.*

12/18/96 (Wed): Conversation—approx. 5 min.—10:30 p.m.—ML at home.

12/30/96 (Mon): Message.

1/12/97 (Sun): Conversation—job talk—ML at home.*

2/8/97 (Sat): Conversation—ML at home—midday—11:30–12:00.

2/8/97 (Sat): Conversation—job talk—1:30 or 2:00 p.m.—ML at home.*

3/12/97 (Wed): Conversation—three minutes—ML at work.

4/26/97 (Sat): Conversation—late afternoon—20 min.—ML at home.

5/17/97 (Sat): Conversations—multiple calls.

5/18/97 (Sun): Conversations—multiple calls.

7/15/97 (Tues): Conversation—ML at home.

8/1/97 (Fri): Conversation.

9/30/97 (Tues): Conversation.*

10/9 or 10/10/97 (Thur or Fri): Conversation—long, from 2 or 2:30 a.m. until 3:30 or 4:00 a.m.—job talk—argument—ML at home.

10/23/97 (Thur): Conversation—ML at home—end b/c HRC.

10/30/97 (Thur): Conversation—ML at home—interview prep.

11/12/97 (Wed): Conversation—discuss re: ML visit.*

12/6/97 (Sat): Conversation—approx. 30 min—ML at home.

12/17/ or 12/18/97 (Wed or Thur): Conversation—b/t 2:00 a.m. and 3:00 a.m.—ML at home—witness list.

1/5/98 (Mon): Conversation.

*Conversation that involved and may have involved phone sex.

[Chart C]

LEWINSKY GIFTS TO THE PRESIDENT

10/24/95: Lewinsky (before the sexual relationship began) gives her first gift to The President of a matted poem given by her and other White House interns to commemorate ''National Boss' Day''. It is the only gift the President sent to the archives instead of keeping.

11/20/95: Lewinsky gives The President a Zegna necktie.

3/31/96: Lewinsky gives The President a Hugo Boss Tie.

Christmas 1996: Lewinsky gives The President a Sherlock Homes game and a glow in the dark frog.

Before 8/16/96: Lewinsky gives The President a Zegna necktie and a t-shirt from Bosnia.

Early 1997: Lewinsky gives The President *Oy Ve*, a small golf book, golf balls, golf tees, and a plastic pocket frog.

3/97: Lewinsky gives The President a care package after he injured his leg including a metal magnet with The Presidential seal for his crutches, a license plate with ''Bill'' for his wheelchair, and knee pads with The Presidential seal.

3/29/97: Lewinsky gives The President her personal copy of *Vox*, a book about phone sex, a penny medallion with the heart cut out, a framed Valentine's Day ad, and a replacement for the Hugo Boss tie that had the bottom cut off.

5/24/97: Lewinsky gives The President a Banana Republic casual shirt and a puzzle on gold mysteries.

7/14/97: Lewinsky gives The President a wooden B, with a frog in it from Budapest.

Before 8/16/97: Lewinsky gives The President *The Notebook*.

8/16/97: Lewinsky gives The President an antique book on *Peter the Great*, the card game ''Royalty'', and a book, *Disease and Misrepresentation*.

10/21/97 or 10/22/97: Lewinsky gives The President a Calvin Klein tie, and pair of sunglasses.

10/97: Lewinsky gives The President a package Before filled with Halloween-related items, such as a Halloween pumpkin lapel pin, a wooden letter opener with a frog on the handle, and a plastic pumpkin filled with candy.

11/13/97: Lewinsky gives The President an antique paperweight that depicted the White House.

12/6/97: Lewinsky gives The President *Our Patriotic President: His Life in Pictures, Anecdotes, Sayings, Principles and Biography;* an antique standing cigar holder; a Starbucks Santa Monica mug; a Hugs and Kisses box; and a tie from London.

12/28/97: Lewinsky gives The President a hand-painted Easter Egg and ''gummy boobs'' from Urban Outfitters.

1/4/98: Lewinsky gives Currie a package with her final gift to The President containing a book entitled *The Presidents of the United States* and a love note inspired by the movie Titanic.

[Chart D]

THE PRESIDENT'S GIFTS TO LEWINSKY

12/5/95: The President gives Lewinsky an autographed photo of himself wearing the Zenga necktie she gave him.*

2/4/96: The President gives Lewinsky a signed ''State of the Union'' Address.*

3/31/96: The President gives Lewinsky cigars.

2/28/97: The President gives Lewinsky a hat pin*, ''Davidoff'' cigars, and the book the *Leaves of Grass* by Walt Whitman as belated Christmas gifts.

The President gives Lewinsky a gold brooch.*

The President gives Lewinsky an Annie Lennox compact disk.

The President gives Lewinsky a cigar.

7/24/97: The President gives Lewinsky an antique flower pin in a wooden box, a porcelain object d'art, and a signed photograph of the President and Lewinsky.*

Early 9/97: The President brings Lewinsky several Black Dog items, including a baseball cap*, 2 T-shirts*, a hat and a dress.*

12/28/97: The President gives Lewinsky the largest number of gifts including:

1. a large Rockettes blanket,*
2. a pin of the New York skyline,*
3. a marblelike bear's head from Vancouver,*
4. a pair of sunglasses,*
5. a small box of cherry chocolates,
6. a canvas bag from the Black Dog,*
7. a stuffed animal wearing a T-shirt from the Black Dog.*

(*Denotes those items Lewinsky produced to the OIC on 7/29/98).

JUL. -14' 98(TUE) 14:02 RADER, CAMPBELL TEL:214 630 9996 P. 005

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FROM ATTORNEY/SENDER: T. Wesley Holmes 1408-DC-00000005

COMMENTS:

Chart E

[Chart F]

LEWINSKY SUBPOENA

JONES V. CLINTON

DECEMBER 19, 1997

The Jones v. Clinton subpoena to Lewinsky called for:

(1) Her testimony on January 23, 1998 at 9:30 a.m.;

(2) Production of ''each and every gift including but not limited to, any and all dresses, accessories, and jewelry, and/or hat pins given to you by, or on behalf of, Defendant Clinton;'' and

(3) ''Every document constituting or containing communications between you and Defendant Clinton, including letters, cards, notes, memoranda and all telephone records.''

[Chart G]

DECEMBER 19, 1997

(Friday)

LEWINSKY IS SERVED WITH A SUBPOENA IN JONES V. CLINTON

1:47–1:48 p.m.: Lewinsky telephones Jordan's office.

3:00–4:00 p.m.: Lewinsky is served with a subpoena in *Jones* v. *Clinton*.

—: Lewinsky telephones Jordan immediately about subpoena.

3:51–3:52 p.m.: Jordan telephones The President and talks to Debra Schiff.

4:17–4:20 p.m.: Jordan telephones White House Social Office.

4:47 p.m.: Lewinsky meets Jordan and requests that Jordan notify The President about her subpoena.

5:01–5:05 p.m.: The President telephones Jordan; Jordan notifies The President about Lewinsky's subpoena.

5:06 p.m.: Jordan telephones attorney Carter to represent Lewinsky.

Later that Evening: The President meets alone with Jordan at the White House.

[Chart H]

DECEMBER 23, 1997

JONES V. CLINTON INTERROGATORY NO. 10

Interrogatory No. 10: Please state the name, address, and telephone number of each and every individual (other than Hillary Rodham Clinton) whom you had sexual relations when you held any of the following positions:

a. Attorney General of the State of Arkansas;

b. Governor of the State of Arkansas;

c. President of the United States.

(Court modifies scope to incidents from May 8, 1986 to the present involving state or federal employees.)

Supplemental Response to Interrogatory No. 10 (as modified by direction of the Court): None.

[Chart I]

DECEMBER 23, 1997

JONES V. CLINTON INTERROGATORY NO. 11

Interrogratory No. 11: Please state the name, address, and telephone number of each and every individual (other than Hillary Rodham Clinton) with whom you sought to have sexual relations, when you held any of the following positions:

a. Attorney General of the State of Arkansas;

b. Governor of the State of Arkansas;

c. President of the United States.

(Court modifies scope to incidents from May 8, 1986 to the present involving state or federal employees.)

Supplemental Response to Interrogatory No. 11 (as modified by direction of the Court): None.

[Chart J]

DECEMBER 28, 1997

(Sunday)

THE PRESIDENT'S FINAL MEETING WITH LEWINSKY AND THE CONCEALMENT OF THE GIFTS TO LEWINSKY

8:16 a.m.: Lewinsky meets The President at the White House at Currie's direction.

- The President gives Lewinsky numerous gifts.
- The President and Lewinsky discuss the subpoena, calling for, among other things, the hat pin. The President acknowledges ''that sort of bothered [him] too.''
- Lewinsky states to The President: ''Maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty [Currie].''

3:32 p.m.: Currie telephones Lewinsky at home from Currie's cell phone.

''I understand you have something to give me.'' or

''The President said you have something to give me.''

Later that Day: Currie picks up gifts from Lewinsky.

Chart K

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CUSTOMER ACCOUNT NO: 001423615-00001
MOBILE TELEPHONE NO: 202-395-1831

INVOICE NO: 0152183136
INVOICE DATE: JANUARY 01, 1998

USAGE DETAILS FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAM

PHONE USER NAME: . .

DATE	TIME	ORIG BAND	ORIGINATING LOCATION	CALLS TO	TELEPHONE NUMBER	AIRTIME RATE	AIRTIME MIN	AIRTIME AMOUNT	LANDLINE RATE	LANDLINE TYPE	LANDLINE AMOUNT	TOTAL CHARGES
12/11												
					*	*	*					
12/25	09:41 AM	1	WASHINGTON DC	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:42 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:43 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	11:35 AM	1	WASHINGTON DC	MOBILE CL	[redacted]	OFFPK	1	0.10				0.10
12/27	11:37 AM	1	WASHINGTON DC	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20
12/28	03:32 PM	1	ARLINGTON VA	WASHINGTON DC	202 96[illegible]-6355	OFFPK	1	0.10		LCL	0.10	0.20
12/31	06:59 PM	1	WASHINGTON DC	ARLINGTON VA	[redacted]	PEAK	4	1.20		LCL	0.10	1.30
12/31	09:55 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	1	0.10				0.10
12/31	09:56 PM	1	ARLINGTON VA	ARLINGTON VA	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/31	09:58 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20

TOTAL AIRTIME FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAM

PHONE USER NAME: . .

1070-DC-00000007

BAND 1 ALL W/B CELLS	CALLS	MINUTES USED	AIRTIME AMOUNT

[Chart L]

THE PRESIDENT'S STATEMENTS ABOUT CONCEALING GIFTS

12/28/97

''[Lewinsky]: And then at some point I said to him [The President], 'Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic.''—(Lewinsky Grand Jury 8/6/98 Tr. 152)

[Chart M]

AFFIDAVIT OF JANE DOE #

1. My name is Jane Doe # . I am 24 years old and I currently reside at 700 New Hampshire Avenue, NW., Washington, DC 20037.

2. On December 19, 1997, I was served with a subpoena from the plaintiff to give a deposition and to produce documents in the lawsuit filed by Paula Corbin Jones against President William Jefferson Clinton and Danny Ferguson.

3. I can not fathom any reason that the plaintiff would seek information from me for her case.

4. I have never met Ms. Jones, nor do I have any information regarding the events she alleges occurred at the Excelsior Hotel on May 8, 1991 or any other information concerning any of the allegations in her case.

5. I worked at the White House in the summer of 1995 as a White House intern. Beginning in December, 1995, I worked in the Office of Legislative Affairs as a staff assistant for correspondence. In April, 1996, I accepted a job as assistant to the Assistant Secretary for Public Affairs at the U.S. Department of Defense. I maintained that job until December 26, 1997. I am currently unemployed but seeking a new job.

6. In the course of my employment at the White House, I met President Clinton on several occasions. I do not recall ever being alone with the President, although it is possible that while working in the White House Office of Legislative Affairs I may have presented him with a letter for his signature while no one else was present. This would have lasted only a matter of minutes.

7. I have the utmost respect for the President who has always behaved appropriately in my presence.

8. I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship. I do not know of any other person who had a sexual relationship with the President, was offered employment or other benefits in exchange for a sexual relationship, or was denied employment or other benefits for rejecting a sexual relationship. The occasions that I saw the President, with crowds of other people, after I left my employment at the White House in April, 1996 related to official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on all of these occasions.

9. Since 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, I asked my attorney to provide this affidavit to plaintiff's counsel. Requiring my deposition in this matter would cause unwarranted attorney's fees and costs, disruption of my life, especially since I am looking for employment, and constitute an invasion of my right to privacy.

I declare under the penalty of perjury that the foregoing is true and correct.

MONICA S. LEWINSKY.

DISTRICT OF COLUMBIA, ss:

Monica S. Lewinsky, being first duly sworn on oath according to law, deposes and says that she has read the foregoing Affidavit of Jane Doe # by her subscribed, that the matters stated herein are true to the best of her information, knowledge and belief.

Monica S. Lewinsky.

Subscribed and sworn to before me this _____ day of _____, 1998.

_____

NOTARY PUBLIC, D.C.

My Commission expires: _____

[Chart N]

FINAL AFFIDAVIT OF JANE DOE #6 [LEWINSKY]

1/7/98

8. I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship. I do not know of any other person who had a sexual relationship with the President, was offered employment or other benefits in exchange for a sexual relationship, or was denied employment or other benefits for rejecting a sexual relationship. The occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions.

[Chart O]

LEWINSKY'S AFFIDAVIT GETS FILED

(1/14/98-1/17/98)

JANUARY 14, 1998 (WEDNESDAY)

7:45 p.m.: Bennett's firm (Sexton) leaves Carter telephone message.

—: Carter faxes signed affidavit to Bennett's firm.

JANUARY 15, 1998 (THURSDAY)

9:17 a.m.: Sexton leaves Carter telephone message.

12:59 p.m.: Sexton leaves Carter telephone message.

—: Currie called by Newsweek.

—: Lewinsky drives Currie to meet Jordan.

—: Sexton telephones Carter: ''STILL ON TIME?''

—: Carter telephones Court Clerk for Saturday (1/17/98) Filing of Affidavit and motion to quash.

JANUARY 16, 1998 (FRIDAY)

2 a.m. (Approx.): Carter completes motion to quash Lewinsky's deposition.

Carter sends by overnight mail motion to quash and affidavit to Bennett's firm and to the Court.

11:30 a.m.: Sexton message to Carter: ''Please call.''

JANUARY 17, 1998 (SATURDAY)

—: Lewinsky Affidavit is submitted to the Court.

—: The President is deposed.

[Chart P]

MISSION ACCOMPLISHED: LEWINSKY SIGNS AFFIDAVIT AND GETS A NEW YORK JOB

(1/5/98–1/9/98)

JANUARY 5, 1998

Lewinsky meets with attorney Carter for an hour; Carter drafts an Affidavit for Lewinsky in an attempt to avert her deposition testimony in *Jones* v. *Clinton* scheduled for January 23, 1998.

Lewinsky telephones Currie stating that she needs to speak to the President about an important matter; specifically that she was anxious about something she needed to sign—an Affidavit.

The President returns Lewinsky's call; Lewinsky mentions the Affidavit she'd be signing; Lewinsky offers to show the Affidavit to The President who states that he doesn't need to see it because he has already seen about fifteen others.

JANUARY 6, 1998

11:32 a.m.: Carter pages Lewinsky: ''Please call Frank Carter.'' Lewinsky meets Carter and receives draft Affidavit.

2:08–2:10 p.m.: Jordan calls Lewinsky. Lewinsky delivers draft Affidavit to Jordan.

3:14 p.m.: Carter again pages Lewinsky: ''Frank Carter at [telephone number] will see you tomorrow morning at 10:00 in my office.''

3:26–3:32 p.m.: Jordan telephones Carter.

3:38 p.m.: Jordan telephones Nancy Hernreich, Deputy Assistant to The President.

3:48 p.m.: Jordan telephones Lewinsky.

3:49 p.m.: Jordan telephones Lewinsky to discuss draft Affidavit. Both agree to delete implication that she had been alone with The President.

4:19–4:32 p.m.: The President telephones Jordan.

4:32 p.m.: Jordan telephones Carter.

4:34–4:37 p.m.: Jordan again telephones Carter.

5:15–5:19 p.m.: Jordan telephones White House.

9:26–9:29 a.m.: Jordan telephones Carter.

10:00 a.m.: Lewinsky signs false Affidavit at Carter's Office.

—: Lewinsky delivers signed Affidavit to Jordan.

11:58 a.m.–12:09 p.m.: Jordan telephones the White House.

5:46–5:56 p.m.: Jordan telephones the White House (Hernreich's Office).

6:50–6:54 p.m.: Jordan telephones the White House and tells The President that Lewinsky signed an Affidavit.

JANUARY 8, 1998

9:21 a.m.: Jordan telephones the White House Counsel's Office.

9:21 a.m.: Jordan telephones the White House.

—: Lewinsky interviews in New York at MacAndrews & Forbes Holdings, Inc. (MFH)

11:50–11:51 a.m.: Lewinsky telephones Jordan.

3:09–3:10 p.m.: Lewinsky telephones Jordan.

4:48–4:53 p.m.: Lewinsky telephones Jordan and advises that the New York MFH Interview went ''Very Poorly.''

4:54 p.m.: Jordan telephones Ronald Perelman in New York, CEO of Revlon (subsidiary of MFH) ''to make things happen . . . if they could happen.''

4:56 p.m.: Jordan telephones Lewinsky stating, ''I'm doing the best I can to help you out.''

6:39 p.m.: Jordan telephones White House Counsel's Office (Cheryl Mills), possibly about Lewinsky.

Evening: Revlon in New York telephones Lewinsky to set up a follow-up interview.

9:02–9:03 p.m.: Lewinsky telephones Jordan about Revlon interview in New York.

JANUARY 9, 1998

—: Lewinsky interviews in New York with Senior V.P. Seidman of MacAndrews & Forbes and two Revlon individuals.

Lewinsky offered Revlon job in New York and accepts.

1:29 p.m.: Lewinsky telephones Jordan.

4:14 p.m.: Lewinsky telephones Jordan to say that Revlon offered her a job in New York.

Jordan notifies Currie: ''Mission Accomplished'' and requests she tell The President.

Jordan notifies The President of Lewinsky's New York job offer. The President replies ''Thank you very much.''

4:37 p.m.: Lewinsky telephones Carter.

5:04 p.m.: Lewinsky telephones Jordan.

5:05 p.m.: Lewinsky telephones Currie.

5:08 p.m.: The President telephones Currie.

5:09–5:11 p.m.: Lewinsky telephones Jordan.

5:12 p.m.: Currie telephones The President.

5:18–5:20 p.m.: Jordan telephones Lewinsky.

5:21–5:26 p.m.: Lewinsky telephones Currie.

[Chart Q]

THE PRESIDENT'S INVOLVEMENT WITH LEWINSKY JOB SEARCH

''Q Why are you trying to tell someone at the White House that this has happened [Carter had been fired]?

[Jordan]: Thought they had a right to know.

Q Why?

[Jordan]: The President asked me to get Monica Lewinsky a job. I got her a lawyer. The Drudge Report is out and she has new counsel. I thought that was information that they ought to have . . . .'' (Jordan Grand Jury 6/9/98 Tr. 45–46)

''Q Why did you think the President needed to know that Frank Carter had been replaced?

[Jordan]: Information. He knew that I had gotten her a job, he knew that I had gotten her a lawyer. Information. He was interested in this matter. He is the source of it coming to my attention in the first place . . . .'' (Jordan Grand Jury 6/9/98 Tr. 58–59)

[Chart R]

JORDAN'S PRE-WITNESS LIST JOB SEARCH EFFORTS

''[Jordan]: I have no recollection of an early November meeting with Ms. Monica Lewinsky. I have absolutely no recollection of it and I have no record of it.'' (Jordan Grand Jury 3/3/98 Tr. 50)

* * *

''Q Is it fair to say that back in November getting Monica Lewinsky a job on any fast pace was not any priority of yours?

[Jordan]: I think that's fair to say.'' (Jordan Grand Jury 5/5/98 Tr. 76)

* * *

''[Lewinsky]: [Referring to 12/6/97 meeting with the President]. I think I said that . . . I was supposed to get in touch with Mr. Jordan the previous week and that things did not work out and that nothing had really happened yet [on the job front].

Q Did the President say what he was going to do?

[Lewinsky]: I think he said he would—you know, this was not sort of typical of him, to sort of say, 'Oh, I'll talk to him. I'll get on it.'" (Lewinsky Grand Jury 8/6/98 Tr. 115–116)

* * *

''Q But what is also clear is that as of this date, December 11th, you are clear that at that point you had made a decision that you would try to make some calls to help get her a job.

[Jordan]: There is no question about that.'' (Jordan Grand Jury 5/5/98 Tr. 95)

[Chart S]

JANUARY 17, 1998

SATURDAY

- 4:00 p.m. (approx): THE PRESIDENT finishes testifying under oath in *Jones v. Clinton, et al.*
- 5:19 p.m.: Jordan telephones White House.
- 5:38 p.m.: THE PRESIDENT telephones Jordan at home.
- 7:02 p.m.: THE PRESIDENT telephones Currie at home but does not speak with her.
- 702: p.m.: THE PRESIDENT places a call to Jordan's office.
- 7:13 p.m.: THE PRESIDENT telephones Currie at home and asks her to meet with him on Sunday.

JANUARY 18, 1998

SUNDAY

- 6:11 a.m.: Drudge Report Released.
- —: The President learns of the Drudge Report and [Tripp] tapes.
- 11:49 a.m.: Jordan telephones the White House.
- 12:30 p.m.: Jordan has lunch with Bruce Lindsey. Lindsey informs Jordan about the Drudge Report and [Tripp] tapes.
- 12:50 p.m.: THE PRESIDENT telephones Jordan at home.
- 1:11 p.m.: THE PRESIDENT telephones Currie at home.
- 2:15 p.m.: Jordan telephones the White House.
- 2:55 p.m.: Jordan telephones THE PRESIDENT.
- 5:00 p.m.: THE PRESIDENT meets with Currie, concerning his contacts with Lewinsky.
- 5:12 p.m.: Currie pages Lewinsky: ''Please call Kay at home.''
- 6:22 p.m.: Currie pages Lewinsky: ''Please call Kay at home.''
- 7:06 p.m.: Currie pages Lewinsky: ''Please call Kay at home.''
- 7:19 p.m.: Jordan telephones Cheryl Mills, White House Counsel's Office.
- 8:28 p.m.: Currie pages Lewinsky: ''Call Kay.''
- 10:09 p.m.: Lewinsky telephones Currie at home.
- 11:02 p.m.: THE PRESIDENT telephones Currie at home and asks if she reached Lewinsky.

JANUARY 19, 1998

MONDAY—MARTIN LUTHER KING DAY

- 7:02 a.m.: Currie pages Lewinsky: ''Please call Kay at home at 8:00 this morning.''
- 8:08 a.m.: Currie pages Lewinsky: ''Please call Kay .''
- 8:33 a.m.: Currie pages Lewinsky: ''Please call Kay at home.''
- 8:37 a.m.: Currie pages Lewinsky: ''Please call Kay at home. It's a social call. Thank you.''
- 8:41 a.m.: Currie pages Lewinsky: ''Kay is at home. Please call.''
- 8:43 a.m.: Currie telephones The President from home to say she has been unable to reach Lewinsky.
- 8:44 a.m.: Currie pages Lewinsky: ''Please call Kate re: family emergency.''
- 8:50 a.m. THE PRESIDENT telephones Currie at home.
- 8:51 a.m.: Currie pages Lewinsky: ''Msg. From Kay. Please call, have good news.''
- 8:56 a.m.: THE PRESIDENT telephones Jordan at home.
- 10:29 a.m.: Jordan telephones the White House from his office.
- 10:35 a.m.: Jordan telephones Nancy Hernreich at the White House.
- 10:36 a.m.: Jordan pages Lewinsky: ''Please call Mr. Jordan at [number redacted].''
- 10:44 a.m.: Jordan telephones Erskine Bowles at the White House.
- 10:53 a.m.: Jordan telephones Carter.
- 10:58 a.m.: THE PRESIDENT telephones Jordan at his office.
- 11:04 a.m.: Jordan telephones Bruce Lindsey at the White House.
- 11:16 a.m.: Jordan pages Lewinsky: ''Please call Mr. Jordan at [number redacted].''
- 11:17 a.m.: Jordan telephones Lindsey at the White House.
- 12:31 p.m.: Jordan telephones the White House from a cellular phone.
- —:Jordan lunches with Carter.
- 1:45 p.m.: THE PRESIDENT telephones Currie at home.
- 2:29 p.m.: Jordan telephones the White House from a celluar phone.
- 2:44 p.m.: Jordan enters the White House and over the course of an hour meets with THE PRESIDENT, Erskine Bowles, Bruce Lindsay, Cheryl Mills, Charles Ruff, Rahm Emanuel and others.
- 2:46 p.m.: Carter pages Lewinsky: ''Please call Frank Carter at [number redacted].''
- 4:51 p.m.: Jordan telephones Currie at home.
- 4:53 p.m.: Jordan telephones Carter at home.
- 4:54 p.m.: Jordan telephones Carter at his office. Carter informs Jordan that Lewinsky has replaced Carter with a new attorney.
- 4:58 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 4:59 p.m.: Jordan telephones Mills, White House Counsel's Office.
- 5:00 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 5:00 p.m.: Jordan telephones Ruff, White House Counsel's Office.
- 5:05 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 5:05 p.m.: Jordan again telephones Lindsey, White House Counsel's Office.
- 5:05 p.m.: Jordan telephones the White House.
- 5:09 p.m.: Jordan telephones Mills, White House Counsel's Office.
- 5:14 p.m.: Jordan telephones Carter concerning his termination as Lewinsky's attorney.
- 5:22 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 5:22 p.m.: Jordan telephones Mills, White House Counsel's Office.
- 5:55 p.m.: Jordan telephones Currie at home.
- 5:56 p.m.: THE PRESIDENT telephones Jordan at his office; Jordan informs The President that Carter was fired.
- 6:04 p.m.: Jordan telephones Currie at home.
- 6:26 p.m.: Jordan telephones Stephen Goodin, an aide to THE PRESIDENT.

[Chart T]

THE PRESIDENT'S POST-DEPOSITION STATEMENTS TO CURRIE

1/18/98

- ''I was never really alone with Monica, right?''
- ''You were always there when Monica was there, right?''
- ''Monica came on to me, and I never touched her, right?''
- ''You could see and hear everything, right?''
- ''She wanted to have sex with me, and I cannot do that.''—(Currie Grand Jury 7/22/98 Tr. 6–7; Currie Grand Jury 1/27/98 Tr. 70–75)

[Chart U]

THE PRESIDENT'S DENIALS

1/21/98

''And it was at that point that he gave his account of what had happened to me [sic]

and he said that Monica—and it came very fast. He said, 'Monica Lewinsky came at me and made a sexual demand on me.' He rebuffed her. He said, 'I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.'

She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more.''—(Blumenthal Grand Jury 6/4/98 Tr. 49)

''And he said, 'I feel like a character in a novel. I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out. I feel like the character in the novel Darkness at Noon.'

And I said to him, I said, 'When this happened with Monica Lewinsky, were you alone? He said, 'Well, I was within eyesight or earshot of someone.'''—(Blumenthal Grand Jury 6/4/98 Tr. 50)

[Chart V]

''Q. Okay. Share that with us.

A. Well, I think he said—he said that—there was some spate of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever—

Q. Okay.

A—that they had not had oral sex''—(John Podesta Grand Jury 6/16/98 Tr. 92)

* * *

''And I said, 'They're just too shocked by this. It's just too new, it's too raw.' And I said, 'And the problem is they're willing to forgive you [The President] for adultery, but not for perjury or obstruction of justice or the various other things.'''—(Dick Morris Grand Jury 8/18/98 Tr. 10, 12, 20)

* * *

''And I said, 'They're just not ready for it,' meaning the voters.' And he [The President] said, 'Well, we just have to win, then.'''—(Dick Morris Grand Jury 8/18/98 Tr. 30)

[Chart W]

''TALKING POINTS''*

January 24, 1998

* * *

''Q. Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?''

''A: Of course it would.''

* * *

*Produced by the White House pursuant to OIC Subpoena.

[Chart X]

THE PRESIDENT CLAIMS HE WAS TRUTHFUL WITH AIDES

[President]: And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course.

But I also didn't want to do anything to complicate this matter further. So I said things that were true. They may have been misleading, and if they were I have to take responsibility for it, and I'm sorry.—(The President Grand Jury 8/17/98 Tr. 106)

[Chart Y]

GRAND JURY WITNESSES

A person testifying before a federal grand jury has three options under the law:

(1) To obey the oath and testify to the truth, the whole truth and nothing but the truth;

(2) To lie;

(3) To assert the Fifth Amendment or another legally recognized privilege.

[Chart Z]

PRESIDENT'S STATEMENT GRAND JURY TESTIMONY

''When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.

These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.

I regret that what began as a friendship came to include this conduct, and I take full responsibility for my actions.

While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.

I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the term 'sexual relations', as I understood it to be defined at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses. That, Mr. Bittman, is my statement.''

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EXHIBITS

Telephone records

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(2) Currie Cell phone records, 12/28/97
(3) Summary chart, 1/6/98
(4) Summary chart, 1/7/98
(5) Summary chart, 1/15/98–1/16/98
(6) Summary chart, 1/17/98
(7) Summary chart, 1/18/98
(8) Summary chart, 1/19/98

Court Documents

(9) *Jones* v. *Clinton*. Jan. 29, 1998 District Court Order regarding discovery
(10) President Clinton's Answer to First Amended Complaint. *Jones* v. *Clinton*
(11) *In re: Sealed Case,* Nos. 98–3053 & 3059, U.S. court of Appels, District of Columbia
(12) Jane Doe #6 (Lewinsky) Affidavit filed in *Jones* v. *Clinton*
(13) ''Sexual Relations'' definition

Miscellaneous

(14) 1/18/98 Drudge Report
(15) *Jones'* attorneys fax cover sheet of witness list to Bennett
(16) White House ''Talking Points,'' January 24, 1998
(17) LA Times 1/25/98 Article regarding White House ''Talking Points''
(18) Response of William J. Clinton to Judiciary Committee Questions
(19) President Clinton Grand Jury Tr. 138 L. 16–23 (From GJ Tape 2)
(20) President Clinton Grand Jury Tr. 100 L. 20–25, Tr. 105 L. 19–25, Tr. 106 L. 1–12 (From GJ Tape 3)
(21) President Clinton Deposition Tr. 75 L. 2–8, Tr. 76 L. 24–25, Tr. 77 L. 1–2, (From Dep. Tape 1)
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(24) President Clinton Deposition Tr. 53 L. 22–25, Tr. 54 L. 1–7, 20–25, Tr. 55 L. 1–3 (From Dep. Tape 5)
(25) President Clinton Deposition Tr. 204 L. 5–14, (From Dep. Tape 8)
(26) President Clinton Grand Jury Tr. 9–11

[EXHIBIT 1]

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Telephone Calls

TABLE 31

December 19, 1997

No.	Time	Call From	Call To	Length of Call
1	1:47 PM	Ms. Lewinsky's office, [redacted]	Mr. Jordan's office, [redacted]	1:50
2	3:51 PM	Mr. Jordan's office, [redacted]	President Clinton; talked with Debra Schiff	1:00
3	4:17 PM	Mr. Jordan's office, [redacted]	White House Social Office, [redacted]	2:42
4	5:01 PM	President Clinton	Mr. Jordan's office, [redacted]	4:30 *
5	5:06 PM	Mr. Jordan's office [redacted]	Francis Carter's office, [redacted]	1:54

Source Documents

Call 1: 833-DC-00017890 (Pentagon phone records)

Call 2: 1178-DC-00000013 (Presidential call log); V004-DC-00000151 (Akin, Gump, Strauss, Hauer & Feld phone record)

Calls 3 and 5: V004-DC-00000151 (Akin, Gump, Strauss, Hauer & Feld phone record)

Call 4: 1178-DC-00000014 (Presidential call log); V004-DC-00000151 (Akin, Gump, Strauss, Hauer & Feld phone record)

* Presidential call logs indicate that President Clinton placed a call to Mr. Jordan at 4:57 PM and that they talked from 5:01 PM to 5:08 PM. The best interpretation of the evidence suggests that the call did not end at 5:08 PM. The Presidential call logs are maintained by hand, whereas the automated Akin, Gump, Strauss, Hauer & Feld phone records reflect that the conversation actually ended at 5:05 PM.

[EXHIBIT 2]

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CUSTOMER ACCOUNT NO: 001423615-00001
MOBILE TELEPHONE NO: 202-395-1831

INVOICE NO: 0152183138
INVOICE DATE: JANUARY 01, 1998

USAGE DETAILS FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAN

PHONE USER NAME: . .

DATE	TIME	ORIG BAND	ORIGINATING LOCATION	CALLS TO	TELEPHONE NUMBER	AIRTIME RATE	AIRTIME MIN	AIRTIME AMOUNT	LANDLINE RATE	LANDLINE TYPE	LANDLINE AMOUNT	TOTAL CHARGES
12/11												
					*	*	*					
12/25	09:41 AM	1	WASHINGTON DC	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:42 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:43 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	11:35 AM	1	WASHINGTON DC	MOBILE CL	[redacted]	OFFPK	1	0.10				0.10
12/27	11:37 AM	1	WASHINGTON DC	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20
12/28	03:32 PM	1	ARLINGTON VA	WASHINGTON DC	202 965-6355	OFFPK	1	0.10		LCL	0.10	0.20
12/31	06:59 PM	1	WASHINGTON DC	ARLINGTON VA	[redacted]	PEAK	4	1.20		LCL	0.10	1.30
12/31	09:55 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	1	0.10				0.10
12/31	09:56 PM	1	ARLINGTON VA	ARLINGTON VA	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/31	09:58 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20

TOTAL AIRTIME FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAN

PHONE USER NAME: . .

1070-DC-00000007

BAND 1 ALL W/B CELLS	CALLS	MINUTES USED	AIRTIME AMOUNT

THE WHITE HOUSE

WASHINGTON

PRESIDENTIAL CALL LOG

DECEMBER 27, 19 97

	TIME PLACED	TIME DISC	NAME	ACTION
OUT	AM	11:33	MS. BETTY W. CURRIE CELLULAR PHONE 202-395-1831	TLKD-OK 11:29 A.M.
IN	11:27 AM			

REDACTED

V006-DC-00002063

HB 003062

MCI

MARCIA LEWIS
Acct 202 965 6353 340 55

May 4 1996

Long Distance continued
Calls from 202-965-6355:

Amount	Place	Number	Date	Time	Rate	Min
$ .81	FF W ANGEL CA	[redacted]	Apr 3	8:03P	*E	7
.11	SAN FRAN CA		6	12:49P	*N	1
.11	PORTLAND OR		6	3:42P	*N	1
.11	SAN FRAN CA		6	6:41P	*N	1
.11	PORTLAND OR		6	6:42P	*N	1
.11	SAN FRAN CA		6	9:10P	*N	1
2.33	FF W ANGEL CA		7	5:08P	*E	20
1.67	THE PLAI VA		7	9:16P	*E	14
.47	THE PLAI VA		7	9:49P	*E	4
.12	BEVERLYH CA		7	9:58P	*E	1
.12	BEVERLYH CA		7	9:58P	*E	1
3.09	KIHEI HI		7	9:59P	*E	18
.16	KIHEI HI		7	10:17P	*E	1
1.54	KIHEI HI		7	10:18P	*E	9

1000-DC-00000767 Page 30

MCI

MARCIA LEWIS
Acct 202 965 6353 340 55

May 4 1996

Long Distance continued
Calls from 202-965-6355:

Amount	Place	Number	Date	Time	Rate	Min
$ 1.00	THE PLAI VA	[redacted]	Apr 8	4:53P	*D	5
.12	PORTLAND OR		8	5:01P	*E	1
.12	PORTLAND OR		8	5:01P	*E	1
.12	CANBY OR		8	5:02P	*E	1
2.01	PORTLAND OR		8	5:03P	*E	15
.12	PORTLAND OR		8	5:48P	*E	1
.12	SAN FRAN CA		8	8:34P	*E	1
.12	PORTLAND OR		8	8:36P	*E	1
1.98	FF W ANGEL CA		8	9:43P	*E	17
1.61	PORTLAND OR		8	10:00P	*E	12
3.09	SAN FRAN CA		8	10:12P	*E	23
.63	DIR ASST NY		9	2:17P	*D	1
3.45	FF NEW YOR NY		9	2:18P	*D	19
.20	NEW YORK NY		9	4:36P	*D	1

1000-DC-00000768 Page 31

[EXHIBIT 3]

161

Telephone Calls

TABLE 35

January 6, 1998

No.	Time	Call from	Call to	Length of call
1	11:32 AM	Mr. Carter	Ms. Lewinsky's pager, message reads: "PLEASE CALL FRANK CARTER @ [redacted]"	N/A
2	2:08 PM	Mr. Jordan's office, [redacted]	Ms. Lewinsky's residence, [redacted]	1:48
3	3:14 PM	Mr. Carter	Ms. Lewinsky's pager, message reads: "FRANK CARTER AT [redacted] I WILL SEE YOU TOMORROW MORNING AT 10:00 IN MY OFFICE."	N/A
4	3:26 PM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	6:42
5	3:38 PM	Mr. Jordan's office, [redacted]	Ms. Hernreich, White House, [redacted]	2:12
6	3:48 PM	Mr. Jordan's office, [redacted]	Ms. Lewinsky's residence, [redacted]	0:24
7	3:49 PM	Mr. Jordan's office, [redacted]	Ms. Lewinsky at Ms. Finerman's residence, [redacted]	5:54
8	4:19 PM	President Clinton	Mr. Jordan's office, [redacted]	13:00
9	4:32 PM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	1:06
10	4:34 PM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	2:30
11	5:15 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	4:06

Source Documents

Calls 1 and 3: 831-DC-00000010 (Pagemart; all times have been adjusted from Pacific to Eastern Standard Time)

Calls 2, 4, 5, 6, 7, 9, 10, and 11: V004-DC-00000158 (Akin, Gump, Strauss, Hauer & Feld call log)

Call 8: 1178-DC-00000016 (Presidential call log)

[EXHIBIT 4]

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Telephone Calls

TABLE 36

January 7, 1998

No.	Time	Call from	Call to	Length of call
1	9:26 AM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	3:30
2	11:58 AM	Mr. Jordan's office, [redacted]	White House, [redacted]	11:30
3	5:46 PM	Mr. Jordan's office, [redacted]	Ms. Hernreich, White House, [redacted]	10:48
4	6:50 PM	Mr. Jordan's limousine, [redacted]	White House, [redacted]	4:00

Source Documents

Call 1: V004-DC-00000158 (Akin, Gump, Strauss, Hauer & Feld call logs)

Call 2 and 3: V004-DC-00000159 (Akin, Gump, Strauss, Hauer & Feld call logs)

Call 4: 1033-DC-00000115 (Bell Atlantic Mobile toll records)

[EXHIBIT 5]

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Telephone Calls

TABLE 44

January 15, 1998

No.	Time	Call from	Call to	Length of call
1	unknown	Mr. Jordan at St. Regis Hotel, New York, NY	White House, [redacted]	unknown
2	unknown	Ms. Currie's office, [redacted]	Vernon Jordan's office; message reads: "Betty- POTUS, [redacted] KIND OF IMPORTANT"	N/A
3	10:22 AM	Mr. Carter	Ms. Lewinsky's pager; message reads: "PLEASE CALL FRANCIS CARTER @ [redacted]	N/A
4	12:31 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY."	N/A
5	1:08 PM	Mr. Carter	Ms. Lewinsky's pager; message reads: "PLEASE CALL FRANK CARTER AT [redacted]	N/A
6	3:02 PM	Mr. Jordan's office, [redacted]	Ms. Hernreich, White House, [redacted]	1:30
7	3:04 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	1:54
8	5:16 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	2:48
9	5:22 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY ASAP."	N/A
10	6:45 PM	Mr. Jordan's office, [redacted]	Ms. Currie's residence, [redacted]	0:12

Source Documents

Call 1: 1065-DC-00000006 (St. Regis Hotel receipt)

Call 2: V005-DC-00000058 (Vernon Jordan's message log)

Calls 3, 4, 5 and 9: 831-DC-00000008 (Pagemart)

Calls 6, 7, 8 and 10: V004-DC-00000164 (Akin, Gump, Strauss, Hauer & Feld call logs)

TABLE 45

January 16, 1998

No.	Time	Call from	Call to	Length of call
1	11:17 AM	Mr. Jordan's office, [redacted]	Ms Currie, White House, [redacted]	1:24
2	9:41 PM	Mr. Jordan's residence, [redacted]	President Clinton	5:00

Source Documents

Call 1: V004-DC-00000164 (Akin, Gump, Strauss, Hauer & Feld call logs)

Call 2: 1178-DC-00000018 (Presidential call log)

[EXHIBIT 6]

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Telephone Calls

TABLE 46

January 17, 1998

No.	Time	Call from	Call to	Length of call
1	5:19 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	1:00
2	5:38 PM	President Clinton	Mr. Jordan's residence, [redacted]	2:00
3	7:02 PM	President Clinton	Mr. Jordan's office, [redacted]	2:00
4	7:13 PM	President Clinton	Ms. Currie's residence, [redacted]	1:00

Source Documents

Call 1: 1033-DC-00000033 (Bell Atlantic Mobile toll records)

Call 2: 1178-DC-00000019 (Presidential call log)

Call 3: 1178-DC-00000020 (Presidential call log)

Call 4: V006-DC-00002066 (Presidential call log)

[EXHIBIT 7]

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Telephone Calls

TABLE 47

January 18, 1998

No.	Time	Call From	Call To	Length of Call
1	11:49 AM	Mr. Jordan's office, [redacted]	White House, [redacted]	1:12
2	12:50 PM	President Clinton	Mr. Jordan's residence, [redacted]	2:00
3	1:11 PM	President Clinton	Ms. Currie's residence, [redacted]	3:00
4	2:15 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	4:00
5	2:55 PM	Mr. Jordan's residence, [redacted]	President Clinton "hold per PRESUS, 9:20 PM"	N/A
6	5:12 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY AT HOME."	N/A
7	6:22 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY AT HOME."	N/A
8	7:06 PM	Ms. Currie	Ms. Lewinsky's pager; message reads "PLEASE CALL KAY AT HOME."	N/A
9	7:19 PM	Mr. Jordan's office [redacted]	Cheryl Mills, White House Counsel's Office, [redacted]	1:06
10	8:28 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "CALL KAY"	N/A
11	11:02 PM	President Clinton	Ms. Currie's residence, [redacted]	1:00

Source Documents

Calls 1 and 9:	V004-DC-00000165 (Akin, Gump, Strauss, Hauer & Feld call logs)
Call 2:	1178-DC-00000021 (Presidential call log)
Call 3:	V006-DC-00002067 (Presidential call log)
Call 4:	1033-DC-00000034 (Bell Atlantic Mobile toll records)
Call 5:	1248-DC-00000312 (Presidential call log)
Calls 6, 7, 8, and 10:	831-DC-00000008 (Pagemart)

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TABLE 47 continued

Call 11	V006-DC-00002068 (Presidential call log)

[EXHIBIT 8]

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Telephone Calls

TABLE 48

January 19, 1998

No.	Time	Call From	Call To	Length of Call
1	7:02 AM	Ms. Currie	Ms. Lewinsky's pager, message reads: "PLEASE CALL KAY AT HOME AT 8:00 THIS MORNING."	N/A
2	8:08 AM	Ms. Currie	Ms. Lewinsky's pager, message reads: "PLEASE CALL KAY."	N/A
3	8:33 AM	Ms. Currie	Ms. Lewinsky's pager, message reads: "PLEASE CALL KAY AT HOME."	N/A
4	8:37 AM	Ms. Currie	Ms. Lewinsky's pager, message reads: "PLEASE CALL KAY AT HOME. IT'S A SOCIAL CALL. THANK YOU"	N/A
5	8:41 AM	Ms. Currie	Ms. Lewinsky's pager, message reads: "KAY IS AT HOME. PLEASE CALL"	N/A
6	8:43 AM	Ms. Currie's residence, [redacted]	President Clinton	1:00
7	8:44 AM	Ms. Currie	Ms. Lewinsky's pager, message reads: "PLEASE CALL KATE RE: FAMILY EMERGENCY."	N/A
8	8:50 AM	President Clinton	Ms. Currie's residence, [redacted]	1:00
9	8:51 AM	Ms. Currie	Ms. Lewinsky's pager, message reads: "MSG. FROM KAY. PLEASE CALL. HAVE GOOD NEWS."	N/A
10	8:56 AM	President Clinton	Mr. Jordan's residence, [redacted]	9:00
11	10:29 AM	Mr. Jordan's office, [redacted]	White House, [redacted]	3:42
12	10:36 AM	Mr. Jordan's office, [redacted]	Ms. Lewinsky's pager, message reads: "PLEASE CALL MR. JORDAN AT [redacted]	N/A
13	10:35 AM	Mr. Jordan's office, [redacted]	Nancy Hernreich, White House, [redacted]	1:12
14	10:44 AM	Mr. Jordan's office, [redacted]	Erskine Bowles, White House, [redacted]	1:00

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TABLE 48 continued

No.	Time	Call From	Call To	Length of Call
15	10:53 AM	Mr. Jordan's office, [redacted]	Frank Carter's office, [redacted]	0:36
16	10:58 AM	President Clinton	Mr. Jordan's office, [redacted]	1:00
17	11:04 AM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:24
18	11:16 AM	Mr. Jordan	Ms. Lewinsky's pager, message reads: "PLEASE CALL MR. JORDAN AT [redacted]"	0:36
19	11:17 AM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	1:36
20	12:31 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	3:00
21	1:45 PM	President Clinton	Ms. Currie's residence, [redacted]	2:00
22	2:29 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	2:00
23	2:46 PM	Frank Carter	Ms. Lewinsky's pager, message reads: "PLEASE CALL FRANK CARTER AT [redacted]"	N/A
24	4:51 PM	Mr. Jordan's office [redacted]	Ms. Currie's residence, [redacted]	1:42
25	4:53 PM	Mr. Jordan's office [redacted]	Frank Carter's residence, [redacted]	0:24
26	4:54 PM	Mr. Jordan's office, [redacted]	Frank Carter's office, [redacted]	4:00
27	4:58 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:12
28	4:59 PM	Mr. Jordan's office, [redacted]	Cheryl Mills, White House Counsel's office, [redacted]	0:42
29	5:00 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:18
30	5:00 PM	Mr. Jordan's office, [redacted]	Charles Ruff, White House Counsel, [redacted]	0:24
31	5:05 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:06

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TABLE 48 continued

No.	Time	Call From	Call To	Length of Call
32	5:05 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:18
33	5:05 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	2:12
34	5:09 PM	Mr. Jordan's office, [redacted]	Cheryl Mills, White House Counsel's office, [redacted]	1:06
35	5:14 PM	Mr. Jordan's office, [redacted]	Frank Carter's office, [redacted]	8:24
36	5:22 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:06
37	5:22 PM	Mr. Jordan's office, [redacted]	Cheryl Mills, White House Counsel's office, [redacted]	0:18
38	5:55 PM	Mr. Jordan's office, [redacted]	Ms. Currie's residence, [redacted]	0:24
39	5:56 PM	President Clinton	Mr. Jordan's office, [redacted]	7:00
40	6:04 PM	Mr. Jordan's office, [redacted]	Ms. Currie's residence, [redacted]	3:00
41	6:26 PM	Mr. Jordan's office, [redacted]	Stephen Goodin, White House, [redacted]	0:42

Source Documents

Calls 1, 2, 3, 4, 5, 7, 9, 12, 18, and 23:	831-DC-00000009 (Pagemart)
Calls 6 and 8:	V006-DC-00002069 (Presidential call log)
Call 10:	1178-DC-00000023 (Presidential call log)
Calls 11, 12, 13, 14, 15, 17, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37:	V004-DC-00000165 (Akin, Gump, Strauss, Hauer & Feld call log)
Call 16, 39:	1248-DC-00000319 (Presidential call log)
Calls 20 and 22:	1033-DC-00000035 (Bell Atlantic Mobile toll records)

[EXHIBIT 9]

FILED
U S DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JAN 29 1998
JAMES W. McCORMACK, CLER
By: DEP CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES,	*	
Plaintiff,	*	
vs.	*	No. LR-C-94-290
WILLIAM JEFFERSON CLINTON and DANNY FERGUSON,	*	
Defendants.	*	

ORDER

Before the Court is a motion by the United States, through the Office of the Independent Counsel ("OIC"), for limited intervention and a stay of discovery in the case of *Jones v. Clinton*, No. LR-C-94-290 (E.D.Ark.). The Court held a telephone conference on this motion on the morning of January 29, 1998, during which the views of counsel for the plaintiff, counsel for the defendants, and the OIC were expressed. Having considered the matter, the Court hereby grants in part and denies in part OIC's motion.

In seeking limited intervention and a stay of discovery, OIC states that counsel for the plaintiff, in a deliberate and calculated manner, are shadowing the grand jury's investigation of the Monica Lewinsky matter. Motion of OIC, at 2. OIC states that "the pending criminal investigation is of such gravity and paramount importance that this Court would do a disservice to the Nation if it were to permit the unfettered - and extraordinarily aggressive - discovery

efforts currently underway to proceed unabated." *Id.* at 3.[1] OIC's motion comes with less than 48 hours left in the period for conducting discovery, the cutoff date being January 30, 1998. Given the timing of OIC's motion and the possible impact that this motion could have on the proceedings in this matter, the Court is required to rule at this time on the admissibility at trial of evidence concerning Monica Lewinsky.

Rule 403 of the Federal Rules of Evidence provides that evidence, although relevant, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." This weighing process compels the conclusion that evidence concerning Monica Lewinsky should be excluded from the trial of this matter.

The Court acknowledges that evidence concerning Monica Lewinsky might be relevant to the issues in this case. This Court would await resolution of the criminal investigation currently underway if the Lewinsky evidence were essential to the plaintiff's case. The Court determines, however, that it is not essential to the core issues in this case. In fact, some of this evidence might even be inadmissable as extrinsic evidence under Rule 608(b) of the Federal Rules of Evidence. Admitting <u>any</u> evidence of the Lewinsky matter would frustrate the timely resolution of this case and would undoubtedly cause undue expense and delay.

This Court's ruling today does not preclude admission of any other evidence of alleged improper conduct occurring in the White House.

---

[1] For the record, counsel for the plaintiff take great issue with OIC's characterization of their discovery efforts.

In addition, and perhaps more importantly, the substantial interests of the Presidency militate against any undue delay in this matter that would be occasioned by allowing plaintiff to pursue the Monica Lewinsky matter. Under the Supreme Court's ruling in *Clinton v. Jones,* 117 S.Ct. 1636, 1651 (1997), "[t]he high respect that is owed to the Office of the Chief Executive ... is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery." There can be no doubt that a speedy resolution of this case is in everyone's best interests, including that of the Office of the President, and the Court will therefore direct that the case stay on course.

One final basis for the Court's ruling is the integrity of the criminal investigation. This Court must consider the fact that the government's proceedings could be impaired and prejudiced were the Court to permit inquiry into the Lewinsky matter by the parties in this civil case. *See, e.g., Arden Way Associates v. Ivan F. Boesky*, 660 F.Supp. 1494 (S.D.N.Y. 1987). In that regard, it would not be proper for this Court, given that it must generally yield to the interests of an ongoing grand jury investigation, to give counsel for the plaintiff or the defendants access to witnesses' statements in the government's criminal investigation. *See* Fed.R.Crim.P. 16(a)(2), which generally prohibits the discovery of government witnesses. That being so, and because this case can in any event proceed without evidence concerning Monica Lewinsky, the Court will exclude evidence concerning her from the trial of this matter.

In sum, the plaintiff and defendants may not continue with discovery of those matters that concern Monica Lewinsky. In that regard, OIC's motion for limited intervention and stay of discovery is granted. Further, any evidence concerning Ms. Lewinsky shall be excluded

from the trial of this matter. With respect to matters that do not involve Monica Lewinsky, OIC's motion is denied and the parties may continue with discovery. Because the telephone conference underlying today's ruling involved a discussion of discovery matters, the transcript of the conference shall remain under seal in accordance with the Court's Confidentiality Order on Consent of all Parties.

IT IS SO ORDERED this 29th day of January 1998.

UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP
ON 1/29/98 BY

[EXHIBIT 10]

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
DEC 17 1997
JAMES W. McCORMACK, CLERK
By _____ DEP CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	NO. LR-C-94-290
WILLIAM JEFFERSON CLINTON	:	Judge Susan Webber Wright
and	:	(JURY TRIAL DEMANDED)
DANNY FERGUSON,	:	
Defendants.	:	

ANSWER OF PRESIDENT WILLIAM JEFFERSON CLINTON TO THE FIRST AMENDED COMPLAINT

President William Jefferson Clinton, through his undersigned attorneys, answers the First Amended Complaint ("Amended Complaint") in the above-captioned matter as follows:

GENERAL DENIAL

The President adamantly denies the false allegations advanced in the Amended Complaint. Specifically, at no time did the President make sexual advances toward the plaintiff, or otherwise act improperly in her presence. At no time did the President threaten or intimidate the plaintiff. At no time did the President conspire to or sexually harass the plaintiff. At no time did the President conspire to or deprive the plaintiff of her constitutional rights. And at no time did the President act in a manner intended to, or which could, inflict emotional distress upon the plaintiff.

As Governor of Arkansas, Mr. Clinton never took any action or made any request of any state employee to interfere with or otherwise detract from plaintiff's advancement, promotion or job responsibilities. President Clinton also adamantly denies plaintiff's baseless allegations that he engaged in any pattern or practice of granting governmental or employment benefits to women in exchange for sexual favors. Such allegations are false, and have no relevance whatsoever to Plaintiff's claims concerning her alleged encounter with Governor Clinton. Plaintiff's Amended Complaint thus is simply a groundless attempt by Paula Jones and those who are financially supporting her to use the judicial system improperly to try to humiliate and embarrass the President.

SPECIFIC DENIALS

JURISDICTION

1. Paragraph 1 of the Amended Complaint states legal conclusions as to which no response is required.

VENUE

2. Paragraph 2 of the Amended Complaint states legal conclusions as to which no response is required.

THE PARTIES

3. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3, and therefore denies the same.

4. President Clinton admits he is a resident of Arkansas.

5. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5, and therefore denies the same.

FACTS

6. President Clinton admits that the Governor of Arkansas serves in the executive branch. Based on information and belief, he also admits that at some point in time plaintiff was an employee of the Arkansas Industrial Development Commission. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6, and therefore denies the same.

7. Admitted.

8. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8, and therefore denies the same.

9. Based on information and belief, President Clinton admits that Danny Ferguson was a state trooper assigned to the Governor's security detail on or about May 8, 1991. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 9, and therefore denies the same.

10. President Clinton denies the allegations set forth in paragraph 10 to the extent they purport to allege that he requested to meet plaintiff in a suite at the Excelsior Hotel. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 10, and therefore denies the same.

11. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11, and therefore denies the same.

12. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12, and therefore denies the same.

13. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13, and therefore denies the same.

14. President Clinton does not recall ever meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 14.

15. While it was the usual practice to have a business suite available for the purpose of making calls and receiving visitors, President Clinton has no recollection of meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 15.

16. President Clinton does not recall ever meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 16.

17. President Clinton denies each and every allegation set forth in paragraph 17, except he admits that on or about May 8, 1991, David Harrington was Director of the Arkansas Industrial Development Commission, having been elevated to that position by Governor Clinton.

18. President Clinton denies each and every allegation set forth in paragraph 18.

19. President Clinton denies each and every allegation set forth in paragraph 19.

20. President Clinton denies each and every allegation set forth in paragraph 20.

21. President Clinton denies each and every allegation set forth in paragraph 21.

22. President Clinton denies each and every allegation set forth in paragraph 22.

23. President Clinton denies each and every allegation set forth in paragraph 23.

24. President Clinton denies each and every allegation set forth in paragraph 24.

25. President Clinton denies each and every allegation set forth in paragraph 25.

26. President Clinton denies each and every allegation set forth in paragraph 26.

27. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27, and therefore denies the same.

28. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 28, and therefore denies the same.

29. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29, and therefore denies the same.

30. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He also denies making the statement attributed to him in paragraph 30. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 30, and therefore denies the same.

31. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 31, and therefore denies the same.

32. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 32, and therefore denies the same.

33. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 33, and therefore denies the same.

34. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 34 and therefore denies the same.

35. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 35, and therefore denies the same.

36. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36, and therefore denies the same.

37. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37, and therefore denies the same.

38. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. President Clinton does not recall ever meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 38.

39. President Clinton denies that he engaged in any improper conduct with respect to plaintiff or any other woman. President Clinton further denies that he took any action against plaintiff to chill or squelch her communications in any way. President Clinton further denies that he discriminated against plaintiff or had a custom, habit, pattern or practice of improper conduct with respect to any other women. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 39, and therefore denies the same.

40. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 40, and therefore denies the same.

41. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 41, and therefore denies the same.

42. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. To the extent the allegations set forth in paragraph 42 merely refer to or quote from the article in the American Spectator, attached as exhibit A to the Amended Complaint, no response is required.

43. President Clinton denies that he engaged in any improper conduct with respect to plaintiff or others. President Clinton further denies that the American Spectator article is accurate. To the extent the allegations set forth in paragraph 43 merely refer to or quote from the article in the American Spectator, attached as exhibit A to the Amended Complaint, no response is required.

44. President Clinton denies each and every allegation set forth in paragraph 44.

45. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 45, and therefore denies the same.

46. President Clinton denies that he made sexual advances toward plaintiff. He also denies the quote attributed to him in paragraph 46. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 46, and therefore denies the same.

47. President Clinton denies each and every allegation in paragraph 47, except that he admits that a false article was published in the American Spectator, that plaintiff spoke publicly on February 11, 1994, and that representatives of plaintiff asked the President to acknowledge certain things which were untrue.

48. Based on information and belief, President Clinton admits that he and those acting on his behalf have denied plaintiff's allegations. Each and every other allegation set forth in paragraph 48 is denied.

49. Based on information and belief, President Clinton admits that his legal counsel made the statements set forth in paragraph 49. Each and every other allegation set forth in paragraph 49 is denied.

50. Based on information and belief, President Clinton admits that White House spokeswoman Dee Dee Meyers made the statement set forth in paragraph 50. Each and every other allegation set forth in paragraph 50 is denied. To the extent paragraph 50 states legal conclusions, no response is required.

51. President Clinton denies each and every allegation set forth in paragraph 51.

52. President Clinton admits that the general public reposes trust and confidence in the integrity of the holder of the office of the Presidency. Each and every other allegation set forth in paragraph 52 is denied.

53. President Clinton denies each and every allegation set forth in paragraph 53, except that he admits he was a member of the Arkansas State Bar on or about May 8, 1991. President Clinton also denies he was a partner at Wright, Lindsey & Jennings, but admits he formerly was Of Counsel to that firm. To the extent paragraph 53 states legal conclusions, no response is required.

54. President Clinton denies each and every allegation set forth in paragraph 54. To the extent paragraph 54 states legal conclusions, no response is required.

55. President Clinton denies each and every allegation set forth in paragraph 55. To the extent paragraph 55 states legal conclusions, no response is required.

56. President Clinton denies each and every allegation set forth in paragraph 56. To the extent paragraph 56 states legal conclusions, no response is required.

57. President Clinton denies each and every allegation set forth in paragraph 57.

Count I: Deprivation of Constitutional Rights and Privileges (42 U.S.C. § 1983)

58. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-57 as if fully set forth herein. President Clinton denies that he engaged in any improper conduct or deprived plaintiff of any constitutional right or privilege protected under 42 U.S.C. § 1983, and therefore denies each and every allegation set forth in paragraphs 58, 59, 60, 61, 62, 63, 64 and 65. To the extent plain-

tiff alleges due process violations, these claims were dismissed by the Court's Orders dated August 22, 1997 and November 24, 1997. Therefore, no response is required. To the extent plaintiff alleges additional grounds for recovery, e.g., an alleged quid pro quo third party favoritism claim, an alleged hostile environment third party favoritism claim or a First Amendment claim, the Court rejected any separate cause of action for any such claims by Order dated November 24, 1997. Therefore, no response is required. To the extent paragraphs 58-65 state legal conclusions, no response is required.

Count II: Conspiracy To Deprive Persons of Equal Protection of the Laws (42 U.S.C. § 1985(3))

59. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-65 as if fully set forth herein. President Clinton denies that he engaged in a conspiracy to deprive plaintiff of any constitutionally protected right, and therefore denies the allegations set forth in paragraphs 66, 67, 68 and 69. To the extent plaintiff alleges due process violations, these claims were dismissed by the Court's Orders dated August 22, 1997 and November 24, 1997. Therefore, no response is required. To the extent paragraphs 66-69 state legal conclusions, no response is required.

Count III: Intentional Infliction of Emotional Distress and Outrage

60. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-69 as if fully set forth herein. President Clinton denies that he engaged

in any improper conduct with respect to plaintiff or any conduct intended to or which he knew was likely to inflict emotional distress upon plaintiff, and therefore denies the allegation of paragraphs 70, 71, 72, 73 and 74. To the extent paragraphs 70-74 state legal conclusions, no response is required.

Count IV: Declaratory Judgment

61. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-74 as if fully set forth herein. President Clinton denies all of the claims asserted in Counts I-III, and therefore denies the allegations appearing in paragraphs 75, 76 and 77(a)-(m). To the extent plaintiff seeks relief in the form of declaratory judgment, the Court by Order dated November 24, 1997 held that such request for relief shall have no effect. Therefore, no response is required. Moreover, to the extent plaintiff seeks declaratory judgment for alleged First Amendment violations, or for alleged violations of the Equal Protection Clause based on alleged quid pro quo third party favoritism or hostile environment third party favoritism, such claims have been rejected as separate causes of action by Order dated November 24, 1997. Therefore, no response is required. To the extent plaintiff seeks a declaratory judgment for alleged due process violations, such claims were dismissed by Orders dated August 22, 1997 and November 24 1997. Therefore, no response is required. To the extent plaintiff seeks a declaratory judgment for alleged violations of "28 U.S.C. § 1983" or "28 U.S.C. § 1985(3)," (paragraphs 77(c) & (g)) no

such provisions exist, and therefore no response is required. To the extent paragraphs 75-77(a)-(m) state legal conclusions, no response is required.

62. To the extent any allegation set forth in the Amended Complaint is not specifically answered above, it is hereby denied.

AS TO PLAINTIFF'S REQUEST FOR RELIEF

63. President Clinton denies that plaintiff is entitled to any relief whatsoever in connection with the Amended Complaint. To the extent plaintiff seeks to recover costs and attorney's fees and expenses "under 28 U.S.C. § 1988" this request must be rejected as no such provision awarding fees and costs exists.

AFFIRMATIVE DEFENSES

President Clinton alleges the following affirmative defenses to the allegations that he engaged in conduct violative of federal or state law.

FIRST AFFIRMATIVE DEFENSE

64. The Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

65. Plaintiff's cause of action for intentional infliction of emotional distress is time-barred.

THIRD AFFIRMATIVE DEFENSE

66. Plaintiff's claims are barred because she did not incur any injury or damages cognizable at law.

FOURTH AFFIRMATIVE DEFENSE

67. Plaintiff's injuries and damages, if any, were caused by the acts of third persons, for which the President is not responsible.

FIFTH AFFIRMATIVE DEFENSE

68. Plaintiff's injuries and damages, if any, were caused by the acts of plaintiff and her representatives, for which the President is not responsible.

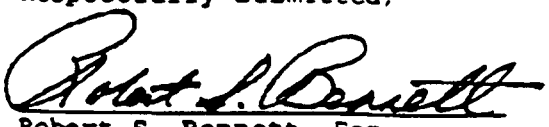
SIXTH AFFIRMATIVE DEFENSE

69. Plaintiff is not entitled to punitive damages under the applicable law.

* * *

Wherefore, President Clinton respectfully requests that the Amended Complaint be dismissed with prejudice and that this Court enter judgment in his favor and grant such other relief as the Court deems just and proper.

Respectfully submitted,



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Counsel to
President William J. Clinton

Dated: December 22, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of December, 1997, a true and correct copy of President Clinton's Answer to the First Amended Complaint was served via Federal Express and first class United States Mail postage prepaid to:

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Kathlyn Graves, Esq.

[EXHIBIT 11]

UNDER SEAL - RETURN TO VAULT

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNDER SEAL

Filed May 26, 1998

No. 98-3052

IN RE: SEALED CASE

Consolidated with
Nos. 98-3053 & 98-3059

Appeals from the United States District Court
for the District of Columbia
(98ms00068)

Nathaniel H. Speights filed the briefs for appellant Monica Lewinsky.

Charles J. Ogletree, Jr. filed the briefs for appellant Francis D. Carter, Esq.

Robert J. Bittman, Deputy Independent Counsel, filed the briefs for cross-appellant the United States.

Before: GINSBURG, RANDOLPH, and TATEL, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* RANDOLPH.

RANDOLPH, *Circuit Judge*: In 1997, Monica S. Lewinsky, a former White House intern, received a subpoena to produce items and to testify in *Paula Jones v.*

[illegible] States District

Court for the Eastern District of Arkansas. The subpoena requested, among other things, documents relating to an alleged relationship between President Clinton and Lewinsky and any gifts the President may have given her. Lewinsky retained Francis D. Carter, Esq., to represent her regarding the subpoena.

Carter drafted an affidavit for Lewinsky, which she signed under penalty of perjury. The affidavit, submitted to the Arkansas district court as an exhibit to Lewinsky's motion to quash the subpoena, states in relevant part:

> I have never had a sexual relationship with the President, [and] he did not propose that we have a sexual relationship . . .. The occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions.

On January 16, 1998, at the request of the Attorney General, a Special Division of this Court expanded the jurisdiction of the Office of Independent Counsel to include "authority to investigate . . . whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law . . . in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case *Jones v. Clinton*." Order of the Special Division, Jan. 16, 1998. On February 2 and 9, 1998, as part of that investigation, a grand jury issued subpoenas to Carter, the first for documents and other items, the second for his testimony. Carter

moved to quash the subpoenas, contending, *inter alia*, that the documents, testimony, and other items sought were protected from disclosure by the attorney-client privilege, the work-product privilege, and Lewinsky's Fifth Amendment privilege against self-incrimination. Lewinsky, as the real-party-in-interest, filed a response in support of Carter's motion. The United States opposed the motion, arguing among other things that the crime-fraud exception vitiated any claims of attorney-client or work-product privilege and that the Fifth Amendment did not bar production of the requested materials. The district court ordered Carter to comply with the two grand jury subpoenas except to the extent that compliance would "call for him to disclose materials in his possession that may not be revealed without violating Monica S. Lewinsky's Fifth Amendment rights."

Carter and Lewinsky argue in separate appeals that the district court erred in rejecting their motions to quash the grand jury subpoenas in their entirety. In its cross-appeal, the United States, through the Office of Independent Counsel, claims that the Fifth Amendment does not bar production of any of the materials the grand jury subpoenaed from Carter.

We dismiss Carter's appeal for want of jurisdiction. Well-settled law dictates that "one to whom a subpoena is directed may not appeal the denial of a motion to quash that subpoena but must either obey its commands or refuse to do so and contest

the validity of the subpoena if he is subsequently cited for contempt on account of his failure to obey." *United States v. Ryan*, 402 U.S. 530, 532 (1971); *see Cobbledick v. United States*, 309 U.S. 323, 328 (1940); *In re Sealed Case*, 107 F.3d 46, 48 n.1 (D.C. Cir. 1997). Rather than risking contempt, Carter has sworn that he will comply with the subpoenas if ordered to do so.[1]

Our jurisdiction over Lewinsky's appeal is another matter. Lewinsky is the holder of the privilege. Given Carter's sworn declaration that he will give testimony if ordered, she is entitled to appeal the district court's ruling rejecting Carter's assertion of the privilege. *See In re Sealed Case*, 107 F.3d at 48 n.1.

The district court held that the crime-fraud exception to the attorney-client privilege applied. After reviewing the government's *in camera* submission, the court found that "Ms. Lewinsky consulted Mr. Carter for the purpose of committing perjury and obstructing justice and used the material he prepared for her for the purpose of committing perjury and obstructing justice."[2] Lewinsky tells us she could not have

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[1] In addition to adopting Lewinsky's arguments regarding the crime-fraud exception, Carter claims that the subpoenas are overbroad, unreasonable, and oppressive and that the district court's reliance on the Independent Counsel's *ex parte* submissions in enforcing the subpoenas violated due process. Contrary to Carter's contention, the issues he seeks to present are thus neither "virtually identical" to, nor "inextricably intertwined" with, those Lewinsky raises.

[2] The district court did not find, nor did the Independent Counsel suggest, any impropriety by Carter.

committed either crime: the government could not establish perjury because her denial of having had a "sexual relationship" with President Clinton was not "material" to the Arkansas proceedings within the meaning of 18 U.S.C. § 1623(a); and her affidavit containing this denial could not have constituted a "corrupt[] . . . endeavor[] to influence" the Arkansas district court within the meaning of 18 U.S.C. § 1503. Both of Lewinsky's propositions rely on the Arkansas district court's ruling on January 30, 1998, after Lewinsky had filed her affidavit, that although evidence concerning Lewinsky might be relevant, it would be excluded from the civil case under FED. R. EVID. 403 as unduly prejudicial, "not essential to the core issues in th[e] case," and to prevent undue delay resulting from the Independent Counsel's investigation.[3]

A statement is "material" if it "has a natural tendency to influence, or was capable of influencing, the decision of the tribunal in making a [particular] determination." *United States v. Barrett*, 111 F.3d 947, 953 (D.C. Cir.), *cert. denied*, 118 S. Ct. 176 (1997). The "central object" of any materiality inquiry is "whether the misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a

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[3] Lewinsky does not appear to contest directly the district court's finding that she made one or more false statements in her sworn affidavit. Even so, we have independently reviewed the *in camera* materials considered by the district court and conclude that sufficient evidence existed to support the court's finding.

natural tendency to affect, the official decision." *Kungys v. United States*, 485 U.S. 759, 771 (1988). Lewinsky used the statement in her affidavit, quoted above, to support her motion to quash the subpoena issued in the discovery phase of the Arkansas litigation. District courts faced with such motions must decide whether the testimony or material sought is reasonably calculated to lead to admissible evidence and, if so, whether the need for the testimony, its probative value, the nature and importance of the litigation, and similar factors outweigh any burden enforcement of the subpoena might impose. *See* FED. R. CIV. P. 26(b)(1), 45(c)(3)(A)(iv); *Linder v. Department of Defense*, 133 F.3d 17, 24 (D.C. Cir. 1998); *see generally* 9A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2459 (2d ed. 1995). There can be no doubt that Lewinsky's statements in her affidavit were -- in the words of *Kungys v. United States* -- "predictably capable of affecting" this decision. She executed and filed her affidavit for this very purpose.

As to obstruction of justice, 18 U.S.C. § 1503 is satisfied whenever a person, with the "intent to influence judicial or grand jury proceedings," takes actions having the "natural and probable effect" of doing so. *United States v. Aguilar*, 515 U.S. 593, 600 (1995) (citations and quotation marks omitted); *see United States v. Russo*, 104 F.3d 431, 435-36 (D.C. Cir. 1997). Our review of the *in camera* materials on which the district court based its decision convinces us that the government sufficiently

established the elements of a violation of § 1503. That is, the government offered "evidence that if believed by the trier of fact would establish the elements of" the crime of obstruction of justice. *In re Sealed Case*, 107 F.3d at 50 (citation and quotation marks omitted); *see In re Sealed Case*, 754 F.2d 395, 399-400 (D.C. Cir. 1985) (same).

Lewinsky maintains that the district court erred in treating, as admissible for *in camera* review, transcripts of taped conversations between Lewinsky and Linda Tripp. She relies on the following statement in *United States v. Zolin*, 491 U.S. 554, 575 (1989): "the threshold showing to obtain *in camera* review may be met by using any relevant evidence, lawfully obtained, that has not been adjudicated to be privileged." *Zolin*, and the statement just quoted, dealt with a rather different problem than the one presented here. Sometimes a party seeking to overcome the privilege by invoking the crime-fraud exception asks the district court to examine *in camera* the privileged material to determine whether it provides evidence of a crime. The issue *Zolin* addressed is under what circumstances a district court should undertake such *in camera* review. *Zolin's* answer, as the quotation indicates, was that the court should do so only when there has been a threshold showing through evidence lawfully obtained. *See In re Grand Jury Proceedings*, 33 F.3d 342, 350 (4th Cir. 1994). In this case, the district court reviewed *in camera* not the allegedly

privileged material, but other evidence intended to establish that the crime-fraud exception applied. In any event, even if *Zolin* applied, Lewinsky gains nothing from the decision. She maintains that the Tripp tapes were not "lawfully obtained" and therefore should not have been considered *in camera*. But the government satisfied its burden wholly apart from the Tripp tapes. Other government evidence -- consisting of grand jury testimony and documents -- established that the crime-fraud exception applied. Because that other evidence, if believed by the trier of fact, combined with the circumstances under which Lewinsky retained Carter, would establish the elements of the crime-fraud exception, there is no reason for us to consider her arguments about the tapes.[4]

Lewinsky raises other objections to the district court's decision, including the argument that production of the subpoenaed materials would violate her Fifth Amendment privilege against self-incrimination. Our resolution of the cross-appeal,

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[4] Lewinsky's brief suggests, in a short passage, that other evidence obtained by the grand jury is tainted by the alleged illegality of the Tripp tapes. *United States v. Callandra*, 414 U.S. 338 (1974), refused to extend the exclusionary rule -- and hence doctrines such as the fruit-of-the-poisonous-tree -- to grand jury proceedings. No grand jury witness may refuse to answer questions on the ground that the questions are based on illegally obtained evidence. *See* 414 U.S. at 353-55. It follows that regardless of the legality of the Tripp tapes, the grand jury did not unlawfully obtain the other evidence presented to the district court *in camera*.

discussed next, disposes of that claim. As to the remainder of Lewinsky's arguments, we have accorded each of them full consideration and conclude that none has merit.[5]

This brings us to the Independent Counsel's cross-appeal. The district court ruled that compelling Carter to produce materials his client gave him would violate Lewinsky's Fifth Amendment privilege because it would compel her to admit the materials exist and had been in her possession. The Supreme Court foreclosed that line of reasoning in *Fisher v. United States*, 425 U.S. 391 (1976). Documents transferred from the accused to his attorney are "obtainable without personal compulsion on the accused," and hence the accused's "Fifth Amendment privilege is . . . not violated by enforcement of the [subpoena] directed toward [his] attorneys. This is true whether or not the Amendment would have barred a subpoena directing the [accused] to produce the documents while they were in his hands." *Id.* at 398, 397; *see also Couch v. United States*, 409 U.S. 322, 328 (1973).

Regardless whether Lewinsky herself would have been able to invoke her Fifth Amendment privilege, *but see Andresen v. Maryland*, 427 U.S. 463, 473-74 (1976), the district court's refusal to order full compliance with the subpoenas could be

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[5] In her reply brief, Lewinsky argues for first time that the district court should have permitted her to examine the material the court reviewed *in camera*. This argument comes too late to be considered. *See Rollins Envtl. Servs. (NJ) Inc. v. EPA*, 937 F.2d 649, 652 n.2 (D.C. Cir. 1991).

sustained only if the materials sought fell under a valid claim of attorney-client privilege. *See Fisher*, 425 U.S. at 403-05; *see also In re Feldberg*, 862 F.2d 622, 629 (7th Cir. 1988). But the district court held, correctly, that no valid attorney-client privilege existed. Under *Fisher*, the district court therefore should have denied the motions to quash in their entirety.[6]

Accordingly, we affirm in part and reverse in part the order of the district court and remand the case for proceedings consistent with this opinion. No. 98-3053 is dismissed. The mandate shall issue seven days after the date of this opinion. *See* FED. R. APP. P. 41(a); D.C. CIR. R. 41(a)(1); *Johnson v. Bechtel Assocs. Prof'l. Corp.*, 801 F.2d 412, 415 (D.C. Cir. 1986); *Public Citizen Health Research Group v. Auchter*, 702 F.2d 1150, 1159 n.31 (D.C. Cir. 1983).

So ordered.

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[6] As respondent in the cross-appeal, Carter makes additional arguments against the applicability of the crime-fraud exception. But because the only issue in the cross-appeal is the applicability of the Fifth Amendment, Carter may not use the cross-appeal to press arguments we will not consider in his direct appeal. *See Grimes v. District of Columbia*, 836 F.2d 647, 651-52 (D.C. Cir. 1988).

UNDER SEAL - RETURN TO VAULT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

6/3/98
BY: E. Brown
ATTACHED: Accompanying Order
Opinion
Order on Costs

No. 98-3052 **September Term, 1997**

98ms00068

In re: Sealed Case, No. 98-3052

Consolidated with 98-3053, 98-3059

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAY 26 1998
CLERK

BEFORE: Ginsburg, Randolph and Tatel, *Circuit Judges*

JUDGMENT

These causes came on to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED**, by the Court, that the judgment of the District Court appealed from in these causes is hereby affirmed in part and reversed in part in Nos 98-3052 and 98-3059, and the cases are remanded, and No 98-3053 is dismissed, all in accordance with the opinion for the Court filed herein this date

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: Linda Jones
Linda Jones
Deputy Clerk

Date: May 26, 1998
Opinion for the Court filed by Circuit Judge Randolph.

[EXHIBIT 12]

AFFIDAVIT OF JANE DOE # 6

1. My name is Jane Doe #6 . I am 24 years old and I currently reside at 700 New Hampshire Avenue, N.W., Washington, D.C. 20037.

2. On December 19, 1997, I was served with a subpoena from the plaintiff to give a deposition and to produce documents in the lawsuit filed by Paula Corbin Jones against President William Jefferson Clinton and Danny Ferguson.

3. I can not fathom any reason that the plaintiff would seek information from me for her case.

4. I have never met Ms. Jones, nor do I have any information regarding the events she alleges occurred at the Excelsior Hotel on May 8, 1991 or any other information concerning any of the allegations in her case.

5. I worked at the White House in the summer of 1995 as a White House intern. Beginning in December, 1995, I worked in the Office of Legislative Affairs as a staff assistant for correspondence. In April, 1996, I accepted a job as assistant to the Assistant Secretary for Public Affairs at the U.S. Department of Defense. I maintained that job until December 26, 1997. I am currently unemployed but seeking a new job.

6. In the course of my employment at the White House I met President Clinton several times. I also saw the President at a number of social functions held at the White House. When I worked as an intern, he appeared at occasional functions attended by me and several other interns. The correspondence I drafted while I worked at the Office of Legislative Affairs was seen and edited by supervisors who either had the President's signature affixed by mechanism or, I believe, had the President sign the correspondence itself.

7. I have the utmost respect for the President who has always behaved appropriately in my presence.

8. I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship. I do not know of any

other person who had a sexual relationship with the President, was offered employment or other benefits in exchange for a sexual relationship, or was denied employment or other benefits for rejecting a sexual relationship. The occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions.

9. Since 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, I asked my attorney to provide this affidavit to plaintiff's counsel. Requiring my deposition in this matter would cause disruption to my life, especially since I am looking for employment, unwarranted attorney's fees and costs, and constitute an invasion of my right to privacy.

I declare under the penalty of perjury that the foregoing is true and correct.

Monica S. Lewinsky

MONICA S. LEWINSKY

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849-DC-00000635

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DISTRICT OF COLUMBIA, ss:

MONICA S. LEWINSKY, being first duly sworn on oath according to law, deposes and says that she has read the foregoing AFFIDAVIT OF JANE DOE # 6 by her subscribed, that the matters stated herein are true to the best of her information, knowledge and belief.

Monica S Lewinsky
MONICA S. LEWINSKY

SUBSCRIBED AND SWORN to before me this 7th day of January, 1998.

Kathleen M. Grimes
NOTARY PUBLIC, D.C.
My Commission expires: August 31, 1998

My Commission Expires August 31, 1998

849-DC-00000636

[EXHIBIT 13]

Paula Jones v. William Jefferson Clinton and Danny Ferguson
No. LR-C-94-290 (E.D. Ark.)

DEPOSITION OF WILLIAM JEFFERSON CLINTON

Definition of Sexual Relations

For the purposes of this deposition, a person engages in "sexual relations" when the person knowingly engages in or causes -

(1) contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person;

(2) contact between any part of the person's body or an object and the genitals or anus of another person; or

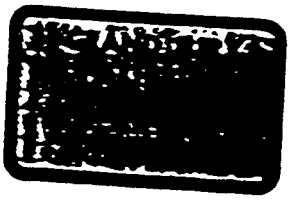
(3) contact between the genitals or anus of the person and any part of another person's body.

"Contact" means intentional touching, either directly or through clothing.

849-DC-00000586

DEPOSITION EXHIBIT
1
Clinton HRC

[EXHIBIT 14]



Andrew J. Scott
01/20/98 10:55:10 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: adam.carstens@mail.house.gov
Subject: DRUDGE-REPORT-EXCLUSIVE 1/18/98

SEX ---- LIES ---- Videotape?

At some point, whether now or after the historians get to him, this guy is going down.

---------- Forwarded by Andrew J Scott/OMB/EOP on 01/20/98 10 54 AM ----------

drudge@drudgereport.com
01/17/98 11:27.00 PM

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To: Andrew J Scott@EOP

cc:
Subject: DRUDGE-REPORT-EXCLUSIVE 1/18/98

XXXXX DRUDGE REPORT XXXXX 06.11 UTC SUN JAN 18 1998 XXXXX

NEWSWEEK KILLS STORY ON WHITE HOUSE INTERN

BLOCKBUSTER REPORT: 23-YEAR OLD, FORMER WHITE HOUSE INTERN, SEX RELATIONSHIP WITH PRESIDENT

V006-DC-00003772

World Exclusive
Must Credit the DRUDGE REPORT

At the last minute, at 6 p.m. on Saturday evening, NEWSWEEK magazine killed a story that was destined to shake official Washington to its foundation: A White House intern carried on a sexual affair with the President of the United States!

The DRUDGE REPORT has learned that reporter Michael Isikoff developed the story of his career, only to have it spiked by top NEWSWEEK suits hours before publication. A young woman, 23, sexually involved with the love of her life, the President of the United States, since she was a 21-year-old intern at the White House. She was a frequent visitor to a small study just off the Oval Office where she claims to have indulged the president's sexual preference. Reports of the relationship spread in White House quarters and she was moved to a job at the Pentagon, where she worked until last week.

HB 004684

The young intern wrote long love letters to President Clinton, which she delivered through a delivery service. She was a frequent visitor at the White House after midnight, where she checked in the WAVE logs as visiting a secretary named Betty Curry, 57.

The DRUDGE REPORT has learned that tapes of intimate phone conversations exist.

The relationship between the president and the young woman become strained when the president believed that the young woman was bragging to others about the affair.

NEWSWEEK and Isikoff were planning to name the woman. Word of the story's impeding release caused blind chaos in media circles; TIME magazine spent Saturday scrambling for its own version of the story, the DRUDGE REPORT has learned. The NEW YORK POST on Sunday was set to front the young intern's affair, but was forced to fall back on the dated ABC NEWS Kathleen Willey break.

The story was set to break just hours after President Clinton testified in the Paula Jones sexual harassment case.

Ironically, several years ago, it was Isikoff that found himself in a shouting match with editors who were refusing to publish even a portion of his meticulously researched investigative report that was to break Paula Jones. Isikoff worked for the WASHINGTON POST at the time, and left shortly after the incident to build them for the paper's sister magazine, NEWSWEEK.

Michael Isikoff was not available for comment late Saturday. NEWSWEEK was on voice mail.

The White House was busy checking the DRUDGE REPORT for details.

Developing...

Filed by Matt Drudge
The REPORT is moved when circumstances warrant
http://www.drudgereport.com for breaks
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V006-DC-00003773

HB 004685

[EXHIBIT 15]

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DEC. -05' 97(FRI) 16:57 RADER, CAMPBELL TEL:214' 630 9996 P.001

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TELECOPY TRANSMITTAL SHEET

DATE: December 5, 1997 TIME: 4:30 p.m. Central Standard Time

WE ARE TRANSMITTING: 19 PAGES (INCLUDING THIS COVER SHEET)

TO: Robert S. Bennett, Esq. TELECOPY NO. (202) 393-5760
Kathlyn Graves, Esq. TELECOPY NO. (501) 376-9442
Stephen Engstrom, Esq. TELECOPY NO. (501) 375-5914
Bill W. Bristow, Esq. TELECOPY NO. (870) 931-4814

FROM ATTORNEY/SENDER: T. Wesley Holmes 1408-DC-00000005

COMMENTS:

THE WHITE HOUSE

WASHINGTON

September 4, 1998

Via Hand Delivery

Julie Corcoran, Esq.
Office of the Independent Counsel
Suite 490 North
1001 Pennsylvania Ave, N.W.
Washington, D.C. 20004

Dear Julie:

I am enclosing additional documents from the Counsel's Office that are responsive to your Subpoena D1512. These documents bear bates numbers S 020780 – S020799. As you and Mr. Crane know, a number of the individuals who may have responsive documents are on vacation or are travelling with the President. I will attempt to gather and produce any remaining documents responsive to this request early next week. Mr. Crane asked specifically about documents from Ms. Lewis. She is out of the Office, but her staff has indicated she has no responsive documents. I will confirm this with her when she returns.

I trust that your office will treat the enclosed information as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury. If you have any questions, I can be reached at (202) 456-7804.

Sincerely,

Michelle Peterson
Associate Counsel to the President

Enclosures

1512-DC-00000018

[EXHIBIT 16]

Talking Points
January 24, 1998

Q: Given all the events of the last week, don't you believe the President owes the American people an explanation of his relationship and activities with respect to Ms. Lewinsky?

A: The President has given the American people the answer to the most important questions: he did not have a sexual relationship with Ms. Lewinsky and he never asked anyone to do anything but tell the truth. There is an investigation on-going and the President is cooperating with that investigation. However, given the climate and types of investigative techniques being used, it is only when the investigation has concluded and the President has been exonerated, that he can address the specific questions you may have.

Q: There are reports that Ms. Lewinsky has been granted full immunity by Mr. Starr in exchange for testimony that she had oral sex with the President, but that he did not tell her to lie or try to suborn perjury. Does the President deny her testimony?

A: If those reports are true, then he certainly denies that he ever had oral sex with Ms. Lewinsky.

Q: What acts does the President believe constitute a sexual relationship?

A: I can't believe we're on national television discussing this. I am not about to engage in an "act-by-act" discussion of what constitutes a sexual relationship.

Q: Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?

A: Of course it would.

Q: Would touching designed to bring about an orgasm constitute a sexual relationship?

A: Look, I'm not going down this road because soon you'll be asking me whether hugging someone is constitutes sex and the President will be having sex with everyone in America

Q: When do you expect the President to explain or at least describe the nature of his relationship with Ms. Lewinsky?

A: I don't know, but let's remember: the President has answered the important questions about Ms. Lewinsky -- that he did not have a sexual relationship with her and that he did not ask her to lie. And, he will cooperate with the on-going investigation as it moves forward.

1512-DC-0000003

Q: In light of the gifts they reportedly exchanged with one another, and reports of telephone calls and letters, would you at least describe the President's relationship with Ms. Lewinsky as a friendship?

A: I'm sure they had a friendly relationship.

Q: What was the nature of Ms. Lewinsky's relationship with Ms. Currie and how frequently did she see her?

A: We're not going to get in the business of addressing some but not other questions. There is an on-going investigation and given the types of investigative techniques, we simply will not be in a position to address these questions until it is complete.

REDACTED

1512-DC-00000038

[EXHIBIT 17]

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1/25/98 LATIMES A1
1/25/98 L.A. Times A1
1998 WL 2392128

Los Angeles Times
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Sunday, January 25, 1998

National Desk

CLINTON UNDER FIRE Clinton Enlists Kantor, Offers Specific Denial

ELIZABETH SHOGREN; RICHARD A. SERRANO; DAVID WILLMAN
TIMES STAFF WRITERS

WASHINGTON -- President Clinton stepped up his defense against allegations of sexual misconduct, recruiting veteran political warrior and longtime advisor Mickey Kantor to become his personal counsel and signing off Saturday on a set of "talking points" for aides that significantly amplify his denial of a sexual relationship with a White House intern.

The president "certainly denies that he ever had oral sex" with 24-year-old former intern Monica S. Lewinsky, according to the memo to be used by his defenders. Lewinsky herself, in a sworn statement, has denied having a sexual relationship with Clinton. In telephone conversations secretly tape-recorded by a friend, however, Lewinsky reportedly said they had oral sex. The president's previous denials were viewed by some as being worded artfully so that they might exclude oral sex.

Approval of the talking points may be an early sign of the counterattack that some Clinton advisors hope Kantor will help the White House launch after a week of near-paralysis.

Kantor, who began helping the White House late Friday and continued to meet with aides there on Saturday, played a key role in devising the response that saved Clinton's 1992 bid for the presidency when nightclub singer Gennifer Flowers accused the then-Arkansas governor of sexual impropriety. And it is Kantor's political savvy, more than his legal expertise, that will be tested now.

In the tumultuous week since independent counsel Kenneth W. Starr began investigating claims that Lewinsky was involved sexually with Clinton, the White House has seen its position steadily erode. Aides, hobbled by legal concerns and unsure about the facts, have been unable to counterattack.

And, as senior administration officials noted bitterly on Saturday, efforts to persuade congressional or other prominent Democrats to speak out for Clinton have almost uniformly failed.

Indeed, Clinton's own former chief of staff, Leon E. Panetta, publicly suggested it might be best for Vice President Al Gore to take over if the allegations prove true.

What Other Developments Disclose

Against this darkening background, there were these other developments:

* Lewinsky's lawyer, William Ginsburg, said negotiations with Starr's office are at a standstill. Ginsburg demanded "complete immunity" from prosecution before Lewinsky will cooperate with the investigation into possible perjury, obstruction of justice or other criminal wrongdoing by Clinton.

"That's my line in the sand," he said.

* New excerpts of Linda Tripp's tapes of Lewinsky, released by Newsweek magazine, show the two women discussing Lewinsky's plan to lie about her relations with Clinton, as well as pressures she was under to cover it up.

* Television film was unearthed showing Clinton surrounded by voters at an outdoor rally in November 1996, with a broadly smiling Lewinsky standing right in front of him and then leaning forward for a presidential embrace.

* After a debate over tactics, the White House decided not to avoid today's television talk shows but instead to send three politically oriented aides, Rahm Emanuel, Paul Begala and Ann Lewis, before the cameras to defend the president.

The decision to bring Kantor onto the team reflected a realization by Clinton and his inner circle that events, and with them public opinion, were outrunning their efforts to protect themselves.

Not only was almost no prominent figure rising vigorously to the president's defense, but the torrent of leaks about the supposed nature of Clinton's alleged relationship with Lewinsky was so shocking that by Saturday, talk of impeachment and resignation was commonplace. "There's nobody for him," one veteran Democratic operative said, reflecting the pervasive gloom. "Even Nixon had a few people for him at the end."

Tacitly acknowledging the downward slide and the difficulty in arresting it, Rep. Charles B Rangel (D-N.Y.) said: "When the president has not more vigorously challenged those who make these allegations but speaks in terms of legal jargon, it creates a bad situation."

Said a senior administration official: "We are dealing with a rapidly moving legal situation caused by an extremely aggressive independent counsel. To some extent, the press is moving this

story faster than it is possible for us to respond to."

It was not just the speed of press revelations that hampered the White House.

While his lawyers urged caution from the beginning, Clinton's political advisors, at first, argued for prompt disclosure of all the facts--taking it for granted that Clinton, as he had so often in the past, could make his case successfully to the public.

Only gradually have some senior aides come to realize that such a press conference or other public appearance might not be feasible.

"The political people are catching up with the legal people about the facts, and they recognize that the facts may be such that it would be better to wait and see what develops before he goes out" in public, one senior official said later Saturday.

The talking points represented a middle ground.

Members of the White House staff had been working for several days to draft the detailed set of authorized answers administration officials and other defenders could give to questions about the matter

In general, they affirm the president's contention that "there was no improper relationship" with Lewinsky. But they deal specifically with oral sex because some skeptics have suggested Clinton, in effect, had his fingers crossed in his earlier denials because--it was suggested--he does not believe having oral sex constitutes a sexual relationship.

Bringing Kantor aboard, as Clinton did with a face-to-face appeal at the White House, is seen by some aides as an even more important sign that the White House is finally beginning to marshal its resources.

"They trust and like him on a personal level and know that he is savvy. He's been there for the president for most of his political life," a knowledgeable official said.

Moreover, making Kantor a personal lawyer instead of a White House aide helps the Clintons deal with another problem: Legally, members of the White House staff can be compelled to reveal what they have heard from the president, even if the aides are lawyers.

Thus, at least some senior aides have been reluctant to talk candidly with Clinton for fear they might be subpoenaed by Starr. And Clinton's legal team, though protected by lawyer-client privilege, lacks the political experience to advise him on that aspect of the issue.

Kantor, as a private lawyer with years of political experience, can bridge the gap.

Whether Kantor can find a rabbit in the hat again remains to be seen, but by Saturday night the mood inside the White House was more hopeful.

"I've had a lot of experience with these kinds of things, and this is one of the nastiest " an advisor said, but "I think we're going forward now, and forward direction is a lot better."

Talks Stalled, Lawyer for Lewinsky Says

Ginsburg, Lewinsky's lawyer said negotiations with the independent counsel's office are stalled, though he has continued to seek ways to restart the talks.

If his client does not receive "complete immunity," he said, she will exercise her 5th Amendment protection against self-incrimination if called before a federal grand jury Tuesday, as she is scheduled to do.

"The clock is ticking," Ginsburg said. " . . . But I need a promise not to prosecute."

For his part, the independent counsel appeared unwilling to yield on his demand that Lewinsky submit a detailed proffer, summarizing what she is willing to say under oath before immunity is promised.

"There has been no deal," said one source. We're not on the same page."

Ginsburg said he believes Starr's office is hesitant about granting her immunity because of earlier problems with potential prosecution witnesses in the past.

Ginsburg pointed to former Department of Justice official and Clinton confidant Webster L. Hubbell and former Whitewater real estate partner Susan McDougal, both of whom initially agreed to help Starr's office, but in the end did not present damaging testimony against Clinton.

"Starr and his office are afraid that they will be burned thrice," Ginsburg said. "Webb Hubbell and Susan McDougal went south, or sour, on him and did not participate. So he is concerned that he will get burned again."

Attorney Describes Apartment Search

Ginsburg described in detail a search and seizure of Lewinsky's property from her Watergate apartment on Thursday. He said the search, to which Lewinsky voluntarily consented, lasted two hours. Lewinsky and her mother were both present.

"The federal agents knocked on the door and the girls said, 'Good morning,' and they had coffee and cakes laid out," he said. "They [the agents] were very courteous. They went room by room, and they didn't tear anything apart."

Taken were her computer, several dresses and at least one dark-colored pantsuit. Also seized were gifts Lewinsky allegedly had received from the president and other White House staffers, such as a T-shirt, a hatpin and a book of Walt Whitman poetry. s Regarding the dresses, Ginsburg said he assumed that agents were looking for any signs of Clinton's semen. There has been speculation that semen on Lewinsky's clothing could be used to establish a DNA link to Clinton.

Ginsburg said he had no knowledge of any stained dresses.

"I'm not aware of it," he said. "And if such a thing existed, you wouldn't think my client would have had her dress cleaned after she had sex?"

The lawyer also sharply denied reports that he and Lewinsky turned down an offer of immunity from Starr's office shortly after she was confronted with the tape-recordings at a meeting at the Ritz-Carlton hotel in Arlington, Va.

Meanwhile, Ginsburg said Lewinsky continues to be racked by the allegations surrounding her, and that she also feels betrayed by Tripp, the friend who made the tape recordings.

"Monica's agenda is to unruin her life, to bring it into equilibrium and balance again, and to avoid a felony conviction and avoid jail."

Regarding Tripp, Ginsburg said: "Monica is angry. She feels betrayed. She doesn't understand, nor do I. What did Linda Tripp get? What's her motive?"

*

Times staff writers Jack Nelson, Jonathan Peterson, Alan C. Miller, Jane Hall and Richard T. Cooper contributed to this story.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

PHOTO: President Clinton hugs a woman identified as Monica S. Lewinsky during a rally in November 1996.; PHOTOGRAPHER: CNN

---- INDEX REFERENCES ----

KEY WORDS: CLINTON, BILL; LEWINSKY, MONICA S; KANTOR, MICKEY; PRESIDENT (U.S.); GOVERNMENT MISCONDUCT; UNITED STATES -- GOVERNMENT OFFICIALS; UNITED STATES -- GOVERNMENT EMPLOYEES;

[EXHIBIT 18]

LAW OFFICES
WILLIAMS & CONNOLLY
725 TWELFTH STREET, N.W.
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FAX (202) 434-5029

DAVID E. KENDALL
(202) 434-5145

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

November 27, 1998

The Honorable Henry J. Hyde
Chairman, Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

By Hand

Dear Chairman Hyde:

We submit herewith responses by the President to the 81 requests for admission that we received on November 5, 1998.

In an effort to be of assistance to the Committee and to provide as much information as possible, we have treated your requests as questions and responded accordingly.

As you know, the President has answered a great many of these questions previously. Where that is the case, we have simply referenced the answers that have been previously given and, in some instances, supplemented those answers.

I want to emphasize again the point I made in the Preliminary Memorandum we submitted to the Committee more than two months ago: the President did not commit or suborn perjury, tamper with witnesses, obstruct justice or abuse power. As you know, we made two formal submissions to the Committee in September and one in October. We will be submitting a further memorandum on behalf of the President in the near future.

WILLIAMS & CONNOLLY

The Honorable Henry J. Hyde
November 27, 1998
Page 2

I will forward to you a sworn original of the responses before the end of the day.

Sincerely,

David E. Kendall

cc: The Honorable John Conyers, Jr.

RESPONSE OF WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, TO QUESTIONS SUBMITTED BY CONGRESSMAN HENRY HYDE, CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE

INTRODUCTORY STATEMENT

Set forth below are answers to the questions that you have asked me.

I would like to repeat, at the outset, something that I have said before about my approach to these proceedings. I have asked my attorneys to participate actively, but the fact that there is a legal defense to the various allegations cannot obscure the hard truth, as I have said repeatedly, that my conduct was wrong. It was also wrong to mislead people about what happened, and I deeply regret that.

For me, this long ago ceased to be primarily a legal or political issue and became instead a painful personal one, demanding atonement and daily work toward reconciliation and restoration of trust with my family, my friends, my Administration and the American people. I hope these answers will contribute to a speedy and fair resolution of this matter.

1. **Do you admit or deny that you are the chief law enforcement officer of the United States of America?**

Response to Request No. 1:

The President is frequently referred to as the chief law enforcement officer, although nothing in the Constitution specifically designates the President as such. Article II, Section 1 of the United States Constitution states that "[t]he executive Power shall be vested in a President of the United States of America," and the law enforcement function is a component of the executive power.

2. **Do you admit or deny that upon taking your oath of office that you swore you would faithfully execute the office of President of the United States, and would to the best of your ability, preserve, protect and defend the Constitution of the United States?**

Response to Request No. 2:

At my Inaugurations in 1993 and 1997, I took the following oath: "I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

3. **Do you admit or deny that, pursuant to Article II, section 2 of the Constitution, you have a duty to "take care that the laws be faithfully executed?"**

Response to Request No. 3:

Article II, Section 3 (not Section 2), of the Constitution states that the President "shall take Care that the Laws be faithfully executed," and that is a Presidential obligation.

4. **Do you admit or deny that you are a member of the bar and officer of the court of a state of the United States, subject to the rules of professional responsibility and ethics applicable to the bar of that state?**

Response to Request No. 4:

I have an active license to practice law (inactive for continuing legal education purposes) issued by the Supreme Court of Arkansas. The license, No. 73017, was issued in 1973.

5. **Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, in a deposition conducted as part of a judicial proceeding in the case of *Jones v. Clinton* on January 17, 1998?**

Response to Request No. 5:

I took an oath to tell the truth on January 17, 1998, before my deposition in the Jones v. Clinton case. While I do not recall the precise wording of that oath, as I previously stated in my grand jury testimony on August 17, 1998, in taking the oath "I believed then that I had to answer the questions truthfully." App. at 458.[1]

6. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, before a grand jury empanelled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit on August 17, 1998?

Response to Request No. 6:

As the August 17, 1998, videotape reflects, I was asked "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?," and I answered, "I do."

7. Do you admit or deny that on or about October 7, 1997, you received a letter composed by Monica Lewinsky in which she expressed dissatisfaction with her search for a job in New York?

Response to Request No. 7:

At some point I learned of Ms. Lewinsky's decision to seek suitable employment in New York. I do not recall receiving a letter in which she expressed dissatisfaction about her New York job search. I understand Ms. Lewinsky has stated that she sent a note indicating her decision to seek employment in New York, but I do not believe she has said the note expressed dissatisfaction about her search for a job there. App. at 822-23 (grand jury testimony of Ms. Lewinsky).

---

[1] Citations to "App." refer to the Appendices to the Office of Independent Counsel Referral to the United States House of Representatives, as published by the House Judiciary Committee. Citations to "Supp." refer to the Supplemental Materials to the Office of Independent Counsel Referral, as published by the House Judiciary Committee. Citations to "Dep." refer to my January 17, 1998, deposition testimony in the civil case, Jones v. Clinton, No. LR-C-94-290 (E.D. Ark.).

8. Do you admit or deny that you telephoned Monica Lewinsky early in the morning on October 10, 1997, and offered to assist her in finding a job in New York?

Response to Request No. 8:

I understand that Ms. Lewinsky testified that I called her on the 9th of October, 1997. App. at 823 (grand jury testimony of Ms. Lewinsky). I do not recall that particular telephone call.

9. Do you admit or deny that on or about October 11, 1997, you met with Monica Lewinsky in or about the Oval Office dining room?

10. Do you admit or deny that on or about October 11, 1997, Monica Lewinsky furnished to you, in or about the Oval Office dining room, a list of jobs in New York in which she was interested?

11. Do you admit or deny that on or about October 11, 1997, you suggested to Monica Lewinsky that Vernon Jordan may be able to assist her in her job search?

12. Do you admit or deny that on or about October 11, 1997, after meeting with Monica Lewinsky and discussing her search for a job in New York, you telephoned Vernon Jordan?

Response to Request Nos. 9, 10, 11 and 12:

At some point, Ms. Lewinsky either discussed with me or gave me a list of the kinds of jobs she was interested in, although I do not know whether it was on Saturday, October 11, 1997. Records included in the OIC Referral indicate that Ms. Lewinsky visited the White House on October 11, 1997, App. at 2594, and I may have seen her on that day.

I do not believe I suggested to Ms. Lewinsky that Mr. Jordan might be able to assist her in her job search, and I understand that Ms. Lewinsky has stated that she asked me if Mr. Jordan could assist her in finding a job in New York. App. at 1079 (grand jury testimony of Ms. Lewinsky); App. at 1393 (7/27/98 FBI Form 302 Interview of Ms. Lewinsky); App. at 1461-62 (7/31/98 FBI Form 302 Interview of Ms. Lewinsky).

I speak to Mr. Jordan often, and I understand that records included in the OIC Referral indicate that he telephoned me shortly after Ms. Lewinsky left the White House complex. Supp. at 1836, 1839. I understand that Mr. Jordan testified

that he and I did not discuss Ms. Lewinsky during that call. Supp. at 1793-94 (grand jury testimony of Vernon Jordan).

13. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, a plan in which she would pretend to bring you papers with a work-related purpose, when in fact such papers had no work-related purpose, in order to conceal your relationship?

14. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that Betty Currie should be the one to clear Ms. Lewinsky in to see you so that Ms. Lewinsky could say that she was visiting with Ms. Currie instead of with you?

15. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that if either of you were questioned about the existence of your relationship you would deny its existence?

19. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

Response to Request Nos. 13, 14, 15, and 19:

I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. at 569. That continues to be my recollection today -- that is, any such conversation was not in connection with her status as a witness in the Jones v. Clinton case.

16. Do you admit or deny that on or about December 6, 1997, you learned that Monica Lewinsky's name was on a witness list in the case of *Jones v. Clinton*?

Response to Request No. 16:

As I stated in my August 17th grand jury testimony, I believe that I found out that Ms. Lewinsky's name was on a witness list in the Jones v. Clinton case late in the afternoon on the 6th of December, 1997. App. at 535.

17. Do you admit or deny that on or about December 17, 1997, you told Monica Lewinsky that her name was on the witness list in the case of *Jones v. Clinton*?

18. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that the submission of an affidavit in the case of *Jones v. Clinton* might suffice to prevent her from having to testify personally in that case?

Response to Requests Nos. 17 and 18:

As I previously testified, I recall telephoning Ms. Lewinsky to tell her Ms. Currie's brother had died, and that call was in the middle of December. App. at 567. I do not recall other particulars of such a call, including whether we discussed the fact that her name was on the Jones v. Clinton witness list. As I stated in my August 17th grand jury testimony in response to essentially the same questions, it is "quite possible that that happened . . . . I don't have any memory of it, but I certainly wouldn't dispute that I might have said that [she was on the witness list]." App. at 567.

I recall that Ms. Lewinsky asked me at some time in December whether she might be able to get out of testifying in the Jones v. Clinton case because she knew nothing about Ms. Jones or the case. I told her I believed other witnesses had executed affidavits, and there was a chance they would not have to testify. As I stated in my August 17th grand jury testimony, "I felt strongly that . . . [Ms. Lewinsky] could execute an affidavit that would be factually truthful, that might get her out of having to testify." App. at 571. I never asked or encouraged Ms. Lewinsky to lie in her affidavit, as Ms. Lewinsky herself has confirmed. See App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); see also App. at 1161 (grand jury testimony of Ms. Lewinsky).

19. For the Response to Request No. 19, see Response to Request No. 13 et al., supra.

20. Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of *Jones v. Clinton* on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?

Response to Request No. 20:

It is evident from my testimony on pages 69 to 70 of the deposition that I did know on January 17, 1998, that Ms. Lewinsky had been subpoenaed in the Jones v. Clinton case. Ms. Jones' lawyer's question, "Did you talk to Mr. Lindsey about what action, if any, should be taken as a result of her being served with a subpoena?", and my response, "No," id. at 70, reflected my understanding that Ms. Lewinsky had been subpoenaed. That testimony was not false and misleading.

21. Do you admit or deny that you gave false and misleading testimony under oath when you stated before the grand jury on August 17, 1998, that you did know prior to January 17, 1998, that Monica Lewinsky had been subpoenaed to testify in the case of *Jones v. Clinton*?

Response to Request No. 21:

As my testimony on January 17 reflected, and as I testified on August 17, 1998, I knew prior to January 17, 1998, that Ms. Lewinsky had been subpoenaed to testify in Jones v. Clinton. App. at 487. That testimony was not false and misleading.

22. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding her moving to New York?

Response to Request No. 22:

When I met with Ms. Lewinsky on December 28, 1997, I knew she was planning to move to New York, and we discussed her move.

23. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House in which you suggested to her that she move to New York soon because by moving to New York, the lawyers representing Paula Jones in the case of *Jones v. Clinton* may not contact her?

Response to Request No. 23:

Ms. Lewinsky had decided to move to New York well before the end of December 1997. By December 28, Ms. Lewinsky had been subpoenaed. I did not suggest that she could avoid testifying in the Jones v. Clinton case by moving to New York.

24. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of *Jones v. Clinton*?

25. Do you admit or deny that on or about December 28, 1997, you expressed concern to Monica Lewinsky about a hatpin you had given to her as a gift which had been subpoenaed in the case of *Jones v. Clinton*?

Response to Request Nos. 24 and 25:

As I told the grand jury, "Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me," App. at 495, but I do not know whether that conversation occurred on December 28, 1997, or earlier. Ibid. Whenever this conversation occurred, I testified, I told her "that if they asked her for gifts, she'd have to give them whatever she had . . . ." App. at 495. I simply was not concerned about the fact that I had given her gifts. See App. at 495-98. Indeed, I gave her additional gifts on December 28, 1997. I also told the grand jury that I do not recall Ms. Lewinsky telling me that the subpoena specifically called for a hat pin that I had given her. App. at 496.

26. Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?

27. Do you admit or deny that on or about December 28, 1998, you requested, instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?

Response to Request Nos. 26 and 27:

I do not recall any conversation with Ms. Currie on or about December 28, 1997, about gifts I had previously given to Ms. Lewinsky. I never told Ms.

Currie to take possession of gifts I had given Ms. Lewinsky; I understand Ms. Currie has stated that Ms. Lewinsky called Ms. Currie to ask her to hold a box. See Supp. at 531.

28. Do you admit or deny that you had a telephone conversation on January 6, 1998, with Vernon Jordan during which you discussed Monica Lewinsky's affidavit, yet to be filed, in the case of *Jones v. Clinton*?

Response to Request No. 28:

White House records included in the OIC Referral reflect that I spoke to Mr. Jordan on January 6, 1998. Supp. at 1886. I do not recall whether we discussed Ms. Lewinsky's affidavit during a telephone call on that date.

29. Do you admit or deny that you had knowledge of the fact that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton* on January 7, 1998?

30. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton*?

Response to Request Nos. 29 and 30:

As I testified to the grand jury, "I believe that [Mr. Jordan] did notify us" when she signed her affidavit. App. at 525. While I do not recall the timing, as I told the grand jury, I have no reason to doubt Mr. Jordan's statement that he notified me about the affidavit around January 7, 1998. Ibid.

31. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that he was assisting Monica Lewinsky in finding a job in New York?

Response to Request No. 31:

I told the grand jury that I was aware that Mr. Jordan was assisting Ms. Lewinsky in her job search in connection with her move to New York. App. at 526. I have no recollection as to whether Mr. Jordan discussed it with me on or about January 7, 1998.

32. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, prior to your deposition in that case?

33. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, prior to your deposition in that case?

Response to Request Nos. 32 and 33:

I do not believe I saw this affidavit before my deposition, although I cannot be absolutely sure. The record indicates that my counsel had seen the affidavit at some time prior to the deposition. See Dep. at 54.

34. Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton* were not true?

40. Do you admit or deny that during your deposition in the case of *Jones v. Clinton* on January 17, 1998, you affirmed that the facts or assertions stated in the affidavit executed by Monica Lewinsky on January 7, 1998, were true?

Response to Request Nos. 34 and 40:

I was asked at my deposition in January about two paragraphs of Ms. Lewinsky's affidavit. With respect to Paragraph 6, I explained the extent to which I was able to attest to its accuracy. Dep. at 202-03.

With respect to Paragraph 8, I stated in my deposition that it was true. Dep. at 204. In my August 17th grand jury testimony, I sought to explain the basis for that deposition answer: "I believe at the time that she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate." App. at 473.

35. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

36. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

Response to Request Nos. 35 and 36:

I know that Mr. Bennett saw Ms. Lewinsky's affidavit during the deposition because he read portions of it aloud at the deposition. See Dep. at 202. I do not recall whether I saw a copy of Ms. Lewinsky's affidavit during the deposition.

37. Do you admit or deny that on or about January 9, 1998, you received a message from Vernon Jordan indicating that Monica Lewinsky had received a job offer in New York?

Response to Request No. 37:

At some time, I learned that Ms. Lewinsky had received a job offer in New York. However, I do not recall whether I first learned it in a message from Mr. Jordan or whether I learned it on that date.

38. Do you admit or deny that between January 9, 1998, and January 15, 1998, you had a conversation with Erskine Bowles in the Oval Office in which you stated that Monica Lewinsky received a job offer and had listed John Hilley as a reference?

39. Do you admit or deny that you asked Erskine Bowles if he would ask John Hilley to give Ms. Lewinsky a positive job recommendation?

Response to Request Nos. 38 and 39:

As I testified to the grand jury, I recall at some point talking to Mr. Bowles "about whether Monica Lewinsky could get a recommendation that was not negative from the Legislative Affairs Office," or that "was at least neutral," although I am not certain of the date of the conversation. App. at 562-64. To suggest that I told Mr. Bowles that Ms. Lewinsky had received a job offer and had listed John Hilley as a reference is, as I testified, a "little bit" inconsistent with my memory. App. at 564. It is possible, as I also indicated, that she had identified Mr. Hilley as her supervisor on her resume and in that respect had already listed him as a reference. Ibid.

40. For the Response to Request No. 40, see Response to Request No. 34, et al., supra.

41. As to each, do you admit or deny that you gave the following gifts to Monica Lewinsky at any time in the past?

a. A lithograph
b. A hatpin
c. A large "Black Dog" canvas bag
d. A large "Rockettes" blanket
e. A pin of the New York skyline
f. A box of "cherry chocolates"
g. A pair of novelty sunglasses
h. A stuffed animal from the "Black Dog"
i. A marble bear's head
j. A London pin
k. A shamrock pin
l. An Annie Lennox compact disc
m. Davidoff cigars

Response to Request No. 41:

In my deposition in the Jones case, I testified that I "certainly . . . could have" given Ms. Lewinsky a hat pin and that I gave her "something" from the Black Dog. Dep. at 75-76. In my grand jury testimony, I indicated that in late December 1997, I gave Ms. Lewinsky a Canadian marble bear's head carving, a Rockettes blanket, some kind of pin, and a bag (perhaps from the Black Dog) to hold these objects. App. at 484-487. I also stated that I might have given her such gifts as a box of candy and sunglasses, although I did not recall doing so, and I specifically testified that I had given Ms. Lewinsky gifts on other occasions. App. at 487. I do not remember giving her the other gifts listed in Question 41, although I might have. As I have previously testified, I receive a very large number of gifts from many different people, sometimes several at a time. I also give a very large number of gifts. I gave Ms. Lewinsky gifts, some of which I remember and some of which I do not.

42. Do you admit or deny that when asked on January 17, 1998, in your deposition in the case of *Jones v. Clinton* if you had ever given gifts to Monica Lewinsky, you stated that you did not recall, even though you actually had knowledge of giving her gifts in addition to gifts from the "Black Dog"?

Response to Request No. 42:

In my grand jury testimony, I was asked about this same statement. I explained that my full response was "I don't recall. Do you know what they were?" By that answer, I did not mean to suggest that I did not recall giving gifts: rather, I meant that I did not recall what the gifts were, and I asked for reminders. See App. at 502-03.

43. Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of *Jones v. Clinton* when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

Response to Request No. 43:

My testimony was not false and misleading. As I have testified previously, I give and receive numerous gifts. Before my January 17, 1998, deposition, I had not focused on the precise number of gifts Ms. Lewinsky had given me. App. at 495-98. My deposition testimony made clear that Ms. Lewinsky had given me gifts; at the deposition, I recalled "a book or two" and a tie. Dep. at 77. At the time, those were the gifts I recalled. In response to OIC inquiries, after I had had a chance to search my memory and refresh my recollection, I was able to be more responsive. However, as my counsel have informed the OIC, in light of the very large number of gifts I receive, there might still be gifts from Ms. Lewinsky that I have not identified.

44. Do you admit or deny that on January 17, 1998, at or about 5:38 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his home?

Response to Request No. 44:

I speak to Mr. Jordan frequently, so I cannot remember specific times and dates. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 17, 1998, at or about 5:38 p.m. App. at 2876.

45. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home?

46. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his office?

47. Do you admit or deny that on January 17, 1998, at or about 7:13 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home and asked her to meet with you the next day, Sunday, January 18, 1998?

Response to Request Nos. 45, 46 and 47:

According to White House records included in the OIC Referral, I placed a telephone call to Ms. Currie at her residence at 7:02 p.m. and spoke to her at or about 7:13 p.m. App. at 2877. I recall that when I spoke to her that evening, I asked if she could meet with me the following day. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's office on January 17, 1998, at or about 7:02 p.m. Ibid.

48. Do you admit or deny that on January 18, 1998, at or about 6:11 a.m., you learned of the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp?

Response to Request No. 48:

I did not know on January 18, 1998 that tapes existed of conversations between Ms. Lewinsky and Ms. Tripp recorded by Ms. Tripp. At some point on Sunday, January 18, 1998, I knew about the Drudge Report. I understand that, while the Report talked about tapes of phone conversations, it did not identify Ms. Lewinsky by name and did not mention Ms. Tripp at all. The Report did not state who the parties to the conversations were or who taped the conversations.

49. Do you admit or deny that on January 18, 1998, at or about 12:50 p.m., you telephoned Vernon Jordan at his home?

Response to Request No. 49:

According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 18, 1998, at or about 12:50 p.m. App. at 2878.

50. Do you admit or deny that on January 18, 1998, at or about 1:11 p.m., you telephoned Betty Currie at her home?

Response to Request No. 50:

According to White House records included in the OIC Referral, I telephoned Ms. Currie's residence on January 18, 1998, at or about 1:11 p.m. App. at 2878.

51. Do you admit or deny that on January 18, 1998, at or about 2:55 p.m., you received a telephone call from Vernon Jordan?

Response to Request No. 51:

According to White House records included in the OIC Referral, Mr. Jordan telephoned me from his residence on January 18, 1998, at or about 2:55 p.m. App. at 2879.

52. Do you admit or deny that on January 18, 1998, at or about 5:00 p.m., you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."
b. "You could see and hear everything."
c. "Monica came on to me, and I never touched her right?"
d. "She wanted to have sex with me and I couldn't do that."

Response to Request No. 52:

When I met with Ms. Currie, I believe that I asked her certain questions, in an effort to get as much information as quickly as I could, and made certain statements, although I do not remember exactly what I said. See App. at 508.

Some time later, I learned that the Office of Independent Counsel was involved and that Ms. Currie was going to have to testify before the grand jury. After learning this, I stated in my grand jury testimony, I told Ms. Currie, "Just relax, go in there and tell the truth." App. at 591.

53. Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."
b. "You could see and hear everything."
c. "Monica came on to me, and I never touched her right?"
d. "She wanted to have sex with me and I couldn't do that."

Response to Request No. 53:

I previously told the grand jury that, "I don't know that I" had another conversation with Ms. Currie within several days of January 18, 1998, in which I made statements similar to those quoted above. "I remember having this [conversation] one time." App. at 592. I further explained, "I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think." App. at 593.

I understand that Ms. Currie has said a second conversation occurred the next day that I was in the White House (when she was), Supp. at 535-36, which would have been Tuesday, January 20, before I knew about the grand jury investigation.

54. Do you admit or deny that on January 18, 1998, at or about 11:02 p.m., you telephoned Betty Currie at her home?

Response to Request No. 54:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 18, 1998, at or about 11:02 p.m. App. at 2881.

55. Do you admit or deny that on Monday, January 19, 1998, at or about 8:50 a.m., you telephoned Betty Currie at her home?

Response to Request No. 55:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 8:50 a.m. App. at 3147.

56. Do you admit or deny that on Monday, January 19, 1998, at or about 8:56 a.m., you telephoned Vernon Jordan at his home?

Response to Request No. 56:

According to White House records included in the OIC Referral, I called Mr. Jordan's residence on January 19, 1998, at or about 8:56 a.m. App. at 2864.

57. Do you admit or deny that on Monday, January 19, 1998, at or about 10:58 a.m., you telephoned Vernon Jordan at his office?

Response to Request No. 57:

According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 10:58 a.m. App. at 2883.

58. Do you admit or deny that on Monday, January 19, 1998, at or about 1:45 p.m., you telephoned Betty Currie at her home?

Response to Request No. 58:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 1:45 p.m. App. at 2883.

59. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., you met with individuals including Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, and Rahm Emanuel?

60. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., at any meeting with Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel, and others, you

discussed the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp, or any other matter related to Monica Lewinsky?

Response to Request Nos. 59 and 60:

I do not believe such a meeting occurred. White House records included in the OIC Referral indicate that Mr. Jordan entered the White House complex that day at 2:44 p.m. Supp. at 1995. According to Mr. Jordan's testimony, he and I met alone in the Oval Office for about 15 minutes. Supp. at 1763 (grand jury testimony of Vernon Jordan).

I understand that Mr. Jordan testified that we discussed Ms. Lewinsky at that meeting and also the Drudge Report, in addition to other matters. Supp. at 1763. Please also see my Response to Request No. 48, supra.

61. Do you admit or deny that on Monday, January 19, 1998, at or about 5:56 p.m., you telephoned Vernon Jordan at his office?

Response to Request No. 61:

According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 5:56 p.m. App. at 2883.

62. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you stated that you rebuffed alleged advances from Monica Lewinsky and in which you made a statement similar to the following?: "Monica Lewinsky came at me and made a sexual demand on me."

63. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you made a statement similar to the following in response to a question about your conduct with Monica Lewinsky?: "I haven't done anything wrong."

64. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Erskine Bowles, Sylvia Matthews and John Podesta, in which you made a statement similar to the

following?: "I want you to know I did not have sexual relationships with this woman Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll understand."

65. Do you admit or deny than on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you had never had an affair with Monica Lewinsky?

66. Do you admit or deny that on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you were not alone with Monica Lewinsky in the Oval Office, and that Betty Currie was either in your presence or outside your office with the door open while you were visiting with Monica Lewinsky?

67. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you did not have an affair with Monica Lewinsky?

68. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you had not asked anyone to change their story, suborn perjury or obstruct justice if called to testify or otherwise respond to a request for information from the Office of Independent Counsel or in any other legal proceeding?

Responses to Requests Nos. 62 – 68:

As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

69. Do you admit or deny that on or about January 21, 1998, you and Richard "Dick" Morris discussed the possibility of commissioning a poll to determine public opinion following the *Washington Post* story regarding the Monica Lewinsky matter?

70. Do you admit or deny that you had a later conversation with Richard "Dick" Morris in which he stated that the polling results regarding the Monica Lewinsky matter suggested that the American people would forgive you for adultery but not for perjury or obstruction of justice?

71. Do you admit or deny that you responded to Richard "Dick" Morris's explanation of these polling results by making a statement similar to the following: "[w]ell, we just have to win, then"?

Response to Request Nos. 69, 70 and 71:

At some point after the OIC investigation became public, Dick Morris volunteered to conduct a poll on the charges reported in the press. He later called back. What I recall is that he said the public was most concerned about obstruction of justice or subornation of perjury. I do not recall saying, "Well, we just have to win then."

72. Do you admit or deny the past or present existence of or the past or present direct or indirect employment of individuals, other than counsel representing you, whose duties include making contact with or gathering information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 72:

I cannot respond to this inquiry because of the vagueness of its terms (e.g., "indirect," "potential," "could be involved"). To the extent it may be interpreted to apply to individuals assisting counsel, please see my responses to Request Nos. 73-75, infra. To the extent the inquiry addresses specific individuals, as in Request Nos. 73-75, infra, I have responded and stand ready to respond to any other specific inquiries.

73. Do you admit or deny having knowledge that Terry Lenzner was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 73:

My counsel stated publicly on February 24, 1998, that Mr. Terry Lenzner and his firm have been retained since April 1994 by two private law firms that represent me. It is commonplace for legal counsel to retain such firms to perform legal and appropriate tasks to assist in the defense of clients. See also Response to No. 72.

74. Do you admit or deny having knowledge that Jack Palladino was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 74:

My understanding is that during the 1992 Presidential Campaign, Mr. Jack Palladino was retained to assist legal counsel for me and the Campaign on a variety of matters arising during the Campaign. See also Response to No. 72.

75. Do you admit or deny having knowledge that Betsy Wright was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 75:

Ms. Betsey Wright was my long-time chief of staff when I was Governor of Arkansas, and she remains a good friend and trusted advisor. Because of her great knowledge of Arkansas, from time to time my legal counsel and I have consulted with her on a wide range of matters. See also Response to No. 72.

76. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in an interview with Roll Call, when you stated "Well, let me say, the relationship was not improper, and I think that's important enough to say. But because the investigation is going on and because I don't know what is out – what's going to be asked of me, I think I need to cooperate, answer the questions, but I think it's important for me to make it clear what is not. And then, at the appropriate time, I'll try to answer what is. But let me answer – it is not an improper relationship and I know what the word means."?

Response to Request No. 76:

The tape of this interview reflects that in fact I said: "Well, let me say the relationship's not improper and I think that's important enough to say . . ." With that revision, the quoted words accurately reflect my remarks. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, I misled people about this relationship, for which I have apologized.

77. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in the Oval Office during a photo opportunity, when you stated "Now, there are a lot of other questions that are, I think, very legitimate. You have a right to ask them; you and the American people have a right to get answers. We are working very hard to comply and get all the requests for information up here, and we will give you as many answers as we can, as soon as we can, at the appropriate time, consistent with our obligation to also cooperate with the investigations. And that's not a dodge, that's really [what] I've – I've talked with [our] people. I want to do that. I'd like for you to have more rather than less, sooner rather than later. So we'll work through it as quickly as we can and get all those questions out there to you."?

Response to Request No. 77:

I made this statement (as corrected), according to a transcript of a January 22, 1998 photo opportunity in the Oval Office. This statement was not false and misleading. It accurately represented my thinking.

78. Do you admit or deny that you discussed with Harry Thomasson, prior to making public statements in response to questions asked by the press in January, 1998, relating to your relationship with Monica Lewinsky, what such statements should be or how they should be communicated?

Response to Request No. 78:

Mr. Thomason was a guest at the White House in January 1998, and I recall his encouraging me to state my denial forcefully.

79. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman, Ms. Lewinsky?"

Response to Request No. 79:

I made this statement on January 26, 1998, although not in response to any question. In referring to "sexual relations", I was referring to sexual

intercourse. See also App. at 475. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, answers like this misled people about this relationship, for which I have apologized.

80. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "...I never told anybody to lie, not a single time. Never?"

Response to Request No. 80:

This statement was truthful: I did not tell Ms. Lewinsky to lie, and I did not tell anybody to lie about my relationship with Ms. Lewinsky. I understand that Ms. Lewinsky also has stated that I never asked or encouraged her to lie. See App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); see also App. at 1161 (grand jury testimony of Ms. Lewinsky).

81. Do you admit or deny that you directed or instructed Bruce Lindsey, Sidney Blumenthal, Nancy Hernreich and Lanny Breuer to invoke executive privilege before a grand jury empanelled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit in 1998?

Response to Request No. 81:

On the recommendation of Charles Ruff, Counsel to the President, I authorized Mr. Ruff to assert the presidential communications privilege (which is one aspect of executive privilege) with respect to questions that might be asked of witnesses called to testify before the grand jury to the extent that those questions sought disclosure of matters protected by that privilege. Thereafter, I understand that the presidential communications privilege was asserted as to certain questions asked of Sidney Blumenthal and Nancy Hernreich. Further, I understand that, as to Mr. Blumenthal and Ms. Hernreich, all claims of official privilege were subsequently withdrawn and they testified fully on several occasions before the grand jury.

Mr. Lindsey and Mr. Breuer testified at length before the grand jury about a wide range of matters, but declined, on the advice of the White House Counsel, to answer certain questions that sought disclosure of discussions that they had with me and my senior advisors concerning, among other things, their legal advice as to the assertion of executive privilege. White House Counsel advised Mr. Lindsey and Mr. Breuer that these communications were protected by the attorney-

client privilege, as well as executive privilege. Mr. Lindsey also asserted my personal attorney-client privilege as to certain questions relating to his role as an intermediary between me and my personal counsel in the Jones v. Clinton case, a privilege that was upheld by the federal appeals court in the District of Columbia.

William J. Clinton

WILLIAM JEFFERSON CLINTON

Subscribed and sworn to before me
this 27th day of November, 1998.

Moira K. Ricketts

Notary Public

MOIRA K. RICKETTS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 28, 2003

[EXHIBIT 19]

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1 full responsibility for it. It wasn't her fault, it was
2 mine. I do not believe that I violated the definition of
3 sexual relations I was given by directly touching those parts
4 of her body with the intent to arouse or gratify. And that's
5 all I have to say.
6 I think, for the rest, you know, you know what the
7 evidence is and it doesn't affect that statement.
8 Q Is it possible or impossible that your semen is on
9 a dress belonging to Ms. Lewinsky?
10 A I have nothing to add to my statement about it,
11 sir. You, you know whether -- you know what the facts are.
12 There's no point in a hypothetical.
13 Q Don't you know what the facts are also, Mr.
14 President?
15 A I have nothing to add to my statement, sir.
16 Q Getting back to the conversation you had with Mrs.
17 Currie on January 18th, you told her -- if she testified that
18 you told her, Monica came on to me and I never touched her,
19 you did, in fact, of course, touch Ms. Lewinsky, isn't that
20 right, in a physically intimate way?
21 A Now, I've testified about that. And that's one of
22 those questions that I believe is answered by the statement
23 that I made.
24 Q What was your purpose in making these statements to
25 Mrs. Currie, if they weren't for the purpose to try to

[EXHIBIT 20]

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1 Do you recall meeting with him around January 23rd,
2 1998, a Friday a.m. in your study, two days after The
3 Washington Post story, and extremely explicitly telling him
4 that you didn't have, engage in any kind of sex, in any way,
5 shape or form, with Monica Lewinsky, including oral sex?
6 A I meet with John Podesta almost every day. I meet
7 with a number of people. The only thing I -- what happened
8 in the couple of days after what you did was revealed, is a
9 blizzard to me. The only thing I recall is that I met with
10 certain people, and a few of them I said I didn't have sex
11 with Monica Lewinsky, or I didn't have an affair with her or
12 something like that. I had a very careful thing I said, and
13 I tried not to say anything else.
14 And it might be that John Podesta was one of them.
15 But I do not remember this specific meeting about which you
16 asked, or the specific comments to which you refer. And --
17 Q You don't remember --
18 A -- seven months ago, I'd have no way to remember,
19 no.
20 Q You don't remember denying any kind of sex in any
21 way, shape or form, and including oral sex, correct?
22 A I remember that I issued a number of denials to
23 people that I thought needed to hear them, but I tried to be
24 careful and to be accurate, and I do not remember what I said
25 to John Podesta.

Clinton Grand Jury (8/17/98)

1 sexual relationship with Monica Lewinsky to those
2 individuals?
3 A I recall telling a number of those people that I
4 didn't have, either I didn't have an affair with Monica
5 Lewinsky or didn't have sex with her. And I believe, sir,
6 that -- you'll have to ask them what they thought. But I was
7 using those terms in the normal way people use them. You'll
8 have to ask them what they thought I was saying.
9 Q If they testified that you denied sexual relations
10 or relationship with Monica Lewinsky, or if they told us that
11 you denied that, do you have any reason to doubt them, in the
12 days after the story broke; do you have any reason to doubt
13 them?
14 A No. The -- let me say this. It's no secret to
15 anybody that I hoped that this relationship would never
16 become public. It's a matter of fact that it had been many,
17 many months since there had been anything improper about it,
18 in terms of improper contact. I --
19 Q Did you deny it to them or not, Mr. President?
20 A Let me finish. So, what -- I did not want to
21 mislead my friends, but I wanted to find language where I
22 could say that. I also, frankly, did not want to turn any of
23 them into witnesses, because I -- and, sure enough, they all
24 became witnesses.
25 Q Well, you knew they might be --

1 A And so --

2 Q -- witnesses, didn't you?

3 A And so I said to them things that were true about

4 this relationship. That I used -- in the language I used, I

5 said, there's nothing going on between us. That was true. I

6 said, I have not had sex with her as I defined it. That was

7 true. And did I hope that I would never have to be here on

8 this day giving this testimony? Of course.

9 But I also didn't want to do anything to complicate

10 this matter further. So, I said things that were true. They

11 may have been misleading, and if they were I have to take

12 responsibility for it, and I'm sorry.

13 Q It may have been misleading, sir, and you knew

14 though, after January 21st when the Post article broke and

15 said that Judge Starr was looking into this, you knew that

16 they might be witnesses. You knew that they might be called

17 into a grand jury, didn't you?

18 A That's right. I think I was quite careful what I

19 said after that. I may have said something to all these

20 people to that effect, but I'll also -- whenever anybody

21 asked me any details, I said, look, I don't want you to be a

22 witness or I turn you into a witness or give you information

23 that could get you in trouble. I just wouldn't talk. I, by

24 and large, didn't talk to people about this.

25 Q If all of these people -- let's leave out Mrs.

[EXHIBIT 21]

William Jefferson Clinton

1 opposed to it, based on anything I knew, anyway.
2 Q. Well, have you ever given any gifts to
3 Monica Lewinsky?
4 A. I don't recall. Do you know what they
5 were?
6 Q. A hat pin?
7 A. I don't, I don't remember. But I
8 certainly, I could have.
9 Q. A book about Walt Whitman?
10 A. I give -- let me just say, I give people a
11 lot of gifts, and when people are around I give a lot
12 of things I have at the White House away, so I could
13 have given her a gift, but I don't remember a
14 specific gift.
15 Q. Do you remember giving her a gold broach?
16 A. No.
17 Q. Do you remember giving her an item that had
18 been purchased from The Black Dog store at Martha's
19 Vineyard?
20 A. I do remember that, because when I went on
21 vacation, Betty said that, asked me if I was going to
22 bring some stuff back from The Black Dog, and she
23 said Monica loved, liked that stuff and would like to
24 have a a piece of it, and I did a lot of Christmas
25 shopping from The Black Dog, and I bought a lot of

849-DC-00000426

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Clinton Deposition (1/17/98)

1 things for a lot of people, and I gave Betty a couple
2 of the pieces, and she gave I think something to
3 Monica and something to some of the other girls who
4 worked in the office. I remember that because Betty
5 mentioned it to me.
6 Q. What in particular was given to Monica?
7 A. I don't remember. I got a whole bag full
8 of things that I bought at The Black Dog. I went
9 there, they gave me some things, and I went and
10 purchased a lot at their store, and when I came back
11 I gave a, a big block of it to Betty, and I don't
12 know what she did with it all or who got what.
13 Q. But while you were in the store you did
14 pick out something for Monica, correct?
15 A. While I was in the store -- first of all,
16 The Black Dog sent me a selection of things. Then I
17 went to the store and I bought some other things,
18 t-shirts, sweatshirts, shirts. Then when I got back
19 home, I took out a thing or two that I wanted to
20 keep, and I took out a thing or two I wanted to give
21 to some other people, and I gave the rest of it to
22 Betty and she distributed it. That's what I remember
23 doing.
24 Q. Has Monica Lewinsky ever given you any
25 gifts?

1 A. Once or twice. I think she's given me a
2 book or two.
3 Q. Did she give you a silver cigar box?
4 A. No.
5 Q. Did she give you a tie?
6 A. Yes, she has given me a tie before. I
7 believe that's right. Now, as I said, let me remind
8 you, normally when I.get these ties, I get ties, you
9 know, together, and then they're given to me later,
10 but I believe that she has given me a tie.
11 Q. Well, Mr. President, it's my understanding
12 that Monica Lewinsky has made statements to people,
13 and I'd like for you --
14 MR. BRISTOW: Object, object to the form of
15 the question. Counsel shouldn't testify, and when
16 you start out like that, it's obviously counsel
17 testifying. I don't think that's proper.
18 MR. BENNETT: Let me add to that, Your
19 Honor wouldn't permit me to make reference to this
20 affidavit, and I respect your ruling.
21 JUDGE WRIGHT: Let me, let me just make my
22 ruling. It is not appropriate for Counsel to make
23 comments about, about these things. I don't know
24 whether he was trying to do this to establish a good
25 faith basis for the next question or not, but it is

849-DC-00000428

[EXHIBIT 22]

William Jefferson Clinton

1 ever sent any letters from the Pentagon to Betty
2 Currie in the White House?
3 A. I don't know. You'd have to ask Betty
4 about that. It wouldn't surprise me but you'd have
5 to ask her.
6 Q. Did Betty Currie ever bring to you a
7 personal message from Monica Lewinsky that had been
8 delivered to Betty?
9 A. On a couple of occasions, Christmas card,
10 birthday card, like that.
11 Q. Do you remember anything that was written
12 in any of those?
13 A. No. Sometimes, you know, just either small
14 talk or happy birthday or sometimes, you know, a
15 suggestion about how to get more young people
16 involved in some project I was working on. Nothing
17 remarkable. I don't remember anything particular
18 about it.
19 Q. Are those kept somewhere?
20 A. I don't think so. 849-DC-00000413
21 Q. What did you do with them after you were
22 done with them?
23 A. I think I discarded them. I normally do.
24 People send me personal notes and stuff like that. I
25 just throw them away.

1 up to us?

2 MR. BENNETT: I've arranged for lunch, Your

3 Honor. We can have it -- I don't know if it's there

4 right now. We were thinking twelve-thirty, but

5 whatever --

6 JUDGE WRIGHT: That's great. That's

7 perfect.

8 MR. BENNETT: And we have a room set aside

9 for you and your law clerk where you can eat

10 privately, and we have a separate room for their side

11 of the table, and our side.

12 JUDGE WRIGHT: All right, let's take a ten

13 minute break.

849-DC-00000403

14 (Short recess.)

15 JUDGE WRIGHT: All right, Mr. Fisher, you

16 may resume.

17 MR. FISHER: Thank you, Your Honor.

18 Q. Mr. President, before the break, we were

19 talking about Monica Lewinsky. At any time were you

20 and Monica Lewinsky together alone in the Oval

21 Office?

22 A. I don't recall, but as I said, when she

23 worked at the legislative affairs office, they always

24 had somebody there on the weekends. I typically

25 worked some on the weekends. Sometimes they'd bring

1 me things on the weekends. She -- it seems to me she
2 brought things to me once or twice on the weekends.
3 In that case, whatever time she would be in there,
4 drop it off, exchange a few words and go, she was
5 there. I don't have any specific recollections of
6 what the issues were, what was going on, but when the
7 Congress is there, we're working all the time, and
8 typically I would do some work on one of the days of
9 the weekends in the afternoon.
10 Q. So I understand, your testimony is that it
11 was possible, then, that you were alone with her, but
12 you have no specific recollection of that ever
13 happening?
14 A. Yes, that's correct. It's possible that
15 she, in, while she was working there, brought
16 something to me and that at the time she brought it
17 to me, she was the only person there. That's
18 possible.
19 Q. Did it ever happen that you and she went
20 down the hallway from the Oval Office to the private
21 kitchen? 849-DC-00000404
22 MR. BENNETT: Your Honor, excuse me, Mr.
23 President, I need some guidance from the Court at
24 this point. I'm going to object to the innuendo.
25 I'm afraid, as I say, that this will leak. I don't

1 kitchen, it's a little cubbyhole, and these guys keep
2 the door open. They come and go at will. Now that's
3 the factual background here.
4 Now, to go back to your question, my
5 recollection is that, that at some point during the
6 government shutdown, when Ms. Lewinsky was still an
7 intern but was working the chief staff's office
8 because all the employees had to go home, that she
9 was back there with a pizza that she brought to me
10 and to others. I do not believe she was there alone,
11 however. I don't think she was. And my recollection
12 is that on a couple of occasions after that she was
13 there but my secretary, Betty Currie, was there with
14 her. She and Betty are friends. That's my, that's
15 my recollection. And I have no other recollection of
16 that.
17 MR. FISHER: While I appreciate all of that
18 information, for the record I'm going to object.
19 It's nonresponsive as to the entire answer up to the
20 point where the deponent, said, "Now back to your
21 question."
22 Q. At any time were you and Monica Lewinsky
23 alone in the hallway between the Oval Office and this
24 kitchen area? 849-DC-00000409
25 A. I don't believe so, unless we were walking

[EXHIBIT 23]

William Jefferson Clinton

1 back to the back dining room with the pizza. I just.
2 I don't remember. I don't believe we were alone in
3 the hallway, no.
4 Q. Are there doors at both ends of the
5 hallway?
6 A. They are, and they're always open.
7 Q. At any time have you and Monica Lewinsky
8 ever been alone together in any room in the White
9 House?
10 A. I think I testified to that earlier. I
11 think that there is a, it is -- I have no specific
12 recollection, but it seems to me that she was on duty
13 on a couple of occasions working for the legislative
14 affairs office and brought me some things to sign,
15 something on the weekend. That's -- I have a general
16 memory of that.
17 Q. Do you remember anything that was said in
18 any of those meetings?
19 A. No. You know, we just have conversation, I
20 don't remember.
21 Q. How long has Betty Currie been your
22 secretary?
23 A. Since I've been President. 849-DC-00000410
24 Q. Did she also work with you in Arkansas?
25 A. Not when I was Governor. She worked in the

[EXHIBIT 24]

William Jefferson Clinton

1 inappropriate for counsel to comment, so I will
2 sustain the objection.
3 MR. FISHER: I understand.
4 Q. Did you have an extramarital sexual affair
5 with Monica Lewinsky?
6 A. No. 849-DC-00000429
7 Q. If she told someone that she had a sexual
8 affair with you beginning in November of 1995, would
9 that be a lie?
10 A. It's certainly not the truth. It would not
11 be the truth.
12 Q. I think I used the term "sexual affair."
13 And so the record is completely clear, have you ever
14 had sexual relations with Monica Lewinsky, as that
15 term is defined in Deposition Exhibit 1, as modified
16 by the Court?
17 MR. BENNETT: I object because I don't know
18 that he can remember --
19 JUDGE WRIGHT: Well, it's real short. He
20 can -- I will permit the question and you may show
21 the witness definition number one.
22 A. I have never had sexual relations with
23 Monica Lewinsky. I've never had an affair with her.
24 Q. Have you ever had a conversation with
25 Vernon Jordan in which Monica Lewinsky was

1 me things on the weekends. She -- it seems to me she
2 brought things to me once or twice on the weekends.
3 In that case, whatever time she would be in there,
4 drop it off, exchange a few words and go, she was
5 there. I don't have any specific recollections of
6 what the issues were, what was going on, but when the
7 Congress is there, we're working all the time, and
8 typically I would do some work on one of the days of
9 the weekends in the afternoon.
10 Q. So I understand, your testimony is that it
11 was possible, then, that you were alone with her, but
12 you have no specific recollection of that ever
13 happening?
14 A. Yes, that's correct. It's possible that
15 she, in, while she was working there, brought
16 something to me and that at the time she brought it
17 to me, she was the only person there. That's
18 possible.
19 Q. Did it ever happen that you and she went
20 down the hallway from the Oval Office to the private
21 kitchen? 849-DC-00000404
22 MR. BENNETT: Your Honor, excuse me, Mr.
23 President, I need some guidance from the Court at
24 this point. I'm going to object to the innuendo.
25 I'm afraid, as I say, that this will leak. I don't

1 question the predicates here. I question the good
2 faith of Counsel, the innuendo in the question.
3 Counsel is fully aware that Ms. Lewinsky has filed,
4 has an affidavit which they are in possession of
5 saying that there is absolutely no sex of any kind in
6 any manner, shape or form, with President Clinton,
7 and yet listening to the innuendo in the questions --
8 JUDGE WRIGHT: No, just a minute, let me
9 make my ruling. I do not know whether counsel is
10 basing this question on any affidavit, but I will
11 direct Mr. Bennett not to comment on other evidence
12 that might be pertinent and could be arguably
13 coaching the witness at this juncture. Now, I, Mr.
14 Fisher is an officer of this Court, and I have to
15 assume that he has a good faith basis for asking this
16 question. If in fact he has no good faith basis for
17 asking the question, he could later be sanctioned.
18 If you would like, I will be happy to review in
19 camera any good faith basis he might have.
20 MR. BENNETT: Well, Your Honor, with all
21 due respect, I would like to know the proffer. I'm
22 not coaching the witness. In preparation of the
23 witness for this deposition, the witness is fully
24 aware of Ms. Lewinsky's affidavit, so I have not told
25 him a single thing he doesn't know, but I think when

1 he asks questions like this where he's sitting on an
2 affidavit from the witness, he should at least have a
3 good faith proffer.
4 JUDGE WRIGHT: Now, I agree with you that
5 he needs to have a good faith basis for asking the
6 question.
7 MR. BENNETT: May we ask what it is, Your
8 Honor?
9 JUDGE WRIGHT: And I'm assuming that he
10 does, and I will be willing to review this in camera
11 if he does not want to reveal it to Counsel.
12 MR. BENNETT: Fine.
13 MR. FISHER: I would welcome an opportunity
14 to explain to the Court what our good faith basis is
15 in an in camera hearing.
16 JUDGE WRIGHT: All right.
17 MR. FISHER: I would prefer that we not
18 take the time to do that now, but I can tell the
19 Court I am very confident there is substantial
20 basis. 849-DC-00000406
21 JUDGE WRIGHT: All right, I'm going to
22 permit the question. He's an officer of the Court,
23 and as you know, Mr. Bennett, this Court has ruled on
24 prior occasions that a good faith basis can exist
25 notwithstanding the testimony of the witness, of the

[EXHIBIT 25]

1 do this, if this is ever used at trial, the Rules of
2 Evidence would apply, and as stated before, the Rules
3 of Evidence don't apply in this discovery
4 deposition. Go ahead.
5 Q. In paragraph eight of her affidavit, she
6 says this, "I have never had a sexual relationship
7 with the President, he did not propose that we have a
8 sexual relationship, he did not offer me employment
9 or other benefits in exchange for a sexual
10 relationship, he did not deny me employment or other
11 benefits for rejecting a sexual relationship."
12 Is that a true and accurate statement as
13 far as you know it?
14 A. That is absolutely true.
15 Q. Do you recall, do you recall --
16 MR. BENNETT: Your Honor, may I have this
17 appended as an exhibit to this deposition, please?
18 MR. FISHER: No objection, Your Honor.
19 JUDGE WRIGHT: All right, it may be.
20 MR. BENNETT: All right.
21 Q. Now you're aware, are you not, of the
22 allegations against you by Paula Corbin Jones in this
23 lawsuit; is that correct?
24 A. Yes, sir, I am. 849-DC-00000555
25 Q. Mr. President, did you ever make any sexual

[EXHIBIT 26]

Page 9

BY MR. BITTMAN:
Q Good afternoon, Mr. President.
A Good afternoon, Mr. Bittman.
Q My name is Robert Bittman. I'm an attorney with the Office of Independent Counsel.
Mr. President, we are first going to turn to some of the details of your relationship with Monica Lewinsky that follow up on your deposition that you provided in the Paula Jones case, as was referenced, on January 17th, 1998.
The questions are uncomfortable, and I apologize for that in advance. I will try to be as brief and direct as possible.
Mr. President, were you physically intimate with Monica Lewinsky?
A Mr. Bittman, I think maybe I can save the – you and the grand jurors a lot of time if I read a statement, which I think will make it clear what the nature of my relationship with Ms. Lewinsky was and how it related to the testimony I gave, what I was trying to do in that testimony. And I think it will perhaps make it possible for you to ask even more relevant questions from your point of view.
And, with your permission, I'd like to read that statement.
Q Absolutely. Please, Mr. President.
A When I was alone with Ms. Lewinsky on certain

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occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.
These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.
I regret that what began as a friendship came to include this conduct, and I take full responsibility for my actions.
While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.
I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the term "sexual relations", as I understood it to be defined at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses.

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[1] That, Mr. Bittman, is my statement.
[2] Q Thank you, Mr. President. And, with that, we would
[3] like to take a break.
[4] A Would you like to have this?
[5] Q Yes, please. As a matter of fact, why don't we
[6] have that marked as Grand Jury Exhibit WJC-1.
[7] (Grand Jury Exhibit WJC-1 was
[8] marked for identification.)
[9] THE WITNESS: So, are we going to take a break?
[10] MR. KENDALL: Yes. We will take a break. Can we
[11] have the camera off, now, please? And it's 1:14.
[12] (Whereupon, the proceedings were recessed from 1:14 p.m.
[13] until 1:30 p.m.)
[14] MR. KENDALL: 1:30, Bob.
[15] MR. BITTMAN: It's 1:30 and we have the feed with
[16] the grand jury.
[17] BY MR. BITTMAN:
[18] Q Good afternoon again, Mr. President.
[19] A Good afternoon, Mr. Bittman.
[20] (Discussion off the record.)
[21] BY MR. BITTMAN:
[22] Q Mr. President, your statement indicates that your
[23] contacts with Ms. Lewinsky did not involve any inappropriate,
[24] intimate contact.
[25] MR. KENDALL: Mr. Bittman, excuse me. The

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[1] witness –
[2] THE WITNESS: No, sir. It indicates –
[3] MR. KENDALL: The witness does not have –
[4] THE WITNESS: – that it did involve inappropriate
[5] and intimate contact.
[6] BY MR. BITTMAN:
[7] Q Pardon me. That it did involve inappropriate,
[8] intimate contact.
[9] A Yes, sir, it did.
[10] MR. KENDALL: Mr. Bittman, the witness – the
[11] witness does not have a copy of the statement. We just have
[12] the one copy.
[13] MR. BITTMAN: If he wishes –
[14] MR. KENDALL: Thank you.
[15] MR. BITTMAN: – his statement back?
[16] BY MR. BITTMAN:
[17] Q Was this contact with Ms. Lewinsky, Mr. President,
[18] did it involve any sexual contact in any way, shape, or form?
[19] A Mr. Bittman, I said in this statement I would like
[20] to stay to the terms of the statement. I think it's clear
[21] what inappropriately intimate is. I have said what it did
[22] not include. I – it did not include sexual intercourse, and
[23] I do not believe it included conduct which falls within the
[24] definition I was given in the Jones deposition. And I would
[25] like to stay with that characterization.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of William Jefferson Clinton, President of the United States

TRIAL MEMORANDUM OF PRESIDENT WILLIAM JEFFERSON CLINTON

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January 13, 1999.

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1. The President denies that on or about December 17, 1997, he ''corruptly encouraged'' Monica Lewinsky ''to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading''
2. The President denies that on or about December 17, 1997, he ''corruptly encouraged'' Monica Lewinsky ''to give perjurious, false and misleading testimony if and when called to testify personally'' in the Jones litigation
3. The President denies that he ''corruptly engaged in, encouraged, or supported a scheme to conceal evidence''—gifts he had given to Monica Lewinsky—in the Jones case
a. Ms. Lewinsky's December 28 Meeting with the President
b. Ms. Currie's Supposed Involvement in Concealing Gifts
c. The Obstruction-by-Gift-Concealment Charge Is at Odds With the President's Actions
4. The President denies that he obstructed justice in connection with Monica Lewinsky's efforts to obtain a job in New York in an effort to ''corruptly prevent'' her ''truthful testimony'' in the *Jones* case
a. The Complete Absence of Direct Evidence Supporting This Charge
b. Background of Ms. Lewinsky's New York Job Search
c. The Committee Report's Circumstantial Case
(1) Monica Lewinsky's December 11 meeting with Vernon Jordan
(2) The January job interviews and the Revlon employment offer
d. Conclusion
5. The President denies that he ''corruptly allowed his attorney to make false and misleading statements to a Federal judge'' concerning Monica Lewinsky's affidavit
6. The President denies that he obstructed justice by relating ''false and misleading statements'' to ''a potential witness,'' Betty Currie, ''in order to corruptly influence [her] testimony''
7. The President denies that he obstructed justice when he relayed allegedly ''false and misleading statements'' to his aides
VI. THE STRUCTURAL DEFICIENCIES OF THE ARTICLES PRECLUDE A CONSTITUTIONALLY SOUND VOTE
A. The Articles Are Both Unfairly Complex and Lacking in Specificity
1. The Structure of Article I
2. The Structure of Article II
B. Conviction on These Articles Would Violate the Constitutional Requirement That Two-Thirds of the Senate Reach Agreement that Specific Wrongdoing Has Been Proven
1. The Articles Bundle Together Disparate Allegations in Violation of the Constitution's Requirements of Concurrence and Due Process
a. The Articles Violate the Constitution's Two-Thirds Concurrence Requirement
b. Conviction on the Articles Would Violate Due Process Protections that Forbid Compound Charges in a Single Accusation
C. Conviction on These Articles Would Violate Due Process Protections Prohibiting Vague and Nonspecific Accusations
1. The Law of Due Process Forbids Vague and Nonspecific Charges
2. The Allegations of Both Articles Are Unconstitutionally Vague
D. The Senate's Judgment Will Be Final and That Judgment Must Speak Clearly and Intelligibly
VII. THE NEED FOR DISCOVERY
VIII. CONCLUSION

TRIAL MEMORANDUM OF PRESIDENT WILLIAM JEFFERSON CLINTON

I. INTRODUCTION

Twenty-six months ago, more than 90 million Americans left their homes and work places to travel to schools, church halls and other civic centers to elect a President of the United States. And on January 20, 1997, William Jefferson Clinton was sworn in to serve a second term of office for four years.

The Senate, in receipt of Articles of Impeachment from the House of Representatives, is now gathered in trial to consider whether that decision should be set aside for the remaining two years of the President's term. It is a power contemplated and authorized by the Framers of the Constitution, but never before employed in our nation's history. The gravity of what is at stake—the democratic choice of the American people—and the solemnity of the proceedings dictate that a decision to remove the President from office should follow only from the most serious of circumstances and should be done in conformity with Constitutional standards and in the interest of the Nation and its people.

The Articles of Impeachment that have been exhibited to the Senate fall far short of what the Founding Fathers had in mind when they placed in the hands of the Congress the power to impeach and remove a President from office. They fall far short of what the American people demand be shown and proven before their democratic choice is reversed. And they even fall far short of what a prudent prosecutor would require before presenting a case to a judge or jury.

Take away the elaborate trappings of the Articles and the high-flying rhetoric that has accompanied them, and we see clearly that the House of Representatives asks the Senate to remove the President from office because he:

- used the phrase ''certain occasions'' to describe the frequency of his improper intimate contacts with Ms. Monica Lewinsky. There were, according to the House Managers, eleven such contacts over the course of approximately 500 days.

Should the will of the people be overruled and the President of the United States be removed from office because he used the phrase ''certain occasions'' to describe eleven events over some 500 days? That is what the House of Representatives asks the Senate to do.

- used the word ''occasional'' to describe the frequency of inappropriate telephone conversations between he and Monica Lewinsky. According to Ms. Lewinsky, the President and Ms. Lewinsky engaged in between ten and fifteen such conversations spanning a 23-month period.

Should the will of the people be overruled and the President of the United States be removed from office because he used the word ''occasional'' to describe up to 15 telephone calls over a 23-month period? That is what the House of Representatives asks the Senate to do.

- said the improper relationship with Ms. Lewinsky began in early 1996, while she recalls that it began in November 1995. And he said the contact did not include touching certain parts of her body, while she said it did.

Should the will of the people be overruled and the President of the United States be removed from office because two people have a

different recollection of the details of a wrongful relationship—which the President has admitted? That is what the House of Representatives asks the Senate to do.

The Articles of Impeachment are not limited to the examples cited above, but the other allegations of wrongdoing are similarly unconvincing. There is the charge that the President unlawfully obstructed justice by allegedly trying to find a job for Monica Lewinsky in exchange for her silence about their relationship. This charge is made despite the fact that no one involved in the effort to find work for Ms. Lewinsky—including Ms. Lewinsky herself—testifies that there was any connection between the job search and the affidavit. Indeed, the basis for that allegation, Ms. Lewinsky's statements to Ms. Tripp, was expressly repudiated by Ms. Lewinsky under oath.

There is also the charge that the President conspired to obstruct justice by arranging for Ms. Lewinsky to hide gifts that he had given her, even though the facts and the testimony contain no evidence that he did so. In fact, the evidence shows that the President gave her new gifts on the very day that the articles allege he conspired to conceal his gifts to her.

In the final analysis, the House is asking the Senate to remove the President because he had a wrongful relationship and sought to keep the existence of that relationship private.

Nothing said in this Trial Memorandum is intended to excuse the President's actions. By his own admission, he is guilty of personal failings. As he has publicly stated, ''I don't think there is a fancy way to say that I have sinned.'' He has misled his family, his friends, his staff, and the Nation about the nature of his relationship with Ms. Lewinsky. He hoped to avoid exposure of personal wrongdoing so as to protect his family and himself and to avoid public embarrassment. He has acknowledged that his actions were wrong.

By the same token, these actions must not be mischaracterized into a wholly groundless excuse for removing the President from the office to which he was twice elected by the American people. The allegations in the articles and the argument in the House Managers' Trial Memorandum do not begin to satisfy the stringent showing required by our Founding Fathers to remove a duly elected President from office, either as a matter of fact or law.

A. THE CONSTITUTIONAL STANDARD FOR IMPEACHMENT HAS NOT BEEN SATISFIED

There is strong agreement among constitutional and legal scholars and historians that the substance of the articles does not amount to impeachable offenses. On November 6, 1998, 430 Constitutional law professors wrote:

''Did President Clinton commit 'high Crimes and Misdemeanors' warranting impeachment under the Constitution? We . . . believe that the misconduct alleged in the report of the Independent Counsel . . . does not cross the threshold. . . . [I]t is clear that Members of Congress could violate their constitutional responsibilities if they sought to impeach and remove the President for misconduct, even criminal misconduct, that fell short of the high constitutional standard required for impeachment.''

On October 28, 1998, more than 400 historians issued a joint statement warning that because impeachment had traditionally been reserved for high crimes and misdemeanors in the exercise of executive power, impeachment of the President based on the facts alleged in the OIC Referral would set a dangerous precedent. ''If carried forward, they will leave the Presidency permanently disfigured and diminished, at the mercy as never before of caprices of any Congress. The Presidency, historically the center of leadership during our great national ordeals, will be crippled in meeting the inevitable challenges of the future.''

We address why the charges in the two articles do not rise to the level of 'high Crimes and Misdemeanors'' in Section III, Constitutional Standard and Burden of Proof.

B. THE PRESIDENT DID NOT COMMIT PERJURY OR OBSTRUCT JUSTICE

Article I alleges perjury before a federal grand jury. Article II alleges obstruction of justice. Both perjury and obstruction of justice are statutory crimes. In rebutting the allegations contained in the articles of impeachment, this brief refers to the facts as well as to laws, legal principles, court decisions, procedural safeguards, and the Constitution itself. Those who seek to remove the President speak of the ''rule of law.'' Among the most fundamental rules of law are the principles that those who accuse have the burden of proof, and those who are accused have the right to defend themselves by relying on the law, established procedures, and the Constitution. These principles are not ''legalisms'' but rather the very essence of the ''rule of law'' that distinguishes our Nation from others.

We respond, in detail, to those allegations whose substance we can decipher in Section IV, The President Should Be Acquitted on Article I, and in Section V, The President Should Be Acquitted on Article II.

C. COMPOUND CHARGES AND VAGUENESS

If there were any doubt that the House of Representatives has utterly failed in its constitutional responsibility to the Senate and to the President, that doubt vanishes upon reading the Trial Memorandum submitted by the House Managers. Having proferred two articles of impeachment, each of which unconstitutionally combines multiple offenses and fails to give even minimally adequate notice of the charges it encompasses, the House—three days before the Managers are to open their case—is still expanding, not refining, the scope of those articles. In further violation of the most basic constitutional principles, their brief advances, *merely as ''examples,''* nineteen conclusory allegations—eight of perjury under Article I and eleven of obstruction of justice under Article II, some of which have never appeared before, even in the Report submitted by the Judiciary Committee (''Committee Report''), much less in the Office of Independent Counsel (''OIC'') Referral or in the articles themselves.[1] If the target the Managers present to the Senate and to the President is *still* moving now, what can the President expect in the coming days? Is there any point at which the President will be given the right accorded a defendant in the most minor criminal case—to know with certainty the charges against which he must defend?

The Senate, we know, fully appreciates these concerns and has, in past proceedings, dealt appropriately with articles far less flawed than these. The constitutional concerns raised by the House's action are addressed in Section VI, The Structural Deficiencies of the Articles Preclude a Constitutionally Sound Vote.

II. BACKGROUND

A. THE WHITEWATER INVESTIGATIVE DEAD-END

The Lewinsky investigation emerged in January 1998 from the long-running Whitewater investigation. On August 5, 1994, the Special Division of the United States Court of Appeals for the District of Columbia Court Circuit appointed Kenneth W. Starr as Independent Counsel to conduct an investigation centering on two Arkansas entities, Whitewater Development Company, Inc., and Madison Guaranty Savings and Loan Association.

In the spring of 1997, OIC investigators, without any expansion of jurisdiction, interviewed Arkansas state troopers who had once been assigned to the Governor's security detail, and ''[t]he troopers said Starr's investigators asked about 12 to 15 women by name, *including Paula Corbin Jones. . . .*'' Woodward & Schmidt, ''Starr Probes Clinton Personal Life,'' *The Washington Post* (June 25, 1997) at A1 (emphasis added). ''The nature of the questioning marks a sharp departure from previous avenues of inquiry in the three-year old investigation. . . . Until now, . . . what has become a wide-ranging investigation of many aspects of Clinton's governorship has largely steered clear of questions about Clinton's relationships with women. . . .''[2] One of the most striking aspects of this new phase of the Whitewater investigation was the extent to which it focused on the *Jones* case. One of the troopers interviewed declared, ''[t]hey asked me about Paula Jones, all kinds of questions about Paula Jones, whether I saw Clinton and Paula together and how many times.''[3]

In his November 19, 1998, testimony before the House Judiciary Committee, Mr. Starr conceded that his agents had conducted these interrogations and acknowledged that at that time, he had not sought expansion of his jurisdiction from either the Special Division or the Attorney General.[4] Mr. Starr contended that these inquiries were somehow relevant to his Whitewater investigation: ''we were, in fact interviewing, as good prosecutors, good investigators do, individuals who would have information that may be relevant to our inquiry about the President's involvement in Whitewater, in Madison Guaranty Savings and Loan and the like.''[5] It seems irrefutable, however, that the OIC was in fact engaged in an unauthorized attempt to gather embarrassing information about the President—information wholly unrelated to Whitewater or Madison Guaranty Savings and Loan, but potentially relevant to the lawsuit filed by Paula Jones.

B. THE PAULA JONES LITIGATION

The Paula Jones lawsuit made certain allegations about events she said had occurred three years earlier, in 1991, when the President was Governor of Arkansas. Discovery in the case had been stayed until the Supreme Court's decision on May 27, 1997, denying the President temporary immunity from suit.[6] Shortly thereafter, Ms. Jones' legal team began a public relations offensive against the President, headed by Ms. Jones' new spokesperson, Mr. Susan Carpenter-McMillan, and her new counsel affiliated with the conservation Rutherford Institute.[7] ''I will

[1] For example, the House managers add a charge that the President engaged in ''legalistic hair splitting [in his response to the 81 questions] in an obvious attempt to skirt the whole truth and to deceive and obstruct'' the Committee. This charge was specifically rejected by the full House of Representatives when it rejected Article IV.

[2] *Ibid.* Trooper Roger Perry, a 21-year veteran of the Arkansas state police, stated that he ''was asked about the most intimate details of Clinton's life: 'I was left with the impression that they wanted me to show he was a womanizer. . . . All they wanted to talk about was women.'' *Ibid.* (Ellipsis in original).

[3] *Ibid.*

[4] Transcript of November 19, 1998 House Judiciary Committee Hearing at 377–378.

[5] *Ibid.* at 378.

[6] *Clinton* v. *Jones*, 520 U.S. 681 (1997).

[7] Ms. Jones was described as having ''accepted financial support of a Virginia conservative group,'' which intended to ''raise $100,000 or more on Jones's behalf, although the money will go for expenses and not legal fees.'' ''Jones Acquires New Lawyers and Backing,'' *The Washington Post* (October 2, 1998) at A1. Jones' new law firm, the Dallas-based Radar,

never deny that when I first heard about this case I said, ''Okay, good. We're gonna get that little slimeball,' said Ms. Carpenter-McMillan.''[8] While Ms. Jones' previous attorneys, Messrs. Gilbert Davis and Joseph Cammarata, had largely avoided the media, as the *Jones* civil suit increasingly became a partisan vehicle to try to damage the President, public personal attacks became the order of the day.[9] As is now well known, this effort led ultimately to the Jones lawyers being permitted to subpoena various women, to discover the nature of their relationship, if any, with the President, allegedly for the purpose of determining whether they had information relevant to the sexual harassment charge. Among these women was Ms. Lewinsky.

In January 1998, Mr. Linda Tripp notified the OIC of certain information she believed she had about Ms. Lewinsky's involvement in the *Jones* case. At that time, the OIC investigation began to intrude formally into the *Jones* case: the OIC met with Ms. Tripp through the week of January 12, and with her cooperation taped Ms. Lewinsky discussing the *Jones* case and the President. Ms. Tripp also informed the OIC that she had been surreptitiously taping conversations with Ms. Lewinsky in violation of Maryland law, and in exchange for her cooperation, the OIC promised Ms. Tripp immunity from federal prosecution, and assistance in protecting her from state prosecution.[10] On Friday, January 16, after Ms. Tripp wore a body wire and had taped conversations with Ms. Lewinsky for the OIC, the OIC received jurisdiction from the Attorney General and formalized an immunity agreement with Ms. Tripp in writing.

The President's deposition in the *Jones* case was scheduled to take place the next day, on Saturday, January 17. As we now know, Ms. Tripp met with and briefed the lawyers for Ms. Jones the night before the deposition on her perception of the relationship between Ms. Lewinsky and the President—doing so based on confidences Ms. Lewinsky had entrusted to her.[11] She was permitted to do so even though she has been acting all week at the behest of the OIC and was dependent on the OIC to use its best efforts to protect her from state prosecution. At the deposition the next day, the President was asked numerous questions about his relationship with Ms. Lewinsky by lawyers who already knew the answers.

The *Jones* case, of course, was not about Ms. Lewinsky. She was a peripheral player and, since her relationship with the President was concededly consensual, irrelevant to Ms. Jones' case. Shortly after the President's deposition, Chief Judge Wright ruled that evidence pertaining to Ms. Lewinsky would not be admissible at the *Jones* trial because ''it is not essential to the core issues in this case.''[12] The Court also ruled that, given the allegations at issue in the *Jones* case, the Lewinsky evidence ''might be inadmissible as extrinsic evidence'' under the Federal Rules of Evidence because it involved merely the ''specific instances of conduct'' of a witness.[13]

On April 1, 1998, the Court ruled that Ms. Jones had no case and granted summary judgment for the President. Although Judge Wright ''viewed the record in the light most favorable to [Ms. Jones] and [gave] her the benefit of all reasonable factual inferences,''[14] the Court ruled that, as a matter of law, she simply had no case against President Clinton, both because ''there is no genuine issue as to any material fact'' and because President Clinton was ''entitled to a judgment as a matter of law.'' *Id.* at 11–12. After reviewing all the proffered evidence, the Court ruled that ''the record taken as a whole could not lead a rational trier of fact to find for'' Ms. Jones. *Id.* at 39.

C. THE PRESIDENT'S GRAND JURY TESTIMONY ABOUT MS. LEWINSKY

On August 17, 1998, the President voluntarily testified to the grand jury and specifically acknowledged that he had had a relationship with Ms. Lewinsky involving ''improper intimate contact,'' and that he ''engaged in conduct that was wrong.'' App. at 461.[15] He described how the relationship began and how he had ended it early in 1997—long before any public attention or scrutiny. He stated to the grand jury ''it's an embarrassing and personally painful thing, the truth about my relationship with Ms. Lewinsky,'' App. at 533, and told the grand jurors, ''I take full responsibility for it. It wasn't her fault, it was mine.'' App. at 589–90.

The President also explained how he had tried to navigate the deposition in the *Jones* case months earlier without admitting what he admitted to the grand jury—that he had been engaged in an improper intimate relationship with Ms. Lewinsky. *Id.* a 530–531. He further testified that the ''inappropriate encounters'' with Ms. Lewinsky had ended, at his insistence, in early 1997. He declined to describe, because of considerations of personal privacy and institutional dignity, certain specifics about his conduct with Ms. Lewinsky,[16] but he indicated his willingness to answer,[17] and he did answer, the other questions put to him about his relationship with her. No one who watched the videotape of this grand jury testimony had any doubt that the President admitted to having had an improper intimate relationship with Ms. Lewinsky.

D. PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES

On September 9, 1998, Mr. Starr transmitted a Referral to the House of Representatives that alleged eleven acts by the President related to the Lewinsky matter that, in the opinion of the OIC, ''may constitute grounds for an impeachment.''[18] The allegations fell into three broad categories: lying under oath, obstruction of justice, and abuse of power.

The House Judiciary held a total of four hearings and called but one witness: Kenneth W. Starr. The Committee allowed the President's lawyers two days in which to present a defense. The White House presented four panels of distinguished expert witnesses who testified that the facts, as alleged, did not constitute an impeachable offense, did not reveal an abuse of power, and would not support a case for perjury or obstruction of justice that any reasonable prosecutor would bring. White House Counsel Charles F.C. Ruff presented argument to the Committee on behalf of the President, which is incorporated into this Trial Memorandum by reference.[19]

On December 11 and 12, the Judiciary Committee voted essentially along party lines to approve four articles of impeachment. Republicans defeated the alternative resolution of censure offered by certain Committee Democrats. Almost immediately after censure failed in the Committee, the House Republican leadership declared publicly that no censure proposal would be considered by the full House when it considered the articles of impeachment.[20]

On December 19, 1998, voting essentially on party lines, the House of Representatives approved two articles of impeachment: Article I, which alleged perjury before the grand jury, passed by a vote of 228 to 206 and Article III, which alleged obstruction of justice, passed by a vote of 221 to 212. The full House defeated two other Articles: Article II, which alleged that the President committed perjury in his civil deposition, and Article IV, which alleged abuse of power. Consideration of a censure resolution was blocked, even though members of both parties had expressed a desire to vote on such an option.

From beginning to end the House process was both partisan and unfair. Consider:

- The House released the entire OIC Referral to the public without ever reading it, reviewing it, editing it, or allowing the President's counsel to review it;

Campbell, Fisher and Pyke, had ''represented conservatives in antiabortion cases and other causes.'' *Ibid. See also* Dallas Lawyers Agree to Take on Paula Jones' Case—Their Small Firm Has Ties to Conservative Advocacy Group,'' *The Los Angeles Times* (Oct. 2, 1997) (Rutherford Institute a ''conservative advocacy group.'').

[8] ''Cause Celebre: An Antiabortion Activist Makes Herself the Unofficial Mouthpiece for Paula Jones.'' *The Washington Post* (July 23, 1998) at C1. Ms. Carpenter-McMillan, ''a cause-oriented, self-defined conservative feminist''', described her role as 'flaming the White House'' and declared '''Unless Clinton wants to be terribly embarrassed, he'd better cough up what Paula needs. Anybody that comes out and testifies against Paula better have the past of a Mother Teresa, because our investigators will investigate their morality.''' ''Paula Jones' Team Not All About Teamwork,'' *USA Today* (Sept. 29, 1997) at 4A.

[9] After Ms. Jones' new team had been in action for three months, one journalist commented: ''In six years of public controversy over Clinton's personal life, what is striking in some ways is how little the debate changes. As in the beginning, many conservatives nurture the hope that the past will be Clinton's undoing. Jone's adviser, Susan Carpenter-McMillan, acknowledged on NBC's 'Meet the Press' yesterday that her first reaction when she first heard Jone's claims about Clinton was, ''Good, we're going to get that little slime ball.'' (Harris, ''Jones Case Tests Political Paradox,'' *The Washington Post* (Jan. 19, 1998) at A1.

[10] Supplemental Materials to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code Section 595(C), H. Doc. 105–316 (hereinafter ''Supp.'') at 3758–3759, 4371–4373 (House Judiciary Committee) (Sept. 28, 1998).

[11] Baker, ''Linda Tripp Briefed Jones Team on Tapes: Meeting Occurred Before Clinton Deposition,'' *The Washington Post* (Feb. 14, 1998) at A1.

[12] Order, at 2, *Jones* v. *Clinton*, No. LR–C–94–290 (E.D. Ark.) (Jan. 29, 1998).

[13] *Ibid.*

[14] *Jones* v. *Clinton*, No. LR–C–94–290 (E.D. Ark.), Memorandum Opinion and Order (April 1, 1998), at 3 n.3.

[15] Appendices to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code Section 595(c), H. Doc. 105–311 (hereinafter ''App.'') at 461 (House Judiciary Committee) (Sept. 18, 1998).

[16] ''While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.'' App. at 461.

[17] ''I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky, questions about my understanding of the term 'sexual relations,' as I understood it to be defined at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses.'' App. at 461.

[18] Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c), at 1 (House Judiciary Committee) (printed September 11, 1998).

[19] Also incorporated by reference into this Trial Memorandum are the four prior submissions of the President to the House of Representatives: Preliminary Memorandum Concerning Referral of Office of Independent Counsel (September 11, 1998) (73 pages); Initial Response to Referral of Office of Independent Counsel (September 12, 1998) (42 pages); Memorandum Regarding Standards of Impeachment (October 2, 1998) (30 pages); Submission by Counsel for President Clinton to the Committee on the House Judiciary of the United States House of Representatives (December 8, 1998) (184 pages).

[20] *See* Baker & Eilperin, ''GOP Blocks Democrats' Bid to Debate Censure in House: Panel Votes Final, Trimmed Article of Impeachment,'' *The Washington Post* (Dec. 13, 1998) at A1.

• The Chairman of the House Judiciary Committee said he had ''no interest in not working in a bipartisan way'';[21]

• The Chairman also pledged a process the American people would conclude was fair;[22]

• The Speaker-Designate of the House endorsed a vote of conscience on a motion to censure;[23]

• Members of the House were shown secret ''evidence'' in order to influence their vote—evidence which the President's counsel still has not been able to review.

III. THE CONSTITUTIONAL STANDARD AND BURDEN OF PROOF FOR DECISION

A. THE OFFENSES ALLEGED DO NOT MEET THE CONSTITUTIONAL STANDARD OF HIGH CRIMES AND MISDEMEANORS

1. The Senate Has a Constitutional Duty to Confront the Question Whether Impeachable Offenses Have Been Alleged

It is the solemn duty of the Senate to consider the question whether the articles state an impeachable offense.[24] That Constitutional question has *not*, in the words of one House Manager, ''already been resolved by the House.''[25] To the contrary, that question now awaits the Senate's measured consideration and independent judgment. Indeed, throughout our history, resolving this question has been an essential part of the Senate's constitutional obligation to ''try all Impeachments.'' U.S. Const. Art. §3, cl.7. In the words of John Logan, a House Manager in the 1868 proceedings:

''It is the rule that all questions of law or fact are to be decided, in these proceedings, by the final vote upon the guilt or innocence of the accused. It is also the rule, that in determining this general issue *senators must consider the sufficiency or insufficiency in law* or in fact *of every article of accusation*.''[26]

We respectfully suggest that the articles exhibited here do not state wrongdoing that constitutes impeachable offenses under our Constitution.

2. The Constitution Requires a High Standard of Proof of ''High Crimes and Misdemeanors'' for Removal

a. The Constitutional Text and Structure Set an Intentionally High Standard for Removal

The Constitution provides that the President shall be removed from office only upon ''Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.'' U.S. Constitution, Art. II, section 4. The charges fail to meet the high standard that the Framers established.[27]

The syntax of the Constitutional standard ''Treason, Bribery *or other* high Crimes and Misdemeanors'' (emphasis added) strongly suggests, by the interpretive principle *noscitur a sociis*,[28] that, to be impeachable offenses, high crimes and misdemeanors must be of the seriousness of ''Treason'' and ''Bribery.''

Our Constitutional structure reaffirms that the standard must be a very high one. Ours is a Constitution of separated powers. In that Constitution, the President does not serve at the will of Congress, but as the directly elected,[29] solitary head of the Executive Branch. The Constitution reflects a judgment that a strong Executive, executing the law independently of legislative will, is a necessary protection for a free people.

These elementary facts of constitutional structure underscore the need for a very high standard for impeachment. The House Managers, in their Brief, suggest that the failure to remove the President would raise the standard for impeachment higher than the Framers intended. They say that if the Senate does not remove the President, ''The bar will be so high that only a convicted felon or a traitor will need to be concerned.'' But that standard is just a modified version of the plain language of Article II, Section 4 of the Constitution, which says a President can only be impeached and removed for ''Treason, Bribery, or other high Crimes and Misdemeanors.'' The Framers wanted a high bar. It was not the intention of the Framers that the President should be subject to the will of the dominant legislative party. As Alexander Hamilton said in a warning against the politicization of impeachment: ''There will always be the greater danger that the decision will be regulated more by comparative strength of parties than by the real demonstrations of innocence or guilt.'' Federalist 65. Our system of government does not permit Congress to unseat the President merely because it disagrees with his behavior or his policies. The Framers' decisive rejection of parliamentary government is one reason they caused the phrase ''Treason, Bribery or other high Crimes and Misdemeanors'' to appear in the Constitution itself. They chose to specify those categories of offenses subject to the impeachment power, rather than leave that judgment to the unfettered whim of the legislature.

Any just and proper impeachment process must be reasonably viewed by the public as arising from one of those rare cases when the Legislature is compelled to stand in for all the people and remove a President whose continuation in office threatens grave harm to the Republic. Indeed, it is not exaggeration to say—as a group of more than 400 leading historians and constitutional scholars publicly stated—that removal on these articles would ''mangle the system of checks and balances that is our chief safeguard against abuses of public power.''[30] Removal of the President on these grounds would defy the constitutional presumption that the removal power rests with the people in elections, and it would do incalculable damage to the institution of the Presidency. If ''successful,'' removal here ''will leave the Presidency permanently disfigured and diminished, at the mercy as never before of the caprices of any Congress.''[31]

The Framers made the President the sole nationally elected public official (together with the Vice-President), responsible to all the people. Therefore, when articles of impeachment have been exhibited, the Senate confronts this inescapable question: is the alleged misconduct so profoundly serious, so malevolent to our Constitutional system, that it justifies undoing the people's decision? Is the wrong alleged of a sort that not only demands removal of the President before the ordinary electoral cycle can do its work, but also justifies the national trauma that accompanies the impeachment trial process itself? The wrongdoing alleged here does not remotely meet that standard.

b. The Framers Believed that Impeachment and Removal Were Appropriate Only for Offenses Against the System of Government

''[H]igh Crimes and Misdemeanors'' refers to nothing short of Presidential actions that are ''great and dangerous offenses'' or ''attempts to subvert the Constitution.''[32] Impeachment was never intended to be a remedy for private wrongs. It was intended to be a method of removing a President whose continued presence in the Office would cause grave danger to the Nation and our Constitutional system of government.[33] Thus, ''in all but the most extreme instances, impeachment should be limited to abuse of public office, not private misconduct unrelated to public office.''[34]

Impeachment was designed to be a means of redressing wrongful public conduct. As scholar and Justice James Wilson wrote, ''our President . . . is amendable to [the laws] in his private character as a citizen, and *in his public character* by impeachment.''[35] As such, impeachment is limited to certain forms of wrongdoing. Alexander

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[21] *Associated Press* (March 25, 1998).

[22] ''This whole proceeding will fall on its face if it's not perceived by the American people to be fair.'' *Financial Times* (Sept. 12, 1998).

[23] ''The next House Speaker, Robert Livingston, said the coming impeachment debate should allow lawmakers to make a choice between ousting President Clinton and imposing a lesser penalty such as censure. The Louisiana Republican said the House can't duck a vote on articles of impeachment if reported next month by its Judiciary Committee. But an 'alternative measure is possible' he said, and the GOP leadership should 'let everybody have a chance to vote on the option of their choice.'" *Wall Street Journal* (Nov. 23, 1998).

[24] In the impeachment trial of Andrew Johnson, the President's counsel answered (to at least one article) that the matters alleged ''do not charge or allege the commission of any act whatever by this respondent, in his office of President of the United States, nor the omission by this respondent of any act of official obligation or duty in his office of President of the United States.'' 1 *Trial of Andrew Johnson* (1868) (''TAJ'') 53.

[25] *See* Statement of Rep. Bill McCollum: ''[A]re these impeachable offenses, which I think has already been resolved by the House. I think constitutionally that's our job to do.'' Fox News Sunday (January 3, 1999).

[26] Closing argument of Manager John H. Logan, 2 TAJ 18 (emphasis added). See also Office of Senate Legal Counsel, *Memorandum on Impeachment Issues* at 25–26 (Oct. 7, 1988) (''Because the Senate acts as both judge and jury in an impeachment trial, the Senate's conviction on a particular article of impeachment reflects the Senate's judgment not only that the accused engaged in the misconduct underlying the article but also that the article stated an impeachable offense'').

[27] For a more complete discussion of the Standards for Impeachment, please see *Submission by Counsel for President Clinton to the House Judiciary of the United States House of Representatives* at 24–43 (December 8, 1998); *Memorandum Regarding Standards of Impeachment* (October 2, 1998); and *Impeachment of William Jefferson, President of the United States*, Report of the Committee on the Judiciary to Accompany H. Res. 611, H. Rpt. 105–830, 105th Cong., 2d Sess. at 332–39 (citing Minority Report). References to pages 2–203 of the Committee Report will be cited hereinafter as ''Committee Report.'' References to pages 329–406 of the Committee Report will be cited hereinafter as ''Minority Report.''

[28] ''It is known from its associates' . . . the meaning of a word is or may be known from the accompanying words.'' *Black's Law Dictionary* 1209 (4th ed. 1968).

[29] Of course, that election takes place through the mediating activity of the Electoral College. *See* U.S. Const. Art. II, §1, cl. 2–3 and Amend. XII.

[30] Statement of Historians in Defense of the Constitution (Oct. 28, 1998) (''*Statement of Historians*''); *see also* Schmitt, ''Scholars and Historians Assail Clinton Impeachment Inquiry,'' *The New York Times* (Oct. 19, 1998) at A18.

[31] *Statement of Historians.*

[32] George Mason, 2 Farrand, *The Records of the Federal Convention of 1787* 550 (Rev. ed. 1966).

[33] As the 1975 Watergate staff report concluded ''Impeachment is the first step in remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government. . . . In an impeachment proceeding a President is called to account for abusing powers that only a President possesses.'' *Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry*, House Comm. on Judiciary, 93d Cong., 2d Sess. at 24 (1974) (''*Nixon Impeachment Inquiry*'').

[34] Minority Report at 337.

[35] 2 *Elliot*, The Debate in the Several State Conventions on the Adoption of the Federal Constitution 480 (reprint of 2d ed.)

Hamilton described the subject of the Senate's impeachment jurisdiction as ''those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as *they relate chiefly to injuries done to the society itself.*''[36]

The Framers ''intended that a president be removable from office for the commission of great offenses against the Constitution.''[37] Impeachment therefore addresses public wrongdoing, whether denominated a ''political crime [ ] against the state,''[38] or ''an act of malfeasance or abuse of office,''[39] or a ''great offense [ ] against the federal government.''[40] Ordinary civil and criminal wrongs can be addressed through ordinary judicial processes. And ordinary political wrongs can be addressed at the ballot box and by public opinion. Impeachment is reserved for the most serious public misconduct, those aggravated abuses of executive power that, given the President's four-year term, might otherwise go unchecked.

3. Past Precedents Confirm that Allegations of Dishonesty Do Not Alone State Impeachable Offenses

Because impeachment of a President nullifies the popular will of the people, as evidence by an election, it must be used with great circumspection. As applicable precedents establish, it should not be used to punish private misconduct.

a. The Fraudulent Tax Return Allegation Against President Nixon

Five articles of impeachment were proposed against then-President Nixon by the Judiciary Committee of the House of Representatives in 1974. Three were approved and two were not. The approved articles alleged *official wrongdoing.* Article I charged President Nixon with ''using the powers of his high office [to] engage [ ] . . . in a course of conduct or plan designed to delay, impede and obstruct'' the Watergate investigation.[41] Article II described the President as engaging in ''repeated and continuing abuse of the powers of the Presidency in disregard of the fundamental principle of the rule of law in our system of government'' thereby ''us[ing] his power as President to violate the Constitution and the law of the land.''[42] Article III charged the President with refusing to comply with Judiciary Committee subpoenas in frustration of a power necessary to ''preserve the integrity of the impeachment process itself and the ability of Congress to act as the ultimate safeguard against improper Presidential conduct.''[43]

On article not approved by the House Judiciary Committee charged that President Nixon both ''knowingly and fraudulently failed to report certain income and claimed deductions [for 1969–72] on his Federal income tax returns which were not authorized by law.''[44] The President had signed his returns for those years under penalty of perjury,[45] and there was reason to believe that the underlying facts would have supported a criminal prosecution against President Nixon himself.[46]

Specifying the applicable standard for impeachment, the majority staff concluded that ''[b]ecause impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the president office.''[47]

And the minority views of many Republican members were in substantial agreement: ''the framers . . . were concerned with preserving the government from being overthrown by the treachery or corruption of one man. . . . [I]t is our judgment, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government established by the Constitution.''[48]

The legal principle that impeachable offenses required misconduct dangerous to our system of government provided one basis for the Committee's rejection of the fraudulent-tax-return charge. As Congressman Hogan (R-Md.) put the matter, the Constitution's phrase ''high crime signified a crime against the system of government, not merely a serious crime,''[49] As noted, the tax-fraud charge, involving an act which did not demonstrate public misconduct, was rejected by an overwhelming (and bipartisan) 26-12 margin.[50]

b. The Financial Misdealing Allegation Against Alexander Hamilton

In 1792, Congress investigated Secretary of Treasury Alexander Hamilton for alleged financial misdealings with a convicted swindler. Hamilton had made payments to the swindler and had urged his wife (Hamilton's paramour) to burn incriminating correspondence. Members of Congress investigated the matter and it came to the attention of President Washington and future Presidents Adams, Jefferson, Madison and Monroe.

This private matter was not deemed worthy of removing Mr. Hamilton as Secretary of the Treasury.[51] Even when it eventually became public, it was no barrier to Hamilton's appointment to high position in the United States Army. Although not insignificant, Hamilton's behavior was essentially private. It was certain not regarded as impeachable.

4. The Views of Prominent Historians and Legal Scholars Confirm that Impeachable Offenses Are not Present

a. No Impeachable Offense Has Been Stated Here

There is strong agreement among consititutional scholars and historians that the articles do not charge impeachable offenses. As Professor Michael Gerhardt summarized in his recent testimony before a subcommitte of the House of Representatives, there is ''widespread recognition [of] a paradigmatic case for impeachment.''[52] In such a case, ''*there must be a nexus between the misconduct of an impeachable official and the latter's official duties.*''[53]

There is no such nexus here. Indeed the allegations are so far removed from official wrongdoing that their assertion here threatens to weaken significantly the Presidency itself. As the more than 400 prominent historians and constitutional scholars warned in their public statement: ''[t]he theory of impeachment underlying these efforts is unprecedented in our history . . . [and is] are extremely ominous for the future of our political insitutions. If carried forward, [the current processes] will leave the Presidency permanently disfigured and diminished, at the mercy as never before of the caprices of any Congress.[54]

Similarly, in a letter to the House of Representatives, an extraordinary group of 430 legal scholars argued together that these offenses, even if proven true, did not rise to the level of an impeachable offense.[55] The gist of these scholarly objections is that the alleged wrongdoing is insufficiently connected to the exercise of public office. Because the articles charge wrongdoing of an essentially private nature, any harm such behavior poses is too removed from our system of government to justify unseating the President. Numerous scholars, opining long before the current controversy, have emphasized the necessary connection of impeachable wrongs to threats against the state itself. They have found that impeachment should be reserved for:

- ''offenses against the government'';[56]
- ''political crime against the state'';[57]
- ''serious assaults on the integrity of the processes of government'';[58]
- ''wrongdoing convincingly established [and] so egregious that [the President's] continuation in office is intolerable'';[59]
- ''malfeasance or abuse of office,''[60] bearing a ''functional relationship'' to public office;[61]
- ''great offense[s] against the federal government'';[62]
- ''acts which, like treason and bribery, undermine the integrity of government.''[63]

The articles contain nothing approximating that level of wrongdoing. Indeed the House Managers themselves acknowledge that ''the President's [alleged] perjury and obstruction

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[36] *The Federalist* No. 65 at 331 (Gary Wills ed. 1982). As one of the most respected of the early commentators explained, the impeachment ''power partakes of a political character, as it respects injuries to the society in its political character.'' Story, *Commentaries on the Constitution,* Sec. 744. (reprint of 1st ed. 1833).

[37] John Labovitz, *Presidential Impeachment* 94 (1978).

[38] Raoul Berger, *Impeachment* 61 (1973).

[39] Rotunda, *An Essay on the Constitutional Parameters of Federal Impeachment*, 76 Ky. L.J. 707, 724 (1987/1988).

[40] Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 Tex. L. Rev. 1, 85 (1989).

[41] *Impeachment of Richard M. Nixon, President of the United States*, Report of the Comm. on the Judiciary, 93rd Cong., 2d Sess, H. Rep. 93–1305 (Aug. 20, 1974) (hereinafter ''*Nixon Report*'') at 133.

[42] *Nixon Report* at 180.

[43] *Id.* 212–13.

[44] *Id.* at 220. The President was alleged to have failed to report certain income, to have taken improper tax deductions, and to have manufactured (either personally or through his agents) false documents to support the deductions taken.

[45] Given the underlying facts, that act might have provided the basis for multiple criminal charges; conviction on, for example, the tax evasion charge, could have subjected President Nixon to a 5-year prison term.

[46] *See Nixon Report* at 344 (''the Committee was told by a criminal fraud tax expert that on the evidence presented to the Committee, if the President were an ordinary taxpayer, the government would seek to send him to jail'') (Statement of Additional Views of Mr. Mezvinsky, *et al.*)

[47] *Nixon Impeachment Inquiry* at 26 (emphasis added).

[48] *Nixon Report* at 364–365 (Minority Views of Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorhead, Maraziti and Latta).

[49] *Id.* (quoting with approval conclusion of *Nixon Impeachment Inquiry*).

[50] *Nixon Report* at 220.

[51] *See generally* Rosenfeld, ''Founding Fathers Didn't Flinch,'' *The Los Angeles Times* (September 18, 1980).

[52] Statement of Professor Michael J. Gerhardt Before the House Subcommittee on the Constitution of the House Judiciary Committee Regarding the Background and History of Impeachment (November 9, 1998) at 13 (''*Subcommittee Hearings*'').

[53] *Ibid.* (emphasis added).

[54] Statement of Historians.

[55] *See* Letter of 430 Law Professors to Messrs. Gingrich, Gephardt, Hyde and Conyers (released Nov. 6, 1998).

[56] Labovitx, *Presidential Impeachment* at 26.

[57] Berger, *Impeachment* at 61.

[58] Charles L. Black, Jr. *Impeachment: A Handbook* 38-39 (1974).

[59] Labovitz *Presidential Impeachment* at 110.

[60] Rotunda, 76 Ky. L.J. at 726.

[61] *Ibid.*

[62] Gerhardt, 68 Tex. L. Rev. at 85.

[63] Committee on Federal Legislation of the Bar Ass'n of the City of New York, *The Law of Presidential Impeachment* 18 (1974).

do not directly involve his official conduct.''[64]

b. To Make Impeachable Offenses of These Allegations would Forever Lower the Bar in a Way Inimical to the Presidency and to Our Government of Separated powers

These articles allege (1) sexual misbehavior, (2) statements about sexual misbehavior and (3) attempts to conceal the fact of sexual misbehavior. These kinds of wrongs are simply not subjects fit for impeachment. To remove a President on this basis would lower the impeachment bar to an unprecedented level and create a devastating precedent. As Professor Arthur Schlesinger, Jr., addressing this problem, has testified:

''Lowering the bar for impeachment creates a novel . . . revolutionary theory of impeachment, [and] . . . would send us on an adventure with ominous implications for the separation of powers that the Constitution established as the basis of our political order. It would permanently weaken the Presidency.''[65]

The lowering of the bar that Professor Schlesinger described must stop here. Professor Jack Rakove made a similar point when he stated that ''Impeachment [is] a remedy to be deployed only in . . . unequivocal cases where . . . the insult to the constitutional system is grave.''[66] Indeed, he said, there ''would have to be a high degree of consensus on both sides of the aisle in Congress and in both Houses to proceed.''[67]

Bipartisan consensus was, of course, utterly lacking in the House of Representatives. No civil officer—no President, no judge, no cabinet member—has ever been impeached by so narrow a margin as supported the articles exhibited here.[68] The closeness and partisan division of the vote reflect the constitutionally dubious nature of the charges.

When articles are based on sexual wrongdoing, and when they have passed only by the narrowest, partisan margin, the future of our constitutional politics is in the balance. The very stability of our Constitutional government may depend upon the Senate's response to these articles. Nothing about this case justifies removal of a twice-elected President, because no ''high Crimes and Misdemeanors'' are alleged.

5. Comparisons to Impeachment of Judges Are Wrong

The House Managers suggest that perjury *per se* is an impeachable offense because (1) several federal judges have been impeached and removed for perjury, and (2) those precedents control this case. *See* House Br. at 95–105. That notion is erroneous. It is blind both to the qualitative differences among different allegations of perjury and the very basic differences between federal judges and the President.

First, the impeachment and removal of a Federal judge, while a very solemn task, implicates very different considerations than the impeachment of a president. Federal judges are appointed without public approval and enjoy life tenure without public accountability. Consequently, they hold their offices under our Constitution only ''during good behavior.'' Under our system, impeachment is the *only* way to remove a Federal judge from office—even a Federal judge sitting in jail.[69] By contrast, a president is elected by the Nation to a term, limited to a specified number of years, and he faces accountability in the form of elections.

Second, whether an allegedly perjurious statement rises to the level of an impeachable offense depends necessarily on the particulars of that statement, and the relation of those statements to the fulfillment of official responsibilities. In the impeachment of Judge Harry Claiborne, the accused had been convicted of filing false income tax returns.[70] As a judge, Claiborne was charged with the responsibility of hearing tax-evasion cases. Once convicted, he simply could not perform his official functions because his personal probity had been impaired such that he could not longer be an arbiter of others' oaths. His wrongdoing bore a direct connection to the performance of his judicial tasks. The inquiry into President Nixon disclosed similar wrongdoing, but the House Judiciary Committee refused to approve an article of impeachment against the President on that basis. The case of Judge Walter Nixon is similar. He was convicted of making perjurious statements concerning his *intervention in a judicial proceeding,* which is to say, employing the power and prestige of his office to obtain advantage for a party.[71] Although the proceeding at issue was not in his court, his use of the judicial office for the private gain of a party to a judicial proceeding directly implicated his official functions. Finally, Judge Alcee Hastings was impeached and removed for making perjurious statements at his trial for conspiring to fix cases in his own court.[72] As with Judges Claiborne and Nixon, Judge Hastings' perjurious statements were immediately and incurably detrimental to the performance of his official duties. The allegations against the President, which (as the Managers acknowledge) ''do not directly involve his official conduct,'' House Br. at 109, simply do not involve wrongdoing of gravity sufficient to foreclose effective performance of the Presidential office.

Impeachment scholar John Labovitz, writing of the judicial impeachment cases predating Watergate, observed that:

''For both legal and practical reasons, th[e] [judicial impeachment] cases did not necessarily affect the grounds for impeachment of a president. The practical reason was that *it seemed inappropriate to determine the fate of an elected chief executive on the basis of law developed in proceedings directed at petty misconduct by obscure judges.* The legal reason was that the Constitution provides that judges serve during good behavior. . . . [T]he [good behavior] clause made a difference in judicial impeachments, confounding the application of these cases to presidential impeachment''.[73]

Thus, the judicial precedents relied upon by the House Managers have only ''limited force when applied to the impeachment of a President.''[74]

The most telling rejoinder to the House's argument comes from President Ford. His definition of impeachable offenses, offered as a congressman in 1970 in connection with an effort to impeach Associate Justice William O. Douglas—that it is, in essence, ''whatever the majority of the House of Representatives considers it to be''—has been cited. Almost never noted is the more important aspect of then-Congressman Ford's statement—that, in contrast to the life-tenure of judges, because presidents can be removed by the electorate, ''to remove them in midterm . . . would indeed require crimes of the magnitude of treason and bribery.''[75]

B. THE STANDARD OF PROOF

Beyond the question of what constitutes an impeachable offense, each Senator must confront the question of what standard the evidence must meet to justify a vote of ''guilty.'' The Senate has, of course, addressed this issue before—most recently in the trials of Judge Claiborne and Judge Hastings. We recognize that the Senate chose in the Claiborne proceedings, and reaffirmed in the Hastings trial, not to impose itself any single standard of proof but, rather, to leave that judgment to the conscience of each senator. Many Senators here today were present for the debate on this issue and chose a standard by which to test the evidence. For many Senators, however, the issue is a new one. And none previously has had to face the issue in the special context of a Presidential impeachment.

We argued before the House Judiciary Committee that it must treat a vote to impeach as, in effect, a vote to remove the President from office and that a decision of such moment ought not to be based on anything less than ''clear and convincing'' evidence. That standard is higher than the ''preponderance of the evidence'' test applicable to the ordinary civil case but lower than the beyond a reasonable doubt test applicable to a criminal case. Nonetheless, we felt that the clear and convincing standard was consistent with the grave responsibility of triggering a process that might result in the removal of a president. In fact, it had been the standard agreed upon by both Watergate Committee majority and minority counsel (as well as counsel for President Nixon) twenty-four years ago.

Certainly no lesser standard should be applied in the Senate. Indeed, we submit that the gravity of the decision the Senate must

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[64] House Br. at 109.

[65] *Subcommittee Hearings* (Written Statement of Arthur Schlesinger, Tr. at 2).

[66] *Subcommittee Hearings* (Written Statement of Professor Jack Rakove at 4).

[67] *Subcommittee Hearings* (Oral Testimony of Professor Rakove).

[68] The present articles were approved by margins of 228–206 (Article I) and 221–212 (Article II). All prior resolutions were approved by substantially wider margins in the House of Representatives. *See* Impeachments of the following civil officers: Judge John Pickering (1803) (45–8; Justice Samuel Chase (1804) (73–32; Judge James Peck (1830) 143–49; Judge West Humphreys (1862) (no vote available, but resolution of impeachment voted ''without division,'' *see* 3 Hinds Precedents of the House of Representatives § 2386); President Andrew Johnson (1868) (128–47; Judge James Belknap (1876) (unanimous); Judge Charles Swayne (1903) (unanimous); Judge Robert Archbald (1912) (223–1); Judge George English (1925) (306–62); Judge Harold Louderback (1932) (183—143); Judge Halsted Ritter (1933) (181–146); Judge Harry Claiborne (1986) (406–0); Judge Walter L. Nixon, Jr. (1988) (417–0); Judge Alcee L. Hastings (1988) (413–3). The impeachment resolution against Senator William Bount in 1797 was by voice vote and so no specific count was recorded.

[69] Former House Judiciary Committee Chairman Peter Rodino, during a recent judicial impeachment proceeding, cogently explained the unique position that Federal judges hold in our Constitutional system:

''The judges of our Federal courts occupy a unique position of trust and responsibility in our government: They are the only members of any branch that hold their office for life; they are purposely insulated from the immediate pressures and shifting currents of the body politic. *But with the special prerogative of judicial independence comes the most exacting standard of public and private conduct* . . . The high standard of behavior for judges is inscribed in article III of the Constitution, which provides that judges ''shall hold offices during good behavior. . . .'' (132 Cong. Rec. H4712 (July 22, 1986) (impeachment of Judge Harry E. Claiborne) (emphasis added).

[70] Proceedings of the United States Senate in the Impeachment Trial of Harry E. Claiborne, 99th Cong., 2d Sess., S. Doc. 99–48 at 291–98 (1986) (''*Claiborne Proceedings*'').

[71] Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr., 101st Cong., 1st Sess., S. Doc. 101–22 at 430–440 (1989) (''*Judge Nixon Proceedings*'').

[72] *See* Proceedings of the United States Senate in the Impeachment Trial of Alcee L. Hastings, 101st Cong., 1st Sess., S. Doc. 101–18 (1989).

[73] Labovitz, *Presidential Impeachment* at 92–93 (emphasis added).

[74] Office of Senate Legal Counsel, *Memorandum on Impeachment Issues* at 26 (Oct. 7, 1988) (summarizing view of some commentators).

[75] 116 Cong. Rec. 11912, 11913, (1970).

reach should lead each Senator to go further and ask whether the House has established guilt beyond a reasonable doubt.

Both lawyers and laymen too often treat the standard of proof as meaningless legal jargon with no application to the real world of difficult decisions. But it is much more than that. In our system of justice, it is the guidepost that shows the way through the labyrinth of conflicting evidence. It tells the factfinder to look within and ask: ''Would I make the most important decisions of my life based on the degree of certainty I have about these facts?'' In the unique legal-political setting of an impeachment trial, it protects against partisan overreaching, and it assures the public that this grave decision has been made with care. In sum, it is a disciplining force to carry into the deliberations.

This point is given added weight by the language of the Constitution. Article I, section 3, clause 6 of the United States Constitution gives to the Senate ''the Power to *try* all Impeachments. . . . and no Person shall be *convicted* without the Concurrence of two thirds of the Members present.'' (Emphasis added.) Use of the words ''try'' and ''convicted'' strongly suggests that an impeachment trial is akin to a criminal proceeding and that the beyond-a-reasonable-doubt standard of criminal proceedings should be used. This position was enunciated in the Minority Views contained in the Report of the House Judiciary Committee on the impeachment proceedings against President Nixon (H.Rep. 93–1305 at 377–381) and has been espoused as the correct standard by such Senators as Robert Taft, Jr., Sam Ervin, Strom Thurmond and John Stennis.[76]

Even if the clear and convincing standard nonetheless is appropriate for judicial impeachments, it does not follow that it should be applied where the Presidency itself is at stake. With judges, the Senate must balance its concern for the independence of the judiciary against the recognition that, because judges hold life-time tenure, impeachment is the only available means to protect the public against those who are corrupt. On the other hand, when a President is on trial, the balance to be struck is quite different. Here the Senate is asked, in effect, to overturn the results of an election held two years ago in which the American people selected the head of one of the three coordinate branches of government. It is asked to take this action in circumstances where there is no suggestion of corruption or misuse of office—or any other conduct that places our system of government at risk in the two remaining years of the President's term, when once again the people will judge who they wish to lead them. In this setting, the evidence should be tested by the most stringent standard we know—proof beyond a reasonable doubt. Only then can the American people be confident that this most serious of constitutional decisions has been given the careful consideration it deserves.

IV. The President Should Be Acquitted on Article I

The evidence does not support the allegations of Article I.

A. Applicable Law

Article I alleges perjury, along with false and misleading statements, before a federal grand jury. Perjury is a statutory crime that is set forth in the United States Code at 18 U.S.C. §1623.[77] Before an accused may be found guilty of perjury before a grand jury, a prosecutor most prove all elements of the offense.

In the criminal law context, §1623 requires proof beyond a reasonable doubt of the following elements: that an accused (1) while under oath (2) knowingly (3) made a false statement as to (4) material facts. The ''materiality'' element is fundamental: it means that testimony given to a grand jury may be found perjurious only if it had a tendency to influence, impede, or hamper the grand jury's investigation. *See, e.g., United States* v. *Reilly,* 33 F.3d 1396, 1419 (3d Cir. 1994); *United States* v. *Barrett,* 111 F.3d 947, 953 (D.C. Cir. 1997). If an answer provided to a grand jury has no impact on the grand jury's investigation, or if it relates to a subject that the grand jury is not considering, it is incapable as a matter of law of being perjurious. Thus, alleged false testimony concerning details that a grand jury is not investigating cannot as a matter of law constitute perjury, since such testimony by definition is immaterial. *See, e.g., United States* v. *Lasater,* 535 F.2d 1041, 1048 (8th Cir. 1976) (where defendant admitted signing letter and testified to its purpose, his denial of actually writing letter was not material to grand jury investigation and was incapable of supporting perjury charge); *United States* v. *Pyle,* 156 F.2d 852, 856 (D.C. Cir. 1946) (details such as whether defendant ''paid the rent on her Washington apartment, as she testified that she did'' were ''not pertinent to the issue being tried;'' therefore, ''the false statement attributed to [defendant] was in no way material in the case in which she made it and did not constitute perjury within the meaning of the statute.'') In other words, mere falsity—even knowing falsity—is not perjury if the statement at issue is not ''material'' to the matter under consideration.

An additional ''element'' of perjury prosecutions, at least as a matter of prosecutorial practice, is that a perjury conviction cannot rest solely on the testimony of one witness. In *United States* v. *Weiler,* 323 U.S. 606, 608–09 (1945), the Supreme Court observed that the ''special rule which bars conviction for perjury solely upon the evidence of a single witness is deeply rooted in past centuries.'' While §1623 does not literally incorporate the so-called ''two-witness'' rule, the case law makes clear that perjury prosecutions under this statute require a high degree of proof, and that prosecutors should not, as a matter of reason and practicality, try to bring perjury prosecutions based solely on the testimony of a single witness. As the Supreme Court has cautioned, perjury cases should not rest merely upon ''an oath against an oath.'' *Id.* at 609.

Indeed, that is exactly the point that experienced former federal prosecutors made to the House Judiciary Committee. A panel of former federal prosecutors, some Republican, testified that they would not charge perjury based upon the facts in this case. For example, Mr. Thomas Sullivan, a former United States Attorney for the Northern District of Illinois, told the Committee that ''the evidence set out in the Starr report would not be prosecuted as a criminal case by a responsible federal prosecutor.'' *See* Transcript of ''Prosecutorial Standards for Obstruction of Justice and Perjury'' Hearing (Dec. 9, 1998); *see generally* Minority Report at 340–47. As Mr. Sullivan emphasized, ''because perjury and obstruction charges often arise from private dealings with few observers, the courts have required either two witnesses who testified directly to the facts establishing the crime, or, if only one witness testifies to the facts constituting the alleged perjury, that there be substantial corroborating proof to establish guilt.'' *See* Transcript of ''Prosecutorial Standards for Obstruction of Justice and Perjury'' Hearing (Dec. 9, 1998). The other prosecutors on the panel agreed. Mr. Richard J. Davis, who served as an Assistant United States Attorney for the Southern District of New York and as a Task Force Leader for the Watergate Special Prosecution Force, testified that ''it is virtually unheard of to bring a perjury prosecution based solely on the conflicting testimony of two people.'' *Id.* A review of the perjury alleged here thus requires both careful scrutiny of the materiality of any alleged falsehood and vigilance against conviction merely on an ''oath against an oath.'' *Weiler,* 323 U.S. at 609.

B. Structure of the Allegations

Article I charges that the President committed perjury when he testified before the grand jury on August 17, 1998. It alleges he ''willfully provided perjurious, false and misleading testimony to the grand jury concerning ''one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.'' As noted above, the article does not provide guidance on the particular statements alleged to be perjurious, false and misleading. But by reference to the different views in the House Committee Report, the presentation of House Majority Counsel David Schippers, the OIC Referral, and the Trial Memorandum of the House Managers, we have attempted to identify certain statements from which members of the House might have chosen.

Subpart (1) alleges that the President committed perjury before the grand jury about the details of his relationship with Ms. Lewinsky—including apparently such insignificant matters as mis-remembering the precise month on which certain inappropriate physical contact started, understating as ''occasional'' his infrequent inappropriate physical and telephone contacts with Ms. Lewinsky over a period of many months, characterizing their relationship as starting as a friendship, and touching Ms. Lewinsky in certain ways and for certain purposes during their intimate encounters.

Subpart (2) of Article I alleges that the President made perjurious, false and misleading statements to the grand jury when he testified about certain responses he had given in the *Jones* civil deposition. The House Managers erroneously suggest that in the grand jury President Clinton was asked about and reaffirmed his entire deposition testimony, including his deposition testimony about whether he had been alone with Ms. Lewinsky. *See* House Br. at 2, 60. That is demonstrably false. Those statements that the President did in fact make in the grand jury, by way of explaining his deposition testimony, were truthful. Moreover, to the extent this subpart repeats allegations of Article II of the original proposed articles of impeachment, the full House of Representatives has explicitly considered and specifically rejected those charges, and their consideration would violate the impeachment procedures mandated by the Constitution.

Subparts (3) and (4) allege that the President lied in the grand jury when he testified about certain activities in late 1997 and early

[76] *Claiborne Proceedings* at 106–107.

[77] Section 1623 provides in relevant part:

''(a) Whoever under oath . . . in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.'' (18 U.S.C. §1623(a) (1994)).

1998. They are based on statements about conduct that the House Managers claim constitutes obstruction of justice under Article II and in many respects track Article II. *Compare* Article I (3) (perjury in the grand jury concerning alleged ''prior false and misleading statements he allowed his attorney to make to a Federal judge'') *with* Article II (5) (obstructing justice by ''allow[ing] his attorney to make false and misleading statements to a Federal judge) and *compare* Article I (4) (perjury in the grand jury concerning alleged ''corrupt efforts to influence testimony of witnesses and to impede the discovery of evidence'') *with* Article II (3), (6), (7) (obstructing justice when he (3) ''engaged in, encouraged, or supported a scheme to conceal evidence,'' *i.e.,* gifts; (6) ''corruptly influence[d] the testimony'' of Betty Currie; (7) ''made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses''). These perjury allegations are without merit both because the obstruction charges upon which they are based are wrong and because the statements that President Clinton made in the grand jury about these charges are true. Because of the close parallel, and for sake of brevity in this submission, we have dealt comprehensively with these overlapping allegations in the next section addressing Article II (obstruction of justice), and address them only briefly in this section.

C. RESPONSE TO THE PARTICULAR ALLEGATIONS IN ARTICLE I

The president testified truthfully before the grand jury. There must be no mistake about what the President said. He admitted to the grand jury that he had engaged in an inappropriate intimate relationship with Ms. Lewinsky over a period of many months. He admitted to the grand jury that he had been alone with Ms. Lewinsky. He admitted to the grand jury that he had mislead his family, his friends and staff, and the entire Nation about the nature of that relationship. No one who heard the President's August 17 speech or watched the President's videotaped grand jury testimony had any doubt that he had admitted to an ongoing physical relationship with Ms. Lewinsky.

The article makes general allegations about his testimony but does not specify alleged false statements, so direct rebuttal is impossible. In light of this uncertainty, we set forth below responses to the allegations that have been made by the House Managers, the House Committee, and the OIC, even though they were not adopted in the article, in an effort to try to respond comprehensively to the charges.

1. The President denies that he made materially false or misleading statements to the grand jury about ''the nature and details of his relationship'' with Monica Lewinsky

(a) Early in his grand jury testimony, the President specifically acknowleded that he had had a relationship with Ms. Lewinsky that involved ''improper intimate contact.'' App. at 461. He described how the relationship began and how it ended early in 1997—long before any public attention or scrutiny.

In response to the first question about Ms. Lewinsky, the President read the following statement:

''When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.

''These inappropriate encounteres ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.

''I regret that what began as a friendship came to include this conduct, and I take full responsibility for my actions.

''While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.

''I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the term 'sexual relations', as I understood it to be denied at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses.''

App. at 460–62. The President occasionally referred back to this statement—but only when asked very specific questions about his physical relationship with Ms. Lewinsky—and he otherwise responded fully to four hours of interrogation about his relationship with Ms. Lewinsky, his answers in the civil deposition, and his conduct surrounding the *Jones* deposition.

The articles are silent on precisely what statements the President made about his relationship with Ms. Lewinsky that were allegedly perjurious. But between the House Brief and the Committee Report, both drafted by the Managers, it appears there are three aspects of this prepared statement that are alleged to be false and misleading because Ms. Lewinsky's recollection differs—albeit with respect to certain very specific, utterly immaterial matters: *first,* when the President admitted that inappropriate conduct occurred ''on certain occasions *in early 1996* and once in 1997,'' he allegedly committed perjury because in the Managers' view, the *first* instance of inappropriate conduct apparently occurred a few months prior to ''early 1996,'' *see* House Br. at 53; *second,* when the President admitted to inappropriate conduct ''*on certain occasions* in early 1996 and once in 1997,'' he allegedly committed perjury because, according to the House Committee, there were *eleven* total sexual encounters and the term ''on certain occasions'' implied something other than eleven. *see* Committee Report at 34; and *third,* when the President admitted that he ''had *occasional* telephone conversations with Ms. Lewinsky that included sexual banter,'' he allegedly committed perjury because, according to the House Committee (although not Ms. Lewinsky), seventeen conversations may have included sexually explicit conversation, *ibid.* Apart from the fact that the record itself refutes some of the allegations (for example, seven of the seventeen calls were only ''possible,'' according even to the OIC, App. at 116–26, and Ms. Lewinsky recalled fewer than seventeen, App. at 744), simply to state them is to reveal their utter immateriality.[78]

The President categorically denies that his prepared statement was perjurious, false and misleading in any respect. He offered his written statement to focus the questioning in a manner that would allow the OIC to obtain the information it needed without unduly dwelling on the salacious details of his relationship. It preceded almost four hours of follow-up questions about the relationship. It is utterly remarkable that the Managers now find fault even with the President's very painful public admission of inappropriate conduct.

In any event, the charges are totally without merit. The Committee Report takes issue with the terms ''on certain occasions'' and ''occasional,'' but neither phrase implies a definite or maximum number. ''On certain occasions''—the phrase introducing discussion of the physical contacts—has virtually no meaning other than ''it sometimes happened.'' It is unfathomable what objective interpretation the Majority gives to this phrase to suggest that it could be false. An attack on the phrase ''occasional''—the phrase introducing discussion of the inappropriate telephone contacts—is little different. Dictionaries define ''occasional'' to mean ''occurring at irregular or infrequent intervals'' or ''now and then.''[79] It is a measure of the Committee Report's extraordinary overreaching to suggest that the eleven occasions of intimate contact alleged by the House Majority over well more than a year did not occur, by any objective reading, ''on certain occasions.'' And since even the OIC Referral acknowledges that the inappropriate telephone contact occurred not ''at least 17 times'' (as the Committee Report and the Managers suggest, Committee Report at 8; House Br. at 11) but between 10 and 15 times over a 23-month period,[80] ''occasional'' would surely seem not just a reasonable description but the correct one.

Finally, these squabbles are utterly immaterial. Even if the President and Ms. Lewinsky disagreed as to the precise number of such encounters, it is of no consequence whatsoever to anything, given his admission of their relationship. This is precisely the kind of disagreement that the law does not intend to capture as perjury.

The date of the first intimate encounter is also totally immaterial. Having acknowledged the relationship, the President had no conceivable motive to misstate the date on which it began. The Managers assert that the President committed perjury when he testified about when the relationship began, but they offer no rationale for why he would have done so.[81] The President had already made a painful admission. Any misstatement about when the intimate relationship began (if there was a misstatement) cannot justify a charge of perjury, let alone the removal of the President from office. As Chairman Hyde himself stated in reference to this latter allegation, ''It doesn't strike me as a terribly

[78] Even the OIC Referral did not allege perjury based on these latter two theories and mentioned the first only briefly.

[79] *Webster's Collegiate Dictionary (*10th ed. 1997) p. 803; *see also Webster's II New Riverside Dictionary* (1988) p. 812 (''occurring from time to time; infrequent''); *Chambers English Dictionary* (1988 ed.) p. 992 (''occurring infrequently, irregularly, now and then''); *The American Heritage Dictionary* (2d Coll. ed.) (''occurring from time to time''); *Webster's New World Dictionary* (3d Coll. ed.) p. 937 (''of irregular occurrence; happening now and then; infrequent'').

[80] The OIC chart of contacts between Ms. Lewinsky and the President identifies ten phone conversations ''including phone sex'' and seven phone conversations ''possibly'' including phone sex. App. at 116–26.

[81] The Committee Report did not adopt the baseless surmise of the OIC Referral, *i.e.,* that the President lied about the starting date of his relationship because Ms. Lewinsky was still an intern at the time, whereas she later became a paid employee. For good reason. The only support offered by the Referral for this conjecture is a comment Ms. Lewinsky attributes to the President in which he purportedly said that her pink ''intern pass'' ''might be a problem.'' Referral at 149–50. But even Ms. Lewinsky indicated that the President was not referring to her intern status, but rather was noting that, as an intern with a pink ''intern pass,'' she had only limited access to the West Wing of the White House. App. at 1567 (Lewinsky FBI 302 8/24/98). Moreover, Ms. Lewinsky had in fact become an employee by late 1995, so even under the OIC theory the President could have acknowledged such intimate contact in 1995.

serious count.'' Remarks of Chairman Hyde at Perjury Hearing of December 1, 1998.

(b) The Managers also assert that the President lied when, after admitting that he had an inappropriate sexual relationship with Ms. Lewinsky, he maintained that he did not touch Ms. Lewinsky in a manner that met the definition used in the *Jones* deposition. *See* House Br. at 54. The President admits that he engaged in appropriate physical contact with Ms. Lewinsky, but has testified that he did not engage in activity that met the convoluted and truncated definition he was presented in the *Jones* deposition.[82]

It is important to note that this *Jones* definition was not of the President's making. It was one *provided to him* by the Jones' lawyers for their questioning of him. Under that definition, oral sex performed by Ms. Lewinsky on the President would not constitute sexual relations, while touching certain areas of Ms. Lewinsky's body with the intent to arouse her would meet the definition. The President testified in the grand jury that believed that oral sex performed on him fell outside the *Jones* definition. App. at 544.[83] As strange as this may sound, a totally reasonable reading of the definition supports that conclusion, as many commentators have agreed.[84]

This claim comes down to an oath against an oath about immaterial details concerning an acknowledged wrongful relationship.

2. The President denies that he made perjurious, false and misleading statements to the grand jury about testimony he gave in the Jones case

First, it is important to understand that the allegation of Article I that the President ''willfully provided false and misleading testimony to the grand jury concerning . . . prior perjurious, false and misleading testimony he gave in'' the *Jones* deposition is premised on a misunderstanding of the President's grand jury testimony. The President was not asked to, and he did not, reaffirm his entire *Jones* deposition testimony during his grand jury appearance. For example, contrary to popular myth and the undocumented assertion of the House Managers, House Br. at 2, the President was never even asked in the grand jury about his answer to the deposition question whether he and Ms. Lewinsky had been ''together alone in the Oval Office.'' Dep. at 52–53,[85] and he therefore neither reaffirmed it nor even addressed it. In fact, in the grand jury he was asked only about a small handful of his answers in the deposition. As is demonstrated below, his explanation of these answers were not reaffirmations or in any respect evasive or misleading—they were completely truthful, and they do not support a perjury allegation.

The extent to which this allegation of the House Majority misses the mark is dramatically apparent when it is compared with the OIC's Referral. The OIC did not charge that the President's statements about his prior deposition testimony were perjurious (apart from the charge discussed above concerning the nature and details of his relationship with Ms. Lewinsky).[86] *See* OIC Ref. at 145. It would be remarkable to contemplate charges beyond those brought by the OIC, particularly in the context of a perjury claim where the OIC chose what to ask the President and itself conducted the grand jury session.

The House Managers point to a single statement made by President Clinton in the grand jury to justify their contention that every statement from his civil deposition is now fair game. House Br. at 60. Specifically, the House Managers rely on President Clinton's explanation in the grand jury of his state of mind during the *Jones* deposition: ''My goal in this deposition was to be truthful, but not particularly helpful . . . I was determined to walk through the mine field of this deposition without violating the law, and I believe I did.'' App. at 532. In addition to being a true statement of his belief as to his legal position, this single remark plainly was not intended as and was not a broad reaffirmation of the accuracy of all the statements the President made during the *Jones* deposition. Indeed, given that he told the grand jury that he had an intimate relationship with Ms. Lewinsky during which he was alone with her, no one who heard the grand jury testimony could have understood it to be the unequivocal reaffirmation that is alleged.

The Managers charge that the President did not really mean it when he told the grand jury how he was trying to be literally truthful in the *Jones* deposition without providing information about his relationship with Ms. Lewinsky. The President had endeavored to navigate the deposition without having to make embarrassing admissions about his inappropriate, albeit consensual, relationship with Ms. Lewinsky. And to do this, the President walked as close to the line between (a) truthful but evasive or nonresponsive testimony and (b) false testimony as he could without crossing it. He sought, as he explained to the grand jury, to give answers that were literally accurate, even if, as a result, they were evasive and thus misleading. We repeat: what is at issue here is not the underlying statements made by the President in the deposition, but the President's *explanations* in the grand jury of his effort to walk a fine line. Anyone who reads or watches that deposition *knows* the President was in fact trying to do precisely what he has admitted—to give the lawyers grudging, unresponsive or even misleading answers without actually lying. However successful or unsuccessful he might have been, there is no evidence that controverts the fact that this was indeed the President's intention.

An examination of the statements that the President actually did make in the grand jury about his deposition testimony further demonstrates the lack of merit in this article. In the grand jury, the President only was asked about three areas of his deposition testimony that were covered in the failed impeachment article alleging perjury in the civil deposition.[87] The first topic was the nature of any intimate contact with Ms. Lewinsky and has already been addressed above.

The second topic was the President's testimony about his knowledge of gifts he exchanged with Ms. Lewinsky. In his grand jury testimony, the President had the following exchange with the OIC:

Q: When you testified in the Paula Jones case, this was only two and a half weeks after you had given her these six gifts, you were asked, at page 75 in your deposition, lines 2 through 5, ''Well, have you ever given any gifts to Monica Lewinsky?'' And you answered, ''I don't recall.''

And you were correct. You pointed out that you actually asked them, for prompting, ''Do you know what they were?''

A: I think what I meant there was I don't recall what they were, not that I don't recall whether I had given them. And then if you see, they did give me these specifics, and I gave them quite a good explanation here. I remembered very clearly what the facts were about The Black Dog. . . .

App. at 502–03. The President's explanation that he could not recall the exact gifts that he had given Ms. Lewinsky and that he affirmatively sought prompting from the *Jones* lawyers is entirely consistent with his deposition testimony. This record plainly does not support a charge of perjury.

The third and last topic was the President's deposition testimony that Ms. Lewinsky's affidavit statement denying having a sexual relationship with the President was correct:

Q: And you indicated that it [Ms. Lewinsky's affidavit statement that she had no sexual relationship with him] was absolutely correct.

A: I did. . . . I believe at the time that she filled out this affidavit, if she believed that

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[82] At the deposition, the Jones attorneys presented a broad, three-part definition of the term ''sexual relations'' to be used by them in the questioning. Judge Wright ruled that two parts of the definition were ''too broad'' and eliminated them. Dep. at 22. The President, therefore, was presented with the following definition (as he understood it to have been amended by the Court):

Definition of Sexual Relations—

For the purposes of this deposition, a person engages in ''sexual relations'' when the person knowingly engages in or causes—

(1) contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person;

~~(2) contact between any part of the person's body or an object and the genitals and anus of another person; or~~

~~(3) contact between the genitals or anus of the person and any part of another person's body.~~

~~''Contact'' means intentional touching, either directly or through clothing.~~

[83] The Managers erroneously suggest that the President's explanation of his understanding of the *Jones* deposition definition of ''sexual relations'' is a recent fabrication rather than an accurate account of his view at the time of the deposition. House Br. at 54–55. To support this contention, the Managers, among other meritless arguments, point to a document produced by the White House entitled ''January 24, 1998 Talking Points,'' stating that oral sex would constitute a sexual relationship for the President. *Id.* at 55. This document, however, was not created, reviewed or approved by the President and did not represent his views. It is irrelevant to the issue at hand for the additional reason that it does not speak by its own terms to the meaning of the contorted definition of ''sexual relations'' used in the *Jones* deposition.

[84] *See, e.g.,* Perjury Hearing of December 1, 1998 (Statement of Professor Stephen A. Saltzburg at 2) (''That definition defined certain forms of sexual contact as sexual relations but, for reasons known only to the Jones lawyers, limited the definition to contact with any person for the purpose of gratification.''); MSNBC Internight, August 12, 1998 (Cynthia Alksne) (''[W]hen the definition finally was put before the president, it did not include the receipt of oral sex''); ''DeLay Urges a Wait For Starr's Report,'' *The Washington Times* (August 31, 1998) (''The definition of sexual relations, used by lawyers for Paula Jones when they questioned the president, was loosely worded and may not have included oral sex''); ''Legally Accurate,'' *The National Law Journal* (August 31, 1998) (''Given the narrowness of the court-approved definition in [the *Jones*] case, Mr. Clinton indeed may not have perjured himself back then if, say, he received oral sex but did not reciprocate sexually'').

[85] The only questions the OIC asked the President about being alone with Ms. Lewinsky did not reference the deposition at all. Instead, the OIC asked the President to elaborate on his acknowledgement in his prepared statement before the grand jury that he had been alone with Ms. Lewinsky, App. at 481, and to explain why he made a statement, ''I was never alone with her'' *to Ms. Currie* on January 18th. *See, e.g.,* App. at 583.

[86] Specifically, the Referral alleges that the President lied when he testified (1) that ''he believed that oral sex was not covered by any of the terms and definitions for sexual activity used at the *Jones* deposition''; (2) that their physical contact was more limited than Ms. Lewinsky's testimony suggests; and (3) that their intimate relationship began in early 1996 and not late 1995. *Id.* at 148–49.

[87] The proposed article of impeachment alleging perjury in the civil deposition, like the two that are before the Senate, did not identity any specific instances of false testimony, but we have made our comparison with the Committee Report's elaboration of the deposition perjury article as it undoubtedly represents the largest universe of alleged perjurious statements.

the definition of sexual relationship was two people having intercourse, then this is accurate. And I believe that this is the definition that most ordinary Americans would give it. . . .

App. at 473. The President's grand jury testimony was truthful. As Ms. Lewinsky and Ms. Tripp discussed long before any of this matter was public, this was in fact Ms. Lewinsky's definition of ''sex'' and apparently the President's as well. *See* Supp. at 2664 (10/3/97 Tape); *see also* App. at 1558 (Lewinsky FBI 302 8/19/98). There is no evidence whatever that the President did not believe this definition of sexual relations, and his belief finds support in dictionary definitions, the courts and commentators.[88] Moreover, the record establishes that Ms. Lewinsky shared this view.[89] Since the President's grand jury testimony about his understanding is corroborated both by dictionaries and by his prior statements to Ms. Lewinsky, it simply cannot be labeled ''wrong'' or, more seriously, ''perjurious.''

The President did not testify falsely and perjuriously in the grand jury about his civil deposition testimony.

3. The President denies that he made perjurious, false and misleading statements to the grand jury about the statements of his attorney to Judge Wright during the Jones deposition

It is remarkable that Article I contains allegations such as this one that even the OIC, which conducted the President's grand jury appearance, chose not to include in the Referral (presumably because there was no ''substantial and credible information'' to support the claim). Subpart (3) appears to allege that the President lied in his grand jury testimony when he characterized his state of mind in his civil deposition as his lawyer described the Lewinsky affidavit as meaning ''there is no sex of any kind in any manner, shape or form.'' Dep. at 53–54. Specifically, the House Managers appear to base their perjury claim on President Clinton's grand jury statement that ''I'm not even sure I paid attention to what he [Mr. Bennett] was saying.'' House Br. at 62.

The House Brief takes issue with President Clinton's statement that he was ''not paying a great deal of attention to this exchange'' because, it alleges, the ''videotape [of the deposition] shows the President looking directly at Mr. Bennett, paying close attention to his argument to Judge Wright.'' *Ibid.* While it is true that the videotape shows the President staring in what is presumably Mr. Bennett's direction, there is no evidence whatsoever that he was indeed ''paying close attention'' to the lengthy exchange. Notably absent from the videotape is any action on the part of the President that could be read as affirming Mr. Bennett's statement, such as a nod of the head, or any other activity that could be used to distinguish between a fixed stare and true attention to the complicated sparring of counsel. The President was a witness in a difficult and complex deposition and, as he testified, he was ''focussing on [his] answers to the questions.'' App. at 477. It is a safe bet that the common law has never seen a perjury charge based on so little.[90]

4. The President denies that he made perjurious, false and misleading statements to the grand jury when he denied attempting ''to influence the testimony of witnesses and to impede the discovery of evidence'' in the Jones case

The general language of the final proviso of Article I, according to the House Managers, is meant to signify a wide range of allegations, *see* House Br. at 60–69, although none were thought sufficiently credible to be included in the OIC Referral. These allegations were not even included in the summary of the Starr evidence presented to the Committee on October 5, 1998, by House Majority Counsel Schippers. They are nothing more than an effort to inflate the perjury allegations by converting every statement that the President made about the subject matter of Article II into a new count for perjury. As the discussion of Article II establishes, the President did not attempt to obstruct justice. Thus, his explanations of his statements in the grand jury were truthful.

The House Brief asserts that the President committed perjury with respect to three areas of his grand jury testimony about the obstruction allegations. These claims are addressed thoroughly in the next section along with the corresponding Article II obstruction claims, and they are addressed in a short form here. The first claim is that the President committed perjury ''when he testified before the grand jury that he recalled telling Ms. Lewinsky that if Ms. Jones' lawyers requested the gifts exchanged between Ms. Lewinsky and the President, she should provide them.'' House Br. at 63. The House Managers contest the truthfulness of this statement by asserting that the President was responsible for Ms. Lewinsky's transfer of gifts to Ms. Currie in late December. In other words, if the obstruction claim is true, they allege, this statement is not true. As is laid out in greater detail in the next section, the House Manager's view of this matter ignores a wealth of evidence establishing that the idea to conceal some of the gifts she had received originated with, and was executed by, Ms. Lewinsky. *See e.g.*, Supp. at 557 (Currie GJ 1/27/98); Supp. at 531 (Currie FBI 302 1/24/98); Supp. at 582 (Currie GJ 5/6/98); App. at 1122 (Lewinsky GJ 8/20/98); *see also* App. at 1481 (''LEWINSKY . . . suggested to the President that Betty Currie hold the gifts'') (Lewinsky FBI 302 8/1/98).

Second, the House Managers contend that the President provided perjurious testimony when he explained to the grand jury that he was trying to ''refresh'' his recollection when he spoke with Betty Currie on January 18, 1998 about his relationship with Ms. Lewinsky. House Br. at 65. The House Managers completely ignore the numerous statements that Ms. Currie makes in her testimony that support the President's assertion that he was merely trying to gather information. for example, Ms. Currie stated in her first interview with the OIC that ''Clinton then mentioned some of the questions he was asked at his deposition. Currie advised the way Clinton phrased the queries, they were both statements and questions at the same time.'' Supp. at 534 (Currie FBI 302 1/24/98). Ms. Currie's final grand jury testimony on this issue also supports the President' explanation of his questioning:

Q: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?

A: *None whatsoever.*

Q: What did you think, or what was going through your mind about what he was doing?

A: *At that time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.*

Q: That was your impression that he wanted you to say—because he would end each of the statements with ''Right?,'' with a question.

A: *I do not remember that he wanted me to say ''Right.'' He would say ''Right'' and I could have said, ''Wrong.''*

Q: But he would end each of those questions with a ''Right?'' and you could either say whether it was true or not true?

A: Correct.

Q: Did you feel any pressure to agree with your boss?

A: *None.*

Supp. at 668 (Currie GJ 7/22/98) (emphasis added).

Ms. Currie's testimony supports the President's assertion that he was looking for information as a result of his deposition. There is no basis to doubt the President's explanation that his expectation of a media onslaught prompted the conversation. *See* App. at 583. Indeed, neither the testimony of Ms. Currie nor that of the President—the only two participants in this conversation—conceivably supports the inference that he had any other intent. The House Managers' contention that the President's explanation to the grand jury was perjurious totally disregards the testimony of the only two witnesses with first-hand knowledge and has no basis in fact or in the evidence.

Finally, the House Managers contend that President Clinton ''lied about his attempts to influence the testimony of some of his top aides.'' House Br. at 68. The basis for this charge appears to be the President's testimony that, although he said misleading things to his aides about his relationship with Ms. Lewinsky, he *tried* to say things that were true. *Id.* at 69. Once again, the record does not even approach a case for perjury. The President acknowledged that he misled; he tried, however, not to lie. It is a mystery how the Managers could try to disprove this simple statement of intent.

V. THE PRESIDENT SHOULD BE ACQUITTED ON ARTICLE II

The evidence does not support the allegations of Article II.

A. APPLICABLE LAW

Article II alleges obstruction of justice, a statutory crime that is set forth in 18 U.S.C. §1503, the ''Omnibus Obstruction Provision.'' In the criminal law context, §1503 requires proof of the following elements: (1) that

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[88] As one court has stated, ''[i]n common parlance the terms 'sexual intercourse' and 'sexual relations' are often used interchangeably.'' *J.Y.* v. *D.A*, 381 N.E.2d 1270, 1273 (Ind. App. 1978). Dictionary definitions make the same point:

- Webster's Third New International Dictionary (1st ed. 1981) at 2082, defines ''sexual relations'' as ''coitus;''
- Random House Webster's College Dictionary (1st ed. 1996) at 1229, defines ''sexual relations'' as ''sexual intercourse; coitus;''
- Merriam-Webster's Collegiate Dictionary (10th ed. 1997) at 1074, defines ''sexual relations'' as ''coitus;''
- Black's Law Dictionary (Abridged 6th ed. 1991) at 560, defines ''intercourse'' as ''sexual relations;'' and
- Random House Compact Unabridged Dictionary (2d ed. 1996) at 1775, defines ''sexual relations'' as ''sexual intercourse; coitus.''

[89] Ms. Lewinsky took the position early on that her contact with the President did not constitute ''sex'' and reaffirmed that position even after she had received immunity and began cooperating with the OIC. For example, in one of the conversations surreptitiously taped by Ms. Tripp, Ms. Lewinsky explained to Ms. Tripp that she ''didn't have sex'' with the President because ''[h]aving sex is having intercourse.'' Supp. at 2664; *see also* Supp. at 1066 (grand jury testimony of Ms. Neysa Erbland stated that Ms. Lewinsky had said that the President and she ''didn't have sex''). Ms. Lewinsky reaffirmed this position even after receiving immunity, stating in an FBI interview that ''her use of the term 'having sex' means having intercourse. . . .'' App. at 1558 (Lewinsky FBI 302 8/19/98). Likewise, in her original proffer to the OIC, she wrote, ''Ms. L[ewinsky] was comfortable signing the affidavit with regard to the 'sexual relationship' because she could justify to herself that she and the Pres[ident] did not have sexual intercourse.'' App. at 718 (2/1/98 Proffer).

[90] This allegation is nearly identical to the allegation of Article II(5), and, for the sake of brevity, it is addressed at greater length in the response to Article II, below.

there existed a pending judicial proceeding; (2) that the accused knew of the proceeding; and (3) that the defendant acted ''corruptly'' with the specific intent to obstruct or interfere with the proceeding or due administration of justice. *See, e.g., United States* v. *Bucey*, 876 F.2d 1297, 1314 (7th Cir. 1989). False statements alone cannot sustain a conviction under §1503. *See United States* v. *Thomas*, 916 F.2d 647, 652 (11th Cir. 1990).[91]

B. STRUCTURE OF THE ALLEGATIONS

Article II exhibited by the House of Representatives alleges that the President ''has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony'' in the *Jones* case. The Article alleges that the President did so by engaging in ''one or more of the following acts'': the President (1) corruptly encouraged Ms. Lewinsky ''to execute a sworn affidavit . . . that he knew to be perjurious, false and misleading''; (2) ''corruptly encouraged Ms. Lewinsky to give perjurious, false, and misleading testimony if and when called to testify personally'' in the *Jones* case; (3) ''corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed'' in the *Jones* case, namely gifts given by him to Ms. Lewinsky; (4) ''intensified and succeeded in an effort to secure job assistance'' for Ms. Lewinsky between December 7, 1997 and January 14, 1998, ''in order to corruptly prevent [her] truthful testimony'' in the *Jones* case; (5) ''corruptly allowed his attorney to make false and misleading statements'' to Judge Susan Webber Wright at the *Jones* deposition; (6) ''related a false and misleading account of events'' involving Ms. Lewinsky to Betty Currie, a ''potential witness'' in the *Jones* case, ''in order to corruptly influence'' her testimony; and (7) made false and misleading statements to certain members of his staff who were ''potential'' grand jury witnesses, in order to corruptly influence their testimony.

As noted above, this article essentially duplicates some of the perjury allegations of Article I (4): Article II alleges particular acts of obstruction while Article I (4) alleges that the President lied in the grand jury when he discussed those allegations.[92] Both sets of allegations are unsupported. Our discussion here of the details of these charges will, as well, serve in part as our response to the allegations in Article I (4).

C. RESPONSE TO THE PARTICULAR ALLEGATIONS IN ARTICLE II

1. The President denies that on or about December 17, 1997, he ''corruptly encouraged'' Monica Lewinsky ''to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading''

Article II (1) alleges that the President ''corruptly encouraged'' Monica Lewinsky ''to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading.'' The House Managers allege that during a December 17 phone conversation, Ms. Lewinsky asked the President what she could do if she were subpoenaed in the *Jones* case and that the President responded, ''Well, maybe you can sign an affidavit.'' House Br. at 22. This admitted statement by the President of totally lawful conduct is *the Managers' entire factual basis* for the allegation in Article II (1).

The Managers do not allege that the President ever suggested to Ms. Lewinsky she should file a *false* affidavit or otherwise told her what to say in the affidavit. Indeed they could not, because Ms. Lewinsky has repeatedly and forcefully denied any such suggestions:

- ''Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie.'' App. at 718 (2/1/98 Proffer).
- ''[N]o one ever asked me to lie and I was never promised a job for my silence.'' App. at 1161 (Lewinsky GJ 8/20/98).
- ''Neither the President nor Jordan ever told Lewinsky that she had to lie.'' App. at 1398 (Lewinsky FBI 302 7/27/98).
- ''Neither the President nor anyone ever directed Lewinsky to say anything or to lie. . . .'' App. at 1400 (Lewinsky FBI 302 7/27/98).
- ''I think I told [Linda Tripp] that—you know at various times the President and Mr. Jordan had told me I have to lie. That wasn't true.'' App. at 942 (Lewinsky GJ 8/6/98).

In an attempt to compensate for the total lack of evidence supporting their theory,[93] the Managers offer their view that ''both parties knew the affidavit would have to be false and misleading in order to accomplish the desired result.'' House Br. at 22; *see also* Committee Report at 65 (the President ''knew [the affidavit] would have to be false for Ms. Lewinsky to avoid testifying''). But there is no evidence to support such bald conjecture, and in fact the opposite is true. Both Ms. Lewinsky and the President testified that, given the particular claims in the *Jones* case, they thought a truthful, limited affidavit might establish that Ms. Lewinsky had nothing relevant to offer. The President explained to the grand jury why he believed that Ms. Lewinsky would execute a truthful but limited affidavit that would have established that she was not relevant to the *Jones* case:[94]

- ''But I'm just telling you that it's certainly true what she says here, that we didn't have—there was no employment, no benefit in exchange, there was nothing having to do with sexual harassment. And if she defined sexual relationship in the way I think most Americans do, meaning intercourse, then she told the truth.'' App. at 474.
- ''You know, I believed then, I believe now, that Monica Lewinsky could have sworn out an honest affidavit, that under reasonable circumstances, and without the benefit of what Linda Tripp did to her, would have given her a chance not to be a witness in this case.'' App. at 521.
- ''I believed then, I believe today, that she could execute an affidavit which, under reasonable circumstances with fair-minded, nonpolitically-oriented people, would result in her being relieved of the burden to be put through the kind of testimony that, thanks to Linda Tripp's work with you and with the Jones lawyers, she would have been put through. I don't think that's dishonest. I don't think that's illegal.'' App. at 529.
- ''But I also will tell you that I felt quite comfortable that she could have executed a truthful affidavit, which would not have disclosed the embarrassing details of the relationship that we had had, which had been over for many, many months by the time this incident occurred.'' App. at 568–69.
- ''I've already told you that I felt strongly that she could issue, that she could execute an affidavit that would be factually truthful, that might get her out of having to testify. . . . And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.'' App. at 571.

The *Jones* case involved allegations of a nonconsensual sexual solicitation. Ms. Lewinsky's relationship with the President was consensual, and she knew nothing about the factual allegations of the *Jones* case.

Ms. Lewinsky similarly recognized that an affidavit need not be false in order to accomplish the purpose of avoiding a deposition:

- LEWINSKY told TRIPP that the purpose of the affidavit was to avoid being deposed. LEWINSKY advised that *one does this by giving a portion of the whole story*, so the attorneys do not think you have anything of relevance to their case. App. at 1420 (Lewinsky FBI 302 7/29/98) (emphasis added).
- LEWINSKY advised the goal of an affidavit is to be *as benign as possible*, so as to avoid being deposed. App. at 1421 (Lewinsky FBI 302 7/29/98) (emphasis added).
- I thought that signing an affidavit could range from anywhere—the point of it would be to deter or to prevent me from being deposed and so that that could range from anywhere between *maybe just somehow mentioning, you know, innocuous things* or going as far as maybe having to deny any kind of a relationship. App. at 842 (Lewinsky GJ 8/6/98) (emphasis added).

The Committee Report argued that Ms. Lewinsky must have known that the President wanted her to lie because he never told her to fully detail their relationship in her affidavit and because an affidavit fully detailing the ''true nature'' of their relationship would have been damaging to him in the *Jones* case. Committee Report at 65. The Managers wisely appear to have abandoned

[91] 18 U.S.C. §1512 covers witness tampering. It is clear that the allegations in Article II could not satisfy the elements of §1512. That provision requires proof that a defendant knowingly engaged in intimidation, physical force, threats, misleading conduct, or corrupt persuasion with intent to influence, delay, or prevent testimony or cause any person to withhold objects or documents from an official proceeding. It is clear from the case law that ''misleading conduct'' as contemplated by §1512 does not cover scenarios where an accused urged a witness to give false testimony without resorting to coercive or deceptive conduct. *See, e.g., United States* v. *Kulczyk*, 931 F.2d 542, 547 (9th Cir. 1991) (reversing conviction under §1512 because ''there is simply no support for the argument that [defendant] did anything other than ask the witnesses to lie''); *United States* v. *King*, 762 F.2d 232, 237 (2d Cir. 1985) (''Since the only allegation in the indictment as to the means by which [defendant] induced [a witness] to withhold testimony was that [the defendant] misled [the witness], and since the evidence failed totally to support any inference that [the witness] was, or even could have been, misled, the conduct proven by the government was not within the terms of §1512.''). Deceit is thus the gravamen of an obstruction of justice charge that is predicated on witness tampering.

[92] *Compare* Article I (4) (perjury in the grand jury concerning alleged ''corrupt efforts to influence testimony of witnesses and to impede the discovery of evidence'') with Article II (1)–(3), (6) (obstructing justice when he (1) ''encouraged witness . . . to execute a [false] sworn affidavit''; (2) ''encouraged a witness . . . to give perjurious, false and misleading testimony''; (3) ''engaged in, encouraged, or supported a scheme to conceal evidence''; (6) ''corruptly influence[d] the testimony'' of Betty Currie). *Compare also* Article I (3) (perjury in the grand jury concerning alleged ''prior false and misleading statements he allowed his attorney to make to a Federal judge'') with Article II (5) (obstructing justice by ''allow[ing] his attorney to make false and misleading statements to a Federal judge).

[93] The myth that the President told Ms. Lewinsky to lie in her affidavit springs not from the evidence but from the surreptitiously recorded Tripp tapes. But as Ms. Lewinsky explained to the grand jury, many of the statements she made to Ms. Tripp—including on this subject—were not true: ''I think I told [Linda Tripp] that—you know at various times the President and Mr. Jordan had told me I have to lie. *That wasn't true.*'' App. at 942 (Lewinsky GJ 8/6/98).

[94] Indeed, the Committee Report alleges without support that the President lied to the grand jury when he indicated his *belief* that Ms. Lewinsky could indeed have filed a truthful but limited affidavit that might have gotten her out of testifying in the *Jones* case. Article I (4). This claim fails for the reasons discussed in the text.

this argument.[95] Ms. Lewinsky plainly was under no obligation to volunteer to the Jones lawyers every last detail about her relationship with the President—and the failure of the President to instruct her to do so is neither wrong nor an obstruction of justice. A limited, truthful affidavit might have established that Ms. Lewinsky was not relevant to the *Jones* case. The suggestion that perhaps Ms. Lewinsky could submit an affidavit in lieu of a deposition, as the President knew other potential deponents in the *Jones* case had attempted to do, in order to avoid the expense, burden, and humiliation of testifying in the *Jones* case was entirely proper. The notion that the President of the United States could face removal from office not because he told Monica Lewinsky to lie, or encouraged her to do so, but because he did not affirmatively instruct her to disclose every detail of their relationship to the *Jones* lawyers is simply not supportable.

Moreover, there is significant evidence in the record that, at the time she executed the affidavit, Ms. Lewinsky honestly believed that her denial of a sexual relationship was accurate given what she believed to be the definition of a ''sexual relationship'':

● ''I never even came close to sleeping with [the President] . . . We didn't have sex . . . Having sex is having intercourse. That's how most people would—'' Supp. at 2664 (Lewinsky-Tripp tape 10/3/97).[96]

● ''Ms. L[ewinsky] was comfortable signing the affidavit with regard to the sexual relationship because she could justify to herself that she and the Pres[ident] did not have sexual intercourse.'' App. at 718 (2/1/98 Proffer).

● ''Lewinsky said that her use of the term 'having sex' means having intercourse. . . .'' App. at 1558 (Lewinsky FBI 302 8/19/98).

The allegation contained in Article II(1) is totally unsupported by evidence. It is the product of a baseless hypothesis, and it should be rejected.

2. The President denies that on or about December 17, 1997, he ''corruptly encouraged'' Monica Lewinsky ''to give perjurious, false and misleading testimony if and when called to testify personally'' in the Jones litigation

Article II (2) alleges that the President encouraged Ms. Lewinsky to give false testimony if and when she was called to testify personally in the *Jones* litigation. Again, Ms. Lewinsky repeatedly denied that anyone told her or encouraged her to lie:

● ''Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie.'' App. at 718 (2/1/98 Proffer).

● ''[N]o one ever asked me to lie and I was never promised a job for my silence.'' App. at 1161 (Lewinsky GJ 8/20/98).

● ''Neither the President nor Jordan ever told Lewinsky that she had to lie.'' App. at 1398 (Lewinsky FBI 302 7/27/98).

● ''Neither the President nor anyone ever directed Lewinsky to say anything or to lie. . . . App. at 1400 (Lewinsky FBI 302 7/27/98).

● ''I think I told [Linda Tripp] that—you know at various times the President and Mr. Jordan had told me I have to lie. *That wasn't true.*'' App. at 942 (Lewinsky GJ 8/6/98) (emphasis added).

The Managers allege that the President called Ms. Lewinsky on December 17 to inform her that she had been listed as a potential witness in the *Jones* case, and that during this conversation, he ''sort of said, 'You know, you can always say you were coming to see Betty or that you were bringing me letters.'' House Br. at 22; App. at 843 (Lewinsky GJ 8/6/98). Other than the fact that Ms. Lewinsky recalls this statement being made in the same conversation in which she learned that her name was on the *Jones* witness list, the Managers cite no evidence whatsoever that supports their claim that the President encouraged her to make such statements ''if and when called to testify personally in the *Jones* case.'' They claim simply that Ms. Lewinsky had discussed such explanations for her visits with the President in the past. Unremarkably, the President and Ms. Lewinsky had been concerned about concealing their improper relationship from others while it was ongoing.

Ms. Lewinsky's own testimony and proffered statements undercut their case:

● *When asked what should be said if anyone questioned Ms. Lewinsky* about her being with the President, he said she should say she was bringing him letters (when she worked in Legislative Affairs) or visiting Betty Currie (after she left the WH). There is truth to both of these statements. . . . [This] occurred *prior to the subpoena* in the Paula Jones case. App. at 709 and 718 (2/1/98 Proffer) (emphasis added).

● After Ms. Lewinsky was informed, by the Pres[ident], that she was identified as a possible witness in the Jones case, the Pres[ident] and Ms. L[ewinsky] discussed what she should do. The President told her he was not sure she would be subpoenaed, but in the event that she was, she should contact Ms. Currie. When asked what to do if she was subpoenaed, the Pres[ident] suggested she could sign an affidavit to try to satisfy their inquiry and not be deposed. *In general*, Ms. L[ewinsky] should say she visited the WH to see Ms. Currie and, on occasion when working at the WH, she brought him letters when no one else was around. Neither of those statements untrue. App. at 712 (2/1/98 Proffer) (emphasis added).

● To the best of Ms. L[ewinsky]'s memory, she *does not believe they discussed the content of any deposition* that Ms. L[ewinsky] might be involved in at a later date. App. at 712 (2/1/98 Proffer) (emphasis added).

● LEWINSKY advised, though *they did not discuss the issue in specific relation to the JONES matter*, she and CLINTON had discussed what to say when asked about LEWINSKY's visits to the White House. App. at 1466 (Lewinsky FBI 302 7/31/98) (emphasis added).

Ms. Lewinsky's statements indicate that she asked the President what to say if ''anyone'' asked about her visits, that the President said ''in general'' she could give such an explanation, and that they ''did not discuss the issue in specific relation to the *Jones* matter.''

This is consistent with the President's testimony that he and Ms. Lewinsky ''might have talked about what to do in a non-legal context at some point in the past,'' although he had no specific memory of that conversation. App. at 569. The President also stated in his grand jury testimony that he did not recall saying anything like that in connection with Ms. Lewinsky's testimony in the *Jones* case:

> Q. And in that conversation, or in any conversation in which you informed her she was on the witness list, did you tell her, you know, you can always say that you were coming to see Betty or bringing me letters? Did you tell her anything like that?
>
> A. I don't remember. She was coming to see Betty. I can tell you this. I absolutely never asked her to lie.

App. at 568. Ms. Lewinsky does not testify that this discussion was had in reference to testimony she may or may not have been called to give personally, and the Managers' implication is directly contradicted by Ms. Lewinsky's statement that she and the President did *not* discuss her deposition testimony in that conversation. *See* App. at 712 (2/1/98 Proffer) (''To the best of Ms. L[ewinsky's] memory, she does not believe they discussed [in the December 17 conversation] the content of any deposition that Ms. L[ewinsky] might be involved in at a later date.'').

In support of this allegation, the Managers also cite Ms. Lewinsky's testimony that she told the President she would deny the relationship and that the President made some encouraging comment. House Br. at 23. Ms. Lewinsky never stated that she told the President any such thing on December 17, or at any other time after she had been identified as a witness. Indeed, Ms. Lewinsky testified that that discussion did not take place after she learned she was a witness in the *Jones* case:

> Q: It is possible that you also had these discussions [about denying the relationship] after you learned that you were a witness in the Paula Jones case?
>
> A: *I don't believe so. No.*
>
> Q: Can you exclude that possibility?
>
> A: *I pretty much can.* I really don't remember it. I mean, it would be very surprising for me to be confronted with something that would show me different, but I—it was 2:30 in the—I mean, the conversation I'm thinking of mainly would have been December 17th, which was——
>
> Q: The telephone call.
>
> A: Right. And it was—you know, 2:00, 2:30 in the morning. I remember the gist of it and I—I really don't think so.

App. at 1119–20 (Lewinsky GJ 8/20/98) (emphasis added).

Moreover, Ms. Lewinsky has stated several times that neither of these so-called ''cover stories'' was untrue. In her handwritten proffer, Ms. Lewinsky stated that she asked the President what to say if anyone asked her about her visits to the Oval Office and he said that she could say ''she was bringing him letters (when she worked in Legislative Affairs) or visiting Betty Currie (after she left the White House).'' App. at 709 (Lewinsky 2/1/98 Proffer). Ms. Lewinsky expressly stated: ''*There is truth to both of these statements.*'' *Id.* (emphasis added); *see also* App. at 712 (2/1/98 Proffer) (''*[n]either of those statements [was] untrue.*'') (emphasis added). Indeed, Ms. Lewinsky testified to the grand jury that she did in fact bring papers to the President and that on some occasions, she visited the Oval Office only to see Ms. Currie:

> Q: Did you actually bring [the President] papers at all?
>
> A: Yes.
>
> Q: All right. Tell us a little about that.
>
> A: It varied. Sometimes it was just actual copies of letters. . . .

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[95] The Committee Report argued that Ms. Lewinsky ''contextually understood that the President wanted her to lie'' because he never told her to file an affidavit fully detailing the ''true nature'' of their relationship. Committee Report at 65. The only support cited for this ''contextual understanding'' obstruction theory advanced by the Committee Report was a reference back to the OIC Referral. The OIC Referral, in turn, advanced the same theory, citing only the testimony of Ms. Lewinsky that, while the President never encouraged her to lie, he remained silent about what she should do or say, and by such silence, ''I knew what that meant.'' App. at 954 (Lewinsky GJ 8/6/98) (cited in Referral at 174). It is extraordinary that the President of the United States could face removal from office *not* because he told Ms. Lewinsky to lie, or said anything of the sort, but instead because he stayed silent—and Ms. Lewinsky thought she ''knew what that meant.''

[96] A friend of Ms. Lewinsky's also testified that, based on her close relationship with her, she believed that Ms. Lewinsky did not lie in her affidavit based on her understanding that when Ms. Lewinsky referred to ''sex'' she meant intercourse. Supp. at 4597 (6/23/98 grand jury testimony of Ms. Dale Young). *See also* Supp. at 1066 (grand jury testimony of Ms. Neysa Erbland stating that Ms. Lewinsky had said that the President and she ''didn't have sex'').

App. at 774–75 (Lewinsky GJ 8/6/98).

''I saw Betty on every time that I was there . . . most of the time my purpose was to see the President, but there were some times when I did just go see Betty but the President wasn't in the office.''

App. at 775 (Lewinsky GJ 8/6/98). The Managers assert that those stories were misleading. House Br. at 23; *see also* Committee Report at 66 (delivering documents to the President was a ''ruse that had no legitimate business purpose.''). In other words, while the so-called ''cover stories'' were literally true, such explanations might have been misleading. But literal truth is a critical issue in perjury and obstruction cases, as is Ms. Lewinsky's belief that the statements were, in fact, literally true.

The allegation contained in Article II (2) is unsupported by the evidence and should be rejected.

3. The President denies that he ''corruptly engaged in, encouraged, or supported a scheme to conceal evidence''—gifts he had given to Monica Lewinsky—in the Jones case

This allegation charges that the President participated in a scheme to conceal certain gifts he had given to Monica Lewinsky. It apparently centers on two events allegedly occurring in December 1997: (a) a conversation between the President and Ms. Lewinsky in which the two allegedly discussed the gifts the President had given Ms. Lewinsky, and (b) Ms. Currie's receipt of a box of gifts from Ms. Lewinsky and storage of them under her bed. The evidence does not support the charge.

a. Ms. Lewinsky's December 28 Meeting with the President

Monica Lewinsky met with the President on December 28, 1997, sometime shortly after 8:00 a.m. to pick up Christmas presents. App. at 868 (Lewinsky GJ 8/6/98). According to Ms. Lewinsky, she raised the subject of gifts she had received from the President in relation to the *Jones* subpoena, and this was the first and only time that this subject arose. App. at 1130 (Lewinsky GJ 8/20/98); App. at 1338 (Lewinsky Depo. 8/26/98).

The House Trial Brief and the Committee Report quote one version of Ms. Lewinsky's description of that December 28 conversation:

''[A]t some point I said to him, 'Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic.'' App. at 872 (Lewinsky GJ 8/6/98).

In fairness, the Senate should be aware that Ms. Lewinsky has addressed this crucial exchange with prosecutors on at least ten different occasions, which we lay out in the margin for review.[97] The accounts varied—in some Ms. Lewinsky essentially recalled that the President gave no response, but the House Managers, like the Committee Report and the OIC Referral, cite only the account most favorable to their case, failing even to take note of the other inconsistent recollections. But the important fact about Ms. Lewinsky's various descriptions of this conversation is that, at the *very* most, the President stated ''I don't know'' or ''Let me think about it'' when Ms. Lewinsky raised the issue of the gifts. Even by the account most unfavorable to the President, the record is clear and unambiguous that the President *never initiated* any discussion about the gifts *nor did he tell or even suggest to Ms. Lewinsky that she should conceal the gifts.*

Indeed, on several occasions, Ms. Lewinsky's accounts of the President's reaction depict the President as *not even acknowledging* her suggestion. Among those versions, ignored by the Committee Report and the Managers, are the following:

- ''And he—I don't remember his response. I think it was something like, 'I don't know,''' or 'Hmm,' or—*there really was no response.*'' App. at 1122 (Lewinsky GJ 8/20/98) (emphasis added).
- ''[The President] either *did not respond* or responded 'I don't know.' LEWINSKY is not sure exactly what was said, but she is certain that whatever CLINTON said, she *did not have a clear image in her mind of what to do next.*'' App. at 1566 (Lewinsky FBI 302 8/24/98) (emphasis added).
- ''The President wouldn't have brought up Betty's name, because he really didn't—*he really didn't discuss it* . . .'' App. at 1122 (Lewinsky GJ 8/20/98) (emphasis added).
- ''A JUROR: You had said that the President had called you initially to come get your Christmas gift, you had gone there, you had a talk, et cetera, and there was no—you expressed concern, *the President didn't really say anything.*'' App. at 1126 (Lewinsky GJ 8/20/98) (emphasis added).[98]

Thus, the evidence establishes that there was essentially no discussion of gifts. That December 28 meeting provides no evidence of any ''scheme . . . designed to . . . conceal the existence'' of any gifts.

b. Ms. Currie's Supposed Involvement in Concealing Gifts

Because the record is devoid of any evidence of obstruction by the President at his December 28 meeting with Monica Lewinsky, Article II (3) necessarily depends on the added assumption that, after the December 28 meeting, the President must have instructed his secretary, Ms. Betty Currie, to retrieve the gifts from Ms. Lewinsky, thereby consummating the obstruction of justice. As the following discussion will demonstrate, the record is devoid of any direct evidence that the President discussed this subject with Ms. Currie. At most, it conflicted on the question of whether Ms. Currie or Ms. Lewinsky initiated the gift retrieval.

We begin with what is certain. The record is undisputed that Ms. Currie picked up a box containing gifts from Ms. Lewinsky and placed them under her bed at home. The primary factual dispute, therefore, is which of the two initiated the pick-up. According to the logic of the Committee Report, if Ms. Currie initiated the retrieval, she must have been so instructed by the President. Committee Report at 69 (''there is no reason for her to do so unless instructed by the President'').

But the facts are otherwise. *Both* Ms. Currie and the President have denied ever having any such conversation wherein the President instructed Ms. Currie to retrieve the gifts from Ms. Lewinsky. App. at 502 (President Clinton GJ 8/17/98); Supp. at 581 (Currie GJ 5/6/98). In other words, the only two parties who could have direct knowledge of such an instruction by the President have denied it took place.

In the face of this direct evidence that the President did not ask Ms. Currie to pick up these gifts, the Committee Report's obstruction theory hinges on the inference that Ms. Currie called Ms. Lewinsky and must have done so at the direction of the President. To be sure, Ms. Lewinsky has stated on several occasions that Ms. Currie initiated a call to her to inquire about retrieving something. The Managers and the Committee Report cited the following passage from Ms. Lewinsky's grand jury testimony:

Q: What did [Betty Currie] say?

A: She said, ''I understand you have something to give me.'' Or, ''The President said you have something to give me.'' Along those lines. . . .

Q: When she said something along the lines of ''I understand you have something to give me,'' or ''The President says you have something for me,'' what did you understand her to mean?

A: The gifts.

App. at 874 (Lewinsky GJ 8/6/98). *See also* App. at 715 (2/1/98 Proffer) (''Ms. Currie called Ms. L later that afternoon and said that the Pres. had told her Ms. L wanted her to hold onto something for her.'').

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[97] Those statements, from earliest to latest in time:

1. Proffer (2/1/98): ''Ms. L then asked if she should put away (outside her home) the gifts he had given her or, maybe, give them so someone else.'' App. at 715.

2. FBI 302 (7/27/98): ''LEWINSKY expressed her concern about the gifts that the President had given LEWINSKY and specifically the hat pin that had been subpoenaed by PAULA JONES. The President seemed to know what the JONES subpoena called for in advance and did not seem surprised about the hat pin. The President asked LEWINSKY is she had told anyone about the hat pin and LEWINSKY denied that she had, but may have said that she gave some of the gifts to FRANK CARTER. . . . LEWINSKY asked the President if she should give the gifts to someone and the President replied 'I don't know.'' App. at 1395.

3. FBI 302 (8/1/98): ''LEWINSKY said that she was concerned about the gifts that the President had given her and suggested to the President that BETTY CURRIE hold the gifts. The President said something like, 'I don't know,' or 'I'll think about it.' The President did not tell LEWINSKY what to do with the gifts at that time.'' App. at 1481.

4. Grand Jury (8/6/98): ''[A]t some point I said to him, 'Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic.'' App. at 872.

5. FBI 302 (8/13/97): ''During their December 28, 1997 meeting, CLINTON did not specifically mention which gifts to get rid of.'' App. at 1549.

6. Grand Jury (8/20/98): ''It was December 28th and I was there to get my Christmas gifts from him. . . And we spent maybe about five minutes or so, not very long, talking about the case. And I said to him, 'Well, do you think' . . . And at one point, I said, 'Well do you think I should—' I don't think I said 'get rid of,' I said, 'But do you think I should put away or maybe give to Betty or give someone the gifts?' And he—I don't remember his response. I think it was something like, 'I don't know,' or 'Hmm,' or—there really was no response.'' App. at 1121–22.

7. Grand Jury (8/20/98): ''A JUROR: Now, did you bring up Betty's name [at the December 28 meeting during which gifts were supposedly discussed] or did the President bring up Betty's name? THE WITNESS: I think I brought it up. The President wouldn't have brought up Betty's name because he really didn't—he really didn't discuss it. . .'' App. at 1122.

8. Grand Jury (8/20/98): ''A JUROR: You had said that the President had called you initially to come get your Christmas gift, you had gone there, you had a talk, et cetera, and there was no—you expressed concern, the President really didn't say anything.'' App. at 1126.

9. FBI 302 (8/24/98): ''LEWINSKY advised that CLINTON was sitting in the rocking chair in the Study. LEWINSKY asked CLINTON what she should do with the gifts CLINTON had given her and he either did not respond or responded 'I don't know.' LEWINSKY is not sure exactly what was said, but she is certain that whatever CLINTON said, she did not have a clear image in her mind of what to do next.'' App. at 1566.

10. FBI 302 (9/3/98): ''On December 28, 1997, in a conversation between LEWINSKY and the President, the hat pin given to Lewinsky by the President was specifically discussed. They also discussed the general subject of the gifts the President had given Lewinsky. However, they did not discuss other specific gifts called for by the PAULA JONES subpoena. LEWINSKY got the impression that the President knew what was on the subpoena.'' App. at 1590.

[98] Here a grand juror is restating Ms. Lewinsky's earlier testimony, with which Ms. Lewinsky appeared to agree (she did not dispute the accuracy of the grand juror's recapitulation).

However, Ms. Lewinsky acknowledged that it was she who first raised the prospect of Ms. Currie's involvement in holding the gifts:

A JUROR: Now, did you bring up Betty's name or did the President bring up Betty's name?

[MS. LEWINSKY]: I think I brought it up. The President wouldn't have brought up Betty's name because he really didn't—he really didn't discuss it.

App. at 1122 (Lewinsky GJ 8/20/98). And contrary to the Committee Report's suggestion that Lewinsky's memory of these events has been ''consistent and unequivocal'' and she has ''recited the same facts in February, July, and August,'' Committee Report at 69, Ms. Lewinsky herself acknowledged at her last grand jury appearance that her memory of the crucial conversation is less than crystal clear:

A JUROR: . . . Do you remember Betty Currie saying that the President had told her to call?

[MS. LEWINSKY]: Right now. I don't. I don't remember. . . .

App. at 1141 (Lewinsky GJ 8/20/98).

Moreover, Ms. Currie has repeatedly and unvaryingly stated that it was Ms. Lewinsky who contacted Ms. Currie about the gifts, not the other way around. A few examples include:

- ''LEWINSKY called CURRIE and advised she had to return all gifts CLINTON had given LEWINSKY as there was talk going around about the gifts.'' Supp. at 531 (Currie FBI 302 1/24/98);
- ''Monica said she was getting concerned, and she wanted to give me the stuff the President had given her—or give me a box of stuff. It was a box of stuff.'' Supp. at 557 (Currie GJ 1/27/98);
- Q: . . . Just tell us for a moment how this issue first arose and what you did about it and what Ms. Lewinsky told you.
- A: The best I remember it first arose with a conversation. I don't know if it was over the telephone or in person. I don't know. She asked me if I would pick up a box. She said Isikoff had been inquiring about gifts.'' Supp. at 582 (Currie GJ 5/6/98);
- ''The best I remember she said that she wanted me to hold these gifts—hold this—she may have said gifts, I'm sure she said gifts, box of gifts—I don't remember—because people were asking questions. And I said, 'Fine.' '' Supp. at 581 (Currie GJ 5/6/98);
- ''The best I remember is Monica calls me and asks me if she can give me some gifts, if I'd pick up some gifts for her.'' Supp. at 706 (Currie GJ 7/22/98).

The Committee Report attempts to portray Ms. Currie's memory as faulty on the key issue of whether Ms. Lewinsky initiated the gift retrieval by unfairly referencing Ms. Currie's answer *to a completely different question*. Ms. Currie was asked whether she had discussed with the President Ms. Lewinsky's ''turning over to [her]'' the gift he had given her. Ms. Currie indicated that she could remember no such occasion. ''If Monica said [Ms. Currie] talked to the President about it,'' she was then asked, ''would that not be true?'' Then, only on the limited question of whether Ms. Currie ever talked to the President about the gifts—wholly separate from the issue of who made the initial contact—did Ms. Currie courteously defer, ''Then she may remember better than I. I don't remember.'' Supp. at 584 (Currie GJ 5/6/98). Ironically, it is the substance of this very allegation—regarding conversations between Ms. Currie and the President—that Ms. Lewinsky told the grand jury *she* could not recall. (In later testimony, referring to a conversation she had with the President on January 21, Ms. Currie testified that she was ''sure'' that she did not discuss the fact that she had a box of Ms. Lewinsky's belongings under her bed. Supp. at 705 (Currie GJ 7/22/98).)

To support its theory that Ms. Currie initiated a call to Ms. Lewinsky, the House Managers place great reliance on a cell phone record of Ms. Currie, calling it ''key evidence that Ms. Currie's fuzzy recollection is wrong'' and which ''conclusively proves'' that ''the President directed Ms. Currie to pick up the gifts.'' House Br. at 33. There is record of a one-minute call on December 28, 1998 from Ms. Currie's cell phone to Ms. Lewinsky's home at 3:32 p.m. Even assuming Ms. Lewinsky is correct that Ms. Currie picked up the gifts on December 28, her own testimony refutes the possibility that the Managers' mysterious 3:32 p.m. telephone call could have been the initial contact by Ms. Currie to retrieve the gifts. To the contrary, the timing and duration of the call strongly suggest just the opposite. It is undisputed that Ms. Lewinsky entered the White House on the morning of December 28 at 8:16 a.m. App. at 111 (White House entry records). While no exit time for Ms. Lewinsky was recorded because she inadvertently left her visitor badge in the White House, she has testified that the visit lasted around an hour. App. at 870–72 (Lewinsky GJ 8/6/98). Consistent with this timing, records also indicate that the President left the Oval Office at 9:52 a.m., thus placing Ms. Lewinsky's exit around 9:30 to 9:45 a.m. App. at 111. Ms. Lewinsky has indicated on several occasions that her discussion with Betty Currie occurred just ''several hours'' after she left. App. at 875 (Lewinsky GJ 8/6/98); App. at 1395 (Lewinsky FBI 302 7/27/98). Ms. Lewinsky three times placed the timing of the actual gift exchange with Ms. Currie ''at about 2:00 p.m.'' App at 1127 (Lewinsky GJ 8/20/98); App. at 1396 (Lewinsky FBI 302 7/27/98); App. at 1482 (Lewinsky FBI 302 8/1/98). This, in light of undisputed documentary evidence and Ms. Lewinsky's own testimony, it becomes clear that the 3:32 p.m. telephone record relied upon by the Committee Report in fact is unlikely to reflect a call placed to initiate the pick-up.

Apart from this conspicuous timing defect, there is another, independent reason to conclude that the 3:32 p.m. telephone call could not have been the conversation Ms. Lewinsky describes. The 3:32 p.m. call is documented to have lasted *no longer* than one minute, and because such calls are rounded up to the nearest minute, it quite conceivably could have been much shorter in duration. It is difficult to imagine that the conversation reflected in Ms. Lewinsky's statements could have taken place in less than one minute. Both Ms. Currie and Ms. Lewinsky have described the various matters that were discussed in their initial conversation: not only was this the first time the topic of returning gifts was discussed, which quite likely generated some discussion between the two, but they also had to discuss and arrange a convenient plan for Ms. Currie to make the pick-up.[99]

What, then, to make of this call so heavily relied upon by the House Managers? The record is replete with references that Ms. Currie and Ms. Lewinsky communicated very frequently, especially during this December 1997–January 1998 time period. *See, e.g.*, Supp. at 554 (Currie GJ 1/27/98) (many calls around Christmas-time). They often called or paged each other to discuss a host of topics, including Ms. Lewinsky's pending job search, Ms. Currie's mother's illness, and her contacts with Mr. Jordan. There is simply no reason to believe this call was anything other than one of the many calls and exchanges of pages that these two shared during the period.

c. The Obstruction-by-Gift-Concealment Charge Is at Odds With the President's Actions

Ultimately, and irrespective of the absence of evidence implicating the President in Ms. Lewinsky's gift concealment, the charge fails because it is inconsistent with other events of the very same day. There is absolutely no dispute that the President gave Ms. Lewinsky numerous additional gifts during their December 28 meeting. It must therefore be assumed that on the very day the President and Ms. Lewinsky were conspiring to hide the gifts he had already given to her, the President added to the pile. No stretch of logic will support such an outlandish theory.

From the beginning, this inherent contradiction has puzzled investigators. If there were a plot to conceal these gifts, why did the President give Ms. Lewinsky several *more* gifts at the very moment the concealment plan was allegedly hatched? The House Managers OIC prosecutors, grand jurors, and even Ms. Lewinsky hopelessly searched for an answer to that essential question:

Q: Although, Ms. Lewinsky, I think what is sort of—it seems *a little odd* and, I guess really the grand jurors wanted your impression of it, was *on the same day that you're discussing basically getting the gifts to Betty to conceal them, he's giving you a new set of gifts.*

A: You know, I have come recently to look at that as *sort of a strange situation*, I think, in the course of the past few weeks. . . .

App. at 887–88 (Lewinsky GJ 8/6/98) (emphasis added). See House Br. at 34.

The Committee Report fails to resolve this significant flaw in its theory.[100] The report admits that Ms. Lewinsky ''can't answer'' why the President would in one breath give her gifts and in the next hatch a plan to take them back. But it cites only to Ms. Lewinsky's understanding of the relationship's pattern of concealment and how she contemplated it must apply to the gifts. It creates the erroneous impression that the President gave Ms. Lewinsky instructions to conceal the gifts in the December 28 meeting by quoting her testimony that ''from everything he said to me'' she would conceal the gifts. But we know that Ms. Lewinsky has

[99] The OIC Referral, which took great pains to point out every allegedly incriminating piece of evidence, made no reference to this telephone record, perhaps because the OIC knew it tended *not* to corroborate Ms. Lewinsky's time line. In its place, the Referral rested its corroboration hopes in the following bizarre analysis: ''More generally, the person making the extra effort (in this case, Ms. Currie) is ordinarily the person requesting the favor.'' Referral at 170. Wisely, the House Managers chose not to pursue this groundless speculation.

[100] Incredibly, not only does the Committee Report fail to offer a sensible answer to this perplexity, but without any factual or logical support it accuses the President of lying to the grand jury when he testified that he was not particularly concerned about the gifts he had given Ms. Lewinsky and thus had no compunction about giving her additional gifts on December 28. Article I (4). For whatever reason, neither the Committee Report nor the OIC Referral acknowledges the most reasonable explanation for these events: as the President has testified repeatedly, he was not concerned about the gifts he had given Ms. Lewinsky.

- ''I was never hung up about this gift issue. Maybe it's because I have a different experience. But, you know, the President gets hundreds of gifts a year, maybe more. I have always given a lot of gifts to people, especially if they give me gifts. And this was no big deal to me.'' App. at 495.
- ''this gift business . . . didn't bother me.'' App. at 496.
- ''I wasn't troubled by this gift issue.'' App. at 497.
- ''I have always given a lot of people gifts. I have always been given gifts. I do not think there is anything improper about a man giving a woman a gift, or a woman giving a man a gift, that necessarily connotes an improper relationship. So, it didn't bother me.'' App. at 498.

repeatedly testified that no such discussion *ever* occurred. Her reliance on ''everything he said to me'' must, therefore, reflect her own plan to implement discussions the two had had about concealing the relationship long before her role in the *Jones* litigation.

What this passage confirms is that Ms. Lewinsky had very much in her mind that she would do what she could to conceal the relationship—a *modus operandi* she herself acknowledged well pre-dated the *Jones* litigation. That she took such steps does not mean that the President knew of or participated in them. Indeed, it appears that the entire gift-concealment plan arose not from any plan suggested by the President—which the Committee Report so desperately struggles to maintain—but rather more innocently from the actions of a young woman taking steps she thought were best.[101]

In any event, the record evidence is abundantly clear that the President has not obstructed justice by any plan or scheme to conceal gifts he had given to Ms. Lewinsky, and logic and reason fully undercut any such theory.

4. The President denies that he obstructed justice in connection with Monica Lewinsky's efforts to obtain a job in New York in an effort to ''corruptly prevent'' her ''truthful testimony'' in the Jones case

Again, in the absence of specifics in Article II itself, we look to the Committee Report for guidance on the actual charges. The Committee Report would like to portray this claim in as sinister a light as possible, and it alleges that the President of the United States employed his close friend Vernon Jordan to get Monica Lewinsky a job in New York to influence her testimony or perhaps get her away from the *Jones* lawyers. To reach this conclusion, and without the benefit of a single piece of direct evidence to support the charge, it ignores the direct testimony of several witnesses, assigns diabolical purposes to a series of innocuous events, and then claims that ''[i]t is logical to infer from this chain of events'' that the job efforts ''were motivated to influence the testimony of'' Ms. Lewinsky. Committee Report at 71. Again, the evidence contradicts the inferences the Committee Report strives to draw. Ms. Lewinsky's New York job search began on her own initiative long before her involvement in the *Jones* case. By her own forceful testimony, her job search had no connection to the *Jones* case.

Mr. Jordan agreed to help Ms. Lewinsky not at the direction of the President but upon the request of Betty Currie, Mr. Jordan's long-time friend. And bizarrely, the idea to involve Mr. Jordan (which arose well before Ms. Lewinsky became a possible *Jones* witness) came not from the President but apparently emanated from Ms. Tripp. In short, the facts directly frustrate the House Majority's theory.[102]

a. The Complete Absence of Direct Evidence Supporting This Charge

It is hard to overstate the importance of the fact that—*by the House Managers', the Committee Report's and the OIC's own admission*—there is not one single piece of direct evidence to support this charge. *Not one.* Indeed, just the contrary is true. Both Ms. Lewinsky and Mr. Jordan have repeatedly testified that there was never an *explicit or implicit* agreement, suggestion, or implication that Ms. Lewinsky would be rewarded with a job for her silence or false testimony. One need look no further than their own testimony:

Lewsinky: ''[N]o one ever asked me to lie and I was never promised a job for my silence.'' App. at 1161 (Lewinsky GJ 8/20/98);

''There was no agreement with the President, JORDAN, or anyone else that LEWINSKY had to sign the Jones affidavit before getting a job in New York. LEWINSKY never demanded a job from Jordan in exchange for a favorable affidavit. Nether the President nor JORDAN ever told LEWINSKY that she had to lie.'' App. at 1398 (Lewinsky FBI 302 7/27/98).

Jordan: ''As far as I was concerned, [the job and the affidavit] were two very separate matters.'' Supp. at 1737 (Jordan GJ 3/5/98).

''Unequivocally, indubitably, no''—in response to the question whether the job search and the affidavit were in any way connected. Supp. at 1827 (Jordan GJ 5/5/98).[103]

This is the direct evidence. The House Managers' circumstantial ''chain of events'' case, House Br. 39–41, cannot overcome the hurdle the direct evidence presents.

b. Background of Ms. Lewinsky's New York Job Search

By its terms, Article II(4) would have the Senate evaluate Ms. Lewinsky's job search by considering only the circumstances ''[b]eginning on or about December 7, 1977.'' Article II(4). Although barely mentioned in the Committee Report's ''explanation'' of Article II(4), the significant events occurring *before* December 7, 1997 cannot simply be ignored because they are inconsistent with the Majority's theory. Without reciting every detail, the undisputed record establishes that the following facts occurred long before Ms. Lewinsky was involved in the *Jones* case:

First, Ms. Lewinsky had contemplated looking for a job in New York as early as July 1997. App. at 1414 (Lewinsky FBI 302 7/29/98) (July 3 letter ''first time [Lewinsky] mentioned the possibility of moving to New York''); App. at 787–788 (On July 4, 1997, Ms. Lewinsky wrote the President a letter describing her interest in a job ''in New York at the United Nations''); Committee Report at 10 (''Ms. Lewinsky had been searching for a highly paid job in New York since the previous July.'') She conveyed that prospect to a friend on September 2, 1997. App. at 2811 (Lewinsky e-mail).

Second, in early October, at the request of Ms. Currie, then-Deputy Chief of Staff John Podesta asked U.N. Ambassador Bill Richardson to consider Ms. Lewinsky for a position at the U.N. Supp. at 3404 (Richardson GJ 4/3/98). Ms. Currie testified that she was acting on her own in this effort. Supp. at 592 (Currie GJ 5/6/98).

Third, around October 6, Ms. Tripp told Ms. Lewinsky that an acquaintance in the White House reported that it was unlikely Ms. Lewinsky would ever be re-employed at the White House. After this disclosure, Ms. Lewinsky ''was mostly resolved to look for a job in the private sector in New York.'' App. at 1543–44 (Lewinsky FBI 302) 8/13/98; *see also* App. at 1460 (Lewinsky FBI 302 7/31/98) (remarks by the Linda Tripp acquaintance were the ''straw that broke the camel's back'').

Fourth, sometime prior to October 9, 1997, Ms. Tripp and Ms. Lewinsky discussed the prospect of enlisting Mr. Vernon Jordan to assist Ms. Lewinsky in obtaining a private sector job in New York. App. at 822–24 (Lewinsky GJ 8/6/98); *see also* App. at 1079 (Lewinsky GJ 8/20/98) (''I don't remember . . . if [enlisting Jordan] was my idea or Linda's idea. And I know that that came up in discussions with her, I believe, before I discussed it with the President''). On either October 9 or 11, Ms. Lewinsky conveyed to the President this idea of asking Mr. Jordan for assistance. *Id.*

Fifth, in mid-October, 1997, Ms. Lewinsky purchased a book on jobs in New York. App. at 1462 (Lewinsky FBI 302 7/31/98). Ms. Lewinsky completed and sent to Betty Currie at the White House a packet of jobs-related materials on October 15 or 16. Supp. at 735 (Lewinsky Tripp tape of 10/15/97 conversation).

Sixth, on October 31, 1997, Ms. Lewinsky interviewed for a position with Ambassador Bill Richardson at the United Nations in New York. Ambassador Richardson was ''impressed'' with Ms. Lewinsky and, on November 3, offered her a position, which she ultimately rejected. Supp. at 3411 (Richardson GJ 4/30/98); Supp. at 3731 (Sutphen GJ 5/27/98). Ms. Currie informed the President that Ms. Lewinsky had received a job offer at the U.N. Supp. at 592 (Currie GJ 5/6/98). Ambassador Richardson never spoke to the President or Mr. Jordan about Ms. Lewinsky, and he testified emphatically and repeatedly that no one pressured him to hire her. Supp. at 3422–23 (Richardson GJ 4/30/98); Supp. at 3418 (same); Supp. at 3429 (same).

Seventh, as of late October or November, Ms. Lewinsky had told Mr. Kenneth Bacon, her boss at the Pentagon, that she wanted to leave the Pentagon and move to New York. In a series of conversations, she enlisted his assistance in obtaining a private sector job in New York. Supp. at 11 (Kenneth Bacon FBI 302 2/26/98). In response, Mr. Bacon contacted Howard Paster, CEO of the public relations firm Hill & Knowlton about Ms. Lewinsky. *Id.*

Eighth, in November, Ms. Lewinsky gave notice to the Pentagon that she would be leaving her Pentagon job at year's end. Supp. at 116 (Clifford Bernath GJ 5/21/98).

Ninth, Ms. Lewinsky apparently had a preliminary meeting with Mr. Jordan on November 5, 1997 to discuss her job search. During this twenty-minute meeting, Ms. Lewinsky and Mr. Jordan discussed a list of potential employers she had compiled. App. at 1464–65 (Lewinsky FBI 302 7/31/98). In that meeting, Ms. Lewinsky never informed Mr. Jordan of any time constraints on her need for job assistance. Supp. at 2647 (Lewinsky-Tripp Tape of 11/8/97 conversation). Mr. Jordan had to leave town the next day. App. at 1465 (Lewinsky FBI 302 Form 7/31/98). Ms. Lewinsky had a follow-up telephone conversation with Mr. Jordan around Thanksgiving wherein he advised her that he was ''working on her job search'' and instructed

[101] As the President has stated about this potentiality, ''I didn't then, I don't now see this [the gifts] as a problem. And if she thought it was a problem, I think it—it must have been from a, really *a misapprehension of the circumstances.* I certainly never encouraged her not to, to comply lawfully with a subpoena.'' App. at 497–98 (emphasis added.)

[102] This allegation has gone through several iterations. As initially referred to the House of Representatives, the charge was that the President ''help[ed] Ms. Lewinsky obtain a job in New York at a time when she would have been a witness against him'' in the *Jones* case. OIC Referral at 181. Faced with the significant evidence that Ms. Lewinsky's job efforts had originated long before she became involved in the *Jones* case and were in fact entirely unrelated to the *Jones* case, the Judiciary Committee Majority was forced to recraft this claim. Instead of implying a complete connection between the job search and the *Jones* ligitation, the article now oddly charges that the President *intensified and succeeded* in an effort to secure job assistance'' for Ms. Lewinsky ''at a time when the truthful testimony of [Ms. Lewinsky] would have been harmful to him,'' Article II (5) (emphasis added)—thereby *admitting* that the initial effort was motivated by appropriate concerns.

[103] The only person who suggested any such *quid pro quo* was Ms. Tripp, who repeatedly urged Ms. Lewinsky to demand such linkage. App. at 1493 (Lewinsky FBI 302 8/2/98 (''TRIPP told LEWINSKY not to sign the affidavit until LEWINSKY had a job.''). To appease Linda Tripp's repeated demands on this point, Ms. Lewinsky ultimately told Ms. Tripp that she had told Mr. Jordan she wouldn't sign the affidavit until she had a job. But as she later emphasized to the grand jury, ''That was definitely a lie, based on something Linda had made me promise her on January 9th.'' App. at 1134 (Lewinsky GJ 8/20/98).

her to call him again ''around the first week of December.'' App. at 1465 (Lewinsky FBI 302 7/31/98); *see also* App. at 825 (Lewinsky GJ 8/6/98) (''And so Betty arranged for me to speak with [Jordan] again and I spoke with him when I was in Los Angeles before—right before Thanksgiving.'')[104] Inexplicably, the Committee Report, the presentation by its chief counsel, and the Starr Referral all choose to ignore this key piece of testimony—that contact resumed in early December because Ms. Lewinsky and Mr. Jordan agreed (in November) that it would. *See* Committee Report at 10 (''Ms. Lewinsky had no further contacts with Mr. Jordan at that time [early November to mid December].''); Schippers Dec. 10, 1998 Presentation at 38 (''Vernon Jordan, who, by the way, had done nothing from early November to mid-December.''); Referral at 182 (''Ms. Lewinsky had no contact with . . . Mr. Jordan for another month [after November 5].'').

In sum, the record is clear that Ms. Lewinsky decided on her own to seek a job in New York many months before her involvement in the *Jones* case. She had asked her Pentagon boss to help, as well as Ms. Currie, who arranged indirectly for Ms. Lewinsky to interview with Ambassador Richardson at the United Nations. Mr. Jordan became involved in the job search at the request of Ms. Currie (apparently at the suggestion of Ms. Tripp) and, notwithstanding his travels in November, Supp. at 1811 (Jordan GJ 5/5/98), kept in contact with Ms. Lewinsky with plans to reconvene early in December.

c. The Committee Report's Circumstantial Case

Article II ignores this background and merely alleges that efforts to aid Ms. Lewinsky's job search ''intensified and succeeded'' in December 1997. While not adopted in the article, the House Brief, the Committee Report, and the accompanying final presentation by Majority Counsel Schippers offer some guidance as to the meaning of the actual charge. They cite three events—Mr. Jordan's December 11 meeting with Ms. Lewinsky to discuss job prospects in New York, Ms. Lewinsky's execution of her *Jones* affidavit, and her receipt of a job—in an effort to portray Ms. Lewinsky's job search as sinister. But the full record easily dispels any suggestion that there were any obstructive or improper acts.

(1) Monica Lewinsky's December 11 meeting with Vernon Jordan

The House Managers and the Committee Report suggest that Mr. Jordan took action on Ms. Lewinsky's job search request only after, and because, Ms. Lewinsky's name appeared on the witness list on December 5 and only after, and because, Judge Wright ordered the President to answer certain questions about ''other women'' on December 11. *See* House Br. at 21. Consider the Committee Report portrayal:

''[T]he effort to obtain a job for Monica Lewinsky in New York intensified after the President learned, on December 6, 1997, that Monica Lewinsky was listed on the witness list for the case Jones v. Clinton.[105]

On December 7, 1997, President Clinton met with Vernon Jordan at the White House. Ms. Lewinsky met with Mr. Jordan on December 11 to discuss specific job contacts in New York. Mr. Jordan then made calls to certain New York companies on Ms. Lewinsky's behalf. Jordan telephoned President Clinton to keep him informed of the efforts to get Ms. Lewinsky a job.'' Committee Report at 70.

''Something happened that changed the priority assigned to the job search. On the morning of December 11, 1997, Judge Susan Webber Wright ordered President Clinton to provide information regarding any state or federal employee with whom he had, proposed, or sought sexual relations. To keep Ms. Lewinsky satisfied was now of critical importance.'' Committee Report at 11.

The unmistakable intention of this narrative is to suggest that, after the President learned Ms. Lewinsky's name was on the witness list on December 6, he (1) contacted Mr. Jordan on December 7 to engage his assistance for Ms. Lewinsky, and only then did Mr. Jordan agree to meet with Ms. Lewinsky, and further, that (2) Mr. Jordan met with Ms. Lewinsky on December 11 and took concrete steps to help Ms. Lewinsky only after and as a result of Judge Wright's December 11 order. Both suggestions are demonstrably false.

The President had nothing to do with arranging the December 11 meeting between Mr. Jordan and Ms. Lewinsky. As the record indicates, after receiving a request from Ms. Currie on December 5 that he meet with Ms. Lewinsky, and telling Ms. Currie to have Ms. Lewinsky call him, Ms. Lewinsky called Mr. Jordan on December 8. Supp. at 1705 (Jordan GJ 3/3/98). As noted above, that call had been presaged by a conversation between Mr. Jordan and Ms. Lewinsky around Thanksgiving in which Jordan told her ''he was working on her job search'' and asked her to contact him again ''around the first week of December.'' App. at 1465 (Lewinsky FBI 302 7/31/98). In the December 8 call, the two arranged for Ms. Lewinsky to come to Mr. Jordan's office on December 11; on the same day, Ms. Lewinsky sent Mr. Jordan via courier a copy of her resume. Supp. at 1705 (Jordan GJ 3/3/98). At the time of that contact, Mr. Jordan did not even know that Ms. Lewinsky knew President Clinton. *Id.*

In the intervening period before Ms. Lewinsky's December 11 meeting with Mr. Jordan, the President met with Mr. Jordan on December 7. As the Committee Report acknowledges, that meeting had nothing to do with Ms. Lewinsky. Committee Report at 11. Yet the House Managers' Brief, like the Committee Report before it, states that ''the sudden interest [in helping Ms. Lewinsky obtain a job] was inspired by a court order entered on December 11, 1997'' in the *Jones* case.[106] House Br. at 21. No evidence supports that supposition. The December 11 meeting had been scheduled on December 8. Neither the OIC Referral nor the Committee Report nor the Managers' Brief cites *any* evidence that the President or Mr. Jordan had any knowledge of the contents of that Order at the time of the December 11 meeting.

Mr. Jordan met with Ms. Lewinsky shortly after 1:00 p.m. on December 11. Supp. at 1863 (Akin Gump visitor log); Supp. at 1809 (Jordan GJ 5/5/98). In anticipation of that meeting, Mr. Jordan had made several calls to prospective employers about Ms. Lewinsky. Supp. at 1807–09 (Jordan GJ 5/5/98). Mr. Jordan spoke about Ms. Lewinsky with Mr. Peter Georgescu of Young & Rubicam at 9:45 a.m. that morning, and with Mr. Richard Halperin of Revlon around 1:00 p.m., immediately before meeting with Ms. Lewinsky. Supp. at 1807–09 (Jordan GJ 5/5/98). Again, there is no evidence that any of this occurred after Mr. Jordan learned of Judge Wright's order.

Although the Committee Report claims that a heightened sense of urgency attached in December which ''intensified'' the job search efforts, it ignores the sworn testimony of Mr. Jordan denying any such intensification: ''Oh, no. I do not recall any heightened sense of urgency [in December]. What I do recall is that I dealt with it when I had time to do it.'' Supp. at 1811 (Jordan GJ 5/5/98).[107]

The ''heightened urgency'' theory also is undermined by the simple fact that Mr. Jordan indisputably placed *no* pressure on any company to give Ms. Lewinsky a job and suggested no date by which Ms. Lewinsky had to be hired. The first person Mr. Jordan contacted, Mr. Georgescu of Young & Rubicam/Burson-Marsteller, told investigators that Mr. Jordan did not engage in a ''sales pitch'' for Lewinsky. Supp. at 1222 (Georgescu FBI 302 3/25/98). Mr. Georgescu told Mr. Jordan that the company ''would take a look at [Ms. Lewinsky] in the usual way,'' Supp. at 1219 (Georgescu FBI 302 1/29/98), and that once the initial interview was set up, Ms. Lewinsky would be ''on [her] own from that point.'' Supp. at 1222 (Georgescu FBI 302 3/25/98). The executive who interviewed Ms. Lewinsky at Burson-Marsteller stated that Ms. Lewinsky's recruitment process went ''by the book'' and, ''while somewhat accelerated,'' the process ''went through the normal steps.'' Supp. at 111 (Berk FBI 302 3/31/98).

At American Express, Mr. Jordan contacted Ms. Ursula Fairbairn, who stated that Mr. Jordan exerted ''no . . . pressure'' to hire Lewinsky. Supp. at 1087 (Fairbairn FBI 302 2/4/98). Indeed, she considered it ''not unusual for board members'' like Mr. Jordan to recommend talented people for employment and noted that Mr. Jordan had recently recommended another person just a few months earlier. *Id.* The person who interviewed Ms. Lewinsky stated that he felt ''absolutely no pressure'' to hire her and indeed told her she did not have the qualifications necessary for the position. Supp. at 3521 (Schick FBI 302 1/29/98).

Perhaps most telling of the absence of pressure applied by Mr. Jordan is the fact that neither Young & Rubicam/Burson-Marsteller or American Express offered Ms. Lewinsky a job.

Similarly, at MacAndrews & Forbes/Revlon, where Ms. Lewinsky ultimately was offered a job (see below), Mr. Jordan initially contacted Mr. Halperin, who has stated that it was not unusual for Mr. Jordan to make an employment recommendation. Supp. at 1281 (Halperin FBI 302 1/26/98). Moreover, he emphasized that Mr. Jordan did not ''ask [him] to work on any particular timetable,'' Supp. at 1294 (Halperin GJ 4/23/98), and that ''there was no implied time constraint or requirement for fast action.'' Supp. at 1286 (Halperin FBI 3/27/98.)

(2) The January job interviews and the Revlon employment offer

The Committee Report attempts to conflate separate and unrelated acts—the signing of the affidavit and the Revlon job offer—to sustain its otherwise unsustainable obstruction theory. The Committee Report's description of these events is deftly misleading:

''The next day, January 7, Monica Lewinsky signed the false affidavit. She showed the executed copy to Mr. Jordan that same day. She did this so that Mr. Jordan could report to President Clinton that it had been signed and another mission had been accomplished.

[104] Mr. Jordan was then out of the country from the day after Thanksgiving until December 4. Supp. at 1804 (Jordan GJ 5/5/98).

[105] Committee Report at 70. That portrayal flatly contradicts the Committee Report's earlier statement that on December 6 ''there was still no urgency to help Lewinsky.'' Committee Report at 10–11.

[106] That Order authorized Paula Jones' attorneys to obtain discovery relating to certain government employees ''with whom the President had sexual relations, proposed sexual relations, or sought to have sexual relations.'' House Br. at 21.

[107] Mr. Jordan explained that not much activity occurred in November because ''I was traveling.'' Supp. at 1811 (Jordan GJ 9/5/98).

On January 8, Ms. Lewinsky had an interview arranged by Mr. Jordan with MacAndrews & Forbes in New York. The interview went poorly. Afterwards, Ms. Lewinsky called Mr. Jordan and informed him. Mr. Jordan, who had done nothing from early November to mid-December, then called the chief executive officer of MacAndrews & Forbes, Ron Perelman, to ''make things happen, if they could happen.'' Mr. Jordan called Ms. Lewinsky back and told her not to worry. That evening, MacAndrews & Forbes called Ms. Lewinsky and told her that she would be given more interviews the next morning.

The next morning, Ms. Lewinsky received her reward for signing the false affidavit. After a series of interviews with MacAndrews & Forbes personnel, she was informally offered a job. Committee Report at 18 (citations omitted).

By this portrayal, the Committee Report suggests two conclusions: first, that Ms. Lewinsky was ''reward[ed]'' with a job for her signing of the affidavit; second, that the only reason Ms. Lewinsky was given a second interview and ultimately hired at Revlon was Mr. Jordan's intervention with Mr. Perelman. Once again, both conclusions are demonstrably false.

Mr. Jordan and Ms. Lewinsky have testified under oath that there was no causal connection between the job search and the affidavit. The only person to draw (or, actually, recommend) any such linkage was Ms. Tripp. The factual record easily debunks the second insinuation—that Ms. Lewinsky was hired as a direct result of Mr. Jordan's call to Mr. Perelman. One fact is virtually dispositive: the Revlon executive who scheduled Ms. Lewinsky's January 9 interview and decided to hire her that same day never even knew about Mr. Jordan's call to Mr. Perelman, or any interest Mr. Perelman might have in Ms. Lewinsky, and thus could not have been acting in furtherance of such a plan.

Ms. Lewinsky initially interviewed with Mr. Halperin of MacAndrews & Forbes (Revlon's parent company) on December 18, 1997. (Mr. Jordan had spoken with Mr. Halperin on December 11.) Prior to interviewing Ms. Lewinsky, Mr. Halperin forwarded a copy of her resume to Mr. Jaymie Durnan, also of MacAndrews & Forbes, for his consideration. Supp. at 1286–87 (Halperin FBI 302 3/27/98). Following his interview of Ms. Lewinsky, Mr. Halperin thought that she would likely be ''shipped to Revlon'' for consideration. *Id.*

Mr. Durnan received Ms. Lewinsky's resume from Mr. Halperin in mid-December and, after reviewing it, decided to interview Ms. Lewinsky after the first of the year. (He was going on vocation the last two weeks of December). Supp. at 1053 (Durnan FBI 302 3/27/98). When he returned from vacation, his assistant scheduled an interview with Ms. Lewinsky for January 7, 1998, but, because of scheduling problems, he rescheduled the interview for the next day, January 8, 1998. Supp. at 1049 (Durnan FBI 302 1/26/98). Mr. Durnan's decision to interview Ms. Lewinsky was made independently of the decision by Mr. Halperin to interview her. Indeed, only when Mr. Durnan interviewed Ms. Lewinsky in January did he discover that she had had a December interview with Mr. Halperin. *Id.*

It was this interview with Mr. Durnan that Ms. Lewinsky later described as having gone poorly in her view. App. at 926 (Lewinsky GJ 8/6/98). The House Managers (''[t]he interview went poorly,'' House Br. at 38), the Committee Report (''The interview went poorly'', *id.* at 21), and the OIC Referral (''The interview went poorly,'' *id.* at 184) all emphasize only *Ms. Lewinsky's* impression of the job interview—for obvious reasons: it tends to heighten the supposed relevance of the Jordan call to Mr. Perelman. In other words, under this theory, Ms. Lewinsky had no prospect of a job at MacAndrews & Forbes/Revlon until Mr. Jordan resurrected her chances with Mr. Perelman.

Unfortunately, like so much other ''evidence'' in the obstruction case, the facts do not bear out this sinister theory. *Mr. Durnan had no similar impression that his interview with Ms. Lewinsky had gone ''poorly.''* In fact, just the opposite was true: he was ''impressed'' with Ms. Lewinsky and thought that she would ''fit in'' with MacAndrews & Forbes but ''there was nothing available at that time which suited her interests.'' Supp. at 1054 (Durnan FBI 302 3/27/98). Mr. Durnan therefore decided to forward Ms. Lewinsky's resume to Ms. Allyn Seidman of Revlon. After the interview, he called Ms. Seidman and left her a voicemail message about his interview with Ms. Lewinsky and explained that, while there was no current opening at MacAndrews & Forbes, ''perhaps there was something available at Revlon.'' *Id.*

In the meantime, Mr. Jordan had called Mr. Perelman about Ms. Lewinsky. Mr. Perelman described this conversation as ''very low key and casual.'' Supp. at 3273 (Perelman FBI 302 1/26/98). Mr. Jordan ''made no specific requests and did not request'' him ''to intervene''; nonetheless, Mr. Perelman agreed to ''look into it.'' *Id.* Later that day, Mr. Durnan spoke to Mr. Perelman, who mentioned that he had received a call from Mr. Jordan about a job candidate. Mr. Perelman told Mr. Durnan ''let's see what we can do,'' Supp. at 3276 (Perelman FBI 302 3/27/98), but Mr. Durnan never concluded that hiring Ms. Lewinsky was ''mandatory.'' Supp. at 1055 (Durnan FBI 302 3/27/98). Mr. Perelman later called Mr. Jordan and said they would do what they could; Mr. Jordan expressed no urgency to Mr. Perelman. Supp. at 3276 (Perelman FBI 302 3/27/98).

By the time Mr. Durnan had discussed Ms. Lewinsky with Mr. Perelman, he had *already* forwarded her resume to Ms. Seidman at Revlon. Supp. at 1049–50 (Durnan FBI 302 1/26/98). After speaking with Mr. Perelman, Mr. Durnan spoke with Ms. Seidman, following up on the voicemail message he had left earlier that day. Supp. at 1055 (Durnan FBI 302 3/27/98). Upon speaking to Ms. Seidman about Ms. Lewinsky, however, *Mr. Durnan did not tell Ms. Seidman that CEO Perelman has expressed any interest in Ms. Lewinsky. Id.* Rather, he simply said that if she liked Ms. Lewinsky, she should hire her. Supp. at 1050 (Durnan FBI 302 1/26/98).

For her part, Ms. Seidman has testified that she had no idea that Mr. Perelman had expressed interest in Ms. Lewinsky:

Q: Did [Mr. Durnan] indicate to you that he had spoken to anyone else within MacAndrews or Revlon about Monica Lewinsky?

A: Not that I recall, no.

Q: Do you have knowledge as to whether or not Mr. Perelman spoke with anyone either on the MacAndrews & Forbes side or the Revlon side about Monica Lewinsky?

A: No.

Supp. at 3642 (Seidman Depo. 4/23/98). Rather, Ms. Seidman's consideration of Ms. Lewinsky proceeded on the merits. Indeed, as a result of the interview, Ms. Seidman concluded that Ms. Lewinsky was ''bright, articulate and polished,'' Supp. at 3635 (Seidman FBI 302 1/26/98), and ''a talented, enthusiastic, bright young woman'' who would be a ''good fit in [her] department.'' Supp. at 3643 (Seidman Depo. 4/23/98). She decided after the interview to hire Ms. Lewinsky, and thereafter called Mr. Durnan ''and told him I thought she was great,'' *Id.*

In sum, Ms. Seidman made the decision to grant an interview and hire Ms. Lewinsky on the merits. She did not even know that Mr. Perelman had expressed any interest in Ms. Lewinsky or that Mr. Jordan had spoken to Mr. Perelman the day before. As amply demonstrated, the House Managers' Jordan-Perelman intervention theory just doesn't hold water.

d. Conclusion

From the preceding discussion of the factual record, two conclusions are inescapable. First, there is simply no direct evidence to support the job-for-silence obstruction theory. From her initial proffer to the last minutes of her grand jury appearance, the testimony of Ms. Lewinsky has been clear and consistent: she was never asked or encouraged to lie or promised a job for her silence or for a favorable affidavit. Mr. Jordan has been equally unequivocal on this point. Second, the ''chain of events'' circumstantial case upon which this obstruction allegation must rest falls apart after inspection of the full evidentiary record. Ms. Lewinsky's job search began on her own volition and long before she was ever a witness in the *Jones* case. Mr. Jordan's assistance originated with a request from Ms. Currie, which had no connection to events in the *Jones* litigation. No pressure was applied to anyone at any time. And Ms. Lewinsky's ultimate hiring had absolutely no connection to her signing of the affidavit in the *Jones* case. Viewed on this unambiguous record, the job-search allegations are plainly unsupportable.

5. The President denies that he ''corruptly allowed his attorney to make false and misleading statements to a Federal judge'' concerning Monica Lewinsky's affidavit

Article II (5) charges that the President engaged in an obstruction of justice because he ''did not say anything'' during his *Jones* deposition when his attorney cited the Lewinsky affidavit to Judge Wright and stated that ''there is no sex of any kind in any manner, shape, or form.'' Committee Report at 72. The rationale underlying this charge of obstruction of justice hinges on an odd combination of a bizarrely heightened legal obligation, a disregard of the actual record testimony, and a good does of amateur psychology. This claim is factually and legally baseless.

The law, of course, imposes no obligation on a client to monitor every statement and representation made by his or her lawyer. Particularly in the confines of an ongoing civil deposition, where clients are routinely counseled to focus on the questions posed of them and their responses and ignore all distractions, it is totally inappropriate to try to remove a President from office because of a statement by his attorney. Indeed, the President forcefully explained to the grand jury that he was not focusing on the exchange between lawyers but instead concentrating on his own testimony:

- ''I'm not even sure I paid much attention to what he was saying. I was thinking, I was ready to get on with my testimony here and they were having these constant discussions all through the deposition.'' App. at 476;
- ''I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.'' App. at 510;
- ''I'm quite sure that I didn't follow all the interchanges between the lawyers all that carefully.'' App. at 510;
- ''I am not even sure that when Mr. Bennett made that statement that I was concentrating on the exact words he used.'' App. at 511;
- ''When I was in there, I didn't think about my lawyers. I was, frankly, thinking about myself and my testimony and trying to answer the questions.'' App. at 512;
- ''I didn't pay any attention to this colloquy that went on. I was waiting for my instructions as a witness to go forward. I was

worried about my own testimony.'' App. at 513.

The Committee Report ignores the President's repeated and consistent description of his state of mind during the deposition exchange. Instead, the Committee Report and majority counsel's final presentation undertake a novel exercise in video psychology, claiming that by studying the President's facial expressions and by noting that he was ''looking in Mr. Bennett's direction' during the exchange, it necessarily follows that the President was in fact listening to and concentrating on every single word uttered by his attorney[108] and knowingly made a decision not to correct his attorney.

The futility of such an exercise is manifest. It is especially unsettling when set against the President's adamant denials that he harbored any contemporaneous or meaningful realization of his attorney's colloquy with the Judge. The theory is factually flimsy, legally unfounded, and should be rejected.

6. The President denies that he obstructed justice by relating ''false and misleading statements'' to ''a potential witness,'' Betty Currie, ''in order to corruptly influence [her] testimony''

There is no dispute that the President met with his secretary, Ms. Currie, on the day after his *Jones* deposition and discussed questions he had been asked about Ms. Lewinsky. The Managers cast this conversation in the most sinister light possible and alleges that the President attempted to influence the testimony of a ''witness'' by pressuring Ms. Currie to agree with an inaccurate version of facts about Ms. Lewinsky. The Managers claim that ''the President essentially admitted to making these statements when he knew they were not true.'' House Br. at 47. That is totally false. The President admitted nothing of the sort and the Managers cite nothing in support. The President has adamantly denied that he had any intention to influence Ms. Currie's recollection of events or her testimony in any manner. The absence of any such intention is further fortified by the undisputed factual record establishing that to the President's knowledge, Ms. Currie was neither an actual nor contemplated witness in the *Jones* litigation at the time of the conversation. And critically, Ms. Currie testified that, during the conversation, she did not perceive any pressure ''whatsoever'' to agree with any statement made by the President.

The President's actions could not as a matter of law support this allegation. To obstruct a proceeding or tamper with a witness, there must be both a known proceeding *and* a known witness. In the proceeding that the President certainly knew about—the *Jones* case—Ms. Currie was neither an actual nor prospective witness. As for the only proceeding in which Ms. Currie ultimately became a witness—the OIC investigation—no one asserts the President could have known it existed at that time.

At the time of the January 18 conversation.[109] Ms. Currie was not a witness in the *Jones* case, as even Mr. Starr acknowledged: ''The evidence is not that she was on the witness list, and we have never said that she was.'' Transcript of November 19, 1998 Testimony at 192.

Nor was there any reason to suspect Ms. Currie would play any role in the *Jones* case. The discovery period was, at the time of this conversation, in its final days, and a deposition of Ms. Currie scheduled and completed within that deadline would have been highly unlikely.

Just as the President could not have intended to influence the testimony of ''witness'' Betty Currie because she was neither an actual nor a prospective witness, so too is it equally clear that the President never pressured Ms. Currie to alter her recollection. Such lack of real or perceived pressure also fatally undercuts this charge. Despite the prosecutor's best efforts to coax Ms. Currie into saying she was pressured to agree with the President's statements, Ms. Currie adamantly denied any such pressure. As she testified:

Q: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?

A: *None whatsoever.*

Q: What did you think, or what was going through your mind about what he was doing?

A: At the time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.

* * * * *

Q: That was your impression, that he wanted you to say—because he would end each of the statements with ''Right?'', with a question.

A: I do not remember that he wanted me to say ''Right.'' *He would say ''Right'' and I could have said. ''Wrong.''*

Q: But he would end each of those questions with a ''Right?'' and you could either say whether it was true or not true?

A: Correct.

Q: Did you feel any pressure to agree with your boss?

A: *None.*

Supp. at 668 (Currie GJ 7/22/98). Ms. Currie explained that she felt no pressure because she basically agreed with the President's statements:

Q: You testified with respect to the statements as the President made them, and, in particular, the four statements that we've already discussed. You felt at the time that they were technically accurate? Is that a fair assessment of your testimony?

A: That's a fair assessment.

Q: But you suggested that at the time. Have you changed your opinion about it in retrospect?

A: I have not changed my opinion, no.

Supp. at 667 (Currie GJ 7/22/98); *see also* Supp. at 534 (Currie FBI 302 1/24/98) (''Currie advised that she responded ''right'' to each of the statements because as far as she knew, the statements were basically right.''); Supp. at 665 (Currie GJ 7/22/98) (''I said 'Right' to him because I thought they were correct, 'Right, you were never really alone with Monica, right' '').

What, then, to make of this conversation if there was no effort to influence Ms. Currie's testimony? Well, to understand fully the dynamic, one must remove the memory of all that has transpired since January 21 and place oneself in the President's position after the *Jones* deposition. The President had just faced unexpectedly detailed questions about Ms. Lewinsky. The questions addressed, at times, minute details and at other times contained bizarre inaccuracies about the relationship. As the President candidly admitted in his grand jury testimony, he had long thought the day would come when his relationship with Ms. Lewinsky would become public:

''I formed an opinion early in 1996, once I got into this unfortunate and wrong conduct, that when it stopped, which I knew I'd have to do and which I should have done long before I did, *that she would talk about it.* Not because Monica Lewinsky is a bad person. She's basically a good girl. She's a good young woman with a good heart and a good mind. . . . But I knew that the minute there was no longer any contact, *she would talk about this.* She would have to. She couldn't help it. It was, it was part of her psyche.''

App. at 575–76 (emphasis added). Now, with the questioning about Ms. Lewinsky in the *Jones* case and the publication of the first internet report article about Ms. Lewinsky, the President knew that a media storm was about to erupt. And erupt it did.

So it was hardly surprising that the President reached out to Ms. Currie at this time. He was trying to gather all available information and assess the political and personal consequences that this revelation would soon have. Though he did not confide fully in Ms. Currie, he knew Ms. Currie was Ms. Lewinsky's main contact and thus could have additional relevant information to help him assess and respond to the impending media scrutiny. As the President testified:

''I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think.''

App. at 593. And further, ''[W]hat I was trying to determine was whether my recollection was right and that she was always in the office complex when Monica was there. . . . *I thought what would happen is that it would break in the press, and I was trying to get the facts down.*'' App. at 507–08 (emphasis added). As the President concluded: ''I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could.'' App. at 508.

Ms. Currie's grand jury testimony confirms the President's ''agitated'' state of mind and information-gathering purpose for the discussion. She testified that the President appeared, in her words, to be ''shocked or surprised that this was an issue, and he was just talking.'' Supp. at 668 (Currie GJ 7/22/98). She described the President's remarks as ''both statements and questions at the same time.'' Supp. at 534 (Currie FBI 302 1/24/98).

Finally, the inference that the President intended to influence Ms. Currie's testimony before she ever became a witness is firmly undercut by the advice the President gave to her when she ultimately did become a witness in the OIC investigation:

''And then I remember when I knew she was going to have to testify to the grand jury, and I, I felt terrible because she had been through this loss of her sister, this horrible accident Christmas that killed her

[108] It is upon this same fanciful methodology that the Committee Report premises the allegation of Article I (3) that the President lied to the grand jury in providing these responses. Citing the President's oft-criticized response about Mr. Bennett's use of the present tense in his statement ''there is no sex of any'' (''It depends on what the meaning of the word 'is' is.'' App. at 510), the Committee Report claims that such parsing contradicts the President's claim that he was not paying close attention to the exchange. But contrary to the Committee Report's suggestion, the President's response to this question did not purport to describe the President's contemporaneous thinking at the deposition, but rather only in retrospect whether he agreed with the questioner that it was ''an utterly false statement.'' *Id.* The President later emphasized that he ''wasn't trying to give . . . a cute answer'' in his earlier explanation, but rather only that the average person thinking in the present tense would likely consider that Mr. Bennett's statement was accurate since the relationship had ended long ago. App. at 513.

[109] Ms. Currie remembers a second conversation similar in substance a few days after the January 18 discussion, but still in advance of the public disclosure of this matter on January 21, 1998. Supp. at 561 (Currie GJ 1/27/98).

brother, and her mother was in the hospital. I was trying to do—to make her understand that I didn't want her to, to be untruthful to the grand jury. And if her memory was different than mine, it was fine, just go in there and tell them what she thought. So, that's all I remember.''

App. at 593; *see also* App. at 508 (''I think Ms. Currie would also testify that I explicitly told her, once I realized you were involved in the Jones case—you, the Office of Independent Counsel—and that she might have to be called as a witness, that she should just go in there and tell the truth, tell what she knew, and be perfectly truthful.'').[110]

In sum, neither the testimony of Ms. Currie nor that of the President—the only two participants in this conversation—supports the inference that the conversation had an insidious purpose. The undisputed evidence shows that Ms. Currie was neither an actual nor contemplated witness in the *Jones* case. And when Ms. Currie did ultimately become a witness in the Starr investigation, the President told her to tell the truth, which she did.

7. The President denies that he obstructed justice when he relayed allegedly ''false and misleading statements'' to his aides

This final allegation of Article II should be rejected out of hand. The President has admitted misleading his family, his staff, and the Nation about his relationship with Ms. Lewinsky, and he has expressed his profound regret for such conduct. But this Article asserts that the President should be impeached and removed from office because he failed to be candid with his friends and aides about the nature of his relationship with Ms. Lewinsky. These allegedly impeachable denials took place in the immediate aftermath of the Lewinsky publicity—*at the very time* the President was denying any improper relationship with Ms. Lewinsky in nearly identical terms on national television. Having made this announcement to the whole country on television, it is simply absurd to believe that he was somehow attempting corruptly to influence the testimony of aides when he told them virtually the same thing at the same time.[111] Rather, the evidence demonstrates that the President spoke with these individuals regarding the allegations because of the longstanding professional and personal relationships he shared with them and the corresponding responsibility he felt to address their concerns once the allegations were aired. The Managers point to no *evidence*—for there is none—that the President spoke to these individuals for any other reason, and certainly not that he spoke with them intending to obstruct any proceeding.[112] They simply assert that since he knew there was an investigation, his intent had to be that they relate his remarks to the investigators and grand jurors. House Br. at 80.

However, there is no allegation that the President attempted to influence these aides' testimony about their *own personal knowledge or observations.* Nor is there any evidence that the President *knew* any of these aides would ultimately be witnesses in the grand jury when he spoke with them. None was under subpoena at the time the denials took place and none had any independent knowledge of any sexual activity between the President and Ms. Lewinsky. Indeed, the only evidence these witnesses could offer on this score was the hearsay repetition of the same public denials that the members of the grand jury likely heard on their home television sets. Under the strained theory of this article, every person who heard the President's public denial could have been called to the grand jury to create still additional obstructions of justice.

To bolster this otherwise unsupportable charge, the Managers point to an excerpt of the President's testimony wherein he acknowledged that, to the extent he shared *with anyone* any details of the facts of his relationship with Ms. Lewinsky, they could conceivably be called before the grand jury—which for the sake of his friends the President wanted to avoid:

''I think I was quite careful what I said after [January 21]. I may have said something to all of these people to that effect [denying an improper relationship], but I'll also—whenever anybody asked me any details, I said, look, I don't want you to be a witness or I turn you into a witness or give you information that could get you in trouble. I just wouldn't talk. I, by and large, didn't talk to people about this.''

App. at 647. The point was not that the President believed these people would be witnesses and so decided to mislead them, but rather that he decided to provide as little information as possible (consistent with his perceived obligation to address their legitimate concerns) in order to keep them from becoming witnesses solely because of what he told them.

In conclusion, this Article fails as a matter of law and as a matter of common sense. It should be soundly rejected.

VI. The Structural Deficiencies of the Articles Preclude a Constitutionally Sound Vote

The Constitution prescribes a strict and exacting standard for the removal of a popularly elected President. Because each of the two articles charges multiple unspecified wrongs, each is unconstitutionally flawed in two independent respects.

First, by charging multiple wrongs in one article, the House of Representatives has made it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of two-thirds of the members. Since Senate Rules require that an entire article be voted as a unit, sixty-seven Senators could conceivably vote to convict while in wide disagreement as to the alleged wrong committed—for example, they could completely disagree on what statement they believe is false—in direct violation of the Constitutional requirements of ''Concurrence'' and due process.

Second, by charging perjury without identifying a single allegedly perjurious statement, and charging obstruction of justice without identifying a single allegedly obstructive action by the President, the House of Representatives has failed to inform the Senate either of the statements it agreed were perjurious (if it agreed), or of the actual conduct by the President that it agreed constituted obstruction of justice (again, if it agreed). The result is that the President does not have the most basic notice of the charges against him required by due process and fundamental fairness. He is not in a position to defend against anything other than a moving target. The guesswork involved even in identifying the charges to be addressed in this Trial Memorandum highlights just how flawed the articles are.[113]

The result is a pair of articles whose structure does not permit a constitutionally sound vote to convict. If they were counts in an indictment, these articles would not survive a motion to dismiss. Under the unique circumstances of an impeachment trial, they should fail:

A. The Articles Are Both Unfairly Complex and Lacking in Specificity

A cursory review of the articles demonstrates that they each allege multiple and unspecified acts of wrongdoing.

1. The Structure of Article I

Article I accuses the President of numerous different wrongful actions. The introductory paragraph charges the President with (i) violating his constitutional oath faithfully to execute his office and defend the

[110] Only groundless speculation and unfounded inferences support the Committee Report's mirror allegation of Article I (4) that the President lied to the grand jury when he described his motivation in discussing these matters with Ms. Currie. That allegation should be rejected for the same reasons discussed more fully in the text of this section.

[111] As the Supreme Court has held, to constitute obstruction of justice such actions must be taken ''with an intent to influence judicial or grand jury proceedings.'' *United States v. Aguilar,* 515 U.S. 592, 599 (1995).

[112] The Committee Reports's allegation under Article I (4) that the President committed perjury before the grand jury when, in the course of admitting that he misled his close aides, he stated that he endeavored to say to his aides ''things that were true,'' App. at 557–60, without disclosing the full nature of the relationship is simply bizarre.

[113] The House Managers cannot constitutionally unbundle the charges in the articles or provide the missing specifics. This is because the Constitution provides that only the House of Representatives can amend articles of impeachment, and judicial precedent demonstrates that unduly vague indictments cannot be cured by a *prosecutor* providing a bill of particulars. Only the charging body—here, the House—can particularize an impermissibly vague charge.

Indeed, Senate precedent confirms that the entire House must grant particulars when articles of impeachment are not sufficiently specific for a fair trial. During the 1933 impeachment trial of Judge Harold Louderback, counsel for the Judge filed a motion to make the original Article V, the omnibus or ''catchall'' article, more definite. 77 Cong Rec. 1852, 1854 (1933). The House Managers unanimously consented to the motion, which they considered to be akin to a motion for a bill of particulars, and the full House amended Article V to provide the requested specifics. *Id.* Thereafter, the Clerk of the House informed the Senate that the House had adopted an amendment to Article V. *Id.* Judge Louderback was then tried on the amended article. Judge Louderback was subsequently acquitted on all five articles. Impeachment of Richard M. Nixon, President of the United States, Report by Staff of the Impeachment Inquiry, House Comm. on the Judiciary, 93d Cong., 2d Sess., Appendix B at 55 (Feb. 1974).

The power to define and approve articles of impeachment is vested by the Constitution exclusively in the House of Representatives. U.S. Const. Art I, §2, cl. 5. It follows that any alteration of an Article of Impeachment can be performed only by the House. The House cannot delegate (and has not delegated) to the Managers the authority to amend or alter the Articles, and Senate precedent demonstrates that only the House (not the Managers unilaterally) can effect an amendment to articles of impeachment.

Case law is consistent with this precedent. When indictments are unconstitutionally vague, they cannot be cured by a prosecutor's provision of a bill of particulars, because only the charging body can elaborate upon vague charges. As the Supreme Court noted in *Russell* v. *United States,* 369 U.S. 749, 771 (1962):

''It is argued that any deficiency in the indictments in these cases could have been cured by bills of particulars. But it is a settled rule that a bill of particular cannot save an invalid indictment . . . To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. This underlying principle is reflected by the settled rule in the federal courts that an indictment may not be amended except by resubmission to the grand jury. . . .''

See also Stirone v. *United States,* 361 U.S. 212, 214, 216 (1960) quoting *Ex Parte Bain,* 121 U.S. 1 (1887) (''If it lies within the province of a court to charging part to an indictment to suit its own notions of what it ought to have been or what they grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury . . . may be frittered away until its value is almost destroyed.'').

Constitution; (ii) violating his constitutional duty to take care that the laws be faithfully executed; (iii) willfully corrupting and manipulating the judicial process; and (iv) impeding the administration of justice.

The second paragraph charges the President with (a) perjurious, (b) false, and (c) misleading testimony to the grand jury concerning ''one or more'' of four different subject areas:

(1) the nature and details of this relationship with a subordinate government employee;

(2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him;

(3) prior false and misleading statements he allowed his attorney to make to a federal judge in that action;

(4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

The third paragraph alleges that, as a consequence of the foregoing, the President has, to the manifest injury of the people of the United States:

- undermined the integrity of his office;
- brought disrepute on the Presidency;
- betrayed his trust as President; and
- acted in a manner subversive of the rule of law and justice.

It is imperative to note that although Article I alleges ''perjurious, false and misleading'' testimony concerning ''one or more'' of four general subject areas, it does not identify the particular sworn statements by the President that were allegedly ''perjurious,'' (and therefore potentially illegal), or ''false'' or ''misleading'' (and therefore not unlawful). In fact, contrary to the most basic rules of fairness and due process, Article I does not identify a single specific statement that is at issue.

In sum, Article I appears to charge the President with four general forms of wrongdoing (violations of two oaths, manipulation of legal process, impeding justice), involving three (perjurious, false, misleading) distinct types of statements, concerning different subjects (relationship to Ms. Lewinsky, prior deposition testimony, prior statements of his attorney, obstruction of justice),[114] resulting in four species of harms either to the Presidency (undermining its integrity, bringing it into disrepute) or to the people (acting in a manner subversive of the rule of law and to the manifest injury of the people). And it alleges all of this without identifying a single, specific perjurious, false or misleading statement.

Absent a clear statement of which statements are alleged to have been perjurious, and which specific acts are alleged to have been undertaken with the purpose of obstructing the administration of justice, it is impossible to prepare a defense. It is a fundamental tenet of our jurisprudence that an accused must be afforded notice of the specific charges against which he must defend. Neither the Referral of the Office of the Independent Counsel, nor the Committee Report of the Judiciary Committee, nor the House Managers' Trial Memorandum was adopted by the House, and none of them can provide the necessary particulars. It is impossible to know whether the different statements and acts charged in the Referral, or the Report, or the Trial Memorandum, or all, or none, are what the House had in mind when it passed the Articles.

2. The Structure of Article II

Article II accuses the President of a variety of wrongful acts. The introductory paragraph charges the President with (i) violating his constitutional oath faithfully to execute his office and defend the Constitution and (ii) violating his constitutional duty to take care that the laws be faithfully executed by (iii) preventing, obstructing and impeding the administration of justice by engaging (personally and through subordinates and agents) in a scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action.

The second paragraph specifies the various ways in which the violations in the first paragraph are said to have occurred. It states that the harm was effectuated by ''means'' that are not expressly defined or delimited, but rather are said to include ''one or more'' of seven ''acts'' attributed to the President:

(1) corruptly encouraging a witness to execute a perjurious, false and misleading affidavit;

(2) corruptly encouraging a witness to give perjurious, false and misleading testimony if called to testify;

(3) corruptly engaging in, encouraging or supporting a scheme to conceal evidence;

(4) intensifying and succeeding in an effort to secure job assistance to a witness in order to corruptly prevent the truthful testimony of that witness at a time when that witness's truthful testimony would have been harmful;

(5) allowing his attorney to make false and misleading statements to a federal judge in order to prevent relevant questioning;

(6) relating a false and misleading account of events to a potential witness in a civil rights action in order to corruptly influence the testimony of that person;

(7) making false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence their testimony and causing the grand jury to receive false and misleading information.

The third paragraph alleges that, as a result of the foregoing, the President has, to the manifest injury of the people of the United States:

- undermined the integrity of his office;
- brought disrepute on the Presidency;
- betrayed his trust as President; and
- acted in a manner subversive of the rule of law and justice.

As with the first article, Article II does not set forth a single specific act alleged to have been performed by the President. Instead, it alleges general ''encourage[ment]'' to execute a false affidavit, provide misleading testimony, and conceal subpoenaed evidence. This Article also includes general allegations that the President undertook to ''corruptly influence'' and/or ''corruptly prevent'' the testimony of potential witnesses and that he ''engaged in . . . or supported'' a scheme to conceal evidence. Again, the Senate and the President have been left to guess at the charges (if any) actually agreed upon by the House.

B. CONVICTION ON THESE ARTICLES WOULD VIOLATE THE CONSTITUTIONAL REQUIREMENT THAT TWO-THIRDS OF THE SENATE REACH AGREEMENT THAT SPECIFIC WRONGDOING HAS BEEN PROVEN

1. The Articles Bundle Together Disparate Allegations in Violation of the Constitution's Requirements of Concurrence and Due Process

a. The Articles Violate the Constitution's Two-Thirds Concurrence Requirement

Article I, section 3 of the Constitution provides that ''no person shall be convicted [on articles of impeachment] without the Concurrence of two thirds of the Members present.'' U.S. Const. Art. I, §3, cl. 6. The Constitution's requirement is plain. These must be ''Concurrence,'' which is to say genuine, reliably manifested, agreement, among those voting to convict. Both the committing of this task to the Senate and the two-thirds requirement are important constitutional safeguards reflecting the Framers' intent that conviction not come easily. Conviction demands real and objectively verifiable agreement among a substantial supermajority.

Indeed, the two-thirds supermajority requirement is a crucial constitutional safeguard. Supermajority provisions are constitutional exceptions[115] to the presumption that decisions by legislative bodies shall be made by majority rule.[116] These exceptions serve exceptional ends. The two-thirds concurrence rule serves the indispensable purpose of protecting the people who chose the President by election. By giving a ''veto'' to a minority of Senators, the Framers sought to ensure the rights of an electoral majority—and to safeguard the people in their choice of Executive. Only the Senate and only the requirement of a two-thirds concurrence could provide that assurance.

The ''Concurrence'' required is agreement that the charges stated in specific articles have in fact been proved, and the language of those articles is therefore critical. Since the House of Representatives is vested with the ''sole Power of Impeachment,'' U.S. Const. Art. I, §2, cl. 5, the form of those articles cannot be altered by the Senate. And Rule XXIII of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials (''Senate Rules'') provides that ''[a]n article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial.''

It follows that each Senator may vote on an article only in its totality. By the express terms of Article I, a Senator may vote for impeachment if he or she finds that there was perjurious, false and misleading testimony in *any* ''one or more'' of four topic areas. But that prospect creates the very real possibility that ''conviction'' could occur even though fewer than two-thirds of the Senators actually agree that any particular false statement was made.[117] Put differently, the article's structure presents the possibility that the President could be convicted on Article I even though he would have been acquitted if separate votes were taken on individual allegedly perjurious statements. To illustrate the point, consider that it would be possible for conviction to result even with as few as seventeen Senators agreeing that any single statement was perjurious, because seventeen votes for one statement in each of four categories would yield 68 votes, one more than necessary to convict. The problem is even worse if Senators agree that there is a single perjurious statement but completely disagree as to which statement within the 176 pages of transcript they believe is perjurious. Such an outcome would plainly violate the Constitution's requirement that there be conviction only when a two-thirds majority agrees.

The very same flaw renders Article II unconstitutional as well. That Article alleges a

[114] It appears that each of these topic areas includes various, unspecified allegedly perjurious, false and misleading statements.

[115] *See e.g.*, U.S. Const. Art. I, §7, cl. 2 (two thirds vote required to override Presidential veto); U.S. Const. Art. II, §2, cl. 2 (two thirds required for ratification of treaties); U.S. Const. Art. V (two thirds required to propose constitutional amendments); U.S. Const. Art. I, §5, cl. 2 (two thirds required to expel members of Congress).

[116] Madison referred to majority voting as ''the fundamental principal of free government.'' *Federalist No. 58* at 248 (G. Wills ed. 1982).

[117] There remains the additional problem that the articles allege not specific perjurious statements, but perjury within a topic area. Perjury as to *a category* (rather than as to specific statements) is an incomprehensible notion.

scheme of wrongdoing effected through ''means'' including ''one or more'' of seven factually and logically discrete ''acts.'' That compound structure is fraught with the potential to confuse. For example, the Article alleges both concealment of gifts on December 28, 1997, and false statements to aides in late January 1998. These two allegations involve completely different types of behavior. They are alleged to have occurred in different months. They involved different persons. And they are alleged to have obstructed justice in different legal proceedings. In light of Senate Rule XXIII's prohibition on dividing articles, the combination of such patently different types of alleged wrongdoing in a single article creates the manifest possibility that votes for conviction on this article would not reflect any two-third agreement whatsoever.

The extraordinary problem posed by such compound articles is well-recognized and was illustrated by the proceedings in the impeachment of Judge Walter Nixon. Article III of the Nixon proceedings, like the articles here, was phrased in the disjunctive and charged multiple false statements as grounds for impeachment. Judge Nixon moved to dismiss Article III on a number of grounds, including on the basis of its compound structure.[118] Although that motion was defeated in the full Senate by a vote of 34–63,[119] the 34 Senators who voted to dismiss were a sufficient number to block conviction on Article III.

Judge Nixon (although convicted on the first two articles) was ultimately acquitted on Article III by a vote of 57 (guilty) to 40 (not guilty).[120] Senator Biden, who voted not guilty on the article, stated that the structure of the article made it ''possible . . . for Judge Nixon to be convicted under article III even though two-thirds of the members present did not agree that he made any one of the false statements.''[121] Senator Murkowski concurred: ''I don't appreciate the omnibus nature of article III, and I agree with the argument that the article could easily be used to convict Judge Nixon by less than the super majority vote required by the Constitution.'' *Id.* at 464.[122] And Senator Dole stated that ''Article III is redundant, complex and unnecessarily confusing. . . . It alleges that Judge Nixon committed five different offenses in connection with each of fourteen separate events, a total of seventy charges. . . . [I]t was virtually impossible for Judge Nixon and his attorney's to prepare an adequate defense.''[123]

In his written statement filed after the voting was completed, Senator Kohl pointed out the dangers posed by combining multiple accusations in a single article:

''Article III is phrased in the disjunctive. It says that Judge Nixon concealed his conversations through 'one or more' of 14 false statements.

''This wording presents a variety of problems. First of all, it means that Judge Nixon can be convicted even if two thirds of the Senate does not agree on which of his particular statements were false. . . .

''The House is telling us that it's OK to convict Judge Nixon on Article III even if we have different visions of what he did wrong. *But that's not fair to Judge Nixon, to the Senate, or to the American people.* Let's say we do convict on Article III. *The American people—to say nothing of history—would never know exactly which of Judge Nixon's statements were regarded as untrue. They'd have to guess. What's more, this ambiguity would prevent us from being totally accountable to the voters for our decision.*''[124]

As noted, the Senate acquitted Judge Nixon on the omnibus article—very possible because of the constitutional and related due process and fairness concerns articulated by Senator Kohl and others.[125]

The constitutional problems identified by those Senators are significant when a single federal judge (one of roughly 1000) is impeached. But when the Chief Executive and sole head of one entire branch of our government stands accused, those infirmities are momentous. Fairness and the appearance of fairness require that the basis for any action this body might take be clear and specific. The Constitution clearly forbids conviction unless two thirds of the Senate concurs in a judgment. Any such judgment would be meaningless in the absence of a finding that specific, identifiable, wrongful conduct has in fact occurred. No such conclusion is possible under either article as drafted.

b. Conviction on the Articles Would Violate Due Process Protections that Forbid Compound Charges in a Single Accusation

Even apart from the Constitution's clear requirement of ''Concurrence'' in Article I, section 3, the fundamental principles of fairness and due process that underlie our Constitution and permeate our procedural and substantive law compel the same outcome. In particular, the requirement that there be genuine agreement by the deciding body before an accused is denied life, liberty or property is a cornerstone of our jurisprudence.[126]

While in the federal criminal context due process requires that there be genuine agreement among the entire jury, *see United States* v. *Fawley,* 137 F.3d 458, 470 (7th Cir. 1998), *Schad* v. *Arizona,* 501 U.S. 624 (1991) (plurality), in the impeachment context, that requirement of genuine agreement must be expressed by a two-thirds supermajority. But the underlying due process principles is the same in both settings. This basic principle is bottomed on two fundamental notions: (1) that there be genuine agreement—mutuality of understanding—among those voting to convict, and (2) that the unanimous verdict be understood (by the accused and by the public) to have been the product of genuine agreement.

This principle is given shape in the criminal law in the well-recognized prohibition on ''duplicitous'' charges. ''Duplicity is the joining in a single count of two or more distinct and separate offenses.'' *United States* v. *UCO Oil,* 546 F.2d 833, 835 (9th Cir. 1976.) In the law of criminal pleading, a single count that charges two or more separate offenses is duplicitous. *See United States* v. *Parker,* 991 F.2d 1493, 1497–98 (9th Cir. 1993); *United States* v. *Hawkes,* 753 F.2d 355, 357 (4th Cir. 1985).[127] A duplicitous charge in an indictment violates the due process principle that ''the requisite specificity of the charge may not be compromised by the joining of separate offenses.'' *Schad* v. *Arizona,* 501 U.S. 624, 633 (1991) (plurality).

More specifically, a duplicitous charge poses the acute danger of conviction by a less-than-unanimous jury; some jurors may find the defendant guilty of one charge but not guilty of a second, while other jurors find him guilty of a second charge but not the first. *See United States* v. *Saleh,* 875 F.2d 535, 537 (6th Cir. 1989); *United States* v. *Stanley,* 597 F.2d 866, 871 (4th Cir. 1979); *Bins* v. *United States,* 331 F.2d 390, 393 (5th Cir. 1964).[128] Our federal system of justice simply does not permit conviction by less than unanimous agreement concerning a single, identified charge. *See United States* v. *Fawley,* 137 F.3d 471 (7th Cir. 1998) (conviction requires unanimous agreement as to particular statements); *United States* v. *Holley,* 942 F.2d 916, 929 (5th Cir. 1991) (reversal required where no instruction was given to ensure that all jurors concur in conclusion that at least one particular statement was false); *see also United States* v. *Gipson,* 553 F.2d 453, 458–59 (5th Cir. 1977) (right to unanimous verdict violated by instruction authorizing conviction if jury found defendant committed any one of six acts proscribed by statute).[129] The protection against conviction by less than full agreement by the factfinders is enshrined in Rule 31(a) of the Federal Rules of Criminal Procedure which dictates that ''[t]he verdict shall be unanimous.''[130]

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[118] *See* Report of the Senate Impeachment Trial Committee on the Articles of Impeachment Against Judge Walter L. Nixon, Jr., Hearings Before the Senate Impeachment Trial Committee, 101st Cong., 1st Sess. at 257, 281–84 (1989).

[119] *Judge Nixon Proceedings* at 430–32.

[120] *Id.* at 435–36.

[121] Statement of Senator Joseph R. Biden, Jr., *id.* at 459.

[122] *See also* Statement of Senator Bailey, Impeachment of Judge Harold Louderback, 77 Cong. Rec. 4238 (May 26, 1933) (respondent should be tried on individual articles and not on all of them assembled into one article).

[123] Statement of Senator Robert Dole, *Judge Nixon Proceedings* at 457.

[124] Statement of Senator Herbert H. Kohl, *id.* at 449 (emphasis added). Senator Kohl did not believe that the constitutional question concerning two-thirds concurrence had to be answered in the Judge Nixon proceedings because he believed that the bundling problem created an unfairness (in effect, a due process violation) that precluded conviction. *Id.*

[125] *See also* Constitutional Grounds for Presidential Impeachment: Modern Precedents, Report by the Staff of the Impeachment Inquiry, Comm. on Judiciary, 105th Cong., 2d Sess. at 12 (1998) (discussing Sen. Kohl's position).

[126] Judicial precedent is persuasive here on these due process and fairness questions. Indeed, in prior impeachment trials, the Senate has been guided by decisions of the courts, because they reflect cumulative wisdom concerning fairness and the search for justice. During the impeachment trial of Judge Alcee L. Hastings, Senator Specter stated:

''[T]he impeachment process relies in significant measure on decisions of the court and the opinion of judges . . . [T]he decisions and interpretations of the courts should be highly instructive to us. In our system of Government, it has been the courts that through the years have been called upon to construe, define and apply the provisions of our Constitution. Their decisions reflect our values and our evolving notions of justice . . . Although we are a branch of Government coequal with the judiciary, and by the Constitution vested with the 'sole' power to try impeachments, I believe that the words and reasoning of judges who have struggled with the meaning and application of the Constitution and its provisions ought to be given great heed because that jurisprudence embodies the values of fairness and justice that ought to be the polestar of our own determinations.'' (S. Doc. 101–18, 101st Cong., 1st Sess. at 740–41.)

(As Senator Specter observed, judicial rules have been developed and refined over the years to assure that court proceedings are fair, and that an accused is assured the necessary tools to prepare a proper defense, including proper notice.

[127] *See also* Federal Rules of Criminal Procedure, Rule 8(a): ''Two or more offenses may be charged in the same indictment or information *in a separate count for each offense* if the offenses charged . . . are of the same or similar charter or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.'' (emphasis added).

[128] Each of the four categories charged here actually comprises multiple allegedly perjurious statements. Thus, the dangers of duplicitousness are increased exponentially.

[129] The Supreme Court has stated that ''[u]nanimity in jury verdicts is required where the Sixth and Seventh Amendments apply.'' *Andres* v. *United States,* 333 U.S. 740, 748 (1948); *Apodaca* v. *Oregon,* 406 U.S. 404 (1972) (same).

[130] That rule gives expression to a criminal defendant's due process right to a unanimous verdict. *See United States* v. *Fawley,* 137 F.2d 458, 4771 (7th Cir. 1988). Because the Constitution does not tolerate the risk of a less than unanimous verdict in the criminal setting, ''where the complexity of a case or other factors create the potential for confusion as to the

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Thus, where the charging instrument alleges multiple types of wrongdoing, the unanimity requirement ''means more than a conclusory agreement that the defendant has violated the statute in question; *there is a requirement of substantial agreement as to the principal factual elements underlying a specified offense.*'' *United States* v. *Ferris,* 719 F.2d 1405, 1407 (9th Cir. 1983) (emphasis added). Accordingly, although there need not be unanimity as to every bit of underlying evidence, due process ''does require unanimous agreement as to the nature of the defendant's violation, not simply that a violation has occurred.'' *McKoy* v. *North Carolina,* 494 U.S. 433, 449 n.5 (1990) (Blackmun, J., concurring). Such agreement is necessary to fulfill the demands of fairness and rationality that inform the requirement of due process. *See Schad,* 501 U.S. at 637.[131]

Where multiple accusations are combined in a single charge, neither the accused nor the factfinder can know precisely what that charge means. When the factfinder body cannot agree upon the meaning of the charge, it cannot reach genuine agreement that conviction is warranted. These structural deficiencies preclude a constitutionally sound vote on the articles.

C. CONVICTION ON THESE ARTICLES WOULD VIOLATE DUE PROCESS PROTECTIONS PROHIBITING VAGUE AND NONSPECIFIC ACCUSATIONS

1. The Law of Due Process Forbids Vague and Nonspecific Charges

Impermissibly vague indictments must be dismissed, because they ''fail[] to sufficiently apprise the defendant 'of what he must be prepared to meet.''' *United States* v. *Russell,* 369 U.S. 749, 764 (1962) (internal quotation omitted). In *Russell,* the indictment at issue failed to specify the subject matter about which the defendant had allegedly refused to answer questions before a Congressional subcommittee. Instead, the indictment stated only that the questions to which the answers were refused ''were pertinent to the question then under inquiry'' by the Subcommittee. *Id.* at 752. The Court held that because the indictment did not provide sufficient specificity, it was unduly vague and therefore had to be dismissed. *Id.* at 773. The Supreme Court explained that dismissal is the only appropriate remedy for an unduly vague indictment, because only the charging body can elaborate upon vague charges:

''To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grant jury which indicted him. This underlying principle is reflected by the settled rule in the federal courts that an indictment may not be amended except by resubmission to the grand jury . . .''

Id. at 771. *See also Stirone* v. *United States,* 361 U.S. 212, 216 (1960); *see also United States* v. *Lattimore,* 215 F.2d 847 (D.C. Cir. 1954) (perjury count too vague to be valid cannot be cured even by bill of particulars); *United States* v. *Tonelli,* 557 F.2d 194, 200 (3d Cir. 1978) (vacating perjury conviction where ''the indictment . . . did not 'set forth the precise falsehood[s] alleged' '').

Under the relevant case law, the two exhibited Articles present paradigmatic examples of charges drafted too vaguely to enable the accused to meet the accusations fairly. More than a century ago, the Supreme Court stated that ''[i]t is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species—it must descend to particulars.'' *United States* v. *Cruikshank,* 92 U.S. 542, 558 (1875). The Court has more recently emphasized the fundamental ''vice'' of nonspecific indictments: that they ''fail[] to sufficiently apprise the defendant 'of what he must be prepared to meet.'' *Russell,* 369 U.S. at 764.

The Supreme Court emphasized in *Russell* that specificity is important not only for the defendant, who needs particulars to prepare a defense, but also for the decision-maker, ''so it may decide whether [the facts] are sufficient in law to support a conviction, if one should be had.'' *Id.* at 768 (internal citation and quotation marks omitted). An unspecific indictment creates a ''moving target'' for the defendant exposing the defendant to a risk of surprise through a change in the prosecutor's theory. ''It enables his conviction to rest on one point and the affirmance of the conviction to rest on another. It gives the prosecution free hand on appeal to fill in the gaps of proof by surmise and conjecture.'' *Russell,* 369 U.S. at 766. Ultimately, an unspecific indictment creates a risk that ''a defendant could . . . be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him.'' *Id.* at 770.

2. The Allegations of Both Articles Are Unconstitutionally Vague

Article I alleges that in his August 17, 1998 grand jury testimony, President Clinton provided ''perjurious, false and misleading'' testimony to the grand jury concerning ''one or more'' of four subject areas. Article I does not, however, set forth a single specific statement by the President upon which its various allegations are predicated. The Article haphazardly intermingles alleged criminal conduct with totally lawful conduct, and its abstract generalizations provide no guidance as to actual alleged perjurious statements.

Aritcle I thus violates the most fundamental requirement of perjury indictments. It is fatally vague in three distinct respects: (1) it does not identify *any* statements that form the basis of its allegations,[132] (2) it therefore does not specify which of the President's statements to the grand jury were allegedly ''perjurious,'' which were allegedly ''false,'' and which were allegedly ''misleading,'' and (3) it does not even specify the *subject matter* of any alleged perjurious statement.

The first defect is fatal, because it is axiomatic that if the precise perjurious statements are not identified in the indictment, a defendant cannot possibly prepare his defense properly. *See, e.g., Slawik,* 548 F.2d 75, 83–84 (3d Cir. 1977). Indeed, in past impeachment trails in the Senate where articles of impeachment alleged the making of false statements, the false statements were specified in the Articles. For example, in the impeachment trial of Alcee L. Hastings, Articles of Impeachment II–XIV specified the exact statements that formed the bases of the false statement allegations against Judge Hastings.[133] Similarly, in the impeachment trial of Walter L. Nixon, Jr., Articles of Impeachment I–III specified the exact statements that formed the bases of their false statement allegations.[134] In this case, Article I falls far short of specificity standards provided in previous impeachment trials in the Senate.

As to the second vagueness defect, there is a significant legal difference between, on the one hand, statements under oath which are ''perjurious,'' and those, on the other hand, which are simply ''false'' or misleading.'' Only the former could form the basis of a criminal charge. The Supreme Court has emphatically held that ''misleading'' statements alone *cannot* form the basis of a prejury charge. In *Bronston* v. *United States,* 409 U.S. 352 (1973), the Court held that literally true statements are by definition nonperjurious, and ''it is no answer to say that here the jury found that [the defendant] intended to *mislead* his examiner,'' since ''[a] jury should not be permitted to enage in conjecture whether an unresponsive answer. . . was intended to *mislead* or divert the examiner.'' *Id.* at 358–60 (emphasis added). The Court emphasized that ''the perjury statute is not to be loosely construed, nor the statue invoked simply because a wily witness succeeds in derailing the questioner so long as the witness speakes the literal truth.'' *Id.* Thus, specification of the exact statements alleged to be prejurious is required, because ''to hold otherwise would permit the trial jury to inject its inferences into the grand jury's indictment, and would allow defendants to be convicted for immaterial falsehoods or for 'intent to mislead' or 'perjury by implication,' which Bronston specifically prohibited.'' Slawik, 538 F.2d at 83–84 (emphasis added). Thus, if the House meant that certain statements were misleading but literally truthful, they might be subject to a

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legal theory or factual basis which sustains a defendant's conviction, a specific unanimity instruction is required.'' *United States* v. *Jackson,* 879 F.2d 85, 88 (3d Cir. 1989) (citing *United States* v. *Beros,* 833 F.2d 455, 460 (3d Cir. 1987)). Such instructions are required where the government charges several criminal acts, any of which alone could have supported the offense charged, because of the need to provide sufficient guidance to assure that all members of the jury were unanimous on the same act or acts of illegality. *Id.* at 88. As the Seventh Circuit recently concluded in a case alleging multiple false statements, ''the jury should have been advised that in order to have convicted [the defendant], they had to unanimously agree that a particular statement contained in the indictment was falsely made.'' *Fawley,* 137 F.2d at 470.

[131] In our federal criminal process, a duplicitous pleading problem may sometimes be cured by instructions to the jury requiring unanimous agreement on a single statement, *see Fawley, supra,* but that option is not present here. Not only do the Senate Rules not provide for the equivalent of jury instructions, they expressly *rule out* the prospect of subdividing an article of impeachment for purposes of voting. *See* Senate Impeachment Rule XXIII. Nor is the duplicitousness problem presented here cured by any specific enumeration of elements necessary to be found by the factfinder. *See, e.g., Santarpio* v. *United States,* 560 F.2d 448 (1st Cir. 1977) (duplicitous charge harmless because indictments adequately set out the elements of the federal crime; appellants were not misled or prejudiced). Article I does not enumerate specific elements to be found by the factfinder. To the contrary, the Article combines multiple types of wrong, allegedly performed by different types of statements, the different types occurring in multiple subject matter areas, and all having a range of allegedly harmful effects.

[132] One of the cardinal rules of perjury cases is that ''[a] conviction under 18 U.S.C. §1623 may not stand where the indictment fails to set forth the precise falsehood alleged and the factual basis of its falsity with sufficient clarity to permit a jury to determine its verity and to allow meaningful judicial review of the materiality of those falsehoods.'' *United States* v. *Slawik,* 548 F.2d 75, 83–84 (3d Cir. 1977). Courts have vacated convictions for perjury in instances where ''the indictment . . . did not 'set forth the precise falsehood(s) alleged.'' *Tonelli,* 577 F.2d at 200.

[133] Proceedings of the United States Senate in the Impeachment Trial Alcee L. Hastings, 101st Cong., 1st. Sess., S. Doc. 101–18 at 4–7 (1989). *See, e.g., Id.* at 2 (Article II alleging that the false statement was ''that Judge Hastings and Wiliam Borders, of Washington, D.C., never made any agreement to solicit a bribe from defendants in *United States* v. *Romano,* a case tried before Judge Hastings'').

[134] Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr., 101st Cong., 1st Sess., S. Doc. 101–22 at 430–32 (1989). *See, e.g., Id.,* at 432 (Article I alleging that the false statement was ''Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.'').

motion to dismiss on the ground that the offense was not impeachable.

The same is true for allegedly ''false'' answers, because it is clear that mere ''false'' answers given under oath, without more, are not criminal. 18 U.S.C. §1623, the statute proscribing perjury before a federal grand jury, requires additional elements beyond falsity, including the defendant's specific intent to testify falsely and the statement's materiality to the proceeding. A defense to a perjury charge is therefore tied directly to the specific statement alleged to have been perjurious. Did the defendant *know* the particular answer was false? Was it material?[135]

Article I's third vagueness defect is that it does not specify the *subject matter* of the alleged perjurious statements. Instead, it simply alleges that the unspecified statements by the President to the grand jury were concerning ''one or more'' of four enumerated areas. The ''one or more'' language underscores the reality that the President—and, critically, the Senate—cannot possibly know what the House majority had in mind, since it may have failed even to agree on the subject matter of the alleged perjury. The paramount importance of this issue may be seen by reference to court decisions holding that a jury has to ''*unanimously* agree that a *particular statement* contained in the indictment was falsely made.'' *United States* v. *Fawley*, 137 F.3d 458, 471 (7th Cir. 1998) (emphasis added); *see also* discussion of unanimity requirement in Section VI.B, *supra*.

Article II is also unconstitutionally vague. It alleges that the President ''obstructed and impeded the administration of justice * * * in a course of conduct or scheme designed to delay, impede, cover up and conceal'' unspecified evidence and testimony in the *Jones* case. It sets forth seven instances in which the President allegedly ''encouraged'' false testimony or the concealment of evidence, or ''corruptly influenced'' or ''corruptly prevented'' various other testimony, also unspecified. In fact, not only does Article II fail to identify a single specific act performed by the President in this alleged scheme to obstruct justice, it does not even identify the ''potential witnesses'' whose testimony the President allegedly sought to ''corruptly influence.''

The President cannot properly defend against Article II without knowing, at a minimum, which specific acts of obstruction and/or concealment he is alleged to have performed, and which ''potential witnesses'' he is alleged to have attempted to influence. For example, it is clear that, in order to violate the federal omnibus obstruction of justice statute, 18 U.S.C. §1503, an accuser must prove that there was a pending judicial proceeding, that the defendant knew of the proceeding, and that the defendant acted ''corruptly'' with the specific intent to obstruct or interfere with the proceeding or due administration of justice. *See, e.g., United States* v. *Bucey*, 876 F.2d 1297, 1314 (7th Cir. 1989); *United States* v. *Smith*, 729 F. Supp. 1380, 1383–84 (D.D.C. 1990). Without knowing which ''potential witnesses'' he is alleged to have attempted to influence, and the precise manner in which he is alleged to have attempted to obstruct justice, the President cannot prepare a defense that would address the elements of the offense with which he has been charged—that he had no intent to obstruct, that there was no pending proceeding, or that the person involved was not a potential witness.

It follows that the requisite vote of two-thirds of the Senate required by the Constitution cannot possibly be obtained if there are no specific statements *whatsoever* alleged to be perjurious, false or misleading in Article I or no specific acts of obstruction alleged in Article II. Different Senators might decide that different statements or different acts were unlawful without any concurrence by two-thirds of the Senate as to any particular statement or act. Such a scenario is antithetical to the Constitution's due process guarantee of notice of specific and definite charges and it threatens conviction upon vague and uncertain grounds. As currently framed, neither Article I nor Article II provides a sufficient basis for the President to prepare a defense to the unspecified charges upon which the Senate may vote, or an adequate basis for actual adjudication.

D. THE SENATE'S JUDGMENT WILL BE FINAL AND THAT JUDGMENT MUST SPEAK CLEARLY AND INTELLIGIBLY

An American impeachment trial is not a parliamentary inquiry into fitness for office. It is not a vote of no confidence. It is not a mechanism whereby a legislative majority may oust a President from a rival party on political grounds. To the contrary, because the President has a limited term of office and can be turned out in the course of ordinary electoral processes, a Presidential impeachment trial is a constitutional measure of last resort designed to protect the Republic.

This Senate is therefore vested with an extremely grave Constitutional task: a decision whether to remove the President for the protection of the people themselves. In the Senate's hands there rests not only the fate of one man, but the integrity of our Constitution and our democratic process.

Fidelity to the Constitution and fidelity to the electorate must converge in the impeachment trial vote. If the Senate is to give meaning to the Constitution's command, any vote on removal must be a vote on one or more specifically and separately identified ''high Crimes and Misdemeanors,'' as set forth in properly drafted impeachment articles approved by the House. If the people are to have their twice-elected President removed by an act of the Senate, that act must be intelligible. It must be explainable and justifiable to the people who first chose the President and then chose him again. The Senate must ensure that it has satisfied the Constitution's requirement of a genuine two-thirds concurrence that specific, identified wrongdoing has been proven. The Senate must also assure the people, through the sole collective act the Senate is required to take, that its decision has a readily discernible and unequivocal meaning.

As matters stand, the Senate will vote on two highly complex Articles of Impeachment. Its vote will not be shaped by narrowing instructions. Its rules preclude a vote on divisible parts of the articles. There will be no judicial review, no correction of error, and no possibility of retrial. The Senate's decision will be as conclusive as any known to our law—judicially, politically, historically, and most literally, irrevocable.

Under such circumstances, the Senate's judgment must speak clearly and intelligibly. That cannot happen if the Senate votes for conviction on these articles. Their compound structure and lack of specificity make genuine agreement as to specific wrongs impossible, and those factors completely prevent the electorate from understanding why the Senate as a whole voted as it did. As formulated, these articles satisfy neither the plain requirement of the Constitution nor the rightful expectations of the American people. The articles cannot support a constitutionally sound vote for conviction.

VII. THE NEED FOR DISCOVERY

The Senate need not address the issue of discovery at this time, but because the issue may arise at a later date, it is appropriate to remark here on its present status. Senate Resolution 16 provides that the record for purposes of the presentation by the House Managers and the President is the public record established in the House of Representatives.[136] Since this record was created by the House itself and is ostensibly the basis for the House's impeachment vote, and because this evidence has been publicly identified and available for scrutiny, comment, and rebuttal, it is both logical and fair that this be the basis for any action by the Senate. Moreover, Senate Resolution 16 explicitly prohibits the President and the House Managers from filing at this time any ''motions to subpoena witnesses or to present any evidence not in the record.''

In the event, however, that the Senate should later decide, pursuant to the provisions of Senate Resolution 16, to allow the House Managers to expand the record in some way, our position should be absolutely clear. At such time, the President would have an urgent need for the discovery of relevant evidence, because at no point in these proceedings has he been able to subpoena documents or summon and cross-examine witnesses. He would need to use the compulsory process authorized by Senate Impeachment Rules V and VI[137] to obtain documentary evidence and witness depositions. While

[135] Not surprisingly, courts have specifically held that because of these additional elements (the lack of which may undermine a perjury prosecution), a defendant must know exactly which statements are alleged to form the basis of a perjury indictment to test whether the requisite elements are present. *See, e.g., United States* v. *Lattimore*, 215 F.2d 847, 850 (D.C. Cir. 1954) (''The accused is entitled under the Constitution to be advised as to every element in respect to which it is necessary for him to prepare a defense''). For example, because of the intent requirement, one potential defense to a perjury prosecution is that the *question* to which the allegedly perjurious statement was addressed was fundamentally ambiguous, as courts have held that fundamentally ambiguous questions cannot as a matter of law produce perjurious answers. *See, e.g., Tonelli*, 577 F.2d at 199; *United States* v. *Wall*, 371 F.2d 398 (6th Cir. 1967). A separate defense to a perjury prosecution is that the statement alleged to have been perjurious was not material to the proceeding. Thus, ''false'' statements alone are not perjurious if they were not material to the proceeding. By not specifying which statements are alleged to be ''false'' or ''misleading,'' Article I precludes the President from preparing a materiality defense, and it also fails to distinguish allegedly criminal conduct from purely lawful conduct. As one court explained,

''It is to be observed that * * * it is not sufficient to constitute the offense that the oath shall be merely false, but that it must be false in some 'material matter.' Applying that definition to the facts stated in either count of this indictment, and it would seem that there is an entire lack in any essential sense to disclose that the particulars as to which the oath is alleged to have been false were material in the essential sense required for purposes of an indictment for this offense.'' (*United States* v. *Cameron*, 282 F. 684, 692 (D. Ariz. 1922).).

[136] S. Res. 16 defined the record for the presentations as ''those publicly available materials that have been submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or mark-ups and any materials printed by the House of Representatives or House Judiciary Committee pursuant to House Resolutions 525 and 581.''

[137] Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials (Senate Manual 99–2, as revised by S. Res. 479 (Aug. 16, 1986)). There is ample precedent for liberal discovery in Senate impeachment trials. For example, in the trial of Judge Alcee Hastings, the Senate issued numerous orders addressing a range of pretrial issues over several months including:

- requiring the parties to provide witness lists along with a description of the general nature of the testimony that was expected from each witness months in advance of the scheduled evidentiary hearing;
- requiring the House Managers to turn over exculpatory materials, certain prior statements of witnesses, and documents and other tangible evidence they intended to introduce into evidence;

Continued

the President has access to some of the grand jury transcripts and FBI interview memoranda of witnesses called by the OIC, the President's own lawyers were not entitled to be present when these witnesses were examined. The grand jury has historically been the engine of the prosecution, and it was used in that fashion in this case. The OIC sought discovery of evidence with the single goal of documenting facts that it believed were prejudicial to the President. It did not examine witnesses with a view toward establishing there was no justification for impeachment; it did not follow up obvious leads when they might result in evidence helpful to the President; and it did not seek out and document exculpatory evidence. It did not undertake to disclose exculpatory information it might have identified.

Nor did the House of Representatives afford the President any discovery mechanisms to secure evidence that might be helpful in his defense. Indeed, the House called no fact witnesses at all, and at the few depositions it conducted, counsel for the President were excluded. Moreover, the House made available only a selected portion of the evidence it received from the OIC. While it published five volumes of the OIC materials (two volumes of appendices and three volumes of supplements), it withheld a great amount of evidence, and it denied counsel for the President access to this material. It is unclear what the criterion was for selecting evidence to include in the published volumes, but there does not appear to have been an attempt to include all evidence that may have been relevant to the President's defense. The President has not had access to a great deal of evidence in the possession of (for example) the House of Representatives and the OIC which may be exculpatory or relevant to the credibility of witnesses on whom the OIC and the House Managers rely.

Should the Senate decide to authorize the House Managers to call witnesses or expand the record, the President would be faced with a critical need for the discovery of evidence useful to his defense—evidence which would routinely be available to any civil litigant involved in a garden-variety automobile accident case. The House Managers have had in their possession or had access at the OIC to significant amounts of non-public evidence, and they have frequently stated their intention to make use of such evidence. Obviously, in order to defend against such tactics, counsel for the President are entitled to discovery and a fair opportunity to test the veracity and reliability of this ''evidence,'' using compulsory process as necessary to obtain testimony and documents. Trial by surprise obviously has no place in the Senate of the United States where the issues in the balance is the removal of the one political leader who, with the Vice-President, is elected by all the citizens of this country.[138]

The need for discovery does not turn on the number of witnesses the House Managers may be authorized to depose.[139] If the House Managers call a single witness, that will initiate a process that leaves the President potentially unprepared and unable to defend adequately without proper discovery. The sequence of discovery is critical. The President *first* needs to obtain and review relevant documentary evidence not now in his possession. He *then* needs to be able to depose potentially helpful witnesses, whose identity may only emerge from the documents and from the depositions themselves. Obviously, he also needs to depose potential witnesses identified by the House Managers. Only at *that* point will the President be able intelligently to designate his own trial witnesses. This is both a logical procedure and one which is the product of long experience designed to maximize the search for truth and minimize unfair surprise. There is no conceivable reason it should not be followed here—if the evidentiary record is opened.

Indeed, it is simply impossible to ascertain how a witness designated by the House Managers could fairly be rebutted without a full examination of the available evidence. It is also the case that many sorts of helpful evidence and testimony emerge in the discovery process that may at first blush appear irrelevant or tangential. In any event, the normal adversarial process is the best guarantor of the truth. The President needs discovery here not simply to obtain evidence to present a trial but also in order to make an informed judgment about what to introduce in response to the Managers' expanded case. The President's counsel must be able to make a properly knowledgeable decision about what evidence may be relevant and helpful to the President's defense, both in cross-examination and during the President's own case.

The consequences of an impeachment trial are immeasurably grave: The removal of a twice-elected President. Particularly given what is at stake, fundamental fairness dictates that the President be given at least the same right as an ordinary litigant to obtain evidence necessary for his defense, particularly when a great deal of that evidence is presently in the hands of his accusers, the OIC and the House Managers. The Senate has wisely elected to proceed on the public record established by the House of Representatives, and this provides a wholly adequate basis for Senate decision-making. In the event the Senate should choose to expand this record, affording the President adequate discovery is absolutely essential.

VIII. CONCLUSION

As the Senate considers these Articles of Impeachment and listens to the arguments, individual Senators are standing in the place of the Framers of the Constitution, who prayed that the power of impeachment and removal of a President would be invoked only in the gravest of circumstances, when the stability of our system of government hung in the balance—to protect the Republic itself from efforts to subvert our Constitutional system.

The Senate has an obligation to turn away an unwise and unwarranted misuse of the awesome power of impeachment. If the Senate removes this President for a wrongful relationship he hoped to keep private, for what will the House ask the Senate to remove the next President, and the next? Our Framers wisely gave us a constitutional system of checks and balances, with three co-equal branches. Removing this President on these facts would substantially alter the delicate constitutional balance, and move us closer to a quasi-parliamentary system, in which the President is elected to office by the choice of people, but continues in office only at the pleasure of Congress.

In weighing the evidence and assessing the facts, we ask that Senators consider not only the intent of the Framers but also the will and interests of the people. It is the citizens of these United States who will be affected by and stand in judgment of this process. It is not simply the President—but the vote the American people rendered in schools, church halls and other civic centers all across the land twenty-six months ago—that is hanging in the balance.

Respectfully submitted.

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January 13, 1999.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF PRESIDENT WILLIAM JEFFERSON CLINTON TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and counsel, replies to the Answer of President William Jefferson Clinton to the Articles of Impeachment (''Answer''), as follows:

PREAMBLE

The House of Representatives denies each and every material allegation in the Preamble to the Answer, including the sections entitled ''The Charges in the Articles Do Not Constitute High Crimes or Misdemeanors'' and ''The President Did Not Commit Perjury or Obstruct Justice.'' With respect to the allegations in the Preamble, the House of Representatives further states that each and every allegation in Articles I and II is true and that Articles I and II properly state impeachable offenses, are not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

ARTICLE I

The House of Representatives denies each and every allegation in the Answer to Article I that denies the acts, knowledge, intent, or wrongful conduct charged against President William Jefferson Clinton. With respect to the allegations in the Answer to Article I, the House of Representatives further states that each and every allegation in Article I is true and that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

• requiring the production from the House Managers of other documents in the interest of allowing the Senate to develop ''a record that fully illuminates the matters that it must consider in rendering a judgment;''

• setting a briefing schedule for stipulations of facts and documents;

• setting a number of pretrial conferences;

• designating a date for final pretrial statements; and

• permitting a number of pre-trial depositions.

• Report of the Senate Impeachment Trial Committee on the Articles of Impeachment Against Judge Alcee L. Hastings, Hearings Before the Senate Impeachment Trial Committee, 101st Cong. 1st Sess. at 281, 286–87, 342–43, 606–07, 740.

The need for discovery in this case is in fact greater than in prior impeachment proceedings. In all other impeachment trials, there were either substantive investigations by the House or prior judicial proceedings in which the accused had a full opportunity to develop the evidentiary record and cross-examine witnesses. *See Id.* at 163–64 (pretrial memorandum of Judge Hastings).

[138] In another context, the Supreme Court has observed that ''the ends of justice will best be served by a system of liberal discovery which gives both parties the maximum possible amount of information from which to prepare their cases and thereby reduces the possibility of surprise at trial.'' *Wardius* v. *Oregon*, 412 U.S. 470, 473 (1973).

[139] It is not sufficient that counsel for the President have the right to depose the witnesses called by the Managers, essential as that right is. The testimony of a single witness may have to be refuted indirectly, circumstantially, or by a number of witnesses; it is often necessary to depose several witnesses in order to identify the one or two best.

FIRST AFFIRMATIVE DEFENSE TO ARTICLE I

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that the offense stated in Article I warrants the conviction, removal from office, and disqualification from holding further office of President William Jefferson Clinton.

SECOND AFFIRMATIVE DEFENSE TO ARTICLE I

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article I is not unconstitutionally vague, and it provides President William Jefferson Clinton adequate notice of the offense charged against him.

THIRD AFFIRMATIVE DEFENSE TO ARTICLE I

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article I does not charge multiple offenses in one article.

ARTICLE II

The House of Representatives denies each and every allegation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President William Jefferson Clinton. With respect to the allegations in the Answer to Article II, the House of Representatives further states that each and every allegation in Article II is true and that Article II properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

FIRST AFFIRMATIVE DEFENSE TO ARTICLE II

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article II properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that the offense stated in Article II warrants the conviction, removal from office, and disqualification from holding further office of President William Jefferson Clinton.

SECOND AFFIRMATIVE DEFENSE TO ARTICLE II

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article II properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article II is not unconstitutionally vague, and it provides President William Jefferson Clinton adequate notice of the offense charged against him.

THIRD AFFIRMATIVE DEFENSE TO ARTICLE II

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article II properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article II does not charge multiple offenses in one article.

CONCLUSION OF THE HOUSE OF REPRESENTATIVES

The House of Representatives further states that it denies each and every material allegation of the Answer not specifically admitted in this Replication. By providing this Replication to the Answer, the House of Representatives waives none of its rights in this proceeding. Wherefore, the House of Representatives states that both of the Articles of Impeachment warrant the conviction, removal from office, and disqualification from holding further office of President William Jefferson Clinton. Both of the Articles should be considered and adjudicated by the Senate.

Respectfully submitted,

The United States House of Representatives.

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[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

REPLY OF THE UNITED STATES HOUSE OF REPRESENTATIVES TO THE TRIAL MEMORANDUM OF PRESIDENT WILLIAM JEFFERSON CLINTON

I. INTRODUCTION

The President's Trial Memorandum contains numerous factual inaccuracies and misstatements of the governing law and the Senate's precedents. These errors have largely been addressed in the Trial Memorandum of the House of Representatives filed with the Senate on January 11, 1999, and given the 24-hour period to file this reply, the House cannot possibly address them all here. The House of Representatives will address them further in its oral presentation to the Senate, and it reserves the right to address these matters further in the briefing of any relevant motions. However, President Clinton has raised some new issues in his Trial Memorandum, and the House of Representatives hereby replies to those issues.

II. FACTS

The President's Trial Memorandum outlines what he claims are facts showing that he did not commit perjury before the grand jury and did not obstruct justice. The factual issues President Clinton raises are addressed in detail in the Trial Memorandum of the House.

A complete and impartial review of the evidence reveals that the President did in fact commit perjury before the grand jury and that he obstructed justice during the *Jones* litigation and the grand jury investigation as alleged in the articles of impeachment passed by the House of Representatives. The House believes a review of the complete record, including the full grand jury and deposition testimony of the key witnesses in this case, will establish that.

The evidence which President Clinton claims demonstrates that he did not commit the offenses outlined in the Articles of Impeachment are cited in Sections IV and V of his Memorandum. Regarding Article I, President Clinton maintains that his testimony before the grand jury was entirely truthful. At the outset of his argument, he states that he told the truth about the nature and details of his relationship with Ms. Lewinsky, and he insists that any false impressions that his deposition testimony might have created were remedied by his admission of ''improper intimate contact'' with Ms. Lewinsky. However, his subsequent testimony demonstrates that this admission is narrowly tailored to mean that Ms. Lewinsky had ''sexual relations'' with him, but he did not have ''sexual relations'' with her, as he understood the term to be defined. In other words, he admitted only what he knew could be conclusively established through scientific tests. He denied what the testimony of Ms. Lewinsky, the testimony of a number of her confidantes, and common sense proves: that while she engaged in sexual relations with him, he engaged in sexual relations with her, regardless of how President Clinton attempts to redefine the term.

Following this pattern, President Clinton discounts substantial evidence as well as common sense when he maintains that he testified truthfully in the grand jury about, among other things, his prior deposition testimony, his attorney's statements to Judge Wright during his deposition, and his intent in providing a series of false statements to his secretary after his deposition. Again, a complete review of the record and witness testimony reveals that President Clinton committed perjury numerous times in his grand jury testimony.

In regard to Article II, President Clinton extracts numerous items of evidence from the record and analyzes them in isolation in an effort to provide innocent explanations for the substantial amount of circumstantial evidence proving his guilt. Yet when the record is viewed in its entirely, including the portions of President Clinton's deposition testimony concerning Ms. Lewinsky and his grant jury testimony, it demonstrates that President Clinton took a number of actions designed to prevent Paula Jones's attorneys, the federal district court, and a federal grand jury from learning the truth. These actions are described in detail in the Trial Memorandum of the House.

To the extent that President Clinton's Trial Memorandum raises issues of credibility, those issues are best resolved by live testimony subject to cross-examination. The Senate, weighing the evidence in its entirety, will make an independent assessment of the facts as they are presented, and a detailed, point-by-point argument of these matters is best resolved on the Senate floor. The House is confident that a thorough factual analysis will not only refute President Clinton's contentions, but will prove the very serious charges contained in the articles.

III. THE ARTICLES PROPERLY STATE REMOVAL OFFENSES

A. THE OFFENSES ALLEGED ARE HIGH CRIMES AND MISDEMEANORS

1. The Senate Has Never Exercised Its Power To Dismiss an Article of Impeachment Except When the Official Impeached Has Resigned

The House acknowledges that the Senate has the power to dismiss an article of impeachment on the ground that it does not state a removable offense. Beyond that, however, President Clinton completely ignores the Senate's precedents concerning the use of that power. In the fifteen cases in which the House has forwarded articles of impeachment to the Senate, the Senate has *never* granted a dispositive motion to preclude a trial on the articles with one exception. In the 1926 case of Judge George English, the Senate granted a motion to adjourn after Judge English resigned from office making a trial moot on the issue of removal. *See* Impeachment of George W. English, U.S. District Judge, Eastern District of Illinois, 68 Cong. Rec. 347–48 (1926). The Senate also granted a motion to adjourn in the 1868 trial of President Andrew Johnson, but only after a full trial and votes to acquit on three articles. III Cannon's Precedents of the House of Representatives §2443.

In addition, the Senate has *never* granted a motion to dismiss or strike an article of impeachment. However, in the 1936 case of Judge Halsted Ritter, the House managers themselves moved to strike two counts of a multi-count article to simplify the trial, and the motion was granted. 80 Cong. Rec. 4898–99 (April 3, 1936). However, the remainder of the article was fully considered, and Judge Ritter was convicted on that article. The House managers in the 1986 Judge Harry Claiborne case made the only motion for summary judgment in the history of impeachment. *Hearings of the Senate Impeachment Trial Committee (Judge Harry Claiborne)*, 99th Cong., 2d Sess. 145 (1986). They did so on the basis that Judge Claiborne had already been convicted of the charges in a criminal trial. *Id.* The Senate postponed a decision on the motion and never ruled on it, but it ultimately convicted Judge Claiborne. In short, the Senate precedents firmly establish that the Senate has always fulfilled its responsibility to give a full and fair hearing to articles of impeachment voted by the House of Representatives.

2. The Constitutional Text Sets One Clear Standard for Removal

a. There is Only One Impeachment Standard

The Constitution sets one clear standard for impeachment, conviction, and removal from office: the commission of ''Treason, Bribery, or other high Crimes and Misdemeanors.'' U.S. Const. art. II, §4. The Senate has repeatedly determined that perjury is a high crime and misdemeanor. Simple logic dictates that obstruction of justice which has the same effect as perjury and bribery of witnesses must also be a high crime and misdemeanor. Endless repetition of the claim that this standard is a high one does not change the standard.

President Clinton claims that to remove him on these articles would permanently disfigure and diminish the Presidency and mangle the system of checks and balances. President's Trial Memorandum at 18. Quite the contrary, however, it is President Clinton's behavior as set forth in the articles that has had these effects. Essentially, President Clinton argues that the Presidency and the system of checks and balances can only be saved if we allow the President to commit felonies with impunity. To state that proposition is to refute it. Convicting him and thereby reaffirming that criminal behavior that strikes at the heart of the justice system will result in removal will serve to strengthen the Presidency, not weaken it.

b. Impeachment and Removal Are Appropriate for High Crimes and Misdemeanors Regardless of Whether They Are Offenses Against the System of Government

President Clinton argues that impeachment may only be used to redress wrongful public misconduct. The point is academic. Perjury and obstruction of justice as set forth in the articles are, by definition, public misconduct. *See generally* House Trial Memorandum at 107–12. Indeed, it is precisely their public nature that makes them offenses—acts that are not crimes when committed outside the judicial realm become crimes when they enter that realm. Lying to one's spouse about an extramarital affair, although immoral, is not a crime. Telling the same lie under oath in a judicial proceeding is a crime. Hiding gifts given to an adulterous lover to conceal the affair, although immoral, is not a crime. When those gifts become potential evidence in a judicial proceeding, the same act becomes a crime. One who has committed these kinds of crimes that corrupt the judicial system simply is not fit to serve as the nation's chief law enforcement officer.

Apart from that, the notion that high crimes and misdemeanors encompass only public misconduct will not bear scrutiny. Numerous ''private'' crimes would obviously require the removal of a President. For example, if he killed his wife in a domestic dispute or molested a child, no one would seriously argue that he could not be removed. All of these acts violate the President's unique responsibility to take care that the laws be faithfully executed.

3. President Clinton Cites Precedents That Do Not Apply Rather Than Relying on the Senate's Own Precedents Clearly Establishing Perjury as a Removable Offense

a. President Clinton Continues To Misrepresent the Fraudulent Tax Return Allegation Against President Nixon

In his trial memorandum, President Clinton argues that the failure in 1974 of the House Judiciary Committee to adopt an article of impeachment against President Nixon for tax fraud supports the claim that current charges against President Clinton do not rise to the level of impeachable and removable offenses. President's Trial Memorandum at 21. The President's lawyers acknowledge the charge in the article against President Nixon of ''knowingly and fraudulently failed to report certain income and claimed deductions [for 1969–72] on his Federal income tax returns which were not authorized by law.'' *Id.* The President's lawyers go on to state that ''[t]he President had signed his returns for those years under penalty of perjury,'' *Id.*, trying to distinguish away the Claiborne impeachment and removal precedent from 1986, and by extension all the judicial impeachments from the 1980s which clearly establish perjury as an impeachable and removable offense.

President Clinton's argument that a President was not and should not be impeached for tax fraud because it does not involve official conduct or abuse of presidential powers simply is unfounded based on the 1974 impeachment proceedings against President Nixon. Moreover, the fact that the President and his lawyers make this argument in defense of the President is telling. He effectively claims that a large scale tax cheat could be a viable chief executive.

It is undisputed that the Judiciary Committee rejected the proposed tax fraud article against President Nixon by a vote of 26 to 12. A slim minority of Committee members stated the view that tax fraud would not be an impeachable offense. That minority view is illustrated by the comments of Rep. Waldie that in the tax fraud article there was ''not an abuse of power sufficient to warrant impeachment. . . .'' *Debate on Article of Impeachment 1974: Hearings of the Comm. on the Judiciary Pursuant H. Res. 803*, 93rd Cong., 2nd Sess., at 548 (1974) (Statement of Rep. Waldie). Similar views were expressed by Rep. Hogan and Rep. Mayne. Rep. Railsback took the position that there was ''a serious question,'' *id.* at 524 (Statement of Rep. Railsback), whether misconduct of the President in connection with his taxes would be impeachable.

Other members who opposed the tax fraud article based their opposition on somewhat different grounds. Rep. Thornton based his opposition to the tax fraud article on the ''view that these charges may be reached in due course in the regular process of law.'' *Id.* at 549 (Statement of Rep. Thornton). Rep. Butler stated his view that the tax fraud article should be rejected on prudential grounds: ''Sound judgment would indicate that we not add this article to the trial burden we already have.'' *Id.* at 550 (Statement of Rep. Butler).

The record is clear, however, that the overwhelming majority of those who expressed a view in the debate in opposition to the tax fraud article based their opposition on the *insufficiency of the evidence*, and not on the view that tax fraud, if proven, would not be an impeachable offense.

The comments of then-Rep. Wayne Owens in the debate in 1974 directly contradict the view that Mr. Owens has expressed in recent testimony before the House Judiciary Committee. Although Mr. Owens in 1974 expressed his ''belief'' that President Nixon was guilty of misconduct in connection with his taxes, he clearly stated his conclusion that ''on the evidence available'' Mr. Nixon's offenses were not impeachable. *Id.* at 549 (Statement of Rep. Owens). Mr. Owens spoke of the need for ''hard evidence'' and discussed his unavailing efforts to obtain additional evidence that would tie ''the President to the fraudulent deed'' or that would otherwise ''close the inferential gap that has to be closed in order to charge the President.'' *Id.* He concluded his comments in the 1974 debate by urging the members of the Committee ''to reject this article . . . based on that lack of evidence.'' *Id.*

In addition to Mr. Owens, eleven members of the Committee stated the view that there was not sufficient evidence of tax fraud to support the article against President Nixon. *Wiggins:* ''fraud . . . is wholly unsupported in the evidence.'' *Id.* at 524 (Statement of Rep. Wiggins). *McClory:* ''no substantial evidence of any tax fraud.'' *Id.* at 531 (Statement of Rep. McClory). *Sandman:* ''There was absolutely no intent to defraud here.'' *Id.* at 532 (Statement of Rep. Sandman). *Lott:* ''mere mistakes or negligence by the President in filing his tax returns should clearly not be grounds for impeachment.'' *Id.* at 533 (Statement of Rep. Lott). *Maraziti:* discussing absence of evidence of fraud. *Id.* at 534 (Statement of Rep. Maraziti). *Dennis:* ''no fraud has been found.'' *Id.* at 538 (Statement of Rep. Dennis). *Cohen:* questioning whether ''in fact there was criminal fraud involved.'' *Id.* at 548 (Statement of Rep. Cohen). *Hungate:* ''I think there is a case here but in my judgment I am having trouble deciding if it has as yet been made.'' *Id.* at 553 (statement of Rep. Hungate). *Latta:* only ''bad judgment and gross negligence.'' *Id.* at 554 (Statement of Rep. Latta). *Fish:* ''There is not to be found before us evidence that the President acted wilfully to evade his taxes.'' *Id.* at 556 (Statement of Rep. Fish). *Moorhead:* ''there is no

showing that President Nixon in any way engaged in any fraud.'' *Id.* at 557 (Statement of Rep. Moorhead).

The group of those who found the evidence insufficient included moderate Democrats like Rep. Hungate and Rep. Owens, as well as Republicans like Rep. Fish, Rep. Cohen, and Rep. McClory, all of whom supported the impeachment of President Nixon.

In light of all these facts, it is not credible to assert that the House Judiciary Committee in 1974 determined that tax fraud by the President would not be an impeachable offense. The failure of the Committee to adopt the tax fraud article against President Nixon simply does not support the claim of President Clinton's lawyers that the offenses charged against him do not rise to the level of impeachable offenses.

In the Committee debate in 1974 a compelling case was made that tax fraud by a President—if proven by sufficient evidence—would be an impeachable offense. Rep. Brooks, who later served as chairman of the Committee, said:

''No man in America can be above the law. It is our duty to establish now that evidence of specific statutory crimes and constitutional violations by the President of the United States will subject all Presidents now and in the future to impeachment.

* * * * *

''No President is exempt under our U.S. Constitution and the laws of the United States from accountability for personal misdeeds any more than he is for official misdeeds. And I think that we on this Committee in our effort to fairly evaluate the President's activities must show the American people that all men are treated equally under the law.''

(Debate on Articles of Impeachment, 1974: Hearings of the Comm. on the Judiciary Pursuant to H. Res. 803, 93rd Cong., 2nd Sess., at 525, 554.)

Professor Charles Black stated it succinctly: ''A large-scale tax cheat is not a viable chief magistrate.'' Charles Black, *Impeachment: A Handbook,* (Yale University Press, 1974) at 42. What is true of tax fraud is also true of a persistent pattern of perjury by the President. An incorrigible perjurer is not a viable chief magistrate.

b. President Clinton Continues to Misrepresent The Allegations Against Alexander Hamilton.

President Clinton continues to try to persuade the American public that the House of Representatives has impeached him for having an extramarital affair. *See Answer of President William Jefferson Clinton to the Articles of Impeachment* at 1 (''The charges in the two Articles of Impeachment do not permit the conviction and removal from office of a duly elected President. *The President has acknowledged conduct with Ms. Lewinsky that was improper.*'') (emphasis added). In doing so, the President's lawyers refer to an incident involving then Secretary of the Treasury Alexander Hamilton being blackmailed by the husband of a woman named Maria Reynolds with whom he was having an adulterous affair. However, the President's lawyers omit the relevant distinguishing facts even as they cast aspersions upon Alexander Hamilton: none of Hamilton's ''efforts'' to cover up his affair involved the violation of any laws, let alone felonies. Indeed, the fact of the matter is that Hamilton was the victim of the crime of extortion.

Never did Hamilton raise his right hand to take a sacred oath and then willfully betray that oath and the rule of law to commit perjury. Never did Alexander Hamilton obstruct justice by tampering with witnesses, urging potential witnesses to sign false affidavits, or attempt to conceal evidence from a Federal criminal grand jury.

Again, the significance of the distinctions are glaringly obvious: it is apparent from the Hamilton case that the Framers did not regard private sexual misconduct as an impeachable offense. It is also apparent that efforts to cover up such private behavior outside of a legal setting, including even paying hush money to induce someone to destroy documents, did not meet the standard. Neither Hamilton's high position, nor the fact that his payments to a securities swindler created an enormous appearance problem, were enough to implicate the standard. These wrongs were real, and they were not insubstantial, but to the Framers they were essentially private and therefore not impeachable. David Frum, ''Smearing Alexander Hamilton,'' *The Weekly Standard* (Oct. 19, 1998) at 14.

But the Alexander Hamilton incident President Clinton cites actually clarifies the precise point at which personal misconduct becomes a public offense. Hamilton could keep his secret only by a betrayal of public responsibilities. Hamilton came to that point and, at immense personal cost, refused to cross the line. President Clinton came to that point and, fully understanding what he was doing, knowingly charged across the line. President Clinton's public acts of perjury and obstruction of justice transformed a personal misconduct into a public offense.

4. The Views of the Prominent Historians and Legal Scholars the President Cites Do Not Stand Up to Careful Scrutiny.

It speaks volumes that the most distinguished of the 400 historians referred to in President Clinton's trial brief is Arthur Schlesinger, Jr. Professor Schlesinger had a different view of impeachment 25 years ago. President Clinton himself asserts that ''the allegations are so far removed from official wrongdoing that their assertion here threatens to weaken significantly the Presidency itself.'' President's Trial Memorandum at 24. However, Schlesinger has written that:

''The genius of impeachment lay in the fact that it could punish the man without the punishing the office. For, in the Presidency as elsewhere, power was ambiguous: the power to go good meant also the power to do harm, the power to serve the republic also the power to demand and defile it.''

(Arthur Schlesinger, Jr., *The Imperial Presidency,* (Easton Press edit. 1973) (hereinafter ''Schlesinger'') at 415.)

The statement of the 400 historians cited with approval in the President's trial memorandum makes the following statement: ''[t]he Framers explicitly reserved that step for high crimes and misdemeanors in the exercise of executive power.'' Statement of Historians in Defense of the Constitution, *The New York Times* (Oct. 30, 1998) at A15. The 400 historians then believe that commission of a murder or rape by the President of the United States in his personal capacity is not subject to the impeachment power of Article II, Section 4.

President Clinton in his trial memorandum asserts that this case does not fit the paradigmatic case for impeachment. President's Trial Memorandum at 24. However, none of his predecessors ever faced overwhelming evidence of repeatedly lying under oath before a federal court and grand jury and otherwise seeking to obstruct justice to benefit himself—directly contradicting his oath to ''take care that the laws are faithfully executed.'' But as former Attorney General Griffin Bell, who served under President Carter, said before the House Judiciary Committee recently, ''[a] President cannot faithfully execute the laws if he himself is breaking them.'' *Background and History of Impeachment: Hearings Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Cong., 2d Sess. at 203 (Comm. Print 1998) (Testimony of Judge Griffin B. Bell).

President Clinton goes on to state that to make the offenses alleged against him impeachable and removable conduct ''would forever lower the bar in a way inimical to the Presidency and to our government of separated powers. These articles allege (1) sexual misbehavior, (2) statements about sexual misbehavior and (3) attempts to conceal the fact of sexual misbehavior.'' President's Trial Memorandum at 26. While President Clinton and his able counsel would like to define the case this way, what is at issue in the articles of impeachment before the Senate is clear: perjury and obstruction of justice committed by the President of the United States in order to thwart a duly instituted civil rights sexual harassment lawsuit against him as well as a subsequent grand jury investigation. While the President may think such allegations would forever lower the bar in terms of the conduct we expect from our public officials, we must square his opinion and that of his lawyers with the fact that his Justice Department puts people in prison for similar conduct. While the President's brief again quotes Arthur Schlesinger, Jr. for the proposition that we must not ''lower the bar,'' President's Trial Memorandum at 26, Schlesinger held a different view during the impeachment of President Nixon:

''If the Nixon White House escaped the legal consequences of its illegal behavior, why would future Presidents and their associates not suppose themselves entitled to do what the Nixon White House had done? Only condign punishment would restore popular faith in the Presidency and deter future Presidents from illegal conduct.''

(Schlesinger at 418.)

5. The President and Federal Judges are Impeached, Convicted, and Removed From Office Under the Same Standard

President Clinton's argument that Presidents are held to a lower standard of behavior than federal judges completely misreads the Constitution and the Senate's precedents. *See generally* House Trial Brief at 101–06. The Constitution provides one standard for the impeachment, conviction, and removal from office of ''[t]the President, the Vice President, and all civil officers of the United States.'' U.S. Const. art II, §4. It is the commission of ''Treason, Bribery, or other high Crimes and Misdemeanors.'' *Id.* The Senate has already determined that perjury is a high crime and misdemeanor in the cases of Judge Nixon, Judge Hastings, and Judge Claiborne.

President Clinton argues that the standard differs because judges have life tenure whereas Presidents are accountable to the voters at elections. That argument fails on several grounds. The differing tenures are set forth in the Constitution, and there is simply no textual support for the idea that they affect the impeachment standard at all. If electoral accountability were a sufficient means of remedying presidential misconduct, the framers would not have explicitly included the President in the impeachment clause. Finally, even if this argument were otherwise valid, it does not apply to President Clinton because he will never face the voters again. U.S. Const. amend. XXII. Indeed, all of the conduct charged in the Articles occurred after the 1996 election.

Then President Clinton rejects the Senate's own precedents showing that perjury is a high crime and misdemeanor in the three judicial impeachments of the 1980s arguing that all of the lying involved there concerned the judges' official duties. That is true with respect to Judge Hastings, but completely false with respect to Judge Claiborne and Judge Nixon. Judge Claiborne was

impeached and convicted for lying on his income tax returns, an entirely personal matter. President Clinton tries to explain this away by saying: ''Once convicted, [Judge Claiborne] simply could not perform his official functions because his personal probity had been impaired such that he could not longer be an arbiter of others' oaths.'' President's Trial Memorandum at 29. The same is true of President Clinton. He ultimately directs the Department of Justice which must decide whether people are prosecuted for lying. If he has committed perjury and obstructed justice, how can he be the arbiter of other's oaths? As Professor Jonathan Turley put it:

''As Chief Executive the President stands as the ultimate authority over the Justice Department and the Administration's enforcement policies. It is unclear how prosecutors can legitimately threaten, let alone prosecute, citizens who have committed perjury or obstruction of justice under circumstances nearly identical to the President's. Such inherent conflict will be even greater in the military cases and the President's role as Commander-in-Chief.''

(Background and History of Impeachment: Hearings Before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 105th Cong., 2d Sess. at 274 (Comm. Print 1998) (Testimony of Professor Jonathan Turley).)

In the same vein, President Clinton claims that Judge Nixon ''employ[ed] the power and prestige of his office to obtain advantage for a party.'' President's Trial Brief at 29. In fact, Judge Nixon intervened in a state criminal case in which he had no official role. His ability to persuade the prosecutor to drop the case rested on his friendship with the state prosecutor—not his official position. President Clinton argues that it was Judge Nixon's intervention in a judicial proceeding that ties it to his official position. The same is true of President Clinton. He intervened in two judicial proceedings and his actions had the same effect as Judge Nixon's—to defeat a just result.

As the person who ultimately directs the Justice Department—the federal government's prosecutorial authority—the President must follow his constitutional duty to take care that the laws are faithfully executed. U.S. Const. art II, §3. His special constitutional duty is at least as high, if not higher, than the judge's. Indeed, President Clinton acknowledged as much early in his Administration when controversy arose about the nomination of Zoe Baird and the potential nomination of Judge Kimba Wood to be Attorney General. Questions were raised about whether they had properly complied with laws relating to their hiring of household help. At that time, President Clinton said the Attorney General ''should be held to a higher standard than other Cabinet members on matters of this kind [i.e. strictly complying with the law].'' Remarks of President Clinton with Reporters Prior to a Meeting with Economic Advisers, February 8, 1993, 29 Weekly Compilation of Presidential Documents 160. If the Attorney General is held to a higher standard of compliance with the law, then her superior, President Clinton, must be also.

B. THE INDIVIDUAL CONSCIENCES OF SENATORS DETERMINES THE BURDEN OF PROOF IN IMPEACHMENT TRIALS.

The Constitution does not discuss the standard of proof for impeachment trials. It simply states that ''the Senate shall have the Power to try all Impeachments.'' U.S. Const., Art I, Sec. 3, clause 5. Because the Constitution is silent on the matter, it is appropriate to look at the past practice of the Senate. Historically, the Senate has never set a standard of proof for impeachment trials. ''In the final analysis the question is one which historically has been answered by individual Senators guided by their own consciences.'' Congressional Research Service Report for Congress, Standard of Proof in Senate Impeachment Proceedings, Thomas B. Ripy, Legislative Attorney, American Law Division (January 7, 1999).

President Clinton argues that the impeachment trial is similar to a criminal trial and that the appropriate standard should therefore be ''beyond a reasonable doubt.'' That argument is not new: it has been made in the past, and the Senate has rejected it, as indeed, President Clinton acknowledges. He asserts, however, that the impeachment trial of a President should proceed under special procedures that do not apply to the trial of other civil officers. His arguments are unpersuasive.

1. The Senate has Never Adopted the Criminal Standard of ''Beyond a Reasonable Doubt'' or Any Other Standard of Proof for Impeachment Trials.

The Senate has never adopted the standard of ''beyond a reasonable doubt'' in any impeachment trial in U.S. history. In fact, the Senate has chosen not to impose a standard at all, preferring to leave to the conscience of each senator the decision of how best to judge the facts presented.

In the impeachment trial of Judge Harry Claiborne, counsel for the respondent moved to designate ''beyond a reasonable doubt'' as the standard of proof for conviction. Gray & Reams, The Congressional Impeachment Process and the Judiciary: Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne, Volume 5, Document 41, X (1987). The Senate overwhelmingly rejected the motion by a vote of 17–75. In the floor debate on the motion, House Manager Kastenmeier emphasized that the Senate has historically allowed each member to exercise his personal judgment in these cases. 132 Cong. Rec. S15489–S15490 (daily ed. October 7, 1986).

The question of the appropriate standard of proof was also raised in the trial of Judge Alcee Hastings. In the Senate Impeachment Trial Committee, Senator Rudman said in response to a question about the historical practice regarding the standard of proof that there has been no specific standard, ''you are not going to find it. It is what is in the mind of every Senator. . . . I think it is what everybody decides for themselves.'' *Report of the Senate Impeachment Trial Committee on the Articles Against Judge Alcee Hastings: Hearings before the Senate Impeachment Trial Committee* (Part 1) 101st Cong., 1st Sess. 73–75, (discussion involving Senator Lieberman and Senator Rudman).

2. The Criminal Standard of Proof is Inappropriate for Impeachment Trials.

President Clinton argues that an impeachment trial is akin to a criminal trial and that, therefore, the criminal standard should apply. That assertion is, of course, at direct odds with his apparent opposition to the presentation of evidence through witnesses, another normal criminal trial procedure. The Senate Rules Committee rejected this analogy in 1974, stating, ''an impeachment trial is not a criminal trial,'' and advocating a clear and convincing evidence standard. Executive Session Hearings, U.S. Senate Committee on Rules and Administration, ''Senate Rules and Precedents Applicable to Impeachment Trials'' 93rd Cong., 2d Sess. (August 5–6, 1974). Indeed, it is undisputed that impeachable offenses need not be criminal offenses. *See Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives,* 105th Cong., 2d Sess. at 14 (Comm. Print Ser. No. 16 1998) (''Impeachable acts need not be criminal acts.'')

Moreover, the result of conviction in an impeachment trial is removal from office, not punishment. As the House argued in the Claiborne trial, the reasonable standard was designed to protect criminal defendants who risked ''forfeitures of life, liberty and property'' (quoting *Brinegar* v. *United States,* 338 U.S. 160, 174 (1949)). This standard is inappropriate here because the Constitution limits the consequences of a Senate impeachment trial to removal from office and disqualification from holding office in the future, explicitly preserving the option for a subsequent criminal trial in the courts. U.S. Const. art. II, §3, cl. 6.

In addition, as the House argued in the Claiborne trial, the criminal standard is inappropriate because impeachment is, by its nature, a proceeding where the public interest weighs more heavily than the interest of the individual defendant. Gray & Reams, The Congressional Impeachment Process and the Judiciary: Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne, Volume 5, Document 41, X (1987). During the course of the floor debate on this motion in the Claiborne trial, Representative Kastenmeier argued for the House that the use of the criminal standard was inappropriate where the public interest in removing corrupt officials was a significant factor. 132 Cong. Rec. S15489–S15490 (daily ed. October 7, 1986).

3. A President Who Is Impeached Should Not Receive Special Procedural Benefits That Do Not Apply in the Impeachment Trials of Other Civil Officers.

President Clinton argues that he should be exempted from the weight of historical practice and precedent and be given a special rule on the standard of proof. This argument is based on fallacious assertions, the first of which is that different constitutional standards apply to the impeachment of judges and presidents. See above at 14–16 and House Trial Memorandum at 101–06.

President Clinton also employs inflammatory rhetoric to suggest that a presidential impeachment trial ought to be treated differently, explaining that the criminal standard is needed because ''the Presidency itself is at stake'' and because conviction would ''overturn the results of an election.'' President's Trial Memorandum at 32–33. The presidency is, of course, not at stake, though the tenure of its current office holder may be. The 25th Amendment to the Constitution ensures that impeachment and removal of a President would not overturn an election because it is the elected Vice President who would replace the President not the losing presidential candidate.

Finally, President Clinton argues that the evidence should be tested by the most stringent standard because ''there is no suggestion of corruption or misuse of office—or any other conduct that places our system of government at risk in the two remaining years of the President's term.'' President's Trial Memorandum at 33. While the President might be expected to argue that he did not act corruptly, he cannot credibly assert that ''there is no suggestion of corruption,'' because ''corrupt'' conduct is precisely what he is charged with in the articles of impeachment. Though not persuasive as an argument, this statement is significant in what it *concedes*—that corruption is among the ''conduct that places our system of government at risk.'' President's Trial Memorandum at 33. Having acknowledged this, President Clinton cannot be heard to complain that the House has failed to charge him with conduct which rises to the level of an impeachable offense.

IV. THE STRUCTURE OF THE ARTICLES IS PROPER AND SUFFICIENT

A. THE ARTICLES ARE NOT UNCONSTITUTIONALLY VAGUE

President Clinton's trial memorandum argues that the two articles of impeachment are unfairly complex. To the contrary, the articles present the misdeeds of President Clinton and their consequences in as transparent and understandable a manner as possible.

The first article of impeachment charges that President Clinton violated his enumerated constitutional responsibilities by willfully corrupting and manipulating the judicial process. He did this by providing perjurious, false and misleading testimony to a grand jury in regard to one or more of four matters. The deleterious consequences his actions had for the people of the United States are then described. The second article charges that President Clinton violated his enumerated constitutional responsibilities by a course of conduct that prevented, obstructed, and impeded the administration of justice. One or more of seven listed acts constitute the particulars of President Clinton's course of conduct. As in the first article, the deleterious consequences his actions had for the people of the United States are then described.

To do as President Clinton requests would require separating out into a unique article of impeachment each possible combination of (a) a particular violation of his duties, (b) a particular wrongful act, and (c) a particular consequence of his actions. This would require 48 different articles in the case of the first article and 84 in the case of the second. Such a multiplicity of articles is not required and would assist no one. Of course, if the president had violated fewer presidential duties, committed fewer misdeeds, and been responsible for fewer harmful consequences to the American people, the articles could have been drafted more simply.

The trial memorandum then makes the contention that the two articles of impeachment are impermissibly vague and lacking in specificity in that they do not meet the standards of a criminal indictment. This contention clearly misses the mark. Impeachment is a political and not a criminal proceeding, designed, as recognized by Justice Joseph Story, the Constitution's greatest nineteenth century interpreter, ''not . . . to punish an offender'' by threatening deprivation of his life or liberty, but to ''secure the state'' by ''divest[ing] him of his political capacity''. J. Story, *Commentaries on the Constitution* (R. Rotunda & J. Nowak eds., 1987) § 803. Justice Story thus found the analogy to an indictment to be invalid:

''The articles . . . need not, and indeed do not, pursue the strict form and accuracy of an indictment. They are sometimes quite general in the form of the allegations; but always contain, or ought to contain, so much certainty, as to enable the party to put himself upon the proper defense, and also, in case of an acquittal, to avail himself of it, as a bar to another impeachment.''

(*Id.* at § 806).

In explaining the impeachment process to the citizens of New York in Federalist No. 65, Alexander Hamilton stated in more general terms that impeachment ''can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases serve to limit the discretion of courts in favor of personal security.'' *The Federalist No. 65*, at 398 (Clinton Rossiter ed., 1961).

Can the president legitimately argue that he is unable to put on a proper defense? President Clinton has committed a great number of impeachable misdeeds. The House Judiciary Committee's committee report requires 20 pages just to list the most glaring instances of the president's perjurious, false, and misleading testimony before a federal grand jury and it requires 13 pages just to list the most glaring incidents in the president's course of conduct designed to prevent, obstruct, and impede the administration of justice. The House believes that President Clinton's attorneys have reviewed the committee report. They know exactly what he is being charged with, as is acknowledged in the president's trial memorandum. The memorandum states in its introduction that ''[t]ake away the elaborate trappings of the Articles and the high-flying rhetoric that accompanied them, and we see clearly that the House of Representatives asks the Senate to remove the President from office because he . . .'' President's Trial Memorandum at 2. In addition, in the House proceedings, the President filed three documents: a Preliminary Memorandum, an Initial Response, and a Submission by Counsel. The first two documents were printed together and ran to 57 pages. *Preliminary Memorandum of the President of the United States Concerning Referral of the Office of the Independent Counsel and Initial Response of the President of the United States to Referral of the Office of the Independent Counsel*, 105th Cong., 2d Sess., H. Doc. No. 105–317 (1998). The third was printed and ran to 404 pages. *Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives*, 105th Cong., 2d Sess. (Comm. Print Ser. No. 16 1998). He was also given 30 hours to present his case before the House Committee on the Judiciary, during which he called numerous witnesses. The Committee repeatedly asked President Clinton to provide it with any exculpatory evidence, an offer which he never accepted. Now President Clinton's Trial Memorandum to the Senate runs to 130 pages. Clearly, President Clinton has not suffered from any lack of specificity in the articles of impeachment.

If he had, he would have availed himself of the opportunity to file a motion for a bill of particulars. He had that opportunity on January 11, 1999, and he waived it. He should not now be heard to claim that he does not know what the charges are.

Unlike the judicial impeachments of the 1980s, President Clinton has not committed a handful of specific misdeeds that can easily be listed in separate articles of impeachment. In order to encompass the whole melange of misdeeds that caused the House of Representatives to impeach President Clinton, the Judiciary Committee looked to the only analogous case—that of President Nixon. In 1974, the Committee was also faced with drafting articles of impeachment of a reasonable length against a president who had committed a long series of improper acts designed to achieve an illicit end.

The first article of impeachment against President Nixon charged that in order to cover up an unlawful entry into the headquarters of the Democratic National Committee and to delay, impede, and obstruct the consequent investigation (and for certain other purposes), he engaged in a series of acts such as ''making or causing to be made false or misleading statements to lawfully authorized investigative officers'', ''endeavoring to misuse the Central Intelligence Agency'', and ''endeavoring to cause prospective defendants and individuals duly tried and convicted, to expect favored treatment and consideration to return for their silence or false testimony.'' *Impeachment of Richard M. Nixon, President of the United States*, H. Rept. No. 93–1305, 93rd Cong., 2d Sess. 2 (1974). The article did not list each false or misleading statement, did not list each misuse of the CIA, and did not list each prospective defendant and what they were promised.

In like fashion, the articles of impeachment against President Clinton charge him with providing perjurious, false, and misleading testimony concerning four subjects, such as an his relationship with a subordinate government employee, and engaging in a course of conduct designed to prevent, obstruct, and impede the administration of justice, such course including four generals acts such as an effort to secure job assistance for that employee. An argument can be made that the articles of impeachment against President Clinton were drafted with more specificity than those against President Nixon. Unless President Clinton is arguing that the Senate should have dismissed the first article of impeachment against President Nixon (had the president not resigned), he has little ground to complain about the articles against himself. In short, President Clinton knows exactly what the charges are, and the Senate should now require him to account for his behavior.

B. THE ARTICLES DO NOT IMPROPERLY CHARGE MULTIPLE OFFENSES IN ONE ARTICLE.

President Clinton argues unpersuasively that the articles of impeachment are ''unconstitutionally flawed'' in two respects. First, he argues that ''by charging multiple wrongs in one article, the House of Representatives has made it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of two-thirds of the members.'' President's Trial Memorandum at 101. Second, he argues that the articles do not provide him ''the most basic notice of the charges against him required by due process and fundamental fairness.'' *Id.* Both arguments are factually deficient, ignore Senate precedent and procedure, and are constitutionally flawed.

The articles of impeachment allege that the President made ''one or more'' ''perjurious, false and misleading statements to the grand jury'' and committed ''one or more'' acts in which he obstructed justice. H. Res. 611, 105th Cong. 2nd Sess. (1998). The articles of impeachment are modeled after those adopted by the House Committee on the Judiciary against President Nixon and were drafted with the rules of the Senate in mind. Senate Rules specifically contemplate that the House may draft articles of impeachment in this manner and prior rulings of the Senate have held that such drafting is not deficient and will not sustain a motion to dismiss.

In 1986, the United States Senate amended the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials.* S. Res. 479, 99th Cong., 2nd Sess. (1986). As part of the reform, Rules XXIII, which deals generally with voting the final question, was amended to clarify the articles of impeachment are not divisible. Rule XXIII provides in relevant part that:

''An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for period not to exceed one day or adjourns sine die.''

The Senate Committee on Rules and Administration, after thoroughly reviewing the impeachment rules, prior articles of impeachments, and prior Senate trials, decided that articles of impeachment should not be divisible. In drafting the amendment to Rule XXIII providing that articles of impeachment not be divided, the Senate was aware that the House may combine multiple counts

of impeachable conduct in one article of impeachment. The Committee report explains the Senate's position:

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

Amending the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, Report of the Comm. on Rules and Administration, S. Rept. 99–401, 99th Cong., 2nd Sess., at 8 (1986) (emphasis added). Because the Senate was aware that multiple specifications of impeachment conduct may be contained in an article of impeachment, the Senate's rules implicitly countenance such drafting.

The issue regarding whether articles of impeachment are divisible is not new to the Senate. In fact, the Senate's Committee on Rules and Administration reviewed the Senate's impeachment procedures in 1974 to prepare for a possible trial of President Richard Nixon. The Committee passed the exact same language as the Committee did in 1986 prohibiting the division of an article of impeachment. Because President Nixon resigned, the full Senate never considered the amendments.

Senator Jacob K. Javits of New York submitted a statement to the Committee in 1974 addressing the divisibility issue and advised that Rule XXIII be amended to prohibit the division of an article of impeachment. His comments, as follows, are instructive:

''Rule XXIII provides for the yeas and nays to be taken on each article separately but does not set any order for a vote when there are several articles. In the [President] Johnson trial, this was done by order of the Senate and several votes were taken on the order. This procedure, setting a vote for final consideration, should be stated in the rules. Also the rule is silent about the division of any article. In the Johnson trial a division was requested and the Chief Justice attempted to devise one, but could not, and the article as a whole was submitted for a vote to the Senate. *I believe articles should not be divided because this raises a further question of whether a two-thirds vote is required on each part of an article and whether the House action on the construction of a particular article can be changed without further action by the House.* Thus the rule should provide for no division of an article by the Senate.''

(Senate Rules and Precedents Applicable to Impeachment Trials, Executive Session Hearings before the Comm. on Standing Rules and Administration, 93rd Cong., 2nd Sess. at 116 (August 5th and 6th, 1974) (emphasis added).)

In addition to implicitly recognizing that articles of impeachment may contain multiple specifications of impeachable offenses, the Senate has convicted a number of judges on such ''omnibus'' articles, including Judges Archbald, Ritter, and Claiborne. In the case of Judge Nixon, the Senate acquitted on the article, but refused to dismiss it.

The most recent example, that of Judge Nixon in 1989, is instructive. Judge Walter L. Nixon filed a motion to dismiss on the grounds that Article III was duplicative, among other things. Senator Fowler, the chairman of the committee appointed to take evidence in the impeachment trial of Judge Nixon explained the reasons for denying Nixon's motion to refer the motion to dismiss to the full Senate:

''To the extent that the motion rests on the House's inclusion of fourteen distinct allegations of false statements in one article, we believe that Article III states an intelligible and adequately discrete charge of an impeachable offense by alleging that Judge Nixon concealed information concerning several conversations in which he had engaged by making ''one or more'' false statements to a grand jury. The House has substantial discretion in determining how to aggregate related alleged acts of misconduct in framing Articles of Impeachment and has historically frequently chosen to aggregate multiple factual allegations in a single impeachment article. The House's itemization of the fourteen particular statements whose knowing falsity it is alleging serves to give Judge Nixon fair notice of the contours of the charge against him without reducing the intelligibility of the article's essential accusation that Judge Nixon knowingly concealed material information from the government's law enforcement agents. Because the Committee believes that evidentiary proceedings may fairly be conducted on Article III as it is presently drafted, Judge Nixon's motion to refer his motion to dismiss Article III to the Senate at this time is denied.''

(135 Cong. Rec. 19635–36 (September 6, 1989).)

The full Senate eventually rejected Judge Nixon's motion to dismiss by a vote of 34 to 63. Mr. Manager Cardin persuasively summed up the argument against the motion to dismiss as follows:

''Judge Nixon argues, in his brief, that you must find all 14 statements to be false to vote guilty on article III. But that is untrue. Read the article closely. The question posed by article III is, did Judge Nixon conceal information? Did he conceal information, first by one or more false or misleading statements in his interview, and then by one or more false and misleading statements in his grand jury testimony?

''You need not find all 14 statements to be false. The House is unanimously convinced that all 14 are complete and utter lies. We hope you will agree. But after considering the evidence, perhaps you will conclude that only 12 of the statements are false. It really does not matter. Just one intentionally false and misleading statement in the interview, or one in the grand jury, should be enough. Because if you conclude that Judge Nixon concealed information, whether by 1 false statement or 14, he should be removed from the bench. You should vote guilty on article III.

''And you need not necessarily agree on which statements are false, if you reach the conclusion that he concealed information. If two-thirds of the Senators present believe Judge Nixon lied, regardless of how each individual Senator reached that conclusion, he will properly be removed from office.

* * * * *

''This is by no means unfair to Judge Nixon, for even if you might differ on which particular statements are lies, the bottom line is that two-thirds of you will have agreed that he concealed information, rendering him unfit for office. That is what the Constitution requires.''

(*Id.* at 26751.)

Given the clear Senate precedent permitting articles of impeachment containing multiple specifications of impeachable offenses, the President's attack on the construction of the articles is an attack on Senate rules and precedent. The President's concerns, if assumed to be valid, could be addressed simply by permitting a division of the question. Under the standing rules of the Senate, any Senator may have the same divided if ''the question in debate contains several propositions.'' Senate Rule XV. A question is divisible if it contains two or more separate and distinct propositions. The Senate, however, has made an affirmative decision to dispense with the regular order which governs bills, resolutions, and amendments thereto, and instead adopted a different procedure not permitting the division of articles of impeachment. The Senate has not acted unconstitutionally in the past regarding prior impeachments, and is not on a course to do so in the trial of President Clinton.

The claim that President Clinton is not on notice regarding the charges is ludicrous. The Lewinsky matter is arguably the most reported and scrutinized story of 1998 and possibly of 1999. The facts of the case are contained in numerous documents, statements, reports, and filings. Specifically, President Clinton has had the following documents, among others, containing the facts and specifics of the case: (1) *Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c),* H. Doc. 105–310, 105th Cong., 2nd Sess. (1998); (2) *Investigatory Powers of the Comm. on the Judiciary with Respect to its Impeachment Inquiry,* H. Rept. 105–795, 105th Cong., 2nd Sess. (October 7, 1998); (3) *Impeachment of William Jefferson Clinton, President of the United States,* 105th Cong., 2nd Sess., H.R. Rept. 105–830 (Dec. 16, 1998); and (4) *Trial Memorandum of the United States House of Representatives.* If all of these reports and the thousands of pages of documents are not enough, President Clinton will have the opportunity to review the presentation of the Managers on the Part of the House for up to twenty-four hours.

V. PRESIDENT CLINTON COMPLETELY MISSTATES THE RECORD AS TO THE DISCOVERY PROCEDURES THAT WERE AVAILABLE TO HIM IN THE HOUSE OF REPRESENTATIVES

President Clinton's trial memorandum claimed to the Senate that, should it decide ''to allow the House managers to expand the record in some way . . . the President would have an urgent need for the discovery of relevant evidence, *because at no point in these proceedings has been able to subpoena documents or summon or cross-examine witnesses.*'' President's Trial Memorandum at 125 (emphasis added). The President also states that ''the House of Representatives [did not] afford the President any discovery mechanisms to secure evidence that might be helpful in his defense.'' *Id.*

We will not address every discovery issue here since those issues will be resolved in the coming days; however, the Senate should know that these claims are absolutely false. In fact, the President's own brief refutes his claims. ''The Committee allowed the President's lawyers two days in which to present a defense. The White House presented four panels of distinguished expert witnesses. . . .'' White House Counsel Charles

F.C. Ruff presented argument to the Committee on behalf of the President. . . .'' *Id.* at 13.

The House Committee on the Judiciary repeatedly asked the President's attorneys to supply any exculpatory evidence to the Committee, both orally and in writing. They never did. When, at the last minute, the President's counsel requested witnesses, the Committee invited to testify every witness they requested. Aside from this, President Clinton nor his attorneys never asked to ''subpoena documents'' or ''summon or cross-examine witnesses.'' If President Clinton's argument is that the Committee did not provide his staff a stack of blank subpoenas, that is correct. However, neither the House of Representatives, nor the Senate, has the ability to ''turn over'' its constitutionally based subpoena power to the executive branch.

President Clinton's attorneys never asked to do the things they now claim they never had the ability to do. In fact, when minority members of the Committee publicly asked that Judge Starr be called as a witness, Judge Starr was called. In fact, President Clinton's attorney and minority counsel questioned Judge Starr for over two hours. Every Member of the Committee questioned him for at least five minutes each. Judge Starr was a witness, and he was cross-examined by David Kendall, President Clinton's private attorney. President Clinton's claims are just not accurate.

President Clinton's attorneys raise the issue of fairness. They are entitled to their own opinion about the House's proceedings, but they are not entitled to rewrite history. The truth is that the Committee's subpoena power could have been used to subpoena documents or witnesses on behalf of the President if they had so requested. They did not. All they requested, is that lawyers, law professors, and historians testify before the Committee. In short, President Clinton's statements about what happened in the House completely misstate what occurred.

VI. CONCLUSION

For the reasons stated herein and in the Trial Memorandum of the United States House of Representatives, the House respectfully submits that the articles properly state impeachable offenses, that the Senate should proceed to a full trial on the articles, and that after trial, the Senate should vote to convict President William Jefferson Clinton, remove him from office, and disqualify him from holding further office.

Respectfully submitted,

The United States
House of Representatives.

HENRY J. HYDE,
F. JAMES SENSENBRENNER, Jr.,
BILL MCCOLLUM,
GEORGE W. GEKAS,
CHARLES T. CANADY,
STEPHEN E. BUYER,
ED BRYANT,
STEVE CHABOT,
BOB BARR,
ASA HUTCHINSON,
CHRIS CANNON,
JAMES E. ROGAN,
LINDSEY O. GRAHAM,
Managers on the Part of the House.

THOMAS E. MOONEY,
General Counsel.

DAVID P. SCHIPPERS,
Chief Investigative Counsel.

Dated: January 14, 1999.

The CHIEF JUSTICE. I would like to inform Members of the Senate and the parties in this case of my need to stand on occasion to stretch my back. I have no intention that the proceedings should be in any way interrupted when I do so.

The Presiding Officer notes the presence in the Senate Chamber of the managers on the part of the House of Representatives and counsel for the President of the United States.

Pursuant to the provisions of Senate Resolution 16, the managers for the House of Representatives have 24 hours to make the presentation of their case. The Senate will now hear you.

The Presiding Officer recognizes Mr. Manager HYDE to begin the presentation of the case for the House of Representatives.

Mr. Manager HYDE. Mr. Chief Justice, distinguished counsel for the President, and Senators.

We are brought together on this solemn and historic occasion to perform important duties assigned to us by the Constitution.

We want you to know how much we respect you and this institution and how grateful we are for your guidance and your cooperation.

With your permission, we the managers of the House are here to set forth the evidence in support of two articles of impeachment against President William Jefferson Clinton. You are seated in this historic Chamber not to embark on some great legislative debate, which these stately walls have so often witnessed, but to listen to the evidence, as those who must sit in judgment.

To guide you in this grave duty, you have taken an oath of impartiality. With the simple words ''I do,'' you have pledged to put aside personal bias and partisan interest and to do ''impartial justice.'' Your willingness to take up this calling has once again reminded the world of the unique brilliance of America's constitutional system of Government. We are here, Mr. Chief Justice and distinguished Senators, as advocates for the rule of law, for equal justice under the law and for the sanctity of the oath.

The oath. In many ways the case you will consider in the coming days is about those two words ''I do,'' pronounced at two Presidential inaugurations by a person whose spoken words have singular importance to our Nation and to the great globe itself.

More than 450 years ago, Sir Thomas More, former Lord Chancellor of England, was imprisoned in the Tower of London because he had, in the name of conscience, defied the absolute power of the King. As the playwright Robert Bolt tells it, More was visited by his family, who tried to persuade him to speak the words of the oath that would save his life, even while, in his mind and heart, he held firm to his conviction that the King was in error. More refused. As he told his daughter, Margaret, ''When a man takes an oath, Meg, he's holding his own self in his hands. Like water. And if he opens his fingers then—he needn't hope to find himself again . . .'' Sir Thomas More, the most brilliant lawyer of his generation, a scholar with an international reputation, the center of a warm and affectionate family life which he cherished, went to his death rather than take an oath in vain.

Members of the Senate, what you do over the next few weeks will forever affect the meaning of those two words ''I do.'' You are now stewards of the oath. Its significance in public service and our cherished system of justice will never be the same after this. Depending on what you decide, it will either be strengthened in its power to achieve justice or it will go the way of so much of our moral infrastructure and become a mere convention, full of sound and fury, signifying nothing.

The House of Representatives has named myself and 12 other Members as Managers of its case. I have the honor of introducing those distinguished Members and explaining how we will make our initial presentation. The gentleman from Wisconsin, Representative JIM SENSENBRENNER, will begin the presentation with an overview of the case. Representative SENSENBRENNER is the ranking Republican member of the House Judiciary Committee, and has served for 20 years. In 1989, Representative SENSENBRENNER was a House manager in the impeachment trial of Judge Walter L. Nixon who was convicted on two articles of impeachment for making false and misleading statements before a federal grand jury.

Following Representative SENSENBRENNER will be a team of managers who will make a presentation of the relevant facts of this case. From the very outset of this ordeal, there has been a great deal of speculation and misinformation about the facts. That has been unfortunate for everyone involved. We believe that a full presentation of the facts and the law by the House managers—will be helpful.

Representative ED BRYANT, from Tennessee was a United States Attorney from the Western District of Tennessee. As a captain in the Army, Representative BRYANT served in the Judge Advocate General Corps and taught at the United States Military Academy at West Point. Representative BRYANT will explain the background of the events that led to the illegal actions of the President. Following Representative BRYANT, Representative ASA HUTCHINSON from Arkansas will give a presentation of the factual basis for article II, obstruction of justice. Representative HUTCHINSON is a former United States Attorney for the Western District of Arkansas. Next, you will hear from Representative JIM ROGAN of California. Representative ROGAN is a former California State judge and Los Angeles County Deputy District Attorney. Representative ROGAN will give a presentation of the factual basis for article I, grand jury perjury. This should conclude our presentation for today.

Tomorrow, Representative BILL MCCOLLUM of Florida will tie all of the facts together and give a factual summation. Representative MCCOLLUM is

the Chairman of the Subcommittee on Crime, a former Naval Reserve Commander and member of the Judge Advocate General Corps.

Following the presentation of the facts, a team of managers will present the law of perjury and the law of obstruction of justice and how it applies to the articles of impeachment before you. While the Senate has made it clear that a crime is not essential to impeachment and removal from office, these managers will explain how egregious and criminal the conduct alleged in the articles of impeachment is. This team includes Representative GEORGE GEKAS of Pennsylvania, Representative STEVE CHABOT of Ohio, Representative BOB BARR of Georgia, and Representative CHRIS CANNON of Utah. Representative GEKAS is the Chairman of the Subcommittee on Commercial and Administrative Law. And in 1989, Representative GEKAS served as a manager of the impeachment trial of Judge Alcee Hastings who the Senate convicted on eight articles for making false and misleading statements under oath and one article of conspiracy to engage in a bribery. Representative GEKAS is a former assistant district attorney. Representative CHABOT serves on the Subcommittee on Crime and has experience as a criminal defense lawyer. Representative BARR is a former United States Attorney for the Northern District of Georgia, where he specialized in public corruption. He also has experience as a criminal defense attorney. Representative CANNON has had experience as the Deputy Associate Solicitor General of the Department of the Interior and as a practicing attorney. That should conclude our presentation for Friday.

On Saturday, three managers will make a presentation on Constitutional law as it relates to this case. There has been a great deal of argument about whether the conduct alleged in the articles rises to the level of removable offenses. This team's analysis of the precedents of the Senate and application of the facts of this case will make it clear that the Senate has established the conduct alleged in the articles to be removable offenses. In this presentation you will hear from Representative CHARLES CANADY of Florida, Representative STEVE BUYER of Indiana and Representative LINDSEY GRAHAM of South Carolina. Representative CANADY is the Chairman of the Subcommittee on the Constitution and one of the leading voices on constitutional law in the House. Representative BUYER served in the United States Army as a member of the Judge Advocate General Corps where he was assigned as Special Assistant to the United States Attorney in Virginia. He also served as a deputy to the Indiana Attorney General. Representative GRAHAM served in the Air Force as a member of the Judge Advocate General Corps and as a South Carolina Assistant Attorney.

Following the presentation of the facts, the law of perjury and obstruction of justice and constitutional law, Mr. ROGAN and myself will give you a final summation and closing to our initial presentation.

Mr. SENSENBRENNER.

The CHIEF JUSTICE. Mr. Manager SENSENBRENNER is recognized.

Mr. Manager SENSENBRENNER. Mr. Chief Justice, distinguished counsel to the President, and Senators, in his third annual message to Congress on December 7, 1903, President Theodore Roosevelt said:

> No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.

We are here today because President William Jefferson Clinton decided to put himself above the law, not once, not twice, but repeatedly. He put himself above the law when he engaged in a multifaceted scheme to obstruct justice during the Federal civil rights case of Paula Corbin Jones versus William Jefferson Clinton, et. al. He put himself above the law when he made perjurious, false and misleading statements under oath during his grand jury testimony on August 17, 1998. In both instances, he unlawfully attempted to prevent the judicial branch of Government—a coequal branch—from performing its constitutional duty to administer equal justice under law.

The United States House of Representatives has determined that the President's false and misleading testimony to the grand jury and his obstruction of justice in the Jones lawsuit are high crimes and misdemeanors within the meaning of the Constitution. Should the Senate conduct a fair and impartial trial which allows each side to present its best case, then the American public can be confident that justice has been served, regardless of the outcome.

We hear much about how important the rule of law is to our Nation and to our system of government. Some have commented this expression is trite. But, whether expressed by these three words, or others, the primacy of law over the rule of individuals is what distinguishes the United States from most other countries and why our Constitution is as alive today as it was 210 years ago.

The Framers of the Constitution devised an elaborate system of checks and balances to ensure our liberties by making sure that no person, institution, or branch of Government became so powerful that a tyranny could ever be established in the United States of America.

We are the trustees of that sacred legacy and whether the rule of law and faith in our Nation emerges stronger than ever, or are diminished irreparably, depends upon the collective decision of the message each Senator chooses to send forth in the days ahead.

The evidence you will hear relates solely to the President's misconduct, which is contrary to his constitutional public responsibility to ensure the laws be faithfully executed. It is not about the President's affair with a subordinate employee, an affair that was both inappropriate and immoral. Mr. Clinton has recognized that this relationship was wrong. I give him credit for that. But he has not owned up to the false testimony, the stonewalling and legal hairsplitting, and obstructing the courts from finding the truth. In doing so, he has turned his affair into a public wrong. And for these actions, he must be held accountable through the only constitutional means the country has available—the difficult and painful process of impeachment.

Impeachment is one of the checks the Framers gave to Congress to protect the American people from a corrupt or tyrannical executive or judicial branch of Government. Because the procedure is cumbersome and because a two-thirds vote in the Senate is required to remove an official following an impeachment trial, safeguards are there to stop Congress from increasing its powers at the expense-of the other two branches. The process is long. It is difficult. It is unpleasant. But, above all, it is necessary to maintain the public's trust in the conduct of their elected officials—elected officials, such as myself and yourselves, who through our oaths of office have a duty to follow the law, fulfill our constitutional responsibilities, and protect our Republic from public wrongdoing.

The Framers of the Constitution envisioned a separate and distinct process in the House and in the Senate. They did not expect the House and Senate to conduct virtually identical proceedings with the only difference being that conviction in the Senate requires a two-thirds vote. That is why the Constitution reserves the sole power of impeachment to the House of Representatives and the sole power to try all impeachments to the Senate. History demonstrates different processes were adopted to reflect very different roles.

In the case of President Andrew Johnson, no hearings were held or witnesses called by the House on the President's decision to remove Secretary of War Stanton from office. The House first approved a general article of impeachment that simply stated that President Johnson was impeached for high crimes and misdemeanors. Five days later, a special House committee drew up specific articles. Eleven articles were passed by the House, all but two of which were based upon President Johnson's alleged violation of the Tenure of Office Act by his actions in removing Secretary of War Stanton. The trial was then conducted with witnesses in the Senate.

In the case of President Nixon, the House Judiciary Committee passed three articles of impeachment based not upon their own investigation, but upon the evidence gathered by the Ervin Committee, the Patman Committee, the Joint Tax Committee and

material from the special prosecutor and various court proceedings. Nine witnesses were called at the end of the impeachment inquiry, five of them at the request of the White House, and their testimony was not at the center of the impeachment articles.

In the Judge Walter Nixon impeachment in 1989, a trial with live witnesses was held even after the Senate rejected by less than a two-thirds vote a defense motion to dismiss one article of impeachment on the grounds that it did not constitute an impeachable offense.

The House managers submit witnesses are essential to give heightened credence to whatever judgment the Senate chooses to make on each of the articles of impeachment against President Clinton.

The matter of how this proceeding will be conducted remains somewhat unsettled. Senate impeachment precedent has been to hold a trial. And, in every impeachment case, the Senate has heard from live witnesses. Should the President's counsel dispute the facts as laid out by the House of Representatives, the Senate will need to hear from live witnesses in order to reach a proper and fair judgment as to the truthful facts of this case.

The House concluded the President made perjurious, false and misleading statements before the grand jury, which the House believes constitutes a high crime and misdemeanor. Our entire legal system is based upon the courts being able to find the truth. That's why witnesses must raise their right hand and swear to tell the truth, the whole truth, and nothing but the truth. That's why there are criminal penalties for perjury and making false statements under oath. The need for obtaining truthful testimony in court is so important that the Federal sentencing guidelines have the same penalties for perjury as for bribery.

The Constitution specifically names bribery as an impeachable offense. Perjury is the twin brother of bribery. By making the penalty for perjury the same as that for bribery, Congress has acknowledged that both crimes are equally serious. It follows that perjury and making false statements under oath, which is a form of perjury, be considered among the ''high crimes and misdemeanors'' the Framers intended to be grounds for impeachment.

The three judicial impeachments of the 1980's were all about lies told by a federal judge. Judge Claiborne was removed from office for lying on his income tax returns. Judge Hastings was removed for lying under oath during a trial, and Judge Nixon was removed for making false statements to a grand jury. In each case, the Senate showed no leniency to judges who lie. Their misconduct was deemed impeachable and more than 2/3rds of the Senate voted to convict.

If the Senate is convinced that President Clinton lied under oath and does not remove him from office, the wrong message is given to our courts, those who have business before them, and to the country as a whole. That terrible message is that we as a nation have set a lower standard for lying under oath for Presidents than for judges. Should not the leader of our country be held to at least as high a standard as the judges he appoints? Should not the President be obliged to tell the truth when under oath, just as every citizen must? Should not our laws be enforced equally? Your decision in this proceeding will answer these questions and set the standard of conduct of public officials in town halls and courtrooms everywhere and the Oval Office for generations.

Justice is never served by the placing of any public official above the law. The framers rejected the British law of, ''The King can do no wrong'', when they wrote our basic law in 1787. Any law is only as good as its enforcement, and the enforcement of the law against the President was left to Congress through the impeachment process.

A Senate conviction of the President in this matter will reaffirm the irrefutable fact that even the President of the United States has no license to lie under oath. Deceiving the courts is an offense against the public. It prevents the courts from administering justice and citizens from receiving justice. Every American has the right to go to court for redress of wrongs, as well as the right to a jury trial. The jury finds the facts. The citizens on the jury cannot correctly find the facts absent truthful testimony. That's why it's vital that the Senate protect the sanctity of the oath to obtain truthful testimony, not just during judicial proceedings but also during legislative proceedings as well.

Witnesses before Congress, whether presidential nominees seeking Senate confirmation to high posts in the executive or judicial branches, federal agency heads testifying during investigative hearings, or witnesses at legislative hearings giving their opinions on bills are sworn to tell the truth. Eroding the oath to tell the truth means that Congress loses some of its ability to base its decisions upon truthful testimony. Lowering the standard of the truthfulness of sworn testimony will create a cancer that will keep the legislative branch from discharging its constitutional functions as well.

Mr. Chief Justice, we are here today because William Jefferson Clinton decided to use all means possible—both legal and illegal—to subvert the truth about his conduct relevant to the federal civil rights suit brought against President Clinton by Mrs. Paula Jones. Defendants in civil lawsuits cannot pick and choose which laws and rules of procedure they will follow and which they will not. That's for the trial judge to decide, whether the defendant be President or pauper.

In this case, a citizen claimed her civil rights were violated when she refused then Governor Clinton's advances and was subsequently harassed at work, denied merit pay raises, and finally forced to quit. The court ruled she had the right to obtain evidence showing other women including Miss Lewinsky, got jobs, promotions, and raises after submitting to Mr. Clinton, and whether other women suffered job detriments after refusing similar advances.

When someone lies about an affair and tries to hide the fact, they violate the trust their spouse and family put in them. But when they lie about it during a legal proceeding and obstruct the parties from obtaining evidence, they prevent the courts from administering justice.

That is an offense against the public, made even worse when a poor or powerless person seeks the protections of our civil rights from the rich or powerful.

When an American citizen claims his or her civil rights have been violated, we must take those claims seriously. Our civil rights laws have remade our society for the better. The law gives the same protections to the child denied entry to a school or college based upon race as to an employee claiming discrimination at work. Once a hole is punched in civil rights protections for some, those protections are not worth as much for all. Many in the Senate have spent their lives advancing individual rights. Their successful efforts have made America a better place. In my opinion, this is no time to abandon that struggle—no matter the public mood or the political consequence.

Some have said that the false testimony given by the President relating to sex should be excused, since as the argument goes, ''Everyone lies about sex.'' I would ask the Senate to stop to think about the consequences of adopting that attitude. Our sexual harassment laws would become unenforceable since every sexual harassment lawsuit is about sex, and much of domestic violence litigation is at least partly about sex. If defendants in these types of suits are allowed to lie about sex, justice cannot be done, and many victims, mostly women, will be denied justice.

Mr. Chief Justice, the House has adopted two articles of impeachment against President William Jefferson Clinton. Each meets the standard of ''high crimes and misdemeanors'' and each is amply supported by the evidence.

Article 1 impeaches the President for ''perjurious, false and misleading'' testimony during his August 17, 1998, appearance before a grand jury of the United States in four areas.

First, the nature and details of his relationship with a subordinate government employee.

Second, prior perjurious, false and misleading testimony he gave in a federal civil rights action brought against him.

Third, prior false and misleading statements he allowed his attorney to make to a federal judge in that federal civil rights lawsuit.

Fourth, his corrupt efforts to influence the testimony of witnesses and to

impede the discovery of evidence in that civil rights action.

The evidence will clearly show that President Clinton's false testimony to the grand jury was not a single or isolated instance which could be excused as a mistake, but rather a comprehensive and calculated plan to prevent the grand jury from getting the accurate testimony in order to do its job. Furthermore, it is important to dispel the notion that the President's false testimony before the grand jury simply relates to details of the relationship between President Clinton and Miss Lewinsky. These charges only make up a small part of Article 1. The fact is, the evidence will show that President Clinton made numerous perjurious, false and misleading statements regarding his efforts to obstruct justice.

Before describing what the evidence in support of Article 1 shows, it is also important to clearly demonstrate that the Senate has already decided that making false statements under oath to a federal grand jury is an impeachable offense.

The last impeachment decided by the Senate, that of United States District Judge Walter L. Nixon, Jr., of the United States District Court for the Southern District of Mississippi, involved the Judge's making false statements under oath to a federal grand jury, precisely the same charges contained in Article 1 against President Clinton. Following an unanimous 417 to 0 vote in the House, the Senate conducted a full trial and removed Judge Nixon from office on the two articles charging false statements to a grand jury by votes of 89 to 8 and 78 to 19. The Senate was clear that the specific misconduct, that is, making false statements to a grand jury, which was the basis for the Judge's impeachment, warranted his removal from office and the Senate proceeded to do just that.

These votes, a little more than nine years ago on November 3, 1989, set a clear standard that lying to a grand jury is grounds for removal from office. To set a different standard in this trial is to say that the standard for judicial truthfulness during grand jury testimony is higher than that of presidential truthfulness.

That result would be absurd. The truth is the truth and a lie is a lie. There cannot be different levels of the truth for judges than for presidents.

The President's perjurious, false and misleading statements regarding his relationship with Ms. Lewinsky began early in his grand jury testimony. These statements included parts of the prepared statement the President read at the beginning of his testimony. He referred or reverted to his statement at least 19 times during the course of his testimony.

Further, the evidence will show the President made other false statements to the grand jury regarding the nature and details of his relationship with Ms. Lewinsky at times when he did not refer to his prepared statement.

Second, the evidence will show that the President piled perjury upon perjury when he provided perjurious, false and misleading testimony to the grand jury concerning prior perjurious, false and misleading testimony given in Ms. Paula Jones' case.

On two occasions, the President testified to the grand jury that his deposition testimony was the truth, the whole truth, and nothing but the truth, and that he was required to give a complete answer to each question asked of him during the deposition. That means he brought to the grand jury his untruthful answers to questions at the deposition.

Third, the evidence will show the President provided perjurious, false and misleading testimony to a Federal grand jury regarding his attorney's use of an affidavit he knew to be false during the deposition in Ms. Paula Jones' case before Federal Judge Susan Webber Wright.

The President denied that he even paid attention to Mr. Bennett's use of the affidavit. The evidence will show he made this denial because his failure to stop his attorney from utilizing a false affidavit at a deposition would constitute obstruction of justice. The evidence will also show the President did not admit that Mr. Bennett's statement was false because to do so would be to admit that he had perjured himself earlier that day during the grand jury testimony, as well as at the deposition.

Fourth, the evidence will show that the President provided perjurious, false and misleading testimony to the grand jury concerning his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in Ms. Paula Jones' civil rights action.

The evidence will show that these statements related to at least four areas:

First, his false statements relating to gifts exchanged between the President and Ms. Lewinsky. The subpoena served on Ms. Lewinsky in the Jones case required her to produce each and every gift she had received from the President. These gifts were not turned over as required by the subpoena, but ended up under Ms. Betty Currie's bed in a sealed container. The President denied under oath that he directed Ms. Currie to get the gifts, but the evidence will show that Ms. Currie did call Ms. Lewinsky about them and that there was no reason for her doing so unless directed by the President.

Second, the President made perjurious, false and misleading statements to the grand jury regarding his knowledge that the Lewinsky affidavit submitted at the deposition was untrue. The evidence will show that the President testified falsely on this issue on at least three separate occasions during his grand jury testimony. He also provided false testimony on whether he encouraged Ms. Lewinsky to file a false affidavit.

Third, the President made false and misleading statements to the grand jury by reciting a false account of the facts regarding his interactions with Ms. Lewinsky and Ms. Currie, who was a potential witness against him in Ms. Jones' case.

The record reflects the President tried to coach Ms. Currie to recite inaccurate answers to possible questions should she be called as a witness. The evidence will show the President testified to the grand jury that he was trying to figure out what the facts were, but in reality the conversation with Ms. Currie consisted of a number of very false and misleading statements.

Finally, the President made perjurious, false and misleading statements to aides regarding his relationship with Ms. Lewinsky. In his grand jury testimony, the President tried to have it both ways on this issue. He testified that his statements to aides were both true and misleading—true and misleading.

The evidence will show that he met with four aides who would later be called to testify before the grand jury. They included Mr. Sidney Blumenthal, Mr. John Podesta, Mr. Erskine Bowles, and Mr. Harold Ickes. Each of them related to the grand jury the untruths they had been told by the President. I have recited this long catalogue of false statements to show that the President's false statements to the grand jury were neither few in number nor isolated, but rather pervaded his entire testimony.

There can be no question that the President's false statements to the grand jury were material to the subject of the inquiry. Grand juries are utilized to obtain sworn testimony from witnesses to determine whether a crime has been committed. The Attorney General and the Special Division of the United States Court of Appeals for the District of Columbia Circuit appointed an independent counsel pursuant to law and added areas of inquiry because they believed there was evidence that the President may have committed crimes. Grand jury testimony relevant to the criminal probe is always material to the issue of whether someone has committed a crime.

Based upon the precedent in the Judge Nixon impeachment, the law, the facts, and the evidence, if you find the President made perjurious, false and misleading statements under oath to the grand jury, I respectfully submit that your duty will be to find William Jefferson Clinton guilty with respect to article I and to remove him from office.

Article II impeaches William Jefferson Clinton for preventing, obstructing and impeding the administration of justice in the Jones case by either directly or through subordinates and agents engaging in a scheme to delay, impede, cover up, and conceal the existence of evidence and testimony relating to Ms. Jones' Federal civil rights action.

As in the case of article I, the President's direct and indirect actions were not isolated mistakes, but were multifaceted actions specifically designed to prevent Ms. Paula Jones from having her day in court.

While the Senate determined in the Judge Nixon trial that the making of false statements to a Federal grand jury warranted conviction and removal from office, no impeachment on an obstruction of justice charge has ever reached the Senate.

Therefore, this article is a matter of first impression. However, the impeachment inquiry of the House Judiciary Committee into the conduct of President Richard Nixon, as well as the relevant Federal criminal statutes, clearly show President Clinton's actions to be within the definition of ''high crimes and misdemeanors'' contained in the Constitution.

The first article of impeachment against President Nixon approved by the Judiciary Committee charged Mr. Nixon with ''engag(ing) personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede and obstruct the investigation of such unlawful entry; to cover up, conceal and protect those responsible and to conceal the existence and scope of other unlawful activities.''

The article charged that the implementation of the plan included nine separate areas of misconduct. Included among these were, one, making or causing to be made false and misleading statements to investigative officers and employees of the United States; two, withholding relevant and material evidence from such persons; three, approving, condoning, acquiescing in and counseling witnesses with respect to the giving of false and misleading statements to such persons as well as in judicial and congressional proceedings.

History shows us that President Nixon's resignation was the only act that prevented the Senate from voting on this article, and that the President's conviction and removal from office were all but certain.

There are two sections of the Federal Criminal Code placing penalties on those who obstruct justice. Title 18, United States Code, section 1503, punishes ''(whoever * * * corruptly, or by threats or force * * * obstructs, or impedes or endeavors to influence, obstruct or impede the due administration of justice.''

The courts have held that this section relates to pending judicial process, which can be a civil action. Ms. Jones' case fits that definition at the time of the President's actions as alleged in article II, as does the Office of Independent Counsel's investigation.

Title 18, United States Code, section 1512, punishes, ''Whoever * * * corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to * * * influence, delay or prevent the testimony of any person in an official proceeding * * * (or) cause or induce any person to * * * withhold testimony, or withhold a record, document, or other object from an official proceeding * * *.''

The evidence will show that President Clinton's actions constituted obstruction of justice in seven specific instances as alleged in Article II. Paragraph one alleges that on or about December 17, 1997, the President encouraged Miss Lewinsky, who would be subpoenaed as a witness in Mrs. Jones' case two days later, to execute a sworn affidavit that he knew would be perjurious, false, and misleading.

The evidence will show the President's actions violated both federal criminal obstruction statutes.

Second, Article II alleges that on or about that same day, the President corruptly encouraged Miss Lewinsky to give perjurious, false, and misleading testimony if and when called to testify personally in that proceeding. Miss Lewinsky, on the witness list at that time, could have been expected to be required to give live testimony in the Jones case and in fact she was subsequently subpoenaed for a deposition in that case.

The evidence will show the President's actions violated both federal criminal obstruction statutes.

Third, Article II alleges on or about December 28, 1997, the President corruptly engaged in, encouraged, or supported a scheme to conceal evidence which had been subpoenaed in Mrs. Jones' civil rights case. He did so by asking Ms. Betty Currie to retrieve evidence from Miss Lewinsky that had been subpoenaed in the case of Jones v. Clinton.

The evidence will show the President's actions violated the second federal criminal obstruction statute.

Fourth, Article II alleges that beginning on or about December 7, 1997, and continuing through and including January 14, 1998, the President intensified and succeeded in an effort to secure job assistance to Miss Lewinsky in order to corruptly prevent her truthful testimony in the Jones case at a time when her truthful testimony would have been harmful to him.

While Miss Lewinsky had sought employment in New York City long before the dates in question, helping her find a suitable job was clearly a low priority for the President and his associates until it became obvious she would become a witness in the Jones case. The evidence will clearly show an intensification of that effort after her name appeared on the witness list. This effort was ultimately successful and the evidence will show that the President's actions violated both federal obstruction statutes.

Fifth, Article II alleges on January 17, 1998, the President corruptly allowed his attorney to make false and misleading statements to Judge Wright characterizing the Lewinsky affidavit in order to prevent questioning deemed relevant by the judge. The President's attorney, Robert Bennett, subsequently acknowledged such false and misleading statements in a communication to Judge Wright.

The evidence will show the President's actions clearly violate the second federal criminal obstruction statute.

Sixth, Article II alleges that on or about January 18, 20, and 21, 1998, the President related a false and misleading account of events relevant to Mrs. Jones' civil rights suit to Ms. Betty Currie, a potential witness in the proceeding, in order to corruptly influence her testimony.

The evidence will show that President Clinton attempted to influence the testimony of Ms. Betty Currie, his personal secretary, by coaching her to recite inaccurate answers to possible questions that might be asked of her if called to testify in Mrs. Paula Jones' case. The President did this shortly after he had been deposed in the civil action.

During the deposition, he frequently referred to Ms. Currie and it was logical that based upon his testimony, Ms. Currie would be called as a witness.

The evidence will show that two hours after the completion of the deposition, the President called Ms. Currie to ask her to come to the office the next day, which was a Sunday.

When Ms. Currie testified to the grand jury, she acknowledged the President made a series of leading statements or questions and concluded that the President wanted her to agree with him.

The evidence will show the President's actions violated both statutes, but most particularly section 1512.

In *United States* v. *Rodolitz* 786 F2d 77 at 82 (2nd Cir 1986) cert. Den. 479 US 826 (1986), the United States Court of Appeals for the 2nd Circuit said,

> The most obvious example of a sec. 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 believes the story and testify to it before the grand jury.

If the President's actions do not fit this example, I'm at a loss to know what actions do.

Seventh, and last, Article II alleges on or about January 21, 23, and 26, 1998, the President made false and misleading statements to potential witnesses in a federal grand jury proceeding in order to corruptly influence this testimony of those witnesses. The articles further alleges these false and misleading statements were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

The evidence will show that these statements were made to presidential aides Mr. Sidney Blumenthal, Mr. Erskine Bowles, Mr. John Podesta and Mr. Harold Ickes. They all testified to the grand jury. By his own admission seven months later, on August 17, 1998, during his sworn grand jury testimony, the President said that he told a number of aides that he did not have an affair with Ms. Lewinsky and did not

have sex with her. He told one aide, Mr. Sidney Blumenthal, that Miss Monica Lewinsky came on to him and he rebuffed her. President Clinton also admitted that he knew these aides might be called before the grand jury as witnesses. The evidence will show they were called; they related the President's false statements to the grand jury; and that by the time the President made his admission to the grand jury, the damage had already been done.

This is a classic violation of 18 U.S.C. Section 1512.

The seven specific, allegations of obstruction of justice contained in Article II were designed to prevent the judicial branch of government, a separate and coequal branch, from doing its work in Ms. Paula Jones' lawsuit. Based upon the allegation of Article 1 against President Nixon in 1974, as well as repeated and calculated violations of two key criminal obstruction statutes, William Jefferson Clinton committed an impeachable offense.

In Article II, the evidence is conclusive that President Clinton put himself above the law in obstructing justice, not once, not just a few times, but as a part of a extensive scheme to prevent Ms. Jones from obtaining the evidence she thought she needed to prove her civil rights claims.

Complying with the law is the duty of all parties to lawsuits and those who are required to give truthful testimony. A defendant in a federal civil rights action does not have the luxury to choose what evidence the court may consider. He must abide by the law and the rules of procedure. William Jefferson Clinton tried to say that the law did not apply to him during his term of office in civil cases were concerned. He properly lost that argument in the Supreme Court in a unanimous decision.

Even though the Supreme Court decided that the President wasn't above the law and that Ms. Jones' case could proceed, William Jefferson Clinton decided—and decided alone—to act as if the Supreme Court had never acted and that Judge Wright's orders didn't apply to him. What he did was criminal time and time again. These criminal acts were in direct conflict with the President's obligation to take care the laws be faithfully executed.

Based upon the repeated violations of federal criminal law, its effect upon the courts to find the truth, and the President's duty to take care that the laws be faithfully executed, if you find that the President did indeed obstruct the administration of justice through his acts, I respectfully submit your duty will be to find William Jefferson Clinton guilty with respect to Article II and to remove him from office.

It is truly sad when the leader of the greatest nation in the world gets caught up in a series of events where one inappropriate and criminal act leads to another, and another and another.

Even sadder is that the President himself could have stopped this process simply by telling the truth and accepting the consequences of his prior mistakes. At least six times since December 17, 1997, William Jefferson Clinton could have told the truth and suffered the consequences. Instead he chose lies, perjury, and deception. He could have told the truth when he first learned that Ms. Lewinsky would be a witness in the Ms. Jones' case. He could have told the truth at his civil deposition. He could have told the truth to Betty Currie. He could have told the truth when the news media first broke the story of his affair. He could have told the truth to his aides and cabinet. He could have told the truth to the American people. Instead, he shook his finger at each and every American and said, ''I want you to listen to me,'' and proceeded to tell a straight-faced lie to the American people. Finally, he had one more opportunity to tell the truth. He could have told the truth to the grand jury. Had he told the truth last January, there would have been no independent counsel investigation of this matter, no grand jury appearance, no impeachment inquiry and no House approval of articles of impeachment. And, we would not be here today fulfilling a painful but essential constitutional duty. Instead, he chose lies and deception, despite warnings from friends, aides, and members of the House and Senate that failure to tell the truth would have grave consequences.

When the case against him was being heard by the House Judiciary Committee, he sent his lawyers, who did not present any new evidence to rebut the facts and evidence sent to the House by the Independent Counsel. Rather, they disputed the Committee's interpretation of the evidence by relying on tortured, convoluted, and unreasonable interpretations of the President's words and actions.

During his presentation to the House Judiciary Committee, the President's very able lawyer, Charles Ruff, was asked directly, ''Did the President lie?'' during his sworn grand jury testimony.

Mr. Ruff could have answered that question directly. He did not, and his failure to do so speaks a thousand words.

Is there not something sacred when a witness in a judicial proceeding raises his or her right hand and swears before God and the public to tell the truth, the whole truth, and nothing but the truth? Do we want to tell the country that its leader gets a pass when he is required to give testimony under oath? Should we not be concerned about the effect of allowing perjurious, false, and misleading statements by the President to go unpunished on the truthfulness of anyone's testimony in future judicial or legislative proceedings? What do we tell the approximately 115 people now in federal prison for the crime of perjury?

The answers to all these questions ought to be obvious.

As elected officials, our opinions are frequently shaped by constituents telling us their own stories. Let me tell you one related to me about the poisonous results of allowing false statements under oath to go unpunished.

Last October while the Starr report was being hotly debated, one circuit court judge for Dodge County, Wisconsin approached me on the street in Mayville, Wisconsin. He said that some citizens had business in his court and suggested that one of them take the witness stand and be put under oath to tell the truth. The citizen then asked if he could tell the truth, ''just like the President.''

How many people who have to come to court to testify under oath about matters they would like to keep to themselves think about what that citizen asked Judge John Storck? And, how will the courts be able to administer the, ''equal justice under law'' we all hold so dear if we do not enforce the sanctity of that oath even against the President of the United States?

When each of us is elected or chosen to serve in public office, we make a compact with the people of the United States of America to conduct ourselves in an honorable manner, hopefully setting a higher standard for ourselves than we expect of others. That should mean we are careful to obey all the laws we make, execute and interpret.

There is more than truth in the words, ''A public office is a public trust.''

When someone breaks that trust, he or she must be held accountable and suffer the consequences for the breach. If there is no accountability, that means that a President can set himself above the law for four years, a Senator for six, a Representative for two, and a judge for life. that, Mr. Chief Justice, poses a far greater threat to the liberties guaranteed to the American people by the Constitution that anything imaginable.

For the past 11 months, the toughest questions I've had to answer have come from parents who want to know what to tell their children about what President Clinton did.

Every parent tries to teach their children to know the difference between right and wrong, to always tell the truth, and when they make mistakes, to take responsibility for them and to face the consequences of their actions.

President Clinton's actions at every step since he knew Ms. Lewinsky would be a witness in Mrs. Jones' case have been completely opposite to the values parents hope to teach their children.

But being a poor example isn't grounds for impeachment. Undermining the rule of law is. Frustrating the courts' ability to administer justice turns private misconduct into an attack upon the ability of one of the three branches of our government to impartially administer justice. This is a direct attack upon the rule of law in our country and a very public wrong

that goes to the constitutional workings of our government and its ability to protect the civil rights of even the weakest American.

What is on trial here is the truth and the rule of law. Failure to bring President Clinton to account for his serial lying under oath and preventing the courts from administering equal justice under law will cause a cancer to be present in our society for generations.

Those parents who have asked the questions should be able to tell their children that even if you are the President of the United States, if you lie when sworn to tell the truth, the whole truth and nothing but the truth, you will face the consequences of that action even when you won't accept the responsibility for it.

How those parents will answer those questions is up to the United States Senate.

While how today's parents answer those questions is important, equally important is what parents tell their children in the generations to come about the history of our country and what has set our government in the United States of America apart from the rest of the world.

Above the President's dais in this Senate chamber appears our national motto. ''E pluribus unum''—''out of many, one.'' When that motto was adopted more than two hundred years ago, the First Congress referred to how thirteen separate colonies turned themselves into one, united nation.

As the decades have gone by, that motto has taken an additional meaning. People of all nationalities, faiths, creeds, and values have come to our shores, shed their allegiances to their old countries and achieved their dreams to become Americans.

They came here to flee religious persecution, to escape corrupt, tyrannical and oppressive governments, and to leave behind the economic stagnation and endless wars of their homelands.

They came here to be able to practice their faiths as they saw fit—free of government dictates and to be able to provide better lives for themselves and their families by the sweat of their own brows and the use of their own intellect.

But they also came here because they knew America has a system of government where the Constitution and laws protect individual liberties and human rights. Everyone—yes, everyone—can argue that this country has been a beacon for individual citizen's ability to be what he or she can be.

They fled countries where the rulers ruled at the expense of the people, to America, where the leaders are expected to govern for the benefit of the people.

And, throughout the years, America's leaders have tried to earn the trust of the American people, not by their words, but by their actions.

America is a place where government exists by the consent of the governed. And, that means our Nation's leaders must earn and re-earn the trust of the people with every thing they do.

Whenever an elected official stumbles, that trust is eroded and public cynicism goes up. The more cynicism that exists about government, its institutions, and those chosen to serve in them, the more difficult the job is for those who are serving.

That's why it is important, yes vital, that when a cancer exists in the body politic, our job—our duty—is to excise it. If we fail in our duty, I fear the difficult and dedicated work done by thousands of honorable men and women elected to serve not just here in Washington, but in our State capitals, city halls, courthouses and school board rooms will be swept away in a sea of public cynicism. We must not allow the beacon of America to grow dim, or the American dream to disappear with each waking morning.

In 1974, the Congress did its painful public duty when the President of the United States broke the public trust.

During the last decade, both Houses impeached and removed three Federal judges who broke their trust with the people.

During the last 10 years, the House of Representatives disciplined two Speakers for breaking the rules and their trust with the public.

And, less than 6 years ago, this honorable Senate did the same to a senior Senator whose accomplishments were widely praised.

In each case, Congress did the right thing to help restore the vital trust upon which our Government depends. It wasn't easy, nor was it always popular, but Congress did the right thing. Now, this honorable Senate must do the right thing. It must listen to the evidence; it must determine whether William Jefferson Clinton repeatedly broke our criminal laws and thus broke his trust with the people—a trust contained in the Presidential oath put into the Constitution by the Framers—an oath that no other Federal official must take—an oath to insure that the laws be faithfully executed.

How the Senate decides the issues to be presented in this trial will determine the legacy we pass to future generations of Americans.

The Senate can follow the legacy of those who have made America what it is.

The Senate can follow the legacy of those who put their ''lives, fortunes and Sacred Honor'' on the line when they signed the Declaration of Independence.

The Senate can follow the legacy of the Framers of the Constitution whose preamble states that one of its purposes is, ''to establish justice.''

The Senate can follow the legacy of James Madison and the Members of the First Congress who wrote and passed a Bill of Rights to protect and preserve the liberties of the American people.

The Senate can follow the legacy of those who achieved equal rights for all Americans during the 1960s in Congress, in the courts, and on the streets and in the buses and at the lunch counters.

The Senate can follow the legacy of those who brought President Nixon to justice during Watergate in the belief that no President can place himself above the law.

The Senate can follow the legacy of Theodore Roosevelt who lived and governed by the principle that no man is above the law.

Within the walls of the Capitol and throughout this great country there rages an impassioned and divisive debate over the future of this presidency. This Senate now finds itself in the midst of the tempest. An already immense and agonizing duty is made even more so because the whims of public opinion polls, the popularity and unpopularity of individuals, even questions over the strength of our economy, risk subsuming the true nature of this grave and unwelcome task.

We have all anguished over the sequence of events that have led us to this, the conclusive stage in the process. We have all identified in our own minds where it could have, and should have stopped. But we have ended up here, before the Senate of the United States, where you, the Senators, will have to render judgment based upon the facts.

A scientist in search of the basic nature of a substance begins by boiling away what is not of the essence. Similarly, the Senate will sift through the layers of debris that shroud the truth. The residue of this painful and divisive process is bitter, even poisonous at times. But beneath it lies the answer. The evidence will show that at its core, the question over the President's guilt and the need for his conviction will be clear. Because at its core, the issues involved are basic questions of right versus wrong—deceptive, criminal behavior versus honesty, integrity and respect for the law.

The President engaged in a conspiracy of crimes to prevent justice from being served. These are impeachable offenses for which the President should be convicted. Over the course of the days and weeks to come, we, the House managers, will endeavor to make this case.

May these proceedings be fair and thorough. May they embody our highest capacity for truth and mutual respect. With these principles as our guides, we can begin with the full knowledge our democracy will prevail and that our Nation will emerge a stronger, better place.

Our legacy now must be not to lose the trust the people should have in our Nation's leaders.

Our legacy now must be not to cheapen the legacies left by our forebearers.

Our legacy must be to do the right thing based upon the evidence.

For the sake of our country, the Senate must not fail. Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Mr. Chief Justice, Members of the Senate, and my distinguished colleagues from the bar, I am ED BRYANT, the Representative from the Seventh District of Tennessee. During this portion of the case, I, along with Representative ASA HUTCHINSON of Arkansas, Representative JAMES ROGAN of California, and Representative BILL MCCOLLUM of Florida, will present the factual elements of this case. Our presentation is a very broad roadmap with which first I will provide the history and background of the parties, followed by Mr. HUTCHINSON and Mr. ROGAN, who will review the articles of impeachment. Mr. MCCOLLUM will close with a summation of these facts and evidence.

It is our intent to proceed in a chronological fashion, although by necessity, there will be some overlap of the facts and circumstances arising from what I have called ''the four-way intersection collision'' of President William Jefferson Clinton, Ms. Paula Corbin Jones, Monica Lewinsky, and the U.S. Constitution.

As a further preface to my remarks, permit me to say that none of us present here today in these hallowed Chambers relishes doing this job before us. But we did not choose to be involved in that reckless misconduct, nor did we make those reasoned and calculated decisions to cover up that misconduct which underlies this proceeding. However, this collision at the intersection, if you will, of the President, Ms. Jones, and Ms. Lewinsky, is not in and of itself enough to bring us together today. No. Had truth been a witness at this collision, and prevailed, we would not be here. But when it was not present, even under an oath to tell the truth, the whole truth and nothing but the truth in a judicial matter, the impact of our Constitution must be felt. Hence, we are together today—to do our respective duties.

By voting these articles of impeachment, the House is not attempting to raise the standard of conduct to perfection for our political leadership. Such a person does not walk the world today. Everyone falls short of this mark everyday.

But political life is not so much about how an individual fails, but rather how the person reacts to that failure. For example, a person campaigning for a political office admits wrongdoing in his past and says he will not do that again. Most people accept that commitment. He is elected. Thereafter, he repeats this wrongdoing and is confronted again. What does he do? He takes steps to cover up this wrongdoing by using his workers and his friends. He lies under oath in a lawsuit which is very important to the person he is alleged to have harmed. He then takes a political poll as to whether he should tell the truth under oath. The poll indicates the voters would not forgive him for lying under oath. So he then denies the truth in a Federal grand jury. If this person is the President of the United States, the House of Representatives would consider articles of impeachment. It did and voted to impeach this President.

But do not let it be argued in these chambers that ''We are not electing Saints, we are electing Presidents.'' Rather, let it be said that we are electing people who are imperfect and who have made mistakes in life, but who are willing to so respect this country and the Office of the President that he or she will now lay aside their own personal shortcomings and have the inner strength to discipline themselves sufficiently that they do not break the law which they themselves are sworn to uphold.

Every trial must have a beginning and this trial begins on a cold day in January 1993.

[Video presentation.]

Mr. Manager BRYANT. I had expected a video portion, but all of you heard the audio portion. As you can hear from the audio portion—perhaps some of you can see—William Jefferson Clinton, placed his left hand on the Bible in front of his wife, the Chief Justice and every American watching that day and affirmatively acknowledged his oath of office. On that every day and again in January of 1997, the President joined a privileged few. He became only the 42nd person in our Nation to make the commitment to ''faithfully execute'' the office of the President and to ''preserve, protect and defend the Constitution.'' He has the complete executive power of the Nation vested in him by virtue of this Constitution.

As we progress throughout the day, I would ask that you be reminded of the importance of this oath. Before you is a copy of it and certainly available as anyone would like to look at it on breaks.

William Jefferson Clinton is a man of great distinction. He is well-educated with degrees from Georgetown University and Yale Law School. He has taught law school courses to aspiring young lawyers. He served as Governor and Attorney General for the State of Arkansas, enforcing the laws of that state. The President now directs our great Nation. He sets our agenda and creates national policy in a very public way—he is in fact a role model for many.

President Clinton also serves as the Nation's chief law enforcement officer.

It is primarily in this capacity that the President appoints Federal judges. Within the executive branch, he selected Attorney General Janet Reno and appointed each of the 93 United States Attorneys who are charged with enforcing all Federal, civil and criminal law in Federal courthouses from Anchorage, Alaska to Miami, Florida and from San Diego, California to Bangor, Maine.

Before you we have another chart which shows the schematics of the Department of Justice and how it is under the direct control of the President through his Cabinet, Attorney General and then down to such functions as the Federal Bureau of Investigation, the Drug Enforcement Administration, Immigration, U.S. Marshals Office, Bureau of Prisons and so many other very important legal functions this Federal Government performs.

As protectors of our Constitution, the U.S. Attorneys and their assistants prosecute more than 50,000 cases per year.

Through these appointments and his administration's policies, the President establishes the climate in this country for law and order. Each and every one of these 50,000 cases handled by his United States Attorneys is dependent upon the parties and witnesses telling the truth under oath. Equally as important in these proceedings is that justice not be obstructed by tampering with witnesses nor hiding evidence.

Quoting from the November 9, 1998 Constitution Subcommittee testimony of attorney Charles J. Cooper, a Washington, DC attorney, he states:

> The crimes of perjury and obstruction of justice, like the crimes of treason and bribery, are quintessentially offenses against our system of government, visiting injury immediately upon society itself, whether or not committed in connection with the exercise of official government powers. Before the framing of our Constitution and since, our law has consistently recognized that perjury primarily and directly injures the body politic, for it subverts the judicial process and this strikes at the heart of the rule of law itself.

Professor Gary McDowell, the Director at the Institute for United States Studies at the University of London, also testified in the same hearing in reference to the influential writer William Paley, and this is also in chart form for those who would like review it later. Paley saw the issue of oaths and perjury as one of morality as well as law. Because a witness swears that he will speak the truth, the whole truth and nothing but the truth, a person under oath cannot cleverly lie and not commit perjury. If the witness conceals any truth, Paley writes, that relates to the matter in adjudication, that is as much a violation of the oath, as to testify a positive falsehood. Shame or embarrassment cannot justify his concealment of truth, linguistic contortions with the words used cannot legitimately conceal a lie, or if under oath, perjury.

Professor McDowell concludes with a quote from Paley which accurately provides, I believe the essence of a lie or perjurious statement. ''It is willful deceit that makes the lie; and we willfully deceive, where our expressions are not true in the sense in which we believe the hearer apprehends them.''

Neither has this United States Senate been silent on the issue of perjury. You have rightfully recognized through previous impeachment proceedings the unacceptable nature of a high government official lying under oath, even in matters initially arising from what some would argue here are merely personal. In 1989, many of you present

today, using the very same standard which is section 4 of the Constitution, which is set forth there, for impeaching a federal judge or the President, many of you actually voted in support of a conviction and the removal of a U.S. District judge under oath.

Indeed, truth-telling is the single most important judicial precept underpinning this great system of justice we have, a system which permits the courthouse doors to be open to all people, from the most powerful man in America to a young woman from Arkansas.

On May 6, 1994, Paula Corbin Jones attempted to open that courthouse door when she filed a Federal sexual harassment lawsuit against President Clinton. The case arose from a 1991 incident when she was a State employee and he was the Governor. Further details of the underlying allegations are not important to us today, but Ms. Jones' pursuit for the truth is worth a careful study.

The parties first litigated the question of whether Ms. Jones' lawsuit would have to be deferred until after the President left office. The Supreme Court unanimously rejected the President's contention and allowed the case to proceed without further delay.

Ms. Jones sought and, appropriately, won ''her day in court.'' Incumbent with this victory, however, was the reasonable expectation that President Clinton would tell the truth.

After all, this was the most important case in the whole world to Paula Corbin Jones.

Notwithstanding this, that fact didn't happen, that the President told the truth. Even after the President was ordered to stand trial, pursuing the truth for Ms. Jones remained an elusive task. The evidence will indicate that President Clinton committed perjury and orchestrated a variety of efforts to obstruct justice, all of which—all of which—had the effect of preventing the discovery of truth in the Paula Jones case.

During the discovery phase, Judge Susan Webber Wright of the U.S. District Court for the Eastern District Court of Arkansas ordered the President to answer certain historical questions about his sexual relations with either State or Federal employees.

In part, Judge Wright said:

> The Court finds, therefore, that the plaintiff is entitled to information regarding any individuals with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant time frame state or federal employees.

Judge Wright validated Ms. Jones' right to use this accepted line of questioning in sexual harassment litigation. More often than not, these cases involve situations where ''he said/she said,'' and they produce issues of credibility and are often done in private. Because of this, they are really difficult for a victim to prove.

Such standard questions are essential in establishing whether the defendant has committed the same kind of acts before or since—in other words, a pattern or practice of harassing conduct. The existence of such corroborative evidence, or the lack thereof, is likely to be critical in these types of cases. Both the Equal Employment Opportunity Commission guidelines and the Federal Rules of Evidence permit this type of evidence. In short, a defendant's sexual history, at least with respect to other employees, is ordinarily discoverable in a sexual harassment lawsuit.

To not expect a defendant in this type of litigation to speak the truth creates, in its worst case, a very real danger to the entire area of sexual harassment law which would be irreparably damaged and, in its best case, sends out a very wrong message. As such, the will and intent of Congress with regard to providing protection against sexual harassment in the workplace would be effectively undermined.

The ''pattern and practice'' witnesses whom Paula Corbin Jones was entitled to discover should have included the name of Monica Lewinsky. But before I discuss the Ms. Lewinsky matter, I want to offer three matters of cause to each of you as jurors in this very important matter.

No. 1, I do not intend to discuss the specific details of the President's encounters with Ms. Lewinsky. However, I do not want to give the Senate the impression that those encounters are irrelevant or lack serious legal implications. In fact, every day in the courtrooms all across America, victims of sexual harassment, of rape, assault, and abuse must testify, in many public cases, in order to vindicate their personal rights and society's right to be free of these intolerable acts.

The President's lies about his conduct in the Oval Office with Ms. Lewinsky also make these unseemly details highly relevant. If you are to accept the President's version about the relationship, you must in effect say to Ms. Lewinsky that she is the one who is disregarding the truth. But beyond this, his denials also directly contradict Ms. Lewinsky's testimony, not only directly contradict Ms. Lewinsky's testimony, but also contradict eight of her friends and the statements by two professional counselors with whom she contemporaneously shared details of her relationship. By law, their testimony may serve as proper and admissible evidence to corroborate her side of this important story.

No. 2, the evidence and testimony in this proceeding must be viewed as a whole; it cannot be compartmentalized. Please do not be misled into considering each event in isolation and then treating it separately. Remember, events and words that may seem innocent or even exculpatory in a vacuum may well take on a sinister or even criminal connotation when observed in the context of the whole plot.

For example, we all agree that Ms. Lewinsky testified, ''No one ever told me to lie . . .'' When considered alone, this statement would seem exculpatory. In the context of other evidence, however, we see that this one statement gives a misleading inference. Of course no one said, ''Now, Monica, you go down there and lie.'' They didn't have to. Based upon their previous spoken and even unspoken words, Ms. Lewinsky knew what was expected of her. Surely, if the President were to come on to the Senate floor and give testimony during this proceeding, he would not tell you that he honestly expected her to tell the truth about their personal relationship. After all, the purpose of her filing the false affidavit was to avoid testifying in the Jones case and discussing the nature of their relationship. If she had told the truth in that affidavit, instead of lying, she would have been invited to testify immediately, if not sooner.

No. 3, throughout our presentation of the facts, especially as it relates to the various illegal acts, I ask you to pay particular attention to what I call the big picture. Look at the results of those various acts as well as who benefited. Please make a mental note now, if you can, and ask yourself always, as you look at each one of these illegal acts that are presented to you: A, What was the result of that illegal act? and, B, Who benefited from that illegal act?

I believe you will find that the evidence will show that while the President's ''fingerprints'' may not be directly on the evidence proving these illegal acts, the result of the acts usually inures to the benefit of the President, and the President alone. Subordinates and friends alike are drawn into this web of deceit. The President is insulated. Crimes are committed. Justice is denied. The rule of law is suspended. And this President is the beneficiary.

Some examples:

No. 1, subpoenaed evidence disappears from Ms. Lewinsky's apartment and reappears under Ms. Currie's bed. What was the result of that? Who had the benefit of that?

No. 2, Ms. Lewinsky files a false affidavit in the Jones case. What is the result of filing that false affidavit and who benefited from that?

No. 3, the President's attorney files the Lewinsky affidavit, not knowing it was false, representing to the Court that ''there is absolutely no sex of any kind in any manner, shape, or form,'' while the President sits in the deposition and does not object to that—very silently sits in the deposition. What was the result of that? And who benefited from that filing of the affidavit?

No. 4, and finally, Ms. Lewinsky, after months of job searching in New York City, is offered a job with a Fortune 500 company in New York City within 48 hours of her signing this false affidavit. Who shared the results of that with Ms. Lewinsky? And who obtained the benefit of that?

Another example occurred in a meeting between the President and Ms.

Lewinsky in July—on July 4, 1997, to be specific—when, as a part of their conversation, she mentioned she heard someone from Newsweek was working on a story about Kathleen Willey. The President has Ms. Lewinsky back for a visit on July 14, some 10 days later, following his return from an overseas trip. She was questioned about the Willey story, and specifically if Linda Tripp had been her source.

Important to this point—important to this point—the President then asked Ms. Lewinsky to try to persuade Ms. Tripp to call White House Legal Counsel Bruce Lindsey. The President told her to notify Ms. Currie the following day, ''without getting into the details with her, even mentioning names with her,'' whether Ms. Lewinsky had ''mission accomplished'' with Linda. And as you will learn from Mr. HUTCHINSON, who will follow me with his presentation, this is very similar to the method of operation with another job the President requested be done, which in that case succeeded with a ''mission accomplished.'' I ask you to watch for that in Mr. HUTCHINSON's presentation.

I want to now rewind the clock back to November of 1995. We are here in Washington where Ms. Lewinsky has been working at the White House since July of 1995.

As you continue to listen to the evidence, from this point on November 15 forward, remember that Ms. Lewinsky and the President were alone in the Oval Office workplace area at least 21 times. And I have a list of these, in chart form, beginning in November of 1995, and going through 1996 and into the early part of 1997, continuing through the year. During that time, they had at least 11 of the so-called salacious encounters there in the workplace at various times during the day and night: Three in 1995, five in 1996, and three in 1997.

They also had in excess of 50 telephone conversations, most of which appear to have been telephone calls to and from Ms. Lewinsky's home. And I have a schedule of all these telephone calls to show you, the 50-plus telephone calls. Also, they exchanged some 64 gifts, with the President receiving 40 of these gives and Ms. Lewinsky receiving 24 of these gifts. And again we have charts that reflect the receipt of both sets of gifts. And again these charts will be here in the front, always available for your inspection.

We also note that their affair began on November 15th. Interestingly, there is even a conflict here with the President. According to Ms. Lewinsky, they had never spoken to each other up to that point. Yet, he asked an unknown intern into the Oval Office and kissed her and then invited her back to return later that day, when the two engaged in the first of the 11 acts of misconduct.

The contradiction is in the statement that the President relied upon in his grand jury testimony that has been referenced earlier—very carefully worded—and that statement, the President gave in testimony before the grand jury about meeting in this relationship. And he says, ''I regret that what began as a friendship came to include this conduct . . .'' Almost as if it had evolved over a period of time. So there is very clearly a conflict there.

As Ms. Lewinsky's internship was ending that year, she did apply and receive a paying job with the White House Office of Legislative Affairs. This position allowed her even more access to the Oval Office area. She remained a White House employee until April 1996 when she was reassigned to the Pentagon. The proof will show that Ms. Evelyn Lieberman, Deputy Chief of Staff at the time, believed that the transfer was necessary because Ms. Lewinsky was so persistent in her efforts to be near the President. Although Ms. Lieberman could not recall hearing any rumors linking her and the President, she acknowledged the President was vulnerable to these kinds of rumors. While Ms. Lewinsky tried to return to work in the White House, her absence was appreciated by those on the President's staff who wanted to protect him.

After she began her job at the Pentagon in April, there was no further physical contact with the President through the 1996 election and the remainder of that year. The two communicated by telephone and on occasion saw each other at public events. Their only attempt at a private visit in the Oval Office was thwarted because Ms. Lieberman was nearby. On December 17, she attended a holiday celebration at the White House and had a photograph made shaking hands with the President.

However, the evidence establishes that in 1997, Ms. Lewinsky was more successful in arranging visits to the White House. This was because she used the discreet assistance of Ms. Currie, the President's secretary, to avoid the likes of Ms. Lieberman. Ms. Currie indicated she did not want to know the details of this relationship. Ms. Currie testified on one occasion when Ms. Lewinksy told her, ''As long as no one saw us—and no one did—then nothing happened.'' Ms. Currie responded, ''Don't want to hear it. Don't say any more. I don't want to hear any more.''

Early on during their secret liaisons, the two concocted a cover story to use if discovered. Ms. Lewinksy was to say she was bringing papers to the President. The evidence will show that statement to be false. The only papers that she ever brought were personal messages having nothing to do with her duties or the President's. The cover story plays an important role in the later perjuries and the obstruction of justice.

Ms. Lewinksy stated that the President did not expressly instruct her to lie. He did, however, suggest, indeed, the ''misleading'' cover story. When she assured him that she planned to lie about the relationship, he responded approvingly. On the frequent occasions that she promised that she would ''always deny'' the relationship and ''always protect him,'' for example, the President responded, in her recollection, ''That's good,'' or something affirmative. Not ''Don't deny it.''

The evidence will establish further that the two of them had, in her words, ''a mutual understanding'' that they would ''keep this private, so that meant deny it and . . . take whatever appropriate steps needed to be taken.'' When she and the President both were subpoenaed in the Jones case, Ms. Lewinksy anticipated that ''as we had on every other occasion and every other instance of this relationship, we would deny it.''

In his grand jury testimony, President Clinton acknowledged that he and Ms. Lewinsky ''might have talked about what to do in a nonlegal context'' to hide their relationship and that he ''might well have said'' that Ms. Lewinsky should tell people she was bringing letters to him or coming to visit Ms. Currie. He always stated that ''I never asked Ms. Lewinsky to lie.''

But neither did the President ever say that they must now tell the truth under oath; to the contrary, as Ms. Lewinsky stated: ''It wasn't as if the President called me and said, 'You know, Monica, you're on the witness list, this is going to be really hard for us, we're going to have to tell the truth and be humiliated in front of the entire world about what we've done,' which I would have fought him on probably,'' she said. ''That was different. By not calling me and saying that, you know, I knew what that meant,'' according to Monica Lewinsky.

In a related but later incident that Mr. HUTCHINSON may refer to, Monica Lewinsky testified that President Clinton telephoned her at home around 2 o'clock or 3 o'clock one morning on December 17, 1997—2:00 or 2:30 a.m. He told her that her name was on the list of possible witnesses to be called in the Paula Jones lawsuit. When asked what to do if she was subpoenaed, the President suggested that she could sign an affidavit. Ms. Lewinsky indicated that she was 100 percent sure that he had suggested that she might want to sign an affidavit. She understood his advice to mean that she might be able to execute an affidavit that would not disclose the true nature of their relationship.

When Ms. Lewinsky agreed to that false affidavit, she told the President by telephone that she would be signing it and asked if he wanted to see it before she signed it. According to Ms. Lewinsky, the President responded that he did not, as he had already seen about 15 others.

Concurrent with these events I just described, the evidence will further demonstrate that as Ms. Lewinsky attempted to return to work at the White House after the 1996 elections, she

spoke with the President. According to Betty Currie, the President instructed Betty Currie and Marsha Scott, Deputy Director of Personnel, to assist in her return to the White House. In the spring of 1997, she met with Ms. Scott. She complained in subsequent notes to Ms. Scott and the President about no progress being made with her getting back to the White House. On July 3rd of that year, she dispatched a more formal letter to the President—in fact, using the salutation, ''Dear Sir,''—and raising a possible threat that she might have to tell her parents about why she no longer had a job at the White House if they don't get her another job. She also indicated a possible interest in a job in New York at the United Nations. The President and Ms. Lewinsky met the next day in what Ms. Lewinsky characterized as a ''very emotional'' visit, including the President scolding her that it was illegal to threaten the President of the United States. Their conversation eventually moved on to other topics, though primarily her complaining about his failure to get her a job at the White House.

Continuing with Ms. Lewinsky's effort to return to work near the President, there was a July 16th meeting and September 3rd telephone call with Ms. Scott. On the evening of September 30, the President advised Ms. Lewinsky that he would have Chief of Staff Erskine Bowles help with a job search, and Bowles later passed this on to John Podesta, although each recalled their involvement occurring earlier in the year.

A few days later, however, her hopes of a job at the White House quickly ended. On October 6, she had a conversation with Linda Tripp who told her that she would never return to the White House, according to a friend of hers on the staff. Learning this ''secondhand'' was, according to Ms. Lewinsky, the ''straw that broke the camel's back.'' She decided to ask the President for a job in New York with the United Nations and sent him a letter to that effect on October 7.

During an October 11 meeting with the President, he suggested that she give him a list of New York companies which interested her. She asked if Vernon Jordan might also help. Five days later, she provided the President with her ''wish list'' and indicated that she was no longer interested in the U.N. position, although she did receive an offer on November 24th and declined it on January 5, 1998.

After this meeting with the President, arrangements were made through the President and Ms. Currie for Ms. Lewinsky to meet with Mr. Jordan. On the morning of November 5, 1997, Mr. Jordan spoke by telephone with the President about 5 minutes and later met with Ms. Lewinsky for the first time for about 20 minutes. According to Ms. Lewinsky, Mr. Jordan told her he had spoken with the President, that she came highly recommended and that ''We're in business.''

However, the evidence reflects that Mr. Jordan took no steps to help Ms. Lewinsky until early December of that year after she appeared on the witness list in the Jones case. Actually, Mr. Jordan testified in his grand jury testimony that he had no recollection of even having met Ms. Lewinsky on November 5.

When he was shown documentary evidence demonstrating that his first meeting with Ms. Lewinsky occurred in early November, he acknowledged that such meeting ''was entirely possible.'' You can see that was not to be a high priority for Mr. Jordan at that time, until December.

For many months, Ms. Lewinsky had not been able to find a job to her satisfaction—even without the perceived ''help'' of various people. Then in December of 1997, something happened which caused those interested in finding Ms. Lewinsky a job in New York to intensify their search. Within 48 hours of her signing this false affidavit in the Paula Jones case, Ms. Lewinsky had landed a job with a prestigious Fortune 500 Company.

It is anticipated that attorneys for the President will present arguments which will contest much of the relationship with Monica Lewinsky. The President has maintained throughout the last several months that while there was no sexual relationship or sexual affair, in fact, there was some type of inappropriate, intimate contact with her. What has now been dubbed as ''legal gymnastics'' on the part of the President has made its appearance.

Other examples followed. Within his definition of the word ''alone,'' he denies being alone with Ms. Lewinsky at any time in the Oval Office. He also questions the definition of the word ''is.'' ''It depends on what the word 'is' means in how you answer a particular question.'' Further, we would expect the President to continue to disavow knowledge of why evidence detrimental to his defense in the Jones case was removed from Ms. Lewinsky's apartment and hidden beneath Ms. Currie's bed or knowledge of how Ms. Lewinsky found herself with an employment offer in New York virtually at the same time she finally executed an affidavit in the Jones case.

Unfortunately, for your search for the truth in these proceedings, the President continues today to parse his words and use ''legal hairsplitting'' in his defense. I cite for your consideration his Answer filed with this body just days ago. For instance:

1. Responding in part to the impeachment article I, the President persists in a wrongheaded fashion with his legal hairsplitting of the term ''sexual relations,'' which permits him to define that term in such a way that in the particular salacious act we are talking about here, one person has sex and the other person does not. As a graduate of one of the finest law schools in America and as a former law professor and attorney general for the State of Arkansas, the President knows better. I have this statement here extracted out of the President's Answer to this proceeding.

2. Responding to both articles of impeachment, the President now would have you believe that he ''was not focusing'' when his attorney, Bob Bennett, was objecting during the deposition and attempting to cut off a very important line of questioning of the President by representing to Judge Wright that Ms. Lewinsky's affidavit proved that there is no need to go into this testimony about the President's life. He said that this affidavit proves that ''there is absolutely no sex of any kind, in any manner, shape or form.'' Remember that this is the same President who now pleads that he lost his focus during this very important part of this deposition. This is the very same President who is renowned for his intelligence and his ability ''to compartmentalize,'' to concentrate and focus on whatever matter is at hand. And now he comes before this Senate, to each one of you, in his Answer, by and through his attorneys, and pleads that he simply wasn't paying attention at this very important point during his own deposition. In Tennessee, we have a saying for situations like that: ''That dog won't hunt.''

3. In his further response to article I, the President effectively admits guilt to obstruction. As I read this, his pleadings refer to the President himself, and he states that he, the President, ''truthfully explained to the grand jury his efforts to answer the questions in the Jones deposition without disclosing his relationship with Ms. Lewinsky.'' So he said he did answer the questions in the Jones deposition in a way so as not to disclose his relationship with Ms. Lewinsky. At the bottom of the same page, he denies that he attempted ''to impede the discovery of evidence in the Jones case.'' Think about this with me for a minute. Basically, the purpose of the Jones deposition of the President was to secure truthful testimony about these kinds of ''pattern and practice'' witnesses, and therein discover the likes of Monica Lewinsky. That is the purpose of being there. The President admitted in his Answer that he purposely answered questions so as not to disclose his relationship with Ms. Lewinsky. Said another way, he intentionally answered questions to avoid the discovery of one of these female employees with whom he was sexually involved. That is precisely, folks, what impeding the discovery of evidence is.

I ask you, if you get an opportunity, to look at this very closely.

4. In his answer to article II, the President ''denies that he encouraged Monica Lewinsky to execute a false affidavit in the Jones case.'' When everything is said and done, Ms. Lewinsky had no motivation, no reason whatsoever to want to commit a crime by willfully submitting a false affidavit with a court of law. She really did not

need to do this at that point in her life, but this 20-something-year-old young lady was listening to the most powerful man in the United States, whom she greatly admired, hearing him effectively instruct her to file a false affidavit to avoid having to testify about their relationship. And in order to do that, she had to lie about the physical aspects of their relationship. According to her, the President didn't even want to see that actual affidavit because he had seen 15 more just like it and as such he knew what it would be.

5. In an additional response to article II, the President answers and asserts that ''he believed that Ms. Lewinsky could have filed a limited and truthful affidavit that might have enabled her to avoid having to testify in the Jones case.'' That is an incredible statement. That is an incredible statement given the fact that the President knew firsthand of the extent of their sexual relationship, and he also knew that the Jones discovery efforts were specifically after that type of conduct. Even with the best of the legal hairsplitting, it is still difficult to envision a truthful affidavit from Ms. Lewinsky that could have skirted this issue enough to avoid testifying.

And if you really think the President had this belief, don't you think he would have accepted Ms. Lewinsky's offer to review her affidavit and perhaps share this bit of wisdom he had with her before she signed it and lied? After all, in this answer he just filed, he says he had an out for her, a way for her to have the best of both worlds—not to have to lie and still avoid testifying in the Jones case. Why didn't he share that with her when she gave him the opportunity if he in fact had such an idea? I suggest that perhaps that is a recent idea.

Even if, for some reason, you don't believe Ms. Lewinsky offered to share that affidavit with him, don't you think it still would have been in the President's best interest to give Ms. Lewinsky his thoughts before she violated the law with a completely false affidavit?

Now, indeed, is the time to stop the legal gymnastics and hairsplitting and deal with these charges and facts appropriately.

As a House manager, I believe I can speak for all of us out of a sense of fairness, and again request that we and the President be permitted to call witnesses. I submit that the state of the evidence is such that unless and until the President has the opportunity to confront and cross-examine witnesses like Ms. Lewinsky, and himself, to testify if he desires, there could not be any doubt of his guilt on the facts. A reasonable and impartial review of the record as it presently exists demands nothing less than a guilty verdict.

While it has been the consistent defense of the White House to be inconsistent, it still comes as something of a surprise that the President has not made a stronger case for the calling of witnesses. Before now, he has aggressively sought the opportunity to challenge the truth and veracity of witnesses in these impeachment proceedings. During the hearings in the House, which many believe are analogous to a grand jury proceeding, the President's defenders and his attorneys consistently complained of the failure to call witnesses and the lack of fairness and due process. Almost every day, there were partisan attacks from the White House and its emissaries who were dispatched throughout the media talk shows with the same complaints of no witnesses.

And always, our measured response was a calm assurance that there would be witnesses called during the trial phase in the Senate. Is there any doubt that our forefathers intended a two-step impeachment proceeding?

The House would function as the Grand Jury and determine whether to charge—to impeach. Then you, as the trier of fact, would function as the jury to try the case and weigh the testimony of the fact witnesses. In recent days, some have publically asserted that the House is hypocritical because it didn't call some of the fact witnesses it now asks to call in the Senate. For the record, it must be noted that the House Judiciary Committee, out of an abundance of fairness, did allow the President's defense team 30 hours in which to present any witnesses that they could have chosen and they could have examined.

But any allegation of hypocrisy certainly appears to miss the point that the writers of our Constitution never contemplated two separate trials for an impeachment proceeding. But now we would respectfully suggest is the time for witnesses.

All Americans, including the President, are entitled to enjoy a private family life, free from public or governmental scrutiny. But the privacy concerns raised in this case are subject to limits, three of which I will briefly discuss here.

First. The first limit was imposed when the President was sued in federal court for alleged sexual harassment. The evidence in such litigation is often personal. At times, that evidence is highly embarrassing for both plaintiff and defendant. As Judge Wright noted at the President's January 1998 deposition, ''I have never had a sexual harassment case where there was not some embarrassment.'' Nevertheless, Congress and the Supreme Court have concluded that embarrassment-related concerns must give way to the greater interest in allowing aggrieved parties to pursue their claims. Courts have long recognized the difficulties of proving sexual harassment in the work place, inasmuch as improper or unlawful behavior often takes place in private. To excuse a party who lied or concealed evidence on the ground that the evidence covered only ''personal'' or ''private'' behavior would frustrate the goals that Congress and the courts have sought to achieve in enacting and interpreting the Nations's sexual harassment laws. That is particularly true when the conduct that is being concealed—sexual relations in the workplace between a high official and a young subordinate employee—itself conflicts with those goals.

Second. The second limit was imposed when Judge Wright required disclosure of the precise information that is in part the subject of this hearing today. A federal judge specifically ordered the President, on more than one occasion, to provide the requested information about relationships with other women, including Ms. Lewinsky. The fact that Judge Wright later determined that the evidence would not be admissible at trial, and still later granted judgment in the President's favor, does not change the President's legal duty at the time he testified. Like every litigant, the President was entitled to object to the discovery questions, and to seek guidance from the court if he thought those questions were improper. But having failed to convince the court that his objections were well founded, the President was duty bound to testify truthfully and fully. Perjury and attempts to obstruct the gathering of evidence can never be an acceptable response to a court order, regardless of the eventual course or outcome of the litigation.

The Supreme Court has spoken forcefully about perjury and other forms of obstruction of justice: ''In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are therefore imperative.''

The insidious effects of perjury occur whether the case is civil or criminal. Only a few years ago, the Supreme Court considered a false statement made in a civil administrative proceeding: ''False testimony in a formal proceeding is intolerable. We must neither reward nor condone such a 'flagrant affront' to truth-seeking function of adversary proceedings * * * Perjury should be severely sanctioned in appropriate cases.'' Stated more simply, ''perjury is an obstruction of justice.''

Third. The third limit is unique to the President. ''The Presidency is more than an executive responsibility. It is the inspiring symbol of all that is highest in American purpose and ideals.'' As the head of the Executive Branch, the President has the constitutional duty to ''take Care that the Laws be faithfully executed.'' The President gave his testimony in the Jones case under oath and in the presence of a federal judge, a member of a co-equal branch of government; he then testified before a federal grand jury, a body of citizens who had themselves taken an oath to seek the truth. In view of the enormous trust and responsibility attendant to his high Office, the President has a manifest duty to ensure that

his conduct at all times complies with the law of the land.

In sum, perjury and acts that obstruct justice by any citizen—whether in a criminal case, a grand jury investigation, a congressional hearing, a civil trial or civil discovery—are profoundly serious matters. When such acts are committed by the President of the United States, those acts are grounds for conviction and removal from his Office.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that there now be a recess of the proceedings for 15 minutes.

The CHIEF JUSTICE. Is there objection?

Mr. Manager BRYANT. Mr. Chief Justice, I have just about 1 minute, and I will conclude.

Mr. LOTT. I withhold my request.

The CHIEF JUSTICE. Very well.

Mr. Manager BRYANT. Thank you.

As I reach the conclusion of my presentation, the time line is now in December of 1997. Following her November 5th meeting with Mr. Jordan, Ms. Lewinsky had no communication with him or the President for a month. Then in early December, the parties in the Jones case exchanged witness lists and Ms. Lewinsky was scheduled as a potential witness by the Jones' attorneys. On or about that same day, Ms. Lewinsky attempted to make an uninvited visit to the White House and later that day, was allowed in by the President. But it was during this time, in December of 1997, that some of the seams began to unravel for the President.

I will conclude my remarks at this point and thank the Chief Justice and the Members of the Senate for their careful attention. My colleague from Arkansas, Mr. HUTCHINSON will follow me now or at the end of any recess as may be necessary.

RECESS

Mr. LOTT. Mr. Chief Justice, my apologies to the manager for the interruption at the end of his remarks.

I renew my request of unanimous consent to take a 15-minute recess.

The CHIEF JUSTICE. In the absence of an objection, it is so ordered.

(Thereupon, the Senate, sitting as a Court of Impeachment, at 3:07 p.m., recessed until 3:30 p.m.)

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. I believe, Mr. Chief Justice, we are prepared now to go forward with the next manager's presentation.

The CHIEF JUSTICE. Very well, the Chair recognizes Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Mr. Chief Justice, Senators, I am ASA HUTCHINSON, a Member of Congress from the Third Congressional District of Arkansas. I am grateful for this opportunity, although it comes with deep regret, to be before you. I do want to tell you in advance that we have presented to you, on your tables, a selection of charts that I will be referring to here so everyone will have the advantage of being able to see at least in some fashion the charts to which I will be referring. And we will have the charts here as well.

This is certainly a humbling experience for a smalltown lawyer. I learned to love and to respect the law trying cases in the courtrooms of rural Arkansas. The scene is different in this setting, in this historic Chamber with the Chief Justice presiding and Senators sitting as jurors. But what is at stake remains the same.

In every case heard in every courtroom across this great country, it is the truth, it is justice, it is the law that are at stake. In this journey on Earth, there is nothing of greater consequence for us to devote our energies than to search for the truth, to pursue equal justice and to uphold the law. It is for those reasons that I serve as a manager. And as you, I hope that I can help in some way to bring this matter to a conclusion for our country. This afternoon I will be discussing the evidence and the testimony from witnesses that we do hope to call, and during my presentation I will be focusing on the evidence that demonstrates obstruction of justice under article II.

You might wonder, well, why are we going to article II before we have covered article I on perjury? And the answer is that in a chronological flow, article II, the obstruction facts, precede much of the perjury allegations. And so, following my presentation, Manager ROGAN will present article I on perjury.

The presentation I make will be based upon the record, the evidence, the facts that have been accumulated, and I want you to know that I am going to be presenting those facts, and from time to time I will argue those facts. I believe they are well supported in the record, but I urge each of you, if you ever find anything that you question, to search the record and verify the facts, because I do not intend to misrepresent anything to this body. In fact, we will be submitting to each of your offices my presentation with annotations to the record, to the grand jury transcripts which will tie in the facts that I present to you. Again, I believe and trust that you will find that they are well supported.

So let's start with obstruction of justice. Later on, there will be a full discussion of the law on obstruction of justice, but for our purposes, it is simply any corrupt act or attempt to influence or impede the proper functioning of our system of justice. It is a criminal offense, a felony, and it has historically been an impeachable offense.

Let me first say, it is not a crime nor an impeachable offense to engage in inappropriate personal conduct. Nor is it a crime to obstruct or conceal personal embarrassing facts or relationships. It might be offensive, but there are no constitutional consequences. But as we go through the facts of the case, the evidence will show in this case that there was a scheme that was developed to obstruct the administration of justice, and that is illegal. And the obstruction of justice is of great consequence and significance to the integrity of our Nation when committed by anyone, but particularly by the Chief Executive of our land, the President of the United States.

Mr. BRYANT took us factually up to a certain point pertaining to the job search. This is chart No. 1 that you have before you. This puts it in perspective a little bit, and just for a brief review. You go back in the calendar, back into October. That is when Ms. Lewinsky sends the President her wish list for a list of jobs. And then shortly after that, Ms. Currie faxes Lewinsky the resume to Ambassador Richardson, and Ambassador Richardson gets involved in the job search.

October 30, the President promised to arrange a meeting between Lewinsky and Jordan. This was set up in November. It was actually November 5. But preceding that, there was a job offer at the United Nations extended to Ms. Lewinsky. Ms. Lewinsky decided that she was not interested in a job at the United Nations, she wanted to go into the private sector. And so that was the purpose on November 5 of the meeting between Jordan and Lewinsky. That is when Mr. Jordan says, ''We're in business.'' But the facts will show that there was nothing really done in November, and that is when I will get in a little bit more to my presentation, and then I will get into December when some things happened there that picked up speed on this issue.

The obstruction, for our purposes, started on December 5, 1997, and that is when the witness list from the Paula Jones case was faxed to the President's lawyers. At that point, the wheels of obstruction started rolling, and they did not stop until the President successfully blocked the truth from coming out in the civil rights case.

These acts of obstruction included attempts to improperly influence a witness in a civil rights case—that is Monica Lewinsky—the procurement and filing of a false affidavit in the case; unlawful attempts to influence the testimony of a key witness, Betty Currie; the willful concealment of evidence under subpoena in that case, which are the gifts of December 28; and illegally influencing the testimony of witnesses—that is the aides who testified before the grand jury—before the grand jury of the United States. Each of these areas of obstruction will be covered in my presentation today.

As I said, it began on Friday, December 5, when the witness list came from the Paula Jones case. Shortly thereafter, the President learned that the list included Monica Lewinsky. This had to be startling news to the President, because if the truth about his relationship with a subordinate employee

was known, the civil rights case against him would be strengthened and it might have totally changed the outcome.

But to compound the problem, less than a week later, Judge Wright, Federal district judge in Arkansas, on December 11, issued an order, and that order directed that the President had to answer questions concerning other relationships that he might have had during a particular timeframe with any State or Federal employee. And when I say ''relationships,'' I am speaking of sexual relationships. So Judge Wright entered the order that is not in your stack, but I have it here. It was filed on December 11 in the district court in Arkansas and directs the President that he has to answer those questions within a timeframe, as Mr. BRYANT said, which is typical in a civil rights case of this nature.

The White House knew that Monica was on the witness list. The President knew that it was likely that she would be subpoenaed as a witness and that her truthful testimony would hurt his case.

What did the President do? What he had to do was he made sure that Monica Lewinsky was on his team and under control. And then on December 17, the President finally called Ms. Lewinsky to let her know she was on the list. This was a call between 2 a.m. and 2:30 a.m. in the morning.

Now, what happened in the time between the President learning Monica Lewinsky was on the list and when he notified her of that fact on December 17 is very important. The President, during that timeframe, talked to his friend, his confidante and his problem-solver, Vernon Jordan. Mr. Jordan had come to the President's rescue on previous occasions. He was instrumental in securing consulting contracts for Mr. Webb Hubbell while Mr. Hubbell was under investigation by the independent counsel.

Let me parenthetically go to that point, right before Mr. Hubbell announced his resignation from the Justice Department.

During that timeframe, there was a meeting at the White House in which the President, the First Lady and others were present. After that meeting, Vernon Jordan agreed to help obtain financial assistance for Mr. Hubbell. Mr. Jordan then introduced Mr. Hubbell to the ''right people.'' The introduction was successful, and Mr. Hubbell obtained a $100,000 contract. The ''right people'' that Mr. Jordan contacted happened to be the same right people for both Mr. Hubbell and ultimately for Monica Lewinsky, which is the parent company of Revlon. So the President was aware that Mr. Jordan had the contacts and the track record to be of assistance to the President in delicate matters.

Now let's go back a little. Monica Lewinsky had been looking for a good-paying and high-profile job in New York, since the previous July, as I pointed out.

She had been offered a job at the United Nations, but she wanted to work in the private sector. She was not having much success, and then in early November it was Betty Currie who arranged a meeting with Vernon Jordan, which was ultimately on November 5. At this meeting, Ms. Lewinsky met with Mr. Jordan for about 20 minutes.

Now, let's refer to Mr. Vernon Jordan's grand jury testimony on that meeting that occurred on November 5. And you have that, and it should be your chart No. 2, or exhibit 2.

As Mr. Jordan testified before the Federal grand jury on March 3, 1998, in reference to the November 5 meeting, he testifies:

> I have no recollection of an early November meeting with Ms. Monica Lewinsky. I have absolutely no recollection of it and I have no record of it.

He goes on to testify, at page 76 of the grand jury testimony. Question:

> Is it fair to say that back in November getting Monica Lewinsky a job on any fast pace was not any priority of yours?

His answer:

> I think that's fair to say.

Now, let's stop there for a moment. What happened as a result of this meeting? No action followed whatsoever. No job interviews were arranged and there were no further contacts with Mr. Jordan. Mr. Jordan made no effort to find a job for Ms. Lewinsky for over a month. Indeed, it was so unimportant to him that he ''had no recollection of an early November meeting,'' and, in fact, he testified finding her a job was not a priority. And then you will see that during this timeframe the President's attitude was exactly the same.

And so look at the same exhibit 2, the last item on that chart, where it refers to Monica Lewinsky's grand jury testimony. And there she is referring to a December 6 meeting with the President.

> I think I said that . . . I was supposed to get in touch with Mr. Jordan the previous week and that things did not work out and that nothing had really happened yet [on the job front].

And the question was:

> Did the President say what he was going to do?

The answer:

> I think he said he would—you know, this was sort of typical of him, to sort of say, ''Oh I'll talk to him. I'll get on it.''

So you can see from that that it was not a high priority for the President, either. It was: Sure, I'll get to that. I will do that.

It was clear from Monica Lewinsky that nothing was happening.

But then the President's attitude suddenly changed. What started out as a favor for Betty Currie dramatically changed after Ms. Lewinsky became a witness, and the judge's order was issued, again, on December 11. And at that time, the President talked personally—personally—to Mr. Jordan and requested his help in getting Ms. Lewinsky a job. And that would be, again, back on exhibit 2 on that chart, the third item of testimony there; back to Mr. Jordan, his grand jury testimony, May 5, 1998.

The question is:

> But what is also clear is that as of this date, December 11th, you are clear that at that point you had made a decision that you would try to make some calls to help get her a job.

His answer:

> There is no question about that.

And so what triggered—let's look at the chain of events. The witness list came in. The judge's order came in. That triggered the President to action. And the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along.

Now, if we had Mr. Jordan on the witness stand—which I hope to be able to call Mr. Jordan—you would need to probe where his loyalties lie, listen to the tone of his voice, look into his eyes and determine the truthfulness of his statements. You must decide whether he is telling the truth or withholding information.

And so let's go to exhibit 3 in your booklet. Again, recalling Mr. Jordan, he testifies about that meeting. He testifies, in his March 3, 1998, grand jury testimony:

> I am certain after the 11th that I had a conversation with the President and as a part of that conversation I said to him that Betty Currie had called me about Monica Lewinsky. And the conversation was that he knew about her situation which was that she was pushed out of the White House, that she wanted to go to New York and he thanked me for helping her.

Remember what else happened on that day, again, the same day that Judge Wright ruled that the questions about other relationships could be asked by the Jones' attorneys.

Now, let's go back again to Mr. Jordan's testimony. What does he say about the involvement of the President of the United States in regard to these jobs? You look at exhibit 4. That is in your booklet. This is, again, Vernon Jordan's grand jury transcript of June 9, 1998.

Now, the question is on a different issue. The question is about why did he tell the White House that Frank Carter—Frank Carter was the attorney for Monica Lewinsky that Vernon Jordan arranged and introduced to Monica Lewinsky. He was hired. And at whatever point he was terminated, then Vernon Jordan notified the President. So the question relates to that:

> Why are you trying to tell someone at the White House that this has happened, [Carter had been fired]?

Answer:

> Thought they had a right to know.

Question:

> Why?

And here is the answer that is critical for my point:

> The President asked me to get Monica Lewinsky a job. I got her a lawyer. The Drudge Report is out and she has new counsel. I thought that was information that they ought to have. . . .

''The President asked me to get Monica Lewinsky a job.'' Clear, straightforward testimony; no doubt about it.

Then go on down to page 58 of his grand jury testimony of June 9.

The question:

Why did you think the President needed to know that Frank Carter had been replaced?

Answer:

Information. He knew that I had gotten her a job, he knew that I had gotten her a lawyer. Information. He was interested in this matter. He is the source of it coming to my attention in the first place.

''He is the source of it coming to my attention in the first place.'' Remember he had already met with Betty Currie. Nothing was happening in the November timeframe. Nothing was happening. Vernon Jordan—it was not a priority. Then the President of the United States called him, and it became a priority. And that is who he was acting for in trying to get Monica Lewinsky a job.

At this point we do not know all that the President was telling Vernon Jordan, but we do know that there were numerous calls back and forth between Mr. Jordan and the President. There were numerous calls being made by Mr. Jordan on behalf of Monica Lewinsky searching for a job, and that despite the fact that Monica Lewinsky did not know that she was witnessed—she did not know she was a witness—the President knew that she was a witness during his intensified efforts to get her a job.

Now, the President's counselors have made a defense that the job search started before Monica Lewinsky was a witness and there was nothing wrong with that. My response to that is, it is true there is nothing wrong with a public official, under the right circumstances, helping someone get a job. And what might have started out being innocent, if you accept that argument, crossed the line—crossed the line—whenever it was tied and interconnected with the President's desire to get a false affidavit from Monica Lewinsky, and whenever the job is out there and preparing the false affidavit, you will see that they are totally interconnected, intertwined, interrelated; and that is where the line has crossed into obstruction.

For example, when the President was waiting on Ms. Lewinsky to sign the false affidavit in the Jones case during the critical time in January a problem developed. The job interviews were unproductive, despite the numerous calls by Mr. Jordan. On one particular day, Monica called Mr. Jordan and said the interview with Revlon did not go well. Mr. Jordan, what did he do? He picked up the phone to the CEO of—the president of the company, Mr. Perlman, to, as Vernon Jordan testified, ''make things happen—if they could happen.'' That is the request from Mr. Jordan to the CEO of a company, after a job interview with Monica Lewinsky did not go well.

What happened? Things happened. He did, he made things happen. Monica Lewinsky got a job. The affidavit was signed and the President was informed by Mr. Jordan, through Betty Currie, that the mission was accomplished.

The question here is not why did the President do a favor for an ex-intern, but why did he use the influence of his office to make sure it happened? The answer is that he was willing to obstruct, impede justice by improperly influencing a witness in order to protect himself in a civil rights case.

The next step in the obstruction is the false affidavit. This is directly related to the job mission. The President needed the signature of Monica Lewinsky on the false affidavit, and that was assured by the efforts to secure her a job. Again, the President brought Ms. Lewinsky into the loop on December 17. Over 10 days after the witness list was received by the President, the President was ready to tell Monica the news.

That timeframe is important. He gets the witness list. He could have called Monica Lewinsky immediately, but he needed 7 days because he needed to make sure the job situation was in gear. And in fact, the day after, if you look back on exhibit 1, you will see that the day after the December 17 timeframe that she was informed that she was on the witness list, the next day she already had lined up job interviews for her. So she felt confident. But she was notified on December 17. Between 2 and 2:30 a.m., her phone rang. It was the President of the United States. The President said that he had seen the witness list in the case and her name was on it. Ms. Lewinsky asked what she should do if subpoenaed, and the President responded, ''Well, maybe you can sign an affidavit.''

Well, how would this work? Both parties knew that the affidavit would need to be false and misleading in order to accomplish the desired result. Clearly, truthful testimony by Monica Lewinsky would make her a witness, would not keep her away from testifying. Only a false affidavit would avoid the deposition.

So look at what I have marked as exhibit 4.1, which is just a review of the key dates on this job search. Again, November 5 was the first meeting between Jordan and Ms. Lewinsky. In November nothing happened. According to Jordan, ''not a high priority.'' December 5, the President receives the witness list. The 11th, things intensify with Judge Wright's order. The 11th, the President talks to Mr. Jordan about the job for Monica. He gets into action. On the 17th, they are ready to tell Monica that she is on the witness list. And then, on the 19th, she is actually served with a subpoena. Again, remember, after she was finally notified, it was the next day that she had the job interviews.

Now, still we will spend some time on the December 17 conversation, the day that Monica Lewinsky was notified that she was on the witness list. During that conversation, the President had a very pointed suggestion for Ms. Lewinsky in a suggestion that left no doubt about his purpose and the intended consequences. He did not say specifically, ''Go in and lie.'' This is something that you will hear, and Monica Lewinsky testified in her grand jury testimony: ''The President never told me to lie.''

How do you tell people to lie? You can tell them the facts that they can use that would, in substance, be a false statement; or you can say, ''Go in and lie and make up your own false testimony.'' The President chose to give her the ideas as to what she could testify to that would be false, but he never said the words, ''You need to go in and lie.'' So what he did say to her was, ''You know, you can always say you were coming to see Betty or that you were bringing me letters.''

That, ladies and gentlemen of the Senate, is a false representation, is a false statement that he is telling Ms. Lewinsky to utter. Remember, at this point the President knows she is a witness, and what does he do? As evidenced by the testimony of Monica Lewinsky, he encourages her to lie, to say, ''You can always say you were coming to see Betty or that you were bringing me letters.''

It should also be remembered that the President, when questioned about encouraging Monica Lewinsky to lie, has denied these allegations, and therefore there is certainly a conflict in the testimony. It is our belief that Ms. Lewinsky's testimony is credible and she has the motive to tell the truth because of her immunity agreement with the independent counsel, where she gets in trouble only if she lies; whereas the President has the motive to cover up and to testify falsely.

In order to understand the significance of this statement made by the President, it is necessary to recall the cover stories that the President and Ms. Lewinsky had previously concocted in order to deceive those people who might inquire. It was to deceive those people that they worked with. The difference in the initial cover stories, though, to protect the President and Monica from an embarrassing personal relationship, from friends and coworkers and the media, now it is in a different arena, with the pending civil rights case and Ms. Lewinsky being on the witness list.

Despite the legal responsibilities, the President made the decision to continue the pattern of lying which ultimately became an obstruction of the administration of justice. We are still on December 17, when the President called Monica at 2 a.m. on that particular day to tell her she was on the witness list, to remind her of the cover stories. Monica Lewinsky testified, when the President brought up the cover story, she understood that the

two of them would continue their preexisting pattern of deception and it became clear that the President had no intention of making his relationship with a subordinate Federal employee an issue in that civil rights case, no matter what the Federal courts told him he needed to answer. And he used lies, deceit, and deception to carry out that purpose.

It is interesting to note that the President, when he was asked by the grand jury whether he remembered calling Monica Lewinsky at 2 a.m. on that December 17th day, responded, ''No, sir, I don't, but it is quite possible that that happened.'' When he was asked whether he encouraged Monica Lewinsky to continue the cover stories of coming to see Betty or bringing letters, he answered, ''I don't remember exactly what I told her that night.''

This is not a denial, and therefore I believe you should accept the testimony of Monica Lewinsky. If you say in your mind, well, I'm not going to believe her, then you should first give us the opportunity to present this witness so that you as jurors can fairly and honestly determine her credibility.

As expected, 2 days later, on December 19, Ms. Lewinsky received a subpoena to testify in the Jones case. This sets about an immediate flurry of activity. There are a series of telephone calls between Ms. Lewinsky, Vernon Jordan, the President, and his staff. You will see this pattern of telephone calls repeated and generated at any point in time when it appears that the truth may be told in the civil rights case.

Now, let's look at exhibit 5, which is the activity on Friday, December 19. This is the day that Monica Lewinsky is served with a subpoena. Now, after Mr. Jordan is notified that Monica Lewinsky is served with a subpoena, what does he do? In the 3:51–3:52 notation, Jordan telephones the President and talks to Debra Schiff, his assistant. The subpoena is issued. Monica calls Jordan and Jordan immediately calls the President. ''Lewinsky meets with Jordan and requests that Jordan notify the President about her subpoena''—this is at 4:47 p.m.

Presumably in the middle of that meeting, at 5:01 p.m., the President of the United States telephones Mr. Jordan and Jordan notifies the President about Ms. Lewinsky's subpoena.

Then that is whenever he arranged for Ms. Lewinsky's attorney—''Jordan telephones attorney Carter''—for representation, and that night, Vernon Jordan goes to the White House to meet privately with the President on these particular issues.

Now, in that meeting—and I am speaking of the meeting that happened late that night at the White House—Mr. Jordan told the President again that Ms. Lewinsky had been subpoenaed and related to the President the substance and details of his meeting with Ms. Lewinsky. It wasn't a casual consideration; the details were discussed, including her fascination with the President and other such issues.

This led Mr. Jordan to ask the President about his relationship with Ms. Lewinsky, and the response by the President of the United States was the first of many denials to his friends and aides. The President stated in his deposition that he does not recall that meeting. But you should remind yourselves of the testimony and the description provided by Vernon Jordan when he said, ''The President has an extraordinary memory.'' In fact, we all know that he is world famous for that memory.

Now, the subpoena had been delivered, but the testimony of Monica Lewinsky was not scheduled until January 23, and the President's deposition, which was even more critical, was not scheduled until January 17. So the President and his team had some time to work. The work was not the business of the Nation, it was the distraction and self-preservation in the civil rights case.

Under the plan, Mr. Jordan would be the buffer; he would obtain an attorney—Mr. Carter—and that attorney would keep Mr. Jordan informed on the progress of the representation, including reviewing any copy of the affidavit, knowing about the motion to quash, and the general progress of the representation. All along the way, when Mr. Jordan gets information, what does he do with that? Mr. Jordan keeps the President informed both about the affidavit and the prospects of the job in New York, for which Ms. Lewinsky was totally dependent on the help of her friends in high places.

Let me go back again. There is nothing wrong with helping somebody get a job. But we all know there is one thing forbidden in public office: We must avoid quid pro quo, which is: This is for that. But Vernon Jordan testified he kept the President informed on the status of the false affidavit, the job search, and the status of Ms. Lewinsky's representation. Why? Is this just idle chatter with the President of the United States, or are these matters the President is vitally interested in and, in fact, coordinated? Mr. Jordan answers this question himself on page 25 of his grand jury testimony, where he testified, ''I knew the President was concerned about the affidavit and whether or not it was signed. He was obviously.'' That was his March 5, 1998, grand jury testimony. The President was concerned not just about the affidavit but specifically about whether it was signed.

The President knew that Monica Lewinsky was going to make a false affidavit. He was so certain of the contents that when Monica Lewinsky asked if he wanted to see it, he told her no, that he had seen 15 of them. Besides, the President had suggested the affidavit himself, and he trusted Mr. Jordan to be certain to keep things under control. In fact, that was one of the main purposes of Mr. Jordan's continued communication with Monica Lewinsky's attorney, Frank Carter.

Even though Mr. Jordan testifies at one point he never had any substantive discussions on the representation with Mr. Carter, he contradicts himself in his March 3 grand jury testimony where he states: ''Mr. Carter at some point told me—this is after January—that she had signed the affidavit, that he had filed a motion to quash her subpoena and that—I mean, there was no reason for accountability, but he reassured me that he had things under control.''

Mr. Jordan was aware of the substance of the drafting of the affidavit, the representation, the motion to quash, and even had a part in the redrafting. This was clearly important to Mr. Jordan and clearly important to the President.

Now, let's go to the time when the false affidavit was actually signed, January 5, 1998. These will be exhibits 7, 8, and 9 in front of you. Let's go to January 5. This is sort of a summary of what happened on that day. Ms. Lewinsky meets with her attorney, Mr. Carter, for an hour. Carter drafts the affidavit for Ms. Lewinsky on the deposition. In the second paragraph, Ms. Lewinsky telephones Betty Currie, stating that she needs to speak to the President, that this is about an important matter; specifically, that she was anxious about something she needed to sign—an affidavit. Frank Carter drafts the affidavit she is concerned about. She calls the President. The President returns Ms. Lewinsky's call.

Big question: Should the President return Ms. Lewinsky's call? He does, that day, quickly. Ms. Lewinsky mentions the affidavit she is signing and offers to show it to the President. That is where he says no, he had seen 15 others.

Let's go to the next day. The next exhibit is January 6. On this particular day, Ms. Lewinsky picks up the draft affidavit. At 2:08 to 2:10 p.m., she delivers that affidavit. To whom? Mr. Jordan. That is after she got it. She delivers it to Jordan. And then, at 3:26 p.m., Mr. Jordan telephones Mr. Carter. At 3:38, Mr. Jordan telephones Nancy Hernreich of the White House. At 3:48, he telephones Ms. Lewinsky about the draft affidavit, and, at 3:49, you will see in red that both agree to delete a portion of the affidavit that created some implication that maybe she had been alone with the President.

So Mr. Jordan was very involved in drafting the affidavit and the contents of that.

And then at 4:19, presumably in response to some of the calls by Jordan earlier in the day, the President telephones Mr. Jordan and they have a discussion. And then Mr. Jordan telephones Carter and the conversations go back and forth. At the end of the day, Mr. Jordan telephones the White House. So the affidavit is still in the drafting process.

Let's go to the next day, exhibit 9. Monica signs the affidavit here. At 10

a.m., Ms. Lewinsky signs a false affidavit in Mr. Carter's office. Then she delivers the signed affidavit to Mr. Jordan. And then what does he do? The usual. At 11:58, Mr. Jordan telephones the White House. At 5:46, Mr. Jordan telephones the White House. At 6:50, Mr. Jordan telephones the White House and tells the President that Ms. Lewinsky signed the affidavit.

Is this important information for the President, to know he was vitally interested in it?

The next day, exhibit 10, January 8. After it is signed, what is important the next day? It was the other part of the arrangement, that she has the job interview with MacAndrews in New York. She had that job interview. The only problem was that it went poorly, very poorly. So at 4:48 p.m. on this particular day, Ms. Lewinsky telephones Jordan and advises that the New York interview went ''very poorly.''

What does Mr. Jordan do? He telephones Ron Perelman, the CEO of Revlon, the subsidiary of MFH, to make things happen if they could happen. What does he do next? Jordan telephones Ms. Lewinsky, saying, ''I'm doing the best I can to help you out.'' And they set up another interview for the next day. Jordan telephones the White House Counsel's Office, and, in the evening, Revlon in New York telephones Ms. Lewinsky to set up a follow-up interview. They said the first interview didn't go well, but because Mr. Jordan intercedes—and why? Because the false affidavit has been signed and he wants to make sure this is carried out. At 9:02 p.m., Ms. Lewinsky telephones Jordan about the Revlon interview in New York, and presumably it went better on that particular day.

Then on January 9—exhibit 11—Monica is confirmed that she has the job. Lewinsky is offered the Revlon job in New York, and accepts.

Lewinsky telephones Jordan. And then, at 4:14, Jordan notifies Currie, calls Betty Currie, and says ''Mission accomplished,'' and requests that she tell the President. Jordan notifies the President of Lewinsky's job offer, and says, ''Thank you, very much, Mr. President.'' And then, that evening, the President telephones Currie, and so on. But the President is notified that the job has been secured, ''mission accomplished.''

Let me ask you a question, after I have gone through these exhibits. Would Mr. Jordan have pushed for a second interview without cooperation on the affidavit? Would Monica Lewinsky have received the support and secured the job if she had said ''I don't want to sign an affidavit; I am just going to go in there and tell the truth; whatever they ask me, I am going to answer; I am going to tell the truth?'' Does anyone in this room believe that she would have been granted the job—if Mr. Jordan had made that call to get that second interview—that she would ever have had the help from her friend in high places? Now the affidavit has been signed. The job is secure. Monica Lewinsky is on the team, and the President of the United States is armed for the deposition.

So let's move there.

Just how important was Monica Lewinsky's false affidavit to the President's deposition? Let's look. What did the President's attorney, Robert Bennett, say about that affidavit to the Federal judge during the deposition? That false affidavit allowed Mr. Bennett, the attorney for Mr. Clinton, when talking about the question of whether the relationship between the President and Ms. Lewinsky—it allowed him to assert that '' . . . there is absolutely no sex of any kind in any manner, shape or form with President Clinton * * *.''

That is a statement of Robert Bennett—his representation to the court about that relationship. It is a representation that he had to later, probably based upon his own professional embarrassment, withdraw, and to correct that inaccurate part of the record.

When questioned by his own attorney in the deposition, the President stated specifically the key paragraph of Ms. Lewinsky's affidavit was ''absolutely true.''

Paragraph 8 of her affidavit states:

> I have never had a sexual relationship with the President. . . .

If it enters your mind at this point as to what was meant by ''sexual relationship,'' please remember that this affidavit was drafted upon a common understanding of that phrase at that point, and not based upon any definition used in the deposition of the President.

I am sure it was the President's hope and belief that the false affidavit used in the deposition to bolster his own testimony would be the end of the matter. But that was not the case. We know in life that one lie leads to another. And so it is when we attempt to thwart the administration of justice—one obstruction leads to another.

Now we move to another key witness, Betty Currie.

By the time the President concluded his deposition, he knew there were too many details out about his relationship with Ms. Lewinsky. He knew that the only person who would probably be talking was Ms. Lewinsky herself. He knew the cover story that he had carefully created and that was converted into false statements in the affidavit was now in jeopardy and had to be backed at this point by the key witnesses, Monica Lewinsky and Betty Currie. After the deposition, the President needed to do two things: He had to contact Ms. Lewinsky to see if she was still on the team, but he also had to make sure that his secretary, Betty Currie was lying to protect him. So let's look at how the concern became a frenzied and concerted effort to keep the holes plugged in the dike.

Let's look at exhibits 12 and 13.

What happened on the day the deposition—really the night of the deposition—on January 17. The President finishes testifying in the deposition around 4 p.m. At 5:38 p.m., the President telephones Mr. Jordan at home. And then, at 7:13, the President telephones Ms. Currie at home. At 7:02, the President places a call to Mr. Jordan's office. And then, at 7:13, he gets Ms. Currie at home finally, and asks her to meet with him on Sunday. It is vitally important that he meet with Ms. Currie at this point because he knows his whole operation is coming unglued.

So the next day, on January 18, which is exhibit 13, there is a whole flurry of activity here.

I am not going to go through all of them. You can see the frantic pace at the White House because at 6:11 in the morning, the President had some more bad news. The Drudge Report was released. And that created a greater flurry. Then between 11:49 and 2:55 p.m., two phone calls were made between Mr. Jordan and the President.

Then, at 5 p.m., we see the meetings. That is on the second page. At 5 p.m., Ms. Currie meets with the President. And the President then tells Ms. Currie to find Monica Lewinsky. The telephone calls were generated, and there was no success in that.

Then, that evening the President calls Ms. Currie at home to try once again to see if she had found Monica.

But it was on that day that there was that critical meeting on that Sunday in the Oval Office between Betty Currie and the President of the United States.

For that reason, we need next to hear from Betty Currie, the President's personal secretary, as to what occurred during that most unusual meeting on Sunday following the deposition.

Betty Currie testified in the grand jury that the President said that he had just been deposed and that the attorneys had asked several questions about Monica Lewinsky. This is a violation of the judge's gag order. And the President, you know, made some comments that were not in line. But he had some choices to make, and he made the wrong choices.

But let's look at exhibit 14, which covers the series of statements made to Ms. Currie. At this point there is the testimony of Betty Currie. She is reciting to the grand jury each of the statements the President made to her after his grand jury testimony.

The first: ''I was never really alone with Monica, right?''

Second: ''You were always there when Monica was there, right?''

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

I am not going to read each one of those. You can read them. You have heard those as well.

But the President is making those simple declaratory statements to her.

There are three areas that are covered.

First of all, the President makes a case that he was never alone with Monica Lewinsky.

Second, he is making a point to her that ''she was the aggressor, not me.''

The third point he is making, ''I did nothing wrong.''

Those are the basic three points of those five statements that the President made to Betty Currie.

During Betty Currie's grand jury testimony she was asked whether she believed that the President wished her to agree to the statements.

Let's look at Betty Currie for a second. She is the classical reluctant witness. Where are her loyalties? How would you examine her testimony? Where is she uncomfortable in her testimony when she is asked the question? How does she shift in the chair? Those are the kind of ways you have to evaluate the truthfulness of the testimony, where their loyalties lie, and their demeanor.

During the questioning she was clearly reluctant.

She was asked a series of questions, and she finally acknowledges that the President was intending for her to agree with the statements that were made. She says, ''That is correct.'' And that is page 74 of Betty Currie's grand jury testimony.

When the President testified in the August 17 grand jury, he was questioned about his intentions when he made those five statements to Ms. Currie in his office on that Sunday. And the President's explanation is as follows to the grand jury:

The President:

> . . . I thought we were going to be deluged by the press comments. And I was trying to refresh my memory about what the facts were.

Then he goes on to testify:

> So, I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could.

Ladies and gentlemen of the Senate, you have to determine what the purpose of those five statements to Betty Currie were. Were they to get information, or were they to get her to falsely testify when she was called as a witness? Logic tells us that the President's argument was that he was just trying to refresh his memory. Well, so much of a novel legal defense argument.

First, consider the President's options after he left the deposition.

He could have abided by the judge's gag order and not say anything.

Second, he could have called Betty Currie in and asked her an open-ended question: Ms. Currie, or Betty, what do you remember happened?

The third option was to call her in and to make these declaratory statements, violate the judge's order, and tamper with the anticipated testimony of Betty Currie.

That is the course that the President chose. He made sure it was a face-to-face meeting, not a telephone call. He made sure that no one else was present. He made sure that the meeting was on his territory and in his office where he could feel comfortable and he could utilize the power and prestige of his office to have the greatest influence on her future testimony.

After Ms. Currie was in the President's office, he made short, clear, understandable, declarative statements telling Ms. Currie what the story was. He was not interested in what she knew. Why? Because he knew the truth, but he did not want Ms. Currie to tell the truth. The only way to ensure that was by telling her what to say, not asking her what she remembered. You do not refresh someone's memory by telling that person what he or she remembers, and you certainly do not make the declarative statements to someone regarding factual scenarios of which the listener was unaware.

The statements that were made to her, Betty Currie could not have any possible knowledge about as to whether they were ever alone, as to whether she came on to him. No. This was not any attempt for the President to refresh his recollection. It was witness tampering, pure and simple.

Understanding the seriousness of the President's attempting to influence the testimony of Ms. Currie, his attorneys have tried to argue that those statements could not constitute obstruction of justice because she had not been subpoenaed and the President did not know that she was a potential witness at this time. Well, the argument is refuted by both the law and the facts.

The law is clear that a person may be convicted of obstructing justice if he corruptly influenced the testimony of a prospective witness. The witness does not actually have to give testimony. The witness does not have to be under any subpoena. The witness does not have to be on any witness list. And so the law is clear.

Secondly, let's examine the defense in light of the facts. The President himself brought Ms. Currie into the civil rights case as a corroborating witness when he repeatedly used her name in the deposition, and just as significantly the President had to be concerned about a looming perjury charge against him in light of his false testimony in the deposition. At least six times in that deposition the President challenged the plaintiff's attorneys to question Ms. Currie about the particular issue.

You don't have it in front of you, but you will see it when we distribute the copies of my remarks. I will go through those six times.

At page 58 of the deposition, the President, when asked whether he was alone with Ms. Lewinsky said that he was not alone with her or that Betty Currie was there with Monica.

At page 70, when asked about the last time the President saw Ms. Lewinsky, he falsely testified he only recalled that she was there to see Betty.

At page 64, he told the Jones lawyers to ''ask Betty'' whether Lewinsky was alone with him in the White House or not or with Betty in the White House between the late hours.

At page 65 of the deposition, the President was asked whether Ms. Lewinsky sent packages to him, and he stated that Betty handled the packages.

At page 72, the President was asked whether he may have assisted in any way with a job search. He said he thought Betty suggested Vernon Jordan talk to her.

At page 74, he said Monica asked Betty to ask someone to talk to Ambassador Richardson. He asserted Betty as a corroborating witness at least six times in the deposition.

There is no question that Ms. Currie was a prospective witness, and the President clearly wanted her to be deposed as a witness as his ''ask Betty'' testimony demonstrates.

But there is another fact that, thus far, has been overlooked, and let me draw your attention to this.

Two days before the President's deposition, Betty Currie receives a call from Michael Isikoff, a reporter with Newsweek magazine, inquiring about the records, the courier records of gifts going from Ms. Lewinsky to the President.

You've got a news reporter for a national publication two days before the President's deposition talking to the President's secretary, saying, ''I need to see the courier records at the White House.'' What does Betty Currie do? She testified that she probably told the President this. Then she tells Bruce Lindsey, but she also goes to see Vernon Jordan. Why? Why would the secretary go see Vernon Jordan because she had a press inquiry? The reason is, as we see later on, remember, this is January 15th. What happened on December 28th that we will get to a little bit later? December 28th Betty Currie went and put those gifts under her bed. Why is she nervous? Because Mike Isikoff is calling about the gifts that are presently under her bed, and she is nervous. I would be nervous. And so she goes to see Bruce Lindsey. She goes to see Vernon Jordan. ''I need help. What do I do?'' And she probably told the President.

It is all breaking loose, the house of cards is falling down, and she is either going to report to Mr. Jordan or to seek advice from him. Either way, she knows it is serious, and it all has legal consequences. And she is a witness to it all.

And not only does Betty Currie's testimony talk about this call from Michael Isikoff and going to see Vernon Jordan, but Vernon Jordan's testimony confirms the visit as well.

The President claims he called Ms. Currie in to work on that Sunday night only to find out what she knew, but the President knew the truth about the relationship, and if he told the truth in deposition the day before, he would have had no reason to be refreshed by Betty Currie.

More importantly, the President's demeanor, Ms. Currie's reaction and the suggested lies clearly prove that the President was not merely interviewing Ms. Currie. Rather, he was

looking for corroboration for his false coverup, and that is why he coached her. He needed a witness for him, not against him.

Now, let's go to exhibit 5, Betty Currie's testimony—excuse me, exhibit 15.

This is Betty Currie's testimony before the grand jury on January 27, 1998. And Betty Currie is asked about this. Now, remember, it was on a Sunday that Betty Currie was first called into the White House to go through these five statements, this coaching by the President. And then she testified to the grand jury:

Question: Did there come a time after that that you had another conversation with the President about some other news about what was going on? That would have been Tuesday or Wednesday—when he called you into the Oval Office?

Betty Currie's answer:

It was Tuesday or Wednesday. I don't remember which one this was, either. But the best I remember, when he called me in the Oval Office, it was sort of a recapitulation of what we had talked about on Sunday—you know, ''I was never alone with her''—that sort of thing.

Question: Did he pretty much list the same——

Answer: To my recollection, sir, yes.

Question: And did he say it in sort of the same tone and demeanor that he used the first time he told you on Sunday?

Answer: The best I remember, yes, sir.

And this needs to be emphasized. Not only was that witness coaching taking place on Sunday, but it took place a couple days later. It was twice repeated by the President to Betty Currie. He needed to have her good and in line.

This is more than witness tampering. It is witness compulsion of false testimony by an employer to a subordinate employee. This has nothing to do with facts, nothing to do with media inquiries. It has to do with keeping his team on board, keeping the ship from sinking, and hiding the facts that are important. At this point we are not talking about hiding personal facts from inquiring minds but an effort to impede the legitimate and necessary functioning of our court system.

And now let's go to the Martin Luther King holiday, almost exactly a year ago, Monday, January 19. Again, you will see the example of the frantic search for Monica Lewinsky did continue.

Exhibit 16. I am not going to go through all of this, but I just want to briefly show the frantic activity on this particular day.

First of all, you will see Betty Currie is trying to fulfill her responsibility to get ahold of Ms. Lewinsky. She uses the pager system, and she says, ''Please call Kay at home.'' Now ''Kay'' is the code name that is used for Betty Currie. That is the agreed upon signal. And she uses three messages: ''Please call Kay. Please call Kay. Please call Kay.''

Then she starts using different techniques to get her attention. ''It's a social call.'' And then she later uses it's a ''family emergency.'' Then she later uses it's ''good news.'' She is using every means possible to get the attention of Monica Lewinsky. And then at 8:50 a.m. the President telephones Currie at home. At 8:56 a.m. the President telephones Jordan at home.

Go on down to 10:56 a.m. ''The President telephones Jordan at his office.'' And so what is going on here? They are nervous; they are afraid; it is all breaking loose. They are trying to get ahold of Monica Lewinsky to find out what is going on, who she is talking to.

Later that day things continued to destabilize for the President. At 4:54 p.m. Mr. Jordan learned from the attorney, Frank Carter, that he no longer represented Ms. Lewinsky, and so Mr. Jordan's link had been cut off. Mr. Jordan continued to attempt to reach the President or someone at the White House. Between 4:58 and 5:22 p.m., he made six calls trying to get ahold of someone at the White House, the President.

When Mr. Jordan was asked about why he was urgently trying to get ahold of the White House, he responded, ''Because the President asked me to get Monica Lewinsky a job'' and he thought it was ''information they ought to have.'' Jordan finally reaches the President about 6 p.m. and tells him that [Mr.] Carter had been fired.

Why this flurry of activity? It shows how important it was for the President of the United States to find Ms. Lewinsky. Betty Currie was in charge of contacting Monica, and it could not happen, it did not happen. Ms. Lewinsky was a co-conspirator in hiding this relationship from the Federal court and he was losing control over her. In fact, she ultimately agreed to testify truthfully, under penalty of perjury, in this matter. This was trouble for the President.

And, so, now let's continue; let's continue exploring the web of obstruction. But to do this, we have to backtrack to what I have already referred to, and that was the incident on December 28, the episode with the gifts.

On December 28, another brick in the wall of obstruction was laid. It was the concealment of evidence. Ms. Lewinsky testified that she discussed with the President the fact that she had been subpoenaed and that the subpoena called for her to produce gifts. And this is what Ms. Lewinsky was telling the President at the meeting with him on December 28. She testified before the grand jury that she recalled telling the President that the subpoena in question had requested a hatpin and other items, and this concerned her—the specificity of it. And the President responded it ''bothered'' him, too.

Well, let's look at the testimony of Ms. Lewinsky, which is exhibit 17. This is Lewinsky testifying about the meeting.

And then at some point I said to him [the President], ''Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.'' And he sort of said—I think he responded, ''I don't know,'' or, ''Let me think about that,'' and left that topic.

Not exactly the response you would hope for or expect from the President. But the answer led to action. Later that day Ms. Lewinsky got a call from Ms. Currie, who said, ''I understand you have something to give to me,'' or, according to Ms. Lewinsky, ''The President said you have something to give me.'' She wasn't exactly sure of the phrase but it was either, ''I understand you have something to give me,'' what Betty Currie said, or Betty Currie said, ''The President said you have something to give to me.''

And so, ladies and gentlemen, if you accept the testimony of Monica Lewinsky on that point, you must conclude that the directive to retrieve the gifts came from the President. I will concede that there is a conflict in the testimony on this point with the testimony of Betty Currie. Ms. Currie, in her grand jury testimony, had a fuzzy memory, a little different recollection. She testified that, ''the best she can remember,'' Ms. Lewinsky called her. But whenever she was asked further, she said that maybe Ms. Lewinsky's memory is better than hers on that issue. But there is helpful evidence to clear up this discrepancy, or this inconsistency. Monica, you will recall, in her deposition said she thought that Betty had called her and she thought that the call came from her cell phone number.

Well, it was not known at the time of the questioning of Monica Lewinsky, but since then the cell phone record was retrieved. And you don't have it in front of you, but it will be available. The cell phone record was retrieved that showed, on Betty Currie's cell phone calls, that a call was made at 3:32, from Betty Currie to Monica Lewinsky. And this confirms the testimony of Monica Lewinsky that the followup to get the gifts came from Betty Currie. The only way she would know about it is if the President directed her to go retrieve the gifts, as was discussed with Monica earlier.

Now, the President will argue that Monica's timeline does not fit with the time of the cell phone call. But remember, the cell phone record was retrieved subsequent to both the testimony of Monica Lewinsky and Betty Currie before the grand jury, and therefore the record was not available to refresh the recollection or to make inquiry with him about that. Monica Lewinsky's time estimates as to when Betty Currie arrived to pick up the gifts was based upon her memory without the benefit of records.

The questions raised by the President on this issue are legitimate and demonstrate the need to call the key witnesses to a trial of this case and to assess which version of the events is believable and substantiated by the corroborating evidence. This is certainly an area of testimony where the juror needs to hear from Betty Currie and Monica Lewinsky and to examine all of

the circumstantial evidence and documentary evidence to determine the truth. It is my belief, based upon common sense and based upon the documentary evidence, that the testimony of Monica Lewinsky is supported in the record and it leads to the conclusion that it was the President who initiated this retrieval of the gifts and the concealment of the evidence.

Now, there are many lawyers here in this room, and you know that in Federal cases all across this country judges instruct juries on circumstantial evidence. We have presented to you a great amount of direct evidence, grand jury testimony, eyewitness testimony, documentary evidence. But juries can use circumstantial evidence as well. And a typical line from the instruction that is given in Federal courts to Federal juries all across the land:

> The law makes absolutely no distinction between the weight or value to be given either to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

So I think it is incumbent upon you to evaluate the circumstances very carefully in addition to the testimony.

Now, let's examine the key question for a moment. Why did Betty Currie pick up the gifts from Monica Lewinsky? Monica Lewinsky states that she did not request this and the retrieval was initiated by the call from Betty Currie. This was after the meeting with the President. Monica Lewinsky's version is corroborated by the cell phone record and the pattern of conduct on the part of Betty Currie. What do I mean by that? As a loyal secretary to the President, it is inconceivable that she would go to retrieve gifts that she knows the President is very concerned about and could bring down the whole house. Betty Currie, a subordinate employee, would not engage in such activity on such a sensitive matter without the approval and direction of the President himself.

In addition, let's look further to the actions of Betty Currie. It becomes clear that she understands the significance of these gifts, their evidentiary value in a civil rights case, and the fact that they are under subpoena. She retrieves these items, and where does she place them? She hides them under her bed—significantly, a place of concealment.

Now, let's look at the President's defense. The President stated in his response to questions 24 and 25, that were submitted from the House to the President, he said he was not concerned about the gifts. In fact, he recalled telling Monica that if the Jones lawyers request the gifts, she should just turn them over to them. The President testified he is ''not sure'' if he knew the subpoena asked for gifts.

Now, why in the world would Monica and the President discuss turning over gifts to the Jones lawyer if Ms. Lewinsky had not told him that the subpoena asked for gifts? On the other hand, if he knew the subpoena requested gifts, why would he give Monica more gifts on December 28? This seems odd. But Ms. Lewinsky's testimony reveals the answer. She said that she never questioned ''that we were ever going to do anything but keep this private,'' and that means to take ''whatever appropriate steps need to be taken.'' That is from Monica's grand jury testimony of August 6.

Why would the President even meet with Monica Lewinsky on December 28 when their relationship was in question and he had a deposition coming up? Certainly he knew he would be questioned about it. Certainly if Monica became a witness she would be questioned about the relationship, that she would be asked when was the last time you met with the President, and now they have to say December 28, if they were going to tell the truth.

The answer is, the President knew that he had to keep Monica Lewinsky on the team and he was willing to take more risks so that she would continue to be a part of the conspiracy to obstruct the legitimate functions of the Federal court in a civil rights case.

It should be remembered that the President has denied each and every allegation of the two articles of impeachment, he has denied each element of the obstruction of justice charges, including this allegation that he encouraged a scheme to conceal evidence in a civil rights case. This straightforward denial illustrates the dispute in the evidence and testimony. It sets the credibility of Monica Lewinsky, the credibility of Betty Currie, the credibility of Vernon Jordan, and others against the credibility of the President of the United States.

How can you, as jurors, determine who is telling the truth? I have pointed to the corroborating evidence, the circumstantial evidence, as well as common sense supporting the testimony of Monica Lewinsky. But let me ask you two questions: Can you convict the President of the United States without hearing personally the testimony of one of the key witnesses? The second question is: Can you dismiss the charges under this strong set of facts and circumstances without hearing and evaluating the credibility of key witnesses?

Let me take this a step further and evaluate the credibility of the President. Let's first look back at his testimony on the December 28 meeting that he gave in his deposition. In that case, he seriously misrepresented the nature of his meeting with Ms. Lewinsky, and that was the gift exchange. First he was asked:

> Question: Did she tell you that she had been served with a subpoena in this case?

The President answered flatly, ''No. I don't know if she had been.''

Again, this is his testimony in the deposition. He was also asked in the deposition if he ''ever talked to Monica Lewinsky about the possibility of her testifying.'' His answer: ''I'm not sure * * *,'' he said. He then added that he may have joked that the Jones lawyers might subpoena every woman he has ever spoken to, and that ''I don't think we ever had more of a conversation than that about it * * *.''

Not only does Monica Lewinsky directly contradict his testimony, but the President later had to answer questions in the grand jury about these same set of circumstances and the President directly contradicted himself. Speaking of this December 28 meeting, he said that he ''knew by then, of course, that she had gotten a subpoena'' and they had a ''conversation about the possibility of her testifying.''

I submit to this body that the inconsistencies of the President's own testimony, as well as common sense, seriously diminish his credibility on this issue.

Now let's go forward, once again, to the time period in which the President gave his deposition in the Paula Jones case. The President testified under oath on January 17, and immediately thereafter, remember, he brought Betty Currie in to present a set of false facts to her, seeking her agreement and coaching her.

But the President is fully convinced that he can get by with his false denials because no one will be able to prove what did or did not happen in the Oval Office. There were no witnesses, and it boils down to a ''he said, she said'' scenario, and as long as that is the case, he believes he can win. If the President can simply destroy Monica Lewinsky's credibility in public and before the grand jury, then he will escape the consequences for his false statements under oath and obstruction in the civil rights case. Now, remember, this viewpoint, though, is all before the DNA tests were performed on the blue dress, forcing the President to acknowledge certain items.

In order to carry out this coverup and obstruction, the President needed to go further. He needed not only Betty Currie to repeat his false statements, but also other witnesses who would assuredly be called before the Federal grand jury and who would be questioned by the news media in public forums. And this brings us to the false statements that the President made to his White House staff and Presidential aides.

Let's call Sydney Blumenthal and John Podesta to the witness stand. I concede they would be adverse witnesses. This is referred to in exhibit 18 that you have in front of you.

First, the testimony of Sydney Blumenthal. Mr. Blumenthal, to put this in perspective, is testifying about his conversations when the President called him in to go through these facts of what happened. So Mr. Blumenthal testified that ''it was at that point that he''—referring to the President—''gave his account as to what happened to me and he said that Monica—and it came

very fast. He said, 'Monica Lewinsky came at me and made a sexual demand on me.' He rebuffed her. He said, 'I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.'"

Look at this next line. "She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more."

He talks about this character in a novel, and I haven't read that book. But the last line: "And I said to him, I said, "When this happened with Monica Lewinsky, were you alone?' He said, 'Well, I was within eyesight or earshot of someone.'"

Let's go to John Podesta's testimony where he was called in the same fashion. The President talked to him about what is happening:

Question: Okay. Share that with us.

Answer: Well, I think he said—he said that—there was some spate of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever.

Question: Okay.

Answer: —that they had not had oral sex.

Very briefly, Dick Morris. You have heard this. I will refer to the last line: "'They're just not ready for it,' meaning the voters. And he [The President] said, 'Well, we just have to win, then.'"

As the President testified before the grand jury, he knew these witnesses would be called before the grand jury. At page 106 of the President's testimony before the grand jury—I just want to confirm this point because it is important—he testified—the question was: "You know that they"—and this is referring to John Podesta, Sydney Blumenthal and his aides— "that they might be witnesses, you knew they might be called into the grand jury, didn't you?"

His answer: "That's right."

So there is no question these were witnesses going to testify before the grand jury. He was giving them false information, and he did not limit it to that. The false statements to them constitute witness tampering and obstruction of justice.

I think there are two significant points in the statements the President made to his aides.

First of all, the President who wants to do away with the politics of personal destruction indicates a willingness to destroy the credibility and reputation of a young person who worked in his office for what reason? In order to preserve not only his Presidency but, more significantly, to defeat the civil rights case against him. It is not a matter of saying he didn't do it, because he could have simply uttered a denial, but he engaged in character assassination that he knew would be repeated to the Federal grand jury and throughout the public—she was a stalker, she threatened me, she came on to me, and it was—it was repeated.

Secondly, he makes it clear in his statements to John Podesta that he denies any sexual relations with Monica Lewinsky, including oral sex. There is no quibbling about definitions in this statement. It clearly reflects an attempt to deceive, lie and obstruct our system of justice.

In this case, at every turn, he used whatever means available to evade the truth, destroy evidence, tamper with witnesses and took any other action required to prevent evidence from coming forward in a civil rights case that would prove a truth contrary to the President's interest. He had obstructed the administration of justice before the U.S. district court in a civil rights case and before the Federal grand jury. But as we move toward a conclusion, let's not focus just on the supporting cast we talked about, but we need to look at the direct and personal actions of the President.

I want to look at exhibit 20. This just summarizes the seven pillars of obstruction. What did the President do that constitutes evidence of obstruction?

No. 1, he personally encouraged a witness, Monica Lewinsky, to provide false testimony.

No. 2, the President had direct involvement in assuring a job for a witness—underlining direct involvement. He made the calls, Vernon Jordan did, and it is connected with the filing of the false affidavit by that witness.

No. 3, the President personally, with corrupt intentions, tampered with the testimony of a prospective witness, Betty Currie.

No. 4, the President personally provided false statements under oath before a Federal grand jury.

No. 5, by direct and circumstantial evidence the President personally directed the concealment of evidence under subpoena in a judicial proceeding.

No. 6, the President personally allowed false representations to be made by his attorney, Robert Bennett, to a Federal district judge on January 17.

No. 7, the President intentionally provided false information to witnesses before a Federal grand jury knowing that those statements would be repeated with the intent to obstruct the proceedings before that grand jury and that is the statements that he made to the aides.

The seven pillars of this obstruction case were personally constructed by the President of the United States. It was done with the intent that the truth and evidence would be suppressed in a civil rights case pending against him. The goal was to win, and he was not going to let the judicial system stand in his way.

At the beginning of my presentation, I tried to put this case into perspective for myself by saying that this proceeding is the same as to what takes place in every courtroom in America—the pursuit of truth, seeking equal justice, and upholding the law. All of that is true. But we know there is even more at stake in this trial. What happens here affects the workings of our Constitution, it will affect the Presidency in future decades, and it will have an impact on a whole generation of Americans. What is at stake is our Constitution and the principle of equal justice for all.

I have faith in the Constitution of the United States, but the checks and balances of the Constitution are carried out by individuals—individuals who are entrusted under oath with upholding the trust given to us by the people of this great land. If I believe in the Constitution, that it will work, then I must believe in you.

Ladies and gentlemen of the Senate, I trust the Constitution of the United States. But today it is most important that I believe in you. I have faith in the U.S. Senate. You have earned the trust of the American people, and I trust each of you to make the right decision for our country.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take another 15-minute break in the proceedings. And I urge the Senators to return promptly to the Chamber so we can begin after the 15-minute break.

There being no objection, at 4:51 p.m., the Senate recessed until 5:10 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to resume final presentation of the afternoon. Several Senators have inquired what will happen the balance of the day. I believe the presentation by Congressman ROGAN will be the last of the day. It is anticipated we will complete today's presentation around 6:30 or 6:45.

I yield the floor.

The CHIEF JUSTICE. The Chair recognizes Mr. ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, counsel for the President, Members of the United States Senate, my name is Congressman JAMES E. ROGAN. I represent the 27th District of California.

May I say at the outset that some of the facts and evidence you will hear in my presentation may sound familiar in light of the last presentation. Although at times the facts may appear to be a crossover, the relevance will be presented in a different light.

Mr. Manager HUTCHINSON's presentation offered the evidence as it relates to the obstruction of justice charge against the President in article II. I will be inviting this body to view the evidence within the framework of article I, perjury before the grand jury.

On behalf of the House of Representatives and in the name of the people of the United States, I will be presenting

to the Senate evidence against the President to demonstrate he committed perjury before a Federal grand jury as set forth in article I of the articles of impeachment.

Article I of the impeachment resolution against President Clinton alleges that he committed perjury before the grand jury.

On August 17, 1998, President Clinton swore to tell the truth, the whole truth, and nothing but the truth. The evidence shows that contrary to that oath, the President willfully provided perjurious, false, and misleading statements to the grand jury in four general areas:

First, he perjured himself when he gave a false accounting to the grand jury about the nature and details of his relationship with a 21-year-old intern, Ms. Monica Lewinsky, who was a subordinate Federal Government employee.

Second, he perjured himself before the grand jury when he repeated previous perjured answers he gave under oath in a sexual harassment suit, which was a Federal civil rights action brought against him by Paula Jones.

Third, he perjured himself before the grand jury when he repeated previous perjured answers to justify his attorney's false representations to a Federal judge in the Paula Jones sexual harassment lawsuit against him.

Finally, he perjured himself before the grand jury when he testified falsely about his attempts to get other potential grand jury witnesses to tell false stories to the grand jury, and to prevent the discovery of evidence in Paula Jones' sexual harassment lawsuit against him.

In a judicial proceeding, a witness has a very solemn obligation to tell the truth, the whole truth and nothing but the truth. Perjury is a serious crime because our judicial system can only succeed if citizens are required to tell the truth in court proceedings. If witnesses may lie with impunity for personal or political reasons, ''justice'' is no longer the product of the court system, and we descend into chaos. That is why the U.S. Supreme Court has placed a premium on truthful testimony and shows no tolerance for perjury.

More than 20 years ago, the Supreme Court addressed this very concept of perjury and its dangerous effect on our system of law. Listen to the words of the U.S. Supreme Court:

> In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. . . . Congress has made the giving of false answers a criminal act punishable by severe penalties; in no other way can criminal conduct be flushed into the open where the law can deal with it.

That is the framework under which the House of Representatives acted in impeaching the President of the United States, and now respectfully urges this body to call the President to constitutional accountability.

The key to understanding the facts of this case is to understand why the President was asked, under oath, questions about his private life in the first place.

Despite the popular spin, it wasn't because Members of Congress or lawyers from the Office of the Independent Counsel, or a gaggle of reporters suddenly decided to invade the President's privacy. No. This all came about because of a claim against the President from when he was the Governor of Arkansas.

During the discovery phase of the Paula Jones sexual harassment case against the President, Federal Judge Susan Webber Wright ordered him to answer questions under oath relating to any sexual relationship he may have had while Governor and President with subordinate female Government employees. These orders are common in similar cases, and the questions posed to President Clinton are questions routinely posed to defendants in civil rights sexual harassment cases every single day in courthouses throughout the land.

During the President's deposition in the Paula Jones case, he was asked questions about his relationship with Monica Lewinsky. The judge allowed these questions because they possibly could lead Mrs. Jones to discover if there was any pattern of conduct to help prove her case. The President repeatedly denied that he had a sexual relationship with Monica Lewinsky.

A few days later, the story about his relationship with Ms. Lewinsky broke in the press. A criminal investigation began to determine whether the President perjured himself in the Paula Jones sexual harassment case and obstructed justice by trying to defeat her claim against him by corrupt means.

On the afternoon of August 17, 1998, President Clinton raised his right hand and took an oath before the grand jury in their criminal investigation.

(Text of Videotape presentation:)

> William Jefferson Clinton, Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Note the incredibly solemn obligation of the oath the President took:

> Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth?

When the President made that solemn pledge, he was not obliging himself to tell the grand jury the partial truth, he was not obliging himself to tell the ''I didn't want to be particularly helpful'' truth; he was not obliging himself to tell the ''this is embarrassing so I think I'll fudge on it a little bit'' truth. He was required to tell the truth, the whole truth, and nothing but the truth, and he made that pledge in the name of God.

The attorneys for the Office of the Independent Counsel showed great deference to the President when they questioned him that day. The President's attorneys were allowed to be there with him during the entire proceeding so that he could confer with them at his leisure if he was unsure of how to respond to a question. As a matter of fact, the attorney who questioned the President encouraged him to confer with his lawyers if there arose in the President's mind any reason to hesitate before answering a question.

The following exchange occurred at the beginning of the President's testimony. The President was told:

> Normally, grand jury witnesses, while not allowed to have attorneys in the grand jury room with them, can stop and consult with their attorneys. Under our arrangement today, your attorneys are here and present for consultation and you can break to consult them as necessary. . . . Do you understand that, sir?

The President responded: ''I do understand that.''

As a practical matter, the President had three options as he appeared before the grand jury to testify.

First, the President could tell the truth about his true relationship with Miss Lewinsky.

However, the evidence will clearly show that the president rejected the option of telling the truth.

Second, the President knew he could invoke his Fifth Amendment privilege against self-incrimination.

The independent counsel's attorney explicitly reminded the President about his right to refuse to answer any question that might tend to incriminate him.

The President was asked:

> You have a privilege against self-incrimination. If a truthful answer to any question would tend to incriminate you, you can invoke the privilege and that invocation will not be used against you. Do you understand that?

The President's response was: ''I do.''

The President knew he had the right to refuse to answer any incriminating questions and that no legal harm would have come to him for doing so.

But he rejected this option, just as he rejected the option of telling the truth, the whole truth, and nothing but the truth.

Instead, he selected a third path.

He continued to lie about corrupt efforts to destroy Paula Jones' civil rights lawsuit against him.

If a trial is permitted before this body where live witnesses can be called, and where their credibility can be scrutinized, the evidence will show this distinguished body that the course the President charted was a course of perjury.

Despite the president's unique level of judicial sophistication and expertise, the attorneys at the grand jury were careful to make sure the president understood his responsibilities to tell the truth, the whole truth, and nothing but the truth.

They did this at the outset of his testimony, before any questions were asked that might tempt the president to lie under oath.

And they specifically warned him that if he were to lie or intentionally mislead the grand jury, he could face perjury and obstruction of justice charges, both of which are felonies under federal law.

This exchange occurred before the President's testimony:

Q: Mr. President, you understand that your testimony here today is under oath?

A: I do.

Q: And you understand that because you have sworn to tell the truth, the whole truth, and nothing but the truth, that if you were to lie or intentionally mislead the grand jury, you could be prosecuted for perjury and/or obstruction of justice?

A: I believe that's correct.

Q: Is there anything that . . . I've stated to you regarding your rights and responsibilities that you would like me to clarify or that you don't understand?

A: No, sir.

Despite this ominous warning, the prosecutors continued emphasizing the need for the President to resist lying to the grand jury.

Still intent on making sure the President understood his obligations, the attorneys further advised him:

Q: Mr. President, I would like to read for you a portion of Federal Rule of Evidence 603, which discusses the important function the oath has in our judicial system.

It says that the purpose of the oath is . . . calculated to awaken the witness' conscience and impress the witness' mind with the duty to tell the truth.

Could you please tell the grand jury what that oath means to you for today's testimony?

A: I have sworn an oath to tell the grand jury the truth, and that's what I intend to do.

When the President said in that very last answer I just read that he swore an oath to tell the grand jury ''the truth,'' the prosecutor immediately followed up with this question. Here is what he was told.

Question to the President:

Q: You understand that [the oath] requires you to give the whole truth, that is, a complete answer to each question, sir?

A: I will answer each question as accurately and fully as I can.

One would think these repetitive explanations would be enough to warn even the most legally unsophisticated witness about the need to treat a grand jury criminal investigation seriously, and the need to tell the whole truth at any cost.

No reasonable person could believe at this point that the President did not understand his obligations.

Yet, just to be sure, the attorneys again impressed on the President his solemn duty to tell the truth:

Question to the President:

Q: Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth on January 17th, 1998, in a deposition in the Paula Jones litigation; is that correct, sir?

A: I did take an oath then.

Q: Did the oath you took on that occasion mean the same to you then as it does today?

A: I believed then that I had to answer the questions truthfully. That is correct. . . .

Q: And it meant the same to you then as it does today?

A: Well, no one read me a definition then and we didn't go through this exercise then.

I swore an oath to tell the truth, and I believed I was bound to be truthful and I tried to be.

Having just received his ''refresher course'' on either ''taking the Fifth'' and remaining silent, *or* telling the whole truth and nothing but the truth, the president acknowledged he was required to tell the truth when he gave answers to questions 8 months earlier in the Paula Jones sexual harassment civil rights lawsuit.

Question to the President:

Q: At the Paula Jones deposition, you were represented by Mr. Robert Bennett, your counsel, is that correct?

A: That is correct.

Q: He was authorized by you to be your representative there, your attorney, is that correct?

A: That is correct.

Q: Your counsel, Mr. Bennett, indicated . . . and I'm quoting, ''The President intends to give full and complete answers as Ms. Jones *is entitled* to have.''

My question to you is, do you agree with your counsel that a plaintiff in a sexual harassment case is, to use his words, *entitled* to have the truth?

A: I believe that I was bound to give truthful answers, yes, sir.

Q: But the question is, sir, do you agree with your counsel that a plaintiff in a sexual harassment case is entitled to have the truth?

A. I believe when a witness is under oath in a civil case, or otherwise under oath, the witness should do everything possible to answer the questions truthfully.

Thus, the groundwork was laid for the President to testify under oath.

He knew how the rules worked respecting testimony before the grand jury.

If a question was vague or ambiguous, the President could ask for a clarification.

If he was unsure *how* to answer, or indeed *whether* to answer a question, he could stop the questioning, take a break, and consult privately with his attorneys who were present with him.

If giving an answer would tend to incriminate him, he could refuse to answer the question by claiming his Fifth Amendment rights.

But if, after all of this, he decided to give an answer, the answer he gave was *required* to be the truth, the whole truth, and nothing but the truth. And it was no different than the obligation when he testified in the Paula Jones deposition—the same oath, the same obligation.

Let's look at how the President chose to meet his obligation.

As noted in my opening remarks, the President's grand jury perjury is the basis for article I of the impeachment resolution. The evidence shows, and live witnesses clearly will demonstrate, that the President repeatedly committed perjury before the grand jury when he testified as a defendant in a sexual harassment civil rights lawsuit against him.

He intentionally failed in his lawful obligation to tell the truth in four general areas. First, the President committed perjury before the grand jury when he testified about the nature of his relationship with Monica Lewinsky, a 21-year-old White House intern who, by definition, was a subordinate Government employee.

On December 5, 1995, Monica Lewinsky's name appeared on the Paula Jones witness list. Later, the President was ordered by Federal Judge Susan Webber Wright to answer questions about Monica Lewinsky because the President was a defendant in a sexual harassment case.

At his deposition in the Paula Jones case, the President was shown a definition approved by Judge Wright of what constitutes sexual relations. I am going to read the definition that was presented to the President.

And let me say at the outset that I am going to slightly sanitize it. You have in your materials, Members of this body, a copy of the actual definition that was given to you, so you will be able to understand precisely what was put before the President.

Definition of sexual relations: ''For the purposes of this deposition, a person engages in sexual relations when the person knowingly engages in or causes contact with the [certain enumerated body parts] of any person with an intent to arouse or gratify the sexual desire of any person.''

Members of the Senate, just for clarification, I did not feel the need to actually relate to this body what those enumerated body parts are.

After reviewing the deposition, the President then denied that he ever had a sexual relationship with Monica Lewinsky. As we have already seen, from the day in January when the President testified in the Jones deposition until the day he appeared in August for his grand jury testimony, he vehemently denied ever having a sexual relationship with Monica Lewinsky.

Listen to the President addressing the American people on the subject of his credibility. The date is January 26, 1998, 5 days after the Lewinsky story broke in the press.

(Text of videotape presentation:)

''But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again.''

''I did not have sexual relations with that woman—Miss Lewinsky.''

''I never told anybody to lie—not a single time. Never. These allegations are false. And I need to go back to work for the American people.''

''Thank you.''

Beginning in January 1998, the President went on an 8-month campaign, both under oath and in the press, denying any sexual relationship with Monica Lewinsky in any way, shape, or form. But 8 months after his deposition testimony and these passionate denials, the tide had turned against his story. By August, Monica Lewinsky was now cooperating with the office of the independent counsel. If she was telling the truth in her sworn testimony, then the President's January denial in the Paula Jones case would

have been a clear case of him committing perjury and obstructing justice.

Why? Because she was describing, in very graphic detail, conduct occurring between her and the President that clearly fit the definition of ''sexual relations'' as used in the Paula Jones deposition—conduct that he repeatedly denied under oath.

So by the time the President sat down for his grand jury testimony to answer these questions under oath, he had put himself in a huge box. He could not continue the outright lie because Ms. Lewinsky had turned over her blue dress for DNA testing, and at the time of his grand jury testimony he didn't know what the results were of that FBI test. Under such circumstances, continuing the lie was too risky of a strategy even for the most accomplished of gamblers. But if he told the truth, his earlier perjury and obstruction of justice would have ended his Presidency. He was sure he would have been driven from office.

Remember that the President had actually authorized that a poll be taken for him by Dick Morris, and the poll wasn't just taken on whether the American people would forgive him for adultery; the President asked Dick Morris to poll in two other areas. He asked Dick Morris to poll whether the American people would forgive him for perjury and obstruction of justice. When he got the poll results back, he learned that the American people would forgive him for the adultery but they would not forgive him for perjury or for obstruction of justice.

Once he got the bad news from Dick Morris that his political career was over if he perjured himself, he told Dick Morris, ''We'll just have to win.'' So at his grand jury testimony, once the first question was asked about his relationship with Monica Lewinsky, the President produced a prepared statement and read from it. This prepared statement he read to the grand jury on August 17, 1998, was the linchpin in his plan to ''win.''

(Text of videotape presentation:)

Q. Mr. President, were you physically intimate with Monica Lewinsky?

A. Mr. Bittman, I think maybe I can save you and the grand jurors a lot of time if I read a statement, which I think will make it clear what the nature of my relationship with Ms. Lewinsky was and how it related to the testimony I gave, what I was trying to do in that testimony. And I think it will perhaps make it possible for you to ask even more relevant questions from your point of view. And, with your permission, I'd like to read that statement.

Q. Absolutely. Please, Mr. President.

A. When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.

These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.

I regret that what began as a friendship came to include this conduct. I take full responsibility for my actions. While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.

I will try to answer to the best of my ability other questions, including questions about my relationship with Ms. Lewinsky, questions about my understanding of the term of sexual relations, as I understood it to be defined at my January 17th, 1998, deposition, and questions concerning alleged subordination of perjury, obstruction of justice and intimidation of witnesses.

That . . . is my statement.

Beyond that statement, the President generally refused to answer specific questions about his relationship with Monica Lewinsky. The President used that prepared statement as a substitute answer for specific questions about his conduct with Ms. Lewinsky 19 separate times during his testimony before the grand jury. The purpose of the prepared statement was to avoid answering the types of specific harassment lawsuit questions for which the U.S. Supreme Court and Judge Susan Webber Wright had earlier cleared the way. The evidence shows the President used this prepared statement in order to justify the perjurious answers he gave at his deposition which were intended to affect the outcome of the Paula Jones case. The fact that this statement was prepared in advance shows his intent to mislead the grand jury in this very area. Ironically, this prepared statement was supposed to inoculate the President from perjury. Instead, it opened him up to 19 more examples of giving perjurious, false, and misleading answers under oath.

For example, in that prepared statement, the President said his sexual contact with Ms. Lewinsky began in 1996, and not in 1995, as Ms. Lewinsky had testified. This was not a mere slip of memory over a meaningless timeframe; there is a discrepancy in the dates for a reason. You see, under the President's version, in 1996 Monica Lewinsky was a paid White House employee. Under the facts as testified to by Ms. Lewinsky, when the relationship really began in 1995, she was not a paid employee at the White House, she was a young, 21-year-old White House intern.

The concept of a President having a sexual relationship in the White House with a young intern less than half his age was a public relations disaster for the President, as everyone vividly remembers. It is clear that the President somehow viewed the concept as less combustible if he could take the ''young intern'' phrase out of the public lexicon. Yet, in his deposition testimony, the President admitted he met her and saw her when she was an intern working in the White House in November 1995, during the Government shutdown. Monica Lewinsky confirmed this. In fact, she testified that the first time she ever spoke to the President was on November 15, 1995, during the Government shutdown. And she also said that the very first time that she ever spoke to the President was the same day he invited her back to the Oval Office and began a sexual relationship with her.

It is obvious that the reference in the President's prepared statement to the grand jury that this relationship began in 1996 was intentionally false.

The President's statement was intentionally misleading when he described being alone with Ms. Lewinsky only on certain occasions. Actually, they were alone in the White House at least 20 times and had at least 11 sexual encounters at the White House. The President attempted to use language that subtly minimized the number of times they were alone.

The President's statement was intentionally misleading when he described his telephone conversations with Monica Lewinsky as ''occasional.'' In fact, there are at least 55 documented telephone conversations between the President of the United States and the young intern. And, without going into further graphic detail, the evidence shows that, at least on 17 of those occasions, those conversations included much more than mere sexual banter, as the President described it.

The most unsettling part of that statement was uttered near the close. Listen to what the President said: ''I regret that what began as a friendship came to include this conduct.'' ''Friendship.'' The very day the President met and spoke with a young White House intern for the first time was the day he invited her back to the Oval Office to perform sex acts on him.

In fact, Monica Lewinsky said that after their sexual relationship was over a month old, she didn't even think the President knew her name. The President's statement about his relationship with Monica Lewinsky beginning as a friendship is a callous and deceptive mischaracterization of how his relationship with this young woman really began.

Thus, the President began his deposition testimony by reading a false and misleading statement to the grand jury. He then used that statement as an excuse not to answer specific questions that were directly relevant to allowing the grand jury to complete its criminal investigation. Had he given specific answers to specific questions about the true nature of his relationship, the grand jury would have been able to learn the whole truth about whether the President perjured himself and obstructed justice in the Paula Jones sexual harassment civil rights lawsuit.

Paula Jones had a legal and constitutional right to learn if the President, while as President or Governor, used his position of power and influence to get sexual favors from subordinate female employees in the workplace or to reward subordinate female employees

for granting such favors to him. Instead, the President intentionally provided on 19 separate occasions a misleading statement instead of giving a true characterization of his conduct, as required by his oath.

He had no legal or constitutional right to refuse to answer such questions without claiming a fifth amendment privilege and then allowing Judge Wright to make a determination as to whether the privilege applied. The President's preliminary statement delivered 19 times was an initial shot across the perjury bow offered by the President throughout his grand jury testimony. It showed a premeditated effort to thwart the grand jury's criminal investigation, to justify his prior wrongdoing, and to deny Paula Jones her constitutional right to bring forward her claim in a court of law.

The President gave further perjurious, false, and misleading testimony regarding the nature and details of his relationship with Monica Lewinsky. One of the ways the President tried to justify his perjurious answers in the Jones deposition about his relationship was to deconstruct the English language. Remember, the President was shown a copy of the definition of ''sexual relations'' that Judge Wright approved in his January deposition. This definition was directed by Judge Wright to be used as the guide under which the President was to answer questions about his relationship with Monica Lewinsky. After carefully reviewing that definition, the President said under oath that it did not apply to his relationship with her.

It is important to remember that at the time the President testified that he never had sexual relations with Monica Lewinsky, this was not a risky perjury strategy. After all, he had successfully used Vernon Jordan to get Monica Lewinsky a good job in New York, despite her questionable qualifications. She had filed a false affidavit in the Jones case denying a sexual relationship with the President. She and the President had previously agreed to comprehensive cover stories to deny the truth of their relationship if anyone ever confronted them about it. And the bevy of gifts the President had given to Monica were now nestled safely under Betty Currie's bed so that they would never be produced to or discovered by Mrs. Jones' attorneys in compliance with their subpoena to have those gifts produced.

The perjury strategy was a safe bet in January at his deposition, but it soon turned upside-down for the President. By the time of his grand jury testimony in August, the President knew things had changed drastically, but not in his favor. In light of Ms. Lewinsky's cooperation with the independent counsel, the impending FBI report on the DNA testing on the blue dress, and the President's decision not to confess to his crime, the President needed to come up with some excuse. Here is how the President, at his August grand jury appearance, tried to explain away his January deposition denial of engaging in sexual relations with Monica Lewinsky.

(Text of video tape presentation:)

Q. Did you understand the words in the first portion of the [Jones deposition] exhibit, Mr. President, that is, ''For the purposes of this deposition, a person engages in 'sexual relations' when the person knowingly engages in or causes . . .''?

Did you understand, do you understand the words there in that phrase?

A. Yes . . . I can tell you what my understanding of the definition is, if you want . . . My understanding of this definition is it covers contact by the person being deposed with the enumerated areas, if the contact is done with an intent to arouse or gratify. That's my understanding of the definition.

Q. What did you believe the definition to include and exclude? What kinds of activities?

A. I thought the definition included any activity by the person being deposed, where the person was the actor and came into contact with those parts of the bodies with the purpose or intent of gratification, and excluded any other activity. For example, kissing's not covered by that, I don't think.

Q. Did you understand the definition to be limited to sexual activity?

A. Yes, I understood the definition to be limited to physical contact with those areas of the body with the specific intent to arouse or gratify. That's what I understood it to be.

Q. What specific acts did the definition include, as you understood the definition on January 17th, 1998?

A. Any contact with the areas that are mentioned, sir. If you contacted those parts of the body with an intent to arouse or gratify, that is covered.

Q. What did you understand . . .

A. The person being deposed. If the person being deposed contacted those parts of another person's body with an intent to arouse or gratify, that was covered.

If that answer sounds confusing to you, there is a reason for that. It was meant to be.

What the President now was saying to the grand jury is that during their intimate relationship in the Oval Office, Monica Lewinsky had sexual relations with him; he didn't have sexual relations with her.

Consider that for a minute.

The President is asking everyone to believe that between the years 1995 and 1997, while Monica Lewinsky was engaged in a pattern of explicit availability for him as she described in her testimony, the President carefully avoided having any intimate contact with her as described in Judge Wright's very detailed definition.

And, according to the President, since he never intimately touched her as described in the definition—she only touched him—then he was under no obligation to answer questions in the harassment suit about Monica Lewinsky as Federal Judge Susan Webber Wright ordered him to do under oath.

Not only does the President's claim strain all boundaries of common sense, it is directly in conflict with Monica Lewinsky's detailed and corroborated accounts of their relationship.

As if this ridiculous expansion of Judge Wright's definition of what constituted sexual relations wasn't enough, the President then decided to take his interpretation of the judge's definition one step further. He added a new element as to why he claimed the definition didn't apply to him.

When asked again, at his grand jury testimony, what he thought the definition of sexual relations meant, here is the new twist that the President came up with.

(Text of videotape presentation:)

A. As I remember from the previous discussion this was some kind of definition that had something to do with sexual harassment. So, that implies it's forcing to me. And I—there was never any issue of forcing in the case involving—well, any of these questions they were asking me. They made it clear in this discussion I just reviewed that what they were referring to was intentional sexual conduct, not some sort of forcible abusive behavior.

So I basically—I don't think I paid any attention to it because it appeared to me that that was something that had no reference to the facts that they admitted they were asking me about.

The President now took the position that the definition didn't apply to him because it would only have applied if he forced himself on Monica Lewinsky. Remember the definition. And I will read it again:

For the purposes of this deposition, a person engages in sexual relations when the person knowingly engages in or causes—

(1) contact with the [certain enumerated body parts] of any person with an intent to arouse or gratify the sexual desire of any person[.]

As you can see, this straightforward definition did not include the subject of force or harassment.

Yet when the independent counsel's attorney tried to clarify the President's newfound position, the President gave no ground. He simply plowed ahead with his new interpretation.

(Text of videotape presentation:)

Q. I'm just trying to understand, Mr. President. You indicated that you put the definition in the context of a sexual harassment case . . .

A. No, no, I think it was not in the context of sexual harassment. I just re-read those four pages, which obviously the grand jury doesn't have. But there was some reference to the fact that this definition apparently bore some—had some connection to some definition in another context and that this was being used not in that context, not necessarily in the context of sexual harassment.

So I would think that this causes would be—means to force someone to do something. That's what I read it. That's the only point I'm trying to make. Therefore, I did not believe that any one had ever suggested that I had forced anyone to do anything and I did not do that. And so, that could not have had any bearing on any questions relating to Ms. Lewinsky.

The evidence clearly shows from Monica Lewinsky's sworn testimony that the President deconstructed the English language to deny Paula Jones the opportunity to find out if other witnesses were out there who would help bolster her case against the President, and she was legally entitled to do that under our sexual harassment laws.

No reasonable interpretation of the President's testimony could be made

that he fulfilled his legal obligation to testify to the truth, the whole truth and nothing but the truth.

His statements were perjurious. They were designed to defeat Paula Jones' right to pursue her sexual harassment civil rights lawsuit against this President.

And by the way, in his testimony, the President conceded that if Monica Lewinsky's recitation of the facts was true, he would have perjured himself both in his deposition testimony and in repeating his denials before the grand jury. Listen to this.

(Text of videotape presentation:)

Q. And you testified that you didn't have sexual relations with Monica Lewinsky in the Jones deposition under that definition, correct?

A. That's correct, sir.

Q. If the person being deposed touched the genitalia of another person, would that be in—with the intent to arouse the sexual desire, arouse or gratify, as defined in definition one, would that be, under your understanding, then and now, sexual relations?

A. Yes, sir.

Q. Yes, it would?

A. Yes, it would if you had a direct contact with any of these places in the body, if you had direct contact with intent to arouse or gratify, that would fall within the definition.

Q. So you didn't do any of those three things with Monica Lewinsky?

A. You are free to infer that my testimony is that I did not have sexual relations as I understood this term to be defined.

So, who is telling the truth? The only way to really know is to bring forth the witnesses, put them under oath and give each juror, each Member of this body the opportunity to make that determination of credibility, because the record shows that Monica Lewinsky delivered consistent and detailed testimony under oath regarding many specific encounters with the President that clearly fell within the definition of sexual relations from the Jones deposition.

Monica Lewinsky's memory and accounts of these incidents are amazingly corroborated by her recollection of dates, places and phone calls which correspond with the official White House entrance logs and phone records.

Monica Lewinsky's testimony is further corroborated through DNA testing and the testimony of her friends and family members, to whom she made near contemporaneous statements about the relationship.

Most importantly, Monica Lewinsky had every reason to tell the truth to the grand jury. She was under a threat of prosecution for perjury, not only for her grand jury testimony, but also for the false affidavit she filed on behalf of the President in the Jones case.

She knew then and she knows today that her immunity agreement could be revoked at any time if she lies under oath or if she lied under oath in the past. Truthful testimony was and remains a condition for her immunity from prosecution.

By way of contrast, the President was under obligation to give complete answers. Instead, he offered false answers that violated his oath to tell the truth, the whole truth and nothing but the truth. And incidentally, during his grand jury testimony, the President actually suggested that he had a right to give less than complete answers. Why? Because he questioned the motives of Ms. Jones in bringing her lawsuit.

If this standard is acceptable, what does that do to the search for the truth when an oath is administered in a courtroom to one who claims to question the ''motives'' of their opponent in a trial? This suggestion has no basis in law. And it is destructive to the truth-seeking function of the courts.

The President's perjurious legal hair-splitting used to bypass the requirement of telling the complete truth denied Paula Jones her constitutional right to have her day in court and an orderly disposition of her claim in the sexual harassment case against the President.

To dismiss this conduct with a shrug because it is ''just about sex'' is to say that the sexual harassment laws protecting women in the workplace do not apply to powerful employers or others in high places of privilege. As one wag recently noted, if this case is ''just about sex,'' then robbery is just a disagreement over money.

Next, the President perjured himself before the grand jury when he repeated previous perjured answers he gave in the deposition of the Paula Jones case. In his grand jury testimony in August, the President admitted he had to tell the truth, the whole truth, and nothing but the truth when he testified in the Paula Jones deposition.

The question to the President:

Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth on January 17th, 1998, in a deposition in the Paula Jones litigation; is that correct, sir?

Answer:

I did take an oath then.

Question:

Did the oath you took on that occasion mean the same to you then as it does today?

Answer:

I believe then that I had to answer the questions truthfully; that is correct.

When the President testified in his January deposition, he knew full well that Monica Lewinsky's affidavit she filed in the case stating that they never had sexual relations was false. Yet, when this affidavit was shown to him at the deposition, he testified that her false claim was, in his words, ''absolutely true.''

He knew that the definition of ''sexual relations'' used in the earlier Jones deposition was meant to cover the same activity that was mentioned in Monica Lewinsky's false affidavit. Rather than tell the complete truth, the President lied about the relationship, the cover stories, the affidavit, the subpoena for gifts, and the search for a job for Ms. Lewinsky.

Later he denied to the grand jury in August that he committed any perjury during his January deposition. This assertion before the grand jury that he testified truthfully in the Jones case is in and of itself perjurious testimony because the record is clear he did not testify truthfully in January in the Paula Jones case. He perjured himself.

Thus, when the President testified before the grand jury in August, he knew he had given perjurious answers in the January deposition. If the President really thought, as he testified, that he had told the truth in his January deposition testimony, he would not have related a false account of events to his secretary, Betty Currie, whom he knew, by his own admission, might be called as a witness in the Jones case; he would not have repeatedly denied he was unable to recall being alone with Monica Lewinsky; and he would not have told false accounts to his aides whom he knew, by his own admission, were potential witnesses in later proceedings.

The evidence of perjury and obstruction of justice is overwhelming in this case. He continued to use illegal means to defeat Ms. Jones' constitutional right to bring her harassment case against him.

Next, the President committed perjury before the grand jury when he testified that he did not allow his attorney to make false representations while referring to Monica Lewinsky's affidavit before the judge in the Jones case, an affidavit that he knew was false.

Remember, at the Jones deposition in January 1998, Monica Lewinsky previously had filed a false affidavit that said, ''I have never had a sexual relationship with the President'' and that she had no relevant information to provide on the subject to Ms. Jones.

When Ms. Jones' attorneys attempted to question the President about his relationship with Ms. Lewinsky, the President's attorney, Mr. Bennett, objected to him even being questioned about the relationship.

Mr. Bennett claimed that in light of Monica Lewinsky's affidavit saying that there was no sexual relationship between the two, and there never had been, that Paula Jones' lawyer had no good faith belief even to question the President about a relationship with Monica Lewinsky.

Listen to what Mr. Bennett told Judge Wright in the deposition.

(Text of videotape presentation:)

Mr. BENNETT. Your Honor, excuse me, Mr. President, I need some guidance from the Court at this point. I'm going to object to the innuendo. I'm afraid, as I say, that this will leak. I don't question the predicates here. I question the good faith of counsel, the innuendo in the question. Counsel is fully aware that Ms. Jane Doe 6 [Monica 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, and yet listening to the innuendo in the questions——

Judge WRIGHT. No, just a minute, let me make my ruling. I do not know whether

counsel is basing this question on any affidavit, but I will direct Mr. Bennett not to comment on other evidence that might be pertinent and could be arguably coaching the witness at this juncture. Now, Mr. Fisher is an officer of this court, and I have to assume that he has a good faith basis for asking the question. If in fact he has no good faith basis for asking this question, he could later be sanctioned. If you would like, I will be happy to review in camera any good faith basis he might have.

Mr. BENNETT. Well, Your Honor, with all due respect, I would like to know the proffer. I'm not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Jane Doe 6's (Monica Lewinsky's) affidavit, so I have not told him a single thing he doesn't know, but I think when he asks questions like this where he's sitting on an affidavit from the witness, he should at least have a good faith proffer.

Judge WRIGHT. Now, I agree with you that he needs to have a good faith basis for asking the question.

Mr. BENNETT. May we ask what it is, Your Honor?

Judge WRIGHT. And I'm assuming that he does, and I will be willing to review this in camera if he does not want to reveal it to counsel.

Mr. BENNETT. Fine.

Mr. FISHER. I would welcome an opportunity to explain to the Court what our good faith basis is in an in camera hearing.

Judge WRIGHT. All right.

Mr. FISHER. I would prefer that we not take the time to do that now, but I can tell the Court I am very confident there is substantial basis.

Judge WRIGHT. All right, I'm going to permit the question. He's an officer of the Court, and as you know, Mr. Bennett, this Court has ruled on prior occasions that a good faith basis can exist notwithstanding the testimony of the witness, of the deponent, and the other party.

May I say as an aside that by presenting that, I am in no way questioning the quality or the integrity of the President's attorney, Mr. Bennett, on that day. Mr. Bennett was doing his job as the President's lawyer. He had an affidavit from Monica Lewinsky that said none of this ever happened. And so I hope that none of you will assume that by my showing this deposition tape today that I am trying to draw any unfair inference against the President's attorney on that date. But you can tell from what you have just observed that Mr. Bennett was using Monica Lewinsky's false affidavit in an attempt to stop questioning of the President about Ms. Lewinsky.

What did the President do during that exchange? He sat mute. He did not say anything to correct Mr. Bennett, even though the President knew that the affidavit upon which Mr. Bennett was relying was utterly false.

Judge Wright overruled Mr. Bennett's objection and allowed the questioning about Monica Lewinsky to proceed.

Later in the deposition, Mr. Bennett read to the President the portion of Ms. Lewinsky's affidavit in which she denied having a sexual relationship with the President. Mr. Bennett then asked the President, who was under oath, if Ms. Lewinsky's statement that they never had a sexual relationship was true and accurate.

Listen to the President as he responds.

(Text of videotape presentation:)

Q: In paragraph eight of her affidavit, she says this, ''I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for reflecting a sexual relationship.''

Is this a true and accurate statement as far as you know it?

A: That is absolutely true.

The President's answer: ''That is absolutely true.''

When President Clinton was asked during his grand jury testimony 8 months later how he could have sat silently at his earlier deposition while his attorney made the false statement that ''there is no sex of any kind,'' in any manner, shape, or form, to Judge Wright, the President first said that he was not paying ''a great deal of attention'' to Mr. Bennett's comments.

(Text of videotape presentation:)

Q. Mr. President, I want to—before I go into a new subject area, briefly go over something you were talking about with Mr. Bittman. The statement of your attorney, Mr. Bennett, at the Paula Jones deposition—counsel is fully aware—it's page 54, line 5. ''Counsel is fully aware that Ms. Lewinsky is filing, has an affidavit, which they were in possession of, saying that there was absolutely no sex of any kind in any manner, shape or form with President Clinton.'' That statement was made by your attorney in front of Judge Susan Webber Wright.

A. That's correct.

Q. Your—that statement is a completely false statement. Whether or not Mr. Bennett knew of your relationship with Ms. Lewinsky, the statement that there was ''no sex of any kind in any manner, shape or form with President Clinton'' was an utterly false statement. Is that correct?

A. It depends upon what the meaning of the word ''is'' means. If ''is'' means is, and never has been, that's one thing. If it means, there is none, that was a completely true statement. But as I have testified—I'd like to testify again—this is —it is somewhat unusual for a client to be asked about his lawyer's statements instead of the other way around. I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

The President added to this explanation he was giving to the attorney questioning him. This is what the President said: ''And I'm not sure . . . as I sit here today that I sat there and followed all these interchanges between the lawyers. I'm quite sure that I didn't follow all the interchanges between the lawyers all that carefully. And I don't really believe, therefore, that I can say Mr. Bennett's testimony or statement is testimony and is imputable to me. I didn't—I don't know that I was really paying attention, paying that much attention to him.''

This denial of the President while his attorney was proffering a false statement to Judge Wright in an effort to keep the Paula Jones lawyers from even questioning the President about his relationship with Monica Lewinsky simply does not withstand the test of truth. The videotape of the President's January deposition shows the President paying very close attention to Mr. Bennett when Mr. Bennett was making the statement about ''no sex of any kind.''

View again the video clip of the President during Mr. Bennett's argument that the Jones lawyers have no right to ask questions about Monica Lewinsky, only this time watch the President as he focuses on his lawyer speaking about one of the most important subjects he has ever faced in his entire life—the survival of his Presidency.

(Text of videotape presentation:)

Mr. BENNETT. Your Honor, excuse me, Mr. President, I need some guidance from the Court at this point. I'm going to object to the innuendo. I'm afraid, as I say, that this will leak. I don't question the predicates here. I question the good faith of counsel, the innuendo in the question. Counsel is fully aware that Ms. Jane Doe 6 [Monica 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, and yet listening to the innuendo in the questions——

Judge WRIGHT. No, just a minute, let me make my ruling. I do not know whether counsel is basing this question an any affidavit, but I will direct Mr. Bennett not to comment on other evidence that might be pertinent and could be arguably coaching the witness at this juncture. Now, I Mr. Fisher is as officer of this court, and I have to assume that he has a good faith basis for asking the question. If in fact he has no good faith basis for asking this question, he could later be sanctioned. If you would like, I will be happy to review in camera any good faith basis he might have.

Mr. BENNETT. Well, Your Honor, with all due respect, I would like to know the proffer. I'm not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Jane Doe 6's (Monica Lewinsky's) affidavit, so I have not told him a single thing he doesn't know, but I think when he asks questions like this where he's sitting on an affidavit from the witness, he should at least have a good faith proffer.

Judge WRIGHT. Now, I agree with you that he needs to have a good faith basis for asking the question.

Mr. BENNETT. May we ask what it is, Your Honor?

Judge WRIGHT. And I'm assuming that he does, and I will be willing to review this in camera if he does not want to reveal it to counsel.

Mr. BENNETT. Fine.

Mr. FISHER. I would welcome an opportunity to explain to the Court what our good faith basis is in an in camera hearing.

Judge WRIGHT. All right.

Mr. FISHER. I would prefer that we not take the time to do that now, but I can tell the Court I am very confident there is substantial basis.

Judge WRIGHT. All right, I'm going to permit the question. He's an officer of the Court, and as you know, Mr. Bennett, this Court has ruled on prior occasions that a good faith basis can exist notwithstanding the testimony of the witness, of the deponent, and the other party.

By the way, lest there be any doubt in the minds of any Member of this body as to whom the President was

looking at and focusing at, we are fully prepared to bring in a witness for you who was present at the deposition and who will draw a map for every Member of this body and show the location of the President and every other person around the table.

Just in case the President's ''I wasn't paying any attention'' excuse didn't fly, the President, in his grand jury testimony, decided to try another argument on for size. He suggested that when Mr. Bennett made his statement about ''there is no sex of any kind,'' the President was focusing on the meaning of the word ''is.''

He then said that when Mr. Bennett made the assertion that ''there is no sex of any kind,'' Mr. Bennett was speaking only in the present tense, as if the President understood that to mean ''there is no sex'' because there was no sex occurring at the time Mr. Bennett's remark was made.

The President stated, ''It depends on what the meaning of the word 'is' is.''

And that if it means there is none, that was a completely true statement. Listen and watch again to the same video clip from the President's grand jury testimony that we saw a few moments ago. Only this time, pay close attention to the President's excuse as to why he did not have to comply with the truth, because in his mind there is some question as to what the meaning of the word ''is'' is.

(Text of videotape presentation:)

Q. Mr. President, I want to, before I go into a new subject area, briefly go over something you were talking about with Mr. Bittman. The statement of your attorney, Mr. Bennett, at the Paula Jones deposition ''counsel is fully aware''—it's page 54 line 5.—''counsel is fully aware that Ms. Lewinsky has filed, has an affidavit which they were in possession of saying that there is no sex of any kind in any manner, shape or form, with President Clinton?'' That statement is made by your attorney in front of Judge Susan Webber Wright, correct?

A. That's correct.

Q. That statement is a completely false statement. Whether or not Mr. Bennett knew of your relationship with Ms. Lewinsky, the statement that there was ''no sex of any kind in any manner, shape or form, with President Clinton,'' was an utterly false statement. Is that correct?

A. It depends on what the meaning of the word ''is'' is. If ''is'' means is, and never has been, that is one thing. If it means there is none, that was a completely true statement. But, as I have testified, and I'd like to testify again, this is—it is somewhat unusual for a client to be asked about his lawyer's statements, instead of the other way around. I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

In essence, here is what the President says in his own defense: I wasn't paying any attention to what my lawyer was saying when he offered the false affidavit on my behalf to the judge. However, if I was paying attention, I was focusing on the very narrow definition of what the word ''is'' is and the tense in which that was presented.

Now, I am a former prosecutor, and that is like the murderer who says: I have an ironclad alibi. I wasn't at the crime scene, I was home with my mother eating apple pie. But if I was there, it is a clear case of self-defense.

The President now asks this body of lawmakers to give acceptance to these ludicrous definitions of ordinary words and phrases. He asks you to believe this is what he really thought when he was asked if he ever had sexual relations with Monica Lewinsky, and when he was asked about her false affidavit.

By the way, as to the President's ''tense'' argument that he presented about what the meaning of the word ''is'' is, this fails to take into account another important fact. The false affidavit of Monica Lewinsky that Mr. Bennett was waiving that day before the judge made no such distinction. Her affidavit never said in the present tense, ''I am not now having a sexual relationship with the President.'' Her affidavit said, ''I have never had a sexual relationship with the President.''

The President perjured himself when he said that Mr. Bennett's statement that there was no sex of any kind was ''absolutely true,'' depending on what the meaning of the word ''is'' is.

The President did not admit to the grand jury that Mr. Bennett's statement was false, because to do so would have been to admit that the term ''sexual relations'' as used in Ms. Lewinsky's affidavit meant ''no sex of any kind.'' Admitting that would be to admit that he perjured himself previously in his grand jury testimony and in his deposition.

Now, interestingly, Ms. Lewinsky doesn't bother attempting to match the President's linguistic deconstructions of the English language. After she was granted immunity, Monica Lewinsky testified under oath that the part of her affidavit denying a sexual relationship with the President was a lie.

I read from page 204 of Ms. Lewinsky's testimony:

Question: Let me ask you a straightforward question. Paragraph 8—

Referring to her affidavit—

at the start says, ''I have never had a sexual relationship with the President.'' Is that true?

Answer: No.

Thus, the President engaged in an evolving series of lies during his sworn testimony in order to cover previous lies he told in sworn testimony, and to conceal his conduct that obstructed justice in the Paula Jones sexual harassment suit against him. He did this to deny Paula Jones her constitutional right to bring a case of sexual harassment against him, and to sidetrack the investigation of the Office of Independent Counsel into his misconduct.

Finally, the President committed perjury before the grand jury when he testified falsely about his blatant attempts to influence the testimony of potential witnesses and his involvement in a plan to hide evidence that had lawfully been subpoenaed in the civil rights action brought against him.

This perjurious testimony breaks down into four categories:

First, he made false and misleading statements to the grand jury concerning his knowledge of Monica Lewinsky's false affidavit.

Second, he made false and misleading statements to the grand jury when he related a false account of his interaction with his secretary, Betty Currie, when he reasonably knew she might later be called before the grand jury to testify.

Third, he made perjurious and misleading statements to the grand jury when he denied engaging in a plan to hide evidence that had been subpoenaed in the Jones civil rights case against him.

Finally, he made perjurious and misleading statements to the grand jury concerning statements he made to his aides about Monica Lewinsky when he reasonably knew these aides might be called later to testify.

Let's look briefly at the first area.

The President made false and misleading statements before the grand jury regarding his knowledge of the contents of Monica Lewinsky's affidavit.

As we now know conclusively, Monica Lewinsky filed an affidavit in the Jones case in which she denied ever having a sexual relationship with the President, and that was a lie when it was filed.

Remember—during his deposition in the Jones case, the President said that Ms. Lewinsky's denial of ever having a sexual relationship was ''absolutely true.''

Monica Lewinsky later testified that she is ''100 percent sure'' that the President suggested she might want to sign an affidavit to avoid testifying in the case of Jones versus Clinton. In fact, the President gave the following testimony before the grand jury:

And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.

This testimony is false because it could not be possible that Monica Lewinsky could have filed a truthful affidavit in the Jones case, an affidavit acknowledging a sexual relationship with the President, that would have helped her to avoid having to appear as a witness in the Paula Jones case.

The attorneys for Paula Jones were seeking evidence of sexual relationships with the President, and ones that the President might have had with other State or Federal employees.

This information was legally obliged to be produced by the President to Paula Jones in her sexual harassment lawsuit against him to help prove her claim.

Judge Susan Webber Wright had already ruled that Paula Jones was entitled to this information from the President for purposes of discovery.

If Monica Lewinsky had filed a truthful affidavit that acknowledged a sexual relationship with the President,

then she certainly could not have avoided having to testify in a deposition.

The President knew this.

His grand jury testimony on this subject is perjury.

Next, the President provided false testimony concerning his conversations with his personal secretary Betty Currie about Monica after he testified in the Jones deposition.

Recall Mr. Manager HUTCHINSON's presentation a short time ago. The President had just testified on January 17, 1998, in the Paula Jones deposition. He said he could not recall being alone with Monica Lewinsky and that he did not have a sexual relationship with her.

After his testimony, on the very next day and in a separate conversation with her a few days later, President Clinton made statements to Ms. Currie that he knew were false.

He made them to coach Ms. Currie and to influence her potential future testimony.

He coached her by reciting inaccurate answers to possible questions that she might be asked if she were called to testify in the Paula Jones case.

By the way: the President discussed his deposition testimony with Ms. Currie in direct violation of Judge Wright's order that he not discuss his testimony with anyone. Judge Wright warned the President at the deposition:

> Before he leaves, I want to remind him, as the witness in this matter, . . . that this case is subject to a Protective Order regarding all discovery, . . . [A]ll parties present, including . . . the witness are not to say anything whatsoever about the questions they were asked, the substance of the deposition, . . ., any details . . .

After he coached her, the President wanted Betty Currie to be a witness.

During his deposition testimony, the President did everything he could to suggest to the Jones lawyers they needed to depose Betty Currie. He did this by referring to her over and over again as the one with the information they need for information about him and Monica Lewinsky.

He stated to the Jones lawyer in his deposition, for example, that:

> . . . the last time he had seen Ms. Lewinsky was when she had come to the White House to see Ms. Currie; that Ms. Currie was present when the President had made a joking reference about the Jones case to Ms. Lewinsky; that Ms. Currie was his source of information about Vernon Jordan's assistance to Ms. Lewinsky; and that Ms. Currie had helped set up the meetings between Ms. Lewinsky and Mr. Jordan regarding her move to New York.

Because the President referred so often to Ms. Currie, it is obvious he wanted her to become a witness in the Jones matter, particularly if specific allegations of the President's relationship with Ms. Lewinsky came to light.

According to Ms. Currie, President Clinton even told her at some point that she might be asked about Monica Lewinsky.

Two and a half hours after he returned from the Paula Jones deposition, President Clinton called Ms. Currie at home and asked her to come to the White House the next day, a Sunday.

Ms. Currie testified that it was rare for the President to ask her to come in on a Sunday.

At about 5:00 p.m. on Sunday, January 18, Ms. Currie went to meet with President Clinton at the White House.

Listen to what Betty Currie told the grand jury:

> He said that he had had his deposition yesterday, and they had asked several questions about Monica Lewinsky. And I was a little shocked by that or—(shrugging). And he said—I don't know if he said—I think he may have said, ''There are several things you may want to know,'' or ''There are things—'' He asked me some questions.

According to Ms. Currie, the President then said to her in rapid succession:

> You were always there when she was there, right? We were never really alone.
>
> You could see and hear everything.
>
> Monica came on to me, and I never touched her, right?
>
> She wanted to have sex with me, and I can't do that.

Ms. Currie indicated that these remarks were ''more like statements than questions.''

Ms. Currie concluded that the President wanted her to agree with him.

Ms. Currie also said that she felt the President made these remarks to see her reaction.

Ms. Currie said that she indicated her agreement with each of the President's statements, although she knew that the President and Ms. Lewinsky had in fact been alone in the Oval Office and in the President's study.

Ms. Currie also knew that she could not, and did not hear or see the President and Ms. Lewinsky while they were alone.

Ms. Currie testified that two or three days after her conversation with the President at the White House, he again called her into the Oval Office to discuss this.

She described their conversation as, quote, ''sort of a recapitulation of what we had talked about on Sunday—you know, I was never alone with her''—that sort of thing.''

> Q: [To Ms. Currie] Did he pretty much list the same?
>
> A. To my recollection, sir, yes.

In his grand jury testimony, the president was asked why he might have said to Ms. Currie in their meeting on that Sunday ''we were never alone together, right?'' and ''you could see and hear everything.''

Here is how the President testified:

> [W]hat I was trying to determine was whether my recollection was right and that she was always in the office complex when Monica was there, and whether she thought she could hear any conversations we had, or did she hear any—I was trying to—I knew . . . to a reasonable certainty that I was going to be asked more questions about this. I didn't really expect you to be in the Jones case at the time. I thought what would happen is that it would break in the press, and I was trying to get the facts down. I was trying to understand what the facts were.

The President told the grand jury that he was putting those questions to Betty Currie on that Sunday to refresh his recollection and trying to pin down what the facts were.

Later, the President stated that he was referring to a larger area than simply the room where he and Ms. Lewinsky were located. He also testified that his statements to Ms. Currie were intended to cover a limited range of dates.

Listen to the President's answer.

> A. [W]hen I said, we were never alone, right, I think I also asked her a number of other questions, because there were several times, as I'm sure she would acknowledge, when I either asked her to be around. I remember once in particular when I was talking with Ms. Lewinsky when I asked Betty to be in the, actually, in the next room in the dining room, and, as I testified earlier, once in her own office. But I meant that she was always in the Oval Office complex, in that complex, while Monica was there. And I believe that this was part of a series of questions I asked her to try to quickly refresh my memory. So, I wasn't trying to get her to say something that wasn't so. And, in fact, I think she would recall that I told her to just relax, go in the grand jury and tell the truth when she had been called as a witness.

Now the President was treating the grand jury to his construction of what the word ''alone'' means to him.

When asked he answered:

> it depends on how you define alone, and ''there were a lot of times when we were alone, but I never really thought we were.

The President also was asked about his specific statement to Betty Currie that ''you could see and hear everything.'' He testified that he was uncertain what he intended by that comment:

Question to the President:

> Q: When you said to Mrs. Currie, you could see and hear everything, that wasn't true either, was it, as far as you knew. . . .
>
> A. My memory of that was that, that she had the ability to hear what was going on if she came in the Oval Office from her office. And a lot of times, you know, when I was in the Oval Office, she just had the door open to her office. Then there was—the door was never completely closed to the hall. So I think there was—I'm not entirely sure what I meant by that, but I could have meant that she generally would be able to hear conversations, even if she couldn't see them. And I think that's what I meant.

The President also was asked about his comment to Ms. Currie that Ms. Lewinsky had ''come on'' to him, but that he had ''never touched her.''

Question to the President:

> Q: [I]f [Ms. Currie] testified that you told her, Monica came on to me and I never touched her, you did, in fact, of course, touch Ms. Lewinsky, isn't that right, in a physically intimate way?
>
> A. Now, I've testified about that. And that's one of those questions that I believe is answered by the statement that I made.
>
> Q: What was your purpose in making these statements to Mrs. Currie, if it weren't for the purpose to try to suggest to her what she should say if ever asked?

A. Now, Mr. Bittman, I told you, the only thing I remember is when all this stuff blew up, I was trying to figure out what the facts were. I was trying to remember. I was trying to remember every time I had seen Ms. Lewinsky. . . . I knew this was all going to come out. . . . I did not know [at the time] that the Office of Independent Counsel was involved. And I was trying to get the facts and try to think of the best defense we could construct in the face of what I thought was going to be a media onslaught.

Finally, the President was asked why he would have called Ms. Currie into his office a few days after the Sunday meeting and repeated the statements about Ms. Lewinsky to her.

The President testified that although he would not dispute Ms. Currie's testimony to the contrary, he did not remember having a second conversation with her along these lines.

Thus, the president referred to Ms. Currie many times in his deposition when describing his relationship with Ms. Lewinsky.

He himself admitted that a large number of questions about Ms. Lewinsky were likely to be asked in the very near future.

The President reasonably could foresee that Ms. Currie either might be deposed or questioned, or might need to prepare an affidavit.

When he testified he was only making statements to Ms. Currie to ''ascertain what the facts were, trying to ascertain what Betty's perception was,'' this statement was false, and it was perjurious.

We know it was perjury, because the President called Ms. Currie into the White House the day after his deposition to tell her—not ask her, to tell her—that

he was never alone with Ms. Lewinsky;

to tell her that Ms. Currie could always hear or see them

and to tell her that he never touched Ms. Lewinsky.

These were false statements, and he knew that the statements were false at the time he made them to Betty Currie.

The President's suggestion that he was simply trying to refresh his memory when talking to Betty Currie is nonsense.

What if Ms. Currie had confirmed these statements—statements the president knew were false? It could not in any way remind the President of what really happened in the Oval Office with Monica Lewinsky because the President already knew he was alone with Monica Lewinsky. The President already knew that obviously Ms. Currie could not always see him back in the Oval Office area with Monica Lewinsky. And the President already knew that he had an intimate sexual relationship with Monica Lewinsky.

There is no logical way to justify his claim that he made these statements to Ms. Currie to refresh his recollection.

The only reasonable inference from the President's conduct is that he tried to enlist a potential witness to back up his perjury from the day before at the deposition.

The circumstances surrounding the president's statements clearly show, clearly show that he improperly sought to influence Ms. Currie's potential future testimony.

His actions were an obstruction of justice, and a blatant attempt to illegally influence the truthful testimony of a potential witness.

And his later denials about it under oath were perjurious.

Next, the President gave perjurious, false and misleading testimony before the grand jury when he denied he was engaged in a plot to hide evidence that had been subpoenaed in the Paula Jones case.

On December 19, 1997, Monica Lewinsky was served with a subpoena in the Paula Jones case.

The subpoena required her to testify at a deposition in January, and the subpoena required her to produce each and every gift President Clinton had given her.

Nine days after she received this subpoena, Ms. Lewinsky met with the President for about 45 minutes in the Oval Office.

By this time, President Clinton knew that she had been subpoenaed in the case.

At this meeting they discussed the fact that the gifts that he had given Monica Lewinsky had been subpoenaed, including a hat pin—the first gift the president had ever given Ms. Lewinsky.

Monica Lewinsky testified that at some point in this meeting she said to the President,

Well, you know, I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.

And he sort of said—I think he responded, ''I don't know'' or ''Let me think about that.'' And left that topic.

President Clinton provided the following explanation to the grand jury and to the House Judiciary Committee regarding this conversation:

Ms. Lewinsky said something to me like, ''what if they ask me about the gifts you've given me,'' but I do not know whether that conversation occurred on December 28, 1997, or earlier.

Whenever this conversation occurred, I testified, I told her ''that if they [the Jones Lawyers] asked her for gifts, she'd have to give them whatever she had. . . .''

I simply was not concerned about the fact that I had given her gifts. Indeed, I gave her additional gifts on December 28, 1997.

The President's statement that he told Ms. Lewinsky that if the attorneys for Paula Jones asked for the gifts, then she had to provide them, is perjurious.

It strains all logic to believe the President would encourage Monica Lewinsky to turn over the gifts. To do so would have raised questions about their relationship and would go against all of their other efforts to conceal the relationship, including filing a false affidavit about their relationship. The fact that the President gave Monica Lewinsky additional gifts on December 28, 1998, doesn't exonerate the President. It demonstrates that the President never believed that Monica Lewinsky in light of all of their relationship, all of the cover stories, all of the plans that they had put forward, her willingness to subject herself to a perjury prosecution by filing a false affidavit, all of that was because he knew that Monica Lewinsky would never turn those gifts over pursuant to the subpoena. And as Ms. Lewinsky testified, she never questioned, as she said, ''that we were ever going to do anything but keep this quiet.''

This meant that they would take, in her words, ''whatever steps needed to be taken'' to keep it quiet.

By giving more gifts to Monica Lewinsky after she received a subpoena to appear in the Jones case, the President believed that Monica Lewinsky would never testify truthfully about their relationship.

Additionally, Ms. Lewinsky said she could not answer why the President would give her more gifts on the 28th when he knew she had to produce gifts in response to the subpoena. She did testify, however, that——

To me it was never a question in my mind and I—from everything he said to me, I never questioned him, that we were never going to do anything but keep this private, so that meant deny it and that meant do—take whatever appropriate steps needed to be taken, you know, for that to happen. . . . So by turning over these gifts, it would at least prompt [the Jones attorneys] to question me about what kind of friendship I had with the President. . . .

After this meeting on the morning of December 28, Betty Currie called Monica Lewinsky and made arrangements to pick up gifts the President had given to Ms. Lewinsky.

Monica Lewinsky testified under oath before the grand jury that a few hours after meeting with the President on December 28, 1997, where they discussed what to do about the gifts he gave to her, Betty Currie called Monica Lewinsky.

Monica Lewinsky explained it to the grand jury as follows:

Question: What did [Betty Currie] say?

Answer: She said, ''I understand you have something to give me.'' Or, ''The President said you have something to give me.'' Along those lines. . . .

Question: When she said something along the lines of ''I understand you have something to give me,'' or ''The President says you have something for me,'' what did you understand her to mean?

Answer: The gifts.

Later in the day on December 28, Ms. Currie drove to Monica Lewinsky's home.

Ms. Lewinsky gave Ms. Currie a sealed box that contained several gifts Ms. Lewinsky had received from the President, including the hat pin that was specifically named in the Jones subpoena.

As further corroboration, Monica Lewinsky had told the FBI earlier that when Betty Currie called her about these gifts, it sounded like Betty Currie was calling on her cell phone.

Ms. Lewinsky gave her best guess on the time of day the call came on December 28.

Although Ms. Lewinsky's guess on the hour the call came was a bit off, phone records were later produced revealing that Betty Currie in fact called Monica Lewinsky on her cell phone, just as Ms. Lewinsky had described it. The only logical conclusion is that Betty Currie called Monica Lewinsky about retrieving the President's gifts. There would have been no reason for Betty Currie, out of the blue, to return gifts unless instructed to do so by the President. Betty Currie didn't know about the gift issue ahead of time. Only the President and Monica Lewinsky had discussed it. There is no other way Ms. Currie could have known to call Monica Lewinsky about the gifts unless the President told her to do it.

President Clinton perjured himself when he testified before the grand jury on this issue and reiterated to the House Judiciary Committee that he did not recall any conversation with Ms. Currie around December 28. He also perjured himself when he testified before the grand jury that he did not tell Betty Currie to take possession of the gifts that he had given Ms. Lewinsky.

Question to the President:

After you gave her the gifts on December 28th, did you speak with your secretary, Ms. Currie, and ask her to pick up a box of gifts that were some compilation of gifts that Ms. Lewinsky would have——

Answer: No, sir, I didn't do that.

Question: —to give to Ms. Currie?

Answer: I did not do that.

The President had a motive to conceal the gifts because both he and Ms. Lewinsky were concerned that the gifts might raise questions about their relationship. By confirming that the gifts would not be produced, the President ensured that these questions would never arise. The concealment of these gifts from Paula Jones' attorneys allowed the President to provide perjurious statements about the gifts at his deposition in the Jones case.

Finally, the President gave perjurious testimony to the grand jury concerning statements he gave to his top aides regarding his relationship with Monica Lewinsky. Here is a portion of his grand jury transcript, when the President testified about his conversation with key aides, once the Monica Lewinsky story became public.

Question to the President:

Question: Did you deny to them or not, Mr. President?

Answer: . . . I did not want to mislead my friends, but I want to define language where I can say that. I also, frankly, do not want to turn any of them into witnesses because I—and sure enough, they all became witnesses.

Question: Well, you knew they might be witnesses, didn't you?

Answer: And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there is nothing go[ing] on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course. But I also didn't want to do anything to complicate this matter further. So, I said things that were true. They may have been misleading, and if they were, I have to take responsibility for it, and I'm sorry.

The President's testimony that day that he said things that were true to his aides is clearly perjurious. Just as the President predicted, several of the President's top aides were later called to testify before the grand jury as to what the President told them. And when they testified before the grand jury they passed along the President's false account, just as the President intended them to do.

I will not belabor the point any further with the Members of this body because I think Mr. Manager HUTCHINSON ably presented that testimony.

But we know from the evidence that Erskine Bowles, John Podesta, Sidney Blumenthal, all came before the grand jury. They all provided testimony to the grand jury establishing that the President's comments to them were the truth. The President had them go in. The President gave them that information so false information would be shared with the grand jury so that the grand jury would never be armed with the truth. And when witnesses are called to come before this body, you will have an opportunity to make that determination.

Mr. Chief Justice and Members of the United States Senate, posterity looks to this body to defend in a courageous way the public trust and take care that the basis of our Government is not undermined. On January 17, 1998, President Clinton, while a defendant in a civil rights sexual harassment lawsuit, gave sworn testimony in a deposition presided over by a Federal judge. In this deposition he raised his hand and he swore to tell the truth, the whole truth and nothing but the truth.

On August 17th, President Clinton testified before a Federal grand jury in a criminal investigation. At this appearance he raised his hand and he swore to tell the truth, the whole truth, and nothing but the truth. The evidence conclusively shows that the President rejected his obligations under oath on both occasions. He engaged in a serial pattern of perjury and obstruction of justice. These corrupt acts were done so he could deny a U.S. citizen, Mrs. Paula Jones, her constitutional right to bring her claim against him in a court of law. In so doing, he intentionally violated his oath of office, his constitutional duty to take care that the laws be faithfully executed, and his solemn obligation to respect Mrs. Jones' rights by providing truthful testimony under oath.

The evidence reviewed by the House of Representatives and relied upon by our body in bringing articles of impeachment against the President was not political. It was overwhelming. He has denied all allegations set forth in these articles. Who is telling the truth? There is only one way to find out.

On behalf of the House of Representatives, we urge this body to bring forth the witnesses and place them all under oath. If the witnesses can make the case against the President, if the witnesses that make the case against the President who, incidentally, are his employees, his top aides, his former interns, and his close friends—if all of these people in the President's universe are lying, then the President has been done a grave disservice. He deserves not just an acquittal, he deserves the most profound of apologies.

But, if they are not lying, if the evidence is true, if the Chief Executive Officer of our Nation used his power and his influence to corruptly destroy a lone woman's right to bring forth her case in a court of law, then there must be constitutional accountability, and by that I mean the kind of accountability the framers of the Constitution intended for such conduct and not the type of accountability that satisfies the temporary mood of the moment.

Our Founders bequeathed to us a Nation of laws, not of polls, not of focus groups, and not of talk show habitues. America is strong enough to absorb the truth about their leaders when those leaders act in a manner destructive to their oath of office. God help our country's future if we ever decide otherwise.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ADJOURNMENT

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the court stand in adjournment until 1 p.m. tomorrow, and that all Members remain standing at their desks as the Chief Justice departs the Chamber. I further ask that after the court adjourns in a moment, the Senate will, while in legislative session, stand in recess subject to the call of the Chair.

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

Thereupon, at 6:59 p.m., the Senate, sitting as a Court of Impeachment, adjourned.

LEGISLATIVE SESSION

RECESS SUBJECT TO THE CALL OF THE CHAIR

Thereupon, at 6:59 p.m., the Senate recessed subject to the call of the Chair.

The Senate reassembled at 7:01 p.m., when called to order by the Presiding Officer (Mr. SESSIONS).

ORDER FOR PRINTING OF APPOINTMENTS

Mr. LOTT. Mr. President, I ask unanimous consent that the appointments that are now at the desk, which were made pursuant to law during the sine die adjournment of the Senate, be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The appointments are as follows:

To the Twenty-First Century Workforce Commission, pursuant to Public Law 105–220,